Economic Regulation of Urban Public Transportation: An Operator's Perspective

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In its common usage, economic regulation refers to the direct regulation of rates charged, who may or may not enter the industry, levels of service, and so on. These are important issues in public transportation in our urban areas. I believe, however, that to focus only on those direct regulatory effects is to ignore some of the more important effects of regulation on public transportation and to unwittingly distort reality. In the context of my presentation, I would like to broaden the use of the term economic regulation to encompass the application of rules or regulations from any source that affects the allocation of economic resources committed to public transportation in our urban areas.

A rule or a regulation represents a constraint on somebody. For a public transportation operator, it can be a direct constraint in the sense that it sets forth what a public transportation operator may or may not do, such as regulation of fares by the Interstate Commerce Commission or public service commission. It can be indirect in the sense that it establishes a constraint on others—automobile tolls, gasoline taxes, or parking charges, for example—that in turn affects the need for and desirability of public transportation.

A rule or constraint can be applied from outside by others, or it can be applied internally by the public transportation operator. Often overlooked is the important role of commissioners, directors, or other internal policy makers in establishing the standards and levels of service to be provided in public transport. In addition, a rule or constraint can be positive or negative as it affects public transportation. A negative rule may require public transportation operators to maintain or extend grossly underutilized service or keep a fare level below market-justified levels. A positive rule, in contrast, may establish priorities for the use of streets by public transportation, e.g., exclusive busways or automobile-free zones.

Traditionally, the word economic, as used in the term economic regulation, has referred to the finances of an enterprise. In the context of public transportation, this meant control of prices, control of competition between public transportation operators, and, to varying degrees, control of services provided. In its earlier construction, the lever of measurement was the allowable rate of return, which was merely reflective of the fact that the enterprises were privately owned and operated within the framework of little monopolies over certain routes or geographic areas. The operator surrendered control over his prices in return for being sheltered from the discipline of competition.

Neither time nor space allows for an analysis of the virtues or frailties of this regulatory process. It is enough to suggest that it was workable within the framework of the American concept of how a private business imbued with the public interest should operate and, in fact, that it still prevails in regulation of the communication and public utilities industries. It is a fact that economic regulation as it was applied to public transportation has failed. It is clear to me at this time that there are two distinct reasons. The first is that the regulatory frame of reference has been too narrow. The second is that the application of the rules and regulations has been too fragmented. Let me give some examples.

Today, within the regulatory authority provided by statute, public regulation of pricing in public transportation to hold down excessive rates of return is anachronistic. The issue before us is to hold down the deficits. The portion of costs incurred that is not covered by revenues must be borne by someone. It can be covered by increasing subsidies or by degrading the service provided. Given the natural resistance of the user to higher rates and the weakness of the evaluative tools to fully assess the consequences of the alternatives to fare changes, the regulatory authorities have virtually no guidelines whatsoever as to what is an appropriate fare level or, in a broader context, how the burden of providing public transportation is to be divided between the user and the community at large. We cannot come to grips with this question when the elements—such as costs, fare revenue, and public subsidies—are all measured in monetary terms.

The confusion is compounded when nonmonetary criteria are superimposed. For example, the National Environmental Policy Act of 1969 and the Clean Air Act amendments of 1970 imposed new constraints and guidelines for this regulatory process. Any increase in fares is considered a subversion of the intent of the legislation. Several years ago when the Port Authority Trans-Hudson Corporation (PATH) proposed a fare increase for its system, the Environmental Protection Agency (EPA) petitioned the ICC to deny the increase in fares or to reduce them, if possible, on the basis that the proposed increases were against public policy and were unjust, unreasonable, and unlawful under these congressional acts. The ICC, in its draft environmental impact statement, straddled the issue by acknowledging on one hand that, in view of the substantial automobile traffic already in the New York metropolitan area, the added increment of emissions would have a relatively negligible impact. On the other hand, the absolute impact would be adverse, and, therefore, the ICC concluded that the action would be counterproductive to the stated Clean Air Act goals of New York and New Jersey and, in the long run, would significantly affect air quality.

The ICC then compounded the problem. In the environmental impact statement, they noted with some favor the possibility of raising bridge and tunnel tolls as an alternative source of financing for mass transit, stating that "it would be realistic to promote PATH ridership through maintaining a relatively low fare while at the

same time creating certain monetary constraints on the traveling public in order to reduce automotive traffic. In this manner, responsive steps could be taken to improve the area's air quality and, at the same time, conserve energy resources." Yet, PATH's bridge tolls come under the legislative authority of the 1906 Bridge Act, administered by the Federal Highway Administration (FHWA), which provides that the tolls charged shall be just and reasonable. The legality of PATH's increased toll charges, which are earmarked for public transportation improvements, has been challenged under the 1906 act and is now subject to hearings before the FHWA. The issue may end up in the federal courts. The entire process has the ring of Kafka—or perhaps Catch-22—to it.

