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H.R. 3985, THE OVER-THE-ROAD BUS TRANSPORTATION ACCESSIBILITY ACT OF 2007

**HON. JAMES L. OBERSTAR**

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

*Monday, October 29, 2007*

Mr. OBERSTAR. Madam Speaker, I rise in strong support of H.R. 3985 the "Over-the-Road Bus Transportation Accessibility Act of 2007", introduced today by the gentleman from Oregon (Mr. DEFAZIO). I am proud to co-sponsor this important legislation, which will ensure that motorcoach accessibility regulations promulgated by the Department of Transportation, DOT, pursuant to the Americans with Disabilities Act, ADA, are fully implemented, vigorously monitored, and actively enforced.

In 1990, upon signing the landmark ADA into law, President George H. W. Bush stated that the ADA "promises to open up all aspects of American life to individuals with disabilities—employment opportunities, government services, public accommodations, transportation, and telecommunications." In many respects, the Act has been implemented to result in expanded and enhanced transportation opportunities for individuals with disabilities. However, as a recent U.S. Court of Appeals case revealed, a troubling void in DOT's oversight of the over-the-road bus accessibility regulations has unnecessarily reduced the protection Congress intended to afford under the ADA.

In 1998, DOT adopted a final rule requiring vehicle modifications to intercity, charter, and tour buses to accommodate individuals with disabilities. These regulations set forth requirements for these transportation providers, referred to as over-the-road bus operators, to acquire or lease accessible vehicles or provide accessible service to passengers with disabilities on a 48-hour advanced notice basis. The requirements are phased in over time, and vary by type of service provided by a company, either fixed route or "demand responsive", such as charter and tour service. Alter-

native compliance requirements were established for small businesses.

The Federal Motor Carrier Safety Administration ("FMCSA") is the modal agency responsible for ensuring that over-the-road bus transportation providers comply with DOT regulations, including safety rules. However, according to FMCSA's interpretation, the existing motor carrier statute limits the agency's ability to enforce the over-the-road bus accessibility regulations promulgated by DOT.

On December 19, 2006, the United States Court of Appeals for the D.C. Circuit, in *Peter Pan Bus Lines, Inc. and Bonanza Acquisition, LLC v. Federal Motor Carrier Safety Administration*, rejected FMCSA's assertion that the agency does not have discretion to interpret the law to allow FMCSA to consider compliance with ADA regulations in determining whether a bus company is fit to operate in interstate commerce. The case was remanded to FMCSA in February 2007, and the Court directed the agency to reexamine the statute.

FMCSA did not respond to the Court for more than 8 months, and I have no doubt the pattern of inaction would have continued without pressure from Congress. Earlier this month, Highways and Transit Subcommittee Chairman DEFAZIO and I sent a letter to Federal Motor Carrier Safety Administrator John Hill, expressing our intent to legislate a solution to this problem if the agency did not respond with its plans to make changes administratively to ensure that ADA requirements were being met by the over-the-road bus operators that FMCSA registers.

Last week, FMCSA issued a decision in response to the Court order. In the decision on remand, the agency defends its original position that the underlying statute does not provide the authority for FMCSA to consider compliance with ADA. The agency further argues that the Department of Justice ("DOJ") has enforcement authority under the ADA to investigate all alleged violations and commence a civil action in court, pursuant to part 36 of title 28, Code of Federal Regulations. This includes authority over transportation providers. Therefore, FMCSA concludes the agency has no role in taking action with respect to ADA violations by over-the-road bus companies. In fact, in the October 26, 2007 decision FMCSA states: "If Congress intended to expand the fitness criteria to include compliance with addi-

tional DOT regulations, such as 49 CFR part 37, it presumably would have said so."

Let there be no doubt—Congress will be saying so with this legislation. This bill removes any statutory ambiguity and gives FMCSA the authority to take action against violators of the ADA.

H.R. 3985 strengthens FMCSA's ability to monitor and enforce compliance with the Department of Transportation's regulations governing the accessibility of over-the-road bus transportation. The bill amends Section 13902(a)(1) of title 49, United States Code, to prohibit the agency from granting registration authority to a motor carrier providing over-the-road bus transportation who is not willing and able to comply with the accessibility regulations under subpart H of part 37, title 49, Code of Federal Regulations. The bill also clarifies that the Secretary may suspend, amend, or revoke a motor carrier's registration in the event of a willful failure to comply with regulations pursuant to the ADA. H.R. 3985 further requires the Department of Transportation and the Department of Justice to enter into a memorandum of understanding to ensure coordination between the two Departments, to clearly define each Department's roles and responsibilities in enforcing the provisions of the ADA, and to avoid duplication of effort.

Violations of ADA regulations are not a theoretical problem. Several newspaper articles have highlighted problems that individuals with disabilities have encountered in trying to ride curbside buses. Curbside bus companies operate fixed-route, intercity bus service, mainly between cities along the Northeast Corridor, picking up and dropping off passengers on the street rather than in bus terminals. A March 2, 2006 Washington Post investigation revealed that 11 companies that operate in the Northeast Corridor had violated ADA regulations. (See "Bus Lines Cited in Federal Probe; 11 Firms Accused of Violating ADA"; Washington Post, March 2, 2006; Financial; page D1).

Madam Speaker, the Americans with Disabilities Act was enacted 17 years ago, and nearly a decade has passed since the Department of Transportation issued implementing regulations. This legislation, to ensure that the accessibility regulations promulgated by DOT are adhered to by all over-the-road bus operators, is both necessary and overdue.