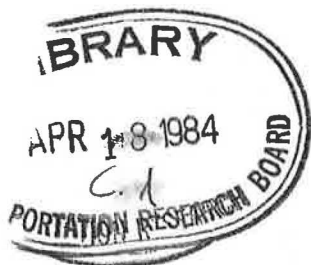


2.75



# TRANSPORTATION RESEARCH

Number 275, April 1984  
ISSN 0097-8515

# CIRCULAR

Transportation Research Board, National Academy of Sciences, 2101 Constitution Avenue, N.W., Washington, DC 20418

## ISSUES RELATING TO NATIONAL POLICY ON MOTORIST INFORMATION AND ROADSIDE AMENITIES

mode  
1 highway transportation

subject areas  
16 user needs  
23 environmental design  
70 transportation law

*Report on a Conference Session Sponsored by the  
Committee on Environmental Issues in Transportation Law  
of the Transportation Research Board held at the  
61st Annual Meeting, January 18, 1982.*

### CONTENTS

FOREWORD . . . . .	2
HISTORICAL PERSPECTIVE ON SIGNING FOR MOTORIST SERVICES	
Woodrow W. Rankin . . . . .	2
OPTIONS FOR ASSURING ADEQUATE MOTORIST TRAVEL INFORMATION SYSTEMS	
Ross D. Netherton . . . . .	4
FIRST AMENDMENT ISSUES IN STATE REGULATION OF BILLBOARDS AND SAFETY REST AREAS	
Edward V. A. Kussy . . . . .	22

## FOREWORD

The three papers that comprise this circular were presented at the Sixty-First Annual Meeting of the Transportation Research Board in January 1982. They document the pervasiveness of motorists' needs for information about travel-related services and facilities, and the extent to which existing or planned travel information systems are responding to these needs. Taken together, these papers suggest measures that can be taken to bring the level of information services into closer parity with the service levels achieved for the safety, economy and convenience of the highway system.

In this series of papers, Woodrow Rankin views motorist information in terms of its traffic engineering aspects and history. Dr. Ross Netherton evaluates motorist information needs, and reviews the policy that is reflected in Federal-aid highway law to assure the adequacy of motorist information systems and the options for implementing that policy. Edward Kussy considers these options in terms of the constitutional and other legal protection of the freedom of speech as they have most recently been applied to the regulation of billboards and solicitation of funds in highway safety rest areas.

## HISTORICAL PERSPECTIVE OF SIGNING FOR MOTORIST SERVICES

Woodrow W. Rankin, Director,  
Transportation and Safety Highway  
Users Federation

Systems of services for travelers were needed and were developed long before the motor vehicle era. Wayfarers on roads of the Roman Empire were supplied with information on three essential services: food, lodging, and if the traveler was riding, food (fuel) for the four-footed means of transport.

For centuries, on-premise signs were the usual method for letting the traveler know of available services. A prudent person, however, undoubtedly would have obtained from someone who had traveled the route as much information as possible on available services. This two-element system -- on-premise signs and advance information -- served travelers into the early 1900s, when travel of more than a day's duration was regarded as an expedition rather than a routine trip, despite the advent of the automobile.

The on-premise signing that early motorists depended upon was adequate for their needs because speeds were not much greater than those of the coach and wagon travelers that the signs had been intended for.

With the rapid development of an all-weather system of main rural roads, and the availability of low-cost, reliable automobiles after World War I, two significant changes were made in the motorist services information system. New service information needs arose, and new techniques were developed to meet them.

With all-weather roads and reliable cars, long-distance automobile vacations became part of the American way of life. In addition to information on the three basic services -- food, lodging, and fuel -- these long-distance recreational travelers wanted two new types of service signs:

- information on local attractions such as scenic and historical interest points, and
- information on local specialty goods and services such as craft items and food specialties.

With improved roads and better cars, rural

driving speeds of 35-50 m.p.h. became the rule rather than the exception. Because of these higher speeds, motorists generally needed information about available services sooner than could be given with on-premise signs. Consequently, off-premise advertising signs, giving advance information on travel attractions, became common roadside sights. In some areas the numbers of these signs became excessive, resulting in what was called "billboard blight." The first state legislation to control roadside advertising was enacted in the early 1900s, soon after American motorists began hitting the road in increasing numbers each year.

From the 1920s until the mid-1960s, motorists depended upon a services information system primarily supplied by the private sector. Businesses and individuals erected on- and off-premise signs advertising motorist services, and motorists planning vacations could get advance information from private sector organizations, such as auto clubs, travel agencies, highway associations, and chambers of commerce. Some states and local governments maintained roadside tourist information centers. The payoff of well-conceived and managed information systems serving the motorist public was first recognized in America's resort regions and vacationlands. But as highway travel for business and recreation grew, roadside businesses extended their informational activities to all heavily traveled highway routes.

The pre-Interstate motorist services system evolved in response to two complementary needs. The long-distance traveler wanted to know the who, what, where and when for the services needed. Complementing this need, suppliers wanted travelers to know the same who, what, where and when regarding their services. The system was developed primarily by economic market factors, without coordination of effort or functional concept.

As long as the majority of long-distance travel was on highways without access control -- as it was until the mid-1960s -- this system worked reasonably well to meet the traveler's needs. A tourist home, gas station, motel, or diner at the side of the road was easily seen and recognized, particularly if it had an effective on-premise sign supplemented by an advance roadside sign.

Additionally, the market forces were sufficiently strong to encourage the designation of specific information on signs. The sensitivity of the system to specific information needs is illustrated by development in the early 1920s of product identification signs for gasoline and other petroleum products. At that time, a motorist could not be sure of the quality of petroleum products unless they were purchased from a well-known refiner. Therefore, long-distance travelers tried to purchase from outlets of major companies whenever possible. The companies, recognizing this desire, and realizing the competitive benefits by responding to it, started using easily recognized brand name identification on their advance signs and on-premise signs.

Fast food and national motel chains also benefited directly from the growth of long-distance motoring, and they recognized the advertising benefits of specific information signing as their chains developed after 1945.

The service signing system of the pre-Interstate era had several deficiencies. In those places where the system over-advertised and contributed to roadside clutter, general product advertising was responsible for many billboards and other roadside signs. In addition, with few exceptions, the information system operated on a principle of "let

the buyer beware." Motorists had to depend upon local and state laws for regulation of quality in food services, lodging, and local products. The system supplied little advance information on the time when the services were available. Motorists knew there was a restaurant or gasoline station ahead, but they had no way of knowing the hours of operation. Motorists of that day, however, may not have considered these information gaps as serious deficiencies. They did not expect, or recognize a need for, quality controlled services or guaranteed hours of service.

As segments of the Interstate system were opened to traffic after 1960, the earlier private sector roadside sign system became increasingly inadequate. In addition, billboard controls on the Interstate routes that emerged in the late 1960s threatened to isolate motorists from private sector service information. As a result, responsibility for initial motorist services information shifted from the private sector to public highway agencies. Most highway agencies considered that this responsibility was satisfied by posting "FOOD-FUEL-LODGING" signs at interchanges. Businesses supplying the services had to put up their own signs with information on who, what, and where after official signs had announced general availability of the services.

In the present period of transition from private to public sector responsibility for service signs, Interstate motorists often are not adequately informed on services availability, location and suppliers.

For example, the lack of signing of fuel brand names can be a problem where there is extensive use of credit cards. To minimize this inconvenience,

the private sector has erected high-level on-premise brand name signs that may be seen and recognized at a great distance, and some states have added brand logo signs to on-highway service signing.

Currently, the official motorist service signing system, particularly on the Interstate system of highways, is significantly different from the system used prior to 1960. The pre-1960 system evolved over a number of years. It had many single-purpose components that were designed and installed unilaterally by individuals or organizations acting independently. Today's system, however, is designed in compliance with national standards, and it is installed and administered in most states by a single agency.

