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PUBLIC VERSION

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. MC-F-21035

**STAGECOACH GROUP PLC AND COACH USA, INC., et al.
- ACQUISITION OF CONTROL - TWIN AMERICA LLC**

ENTERED
Office of Proceedings

MAR 10 2010

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Public Record

**REPLY OF APPLICANTS TO SUR-REPLY
OF THE NEW YORK STATE ATTORNEY GENERAL
AND TO COMMENTS OF TRANSPORT WORKERS UNION AFL-CIO, LOCAL 225**

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Marmurstein; and Twin America, LLC

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Pursuant to the procedural schedule for further submissions in this proceeding established by the Board in its January 12, 2010 decision, and subsequently revised by decision served February 18, 2010, Applicants hereby submit this Reply to the February 1, 2010 Sur-Reply of the New York State Attorney General (“NYSAG”) and to the January 29, 2010 Comments of the Transport Workers Union, AFL-CIO, Local 225 (“TWU”). Applicants urge the Board to issue a decision in this proceeding on the basis of the very complete record before it, without any further evidentiary submissions.¹

I. INTRODUCTION

NYSAG has fared no better in its second bite at the apple than it did in its initial, November 2, 2009 Comments in opposition to the application for control at issue in this proceeding (“Application”). NYSAG explicitly acknowledges in its Sur-Reply that it does not

¹ Facts set forth in this Reply have been verified by Zev Marmurstein and Ross Kinnear. *See* attached verifications.

challenge the Board's jurisdiction over that Application under Section 14303 of the Interstate Commerce Act, 49 U.S.C. § 14303. Yet, at the same time, NYSAG asks the Board to withhold exercising that jurisdiction so that it can conduct an antitrust investigation under New York law of the very transaction that it acknowledges falls within the Board's jurisdiction.

NYSAG cannot have it both ways. The Board's jurisdiction over a carrier transaction under Section 14303 is exclusive, preempts state authority, and extends to all elements of the transaction. The terms of Section 14303(f) could not be clearer: "A carrier, corporation or person participating in the approved or exempted transaction is exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain and operate property, and exercise control or franchises acquired through the transaction." 49 U.S.C. § 14303(f). *See, e.g., Colorado Mountain Express, Inc. and Airport Shuttle Colorado, Inc d/b/a Aspen Limousine Service – Consolidation and Merger – Colorado Mountain Express*, STB No. MC-F-20902, at 2 (served Feb. 28, 1997) (motor passenger carrier participants in a Section 14303 consolidation transaction "are subject to our exclusive and plenary jurisdiction *in all matters* relating to their consolidation, merger and acquisition of control . . . This entitles them to carry out any Board approved or exempted finance transaction under section 14303, own and operate property and exercise control without state approval, and, in doing so, they are specifically exempted from all state and municipal law, as necessary.") (emphasis added). It is equally well-settled that a state cannot act as a "gate-keeper" with respect to a carrier control transaction subject to federal regulatory approval. *Leaseway Transp. Corp. v. Bushnell*, 888 F.2d 1212, 1215 (7th Cir. 1989) (affirming the exclusive jurisdiction of the STB's predecessor, the Interstate Commerce Commission, over a carrier acquisition transaction under predecessor to Section 14303).

Accordingly, the NYSAG's strange contention that it should be entitled to investigate the Twin America transaction first, following which the Board may exercise its jurisdiction, is directly contrary to the principles of exclusive jurisdiction and preemption of state law that are expressly stated in Section 14303(f). Allowing the NYSAG to serve as a "gate-keeper" by conducting its investigation before the Board has considered the transaction is thus tantamount to the Board altogether conceding its role with respect to this regulated carrier transaction to a state body. Such a result would not only offend the clear preemptive terms of Section 14303(f), but directly contradict the policy preference reflected in Section 14303 of having an expert federal agency regulate matters involving interstate transportation. That is not what Congress intended: ***"The wisdom and experience of [the STB], not of the courts, must determine whether the proposed consolidation is 'consistent with the public interest.'"*** *McLean Trucking Co. v. United States*, 321 U.S. 67, 87 (1944) (quoting 79 Cong. Rec. 12207 (1935)).

Further, the Board should reject NYSAG's confusing and unfounded assertion that Applicants' March 17, 2009 Joint Venture Agreement is somehow a separate transaction from their August 19, 2009 Application filed with the Board.² To state the obvious, the Application seeks Board approval of the control and merger transaction that occurred on March 17, *i.e.*, the formation of Twin America. Regardless of when the Application was filed (or the NYSAG subpoenas served), Board jurisdiction under Section 14303 was triggered by the March 17 control and merger transaction, the only transaction at issue here. To accept the NYSAG's view

² NYSAG asserts that, "The Applicants try to muddy the waters by co-mingling two distinct transactions, the March 17, 2009 joint venture agreement ("JV Agreement") and the Application filed with the STB on August 19, 2009, employing a jurisdictional shell game." Sur-Reply of the State of New York to Reply of Applicants to Comments of New York State Attorney General Dated November 17, 2009 (filed Feb. 1, 2010) [hereinafter "NYSAG Sur-Reply"] at 2. It is in fact NYSAG that is confused since there was only one transaction among Applicants, not two.

that the Board's preemptive jurisdiction did not attach until the Application was filed on August 19 would have the effect of allowing state law to supersede the Board's exclusive jurisdiction over the March 17 transaction, thereby nullifying the federal preemption provisions of Section 14303(f).

On the merits of whether the transaction should be approved under the statutory standard of "consistent with the public interest," NYSAG offers no convincing reason why the Board should not allow the transaction. As Applicants have already shown, and will underscore with additional responsive evidence in this submission, the transaction was a reasoned response to a decline in ridership and offered a means whereby two competing carriers could form a stronger entity that can better withstand economic cycles, reduce costs and improve service to the public. With low barriers to entry and plenty of competing tourism transportation services already in place, the transaction poses no meaningful threat to competition or risk of monopolization.

The arguments presented by TWU, many of which are entirely irrelevant to this Application, similarly do not warrant disapproval of the Application. TWU represents the tour guides and ticket sellers that work for the Gray Line side of the Twin America joint venture, as well as one Twin America driver. All other Twin America drivers are represented either by the Teamsters Union (Gray Line) or the United Service Workers of America (CitySights). The USWA also represents the tour guides and ticket sellers that work for the CitySights side of Twin America. Neither of those unions has expressed any objections to the Application.

TWU's concerns appear focused on its perception that the transaction may be disadvantageous to its members relative to other Twin America employees who are members of the United Service Workers of America, which TWU apparently believes may benefit from the transaction. Applicants submit that not only are TWU's concerns speculative, but they offer no

basis for disapproval of the Application.

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II. THE BOARD HAS EXCLUSIVE AND PREEMPTIVE JURISDICTION OVER THE TWIN AMERICA TRANSACTION

A. The Board's Jurisdiction is Unchallenged by NYSAG

In its Sur-Reply, the NYSAG clarifies that it has "never alleged that [the Board] lacks jurisdiction." NYSAG Sur-Reply at 2. The NYSAG's concession of Board jurisdiction is significant because the Board's jurisdiction leaves no room for the NYSAG to apply New York's antitrust law to the only transaction at issue here, *i.e.*, the March 17 joint venture agreement described in the Application. The STB has been given the exclusive power to approve and authorize the consolidation, merger or acquisition of a motor carrier "when it finds the transaction is consistent with the public interest." 49 U.S.C. § 14303(b). Approved transactions are specifically "exempt from the antitrust laws and from all other law, including State and municipal law, as necessary to let that person carry out the transaction, hold, maintain, and operate property, and exercise control . . . acquired through the transaction." *Id.* § 14303(f).

The Board's jurisdiction over the March 17 transaction under Section 14303(a) is clear: certain of the Applicants which already control other motor passenger carriers (*e.g.*, Stagecoach and Coach USA control numerous motor passenger carriers, and Mr. Marmurstein controls another motor passenger carrier, R.W. Express LLC) attained control of Twin America, which then began operations as a motor passenger carrier. *See* Section 14303(a)(4), (5) (requiring Board approval of the acquisition of control of at least 2 carriers by a person that is not a carrier and approval of the acquisition of control of a carrier by a non-carrier that controls any number of carriers). In addition, Twin America was formed as a consequence of the consolidation of the

properties and franchises of two motor passenger carriers (IBS and CitySights) into a single, commonly-owned and managed operation, providing another ground on which Section 14303 jurisdiction was triggered. *See* Section 14303(a)(1).³

The interstate nature of the Twin America operations (and those of its predecessors) under 49 U.S.C. § 13501 – which defines the Board’s jurisdiction – are not in dispute. Indeed, by its concession that the Board has jurisdiction over this transaction, the NYSAG effectively acknowledges Twin America’s interstate nature – a view that comports with the facts.⁴ Twin America holds motor passenger operating rights issued to it by the Federal Motor Carrier Safety Administration. In recent months, it has used that authority to conduct interstate charter services between New York City and points outside New York state, including Atlantic City and Washington, D.C. Twin America’s transportation tourism operations conducted in New York City are held out jointly with other interstate carriers pursuant to through ticket arrangements, which brings all of those operations within the scope of regulated interstate commerce. *See* November 17 Reply at 26-28. Some of those arrangements are with affiliated carriers and some (like the arrangements with Peter Pan Bus Lines and Metro North) are not.⁵ Contrary to

³ Applicants described the basis for the STB’s jurisdiction over the Twin America transaction in greater detail in their Reply of Applicants to Comments of New York State Attorney General (filed Nov. 17, 2009) [hereinafter “November 17 Reply”] at 14-34.

⁴ While Twin America did not have federal operating authority at the time of the March 17 transaction, it inherited from IBS and CitySights a variety of interstate operations resulting from through ticketing and like arrangements with interstate carriers. Twin America also came into control of motorcoaches from IBS that had historically been used to provide charter services across state lines. Recognizing that it was engaged in interstate commerce, Twin America’s management subsequently applied for and obtained the requisite interstate operating authority from FMCSA.

⁵ Applicants have in fact finalized a new arrangement with Metro North, currently in effect, that provides for the transportation of persons under a combination ticket that allows persons to travel from points in New York, New Jersey and Connecticut by train to New York City and then via Twin America once in New York City before returning to their origin via rail.

NYSAG's suggestion otherwise, whether the other transportation entity is affiliated or not has no bearing on the interstate nature of the joint operation.⁶ Twin America also engages in extensive sales of its New York tourism transportation services to persons outside of New York through a network of agents outside of New York, and outside of the United States, and through extensive and growing Internet sales.

Thus, because Twin America both physically transports across state lines, participates in arrangements with other interstate carriers for the through transportation of persons across state lines, and engages in significant sales to persons outside of New York, Twin America's operations are interstate in nature and fall within Board jurisdiction under 49 U.S.C. § 13501. The Twin America transaction accordingly falls within Section 14303. *See Colorado Mountain*, STB No. MC-F-20902, at 2 (approving a Section 14303 transaction involving carriers operating within a single state upon finding that "it is well-settled that services within a single state may be in interstate commerce and subject to our jurisdiction when there is a through ticket or some other arrangement between the involved carriers for through transportation to or from a point in another state.").⁷ *See also Southerland Tours v. St. Croix Taxicab Ass'n*, 315 F.2d 364, 369 (3d

⁶ NYSAG incorrectly states at page 5 of its Sur-Reply that Peter Pan Bus Lines, with which Twin America has a joint ticketing agreement for the carriage of passengers between New England and New York City, is owned by Coach USA. Coach USA, however, does not own or control Peter Pan Bus Lines.

⁷ NYSAG endeavors at page 7 of its Sur-Reply to distinguish *Colorado Mountain* on the grounds that the carriers there both had interstate operating authority, whereas CitySights LLC and CitySights Twin LLC had no such authority and Twin America only recently applied for such authority. While the CitySights entities did not hold FMCSA authority (as does IBS), the pre-merger operations of CitySights were in fact conducted in interstate commerce, as are the Twin America operations today conducted under its operating authority. NYSAG has in any event conceded jurisdiction so its point is trivial at best. NYSAG's further contention that *Colorado Mountain* "did not involve the two largest competitors forming a joint venture" is flawed for at least two reasons. NYSAG Sur-Reply at 7. First, there is no indication in the Board's decision as to whether the Colorado carriers were or were not the largest passenger operators in the state and no suggestion at all that their size would have mattered to the outcome.

Cir. 1963); *East West Resort Transp., LLC v. Binz*, 494 F. Supp. 2d 1197 (D. Colo., 2007); *Global Passenger Services, LLC — Control — Bortner Bus Company, et al.*, STB No. MC-F-20924, at 3 (served July 17, 1998) (“It is well settled that service within a single state may be interstate commerce and subject to our jurisdiction when there is a through ticket or some other arrangement between the involved carriers for through transportation to or from a point in another state”).

NYSAG nevertheless argues that the STB should forego its exclusive jurisdiction under Section 14303 in favor of the agency’s state law antitrust investigation because the agency purports to be examining the “legitimacy” of the transaction. NYSAG Sur-Reply at 5. This circular logic is just another way of saying that NYSAG is investigating the very subject matter over which the STB has exclusive jurisdiction: the Twin America joint venture. In view of the STB’s exclusive jurisdiction and the crystal clear preemption of state law provided for in Section 14303(f), the NYSAG has no jurisdiction over any element of the Twin America transaction. *See, e.g., Colorado Mountain*, STB No. MC-F-20902, at 4 (Colorado Public Utilities Commission “may not take any action affecting state licensing or certification that would in any way interfere with the applicants’ consummation of the instant [Section 14303] transaction.”). *See also Leaseway*, 888 F.2d at 1215 (applying predecessor to Section 14303 to preclude Illinois Commerce Commission from acting “as a ‘gate-keeper’” with respect to motor carrier transactions subject to exclusive and plenary federal jurisdiction); *Ex Parte No. 559. Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers*, 3 STB 658

Second, the assumption that IBS and CitySights were “the two largest competitors” belies the question of market definition, discussed below. *Id.*

(served Sept. 1, 1998) (“a State may not take any action that would in any way interfere with the applicants’ consummation of a section 14303 transaction”).⁸

NYSAG, however, is not without recourse to the extent that it has concerns about the transaction. Specifically, it has the rights that it has exercised to make its views known to the Board. As shown further below, its arguments against the Twin America transaction are wide of the mark, and the Board should reject them.

B. The NYSAG’s Assertion that Twin America Has Engaged in a “Jurisdictional Shell Game” Is Unfounded

While conceding that the Board has jurisdiction over the formation of the Twin America joint venture, the NYSAG argues that the Applicants have engaged in a “jurisdictional shell game” by taking actions designed to position themselves within the STB’s jurisdiction, presumably so as to avoid the NYSAG’s jurisdiction. NYSAG Sur-Reply at 2-9. However, what NYSAG perceives as some sort of game is no more than Twin America taking rational – and legally required – actions as a motor passenger carrier to further its transportation business and to comply with the law.

For example, whereas NYSAG takes issue with Twin America filing with FMCSA for charter operating authority in August 2009 (see NYSAG Sur-Reply at 4), in seeking and obtaining such authority Twin America was simply carrying through on a decision made months earlier to obtain such authority for the operation of motorcoaches that IBS contributed to the Twin America joint venture in March. Those motorcoaches had been regularly used by IBS for

⁸ The breadth of the preemptive reach of Section 14303(f) is similar to that of 49 U.S.C. Section 11321, pertaining to rail transactions. The Board’s exclusive jurisdiction over rail transactions under Section 11321, and consequent preemption of state law, are well-established. See *City of Auburn v. United States*, 154 F.3d 1025, 1029-31 (9th Cir. 1998) (affirming STB determination that localities were preempted from exercising jurisdiction so as to interfere with STB approval of a railroad’s acquisition of a rail line).

cross-border interstate charter services and Twin America's management decided to use them for the same purpose, which in fact it is now doing.⁹

Similarly, whereas NYSAG characterizes the filing of Applicants' August 19 control Application as a response to NYSAG's subpoenas (see NYSAG Sur-Reply at 4), the fact is that Application was a response to the March 17 transaction and specifically to the requirement in Section 14303 that Board approval be sought for such transactions. *See, e.g., Laidlaw Inc. and Laidlaw Transit Acquisition Corp. — Merger — Greyhound Lines, Inc.*, STB No. MC-F-20940, at 5 (served Dec. 17, 1998) (approving merger under 49 U.S.C. Section 14303); *Colorado Mountain*, STB No. MC-F-20902, at 3 (same). Applicants have previously explained why their Application was unintentionally filed post-transaction – undersigned transportation counsel was not made aware of the joint venture agreement until after it was consummated because the officials involved in the transaction were not aware that Board jurisdiction was triggered by the formation of a joint venture or that the New York City tourism transportation provided by Twin America was in fact interstate commerce subject to federal jurisdiction.¹⁰ Once transportation counsel was consulted, and months before the NYSAG launched its investigation, Coach USA authorized counsel to determine whether an application was appropriate. Verified Statement of Ross Kinnear (filed Nov. 17, 2009) ¶ 2. The Applicants thereafter authorized counsel to prepare

⁹ The Board has previously approved Section 14303 applications involving the control of entities that have not yet received FMCSA operating authority. *See, e.g., Coach USA, Inc. — Continuance in Control — Salt Lake Coaches, Inc.*, STB No. MC-F-20928, at 2 (served Sept. 4, 1998), noted at page 33 of Applicants' November 17 Reply. NYSAG ignores this point in its Sur-Reply.

