

Before the

**Committee on Commerce, Science, and Transportation
Subcommittee on Surface Transportation and Merchant
Marine Infrastructure, Safety, and Security**

United States Senate

Testimony of

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On Behalf of

The American Trucking Associations

Hearing on

**Protecting Commuters: Ensuring Accountability and
Oversight in Tolling**

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**AMERICAN
TRUCKING
ASSOCIATIONS**

Driving Trucking's Success

Introduction

Chairman Lautenberg, Ranking Member Wicker, and members of the Subcommittee, thank you for giving me the opportunity to testify on behalf of the American Trucking Associations (ATA). The American Trucking Associations is the largest national trade association for the trucking industry. Through a federation of other trucking groups, the industry-related conferences and its 50 affiliated state trucking associations, ATA represents more than 35,000 members covering every type of motor carrier in the United States.

My name is Steve Grabell and I am the Chief Financial Officer for National Freight, Incorporated, more commonly known as NFI. NFI offers a complete range of transportation and distribution services throughout the United States and Canada, including dedicated trucking, non-asset based transportation services, public and dedicated warehousing, and other supply chain and logistics services. NFI is based in New Jersey and has total annual revenues of approximately \$1 billion. More than 50% of NFI's trucking revenue is generated in the Mid-Atlantic and Northeast regions of the U.S., where tolls are most prominent. NFI operates approximately 2,000 tractors and 7,000 trailers and about 20 million square feet of warehouse space.

Mr. Chairman, we are very concerned about the irresponsible behavior of some tolling authorities which, along with complicit state officials, seemingly view toll revenue as a slush fund for investment in all manner of projects, programs and activities which have nothing to do with maintaining their highways, bridges and tunnels. We believe that these toll facilities must be subject to federal oversight, and the statutory "just and reasonable" toll rate standard that has been in effect for nearly a century must be applied to toll facilities that serve interstate traffic. Furthermore, federal enforcement authority, whether through judicial review, executive branch oversight, or a combination of the two, must be restored. Absent such action, consumers and businesses will be compromised by unfair costs and a highway system that is less efficient and less safe.

The Impacts of Tolls on NFI

Due to our considerable operations in the Northeast and Mid-Atlantic, NFI bears a significant toll burden. In 2011 alone, we paid approximately \$14 million in tolls. Tolls represent the fourth largest expense category for our trucking fleet, behind the cost of our drivers, trucks and fuel. In the event of increases in tolls, we are able to pass on to our customers in any given year, 50% to 80% of these increases, depending on contractual commitments, market conditions and the particular freight lanes. Regardless, there will always be a portion of our toll cost increases that we cannot collect from our customers. For example, when the marketplace may not accept, or may delay the acceptance of, the additional pricing for necessary empty miles run by our trucks without customer freight. The additional costs, administrative burdens, as well as customer frictions created by the toll increases, compromise margin and customer satisfaction in an already low margin, highly competitive business.

Our customers, ultimately, bear much of the costs of tolls, and of course, they attempt to pass the costs on to their customers, which eventually filter through to the consumer of the product. This

impacts the customers' cost of doing business and creates additional uncertainty regarding these companies' ability to continue to operate in the Northeastern part of the U.S. and other areas of the country that impose tolls on major freight routes. It should be no surprise that companies have relocated to more business-friendly locations. Toll costs certainly contribute to these decisions. It is also important to recognize that individual toll facilities do not exist in a vacuum. Because of other recent increases in the Northeast, by 2015 a trip from Baltimore to New York City will cost a 5-axle truck more than \$209 in tolls. To put this into perspective, the tolls could represent more than 20% of the charge to a customer for this move and would make tolls as a cost component more expensive than the cost of a driver, truck or fuel for this trip. This will be a serious consideration for businesses who are considering their future plans, including in states served by the I-95 corridor which do not impose tolls.