In comparing the capabilities of the two systems to provide the information needed, it can be seen that the current official system does not serve motorists as well as uncontrolled pre-1960 public-sector installations did in their time. The informational requirements of a motorist service signing system for controlled-access highways are substantially different and more demanding. It is important that the agencies responsible for today's information system recognize the deficiencies of their system rather than regard them as negative criticism. In developing improvements in the present system, the designer must accept the challenge to meet new needs arising from new ways of travel. Needs of both the users and the suppliers of travel services must be accommodated in the system that results. This accommodation should be the principal objective in revising the present system or planning a new one.

## OPTIONS FOR ASSURING ADEQUATE MOTORIST TRAVEL INFORMATION SYSTEMS

Ross D. Netherton, Federal Highway Administration

### Abstract

Historically information relating to goods and services needed during travel has been delivered through a combination of official signing, billboards, guidebooks and maps. Implementation of laws restricting billboards has caused concern that needed information will not be available. Authorization for special official signing and other information facilities has been included in all Federal billboard laws but has not been systematically implemented. Congressional authorization contemplates a cooperative, coordinated, multi-media; incremental information system reflecting functional needs of motorist. Information needs regarding goods and services are met by (1) locational information, (2) directional information, and (3) preference information.

The Federal Highway Administration (FHWA) Task Force recommends that the national policy on information systems recognize that the general duty to provide a safe, efficient, economical and convenient highway system includes the specific duty to assure that motorists using that system have adequate, timely information regarding goods and services and attractions that may be travel objectives. Existing legislative authority provides options for State highway agencies to meet this travel information need by developing a "mix" of techniques that is suitable to individual State or regional needs and circumstances. Specific options are listed and described. Recommendations for developing adequate motorist travel information systems are made.

### Introduction

Throughout history our legal system has seemed to work best when it performs the function of settling disputes. Another function it performs well, when it has public support, is the regulatory function -- suppressing something that endangers public health, safety or welfare. In both cases the task is, essentially, to take rules that have been agreed upon, and, acting as arbiter or enforcer, apply them to varying fact situations. The results are readily visible, conclusive, and constructive in the sense that they can be classified, distinguished from each other, and used as the basis for inferences about how to treat other situations that have not yet occurred.

When the law is asked to perform the dual function of restricting one activity and facilitating another, it often seems less decisive. Indeed, sometimes it flounders, for this dual function probably is the most difficult one that it is asked to perform.

An example of this problem occurs in connection with assuring adequate motorist travel information services and facilities in the highway system. This paper discusses some of the options for a national policy on this matter, and steps for achieving the policy. The discussion is based on the work of the Federal Highway Administration's Task Force to Restudy Directional and Informational Signing in 1978 to 1980.

## The Problem of Assuring Adequate Motorist Travel Information

The problem can be described as follows:

Historically, the responsibility for providing information to motorists about services and travel attractions has been dispersed among highway agencies that provide official signing within the highway rights-of-way, and the operators of service establishments and travel attractions using outdoor advertising adjacent to the right-of-way. In this division of labor, highway agencies have tended to limit their information signing to general identification of major communities and geographic points, and, on the Interstate system, general locational and directional information about food services, fuel, lodgings, campgrounds and major travel attractions. Businesses catering to highway travelers have provided varying amounts of information relating to locations and routing instructions on signs advertising their products and services.

Development of the Interstate system and other controlled access highways, together with efforts to reduce the risk that these highways would become "billboard alleys", sharpened the need for a rational, consistent system for delivering motorist service information. From its first appearance in Federal-aid highway legislation, therefore, the program to regulate roadside advertising created concern about motorists' ability to get sufficient, timely information about goods, services and facilities needed during travel, and for in-trip planning of travel objectives.

Congress never announced a national policy on this matter, but indirectly addressed the issue in three features of the Federal-aid law.

First, not all commercial advertising in roadside areas was prohibited. Exceptions were made for certain types of commercial signs providing directional information.

Second, States were authorized to use Federal-aid funds to provide systems of official signs giving specific information in the interest of the traveling public (i.e., business and brand names) and also to establish other information facilities and services.

Third, procedures for removal of nonconforming advertising signs encouraged States to delay removal of directional information until adequate alternative sources and services were available.

Federal law and policy did not mandate any uniform program or timetable for establishing effective alternative information systems, and, State-by-State, development of alternatives to nonconforming roadside billboards as sources of motorists services information has been uneven. A cyclical relationship has appeared to exist between removal of nonconforming billboards and progress in introducing alternative information services. Lack of available alternatives discourages removal of nonconforming signs; and delay in removal of these signs reduces incentives for States to provide alternative information systems.

This cycle symbolizes the stalemate that prevailed from 1958 to 1978. During these years there has been little application of new technology to the practical matter of communicating with motorists as they travel, and no national policy detailing the kind of motorist information system that would



best serve the public interest, or the steps to achieve it. As the Restudy Task Force interpreted its task, the first step was to describe the elements of an adequate motorist travel information system. Against this standard the information system authorized by Congress can be considered for its adequacy, and options for improvements can be identified.

#### Task Force Study Directive

What does the term "adequate" mean in this context?

The basic instruction given to the Task Force by Congress in the 1976 Federal-aid Highway Act, was only generally helpful. It said: (1)

"During the implementation of State laws enacted to comply with this section, the Secretary shall encourage and assist the States to develop controls and programs which will assure that necessary directional information about facilities providing goods and services in the interest of the traveling public will continue to be available to motorists. To this end the Secretary shall restudy and revise as appropriate existing standards authorized under subsection 131(c)(1) and 131(f) to develop signs which are functional and esthetically compatible with their surroundings. . . . (2)

In the view of the Task Force the adequacy of any system must be understood and evaluated by reference to the function it is intended to serve. In this case the function of the system's information components is determined by the functional needs of the motorist for information during travel. (3)

#### Motorists Travel Information Needs: Subject Matter

Motorist surveys show a wide range of subjects about which information is wanted during travel, reflecting the wide-ranging interests of the traveling public and the purposes of highway travel. These subjects may be classified according to whether they are *essential* or *desirable*.

While neither term is rigorously defined, there is a practical consensus that *essential* subjects include fuel, food, lodging, campgrounds and emergency services (e.g., first aid, hospital, telephone). Subjects for which in-trip information is desirable but not essential relate to other travel objectives or intermediate stops that are identified in pre-trip planning or by in-trip decisions. Typically such subjects involve scenic areas, cultural or historic sites, recreation areas, local or regional craft centers, tourist resorts and attractions, travel-oriented businesses, churches, and service clubs.

#### Motorist Travel Information Needs: Types of Information

With regard to any of these subjects, motorists normally need to know a variety of specific things, all of which may be correlated with the process of making in-trip planning decisions. Three major categories or types of information may be identified, namely:

1. Locational information announces the availability of certain goods, services or facilities at a given location. Often these announcements include certain

additional details about the subject. Typically, these include brand, type, quality, hours of availability, price, credit card acceptance, distance to next service, and availability of access for handicapped persons. Where an area offers a choice of particular goods, services or facilities, or offers them in combination with other goods, services, or facilities, the range of choice may also be important.

2. Directional information advises as to a specific location, distance, routing, travel time, and return access to an arterial highway. Whereas *location* information tells a motorist what goods, services, facilities or attractions are available in the area in which or to which he is traveling, and assists him in determining whether he wishes to utilize them, directional information tells how to get to the specific site where those services or facilities are available.
3. Preference information supplements locational and directional information with data about factors that have special significance in the selection of service establishments where a choice is available. Studies of how motorists actually select the establishment they patronize show that these selections are influenced by such things as appearance of sites or facilities, availability of parking, convenience of access, necessity for reservations, dress code, reputation or quality rating, and proximity to other related services. (4)

#### Motorist Travel Information Needs: Priorities

In the priorities of highway signing, information for trip planning and services is subordinate to signing for traffic control and guidance. Therefore in determining what types of official signs shall be provided within the highway right-of-way, certain roadside locations always are preempted for traffic control and advisory signs. (5)

Within the subsystem of signs providing location and directional information there also are priorities which reflect functional needs. Since motorists' ability to process information is limited, the information system should be designed to facilitate this processing. Information relating to matters that do not call for immediate driving decisions has low priority. (6) It should not be displayed in areas where demands of higher priority information oblige the motorist to shut it out of his processing activity. The practice of "spreading", or moving low priority information to places of low processing demand, is one way of making display of such information effective. The effectiveness of low priority information also can be increased by providing it where motorists have come to expect such information rather than in random locations.

