

Testimony of
Katsumi Tanaka, Chairman of the Board and CEO
of
E Noa Corporation, Honolulu, Hawaii
Before the
Subcommittee on Energy Policy, Natural Resources
And Regulatory Affairs,
Committee on Government Reform,
House of Representatives,
Congress of the United States

Hearing on Private Sector Participation
In Transportation

May 18, 2004

I am Katsumi Tanaka, Chairman of the Board and CEO of E Noa Corporation, operator of the Waikiki Trolley and E Noa Tours in Honolulu, Hawaii. Thank you for providing me with this opportunity to discuss how the federally-subsidized mass transit provider in Honolulu, namely, the City and County of Honolulu, and its captive corporation, Oahu Transit Service (OTS), stifle private sector competition at every turn, regardless of the intent of the federal laws and regulations.

I will cite three specific instances of such unfair competition: (1) The Hanauma Bay monopoly; (2) The aggressive recruiting of visitors; and (3) The formulation of the Bus Rapid Transit proposal.

The primary business of the private passenger carriers in Honolulu is serving the visitors to Hawaii.¹ We employ a variety of vehicles including buses of all sizes, trolleys, vans, and trams. The core of our business is in Waikiki, a compact urban resort area of less than two square miles where approximately 95% of the visitors to Oahu stay. On an average day, Waikiki houses 72,000 visitors. Also, about 19,000 residents live in Waikiki.²

Waikiki and its visitors are the alpha and omega of existence for the privately owned passenger carriers in Honolulu. Take the visitors, who are our customers, away, as the City and County seeks to do, and there is no more major private ground transportation industry in Hawaii.

The Hanauma Bay Monopoly

The City and County monopolizes pick-up and delivery service to a very popular visitor destination, namely, Hanauma Bay, partially under the guise of avoiding overcrowding.³ Visitors carried by private tour operators may only stop at the overlook for a few minutes, but none of their passengers may stay at Hanauma Bay and be picked-up later. Visitors arriving by the federally subsidized TheBus, namely, Route 22, can get off TheBus at Hanauma Bay and stay as long as they wish, enjoying the beach, the water and the marine life, and return to Waikiki on a later bus at a time of their

own choosing.⁴ In fact, the vast majority of passengers on Route 22, which runs from Waikiki to Sea Life Park and return, are tourists. The City chooses to ignore two facts: (1) there are private sector passenger carriers ready and prepared to bring visitors to and from Hanauma Bay; and (2) there are alternative means available for achieving the valuable goal of preserving the fragile environment of the Bay, without, in effect, banning customers of the private tour operators from enjoying the beach, the water and the marine life.

The City in this instance is acting as an entrepreneur, seeking to:

(1) maximize its revenues; (2) use its power as a regulator to eliminate potential participation by private transportation carriers; and (3) maximize the federal tax dollars it receives as a federal grantee. The City receives federal funds, which it then uses to compete unfairly with private carriers while simultaneously using its regulatory power to make sure private carriers cannot compete with the City. The injustice of the arrangements for serving Hanauma Bay has been called to the attention of City officials many times, but no changes have been made.

The Aggressive Recruiting of Visitors

The fundamental problem is that the City is simultaneously regulator and entrepreneur, a basic conflict of interest, which it has not been able to resolve, as noted in the paragraphs relating to Hanauma Bay. As entrepreneur, the City desire to maximize ridership and revenues for its highly subsidized public transportation service, TheBus. As regulator the City is responsible for creating a level playing field in which subsidized public transit services do not unfairly compete with private transportation carriers.⁵ What has happened in Honolulu is that the City's desire to promote the well-being of its own highly subsidized transportation service has taken precedence over other choices in a manner that is detrimental to privately-owned passenger carrier companies. The combination of federally subsidized City buses serving primarily tourist destinations plus the City's anti-private sector regulatory schemes harm the private carriers and hurt their ability to

survive economically.

The City's determination to recruit visitors to the subsidized TheBus is further evidenced by the authorized publication of two guides to the City's bus service, one in English and one in Japanese, The Bus Map and Guide Book. The emphasis in the Guides is on how to travel to attractive tourist destinations using TheBus. The guides, promoted on the OTS web site, are widely available for purchase in Waikiki. They include a glowing invitation from the Mayor to visitors to ride TheBus.

The City and County's fare structure includes a \$20 "Visitor Pass," which allows unlimited use of TheBus for four consecutive days and which is sold throughout Waikiki. Furthermore, a visitor may circle Oahu on TheBus for just \$2.

Finally, the City is seeking to commence its BRT system, not by providing additional service to rural and suburban customers, who have the fewest public transit options and are badly in need of public transportation, but by adding to services that are already available in Waikiki, with its high concentration of visitors, a group well served by the private transportation carriers. Obviously, the revenue per passenger mile will be higher in Waikiki than in rural and suburban Oahu, but a primary purpose of public transportation is to provide subsidized services to those most in need, especially low-income families, youth and the elderly living on limited means. These are not the residents of Waikiki nor are they the tourists visiting Waikiki.

