

Chairman Doug Ose
Opening Statement
How Can We Maximize Private Sector Participation in Transportation? – Part II
September 30, 2004

On May 18, 2004, this Subcommittee held its initial hearing on maximizing private sector participation in transportation. Witnesses included the Department of Transportation (DOT), think tank experts, and three adversely affected small business operators of mass transit services. Today, we will focus on mass transit and highways, and we will further explore DOT's record in implementing the various statutory and regulatory private sector participation requirements.

There are many advantages to participation by the private sector in improving America's transportation system. For example, infrastructure improvement projects can often be completed more quickly and at reduced cost, transportation services can often be delivered more cost effectively, and Federal and State funds can be devoted to other pressing needs.

In 1964, Congress began to enact laws to encourage private sector participation in transportation. The 1966 law that established DOT identified six reasons for the Cabinet-level department. The second reason was to "facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible." DOT's implementing rules assign primary responsibility for "evaluation of private transportation sector operating and economic issues" to the Assistant Secretary for Transportation Policy, who is organizationally located within the Office of the Secretary.

In addition to laws requiring private sector participation to the maximum extent feasible, Federal regulations support this objective. For example, the government-wide grants management common rule provides that Federal grantees and subgrantees "must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services."

I became especially interested in this subject in March 2003 when I learned of a public takeover of an over 25-year competitively awarded contract for mass transit services in Sacramento, California. Since then, I found: (a) unneeded expenditure of substantial Federal funds, (b) noncompliance by a federally-funded local transit grantee with the Federal law requiring private sector participation to the maximum extent feasible, and (c) inadequate enforcement by DOT. Now, after the public takeover, peak hour bus service is every 15 minutes (vs. 5 minutes) and the service costs 76 percent more (\$152,535/bus vs. \$86,503/bus).

In August 2003, I recommended that: (a) DOT initiate a rulemaking to ensure implementation of the statutory private sector participation requirements, and (b) DOT take an appropriate enforcement action against the noncompliant Federal grantee. To date, DOT neither initiated a rulemaking nor took an enforcement action. DOT argued that it is a grant-making, not rulemaking agency, and it has a reduced enforcement role. However, DOT has fiduciary responsibility to assure that Federal grant funds are expended in accordance with Federal law.

Since my investigation of this case, I learned of additional cases involving federally-funded

grantee noncompliance with existing Federal statutory or regulatory protections. In some cases, DOT has not enforced its own rules and, thus, allowed local transit authorities to compete unfairly with existing private mass transit service providers. In another case, the New York City Council stated that a proposed takeover by a local transit agency of franchised private sector bus services “potentially makes the City responsible for paying hundreds of millions of dollars in transfer costs arising from necessary purchases of infrastructure.”

Our witnesses today include DOT, current and former expert public officials, and three more adversely affected small business operators of mass transit services. Small businesses are the backbone of our economy. Congress wants and Americans deserve a reliable and cost-effective transportation system, and one that does not harm existing small business operators of transportation services.

I want to welcome our witnesses today. They include: Jennifer Dorn, Administrator, Federal Transit Administration (FTA), DOT; Dan Tangherlini, Director, DC Department of Transportation; Tom Mack, Chairman, Tourmobile Sightseeing, Washington, DC; David Smith, Director of Marketing and Sales, Oleta Coach Lines, Inc., Williamsburg, Virginia; Jerome Cooper, Chairman, Transit Alliance & President, Jamaica Buses, Inc., Jamaica, New York; and, Steven Diaz, Esq., former Chief Counsel, FTA, DOT.

In addition, Shirley Ybarra, President, Ybarra Group & Council Member, The National Council for Public-Private Partnerships, & former Commissioner, Virginia Department of Transportation accepted our invitation to testify on September 29th but was unavailable for today’s rescheduled hearing; therefore, her testimony will be made part of today’s hearing record. Lastly, Iris Weinshall Schumer, Commissioner, New York City Department of Transportation was invited to testify but declined to do so.