

TESTIMONY

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HOUSE TRANSPORTATION AND INFRASTRURE

APRIL 29, 2015

‘THE FUTURE OF COMMERCIAL MOTOR VEHICLE SAFETY: TECHNOLOGY,  
SAFETY INITIATIVES, AND THE ROLE OF FEDERAL REGULATION’



Chairman Graves, Ranking Member Norton, Members of the Subcommittee; on behalf of members of the United Motorcoach Association, thank you for calling this hearing today and the opportunity to represent the bus and motorcoach industry in my testimony. This Committee has a long and distinguished record of promoting commercial motor vehicle safety and a reasonable and defensible regulatory climate.

The United Motorcoach Association (UMA) is North America's largest association for bus and motorcoach companies providing charter, tour and regular route services. Founded in 1971, UMA is comprised of over 900 professional bus and motorcoach companies who provide transportation services in all fifty states, Canada, and Mexico; and more than 250 suppliers, manufacturers, and travel partners. Membership represents the full spectrum of bus and motorcoach operations; from small family charter and tour companies - to nationwide scheduled and commuter service operations. 90% of our members are small businesses, with 10 units or less. Many companies, like mine, are second or third generation family businesses.

Approximately one-third of our members also operate school buses. Headquartered in Alexandria, VA, UMA is dedicated to protecting and promoting the interests of the entire bus and motorcoach industry and providing its members with programs and services to enhance safety and success of their operations.

I am the President of Escot Bus Lines; an established, second generation family owned and operated charter, contract transportation, and scheduled service bus operation with offices and facilities located in Tampa Bay (Largo), Orlando, and Sarasota, Florida. Not unlike most bus companies when they first start out, Escot began in 1983 when my parents purchased two mini-buses. Currently we operate a fleet of 84 motorcoaches, transit, and mini-buses serving a varied clientele with equally diverse services ranging from cross-country tours to employee-shuttle systems to working with local schools, senior citizen groups, churches, etc. in the local Tampa Bay and Central Florida communities. Our company has an active role in various capacities with

emergency services. In particular, Escot provided buses for power crews in the Florida panhandle and Mississippi areas after hurricanes Katrina and Rita and in Central and South Florida after Hurricane Charlie. Escot currently has emergency service agreements with an array of retirement communities in the Tampa Bay and Central Florida areas. I serve on the Board of Directors of UMA having previously served as Chairman of the Board, and I currently serve as the Chairman of the Risk Management Committee. I am a former Chairman of the International Motorcoach Group, President of the Florida Motorcoach Association and Director of the Global Passenger Network. I currently serve as a member of the Pinellas Suncoast Transit Authority Board of Directors with additional responsibilities on the Finance and Performance Management Committee, and Vice Chairman of the Pinellas County Local Coordinating Board for the Transportation Disadvantaged.

Mr. Chairman, I want to frame this conversation from one critical perspective - bus and motorcoach travel is extremely safe. And while we all agree that even one accident is one too many, the bus and motorcoach industry averages approximately 20 fatalities annually<sup>1</sup> while operating in a highway environment that yields nearly 34,000 fatalities annually. Percentage-wise, that is less than 1/10 of 1 % of the annual highway fatality toll. This remarkable safety record is no small achievement and is largely attributable to the vigilance and dedication of the men and women that drive, maintain, own, and manufacture our equipment. In a nutshell, our business is moving people safely, timely and economically. Most importantly, if we are not safe, we don't have customers. Contributing to our professionals' personal commitment to safety, we are a heavily regulated industry at Federal and state levels. Moreover, while our equipment is largely operated out of the direct oversight of management, we must acknowledge the men and

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<sup>1</sup> Number of bus occupant fatalities in crashes involving cross-country, other, and unknown buses with a GVWR > 11,793 kg (26,000 lb) except for transit and school buses (categorized by bus body type). (FARS 2000-2009 data files.)

women of law enforcement that dutifully enforce the myriad of laws and regulations that impact bus and motorcoach travel on our nation's roads and highways.

