



August 3, 1009

Federal Motor Carrier Safety Administration
U.S. Department of Transportation
Docket Operations (M-30)
Room W12-140
1220 New Jersey Avenue, S.E.
Washington, D.C. 20590-0001

Re: FMCSA Docket 2009-0106; Fullington Trailways, LLC

Dear Sir or Madam:

The American Bus Association, Inc. submits these comments in support of the petition for a declaratory order submitted by Fullington Trailways, LLC in this docket. Fullington is one of approximately 750 bus operator members of ABA.

ABA member companies offer a variety of bus service options, including scheduled intercity service over regular routes, charter service, tour service, commuter bus service, and special operations. In addition, through its affiliate, the National Bus Traffic Association, ABA promotes interline service between and among its operator members, like Fullington, that are engaged in scheduled service. NBTA operates a clearinghouse that allows interline carriers to honor each other's tickets and exchange funds to facilitate the smooth interlining of passengers who desire to travel by bus beyond the routes of one carrier. Fullington participates in this clearinghouse program as an interline carrier.

This issue of whether Fullington's intercity bus operations are in interstate commerce, and therefore are not subject to regulation by the Pennsylvania Public Utilities Commission, has implications for the entire intercity bus network of scheduled service operators. Carriers must be afforded the flexibility to set their schedules and fares to offer seamless transportation service to passengers. Requiring a carrier to go through a prolonged proceeding and hearing before the state regulatory agency each time the carrier wants to alter its service or its fares will impose a chilling effect on intercity bus

transportation. The legal and administrative cost and uncertainty of these proceedings will make intercity bus transportation much more expensive for the passenger.¹

Moreover, the transportation policy of the United States directs the Department of Transportation to “promote efficiency in the motor carrier transportation system,” 49 U.S.C. § 13101(a)(2)(B), and “allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public.” 49 U.S.C. § 13101(a)(2)(D). The statutory policy further directs DOT “to ensure that Federal reform initiatives enacted by . . . the Bus Regulatory Reform Act of 1982 are not nullified by State regulatory actions.” 49 U.S.C. § 13101(a)(3)(C). Allowing state regulatory agencies to hold Fullington and other similarly-situated carriers hostage to prolonged and expensive proceedings clearly violates these statutory directives.

Most important, Fullington has amply demonstrated that its operations between State College and Harrisburg, Pennsylvania meet the test for interstate transportation as set out in *Funbus Systems, Inc. – Intrastate Operations –Petition for Declaratory Order*, 1988 WL 225255 (August 11, 1988), and adopted by the federal court in *East West Resort Transportation, LLC v. Binz*, 494 F. Supp. 1197 (D. Colo. 2007). Thus, Fullington is entitled to the protection of 49 U.S.C. § 14501(a)(1), which preempts state regulation of schedules or fares “on an interstate route,” and 49 U.S.C. § 13902(b)(3), which states that a motor carrier of passengers registered by the Secretary of Transportation to provide interstate service “is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.”

In its petition, Fullington noted evidence introduced in the PUC proceeding and developed later that showed a significant and substantial percentage of its passengers on the State College to Harrisburg run were interlined with other carriers (Greyhound Lines, Capitol Trailways, and Amtrak) via through-ticketing. According to the opinions in *Funbus* and *East-West Resort Transportation*, this is conclusive evidence of the interstate nature of Fullington’s service within the Commonwealth of Pennsylvania.

Further, the early-morning and late afternoon runs on the State College-Harrisburg route may not be characterized as commuter operations, which are outside the scope of preemption in 49 U.S.C. § 14501(a)(1).² Although some passengers on those runs admittedly use the service to commute to and from work, Fullington terminates the

¹ For example, this proceeding began in January 2007, over two and one-half years ago, when Fullington attempted to terminate one scheduled run due to lack of ridership and raise its fares for the first time in 18 years. The resultant complaint proceeding at the PUC has generated tens of thousands of dollars in legal fees for Fullington and for ABA, which has underwritten some of those expenses. The proceeding required several briefs and a full day evidentiary hearing before an administrative law judge, who issued an 84-page opinion without reaching the ultimate question of the PUC’s jurisdiction over Fullington’s operations.

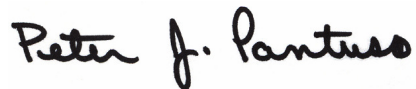
² The preemption of state regulation of intrastate transportation on an interstate route in 49 U.S.C. § 13902(b)(3), however, does not contain the exception for commuter bus service, so Fullington’s single-state operations would still be authorized under federal law.

run at the Harrisburg Transportation Center, a multi-modal center where Fullington's passengers may conveniently transfer to and from other bus and rail operators. On all of its runs, Fullington offers baggage transfer service and connections to other interline carriers, and schedules its service to facilitate passengers transferring to and from Greyhound and other carriers. This service was clearly designed to accommodate interlining passengers in interstate commerce, and is not point-to-point commuter bus service.

Finally, this issue requires the specialized expertise and intervention of the FMCSA to provide clarity and finality for Fullington and the entire intercity bus industry. If the FMCSA is unwilling to or unable to rule in favor of Fullington herein, state agencies like the Pennsylvania PUC will once again begin regulating schedules and fares on the intrastate portions of interstate routes operated by FMCSA-authorized carriers. These carriers will then file additional petitions with the FMCSA and seek to obtain declaratory orders on facts that differ slightly from those in this proceeding. The FMCSA will be caught in a stream of multiple proceedings to determine exactly when intrastate bus service is and is not preempted.

For these reasons, ABA strongly requests that the FMCSA grant Fullington's petition for a declaratory order.

Respectfully submitted,

A handwritten signature in black ink that reads "Peter J. Pantuso". The signature is written in a cursive, slightly slanted style.

Peter J. Pantuso
President and CEO