The U.S. Transportation Technology Innovation and Demonstration (TTID) Program: When Politics, Competition, and the Public Interest Collide

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November 12, 2007

In recent months, the Transportation Technology Innovation and Demonstration (TTID) program, which is managed by the Federal Highway Administration's Office of Operations, has come under increased scrutiny and challenge from legislators on both sides of the political aisle, who contend that the program unfairly created a monopoly for a single company, Traffic.com.

The positive news in all this is that there's an increased discussion about the relative roles of the public and private sectors in collecting traffic data and disseminating real-time information to the traveling public. That discussion will hopefully lead to some innovative new public-private partnerships in this vital and rapidly growing arena.

What is the TTID Program All About?

The overall intent of the TTID program is to help fill what is often called the "data gap" related to our knowledge of traffic conditions on many of our nation's most congested roadways, primarily through the deployment of new traffic sensors on roadway segments that are not currently instrumented. The TTID program has several different intertwined goals for different constituencies, which include the federal government, state and local transportation agencies, the private sector, and the traveling public. This description, on the FHWA's website [1], captures that mix at a high level:

> *The purpose of this program is to address national, local, and commercial data needs through enhanced surveillance and data management in major metropolitan areas. This involves integration of data from existing surveillance infrastructure and strategic deployment of supplemental surveillance infrastructure to provide real-time and archived roadway system performance data.*

While the stated goals of the TTID program are clear and unambiguous, like most everything else in business and government "the devil is in the details." What does it mean to "address local data needs?" And whose "commercial data needs" is the program intended to help provide – those of one company or of the overall commercial sector? The answers to those questions have been increasingly asked in recent months, and the answers at times have been quite revealing.

The Legislative Underpinning of the TTID Program

Funding for the TTID program comes from what is called an "earmark" in the large U.S. Transportation authorization bill that is typically "re-authorized" every seven years or so. The

1 http://ops.fhwa.dot.gov/travelinfo/ttidprogram/ttidprogram.htm

roots of this program go all the way back to "TEA-21" -- the "Transportation Equity Act for the 21st Century," which was passed into law in mid 1998. At that time, the program was called the Intelligent Transportation Infrastructure Program, or "ITIP."

The original earmark language for the ITIP program, which was legislatively spearheaded by Cong. Bud Shuster (R-PA), the then Chairman of the U.S. House Transportation and Infrastructure Committee, established a pilot program for Philadelphia and Pittsburgh. Shuster has long had many connections with the company. His former Chief of Staff, Ann Eppard, was one of the first lobbyists that the company hired. David Jannetta, the former two-time mayor of Altoona – the largest city in Shuster's old congressional district – was the long-time President of the company until very recently. His son, Robert L. Shuster, was recently a registered lobbyist for the company.

For each city that participated in the ITIP program, Traffic.com[2] typically installed numerous pole-mounted radar traffic sensors to create what it called its "Digital Traffic Pulse (SM) sensor network." According to a July 2001 company press release launching that network in Philadelphia, that 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."

The lead story in the January 15, 2001 issue of the industry newsletter *Inside ITS*, entitled "Traffic.com claim to $50 million ITS earmark raises questions," first alerted the ITS community about some of the political gamesmanship that was going on behind the scenes. "If the $50 million goes to Traffic.com, it would be by far the largest amount of money ever given to a company under the federal ITS program. In fact, it could be the only money ever directly awarded to a company for deployment," observed *Inside ITS* Editor Mike Curran.

With the support of numerous high-level lobbyists (according to the publication *The Hill*, the company has spent over $900,000 on lobbyists over the years), Traffic.com was able to earmark an additional $50 million in funding for the ITIP program in the Fiscal Year 2001 Transportation Appropriations bill. Those funds were intended to make 25 additional big congested U.S. Cities eligible for this program, at typically $2 million in federal funds per city.

While the company understandably wanted to be the sole-source provider for those additional funds, it encountered a roadblock: the FHWA's analysis of the language in the FY2001 transportation authorization bill concluded that adding $50 million to the existing sole-source contract would (according to a letter to Cong. Shuster's Administrator) "significantly change the scope of the contract and require recompetition."