The Federal Motor Carrier Safety Administration also plays a critical role in facilitating interstate commerce and ensuring the safety of commercial motor vehicles. We supported its creation 15 years ago and have worked closely with the agency on a myriad of bus and motorcoach safety issues over that time. However, UMA is becoming increasingly concerned that the culture of the agency and many of its actions in recent years have not served the cause of public safety and have been harmful to existing bus and motorcoach carriers and the continued growth and health of the industry. UMA supports active and legitimate enforcement of federal regulations to address unsafe practices through corrective actions; and as a last resort, termination of operating privileges. However, it appears to UMA the agency has declared war on the industry as a whole, and we are concerned enough to worry about the continued viability of this important transportation sector. Chairman Graves, Ranking Member Norton, Members of the Subcommittee, I have doubts that my parents, Louis and Diane Scott, could start Escot Bus Lines today and survive under the current regulatory environment.

For the first time I can recall in my thirty-year career, today the nation's motorcoach industry is in decline. A recent census report by John Dunham & Associates for the American Bus Association Foundation<sup>2</sup> concludes that in 2013 the number of interstate passenger carriers decreased by nearly 5%; a net loss of 153 carriers in one year alone and 177 since 2011. Total passenger trips by motorcoach in the U.S. dropped 5.1 percent in 2013, falling to 605.1 million from 637.4 million in 2012. Total passenger trips dropped by a whopping 32 million in the past year alone.

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<sup>2</sup>Motorcoach Census - A Study of the Size and Activity of the Motorcoach Industry in the United States and Canada in 2013 John Dunham & Associates for the American Bus Association Foundation – March 12, 2015

UMA believes the regulatory climate at FMCSA is a significant contributing factor<sup>3</sup>. There are many real life examples of carriers with longstanding compliant histories that have been targets of overzealous enforcement or the agency taking an inordinate amount of time to process administrative remedies, leading many carriers to cease operations through bureaucratic inaction. And make no mistake, if the bus and motorcoach industry ceases to exist, most of our customers, which include students, athletes, retirees and others who rely on our services, will be forced to travel by private passenger automobile; a significantly less safe mode of travel.

We appreciate this Subcommittee's attention to the future of commercial motor vehicle safety and the impact of technology, safety initiatives, and the regulatory climate, to which I will focus the majority of my comments.

First, let's look at the impact of equipment mandates and safety technologies.

When I testified before this Committee in 2007, the cost of a motorcoach was \$425,000. A standard motorcoach today can exceed \$600,000. In the last ten years, Congress directed an industry-supported initiative that concluded, after research and testing, the inclusion of three-point seatbelts on all new motorcoaches. Electronic stability control is now a routine component on most motorcoaches and an electronic logging device mandate is only a few months away. Currently, the National Highway Traffic Safety Administration is considering new regulations addressing roof strength, window glazing, fire mitigation, and emergency egress. Some passenger carriers are currently assessing evolving technologies such as lane departure warning and collision warning devices for effectiveness in avoiding crashes. There are many technologies and safety equipment that can make motorcoach travel incrementally safer; but mandates must be supported by research and testing, and balanced with additional costs and

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<sup>3</sup> From 2012 to 2013, the industry decreased in size by 153 companies. Of the decline, 71.2% was due to companies going out of business, 18.3% was due to companies discontinuing motorcoach service, and 10.5% was due to mergers and acquisitions in the industry. - Motorcoach Census - A Study of the Size and Activity of the Motorcoach Industry in the United States and Canada in 2013 John Dunham & Associates for the American Bus Association Foundation – March 12, 2015

impact on the industry. Customers select bus and motorcoach travel for its convenience, efficiency, and economy as well as safety. Well known for razor thin margins, the industry and its customers' ability to absorb increased costs associated with mandates must always be a consideration.

A greater issue of concern to UMA is the current regulatory climate at the FMCSA.

I would like to highlight four primary issues of concern: overzealous regulatory enforcement and lack of due process, the Compliance, Safety and Accountability (CSA) program, the rulemaking proceeding to increase minimum levels of financial responsibility, and delays in processing new entrant applications. Let me share some real-life examples of the negative impacts of the current hostile enforcement posture of FMCSA.