¹⁰ NYSAG observes, correctly, that Stagecoach and Coach USA have filed other bus acquisition applications with the STB. However, Coach USA's other deals did not involve the formation of a joint venture such as Twin America or involve similar services to those offered in New York City by the Applicants, and thus did not alert the Applicants to the need for filing in this case. By contrast, the three recent control applications filed by Coach USA and cited at page 9 of the NYSAG Sur-Reply each involved the acquisition of control over entities providing intercity, scheduled bus services, similar to many other Coach USA control applications.

the required STB application, again months before the NYSAG's investigation. *Id.* ¶ 22; Verified Statement of Zev Marmurstein (filed Nov. 17, 2009).¹¹

The Twin America transaction has been under the STB's jurisdiction from the day it was consummated, even if no application was filed at that time. Thus, the fact that the Application was filed post-transaction is of no moment. As set forth in Twin America's November 17 Reply, while a post-transaction filing with the STB is not preferred, neither are such filings uncommon. In similar circumstances involving post-transaction filings, the Board has approved transactions under Section 14303, *See, e.g., Laidlaw, Inc., et al — Control — Dave Transportation Services, et al.*, STB No. MC-F-20929, at 2 (served Aug. 7, 1998) (STB approves transactions under section 14303 that "have previously occurred"); *First Group plc — Acquisition — Cognisa Transp., Inc.*, STB No. MC-F-21021, at 2 (served July 13, 2007) (noting that the transaction had previously been consummated "without the advice of commerce counsel or the approval of the Board"). And in any case, a late filing does not deprive the Board of its exclusive jurisdiction or expose the applicants to state law remedies. *See, e.g., Laidlaw, Inc.*, STB No. MC-F-20929, at 6 n.12 (holding that applicant "should have sought our approval sooner" but because of extenuating circumstances, the STB did "not intend to pursue enforcement actions against Laidlaw"); *K.C. Irving, Ltd. and S.M.T. (Eastern), Ltd. — Control — Acadian Lines, Ltd., Nova Charter Service Inc., S.M.T. (Eastern), Inc. and S.M.T. (Eastern), Ltd.*, STB No. MC-F-20944, at 5 n.12 (served Mar. 19, 1999) (same); *Global Passenger Services, L.L.C., et al. — Control — Gongaware Tours, Inc. et al.*, STB No. MC-F-20954, at 4 (served Sept. 20, 1999) (same). NYSAG does not address these cases.

¹¹ Even so, the Applicants have voluntarily complied with NYSAG's requests, producing all documents NYSAG requested on the timeline NYSAG set, at tremendous expense to Twin America.

Mr. Marmurstein's September 16, 2009 application to the Board in MC-F-21036 for control of R.W. Express, LLC, also included at page 4 of NYSAG's Sur-Reply on a list of actions that allegedly constitute some form of gamesmanship, was similarly a response to the mandatory requirements of Section 14303. Because Mr. Marmurstein controls more than one motor carrier, he has taken the steps required under that statute to seek Board approval. That approval became effective on November 30, 2009 under the terms of the Board's October 16, 2009 Decision.

The new Twin America services that NYSAG lists on pages 4-5 of its Sur-Reply (new tours, cross-ticketing and interstate charter services) are the function of the joint venture's management improving services held out to the public. While NYSAG evidently sees some problem with the offering of such new services, these actions underscore that the transaction has enhanced service to the public, a relevant consideration under Section 14303(b)(1). To the extent that NYSAG finds fault with improved transportation services, or believes that somehow offering them is part of some elaborate plan to undermine its authority, the NYSAG is off base. Its criticism of these services highlights the inconsistency of its regulatory approach with the standards of Section 14303, and the consequent impropriety of NYSAG's suggestion that it exercise authority over the joint venture transaction (and apply its obviously different standards) before the Board is allowed to exercise its statutorily-mandated role.

C. NYSAG's Critique of the Joint Venture Agreement is Misplaced

Notably, NYSAG does not allege the transaction is a sham, nor can it. Twin America is a legitimate, fully-integrated joint venture with shared risk and reward, "justify[ing] treatment . . . analogous to a merger." United States Dep't of Justice and Federal Trade Comm'n, Antitrust Guidelines for Collaborations Among Competitors § 1.3 n.10 (2000). In a joint venture:

[P]artners contribute assets, such as, capital, technology, or production facilities to a common endeavor. This integration of resources creates economic efficiencies that cannot be achieved by naked agreements among competitors. Indeed, the efficiencies created by joint ventures are similar to those resulting from mergers - risk-sharing, economies of scale, access to complementary resources and the elimination of duplication and waste.

SFC ILC Inc. v. Visa USA Inc., 36 F.3d 958, 963 (10th Cir. 1994) (rejecting claim that a joint-venture's refusal to admit a third party constituted a per se illegal agreement among competitors).

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Robert D. Willig in Response to Dr. Kitty Kay Chan ("Willig Response") ¶ 10 (filed Mar. 10, 2010).

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Redacted As Professor Willig states, "from a competitive effects perspective, Twin

America functions as a merger between competitors rather than as a collaboration between competitors." Willig Response ¶ 9.

In fact, the United States Department of Justice Antitrust Division and Federal Trade Commission would treat the Twin America transaction as a merger, because:

(a) the participants are competitors in that relevant market; (b) the formation of the collaboration involves an efficiency-enhancing integration of economic activity in the relevant market; (c) the integration eliminates all competition among the participants in the relevant market; and (d) the collaboration does not terminate within a sufficiently limited period by its own specific and express terms.

Antitrust Guidelines for Collaborations Among Competitors § 1.3 (footnotes omitted); *see also* Verified Statement of Professor Robert D. Willig (“Willig V.S.”) ¶ 25 (Nov.17, 2009). Twin America is not pretextual, not subterfuge – the companies have fully combined their New York transportation tourism businesses.¹²

Nor does Twin America’s current use of the (well-established and valuable) Gray Line and CitySights brands indicate the transaction is pretextual. In *Texaco v. Dagher*, 547 U.S. 1 (2006), Texaco and Shell “collaborated in a joint venture, Equilon Enterprises, to refine and sell gasoline in the western United States under the original Texaco and Shell brand names.” *Id.* at 3. Contrary to NYSAG’s assertions, Texaco and Shell did compete in the western United States before the joint venture. After consummating the transaction, Equilon continued to sell under those already-established brand names – just like Twin America has done with the CitySights and Gray Line brands in New York. *Id.* at 4 (Texaco and Shell “consolidate[d] their operations in the western United States, thereby ending competition between the two companies. . . .”). The Supreme Court conclusively held that continuing to conduct retail operations under separate brands did not turn the joint venture into a *per se* illegal “sham” or “price fixing” scheme. The retention of the Delta Airlines and Northwest Airlines trade names and operations following

¹² NYSAG points to the fact that it has taken some time to execute some administrative functions and merger efficiencies as evidence that more than one transaction has occurred. Merging two businesses, however, rarely happens overnight. **Redacted**

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Delta's purchase of Northwest offers yet another example of one management operating under two different brand names.¹³

III. THE TWIN AMERICA TRANSACTION IS IN THE PUBLIC INTEREST

Twin America retained Robert D. Willig, Ph.D., a thirty-year Professor of Economics and Public Affairs at Princeton University, to evaluate the competitive and public interest implications of the formation of the joint venture. Professor Willig not only served an appointed position as the Deputy Assistant Attorney General for Economics at the U.S. Department of Justice, Antitrust Division, but he has longstanding substantial and significant experience with transportation transactions.

To rebut Professor Willig's conclusions, the NYSAG proffers comments from Dr. Kitty Kay Chan of the NYSAG's office. Chan V.S. ¶ 1. Dr. Chan served as an economist for the U.S. Department of Agriculture and the Federal Communications Commission. *Id.* Her background does not indicate she has expertise analyzing the effects of transportation mergers, which Congress has determined are unique, conferring exclusive jurisdiction to the experience and expertise of this Board. *Id.* Dr. Chan has ignored or misconstrued Professor Willig's testimony regarding the economic effects of the Twin America joint venture, and has failed to take into account efficiencies resulting from the transaction. Further, Dr. Chan's analyses of the appropriate market and ease of entry into that market are flawed.

¹³ NYSAG cites:

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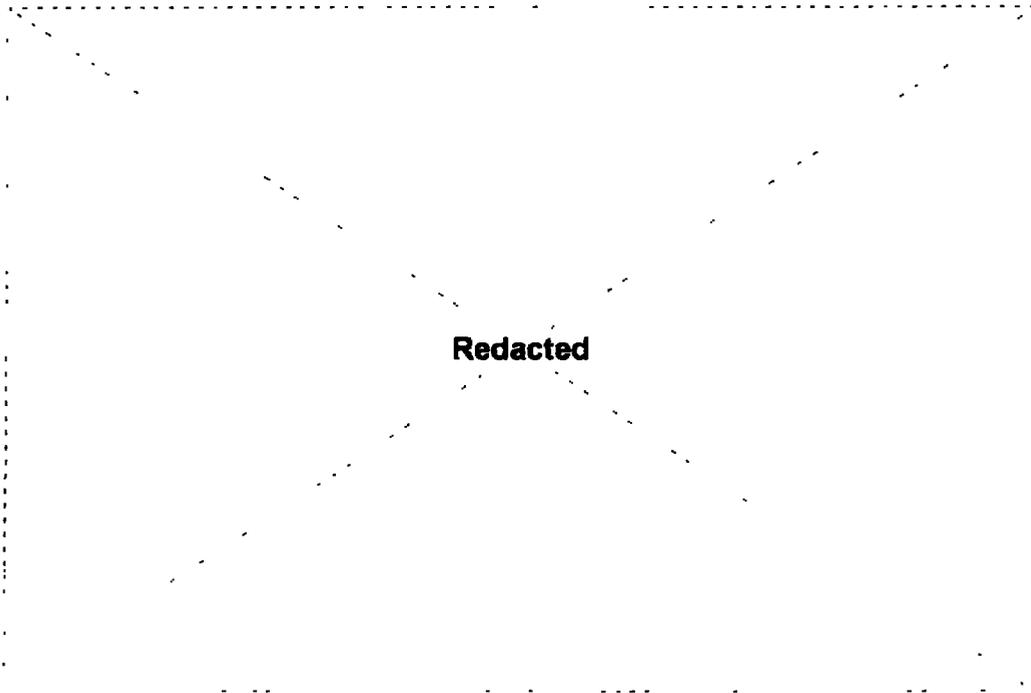
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The through ticketing and similar arrangements that Twin America retains with interstate carriers, the interstate sales of its services and the interstate charters it operates are all in furtherance of its transportation business.

As Professor Willig concludes:

- “The NYSAG is incorrect to contend that the joint venture is not an efficiency-enhancing integration of economic activity. Twin America is structured as a permanent venture that ended competition in bus tours between the two parties. While Twin America continues to operate both the Gray Line and CitySights brand names, all aspects of the operation are under the management of a single entity. In line with this integration, the fleet of double-decker buses has been rationalized and the operations are being optimized to generate synergies and efficiencies. **Redacted**

- “I disagree with Dr. Chan’s contention that the synergies and efficiencies are speculative and unverified. In this instance, the joint venture has been in operation for almost one year, which provides the opportunity to observe directly what cost savings have been achieved. **Redacted**



- “These cost savings have been achieved while the joint venture has provided equivalent or improved services. **Redacted**

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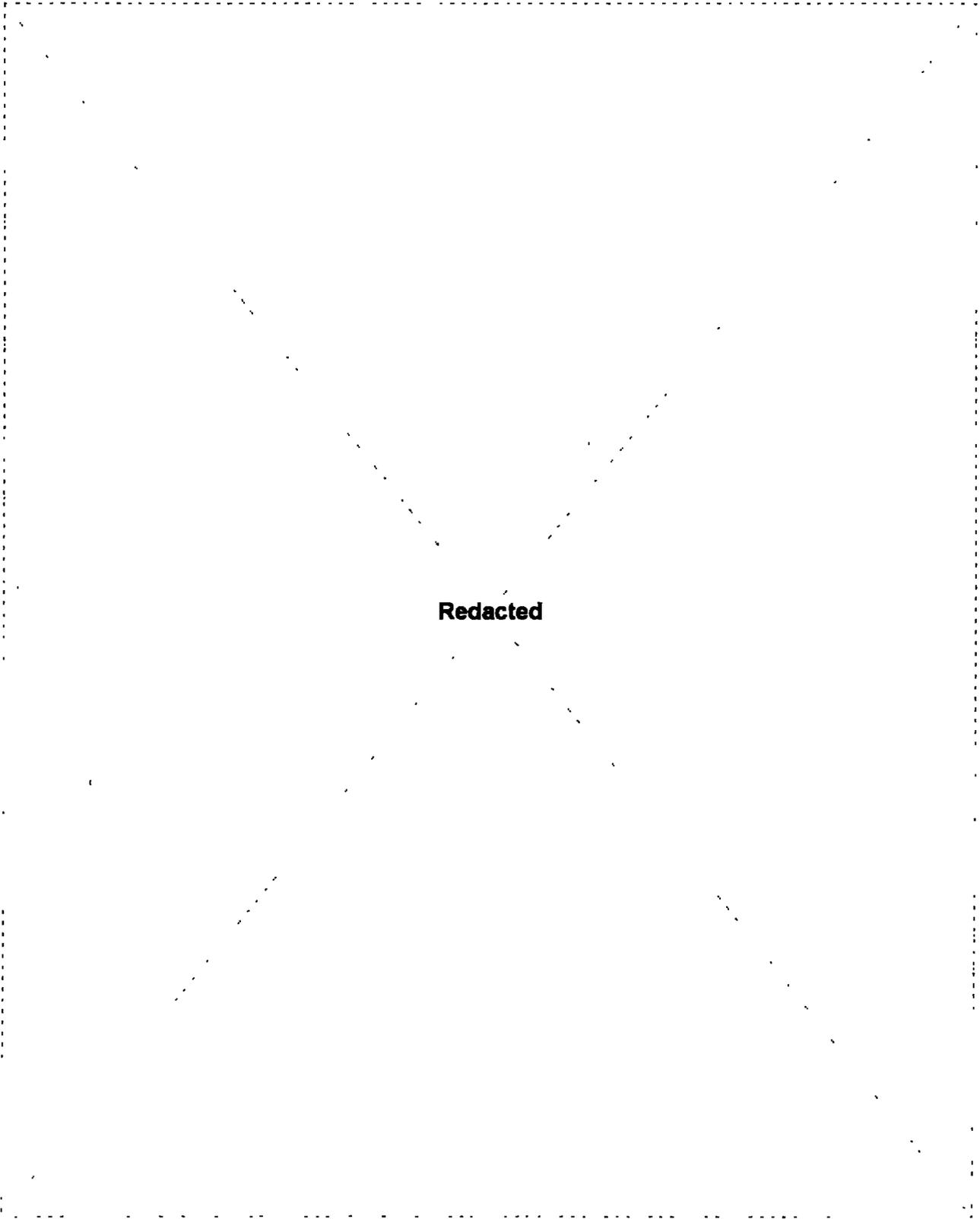
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inaccuracy of Dr. Chan’s contention that cross-ticketing may not decrease passenger wait times because bus passenger seating capacity limits may be exceeded.”

- “I also disagree with Dr. Chan’s assertions that the price increases implemented on Gray Line and CitySights double-decker tours are indicative of the exercise of market power and indicative that the antitrust relevant market is double-decker bus tours. Dr. Chan’s analysis of prices does not constitute an application of the hypothetical monopolist test laid out in the Merger Guidelines to delineate a relevant market. Dr. Chan does not attempt to examine whether the prices of competing tourist attractions and tours also increased, which is a necessary part of a proper analysis of the implications of price rises for market power or relevant market definition. The evidence suggests that the prices of other attractions and tours also increased.”

Willig Response ¶¶ 3-6.