CONTROL OF COMPETITION

Control of competition has also been ineffective because, in my view, the concept of the competitive universe is too restricted. We have regulated the balance of competition between rail and bus or between separate operators running parallel services, but only limited constraints—competitive, economic, or otherwise—have been placed on the use of the automobile. Now, paratransit is being inserted into the public transportation area by the Urban Mass Transportation Administration (UMTA) with virtually no consideration of whether these new services are to be supplementary to or competitive with the more conventional public transportation services.

The rationalization of competitive offerings of public transportation services has been somewhat alleviated in recent years with the trend toward public operation of the system and broad-based regionalization and integration of bus, rail, and transit. Nonetheless, it appears that American law and public opinion support the idea that the motorist has the right to expect that the highway network should serve all of the traffic that shows up at any time. We have built and maintained highways with the infusion of public funds while barely acknowledging that these so-called improvements have had vast social and monetary effects on other sectors that are not even included in the proferred cost-benefit analyses.

It is said by some that by responding to the demand for automotive travel we are merely reacting to the consumer's choice. I submit that, under the current institutional structure, the consumer is not aware of either the cost consequences of his choices or the social consequences of his choices. While I cannot prove it arithmetically, it is my belief that total unit costs rise as private automobile use increases during, for example, the peak hour, while unit costs on public transportation fall as the level of use increases. We have no mechanism to reflect this phenomenon that would allow a more informed choice.

Furthermore, even with the presence of economic constraints, a consumer will tend to optimize his choices on the basis of short-run considerations as he perceives them. The apparent insensitivity of the automobile user to rises in prices of gasoline is a case in point. Yet, from society's viewpoint, the long-term consequences of ever-rising automotive use on our land use, consumption of liquid energy, and the environment are self-evident. At this moment, we have neither the regulatory tools nor the analytical bases to cope with this kind of issue.

The regulation of services to be provided by public transportation has changed in form during recent years. As the provision of public transportation by private operators was diminishing during the 1950s and 1960s, the role of the regulatory bodies was largely to attempt to forestall abandonments of routes and services. It might be interesting to evaluate whether, in fact, the regulatory bodies were able to achieve anything in this area or whether the attempt to legally force the retention of money-losing services merely hastened abandonments or public takeover. However, since public takeover and regionalization of public transportation services have been established in some of our larger urban areas, route and service decisions have become more the concern of the operator and elected officials rather than of the duly constituted state or national regulatory authorities.

As operators, however, we are subject more and more to back-door regulatory effects that affect service. But these keep popping up as a result of specific legislative mandates that deal with single issues rather than as part of some well-thought-out regulatory concept. Two that come immediately to mind are the requirement concerning services for the elderly and handicapped and the issue of system safety. Both of these have financial and economic impacts on public transportation.

Obviously, as the operator of a public transportation system, PATH is not against providing services to the elderly and handicapped or offering system safety. (In this latter regard, public transportation—urban bus and transit—is safer on a passenger-kilometer basis than any other mode of public transportation in existence, whether public or private.) What we are concerned about is the zealous promulgation of new rules and regulations without regard to the real payout that the commitment would achieve. The economist often refers to the law of diminishing returns. Additional commitment of resources should take place only if the perceived increase in the benefit exceeds the resource cost. Such types of evaluation are rarely even hinted at, much less actually undertaken.

A case in point is the provision of services for the elderly and handicapped. A transit operator, to be eligible for operating assistance, for example, must offer half fares, regardless of the basic fare level. Half fare, if the basic ride costs 50 cents, means something different to the user and to the operator than if the basic fare is 15 cents.

Why transit should be singled out in legislation rather than food stores or air transportation is not known to me, except that it was a convenient spot to show congressional concern for the plight of the elderly and the handicapped. As an operator, I too am concerned, and it is not because of the small revenue loss or the increased operating expense involved in administering the program. If income maintenance for the elderly and the handicapped is indeed a problem and a legitimate concern of the nation, let us address the issue of the elderly and the handicapped on its merits and not profess that the solution has been provided by making federal operating assistance conditional upon half fares. This merely nibbles at the fringes of the problem for the elderly and handicapped who need or desire transportation service.

The problem is compounded when we cope with the capital investment that would be required to make public transportation fully accessible to the nonambulatory handicapped—a need that has been only partially articulated and analyzed only in terms of theory. Let me assure you, I am not taking issue with the proposition that our elderly and handicapped have a legitimate transportation requirement. I am questioning whether the regulations in force and the regulations under consideration represent the optimization of resource allocation. Indeed, consider the furor if Congress mandated that all automobiles marketed in the United States after January 1, 1979, had to be fully accessible for the nonambulatory handicapped, requiring minimum door widths and heights,

hydraulic platforms, tie-down provisions, and so on. But I am sure a service-requirement analysis would indicate that such a program would be more usable for the handicapped.