In January 2003, Baldwin Nicholson established Lakim Bus Service in Moncks Corner, South Carolina with one motorcoach to supplement his income operating a diesel mechanic shop. Mr. Nicholson is a respected member of the bus and motorcoach community and over the last decade has served on the Motorcoach Association of South Carolina Board of Directors and its various committees. A decade later, Mr. Baldwin's daughter demonstrated a growing interest in the business and the fleet grew to three motorcoaches. The company received "Satisfactory" ratings from FMCSA as a result of routine Compliance Reviews in 2003, 2007, and 2011. In September 2014, Lakim Bus Service received what Mr. Nicholson assumed would be another routine Compliance Review. It was not. Through an interpretative documentation error and other findings, such as a new emergency window that the inspector recorded as not working, (Mr. Baldwin still disagrees with the assessment, and the window functioned as specified on a subsequent inspection) he was notified his company was now "Unsatisfactory". He was summarily ordered to cease operations in 45 days barring an acceptable corrective action plan. He submitted a corrective action plan in a timely manner. However, FMCSA failed to prioritize

Mr. Nicholson's corrective action plan, resulting in his company ceasing operations per the Federal order on the 45<sup>th</sup> day, despite customer, employee, and loan commitments. There are no requirements for FMCSA to review a corrective action plan on a timely basis. Seventeen days after Mr. Nicholson was ordered to shut down his operations, he was advised that his corrective action plan was now accepted and they were upgrading his rating; however, since 45 days had passed his authority could no longer be reinstated and he must now apply for NEW operating authority – essentially sending him to the “end of the line”. FMCSA acknowledged receipt of Mr. Nicholson's NEW application for interstate authority on December 12, 2014; however, Mr. Nicholson's company is languishing today, exhausting financial savings and a decade of customer and company goodwill. Nobody at FMCSA will even tell him why his application is delayed or when he might anticipate approval. Mr. Nicholson is considering leaving the business entirely. FMCSA's actions – or rather inaction – is inexcusable, unnecessarily punitive, and surely exceeds Congressional intent.

Another example is bus driver Jeff Rodgers, who dreamed of one-day owning his own bus company. Together with his wife Judy, and along with family support, that dream materialized over two-decades ago when they founded Southeastern Tours in Greenville, North Carolina. Similar to Mr. Nicholson, Jeff and Judy passed Compliance Reviews with satisfactory ratings in 2003, 2005, and 2010. In August 2013, they were scheduled for what they thought would be another routine Compliance Review. This Compliance Review began very differently when the FMCSA representative stated, “I'm going to warn you now that we have done five audits like this and we've put four out of business.” Paperwork snafus in combination with other correctible deficiencies, despite a longstanding compliant history, led to the company being placed out-of-service, and like Mr. Nicholson, they were also forced to reapply for new operating authority. Meanwhile, with no operating revenues, the company's finances rapidly deteriorated and like most small business owners, so did their personal finances. A long trail miserable trail of



employee layoffs, equipment repossessions, foreclosures, and unpaid creditors are the hallmark of FMCSA's unwarranted out-of-service orders. Despite hiring consultants, attorneys, and submitting corrective action plans, today Jeff and Judy Rodgers remain on the sidelines with an uncertain future. A twenty year satisfactory safety history should mean the company was doing most things right and that putting them out of business was not warranted.

It is Congress' intent for FMCSA to provide oversight of a safe and thriving industry, yet how many companies have now failed financially while waiting some undeterminable time for FMCSA to acknowledge their corrective actions. Surely, Congress wants FMCSA to direct companies to correct deficiencies when they find them, but not to put companies' with longstanding good safety records out-of-business - the equivalent of the corporate death penalty. Marked as Exhibit "A" and attached to this testimony are the findings<sup>4</sup> of U.S. Administrative Law Judge Richard C. Goodwin regarding an Imminent Hazard/Out-of-Service Order issued to DND Trucking. The "Findings of Fact" should send tremors through this Committee, every motor carrier, and every U.S. citizen. Perhaps the decision is best summarized in one sentence: "The [FMCSA] Field Administrator's allegations are *unsupported by the totality of the evidence and testimony* in this case (emphasis added). UMA encourages Congress to investigate abuses of administrative authority by this agency.

