

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. MC-F-21035**

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

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**REPLY OF APPLICANTS  
TO COMMENTS OF NEW YORK STATE ATTORNEY GENERAL**

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LLC; Zev Marmurstein; and Twin  
America, LLC

November 17, 2009

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Applicants in this control proceeding hereby jointly submit this Reply to the November 2, 2009 comments filed by the State of New York through its Attorney General (“NYSAG Comments”) pursuant to the Board’s September 18, 2009 decision in this proceeding, and the Board’s rules at 49 C.F.R. Part 1182, and in support of their August 19, 2009 Application to control Twin America, LLC (“Twin America”). The facts set forth in this Reply have been verified consistent with the Board’s rules in supporting verified statements from Zev Marmurstein, President and CEO of Twin America, LLC and a principal in the CitySights group of companies; Ross Kinnear, Vice President, Chief Financial Officer, and Treasurer of Coach USA, Inc. and a member of the Board of Twin America, LLC and Robert D. Willig, Ph.D., Professor of Economics and Public Affairs, Princeton University.

Applicants Stagecoach Group plc and Coach USA, Inc. (both non-carriers that already control numerous other motor passenger carriers), Coach USA subsidiary International Bus Services, Inc. (“IBS”) (a federally regulated motor passenger carrier and

one of the two members of Twin America, LLC), and several other Stagecoach and Coach USA affiliates seek approval of their control of Twin America, a newly-formed motor carrier joint venture, together with co-applicants Mr. Zev Marmurstein, an individual who already controls another motor carrier, and CitySights Twin, LLC, the other member of the Twin America, LLC and an entity solely owned by Mr. Marmurstein. The transaction that resulted in the formation and control of Twin America by the Applicants (hereafter, the “Transaction”) is plainly subject to the Board’s jurisdiction under any one of several provisions of 49 U.S.C. § 14303 because it involves: (1) the consolidation or merger of the properties and franchises of at least two carriers (IBS and CitySights, LLC) into one operation (Twin America) for the ownership, management and operation of the previously separately owned properties; (2) acquisition of control of a carrier (Twin America) by any number of carriers; (3) the acquisition of control of at least two carriers by a person that is not a carrier (Stagecoach, Coach USA and Mr. Marmurstein); and/or (4) the acquisition of control of a carrier by a person that is not a carrier but that controls any number of carriers. *See* 49 U.S.C. § 14303(a)(1), (a)(3), (a)(4) & (a)(5).

The NYSAG Comments do not offer a colorable argument as to why this Board should not approve the control of Twin America by the Applicants. NYSAG’s intimation that the Board lacks jurisdiction over the parties to the Transaction is unsupported and incorrect. NYSAG misapprehends the fact that Twin America has been formed as, and is operating as, an interstate motor carrier both by virtue of (a) its motor carrier tourism transportation services (which are conducted in part jointly with other carriers for the benefit of interstate passengers); and (b) its intention to hold out and operate interstate

charter services with the charter authority that it has now obtained from the Federal Motor Carrier Safety Administration (“FMCSA”). Likewise, NYSAG does not appear to understand that CitySights, LLC was operating pre-Transaction as an interstate carrier, just as IBS was doing, or that Mr. Marmurstein’s control of Twin America places him in control of more than one motor carrier and thus requires that he seek control authorization under 49 U.S.C. § 14303 just like Stagecoach or Coach USA, the applicants NYSAG does not address in its suggestion that the Board has no jurisdiction over this transportation Transaction.

NYSAG’s preliminary assertion that the Transaction should not be approved under the standards of 49 U.S.C. § 14303(b) likewise lacks foundation. NYSAG argues that efficiencies attained through consolidation are contrary to the public interest because they might raise barriers to entry. That counterintuitive proposition should be rejected. The fact is that the Transaction at issue will allow Twin America to provide the same if not expanded motor carrier tourism transportation service to the public more efficiently at substantial cost savings while creating public benefits in the form of, for example, less congestion and lower fuel consumption. The NYSAG Comments do not dispute this. Nor does the NYSAG address the fact that CitySights was able to enter the transportation tourism business in 2005 with eight buses and grow its operations to a 70-bus fleet over four years in the face of existing motor tour transportation operators. The CitySights startup from scratch just four years ago confirms the lack of entry barriers to providing tour transportation services.

Further, the Transaction, which created a single new firm and not a horizontal conspiracy, is not a threat to competition. Twin America operates in a broad market,

which the NYSAG has not defined, and does not pose the threat to competition that the NYSAG hypothesizes. To this end, Applicants retained Professor Robert D. Willig, Ph.D., Professor of Economics and Public Affairs at Princeton University for thirty years and a former Deputy Assistant Attorney General for the United States Department of Justice Antitrust Division, to independently assess the competitive and public interest implications of the Twin America joint venture and respond to the NYSAG Comments. Professor Willig concluded the joint venture enhances efficiency and the public interest and poses no countervailing threat to competition. His thorough analysis is set forth in the accompanying Verified Statement of Professor Robert Willig and summarized further in Part III.C., *infra*.

**I. Background of Transaction<sup>1</sup>**

**A. Description of the Entities that Formed Twin America**

This Transaction concerns the formation of a new motor carrier known as Twin America, LLC. The formation took place on March 17, 2009 when the Twin America LLC agreement was executed by IBS (MC-155397) and CitySights Twin, LLC, the two members of the joint venture.

The new entity operates using two trade names under which its two members, or entities affiliated with its members, operated prior to the Transaction, Gray Line of New York (a trade name previously used by IBS) and CitySights (a trade name previously used by CitySights, LLC). Both IBS/Gray Line and CitySights provided motor carrier services

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<sup>1</sup> In its September 18, 2009 decision in this proceeding, the Board states that the Applicants “do not provide specific information detailing the authority under which” the interstate Twin America operations are conducted. In this Reply, Applicants will describe that authority.

in New York City immediately prior to the Transaction. Gray Line/IBS operated interstate and local charter services, including charters between New York and other states, and both it and CitySights operated motor carrier tourism transportation services. Post-Transaction, the same motor carrier services continue to be held out to the public in both trade names, but under the common ownership of Twin America, which essentially merged the assets and operations of the Gray Line and CitySights businesses. A further description of each member entity and the Transaction follows.

**1. International Bus Services, Inc.**

IBS is a federally-regulated carrier that is one of the 65 motor passenger carriers constituting the Coach USA family of interstate motor passenger carriers. Control of each of these carriers was attained through transactions that were subject to STB jurisdiction under 49 U.S.C. § 14303 and that were approved or exempted by the STB under applicable statutes and regulations.

Coach USA assumed control of IBS in a 1998 transaction involving a series of commonly-owned carriers approved by the Board under section 14303. *See Coach USA, Inc. — Control — Chenango Valley Bus Lines, Inc., et al.*, No. MC-F-20927, 1998 WL 547261 (STB served Aug. 28, 1998). Among the carriers that were party to that Board-approved acquisition transaction were Gray Line New York Tours, Inc. (“GLNY”) (MC-180229) and Gray Line Air Shuttle, Inc. (“GL Air”) (MC-218255). Both of these carriers are federally-regulated carriers that provided New York City tour services (including with double-decker buses of the type still in use) at the time of the 1998 transaction and both are predecessors to the IBS operations previously conducted under the Gray Line New

York trade name.<sup>2</sup> *Kinnear V.S.* at ¶ 5. In the July 31, 1998 Coach USA application for control of these carriers, Coach USA described GLNY as follows, “GLNY focuses its operations on providing sightseeing and charter services in the New York area” and described IBS as follows, “IBS focuses its operations on providing charter and sightseeing services in coordination with GLNY.” In other words, the operations of GLNY and IBS in 1998, at the time of their acquisition by Coach USA, were similar to those of Twin America today.

In 1999, the Board approved the acquisition by Stagecoach Group plc of Coach USA and, thereby, of each of the Coach USA carriers. *See Stagecoach Holdings plc — Control — Coach USA, Inc., et al.*, No. MC-F-20948, 1999 WL 543356 (STB served July 22, 1999). Stagecoach thus assumed control of IBS and the entities IBS acquired control of a year earlier (i.e., GLNY and GL Air). *See Stagecoach Holdings plc — Control — Coach USA, Inc.*, (specifically identifying IBS among the acquired carriers listed in footnote 4).

IBS is registered with FMCSA to provide interstate charter and special operations and has been assigned DOT number 203061 and MC number 155937 by that agency. IBS has long engaged in both interstate charter and tourism transportation services subject to federal jurisdiction under 49 U.S.C. § 13501. *Kinnear V.S.* at ¶¶ 1, 5.

As part of the Twin America Transaction, IBS contributed to Twin America a total of 87 vehicles. Fifty-nine of these vehicles are double-decker sightseeing buses. *Id.*

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<sup>2</sup> The Board’s 1998 decision notes that GL Air operated thirty-three double-decker buses and one trolley among the other vehicles in its fleet. *See MC-F-20927, Coach USA, Inc. — Control — Chenango Valley Bus Lines, Inc.*, slip op. at 3, n.5.

at ¶ 4. As described further below and in the Kinnear Verified Statement, those motor tour operations were conducted by IBS (using the Gray Line trade name) in interstate commerce pursuant to a variety of arrangements with other carriers and the pre-arrangement of transportation on IBS by interstate passengers. *Id.* at ¶¶ 15-20. Twelve other vehicles contributed by IBS to Twin America are traditional motorcoaches that were used by IBS in providing interstate charter services between New York and other states, including points in New Jersey (e.g., Atlantic City) and Pennsylvania. *Id.* at ¶¶ 4, 12.

## **2. CitySights Twin, LLC and Related Entities**

The other member of Twin America is CitySights Twin, LLC. This non-carrier entity was formed for the purpose of effectuating the Transaction. Marmurstein V.S. at ¶ 12. It served as the conduit for contributing to Twin America sixty-two double-decker buses and an additional eight such vehicles that were built after the effective date of the Transaction. *Id.* Prior to the Transaction, CitySights had used these buses in its motor tour sightseeing operations since its formation in 2005. *Id.* at ¶¶ 5, 10.

As discussed further below, CitySights' motor carrier tourism transportation operations were conducted in interstate commerce by virtue of a variety of arrangements with other carriers and pre-arranged sales to interstate travelers. For example, CitySights offered a motorcoach service to Woodbury Common Premium Outlets in Central Valley, New York (reached from New York City via New Jersey) twice a day. *Id.* at ¶ 6. While CitySights did not hold operating authority issued by FMCSA to conduct these interstate services, the services were in fact those of a regulated motor carrier as a result of through

ticketing and like arrangements.<sup>3</sup> Thus, as discussed in detail below, the services offered by CitySights were those of a motor carrier subject to federal jurisdiction under 49 U.S.C. § 13501.

CitySights, LLC and CitySights Twin, LLC are both controlled by Mr. Zev Marmurstein, an individual who now serves as President and CEO of Twin America and who manages the operations of Twin America on a day-to-day basis. Mr. Marmurstein also continues to control another federally regulated interstate motor carrier of passengers that engages in charter operations, R.W. Express, LLC (MC-474958). Marmurstein V.S. at ¶ 8. Given his control of Twin America, Mr. Marmurstein has separately filed an application with the STB for control of R.W. Express and that application has been tentatively approved. *See Mr. Zev Marmurstein — Continuance in Control — R.W. Express, LLC*, No. MC-F-21036, 2009 WL 3329241 (STB served Oct. 16, 2009).

### **3. The Transaction and Governance of Twin America**

IBS and CitySights Twin, LLC entered into the Transaction on March 17, 2009, and it became effective on March 31, 2009. Kinnear V.S. at ¶¶ 1, 6; Marmurstein V.S. at ¶ 12. As discussed in the Application and explained further below, Twin America was formed— in effect a merger of the IBS and CitySights properties and franchises —to achieve various economies in a challenging economic environment. By combining the IBS and CitySights motor carrier operations, Twin America has been able to save on various costs, such as maintenance, repair, fuel, and spare parts. It also has expanded motor carrier tourism transportation services with fewer buses on the street, resulting in

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<sup>3</sup> CitySights, LLC did not seek or obtain federal operating registration for its operations because it was not aware that such authority might be required by virtue of the various arrangements maintained by that entity with other interstate carriers.

additional savings and efficiencies. Further anticipated efficiencies include lower insurance and advertising costs and the elimination of certain duplicative administrative functions. These benefits from the Transaction are discussed further below in the Verified Statements of Messrs. Kinnear, Marmurstein and Willig.

Each of the members of Twin America not only contributed vehicles to Twin America, but also management personnel. As noted, Mr. Marmurstein from the CitySights side of the Transaction now serves as President and CEO, and is in charge of day-to-day management decisions for Twin America. Marmurstein V.S. He works closely with other officials who were drawn from both Coach and CitySights. *Id.* at ¶ 13. Twin America is managed by a six person Board of Managers, composed of three persons appointed by IBS and three persons appointed by CitySights. *Id.* Any material decision requires the votes of at least four Managers, or a majority if the number of Managers is other than six. *Id.* Such material decisions include decisions to expand or change the nature of the service provided by Twin America, enter into contracts above certain dollar amounts, enter strategic alliances with other entities, or merge or dissolve the company. *Id.*

Because each of the two members of the joint venture can block a material decision of Twin America by refusing to offer at least one vote, each has attained control of Twin America for STB regulatory purposes pursuant to 49 U.S.C. § 13102(5). *See Greyhound Corporation — Control*, 101 M.C.C. 655, 666 (1967) (control found where minority shareholder could block major decisions). As a result, both the Stagecoach set of Applicants and the CitySights set of Applicants have sufficient control of Twin

America to warrant the filing of a section 14303 application based on such control by the members of the Transaction and their related entities.<sup>4</sup>

**B. Twin America Applications for Federal Operating Authority/STB Approval**

In late June 2009, IBS officials, on behalf of Twin America, decided to pursue an application with the Federal Motor Carrier Safety Administration (“FMCSA”) to obtain operating rights for Twin America. Kinnear V.S. at ¶ 2. The decision to file the application was made after transportation counsel for Coach USA determined, based on an assessment of Twin America’s current arrangements with other carriers for the transportation of persons traveling in interstate commerce, and its planned interstate charter services, that federal interstate operating authorization was required. Following further review of the company’s operations and plans, and consultation with CitySights officials involved in the management of Twin America, a final decision was made to proceed with the application. *Id.* The FMCSA operating rights application, seeking authority to engage in interstate charter and special operations (a type of service which includes sightseeing), was filed on August 10, 2009. *Id.* Twin America simultaneously applied for assignment of a DOT number. *Id.* at ¶ 13. The FMCSA granted the operating rights application, and an operating certificate authorizing charter and special operations was officially issued today by FMCSA. *Id.*

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<sup>4</sup> CitySights, LLC was not named as a co-Applicant to the August 19 Application because it was not a party to the Transaction, having transferred its assets to CitySights Twin, LLC just prior to the Transaction. Nonetheless, to the extent that the Board determines that CitySights, LLC has attained control of Twin America through the Transaction and should have been named as an Applicant, Applicants do not object to a Board decision extending control authority to CitySights, LLC.

The IBS officials involved in Twin America management also decided in late June to authorize their transportation counsel, who had not been involved in the Twin America Transaction, to determine whether it was necessary to file an application with the STB for control of Twin America by the Coach USA applicants. *Id.* at ¶ 2. As part of the same assessment described above, a determination was made that an STB application for control was appropriate and warranted given the control that IBS exercised over Twin America. Likewise, given the degree of Mr. Marmurstein’s control over Twin America, CitySights officials involved in the management of Twin America authorized preparation of an STB application for control. *Id.* Following this approval by both members of Twin America, an application was filed with the STB on behalf of Twin America and the co-applicants on August 19, 2009. *Id.*

While the management personnel involved in the Transaction were not immediately aware that STB jurisdiction would attach to their creation of the new joint venture, they took appropriate steps to remedy the absence of a filing after consulting with transportation counsel. 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.*, No. MC-F-20929, 1998 WL 460308, at \*1 (STB served Aug. 7, 1998) (STB approves transactions under section 14303 that “have previously occurred”); *First Group plc — Acquisition — Cognisa Transportation, Inc.*, No. MC-F-21021, 2007 WL 2022128, at \*1 (STB served July 13, 2007) (noting that the transaction had previously been consummated “without the advice of commerce counsel or the approval of the Board”).

### C. The New York Attorney General Investigation

On July 31, 2009, well after Applicants had engaged transportation counsel to compile and complete requisite filings with this Board, IBS received a subpoena *duces tecum* from the New York Attorney General concerning the Twin America Transaction. Kinnear V.S. at ¶ 22. The subpoena was addressed to “Gray Line New York Tours, Inc. and Gray Line Twin, LLC” at IBS’s New York address. The subpoena requested a variety of documents and information related to the Transaction that led to the formation of Twin America, communications between the companies about the Transaction and other matters relating to sightseeing business operations. *Id.* CitySights, LLC and Twin America received similar subpoenas on or about August 3, 2009. Marmurstein V.S. at ¶ 19.

The NYSAG is apparently investigating the Transaction under New York’s antitrust laws, although it has not alleged or identified a violation of those laws. When the investigation became known to Twin America, each member of Twin America and Twin America itself retained antitrust counsel to represent their interests. These counsel immediately advised the NYSAG of the STB’s exclusive jurisdiction over the Transaction under section 14303 – specifically, on August 12, 2009, one week before a meeting between the NYSAG and antitrust counsel for Twin America and its members. The NYSAG was advised at that time of the STB’s exclusive jurisdiction over the Transaction pursuant to 49 U.S.C. § 14303(f) and of the planned STB filing. At an August 19, 2009, meeting with counsel for the parties, the NYSAG was provided a copy of the application filed that day with the STB.

## **II. The STB Has Exclusive Jurisdiction Over The Transaction**

The Board's jurisdiction over the Transaction pursuant to section 14303 is clear – the Transaction has resulted in the formation of a new carrier through the merger of carrier properties and the control of that new carrier by other carriers and by non-carriers that control other carriers. Nonetheless, because NYSAG has placed jurisdiction at issue, and given the threshold importance of that issue, Applicants have provided a more extended discussion of the relevant principles than may be warranted given the clear facts of this case. Applicants will subsequently address the specific points raised by the Attorney General.

### **A. Overview of Federal Motor Passenger Carrier Jurisdiction**

#### **1. Motor Carrier Tourism Transportation Services are Included in the Broad Scope of Regulated Motor Carriage**

The broad definition of “motor carrier” in the Interstate Commerce Act includes carriers that offer both charter and sightseeing services. *See* 49 U.S.C. § 13102(14), which defines “motor carrier” as “a person providing motor vehicle transportation for compensation.” The term “motor vehicle” is defined in the Act to include any type of vehicle “propelled or drawn by mechanical power” used on a “highway,” which is defined to include a “road, highway street and way in a State.” 49 U.S.C. §§ 13102(9), (16). The term “transportation” is also broadly defined to include “a motor vehicle ... related to the movement of passengers” and “services related to that movement.” 49 U.S.C. § 13102(23).

These terms are not limited to long-distance transportation, and embrace motor carrier tourism transportation operations. Accordingly, among the types of interstate

operating rights for which motor carriers may apply under the federal motor carrier operating authority registration statute (49 U.S.C. § 13902) are rights to engage in “charter and special operations.” This is the type of authority held by IBS, and the authority that Twin America has now obtained. The term “special operations” in such certificates includes bus sightseeing services. *See Asbury Park – N.Y. Transit Corp. v. Bingler Vacation Tours*, 62 M.C.C. 731, 739-740 (1954), *aff’d per curium*, *Bingler Vacation Tours, Inc. v. United States*, 350 U.S. 921 (1955) (describing the variety of sightseeing and tour operations conducted under federal operating rights for “special operations”); *Interstate Transportation of Passengers by Motor Common Carriers*, 129 M.C.C. 220, 224 (ICC decided May 20, 1977) (“sightseeing operations are included within the term special operations”).

On numerous occasions, the Board has granted, without raising any question as to its jurisdiction to do so, section 14303 control approval to transactions involving the acquisition of control of federally-authorized carriers that engage in motor tour operations, as it did in connection with the acquisition of IBS and Gray Line New York Tours, Inc. by Coach USA in 1998, described above. *See, e.g., CUSA PCSTC, LLC d/b/a Pacific Coast Sightseeing Tours & Charters — Acquisition of Assets and Business Operations — Laidlaw Transit Services, Inc. d/b/a Roesch Lines*, No. MC-F-21009, 2005 WL 77136 (STB served Jan. 13, 2005); *Laidlaw, Inc. — Acquisition of Control — C. Seeley’s Bus Lines Ltd.*, No. MC-F-20993, 2002 WL 31080847 (STB served Sept. 18, 2002); *Laidlaw Inc. — Acquisition of Control — Rockton Bus Co.*, No. MC-F-20990, 2002 WL 1481371 (STB served July 11, 2002); *Laidlaw Inc. — Continuance in Control*

— *Victoria Tours Limited*, No. MC-F-20981, 2001 WL 489992 (STB served May 9, 2001).<sup>5</sup>

Moreover, courts have recognized that motor carrier tour operations in New York City affect, and take place in, interstate commerce and that federal laws apply to such operations. In *NLRB v. Sightseeing Guides & Lecturer's Union*, 310 F.2d 40, 42 (2d Cir. 1962), the Second Circuit held that federal labor laws apply to carriers engaged in such sightseeing:

The Companies here involved are engaged in operating bus sightseeing tours within the City of New York. A significant portion of their business is secured from out-of-town travel agents and railroad agents. One of the companies, Cross Roads Sightseeing Corp., paid more than \$ 100,000, during the year prior to the hearing below, to two New Jersey firms for the rental of buses. The vehicles are garaged and serviced in New Jersey and dispatched to New York City when ordered by Cross Roads. These operations, when taken together, clearly affect interstate commerce within the broad interpretation of that statutory requirement.

In denying a motion to dismiss a claim under the federal antitrust laws regarding New York City sightseeing operations, the Court in *A.B.T. Sightseeing Tours v. Gray Line New York Tours*, 242 F. Supp. 365, 369 (S.D.N.Y. 1965), held:

The bus sightseeing industry caters to tourists, and it can doubtless be shown that while some tourists come from other parts of the State of New York, the majority come from other states or from foreign countries. Unlike the taxi cab companies which cater primarily to the local patrons and only incidentally to tourists from outside the state, the bus sightseeing industry caters primarily to

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<sup>5</sup> Further, in an analogous railroad context, the Board relied on the definition of the term “transportation” in the rail section of the Act — which is similarly as broad as the motor carrier portion of the statute described above — to determine that a rail carrier engaged in sightseeing services is providing transportation subject to STB regulation. See *American Orient Express Ry — Petition for Declaratory Order*, Fin. Docket No. 34502, 2005 WL 3552968 (STB served Dec. 29, 2005) (holding that “the statute does not require that transportation encompass movement from an origin to a destination as its sole or main purpose, only that movement be involved.”).

tourists from outside the state and only incidentally to local patrons. Indeed, through its contacts with travel agencies, arrangements with out of state agents, and its contacts with hotels to which tourists come, it seems likely that the evidence at the trial will establish that the defendant makes ‘such a substantial utilization of the channels of interstate trade and commerce that the business itself assumes an interstate character.’

(citation omitted).

That Twin America’s bus tour business has assumed the same interstate character (including the same Gray Line brand) cannot be questioned.

**2. Section 14303 Applies to Transactions Involving Carriers that are Engaged in Interstate Commerce**

Section 14303 applies by its terms to certain types of transactions “involving motor carriers of passengers subject to jurisdiction under subchapter I of Chapter 135 [of Title 49].” 49 U.S.C. § 14303(a). Twin America is such a carrier, as are other carrier parties to the transaction.