Safety represents a similar no-win situation. Who can be against more safety? At PATH, we could optimize passenger security by assigning one police officer to accompany every passenger on and off the system. Fortunately, security regulations of this sort are not yet subject to formal external regulation, although it is still an internal or policy constraint. I recognize that proposing there be one security officer per patron may sound facetious. But one should consider that it is a very short step from the radical to the ridiculous.

A number of years ago, it was seriously proposed that Washington Metro should install so-called train shields, which basically isolate the track from the passenger platforms the way elevator doors do, as a safety measure. The idea of these train shields was pioneered in Leningrad. The capital costs would have been high, the operating problems of aligning the train to match the door openings would be high, and the reliability factor was known but was certainly worse than current practice. Maintenance would have been a new burden, and, with the peaking characteristics of public transportation, implementation might require the assignment of platform personnel in each station to assure smooth passenger flow. I was astounded to read recently that the jury was still out on the safety study conducted by Battelle Columbus Laboratories and that further studies of the efficacy of train shields were required (1). This was the apparent conclusion even though the statistics presented showed more incidents affecting passenger safety on elevators than on all forms of public transportation. This, I believe, is a classic case of a potential solution creating a problem rather than solving it.

PURPOSES OF REGULATIONS

It is not my intention to appear crotchety, insensitive, or omniscient. It is more a reflection of the frustration of the transit operator. I am sincere in the belief that those responsible for the conduct of our public transportation services have the same goals as those who would regulate them. But in their zeal, the regulators—whoever they may be—have lost sight of the fact that each regulation, rule, or constraint has its consequences, which necessarily affect either directly or indirectly the choices or decisions that people—our constituency—make about travel and the associated costs.

Since I have been associated with public transportation for many years, I am aware that there are more rules, regulations, or constraints then the ones I have discussed today. PATH has to deal with the Federal Railroad Administration with respect to the Safety Appliance Act, the Locomotive Inspection Act, and the Hours of Service Laws. On occasion, we have had dealings with the National Transportation Safety Board. We have to be responsive to the requirements of equal opportunity legislation and to requirements to pay the prevailing wages for construction labor. We are subject to scrutiny and the veto power of the governors of the two states within which we operate and who appoint our directors. We have to be cognizant of the wishes, needs, or aspirations of the communities we serve. Succinctly stated, we have no lack of constraints on any aspect of our business, including whether, and during what hours, we offer restroom facilities.

As the responsible general manager who, at least internally, has to translate policy into effective operating guidelines, I am often overwhelmed. I cannot fault those who are directed to do what they are doing. They are doing what they are supposed to do. What does concern me is purpose.

Any rule, regulation, or constraint—whether it affects public transportation or not—should have a purpose. The effectiveness of the regulation should be evaluated within the context of the purpose and the consequences of achieving that purpose through the action proposed. In our urban areas, the evaluation of a proposed regulatory action should not be limited in scope to its impact on public transportation but to its impact on the community as a whole. It should not be evaluated only in the context of system profit or deficit but of community profits and community losses. A mechanism for inserting judgments on societal gains and losses should be introduced. The evaluative process should embrace the totality of the problem and not merely those aspects that, because of proximity or legislative visibility, are easy to focus on. It is in the public's interest, in the interest of resource allocation, and in the long-term interest of the traveling public that any evaluation of rules, regulations, or constraints that affect transportation in urban areas be considered in the context of all the consequences and not in that of a single participant.

Within this framework, details of how rule making or regulation is to be applied are really subsidiary to a determination of what is to be regulated, by whom, in what frame of reference, and within what guidelines. I am really not concerned whether such an evaluation is for or against public transportation. I am concerned whether such an evaluation is for or against the public interest. What can be done to extricate us from this impasse? I believe there are several actions that would lead us in the right direction.

First, UMTA could sponsor a research project to inventory and analyze regulatory constraints—direct and indirect—that affect urban passenger transportation by all modes in our urban areas. Very frankly, I do not think we know the full dimensions of the problem.

Second, UMTA could act as a clearinghouse for changes or proposed changes in the regulations that affect public transportation to attempt to determine costs and other impacts.

Third, analyses of these regulatory constraints should be undertaken to indicate whether they are complementary with or contrary to the objectives of providing mobility in our urban areas. Such analyses may well indicate a number of fundamental policy conflicts and trade-offs that have to be addressed in order to determine the primacy of policy objectives; this approach is to be preferred to merely tinkering with regulatory language. Such analyses would probably range beyond the scope of UMTA itself and in fact might better be undertaken at the level of the Secretary of Transportation as part of revived efforts at articulating national transportation policy.