A. Twin America Has Actually Realized Predicted Efficiencies

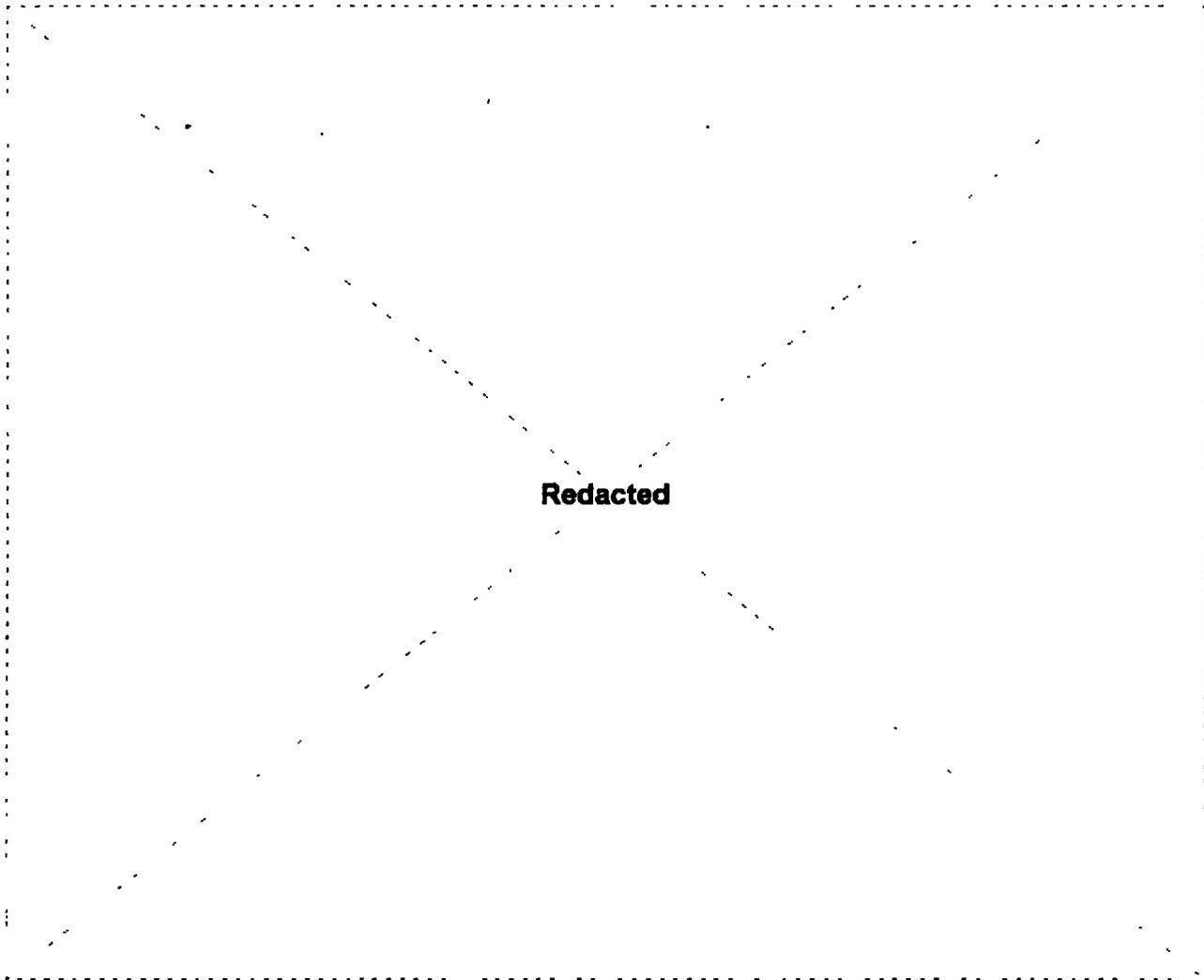


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Nor would such volume purchasing cost savings be anticompetitive were they to result. Contrary to the NYSAG's conjecture that purchasing efficiencies would

block new entry, CitySights was able to enter and compete effectively despite paying higher prices for fuel than Gray Line. And there are plenty of motor transportation carriers with equal or greater potential for volume purchasing discounts than Twin America.



Efficiencies of this type evidence the fact that this joint venture serves the public interest.

Cost savings and implementation of best practices constitute classic procompetitive efficiencies

¹⁴ TWU claims that Twin America has reduced consumer choice by cancelling a number of niche tours, including the Staten Island tour, the Heritage tour, the Cloisters tour, the Dinner Tour, and the Showbiz tour. **Redacted**

Redacted As TWU recognizes, "most of Twin America's sales are for the Downtown and All Loops tickets." TWU Comments ¶ T.

resulting from a merger or joint venture. *FTC v. Occidental Petroleum Corp.*, No. 86-900, 1986 U.S. Dist. LEXIS 26138, at *16-*27 (D.D.C. Apr. 29, 1986) (recognizing procompetitive efficiency where acquiring firm planned to apply technology developed by and used at its plant to the acquired firm's plant); *United States v. Int'l Tel. & Tel. Co.*, No. 69C924, 1971 WL 541, at *36 (N.D. Ill. July 2, 1971) (efficiencies include elimination of excessive overhead costs and installation of acquiring firm's management policies); *United States v. Carillon Health Sys.*, 707 F. Supp. 840, 845 (W.D. Va. 1989) (efficiencies include cost savings such as "clinical and administrative efficiencies"); *United States v. Third Nat'l Bank in Nashville*, No. 3849, 1964 U.S. Dist. LEXIS 9773, at *10 (M.D. Tenn. Aug. 18, 1964) (merger improves "operating efficiency for the benefit of [its] customers").

Indeed, Twin America's operating efficiencies fit squarely with those routinely recognized in transportation transactions. See *Notre Capital Ventures II, LLC & Coach USA, Inc. — Control Exemption — Arrow Stage Lines, Inc. et al.*, STB Finance No. 32876, 1996 WL 224201, at *5-*6 (STB served May 3, 1996) (transaction was in the public interest because it would "yield efficiencies and economics of scale" that would "lower operating costs and thereby enhance both the competitive posture of the operating companies and the level of competition within their respective markets"); *Global Passenger Services, LLC & Bortner Bus Co.*, STB No. MC-F-20924, at 5 (served July 17, 1998) (transaction in the public interest where it would lead to cost savings and increased utilization of resources); *Laidlaw, Inc.*, STB No. MC-F-20929, at 5-6 (served July 17, 1998) (same); *Laidlaw Transit Inc. et al. — Control and Merger Exemption — National School Bus Service, Inc., Charterways Transportation Ltd., Enterprise Transit Corp., and MCS Interstate, Inc.*, STB Finance No. 33007, 1996 WL 614240, at *3 (STB served Oct. 25, 1996) (exemption in the public interest because it would permit "the more efficient use of

expensive rolling stock” and reduce costs); *National Express Group PLC et al. — Control Exemption — School Services & Leasing, Inc. et al.*, STB No. MC-F-20968, at 3 (served Aug. 25, 2000) (same).

Likewise, Twin America’s ability to increase consumer choice by expanding the range of available services, routes and options provides further support for approval of the transaction.¹⁵ In analyzing the competitive impact of a potential merger, courts have repeatedly found the creation of new programs and services to be an important and tangible procompetitive effect. *See FTC v. Tenet Health Care Corp.*, 186 F.3d 1045, 1054-55 (8th Cir. 1999) (reversing grant of preliminary injunction where merger would result in new services, including “integrated delivery,” tertiary care services, and improved quality of care); *Carillon Health*, 707 F. Supp. at 849 (merger would strengthen and expand joint operations, including offering new services); *Int’l Tel.*, 1971 WL 541, at *36 (merger led to programs that provided “greater meal variety at lower cost to the customer as a result of more efficient use of foods, labor and equipment”).

The very purpose of the Twin America joint venture was to cost-effectively align bus tour service to passenger demand in a historically recessed economy, improving passenger service in competition with other transportation tours and tourist attractions generally. That is precisely what Twin America has already and actually accomplished. As courts have observed, when “business requirements and consumer demand, rather than a monopolistic design, motivate defendants’ intention to merge [, this] argues strongly in favor of the planned merger’s reasonableness.” *Carillon Health*, 707 F. Supp. at 849.

¹⁵ NYSAG accuses Twin America of “mak[ing] up new products” by citing ticketing arrangements made with the Applicants’ own entities. NYSAG Sur-Reply at 5. This allegation is simply not true, as evidenced by the fact that several of the arrangements NYSAG cites, such as agreements with Peter Pan Bus Lines and Show Bus Tours, are with companies that bear no relation to Coach or CitySights.

B. The NYSAG's Market Definition Ignores Market Realities

The STB is not required to define a relevant antitrust market: "courts have expressly held that [the STB is] not bound by, nor should [it] attempt to undertake, an antitrust analysis under the antitrust laws to determine what the relevant product and geographic market is." *Union Pacific Corp., Union Pacific Railroad Co. and Missouri Pacific Railroad Co. — Control — Chicago and North Western Transportation Co. and Chicago and Northwestern Railway Co.*, Finance Docket No. 32133, 1995 ICC LEXIS 37, at *148 (ICC served Mar. 7, 1995) (citing *Florida East Coast Railway Co. v. United States*, 259 F. Supp. 993, 1000-02 (M.D. Fla. 1966), *aff'd per curiam*, 386 U.S. 544 (1967)).

But to the extent NYSAG argues for a particular market definition, that market must reflect the realities of competition. Here, Dr. Chan attempts to define a "double-decker" market to conclude Twin America has "market power." Dr. Chan is falling into one of the most common errors in antitrust analysis – trying to define a market as Twin America's products and then asserting that the company has a high share of that "market." *See, e.g., United States v. E.I. DuPont de Nemours & Co.*, 351 U.S. 377 (1956) (defendants should not be deemed to have "monopolized" their own products); *Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059 (9th Cir. 2001) (affirming dismissal where proposed relevant market was based on personal preference and not the area of effective competition); *Elliott v. United Ctr.*, 126 F.3d 1003 (7th Cir. 1997) (same).

Dr. Chan neither meets nor addresses the market realities Applicants proffered in their initial Reply – evidence that other, intermodal tour transportation services constrain Twin America's ability to price at supracompetitive levels:

Twin America competes with various transportation tour companies. It competes most directly with other land, air, and water-based tours. . . . Land, air, and water-based tours provide competing types of sightseeing services which are differentiated by type of transportation mode, but essentially providing the

consumer with access to similar types of attractions . . . and each competes for tourists' time and money.

Willig V.S. ¶¶ 29-31. Twin America's competitors include:

Big Taxi Tours, OnBoard Tours, OnLocation Tours (specializing in movie and television sites), New York Water Taxi, Harlem Spiritual Tours, Circle Line Tours, Helicopter Flight Services, and CityTours. Other more specialized tours include Gordon's Guide Tours, New York Party Ride, My New York Party Bus.com, New York Waterway, and the MTA's Sightseeing and Trip Planner tours. In addition, tourists often choose to use self-guided tours, walking tours, bicycle tours, pedi-cabs, Segway tours, and New York City's iconic horse and carriage tours, rather than choose the services of motor transportation tourism services."

Willig V.S. ¶ 29.¹⁶

Third party advertising makes the point. The January/February 2010 issue of *Arrive*, Amtrak's "magazine for Northeast business and leisure travelers," offers consumers a package deal including rail tickets, hotel, admission to Top of the Rock observatory, and the traveler's choice of tickets to a Broadway show, an All Loops double-decker tour, or admission to the Empire State Building. See Willig Response n.25, Ex. 5.

Nor does Twin America's adjustment to CitySights list price indicate it is suddenly a monopolist. Notably, CitySights entered the market in 2005 at the same price point as Gray Line for Downtown and Night single loop tours and the All Around Town tour. To compensate for rising costs, Coach raised Gray Line prices on February 1, 2009, *before* Twin America was formed or even likely to occur. *Marmurstein 2d V.S.* ¶ 12. At the time, other attractions and transportation tours were raising prices across the board as well, completely contrary to the NYSAG's unsupported assertion that only double-decker bus prices increased. Circle Line – a

¹⁶ Dr. Chan relies in part on

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ferry tour – increased its rates on different tours by 12.9% and 21.1% from 2008 to 2010. NY Water Taxi increased fares by 25%. Other tours that increased fares between 2008 and 2010 include: Skyride (22%), Harlem Gospel (10%), Liberty Helicopter (9% for selected routes), and On Location Tours (between 9.5% and 29.4%, depending on tour). Attractions likewise raised rates during that time: Museum of the City of New York (42%), Madame Tussaud's (22%), UN Tour (18%), and Ripley's Believe It or Not (7%), and the Intrepid (5%). See Willig Response ¶ 35 & Ex. 4.

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Redacted Twin America's natural adjustment of the CitySights price neither resulted from the merger nor indicated Twin America has some sort of "market power."

In this regard, the NYSAG fails completely even to consider let alone account for discounting. Twin America routinely offers discounts on the street, over the web, and in combination with other travel providers such as airlines or attractions.¹⁷ The company offers a web discount of \$5 per adult ticket off the list price for both brands.¹⁸ It offers New York, Connecticut, and New Jersey residents an additional free ticket with the purchase of an All Loops, Uptown Loop, Downtown Loop, Brooklyn Loop, Night, or Multilingual tour. Recently, Twin America ran an ad in Continental Airlines magazine in January 2010 offering \$5.00 off any Gray Line Tour for presenting the ad at the Gray Line Visitors Center. The company also offered a Valentine's Day special on Gray Line whereby customers purchasing two Night Tour tickets for February 12, 13 or 14 received a free \$25 dining gift card. Yet another ad offered a free ticket to the Top of the Rock with the purchase of an All Loops tour.

¹⁷ Discounts can be an extension of time, such as an extra day, or a percentage off the price of the ticket.

¹⁸ **Redacted**
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Twin America's continued discounting post-transaction is significant – it shows that Twin America continues to compete with a broad array of other transportation tours and tourist services and attractions generally.

C. The NYSAG's Concession That There Are No Barriers to Entry Is Dispositive

However the NYSAG views the "market," as the STB has observed, "with the low entry barriers and pervasive intermodal and intramodal competition that otherwise characterizes the charter and special operations segment of the bus industry, most opportunities for the abuse of market power are effectively foreclosed." *Laidlaw Transit Inc.*, 1996 WL 614240, at *4.

The STB's experience, moreover, comports with antitrust principles generally. "The existence and significance of barriers to entry are . . . crucial considerations . . . [because] [i]n the absence of significant barriers, a company probably cannot maintain supracompetitive pricing for any length of time." *United States v. Baker Hughes*, 908 F.2d 981, 987 (D.C. Cir. 1990) (affirming dismissal of merger challenge where "district court's factual findings amply support its determination that future entry into the [relevant] market is likely"). "If there are no significant barriers to entry . . . any attempt to raise prices above the competitive level will lure into the market new competitors able and willing to offer their commercial goods or personal services for less." *United States v. Syufy Enters.*, 903 F.2d 659, 664 (9th Cir. 1990) (affirming dismissal of merger challenge where movie theatre operator acquired his former competitors, because new entry was easy in relevant market); *United States v. Waste Mgmt.*, 743 F.2d 976, 983 (2d Cir. 1984) (affirming dismissal of merger challenge because entry into relevant market was easy); *In re Echlin Mfg. Co.*, 105 F.T.C. 410, 502 n.34 (1985) (merger challenge dismissed because "[i]n the absence of barriers to entry, incumbent firms cannot exercise market power, regardless of the concentration in the nominal 'market,' and indeed even if that 'market' has

been 'monopolized' by a single firm."); *In re Grand Union Co.*, 102 F.T.C. 812, 1063 (1983) ("[W]ithout barriers to entry, mergers and acquisitions are unable to create market power.").

Under the Justice Department and Federal Trade Commission's jointly issued Horizontal Merger Guidelines, "[a] merger is not likely to create or enhance market power or to facilitate its exercise, if entry into the market is so easy that market participants, after the merger, either collectively or unilaterally could not profitably maintain a price increase above premerger levels. Such entry likely will deter an anticompetitive merger in its incipiency, or deter or counteract the competitive effects of concern." United States Dep't of Justice & Federal Trade Comm'n, *Horizontal Merger Guidelines*, § 3.0 (rev. 1997). Entry is considered easy if it would be "timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern. In markets where entry is that easy . . . the merger raises no antitrust concern and ordinarily requires no further analysis." *Id.*

Here, the fact that CitySights began operations in May 2005 with eight tour buses, and expanded to seventy buses in just four years demonstrates that entry barriers are non-existent. The company was profitable from the start. Willig v.S. ¶¶ 37-41. And several motor transportation companies are poised to operate in New York City at any time. Motor carrier transportation tour services continue to spring up throughout the nation, including double-decker transportation tours in the nation's leading cities launched by a variety of domestic and international companies. LesCar Rouge, a Paris transportation tour company, started bus service in Washington, D.C. in 2006, expanding to San Francisco in 2007 and Las Vegas in 2009. *Id.* ¶ 45. New York City itself just assigned stops to Rainbow Tours, which plans to begin running double-decker tours in early summer. As Professor Willig observed:

[T]he number of tour bus operations is relatively small in all cities. A small number of competitors, however, is not determinative of

non-competitive markets. The ease of entry demonstrated by CitySights' entry in New York City and recent entry in other markets suggests that a small number of players may be competitively sufficient and may be preferable from the public interest perspective in terms of quality and efficiency of service, environmental impact, and traffic congestion.