The relevant jurisdictional provision in subchapter I of Chapter 135 is 49 U.S.C. § 13501, which provides as follows:

The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier—

- (1) between a place in—
  - (A) a State and a place in another State;
  - (B) a State and another place in the same State through another State;
  - (C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;
  - (D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

- (E) the United States and a place in a foreign country to the extent the transportation is in the United States; and
- (2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

Consistent with a long line of Interstate Commerce Commission and judicial precedents, the STB has held that even a carrier that operates entirely within a single state, but has ticketing or other arrangements with carriers that cross state lines, is subject to federal jurisdiction under section 13501. *See, e.g., Colorado Mountain Express, Inc., and Airport Shuttle Colorado, Inc., d/b/a Aspen Limousine Service, Inc— Consolidation and Merger— Colorado Mountain Express*, No. MC-F-20902, 1997 WL 82536 (STB served Feb. 28, 1997); *See Kimball—Petition for Declaratory Order*, 131 M.C.C. 908, 918 (1980); *Moore Serv., Inc., Extension—Migrant Workers*, 89 M.C.C. 180, 181 (1962); *Chao v. First Class Coach Co., Inc.*, 214 F. Supp. 2d 1263, 1266, 1273 (M.D. Fla. 2001); *United Transp. Union v. Orange Newark Elizabeth*, 111 F. Supp. 2d 514, 519 (D.N.J. 2000).

These cases stand for the general proposition that where there is a “practical continuity of movement” by a passenger across state lines, the single-state portion of that movement is a continuation of the interstate journey and thus interstate in nature. *See Chao*, 214 F. Supp. 2d at 1271 (“Trips which begin and end in Florida as part of interstate or international tours are also included under the heading of interstate travel if they are part of continuous interstate transportation of passengers.”); *United Transp. Union*, 111 F. Supp. 2d at 519 (“The carriers, regardless of whether they operate exclusively intrastate, are an integral part of the ‘practical continuity of movement’ of the passengers across state lines. As such, the carriers who participate in through-ticketing arrangements

are involved in interstate transportation.”); *Kimball — Petition for Declaratory Order*, 131 MCC at 918 (“[M]otor transportation wholly within a single State of passengers... between an airport and another point in the same State, either prior or subsequent to an interstate air movement from or to the airport,... is an interstate movement where there is an arrangement (referred to as a ‘common arrangement’ or ‘through ticketing’) between the motor carrier and the air carrier for continuous passage or interchange.”). The “practical continuity” may be evidenced by a through ticket or other common arrangement between carriers, by the pre-arrangement of a package of services for interstate travelers, or by sales of the carrier’s services outside of the state.

A notable STB section 14303 case involving single-state operations and arising in circumstances strikingly similar to the present proceeding is *Colorado Mountain Express, Inc., and Airport Shuttle Colorado, Inc. d/b/a Aspen Limousine Service, Inc. — Consolidation and Merger — Colorado Mountain Express*, No. MC-F-20902, 1997 WL 82536 (STB served Feb. 28, 1997) (“*Colorado Mountain*”). In that proceeding, two motor passenger carriers filed an application with the STB under section 14303 to merge and form a new motor carrier entity, Colorado Mountain Express. The Colorado Public Utilities Commission (“CPUC”) filed comments with the STB seeking clarification of how STB approval would impact its jurisdiction over the intrastate elements of the transaction. The STB began its analysis by noting that if the participants to a finance transaction are motor carriers of passengers subject to its jurisdiction under 49 U.S.C. § 13501, then under 49 U.S.C. § 14303(f), “they are subject to our exclusive and plenary jurisdiction in all matters relating to their consolidation, merger, and acquisition of control, and this extends to intrastate operating rights. 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 laws, as necessary.” *Id.* at \*1.

The STB proceeded to observe that the applicants’ regular route operations “appear to be entirely within the state of Colorado.” In fact, the two carriers described their services at page two of their November 1, 1996 STB application for section 14303 approval as follows:

The Joint Applicants are motor carriers of passenger, and generally transport passengers and their baggage in interstate commerce, and between Denver, Colorado on the one hand, and points in the Colorado mountain country (particularly ski resorts) on the other hand, and between other points in Colorado, all as permitted by their certificates issued by the former Interstate Commerce Commission (“ICC”) and by the Colorado Public Utilities Commission (“CPUC”).

Although the applicants operated solely within one state, the Board readily concluded that they were motor carriers subject to its jurisdiction under 49 U.S.C. §§ 13501 and 14303 because “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.” *Colorado Mountain*, at \*1.

There is considerable precedent for the conclusion that through ticketing or other forms of common arrangements between interstate carriers and single-state carriers suffice to establish that a single-state carrier is engaged in interstate commerce. For example, the ICC held that a motor carrier that had “a common arrangement with Greyhound for the through movement of interstate passengers” operated in interstate

commerce where the carrier, operating solely within California, took passengers to and from the Greyhound terminal and employed ticket agents within the Greyhound terminal. See *Minnesota Department of Transportation — Petition for Declaratory Order — Operations of Rochester Limousine Service, Inc.*, No. MC-C-30225, 1995 WL 123850, at \*4, n.4 (STB served March 24, 1995) (“If a carrier in a single-state movement is engaged in through ticketing arrangements or other common arrangements with a connecting out-of-state carrier, passengers moving in the single-state operation under those arrangements to or from an out-of-state point are in interstate commerce.”); *Pennsylvania Pub. Util. Comm'n v. United States*, 812 F.2d 8, 11-12 (D.C. Cir. 1987) (finding that a motor carrier had a common arrangement with an air carrier when it “operated pursuant to an explicit contract” with the airline, and that this was sufficient for the ICC to find the motor carrier's activities to be in interstate commerce, despite the absence of a through-ticketing agreement); *Walters v. Am. Coach Lines of Miami, Inc.*, 575 F.3d 1221, 1234-35 (11th Cir. 2009) (interstate motor carrier operations found to constitute interstate commerce based on informal common arrangement with a cruise line for the cruise line to sell pre-arranged tickets for airfare, ground transportation, and the cruise itself).

Further, even without any agreement between the involved carriers, single-state transportation can qualify as interstate commerce if it is prearranged through other parties in connection with an interstate journey. For example, in *Southerland Tours v. St. Croix Taxicab Ass'n*, 315 F.2d 364, 369 (3d Cir. 1963), the Court considered whether taxi service from the Virgin Islands airport to other locations in the Virgin Islands was conducted in interstate commerce when passengers arranged through a travel agency for a

package that included ground travel from the airport to their hotel.<sup>6</sup> The court reasoned that it was “not a situation where the transportation from the airport to the hotel was local haulage in the sense that the traveler’s interstate journey had ended at the airport at which point he could independently contract for his transportation service to his hotel by a conveyance of his own choice.” *Id.* at 369. Rather, “the transportation of these individuals had been arranged for them and paid for in advance as an integral part of their all-expense interstate journey.” *Id.*

Similarly, the U.S. District Court in Colorado, in determining whether intrastate operations constituted interstate service under 49 U.S.C. § 13902(b)(3),<sup>7</sup> held that prearranged transportation from Colorado airports to ski resorts in Colorado was sufficiently linked to the overall interstate journey of passengers to qualify as interstate commerce. *East West Resort Transp., LLC v. Binz*, 494 F. Supp. 2d 1197 (D. Colo. 2007) (“*East West Resort*”). In support of its holding, the court recognized the revolutionary impact of the Internet on the sale of interstate transportation and recognized that it is now

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<sup>6</sup> The issue in *Southerland* was whether a local law constituted an unreasonable burden on interstate commerce. While that case, and several others discussed in this Reply, did not arise in a context involving STB jurisdiction over the carriers, one of the leading ICC decisions dealing with the question of when intrastate transportation constitutes interstate commerce relied on cases from other areas of the law that dealt with the question of interstate commerce. *See Motor Transportation of Passengers Incidental to Transportation by Aircraft*, 95 M.C.C. 526 (1964) (relying on *United States v. Yellow Cab*, 332 U.S. 218 (1947), a Sherman Antitrust case cited by many of the cases discussed here for the point that single state transportation of passengers may be conducted in interstate commerce when certain conditions are met).

<sup>7</sup> Under section 13092(b)(3), a carrier can operate purely intrastate routes based on federal authorization if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers. *East West Resort Transp., LLC v. Binz*, 494 F. Supp. 2d 1197 (D. Colo. 2007).

much easier for passengers to forge their own interstate transportation arrangements involving a series of carriers, one or more of which might operate in a single-state. The court thus correctly noted that “the expansion of internet-based travel arrangements prompts the need to rethink needlessly formalistic rules defining interstate travel.” *Id.* at 1204.

On that basis, the court in *East West Resort* rejected the argument that there must be a through ticket or other arrangement between carriers, noting that individuals, via an Internet service, often arranged “an airline ticket, transportation to a lodge and accommodations all as part of a single interstate trip, even where the various pieces [were] not part of a single reservation.” *Id.* Because the individual or a third party had prearranged the whole trip from the individual’s home to the resort, “this [was] not a case where passengers arrive at the airport and... fend for themselves to get to their next stop in any manner or at any time that suits them.” *Id.* Accordingly, “passengers traveling from outside of Colorado to a ski resort [did] not end their journey at the airport; they end[ed] their interstate journey at the resort.” *Id.* The transportation — solely within Colorado — was therefore deemed to be conducted in interstate commerce, just as in the STB’s decision in *Colorado Mountain*. See also *Charter Limousine, Inc. v. Dade County Bd. of County Comm’rs*, 678 F.2d 586, 587-89 (5th Cir. 1982) (explicitly rejecting the argument that a through ticket or other arrangement is necessary and holding that ground transportation to and from the Miami airport constituted interstate commerce because it was prearranged by a third party).

Other cases underscore that the interstate nature of a carrier’s passengers is sufficient to demonstrate that the carrier is engaged in interstate commerce, even in the

absence of any kind of common arrangement or prearrangement with another carrier or tour operator. In *United States v. Capital Transit Co.*, 338 U.S. 286 (1949), the Supreme Court found a motor carrier that operated buses and streetcars solely within the District of Columbia to be an integral part of an interstate movement and therefore subject to ICC jurisdiction because a large portion of the passengers occupying those vehicles were government employees traveling between federal offices in the District and their homes in Virginia. Similarly, in determining whether local regulations violated the commerce clause, the court in *Park 'N Fly of Texas, Inc. v. City of Houston*, 327 F. Supp. 910 (S.D. Tex. 1971) held that courtesy buses for commercial parking lots near an airport operated in interstate commerce because their customers were almost exclusively involved in interstate travel.

The advance purchase of transportation by passengers while out-of-state was sufficient to qualify an Orlando-area tourist bus service as an interstate carrier subject to federal jurisdiction under 49 U.S.C. § 13501, even though that carrier did not have any common arrangements with other carriers that cross state lines. See *Chao v. First Class Coach Co., Inc.*, 214 F. Supp. 2d 1263, 1266 (M.D. Fla. 2001) (“*Chao*.”) The *Chao* court held that “a scheduled trolley-bus service provided in a retail area in proximity to local [Orlando area] theme parks and other attractions” was engaged in federally-regulated interstate commerce because there is “no meaningful distinction between the through-ticket arrangement ... and out of state sale and purchase of the trolley tickets.” *Id.* at 1273. Like the decision in *East West Resort, supra*, *Chao* stands for the proposition that a carrier transporting persons traveling on vacation or touring within a single state can be

engaged in interstate commerce subject to federal jurisdiction even without a through ticket or other form of common arrangement.

Twin America's motor carrier tourism transportation services fall within this framework and constitute transportation in interstate commerce, both because Twin America maintains through ticket and other common arrangements with other interstate carriers and, in addition, because its passengers to a significant degree purchase their tickets in advance outside of New York and then travel to New York to utilize the Twin America bus service. In addition, Twin America will begin interstate transportation using its own motorcoaches in now-authorized charter service across state lines.

**B. The STB Has Jurisdiction Over the Parties to The Transaction**

The STB's jurisdiction over Stagecoach, Coach USA and IBS has not been called into question in the NYSAG Comments. The basis for STB jurisdiction over the other co-applicants to the Transaction was described in the Application previously filed with the STB and is described further below in response to the NYSAG's Comments.

Twin America, like IBS, is an FMCSA-registered interstate carrier, having been issued its operating certificate on November 17, 2009. Kinnear V.S. at ¶ 13. Twin America holds DOT number 1924173 and has been assigned MC number 688284 by FMCSA. *Id.* As noted above, Twin America's operating authority authorizes it to engage in charter and special operations. *Id.*

Specifically, Twin America will use its motorcoach fleet to provide interstate charter services between the New York area and points in nearby states, including Atlantic City and Pennsylvania. *Id.* at ¶ 14. Twin America will thus be engaged in interstate transportation of passengers directly with its own motor vehicles under its own

operating authority, crossing state lines and thereby triggering federal jurisdiction under 49 U.S.C. §13501.

Further, Twin America's motor carrier tourism transportation operations, like those of IBS and CitySights, LLC conducted prior to the Transaction, are conducted in interstate commerce under the precedents described in the preceding section of this Reply, and thus are also subject to STB jurisdiction. Twin America maintains a variety of through ticket and other common arrangements, previously made by IBS and CitySights, with other motor passenger carriers that cross state lines to bring passengers to New York City, where such passengers continue their transportation within New York City via Twin America. Kinnear V.S. at ¶¶ 15-18; Marmurstein V.S. at ¶¶ 6, 8. The situation is in all meaningful respects the same as that described in *Colorado Mountain* – both situations involve persons who travel from out-of-state points to a single state where they then continue their pre-arranged vacation travel.

For example, Twin America has an arrangement with Peter Pan Bus Lines, previously negotiated by CitySights, under which a passenger can purchase a single through ticket for transportation between certain points in New England and New York City where, upon arrival, the passenger boards a Twin America bus for travel within the City. Marmurstein V.S. at ¶ 8 and Exhibit 3. This service, marketed under the name "Show Bus Tours," provides a through, single price ticket for persons using the combination of Peter Pan and Twin America services. This alone places Twin America within interstate commerce. See *United Transp. Union v. Orange Newark Elizabeth*, 111 F. Supp. 2d 514, 519 (D.N.J. 2000) ("[W]hen a passenger is able to use a single ticket for interstate and intrastate travel, the passenger intends to travel interstate. The carriers,

regardless of whether they operate exclusively intrastate, are an integral part of the 'practical continuity of movement' of the passengers across state lines. As such, the carriers who participate in through-ticketing arrangements are involved in interstate transportation.”).

A similar through ticket arrangement exists with Butler Motor Transit, a Coach USA-controlled carrier. As explained by Mr. Kinnear, for a single price a passenger may purchase travel from Pennsylvania to New York City via Butler and travel within New York City on a Twin America bus, as well as stay overnight at a hotel that could be included in the same package. Kinnear V.S. at ¶ 16. Under like arrangements with Lenzner Coach Lines, which is also controlled by Coach USA, passengers traveling on Lenzner buses from Pennsylvania to New York City may also jointly purchase travel on Twin America. *Id.* Under arrangements with Trans-Bridge Lines, a passenger can purchase for a single price transportation to New York City from Pennsylvania by a Trans Bridge motorcoach and transportation on a Twin America bus within New York City. *Id.* at ¶ 15.

In addition, Gray Line entered into an arrangement prior to the Transaction with Metro North, a commuter railroad that serves points in New Jersey and Connecticut. A new arrangement with Twin America is being finalized that will be effective as of January 1, 2010. Under the prior and forthcoming arrangements, passengers can buy a combination ticket entitling them to transportation by rail to New York City and via a Twin America bus upon arrival in New York City. *Id.* at ¶ 17.

Twin America travel is also sold in conjunction with airline services to New York City. Delta Airlines provides tour packages to its passengers which include Twin

America tourism transportation for persons who travel by air to New York via Delta.<sup>8</sup> Twin America has similar through ticket arrangements with British Airways and Virgin Atlantic, contributed by CitySights. Marmurstein V.S. at ¶ 8.<sup>9</sup> It also maintains arrangements with New York Waterways, a ferry service that transports passengers between New York and New Jersey. Under these arrangements, passengers can purchase Twin America transportation services from New York Waterways, allowing them to transfer seamlessly between the ferry and Twin America's motor transportation tour services. *Id.*

These various arrangements fall squarely within the scope of agreements that the Board and Courts have found to constitute interstate transportation. *See, e.g., Walters v. Am. Coach Lines of Miami, Inc.*, 575 F.3d 1221, 1234-35 (11th Cir. 2009); *Pennsylvania Pub. Util. Comm'n v. United States*, 812 F.2d 8, 11-12 (D.C. Cir. 1987); *United Transp. Union v. Orange Newark Elizabeth*, 111 F. Supp. 2d 514, 519 (D.N.J. 2000). The Board need look no further than the ticketing arrangements with interstate carriers to conclusively establish the Board's jurisdiction over Twin America as a carrier that engages in interstate commerce.

In addition to these through ticket and other common arrangements with other bus, rail, air and water carriers, there is significant additional indicia that Twin America is

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<sup>8</sup> *See* [http://www.deltavacations.com/planning/destination.do?destinationCode=NYC&displayTab=HOTELS\\_AND\\_PRICING](http://www.deltavacations.com/planning/destination.do?destinationCode=NYC&displayTab=HOTELS_AND_PRICING).

<sup>9</sup> CitySights also entered an arrangement with R.W. Express, Inc., which transports passengers to and from New York area airports (and also provides interstate charter services), so that tour operators are able to sell a ticket that includes both CitySights services and airport transportation for interstate and foreign travelers. Marmurstein V.S. at ¶ 8. Twin America continues this arrangement today. *Id.*

engaged in interstate commerce. Twin America (through its member entities) maintains about 100 arrangements with non-U.S. tour operators who sell, on an advance purchase basis, travel on Twin America buses to persons traveling to New York from outside the United States. Kinnear V.S. at ¶ 18; Marmurstein V.S. at ¶ 6 and Exhibit 1. Passengers prearrange their travel on Twin America from outside of New York, just as passengers did on the Orlando-area bus that was deemed to be operating in interstate commerce in *Chao, supra*, or via the intra-Colorado ski vans found to be operating in interstate commerce in *East West Resort, supra*. Further, the number of passengers who purchase their Twin America tickets through third-party tour agencies located outside the United States is substantial — in excess of \$1.4 million in revenue earned from over 21,000 international passengers between April 2009 and September 2009. *See* Kinnear V.S. at ¶ 18.

In fact, a significant percentage of Twin America's passengers are foreign tourists who travel to New York having purchased travel on Twin America in advance, often as part of a larger travel package that includes airline and hotel services. A large number of Twin America passengers also purchase their travel via the Internet from points outside of New York. Such Internet sales totaled over \$6.5 million in 2008-2009 and were made by persons located in no fewer than 137 nations. Marmurstein V.S. at ¶ 7 and Exhibit 2; Kinnear V.S. at ¶ 19. These purchases — made from points outside of New York for prearranged travel on Twin America — are compelling, dispositive evidence of Twin America's interstate tourism transportation operations. *See East West Resort, supra*, at 1204 (noting that “the expansion of internet-based travel arrangements prompts the need to rethink needlessly formalistic rules defining interstate travel”); *see also Southerland*

*Tours v. St. Croix Taxicab Ass'n*, 315 F.2d 364, 369 (3d Cir. 1963) (intrastate operations were interstate in character because the transportation was prearranged and paid for in advance as a part of their interstate journey); *Executive Town & Country Servs., Inc. v. City of Atlanta*, 789 F.2d 1523, 1526 (11th Cir. 1986) (limousine service qualified as interstate commerce because the majority of its business consisted of pre-arranged trips to and from the airport of passengers “making or completing interstate journeys”).

In addition, Twin America maintains arrangements with a number of hotels in New Jersey where Twin America tour tickets include Twin America shuttle transportation for hotel guests to and from New York City. Kinnear V.S. at ¶ 20.

In sum, Twin America, like IBS and CitySights before it, provides interstate motor carrier tourism transportation service subject to STB jurisdiction. Further, as the owner of CitySights and another motor carrier (R.W. Express), and the President and CEO of Twin America, Mr. Marmurstein falls within the STB’s jurisdiction for purposes of making a control filing under section 14303 since he controls more than one motor carrier.<sup>10</sup>

**C. The New York Attorney General Has Failed to Show that the STB Lacks Jurisdiction Over the Transaction Under Section 14303**

At page six of its Comments, NYSAG states as follows:

We are not persuaded that CitySights, LLC, CitySights Twin and Twin America were interstate passenger carriers when we subpoenaed the parties. Although Coach USA and its parent

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<sup>10</sup> “Control” for STB regulatory purposes “includes actual control, legal control and the power to exercise control, through or by – (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means.” See 49 U.S.C. § 13102(5). Through his ownership of CitySights Twin, LLC and his position as President and a member of the Board of Managers of Twin America, Mr. Marmurstein’s control of Twin America is beyond question.

Stagecoach plc controlled interstate passenger carriers, the joint venture they entered into with CitySights Twin in March, 2009, did not involve interstate transportation because the parties' sightseeing double-decker tour buses in New York City did not carry passengers interstate. Also, the sightseeing passengers did not purchase New York City double-decker bus tour tickets to travel interstate.

These conclusory assertions, offered without any statutory or case citations, are belied by the facts set forth in the Application and in this Reply. Coach USA-controlled IBS and CitySights, LLC were indeed engaged in interstate commerce through interstate charter bus activities (in the case of IBS) and through the arrangements that IBS and CitySights maintained with interstate carriers described above at the time of the Transaction. Twin America is likewise engaged in interstate commerce as a result of those same activities and arrangements.

The fact that Twin America's New York City tour buses on which NYSAG focuses do not themselves transport passengers across state lines does not diminish the fact that the operators of those buses maintain arrangements with other bus companies, as well as with a passenger railroad, major international airlines and marine carriers to transport persons under one combination ticket from points outside New York City. In fact, the NYSAG's statement that, "the sightseeing passengers did not purchase New York City double-decker bus tour tickets to travel interstate" is inaccurate. Many of those passengers bought tickets from Peter Pan, Trans-Bridge and other carriers to travel to and around New York from surrounding states via a combination of those carriers and Twin America. Moreover, large numbers of other passengers purchased such tickets from the over 100 overseas tour operators and travel agents under pre-arrangements purchased with air travel to New York. Still others purchased their tickets in connection with their

air travel packages on Delta, British Airways and Virgin Atlantic. And many more purchased their tickets over the Internet from points outside New York.

NYSAG's Comments also overlook the fact that Twin America will be operating its own buses across state lines in charter service. Thus, the control of Twin America is subject to exclusive STB jurisdiction under section 14303 because Twin America will be operating interstate bus services under its now-issued federal charter and special operations authority. By virtue of the fact that Twin America will be holding itself out to conduct interstate charter service, any intrastate portion of Twin America's service also falls within the STB's exclusive section 14303 jurisdiction. *See Colorado Mountain*, where the STB clearly held that, "Once interstate jurisdiction over the motor carrier participants is established under 49 U.S.C. § 13501, Federal law under 49 U.S.C. § 14303(f) specifically preempts any state action that would interfere with the consummation of a Board approved or exempted merger, consolidation or acquisition of control, regardless of the extent of the participating carriers' operations in intrastate commerce." *Colorado Mountain* at \*2. *See also Global Passenger Servs., L.L.C. — Control — Bortner Bus Co., et al.*, No. MC-F-20924, 1998 WL 402075 (STB served July 17, 1998) at fn. 11 (citing *Colorado Mountain* for proposition that carriers subject to STB jurisdiction are subject to its exclusive and plenary jurisdiction "in all matters relating to their consolidation, merger and acquisition of control, and this extends to intrastate operating rights").

The fact that Twin America, as a new entity, has not yet started its interstate charter service does not mean that it is not subject to STB jurisdiction under section 14303. On the basis of applications filed with, and pending at, FMCSA, the STB has

approved control transactions involving newly-formed carriers that, at the time of the STB control proceeding, had not yet obtained interstate operating authority for which the carrier or carriers had applied or engaged in any interstate operations. *See, e.g., Peter Pan Bus Lines Trust — Purchase and Acquisition of Control — Arrow Acquisition, LLC, et al.*, No. MC-F-20995, 2002 WL 31876189 (STB served Dec. 27, 2002) (approving control of newly formed entities that would become motor carriers following acquisition of assets from existing carriers); *Coach USA, Inc. — Continuance in Control — Salt Lake Coaches, Inc.*, No. MC-F-20928, 1998 WL 566117 (STB served Sept. 4, 1998) (“following registration with FHWA [then the federal licensing agency] SLC intends to commence charter and special operations in interstate commerce”). Here, of course, Twin America has now obtained its FMCSA authority that will allow it to use motorcoaches already in its fleet for interstate operations, and it is also heavily engaged in the various interstate services described above.

