



## **Memo to Road Socialists: There Is Nothing Unlibertarian about Road Pricing**

By: Marc Scribner - November 5, 2013

Virginia just elected Democrat Terry McAuliffe as governor, as had been predicted by every poll conducted during the past few months — although at much smaller margins than had been projected. During the twilight hours of the campaign, some of Republican Ken Cuccinelli’s supporters began attacking Libertarian Robert Sarvis for various alleged ideological sins. One in particular involved Sarvis’s expressed support for adopting a user-based funding model for Virginia’s roads, specifically his mention of a mileage-based user fee as a possible replacement to fuel and non-user tax revenue.

The claim is that this is a necessarily a government surveillance scheme and that such a proposal is inherently unlibertarian. This is false and is based upon ignorance of how such systems actually operate. Furthermore, labeling a mileage-based user fee system as unlibertarian runs contrary to the opinions of virtually every libertarian transportation scholar. What follows is my attempt to articulate why libertarians ought to support mileage-based user fees over fuel taxes and general revenue funding for transportation.

### **Virginia’s New Transportation Law**

To put this in context, outgoing Republican Virginia Governor Bob McDonnell enacted this past spring a tax-and-spend transportation law that raised taxes, failed to do serious program reform, and increased the share of non-user funding for Virginia’s roads. CEI harshly criticized the plan for these reasons. In the lead up to the vote, Cuccinelli supported a watered-down proposal that didn’t rely on the general sales and use tax increases backed by McDonnell. However, the Cuccinelli-supported plan, just like the McDonnell plan, relied on increased sales tax funding of transportation, and assumed Congress would legalize state Internet sales taxes so Virginia could use the “Amazon tax” to fund transportation projects.

In October, the Cuccinelli campaign released a seemingly reasonable transportation plan that stressed the devolution of funding and management responsibility from the state to local authorities (the Sarvis campaign also repeatedly stressed decentralization of transportation funding and management). While decentralization, ideally to the facility level, is a goal shared by many fans of free markets and limited government, the Cuccinelli plan failed to articulate how locally controlled roads should be funded —

specifically, the revenue collection mechanisms. Out of the three candidates, only Sarvis offered user-based road pricing alternatives such as tolling and a mileage-based user fee (MBUF).

### **The User-Pays/User-Benefits Principle and Road Commercialization**

Sarvis repeatedly emphasized what is known as the “user-pays/user-benefits principle”: that transportation system users should pay for their use and the revenue collected should be used to finance facility or network improvements that benefit users. The user-pays principle is the bedrock of sound transportation policy, as it offers a number of advantages over general revenue finding, including:

1. **Fairness:** Highway users benefit from the improvements their user fees generate.
2. **Proportionality:** Users who drive more pay more. Users who impose disproportionate costs, such as heavy trucks, are charged more.
3. **Funding Predictability:** Highway use and therefore highway user revenues do not fluctuate wildly in the short-run.
4. **Signaling Investment:** Revenue roughly tracks use, which provides policy makers with an important signal as to how much infrastructure investment is needed to maintain a desired level of efficiency.

Road pricing — and especially variable user charges — has long been popular with economists, who correctly view transportation as yet another service where consumers should be charged for their use, rather than a “right” that many who oppose paying for their road use claim it to be. I call these opponents of sound public policy — who span the ideological spectrum — *road socialists*.

But transportation user fees aren’t only supported by ivory tower economists. Libertarians have also been among the chief advocates of road pricing. Libertarian transportation analysts who support MBUFs can be found at the Reason Foundation, Cato Institute, Independent Institute, here at CEI, and other libertarian and free market organizations.

Road pricing is critical to the commercialization of roads, which will hopefully facilitate outright privatization in the future. Transitioning to market-based roads is likely to be gradual and include such measures as express toll lanes and design-finance-build-operate public-private partnerships, which have long been advocated by Reason Foundation founder Robert Poole. As the Independent Institute’s Gabriel Roth concluded this past summer in a study for the U.K.’s Institute of Economic Affairs:

These policies should be viewed as steps towards the implementation of much more widespread pricing, ideally on a system-wide basis and combined with cuts in motoring taxes. As long as roads remain outside the market economy, new investment will be constrained by government policy and large parts of the network will continue to be plagued by excessive congestion. Those who prefer services to respond to consumer demand should support road commercialisation or privatisation.

Recent popular interest in direct road user charges has been driven by the breakdown of traditional road funding mechanisms, namely fuel excise taxes, in their ability to provide consistent and predictable transportation funding. Inflation and the continued development of highly fuel efficient and electric vehicles are the primary culprits, but congested urban corridors and the opportunities offered by variable pricing also play a large role.

In response, some have suggested raising or indexing fuel taxes to inflation. But, as the Cato Institute's Randal O'Toole notes, "simply raising taxes does little to address the problems of localized road costs, targeting congestion, and other problems associated with the inefficient practice of paying for roads through federal and state gas taxes." A consensus has formed: we need to find a new way to pay for roads.

### **Misguided Conservative Attacks on Road Pricing**

Yet for suggesting alternatives supported by most economists and libertarian transportation scholars, Sarvis was branded by some conservative commentators as a "phony libertarian," "supposed 'Libertarian,'" and "Libertarian-in-name-only." Apparently, conservatives are now acting as the libertarian movement's purity police. Thanks for the help, guys, but we libertarians already have a long and counterproductive tradition of internal litmus tests and circular firing squads.