Id. ¶ 46.

Dr. Chan suggests that new entry would not be feasible because the New York City Department of Transportation may not approve additional bus stops. But there is no legal limit to the number of licenses or bus stops the city can assign. In fact, the city recently assigned new stops to MegaBus, Bolt Bus, Rainbow Tours, and others. Bus stops are not an exclusive commodity, and are often assigned to more than one company. For example, Gray Line and the transit authorities were already using many of the stops assigned to CitySights. At present, the majority of Twin America bus stops outside of Times Square and Battery Park are shared with others. With such low entry barriers, there is little prospect that Twin America could sustain an exercise of market power.

IV. TWU'S CONCERNS

As stated above, TWU represents Gray Line ticket sellers and tour guides, and only a single driver of the Twin America buses. Apart from that one driver, the Twin America drivers are represented either by the Teamsters Union (Gray Line) or the United Service Workers of America (CitySights). Neither union has expressed any concern with Twin America.

Moreover, TWU's comments are not representative of all members, and may not even be common among members.

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The merger of Gray Line and CitySights operations did not affect workers' rights under pre-existing collective bargaining agreements, which remain in place. Twin America has worked cooperatively with each union from day one of the combination and will continue to do so.

Twin America specifically addresses each of the points that TWU raises in a separate Appendix, attached as Appendix 1. As that Appendix indicates, TWU has not raised any issues that would warrant disapproval of the Twin America transaction.

V. CONCLUSION

For all of the reasons set forth above and in the Applicants' prior submissions, the Board should approve the Application.



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SCUSI Ltd.; Coach USA Administration,
Inc.; Coach USA, Inc.; International Bus
Services, Inc.; City Sights, LLC; Mr. Zev
Marmurstein; and Twin America, LLC

March 10, 2010

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

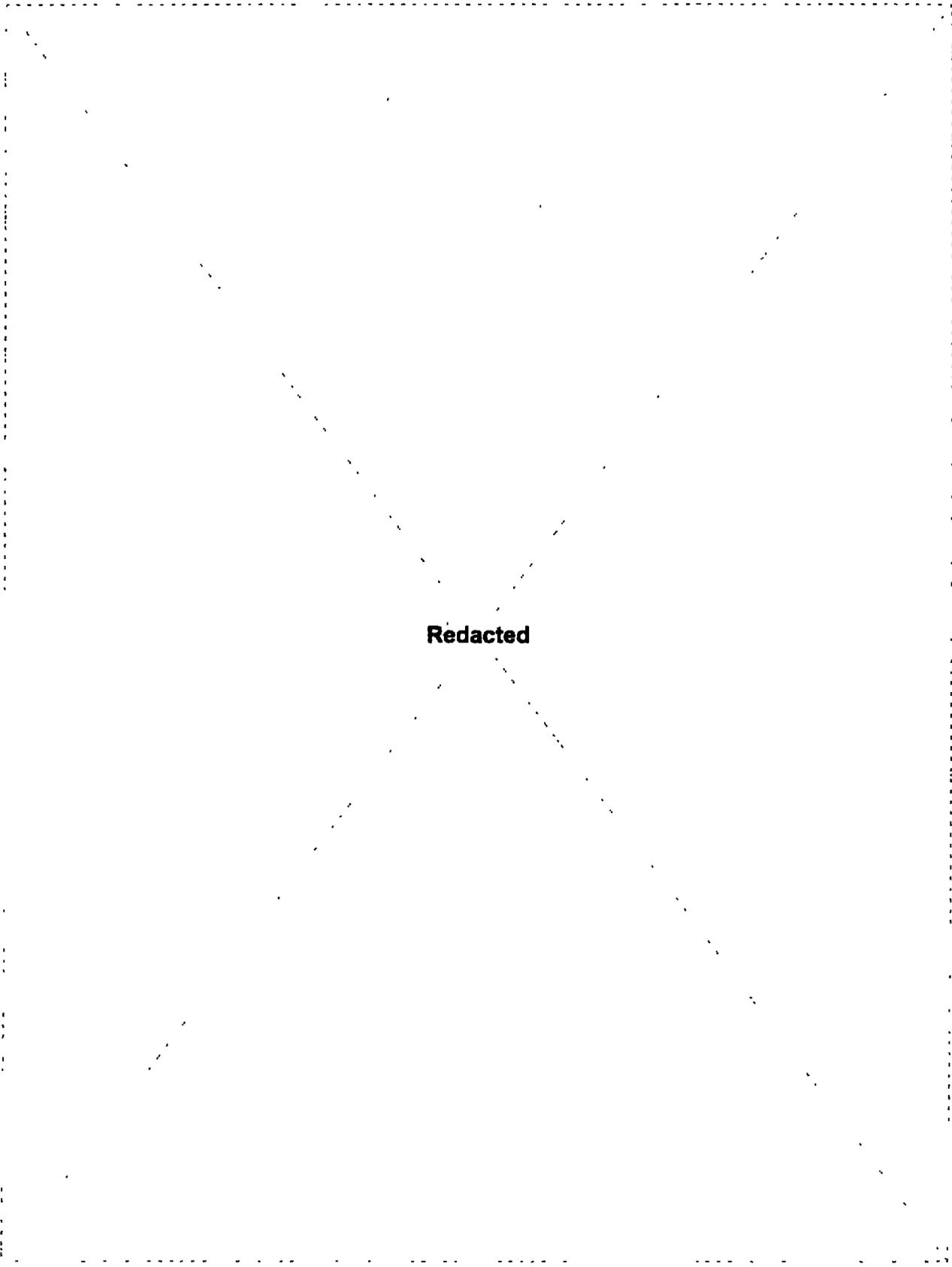
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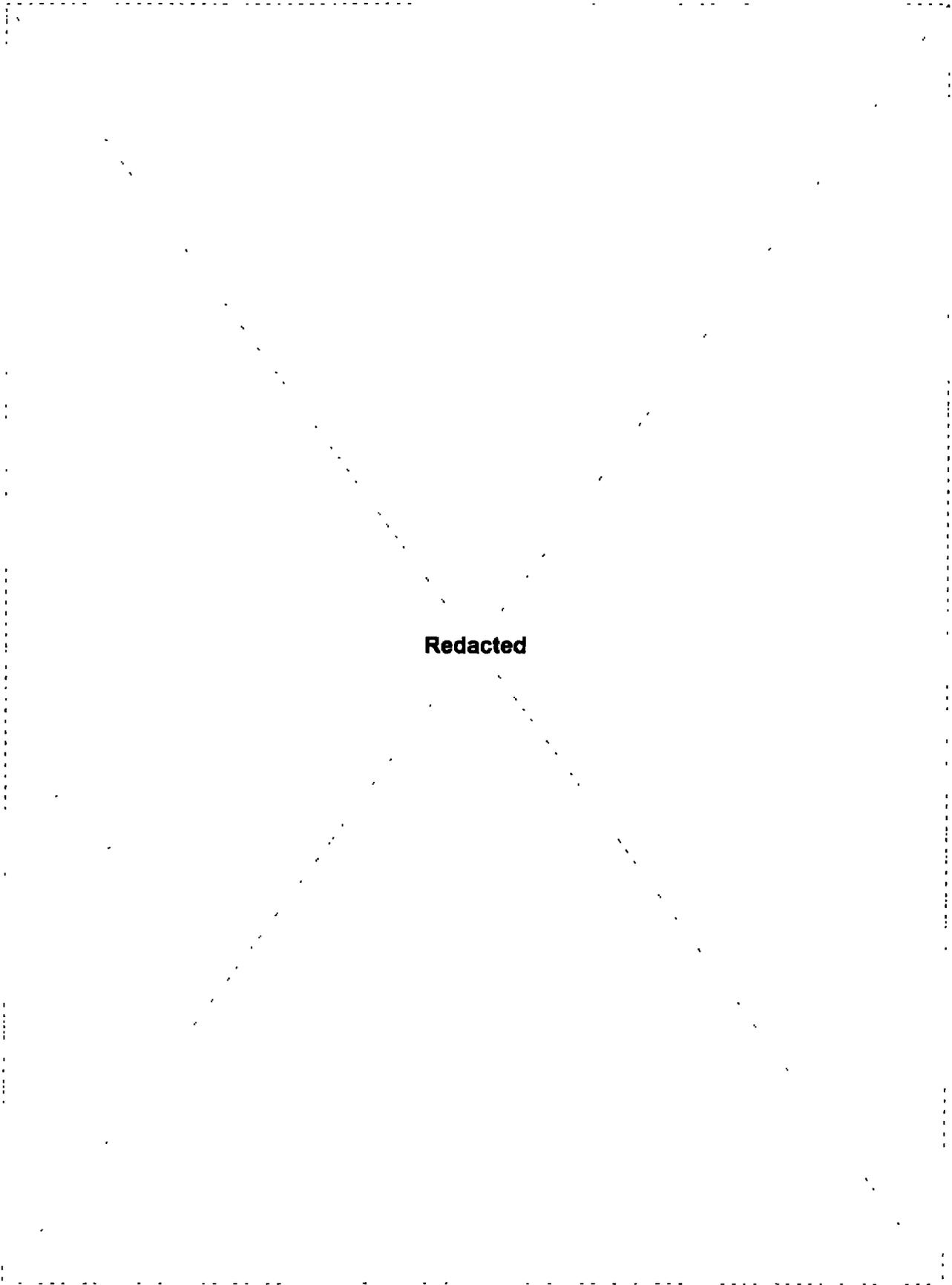
**STAGECOACH GROUP PLC AND COACH USA, INC., et al.
- ACQUISITION OF CONTROL - TWIN AMERICA, LLC**

VERIFIED STATEMENT OF ZEV MARMURSTEIN

My name is Zev Marmurstein. I am the President and Chief Executive Officer of Twin America, LLC, and an officer and managing member of CitySights LLC. My business address is 1430 Broadway, 5th Floor; New York, New York 10018.

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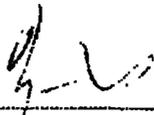
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I have read the "Reply of Applicants to Sur-Reply of the New York State Attorney General and to Comments of Transport Workers Union AFL-CIO, Local 225," including the appended "Applicants' Reply to the Comments of Transport Workers Union AFL-CIO, Local 225," and the facts stated therein are accurate to the best of my

knowledge. I declare under penalty of perjury that the foregoing is true and correct.
Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on: March 10, 2010



Zev Marmurstein

BEFORE THE SURFACE TRANSPORTATION BOARD

STB DOCKET NO. MC-F-21035
STAGECOACH GROUP PLC. AND COACH USA, INC. ET AL.
- ACQUISITION OF CONTROL - TWIN AMERICA, LLC

VERIFIED STATEMENT OF PROFESSOR ROBERT D. WILLIG
IN RESPONSE TO DR. KITTY KAY CHAN

I. Qualifications and Assignment

1. I am Professor of Economics and Public Affairs at Princeton University where I hold a joint appointment in the Economics Department and at the Woodrow Wilson School of Public and International Affairs. I am also a senior consultant with Compass Lexecon. I served as the Deputy Assistant Attorney General for Economics in the Antitrust Division of the United States Department of Justice from 1989 to 1991. A more complete description of my qualifications is presented in my Verified Statement dated November 17, 2009 and in my curriculum vitae attached thereto.
2. I have been asked by counsel for Twin America to review and respond to the statement of Dr. Kitty Kay Chan dated February 1, 2010 and the sur-reply of the State of New York (NYSAG).¹ Dr. Chan's statement is a reply to my previously filed verified statement.

II. Summary of Conclusions

3. The NYSAG is incorrect to contend that the joint venture is not an efficiency-enhancing integration of economic activity. Twin America is structured as a permanent venture that ended competition in bus tours between the two parties. While Twin America continues to operate both the Gray Line and CitySights brand names, all aspects of the operation are under the management of a single entity. In line with this integration, the fleet of double-decker buses has been rationalized and the operations are being optimized to generate

¹ Reply to Verified Statement of Professor Robert D. Willig, Dr. Kitty Kay Chan, February 1, 2010; Sur-Reply of the State of New York to Reply of Applicants To Comments of the New York State Attorney General Dated November 17, 2009, February 1, 2010.

synergies and efficiencies. Any profits and risks are shared by the joint venture's participants.

4. I disagree with Dr Chan's contention that the synergies and efficiencies are speculative and unverified. In this instance, the joint venture has been in operation for almost one year, which provides the opportunity to observe directly what cost savings have been achieved.

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5. These cost savings have been achieved while the joint venture has provided equivalent or improved services.

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suggesting the inaccuracy of Dr. Chan's contention that cross-ticketing may not decrease passenger wait times because bus passenger seating capacity limits may be exceeded.

6. I also disagree with Dr. Chan's assertions that the price increases implemented on Gray Line and CitySights double-decker tours are indicative of the exercise of market power and indicative that the antitrust relevant market is double-decker bus tours. Dr. Chan's analysis of prices does not constitute an application of the hypothetical monopolist test laid out in the Merger Guidelines to delineate a relevant market. Dr. Chan does not attempt to examine whether the prices of competing tourist attractions and tours also increased, which is a necessary part of a proper analysis of the implications of price rises for market power or relevant market definition. The evidence suggests that the prices of other attractions and tours also increased.

7. I provide support for these conclusions below.

venture entity, Twin America. Consolidations of operations rarely happen overnight. In the case of Twin America, the joint venture was formed in late March 2009, immediately prior to the high season for tourism. From a business perspective, it made economic sense for Twin America to proceed cautiously in implementing changes that would disrupt or compromise the Joint Venture's ability to serve its customers during peak season.

12. Unlike Dr. Chan, I do not find the continuation of separate brand names to be significant evidence of a lack of economic integration. Maintaining prior brand names is not unusual in a fully consummated merger between two parties. In essence, Twin America operates as a production joint venture producing a similar output that is sold under two brand names. The production of the output that is sold this way is intended to be managed as a harmonized and integrated unity.
13. Third, Twin America has rationalized its overall fleet of double-decker buses to operate these assets more efficiently, particularly during the recession. The integration of City Sights' and Gray Line's double-decker operations is expected to generate significant efficiencies by combining inputs, output of services, and decision-making within one entity, which I address in more detail below.

IV. The Expected Synergies and Cost Efficiencies Are Not Vague or Speculative

A. The predicted Redacted synergies and cost savings were based on reasonable projections

14. Dr. Chan alleges that the synergies and efficiencies estimated by Twin America are speculative, unverified, and contradict economic logic and evidence.⁴ I find Dr. Chan's allegation to be meritless. Dr. Chan fails to acknowledge that the synergy and efficiencies were addressed in the Verified Statement of Ross Kinnear submitted at the time of my original statement. Mr. Kinnear detailed the cost savings resulting from rationalizing the fleet of double-decker and other vehicles, and other direct and indirect costs, including payroll, maintenance costs, and purchasing costs. He also identified other cost savings that were anticipated but had not yet been realized. The cost savings discussed by Mr. Kinnear were based on five months of combined operations during the peak season. Redacted

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15. Prior to the combination of operations, the synergies and efficiencies expected from a merger or joint venture are necessarily projected estimates. In my experience, it is not uncommon for the parties to make multiple evaluations of the expected synergies and

⁴ See Chan Statement at ¶ 3 ("However, the efficiencies and synergies which Dr. Willig proposed are in general speculative and have not been verified.")

efficiencies as more information is learned about each firm's operating practices during the integration process both before and after consummation. Typically, some anticipated synergies are bigger or realized more quickly than previously thought, others are smaller or take more time to realize, some may turn out to be unachievable, and yet others that were previously unforeseen are realized.

16. As Coach and CitySights engaged in negotiations to set up the joint venture, several attempts were undertaken to estimate the cost savings likely to be achieved by combining the operations and assets of the two companies. **Redacted**

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17. Given that anticipated synergies and efficiencies are projections, verification of these pre-consummation of the joint venture would have involved assessing their likelihood and magnitude based on information available at that time. However, in this instance, the joint venture has been in operation for almost one year, and data are available to see what synergies and efficiencies have been achieved, and what plans have been put in place to achieve future cost savings.