NYSAG curiously contends that the parties to the Transaction should have filed for approval of a pooling agreement under 49 U.S.C. § 14302. *See* NYSAG Comments at 7, noting that no pooling filing was made “if such a filing were required for the pooling and division of transportation or earnings.” This somewhat confusing comment — which seems at least to acknowledge STB jurisdiction over the parties — is off the mark because the parties have effectively merged their businesses rather than entered an agreement merely to pool and divide revenues. The Transaction at issue here thus stands in a very different position than a pooling arrangement. Compare the arrangement between Greyhound and Peter Pan, under which each carrier operates its own business and the two share revenues and, subject to Board approval, rationalize services on certain

routes. See, e.g., *Peter Pan Bus Lines, Inc – Pooling – Greyhound Bus Lines*, MC-F-20908, 1998 WL 209278 (STB served Apr. 29, 1998) (allowing pooling agreement between the competing two bus companies relative to the New York-Washington market under which both companies continued to serve that market while schedules were rationalized and revenues divided). Twin America, by contrast, is the product of a complete merger of the operations of IBS and CitySights.

**D. The STB’s Jurisdiction Over the Transaction Displaces the Ability of the State to Regulate the Entire Transaction**

Section 14303(f) is clear on the point that New York’s antitrust laws are displaced when the Board approves or exempts a transaction under the standards set forth in section 14303:

(f) EFFECT OF APPROVAL.—A carrier or corporation participating in or resulting from a transaction approved by the Board under this section, or exempted by the Board from the application of this section pursuant to section 13541, may carry out the transaction, own and operate property, and exercise control or franchises acquired through the transaction without the approval of a State authority. 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.

The case law is equally clear that there is no role for the application of state law in connection with the effectuation of section 14303 transactions subject to STB jurisdiction. See *Colorado Mountain* at 1-2 (STB approval entitles parties “to carry out any Board approved or exempted finance transaction under section 14303, own and

operate property, and exercise control without state approval ... exempted from all state and municipal laws, as necessary.”).<sup>11</sup>

The statutory preemption of state law expressly applies to state antitrust law because, among other things, the application of such law could foreclose transactions that the Board finds merit approval under the broader “public interest” standard that governs STB actions in section 14303 proceedings. *See GLI Acquisition Company — Purchase — Trailways Lines, Inc.*, No. MC-F-18505, 1988 WL 226400 (ICC served May 27, 1988) (*GLI Acquisition*) (recognizing that the regulatory statute requires that the agency consider National Transportation Policy factors and other factors along with impact of a transaction on competition). Indeed, the NYSAG acknowledges in its Comments that, “the STB’s approval of the Application would have the effect of exempting the applicants from both state and federal antitrust law under 49 U.S.C. § 14303.” Comments at 2.

The Board’s exclusive and plenary authority over motor carrier control transactions displaces the NYSAG’s rights to regulate or challenge (other than before the STB) any element of the Transaction or any party to the Transaction. The Board’s jurisdiction would be undermined if the NYSAG could assert its jurisdiction over one or more of the parties to a transaction that is so plainly subject to Board jurisdiction under

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<sup>11</sup> *See also Board of Trustees of Trucking Employees v. Centra*, 983 F.2d 495, 503 (3d Cir. 1992) (“federal law preempts any state law that might purport to require state approval before the transfer of stock or interstate operating authority may occur”); *Washington Trucking Inc.— Purchase Exemption — Maddox Transfer*, 7 I.C.C. 2d 372, 378-80 (1991), *aff’d*, *Oregon Pub. Util. Comm’n v. ICC*, 979 F.2d 778, 780-81 (9th Cir. 1992); *Herman Bros., Inc. — Purchase Exemption — Thompson Truck Line*, 7 I.C.C. 2d 382, 386-87 (1991), *aff’d*, *Minnesota Transp. Regulation Bd. v. ICC*, 966 F.2d 335, 338-39 (8th Cir. 1992) (both holding that the ICC’s preemption authority under the predecessor to section 14303(f) extends to the transfer of intrastate operating rights).

any of several provisions of section 14303(a), *i.e.*, as a merger of the properties and franchises of two carriers and as the acquisition of control of a carrier by other carriers and by non-carriers that control other carriers.

### **III. The STB Should Approve the Transaction**

The standard for approval of the Transaction is whether or not the transaction is “consistent with the public interest.” 49 U.S.C. § 14303(b). If the STB finds that a transaction meets this public interest test, the statute directs that the STB “shall approve and authorize” the transaction.

#### **A. The Transaction Advances the Public Interest**

In assessing the public interest, the statute provides that the STB must consider the impact of the transaction on at least the adequacy of transportation to the public, as well as the transaction’s impact on fixed charges and employees. The NYSAG Comments, however, do not touch on these issues. The NYSAG offers no evidence or argument to suggest any deterioration in service to the public resulting from the Transaction. Instead, the NYSAG focuses narrowly on the impact on competition and barriers to entry, characterizing the likelihood that the Transaction will result in cost savings as a concern about competition rather than a commendation for economic efficiency.

The positive impact of the Transaction on adequacy of service was described in the STB Application, and is further addressed by Mr. Kinnear and Mr. Marmurstein in their Verified Statements and in Mr. Willig’s expert economic testimony. Simply put, the very reason for the Transaction is to maintain and increase the level and quality of motor carrier tourism transportation services. The combination of the bus fleets has allowed

Twin America, in the face of challenging economic conditions, to rationalize the rotation of buses in service on a daily basis, allowing Twin America to maintain and, over time, increase frequency and routes with less on-street equipment and more rotation of its fleet. This in turn allows Twin America to save fuel, maintenance, repair and part costs, extending the life of its fleet, and creating more ability to expand its motor tourism transportation products and services. *Marmurstein V.S.* at ¶¶ 14, 16; *Kinnear V.S.* at ¶¶ 8-9.

These types of synergies advance the public interest and welfare from an economic as well as legal standpoint. *See Willig V.S.* ¶¶ 14-22. In fact, as Professor Willig explains, the rationalization of the combined bus fleets allowed Coach to redeploy twenty buses to Chicago to meet that city's growing tourism transportation demand, an acknowledged additional, procompetitive benefit of combining operations. *See id.* at ¶¶ 19-20. As Professor Willig concludes:

In sum, the joint venture expects to provide (1) tour bus consumers a higher quality service delivered at a lower cost of service, (2) better coordinated service with reduction in road congestion and enhanced tour value, and (3) cost savings and synergies arising from best practices and elimination of duplicative services. Consumers and the public interest will gain positive net benefits from the formation and operation of the joint venture.

*Id.* at ¶ 28.

With respect to fixed charges and impact on employees, the NYSAG offers no substantiated critique of the Transaction. The fact is the Transaction did not result in any significant increase in debt (but rather was designed to improve the financial circumstances of the carriers in the face of financial challenges) and will not have

substantial adverse impacts on employees, who will benefit from the improved financial circumstances. Kinnear V.S. at ¶¶ 1, 7, 11. Thus, these are not significant factors here.

The only issue on which the NYSAG focuses its critique relates to the Transaction's competitive impacts. Yet, as the discussion below demonstrates, Twin America is an efficiency-enhancing transaction that benefits consumers. When added as one factor within the public interest balancing test, *see GLI Acquisition*, 1988 WL 226400, at \*6 (assessing a transaction between two major regular route carriers in light of a variety of factors, including competitive impacts and National Transportation Policy considerations), the procompetitive nature of this Transaction advocates in favor of approval.

#### **B. The Transaction is Procompetitive**

The Transportation Policy set forth at 49 U.S.C. § 13101 includes the mandate “to promote competitive and efficient transportation services in order to,” among other things, “encourage fair competition, and reasonable rates,” to “promote efficiency,” to “meet the needs of ... consumers,” to “allow the most productive use of equipment and energy resources,” to “enable efficient and well-managed carriers to earn adequate profits,” and to “attract capital.” The Twin America acquisition more than satisfies these policy objectives. It will invigorate competition by creating a more resilient and efficient motor tourism transportation carrier, better able to withstand turbulent economic conditions and deliver superior service.

Indeed, as detailed in the Verified Statements of Mr. Kinnear and Mr. Marmurstein, Twin America already has yielded significant cost savings. Kinnear V.S. at ¶¶ 9-11; Marmurstein V.S. at ¶ 15. For instance, maintenance costs fell by 19.5 percent

in the same time period. Kinnear V.S. at ¶ 9. Certain variable and direct costs, such as commissions, tolls, fuel and depreciation, also fell, and a portion of that decrease is attributable to the reduced number of buses. *Id.* at ¶¶ 9-10.

There are also savings that are being realized by extending the best practices and cost advantages of either Gray Line or CitySights to the entire operations of Twin America. For example, Gray Line had better fuel purchase arrangements in place, and Twin America extended these more favorable arrangements across the combined fleet. Fuel costs for Twin America were 22.5 percent less in the time period April through August 2009 than they were for Gray Line and CitySights in the same months of 2008. *Id.* at ¶ 10.

In all, Twin America's total operating expenses for the period March 31, 2009, through August 2009 were 7.3 percent lower than they were for Gray Line and CitySights combined during the same months of 2008. *Id.* at ¶ 11. Both Mr. Kinnear and Mr. Marmurstein explain that these savings, recognized over a period of just a few months and during the height of the tourist season, will continue to grow over the course of the next year and beyond. *Id.*; Marmurstein V.S. at ¶ 18. As Marmurstein explains, "Twin America has and will continue to realize additional cost savings as well, from consolidating call centers, warehousing buses at common locations, and consolidating accounting, IT, sales and marketing functions." *Id.* at ¶ 15.

**C. The Transaction Will Enable Twin America to Provide Stronger Competitive Alternatives to the Many Rivals Against Which it Competes.**

To respond to the NYSAG Comments, Applicants retained economic expert Professor Robert Willig to analyze the competitive effects of the Transaction. Dr. Willig

is a thirty-year Professor of Economics and Public Affairs at Princeton University. He is also the former chief economist for the United States Department of Justice Antitrust Division, where he served an appointment as the Deputy Assistant Attorney General for Economics from 1989 to 1991, leading a group that included fifty Ph.D. economists and finance specialists investigating competition matters, including the competitive effects of mergers and acquisitions. *See* Willig V.S. at ¶¶ 1-2.

As Professor Willig explains, “[w]hile the analysis of mergers is at the core of the antitrust laws, it is important to note that the vast majority of all mergers and joint ventures present no anticompetitive risk whatsoever.” *Id.* at ¶ 23. He concludes this Transaction is in that no-risk category:

- “Based on my review of the economic evidence produced in this application, I conclude that the Twin America joint venture will not result in anticompetitive effects for consumers of transportation tour services or, more specifically, double-decker bus tour services, nor will it harm the public interest.”
- “The economic data produced indicate that the joint venture is expected to result in an estimated cost savings of \$7 to \$11 million on the combined basis. These cost savings are of the kind that create benefits for consumers by improving the quality of services provided at lower costs. In addition, these cost savings will likely result in increased quantity and quality of services provided. The rationalization of productive and supporting assets benefits the public interest by releasing assets to more productive uses, both within the New York City marketplace and elsewhere.”

- “My economic analysis of the marketplace also indicates that Twin America competes with other bus operations as well as other non-bus transportation tour services, including air, land, and water-based services. These services exert competitive discipline on Twin America’s ability to raise price. In addition, the ease with which entry or repositioning by new or existing competitors into double-decker bus transportation tours can occur, which has been demonstrated by CitySights’ own entry, would likely discipline any attempt by the joint venture to raise prices above competitive levels.”
- “I have reviewed the comments provided by the New York State Attorney General (NYSAG) and find those comments to be inconsistent with economic logic and not reflective of accepted standard economic views of competitive effects, entry or market definition.”

*Id.* at ¶¶ 5-8.

The NYSAG, for its part, alludes that the acquisition (a) creates a monopolist in the “relevant product segment” for “the hop-on/hop-off double-decker tour bus business” in New York City, (b) creates barriers to new entry by reducing costs and achieving efficiencies, and (c) creates a “horizontal” agreement between two competitors.

The Applicants respectfully disagree as to each point.

**1. The Transaction Does Not Create A Monopoly In a Relevant Market**

The NYSAG asserts that Twin America now controls eighty-nine percent of the “relevant product segment” for “the hop-on/hop-off double-decker tour bus business” in New York City, a purported market that simply describes Twin America’s business.

(NYSAG Comments at 3.) In making this assertion, the NYSAG explains that it had “access to only limited information on the various product market segments” that Twin America allegedly serves. The NYSAG, however, requested and received documents and data directly from the Applicants. The NYSAG had access to the same public information about the market that was available to Professor Willig, who concludes “[t]he NYSAG’s office provides no economic support for its assertion that Twin America has market power and can unilaterally raise prices above competitive levels.” Willig V.S. at ¶ 49.

The proper definition of a relevant market does not start and stop with the products or services offered by the merging parties. Otherwise, the inevitable result would always be a gerrymandered “market” that excludes the alternatives against which the parties compete. Instead, as the Board regularly has recognized, the relevant market properly includes all the products and services against which the parties compete, and which customers can substitute. *GLI Acquisition*, 1988 WL 226400 at \*7 (analyzing the impact of a merger between bus companies “by reviewing the bus industry generally, and the competition it faces,” which included other modes of transportation such as automobiles, trains service and airlines); *Northwestern Stage Lines, Inc. & Greyhound Lines, Inc.—Purchase (Portion) Exemption*, Fin. Docket No. 33122, 1996 WL 714560, at \*3 (STB served Dec. 10, 1996) (same).

The leading precedent examining the relevant market and competitive effects of a motor carrier acquisition is *GLI Acquisition*. There, Greyhound was acquiring the operating authorities of Trailways Lines but one of its principal competitors, Peter Pan Lines, opposed the transaction, arguing that it would make the market less competitive.

Relying on a thorough review of transportation and travel data, the ICC rejected the premise underlying Peter Pan's argument. "[T]he relevant market with respect to this application," the ICC explained, "extends far beyond merely intramodal bus transportation. Indeed, the relevant 'product' market is the intercity transportation of passengers." 1988 WL 226400 at \*7. The ICC concluded that this intercity passenger transportation market was dominated by the private automobile, and also included competition from air and rail companies. *See id.* Consequently, "the presence of intramodal [*i.e.*, bus] competitors is not necessary to maintain competitive discipline for bus firms." *Id.* at \*9.

The ICC further found that barriers to entering the bus transportation market were "virtually nonexistent." *Id.* Quoting then-Chairman of the Federal Trade Commission, the ICC noted that "the ratio of variable to fixed costs is high" in the bus industry. *Id.* "[T]he buses that constitute a carrier's principle assets are mobile and short-lived, enabling carriers to determine whether they should be replaced, sold, or moved to another market." Moreover, "the investment in each unit is comparatively small . . . diminishing the likelihood of excess capacity." *Id.* Given that "re-entry by competitors can be immediate," the ICC endorsed the Federal Trade Commission Chairman's conclusion that "extended predatory price cutting" in the bus industry is "unworkable." *Id.*<sup>12</sup>

The STB has applied the reasoning of *GLI Acquisition* on several occasions over the past decade. In a transaction involving bus routes in Washington and Oregon, the STB recognized the presence of "ample intermodal competition in the affected region"

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<sup>12</sup> The D.C. Circuit affirmed the I.C.C.'s decision in an unpublished memorandum opinion, *Peter Pan Bus Lines, Inc. v. ICC*, 873 F.2d 408 (D.C. Cir. 1989).

from “[t]he private automobile,” and concluded that such “[s]trong competition from other transportation modes” would “prevent[] competitive abuses.” *Northwestern Stage Lines, Inc.*, 1996 WL 714560, at \*3.

In a case involving the acquisition of a charter bus company, the STB noted that “the [bus] industry’s low entry barriers and pervasive intermodal competition effectively foreclose any opportunity for abuse of market power.” *Coach USA, Inc. — Control Exemption — Browder Tours, Inc. and El Expreso, Inc.*, Fin. Docket No. 33506, 1998 WL 113563, at \*3 (STB served Mar. 17, 1998).

In a case where a competitor claimed that an acquisition would allow the controlling carrier to raise its fares on specific routes, the Board reiterated that “the threat of entry by new competitors and competition from other modes of passenger transportation are sufficient to keep bus fares low.” *Peter Pan Bus Lines Trust — Purchase and Acquisition of Control — Arrow Line Acquisition, LLC, Bonanza Acquisition, LLC, Maine Line, LLC, Pawtuxet Valley, LLC, Peter Pan Boston, LLC & Peter Pan Bus Lines, Inc.*, No. MC-F-20995, 2003 WL 21055724 at \*4 (STB served May 12, 2003).

The same principles apply here. The relevant market is far broader than the slim “product segment” for “the hop-on/hop-off double-decker tour bus business” in New York City. In fact, the NYSAG hypothesizes a market that includes only four selected double-decker bus routes where Gray Line and CitySights had overlapping operations prior to forming Twin America. The NYSAG neither mentions nor discusses the myriad other motor transportation tour options in New York, including other motorcoach buses,

double-decker buses, trolleys, limousine and shuttle tours, let alone intramodal tours like ferry services and helicopter tours.

As Professor Willig puts it, “bus routes are not markets.” Willig V.S. at ¶ 52. Concluding the NYSAG “analysis is grossly misleading,” Professor Willig notes the “analysis artificially limits the relevant market to just four routes and ignores the availability of a wide array of alternate tours by all other transportation tour operators which compete for tourists’ time and money.” *Id.* at ¶ 51. More specifically, Professor Willig concludes:

Twin America competes with various transportation tour companies. It competes most directly with other land, air, and water-based tours. 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 transportation 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.

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. For example, the 2009 Concierge Choice Awards selected New York Helicopter as the *top tour operation* for the year. Other nominees were Gray Line, Circle Line Sightseeing at 42<sup>nd</sup> Street, and My Kind of Town. In the *transportation category*, NY Water Taxi was selected over nominees NY Waterway, Helicopter Flight Services, and Circle Line Sightseeing at 42<sup>nd</sup> Street. Concierges’ recognition of these different modes of transportation does not lessen the view

that these services compete across various transportation modes for tourists' money and time.

*Id.* at ¶¶ 29-30.<sup>13</sup>

In addition, as Professor Willig explains, transportation tourism services are among the myriad options available to a visitor, noting “that in 2008, New York City was visited by 47.0 million tourists, less than 5% of whom purchased tickets from either party to the joint venture. These figures indicate that bus-tours are not an obligatory part of the itineraries of most tourists.” *Id.* at ¶ 33. Twin America does not have monopoly power in this environment or any part of it. *Id.* at ¶¶ 34-36.

Nor could any motor carrier tourism transportation service exercise “monopoly power” — the power to control price and exclude competition — given the lack of entry barriers to even the motor tour industry. There are no meaningful barriers to entry for motor carrier tourism transportation services, as the Board has held in prior decisions. *See, e.g., Holland America Line Inc. — Acquisition — Royal Highway Tours, Inc.*, No. MC-F-21033, 2009 WL 891298, at \*1 (STB served Apr. 3, 2009) (noting applicant’s statement that “this agency’s prior finding regarding low entry barriers in this segment continues to be accurate”); *Coach USA, Inc., and K-T Contract Services, Inc. — Control And Merger Exemption — Gray Line Tours Of Southern Nevada*, Fin. Docket No. 33431, 2001 WL 986001, at \*2 (STB served Aug. 29, 2001) (“the bus industry is characterized by . . . low entry barriers”); *Notre Capital Ventures II, LLC and Coach USA, Inc. — Control Exemption—Arrow State Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit*

<sup>13</sup> Both New York Party Bus, Inc. and NY Waterway operate under FMCSA authority.

*Corp.*, Fin. Docket No. 32876 (Sub-No. 1), 1996 WL 224201, at \*6 (STB served May 3, 1996) (“[w]ith the low entry barriers and the pervasive intramodal and intermodal competition that characterizes the bus industry, most opportunities for abuse of market power are effectively foreclosed”).

CitySights itself, which grew from eight to seventy buses in a span of four years from its May 2005 inception, makes the point. *See* Marmurstein V.S. at ¶¶ 5, 10. CitySights started with motorcoaches and eight upper deck buses it designed and had custom built by a U.S. company for approximately \$225,000 each. *Id.* at ¶¶ 2-3, 5. CitySights financed its initial upper deck buses through banks and an engine manufacturer. *Id.* at ¶ 3. CitySights was profitable from day one – its first day of sales exceeded \$10,000. *Id.* at ¶ 5. And in its first year of operation, 2005-2006, CitySights generated revenues exceeding \$7.5 million. *Id.*

CitySights subsequently managed and controlled its growth by building its own double-decker buses, purchasing used transit buses for \$90,000 to \$150,000 each, and hiring two body shops to convert the buses into double-decker models. *Id.* at ¶ 9. CitySights financed these buses with its own revenue. No outside financing was necessary. *Id.* By 2008, CitySights was operating more than fifty buses and the company’s annual revenue exceeded \$30 million. *Id.* at ¶ 10. By 2009 CitySights had commitments in place to bring its double-decker fleet to seventy buses. *Id.*

Nor are there any significant regulatory barriers to entry. CitySights experienced no difficulties obtaining New York State Department of Transportation vehicle inspections. *Id.* at ¶ 4. It likewise obtained licenses from the New York City Department of Consumer Affairs with no difficulty, at a cost of approximately \$35 per bus. *Id.* And

the City approved and assigned more than fifty well-situated bus stops throughout New York City. *Id.* Of note, many of those stops were already established and in use by other motor carriers, including other transportation tours. That fact did not preclude assignment and use of the bus stops by CitySights as well. CitySights and the other carriers worked out arrangements for location and parking to minimize congestion. *Id.*

The company's growth from eight to seventy buses in just four years demonstrates the ease with which any motor carrier transportation tour service can timely and successfully offer bus tours in the greater New York City's tri-state area and elsewhere. *See Willig V.S.* at ¶¶ 34-44. The CitySights entry story, moreover, is not unique. Motor carrier transportation tour services continue to spring up throughout the nation. Double-decker bus transportation tours, in particular, have leaped into the nation's leading cities. These new entrants, furthermore, are diverse, representing a variety of domestic and international companies. LesCar Rouge, a Paris transportation tour company, for example, entered the Washington D.C. market in 2006, expanding to San Francisco in 2007 and Las Vegas in 2009. *Id.* at ¶ 45.

When "entry into the relevant product and geographic market by new firms or by existing firms ... is so easy that any anti-competitive impact of the merger ... would be eliminated" by new competition, the merger should be permitted. *United States v. Waste Management, Inc.*, 743 F.2d 976, 983 (2d Cir. 1984); *see also Notre Capital Ventures II, LLC and Coach USA, Inc.*, STB Finance Docket No. 32876 (exempting a proposed acquisition of control via stock purchase of ten motor common carriers).<sup>14</sup>

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<sup>14</sup> Courts have denied injunctions, thus permitting competitors to merge, when entry barriers are low. *See, e.g., United States v. Baker Hughes, Inc.*, 908 F.2d 981 (D.C.

The Board's decision in *Peter Pan Bus Lines Trust — Purchase and Acquisition of Control — Arrow Line Acquisition, LLC, et al.*, is equally instructive here:

“Where the barriers to entry are virtually non-existent, potential entry, together with intermodal competition, exerts pressure on existing firms to price reasonably.” In other words, the threat of entry by new competitors and competition from other modes of passenger transportation are sufficient to keep bus fares low. If Peter Pan were to charge customers excessively high rates, as Entertainment predicts, other motor passenger carriers would recognize an opportunity to profit by entering the market and providing service to those customers at a lower rate (as Entertainment has done), or those customers might decide to travel by another mode of transportation, such as rail, air, or private automobile. Thus, it is in Peter Pan's own best interest to keep fares reasonable.