Applying these principles to the design of a system for supplying information about goods, services and facilities, the following conclusions seem warranted: (7)

Directional information is most effective when provided at points where action decisions must be made, such as exists from main highways to local routes.

Information as to availability, choice, and location of services or travel objectives should

be provided sufficiently in advance of access routes to allow motorists to make trip planning decisions regarding them.

Advance notice of the availability of a service or facility should include sufficient information to enable motorists to decide whether they wish to use that service or facility when they arrive in its vicinity. Such notice should not, however, provide precise routing instructions or extraneous advertising messages.

When adequate notice is provided to identify an available service by name or brand, and to give directions to the business site, repetitive messages regarding the availability, location, brand, distance, and similar information do not increase its effectiveness. Excessive repetition of such information is chiefly a commercial advertising stratagem.

#### An Effective Motorist Travel Information System: Basic Considerations

Although it may be desirable to have more insight regarding the way motorists obtain and use information about goods, services and facilities needed during travel, enough is known to say that an adequate information system should cover the following categories of subjects: (8)

Fuel, routine maintenance and emergency repair services.

Food services.

Lodging, including standard transient housing and facilities for camping.

Travel attractions, including points of scenic, historical, cultural and recreational interest.

Miscellaneous goods and services having special interest to the traveling public, generally or regionally.

The frequency of these information needs naturally affects the level of service the information system should provide. In some cases this may be inferred from the nature of the need or the driving task; thus, for a typical traveler (9)

Fuel information is required, on the average, once every 200 miles (322 km).

Food information generally is required at intervals of 3 to 5 hours.

Lodging information is required once a day.

Information about travel attractions and miscellaneous goods or services is needed according to its availability.

Any system of information facilities and services capable of meeting the needs of the motoring public should be:

Comprehensive, in that it covers the full range of the motoring public's information needs, including special regional needs that may be locally important.

Multimedia, recognizing that no single source or information technique can meet all information needs in a timely, convenient, and economic manner.

Coordinated, so that each medium and technique performs the function for which it is best suited within the total system.

Incremental, making it possible for different levels or categories of information to be handled by differing program options, and enabling the user to choose the level of information he or she desires and is willing to make the effort to obtain.

Cooperative, in which responsibility for providing the required information is shared by the public and private sector.

Uniform, to assure easy general understanding and use by the traveling public.

States have a variety of technical options to use in designing informations that meet these criteria. The "mix" of options that any State selects may be influenced by local or regional factors. Some of these factors are: (10)

Level of information services needed.

Number of users to be served.

Timeliness of information needed.

Provision for updating information.

Maintainability of the system's elements.

Governmental costs.

User costs.

Lead time for system implementation.

Transition problems associated with implementation.

#### Responsibility for Providing Information

Since the 1940s, the motoring public's information needs have grown and changed significantly. This has been due to a general increase in highway travel, changing patterns of business and recreational travel, and the growth of a wide range of commercial services catering to the highway user's needs and interests. These changes have been reflected in the way public highway agencies view their responsibility to provide directional and locational information regarding essential goods, services, and facilities, and recreational and travel-related interests.

Historically, official signing within the right-of-way has provided some of this information. The extent of official responsibility for such signing is reflected in the Manual on Uniform Traffic Control Devices. (11) Most recently, the development and growth of facilities for clear, short range radio communications have shown that these facilities can supplement visual sources for certain types of information.

A central issue in improving the present information system is whether the historic allocation of responsibility between public highway agencies and the private sector should be changed, and, if so,

Table 1. Evaluation of currently authorized facilities and signing for directional information and travel services information.

TYPE OF SIGN OR SERVICE	INFORMATION COVERAGE		EXTENT OF CURRENT USE	OPERATIONAL EXPERIENCE
	TYPE	SUBJECT		
General Service Signing 23 USC 109	Directional information	Food, Gas, Lodging, Campground, Hospital, and Telephone.	Used in most States on interstate system, expressways, freeways; some use on rural trunk highways.	Gives timely notice of services at next interchange or intersection where services are not visible from main highway.  Does not give business identification or brand of service, or distance on crossroad. Does not give distance to next available services.
Directional and Official Signs 23 USC 131(c)(1)	Directional information	Public places owned or operated by Federal, State, or local agencies; natural phenomena; historic, scenic, cultural, scientific, educational, or religious sites; areas naturally suited for outdoor recreation deemed to be in interest of traveling public; public service organizations; public utility facilities.	Permitted in 46 States by laws substantially similar to Federal law and National Standards; permitted in three States under limited conditions.	Gives directional information for certain types of activities not generally service signs or commercialized outdoor advertising.  States vary in interpretation of activities eligible for use of these signs. Sign sites are not always obtainable where information is needed by motorists. New eligible activities sometimes cannot obtain sign sites because of spacing requirements.  Although sign size limits authorized by the National standards are adequate for legible signing within 61 m (200 ft) from highways, use of poor design frequently impairs the communication effectiveness of signs.
Sale or lease of property signs 23 USC 131(c)(2)	Business identification and commercial advertising	Sale or lease of land or building at sign site.	Permitted in all States under laws substantially similar to Federal law.	Gives notice of availability of land or building at the site for sale or lease and identification or owner or agent. May also give some description of premises.  Lack of standards for size, design, etc., permits variety of style.
Onpremise advertising signs 23 USC 131(c)(3)	Business identification and commercial advertising	All types of facilities, services, or activities carried on at the site.	Permitted in all States under laws substantially similar to Federal law.	Gives necessary identification of business site, and provides motorists with "index" to roadside development. However, local standards and enforcement vary widely, and are lacking in many rural areas. As a result, excessive numbers and poor design of onpremise signs impairs their communication effectiveness. In some instances high rise onpremise signs in rural areas attempt to serve as directional signing.
Landmark signs 23 USC 131(c)(4)	Business identification; commercial advertising; directional information	Signs, generally on farm structures or natural surfaces, having historic or esthetic significance.	Permitted in 14 States. Implemented in two States.	Operational experience limited to Nevada, which has designated one landmark sign on interstate system, and Missouri, which has designated 43 on interstate and 62 on primary highways.
"Free Coffee" signs 23 USC 131(c)(5)	Directional information	Nonprofit organizations offering free coffee to motorists.	No States authorize this type of signing.	Authority for permitting these signs was enacted in 1978 Federal legislation. No operational experience has been reported.
Commercial outdoor advertising 23 USC 131(d)	Business identification; directional information; general commercial advertising	All types of activities.	Permitted in all States but Alaska, Hawaii, Maine, and Vermont in zoned and unzoned commercial or industrial areas, subject to customary use regarding size, lighting, and spacing, and land use development requirements in some States.	Unzoned areas are difficult to supervise due to frequent changes in land development.  Local zoning practice sometimes allows signs where no actual commercial or industrial development exists.  Limited availability of sign sites permitted in zoned and unzoned areas has given existing sign owners an advantage over new businesses seeking sign sites.  State agreements governing size, lighting, and spacing for signs in commercial and industrial areas negotiated in the 1960's may not in fact represent current "customary use" relative to existing policies on roadside land use, planning, technological developments in signage, and prevailing industry practices.  Regulatory and other constraints limit such signing to only random availability.

Table 1. Continued.

