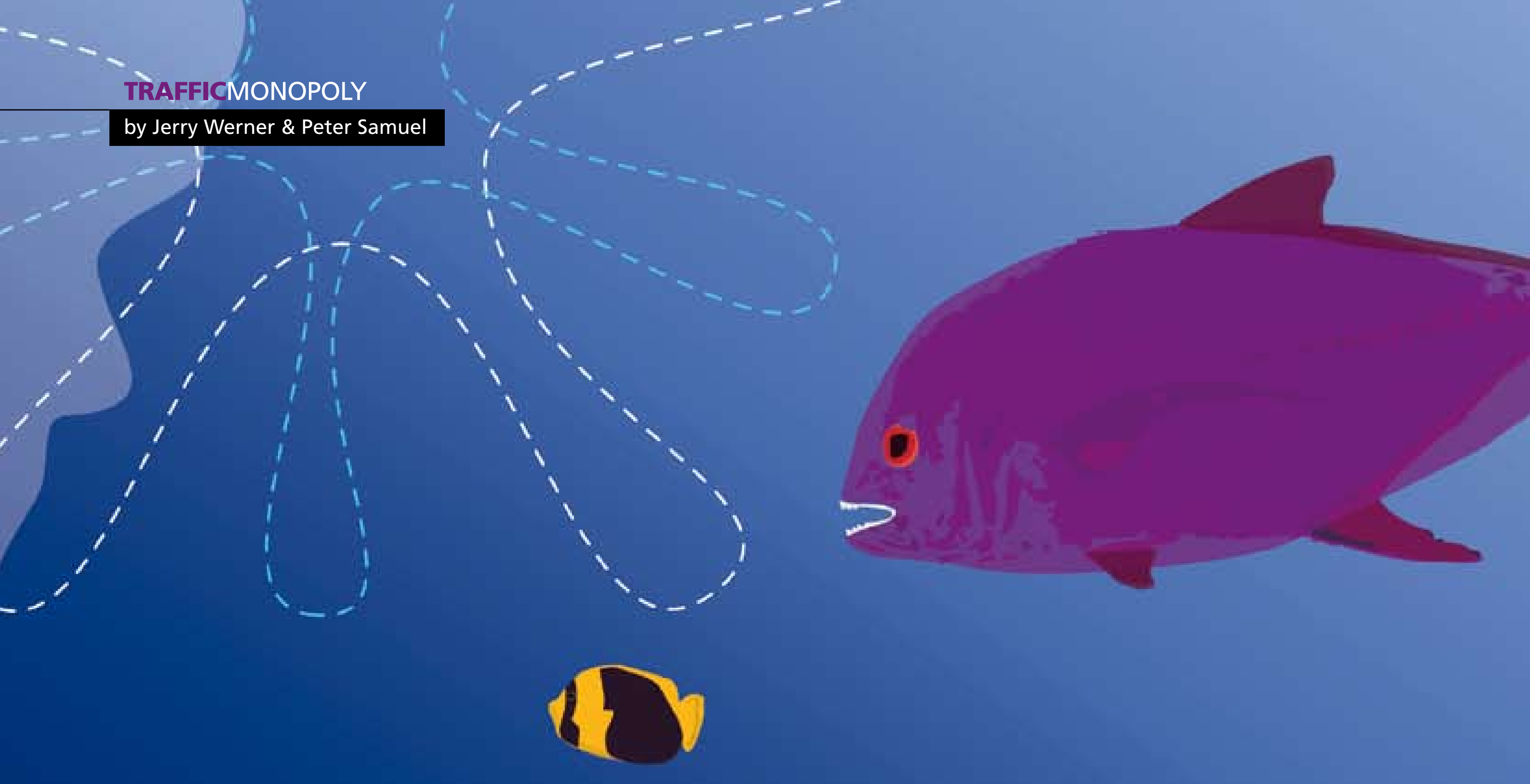
by Jerry Werner & Peter Samuel



ALL ABOUT THE BIG FISH?

HOW A STATE-ENFORCED MONOPOLY IS ROCKING THE ITS INDUSTRY

An ITS program in the USA is coming under serious scrutiny. Allegations of foul play in favor of one company are rife, and competitors are questioning the administration of USDOT's entire traffic data program

For years, supporters of ITS in the USA have called for it to be 'mainstreamed', to become part of the normal state and federal government funding process, rather than being treated as something exotic and only fit for small pilot projects. Now, ITS is being mainstreamed – but the result is not always pretty. Just as pavement and bridge constructors have often been selected by less than ethical criteria, so at least one ITS offering is coming under serious scrutiny in the USA, namely the Transportation Technology Innovation and Demonstration (TTID) program, managed by the Federal Highway Administration's Office of Operations.