No. MC-F-20995, 2003 WL 21055724, at \*4 (STB served May 12, 2003) (quoting *GLI Acquisition* in allowing Peter Pan Bus Lines to acquire several formerly competing motor carriers).

Under this framework, Professor Willig's economic conclusions are not surprising:

I have seen no economic data to suggest that either CitySights or Gray Line exercised any market power in providing transportation tour services or that the joint venture has changed the competitive dynamics of the marketplace. Rather, CitySights' entry and the strategic adaptations of the joint venture are evidence that the marketplace is dynamically competitive, and that the consolidation is bringing pro-competitive efficiencies to its

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Cir. 1990) (hardrock hydraulic underground drilling rig industry); *United States v. Gillette Co.*, 828 F. Supp. 78 (D.D.C. 1993) (ink-based writing utensil industry); *United States v. Syufy*, 712 F. Supp. 1386 (N.D. Cal. 1989) (motion picture exhibition industry); see also United States Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* § 3.0 (rev. Apr. 8, 1997) (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”).

operations and to its customers. The NYSAG's evaluation of the joint venture is inconsistent with the economic facts.

Willig V.S. at ¶ 47. As Professor Willig further indicates, by contrast, the "NYSAG's analysis is static and fails to acknowledge or incorporate the commercial realities and dynamic nature of competition within the marketplace...." *Id.* at ¶ 53.

## **2. The Transaction Does Not Raise Barriers to Entry**

The NYSAG asserts that the formation of Twin America "would likely significantly increase the barriers to entry into the market by putting potential entrants in competition with an incumbent with control of nearly 90% of the market and with the ability to benefit from volume discounts...." (NYSAG Comments at 5.)

As explained above, Twin America does not possess a 90 percent share of an economically meaningful relevant market. Regardless, that in itself would not create a barrier to entry. Genuine barriers to entry are impediments that prevent or discourage new entry within some reasonable period of time — generally within two years. Here, the story of CitySights itself illustrates how easily newcomers can enter into competition against Twin America and then rapidly grow. *See, e.g.,* Marmurstein V.S. at ¶¶ 2-10; Willig V.S. at ¶¶ 34-44. CitySights not only entered from scratch, with no limits from the City government on the number of buses it could operate, but CitySights eventually designed and assembled its own buses from used transit vehicles and engines and parts from around the world. And CitySights both entered the market and grew its business in the face of existing motor carrier tourism transportation providers.

Moreover, the notion that "cost savings" from combining "common management and purchasing activities" and "savings in fuel, spare parts and insurance" through

“volume discounts” qualify as a barrier to entry turns antitrust doctrine on its head. The same applies to “savings on advertising costs.” (NYSAG Comments at 5.) While these savings represent genuine efficiencies, there is nothing to suggest that they pose a barrier to entry by others, who presumably could run similarly lean operations and achieve efficiencies of their own. In this regard, the concern expressed by the NYSAG is not that Twin America will become so efficient that it will slash its prices to the bone and thereby deter new competitors from entering. Rather, the concern expressed by the NYSAG is that the acquisition could “increase [Twin America’s] ability and incentive profitably to raise price above . . . what likely would prevail in the absence of the relevant agreement.” (NYSAG Comments at 2.) Higher prices do not deter new entry, they attract it.

In addition, as Professor Willig explains, there is no economic evidence to suggest economic efficiencies from the Twin America joint venture create entry barriers. Much of the cost savings stem from reconciling best practices between the combined entities. And to the extent Twin America extends any volume cost savings from Gray Line or CitySights to the combined Twin America fleet, those cost savings have not precluded entry, as evident from the low thresholds required to begin motor tour transportation services, best illustrated by CitySights itself. Willig V.S. at ¶ 55.

### **3. There Is No Horizontal Agreement.**

The NYSAG insinuates that Twin America amounts to a “horizontal agreement” (NYSAG Comments at 5) between “two direct competitors,” creating a “disincentive to compete on price.” (NYSAG Comments at 6.) This misapprehends the nature of this Transaction.

Twin America is a fully-integrated joint venture, making it the equivalent of a merger for purposes of antitrust analysis. It is on all fours with the venture recently examined by the United States Supreme Court in *Texaco Inc. v. Dagher*, 547 U.S. 1 (2006). There, two competitors, Texaco and Shell, formed a joint venture that completely consolidated their operations while it continued to sell products under both of their two pre-existing brands. The Court recognized that when two competitors pool their capital and share the profits and risk of loss, their venture is “regarded as a single firm” for purposes of antitrust regardless of how it is regarded for other purposes. *Id.* at 6 (quoting *Arizona v. Maricopa County Medical Soc’y*, 457 U.S. 332, 356 (1982)). Accordingly, although such a venture’s “pricing policy may be price fixing in a literal sense, it is not price fixing in the antitrust sense.” *Id.* The Court added that although such a venture could elect to eliminate one of its brands and sell under only one brand, there is “no reason to treat” the venture “differently just because it chose to sell ... under two distinct brands at a single price.” *Id.* at 6-7.

The same holds true here. *See* Willig V.S. at ¶ 25. Twin America is not a horizontal conspiracy. It is, for antitrust purposes, a “single firm.” *See* 2000 Dep’t of Justice and Federal Trade Comm’n Antitrust Guidelines for Collaborations Among Competitors, at § 1.3. (a combination such as Twin America should be treated as a merger when: “(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.”). Under these Guidelines, this Transaction would thus be deemed as a merger. *Id.*; Willig V.S. at ¶ 25.

The NYSAG’s preliminary concerns about the competitive effects of Twin America are unfounded and should not dissuade the Board from approving the Transaction. Twin America will make the competitive environment healthier, and the Transaction merits approval on this basis as well for the other reasons described herein.

### CONCLUSION

For all of the above reasons, the Board should grant the control application pending before it without further proceedings. Further, Applicants respectfully urge the Board to make its decision promptly and effective immediately given the delay already experienced as a consequence of the filing of the NYSAG Comments.

Respectfully submitted,



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November 17, 2009

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. MC-F-21035**

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

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**VERIFIED STATEMENT OF ZEV MARMURSTEIN**

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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 49 West 45th Street, 5th Floor; New York, New York 10036.

1. I founded CitySights LLC in New York on November 24, 2004, to operate a tour bus service in New York City.

2. CitySights hired Craftsmen Limousine (a Missouri company) to build tour buses for CitySights. Because the vehicle chassis that Craftsmen Limousine typically used for its custom buses was not low enough to accommodate two seating levels for passengers, CitySights designed a bus that included only a top layer for passengers. This “upper deck” design made sense for the CitySights business. Craftsmen Limousine produced a “test bus.” CitySights purchased the “test bus” and hired Craftsmen to build seven additional buses. By the end of 2005, CitySights had purchased fifteen buses from Craftsmen Limousine.

3. Craftsmen Limousine charged CitySights approximately \$225,000 for each bus. Craftsmen Limousine helped arrange financing for two of the first fifteen buses

through Cummins, which manufactured the bus engines. CitySights financed an additional four of the initial fifteen buses with Sovereign Bank, and the remaining nine buses with Banco Popular.

4. To begin operations, CitySights needed a license from the New York City Department of Consumer Affairs for each tour bus. These licenses cost \$35 each. CitySights also needed the New York State Department of Transportation to inspect and approve its buses, and the New York City Department of Transportation to provide CitySights with bus stops. The State Department of Transportation approved CitySights' buses, and the City provided CitySights with approximately fifty bus stops. In many cases, the City Department of Transportation assigned CitySights a bus stop that overlapped with another motor carrier's stop, and CitySights and the other carriers worked out arrangements for location and parking to minimize congestion. The fact that the stops already served other carriers did not preclude CitySights from obtaining approval for use of the same bus stops.

5. On May 20, 2005, CitySights began operations with approximately eight upper-decker buses, six motorcoaches, and between thirty and forty leased ticket sellers to sell tickets on the streets. From the beginning, CitySights was profitable. On its first day, CitySights had approximately 250 customers and \$10,000 in sales. The company's first full year of revenues exceeded \$7.5 million.

6. In 2006, CitySights expanded its business. Through international travel agents and ticket agents, CitySights booked overseas passengers planning visits to New York, often as part of a single-priced package including air travel or other travel services – a practice that Twin America continues today. *See* Exhibit 1. CitySights hired a U.K.

sales consultant to sell tickets to different British tour groups. In 2007, CitySights hired similar sales consultants in France and Germany. Twin America continues to work with these consultants to sell tickets to international groups. In addition, CitySights started offering a motorcoach service to Woodbury Common Premium Outlets in Central Valley, New York (reached from New York City via New Jersey) twice a day with two or three motorcoaches.

7. CitySights also redesigned its website, improving the process for online ticket purchases, and advertised on Google and other websites. By 2009, the company's Internet ticket sales grew to approximately 9% of all passengers. CitySights sold tickets over the Internet to persons in at least 137 countries in 2008 and 2009. *See Exhibit 2.* Twin America has rebuilt the Gray Line website, based on experience that made the CitySights website successful.

8. CitySights expanded its business through various interstate transportation arrangements as well. For example, CitySights sold day tours to Boston and Washington, DC operated by a partner. CitySights entered a joint transportation arrangement with Peter Pan Bus Lines under which customers can purchase a single-priced combined ticket/voucher for transportation from one of four points in New England (East Hartford, CT; Cromwell, CT; Milford, CT; or Springfield, MA) to New York City, a CitySights double-decker bus tour, and return transportation to the point of origin. *See Exhibit 3.* CitySights double-decker bus transportation is also sold jointly with air travel in packages booked by international travelers on major airlines (including Virgin Atlantic, British Airways, and Delta). In addition, CitySights partnered with New York Waterways to sell tickets that included ferry transportation between New Jersey and New

York and CitySights bus tours. And CitySights entered an arrangement with R.W. Express, Inc., a company that transports passengers to and from New York area airports (and also provides interstate charter services), so that tour operators are able to sell a ticket that includes both CitySights services and airport transportation for interstate and foreign travelers. (I own and control R.W. Express, Inc., an FMCSA licensed motor carrier that specializes in interstate charter operations. I have applied to the STB for authority to control that carrier.) Twin America continues these joint transportation arrangements and partnerships, which are in effect today.

9. Beginning sometime in 2006, CitySights decided to better control and manage its own growth by manufacturing its own buses. CitySights purchased used transit buses through a variety of channels, including auctions and rental car companies, purchased parts from various worldwide suppliers, and hired two body shops to convert the buses into double-decker models. The used transit buses generally cost between \$5,000 and \$40,000 depending on demand for the bus and the bus quality. Some of the buses required a new engine (which cost approximately \$10,000) and some required a new transmission (which cost approximately \$7,000). The more buses CitySights built, the better (and lighter) they became. The cost for CitySights to build a new double-decker bus ranged from \$90,000 to \$150,000. CitySights built these buses with its own revenues, without outside financing.

10. By the end of 2008, CitySights operated more than fifty double-decker buses, doubling its sales over the prior year, exceeding \$30 million, with commitments to grow to seventy double-decker buses in 2009.

11. In the fall of 2008, tourism experienced the worst economic downturn in recent history – far worse than the economic aftermath of September 11, 2001. That fall I entered into joint venture discussions with Gray Line, which eventually led to the formation of Twin America.

12. On March 17, 2009, CitySights Twin, LLC and International Bus Services, Inc. (IBS), a subsidiary of Coach USA, formed Twin America, LLC, which merged the CitySights and Gray Line assets and operations. (CitySights, LLC had formed CitySights Twin, LLC for the purpose of effectuating the transaction and contributing the CitySights vehicles to Twin America. CitySights Twin LLC does not engage in any carrier operations.) CitySights contributed all sixty-two of its double-decker buses, as well as the eight additional double-decker buses it had committed to build by the end of 2009.

13. Twin America has a Board of Managers, which is authorized to make all material decisions. The Board of Managers consists of six managers – three appointed by CitySights and three appointed by IBS. Major matters coming before the Board require approval by at least four managers (or, if the Board consists of less or more than six managers, approval by a majority of managers). Material decisions include decisions to expand or change the nature of the service provided by Twin America, enter into contracts above certain dollar amounts, enter strategic alliances with other entities, or merge or dissolve the LLC. Twin America has two Executive Vice Presidents – one originally affiliated with Gray Line and one originally affiliated with CitySights.

14. The overarching purpose of the joint venture was to maintain and increase current tour bus service using fewer buses rotated from a combined fleet. Simply put, by combining the CitySights and Gray Line bus fleets, Twin America can actually increase

frequency and service, and even expand transportation tours, using fewer buses in rotation. This rationalization extends the life of the double-decker equipment because more buses can be rotated into the routes, relieving the miles traveled for individual buses in the fleet. The rotation also substantially reduces wear and tear, maintenance costs, spare part expense, and fuel expense.

15. Twin America has and will continue to realize additional cost savings as well, from consolidating call centers, warehousing buses at common locations, and consolidating accounting, IT, sales and marketing functions. Twin America also has been able to select and use the best and most cost-effective vendors from each company. For example, Gray Line had purchasing savings for fuel and spare parts from its affiliation with IBS and Coach USA, which are much larger transportation companies. Twin America extended these savings to the CitySights fleet. Similarly, Twin America has been able to adopt the more favorable insurance structure of the Gray Line fleet for the combined Twin America fleet. And having a single dispatcher allows Twin America to better coordinate the location of its buses and reduce traffic congestion.

16. Twin America also already has expanded the bus tours offered by Gray Line and CitySights. Twin America is now testing a new product called FreeStyle New York on Gray Line-branded buses. Purchasers of a FreeStyle New York ticket have 72-hour access to Gray Line's Uptown, Downtown, Brooklyn, and Night Tours, and the customer's choice of three additional attractions. Twin America also offers a new product under the CitySights brand called "Land, Air, and Sea," which gives the customer 48-hour access to CitySights' Uptown, Downtown, Brooklyn, and Night Tours, a Lady Liberty Helicopter Flight, a Circle Line cruise, and a ticket to the Museum of the

City of New York. Twin America is also considering offering a less expensive, half-day, fixed duration bus tour.

17. Soon Twin America will begin cross-ticketing arrangements in which a customer with a ticket to a Gray Line tour can ride a CitySights bus (and vice versa). Twin America will initially implement this arrangement on its Brooklyn bus tour and once successful, will extend the cross-ticketing to the Uptown and Downtown bus tours. (Twin America currently cross-tickets on its multi-lingual tours). Cross-ticketing increases the frequency of service with the same number of buses currently in use.

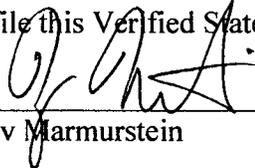
18. It is important to understand that Twin America began operating only eight months ago, at the onset of the busiest season. Consequently, while the operation improvements and cost savings have already been significant, the savings and improvements from the joint venture will be greater next year and going forward into the future.

19. On or around August 3, 2009, CitySights and Twin America each received a Subpoena Duces Tecum from the New York Attorney General concerning the formation of Twin America.

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: November 16, 2009

  
\_\_\_\_\_  
Zev Marmurstein

*CITY SIGHTS NY*

September 25, 2008

Henning Schoedt  
**TRAVEL PARTNERS**  
 Ostergade 10  
 8900 Randers, Denmark

T: 45.7022.6603  
 F: 45.7022.6403  
 E: [henning@travel-partner.dk](mailto:henning@travel-partner.dk)

**Tour Operator Agreement**  
**Valid 01 April, 2009 through 31 March, 2010**

Tour/Service	Retail		Net	
	Adult	Child	Adult	Child
<b>Double-Decker Bus Tours (English)</b>				
All Around Town				
Downtown Tour				
Uptown Treasures & Harlem Tour				
Night Tour				
Brooklyn Tour				
Lights of the Holiday Tour (Nov 30 – Jan 1)				
<b>Multi-Lingual Tours</b>				
		Retail		Net
All Around Town Tour (3 DAY VALUE)				
German, Spanish, Italian, French, & Dutch				
<b>Tours + Attractions</b>				
		Retail		Net
Super NY (3 DAY VALUE)				
All Around Town Tour & Madame Tussauds				
All Around Town Tour & Intrepid Sea, Air & Space Museum				
All Around Town Tour & Liberty Helicopter – Big Apple				
Downtown & Sport Museum				
Woodbury Common Premium Outlets Day Trip*				
Shop, Hop, & Top (4 DAY VALUE)				
<b>Tours &amp; Meal</b>				
		Retail		Net
Night Tour & Planet Hollywood**				
<b>Day Trips</b>				
		Retail		Net
Washington, D.C.***				
Philadelphia & Amish Country***				
Boston***				

**IMPORTANT MESSAGES**

Liberty Helicopter has implemented a processing fee and security which is paid directly to the Liberty Helicopters when the customer arrives for their tour.

Circle Line Cruise which is included in our All Around Town Tour has now implemented a fuel charge which is payable directly to Circle Line when customer arrives for their cruise.

These changes are currently in effect but can change at anytime.

\* Woodbury Common Premium Outlets Day Trip is free sale. Reservations are not needed in advance.

\*\* Planet Hollywood Restaurant is valid for 30 days from the date the voucher is exchanged.

\*\*\* Day Trips to other Cities - Reservations are required in advances. Send request to [salesny@citysightsny.com](mailto:salesny@citysightsny.com) to confirm a seat on the bus.

# CitySights NY

**Planet Hollywood Meal:** Meal vouchers are designed to suit a wide variety of tastes. Known for their world famous meals and eye catching décor, Planet Hollywood's "Premier Meal" for adults includes a Starter, House Salad, Choice of: Any entrée on the menu and Ice Cream for dessert. Plus, unlimited soft drinks, coffee, Hot Tea & Ice Tea.  
**Children ages 5-11 meal vouchers includes:** Any entrée on the kids menu and Ice Cream for Desserts. Plus unlimited soft drink, juice or milk.  
**Prices include tax and 15% gratuity. Client will get a VIP seating when they show their vouchers. First available seating which will bypass any lines.**

## **CitySights NY – CLOSED OPERATIONS**

CitySights NY entire operation will be closed for the observance of Yom Kippur on Monday September 28<sup>th</sup> 2009. Sunday September 27<sup>th</sup> 2009 we will close all tours by 3pm. Thanksgiving we will run a regular schedule. Christmas we will run a regular schedule. New Years Eve we will close all tours by 3pm. New Years Day we will run a regular schedule.

## **CitySights NY – SAMPLE VOUCHER**

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### **SAMPLE VOUCHER**

**Issued To: CitySights NY**

**(Tour/Receptive Operator logo)**

**Issued By: (Name of Tour/Receptive Operator)**

Please provide the following:

**Name of Tour:**

**# Adults \_\_\_\_\_ # Children \_\_\_\_\_**

**Note to Passengers:** Exchange this voucher at the CitySights NY Visitor Center inside Madame Tussauds, 234 W. 42<sup>nd</sup> Street in Times Square (between Broadway & 8<sup>th</sup> Avenue) between 08:00AM to 08:00PM.

CitySights NY Customer Service: 1-212-812-2700 or 1-877-486-8769

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**Payable By:**

**Voucher No:**

**Expires 31 March 2010**

### **PAYMENTS/CREDIT**

Payment terms must be arranged before vouchers may be issued. If you are a tour operator issuing your own voucher with payment to be made by a receptive operator, please remember to include the name of the receptive operator in the voucher section under "Payable By"

**CREDIT CARD PAYMENTS:** To make payments by credit card, a credit card authorization form, including a copy of the front and back of the credit card, must be submitted to CitySights NY by email or fax. Once approved, invoices will be sent for review. Charges will be processed on the authorized credit card one week from invoice mailing. To request a credit card authorization form, please email salesny@citysightsny.com or fax 718-361-7377.

**BILLING:** For clients with approved credit, CitySights NY will invoice at the end of each month for all vouchers collected during that month. Payments are due within 30 days from the date of the invoice. To request a credit application, please email salesny@citysightsny.com or fax 718-361-7377.

**Accounting Contact: Ms.Gitty Braun** <Tel. 718-875-8200, ext.106> <email:gitty@nyairportservice.com

# CitySights NY

## RESERVATIONS

CitySights NY sightseeing tours are free-sale and do not require reservations. Reservations are required for one-day escorted motor-coach tours only by email ([salesny@citysightsny.com](mailto:salesny@citysightsny.com)) or fax (718-361-7377).

## AIRPORT TRANSFERS

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Accepted By:

Company Name \_\_\_\_\_

Authorized Representative \_\_\_\_\_

(Print Name)

Signature \_\_\_\_\_ Date \_\_\_\_\_

Best regards,

***Blanca Espinosa***

**Director of Sales & Marketing**

**CitySights NY / Airlink NY / NYAS**

**Tel. 718-560-3985**

**Fax. 718-361-7377**

**Email: [Blanca@citysightsny.com](mailto:Blanca@citysightsny.com)**

# CitySights NY

November 6<sup>th</sup>, 2008  
 Karolina Wozinska  
 Specjalista ds Tuusyki  
 TUI Centrum Podrozy  
 66-400 Gorzow Wlkp.  
 Polska

T: 095/720.5776  
 F: 095/720.7089  
 E: karolina.wozinska@tui-centrumpodrozy.pl

## Tour Operator Agreement Valid 01 April, 2009 through 31 March, 2010

Tour/Service	Retail		Net	
	Adult	Child	Adult	Child
<b>Double-Decker Bus Tours (English)</b>				
All Around Town				
Downtown Tour				
Uptown Treasures & Harlem Tour				
Night Tour				
Brooklyn Tour				
Lights of the Holiday Tour (Nov 30 – Jan 1)				
<b>Multi-Lingual Tours</b>				
		Retail		Net
<b>All Around Town Tour (3 DAY VALUE)</b>				
German, Spanish, Italian, French, & Dutch				
		Retail		Net
<b>Tours + Attractions</b>				
<b>Super NY (3 DAY VALUE)</b>				
All Around Town Tour & Madame Tussauds				
All Around Town Tour & Intrepid Sea, Air & Space Museum				
All Around Town Tour & Liberty Helicopter – Big Apple				
Downtown & Sport Museum				
Woodbury Common Premium Outlets Day Trip*				
Shop, Hop, & Top (4 DAY VALUE)				
		Retail		Net
<b>Tours &amp; Meal</b>				
Night Tour & Planet Hollywood**				
		Retail		Net
<b>Day Trips</b>				
Washington, D.C.***				
Philadelphia & Amish Country***				
Boston***				

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# CitySights NY

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### SAMPLE VOUCHER

Issued To: CitySights NY

(Tour/Receptive Operator logo)

Issued By: (Name of Tour/Receptive Operator)

Please provide the following:

Name of Tour:

# Adults \_\_\_\_\_ # Children \_\_\_\_\_

**Note to Passengers:** Exchange this voucher at the CitySights NY Visitor Center inside Madame Tussauds, 234 W. 42<sup>nd</sup> Street in Times Square (between Broadway & 8<sup>th</sup> Avenue) between 08:00AM to 08:00PM.

CitySights NY Customer Service: 1-212-812-2700 or 1-877-486-8769

CitySights NY entire operation will be closed for the observance of Yom Kippur on Monday September 28<sup>th</sup> 2009. Sunday September 27<sup>th</sup> 2009 we will close all tours by 3pm. Thanksgiving we will run a regular schedule. Christmas we will run a regular schedule. New Years Eve we will close all tours by 3pm. New Years Day we will run a regular schedule.

Payable By:

Voucher No:

Expires 31 March 2010

### PAYMENTS/CREDIT

Payment terms must be arranged before vouchers may be issued. If you are a tour operator issuing your own voucher with payment to be made by a receptive operator, please remember to include the name of the receptive operator in the voucher section under "Payable By"

**CREDIT CARD PAYMENTS:** To make payments by credit card, a credit card authorization form, including a copy of the front and back of the credit card, must be submitted to CitySights NY by email or fax. Once approved, invoices will be sent for review. Charges will be processed on the authorized credit card one week from invoice mailing. To request a credit card authorization form, please email salesny@citysightsny.com or fax 718-361-7377.

