

Testimony
Before the
Council of the City of New York

The American Bus Association

Oversight – The City’s Oversight Role in the Operation of Interstate Buses

Submitted by:

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Introduction

Members of the Council of the City of New York, my name is Clyde J. Hart, Jr. and I serve as the Senior Vice President for Government Affairs of the American Bus Association. First, on behalf of the American Bus Association (ABA) and its over 3500 members, I want to thank the members of the City Council for this opportunity to testify on what ABA believes is a vital issue touching on the safety, security and economic well being of the City of New York, its people and its institutions.

Before I begin documenting what ABA believes can be done to further protect New York City and its citizen-users of interstate bus transportation, I would like to familiarize the Council with the American Bus Association, and in doing so, I also hope to give you some appreciation of the ABA's knowledge of the industry and its interest in the subject of the hearing.

The ABA is the primary trade organization for the over-the-road private bus industry. The ABA is made up of over 3500 member organizations, including nearly 800 bus operator members. ABA members are engaged in providing all manner of travel, tour and transportation services to the public. Specifically, our bus operator members provide intercity scheduled service, charter and tour, airport shuttle and commuter services throughout the nation.

The private bus industry transports approximately 660 million passengers a year. The industry ABA represents is largely made up of small businessmen and women. The average ABA member has fewer than eight motorcoaches in operation. We like to point out that we are a "mom and pop" industry. Dad drives and Mom is responsible for booking trips and for bookkeeping.

Suspect Interstate Bus Operations

ABA and its members' experience in the transportation of passengers compel the conclusion that there are serious deficiencies in the safety enforcement of some carriers that provide interstate transportation. ABA calls these carriers "curbside operators". Let me be clear that ABA is not concerned with those operators who provide commuter service to the thousands of New Jersey, Pennsylvania and Connecticut residents who work in New York City. The so-called "curbside operators" may be defined as operators who boast of providing low cost service primarily between cities along the east coast. The offered service begins on street corners in Washington, D.C., Philadelphia, New York City and Boston. From these street corners and storefronts along the street, these carriers operate between these major cities.

The "curbside operators" may be discerned by their lack of maintenance facilities, administrative offices and sales offices. In some cases, such operators do not even have valid addresses. Of course, they will pride themselves on their "low cost" but the other

side of that coin is the lack of maintenance facilities and therefore, the lack of maintenance on their equipment, their violation of federal, and we suspect, state and local laws concerning providing transportation for the disabled, and the violation of federal, state and local clean air and water laws. Indeed these carriers are a drain on the economic life of the City.

One final point before I begin. Some will cry that ABA member carriers are interested in this issue only because the competition offered by these curbside operators is too great to bear. ABA has two responses to than assertion. First, the competition offered by these carriers is not competition between equals but rather between carriers that obey the laws of the land and those that do not. No ABA member objects to competing on price or services but the laws and regulations under which we operate must be the same for all. Second, the bus operators represented by the ABA have outstanding safety records. However, these curbside operators are not safe, and when they continue to operate their deficiencies give the entire private bus industry a bad name, force good operators into curtailing service, and make a mockery of our efforts to provide safe and efficient transportation to the nation. It is in all of our interests to get these so-called curbside operators to obey the law or get them off the road. How we may either get compliance from them or close them down will be the bulk of my testimony.

The Deficiencies of the Curbside Operators

Safety Enforcement

In speaking of the deficiencies of these carriers it is difficult to know where to begin. Certainly their lack of safety is an issue. Hardly a month now goes by without another news story about a curbside operator bus that breaks down, catches fire or leaves passengers stranded by the side of the road.

The latest report of these carriers' deficiencies is found in the September 15th edition of the Washington Post. In that article the Post details the legal problems of Fung Wah, a curbside carrier who bills itself as he largest bus operator in the New York – Boston market. In May of this year, Fung Wah paid \$12, 950 to settle a case with regulators who charged violation of several federal safety regulations. In April, these same regulators warned Fung Wah against scheduling buses in a way that forced their drivers to speed and just last month regulators were forced to deal with a Fung Wah bus that overturned on its way to New York from Boston.

If the travails at Fung Wah were the problems of one carrier we could all be a bit less alarmed. We would assume that the offending carrier would be shut down and prevented from operating at least until it complied with all applicable regulations. But unfortunately, neither assumption is true. First, Fung Wah continues to operate and second, the issues of Fung Wah's lack of compliance with safety regulations are not limited to it.