B. Synergies and Efficiencies Have Been Achieved

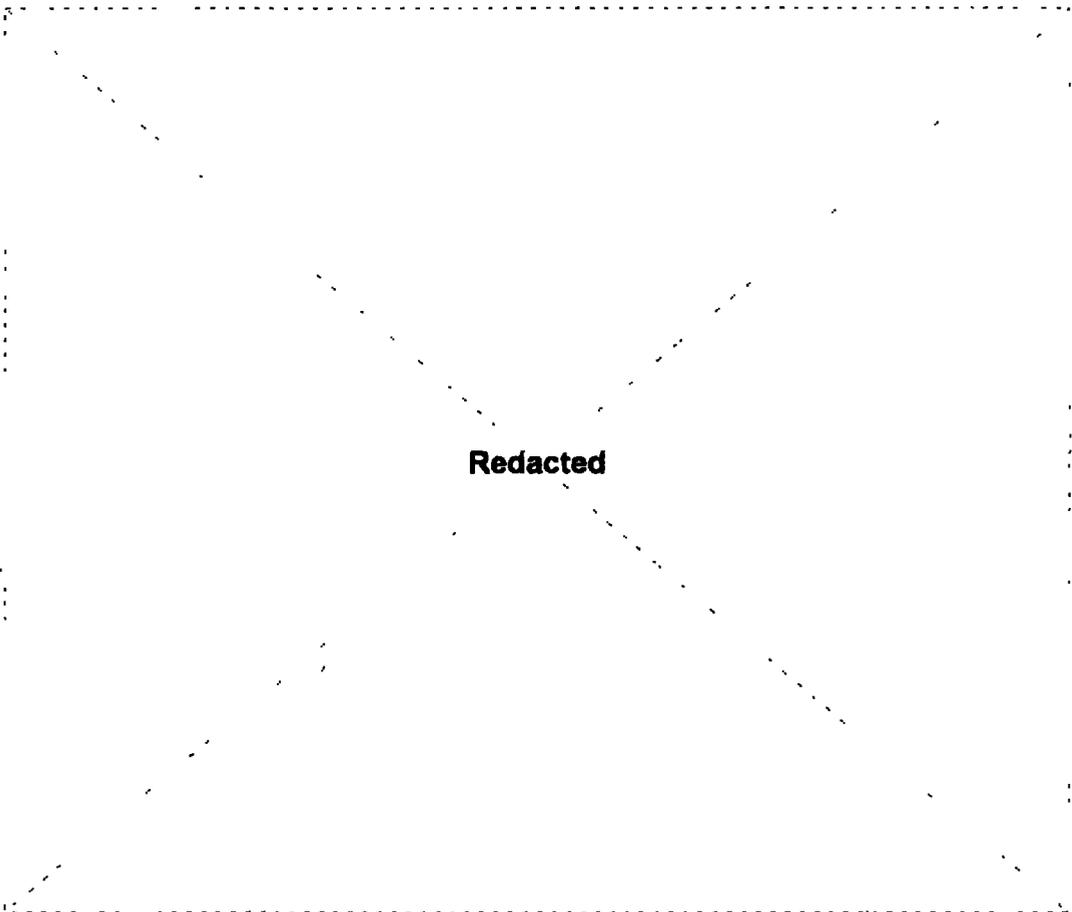
18. A review of Twin America's operating costs shows that cost savings have been realized by the combination of the two enterprises. As shown in Exhibit 1, Twin America's operating costs for the nine months ending December 31, 2009 were significantly lower than the sum of the two separate entities' costs for the same period ending December 31, 2008 due to improved operating practices in a number of major cost categories.⁷ I discuss these improved operating practices and the cost savings they generated below.

a. **Redacted**

⁵ See COA 000243.

⁶ See COA 000254.

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c.

19. Across two of these three categories (excluding fuel), the operating costs for the joint venture for the nine-month period to the end of 2009 are **Redacted** lower than costs were for the separate entities combined during the prior such period. The joint venture generated these cost reductions while providing equivalent or better service by applying best practices from the two previously separate entities to the combined entity, and not just by obtaining volume discounts. Contrary to Dr. Chan's claim, entry barriers are not being created by increased volume discounts. On an annualized basis, these realized cost savings will likely be **Redacted**

20. Twin America's greater focus on operating efficiency (compared particularly to that of Gray Line). I understand, has also led to **Redacted**



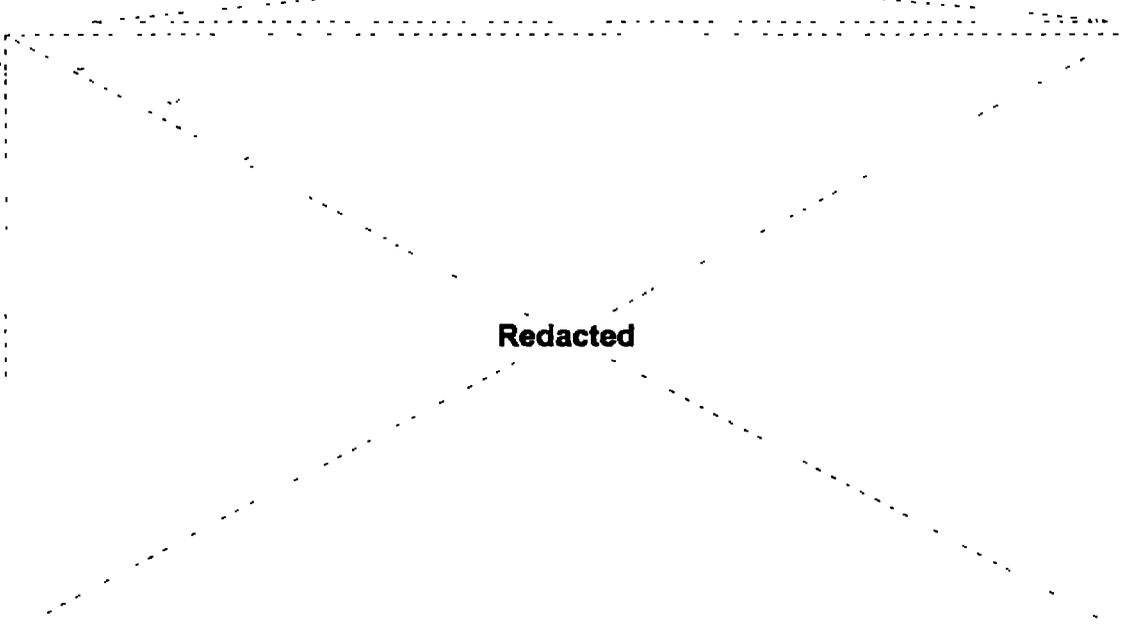
12) **Redacted**
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C.

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22. Data on customer wait times are not available, but there is no evidence to suggest that wait times have increased, as Dr. Chan suggests. Dr Chan contends that while the added flexibility of cross-ticketing could shorten wait times, the reduction in the number of buses in operation could mean that some buses are full, forcing customers to wait even longer for the next bus.¹³

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Redacted suggests that buses reaching seating capacity limits is not a valid concern.

23. The synergies generated by

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An increase in this ratio represents fewer resources being used to generate the same or greater output. Exhibit 2 shows the

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¹³ See Chan Statement at ¶ 8

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improvement. As I discussed in my first statement, economic welfare is enhanced when the same (or a higher) level of output is generated using fewer inputs. The lower costs incurred by Twin America compared to the costs of the separate entities while generating an improved service with more trips represents fewer inputs (capital and labor) being used to generate a higher output. This improves economic welfare and is in the public interest.

28. In a competitive economy, the resources made redundant by efficiency improvements will be redeployed to more productive uses. This is a standard tenet in economics. Antitrust analysis does not examine to what other specific uses and when the resources freed by efficiency improvements are or will be deployed; rather, it focuses on whether the efficiencies will be realized. In this instance, as I discussed above, efficiencies are being realized.

V. Dr. Chan's Analysis of Price Changes Does Not Demonstrate the Exercise of Monopoly Power or Establish that the Relevant Market is Double-Decker Bus Tours

A. Dr. Chan's market power analysis is flawed

29. Dr. Chan criticizes my analysis as inconsistent with the Merger Guidelines. She contends that the relevant market is double-decker tour buses and that the joint venture enabled Twin America to exercise market power. She seems to base her opinion on a few specific facts. First, Coach increased the prices of its double-decker bus tours by 10-17% from the previous month to February 2009, just prior to the joint venture, while in the period February 2007 to August 2008, Coach had increased its prices only 1% to 3%.¹⁷ Second, Twin America raised the prices of CitySights double-decker bus tours post-joint venture by 10-17%.¹⁸ Dr. Chan asserts that these two facts indicate that the joint venture was able to exercise market power to increase prices at a rate not previously attained. In addition, Dr. Chan considers these two facts to be evidence that double-decker bus tours are in a separate relevant market from other tours and tourist activities. Dr. Chan appears to suggest that her identification of these two pieces of information constitutes an analysis consistent with the Merger Guidelines. I disagree with Dr. Chan's analyses and opinions.

30. Dr. Chan's pricing analysis is both misleading and economically flawed. First, Dr. Chan's pricing analysis should not be interpreted as a hypothetical monopolist test under the Merger Guidelines. This test seeks to delineate the relevant product market by asking whether a hypothetical profit-maximizing monopoly seller of a candidate group of

¹⁷ Chan Statement at ¶¶ 13 and 14. Dr. Chan also compares the February 2009 prices to the August 2008 prices, which shows a lower price increase of 7% to 10% (See Chan Statement at Table 1b). The price increase is lower for this comparison because Gray Line fares were higher in August 2008 than January 2009 due to fuel surcharges. Coach lowered its fares in January 2009 back to its pre-fuel surcharge February 2007 levels

¹⁸ Chan Statement at ¶ 14

products could profitably impose a small but significant and non-transitory price increase. If the hypothetical monopolist would not find such a price increase profitable, the candidate group of products is widened to include other products consumers would consider to be alternatives, and the test is run again. The test is repeated with additional alternative products being included at each iteration until a group of products is identified for which the hypothetical monopolist would find it profitable to increase prices, thus delineating this group of products as a relevant antitrust market.

31. Dr. Chan seems implicitly to represent her observation of Twin America's fare increase in February 2009 as being a hypothetical monopolist test in which she treats Twin America as being a hypothetical monopolist of double-decker bus tours. However, Dr. Chan's analysis is no such test. She assumes that because Coach, and subsequently Twin America on the CitySights branded tours, were able to raise list prices on double-decker tours, this constitutes evidence of a relevant antitrust market.¹⁹ Dr. Chan makes no attempt to identify the appropriate candidate market for applying the hypothetical monopolist test. Nor does she examine whether a price increase by a hypothetical monopolist over a candidate group of products would be profitable given unchanging other salient conditions such as costs, the overall level and character of demand, and prices charged for substitute services.

B. Dr. Chan's Analysis of Price Increases is Inconsistent with the Facts

32. Exhibit 3 presents a history of Gray Line's prices over time. In percentage terms, price increases ranged from 3.4% to 13.0% (see Exhibit 3). Focusing on Gray Line's four most popular double-decker tours, Downtown Loop, All Loops, Essential, and Uptown Loop tours, prices increased \$2 per adult ticket prior to August 2008 to reflect higher fuel charges, and prices were increased again in February 2009 by \$5 per adult ticket after having been decreased in January 2009 by \$2 per ticket to reflect lower fuel costs.²⁰
33. Dr. Chan refers to the February 2009 period as "the time when the joint venture agreement was being finalized."²¹ This is factually incorrect. My understanding, based on

¹⁹ Dr. Chan seems to represent Gray Line's double-decker bus prices as increasing while its non-double-decker tour prices did not. A review of Gray Line's prices shows that this is not generally correct. Exhibit 3 shows that between February 2007 and August 2008, Gray Line increased the prices of some its non-double-decker bus tours (The History Channel, Manhattan Comprehensive, Downtown & Statue of Liberty, and Downtown & Empire State tours), and lowered the prices of several double-decker bus tours (Multilingual and ShowBiz Insider tours). The ShowBiz Insider tour price was decreased by \$20 per adult ticket before it was discontinued in June 2009. **Redacted**

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understand that a number of smaller specialist tour companies, such as JTB, which has operations in Japan, offer such foreign language services.

²⁰ I understand that **Redacted**
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²¹ Chan Statement at ¶ 13

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34. I understand from

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35. In addition to the evidence that the price increases were not dependant on the creation of the joint venture, Dr. Chan's approach is not sufficient to establish that double-decker bus tours are a separate relevant market and that Twin America has exercised market power. Dr. Chan makes this claim by looking at Gray Line's and CitySights' price increases in isolation. Many other tours and attractions in New York City make up the full range of competing alternative products to double-decker tours. Dr. Chan has performed no analysis of which other tour products consumers might consider substitutes for double-decker bus tours, and changes in the prices of those competing products. I have examined the price changes of other competing tours in New York City to determine if Gray Line and City Sight tour prices were moving in isolation relative to other competing substitutes. As Exhibit 4 shows, Circle Line increased its rates by 12.9% to 21.1% from 2008 to 2010, NY Water Taxi increased its fares by 25%, Harlem Gospel Tour rates increased 10%²³ The list price increases taken by Gray Line and Twin America are not dissimilar to, and in many cases are lower than those taken by other competing NYC tour

²² Promotions and discounts for double-decker bus tours are also a feature of pricing. For example, Twin America offers a web-special discount of \$5 on the adult ticket price for both its Gray Line and CitySights double-decker bus tours. Including free admission to another attraction with the price of the double-decker tour ticket is also used to promote tickets. Discounting occurred before the joint venture and continues to occur, there is no evidence that the level of discounting decreased after the consummation of the joint venture.

²³ Tour prices appear to have increased in some other cities as well. I understand from Coach USA that in Chicago it increased the price of its one-day trolley and double-decker sightseeing tour by \$4 to \$29 for adults and by \$2 to \$17 for children in May 2008; it previously increased the price of its two-day adult ticket by \$10 to \$45 in May 2007.

operators during the same time period²⁴ NYC taxi fares were also rising during this time period. In May 2009, the state legislature passed a resolution to increase the base fare for NYC taxis by \$0.50 to \$3.00 to cover a deficit at the Metropolitan Transportation Authority; the fare increase came into effect in November 2009.²⁵

36. Dr. Chan's evidence and analysis of the relevant market and the exercise of market power by Twin America are not economically sound. The increase in Gray Line's double-decker tour list prices prior to reaching an agreement with CitySights to form a joint venture and Twin America's decision to increase the prices of CitySights double-decker tours post-joint venture are not sufficient evidence to conclude that the relevant market is double-decker tour buses and that market power has been exercised by the joint venture.

37. Dr. Chan seems to rely heavily for her conclusions on an internal Gray Line document's statement that one of the benefits from the joint venture is **Redacted**

Redacted²⁶ This statement is consistent with the fact that unified management of the double-decker bus fleets has enabled significant efficiencies from their integrated scheduling and know-how, as discussed above. However, this statement cannot be validly read as evidence of market power created by the joint venture in an antitrust relevant market. Business people do not use the word "market" to mean antitrust relevant market, and it is completely invalid and unreliable to infer market power or that double-decker bus tours constitute an antitrust relevant market from **Redacted**
Redacted

VI. Barriers to Entry are Low for Double-Decker Bus Tours in NYC

38. The desirable outcomes of competition are often the result of the ease with which firms can enter and exit a business. With ease of entry, if the price charged for a product by the incumbent firm or firms is too high, another firm will enter at a lower price to capture sales and profit from the incumbents. Similarly, if an entrant can generate the same output as the incumbent firm or firms but at a lower cost, it will enter to capture share and divert profits from the incumbents. Entry need not even occur to ensure that the incumbents maintain competitive prices and costs – the threat of entry can be sufficient to keep them in check.

39. Not surprisingly, given the importance of entry in maintaining competition, assessing barriers to entry is a key part of an antitrust inquiry. As I discussed in my first statement,

²⁴ As an example indicating that double-decker tours compete with other tour operations, Exhibit 5 presents an advertisement appearing in the January/February Amtrak Magazine for Amtrak Vacations. The ad offers a \$530 tour package to New York City, which includes roundtrip rail from Washington, DC, two nights' accommodations at the Belvedere Hotel or similar hotel, admission to the Top of the Rock and the option of either a Broadway show, All Loops double-decker tour, or admission to the Empire State Building.

²⁵ <http://www.yellowcabnyc.com/nyc-taxi/nyc-taxi-fares-increase-sunday>, accessed on March 8, 2010.

²⁶ See Chan Statement at ¶ 3.

barriers to entry into the double-decker bus tour business in New York City are low.²⁷ One of the most important indicators of low entry barriers looked for in an antitrust inquiry is evidence that entry has in fact occurred. Here, CitySights is such an example for double-decker bus tours in New York City. CitySights' entry easily met the Merger Guidelines key criteria – it was timely and created a profitable market impact.