The Formulation of the Bus Rapid Transit Proposal

On July 22, 2002, E Noa Corporation wrote to Jennifer Dorn, FTA Administrator, protesting the bypassing of the private transportation carriers by the City and County of Honolulu in the planning and development of its BRT Proposal, for which federal funds are being sought.⁶ In that letter we cited what appeared to us to be violations of FTA Circular C9300.1A, section

4, subsection 9, USC 5307 re urbanized area formula grants, and 49 USC 5323(a), all of which emphasize the importance of consultation with private transportation companies in the development of plans and programs requiring federal assistance as well as protecting private providers of transit against competition from federally assisted transit providers.

The BRT Plan was not developed in consultation with private passenger transportation carriers. Just briefly: (1) There were no meetings with the members of the Private Passenger Carrier Division of the Hawaii Transportation Association (HTA) with respect to the planning of the BRT; (2) There were community meetings, but in no sense was these designed to be consultative sessions with the private passenger carriers; (3) The City and County did convene five geographical working groups, to address operational details of the proposed BRT, subsequent to the selection of the preferred alternative by the City Council. Two or three representatives of the private passenger carriers were members of the Waikiki Working Group, among 30 to 40 other members representing a variety of interests. The five meetings of this group, mostly dedicated to power point presentations by the City and its consultants, did not constitute consultation with the private transportation carriers; and (4) The BRT Plan does not examine whether implementation of the Plan would have a deleterious impact on the private transportation providers. The Supplemental Draft Environmental Impact Statement (SDEIS) asserts that, "The number of tourists expected to use the public transit system with the BRT is forecast to be no greater proportionally than today." (p. 5-20) There are no detailed data and analyses in the SDEIS or any subsequent EIS to support this assertion. This statement was not developed in consultation with the private passenger transportation carriers.

On September 9, 2002, Williams Sears, Chief Counsel, FTA, responded, on behalf of Ms. Dorn, stating that with respect to the EIS process there is no provision for involvement or access by a private company greater than that afforded the general public.⁷ The response was a bit frustrating because, in

the development of the BRT, the EIS is in essence both the plan and the assessment document. There is no separate, stand-alone plan.

Let me note that 49 USC 5323(a) states very specifically that: "Financial assistance provided under this chapter to a State or local governmental authority may be usedto operate mass transportation equipment or a mass transportation facility in competition with, or in addition to, transportation services provided by an existing mass transportation company, only if

- a. The Secretary of Transportation finds the assistance is essential to a program of projects required under sections 5305-5306 of this title;
- b. The Secretary of Transportation finds that the program, to the maximum extent feasible, provides for the participation of the private mass transportation companies."

There was no request to the Secretary of Transportation for such a finding nor did the Secretary issue such a finding in the case of the Honolulu BRT proposal or its truncated version, the Honolulu IOS proposal. In our case, participation of the private sector passenger carriers in the program to the "maximum extent feasible" proved to be a fiction.

In conclusion, the private passenger carriers were not consulted in any special way in the development of the BRT proposal, nor were the assessment made by the City in its EIS documents about the economic impact of the BRT on private transportation carriers anything more than mere assertions.

In Conclusion

I hope that these few examples -- (1) The Hanauma Bay monopoly; (2) The aggressive recruiting of visitors; and (3) The formulation of the Bus Rapid Transit proposal --will prove useful to you as you seek to assist FTA in providing increased opportunities for private sector participation in furnishing local transportation services and protecting private carriers against unfair competition from publicly subsidized mass transit providers. On behalf of all the private passenger carriers in Honolulu, I urge you to require FTA to engage in meaningful rule making so that what has happened

to us and is still happening will not happen to others and will not happen to us in the future.

¹ One of the private passenger carriers does provide school bus service under a contract with the State of Hawaii.

² Data drawn from Wilson Okamoto Corporation, Waikiki Livable Community Project: a Report Prepared for the City and County of Honolulu, December 2003.

³ See section 8 of Amended Rules and Regulations Relating to Visitor Use Level and Controls at Hanauma Bay Nature Preserve, Department of Parks and Recreation, City and County of Honolulu, adopted July 1, 1998.

⁴ To the best of our knowledge, the City and County has never sought an exemption under the provisions of 49 USC 5323(a) to provide this “mass transportation facility in competition with, or in addition to, transportation services provided by an existing mass transportation company.”

⁵ See 49 USC 5323(a) and Federal Transit Administration (FTA) Circular C 9300.1A, Section 4, Subsection 9a.

⁶ See Letter of Tom Dinell, Consultant to E Noa Corporation, to Jennifer Dorn, FTA Administrator, dated July 22,, 2003.

⁷ See Letter of William P. Sears, Chief Counsel, FTA, to Tom Dinell, dated September 9, 2002.