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BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON TRANSPORTATION  
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Mr. Chairman, members of the Committee, I am pleased to have this opportunity to appear before you today to discuss UMTA's charter bus regulation. Appearing with me is UMTA's Chief Counsel, Joseph A. LaSala, Jr.

Our final charter bus regulation was published on April 13, 1987 in the Federal Register and, as is routine in such rulemakings, became effective thirty days later, on May 13, 1987. Before summarizing the contents of the rule, and discussing what we are doing about the guidance from this Committee, let me outline for you the statutory basis for the charter bus regulation and the lengthy process we went through before publishing the final rule.

The Statutory Basis

The rule implements two provisions in the Urban Mass Transportation Act of 1964, as amended. The first, section 12(c)(6), has been in the UMT Act since its enactment, and defines "mass transportation" specifically to exclude charter service, sightseeing service, or school bus service.

The second provision in the UMT Act, section 3(f), was enacted by Congress in the early 1970s and is more specific. It requires all applicants for UMTA assistance for the purchase or operation of buses to enter into an agreement with UMTA to ensure that the private intercity charter bus industry is not foreclosed from the charter business by public operators using publicly funded equipment.

I should also point out that Congress recently has passed legislation in a related area. As you know, the Surface Transportation and Uniform Relocation Assistance Act of 1987, enacted on April 2, 1987, reauthorized both the transit and highway programs for five years. Section 339 of that bill amended the laws governing the Interstate Commerce Commission. This provision precludes a public transit authority that has received Federal assistance from acquiring interstate charter rights beyond the area in which it provides regularly scheduled mass transportation services if any private operator is providing the service or is willing and able to provide the proposed service. This is noteworthy because we have taken a parallel approach in our charter bus regulation, which applies within a transit operator's service area.

#### The Rulemaking Process

On April 1, 1976, UMTA published the previous rule regulating the charter bus activities that a recipient of funds from UMTA could provide. A number of our grantees complained that this rule

placed undue administrative and paperwork burdens on them. Moreover, private charter bus operators complained that the rule did not provide sufficient protections for them, and that public transit operators were forcing them out of business with federally funded equipment. In light of these continuing concerns, UMTA in early 1981 published an advance notice of proposed rulemaking (ANPRM) seeking comment on a very detailed approach to revising the rule. Because additional issues were raised, UMTA published another ANPRM in October of 1982.

In March of 1986 UMTA published a notice of proposed rulemaking (NPRM) proposing an approach substantially identical to that set forth in the final rule. The 60-day comment period for this NPRM ended on May 5, 1986, but in response to a number of requests for additional time within which to comment, UMTA provided an additional 30-day comment period.

As a result of this extensive process, we received a significant number of comments - three hundred and seven, to be specific. Of these, 86 came from UMTA grantees, 69 from private charter operators, 28 from private individuals, 24 from businesses, 15 from State agencies, and the rest from a variety of other sources. A detailed explanation of the comments and our response to them is contained in the preamble to the final rule.

I think the record speaks for itself in showing that we proceeded in an open manner in arriving at our final rule.

### The Final Rule

The final charter bus regulation applies to all recipients of funds under our grant programs - sections 3, 9, and 18 of the UMT Act, and the Federal Highway Administration programs available for transit funding.

As I noted earlier, the rule was published in the Federal Register on April 13 and became effective a month later, May 13, 1987. Under the regulation, an UMTA grantee that was providing charter service and wanted to continue doing so, had to complete a public participation process by August 11, 1987. After that date, a grantee may provide charter service only if it has determined that there are no private operators that are willing and able to provide the service.

If a grantee operates charter service after August 11, 1987, without engaging in an adequate public participation process designed to notify willing and able private operators of its desire to operate charter service, the grantee will be in violation of the regulation and may be operating in violation of its grant agreement. If we determine that there has been a continuing violation of the regulation, section 3(f) of the UMT Act specifically authorizes us to bar a grantee from receiving further Federal transit funding.