A. Dr. Chan's assertion that regulatory barriers exist is without support

40. Dr. Chan appears to make the claim that entry into the double-decker bus tour business in New York City would be difficult because there are no stops available for a would-be entrant.²⁸ This apparent assertion is without support. There is no evidence to suggest that the City would be unwilling or unable to allocate stops to an entrant if doing so would be in the consumers' interest. As I noted above in relation to the movement of Twin America's stops in Times Square, it is within the power of the City to issue, revoke, or move bus stops at its reasonable discretion and thus, influence the supply of bus tour services operating within the City

B. Barriers to entry are not increased by the JV's use of best practices

41. Dr. Chan also appears to argue that the efficiencies created by the joint venture increase barriers to entry because an entrant would be unable to match the low cost levels Twin America can achieve.²⁹ This argument is also without merit.
42. The efficiencies the joint venture has created, as discussed above, are largely the result of applying best operating practices from each of the two separate entities to the combined entity. These cost savings are not simply the result of the combined entity's having greater purchasing power. A potential entrant with superior operating practices could have competitive or lower costs without being as large as the incumbent. Again, CitySights is evidence that this can happen. CitySights was a small entrant operating only eight buses, but it chose an efficient operating strategy that enabled it to grow and compete successfully with Gray Line. Telling of the success of CitySights' performance is that many of the operating practices, **Redacted** adopted by the joint venture were **Redacted** **Redacted** Nothing in Dr. Chan's analyses of entry barriers causes me to change my opinion that entry is likely and can be achieved in a timely manner and at sufficient scale to discipline any anticompetitive exercise of market power by the joint venture.

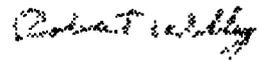
²⁷ See Willig Statement at ¶¶ 34-46.

²⁸ See Chan Statement at ¶ 18.

²⁹ See Chan Statement at ¶ 22

I declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on March 10, 2010



Robert D. Willig

EXHIBITS

Exhibit 1

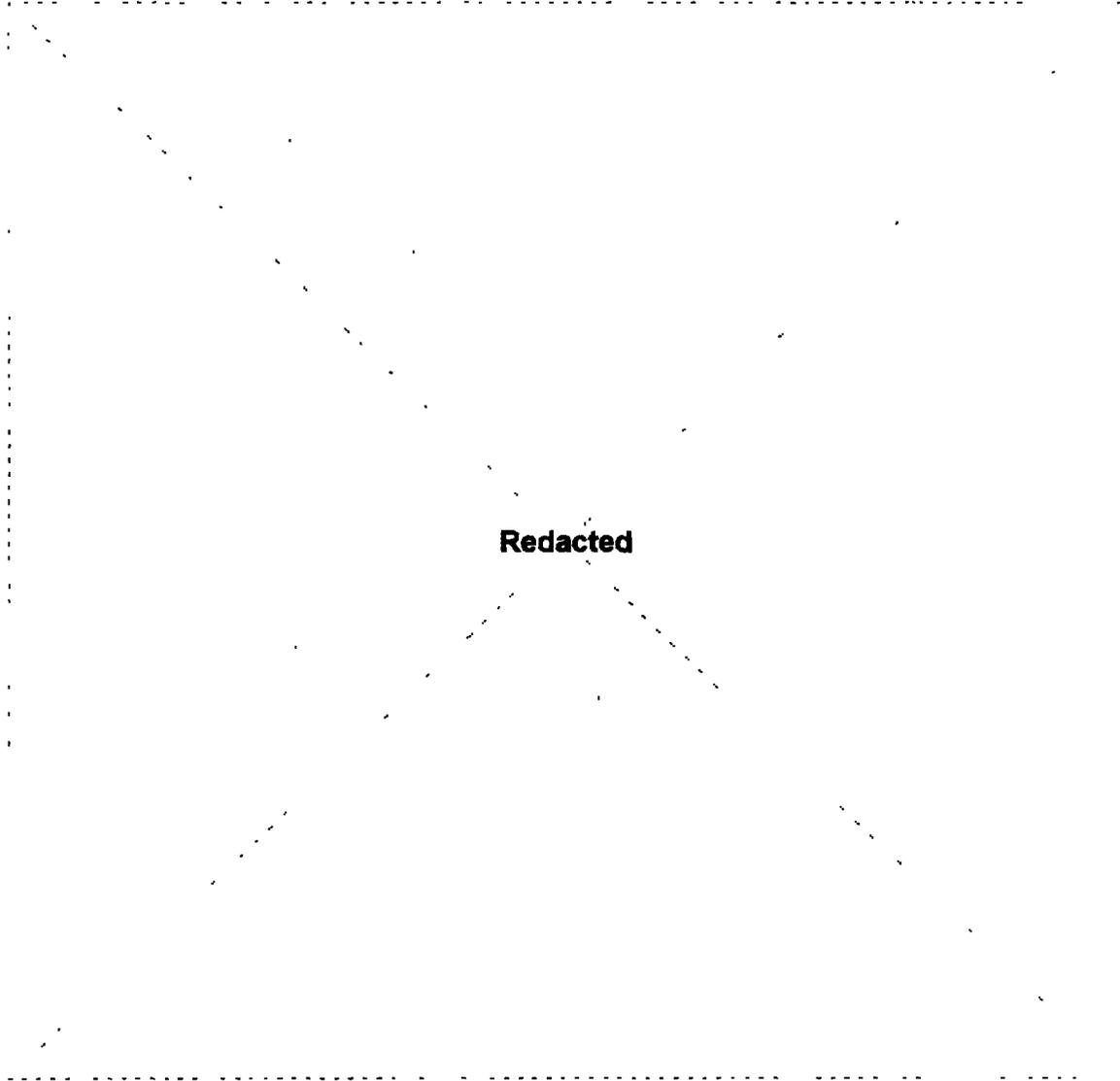


Exhibit 2

Redacted

**Exhibit 4
Competing NYC Tours Rates**

Company	Adult			Child		
	2008	2009	2010	2008	2009	2010
Circle Line Sightseeing (3-hr cruise)	\$31.00	\$34.00	\$35.00	\$18.00	\$21.00	\$22.00
(2-hour cruise)	\$27.00	\$30.00	\$31.00	\$16.00	\$19.00	\$20.00
(The Beast)	\$19.00	\$22.00	\$23.00	\$13.00	\$16.00	\$17.00
(75-min. cruise)	\$21.00	\$24.00	\$25.00	\$13.00	\$16.00	\$17.00
(75-min. cruise Special incl in AAT tour)						
NY Waterway 90-min	\$26.00	\$26.00	\$26.00	\$15.00	\$15.00	\$15.00
NY Water Taxi (Harbor Pass)	\$20.00	\$25.00	\$25.00	\$15.00	\$15.00	\$15.00
(Statue of Liberty Cruise Special)	\$25.00	\$15.00	\$15.00	\$15.00	\$15.00	\$15.00
SOL Ferry	\$12.00	\$12.00	\$12.00	\$5.00	\$5.00	\$5.00
Manhattan By Sail	*	\$39.00	\$39.00		\$17.00	\$17.00
ESB	\$20.00	\$20.00	\$20.00	\$14.00	\$14.00	\$14.00
Skyride	\$29.50	\$36.00	\$36.00	\$21.50	\$18.00	\$25.00
Top of the Rock	\$20.00	\$20.00	\$21.00	\$13.00	\$13.00	\$14.00
Harlem Gospel (TG1)	\$50.00	\$55.00	\$55.00	\$35.00	\$39.00	\$39.00
(TG2)	\$50.00	\$55.00	\$55.00	\$35.00	\$39.00	\$39.00
Liberty Helicopter (Lady Liberty)	\$110.00	\$120.00	\$120.00	\$110.00	\$120.00	\$120.00
(Big Apple)	\$140.00	\$150.00	\$150.00	\$140.00	\$150.00	\$150.00
(New York, NY)	\$204.00	\$215.00	\$215.00	\$204.00	\$215.00	\$215.00
Manhattan Helicopters (Express Saver)	N/A	N/A	\$125.00	N/A	N/A	\$125.00
(Express)	\$175.00	\$175.00	\$170.00	\$175.00	\$175.00	\$170.00
(Deluxe)	N/A	\$205.00	\$205.00	N/A	\$205.00	\$205.00
Madame Tussaud's	\$32.46	\$37.93	\$38.65	\$25.96	\$30.35	\$31.03
MoMA	\$20.00	\$20.00	\$20.00	Free	Free	Free
Metropolitan Museum	*	\$20.00	\$20.00		Free	Free
Guggenheim Museum	*	\$18.00	\$18.00		\$18.00	\$18.00
Museum of Natural History	\$15.00	\$15.00	\$15.00	\$6.00	\$9.00	\$9.00
Museum of the City of New York	\$7.00	\$9.00	\$10.00	\$7.00	\$9.00	\$10.00
Ripley's Believe it not	\$27.04	\$29.21	\$29.21	\$20.53	\$21.62	\$21.62
Ground Zero Museum Workshop	\$25.00	\$25.00	\$25.00	\$19.00	\$19.00	\$19.00
Tribute WTC Visitor Center	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
UN Tour	\$13.50	\$16.00	\$16.00	\$7.50	\$9.00	\$9.00
SSS Museum	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00	\$10.00
Intrepid	\$18.50	\$19.50	\$19.50	\$13.50	\$14.50	\$14.50
MSG Entertainment: Radio City Tour	*	\$18.50	\$18.50		\$10.00	\$10.00
MSG All Access Tour	*	\$18.50	\$18.50		\$12.00	\$12.00
On Location Tours (TV & Movie ad)	\$36.00	\$38.00	\$40.00	\$22.00	\$22.00	\$24.00
(Sex & the City)	\$39.00	\$42.00	\$44.00	N/A	N/A	N/A
(Gossip Girl)	N/A	\$40.00	\$42.00	N/A	\$40.00	\$42.00
(Sopranos)	\$42.00	\$44.00	\$46.00	\$22.00	N/A	N/A
(Central Park)	\$17.00	\$20.00	\$22.00	\$12.00	\$12.00	\$14.00
Amadeo Travel Solutions (Boston)	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00
(Philadelphia)	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00
(Washington)	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00	\$149.00
Dinner Cruises						
Spirit Cruises: Sun-Thur	\$104.94	\$98.29	\$99.62	N/A	N/A	N/A
Fri	\$124.89	\$108.93	\$110.26	N/A	N/A	N/A
Sat	\$124.89	\$111.59	\$112.92	N/A	N/A	N/A
Daveaux: Sun-Thur	\$144.84	\$152.82	\$154.15	N/A	N/A	N/A
Fri	\$164.79	\$166.12	\$167.45	N/A	N/A	N/A
Sat	\$164.79	\$172.77	\$174.10	N/A	N/A	N/A
World Yacht: Sun-Thur	\$116.28	\$122.43	\$119.80	N/A	N/A	N/A
Fri + Sat	\$127.97	\$137.92	\$134.98	N/A	N/A	N/A
Sunday Brunch (May-Oct)	\$72.47	\$77.36	\$75.18	N/A	N/A	N/A

*Notes * represents "No agreement"

Source: *IrregularNYCtours.pdf*

**Exhibit 4
Competing NYC Tours Rates
Indexed: 2008 = 100**

Company	Adult			Child		
	2008	2009	2010	2008	2009	2010
Circle Line (Average)						
Circle Line Sightseeing 3-hr cruise	100.0	109.7	112.9	100.0	116.7	122.2
(2-hour cruise)	100.0	111.1	114.8	100.0	118.8	125.0
(The Boat)	100.0	114.8	121.1	100.0	123.1	130.8
(75-min cruise)	100.0	114.3	119.0	100.0	123.1	130.8
(75-min cruise Special incl in AAT tour)						
NY Waterway (Average)						
NY Waterway 90-min	100.0	100.0	100.0	100.0	100.0	100.0
NY Water Taxi (Harbor Pass)	100.0	125.0	125.0	100.0	100.0	100.0
(Statue of Liberty Cruise Special)	100.0	60.0	60.0	100.0	100.0	100.0
SOL Ferry	100.0	100.0	100.0	100.0	100.0	100.0
Manhattan By Sea						
ESB	100.0	100.0	100.0	100.0	100.0	100.0
Skyride	100.0	122.0	122.0	100.0	83.7	116.3
Top of the Rock	100.0	100.0	105.0	100.0	100.0	107.7
Harlem Gospel (TG1)	100.0	110.0	110.0	100.0	111.4	111.4
(TG2)	100.0	110.0	110.0	100.0	111.4	111.4
Liberty Helicopter (Average)						
Liberty Helicopter (Lady Liberty)	100.0	109.1	109.1	100.0	119.1	109.1
(Big Apple)	100.0	107.1	107.1	100.0	107.1	107.1
(New York NY)	100.0	105.4	105.4	100.0	105.4	105.4
Manhattan Helicopters (Average)						
Manhattan Helicopters (Express Saver)						
(Express)	100.0	100.0	97.1	100.0	100.0	97.1
(Deluxe)						
Madame Tussaud's (Average)						
Madame Tussaud's	100.0	116.9	119.1	100.0	116.9	119.1
MoMA	100.0	100.0	100.0			
Metropolitan Museum						
Guggenheim Museum						
Museum of Natural History	100.0	100.0	100.0	100.0	150.0	150.0
Museum of the City of New York	100.0	128.6	142.9	100.0	128.6	142.9
Ripley's Believe it not	100.0	108.0	108.0	100.0	105.3	105.3
Ground Zero Museum Workshop	100.0	100.0	100.0	100.0	100.0	100.0
Tribute WTC Visitor Center	100.0	100.0	100.0	100.0	100.0	100.0
UN Tour (Average)						
UN Tour	100.0	118.5	118.5	100.0	120.0	120.0
SSS Museum	100.0	100.0	100.0	100.0	100.0	100.0
Intrepid	100.0	105.4	105.4	100.0	107.4	107.4
MSG Entertainment Radio City Tour						
MSG All Access Tour						
On Location Tours (Average)						
On Location Tours (TV & Movie ad)	100.0	105.6	111.1	100.0	100.0	109.1
(Sax & the City)	100.0	107.7	112.8			
(Gossip Girl)						
(Soprano)	100.0	104.8	109.5	100.0		
(Central Park)	100.0	117.6	129.4	100.0	100.0	116.7
Amadeo Travel Solutions (Average)						
Amadeo Travel Solutions (Boston)	100.0	100.0	100.0	100.0	100.0	100.0
(Philadelphia)	100.0	100.0	100.0	100.0	100.0	100.0
(Washington)	100.0	100.0	100.0	100.0	100.0	100.0
Dinner Cruises (Average)						
Dinner Cruises						
Spirit Cruises Sun-Thur	100.0	93.7	93.9			
Fri	100.0	87.2	88.3			
Sat	100.0	89.4	90.3			
Bateaux (Average)						
Bateaux Sun-Thur	100.0	103.5	106.1			
Fri	100.0	100.8	101.5			
Sat	100.0	104.8	105.6			
World Facts (Average)						
World Yacht Sun-Thur	100.0	105.3	103.0			
Fri - Sat	100.0	107.8	105.3			
Sunday Branch (May-Oct)	100.0	106.7	103.7			

Exhibit 5



WINTER IN VERMONT • FLAMENCO NATION

Arrive



...and why...

...and why...