Fourth, we need better information and understanding of the interrelationships between transportation and nontransportation goals and criteria so that we have better bases for better decisions. The framework and budget exist in UMTA's research programs. It is a question of identifying the priorities.

AFTERWORD: A POINTED REJOINDER

(These remarks were prepared by Mr. Gambaccini at the close of the conference.)

Preoccupation with runaway deficits, poor management, poor leadership, and poor labor productivity is a gross distortion of the realities of public transportation. I would be the last to say that the transit industry is the most efficient or productive sector of the whole economy, but neither would I say that it is among the least produc-

tive sectors. An objective study of productivity in the transit industry compared with productivity in the civil service or other fields of employment would be worthwhile. I have been in this industry for 15 years and I am impressed by the complexity of the problems of the industry and by the integrity of its management. I am incredulous at the simplistic attitude of many analysts who ascribe all transit-industry problems to hidebound management, poor labor productivity, featherbedding, and similar practices. In reality it is not like that, and I would welcome an objective review of transit workers' productivity and managerial performance that takes into account the welter of political, social, and other problems that affect its operation.

The notion of a free market under today's conditions is impossible. Society is not currently in—nor can it return to—any kind of free market with respect to public transportation. The dynamics of the last 30 or 40 years—the evolution from private enterprise to governmental operation, changing land use patterns, the automobile revolution—clearly underscore the fact that a free market is now completely impossible, if indeed a free market ever really existed. To flirt nostalgically with romanticized notions of a world that passed us by at least 30 or 40 years ago is counterproductive because it tends to create hopes and illusions that there are simple solutions to current problems. On the contrary, the socioeconomic system we now live in is extremely complicated, and the forces of the last 10 years in particular have pushed us in the direction of increasing complexity. The increasing concerns with environment, air pollution, energy, and the quality of life, among others, have made our world infinitely more complicated than it had been in times past. In this context, the failure of some analysts to recognize this fact represents a gross deficiency, particularly when such studies are supposed to be used by political leaders in developing public policy.

It seems to me that some analysts, unable to cope with the complexities of current economic and social reality, tend to retreat into narrower and narrower areas of focus, drawing the parameters more securely around them. They somehow assume that, if they can come to grips with solutions within these narrow compartments, they can directly extrapolate their conclusions and apply them to more complex and entirely different issues. This is sophistry of the worst sort.

I think many planners and analysts become hypnotized by their own tools and processes. They make a god of the sciences of model building and traffic projection. Often, they spin off formulas and conclusions to the fourth decimal point without stating that much of it is based on very subjective and doubtful premises. What appears at the outset to be an incredible degree of scientific process at work is in fact only the projection of subjective premises to superficial scientific conclusions.

I would implore transportation analysts to attempt to stand back and take a broad look at the underlying issues surrounding public transport. If public transit is to be properly evaluated and if that evaluation is to be useful in a policy-making context, the consideration of costs and benefits must be expanded beyond the fare box and the direct users to a host of external factors. If this evaluation indicates that we should alter or eliminate investment in transit, we should demonstrate it earlier rather than later, so that we do not continue to expend more money on capital and operating costs in unwise ways. However, transportation analysts will not have served the public well until they have made a more sincere effort to explore the complex interrelationships between transit and land use, air pollution, energy conservation, economic development, and government infrastructure.

I have frequently seen respected transportation analysts restrict their scope of analysis to ever smaller compartments, abandoning function in favor of form. Suddenly, model building and computer simulation have achieved high research priorities in UMTA and the Department of Transportation. Although they are important and effective tools, it must be remembered that they are only tools. We currently tend to be overwhelmed and awed by the pseudo-scientific conclusions and results that flow from these sophisticated processes.

In short, in my view the transit operator's life has in recent years become increasingly more complicated. Fifteen years ago, there were few interfaces with the federal government. During the last 15 years, the force of events has immersed us in concerns about environmental impact, labor protection, public hearings, services for the elderly and handicapped, and a whole host of other requirements that have been imposed on us and have vastly expanded the time frames in which projects are executed. Decision making has been slowed and the latitude of operational options narrowed. That, I submit, is reality. Even if the whole industry wished to turn the clock back—and we do not—we could not do so. The trends apply not only to public transport but also to society at large and to all aspects of our economy. Transportation analysts who do not recognize or try to deal with these complex and ambiguous issues not only fail to be helpful but may also play a major role in exacerbating the real issues.

REFERENCE

1. E. S. Cheaney, J. A. Hoess, R. E. Thompson, and R. L. Svehla. Safety in Urban Mass Transportation: Research Report. Battelle Columbus Laboratories and U.S. Department of Transportation, Rept. UMTA-RI-06-0005-75-3, March 1976.