Less than a year ago, a sweep of 400 mostly low cost carrier buses by a federal, state, and local taskforce in Washington, D.C, led the Federal Motor Carrier Safety Administration (FMCSA) to put 56 buses and 13 drivers out of service. (A copy of the news article documenting that raid is appended to my testimony). By my calculation 14% of those buses were not safe for passengers. Let me suggest that if the Federal Aviation Administration (FAA) found 14% of an airline's fleet out of service, that air carrier would not be allowed to fly.

When United States Senator Charles Schumer (D-NY) speaks of a "safety gap on intercity Chinatown buses" he is referring to these low cost interstate carriers and with good reason. Senator Schumer's office collected safety data on Fung Wah and other curbside operators from the FMCSA's website. The data on driver safety show that Greyhound had a driver safety score of 22 out of 100 (under the FMCSA rating criteria the lower the number, the better the carrier). Fung Wah's rating: 73; comparable ratings for other curbside operators included: Dragon Coach, 74 and New Century Coach: 97. In the area of "safety management" Greyhound's rating was 0. Fung Wah: 71. Dragon Coach: 99. New Century: 92.

The responsibility for enforcement of federal motor carrier and bus safety regulations is lodged with the FMCSA, but ABA contends that the FMCSA, as well meaning and as dedicated as its employees are, needs help in keeping unsafe carriers off the nation's highways and city streets. FMCSA attempts to meet its responsibilities by rating carriers as either: satisfactory, conditional or unsatisfactory. However, a recent search of the FMCSA database revealed that of the 150 carriers domiciled in New York State (as opposed to the larger number of carriers that operate within the State) over one hundred are listed as "not rated" by FMCSA.

It must be remembered that motor carriers may operate until they are rated. Even if rated as "unsatisfactory" or "conditional" carriers are given at least a month to correct safety violations before the FMCSA will take any action to shut them down. Surely, it is difficult to cull the good carriers from the bad if there is no rating of any kind or to follow up with carriers with less than "satisfactory" ratings. In order to alleviate these problem ABA suggests that the City find ways to coordinate bus safety inspections with the FMCSA. Federal funds exist under the Motor Carrier Safety Assistance Program (MCSAP) for states to undertake federal bus inspections. In order to protect its citizens, the City must take a more active role in making safety a priority for these curbside operators.

Accessibility for People with Disabilities

The enactment of the Americans with Disabilities Act (ADA) was a landmark step in ensuring passenger transportation for an underserved segment of American society. The federal regulations implementing the ADA requires that since October 2000, every over-the-road bus purchased by scheduled service operators (including curbside operators) must be wheelchair lift equipped. In addition, starting this month the

regulations also require that 50% of the bus fleets of all scheduled service carriers must be equipped with wheelchair lifts.¹ Wheelchair lifts allow disabled passengers to board buses safely without danger to themselves or others.

The problem is that the curbside operators have no wheelchair lifts on their motorcoaches. A circumstance that is clearly visible on every motorcoach. Even worse, if you call these curbside operators and ask for a bus that is wheelchair lift equipped they will advise you that they don't have such equipment and tell you to call Greyhound, Peter Pan or other ABA members. At a Congressional hearing on curbside operators in March, a representative from Fung Wah, when asked why he didn't have wheelchair lifts complained: "wheelchair lifts are expensive". Indeed they are. In fact, just the installation of a wheelchair lift on a motorcoach cost \$40,000, not to mention the cost of training, maintenance and repair of the equipment. However, having wheelchair lift equipped buses is the law. The country has long since proclaimed that businesses cannot pick and choose who they want to serve and whom they won't serve. Cost is not the issue. Fairness and service for everyone are the issues.

Discrimination against people with mobility impairments is not the only accessibility problem for curbside operators. Last year, the Massachusetts Attorney General filed a complaint against Fung Wah for denying boarding to a blind couple. The complaint indicated that Fung Wah denied boarding to the husband because he had a seeing eye dog and to the wife because she did not have a seeing eye dog.

Compliance with the ADA on the federal level is the responsibility of the FMCSA and the United States Department of Justice. However, ABA is certain that, providing access to people with disabilities is not just a federal responsibility. ABA suggests that the City's local ordinances on the provision of public accommodation for people with disabilities be used to ensure transportation service for the disabled.

Lack of Facilities

At the beginning of my testimony I referred to the lack of maintenance facilities, administrative offices and even valid addresses as important deficiencies that the curbside operators must be made to correct. Of course, the lack of facilities goes to the ability of the regulators to find them in order to begin safety inspections. But this deficiency impinges on much more.