Due to these recent major toll rate increases in our service area, we are in the process of reviewing all of our major lanes in the Northeast to evaluate rerouting to avoid tolls. We have some success avoiding, for example, the New Jersey Turnpike. We have to measure the cost savings of the tolls relative to costs associated with the out-of-route miles. Unfortunately, to avoid tolls, we are creating additional mileage and congestion on non-toll roads which in some cases may be less safe. Obviously we prefer to use Interstates as much as possible, but we operate in a competitive industry with low average profit margins, and when toll authorities raise their rates to a certain threshold, we have no choice other than to find a less expensive alternative. Toll distort the marketplace by penalizing those vehicles that stay on the toll roads and rewarding those that divert to local roads. As a result, efforts to raise money for toll facility maintenance and improvement have the unintended, yet predictable, effect of adding to the maintenance costs of diversionary routes. In some cases these routes are outside of the state where the toll facility is located.

Some Toll Authorities Have Abused the Public Trust

Mr. Chairman, while there is significant evidence of toll authority abuse in many locations, we would like to highlight two recent examples: the Port Authority of New York and New Jersey (PANYNJ) and the Delaware River Port Authority (DRPA).

Port Authority of New York and New Jersey

A January 31, 2012 audit report¹ of the PANYNJ found “a challenged and dysfunctional organization suffering from a lack of consistent leadership, a siloed underlying bureaucracy, poorly coordinated capital planning processes, insufficient cost controls, and a lack of transparent and effective oversight of the World Trade Center (the “WTC”) program that has obscured full awareness of billions of dollars in exposure to the Port Authority.” The report found that the PANYNJ had accumulated debt of \$19.5 billion by the end of 2011, which is projected to rise to \$20.8 billion by the end of 2012.

In order to fund a 10-year, \$25.1 billion capital plan, in 2011 the PANYNJ announced a massive toll rate increase on the six interstate bridges and tunnels between New York and New Jersey

¹ Navigant, “Phase 1 Interim Report to the Special Committee of the Port Authority of New York and New Jersey,” Jan. 31, 2012.

under its jurisdiction. By 2015 the cash toll rate will increase by 88% for cars and a whopping 163% for 5-axle trucks. This is on top of a 75% increase in truck tolls passed just three years earlier. At \$105 per crossing on PANYNJ facilities, the truck toll rate will be nearly three times higher than the rate for any other bridge or tunnel in the country. In a laughable attempt to mitigate the exorbitant increases, the authority recently developed a “Truck Repeat Volume Program,” which offers a mere 10% discount on trucks’ monthly tolls, provided they take 100 trips or more through Port Authority crossings during off-peak hours within 30 days. However, the vast majority of truckers entering New York City will not be eligible for the program. The fact that a truck has to cross during off-peak hours presents a huge problem. The trucking industry does not choose when to cross a bridge – that is dictated by our customers. Until shippers and receivers allow truck deliveries during overnight hours, trucks MUST travel into New York City during high congestion times. Furthermore, most trucking companies are small operators and simply do not have the necessary volumes to qualify. In addition, in order to qualify for the discount, the truck must have either a New York or New Jersey EZ-Pass transponder. Transponders from other states do not qualify.

Since the PANYNJ has refused to specify how the additional toll revenue will be spent, it is unclear how the money generated by the toll increases will be invested. Public information made available by the Authority lists the projects to be funded, but does not detail the amount to be spent on each.² A PANYNJ press release put out prior to final approval of the capital budget suggested that only about \$3 billion of the revenue from toll increases will be used for projects that directly benefit toll payers.³ The remainder will be used to raise the Bayonne Bridge to accommodate larger ships, improve security at PANYNJ facilities, and fund airport and seaport improvements. However, the most egregious use of toll revenue is the approximately \$11 billion dedicated to the completion of the World Trade Center office buildings. It is apparent from the audit report that these costs are likely to escalate. It is unclear why trucking companies and commuters are being forced to foot the bill for a real estate project. Certainly when Congress granted an interstate compact to the PANYNJ, it did not envision that the Authority’s responsibilities would extend to such activities.