The FMCSA's Compliance, Safety, Accountability program, otherwise known as CSA, is another concern. Like most motor carrier representatives and professionals, UMA supported the creation of this program rolled out in 2010 as a data-driven way to identify carriers more at risk of crashes. However, the methodology and implementation is so riddled with inaccuracies and incomplete information that it is only marginally effective for targeted enforcement intervention. UMA's largest concern is FMCSA has chosen to publicly promote the inaccurate and often

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<sup>4</sup> In The Matter Of: D N D INTERNATIONAL, INC. (U.S. DOT No. 1434005) Docket No. FMCSA-2014-0159 (Imminent Hazard OOS Order)

misrepresentative data and Safety Measurement System (SMS) scores to customers who have no ability to neither interpret such data nor discern whether a carrier is truly safe or unsafe. In fact, the misinformation is causing many customers to erroneously choose carriers who actually may be less safe. The bus and motorcoach industry, in concert with our colleagues in the trucking industry, collectively appealed to Secretary Foxx last summer for retraction of these scores from public view, only to be declined. FMCSA continues to actively promote use of the program with our customers, most recently with a new mobile application.

The CSA system's methodology is flawed by using data that is not predictive of motor carrier crashes. Low-level violations such as "emergency exit markings" and minor paperwork errors such as a driver inadvertently failing to record his last stop, and the recording of non-preventable crashes, are not only scored against a carrier but result in misleading safety scores. Perhaps more important to Congress is that these minor violations are utilized as indicators or substituted for effective risk mitigation when professionals know that basic traffic violations are the true predictors of crashes. Data consistently shows that future crash risk is primarily driven by unsafe operation in traffic such as speeding, following too close, failure to use or improper signal, improper passing, or erratic lane changing.

If a driver of a private passenger automobile crashes into a bus legally stopped at a red light, nobody believes the bus driver or company should be held accountable for a non-preventable crash; yet FMCSA insists on showing these crashes to the public as a recorded fatal crash absent any specific context. While UMA knows collecting crash data is important for possible risk mitigation in the future, the display of non-preventable crashes to the public is malicious, irresponsible, discouraging for motor carriers and misleading to the public.

CSA's basic methodology is seriously flawed and requires complete restructuring rooted in actuarial science, not politics or misguided desires to keep doing the "same-old, same old". At

best, CSA confuses the public in its ability to select carriers, does not appropriately address the differences between passenger carriers and property carriers or allow them to be effectively compared, and does not take into account the vast discrepancies in volume of inspections in some areas as opposed to others. These flaws are not just UMA's views, but the government's own auditing agency agrees. The Government Accountability Office (GAO) report of February 2014 concluded that "...FMCSA identified many carriers as high risk that were not later involved in a crash, potentially causing FMCSA to miss opportunities to intervene with carriers that were involved in crashes". The report recommended that FMCSA revise their SMS methodology. GAO's Director testified just two months ago before the Senate Commerce, Science and Transportation Committee and stated that CSA's Safety Management Scores should be shielded from public view. GAO also recently castigated FMCSA for putting out a mobile application to make it easier for prospective customers to view flawed information into customers' hands. Chairman Graves, Ranking Member Norton, Members of the Subcommittee, I suggest to you that the airlines would never stand for such flawed misrepresentations of their companies to the public and nor shall we. UMA urges the Committee to direct FMCSA to remove the SMS scores and raw data from public view immediately and resolve the foundational and structural problems with CSA. UMA supports a bill introduced by a Member of this Subcommittee, Congressman Barletta, The Safer Trucks and Buses Act of 2015 (HR 1371), as a good first start; and every day that passes is a day that more businesses fail under this deeply flawed system.

Surely the single largest threat to passenger carriers today is FMCSA's decision to propose a potentially massive increase in minimum financial responsibility limits for passenger carriers. Current limits set in statute are \$5 million per vehicle for vehicles with 16 passengers. MAP-21 directed FMCSA to study the adequacy of current limits and submit their findings in a report to Congress, which, like every state legislative body in the Nation, has historically established

