

Testimony Before
Subcommittee on Energy Policy, Natural Resources, and
Regulatory Affairs
Hearing On
Private Sector Participation in Transportation

By

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My name is William Allen, President, Amador Stage Lines, one of the largest private bus operators in Sacramento County. I am here today to outline a series of anti-private enterprise participation rulings by the Federal Transit Administration (FTA). They resulted in the public takeover of an over 25 years competitively-awarded contract for the private sector to operate local bus service in Sacramento, California. Now, the local Sacramento Regional Transit (hereinafter referred to as Regional Transit) is providing the bus service but at a higher cost of over \$277,000 annually and with reduced service to bus riders. The takeover was made with complete disregard of Congressionally-mandated requirements for participation of private enterprise. And, ironically, the bus service did not require any Federal subsidies until FTA approved a \$2.4 million capital grant to Regional Transit in October 1, 2000.

Amador Stage lines, established in 1852 (as a Stagecoach Line carrying passengers in the "Gold Country" of Northern California), has a long history of providing mass transit services, including local shuttles to public and private parties. For over 25 years, the Department of General Services, State of California (hereafter referred to as DGS), has regularly contracted out a scheduled fixed-route shuttle bus service in downtown Sacramento for state employees.

Amador Stage held this contract from 1996 to April 6, 2003.

Regional Transit, a recipient of Federal FTA funds, was unsuccessful as recently as 1995 in competing against local bus companies to provide this State of California shuttle bus service.

In 1998-99, Regional Transit entered into private negotiations with DGS for the purpose of entering into an exclusive agreement - barring local private bus companies - to operate the local bus contract.

Regional Transit could eliminate private operator participation if it could avail itself of new federally-subsidized buses. By systematically excluding all private operator involvement throughout the entire planning process, Regional Transit was able to guarantee itself receipt of over \$2.4 million in Federal capital funds to pay for new shuttle buses. FTA approved these funds despite the complete absence of documented justification for the project and failure to meet any of the federal Private Sector Participation standards required by Congress for the 40-year period of the federal transit funding program.

All actions taken by Regional Transit starting in 1998-99 to the start date of April 7, 2003 were unmistakably in violation of federal statutes, regulations, and a signed grant agreement with the Federal Transit Administration conditioning expenditure of these funds.

In January 2003, Amador's representative, the California Bus Association (CBA), obtained a January 27, 2003 Regional Transit agenda item requesting further Board approval for the unlawful takeover of the privately-operated shuttle service and immediately filed a protest. After the Regional Transit Board approved the

takeover of the DGS shuttle bus service on January 27 despite the formal CBA protest and public presentation outlining how the private sector was excluded from the process, CBA obtained all past Board items and notices not previously disclosed to local bus companies. Then, CBA filed an emergency protest with the FTA in Washington DC on March 6, 2003, requesting relief from the pending nationalization of the state shuttle routes.

On March 13th, Chairman Ose sent a letter to FTA Administrator Dorn requesting an FTA “...*review of the ‘Sacramento Regional Transit Emergency Protest’ filed by ...(CBA) on March 6, 2003.*” This letter specifically referred to CBA’s request to suspend contract termination until FTA completes an investigation of possible violations of laws and regulations “...*especially those governing private sector participation requirements.*”

Almost immediately after receipt of Chairman Ose’s letter, FTA’s Region 9 Administrator, on March 18th, formally notified Regional Transit requesting that they “...*hold any action on the subject contract or service in abeyance pending the outcome of our review of SRT’s response.*” FTA’s March 18th letter of notification to Regional Transit is *prima facie* evidence that FTA, at first, recognized its statutory responsibilities under the law to come to a decision on possible violations and act accordingly as FTA has done in the past.

On March 24th, the Regional Transit governing board, at the urging of the General Manager, approved the final April 7th takeover plan in spite of FTA Region 9's written instructions to "cease and desist".

As for FTA's subsequent actions immediately after the April 7th Board rejection of FTA's March 18th letter which FTA was made aware of by both parties, FTA never admonished Regional Transit. Lacking a follow up letter by FTA relieving Regional Transit of future adverse consequences, FTA did not impede the Regional Transit takeover before a ruling on the merits of CBA's complaint.

FTA ultimately accepted on face value, without regard to its own lack of due diligence in the grant application process, every argument put forth by Regional Transit. FTA arrived at its decision in spite of an abundance of material evidence to the contrary produced not only by CBA but also surprisingly by a Congressionally-mandated FTA-financed August 2, 2000 Triennial Audit citing Regional Transit with violations of private sector statutes on notification and consultation during the very time the violations were occurring.

In a formal response to the Chairman's March 13, 2003 letter, FTA Administrator wrote to Chairman Ose on August 1, 2003 pledging that "*...the issues you raise in your letter of March 13 will be fully addressed.*" No subsequent decision or letter of explanation by FTA ever addressed any of the statutory provisions raised in the Chairman's March 13th letter.

