Minority Views of Secretary Mary Peters, Commission Chair; Commissioner Maria Cino; and Commissioner Rick Geddes

America's surface transportation system is faced today with a new and unprecedented challenge – one that is very different from anything the system has faced before. The most pressing transportation problem of the 21st Century is not connectivity, as it was during the second half of the 20th Century, or connecting farms to markets, as it was in the first half.

Today, the most important challenge is the consistent, precipitous decline in transportation system performance and the increased politicization of transportation investment decisions. These twin but related threats represent a growing risk to the United States economy at a time when the efficiency of our transportation networks is more critical than ever to our prosperity.

The U.S. Department of Transportation estimates that transportation system congestion costs the U.S. economy as much as $200 billion a year. The projected growth of urban and suburban populations and the concomitant growth in both domestic and international commerce are straining our transportation system as never before. When the demand for transportation infrastructure overwhelms the transportation system's current capacity during many periods of the day, America's productivity and mobility are compromised. The energy and environmental policy implications of growing transportation system failure are increasingly apparent.

Most goods and services in America's market economy are sold to consumers at prices determined by the interplay of supply and demand. Our country's willingness to allow this interplay to determine the allocation of the vast majority of our resources has propelled a boom in innovation and technology. It is largely this interplay that has guided the development and modernization of other similar network industries, including telecommunications, electricity, railroads, pipelines and many water systems. While experiences are varied across these sectors, in each, we have seen important improvements in system pricing, network efficiency, innovation, competition, resource allocation and customer service. Yet, when it comes to our highways and mass transportation systems, we have been reluctant to embrace those beneficial forces.

The explanation for this divergence is in some ways simple. Throughout the recent history of our highway and mass transportation systems, engineering and political considerations have trumped economic ones. Since the end of World War II, the overriding objective in both the highway and mass transit sector was to build robust connections between various destination points in the U.S. and within cities. The question of how to create efficient financing mechanisms for these systems is far less important when the test of success is how much highway or track mileage was added or rehabilitated in a given year. In other words, such an approach promotes relative indifference to the revenue mechanisms themselves so long as adequate revenue is generated. This is not a sustainable policy.

It is a virtual economic certainty that congestion and system unreliability will worsen if we continue to rely on a tax-based financing system that has little or nothing to do with the true costs of using or providing transportation infrastructure. Today, a fundamentally new transportation policy must focus on system performance rather than simply connectivity and the size of the system.

Because the Commission was not able to forge a consensus on the underlying nature of the problem facing our transportation system today, it should not be surprising that we were unable to reach agreement on a common set of solutions. Many of our fellow Commissioners believe the principal challenge is that, while our federal, state, and local governments have the ability to generate much higher levels of tax revenues for transportation investments, they have not done so because they have not sufficiently recognized the seriousness of the transportation crisis.

We believe, however, that a failure to properly align supply and demand, not a failure to generate sufficient tax revenues, is the essential policy failure. When consumer demand determines supply, it will engender funding sufficient to meet the demand. The problem is not how to raise a certain level of revenue, but rather how to develop a policy framework that will unleash efficient capital investments, empower consumers, reduce congestion, stimulate technology improvements, improve America's quality of life, and support the increased productivity of American businesses.

The broad policy failures we experience in these areas today are further exacerbated by a Federal-centric funding and regulatory structure that stifles creativity and innovation at the State and local levels. Yet a majority of our colleagues on the Commission urge as a central recommendation, an expansion of that very system. The Commission Report thus serves only to reinforce the misconception that substantially more Federal spending will improve America's surface transportation system.

As a result of this core difference of opinion, our Commission has been unable to reach consensus on the report. The following pages set forth our views on some of the key recommendations contained in the Commission Report. We do not express opinions on all recommendations, however.

Discussion

Although we fundamentally disagree with a number of the central elements of the Commission's Report, that disagreement in no way detracts from our respect for our colleagues on the Commission. They are to be commended for their hard work and dedication in the production of the report. Over the last 20 months, the Commission has met on numerous occasions and has engaged in wide ranging discussions in a serious effort to address the Nation's current and future transportation needs.