TYPE OF SIGN OR SERVICE	INFORMATION COVERAGE		EXTENT OF CURRENT USE	OPERATIONAL EXPERIENCE
	TYPE	SUBJECT		
Specific service information signs  23 USC 131(f)	Business identifi- cation; directional information	Food, gas, lodging, camp- grounds, all located within specified distance from inter- change or intersection.	Used on segments of interstate system in seven states.	Gives timely notice of services at next inter- change or intersection, with business identity and brand logos. Advance signs sometimes supplemented with direction and distance signs on exit ramps. Motorist acceptance of these signs has been good.  Installations cost along extensive distances is substantial. Business establishments near inter- changes may exceed capacity of logo panel and force limitation of signing to services nearest exit services with nationally known logos may have advantage over local independent businesses.
Information centers; services directory displays  23 USC 131(i)	Business identification; directional information; commercial advertising	All types of commercial activity, but mainly highway- oriented services and travel attractions; public and privately operated outdoor recreation facilities.	Forty-two States operate 251 centers on interstate system; 24 States operate 92 centers on Federal- aid primary system.	Initial cost and maintenance generally are paid by State highway agency; operation costs borne by other State or local agency or private contractor-operator. Practice of locating centers in rest areas permits combining rest stop with information inquiries. Motorist acceptance of service, especially in manned centers, is good. Telephones at centers allow advance reservation of facilities and inquiries for trip planning.  Manned information centers are not operated 24 hours a day. Patrons must stop and leave vehicle to obtain service. Generally, in- formation is oriented to State and local facilities rather than multi-State region.
Highway Advisory Radio  47 CFR parts 2 and 89	General advisory information	Area orientation and "welcome" messages; road and weather condition safety tips.	Experimental or demonstration projects in six States.	Audio information systems can be utilized without adding signs to roadside areas, except for advance notice of frequencies.  Currently assigned frequencies at outer edges of regular AM broadcast band are difficult for some car radios to receive. Current FCC rules prohibit advertising commercial services or giving business identification in broadcasts.

how a new division of responsibility should be delineated. The FHWA Restudy Task Force noted increasing acceptance of the view that *overall responsibility for providing a safe, efficient, convenient, and economical highway system encompasses the specific responsibility for assuring that motorists using that system have adequate and timely information regarding goods, services and facilities essential to their travel, and recreational and travel-related interests that may be the purpose of their trip.*

Public highway agencies have a variety of options for meeting this responsibility in ways most suitable to their interests and circumstances. (12) They may choose to act directly, through official signing and information facilities within the right-of-way, or indirectly through regulation of roadside land use by private outdoor advertising. They may act alone, or jointly with other public agencies, or through private sector contractors. Flexibility and local orientation are desirable. It is essential, however, that the options selected to comprise a comprehensive motorist travel information system be appropriately correlated with the needs of the traveling public, the public's driving functions and travel patterns, and the objectives of billboard control under the highway beautification program. The major choices that currently are available to State highway agencies under Federal-aid highway laws are summarized in Table 1.

#### Evaluation of the Present Motorist Travel Information System

If the facilities and services currently authorized in Federal-aid highway legislation were fully implemented, would the resulting system meet the traveling public's need for locational and directional information for goods, services, facilities, and travel related attractions?

Certainly when this system was conceived by Congress and refined by Federal standards, it was intended to assure that these needs would be adequately met. One difficulty in evaluating its success is that all of the system's elements never have been implemented and coordinated according to their intended functions on a scale that could demonstrate their capability nationwide. Another difficulty is that since 1965, Federal and State laws and regulations pertaining to this program have become so extensive and complex and have been changed so often that the change of full implementation may now be seriously impaired. (13) Thus, conclusions about how any particular combination of elements will function as a program must be made on the basis of their conceptual design with relatively little validation by empirical evidence.

On this basis, the FHWA Restudy Task Force found that existing legal authority is adequate for developing a travel information systems that is a comprehensive multimedia system, and can be expanded incrementally to increase its effectiveness and convenience. This authority can be used to develop and implement coordinated programs involving both public and private sector participation. In short,



if fully implemented this authority could assure that the minimum essential information needs of the traveling public would be met.

In such an evaluation the concept of "minimum essential information needs" is of critical importance. The Task Force determined that an adequate system in this respect is one that covers five categories of information, namely: (1) advance notice of availability of service, (2) specific location and distance, (3) directional instructions at major decision points, (4) route guidance from major arterial routes to the destination site, and (5) site identification.

#### Options for Designing Information Systems

Using these five criteria as a frame of reference, it is possible for State highway agencies to select combinations of media and techniques that achieve an effective division of labor in covering all necessary functions while at the same time accommodating local or regional highway conditions, travel patterns and economic development plans. A correlation of the major information media that currently are authorized under Federal-aid laws with the five categories of minimum essential information needs is shown in Table 2.

#### Task Force Findings and Recommendations

What can be done to improve the uneven implementation of the policy and authority provided in the Federal law? The FHWA Restudy Task Force report addressed this question with recommendations on the general program level, on the level of improving technical options, and in regard to planning, coordination and administration of comprehensive information systems.

At the general program level, the Task Force recommended that the Federal-aid law require the establishment in each State of a comprehensive coordinated system for providing information about goods, services, facilities and significant attractions of interest to the traveling public. This requirement does not mandate any specific or exclusive set of measures by the States: it only insists that whatever system a State establishes must fully meet the minimum essential information needs of the traveling public. It contemplates Federal-aid incentives to the States, while leaving it to the States to determine whether their system will be operated by the State's highway agency, or other governmental agency, or be private sector enterprise overseen by a public body.

In the Task Force view, this option offered maximum flexibility for system design while at the same time establishing the States' commitment to providing adequate travel information service for the motoring public.

Among measures to improve the coverage and effectiveness of these information systems, the Task Force recommended the following:

- Authorization for additional information on official standardized motorist service signing, both for general application and for the needs of bypassed rural communities.

- Modification of current limitations on official destination signing to permit directional information for major travel attractions and recreation areas.

- Greater utilization of existing authority for signing to permit business or brand identification

- of establishments offering travel-related services ("logo signs") and directional information.

- Greater utilization of existing authority for establishment of manned and unmanned facilities in rest areas to provide information about local or regional availability of services, attractions, and other matters of interest to the traveling public, together with routing information.

- Authorization for use of Federal-aid funds for a greater range of official publications giving travel and services information.

- Authorization for expanded information programming for Highway Advisory Radio and Citizens Bank radio monitoring dealing with motorist service and travel information needs.

Among measures for improving the means for delivering needed information to the traveling public, various options relating to the planning, design, establishment and operation of comprehensive information systems were considered, and the following were recommended:

- Establishment in each State of organizational responsibility for a comprehensive motorist travel information system and consideration of the use of special bodies to serve as focal points for planning and coordination of statewide information programs, and, if desired, perform certain administrative functions in the system's operation.

- Establishment of a national-level advisory body on travel information needs and information systems.

- Encouragement of the use of contractual arrangements with private enterprise and with other State or local agencies for operation of public highway travel information of facilities and services.

- Establishment of adequate and continuing funding for development of national and State motorist travel information systems. The policy of user-beneficiary responsibility for financing the highway system, as declared by Congress in the Federal-aid Highway Act of 1956, is applicable to programs to assure an adequate motorist travel information system, and can provide a basis for broadening the resources available to the State and Federal highway agencies for developing and expanding the effectiveness and convenience of such systems.

- Increased emphasis should be placed on programs to foster research and development work and demonstration projects aimed at improving the functional and cost effectiveness of motorist travel information systems.

#### Summary

In its 1976 directive for assistance and encouragement of the States in developing systems which assure that information about goods, services, facilities and travel attractions which are of interest to the motoring public will continue to be



Table 2. Options for meeting minimum essential motorist travel information needs.