BY VICE PRESIDENT JOE BIDEN

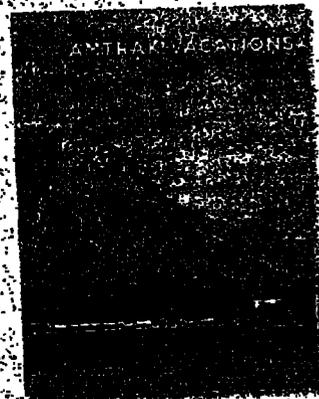
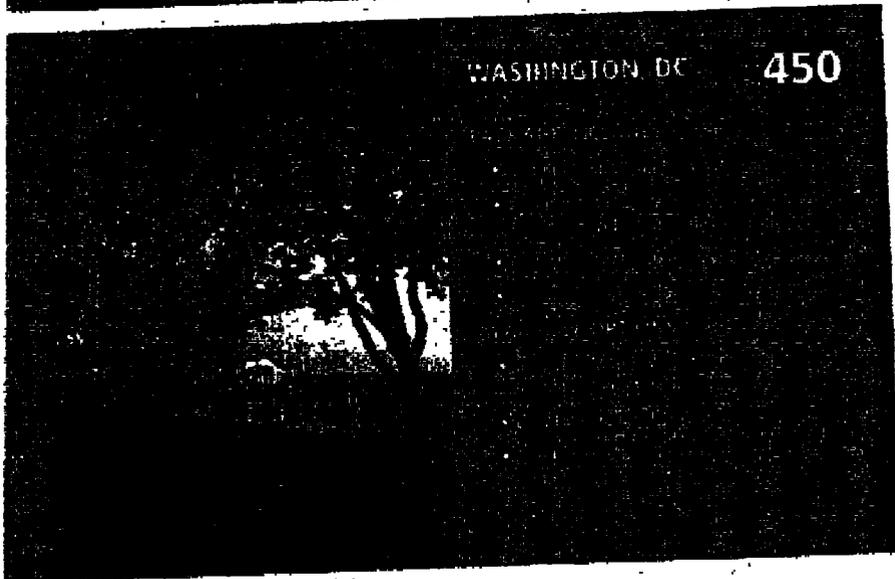
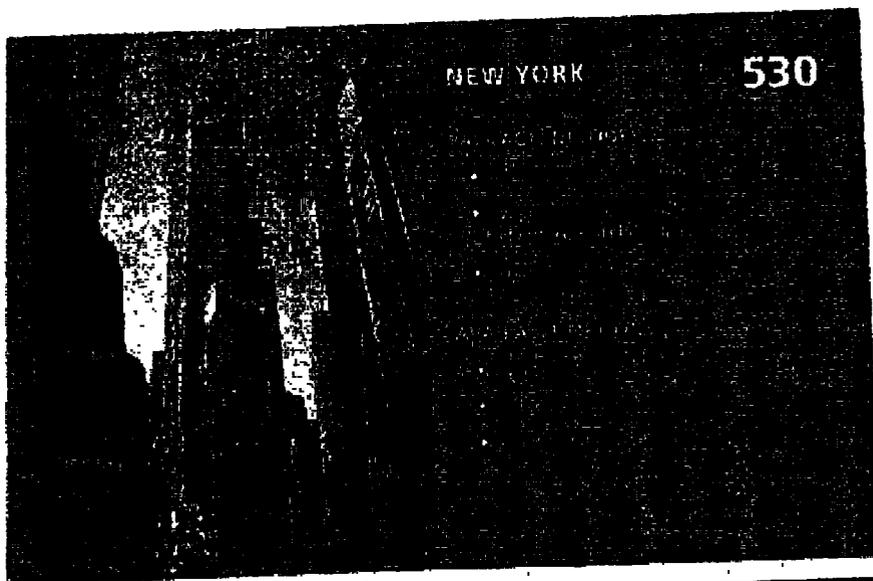
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APPENDIX

**Applicants' Reply to the Comments of
Transport Workers Union AFL-CIO, Local 225**

The newly-elected TWU President has submitted comments on behalf of the TWU Local 225 that in many cases have nothing to do with the sole question in this proceeding, *i.e.*, whether the Applicants have met the standards for approval of control of Twin America under 49 U.S.C. § 14303. See Comments of the Transport Workers Union of America, AFL-CIO, Local 225 (filed Jan. 29, 2010) [hereinafter "TWU Comments"]. Moreover, TWU's comments are not representative of all members, and may not even be common among members.

Redacted

Redacted

Prelude to a point-by-point rebuttal to TWU's comments, it bears note that TWU represents only one driver of the Twin America buses.¹ Apart from that one driver, the Twin America drivers are represented either by the Teamsters Union or the United Service Workers of America, neither of which unions have chosen to participate in this proceeding. The Teamsters union represents (with the exception of the one TWU driver) the drivers of the buses formerly operated by IBS (*i.e.*, the Gray Line buses), while USWA represents the drivers of the buses formerly operated by CitySights. The

¹ TWU also represents drivers of an entirely separate bus service that IBS operates under a contract with New York University. That NYU service was not part of the Twin America transaction.

bifurcation in union representation of the drivers is a function of the continued existence of collectively bargained agreements that pre-date the Twin America transaction. The merger of the IBS/Gray Line tourism transportation operation with the CitySights tourism transportation operation did not affect those agreements, which remain in place.

With the exception of one driver, TWU represents Twin America ticket sellers and tour guides for the Gray Line buses, employees not directly involved in transportation operations and only a portion of the company's overall workforce. These TWU employees remain employed by a Coach USA-controlled motor carrier, GL Bus Lines, Inc. ("GL Bus"). However, under arrangements with GL Bus the services of these persons are provided to Twin America, which controls the payroll of these employees. Thus, the March 31, 2009 memorandum issued by Mr. Tom Lewis, Senior Vice President of Twin America, to the TWU employees, attached as Exhibit 2 to the TWU Comments, was and remains accurate.²

Applicants set forth below a point-by-point response to each of the TWU assertions and requests for clarification:

TWU Claim: TWU observes that Twin America maintains two separate fleets of buses: red Gray Line buses and blue CitySights buses. TWU Comments at 6-7.

Response: As Twin America has previously explained, Twin America continues to operate under each of the trade names previously used by its members. The situation

² The Verified Application correctly states that the Twin America drivers are employed by its members. Thus, IBS has a contract with the Teamsters to employ all but one of the drivers of the buses operated by the Gray Line side of the Twin America business. The CitySights drivers are employed by JAD Transportation, Inc., a third party which contracts with CitySights to supply the drivers.

is analogous to the Delta/Northwest and the Texaco/Shell mergers, under which both trade names continue to be used well after a merger transaction. Nonetheless, Twin America operates with an **Redacted**

Redacted

TWU Claim: TWU alleges that the Application in this proceeding fails to state that the CitySights applicants have attained control of GL Bus Lines, Inc., a motor carrier already controlled (with STB approval in Docket No. MC-F-20948) by Stagecoach, Coach USA and affiliated companies. TWU Comments at 8.

Response: The CitySights applicants have not attained control of GL Bus Lines, Inc. Neither Twin America, CitySights Twin nor Mr. Marmurstein have gained control of GL Bus, and thus no application by any of those parties for control of GL Bus is necessary.

TWU Claim: TWU makes some confusing allegations about IBS's former use of the "Gray Line New York Sightseeing" and "Gray Line of New York" trade names. TWU Comments at 8.

Response: TWU's comments on the trade names formerly used by IBS bear no relevance to the pending Application for control of Twin America. Twin America today continues to use the Gray Line New York Sightseeing trade name.

TWU Claim: TWU observes on page 9 of its comments that the double decker buses contributed to Twin America by IBS are placarded to reflect that they are owned by IBS and operated by "Grayline NY Tour, Inc."

Response: These are the same buses that IBS owns and that it has leased to Twin America as per the lease attached as Exhibit 8 to the TWU Comments. Such leases between regulated entities are commonplace in the motor carrier industry and the IBS/Twin America lease is fully compliant with FMCSA leasing regulations at 49 C.F.R.

Part 376.

Redacted

Redacted

Redacted

Further, Twin America has filed

with New York State to use the trade name Gray Line New York Tours.

TWU Claim: TWU claims that the IBS bus lease agreement at Exhibit 8 of the TWU Comments (which observes that the buses will be used in sightseeing services in New York) contradicts Mr. Kinnear's Verified Statement, which states that the buses are used in interstate service. TWU Comments p. 10.

Response: There is no contradiction. As Mr. Kinnear has shown in his Verified Statement, the buses are operated in conjunction with agreements under which some passengers are traveling under through travel arrangements from/to points outside of New York City. Thus, the fact that buses do not physically transport persons outside of New York City does not mean that they are not used in interstate commerce. In fact, Mr. Kinnear never claimed that the double decker buses are used to transport passengers across state lines. On the other hand, Twin America's fleet of traditional motorcoaches

leased from IBS are available for interstate charter use and are in fact used to conduct such charters across state lines.

TWU Claim: TWU raises a question at page 11 of its Comments about the distinction between buses being “provided” versus “contributed” by IBS to Twin America and questions the basis for the March 18, 2009 press statement issued by Stagecoach Group stating that it contributed \$22.5 million in assets to the Twin America joint venture.

Response: In this context, there is no difference between providing and contributing and thus the terms have been used interchangeably. Further, the \$22.5 million figure represents

Redacted

TWU Claim: TWU notes at pages 11-12 of its Comments that Applicants have stated that Twin America transports passengers between hotels in New Jersey and New York City, where they board the double decker buses and that Applicants have conducted occasional interstate charter operations with the motorcoach buses now leased by Twin America. TWU criticizes the applicants for not providing evidence of these operations or identifying the vehicles and employees used.

Response: Applicants do not understand that it is their obligation to demonstrate which vehicles and drivers are used for each service they provide in a control application of this sort. Nothing in the Board’s rules or precedents requires or suggests that Applicants bear such a burden. Nonetheless, since TWU has raised the issue, Applicants

will respond. The services to/from New Jersey are provided in vans leased by Twin America from IBS with Teamsters drivers employed by IBS. Such services are offered on request at the following hotels in Secaucus, New Jersey: Hilton Garden Inn; Holiday Inn; Embassy suites; and Hampton Inn.

With respect to the charter operations, Twin America has used the motorcoaches leased to it by IBS to conduct several interstate charter operations. For example, on January 29, 2010, a charter was operated from Brooklyn, NY to Falls Village, CT. On February 7, 2010, a charter was operated to Atlantic City, NJ from Brooklyn. On February 14, 2010, another charter was operated between New York City and Washington, D.C.

TWU Claim: TWU asserts at page 12 of its Comments that Twin America claims to operate a service from New York City to Woodbury Commons, a shopping center in upstate New York.

Response: Twin America did not make this claim. Mr. Marmurstein noted in his verified statement submitted with Twin America's November 17 reply that CitySights offered this New York City-Woodbury Commons service pre-merger, but does not claim that Twin America offers the service, which it does not. Rather, that service is provided today by a Coach USA subsidiary. Twin America sells tickets for this service.

TWU Claim: TWU notes on page 12 of its Comments that the Peter Pan Bus Lines website shows a picture of a CitySights bus with the "CitySights NY" trade name

on the side of it and observes that Applicants have not claimed to be using that trade name.

Response: The trade names that Twin America uses to display its services on the sides of its buses or elsewhere are not relevant to the control Application here at issue. It is not clear what point TWU may be attempting to make here, but the critical point for the Board's purposes is that Peter Pan and Twin America have a through interstate transportation arrangement sufficient to trigger Board jurisdiction under which they jointly transport persons between New York City (where passengers are transported by Twin America) and points in Connecticut and Massachusetts served by Peter Pan. TWU does not dispute this.

TWU Claim: TWU states that the CitySights buses are marked as operated by "United Bus LLC" and that they display the MC and DOT numbers of that entity. TWU Comments at 12.

Response: **Redacted.**

Redacted. United Bus LLC is not party to the Twin America transaction.

TWU Claim: TWU observes at page 12 that Twin America merged the assets and operations of the Gray Line and CitySights businesses and asks for clarification of the entities that were party to the Twin America transaction.

Response: The identities of the Applicants are clear from the STB filings.

TWU Claim: TWU observes at page 13 that Gray Line New York Tours, Inc. was a predecessor to the IBS operation previously conducted under the Gray Line New York trade name and states that it is “unclear if any of the services of IBS actually are conducted under the Gray Line New York trade name.”

Response: The services previously provided by IBS under that trade name are now provided by Twin America, which has registered the “Gray Line New York” trade name with the State of New York.

TWU Claim: TWU states at page 13 of its Comments that the motorcoaches controlled by Twin America are used in sightseeing operations in New York City during inclement weather and for certain tours.

Response: It is correct that the motorcoaches are used for some tour operations within New York City (which are conducted in interstate commerce). The buses are also used for charters between New York City and points in other states, as noted above.

TWU Claim: TWU claims at pages 13-14 of its Comments that Applicants have not been clear about the name of the CitySights entity that is a member of the Twin America, LLC, and proceeds to list several corporate or trade names that it claims are registered with the New York State Department of State.

Response: CitySights Twin, LLC is the official name of the limited liability company which is a member of the Twin America, LLC. Twin America officials have made a filing with New York State authorizing the use of the trade name “CitySights New York” and use that trade name in their business.

TWU Claim: TWU claims that the transaction has resulted in the cancellation of five tours, which it lists at page 14 of its Comments.

Response: Three of these five tours (Staten Island Tour, Cloisters Tour and Dinner Tour) were cancelled prior to the Twin America transaction based on **Redacted**

Redacted

The cancellation of the Heritage and Showbiz Tours by Twin America was also based on **Redacted**

Redacted

Redacted Twin America already maintains a large roster of tours as is clear from the websites of its Gray Line and CitySights brands. <http://www.newyorksightseeing.com/> and <http://www.citysightsny.com/>.

TWU Claim: TWU claims at page 14 of its Comments that Gray Line no longer operates late night service since the transaction.

Response: Twin America continues to offer and provide late night service to meet passenger demand.

TWU Claim: TWU argues at pages 14-15 that IBS has reduced the number of buses and frequencies operating in New York and has transferred some buses to Chicago.

Response:

Redacted

Redacted

TWU Claim: TWU argues at page 15 that the reduction in the number of Gray Line buses has led to a diminution in the frequency of service by Gray Line and that CitySights buses operate on different routes, thereby leaving Gray Line passengers with reduced service.

Response:

Redacted

Redacted

TWU Claim: TWU recites on pages 15-16 certain facts concerning the operation of two separate brands by Twin America and alleges that Gray Line and CitySights “are two separate companies.”

Response: At present, there are two fleets and two separate sets of employees represented by different sets of unions, a fact driven by the existence of different collectively bargained agreements, which pre-date the Twin America merger, covering employees that serve Gray Line and employees that serve CitySights. Twin America is otherwise a fully-integrated joint venture. **Redacted**

Redacted

TWU Claim: TWU alleges at page 16 that Alexander Dennis, the company that manufactures the buses used by the Gray Line brand, is controlled by the President and CEO of Stagecoach and that competitors cannot buy buses manufactured by Alexander Dennis.

Response: Alexander Dennis is not controlled, as TWU alleges, by Brian Souter, the President and CEO of Stagecoach. Mr. Souter has a minority interest in Alexander Dennis, which sells buses to operators all over the world, including sightseeing or transit operators in the District of Columbia, Las Vegas and Toronto. TWU's allegation that competitors cannot purchase such buses is not correct.

TWU Claim: TWU alleges at pages 16-17 that an alleged cut in the pay of its tour guide and ticket seller members as a result of a new collectively bargained agreement explains the cost savings experienced by Twin America in 2009.

Response: It is not correct that there was a pay cut or that the new collectively bargained agreement accounts for the post-merger cost savings. The new agreement to which TWU refers was

Redacted

Redacted

Redacted

that Twin America has realized are discussed in detail in the Verified Statements of Twin America's CEO, Zev Marmurstein, and Professor Robert D. Willig, as well as the Applicants' March 10, 2010 Reply.

TWU Claim: TWU states on page 17 of its Comments that Gray Line raised its fares 10% and claims that "[j]ust before the transaction . . . was finalized CitySights, LLC raised its ticket prices to fall in line with the IBS ticket prices."

Response: IBS increased its fares on most tours, effective February 1, 2009, prior to the Twin America transaction. Twin America subsequently raised the price of

CitySights tours consistent with price increases occurring in New York City for almost all transportation tours and flagship tourist attractions generally. The price increase is discussed in Applicants' Reply and the Verified Statement of Professor Robert D. Willig.

TWU Claim: TWU argues on page 18 of its Comments that the Twin America double decker buses constitute a "unique" market that is "vastly different from any of the 'competitors' claimed by the applicants."

Response: Applicants' Reply and the Verified Statement of Professor Robert D. Willig address the question of market definition.

TWU Claim: TWU provides a description on pages 18-20 of its Comments of some of the transportation sightseeing services with which Twin America competes.

Response: TWU's description of Big Taxi Tours (a double decker operator) and Onboard New York Tours (a mini-bus operator) on pages 18-19 is generally accurate to the extent that TWU indicates that these are smaller transportation sightseeing companies. So too was CitySights when it began to compete with other New York tours and attractions.

TWU Claim: TWU claims on page 19 of its Comments that Gordon's Guide Tours only operates a tour in the Adirondack Mountains of New York and thus is not a competitor of Twin America.

Response: TWU's assertion is not true. Gordon's Guide identifies multiple tours in the New York City area. See http://www.gordonsguide.com/gg_search.cfm.

TWU Claim: On page 20 of its Comments, TWU takes issue with the proposition that walking, helicopter, boat and other tours are competitive with double decker tours.

Response: TWU misses the key point that Twin America competes with these other tours for passengers. Each of these different types of transportation tours competes with Twin America, as do other bus company tours. And that includes Segway tours, which are offered just north of New York City, at a point accessible by train from the City. See <http://offmanhattan.com/2009/09/10/segway-nyc-tours/>.

TWU Claim: TWU argues on page 20 of its comments that the Party Bus is not competitive because its vehicles are designed for parties rather than transportation tours.

Response: Again, TWU misses the point the Party Bus offers another transportation tour option that competes for passengers just like Twin America.

TWU Claim: TWU criticizes Professor Willig at page 20 of its Comments for not mentioning that New York Water Taxi is a partner with Gray Line in the NYC Ducks venture.