minimum financial responsibility limit requirements. The agency issued the report last April and failed to include any analysis of passenger accident claims data or consultation with the industry's insurance carriers. The report's limited data focused exclusively on trucks; yet suggests that limits well in excess of \$20 million would be appropriate for large buses - a 400% increase! After releasing their required study, FMCSA announced that a rulemaking proceeding to increase limits was now a high priority, despite no directive from MAP-21 to do so and superseding other MAP-21 directives. In November of 2014, FMCSA released an Advanced Notice of Proposed Rulemaking seeking comments; and further stated their intention to finalize the rule by the end of the year. Insurance data indicates current limits cover all but a tiny fraction (1/10 of 1%) of accidents. The suggestion that passenger carrier minimum financial responsibility limits should be increased 400-500% or more without any study whatsoever of the industry's claims and accident history and adequacy of current limits is unconscionable. One major passenger carrier insurer has stated that just doubling the current limits from \$5 million to \$10 million would result in a 60% increase in premiums. The proposal is uniformly opposed by passenger carriers and perhaps surprisingly, also by the passenger carrier insurance industry. It is notable that a 2014 USDOT/Volpe Center study on which the FMCSA report to Congress was based states. "There is no realistic dollar amount that will necessarily ensure that every possible crash victim is fully compensated". The report also fails to make any correlation between increased insurance limits and improved safety, and yet FMCSA casts this proposal as a safety initiative.

UMA believes current minimum levels of insurance that have been set by Congress are adequate and opposes the rulemaking proceeding. UMA supports a bill introduced just this week by a Member of this Subcommittee, Congressman Scott Perry, that clarifies that minimum levels should be set by Congress and directs FMCSA to do a comprehensive study of current limits and

accident claims history of passenger carriers, consult with both the bus and insurance industries on the study, and submit the study to Congress.

Finally, UMA is concerned about the delays in approving new entrant applicants for operating authority. Established in August 2008, FMCSA's vetting program is designed to assess the ability of an applicant for new operating authority to comply with Federal Motor Carrier Safety Regulations and, in part, to determine whether a new applicant may be an individual or company previously placed out-of-service by FMCSA, or may still owe fines for past violations. UMA supports the intent that these applicants deserve additional scrutiny; however, a 2012 GAO study found that over 98% of new entrant applicants did not display any attributes of these so called "chameleon or reincarnated carriers" and that similar results could be accomplished more effectively in a much shorter period. In their zeal to afford additional scrutiny for the less than 2% that may exhibit certain characteristics, and by delaying approval of new entrant applications, there appears to be an adverse impact on the growth of new and safe carriers to the industry. If potential new bus and motorcoach company owners are discouraged by the regulatory morass they must hurdle to enter the industry, the industry ceases to thrive, creating a bleak future for existing carriers. UMA requested specific information about new entrant applications from FMCSA in August 2014 under a Freedom of Information Act request. We have yet to receive a response. UMA is aware that many new entrant applicants are compelled to wait as long as six or more months for approval granting operating authority with no communication from FMCSA as to when they may anticipate receiving such authority or why their application is delayed. In the meantime, they are attempting to arrange financing to purchase equipment, hire drivers, line up customers and secure insurance. The financial drain of interminable waits from the federal agency charged with granting authority is having a negative impact. While FMCSA advises most applications are eventually approved, UMA believes that many prospective applicants who endure financial losses while waiting for approval simply

abandon the pursuit. UMA believes there should be expedited review and due process protections in the law for new entrant applicants. UMA supports a provision requiring approval or disapproval within 30 days of submission. In addition, prior to disapproving an applicant, FMCSA should be required to provide a detailed explanation stating which criteria the carrier has failed to satisfy. There should also be an appeal process on the decision. Without a Congressional mandate to correct these deficiencies, it is clear FMCSA will continue to discourage new entrant applicants and the capital investments and job expansion our Nation so desperately needs today.

In conclusion, the bus and motorcoach industry remains a vital component to our Nation's economy. The essential service our industry affords provides access to jobs, education, and healthcare and is a critical component to our Nation's travel and tourism industry.

The United Motorcoach Association stands ready to assist this Subcommittee, Full Committee and Congress create a regulatory climate at FMCSA that ensures safe practices by drivers and operators, reasonable regulations grounded in sound science and testing and, strong but fair enforcement of regulations, that will improve the safety for our passengers and the travelling public, at the same time supporting a vibrant and growing passenger transportation industry. We do not believe these goals are mutually exclusive.

Chairman Graves, Ranking Member Norton, Members of the Subcommittee, on behalf of UMA and the dedicated men and women who work hard every day to assure every passenger arrives at their destination safely, I thank you for inviting me here today. We are confident this hearing will contribute positively to the discourse on bus and motorcoach safety and look forward to working with you on these important issues.