Minimum Essential Information Needs Currently Available Information Media	Advance notice of availability.	Specific location and distance.	Directional instructions at major decision points while driving.	Route guidance from major arterial route to destination site.	Site identification.
Directional and official signs for scenic, historic, recreational, etc. places. (See Figure 1)	X	X			
On-premise advertising, including sale and lease signs. (See Figure 2)	X(1)				X
Official services signing, General information. (See Figure 3)			X		
Official services signing, Bypassed community signs. (See Figure 3)	X				
Business directional signs. (See Figures 4, 5 and 11)	X	X			
Specific information services signs ("logo" signs). (See Figure 6)		X	X		
Services and tourism information directories in rest areas. (See Figures 7, 8 and 12)	X	X			
Manned information center. (See Figure 8)	X	X			
Hard copy reference material (maps, guidebooks, directories). (See Figure 9)	X	X	X	X	
Special route markers (trailblazers)			X	X	
Highway Advisory Radio (HAR) (See Figure 10)			X(2)	X(2)	
Citizens' Band Radio (CB) (See Figure 10)	X(3)	X(3)	X(3)	X(3)	

1. When high-rise standards are used to elevate the sign panel above treetop level, and sight distances allow it, on-premise signs can be seen for substantial distances, and serve as advance notice to motorists of the presence of a business establishment.
2. Current Highway Advisory Radio (HAR) practice limits its use to general road condition, weather and detour information. Broadcasts relating to construction work detours may provide directional information at decision points resulting from temporary disruption of normal routes.
3. Citizens' Band Radio (CB) monitors may answer inquiries from motorists calling from the highway, but may not otherwise volunteer specific information about business establishments which would be regarded as advertising. Current rules of the Federal Communications Commission prohibit commercial advertising over CB radio.

available, the Congress reemphasized a need that it recognized at the inception of work on the Interstate system. Although the controversial history of billboard control along Federal-aid highway systems has hampered steady and orderly development of adequate information systems nationwide, some States have taken imaginative initiative in this matter. Also Congress has continued to reflect its policy through expansion of the authority for Federal-aid participation in the establishment of comprehensive and coordinated systems of signing and informational services.

When the FHWA Task Force to Restudy Directional and Informational Signing commenced its work, therefore, it found that the basis for a national policy, a system concept, and substantial enabling authority already existed. Review of the technical options available in informational signing and services revealed a wide range of media and communication techniques, audio as well as visual, that could be used for information system development.

In the view of the Restudy Task Force two developments are needed in order to bring together these elements into a national policy and an action plan for its implementation. One is the establishment of an analytical frame of reference for determining a State or region's information needs and designing a system of signing and services that is responsive to those needs. Such a frame of reference is offered in the Task Force's report.

The second need is for acceptance by State highway agencies of overall responsibility for assuring that highway users have adequate and timely information about goods, services and facilities essential to travel. This is a matter that must be worked out by the States and Federal government within the legislative mechanism of their historic Federal-aid program by recognizing it as a necessary feature of modern highway systems. Used in this way, the law performs a creative role. By structuring responsibility for performing the various information functions, and utilizing public and private sector resources, it can not only respond to the interest of the public, but encourage adaptation or technological advances for improved highway travel.

#### References

1. 23. U.S. Code, "Highways", 131(q)(1), (1980 edition).
2. The Standards referred to in this directive provide, essentially, for installation in controlled roadside zones of limited-size directional signs for public places and public or privately owned natural phenomena, historical, cultural, scientific, educational or religious sites, and areas of natural beauty or naturally suited for outdoor recreation. (23 Code of Federal Regulations, "Highways", 750.151-750.155), and for installation within rights-of-way of controlled access highways of official signs showing business identification and directional information for facilities providing food, gas, lodging, or campgrounds (23 Code of Federal Regulations, "Highways", 655.301-655.310).
3. Options for Assuring Adequate Motorists Travel Informational Signing, Report of the Task Force to Restudy Standards for Directional and Informational Signing, Federal Highway Administration, May 1979.
4. C. Moore, et al., A Valuation of Information Sources and Cues by Motorists Traveler Guests of Lodging Establishments, (Highway Research Record No. 233, Highway Research Board, Washington, D.C., 1968), 27-32.
5. Location of signs is controlled by standards prescribed in 23 Code of Federal Regulations, Parts 655 and 750, and the Manual of Uniform Traffic Control Devices.
6. G. King and M. Wilkinson, Motorists Needs for Services Information on Interstate and Federal-aid Primary Highways, FHWA/RD-82/101, June 1982, Federal Highway Administration, Washington, D.C., 1982.
7. Restudy Task Force Report, note 3 *supra*.
8. King and Wilkinson, note 6 *supra*.
9. *Ibid*.
10. *Ibid*.
11. Manual of Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation, Federal Highway Administration, (Washington, D.C., Government Printing Office, 1978).
12. C. Miller, Motorists Information Services, (Washington, D.C., Federal Highway Administration, 1980); King and Wilkinson, note 6 *supra*.
13. C. Floyd and P. Shedd, Highway Beautification: The Environmental Movement's Greatest Failure, (Boulder, Colorado, Westview Press, 1978).

## APPENDIX

Examples of Directional Signage and Information Facilities Currently  
Available for Development of Motorist Travel Information Systems

The illustrations that follow provide examples of the types of signage and other information facilities that currently are authorized by law and are in use on an experimental or operational basis as part of motorist travel information systems.

Caption references to numbered options relate to the options recommended by the Federal Highway Administration's Restudy Task Force in 1979 for improvement of the coverage and effectiveness of comprehensive and coordinated motorist travel information systems. Illustrations are reproduced from the Restudy Task Force's final report.

Figure 1. Examples of state-approved directional and official signs authorized by 23 US Code 131(c) (1).



(a) Arizona



(b) Missouri



(c) Tennessee



(d) Wisconsin

Figure 2. Examples of outdoor advertising authorized under the Highway Beautification Act of 1965.



(a) On premise signs, authorized by 23 US Code 131(c)(3)



(b) Outdoor advertising in zoned and unzoned commercial and industrial areas, authorized by 23 US Code 131 (d)

Figure 3. Standard and modified general service signing.



(a) General service signing, as authorized in the Manual of Uniform Traffic Control Devices.



(b) Option 7. Official signing for services located in bypassed community (New Mexico).



Figure 4. Examples of official business directional signing within the highway right-of-way (option 9).



(a) New York



(b) New York



(c) New Hampshire

Figure 5. Vermont official business directional signs (option 9).



(a) Automotive fuel and services



(b) Food services



(c) Lodgings



(d) Recreation facilities including campgrounds



(e) General business and services

Figure 6. Specific information signing authorized under 23 US Code 131(f) to provide directional information for facilities offering gas, food, lodging, and campgrounds.



(a) Option 10. Specific information signs using logos to show fuel service facilities at next interchange (Virginia).



(b) Option 10. Logo sign panel erected on interchange exit ramp to give directional information for fuel service facilities (Virginia).

Figure 7. Example of facilities giving information about the availability of goods, services, and attractions of interest to the traveling public (Oregon).



(a) Option 11. Travel information facilities in highway rest areas (Oregon).



(b) Option 11. Directory of services in rest area travel information facility (Oregon).

Figure 8. Vermont motorist travel information facilities:



(a) Option 11. Visitors' information directory located in roadside rest area (Vermont).

**Travel Information**

**Lodging**

**Hartness House Country Inn** -18  
 100 Hartness Ave., Montpelier, VT 05602  
 Phone: 802/486-1111

**Snow Lake Lodge Mount Snow** -6  
 100 Snow Lake Rd., Mount Snow, VT 05651  
 Phone: 802/486-1111

**The Highlands Rest. - Motel** -48  
 100 Highlands Rd., Montpelier, VT 05602  
 Phone: 802/486-1111

**Pa-Lo-Mar Motel**

**Food**

**Country Girl Diner** -83  
 100 Country Girl Dr., Montpelier, VT 05602  
 Phone: 802/486-1111

**Idlenot Farm Restaurant** -590  
 100 Idlenot Farm Rd., Montpelier, VT 05602  
 Phone: 802/486-1111

**Recreation**

**Crown Point Camping Area** -3  
 100 Crown Point Rd., Montpelier, VT 05602  
 Phone: 802/486-1111

**Mount Snow** -5  
 100 Mount Snow Rd., Montpelier, VT 05602  
 Phone: 802/486-1111

**Other Services**

**Basketville** -37  
 100 Basketville Rd., Montpelier, VT 05602  
 Phone: 802/486-1111

**Double Four Orchards** -113  
 100 Double Four Orchards Rd., Montpelier, VT 05602  
 Phone: 802/486-1111

(b) Option 11. Services information display in Vermont visitors' information facility.