Our comments reflect the following themes:

The Federal role in transportation policy and investment should be determined only by that which is essential to the national interest. The Commission report, however, derives the Federal responsibility based on the historic 40% share of transportation funding. The Commission Report recommends an increase of \$0.25 to \$0.40 per gallon in Federal fuel taxes over the next five years (with automatic increases every year after that) and assumes substantial increases of State and local transportation taxes to ensure a Federal share representing 40% of total capital investments.

The fact that the public has overwhelmingly opposed an increase in Federal fuel taxes since 1993 represents a lack of investor confidence in current transportation policy. The public correctly understands that increased fuel taxes will not remedy the woefully inadequate transportation system performance they so frequently experience today. Accordingly, neither Congress nor successive Administrations have supported increases in gas taxes, despite the obvious and rapid deterioration in transportation system performance.

Continued dependence on fuel taxes not only fails to align supply and demand properly, it is also inconsistent with national energy policy. That policy, reflected in recently enacted legislation, seeks to reduce our nation's dependence on imported oil, dramatically increase vehicle fuel economy and increase the use of alternative and renewable fuels. A majority of our Commission colleagues propose to expand transportation capacity by increasing government taxation of a commodity whose consumption we seek to discourage. Placing our energy, environment and transportation infrastructure funding policies into direct conflict with each other guarantees failure of one or all policies.

While the Commission Report recognizes the potential of road pricing to reduce congestion and improve system efficiency, it does not recognize pricing as the essential element in a proper alignment of supply and demand as it is in almost every other major sector of our economy. It also fails to recognize that prices are part of a fundamental shift in capacity policy. They are not just a demand management tool. In addition to generating resources, prices help de-politicize investment decisions by sending clear signals where new capacity is most badly needed.

Although the Commission Report identifies the growing availability of private infrastructure capital, the Commission Report actually proposes unprecedented new national regulations on States wishing to contract with the private sector. The Commission Report also fails to adequately consider the important role the private sector can play in a performance-based investment model. There is a vast amount of private sector capital and capacity for investment and innovation that can be brought to bear to improve the U.S. transportation system in a price-and-invest versus a tax-and-spend policy. Important trends are underway in many States and around the world to reform the way in which transportation systems are financed. These trends coincide with changes in public opinion regarding transportation financing and congestion.

Areas of Agreement

We agree with each of the following conclusions and themes listed in the Commission's Report:

1. ***Importance of the transportation system and need for sustained investment.*** The Commission has clearly recognized the key importance of the transportation system to our Nation's economic prosperity, as well as the vast scale of the nation's transportation challenge over the next 50 years. To address these problems, the Commission has properly recognized the multimodal nature of our surface transportation challenges, encompassing highway, transit, freight and passenger rail, intermodal, and port requirements. It has also recognized that our transportation system will need to be substantially recapitalized even as we seek to add capacity to the most congested parts of the system. Such efforts will require additional resources. Both the recommended policy framework and the magnitude of investment necessary to achieve these objectives, however, are not appropriately addressed in the Commission Report.

2. ***Opportunities for simplification, consolidation, and streamlining of Federal programs.*** The Commission Report correctly identifies opportunities to simplify Federal programs and funding categories. In recent years, there has been a proliferation of special interest programs that do little to improve our surface transportation system. Fewer, more focused programs will deliver better results for the Federal taxpayer. Moreover, current programmatic approaches largely do not take into account the impact that investment and management decisions in one mode can have on other modes. The Commission Report makes concrete proposals for streamlining the current planning and environmental processes to save time and money. The speed of transportation infrastructure and technology deployment must be increased to save money and maximize throughput from our existing resources.