**BILLING:** For clients with approved credit, CitySights NY will invoice at the end of each month for all vouchers collected during that month. Payments are due within 30 days from the date of the invoice. To request a credit application, please email salesny@citysightsny.com or fax 718-361-7377.

Accounting Contact: Ms.Gitty Braun->Tel. 718-875-8200, ext.106->email:gitty@nyairportservice.com

# CitySights NY

## RESERVATIONS

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## AIRPORT TRANSFERS

Door-to-door share-ride airport transfer service in each direction between JFK, EWR, LGA and hotels in Manhattan are operated by our sister company, Airlink NY ([www.airlinknyc.com](http://www.airlinknyc.com)). For rates and information to establish a voucher account, please email [salesny@citysightsny.com](mailto:salesny@citysightsny.com).

Accepted By:

Company Name \_\_\_\_\_

Authorized Representative \_\_\_\_\_

(Print Name)

Signature \_\_\_\_\_ Date \_\_\_\_\_

Best regards,

***Blanca Espinosa***

Director of Sales & Marketing

CitySights NY / Airlink NY / NYAS

Tel. 718-560-3985

Fax. 718-361-7377

Email: [Blanca@citysightsny.com](mailto:Blanca@citysightsny.com)

# CitySights NY

May 6, 20099  
 Silvio Rebrmann  
 USA Travel SK GMBH  
 Maticenstrasse  
 10249 Berlin

T: 030.41935380  
 F: 030.40041961  
 E: rebman@syctravel.de

**Special Operator Agreement -NW**  
**Valid 01 April, 2009 through 31 March, 2010**

Tour Service	Retail		Net	
	Adult	Child	Adult	Child
<b>Double-Decker Bus Tours (English)</b>				
All Around Town				
Downtown Tour				
Uptown Treasures & Harlem Tour				
Night Tour				
Brooklyn Tour				
Lights of the Holiday Tour (Nov 30 – Jan 1)				
<b>Multilingual Tours</b>				
All Around Town Tour (3 DAY VALUE)				
Escorted Multilingual 4 ½ hour Tour				
Super NY plus Escorted Multilingual Tour French, German, Spanish, & Italian				
<b>Tours - Attractions</b>				
Super NY (3 DAY VALUE)				
All Around Town Tour & Madame Tussauds				
All Around Town Tour & Intrepid Sea, Air & Space Museum				
All Around Town Tour & Liberty Helicopter - Big Apple				
Woodbury Common Premium Outlets Day Trip*				
Shop, Hop, & Top 3-day Value Package (4 DAY VALUE)				
<b>Tour &amp; Meal</b>				
Night Tour & Dinner at Planet Hollywood**				
<b>Day Trips</b>				
Washington, D.C.***				
Philadelphia & Amish Country***				
Boston***				

**IMPORTANT MESSAGES**

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\*\* Planet Hollywood Restaurant is valid for 30 days from the date the voucher is exchanged.

\*\*\* Day Trips to other Cities - Reservations are required in advance. Send request to [salesny@citysightsny.com](mailto:salesny@citysightsny.com) to confirm a seat on the bus.

# CitySights NY

## Planet Hollywood Meals

Planet Hollywood is also known for their world famous meals and eye catching décor.

Meal vouchers are designed to suit a wide

variety of tastes. PH is also known for their world famous meals and eye catching décor.

Planet Hollywood's "Premier Meal" for adults includes:

Appetizer: House Salad

Entrée: Choice of any entrée on the menu

Dessert: Ice Cream

Beverages: Unlimited soft drinks, coffee, Hot Tea & Ice Tea.

Children ages 5-11 meal vouchers includes: Any entrée on the kids menu and Ice Cream for Dessert, plus unlimited soft drink, juice or milk.

### SPECIAL SERVICE DATES

Monday, September 29: Tours will not operate in observance of Yom Kippur

Sunday September 27: Tours will not operate after 3pm

Thanksgiving (Thursday, November 26): Tours will operate on a regular schedule

Christmas: Tours will operate on a regular schedule

New Years Eve: Tours will not operate after 3pm

New Years Day: Tours will operate on a regular schedule

### CitySights NY - SAMPLE VOUCHER

Prior to issuing vouchers to your passengers, a sample voucher must be submitted to CitySights NY for approval. Following is information to include on your voucher. All vouchers must be written in English or have an English translation. Please include your company name and any information necessary for passenger assistance and for accounting purposes. Please advise any tour operator or travel agent purchasing services through you to make sure to mark the voucher "Booked and payable by (your company name)".

### SAMPLE VOUCHER

Issued To: CitySights NY  
Issued By: (Name of Tour/Receptive Operator)

(Tour/Receptive Operator logo)

Please provide the following:

Name of Tour: \_\_\_\_\_  
# Adults \_\_\_\_\_ # Children \_\_\_\_\_

Note to Passengers: Exchange this voucher at the CitySights NY Visitor Center inside Madame Tussauds, 234 W. 42<sup>nd</sup> Street in Times Square (between Broadway & 8<sup>th</sup> Avenue) between 8:00AM and 8:00PM.

CitySights NY Customer Service: 1-212-812-2700 or 1-877-486-8769

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Payable By: \_\_\_\_\_

Voucher No: \_\_\_\_\_

Expires 31 March 2010

# CitySights NY

### PAYMENTS/CREDIT

Payment terms must be arranged before vouchers may be issued. If you are a tour operator issuing your own voucher with payment to be made by a receptive operator, please remember to include the name of the receptive operator in the voucher section under "Payable By"

**CREDIT CARD PAYMENTS:** To make payments by credit card, a credit card authorization form, including a copy of the front and back of the credit card, must be submitted to CitySights NY by email or fax. Once approved, invoices will be sent for review. Charges will be processed on the authorized credit card one week from invoice mailing. To request a credit card authorization form, please email [salesny@citysightsny.com](mailto:salesny@citysightsny.com) or fax 718-361-7377.

**BILLING:** For clients with approved credit, Twin America LLC, DBA CitySights NY will invoice at the end of each month for all vouchers collected during that month. Payments are due within 30 days from the date of this invoice. To request a credit application, please email [salesny@citysightsny.com](mailto:salesny@citysightsny.com) or fax 718-361-7377.

Accounting Contact: Mitchell Cantor - Comptroller <Tel. 212.397.2620, ext.208> email: [mitchell.cantor@cochusa.com](mailto:mitchell.cantor@cochusa.com)

### RESERVATIONS

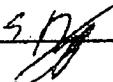
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Accepted By: \_\_\_\_\_  
Company Name U.S.A. TRAVEL SK GmbH

Authorized Representative Silvio Rebmann  
(Print Name)

Signature  Date 06.05.09

Best regards,  
**Blanca Espinosa**  
Director of Sales & Marketing  
CitySights NY / Go Airlink Shuttle  
Tel. 718-560-3985  
Fax. 718-361-7377  
Email: [Blanca@citysightsny.com](mailto:Blanca@citysightsny.com)

# CitySights NY

3.10.09

Virgin Holidays  
 Kieran O'Shea  
 Resort Service Supervisor  
 1001 Ave of the America Suite 420  
 New York, NY 10018

T: 212.790.9560  
 F: 212.398.9120  
 E: Kieran.o'shea@flyvirgin.com

**Special Agreement**  
 Valid 01 April, 2009 through 31 March, 2010

Tour/Service	Retail		Net	
	Adult	Child	Adult	Child
<b>Double-Decker Bus Tours (English)</b>				
All Around Town				
Downtown Tour				
Uptown Treasures & Harlem Tour				
Night Tour				
Brooklyn Tour				
Lights of the Holiday Tour (Nov 30 – Jan 1)				
<b>Multi-Lingual Tours</b>				
	Retail		Net	
All Around Town Tour (3 DAY VALUE)				
Escorted Multilingual 4 ½ hour Tour				
Super NY plus Escorted Multilingual Tour				
French, German, Spanish, & Italian				
<b>Tours + Attractions</b>				
	Retail		Net	
Super NY (3 DAY VALUE)				
All Around Town Tour & Madame Tussauds				
All Around Town Tour & Intrepid Sea, Air & Space Museum				
All Around Town Tour & Liberty Helicopter – Big Apple				
Woodbury Common Premium Outlets Day Trip*				
Shop, Hop,&Top 3-day Value Package (4 DAY VALUE)				
All Around Town Tour & Statue of Liberty Ferry				
<b>Tour &amp; Meal</b>				
	Retail		Net	
Night Tour & Dinner at Planet Hollywood**				
<b>Day Trips</b>				
	Retail		Net	
Washington, D.C.***				
Philadelphia & Amish Country***				
Boston***				

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# CitySights NY

**Planet Hollywood Meal:** Meal vouchers are designed to suit a wide variety of tastes. Known for their world famous meals and eye catching décor, Planet Hollywood's "Premier Meal" for adults includes:

Starter: House Salad.

Main Course: Any entrée on the menu

Dessert: Ice Cream

Beverages: Unlimited soft drinks, coffee, hot tea or iced tea

Children (ages 5-11) meal includes:

Main Course: Any entrée on the kids menu

Dessert: Ice Cream

Beverages: Unlimited soft drink, juice or milk.

Prices include tax and 15% gratuity. Clients presenting CitySights NY voucher receive VIP seating (first available seating/line bypass)

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(Tour/Receptive Operator logo)

Issued By: (Name of Tour/Receptive Operator)

Please provide the following:

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# Adults \_\_\_\_\_ # Children \_\_\_\_\_

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Voucher No:

Expires 31 March 2010

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Accepted By:

Company Name \_\_\_\_\_

Authorized Representative \_\_\_\_\_

(Print Name)

Signature \_\_\_\_\_ Date \_\_\_\_\_

Best regards,

***Blanca Espinosa***

Director of Sales & Marketing

CitySights NY / Go Airlink Shuttle / NYAS

Tel: 718-560-3985

Fax: 718-361-7377

Email: [Blanca@citysightsny.com](mailto:Blanca@citysightsny.com)

**EXHIBIT 2**

Country	Orders	Adult	Child	Total Amount
United States	42154	119109	11276	\$6474156.92
United Kingdom	3952	10576	349	\$698475.90
Canada	3401	9275	664	\$557319.50
Australia	1163	2566	112	\$187426.15
Germany	996	2390	90	\$150942.40
Ireland	549	1478	85	\$105050.00
France	485	1356	100	\$98171.00
Spain	409	1080	52	\$82362.60
Netherlands	387	1109	41	\$76254.20
Brazil	372	860	29	\$63220.00
Mexico	360	1016	73	\$77975.00
Italy	336	918	61	\$65315.60
India	266	589	44	\$35051.60
Belgium	228	618	30	\$43301.00
Switzerland	222	529	28	\$36362.40
Denmark	217	641	36	\$45956.00
Great Britain	209	610	17	\$39181.00
Austria	163	389	9	\$26617.00
Sweden	160	419	17	\$26637.00
South Africa	143	332	18	\$23181.99
South Korea	110	219	20	\$12674.00
Argentina	108	268	13	\$19321.82
Israel	102	221	17	\$12394.20
Japan	101	218	6	\$14179.50
New Zealand	99	206	11	\$13765.00
Singapore	95	218	13	\$15862.00
Norway	92	240	17	\$19415.00
Colombia	91	271	20	\$18224.00
Venezuela	90	180	14	\$12995.00
Finland	75	189	7	\$13083.30
Puerto Rico	70	249	12	\$16908.00
Philippines	62	157	10	\$9938.00
Portugal	60	169	8	\$13671.00
China	56	116	4	\$6366.00

Peru	54	140	13	\$9081.00
United Arab Emirates	53	114	18	\$8412.00
Turkey	51	129	3	\$9751.00
Russian Federation	50	107	3	\$8274.00
Malaysia	42	109	7	\$6227.00
Romania	39	74	1	\$5137.00
Hungary	38	122	0	\$6306.80
Hong Kong	33	84	5	\$4626.00
Greece	31	111	2	\$7567.00
Panama	31	69	7	\$4767.00
Chile	30	83	2	\$5163.00
Luxembourg	29	74	2	\$5310.00
Poland	29	93	2	\$6587.00
Uruguay	29	80	6	\$6115.00
Dominican Republic	28	84	16	\$4368.00
Czech Republic	28	75	1	\$5119.00
Costa Rica	27	68	6	\$4786.00
Bermuda	26	71	2	\$5769.00
Slovenia	26	98	1	\$5825.00
Thailand	22	46	1	\$2589.00
Indonesia	20	47	3	\$3904.00
Guatemala	20	58	6	\$3713.00
Ecuador	19	57	8	\$3129.00
Estonia	17	45	1	\$2745.00
Saudi Arabia	16	37	5	\$2547.00
Latvia	16	25	4	\$1732.00
Yugoslavia	15	34	4	\$2196.00
Virgin Islands (USA)	15	30	3	\$1774.00
Taiwan	15	30	1	\$2064.00
Croatia	14	36	0	\$1942.00
Iceland	14	29	2	\$2473.00
Bahamas	12	35	0	\$1715.00
Trinidad and Tobago	12	31	2	\$2111.00
Lebanon	11	21	1	\$1310.00
Qatar	10	25	1	\$1576.00
Cyprus	10	36	2	\$2267.00

Slovak Republic	10	24	0	\$1475.80
Aruba	10	24	4	\$1498.00
Cayman Islands	9	17	3	\$971.00
Netherlands Antilles	9	32	2	\$2447.00
Sri Lanka	9	19	0	\$989.00
Lithuania	9	25	0	\$1394.00
Barbados	8	14	5	\$1233.00
Kuwait	8	17	6	\$1260.00
Vietnam	8	23	0	\$1552.00
Egypt	8	14	4	\$1053.00
Gibraltar	7	19	0	\$1116.00
Guam	7	17	0	\$1014.00
Bulgaria	7	17	1	\$1914.00
Pakistan	6	11	1	\$921.00
Jamaica	6	13	3	\$832.00
Honduras	6	20	0	\$1320.00
Georgia	6	10	3	\$773.00
Ukraine	6	16	1	\$1217.00
Bahrain	6	17	3	\$1666.00
Oman	5	18	2	\$1234.00
American Samoa	5	16	4	\$1259.00
Nigeria	5	6	0	\$400.00
Bolivia	5	13	0	\$809.00
Guadeloupe	5	13	2	\$991.00
Polynesia	4	10	0	\$880.00
El Salvador	4	9	0	\$337.00
Malta	4	14	0	\$850.00
Martinique	4	6	5	\$893.00
Azerbaijan	3	4	1	\$320.00
Cape Verde	3	6	2	\$324.00
Virgin Islands (British)	3	8	0	\$466.00
Haiti	3	9	0	\$421.00
Armenia	3	9	0	\$416.00
Monaco	3	6	0	\$277.00
Andorra	3	8	0	\$430.00

Nicaragua	3	6	0	\$526.00
Kazakhstan	3	3	0	\$158.00
Malawi	3	11	0	\$653.00
Nepal	3	7	1	\$373.00
Bosnia-Herzegovina	2	4	0	\$230.00
Suriname	2	17	1	\$1437.00
Swaziland	2	18	2	\$843.60
Belize	2	3	0	\$232.00
Morocco	2	3	0	\$155.00
Uganda	2	4	0	\$134.00
Paraguay	2	5	0	\$260.00
Guyana	2	2	0	\$138.00
Reunion	2	4	0	\$360.00
Western Sahara	1	2	0	\$162.00
Uzbekistan	1	4	0	\$156.00
Zaire	1	4	0	\$256.00
Jordan	1	1	0	\$69.00
Belarus	1	1	0	\$49.00
Cambodia	1	2	0	\$98.00
Christmas Island	1	1	0	\$49.00
Bangladesh	1	2	0	\$98.00
Antigua and Barbuda	1	3	0	\$102.00
Albania	1	4	0	\$196.00
Anguilla	1	2	0	\$170.00
Congo	1	4	0	\$324.00
Greenland	1	1	0	\$64.00
Micronesia	1	2	0	\$150.00
New Caledonia	1	1	0	\$75.00
Madagascar	1	4	0	\$540.00
Kenya	1	3	0	\$243.00
Iran	1	1	0	\$149.00
Afghanistan	1	1	0	\$7.00
Saint Vincent & Grenadines	1	2	0	\$98.00

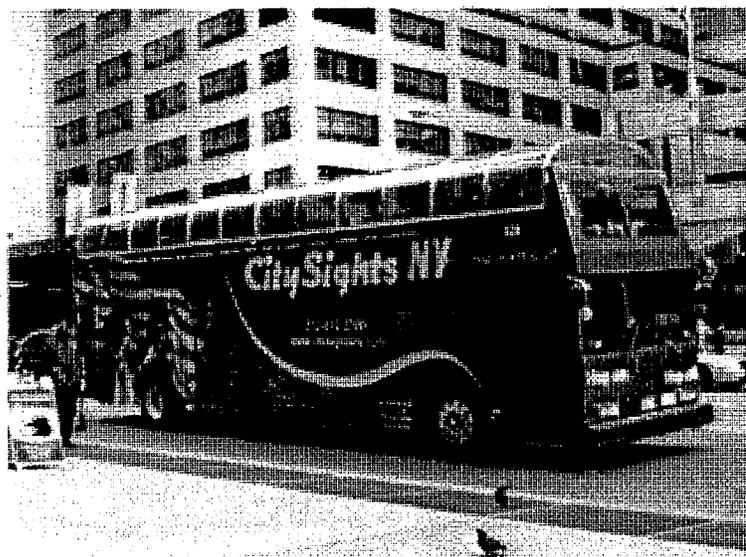


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- |                         |                       |
|-------------------------|-----------------------|
| Macy's                  | Empire State Building |
| Chinatown               | Little Italy          |
| World Trade Center Site | Wall Street           |
| Battery Park            | South Street Seaport  |
| United Nations          | Rockefeller Center    |
| Greenwich Village       | Lower East Side       |
| Times Square            | Theatre District      |
| And More!               |                       |

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Code	Product	Quantity	Price/Ea.	Total
<input type="button" value="Remove"/>	NYCDT CitySights NY Downtown Tour	<input type="text" value="1"/> <input type="button" value="Update"/>	\$0.00	\$239.85
Departure Point: Cromwell CT				
Date: Wed., November 18, 2009				
No. of Adults: 3		\$239.85		
No. of Children: 0				

**Total: \$239.85**

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. MC-F-21035  
STAGECOACH GROUP PLC AND COACH USA, INC., et al.,  
– ACQUISITION OF CONTROL – TWIN AMERICA LLC**

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**VERIFIED STATEMENT OF ROSS KINNEAR**

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My name is Ross Kinnear. I am Vice President, Chief Financial Officer, and Treasurer of Coach USA, Inc. I am also a member of the Board of Twin America, LLC. My business address is 160 S. Route 17 North, Paramus, New Jersey 07652. I offer this verified statement in support of the Reply of Twin America to the Comments of the New York Attorney General, filed in this proceeding on November 2, 2009.

1. On March 17, 2009, Coach USA, through its wholly-owned federally regulated motor carrier subsidiary, International Bus Services, Inc. (“IBS”), entered into the Limited Liability Company Agreement of Twin America, LLC (“Twin America Agreement”), which formed Twin America. IBS holds charter and special operations motor carrier authority from the Federal Motor Carrier Safety Administration (“FMCSA”) issued in Docket MC-155397. IBS entered the Twin America Agreement with CitySights Twin, LLC (“CitySights”), the other

member of the Twin America, LLC (“Twin America”). The Transaction did not involve the acquisition of new debt by Twin America or the member entities.

2. The transaction forming Twin America was undertaken without any involvement by Coach USA’s transportation counsel. Accordingly, at the time of the Agreement and for a period of weeks thereafter, neither I nor my colleagues involved in the transaction were aware that the transaction was subject to Surface Transportation Board (“STB”) approval by virtue of the interstate nature of the transaction forming the new Twin America LLC entity and the services to be provided by that new entity and the control exercised over it by its members. Once I and others associated with the management of Twin America became aware that the transaction was subject to STB jurisdiction, and to an STB filing and approval requirement, in late June 2009 we asked our transportation counsel to prepare an appropriate filing seeking STB approval for the transaction. We also asked our counsel to prepare the necessary applications to obtain interstate charter and service operating authority for Twin America from the Federal Motor Carrier Safety Administration so that certain interstate operations described further below could be undertaken with motorcoaches that were contributed to the Twin America fleet. Our counsel then consulted in regard to the decisions to make these filings with CitySights officials involved in the management of Twin America and received approval to make these filings from those officials as well. The FMCSA application was thereupon filed on August 10, 2009 and the STB application on August 19, 2009.

3. Under the Twin America Agreement, Coach USA and IBS agreed to contribute their Gray Line New York operations to Twin America, including some of the intellectual property held by Gray Line New York. In return, IBS received 60 percent of the economic interests in, and 50 percent of the voting rights in, Twin America. Likewise, CitySights

contributed its entire motor tour transportation business to Twin America in return for 40 percent of the economic interest and fifty percent of the voting rights in Twin America.

4. The attached page from the website of Gray Lines New York describes the different types of vehicles contributed to Twin America by IBS and now operated by Twin America. See Exhibit 1. Specifically, of a total of 87 vehicles contributed by Gray Line, 12 were traditional motorcoaches of the type used in interstate and local charter services, 59 were double-decker buses devoted to motor carrier transportation tour services and 16 consisted of support vans, motorized trolleys and other miscellaneous vehicles. CitySights contributed a total of 62 double-decker vehicles to Twin America, plus an additional 8 such vehicles to be built in 2009.

5. Prior to the transfer of the vehicles to Twin America and initiation of motor carrier tour transportation operations by that entity, Coach USA conducted, through IBS, transportation operations with the contributed vehicles, including charter services with the motorcoaches and motor tourism services with the double-decker buses. IBS had previously conducted these operations, for some period in coordination with another Coach USA affiliate known as Gray Line New York Tours, Inc., a federally regulated carrier engaged in motor carrier tourism and charter operations. Coach USA had acquired both IBS, Gray Line New York Tours, Inc. and certain related carriers with STB approval in 1998. Double-decker buses used to provide the New York motor carrier tourism services were owned by a related federally regulated carrier known as Gray Line Air Shuttle, Inc., also acquired by Coach USA in the same 1998 STB-approved transaction. IBS subsequently came into possession of the double-decker buses.

6. Operation of Twin America began on March 31, 2009. With the exception of the bargaining units, Twin America is a fully-integrated joint venture. While Twin America management is still working to combine the Gray Line and CitySights operations, both businesses are being run as one motor carrier business under common management and control. In all respects, Twin America merged the assets and operations of the Gray Line and CitySights businesses.

7. One of Coach USA's motivations for this transaction was to find a way to offer high-quality, efficient motor carrier tourism services in the face of declining demand and falling revenues. Motor carrier tourism has been hit hard by the economic downturn and Gray Lines' business suffered as a result. For example, in the 2007/2008 season, which begins in April and ends in March of the following year, Gray Lines revenues totaled about \$70.1 million. The next year (2008/2009) revenues fell to \$63.5 million, a decline of 9.5%. Twin America creates a business that is better able to survive in weak economic conditions.

8. One way in which Twin America is better able to withstand economic downturns is by making its operations more efficient and reducing costs. The most immediate efficiency has been the reduction in the size of the combined bus fleet. Before Twin America was formed, Gray Line utilized 113 buses, 79 of which were double-deckers in its motor carrier tourism transportation operations. Only 59 Gray Line double-decker buses were contributed to Twin America, however, removing 20 double-decker buses from the streets. Coach USA was able to redeploy these 20 buses to Chicago, where Coach USA has experienced a significant increase in demand for its operations.

9. Having 20 less buses on the streets has the obvious benefit of reducing congestion. It also contributes to material cost savings for Twin America. Maintenance costs

fell by 19.5 percent during the period April 2009 through August 2009. Certain variable and direct costs, such as commissions, tolls, fuel and depreciation, also fell, and a portion of that decrease is attributable to the reduced number of buses.

