

TESTIMONY
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BEFORE
SUBCOMMITTEE ON ENERGY POLICY, NATURAL
RESOURCES AND REGULATORY AFFAIRS
U. S. HOUSE OF REPRESENTATIVES

HEARING ON
PRIVATE SECTOR PARTICIPATION
IN GROUND TRANSPORTATION

WASHINGTON, D.C.

MAY 18, 2004

My name is Terry Thomas and I am the Chairman of the Community Bus Services, Inc. of Youngstown, Ohio. My company is in the business of providing private bus services for the elderly and persons with disabilities often referred to as “paratransit service, as well as school bus services, and group transportation. CBS has been in business since 1933 when my father first transported students using station wagons. Having grown substantially since then with now over 100 school buses and paratranist vehicles in operation, CBS is the largest private bus operator in Mahoning and Trumbull Counties in Ohio. This is indicative of an industry primarily comprised of many small to mid-size companies.

I have also served as president of the National School Transportation Association (“NSTA”) and currently serve as the chairman of the NSTA Legislative Committee. I wish to thank the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs for holding these hearings and for affording private operators a long overdue opportunity to present our perspective on the implementation of congressional policy by the Federal Transit Administration (“FTA”) through a rulemaking process.

My company currently provides transit and school bus services to some five public entities under competitively awarded contracts, the most important part of our business. Like many other companies, however, we have come to realize that the private investment we have made in mass transportation services and in school

bus services is viewed as an undesirable impediment by many public transportation agencies, including the Federal Transit Administration.

I would like to share with the subcommittee my view of the status of private enterprise participation in providing transit services, and my experience and frustration with the actions of public transit systems and rulings by the FTA that have been detrimental to private enterprise participation. These actions were taken and rulings were made despite Congressionally-mandated requirements for a role for private enterprises to participate in the planning and delivery of transit services.

CBS has had a longstanding approach to forging partnerships with all its public sector customers, including public transit systems. We embraced the concept of public-private partnership formation during the 1980s, and subsequently built relationships with public transit systems, public school systems, counties, municipalities and human services agencies. We have been quite successful in following this model of doing business.

CBS has provided public transit services in the past through competitively awarded contracts from the Greater Cleveland Regional Transit Authority in Cleveland and the Western Reserve Transit Authority in Youngstown. Our most recently awarded public transit service contract is with the City of Niles, Ohio. After a decade long struggle to bring public transit service to the largest county not

served by public transit service in Ohio, Mayor Ralph Infante of Niles, Ohio successfully secured an FTA grant to operate public demand response transit service in Trumbull County. CBS was awarded the contract to operate this service, which began in September 2003.

If that was all there was to the story, it would certainly be viewed as a positive example of competitive contracting for public transit service. However, because of the actions of the Western Reserve Transit Authority and the regional office of the FTA, much needed service was needlessly withheld from the people of Trumbull County for nearly a year. Western Reserve Transit Authority for many years was the only public transit system in the Youngstown-Warren urbanized area, comprising Mahoning and Trumbull Counties. Yet, while receiving FTA formula funding for decades based in large part on Trumbull's population, WRTA consistently refused to extend service to Trumbull County without being paid for cost of the service. The longstanding frustration this caused eventually led Trumbull County and the City of Niles to create its own system, the Niles Trumbull Transit System.

WRTA never submitted a proposal in response to Niles' solicitation in October 2002. Instead, it immediately protested the award of any contract resulting from the effort. The approach by WRTA was to try to thwart the award of any contract to operate public transit service in Trumbull County to anyone other than WRTA, thus guaranteeing WRTA exclusivity in providing public transit services in

the two-county area on a non-competitive basis. FTA's regional office supported WRTA in this effort, ruling that WRTA was at an unfair competitive disadvantage in December 2002. The City of Niles eventually appealed the finding and it was reversed in May 2003 when reviewed by the FTA General Counsel's Office in Washington, and Niles was able to move forward and award a contract, albeit not until September 2003.

Most recently, a local private bus company, Advanced Coach, filed a complaint with FTA against South East Area Transit (SEAT), an FTA grantee, in Southeastern Ohio. The complaint involves SEAT unfairly competing against private bus companies. SEAT is operating a variety of mass transportation services for a fee to outside third party entities utilizing equipment and facilities acquired with federal grants.

Some of these contracts involve peak hour shuttles to local employers that would otherwise be operated by local bus companies without FTA funding. The complaint itself cited Starlight Industries and two contracts with Genesis Healthcare, a local Ohio entity.

Based on recent data of other FTA grantees in Ohio I am analyzing, there are other examples of FTA grantee third party contracts that, at a minimum, have not met the Federal statutory tests of private sector participation.