The notion that the program would require "recompetition" was not, of course, quite what Traffic.com wanted to hear. So the company worked with its legislative backers to take another tack, and added language in the FY2002 Defense Appropriations bill that authorized the USDOT to extend the contract to "the same competitively selected consortium leader" selected for the

2 The company has changed its name several times during its history, from Argus Networks to Mobility Technologies to Traffic.com. For clarity, throughout this white paper it will be referred to by the single name Traffic.com.

earlier contract. These words essentially gave the USDOT the option to extend the original contract to 25 more cities on a sole-source basis. In early 2002, USDOT Secretary Norman Mineta exercised that option, and 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 transportation agencies representing 13 cities signed up to participate in the ITIP program, including such traffic congested cities as Boston, Chicago, Detroit, San Francisco, and Washington, DC. However, as discussions about the reauthorization of the big transportation bill were heating up in early 2005, a number of Traffic.com's competitors that found themselves locked out of business in the cities slated for earmarked funding complained loudly to their elected representatives, urging that the language authorizing the continuation of the ITIP program be changed to open up the program to competition. Many of those concerns were reflected in an article in the April 15, 2005 issue of *The Hill*[3].

New Language in 2005 for "Open Competition"

Wavetronix LLC of Linden Utah was one of the most outspoken of Traffic.com's competitors. The company markets what it calls its SmartSensor™ line of digital wave radar traffic sensors, which compete against Traffic.com's own pole-mounted traffic sensors. "These guys just had the government wire the marketplace in their name," Brian Hagen, Wavetronix' Chief Operating Officer, was quoted as saying in *The Hill* piece.

Wavetronix conveyed their strong objection to the anticompetitive nature of the ITIP program to Utah Republican Senator Orrin Hatch, the state's well-respected senior Senator, who immediately resonated with their concern. 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, Hatch, supported by a group of Congressmen led by New York Congressman Anthony Weiner, a Democrat, added a new "Part II" to the authorizing language designed to open up the program to competition. According to the actual language in that bill (SAFETEA-LU[4]):

> **In carrying out part II of 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, with the consent of the State transportation departments for the congested areas.**

The program was also renamed in SAFETEA-LU, because of the many changes in the authorizing language, to the Transportation Technology Innovation and Demonstration (TTID) program.

3 "Monopoly Money for Pa. Company," *The Hill*, April 15, 2005

4 Public Law 109–59—AUG. 10, 2005, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

Once the House-Senate conference committee had finalized the language for SAFETEA-LU, on July 29, 2005 Senator Hatch's office issued a press release ("Hatch Puts the Brakes on Traffic.com") highlighting the Senator's success in adding the new language designed to open up the program. On the House side, Congressman Weiner issued a similar release[5].

Ironically, on the very same day that Sen. Hatch and Cong. Weiner were announcing their legislative success in opening up the TTID program to competition, Cong. Don Young, the then Chairman of the House Transportation & Infrastructure Committee and chairman of the House-Senate conference committee, inserted this statement in the Congressional Record[6] clearly intended to starve funding for the new, open-competition Part II:

> **I believe that it was the conferees' intent that all of the existing $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.**

Young's statement concluded with "I respectfully urge that USDOT get quickly implementing guidance to the field that is consistent with this intent."

Traffic.com has a long history of contributing to Cong. Young's reelection campaign ("Alaskans for Don Young") and leadership PAC ("Midnight Sun"), dating back to early 2001 when the Congressman succeeded former Cong. Shuster as Chairman of the Transportation & Infrastructure Committee. (Shuster resigned in early 2001 several months after the U.S. House Ethics Committee issued a letter of disapproval for his past ethics transgressions.) C.J. Zane, one of Traffic.com's recent registered lobbyists at Blank Rome Government Relations LLC, served as Cong. Young's Chief of Staff for eight years. Interestingly, the Blank Rome PAC made a $5,000 contribution to "Alaskans for Don Young" two months prior to Cong. Young's July 29, 2005 statement for the House record, and $1,100 to "Midnight Sun" one month after that statement.

Not Quite Open Competition

President Bush signed SAFETEA-LU into law on August 10, 2005. All eleven agreements signed by state/local agencies representing cities earmarked for funding in TEA-21 and 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. Not one of those eleven agreements, for such traffic congested cities as Atlanta, Las Vegas, San Jose, and Baltimore, were awarded as a result of open competition.

In January, 2007, Senator Hatch became aware that his efforts to open up the TTID program to competition back in 2005 were not "taking," and on January 23 he sent a letter to U.S.

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5 Press release, "Federal Highway Legislation Creates Competitive Bidding Process for Traffic Data Collection: Traffic.com Loses Monopoly" from Cong. Anthony Weiner, July 29, 2005.
6 *Congressional Record* – Extensions of Remarks, September 12, 2005, page E1815

Department of Transportation Secretary Mary Peters, asking why none of the TTID agreements signed since the passage of SAFETEA-LU had utilized the new “Part II” he had spearheaded that mandates open competition. Her response, on March 6, 2007, provided detailed data about which cities were participating as well as financial data about the program that essentially confirmed Hatch’s assertion that the USDOT was strongly biasing the management of the program to maintain what he clearly saw as a monopoly.