10. There are also savings that are being realized by extending the best practices and cost advantages of either Gray Line or CitySights to the entire operations of Twin America. For example, Gray Line has been able to purchase fuel at a lower cost than CitySights and the lower price will now be available to Twin America because of the Transaction. Fuel costs for Twin America were 22.5 percent less in the time period April through August 2009 than they were for Gray Line and CitySights in the same months of 2008.

11. In all, Twin America's total operating expenses for the period March 31, 2009 through August 2009 were 7.3 percent lower than they were for Gray Line and CitySights combined during the same months of 2008. And more savings are expected. Because Twin America was formed at the beginning of the heaviest travel season, Twin America has not to date had the opportunity to capitalize on all the potential areas for savings. For example:

- Advertising costs will very likely be reduced given the savings that will be associated with a single advertising campaign as opposed to two separate advertising campaigns, e.g., a single appearance at trade shows instead of two separate appearances.
- Over time, Twin America will be able to integrate its operations more, allowing it to reduce redundant management, accounting, and sales and market functions.
- Twin America will also be able to lower costs by picking the better prices that either party was able to obtain for commonly purchased inputs. One example of this is the purchase of spare parts. Another is when Gray Line or CitySights buys tickets for

attractions to sell in conjunction with a tour. Twin America will now be able to buy those tickets at a lower cost.

- Insurance policies were already purchased for the year by the time Twin America was launched. However, when insurance policies are renewed, Twin America anticipates that it will realize further cost savings.

These cost savings will be material to the business. They will be realized over time, and will help to make Twin America a more efficient operator. This will in turn be of benefit to our passengers and to our employees.

12. Twin America's twelve motorcoaches are used to provide interstate and local charter service. While under IBS's control, these motorcoaches were engaged during 2008 in charter operations within the New York area, as well as between points in the New York metropolitan area and Atlantic City, the Philadelphia area and points in upstate New York that are reached via New Jersey. The charters were provided to various groups that required a motorcoach for transportation needs.

13. As I noted above, following the decision to engage in Twin America charter operations as well as motor carrier tourism operations, Twin America authorized the filing of an application to procure its own FMCSA operating certificate allowing it to conduct operations in interstate commerce providing charter and special services. An application for that authority was filed with the FMCSA on August 10, 2009. Twin America was assigned DOT number 1924173 and MC number 688284. On November 17, 2009, FMCSA issued charter and special operations authority to Twin America. See Exhibit 2, which is a copy of the authority.

14. Now that its operating certificate has been received, Twin America intends to conduct interstate and local New York area charter and special operations using the

motorcoaches in its fleet and its own operating authority to do so. As was the case when IBS controlled the motorcoach vehicles used for interstate charter operations, charters will be operated within the New York area, and also between the New York and points in surrounding states, including points in New Jersey (including Atlantic City) and Pennsylvania.

15. In addition to conducting its own interstate motorcoach charter services, Twin America also maintains, and its operating authority will support, various arrangements with other interstate carriers with respect to its New York City motor carrier tourism transportation services. One such arrangement is with Trans-Bridge Lines, an Allentown, PA-based motorcoach carrier. Under that arrangement, first made by Gray Line and now managed by Twin America, Trans-Bridge passengers pay a single price for a ticket that entitles them to a one-day trip to New York City from any of one of four origin points in Pennsylvania or New Jersey via Trans-Bridge motorcoach, travel around New York City via Twin America, and return travel via Trans-Bridge to the point of origin. An excerpt from the Trans-Bridge Lines website is attached as Exhibit 3.

16. Similar joint transportation arrangements are in place between Twin America and Coach USA operating companies in surrounding states. For example, passengers can and do purchase for a single price, Coach USA motorcoach services to/from New York City and Twin America bus services within New York City. These arrangements are in place with Lenzner Coach (based in the Pittsburgh, PA area), Butler Bus (based in Butler, PA), and Central Cab (based in Waynesburg, PA), each a Coach USA operating motorcoach company. The passenger typically will travel by one of these or other Coach USA companies from an origin in another state to New York, travel around New York via a Twin America bus, and then return to the point of origin or stay over in New York. These arrangements are sometimes also combined with hotels, meals and other services arranged by the Coach USA bus company as part of a package

of travel services. Examples of these types of offerings are set forth at Exhibit 4. During 2009, Twin America has transported several hundred persons under arrangements of this sort.

17. Twin America is working to restore an arrangement that existed prior to the Twin America transaction with Metro North Railroad, a commuter line based in New York that operates into New Jersey and Connecticut, to points beyond the New York metropolitan area such as New Haven. Under this arrangement, passengers traveling on Metro North to New York City are entitled to purchase for a single price a ticket that entitles them to the round trip rail transport and to transport services via the Twin America double-decker buses upon arrival in New York City. A new arrangement for this combination rail/bus service is expected to be in place in January 2010. A copy of the existing arrangement (which is not currently in effect) is attached as Exhibit 5.

18. In addition to these various forms of arrangements with interstate carriers, Twin America maintains approximately 100 arrangements with different tour operators and other travel agencies throughout the world to sell its services to persons traveling to New York City. About one half of these arrangements were made by IBS/Gray Line and the remainder by CitySights, but all are now owned and managed by Twin America. A representative sampling of the arrangements initially made by Gray Line, and now owned and managed by Twin America, is set forth as Exhibit 6. Typically, the tour operator or agent will sell the Twin America service to the passenger prior to the passenger's travel to the United States and combine it with air travel and other travel services in a single price offered to the passenger. Over 21,000 persons made arrangements during the period April 1, 2009 through September 30, 2009 through overseas tour operators to purchase tickets for Twin America travel, and this generated over \$1.4 million in revenues.

19. Twin America also sells its New York City bus services on the Internet, making it available for pre-purchase at any place in the world. The transportation service may be purchased at either of the following websites: <http://www.citysightsny.com/> or <http://www.newyorksightseeing.com/> While we do not keep statistics on the domicile of our passengers, we know that the Internet sales from the Gray Line site were made from 113 nations. Over \$6.5 million worth of tickets have been sold during the period April-September 2009 on the CitySights and Gray Line websites, representing about 10% of Twin America sales. In fact, Internet sales are 15% higher for the period April through September, 2009 compared to the same period the previous year, even while total sales declined due to deteriorating economic conditions.

20. In addition, Twin America also maintains certain arrangements with a number of hotels in New Jersey under which patrons of those hotels are able to purchase tickets allowing them transportation from Twin America between their hotels (where they are picked up by Twin America-operated vans) and New York City and also allowing them seamless transportation on Twin America buses in New York City, and return (via van) to their hotels.

21. Twin America service will be improved in the coming months because passengers will be allowed to use tickets bought from either Gray Line or CitySights to travel on any Twin America bus, thus increasing passenger options. Mr. Marmurstein describes this forthcoming cross-ticketing arrangement in greater detail. As he also describes, there are plans to offer additional tours that neither company was able to offer previously.

22. On July 31, 2009, long after Twin America management had instructed that applications be filed with FMCSA for Twin America operating authority and with the STB for control authorization, IBS received a subpoena *duces tecum* from the New York Attorney

General concerning the formation of Twin America. The subpoena was addressed to “Gray Line New York Tours, Inc. and Gray Line Twin, LLC” and was sent to IBS at its New York address. The subpoena sought documents and information related to the formation of Twin America, communications between IBS and CitySights about Twin America and certain other information about the motor tour operations.

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: November 17, 2009



---

Ross Kinnear



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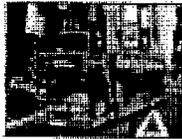


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November 17, 2009

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**MC-688284-C**  
TWIN AMERICA LLC  
D/B/A GRAY LINE NEW YORK CITYSIGHTS  
NEW YORK, NY

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This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 387); the designation of agents upon whom process may be served (49 CFR 366); and schedules (49 CFR 374.305). The carrier shall also render reasonably continuous and adequate service to the public. Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

A handwritten signature in black ink, appearing to read "Jeffrey L. Secrist".

Jeffrey L. Secrist, Chief  
Information Technology Operations Division

**NOTE:** Applicant is a nonrecipient of governmental financial assistance.

**NOTE:** Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

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**New York City  
& North Central  
Jersey Tours**



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- |                                      |                                      |                                   |
|--------------------------------------|--------------------------------------|-----------------------------------|
| AMERICAN GIRL PLACE<br>NEW YORK CITY | BROOKLYN BOTANIC<br>GARDENS & MUSEUM | CHRISTMAS SHOPPING IN<br>NEW YORK |
| GOURMET SHOPPING IN<br>NEW YORK      | NEW YORK CITY<br>GRAY LINE TOURS     |                                   |

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**November 22 (Sun)**

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Price Per Person	
Adult	\$57

Departure Times

Allentown, PA	6:00am
Bethlehem, PA	6:20am
Phillipsburg, NJ	6:50am
Clinton, NJ	7:10am
Home Approximately	6:30pm

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**CHRISTMAS SHOPPING in NEW YORK**

**December 1 (Tues)**

**December 10 (Thurs)**

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### May 8-10 (3 days)

#### NEW YORK CITY WEEKEND

Let us show you the "Big Apple" in style with two nights, right in New York City in the heart of all the city action. We have included an all day ticket on Saturday for the Gray Line sightseeing bus including over 20 different stops today throughout various areas in NYC and you will have the opportunity to get on and off as you wish all day and evening to shop, dine and see all the NYC highlights including Times Square, Broadway, Madison Square, Empire State Building, Union Square, Greenwich Village, World Trade Center Site, Rockefeller Center, Central Park, South Street Seaport, and more! You will be free to go back to your hotel as you wish throughout the day and there will be a drop off from the Gray Line tour bus close to your hotel (some walking involved). This special all day ticket gives all passengers the freedom to spend as much or as little time as you like at your preference for shopping, dining and sightseeing. Your complete package includes: hotel for 2 nights in New York City, ferry ticket to Ellis Island and Statue of Liberty, all day ticket for the Gray Line tour bus. Please note: We cannot guarantee any refund after any payment is made without the purchase of our Refund Protection Plan.

Full payment due by March 1, 2009.

**\$595.00 dbl/trp \$879.00 single Deposit: \$100.00**

AM Departures: Pgh 5:45 / NK 6:30 / Kitt 7:15 / But 7:45

### May 12-15 (4 Days)

#### NEW! SPRING TIME IN THE SMOKIES

Hosted by Gad-About Tours - Package includes: 3 nights in Pigeon Forge, 3 breakfasts, 1 lunch, 3 dinners, Smith Family Theater Show, Biltmore Estate Tour, afternoon exploring Gatlinburg, tram ride, tribute to "The Andy Griffith Show", show "Swingtime" at the Grand Majestic Theater, luggage handling and all touring.

**\$588.00 dbl \$568.00 trp \$558.00 quad \$648.00 single Deposit: \$200.00**

AM Departures: TBA

### May 16-17 (2 Days)

#### "ANNE OF GREEN GABLES" AND "SOUND OF MUSIC" TORONTO THEATER TOUR

Hosted by Gad-About Tours - Theater in Toronto, Canada has become one of the best things to do in the way of classy entertainment. This fabulous itinerary features "Anne of Green Gables" at the Elgin Theater, along with "The Sound of Music" at the Princess of Wales Theater and winner of five Academy Awards including Best Picture - this is an excellent combination and you will simply love both productions! We urge you to sign up early to avoid disappointment. Full package includes: 1 overnight in Toronto, first class dinner at the top of the CN Tower in Toronto, 1 continental breakfast, guided Toronto city tour, "Anne of Green Gables" at the Elgin Theater, "Sound of Music" at the Princess of Wales Theater. (We will have late evening arrival home on the second day) **Identification Requirements:** At time of printing, a birth certificate and driver's license was still acceptable to cross the borders. But,

BUTLER MOTOR TOURS ON THE WEB AT [WWW.BUTLERBUS.COM](http://WWW.BUTLERBUS.COM)



# LENZNER TOUR AND TRAVEL *Getaway* 2009 GUIDE & PLANNER



You'll have more  
**ACTION** than ever before!

**AN EVEN BIGGER  
EARLY BOOKING  
DISCOUNT!**

For  
Details  
See page 3.

**LANCASTER, PA**  
Amish & Theatre Tours

- Mar 13-14, 2009 - *Behold the Lamb/Ring of Fire*
- Mar 27-28, 2009 - *Behold the Lamb/Ring of Fire*
- Apr 24-25, 2009 - *Behold the Lamb/Rocketmen*
- May 15-16, 2009 - *Abraham & Sarah/Rocketmen*
- Jun 19-20, 2009 - *Abraham & Sarah/Route 66*
- Jul 24-25, 2009 - *In the Beginning/Route 66*
- Sep 11-12, 2009 - *In the Beginning/Wedding Singer*
- Oct 16-17, 2009 - *In the Beginning/Smoke on the Mtn.*
- Nov 13-14, 2009 - *Miracle of Christmas/Voices of Christmas*
- Dec 4-5, 2009 - *Miracle of Christmas/Voices of Christmas*

**Day 1:** Shop at the **Kitchen Kettle Village** before checking into your hotel. Enjoy a delicious dinner and wonderful performance this evening. (D)

**Day 2:** Enjoy breakfast at the hotel before departing for an Amish tour with stops at the **Bird-in-Hand Farmers' Market, Riehl's Quilts & Crafts Farm** and **Eli's Road Stand** (if time permits). An early lunch will be served prior to another wonderful performance before heading home. (B,L)

**Cost per person:** \$319.00 double    \$302.00 triple  
**per room**            \$293.00 quad            \$384.00 single

**Includes:** Transportation, lodging, one breakfast, one lunch, one dinner, reserved seating for two shows per the itinerary, baggage handling and taxes.

**Deposit:** \$100.00 per person  
**Insurance:** \$26.00 per person, optional  
**Balance due:** 30 days prior to departure

**Depart:** 7:00 a.m. - SEWI            7:30 a.m. - HILT  
              8:00 a.m. - MONR            8:15 a.m. - IRWN  
              8:30 a.m. - NEWS

Walking Code: 2

**NEW YORK ON A DIME**  
Free Time and Value

- Mar 13-15, 2009
- May 8-10, 2009
- Jun 12-14, 2009
- Jul 10-12, 2009
- Sep 11-13, 2009
- Sep 25-27, 2009
- Oct 9-11, 2009
- Nov 13-15, 2009
- Dec 11-13, 2009
- Dec 18-20, 2009

**Day 1:** Arrive into mid-Manhattan for the next two nights. Come and let us show you how to enjoy **New York City on a budget**. A Lenzner Tour Director will be available for assistance on "how-to" questions.

**Day 2:** This tour will give you the freedom to do what you would like to do without a set itinerary. Buy your own half price show tickets! Ride the subway! Choose a restaurant. See Ellis Island. Tour the museums. **\*\*Note the special offer below for New York Sightseeing.**

**Day 3:** More time for sightseeing before you depart the Big Apple.

**Cost per person:** \$504.00 double    \$414.00 triple  
**Mar-Jul**            \$369.00 quad            \$728.00 single

**Cost per person:** \$539.00 double    \$441.00 triple  
**Sep-Dec**            \$371.00 quad            \$786.00 single

**Includes:** Transportation, lodging mid-Manhattan, baggage handling and taxes.

**Deposit:** \$100.00 per person  
**Insurance:** \$26.00 per person, triple/quad  
**Optional**            \$41.00 per person, double/single  
**Balance due:** 30 days prior to departure

**Depart:** 5:00 a.m. - SEWI            5:30 a.m. - HILT  
              6:00 a.m. - MONR            6:15 a.m. - IRWN  
              6:30 a.m. - NEWS

Walking Code: 3

**GRAY LINE**  
**NEW YORK SIGHTSEEING SPECIALS**  
Discounted City Tours of New York City

**All Loops Tour**  
(Includes Uptown, Downtown, Brooklyn, and Night Tour)

**All Loops Tour with Statue of Liberty/Ellis Island Ferry Combo**

**Downtown Loop**

**Uptown Loop**

**Night Loop or Holiday Lights Tour**

**NYC Ducks Tour**

**NYC Ducks Tour and All Loops Combo**

All tours have hop-on, hop-off privileges except for Night/Holiday tour and NYC Ducks tour. You may use these tours for opportunities to explore, dine, and shop at New York's major attractions. We offer **Discounted Rates** on all of the above tours. Please call our office for the rates. You can also preview the tours at: [www.NewYorkSightseeing.com](http://www.NewYorkSightseeing.com). Reservations must be made

with Lenzner one week in advance of the departure dates. **No exceptions!** Vouchers will be distributed on the coach by the tour director.

More information is available by calling 1-800-342-2349.



**THE GREENBRIER**  
America's Resort!

Mar 29-31, 2009

The Greenbrier, located in White Sulphur Springs, West Virginia, enjoys a long-standing reputation for providing the absolute best in hospitality. Be whisked away to 6,500 acres in the Allegheny Mountain Woodlands for one of the most enjoyable, relaxing vacations ever! From the quality of service and spacious accommodations, to the superb cuisine and varied entertainment, everything speaks of the ultimate at this resort! (2B,2D)

**Cost per person:** \$796.00 double    \$755.00 triple  
**per room**            \$735.00 quad            \$1,011.00 single

**Includes:** Transportation, lodging, two breakfasts, two dinners, one spa treatment\*, use of the indoor pool, afternoon tea and concert, evening movies in the theater, baggage handling and taxes.

**Deposit:** \$150.00 per person  
**Insurance:** \$11.00 per person, double/triple/quad  
**Optional** \$63.00 per person, single  
**Balance due:** Feb 12, 2009

*\*Note: One spa treatment is included in the price above. Please give your spa choice with final payment. Pick from the following:*

- (1) **Mineral Works** - Start off with a vertical body spray followed by a special mineral bath.
- (2) **The Greenbrier Soak** - Soothe tired muscles and minimize aches/pains with a soak in our sulphur tubs. Finish this soak with our wonderful Swiss Shower and Scotch Spray.
- (3) **Greenbrier Sugar Scrub** - Awaken tired, dull skin with our famous sugar scrub exfoliation treatment.
- (4) **Paraffin Hand Rejuvenation** - Tired, dry hands are soaked, then pampered with heat, lotion and paraffin.
- (5) **Paraffin Feet Rejuvenation** - Tired, dry feet are soaked, and then pampered with heat, lotion and paraffin.

**Note: Tour cost is non-refundable after Feb 12, 2009.**

**Depart:** 8:00 a.m. - MONR            8:30 a.m. - HILT  
          9:00 a.m. - SEWI                9:30 a.m. - WASH

Walking Code: 1

**D.C. IN SPRINGTIME - 3 DAY**  
Washington D.C. & Mount Vernon!

Apr 3-5, 2009

**Day 1:** Visit Arlington National Cemetery - the final resting place of President John F. Kennedy and thousands of soldiers from every major U.S. war. A stop will be made at the Marine Corps War Memorial (Iwo Jima Statue). Visits will be made at the National WW II Memorial, the Vietnam Veterans, the Lincoln and the Korean War Memorials. (D)

**Day 2:** Arrive for the Cherry Blossom Parade and Festival. View the activities from Grandstand Seating. Walk to the National Mall and visit your choice of the Smithsonian Institution's museums. Depart for a tour of the National Archives. Stops will be made at the Franklin D. Roosevelt and the Jefferson Memorials. Continue touring with an illuminated monument tour of the Air Force Memorial built on a hillside overlooking the Pentagon. (CB,D)

**Day 3:** Visit the estate and final resting place of George Washington, Mount Vernon. Here you will also visit the Ford Orientation Center & Donald W. Reynolds Museum and Education Center. (CB)

**Cost per person:** \$502.00 double    \$454.00 triple  
**per room**            \$445.00 quad            \$612.00 single

**Includes:** Transportation, lodging, two deluxe continental breakfasts, two dinners, admissions per itinerary, licensed Washington D.C. guide service, baggage handling and taxes.

**Deposit:** \$100.00 per person  
**Insurance:** \$26.00 per person, triple/quad  
**Optional** \$41.00 per person, double/single  
**Balance due:** 30 days prior to departure

*Note: During certain peak tour periods, several popular sights may develop long waiting lines. By maintaining flexibility in the itinerary, we will make every effort to see these sights but cannot give a guarantee. All attractions depend on public line availability.*

**Depart:** 5:30 a.m. - SEWI            6:00 a.m. - HILT  
          6:30 a.m. - MONR                6:45 a.m. - IRWN  
          7:00 a.m. - NEWS

Walking Code: 3

347 Madison Avenue  
New York, NY 10017-3739  
212 340-3000

Peter A. Carrino  
President



## Metro-North Railroad

July 14, 2008

M. Elaine Kellogg  
Director of Sales  
Gray Line New York Sightseeing  
49 West 45<sup>th</sup> Street, 5<sup>th</sup> Floor  
New York, NY 10036

Dear Ms. Kellogg:

This Letter of Agreement sets forth the obligations of Metro-North Commuter Railroad Company ("Metro-North") located at 347 Madison Avenue, New York, NY 10017 and Gray Line New York Sightseeing (hereinafter the "Co-Sponsor"), located at 49 West 45<sup>th</sup> Street-5<sup>th</sup> floor, New York, NY 10036 in conjunction with the joint promotion and sale of Metro-North's rail tickets and Co-Sponsor's discount tour tickets.

Metro-North and Co-Sponsor agree to cooperate and promote the tours more specifically described on Exhibit A attached hereto and made a part hereof: (i) the 75-minute NYC Ducks Tour ("Duck Tour"), and (ii) each of the double-decker bus tours ("Bus Tours") (the Duck Tour and the Bus Tours are hereinafter individually and collectively referred to as the "Event") in the following manner:

**Metro-North hereby agrees to:**

1. Create and produce specially marked tickets for the Event (hereinafter "special event ticket package"), which shall be sold beginning August 1, 2008 through December 30, 2009 and valid seven days a week August 1, 2008 through December 30, 2009 (closed on Christmas and New Year's Day), on Co-Sponsor's behalf and act as agent solely for the purpose of selling the special event ticket package.
  - (i) The special event ticket package shall include discount (excursion) rail fare and discount Event admission ticket.
  - (ii) **Adults** - Adults shall pay the applicable excursion rail fare, plus \_\_\_\_\_ for discount Duck Tour ticket (regular price \_\_\_\_\_) or \_\_\_\_\_ for a discount Bus Tour ticket (regular price \_\_\_\_\_).

**Seniors** - Senior citizens and persons with disabilities shall pay the applicable rail fare, and \_\_\_\_\_ for discount Duck Tour ticket (regular price \_\_\_\_\_) or \_\_\_\_\_ for a discount Bus Tour ticket (regular price \_\_\_\_\_).

**Children 5-11** - Children 5-11 will be charged \* each way on any off-peak train when accompanied by parent or guardian, plus for discount Duck Tour ticket (regular price ) or for a discount Bus Tour ticket (regular price ).

**Children 3-4** - Children 3-4 will ride free on Metro-North trains and will be charged for discount Duck Tour ticket (regular price ) or for a discount Bus Tour ticket (regular price ).

**Children 2 and under** - Children 2 and under will ride free on Metro-North trains and will not be charged for Event admission ticket.

- (iii) Special event tickets with excursion rail to Grand Central Terminal (GCT) will be sold at all Metro-North ticket offices, ticket vending machines (TVMs) and over the internet through WebTicket. Metro-North commutation ticket holders and employees with valid rail passes can purchase the discounted Event admission ticket from any open Metro-North ticket office. The special event ticket package will not be sold on board trains.
2. Participate in the creation, production and distribution of, or engage the services of a contractor to create and produce, artwork and materials relating to the Event.
3. Advertise the Event to its (a) customers on the Metro-North web site and by placing an article in Mileposts and (b) employees by placing an article in the Metro-North Weekly News, as schedule permits.
4. Pay the Co-Sponsor the discount Event admission ticket fees solely from the verifiable and recorded sales of the special event ticket package. The amount remitted to Co-Sponsor shall be the price of the discounted admission tickets (as stated in paragraph 1) multiplied by the number of adult, senior, and child tickets sold minus refunds obtained, if any. Metro-North shall remit these monies within 20 days after the end of each month in which the Event takes place.
5. Promote the Event in "New York City Getaways" program, which includes brochure distribution at all Metro-North ticket offices, Grand Central Terminal information booths and the Station Master's Office. The brochure may also be advertised in local area newspapers in Metro-North's territory.
6. Create and distribute a customer letter to all Metro-North stations with ticket offices.