Critics say it has been used to steer taxpayer money to a private company – present name Traffic.com, although its name has changed twice – chosen not by competitive bids, but by behind-closed-door political deals. The critics allege that the program is used to maintain monopoly control over traffic data, and that federal grants are improperly used to 'sell' the private monopoly's offerings to states and municipalities. And they accuse the USDOT of evading legislative provisions intended to open the program to competition.

THE STORY SO FAR

The Traffic.com story goes back 10 years to the lobbying that produced the TEA21 legislation, one of the six-year megafunding bills that finances not only general categorical grant programs to the states for roads and transit, but also increasingly earmarked grants that specify in detail not just their purpose and amount, but who shall get them and the terms on which they shall be made available.

The Traffic.com monopoly arises out of a TEA21-authorized Transportation Technology Innovation and Demonstration Program that included

an intelligent transportation infrastructure program (ITIP) for the 'measurement of various transportation system activities' to aid in planning and analysis.

The law specified that the program be initiated in the two largest metro areas of Pennsylvania, Philadelphia and Pittsburgh (the state represented by Republican Bud Shuster, chairman of the House transport committee and a well-known dealmaker). It also specified that the database be located at the Pennsylvania Transportation Institute at Pennsylvania State University, located in the Congressman's district in central Pennsylvania. An infrastructure was to be built for measurement of various transport metrics in over 40 metropolitan areas at a cost of US$2 million each. Private technology commercialization initiatives would be provided to generate revenues to be shared with local DOTs, and aggregate data would be compiled into reports for distribution. The law also specified that an advanced information system would be used from an entity with USDOT experience.[1]

Out of this grew a government-funded and enforced monopoly of traffic information data.

In June 2001, USDOT asked state and local government to participate in ITIP with a filing in the Federal Register where all new opportunities are officially logged. This said that the USDOT was 'interested in working with state and local governments and an existing private sector partner to develop an ability to measure the operating performance of the roadway system at a regional and national level, and to produce other valuable streams of information.'

This filing said 'an existing private sector partner' had already been chosen and that one company was to get a lock on federal grants and to be the sole source provider in 40 or more US metropolitan areas.

In early 2001, control of the US House Transportation and Infrastructure Committee passed from Shuster to Republican Don Young. He took up the cause of Traffic.com just as vigorously as his predecessor. Watchdog groups have documented extensive gifts by people associated with Traffic.com to the campaign funds of Shuster and Young, causing them to be classified by one wag as "coin-operated politicians". Also, a Capitol Hill publication estimated Traffic.com has spent US$900,000 on lobbying.

Although TEA21 had authorized the program, it needed to have funding appropriated. Traffic.com and its supporters managed to get US$50 million in the FY2001 transport appropriations bill for the ITIP. These specified that ITIP programs would be instituted in 25 additional metro areas, with a US$2 million federal grant to each.

USDOT's position on the propriety and legality of this monopoly has varied. At times, they have been uneasy about it and even once challenged it. They have also seemed to be reluctant defenders, and at other times they have been enthusiastic supporters and vigorous defenders of it.

In February 2001, the department resisted pressure from Shuster to direct funds to Traffic.com without competition, commenting in an official letter to him that to do so 'would significantly change the scope of the (prior) contract and require recompetition'.

To get around the threat of a competitive procurement, the company worked with its legislative backers on a novel legislative maneuver. Although the program has nothing whatsoever to do with defense, they managed to get language in the FY2002 Defense Appropriations bill that authorized the USDOT to extend the ITIP contract to 'the same competitively selected consortium leader' selected for the earlier contract. Although it was unclear, there was ever any real competition for the original contract.

Former US Secretary of Transportation Norman Mineta then personally embraced the program and its award to Traffic.com. In June 2002 the FHWA formally signed the task order enabling Traffic.com to be the sole-source provider for services under the ITIP program's umbrella.