Not satisfied by USDOT Secretary Peters’ response, on May 10 Senator Hatch then sent a much more pointed letter to Secretary Peters, in which he said Peters' earlier 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 responsibility for responding to that inquiry to Rosalind Knapp, the USDOT's Acting General Counsel, who on June 22, 2002 wrote to Hatch saying that the USDOT had predominantly supported Part I (which supports Traffic.com's monopoly) because of the very language in SAFETEA-LU that Hatch had helped change. “Because 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,” Ms. Knapp wrote.

Once again, Senator Hatch was unsatisfied with the USDOT's response, and on September 19, 2007 he wrote to USDOT Inspector General Calvin Scovel III to “request a review of the use of funds and administration of the Transportation Technology Innovation and Demonstration (TTID) program.”

“I have communicated my concerns to the DOT in letters dated January 23, 2007 and May 10, 2007,” Hatch wrote in that letter to the IG. “The responses from the Department, however, did not adequately address my central concern. The administration of the program has resulted in a monopoly on program funding for the benefit of a single private-sector entity, in direct contravention to the legislative intent of Section 5508.”

Congressman Weiner continues to support Senator Hatch's efforts to break Traffic.com's monopoly and open up the TTID program to competition. He too clearly does not buy the USDOT's reasons for continuing to support Traffic.com's monopoly. On October 3, 2007, Weiner wrote to USDOT Inspector General Calvin Scovel III, requesting that the Office of Inspector General open up an investigation into the USDOT's management and administration of the TTID program. Weiner also dismissed the rationale that Ms. Knapp expressed in her earlier letter to Sen. Hatch as to why the department had continued its strong bias toward awarding new agreements to Traffic.com. Quoting from that letter:

> *Senator Hatch has written to USDOT Secretary Peters twice this year, asking why the USDOT has continued to support Traffic.com's monopoly. The responses that he has received have been very unsatisfactory, to the point of actually containing falsehoods. For example, the second response to Senator Hatch, from Acting USDOT General Counsel Rosalind Knapp, claims that the majority of funding in the TTID program was provided for the Traffic.com monopoly provision in SAFETEA-LU because “the statute expressly required the Department to complete the original contract.” A careful reading*

of the language in Section 5508 shows that assertion to be false. However, even if it were true, the majority of the agreements that have been awarded to Traffic.com since the passage of SAFETEA-LU were for cities that were not mentioned at all in the original contract.

As of the date of this white paper, the USDOT Inspector General's Office had acknowledged to Senator Hatch's staff that they had received his and Congressman Weiner's letters, and that they have now assigned staff to do an audit of the TTID program, both pre-SAFETEA-LU and post-SAFETEA-LU. However, the OIG has not yet publicly announced this audit on its website, which it often does when new audits are initiated.

What the TTID Agreements Show

Even though at least 80% of the funding for the ITIP/TTID program involves federal (public) dollars, neither the FHWA's task order with Traffic.com nor the individual agreements that Traffic.com has signed with state and local transportation agencies have ever been made publicly available by the FHWA on its own website. However, as a result of a Freedom of Information Act (FOIA) request to the FHWA earlier this year by the non-profit government watchdog organization Sunlight Foundation[7], many of these documents are now publicly viewable on the web.

As a direct result of that FOIA request, the Sunlight Foundation has now received the FHWA's June 2002 task order with Traffic.com, as well as a majority of the agreements agencies representing the earmarked cities have signed with Traffic.com. (The agency has promised to also provide a substantial amount of additional documentation related to its administration of the TTID program and communication with Traffic.com, although that material is now months overdue.) The author has made these agreements, as well as an analysis of some of their key provisions, available on the Internet[8]. Interested readers are encouraged to review these materials in detail.