3. ***Need for greater accountability and rationality in investment decisions.*** The Commission emphasized the need for much

more efficient investment in, and operation of, the transportation system. We strongly support recommendations to improve the targeting of investments through a greater emphasis on performance and outcomes, as well as the application of benefit –cost analysis to ensure that projects generate benefits at least equal to the value of resources invested in them. States should be encouraged to increase their reliance on these tools in making decisions. Specific sanctions against States, however, are unlikely to be either politically acceptable or desirable as policy. A more effective and sustainable policy approach would be for the Federal program to meaningfully reward States that are willing to reform decision-making processes so as to incorporate economic analysis and a focus on performance.

Importantly, the Commission has attempted to link Federal participation in each of its ten proposed programs to a more clearly defined Federal interest. The Commission Report rightfully seeks to minimize or eliminate the intrusion of political processes and special interests into the transportation planning and funding process. Unfortunately, the report's recommended mechanism for doing so, the proposed National Surface Transportation Commission (NASTRAC), is both impractical and ill-advised, as further explained below.

Areas of Disagreement

We fundamentally disagree with a number of the Commission Report's major recommendations. Moreover, because the Commission Report focuses on recommendations rather than alternatives for Congress to consider, it is appropriate that we identify alternatives to some of the recommendations in the Commission Report and explain why these alternatives are preferable.

1. ***Federal Fuel Tax increases are not a solution.***

- *An Ineffective Tax.* As noted in the preceding pages, congestion has grown virtually unchecked because of a severe imbalance between the supply of and demand for transportation infrastructure in both urban and suburban areas. This imbalance is largely attributable to ineffective and indirect pricing mechanisms in the provision of surface transportation facilities that bear little or no relation to system costs. While the prices for most goods and services are a function of supply and demand, pricing associated with surface transportation infrastructure – predominantly fuel taxes, sales taxes and other indirect taxes – is essentially uninfluenced by market forces. Users pay the same per gallon fuel tax or other indirect tax to use a higher-value facility at peak travel hours as they do to use a significantly lesser-value facility in off-peak travel hours. As a result, severe over-consumption occurs in some locations and times, and under-consumption in others. While the other network service industries cited earlier are driven by a strong customer focus, the current surface transportation funding model effectively ignores consumer choice. Because transportation services are not rationally priced, market discipline is largely eliminated as a driver of service quality in the provision of transportation infrastructure.
- *Breeds Wasteful Spending.* Raising fuel taxes in the existing financial and planning environment would be wasteful because our current transportation infrastructure system is neither performance driven nor accountable. Only a handful of States currently utilize benefit-cost

analysis and rampant earmarking at the Federal level has continued to erode the returns on U.S. highway investments. While the Commission Report makes some meaningful programmatic reform recommendations, there is a real danger that the principal message many readers will take from the Commission Report is that we should immediately increase fuel taxes. In that case, reforms listed as preconditions for such an increase may be ignored or never enforced.

- *Commission Report fails to adequately consider the potential of more effective and bold alternatives.* Only one of the five future investment scenarios used by the Commissioners to calculate the proposed fuel tax increase considered the option of directly pricing highways. Even this scenario contains unjustified investment needs and does not factor in the potential use of revenues raised by direct pricing to offset the need for a gas tax increase. Recent estimates in a forthcoming paper, Toward a Comprehensive Assessment of Road Pricing Accounting for Land Use by economists Clifford Winston and Ashley Langer at the Brookings Institute conclude that utilizing congestion pricing in the largest 98 metropolitan areas would generate approximately $120 billion a year in revenues while simultaneously solving the recurring congestion problem in those areas and allowing State and local officials to reduce taxes.
- *Timing of alternatives to replace fuel taxes.* The Commission asserts that the current fuel tax based financing structure will be adequate until 2025, after which a replacement revenue source, such as congestion pricing or the Vehicle Miles of Travel (VMT) tax would be necessary. This approach would prolong for at least another eighteen years a tax-based system that neither sends the correct price signals to users nor promotes accountability for project delivery. This timeframe is far too pessimistic from a technological and administrative perspective. It also fails to recognize the growing willingness of State and local leaders to experiment with different approaches. Replacement of fuel taxes by a variety of direct user charges (which can be varied by time of day, congestion, vehicle characteristics, and location depending on the policy objectives of the implementing jurisdiction), can and should be expedited as a matter of national policy. Given current technologies and international experiences, we believe that within a decade, the vast majority of metropolitan areas in the U.S. could finance their transportation systems through direct user charges instead of indirect taxes.