Figure 9. Directories of services and attractions published and distributed by State highway agencies.

# Motorist Services Points of Interest

EXIT NO.	AUTO SERVICE	DINING	LODGING	CAMPING	POINTS OF INTEREST
148 A-B	TEXACO ENCO	GEN DRINGS COCKTAIL LOUNGE TINLEY PARK BOWLING LANE		LAKE SAM LE MAR	
151 A-B	NO EXIT				
154	R & B SERVICE HIGHLAND 86 STANDARD MARATHON	BROWN'S FRIED CHICKEN CHICKEN UNLIMITED PIZZA HUT PONDEROSA STEAK HOUSE STONEHEDGE INN			
155	NO SERVICES				
156	SHELL ENCO HOMWOOD SERVICE CENTER STANDARD CHECKER OIL GAS U.S.A.	BURMA'S RESTAURANT BOZ HOT DOGS	DIXIE GOVERNOR		
157	STANDARD STANDARD CLARK	SIZZLER STEAK HOUSE GOLDEN BEAR RESTAURANT TURF CLUB HOLIDAY INN COFFEE SHOP IRON GATE RESTAURANT DENNY'S RESTAURANT	SHERATON HOLIDAY INN BUDGETTEER		
160 A-B	STANDARD	ABRAHAM LINCOLN OASIS			
161 A-B	ENCO SHELL CHECKER QUICK SERVICE B-Z-GO CLARK OIL SHELL	HOLIDAY INN RESTAURANT LANGES RESTAURANT CAL'S ROAST BEEF MCDONALD'S BROWN'S CHICKEN A & R	HOLIDAY INN PIONEER MOTEL		

(a) Option 13. Except from Illinois Department of Transportation Motorist Services Guide.

**BROWNSVILLE (G-13)**  
 34 Mt. Ascutney Ski Area & Chalet Motel, I-91 Exit 8,  
 2 mi. no. on Rte. 5 to Rte. 44, then 4 mi. to Browns-  
 ville. 484-7722, 484-7711. 🏠 🏠

**CHESTER (F-14)**  
 114 Chester Inn, Rte. 11 in village center. 875-2444. 🏠 🏠  
 83 Country Girl Diner, Rtes. 11 & 103, in village. 875-  
 5685. 🏠  
 248 Motel in the Meadow, Rte. 11, 2 mi. w. of village.  
 875-2626. 🏠

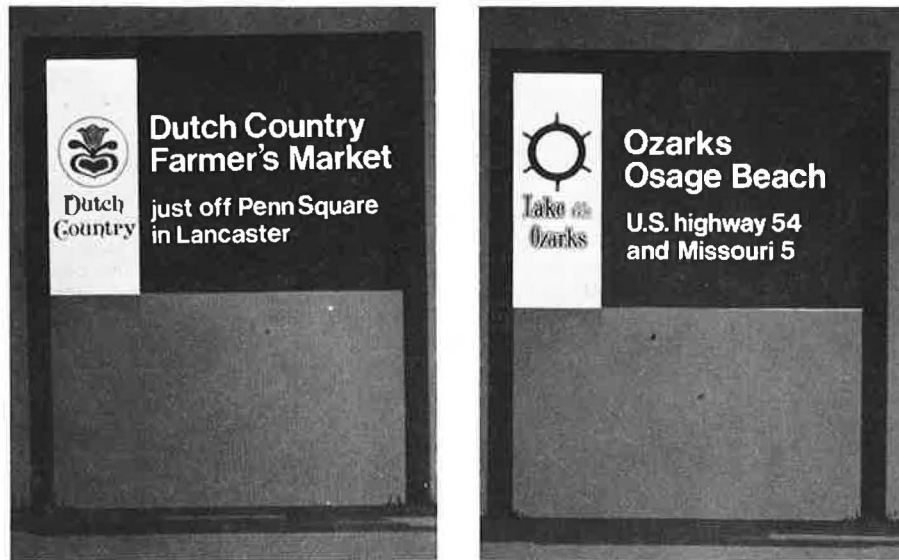
**DORSET (D-14)**  
 429 J.K. Adams Company, Rte. 30, 2.3 mi. so. of village  
 center. 362-2303. 🏠  
 427 Barrows House, Rte. 30 in village center. 867-4455.  
 🏠 🏠

(b) Option 13. Listing of services in Vermont Visitors' Guide.





Figure 11. Proposed private business directional signing for use outside the highway right-of-way (option 16).



(a) Region travel attraction

(b) Tourist resort

Figure 12. Motorist services and travel attractions display board in roadside area (option 17).



FIRST AMENDMENT ISSUES IN STATE REGULATION  
OF BILLBOARDS AND SAFETY REST AREAS  
Edward V. A. Kussy, Federal Highway  
Administration

There are several reasons for considering First Amendment issues relating to state regulation of rest areas and billboards together. The Supreme Court decided both *Metromedia v. City of San Diego*, 101 S.Ct. 2882 (1981), decision below at 164 Cal. Rep. 510 (1980), which specifically addressed a city billboard ordinance, and *Heffron v. Intern Soc. for Krishna Consciousness*, 101 S.Ct. 2559 (1981), decision below at 299 N.W. 2d 79 (Minn. 1980), which involved petitioning at a state fair, but is directly relevant to the regulation of activities in rest areas, in a single month.

*Metromedia* and *Heffron* leave very little doubt that a total prohibition of either billboards or activities in rest areas could not withstand a constitutional challenge. This confronts states with a series of difficult questions: What type of regulation is permitted? Under what circumstances may regulation be imposed? And, what degree of regulation is allowed?

The difficulty of constitutionally regulating billboards is well portrayed in *Metromedia*. There, the issues centered around a city-wide billboard ban. The case produced four different opinions, all of which were somewhat contradictory. The four justices supporting the plurality opinion held that the ordinance was valid as applied to commercial speech, but invalid as applied to noncommercial speech. Therefore, the ordinance was ruled unconstitutional on its face. Although there were twelve exemptions from the ban (some of which pertained to noncommercial speech), the plurality held that "with respect to noncommercial speech, the city may not choose the appropriate subjects for public discourse." *Metromedia*, 101 S.Ct. at 2896. It was concluded that when balancing the State's police power interest in safety and aesthetics against the general concern for protecting First Amendment freedom of speech, the State's power in the area of noncommercial speech was strictly limited.

Justices Brennan and Blackmun concurred in the judgment, but dealt with the ordinance more broadly. In their opinion, even a ban on commercial speech had not been justified by the city on the basis of safety and aesthetics. They made clear that a ban on only commercial billboards would be unconstitutional, as it would leave city officials in the position of determining whether the content of a message was commercial or noncommercial. *Id.*, at 2907. This "presents a real danger of curtailing noncommercial speech in the guise of regulating commercial speech." *Id.* They did suggest that a limited ban on billboards could be, but had not been, justified. Justice Stevens' dissent presented yet a third variation. He agreed with the plurality that the ordinance was constitutional as applied to commercial signs, but also thought the ordinance properly regulated noncommercial signs.

Finally, Justices Burger and Rehnquist argued in dissent that cities have the requisite police power to regulate commercial and noncommercial billboards equally. They felt that the content of a message was, in this instance, separable from its form, i.e., the billboard. Billboards are not an inherently protected form of speech, for there are many other channels by which the public may be reached. The fact that billboards may be a cheaper and more visible form of expression is irrelevant. *Id.*, at 2921.