Let me recall for the Subcommittee that the policy of leveraging public mass transportation infrastructure investment with private equity has been an essential part of the Federal transit subsidy program for its entire history, starting in the administration of President Lyndon Johnson. This policy has been one of the most profoundly bi-partisan policies of the Congress. For example, it was Democratic Senators Daniel Patrick Moynihan of New York and Democratic Senate Majority Leader George Mitchell who joined with Republican Senate Minority Leader Bob Dole and Republican Senate Finance Chairman Mark Hatfield to lead the coalition which passed the historic Intermodal Surface Transportation Efficiency Act of 1991, commonly known as “ISTEA.” The ISTEA legislation was premised upon the leveraging of private sector investment. Indeed, David Osborne, co-author of the celebrated book Reinventing Government, who served as a principal advisor to Vice President Al Gore for the Clinton Administration’s National Policy Review, specifically cites the FTA’s former Office of Private Sector Initiatives, which promoted the use of privately funded transportation resources, as a model for achieving competition and efficiency in the delivery of government services, at page 85 of his book.

Yet, the FTA disbanded the Office of Private Sector Initiatives in 1993. At that time, the FTA also issued an unlawful and non-binding rescission of its Private Sector Participation Guidance, which provided a framework of expectations for the utilization of competition and consideration of privately operated transportation resources as a compliment to publicly subsidized government monopoly service.

FTA at that time described the utilization of competition and private sector resources posed an unreasonable paperwork burden on government and therefore were counterproductive. This is the kind of double-speak with which the FTA has moved away from the congressional statutory language mandating private enterprise participation to the maximum extent feasible.

Part and parcel of the FTA's stepping back from encouraging the use of private transportation operators to the maximum extent feasible, as required by the Federal Transit Act, was the abandonment of the "fully allocated" cost doctrine. This doctrine is enshrined under DOT Regulatory provision, 49 CFR §18.32 Equipment, requiring 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..."*. This regulation was supported and framed by work done under contract for the FTA by the consulting firm of Booz Allen, which required public federally subsidized transit agencies to compare the true cost of operations, including fair and reasonable allocations of administrative, maintenance and related costs, as opposed to mere marginal costs, when reviewing the relative financial merits of operating transit services under competitive contract rather than in-house. It is no surprise that the bureaucratic public transit agencies found this guidance offensive and pressed until the FTA relented and abandoned the analytic requirement. This has occurred though it has been repeatedly demonstrated that when analyzing the cost of providing transit service on a fully-allocated basis, private transportation providers

consistently supply less costly services than public transportation systems. The use of fully-allocated costing as the appropriate basis for making an award of a contract has long been recognized and was a basis for encouraging private sector participation in public transportation by leveling the playing field so that apples to apples comparison as to the actual cost of providing service could be accomplished. I have attached Circular 7005.1, issued in December 1986 describing the fully-allocated costing requirements.

In pushing aside over the past decade the long-standing model public/private partnership program of the FTA, that agency ignored direct pleas to FTA to uphold its statutory responsibilities. The record reflects that the overwhelming majority of comments received about FTA's abdication of private enterprise participation enforcement were in opposition to such change. . Among the voices raised against FTA's explicit lack of enforcement were those of David Osborne, Senator George Mitchell, Senator Bob Dole, Senator Bob Graham, Senator Mark Hatfield, Mayor Kurt Schmoke of Baltimore, and many others.

Public policy rightly emphasizes mobility alternatives for all. Opportunities to enhance the quality of life of the elderly and disabled citizens are increased by making available adequate transit services. In addition, improved mobility and greater access to education, jobs, and job training greatly impact the quality of life for all Americans. It is through the coordination of all transportation resources that we are able to enhance the

transportation alternatives available to every citizen. Utilizing private bus operators as an element of a community transportation system makes good fiscal sense and is operationally practical; unfortunately, many agencies ignore these readily available resources in their own back yard. I ask that FTA engage in rulemaking as Chairman Ose has requested that will establish meaningful thresholds that meet the meaning of FTA's own words that its grantees must meet "*rigorous planning and private enterprise requirements*". As I have shown above FTA has failed to meet a standard of enforcement as intended by Congress.

Existing Federal transit statutes must be enforced to encourage both public transit agencies to consider contracting with private transportation companies to the maximum extent feasible and provide less costly and much needed services while and maximizing all available transportation resources. I also urge that rulemaking address unfair competition from Federally subsidized transit agencies in areas outside of providing public transit service, such as third party services to public or private entities that result in putting private transportation providers out of business and the loss of jobs to their employees.

I wish to thank the Subcommittee for its patience and courtesy in allowing me to testify here this morning. I would be happy to answer any questions you may have or to provide additional information to support your work. It has been an honor to appear before you today.

ATTACHMENT