The manner in which the Authority conducted the public hearings associated with the toll increase did not allow commuters and carriers with legitimate concerns, and who would likely suffer significant hardship as a result of the increases, with sufficient opportunity to provide input. The proposal was announced on August 5, 2011, and only one day of hearings was scheduled, for August 16, 2011. This allowed less than two weeks for the public to analyze the proposal and prepare remarks. The hearings were held at locations that were difficult for the public to reach, and at inconvenient times of the day. Following the hearings, the Port Authority Board met on August 19, 2011 and approved a revised toll increase schedule which was apparently negotiated with both Governor Cuomo (NY) and Governor Christie (NJ). As a result, the public was not even provided an opportunity to comment on the final proposal. The approved toll increase was set to go into effect on September 18, 2011, providing less than a month for motorists to prepare for the exorbitant increases associated with the first phase of the 5-year planned increases. This is especially problematic for trucking companies, which cannot easily renegotiate contracts with customers or, in many cases, cannot effectuate the rate increases

² http://www.panynj.gov/press-room/press-item.cfm?headLine_id=1445

³ http://www.panynj.gov/press-room/press-item.cfm?headLine_id=1401

with customers within such a short period. The result for NFI and other truckers is that we will absorb a disproportionate amount of the toll increase for a period of time.

The hearings associated with the proposed increases were frankly just window dressing. The way in which the whole process was conducted sent a very clear message that the decision to increase tolls had already been made, without regard to public input. The increases were forced on motorists during a slow recovery from one of the worst economic recessions in history, with little to no time for commuters or businesses to determine how they would budget for the increased costs. The process and the outcome points to an Authority with unchecked power that shows little regard for the impacts of its decisions on the community which it purports to serve.

Delaware River Port Authority

Among other responsibilities, DRPA owns and operates four interstate bridges serving traffic between Pennsylvania and New Jersey. Until the PANYNJ's recent rate increases, DRPA's truck toll rates were the highest in the country for a bridge crossing. A March 29, 2012, investigative report by the New Jersey Office of the State Comptroller found "wasteful spending and mismanagement of tollpayer funds due to misguided priorities as well as weak or ignored DRPA policies, procedures and internal controls."⁴ The report reveals an organization whose flagrant disregard for its customers, misuse of public funds and disregard for following even basic tenets of public accountability, is a textbook demonstration of the need for greater federal oversight.

Here are just a few of the report's findings regarding DRPA's operations over the past 10 years:

- \$1.5 million in payments were made to two insurance firms that provided no service or coverage to DRPA.
- \$440 million in "economic development" project grants were made, even though the DRPA Compact prohibits such grants if sufficient money is unavailable for bridge projects. Over the same period, DRPA had to cut back on bridge project funding and take on additional debt to fund economic development projects.
- The economic development project selection essentially relied on the recommendations of elected officials from New Jersey or Pennsylvania, and from DRPA commissioners. Projects were accepted without any evaluation of the benefits to DRPA. No project oversight was instituted.
- Contributions from the DRPA's charitable contributions fund were almost all made to organizations in some way affiliated with the commissioners.
- DRPA commissioners, employees and their friends and family members got free passage EZ Passes, which cost \$1.2 million over 10 years.
- DRPA totally ignored all procedures with regard to expense reimbursement, caps on expenses using DRPA credit cards, etc. The report found evident abuse, citing "meetings" at expensive restaurants and questionable trips and outings, some for elected officials responsible for Authority oversight.

⁴ http://www.state.nj.us/comptroller/news/docs/report_drpa_032912.pdf

It is clear from the report's findings that the obvious abuses at DRPA over a long period of time were allowed to continue with the knowledge of the state officials who were supposed to provide oversight, most likely because these officials were benefitting from DRPA's largesse.