The *Metromedia* decision is difficult to reconcile with the cases which preceded it. Historically, the regulation of free speech in relation to billboards breaks down rather nicely into three eras. The first era is characterized by several cases decided in the 1940s, of which *Valentine v. Chrestensen*, 316 U.S. 52 (1942), is the leading example. This case involved a law forbidding distribution of commercial advertising matter in the streets.

Mr. Chrestensen prepared a handbill containing commercial advertising, and in order to escape the law (or so the Court ruled), he included a message of public protest. In upholding the law, the court reasoned that pure commercial speech was not intended to be protected by the First Amendment. *Id.*, at 54. Thus, the States were free to regulate as they wished in the area of commercial speech. First Amendment protection applied essentially to speech which was considered "non-commercial."

*Chrestensen* remained the law until approximately 1975, at which time the second era was ushered in by such cases as *Biglow v. Virginia*, 421 U.S. 809 (1975), *Bates v. State Bar Association of Arizona*, 433 U.S. 350 (1977), and *Ohralik v. Ohio Bar Association*, 436 U.S. 447 (1978). In *Bigelow*, an advertisement had been published in a Virginia newspaper (Bigelow was director and managing editor) describing where women could go in New York City to be placed for a legal abortion. Bigelow was convicted of violating a statute which prohibited such encouragement of abortion. The Supreme Court overturned the conviction, ruling that commercial advertisements do retain First Amendment protection. *Bigelow*, 421 U.S. at 818.

However, although commercial speech was protected by the First Amendment, the Court maintained that commercial speech could be regulated to a greater degree than noncommercial speech. The regulation had to be based on a valid police power interest in the content of the commercial speech. Typical examples of constitutional laws regulating commercial speech are truth-in-advertising laws, and the ban of certain cigarette advertisements. For purposes of these cases, whether a billboard carried a commercial or non-commercial message was irrelevant, since billboards are typically regulated for reasons of safety and aesthetics, neither of which is content-related.

A good example of the Court using a First Amendment analysis during this era in examining the commercial content of an advertisement is *Central Hudson Gas v. Public Service Comm'n*, 447 U.S. 557 (1980). The New York Public Service Commission (PSC) tried to prevent two utility companies from inserting in their monthly bills advertisements encouraging the use of electricity. At that time the State of New York was campaigning to promote energy conservation, and the PSC thought the utilities should not be permitted to encourage energy use. Although the Court found that the government's interest in energy conservation was substantial, and that the regulation directly advanced that interest, the regulation was held unconstitutional on the ground that there were many other ways to urge energy conservation without such an intrusion on the utilities' right to free speech. *Id.*, at 570. The regulation was simply too extensive. See also, *Consolidated Edison v. Public Serv. Comm'n*, 447 U.S. 530 (1980).

Prior to its decisions in the *Public Service Commission* cases, the Supreme Court had already recognized that certain types of commercial signs were "unique forums," and had to be premitted. See *Linmark Associates, Inc. v. Town of Willingboro*, 431 U.S. 85 (1977), which concerned on-premise signs

advertising the sale of homes. Willingboro attempted to ban these "for sale" signs in order to stem the flight of white homeowners from racially integrated neighborhoods. The Supreme Court noted that the alternatives to "for sale" signs available to sellers were inadequate. *Id.*, at 93. Perhaps, the Court was also influenced by its conclusion that prohibiting the for sale signs would not result in Willingboro retaining its integrated character. *Id.*, at 95.

Prior to *Metromedia*, the Supreme Court had repeatedly declined to review billboard ordinances, most of which were challenged on the grounds that they violated the First Amendment rights of sign owners or advertisers. *Suffolk Outdoor Advertising Co., Inc. v. Hulse*, 373 N.E. 2d 483 (1977), appeal dismissed 439 U.S. 808 (1978); *Madjeska Sign Studios, Inc. v. Berle*, 373 N.E. 2d 255 (1977), appeal dismissed 439 U.S. 809 (1978); *Lotze v. Washington*, 593 P. 2d 811 (1979), appeal dismissed 444 U.S. 921 (1979). *Newman Signs, Inc. v. Hjelle*, 268 N.W. 2d 741 (1978), appeal dismissed 440 U.S. 901 (1979). The dismissal of these cases for failure to state a Federal question was precedential, inasmuch as all of the ordinances were thus sustained. See *Hicks v. Miranda*, 422 U.S. 332 (1975). Thus, it seemed well established that commercial and non-commercial speech were on similar footing.

However, three new cases seem to indicate that the Supreme Court has once again changed direction. See *State ex rel. Dept. of Transp. v. Pile*, 603 P. 2d 337 (Okla. 1979), cert. denied, 453 U.S. 922 (1981); *John Donnelly & Sons v. Campbell*, 639 F. 2d 6 (1st Cir. 1980), aff'd 101 S. Ct. 3151 (1981); and *Metromedia*, *supra*.

In *Pile*, the Supreme Court of Oklahoma struck down the State's outdoor advertising control law as it applied to noncommercial signs. (This state law was essentially identical to the Highway Beautification Act of 1965.) At issue was a sign in the vicinity of a federal highway, with the message: "Get us out of the United Nations". The court applied a First Amendment analysis and held that commercial and noncommercial signs were different; that, if applied to non-commercial signs, the State law would not pass constitutional muster; and that, therefore, the State law did not apply to noncommercial signs. The Oklahoma court considered the case entirely in terms of First Amendment, and ignored the fact that the State (and Federal) beautification laws are not direct restraints on speech, but are land use laws which seek to control the roadside for safety and aesthetic purposes. The court was also unimpressed with the fact that the State law permitted signs at numerous other locations.

In *John Donnelly and Sons v. Campbell*, *supra*, the First Circuit found unconstitutional a statewide billboard ban in Maine. The Court clearly differentiated between commercial and noncommercial speech, concluding that under the facts of the case, the State had adequately justified a ban on commercial signs, but could not prohibit noncommercial ones.

The distinction between commercial and non-commercial speech was reaffirmed by the plurality opinion in *Metromedia*. In the United States Supreme Court, the billboard industry (*Metromedia*) emphasized the traditional protection given non-commercial signs, filling their briefs with pictures of billboards displaying political and religious messages. This obvious appeal to the First Amendment sympathies of the Court may have served to focus the plurality's attention on the difference between commercial and noncommercial speech, which

as indicated above, had been eroding prior to *Metromedia*.

Following these three cases was *Maurice Callahan & Sons v. Outdoor Adver. Bd.*, 427 N.E. 2d 25 (Mass. App. 1981), which involved a fairly traditional billboard ordinance. Although the ordinance banned both commercial and noncommercial signs (with the customary exceptions), the Court addressed the conditionality of the ordinance only as it applied to commercial signs. The Court ruled that the plaintiffs lacked standing to challenge the law on the basis of First Amendment protection of noncommercial speech, for their signs were entirely of commercial content. Interpreting the ordinance to be consistent with *Metromedia*, the court then upheld the ban on off-premise commercial signs. *Maurice Callahan*, 437 N.E. 2d at 29.

From the above, it would seem that, while safety and aesthetics are still valid basis for billboard regulation, area-wide bans will be treated with suspicion. Courts will look not only at what the law says, but at its actual impact as well. For example, in *Central Advertising Co. v. City of St. Joseph*, 309 N.W. 2d 613 (Mich. App., 1981), a seemingly neutral 100 foot setback requirement was struck down under *Metromedia* because the ordinance effectively banned billboards in St. Joseph. *Id.*, at 614.

Given *Metromedia*, it is likely that henceforth commercial speech will receive less protection than noncommercial speech, irrespective of any police power interest in its content. However, each ordinance will have to be reviewed individually, both as to its basis and its scope. Actually, *Metromedia* has not done much in a positive way for the billboard industry. Although it provides a basis for attacking area-wide bans, it has also made it easier for governments to regulate commercial signs directly.

The legal issues raised by the regulation of activities in roadside rest areas are, in many ways, quite similar. The Courts have been much more clear with respect to these issues, and thus regulations in this area are more readily analyzed in a constitutional sense. This is not to say that actual implementation is a simple matter. Although not specifically a rest area case, *Heffron v. Iskon*, *supra*, dealt extensively with the issues raised by the type of restrictions which States often seek to impose in rest areas.