**Co-Sponsor hereby agrees to:**

1. Provide a discount admission to Metro-North customers (as stipulated in paragraph 1(ii) above).

\* Family Fare – up to four children per adult. Fifth child pays applicable excursion fare.

2. Accept as "admission" (as stated in paragraph 1 above) to the Event, special event tickets issued by Metro-North.
3. Make available any artwork that the parties mutually agree to include in the Event's promotional material.
4. Provide Metro-North with 20 free Event admission tickets for an employee raffle.
5. Include Metro-North promotional copy and mention of discount package ("For Metro-North Special Discount Package, call (800) METRO-INFO; in NYC, call (212) 532-4900; or visit our Web site at [www.mta.info](http://www.mta.info)") in Co-Sponsor's advertising and promotional material whenever possible.

General Provisions:

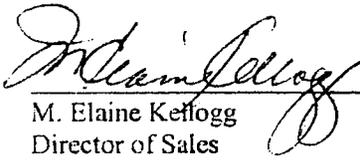
1. This Agreement does not create rights in third parties which did not exist prior to the Agreement. Tickets sold for the use of senior citizens and persons with disabilities shall be subject to the tariff rules and regulations governing the use of such tickets.
2. Neither party shall be liable or responsible for events beyond its control including, but not limited to, labor actions, accidents, Acts of God, and governmental or judicial actions which interfere with either the Event or railroad operations.
3. As between the parties to this Agreement, Metro-North agrees to indemnify and hold harmless Co-Sponsor, its officers, employees and agents from and against any and all loss, costs (including reasonable attorney's fees), damages, expenses and liability of any kind, as a result of injury to or death of any person or organization or damage to any property, arising in connection with the provision of railroad transportation by Metro-North pursuant to this Letter of Agreement.
4. As between the parties to this Agreement, Co-Sponsor agrees to indemnify and hold harmless Metro-North, the Metropolitan Transportation Authority (MTA), Connecticut Department of Transportation (CDOT), their directors, officers, employees, agents, and leaseholders from and against any and all loss, costs (including reasonable attorney's fees), damages, expenses and liability of any kind, as a result of injury to or death of any person or organization or damage to any property, arising in connection with the acts or omissions of Co-Sponsor, its directors, officers, employees, agents, or contractors in connection with the performance of this Letter of Agreement or which arise from or in any manner result from anything other than railroad operations.

5. Co-Sponsor shall maintain an automobile liability insurance policy against claims for personal injury (including death) and property damage caused by or arising out of operation of the tour vehicles with limits of not less than two million dollars ( ) per occurrence. Metro-North, MTA and CDOT shall be named as additional insureds under this policy and a certificate of insurance certifying that the insurance coverage is in full force and effect with Metro-North, MTA and CDOT named as additional insureds shall be furnished to Metro-North prior to commencement of operations hereunder.
  
6. Co-Sponsor shall maintain a general liability policy against claims for personal injury (including death) and property damage caused by or arising out of the activities related to the subject of this agreement including but not limited to claims related to and arising out of the Event, with limits of not less than two million dollars ( ) per occurrence. Co-Sponsor agrees to furnish Metro-North with a certificate of insurance certifying that the insurance coverage required by this Agreement is in full force and effect for the term of the Agreement and naming Metro-North, CDOT and the MTA as additional insureds.
  
7. The term of this Letter of Agreement shall commence on the date this Letter of Agreement is fully executed and continue until December 30, 2009, provided any outstanding payment and/or indemnification obligations hereunder shall survive the termination of this Agreement. The Letter of Agreement may be extended by written mutual agreement of the parties, and either party may terminate the Letter of Agreement prior to the end of this term by providing thirty (30) days written notice to the other party.

If the above constitutes our understanding, please so indicate by signing this Letter of Agreement in the space provided below and returning a fully executed counterpart for our files.

ACCEPTED AND AGREED:

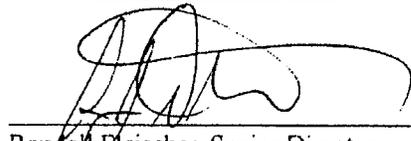
Dated: July 17, 2008

  
 \_\_\_\_\_

M. Elaine Kefflogg  
 Director of Sales  
 GRAY LINE NEW YORK SIGHTSEEING

ACCEPTED AND AGREED:

Dated: 7/23/08

  
 \_\_\_\_\_

Randall Fleischer, Senior Director  
 Business Development, Facilities & Marketing  
 METRO-NORTH COMMUTER  
 RAILROAD COMPANY

APPROVED  
 AS TO FORM 

Cc: T. Chapman

J. Harvey

**EST**

MTA Metro-North Railroad  
Special Event  
Adult  
Admission  
110620  
1694  
08/02/2008  
93382  
\$15.25

093382  
Metro-North Railroad

Special Event  
NYC DUCKS: Sr/Dis  
Admission to Event

Subject to applicable tariff regulations  
and conditions of use  
110620  
1694  
08/02/2008 12:08  
93383

**TEST**

MTA Metro-North Railroad  
Special Event  
NYC DUCKS: Sr/Dis  
Receipt for Admission  
110620  
1694  
217 08/02/2008  
12:08 93383  
Cash \$15.25

**EST**

MTA Metro-North Railroad  
Special Event  
Ch 5-11  
Admission  
110620  
1694  
08/02/2008  
93384  
\$8.00

093378  
Metro-North Railroad

Special Event  
GRAY LINE: Ch 5-11  
Admission to Event

Subject to applicable tariff regulations  
and conditions of use  
110620  
1693  
08/02/2008 12:06  
93378

**TEST**

MTA Metro-North Railroad  
Special Event  
GRAY LINE: Ch 5-11  
Receipt for Admission  
110620  
1693  
217 08/02/2008  
12:06 93378  
Cash \$8.00

**EST**

MTA Metro-North Railroad  
Special Event  
Ch 3-4  
Admission  
110620  
1693  
08/02/2008  
93385  
\$8.00

093379  
Metro-North Railroad

Special Event  
GRAY LINE: Ch 3-4  
Admission to Event

Subject to applicable tariff regulations  
and conditions of use  
110620  
1693  
08/02/2008 12:06  
93379

**TEST**

MTA Metro-North Railroad  
Special Event  
GRAY LINE: Ch 3-4  
Receipt for Admission  
110620  
1693  
217 08/02/2008  
12:06 93379  
Cash \$8.00

**EST**

MTA Metro-North Railroad  
Special Event  
Sr/Dis  
Admission  
110620  
1693  
08/02/2008

093380  
Metro-North Railroad

Special Event  
GRAY LINE: Adult  
Admission to Event

110620

**TEST**

MTA Metro-North Railroad  
Special Event  
GRAY LINE: Adult  
Receipt for Admission  
110620  
1693  
217 08/02/2008  
12:06 93380

~~093382~~  
Metro North Railroad

Special Event  
NYC DUCKS: Adult  
Admission to Event

Subject to applicable tariff regulations  
and conditions of 12-08  
110620  
1694  
12-08  
93382

**TEST**  
MTA Metro North Railroad  
Special Event  
NYC DUCKS: Adult  
Receipt for Admission  
110620  
1694  
217 08/02/2008  
12-08 93382  
Cash \$15.25

~~093378~~  
Metro North Railroad

Special Event  
GRAY LINE: Ch 5-11  
Admission to Event

Subject to applicable tariff regulations  
and conditions of 12-06  
110620  
1693  
12-06  
93378

**TEST**  
MTA Metro North Railroad  
Special Event  
GRAY LINE: Ch 5-11  
Receipt for Admission  
110620  
1693  
217 08/02/2008  
12-06 93378  
Cash \$26.00

093734  
Metro-North Railroad

Special Event  
NYC DUCKS: Ch 5-11  
Admission to Event

110620  
Subject to applicable tariff regulations 1694  
and conditions of use 08/02/2008 12:08  
93384

TEST  
MTA Metro-North Railroad  
Special Event

NYC DUCKS: Ch 5-11

Receipt for Admission

110620  
1694  
217 08/02/2008  
12:08 93384  
Cash \$8.00

093739  
Metro-North Railroad

Special Event  
GRAY LINE: Ch 3-4  
Admission to Event

110620  
Subject to applicable tariff regulations 1693  
and conditions of use 08/02/2008 12:06  
93379

TEST  
MTA Metro-North Railroad  
Special Event

GRAY LINE: Ch 3-4

Receipt for Admission

110620  
1693  
217 08/02/2008  
12:06 93379  
Cash \$26.00

093383  
~~Metro-North Railroad~~

Special Event  
NYC DUCKS: Sr/Dis  
Admission to Event

110620  
Subject to applicable tariff regulations 1694  
and conditions of use  
217 08/02/2008 12-08 93383

TEST  
MTA Metro-North Railroad  
Special Event

NYC DUCKS: Sr/Dis  
Receipt for Admission  
110620  
1694  
217 08/02/2008  
12-08 93383  
Cash \$15.25

093380  
~~Metro-North Railroad~~

Special Event  
GRAY LINE: Adult  
Admission to Event

110620  
Subject to applicable tariff regulations 1693  
and conditions of use  
217 08/02/2008 12-06 93380

TEST  
MTA Metro-North Railroad  
Special Event

GRAY LINE: Adult  
Receipt for Admission  
110620  
1693  
217 08/02/2008  
12-06 93380  
Cash \$31.25

057381  
Metro-North Railroad

Special Event  
GRAY LINE: Sr/Dis  
Admission to Event

110620  
Subject to applicable tariff regulations 1693  
and conditions of use 08/02/2008 12 05 93331

TEST  
MTA Metro-North Railroad  
Special Event

GRAY LINE: Sr/Dis  
Receipt for Admission  
110620  
1693  
217 08/02/2008  
12-05 93331  
Cash \$31.25

057385  
Metro-North Railroad

Special Event  
NYC DUCKS: Ch 3-4  
Admission to Event

110620  
Subject to applicable tariff regulations 1694  
and conditions of use 08/02/2008 12 08 93385

TEST  
MTA Metro-North Railroad  
Special Event

NYC DUCKS: Ch 3-4  
Receipt for Admission  
110620  
1694  
217 08/02/2008  
12-08 93385  
Cash \$8.00

RESELLER CONTRACT  
VALID APRIL 1, 2009 TO MARCH 31, 2010

between Gray Line New York Sightseeing (GLNYS), 49 West 45<sup>th</sup> Street, New York, NY 10036 and

*(all information must be filled in)*

Company Name: Virgin Holidays

Mailing Address: 4700 Millenia Blvd Ste 405  
Orlando Florida 32839

Billing Address: (if different from above): \_\_\_\_\_

Telephone: 407-856-1177 Fax: 407-856-1366

Contact Name: Nancy Hartford Title: Financial Controller

E-mail address: nancy.hartford@virgin.com Website: www.virginholidays.com

List any other branch/brand names that may also issue your company's vouchers  
Virgin Holidays LTD - resold UK vouchers to be billed to the UK

**TERMS & CONDITIONS**

**Vouchers**

New accounts must mail a voided sample of their voucher(s) along with this completed agreement. Gray Line New York Sightseeing (GLNYS) **cannot accept faxed or copies** of vouchers. Vouchers for sightseeing tours must be issued on company's original letterhead and include:

- Tour code and/or Gray Line tour name
- Number of adult and child passengers & passenger name/s
- If issued by a third party - voucher **MUST** clearly indicate "BOOKED AND PAYABLE BY [your company name]"
- Date/year of tour \*

*\* Since most GLNYS tours do not require a reservation, except where noted, passengers can redeem their voucher at any time during their stay. Vouchers must be redeemed within the validity of the contract year i.e. any voucher issued for a tour date after April 1, 2009 must be redeemed by no later than March 31, 2010.*

For local sightseeing tours, operator will only be invoiced for vouchers redeemed. For day trips to Niagara Falls, Philadelphia and Washington DC, operator will be invoiced on the basis of confirmed reservations.

Vouchers with incomplete information or invalid tour codes/names will not be accepted. Passengers will be asked to pay for their tours on-site and advised to return their vouchers to issuing office for a complete refund.

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

Child policy: children ages 3 to 11 must have a child ticket in order to participate in a tour. Children 12 and older are considered adults. If a voucher lists individuals older than 11 as children, GLNYS will collect a difference between child and adult fare for each of those individuals directly from the customers. **PLEASE NOTE: GLNYS will not refund for unused portions of a tour or for unused admissions.**

**Vouchers for local sightseeing** must be redeemed at one of the following mid-Manhattan locations:  
**GLNYS Visitor Center:** 777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> streets

**GLNYS Visitor Center:** street level entrance of Port Authority Bus Terminal  
on 42nd Street, just off the corner of 8th Avenue  
(for Woodbury Common Premium Outlets)

**Vouchers for Niagara Falls** must be presented to driver at morning transfer from hotel.

**Vouchers for Washington DC and Philadelphia** must be presented at GLNYS Visitor Center @ 777 8<sup>th</sup> Avenue when picking up travel documents one day prior to tour departure.

### **Reservations**

**City tours & local day trips:** No reservations. Double-decker bus tours, day trips to Woodbury Common, foreign-language tours and city tours by motorcoach and trolley **do not** require reservations. These tours are on **free-sell** and vouchers can be issued as needed without any notification to GLNYS.

**Harlem Gospel Tours and NYC Showbiz Insiders Tour:** These tours **REQUIRE** a reservation – please **SELL and REPORT** (Harlem tours -by **LANGUAGE**) to our Reservations Dept. by fax at (212) 445-0850 or by email to [nyfit@coachusa.com](mailto:nyfit@coachusa.com). Your reservation is automatically confirmed and you will not receive a confirmation number.

**NYC Ducks Tour:** Customer is required to make a reservation for a specific NYC Ducks Tours departure prior to boarding. It can be made in person at Gray Line Visitor Center 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> and 48<sup>th</sup> Streets).

**Unique Manhattan Helicopter flights:** Customer is required to make a reservation for a specific date and flight time at the time they exchange vouchers for boarding passes at Gray Line Visitor Center 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> and 48<sup>th</sup> Streets).

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Day trips to Niagara Falls, Philadelphia & Washington, DC:** Reservations are required and must be made to the Reservations Dept. by fax at (212) 445-0850 or by email to [nyfit@coachusa.com](mailto:nyfit@coachusa.com)

The following information is required for booking:

Date requested:

Tour name:

Passport names (first & last) for each passenger:

Citizenship:

Language request:

Contact/hotel in New York:

Reservations will be confirmed within 24 hours with a GLNYS booking number. The booking number is very important. Any subsequent changes or cancellations must refer to GLNYS booking number and must be made by e-mail or fax. GLNYS must acknowledge changes and/or cancellations within 24 hours by return e-mail / fax. Passengers must call GLNYS Reservations Dept. at (1-800) 669-0051 Ext 3 or (212) 445-0848 Ext 3 at least 72 hours prior to departure date to reconfirm. Any reservation not reconfirmed will be subject to cancellation with penalties. Passengers can call the Reservations Dept. 7 days a week from 8.30am to 4.00pm (Eastern US time).

**Niagara Falls Clients** will be picked up at their hotel (only between 23<sup>rd</sup> & 74<sup>th</sup> St). This will require *that we have hotel information at the time you make your reservation*. Passengers staying at hotels below 23<sup>rd</sup> Street or above 74<sup>th</sup> Street will be advised of where they will be picked up when they call to reconfirm. Transportation to the pick-up point will be the responsibility of the passengers.

**Washington, DC and Philadelphia Clients** After reconfirming their reservation, passengers must go to the GLNYS Visitor Center (777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> Streets) **ONE DAY PRIOR** to departure, **between 9am and 7pm** to exchange their vouchers for their travel documents and other important information.

**Cancellations & No-Shows**

**Local Tours**

Since there are no reservations for local city sightseeing tours, there are no cancellations or no-show penalties. If a voucher is not collected, operator will not be invoiced.

**Unique Manhattan Helicopter flights**

Once customer makes a reservation for specific date & flight time, their tour is non-refundable. No-shows will be billed.

**For Niagara Falls confirmed reservations**

Cancellations or changes of date received at least 11 days prior to departure:	no penalties
Cancellations or changes of date received between 10 days and 4 days of departure:	50% penalty
Cancellations or changes of date within 4 days of departure or no-shows:	no refund

**For Washington DC and Philadelphia confirmed reservations**

Cancellations or changes of date received at least 3 days prior to departure:	no penalties
Cancellations or changes of date received within 3 days of departure:	● p/person
Cancellations on day of departure or no-show:	no refund

RESELLER CONTRACT  
VALID APRIL 1, 2009 TO MARCH 31, 2010

**Payment policies**

Redeemed vouchers will be invoiced on a monthly basis at net contract rates; payment for invoice is due within thirty (30) days of receipt. No-shows and applicable cancellation fees on Niagara Falls, Philadelphia and Washington day trips will be invoiced on the basis of operator booking.  
NOTE: Invoices must be paid in full. Failure to adhere to payment policies will result in cancellation of agreement and vouchers not being accepted.

**Rates & Tour Product**

GLNYS agrees to maintain, to the best of its ability, the tours listed in the attached "Tour Descriptions". Circumstances beyond GLNYS's control may result in itinerary changes or cancellations; GLNYS will communicate these changes or cancellations to the Operator in writing with as much advance notice as possible. Passengers presenting a voucher issued by Operator prior to receipt of change/cancellation notice from GLNYS will be offered a similar tour or additional services representing the value of the tour originally purchased.

**Net and retail rates are attached.** All rates are inclusive of any local, State and Federal government taxes. Surcharges may also be charged for operational cost increases such as, but not limited to, fuel, government imposed fees, and/or third party attraction rate increases. Retail rates are subject to increase. GLNYS resellers will be advised of rate increases with a minimum 30-day advance written notice. **Please return the first page of the rate schedule with your initials in order validate your rates when you return the signed contract.**

This Agreement shall be construed, governed, interpreted, enforced and litigated, and the relations between the parties determined in accordance with the laws of the State of New York without reference to principles of choice of laws. In the event of any litigation, action or other proceeding relating to or arising out of this Agreement, or the performance and enforcement of this Agreement, the parties hereto irrevocably consent and submit to the exclusive personal jurisdiction of the federal and/or state courts of the State of New York, sitting in New York County. Each of the parties consents that service of process may be made on them by registered mail or overnight courier (with delivery confirmed), to their respective addresses. Each of the parties hereto irrevocably waives any objection to services of process so made or to jurisdiction or venue in such federal or state courts of the State of New York sitting in New York County., including without limitation any objection based on the grounds of forum non conveniens.

**Notice**

Rates are based on agreement by Reseller to publish picture of current GLNYS double-decker bus and/or GLNYS logo in printed brochure and / or website. Copy of printed brochure must be sent to GLNYS by no later than December 15, 2008. GLNY will reserve the right to terminate the contract, with a 60-day advance written notice, if Operator fails to adhere to these conditions.

Contracted rates are subject to a minimum production of 200 sightseeing passengers per calendar year; if this minimum production is not reached, contract will not be renewed.

**GRAY LINE NEW YORK SIGHTSEEING  
CONFIDENTIAL VIRGIN HOLIDAYS RATES (SUBJECT TO CONTRACT APPROVAL &  
ACCEPTANCE)**

VALID APRIL 1, 2009- MARCH 31, 2010

INITIAL ATD DATE 1/26/09

TOUR CODES	TOUR NAME	RETAIL RATES	RETAIL RATES	NET RATES
		ADULT	CHILD	ADULT CHILD

**CHILD RATES:** Children under 3 years travel free on local sightseeing tours when not occupying a separate seat. Rates apply to children 3 through 11 years of age when accompanied by an adult.

<del>AT</del>	<del>ALL LOOPS DOUBLE DECKER BUS TOUR</del> 48 hour pass Includes uptown Downtown & Night Tour	[REDACTED]	[REDACTED]	[REDACTED] ✓
<del>AL</del>	<del>ALL LOOPS plus Statue of Liberty / Ellis Island ferry ticket</del>	[REDACTED]	[REDACTED]	[REDACTED] ✓
ENS	CLASSIC NEW YORK 48 hour pass All Loops + admission tickets to Statue of Liberty ferry and Empire State Building Observatory	[REDACTED]	[REDACTED]	[REDACTED]
ENCT	ESSENTIAL NEW YORK with TOP OF THE ROCK 48 hour pass All Loops + admission tickets to Top of the Rock, Statue of Liberty ferry and NY Skyride	[REDACTED]	[REDACTED]	[REDACTED]
ALMOMA	ALL LOOPS TOUR plus Museum of Modern Art (MoMA) admission	[REDACTED]	[REDACTED]	[REDACTED]
<del>DE</del>	<del>DOWNTOWN LOOP</del> 24 hour pass	[REDACTED]	[REDACTED]	[REDACTED] ✓
<del>UE</del>	<del>UPTOWN LOOP</del> 24 hour pass	[REDACTED]	[REDACTED]	[REDACTED] ✓

**GRAY LINE NEW YORK SIGHTSEEING**  
**CONFIDENTIAL VIRGIN HOLIDAYS RATES (SUBJECT TO CONTRACT APPROVAL &**  
**ACCEPTANCE)**  
**VALID APRIL 1, 2009- MARCH 31, 2010**

TOUR CODES	TOUR NAME	RETAIL RATES	RETAIL RATES	NET RATES
		ADULT	CHILD	ADULT CHILD

**CHILD RATES:** Children under 3 years travel free on local sightseeing tours when not occupying a separate seat. Rates apply to children 3 through 11 years of age when accompanied by an adult.

BL	BROOKLYN LOOP 24-hour pass	[REDACTED]	[REDACTED]	[REDACTED]
<del>NI</del>  <del>HI</del>	<del>NIGHT LOOP TOUR</del> <del>One Evening</del>  <del>Of</del> <del>HOLIDAY LIGHTS</del> <del>Tour</del>	[REDACTED]	[REDACTED]	[REDACTED] ✓
<del>HOPE</del>	<del>The NYC Official Heritage</del> <del>Tour</del>	[REDACTED]	[REDACTED]	[REDACTED] ✓
VIPT	3-Day Super Saver Combo 3-day pass for All Loops Tour + Heritage Tour + Discover Staten Island Tour + admission tickets to Statue of Liberty NY Harbor Cruise and Empire State Building Observatory	[REDACTED]	[REDACTED]	[REDACTED]
<del>SPE</del>	<del>NYC Ducks Tour</del>	[REDACTED]	[REDACTED]	[REDACTED] ✓
<del>SPATE</del>	<del>NYC Ducks Tour and All</del> <del>Loops Tour Combo</del>	[REDACTED]	[REDACTED]	[REDACTED] ✓
<b>MOTORCOACH TOURS</b>				
ML	City tour in Foreign Languages By motorcoach DL-ML German FL-ML/ French SL/ML/ Spanish IL-ML/ Italian JL-ML Japanese CL-ML Mandarin Chinese KL-ML Korean	[REDACTED]	[REDACTED]	[REDACTED]

**GRAY LINE NEW YORK SIGHTSEEING  
CONFIDENTIAL VIRGIN HOLIDAYS RATES (SUBJECT TO CONTRACT APPROVAL &  
ACCEPTANCE)  
VALID APRIL 1, 2009- MARCH 31, 2010**

TOUR CODES	TOUR NAME	RETAIL RATES	RETAIL RATES	NET RATES
		ADULT	CHILD	ADULT CHILD

**CHILD RATES: Children under 3 years travel free on local sightseeing tours when not occupying a separate seat. Rates apply to children 3 through 11 years of age when accompanied by an adult.**

MLS	Tour ML + ticket for Statue of Liberty ferry	[REDACTED]	[REDACTED]	[REDACTED]
MLA	City tour in Foreign Languages + All Loops double-decker bus tour in English	[REDACTED]	[REDACTED]	[REDACTED]
MLAS	Tour MLA + Statue of Liberty ferry ticket	[REDACTED]	[REDACTED]	[REDACTED]
MC	<del>Manhattan Comprehensive Tour</del>	[REDACTED]	[REDACTED]	[REDACTED] ✓
SI	<del>Showbiz/Insiders Tour</del>	[REDACTED]	[REDACTED]	[REDACTED] ✓
WC	<del>Woodbury Common Premium Outlet</del>	[REDACTED]	[REDACTED]	[REDACTED] ✓

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Insurance**

GLNYS has been providing tours for over 80 years. GLNYS is licensed by New York City Department of Consumer Affairs, New York State Department of Transportation and United States Department of Transportation. GLNYS is insured in excess of government requirements.