2. ***Unnecessarily large Federal role.*** There is no question that we urgently need a renewed national focus on infrastructure policy. Unfortunately, the Commission's Report mistakenly converts this need into a recommendation for a larger Federal role in directly financing and managing project development. The massive Federal fuel tax increase recommended by the Commission Report is based on an assumption that the Federal Government should continue to pay 40% of national infrastructure capital costs. There is no analysis to support this percentage. Rather, 40% simply reflects the historic Federal participation share, established over the last decade by the political system. In practice, this recommendation would directly conflict with other parts of the report that are critical of Federal process requirements and recommend that the Federal government should become more focused on matters

of national concern. It is implausible that the Federal government would substantially increase its financial participation in surface transportation infrastructure while simultaneously eliminating many of the burdensome processes that have been put in place.

Far more likely is that increased financial participation will come with additional procedural requirements, greater delays in project decision-making, more special interest programs and projects and unjustified Federal involvement in issues that are best treated as local policy matters. In contrast, revenues collected at the State and local levels allow greater flexibility, responsiveness, and accountability to local transportation consumers. Planning and construction flexibility is much greater without the onerous procedural requirements and "one size fits all" approach that come with Federal funds. Accountability is also improved by State and local funds because those agencies have a stronger incentive to be accountable to their voters than to the Federal Government, which can often be blocked from acting through political intervention. Taxpayers are less inclined to hold State and local officials accountable for the careful spending of Federal funds, in part because these funds are perceived (often incorrectly) to come from outside the State.

Given that today's principal transportation problems are congestion and system unreliability, a far more effective policy would be for the Federal government to stimulate creative new investment approaches. Federal programs should focus on truly Federal objectives, such as preservation and improvement of the Interstate Highway System, interstate freight movement, safety programs (e.g., those of the National Highway Traffic Safety Administration and the Federal Motor Carrier Safety Administration), projects of truly national or regional significance, and research supportive of national goals.

3. ***An inappropriate definition of "need."*** It is inappropriate to cite the highway and transit investment "needs" estimates in the Commission's fuel tax calculations (see "Summary of range of 'high' average annual capital investment levels analyzed for all modes") as these estimates are simply an estimate of projects whose benefits slightly outweigh their costs. Mistakenly, the Commission Report assumes that any project, whose benefits outweigh its costs, even if only by a dollar, should in fact be constructed. This is not a criterion on which we base investment decisions in any other sector of the economy. If utilized, it would translate into extremely low investment returns when analyzed on a rate of return basis. In addition to being a flawed taxing strategy, it also neglects the fact that resources are limited. A dollar invested in a low return transportation project is a dollar not invested in some higher return enterprise. In many areas of the economy – education, health care, waste water treatment – we have far more in "needs", even "needs" that can pass a cost-benefit test, than we have money to pay for them. The existence of a dedicated funding stream in the form of the federal excise tax on fuels leads some to believe that the tax should be raised whenever the benefits of increased investments exceed their costs. Yet raising the fuel tax reduces revenues available for other forms of government expenditure and for private sector expenditures – many of which may have benefits even greater in excess of their costs. After all, if their benefits didn't exceed their costs, people probably wouldn't spend money on them anyway.

Second, several of the investment assumptions used in the Commission analyses include unjustifiable investments. One scenario contains $23 billion per year in highway and transit "needs" that go beyond what even a benefit-cost test would likely support, much less a more realistic standard for fiscal prudence. Some of the transit investments are not based on a strict benefit-cost analysis. The estimates for rail passenger investment needs ($7 - $9 billion per year, of which over $6 billion would be Federal grants) are similarly unrealistic. It is not clear that even our current investments in passenger rail yield benefits in excess of their costs; it is highly unlikely that $9 billion per year in cost-beneficial investment opportunities in passenger rail could be found.