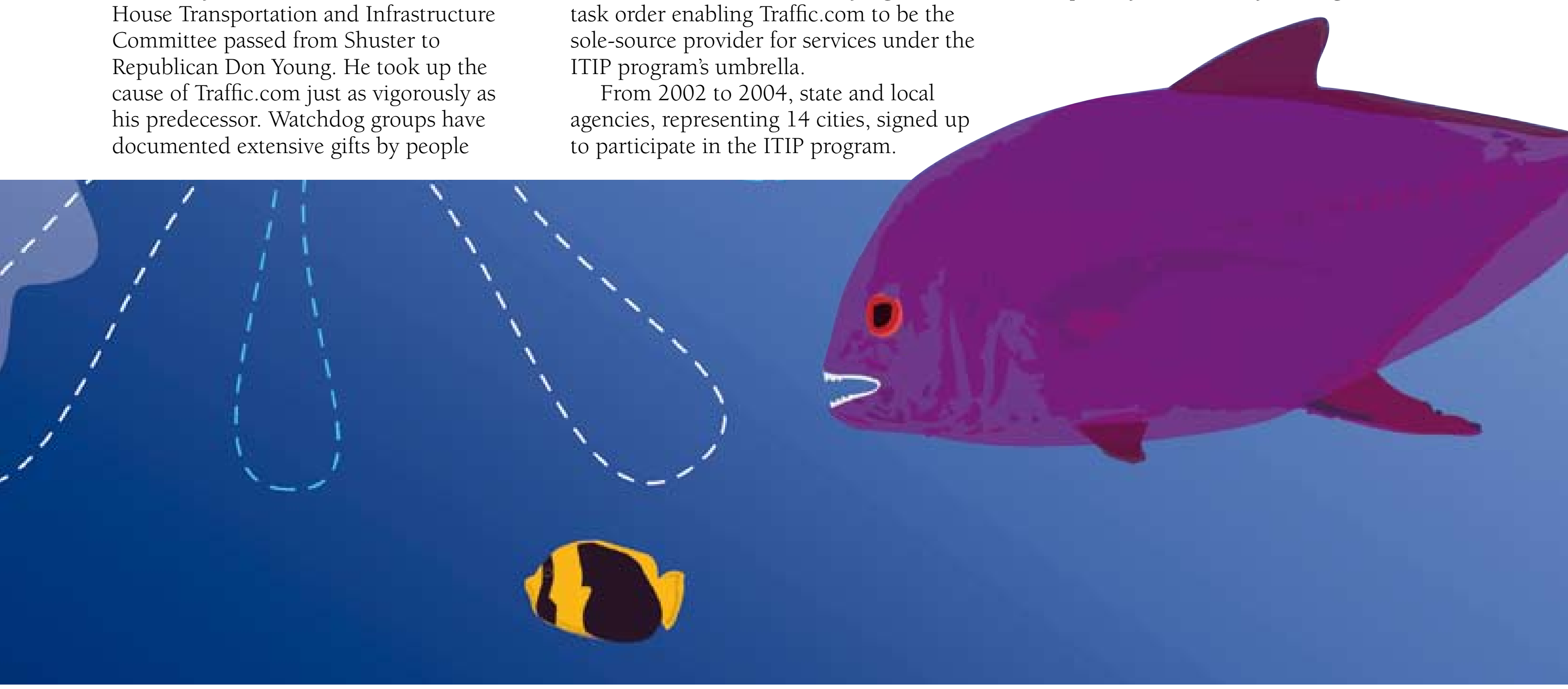
From 2002 to 2004, state and local agencies, representing 14 cities, signed up to participate in the ITIP program. These included major metro areas such as Boston, Chicago, Detroit, San Francisco, and Washington DC. Traffic.com tapped into existing data sources and also installed its own pole-mounted radar traffic sensors to create what it called its 'Digital Traffic Pulse(SM) sensor network'. The company says the network generates lane-by-lane data including actual speeds, volumes and point-to-point travel times, which is then updated every 60 seconds, around the clock.

COMPETITION LOCK-OUT

However, as discussions about the reauthorization of the big transportation bill were heating up in early 2005, a number of Traffic.com's competitors – locked out of business – complained to their elected representatives, urging that the language authorizing the continuation of the ITIP program be changed in SAFETEA-LU to open the program to competition.

Wavetronix of Linden, Utah, was one of the most outspoken of Traffic.com's competitors. The company markets the SmartSensor line of digital wave radar traffic sensors, which compete against Traffic.com's own pole-mounted traffic sensors. Utah Republican Senator Orrin Hatch has long been a strong advocate of open competition, and currently serves as the ranking member of the Senate Judiciary Committee's Antitrust, Competition Policy and Consumer Rights Subcommittee.