After the Regional Administrator's August 5th decision approving Regional Transit succession of the state service, Chairman Ose sent another letter to FTA's Administrator on August 6, 2003, requesting demonstration of how Regional Transit had met the specific statutory requirements. FTA's final reply to the Chairman, after denying CBA's appeal, never demonstrated by independent investigation or by evidence how Regional Transit had met each statutory obligation, as outlined in Chairman Ose's letter or CBA's complaint and appeal.

After further follow up requests by Chairman Ose, FTA unequivocally and bluntly stated that it had no jurisdiction over statutory compliance by grantees for "operational" decisions, even in the face of issuing FTA's its own March 18th "cease and desist" letter to Regional Transit and the plain language of Federal law, regulations, Congressional intent and Court interpretations of FTA's statutory responsibilities.

FTA's record of failure in this case is profound. FTA abdicated its responsibility to enforce Congressionally-mandated statutory standards, federal regulations and FTA's own signed GRANT AGREEMENT with Regional Transit as a condition of receipt of \$2.4 million to purchase new shuttle buses. Instead of assuming a quasi-judicial role in this complaint as required by Congress, FTA became, in effect, an unapologetic advocate for the grant recipient. Here are a few examples of FTA's neglect of its statutory and regulatory responsibilities:

- FTA GRANT AGREEMENT with Regional Transit required a planning notification standard for private operators. This statutory requirement was never complied with, as validated by an FTA audit in 2000. The audit correctly concluded that Regional Transit never had a notification standard for private operators when it applied for the \$2.4 million in FTA grant funds. FTA, while citing this fact, bizarrely found that Regional Transit had not excluded private operators in the planning process for the \$2.4 million grant. FTA could not produce one notification or comment documentation or any other tangible evidence of private bus participation that complied with the Master Agreement provisions in Section 13 of the agreement binding Sacramento RT to “...*the private enterprise provisions of 49 USC §§5303 through 5306, and 5323(1)...*”.
- 49 USC §5306 requires plan and programs funded pursuant to an FTA Master Agreement for each project “*shall encourage to the maximum extent feasible the participation of private enterprise.*”
- 49 USC §5307 requires recipient consultation with and consideration especially of private transportation providers. This explicit and unequivocal command from Congress to all FTA recipients was disregarded by both Regional Transit, the grant recipient, and FTA, the enforcer of Congressional mandates.

- 49 USC §5323(a)(1) requires, in part, a finding or administrative decision by the Secretary that a program in competition with a private mass transportation company provides for participation of private transportation companies to the maximum extent feasible. In our case, FTA refused to decide on two standards in this statute that had to be met before FTA could legally approve over \$2.4 million in federal funds to purchase equipment to replace a local private transportation service. FTA never decided that the funding was essential to the overall program of the region and that the program to the maximum extent feasible provided for the participation of private transportation companies. Throughout the entire public hearing and planning process, Regional Transit never disclosed to FTA or the public that \$2.4 million in capital funds would be used to displace a 25-year continuously competitively-funded private bus transportation service.

- Under DOT Regulatory provisions, 49 CFR §18.32 Equipment, requires that all of the Department's assistance programs *"...must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services..."*.

FTA's August 5, 2003 Decision absolved Regional Transit of each of the statutory and regulatory responsibilities I have referred to today by, in part, concluding that over a multiple year period (1999 to April 2003) Regional Transit *"...has met the minimum statutory*

requirements...” without any evidence of specific compliance with, for example, a new July 1, 2001 Standard Operating Procedure (SOP) adopted by Regional Transit to cure past Federal planning and private enterprise participation statute violations contained in FTA’s August 2, 2000 “*Fiscal year 2000 Triennial Review Report*” mentioned above.

FTA’s decision also contained this startling acknowledgement: “*FTA grantees must comply with rigorous planning and private enterprise requirements (49 U.S.C. 5303-5307)*”. How could Regional Transit have come close to complying with “*rigorous planning and private enterprise requirements*” contained in multiple statutes when FTA then reveals in this same decision that its audit showed Regional Transit had failed the entire public participation process?

FTA first neglected to discharge its responsibilities to make critical findings, as required by Congress, when Regional Transit submitted the grant application containing \$2.4 million in new buses and then FTA compounded its abdication of administrative authority by refusing to enforce compliance with these statutes when CBA brought Regional Transit’s statutory breaches to FTA’s attention in great detail and specificity throughout the complaint process.

It is clear from the facts of our case that DOT and FTA are not meeting Congressional intent to encourage private enterprise to the maximum extent feasible, make the necessary findings by the Secretary of maximum private operator participation, and prevent

unfair and unlawful Federally subsidized competition with private bus providers.

Amador Stage purchased equipment for the purpose of providing this locally funded service and was injured by the preemptive actions of Regional Transit that were ultimately deemed acceptable by FTA.

To this end Amador Stage Lines urgently requests that FTA engage in meaningful rulemaking as Chairman Ose requested on Aug 6, 2003 that will establish thresholds that meet the meaning of the words in FTA's decision that its grantees must meet "*rigorous planning and private enterprise requirements*". For the past 10 years FTA has failed to meet this standard of enforcement at a great loss to national taxpayers and riders across the country.