And, as noted above, the exclusion of congestion pricing from four of the five investment scenarios explored by the Commission causes these scenarios to overstate America's infrastructure "needs" by a substantial measure.

4. ***An independent governance commission is neither practical nor good policy.*** The Commission's proposal to create an independent governance commission (NASTRAC) to oversee the development of a national strategic plan and recommend funding levels for the plan is neither politically realistic nor good policy. Although the motivation for establishing such a commission is commendable, to insulate the transportation planning process from political intervention, it is unlikely that either Congress or the Executive Branch would cede control of infrastructure investment to an autonomous body. Moreover, there is little reason to believe that such a body would itself not soon be subjected to the same political forces that are currently undermining Federal investment policies. Although well-intended, the creation of such a commission would simply add another layer of bureaucracy to the decision-making process. No program or policy recommended by the Commission Report should be made contingent on the creation of an independent governance body.

5. ***New Federal restrictions on pricing and private investment.*** While correctly recognizing that direct pricing and private investment have a role to play, the Commission's Report actually proposes to increase and tighten Federal restrictions on the use of these increasingly important solutions. Each of the recent major Federal surface transportation bills has expanded the ability of States to experiment with pricing and innovative procurement. In addition to being an unprecedented call for greater Federal regulations of the financial flexibility of States, this element of the Commission Report also conflicts with other passages that stress the need for greater investment from all sources. Additionally, the Commission Report proposes no restrictions on the ability of States to raise transportation revenues from non-users. The somewhat striking implication is that the Commission Report believes it is less desirable to charge transportation system users than people buying homes or consumer products.

   The Commission report would limit tolling and congestion pricing of existing Interstate highway capacity to metropolitan areas of 1 million or more in population. There are clearly major sections of Interstates through rural and small urban areas where pricing would be viable. The Commission's proposed restrictions on such segments therefore do not represent good policy. The Commission recommendations would also restrict the use of toll revenues, or payments by private operators to States for the lease of a transportation facility, to the facility itself, or to roads within the same corridor, or the same network of facilities. This latter restriction puts pricing at an artificial disadvantage relative to traditional funding sources such as fuel taxes, which are not constrained in this manner. States are currently allowed to spend Federal and State gas tax dollars on any eligible facility they wish to, even if the taxes are not raised from users of the facility.

The report states that commercial transportation users have limited flexibility to respond to prices, and therefore must be protected from them. In fact, experience has shown that our free enterprise system can adapt to pricing in many innovative ways, and in the end will operate more efficiently. The restrictions on toll levels recommended by the Commission to "protect" commercial users would, in fact, simply undermine the efficacy of tolls to allocate and fund capacity. Trucks and other commercial users can in fact incorporate tolls and other fees into their commercial operations. This has been our experience with container fees for rail access improvements in Southern California.

With respect to public private partnerships, the Commission Report recommends that Congress encourage the use of PPP's. While we strongly agree, the Commission Report contains no proposals in this regard. Instead, without any basis, problem or risk cited, the Commission Report proposes new Federal regulations of State contracts with the private sector. The Commission Report includes recommendations to replace what would otherwise be specifically negotiated terms and conditions with a national regulatory scheme for public-private partnerships that goes well beyond any regulations currently in place.

In fact, despite finding substantial flaws with current programs and policies, the Commission Report strangely subjects innovative forms of project delivery to greater Federal scrutiny than traditional procurement approaches. The Commission Report would also subject private toll operators under contract with a State to greater Federal scrutiny than the scrutiny to which local public toll authorities are subject. There is no basis for this distinction. The Commonwealth of Virginia recently reached financial close on an unsolicited private sector proposal to construct four dynamically priced lanes on one of the most congested highway stretches in the United States, I-495. This transaction is the latest in a growing line of innovative public private infrastructure partnerships being developed in the U.S. and around the globe. The majority of major new highway projects in America are currently being developed as toll roads, and toll revenues are growing far faster than gasoline tax revenues on a percentage basis.