These are just two recent examples of toll agencies' irresponsible practices. There are many more. Here is just a sampling:

- The Ohio Turnpike Commission raised toll rates by 82% in the mid-1990s, and was subsequently forced to partially roll back the increases when it became apparent that massive diversion of traffic to secondary roads was occurring, a scenario that the Commission was told would likely unfold even before they made the decision to raise rates. The Commission ignored entreaties from the state legislature, local school boards, the trucking industry, local city governments and others, who warned that the rate increase would cause massive evasion with dire consequences. The Commission went ahead with their plans anyway. It is instructive that while the Commission's own rules require public hearings prior to a rate increase, and did indeed schedule hearings, none of the Commissioners actually showed up, having obviously predetermined the outcome.
- In 2003, the Delaware River Joint Toll Bridge Commission voted to increase tolls by 300%, partially for economic development, even though federal law did not allow them to use toll revenue for this purpose. When Commissioners realized they could not spend the money as intended, rather than roll back the increases, they put the money into a slush fund. When ATA challenged the rate increases under the federal "Just and Reasonable" standard, the Court found that although the Commission likely violated the standard, federal law does not provide a private right of action to enforce the law, and therefore the suit was thrown out.
- The New York Thruway recently approved toll rate hikes of up to 100%, in part to finance a continuing subsidy of the state's canal system.
- In 2004, the City of Chicago signed a 99-year lease agreement handing control of the Chicago Skyway – and the toll revenue it generates – to a private consortium in return for a one-time payment to the City of \$1.8 billion. Nearly all of this money was used to retire city debt. Skyway users – about 80% of whom live in Indiana – were forced to endure a doubling of toll rates. Indiana residents will have the satisfaction of knowing that for the next century they will be paying off the debt for a city which they do not even reside in.

ATA Opposes Tolls on Existing Lanes

Mr. Chairman, a safe, efficient system of highways connecting America's cities, towns and rural areas, financed in a fair and equitable way, is essential to our country's economic well-being, national security, and overall quality of life. Trucks move 67% of our Nation's freight tonnage and draw 81% of freight revenue.⁵ Unfortunately, the highway system no longer meets our transportation needs. According to the U.S. Department of Transportation, highway investment

⁵ Global Insight, *U.S. Freight Transportation Forecast to...2023*, 2012

would have to approximately double in order to fix the system's deficient pavements and bridges, and address serious and growing congestion on highways throughout the nation.⁶

Disruptions to the movement of freight on our nation's highway system due to congestion jeopardize the tremendous gains the trucking industry has made to improve supply chain efficiencies. Congestion slows delivery times, creates unpredictability in supply chains, and ultimately makes U.S. businesses less competitive and consumer products more expensive. If we fail to address congestion, these costs will continue to rise, and will translate into higher consumer prices and slower job growth, and weaken the United States' ability to compete in the global economy. However, the real costs of congestion are largely hidden. The supply chain is wound so tightly that any disruption or slow-down can cause significant ripple effects.

Recognizing these serious threats to our nation's economic security, ATA's members have indicated their willingness to support an increase in highway user fees, provided the revenue is dedicated to projects and programs that will benefit goods movement on the nation's highways. We use the following criteria to determine how this revenue should be raised.

- Will produce the level of revenues needed to meet current and future highway infrastructure needs;
- is easy and inexpensive to pay and collect;
- has a low evasion rate;
- is tied to highway use; and
- does not create impediments to interstate commerce.

Traditional user fees, such as fuel taxes and registration fees, meet the above tests, and ATA has been a vocal proponent for an increase in the federal fuel tax. Tolls, on the other hand, fall well short of meeting these criteria, and therefore ATA is strongly opposed to tolls on existing Interstate highways. While federal law generally prohibits this practice, Congress has, over the years, created a number of exceptions. Imposing tolls on existing lanes of the Interstate System would have a devastating effect on the trucking industry. The industry is highly competitive and tolls cannot easily be passed along to shippers. Furthermore, tolls cause diversion of traffic to alternative routes, which are usually less safe and were not built to handle the additional traffic.

ATA also opposes the imposition of mileage-based user fees, which are a form of tolling. While we recognize that in the future a replacement for the fuel tax as the primary source of revenue for highway funding will be necessary due to changes in vehicle technology, that scenario is likely at least two decades away. It is also important to understand that passenger vehicle fleet conversion will precede commercial vehicles' transition from internal combustion engines by many years. Therefore, it would be illogical to require trucks to transition to a mileage-based fee before passenger vehicles. In addition, currently available options for implementing vehicle miles traveled fees are limited, and these options have extremely high collection costs and will experience a very high level of evasion.