Through the summer of 2005 with SAFETEA-LU the successor six-year funding law to TEA21 in contention, Hatch – supported by several representatives led by New York's Anthony Weiner, a Democrat – added language saying that in the new Part II to the program 'the Secretary shall award, on a competitive basis, contracts for the deployment of intelligent transportation infrastructure systems that have been accepted by the Secretary in congested areas'.



The program was also renamed the Transportation Technology Innovation and Demonstration (TTID) program.

But Traffic.com's lobbyists had not been idle. On the very same day that Hatch and Weiner were celebrating their legislative triumph in opening up the TTID program to competition, Republican Don Young, the then-Chairman of the House Transportation & Infrastructure Committee and also chairman of the House-Senate conference committee, inserted a statement in the Congressional Record clearly intended to starve funding for the new, competed Part II. The statement said it was 'the conferees' intent that all of the existing US$54 million that has been provided for the current contracting team would be used to carry out the existing contract to deploy the current highway congestion information system under Part I'. In other words USDOT should continue the program under the old no-compete terms and ignore the Part II provisions for competition.

Young got his way with USDOT. All 11 agreements, including with cities such as Atlanta, Las Vegas, San Jose, and Baltimore, signed by state and local government under SAFETEA-LU since mid-2005, have been under the original Part I provisions of the law in which Traffic.com was the sole-source provider.

In January 2007, Hatch sent a pointed letter to USDOT's Mary Peters, asking why none of the TTID agreements signed since the passage of SAFETEA-LU were utilizing Part II. Her response in March contained a list that essentially confirmed his assertion that the USDOT was managing the program to maintain the Traffic.com monopoly, but avoided an explanation. Hatch then complained that the Secretary's response 'does not address my central concern: why the monopoly for Traffic.com has largely continued since the passage of language in SAFETEA-LU specifically was designed to eliminate that monopoly?'

Secretary Peters delegated the response to Rosalind Knapp, the USDOT's Acting General Counsel, who claimed the statute 'expressly requires the Department to complete the original contract, the majority of the funding that has been provided is committed to Part I of the TTID program'.

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INVESTIGATION

Neither Hatch nor Weiner were satisfied with that answer. On 19 September 2007, Hatch wrote to USDOT Inspector General Calvin Scovel to 'request a review of the funds and administration' of the TTID program. On 3 October 2007, Weiner also wrote to Scovel, requesting that the Office of Inspector General open up an investigation into the USDOT's management of the TTID program. Weiner charges USDOT with 'falsehoods' in claiming the law requires no-compete agreements with Traffic.com. He notes that the new agreements were with cities not mentioned in the original contract. The Inspector General's office has informed Hatch's office that they have received both letters, and that IG staff have been assigned to conduct a comprehensive audit of the program, both pre- and post-SAFETEA-LU.

Details of the agreements with state and local agencies signed by USDOT and Traffic.com have never been made available by USDOT. However, the watchdog group Sunlight Foundation has managed to obtain them recently and Jerry Werner has posted them to a special website.[2] There are some amazing revelations.

In all but three of the agreements, USDOT has waived the 20% local match that is almost always a requirement of USDOT grants for ITS-earmarked programs, making them essentially giveaways, helping Traffic.com to expand its monopoly.

The agreements usually restrict local agencies to using the most valuable Traffic.com data internally, preventing them from computing and displaying travel times computed from that data on VMS, or in their 511 telephone traffic services.

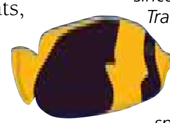
Traffic.com is given the power to set the terms for sale of the data outside the local agencies, even though it is dealing in many cases with competitors such as Westwood One and Clear Channel.

Revenue-sharing provisions with Traffic.com generally do not involve 'sharing' at all, as the funds go back into Traffic.com.

Traffic.com retains ownership of all of the program's traffic sensors and software, even though its deployment is subsidized by the federal grants and supported by the revenue sharing.

A number of local agencies have recently got wind of the disadvantages of the terms of these federal grants and are deciding to avoid the program. In the New York area, for example, a traveler information service has just been announced that pointedly has nothing to do with the USDOT program. Other states and local agencies are increasingly turning down the TTID program as a result of the conditions written into the fine print of proposed agreements, and the growing sense that something bad is going on.

Clearly the USDOT's traffic data program has been corrupted, and serious house-cleaning is in order.



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[2] http://www.itsonline.com/ttid/agreement_summary_v1.html