There are a number of exceptions to the rule, three of which are particularly important. First, we were concerned about the effect of the regulation on grantees under our rural section 18 program, and we have thus provided an exception whereby a section 18 grantee may continue to provide charter service if the private operators are located too far from the origin of the trip, or if the private operators impose minimum durations and the desired trip is less than that minimum amount. Second, a grantee may petition us for an exception to provide charter service for special events. We have already granted a number of exceptions in this area - for example, for the Pan-American games in Indianapolis, and for cities the Pope is visiting - Dade and Broward counties in Florida, Detroit, San Antonio, and San Francisco.

Third, we were also concerned about the impact of our regulation on charter transportation for the elderly and handicapped. We recognized that our grantees might have more handicapped accessible equipment than certain private operators, and we accordingly included an exception to address this issue. Specifically, if a private charter operator does not have equipment that is accessible to elderly or handicapped persons, the grantee may enter into a contractual relationship with the private charter operator to provide equipment or to operate charter service for it.

We have made every effort to work with our grantees in implementing the rule. I sent a "Dear Colleague" letter to all grantees on June 22, 1987, outlining the requirements of the regulation. A similar letter from me to the the American Public Transit Association was published in the August 17, 1987 edition of Passenger Transport, the industry's weekly newspaper.

#### The Committee's Concerns

In the House Report accompanying the Fiscal Year 1988 appropriation bill for the Department, this Committee indicated that it supported the basic intent of the regulation but was concerned about its impact on the activities of those non-profit entities that in the past have relied on charter services provided by public operators. The Report language directs us to undertake a rulemaking on a proposed amendment to the regulation that would permit certain entities to seek bids from public transit operators, notwithstanding the requirements of the regulation. The Committee also directed us to provide interim guidance to transit operators that such a rule change is under consideration.

I want to assure you that we are in the process of developing this notice of proposed rulemaking. I created a special working group to address this issue, and sought input from our regional staff to assist us. As you know, the rulemaking process is such that we must coordinate each of our regulations both with the Office of the Secretary and with the Office of Management and Budget.

Consequently, I cannot give you a specific date when the regulation will be published in the Federal Register, but we will make every effort to expedite the process. Moreover, we will be advising our grantees of this undertaking.

You also asked us to collect information on whether any public transit operators have purchased charter rights entirely with non-Federal funds, and to be prepared to comment at this hearing on the appropriateness of providing an exception to the rule for such operators.

As you know, we have already responded to the Committee about this matter. We pointed out that, while we do not know how many transit operators have purchased charter rights without Federal funds, we do know that no Federal funds should have been used for such purposes. Our grant funds are made available only for mass transportation purposes; charter bus activities do not involve mass transportation. Thus, the purchase of private charter rights by a transit operator has never been eligible for Federal funding during the life of the UMTA program.

Moreover, the charter bus requirements as a matter of law are triggered by the receipt of Federal funding for the purchase or operation of buses, and there simply is no statutory basis to except those who have purchased rights without Federal funds. Let me point out, however, that an exception already exists in the case of locally funded charter operations. The charter bus

regulation does not apply to any charter bus activities of an UMTA grantee that are carried out without Federally funded equipment or facilities. In such a case, if a grantee can establish that Federal funds are not in any manner being used to support its charter bus activities, it may provide charter bus activities without restriction by UMTA.

In closing, let me point out that our regulatory analysis of the charter bus regulation indicates that, collectively, our grantees are actually losing money in operating charter service. For example, an analysis of our section 15 data from 1982 shows a collective loss of \$800,000 in comparing revenues with fully allocated operating costs for all operators reporting revenues and charter miles or hours. A review of our latest available section 15 data indicates that this trend is continuing.

Finally, Mr. Chairman, the regulation is in place and it is working. Our regional offices informally have polled our grantees and have advised us that approximately ninety-five percent are in compliance with the regulation. We think that, working together with our grantees, we are effectively implementing this regulation.

Mr. Chairman and members of the Committee, that concludes my remarks. I would be pleased to answer any questions you may have.