⁶ U.S. Department of Transportation, *2008 Status of the Nation's Highways, Bridges and Transit: Conditions and Performance*, 2009.

Federal Oversight is Needed

Mr. Chairman, we would like to thank you and Senator Menendez for introducing the S. 2006 “Commuter Protection Act.” This legislation will provide greatly needed oversight for irresponsible tolling authorities and protect the public from being gouged in order to fund projects and programs that do not benefit them by ensuring that rates comply with the long-established “just and reasonable standard.” Those tolling agencies which set “just and reasonable” toll rates will not be affected by the legislation and have no reason to be concerned with or oppose the bill.

Title 33, Section 508 of the United States Code requires that “Tolls for passage or transit over any bridge...” constructed over navigable waterways “...shall be just and reasonable.” This requirement, which was first established in 1906, was amended several times over the years. In 1966, Congress gave the U.S. Department of Transportation (USDOT) the explicit authority to determine whether tolls met the just and reasonable standard, although it was equally clear that the law gave the public the right to challenge the agency’s decisions through the judicial process.

In a wide-ranging effort to streamline the federal administrative process, in 1985 Congress removed the USDOT’s authority to rule on the just and reasonable standard. While it is clear from the legislative history that Congress’ intent was to retain a just and reasonable standard that was challengeable through the court system, the new language did not explicitly create a private right of action which would allow the public to challenge the toll rates in Court. In a 2006 decision by the United States Court of Appeals for the Third Circuit, the Court established that this lack of a specific provision for a private right of action prevents the public from challenging toll rates through the judicial process. As a result, since Congress removed the Federal government from the review process altogether, the Court decision essentially rendered Section 508 moot, despite the fact that Congress clearly intended to retain the just and reasonable standard.

The result of this decision is that toll authorities subject to Section 508 can, and have, set toll rates which generate revenues that are far in excess of what is necessary to maintain and improve the tolled bridges. In some cases, the tolls have become a slush fund for all manner of activities completely unrelated to the bridges themselves, and with little or no benefit to the motorists paying the tolls. These toll rates clearly violate the just and reasonable standard established by Congress. Yet neither the public nor the federal government has the ability to challenge these rates and enforce federal law. The Commuter Protection Act, a bicameral, bipartisan bill, would restore enforcement of the just and reasonable standard and we urge its passage.

Congress has a Constitutional obligation to protect interstate commerce. Most of the states that have considered, or are currently considering, Interstate tolls, have suggested that they will charge tolls at their borders or at other locations designed to place much of the financial burden on out-of-state traffic, an act that likely violates the Commerce Clause. Multi-state agencies, such as the PANYNJ and the DRPA, operate with the consent of the federal government and are subject to federal requirements.

Mr. Chairman, as described above, we have witnessed a disturbing trend among some tolling authorities. Operating independently, or with the support of, or benign neglect from, state

officials, these authorities seem to view their control over the distribution of toll revenue as an opportunity for personal enrichment or accumulation of power. Without federal oversight, such abuses may never be uncovered and will not be curtailed.

Toll facilities that serve significant volumes of interstate traffic are particularly in need of federal oversight. This is especially true of bridges and tunnels, which normally do not have toll-free alternatives. In these cases, facility users are captured, and the normal free market rules which might otherwise hold toll rates down do not apply. Under these circumstances, one can characterize tolls more as taxes than as user fees, since customers have no choice but to pay the toll. Yet out-of-state travelers have no voice with regard to whether their toll taxes should be raised since they enjoy no political representation. A federal presence is required to fill that void and to be the voice of representation for interstate travelers. This is certainly consistent with the Commerce Clause.

Mr. Chairman, once again, I would like to thank you for holding this hearing. We look forward to working with the Subcommittee to ensure that the rate-setting practices of tolling authorities are fair, transparent, and consistent with the public's interest. We also encourage Congress to refrain from granting additional state authority to toll existing Interstates, and to consider eliminating existing authority.