Writing at The Federalist, Ben Domenech claims:

That last position is particularly nonsensical to me: a VMT (sic), which generally requires a government GPS to be installed in your car to track your miles driven, is about the most anti-libertarian transportation tax you can think of – even those radical libertarians at Brookings think it's a bad idea, and it was one of the potential bad ideas in McDonnell's transportation plan that got killed over it: "The biggest concern may be privacy. Eighty-six percent of area commuters would oppose having a GPS device installed in their car to track their miles, according to a study by the Council of Governments Transportation Planning Board released last week." Big government technocrats may like such steps, but I cannot think of a single coherent libertarian case for such an invasion of individual privacy.

Similarly, Charles Cooke at National Review Online attacked MBUFs for their supposed privacy-destroying attributes:

Worse yet was Sarvis's rambling interview with the Virginia Prosperity Project, in which the candidate expressed his enthusiasm for increasing gas levies, and for establishing a "vehicle-miles-driven tax." It strikes me that it is almost impossible to square such a measure with any remotely coherent "libertarian" position on that most sacred of rights: privacy. Virginia's mooted VMT plan requires the installation of government GPS systems in private cars — an astonishingly invasive proposal. Even if this isn't what Sarvis has in mind, the fact remains that there is simply no way of determining how far an individual has driven without the government's checking. On Twitter, an amusing fellow with a username not fit for print in this column responded to this idea by contending: "I'm no extremist, but if you put a black box in my vehicle and tax me per mile I will burn down everything you've ever loved." What sort of "libertarian" doesn't feel this way?

Ignoring the fact that Sarvis to the best of my knowledge never endorsed a vehicle-miles traveled fee — merely listing it as a user-based alternative to fuel taxes and reliance on general revenue funds — MBUFs need not violate privacy in the way Domenech, Cooke, and other conservatives seem to believe. To understand why, you need to know a bit about the technology involved and how its components are deployed.

### **How Mileage-Based User Fee Systems Actually Work**

To use the Oregon example, as Domenech highlights and which is currently the only MBUF system in the U.S., let's make sure we get a few things straight about the program:

1. The current program is voluntary and is limited to just 5,000 vehicles. **Section 4(2)(d)**
2. One of the approved revenue collection mechanisms must not use location data. **Section 6(2)(c)**
3. Law enforcement must obtain a court order demonstrating probable cause involving an authorized criminal investigation of the car owner to extract any location data. **Section 9(3)(a)(G)**
4. Location data must be destroyed 30 days following a payment period, dispute, or noncompliance audit, whichever is latest. **Section 9(4)(a)**

Those who opt-in to the MBUF program will be exempt from state fuel taxes. While Oregon explicitly allows drivers who opt-in to their MBUF program a lower-tech, non-location-based mileage recording option, I'm going to focus on the high-tech, location-based recording options that seem to be the source of the anti-MBUF claims.

With respect to these technologies, the American Civil Liberties Union is reportedly satisfied by the privacy protections contained in Section 9. In fact, the ACLU has been a key player in MBUF discussions taking place around the country, supporting necessary privacy protections in a thoughtful and productive manner. It is also important to note that the Oregon statute offers drivers far more protection than they receive for their cell phone location data, as a Fifth Circuit ruling this past summer held that law enforcement may obtain cell phone location data without a warrant.

Once the open standards are determined by the Oregon Department of Transportation (ODOT), we will have a better idea as to how the more technologically advanced (those that collect location data rather than simply tallying mileage like an odometer) will work. But the ODOT MBUF pilot program that concluded early this year can give us an idea.

Of the 88 pilot program volunteers, 46 opted for the location-based option that relied upon on-board GPS data collection. The GPS receiver inside the vehicle tracked routes taken by the driver. An on-board computer then assigned miles driven to various categories — public roads or private property, in-state or out-of-state roads. That mileage was then tallied and processed by a trusted third party, without ODOT receiving any location data. Fuel tax rebates based on mileage data were then applied and charges were assessed — again, without the government obtaining individualized location data.

Privacy risks are widespread in the digital age and the appropriate libertarian response is to limit government access to private, personally identifiable information that are stored or transmitted by digital devices. Just like with cell phones and the Internet, we need to weigh the benefits of MBUFs with these risks.

There is ample evidence that driver privacy can be protected from government overreach and MBUF systems will need to be evaluated on a case-by-case basis to ensure adequate privacy protections, but there is no reason to dismiss MBUFs out of hand simply because privacy risks may be present. Doing as much is a bit like saying we should abandon email in order to prevent unauthorized access to our emails.

## **Conclusion**

So, the whole *mileage-based user fees as a government tracking program* meme popular in some conservative circles largely falls apart when one bothers to consider 1) how the various technologies involved actually work, and 2) how such programs are likely to be implemented. This isn't to say that privacy concerns regarding MBUFs should be dismissed, only that they should correctly reflect the facts. Privacy remains a key challenge for the transition to MBUFs, but this does not mean these hurdles are insurmountable from a libertarian point of view.

If you accept that transportation is a service that ideally should be provided by the private sector, you must accept the reality that the crumbling status quo is fundamentally incompatible with achieving a libertarian outcome.

Virginia's Libertarian gubernatorial candidate Robert Sarvis offered the most libertarian and sensible transportation platform this election (or any election I can recall), and was attacked by conservatives for supposedly deviating from libertarian ideology. According to them, continuing status quo road socialism is preferable to actually reforming our transportation networks in a more libertarian direction.

Libertarians and conservatives disagree on many issues. That's fine. But please, conservatives, stick to the facts and spare us the libertarian litmus tests.