¹ The ADA regulations require that a bus operator with revenues of over \$5.3 million be required to have, as of October 2006, 50% of its fleet wheelchair lift accessible. According to news reports, curbside operators make an estimated \$2135 per bus trip per day. At that rate it would take each of the curbside operators (at least those operators on the U.S. Department of Transportation data base) some 2483 bus trips to reach the \$5.3 million threshold. Over the course of 365 days, a curbside operator would have to make only 6.7 trips per day (three and one half round trips) to reach this threshold. Again according to news reports, one notorious curbside operator "Fung Wah makes eighteen trips per day. This is more than double the number of trips needed to push the carrier into the \$5.3 million revenue class, which triggers the 50% requirement.

By way of example, I can refer the Council to a recent bus industry trade publication that recently ran a picture of a line of motorcoaches lined up by the Manhattan Bridge at the end of Canal Street. The picture says much, the use of city streets as staging areas for buses that under normal circumstances would be in a garage or a bus terminal. In addition, I suggest that the City may want to poll those New York City merchants who find the streets outside their establishments choked with buses, idling longer than the City's ordinance permits, and literally driving away customers.

Certainly the idling of these buses on the city streets no doubt have a negative impact on the city's air. As ABA understands the city's ordinance, buses are prohibited from idling for more than five minutes in most circumstances. I venture to guess that the curbside operators honor the ordinance more in the breach than the observance. Another aspect of the lack of curbside operators' facilities is the congestion that is visited on the City's streets by these buses standing by "their" street corners waiting for passengers or moving around the City's streets to get to the Holland and Lincoln Tunnels or the George Washington Bridge.

Another problem that attends the curbside operators' lack of facilities is the issue of "dumping". Motorcoaches have wastewater tanks that must be emptied periodically. The federal as well as some states and local governments heavily regulate the "dumping" of these tanks. On the federal level the Environmental Protection Agency (EPA) has charge of these clean air and water regulations. These regulations prescribed the manner and place for dumping and the penalties for failure to comply can be severe. The curbside operators lack of facilities compels the question: Where are they dumping their tanks? It is not an idle question. ABA knows of incidents, most recently in Norfolk, Virginia, in which curbside operators have been caught dumping their tanks in prohibited places and manner. The most recent example was a curbside operator caught on videotape dumping his bus tanks in a city sewer. Such an action is a violation of federal law.

There is a "cure" for the problems occasioned by the congestion of these curbside operators and their violation of the City's air and water quality by their refusal to have proper maintenance facilities and it is a cure that has worked well in Boston. In that city the curbside operators were a major problem moving along and blocking Boston's narrow streets, not being available for inspection and suspected of violating the anti-dumping laws. A coalition of Boston merchants, the Boston Police and state and federal regulatory agencies were able to curb the more egregious safety and regulatory violations of these carriers by requiring them to move into Boston's South Street bus terminal.

This move accomplished several results all to the good for the city, its people and the transportation services upon which the people and the city depend. First, the curbside operators could be found and inspected as required by law, not to mention having a visible presence to which disgruntled passengers could complain and seek restitution for service failures. Second, the bus congestion and idling around Boston streets largely ended. Third, merchants in the bus terminal who were glad for the additional revenue the new passengers generated replaced the merchants who complained about the loss of

business occasioned by the buses' presence. Finally, terminals provide the means by which passengers and their baggage can be screened; boarding buses on city streets increases the opportunity for a passerby to load dangerous baggage or a passenger to enter the bus with a weapon.

Intermodal Policy

ABA suggests that the Port Authority Bus Terminal would be, as South Street Station is in Boston, a good place for all interstate bus carriers to be housed in New York City and not only for the reasons noted above. First, it is a central location for the convenience of the passengers as well as for the regulatory authorities whose job it is to ensure that only safe, well-maintained buses are in operation. Second, placing buses at the bus terminal would give effect to the intermodal transportation system that we all struggle to continue to build. Such an intermodal system allows passengers to use all modes of transportation with as few steps between them as possible. With an intermodal system a passenger can walk off an intercity bus and on to a subway car in a few minutes. It is a system that the nation is attempting to complete. The curbside operators who do not use bus terminals seem to be of the opinion that they can go where they want when they want regardless of the cost and hardship to the traveling public and to the City of New York. This Council and the City should not and cannot abide this result.

Conclusion.

The ABA's view of bus operations is consistent and very simple. The law should apply to all. ABA members are legitimate operators happy to compete with anyone as long as the same rules apply to all. It is in all our interests to do everything in our power to bring all bus operators into compliance with the ADA, the safety regulations of the FMCSA, city, state and federal clean air and water laws and provide first class transportation to all our citizens.

This view of our transportation system has no room for operators who operate on or outside the margins, safety, legal or financial. The operators ABA is concerned with do operate on the margins and outside the law. ABA will work with you to ensure that such operators will not continue to do business in New York City.

I thank the Council for its time and I will be happy to answer any questions any member may have for me.

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