The question presented in *Heffron* was whether a religious organization (the Hare Krishnas) desiring to sell and distribute literature and solicit donations at a state fair, could be required to restrict its activities to an assigned booth. The activities involved are considered by the Hare Krishna to be an important religious rite called sankirtan. The Supreme Court held that in order to maintain methodical crowd movement and assure safety and convenience, the State could require an assigned booth. Although the Hare Krishnas consider public activity to be a religious ritual, the majority opinion of the Court saw it as sales, and thus commercial activity. In other words, even where a State could not prevent the Hare Krishnas from wandering about preaching to the public, it may regulate commercial activity. It does not really matter that the group considered the activity to be a religious rite -- a sale is a sale.

By implication, *Heffron* indicates (and confirms a long line of lower court decisions) that some activity must be permitted. It is only a question of the extent to which the State may regulate the activity. Recently, there has been increasing pressure to permit a variety of activities in rest



areas. Vending machines are increasingly allowed in rest areas, and there is an "experimental" duty-free store in a Vermont rest area.

There is little scientific data about the safety benefits of restrictions on activities in rest areas. It is true that rest areas have limited space and limited capacity, that their purpose is to provide a undisturbed atmosphere, and that police protection in rest areas is difficult and costly. For example, if Hare Krisnas were allowed to practice sankirtan in rest areas police protection would be a necessity. It is not difficult to imagine a tired and irritable motorist becoming angered by a solicitous Krishna. Nevertheless, possibilities of anger or violence are not legitimate reasons for denying a group their First Amendment rights.

The serious problems of limited space and capacity still remain. Rest areas are typically designed for the thirtieth peak hour. Thus, on many occasions, such as holiday weekends, the rest areas is at or near capacity. If the time the travelers spend in the rest areas on these occasions is increased even slightly (for example, because of their conversations with Krishnas), congestion could result. This results in motorists not stopping for needed rest. If rest areas are made less tranquil because of a lack of protective restrictions, motorists may avoid rest areas even on normal travel days. No studies are available as to the likelihood of such conduct by motorists. In addition, given the number of activities specifically allowed, such as vending machines, information centers, etc., it is more difficult to exclude other activities which may cause motorists to be disturbed or to tarry in rest areas.

In order to successfully inhibit the exercise of First Amendment rights, it is essential to know exactly why the expression should be prevented. Clearly, some forums are recognized by the Supreme Court as limited use forums (such as state fairgrounds), and are susceptible to more extensive regulation. It seems that rest areas are good candidates for this category. Unlike public parks and streets, which are traditionally open for everyone, rest areas serve a specific, significant purpose for highway motorists.

Any restrictive regulatory scheme, if it is to be upheld, must provide for the exercise of First Amendment rights which do not interfere with the basic purpose for which the restriction was imposed. Any restrictions must be complemented a permitting scheme which includes clear, not unduly burdensome, and objective standards pursuant to which a permit can be obtained. This point is illustrated by *International Society for Krishna Consciousness v. Hays*, 438 F. Supp. 1077 (D. Fla. 1977), which involved a regulation prohibiting the distribution of circulars on the Florida Turnpike system without permission from the State Department of Transportation. The District Court held that the statute was unconstitutional on its face for lack of objective standards, as it gave the licensing official unlimited discretion to grant or deny permission. *Id.*, at 1081.

Another example of the effect of *Heffron* is *Dallas Ass'n, etc. v. Dallas City Hospital Dist.*, 478 F. Supp. 1250 (N.D. Tex. 1979), 656 F. 2d 1175 (5th Cir. 1981), *rev'd on rehearing*, 670 F. 2d 629 (5th Cir. 1982). Originally, the Circuit Court, without considering the hospital's "no solicitation rule," held that the hospital could constitutionally limit the activities of the plaintiff in certain sensitive areas. *Dallas Ass'n Etc.*, 656 F. 2d at 1181. On rehearing, however, the Court held that in light of *Heffron*, the hospital could not

completely forbid freedom of expression. *Dallas Ass'n Etc.*, 670 F. 2d at 632. The "no solicitation rule" prevented expression on the hospital's property without permission of the hospital administration. Since the rule lacked objective standards, it was overbroad and, therefore, unconstitutional. *Id.*, at 633.

See also *Intern. Soc. for Krishna Consciousness v. Bowen*, 600 F. 2d 667 (7th Cir. 1979), *cert. denied*, 444 U.S. 963, where the officials responsible for the Indiana State Fair passed a resolution prohibiting sankirtan and other activities, such as distributing flowers. The Court rejected the prohibition. However, unlike *Heffron*, state fair officials had not established a strong basis for the restriction, relying instead on general assertions that the Krishna activities would threaten public safety. Nevertheless, much of the *Bowen* decision has lost its validity in light of *Heffron*.

In determining the propriety of a particular ordinance, courts have been willing to examine that ordinance in great detail. In *Intern. Soc. for Krishna Consciousness v. Eaves*, 601 F. 2d 809 (5th Cir. 1979), the Circuit Court analyzed a municipal ordinance line by line in a thirty page decision. Some provisions were rejected and some were accepted by the Court.

In addition to setting the appropriate objective standards, the regulations may not be content based. This is illustrated in *Iranian Muslim Org'n v. City of San Antonio*, 615 S.W. 2d 202 (Texas 1981), a case in which a group of Iranians who wanted to protest the Shah's presence in the United States were denied a parade permit. The City manager had announced that no permits would be issued to any group that planned a protest concerning the Iranian issue. This directive was held to be content based, and therefore, unconstitutional, regardless of the fear that violence might erupt from such a demonstration. *Id.*, at 206. "Such fears are not a constitutionally permissible factor." *Id.* This Court's admonition is a reminder that Krishnas may not be barred from practicing sankirtan in rest areas simply because it may lead to violence.

Billboard and rest area cases culminating with the principles of *Metromedia* and *Heffron*, suggest that a minimum level of expression must be permitted. The difficulty is in formulating regulation which will control the spread of billboards and expansion of rest area activities, while remaining consistent with the Supreme Court's interpretation of the Constitution.

In order to be sustained, such rules must:

- (1) Not be entirely exclusive, unless an exclusion is clearly warranted by strong, objective evidence of a police power "interest."
- (2) Be no more restrictive than necessary to accomplish the police power goals which require the issuance of any restriction. These goals should be well enunciated and fully understood.
- (3) Establish clear, fair, and realistic permitting standards.
- (4) Be carefully reviewed to make sure each restriction or requirement can be individually justified in the context of the overall rule.



Given the precision of judicial review, it is unlikely that completely predictable results will be achievable. Nevertheless, if rules are issued with care and sensitivity, reasonable regulations of billboards and rest areas should not be hampered sufficiently to cause serious operational problems. Much more difficult will be making inspectors and permit officials aware of the difficult legal and factual decisions which, of necessity, must become part of the regulatory process in the future.

#### SPONSORSHIP OF THIS CIRCULAR

##### GROUP 4--LEGAL RESOURCES

Robert F. Carlson, California Department of Transportation, Chairman

Committee on Environmental Issues in Transportation Law  
Irwin Leroy Schroeder, Federal Highway Administration,  
Chairman

Laurence J. Aurbach; Robert K. Best;  
David Gates Burwell; Leo A. Byrnes; Hal O. Carroll;  
John J. Collins; Ray M. Druley; Joseph C. Easley;  
Val Fairman; Joseph T. Fromme; Oscar S. Gray;  
Nancy A. Greene; Alvin G. Greenwald;  
John M. Hrubovcak; Edward V. A. Kussy;  
Robert H. Raymond, Jr.; Nolan H. Rogers;  
Richard L. Rudin; Richard L. Russell;  
Robert C. Schwartz

Larry W. Thomas, Transportation Research Board,  
Staff Representative