Some of the key aspects of the agreements include:

1. ***Waiving the normal local agency match.*** The normal 20% local agency cash match for ITS earmarked programs was waived from the local agency's perspective in all but three of the agreements, contradicting the USDOT's own guidance in a recent "lesson-learned" in its "ITS Lessons Learned Knowledge Resource."[9] The rationale for requiring what is often called a "hard (cash) match" on the part of the local agency participant is that this action ensures that the program meets a real local need. By waiving that requirement, the cost of participating from the local agency's standpoint was essentially "free," greatly

7 "Tracking Contractors and Lobbyists, and a Congressional Intervention," Sunlight Foundation's "Under the Influence" blog, February 9, 2007, http://www.sunlightfoundation.com/node/2118

8 "TTID Program: What the Agreements Signed by State and Local Transportation Agencies Show," http://www.itsonline.com/ttid/agreement_summary_v1.html

9 Lesson of the Month for May 2007, "Beware that inter-agency funding arrangements can lead to delays in awarding and executing project contracts," http://www.itslessons.its.dot.gov/its/benecost.nsf/Lesson?OpenForm&82E38349E845E7508525722E0061F4C6

enhancing Traffic.com's ability to recruit new cities into the program and extend its monopoly.

2. ***Preventing the local agency-participants from benefiting from the most useful data.*** While the local agency-participants can broadly use data from the new sensor network for internal (e.g., traffic management) purposes, they are severely restricted from using the most useful real-time data to provide their own traveler information to their constituents unless they sign additional licenses with Traffic.com and pay a substantial annual fee. For example, most of the agreements signed by the local agency partners prevent those agencies from using the real-time data collected in the TTID program to compute travel times that can then be displayed on changeable message signs or provided via the agency's 511 (“national traveler information number”) system. A recent Op-Ed piece in the *Atlanta Journal-Constitution*[10] called this situation “highway robbery” and “one of the oldest con games in the book.”

3. ***Making Traffic.com the gatekeeper for marketing this new data to its arch competitors.*** Traffic.com is responsible for selling the new data provided by the TTID program to other private sector firms, including setting the price these firms must pay for that data. However, the company clearly has a huge conflict of interest in that role, since it is responsible for selling data to companies such as Westwood One and Clear Channel that directly compete against it in the traveler information marketplace.

4. ***Including “revenue sharing” provisions where the revenue essentially goes back into Traffic.com's hands.*** These “shared” funds are typically not provided back to the state DOT to use as the agency wishes; they are essentially funneled back to Traffic.com, for such uses as defraying the company's costs to operate and maintain their new sensor system. Keep in mind that while public dollars are being used to subsidize these new traffic data sources in the TTID program, the new sensors that are being deployed in this program are 100% owned by Traffic.com, so these “shared funds” go directly back into the private-sector company’s business.

Where Does the Program Go from Here?

With all the public attention being paid to the TTID program, it would seem inevitable that the U.S. Congress (particularly the House Highways and Transit Subcommittee of the Transportation and Infrastructure Committee, which has oversight responsibility) will need to address the anti-competitive and anti-public-interest aspects of the TTID program. We're just learning how public-private partnerships like this one can work best in the public interest, and hopefully the remedies identified for the painful lessons-learned in the TTID program can be put to good use in other “PPPs,” too.

Clearly, the widespread availability of information about real-time traffic conditions to travelers in our nation's most congested cities is an important way to improve the utilization of our

10 “Sensors and Insensibility: State is asked to pay for traffic info taxpayers already funded,” *Atlanta Journal-Constitution*, August 29, 2007

existing roadway infrastructure, and at least partially to mitigate the effects of increased traffic congestion. The key for any revamped TTID program to truly meet the public interest will be to make sure that any new data subsidized by public funds is made fully available to both the local transportation agency partners as well as the entire community of commercial traveler information providers.

For Additional Insight...

1. "Mobility Technologies puts claim for $50 million into defense bill," *Inside ITS*, January 1, 2002.
2. "Competitors raise a cry against Traffic.com funds," *Inside ITS*, July 1, 2005
3. "'Monopoly' continues for Pa. company, says Hatch," *The Hill*, June 26, 2007.
4. "SF-LLL Update: Not for Public Inspection?" Sunlight Foundation's "Real-Time Investigations" blog, July 9, 2007.
5. "FHWA Discouraging FOIA requests from potential contractors?" Sunlight Foundation's "Real-Time Investigations" blog, July 9, 2007.
6. "Senator pans federal contract for traffic information site," *National Journal's Technology Daily*, July 23, 2007
7. "State to get only part of data from new traffic sensors," *Atlanta Journal-Constitution*, August 17, 2007.
8. "POGO Urges Department of Transportation Investigation into Traffic Information Contract," Project on Government Oversight, October 15, 2007.
9. "Weiner calls for hearings, IG probe on traffic program," *The Hill*, October 19, 2007.
10. "Hogging the Road: How a company called Traffic.com landed an exclusive government contract worth millions to gather data on the nation's highways -- and then sold the information back to us," *Mother Jones* (online version), November 1, 2007.

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