Response: TWU is wrong. Coach USA – not Twin America or its Gray line fleet – is a partner with New York Waterways (not New York Water Taxi) in NYC Ducks, an amphibious tour of New York.

TWU Claim: TWU criticizes Applicants at pages 21-22 of its Comments for failing to inform the Board about pending New York City legislation that TWU claims would change the “landscape” in New York in relation to double decker tours.

Response: Applicants did not, and do not, believe that any legislation that New York City might be considering is relevant to their request that the Board approve the control application pending before it in this proceeding. Further, the bills that TWU describes are from the 2009 session of the New York City Council. Those bills were not enacted by December 31, 2009, the end of last year’s Council legislative session, and they therefore expired. Similar measures have thus far not been introduced in 2010.

One of the bills from the last legislative session, Intro. 836 (which TWU incorrectly identifies as Intro. 846 on page 22 of its Comments), would have required sightseeing buses to obtain approval from the New York City Department of Consumer Affairs for routes and other operational elements. **Redacted**

Redacted
Redacted The bill was not enacted.

Another of last session’s bills (Intro 1066), which TWU discusses at page 22 of its Comments, would have regulated the location of bus stops in the City. **Redacted**

Redacted

Redacted No such state legislation is on the horizon. Moreover, Twin America’s bus stops are already subject to approval by the New York City Department of Transportation.

TWU Claim: TWU claims on the basis of a September 2009 New York City report attached as Exhibit 13 to its Comments and discussed on page 21 of its Comments that there are 12 licensed sightseeing companies operating 250 buses in New York City and that Twin America controls over half of this total, namely, 154 buses according to Ross Kinnear's Verified Statement.

Response: Applicants have no way of judging the accuracy of the number of buses or licenses set forth in the report. However accurate, the number cited underscores that Twin America has a good deal of competition from other bus providers. Notably, the City does not issue separate "double decker" licenses.

TWU Claim: TWU suggests at page 21 that the New York City Department of Consumer Affairs, which currently licenses sightseeing companies in the City, may be unaware of the existence of Twin America.

Response: TWU is wrong. Twin America holds a license issued to it by NYCDCA.

TWU Claim: TWU claims at page 22 of its Comments that Twin America "already controls the best bus stops in the city from the standpoint of proximity to the most visited tourist destinations." It proceeds to suggest that if the above-mentioned bills were enacted into law, "potential competitors could find themselves shut out of the market."

Response: TWU's speculation is pure conjecture and completely unfounded.

First, the bills are not law and not even pending.

Redacted

Redacted

Redacted Third, even if like bills were to be enacted in the future it is hardly the case that Twin America has some sort of exclusive hold on all bus stops in the City that are near prime tourist destinations. The City controls and assigns stops. And Twin America often shares stops with other transportation tour companies and the transit authorities.

TWU Claim: TWU takes exception at page 23 of its Comments with Ross Kinnear's claim that a 9.5% reduction in Gray Line revenues between 2008 and 2009 was the result of weak economic conditions. TWU argues that Gray Line's revenues declined because CitySights was a more aggressive competitor.

Response: It is beyond dispute that the U.S. economy in general, and economic conditions in New York in particular, deteriorated dramatically in the latter half of 2008, at the outset of the recession. This led to a significant decline in tourists in New York during that time and thus a decline in ridership on Gray Line. While Gray Line also faced competition from CitySights and other sources in 2008, so too did it face such competition in 2007 and in prior years.

TWU Claim: TWU claims at pages 23-24 that Twin America has stopped maintaining plastic domes that it places over the top of the double decker buses during inclement weather.

Response: Twin America continues to maintain the domes as CitySights and Gray Line did before the transaction. The domes are regularly cleaned for the benefit of passengers. Twin America has not received complaints from passengers about the domes.

TWU Claim: At pages 24-25 of its Comments, TWU offers a hodgepodge of claims about the threat to its members of cross-ticketing as between the two Twin America brands.

Response: TWU correctly observes that the tour guides and ticket sellers who work for the Gray Line side of the business are TWU members, while the employees who work for the CitySights side of the business are members of the United Service Workers of America (USWA) union. TWU is also correct that USWA has a contract with JAD Transportation, Inc. ("JAD"). JAD is a non-carrier that is not a party to the transaction, which supplies drivers, tour guides and ticket sellers to Twin America.

None of these facts are relevant to this Application for control. Nor is the question of the level of compensation of the TWU and USWA workers, which TWU attempts to inject into this proceeding. As Applicants have stated, their collectively bargained agreements remain in place post-merger. Likewise, their employees have lost no previously held rights under the applicable labor laws.

Cross-ticketing will benefit passengers. The ability to cross-ticket is, in fact, one of the efficiency, cost-saving and service benefits of the transaction. TWU's speculation about whether its members versus members of a different union will service cross-ticketed passengers is a matter to be determined by the unions under federal labor law and not a factor relevant to the Board's determination in this control proceeding.

Adequacy of transportation is a relevant consideration in this proceeding. In that regard, TWU has failed to show that cross-ticketing will reduce transportation options or the quality of service. In fact, the opposite is true. Further, TWU has not alleged that Twin America will violate any law or collectively bargained agreement to which TWU is a party by utilizing cross-ticketing.

TWU Claim: TWU claims on page 25 of its comments that TWU workers have suffered a loss in hours since the creation of Twin America because the buses have been speeded up. TWU further claims that this has reduced tour quality and created unsafe operating conditions.

Response: TWU's allegations are unfounded. Twin America has not required drivers to "speed up" the buses and anyone familiar with New York City traffic would find such a claim absurd. Further, TWU's effort to attack Twin America's commitment to safety by citing to one unfortunate accident is entirely outside the bounds of the issues relevant to this proceeding.

TWU Claim: TWU on page 25 expresses concern about the economic health of Twin America.

Response: This concern comes only two pages after TWU complains (as if it were contrary to the public interest) that Twin America is highly profitable. TWU's concern about Twin America's economic health is supposedly based on one isolated incident where, due to a change in payroll companies, payroll checks were drawn on the wrong account. This was a one-time error associated with the unification of the IBS/Gray Line and CitySights payroll accounts, and was entirely the fault of the payroll company. Further, to address the problem, Twin America managers were promptly dispatched with cash to pay the workers. This generated a letter of appreciation from the very same person who wrote the TWU Comments. See Exhibit 3 to this Appendix.

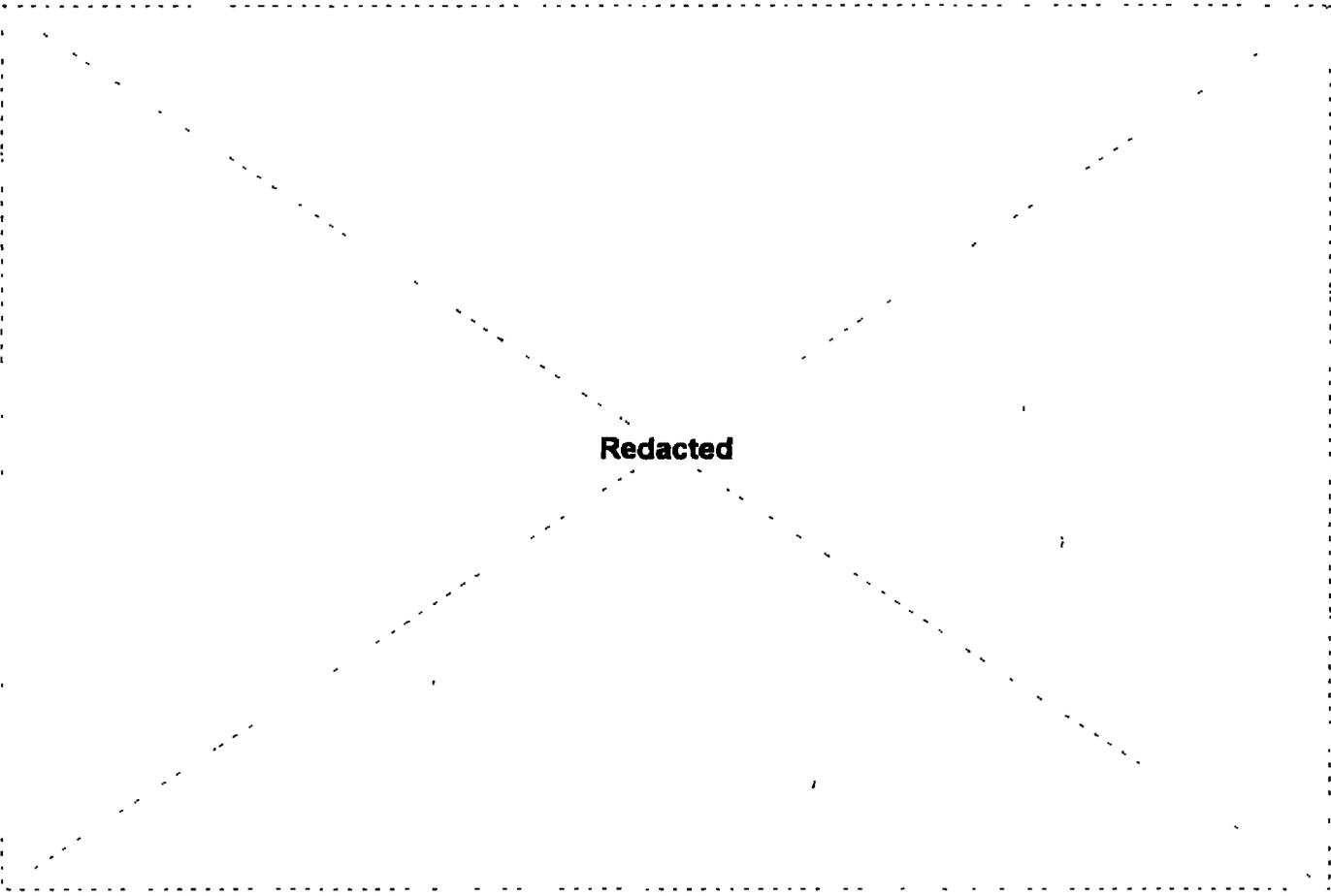
TWU also claims on page 25 that Twin America "has been late forwarding dues collected to TWU. "

Redacted

Redacted

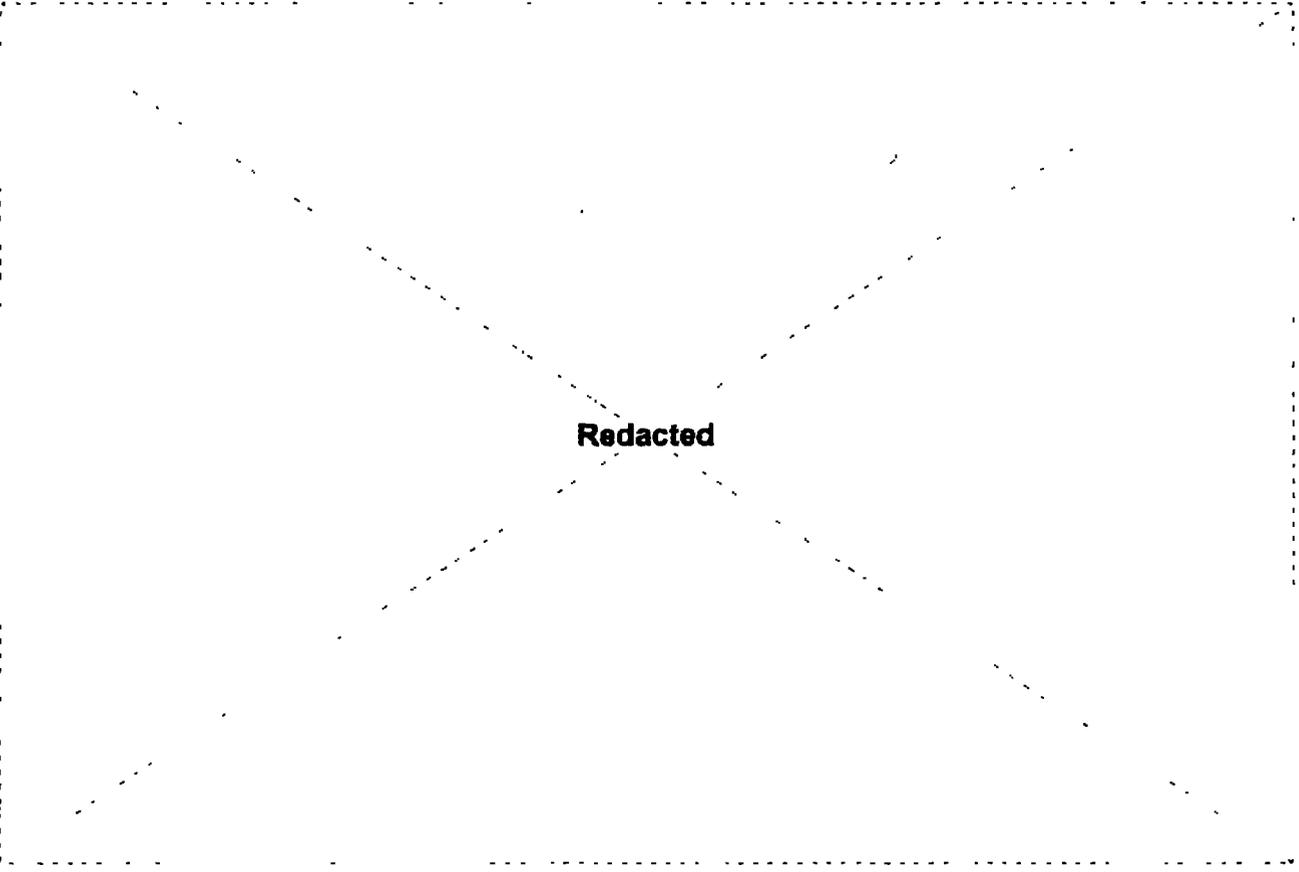
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EXHIBIT 1



Redacted

EXHIBIT 2



Redacted

EXHIBIT 3



Transport Workers Union of America

10-20 Banta Place - Suite 118 - Hackensack, New Jersey 07601
Tel 201-343-9412 - Fax 201-343-9484

Local Officers

Karen Fleming Richard Ventola Anthony Celeste Andy Sydor
President Ex. Vice President Sec/Treasurer Recording Secretary

Executive Board

Mensan Kinvi Max Carames Todd McGue
Branch I Branch II Branch III

Mr. Zev (Mark) Marmurstein
Gray Line NY Sightseeing
49 West 45th Street
New York NY 10036

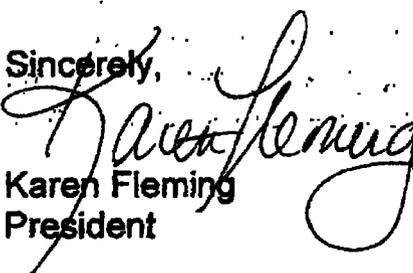
Dear Mark,

The members of the Transport Worker's Union Local 225 and all Members of the Gray Line New York Sightseeing Family wish to thank you for your gracious hosting of our annual holiday party at Planet Hollywood. The food was delicious, the drinks plentiful, and the DJ rocked. The raffle was a fun and generous diversion. The Family Members were, of course, overjoyed to be under one roof.

We also wish to thank you for your rapid deployment of solutions to the recent occurrence of bouncing payroll checks. We trust that the conversion from ADT to another check maker has been adjusted, such that bouncing payroll checks will not happen in the future.

We also wish to verify that we are using the correct address for service and correspondence for GL Lines Inc. Should changes occur, please notify the Bargaining Unit in writing immediately so that we can adjust our records accordingly.

Sincerely,


Karen Fleming
President

VERIFICATION

My name is Ross Kinnear, and I am Vice President, Chief Financial Officer and Treasurer of Coach USA, Inc. I hereby verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with the foregoing Reply of Applicants to Sur-Reply of the New York State Attorney General and to Comments of Transport Workers Union AFL-CIO, Local 225 Twin America, as it relates to Coach USA, Inc and International Bus Services, Inc., is true and correct to the best of my knowledge. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.

A handwritten signature in black ink, appearing to read "R. Kinnear", is written over a horizontal line.

Dated: March 10, 2010

CERTIFICATE OF SERVICE

I certify that I have this 10th day of March 2010 served a copy of the public version of the Reply of Applicants to Sur-Reply of the New York State Attorney General and to Comments of Transport Workers Union AFL-CIO, Local 225 by Federal Express on the parties listed below and that a confidential version will be served on those parties that execute the Undertaking under the terms of the Protective Order entered in this proceeding:

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

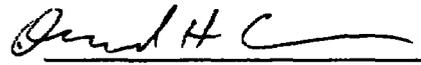
U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

U.S. Department of Transportation
Office of the General Counsel
1200 New Jersey Avenue, S.E.
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David H. Coburn