It should also be noted that public opinion results show a clear preference for toll roads over increases in gasoline and other traditional transportation taxes in recent years. A just completed analysis of public opinion surveys conducted for the Transportation Research Board revealed 56% support for tolling or road pricing concepts on average. All across Europe, Asia and South America, the trend lines are also absolutely clear in this regard. The Commission Report fails to consider successful international public private partnerships and tolling projects while simultaneously stressing the global nature of the U.S. economy.

6. ***The Commission Report is inconsistent in its approach to earmarking.*** Although the Commission clearly recognized the inefficiencies introduced in transportation

planning by the use of earmarking, the Commission has itself inadvertently resorted to this practice in some of its own recommendations. It recommends that 7 percent of transportation funding be set aside for environmental compatibility purposes, but without tying this funding level to any identified actual needs. Similarly, the Federal funding share that the Commission recommends for projects under each of the 10 Federal programs is at least 80 percent of project cost, even though many of the projects in these programs will not be of sufficient Federal interest to justify such a large share of funding. Lower Federal interest would be especially prevalent in many Metropolitan Mobility or Intercity Passenger Rail projects, as well as some projects to rehabilitate local infrastructure, more properly a State and local responsibility.

7. ***The Commission's energy research and investment recommendations are inappropriate.*** The recommendations by the Commission pertaining to energy research and investment are not appropriate. National energy research is not under the purview of the Commission, but rather the Department of Energy. Earmarking of funds proposed by the Commission to fund ongoing research at the Department of Energy is almost certain to miss actual funding needs or responsibilities.

A Path Forward

As is evident from the preceding observations, we would advocate a substantially different approach than that proposed by the Commission Report. Our approach would sustain current gasoline and diesel tax levels and refocus Federal efforts on (a) maintaining the Interstate Highway System; (b) alleviating freight-related bottlenecks that impede the flow of commerce and goods; and (c) providing States with appropriate analysis, incentives, and flexibility regarding the adoption of market-based reforms to their highway systems.

Under this approach, our existing Highway Trust Fund receipts would be re-programmed at the Federal level for the achievement of these key Federal objectives. The remaining funds would stay at the State level. States have been slow to pursue experiments at least in part because of the large Federal presence in State and local transportation decisions. A recast Federal role would encourage experimentation and innovation among the States. U.S. DOT would maintain regulatory oversight related to the safety of transportation infrastructure. Federal infrastructure regulations that are not cost-beneficial would be eliminated, most importantly restrictions against tolling and participation by the private sector.

Every effort should be made to facilitate the application of tolling and congestion pricing to the transportation system so as to attain the greatest efficiency from the system. Thanks to technology development and the leadership of a number of State and local officials, the move toward direct pricing is underway at the State and local level. A change from an indirect to a direct pricing system can and should ensure continued access to transportation systems for all Americans, regardless of income. In fact, when contrasted to the highly regressive nature of higher fuel taxes and congestion itself, direct pricing is likely to be a far more fair system.

Instead of creating additional regulatory barriers as contemplated by the Commission's report, the Federal government should send a clear signal that it is willing to reward State and local innovators. Federal programs and regulations should be restructured so at to reward, not stifle, a focus on efficiency and system performance.

Conclusion

In summary, we must seize the opportunity presented in the upcoming reauthorization of the surface transportation programs to make fundamental changes to the way our system is built, maintained, and operated. The importance of selecting the right path forward for the Nation—one that introduces greater State responsibility and accountability, rational pricing, and market discipline into our transportation system—cannot be overstated. To simply modify historic methods of providing infrastructure, relying on increases in the Federal fuel tax and inviting political earmarking, is a recipe for failure that we, as a Nation, can no longer afford.