**Responsibilities**

**LOCAL SIGHTSEEING TOURS:**

GLNYS assumes no liability or responsibility for traffic conditions, access to sites or other conditions beyond its control or for any injuries, damage, delay, inconvenience, additional costs incurred for any reason beyond its control. GLNYS reserves the right to substitute equipment as needed and/or substitute routes in case of weather, street closures and special events (i.e. parades, street fairs, etc.)

**NYC DUCKS TOUR:** Customers must reserve their departure date/time and check in at the NYC Ducks Tour boarding location no later than 15 minutes prior to scheduled departure. NYC Ducks Tour assumes no liability for injuries, loss, damage, delay, inconvenience, additional costs incurred for any reason beyond its control. NYC Ducks Tour reserves the right to alter and/or cancel operations, schedules and prices without notice. Tickets are non-refundable. Unused tickets can be rebooked for a future Ducks Tour, or are transferable, or may be used towards the purchase of another Gray Line New York Sightseeing product for a period of one year from date of purchase. Unused portions of credits are non-refundable.

**DAY TRIPS TO NIAGARA FALLS, PHILADELPHIA & WASHINGTON DC:**

GLNYS assumes no liability or responsibility for airline and train delays. In case of passengers required to overnight in either Niagara Falls, Philadelphia or Washington DC due to weather or cancellation of flights/train, any additional costs incurred by passengers for hotel accommodations, meals and personal expenditures will be the responsibility of the passengers. Proper documentation for Niagara Falls, Canada, is the responsibility of the passengers.

Accepted by Virgin Holidays  
(Company name)

Date 1/28/09

Signed by Nancy Hartford  
(Name)

(Title) Financial Controller

Nancy Hartford  
(Signature)

For Gray Line New York Sightseeing

Date 1/28/09

Elaine Kellogg  
Elaine Kellogg, Director of Sales

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

between Gray Line New York Sightseeing (GLNYS), 49 West 45<sup>th</sup> Street, New York, NY 10036  
and

*(all information must be filled in)*

Company Name: Yankee Holidays / Amtrak Vacations  
Mailing Address: 100 Cummings Center, Suite 1203  
Beverly, MA 01915  
Billing Address: (if different from above): same  
Telephone: 978-922-4418 Fax: 978-922-4419  
Contact Name: Theresa Pierce Title: Product Manager  
E-mail address: product@yankeeholidays.com Website: www.yankeeholidays.com  
www.amtrakvacations.com  
List any other branch/brand names that may also issue your company's vouchers \_\_\_\_\_

**TERMS & CONDITIONS**

**Vouchers**

New accounts must mail a voided sample of their voucher(s) along with this completed agreement. Gray Line New York Sightseeing (GLNYS) **cannot accept faxed or copies of vouchers.** Vouchers for sightseeing tours must be issued on company's original letterhead and include:

- Tour code and/or Gray Line tour name
  - Number of adult and child passengers & passenger name/s
  - If issued by a third party - voucher **MUST** clearly indicate "BOOKED AND PAYABLE BY [your company name]"
  - Date/year of tour \*
- \* Since most GLNYS tours do not require a reservation, except where noted, passengers can redeem their voucher at any time during their stay. Vouchers must be redeemed within the validity of the contract year i.e. any voucher issued for a tour date after April 1, 2009 must be redeemed by no later than March 31, 2010.*

For local sightseeing tours, operator will only be invoiced for vouchers redeemed. For day trips to Niagara Falls, Philadelphia and Washington DC, operator will be invoiced on the basis of confirmed reservations.

Vouchers with incomplete information or invalid tour codes/names will not be accepted. Passengers will be asked to pay for their tours on-site and advised to return their vouchers to issuing office for a complete refund.

**RESELLER CONTRACT**  
VALID APRIL 1, 2009 TO MARCH 31, 2010

Child policy: children ages 3 to 11 must have a child ticket in order to participate in a tour. Children 12 and older are considered adults. If a voucher lists individuals older than 11 as children, GLNYS will collect a difference between child and adult fare for each of those individuals directly from the customers. **PLEASE NOTE: GLNYS will not refund for unused portions of a tour or for unused admissions.**

Vouchers for local sightseeing must be redeemed at one of the following mid-Manhattan locations:  
**GLNYS Visitor Center:** 777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> streets

**GLNYS Visitor Center:** street level entrance of Port Authority Bus Terminal  
on 42nd Street, just off the corner of 8th Avenue  
(for Woodbury Common Premium Outlets)

Vouchers for Niagara Falls must be presented to driver at morning transfer from hotel.

Vouchers for Washington DC and Philadelphia must be presented at GLNYS Visitor Center @ 777 8<sup>th</sup> Avenue when picking up travel documents one day prior to tour departure.

### **Reservations**

**City tours & local day trips:** No reservations. Double-decker bus tours, day trips to Woodbury Common, foreign-language tours and city tours by motorcoach and trolley **do not** require reservations. These tours are on **free-sell** and vouchers can be issued as needed without any notification to GLNYS.

**Harlem Gospel Tours and NYC Showbiz Insiders Tour:** These tours **REQUIRE** a reservation – please **SELL and REPORT** (Harlem tours -by LANGUAGE) to our Reservations Dept. by fax at (212) 445-0850 or by email to [nyfit@coachusa.com](mailto:nyfit@coachusa.com). Your reservation is automatically confirmed and you will not receive a confirmation number.

**NYC Ducks Tour:** Customer is required to make a reservation for a specific NYC Ducks Tours departure prior to boarding. It can be made in person at Gray Line Visitor Center 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> and 48<sup>th</sup> Streets).

**Unique Manhattan Helicopter flights:** Customer is required to make a reservation for a specific date and flight time at the time they exchange vouchers for boarding passes at Gray Line Visitor Center 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> and 48<sup>th</sup> Streets).

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Day trips to Niagara Falls, Philadelphia & Washington, DC:** Reservations are required and must be made to the Reservations Dept. by fax at (212) 445-0850 or by email to [nyfit@coachusa.com](mailto:nyfit@coachusa.com)

The following information is required for booking:

- Date requested:
- Tour name:
- Passport names (first & last) for each passenger:
- Citizenship:
- Language request:
- Contact/hotel in New York:

Reservations will be confirmed within 24 hours with a GLNYS booking number. The booking number is very important. Any subsequent changes or cancellations must refer to GLNYS booking number and must be made by e-mail or fax. GLNYS must acknowledge changes and/or cancellations within 24 hours by return e-mail / fax. Passengers must call GLNYS Reservations Dept. at (1-800) 669-0051 Ext 3 or (212) 445-0848 Ext 3 at least 72 hours prior to departure date to reconfirm. Any reservation not reconfirmed will be subject to cancellation with penalties. Passengers can call the Reservations Dept. 7 days a week from 8.30am to 4.00pm (Eastern US time).

**Niagara Falls Clients** will be picked up at their hotel (only between 23<sup>rd</sup> & 74<sup>th</sup> St). This will require that we have hotel information at the time you make your reservation. Passengers staying at hotels below 23<sup>rd</sup> Street or above 74<sup>th</sup> Street will be advised of where they will be picked up when they call to reconfirm. Transportation to the pick-up point will be the responsibility of the passengers.

**Washington, DC and Philadelphia Clients** After reconfirming their reservation, passengers must go to the GLNYS Visitor Center (777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> Streets) **ONE DAY PRIOR** to departure, between 9am and 7pm to exchange their vouchers for their travel documents and other important information.

**Cancellations & No-Shows**

**Local Tours**

Since there are no reservations for local city sightseeing tours, there are no cancellations or no-show penalties. If a voucher is not collected, operator will not be invoiced.

**Unique Manhattan Helicopter flights**

Once customer makes a reservation for specific date & flight time, their tour is non-refundable. No-shows will be billed.

**For Niagara Falls confirmed reservations**

- Cancellations or changes of date received at least 11 days prior to departure: no penalties
- Cancellations or changes of date received between 10 days and 4 days of departure: 50% penalty
- Cancellations or changes of date within 4 days of departure or no-shows: no refund

**For Washington DC and Philadelphia confirmed reservations**

- Cancellations or changes of date received at least 3 days prior to departure: no penalties
- Cancellations or changes of date received within 3 days of departure: ● p/person
- Cancellations on day of departure or no-show: no refund

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Payment policies**

Redeemed vouchers will be invoiced on a monthly basis at net contract rates; payment for invoice is due within thirty (30) days of receipt. No-shows and applicable cancellation fees on Niagara Falls, Philadelphia and Washington day trips will be invoiced on the basis of operator booking.  
NOTE: Invoices must be paid in full. Failure to adhere to payment policies will result in cancellation of agreement and vouchers not being accepted.

**Rates & Tour Product**

GLNYS agrees to maintain, to the best of its ability, the tours listed in the attached "Tour Descriptions". Circumstances beyond GLNYS's control may result in itinerary changes or cancellations; GLNYS will communicate these changes or cancellations to the Operator in writing with as much advance notice as possible. Passengers presenting a voucher issued by Operator prior to receipt of change/cancellation notice from GLNYS will be offered a similar tour or additional services representing the value of the tour originally purchased.

**Net and retail rates are attached.** All rates are inclusive of any local, State and Federal government taxes. Surcharges may also be charged for operational cost increases such as, but not limited to, fuel, government imposed fees, and/or third party attraction rate increases. Retail rates are subject to increase. GLNYS resellers will be advised of rate increases with a minimum 30-day advance written notice. **Please return the first page of the rate schedule with your initials in order validate your rates when you return the signed contract.**

This Agreement shall be construed, governed, interpreted, enforced and litigated, and the relations between the parties determined in accordance with the laws of the State of New York without reference to principles of choice of laws. In the event of any litigation, action or other proceeding relating to or arising out of this Agreement, or the performance and enforcement of this Agreement, the parties hereto irrevocably consent and submit to the exclusive personal jurisdiction of the federal and/or state courts of the State of New York, sitting in New York County. Each of the parties consents that service of process may be made on them by registered mail or overnight courier (with delivery confirmed), to their respective addresses. Each of the parties hereto irrevocably waives any objection to services of process so made or to jurisdiction or venue in such federal or state courts of the State of New York sitting in New York County, including without limitation any objection based on the grounds of forum non conveniens.

**Notice**

**Rates are based on agreement by Reseller to publish picture of current GLNYS double-decker bus and/or GLNYS logo in printed brochure and / or website. Copy of printed brochure must be sent to GLNYS by no later than December 15, 2008. GLNYS will reserve the right to terminate the contract, with a 60-day advance written notice, if Operator fails to adhere to these conditions.**

**Contracted rates are subject to a minimum production of 200 sightseeing passengers per calendar year; if this minimum production is not reached, contract will not be renewed.**



YANKEE LEISURE HOLDINGS, Inc.

In Business Since 1972

## *Credit Reference*

### **Contact Names**

Bob DePaolo, Owner

John Tavano, President

Steve Grasso, VP of Operations

Debra Shaw, Accounting Manager

### **Profile**

Yankee Holidays is a wholesale tour operator now in its 36th year of offering individual city packages and customized group tour packages to the travel agent community throughout the United States. Our individual city packages highlight a wide variety of hotels, restaurants, attractions and entertainment.

Our groups are customized using the components best suited to the groups' interests. Over the years we have become widely identified as a tour operator with a strong emphasis on theater packages. We presently send approximately 25,000 theatergoers to New York City and 18,000 to Toronto. A lesser, but still impressive, number of individual travelers visits each of our other cities.

### **Vendor References**

Omni Parker House 60 School Street Boston, MA 02108	PH: 617-227-8600 FX: 617-742-5729	Accounts Receivable
Rocky Mountaineer Vacations Suite 101 -369 Terminal Avenue Vancouver, BC V6A 4C4	PH: 604-606-8413 FX: 604-606-7253	Mubeen Jamal
The Palmer House Hilton 17 East Monroe Street Chicago, IL 60603	PH: 312-917-1356 FX:	Accounts Receivable
Gaylord Opryland 2800 Opryland Drive Nashville, TN 37214	PH: 615-871-5683 FX: 615-871-6362	Carolyn Gibbons

### **Credit References**

Danvers Bank  
100 Cummings Center, Suite 101-K  
Beverly, MA 01915  
Contact: Maureen Safer, Branch Manager  
Phone: 978-927-2282 Fax: 978-927-6935

[www.yankeeholidays.com](http://www.yankeeholidays.com)

100 Cummings Center, Suite 120B  
Beverly, MA 01915  
Phone: 978 922-0418  
Fax: 978-922-5434

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Insurance**

GLNYS has been providing tours for over 80 years. GLNYS is licensed by New York City Department of Consumer Affairs, New York State Department of Transportation and United States Department of Transportation. GLNYS is insured in excess of government requirements.

**Responsibilities**

**LOCAL SIGHTSEEING TOURS:**

GLNYS assumes no liability or responsibility for traffic conditions, access to sites or other conditions beyond its control or for any injuries, damage, delay, inconvenience, additional costs incurred for any reason beyond its control. GLNYS reserves the right to substitute equipment as needed and/or substitute routes in case of weather, street closures and special events (i.e. parades, street fairs, etc.)

**NYC DUCKS TOUR:** Customers must reserve their departure date/time and check in at the NYC Ducks Tour boarding location no later than 15 minutes prior to scheduled departure. NYC Ducks Tour assumes no liability for injuries, loss, damage delay, inconvenience, additional costs incurred for any reason beyond its control. NYC Ducks Tour reserves the right to alter and/or cancel operations, schedules and prices without notice. Tickets are non-refundable. Unused tickets can be rebooked for a future Ducks Tour, or are transferable, or may be used towards the purchase of another Gray Line New York Sightseeing product for a period of one year from date of purchase. Unused portions of credits are non-refundable.

**DAY TRIPS TO NIAGARA FALLS, PHILADELPHIA & WASHINGTON DC:**

GLNYS assumes no liability or responsibility for airline and train delays. In case of passengers required to overnight in either Niagara Falls, Philadelphia or Washington DC due to weather or cancellation of flights/train, any additional costs incurred by passengers for hotel accommodations, meals and personal expenditures will be the responsibility of the passengers. Proper documentation for Niagara Falls, Canada, is the responsibility of the passengers.

Accepted by Yankee Holidays/Amtrak Vacations Date 9/8/08  
(Company name)

Signed by Theresa Pierce (Title) Product Manager  
(Name)

Theresa Pierce  
(Signature)

For Gray Line New York Sightseeing

Date 9/8/08  
5

Elaine Kellogg  
Elaine Kellogg, Director of Sales

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

between Gray Line New York Sightseeing (GLNYS), 49 West 45<sup>th</sup> Street, New York, NY 10036  
and

*(all information must be filled in)*

Company Name: WETA

Mailing Address: 300 W. 125th St. Apt 2  
Brooklyn, NY 11234

Billing Address: (if different from above): 300 W. 125th St. Apt 2  
Brooklyn, NY 11234

Telephone: 321 540 7324 Fax: \_\_\_\_\_

Contact Name: Patricia Shaughnessy Title: Product Manager North Atlantic

E-mail address: patricia.shaughnessy@weta.com Website: www.weta.com

List any other branch/brand names that may also issue your company's vouchers Other City

**TERMS & CONDITIONS**

**Vouchers**

New accounts must mail a voided sample of their voucher(s) along with this completed agreement. Gray Line New York Sightseeing (GLNYS) cannot accept faxed or copies of vouchers. Vouchers for sightseeing tours must be issued on company's original letterhead and include:

Tour code and/or Gray Line tour name

Number of adult and child passengers & passenger name/s

If issued by a third party - voucher MUST clearly indicate "BOOKED AND PAYABLE BY [your company name]"

Date/year of tour \*

*\* Since most GLNYS tours do not require a reservation, except where noted, passengers can redeem their voucher at any time during their stay. Vouchers must be redeemed within the validity of the contract year i.e. any voucher issued for a tour date after April 1, 2009 must be redeemed by no later than March 31, 2010.*

For local sightseeing tours, operator will only be invoiced for vouchers redeemed. For day trips to Niagara Falls, Philadelphia and Washington DC, operator will be invoiced on the basis of confirmed reservations.

Vouchers with incomplete information or invalid tour codes/names will not be accepted. Passengers will be asked to pay for their tours on-site and advised to return their vouchers to issuing office for a complete refund.

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

Child policy: children ages 3 to 11 must have a child ticket in order to participate in a tour. Children 12 and older are considered adults. If a voucher lists individuals older than 11 as children, GLNYS will collect a difference between child and adult fare for each of those individuals directly from the customers. **PLEASE NOTE: GLNYS will not refund for unused portions of a tour or for unused admissions.**

Vouchers for local sightseeing must be redeemed at one of the following mid-Manhattan locations:  
GLNYS Visitor Center: 777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> streets

GLNYS Visitor Center: street level entrance of Port Authority Bus Terminal  
on 42nd Street, just off the corner of 8th Avenue  
(for Woodbury Common Premium Outlets)

Vouchers for Niagara Falls must be presented to driver at morning transfer from hotel.

Vouchers for Washington DC and Philadelphia must be presented at GLNYS Visitor Center @ 777 8<sup>th</sup> Avenue when picking up travel documents one day prior to tour departure.

### **Reservations**

**City tours & local day trips: No reservations.** Double-decker bus tours, day trips to Woodbury Common, foreign-language tours and city tours by motorcoach and trolley **do not** require reservations. These tours are on **free-sell** and vouchers can be issued as needed without any notification to GLNYS.

**Harlem Gospel Tours and NYC Showbiz Insiders Tour:** These tours **REQUIRE** a reservation – please **SELL and REPORT** (Harlem tours -by **LANGUAGE**) to our Reservations Dept. by fax at (212) 445-0850 or by email to [nvfit@coachusa.com](mailto:nvfit@coachusa.com). Your reservation is automatically confirmed and you will not receive a confirmation number.

**NYC Ducks Tour:** Customer is required to make a reservation for a specific NYC Ducks Tours departure prior to boarding. It can be made in person at Gray Line Visitor Center 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> and 48<sup>th</sup> Streets).

**Unique Manhattan Helicopter flights:** Customer is required to make a reservation for a specific date and flight time at the time they exchange vouchers for boarding passes at Gray Line Visitor Center 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> and 48<sup>th</sup> Streets).

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

Day trips to Niagara Falls, Philadelphia & Washington, DC: Reservations are required and must be made to the Reservations Dept. by fax at (212) 445-0850 or by email to [nyfit@coachusa.com](mailto:nyfit@coachusa.com)

The following information is required for booking:

Date requested:

Tour name:

Passport names (first & last) for each passenger:

Citizenship:

Language request:

Contact/hotel in New York:

Reservations will be confirmed within 24 hours with a GLNYS booking number. The booking number is very important. Any subsequent changes or cancellations must refer to GLNYS booking number and must be made by e-mail or fax. GLNYS must acknowledge changes and/or cancellations within 24 hours by return e-mail / fax. Passengers must call GLNYS Reservations Dept. at (1-800) 669-0051 Ext 3 or (212) 445-0848 Ext 3 at least 72 hours prior to departure date to reconfirm. Any reservation not reconfirmed will be subject to cancellation with penalties. Passengers can call the Reservations Dept. 7 days a week from 8.30am to 4.00pm (Eastern US time).

**Niagara Falls Clients** will be picked up at their hotel (only between 23<sup>rd</sup> & 74<sup>th</sup> St). This will require that we have hotel information at the time you make your reservation. Passengers staying at hotels below 23<sup>rd</sup> Street or above 74<sup>th</sup> Street will be advised of where they will be picked up when they call to reconfirm. Transportation to the pick-up point will be the responsibility of the passengers.

**Washington, DC and Philadelphia Clients** After reconfirming their reservation, passengers must go to the GLNYS Visitor Center (777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> Streets) **ONE DAY PRIOR** to departure, between 9am and 7pm to exchange their vouchers for their travel documents and other important information.

### **Cancellations & No-Shows**

#### **Local Tours**

Since there are no reservations for local city sightseeing tours, there are no cancellations or no-show penalties. If a voucher is not collected, operator will not be invoiced.

#### **Unique Manhattan Helicopter flights**

Once customer makes a reservation for specific date & flight time, their tour is non-refundable. No-shows will be billed.

#### **For Niagara Falls confirmed reservations**

Cancellations or changes of date received at least 11 days prior to departure: no penalties  
Cancellations or changes of date received between 10 days and 4 days of departure: 50% penalty  
Cancellations or changes of date within 4 days of departure or no-shows: no refund

#### **For Washington DC and Philadelphia confirmed reservations**

Cancellations or changes of date received at least 3 days prior to departure: no penalties  
Cancellations or changes of date received within 3 days of departure:  p/person  
Cancellations on day of departure or no-show: no refund

Printed August 2008

RESELLER CONTRACT  
VALID APRIL 1, 2009 TO MARCH 31, 2010

**Payment policies**

Redeemed vouchers will be invoiced on a monthly basis at net contract rates; payment for invoice is due within thirty (30) days of receipt. No-shows and applicable cancellation fees on Niagara Falls, Philadelphia and Washington day trips will be invoiced on the basis of operator booking.

NOTE: Invoices must be paid in full. Failure to adhere to payment policies will result in cancellation of agreement and vouchers not being accepted.

**Rates & Tour Product**

GLNYS agrees to maintain, to the best of its ability, the tours listed in the attached "Tour Descriptions". Circumstances beyond GLNYS's control may result in itinerary changes or cancellations; GLNYS will communicate these changes or cancellations to the Operator in writing with as much advance notice as possible. Passengers presenting a voucher issued by Operator prior to receipt of change/cancellation notice from GLNYS will be offered a similar tour or additional services representing the value of the tour originally purchased.

**Net and retail rates are attached.** All rates are inclusive of any local, State and Federal government taxes. Surcharges may also be charged for operational cost increases such as, but not limited to, fuel, government imposed fees, and/or third party attraction rate increases. Retail rates are subject to increase. GLNYS resellers will be advised of rate increases with a minimum 30-day advance written notice. **Please return the first page of the rate schedule with your initials in order validate your rates when you return the signed contract.**

This Agreement shall be construed, governed, interpreted, enforced and litigated, and the relations between the parties determined in accordance with the laws of the State of New York without reference to principles of choice of laws. In the event of any litigation, action or other proceeding relating to or arising out of this Agreement, or the performance and enforcement of this Agreement, the parties hereto irrevocably consent and submit to the exclusive personal jurisdiction of the federal and/or state courts of the State of New York, sitting in New York County. Each of the parties consents that service of process may be made on them by registered mail or overnight courier (with delivery confirmed), to their respective addresses. Each of the parties hereto irrevocably waives any objection to services of process so made or to jurisdiction or venue in such federal or state courts of the State of New York sitting in New York County, including without limitation any objection based on the grounds of forum non conveniens.

**Notice**

Rates are based on agreement by Reseller to publish picture of current GLNYS double-decker bus and/or GLNYS logo in printed brochure and / or website. Copy of printed brochure must be sent to GLNYS by no later than December 15, 2008. GLNYS will reserve the right to terminate the contract, with a 60-day advance written notice, if Operator fails to adhere to these conditions.

Contracted rates are subject to a minimum production of 200 sightseeing passengers per calendar year; if this minimum production is not reached, contract will not be renewed.

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Insurance**

GLNYS has been providing tours for over 80 years. GLNYS is licensed by New York City Department of Consumer Affairs, New York State Department of Transportation and United States Department of Transportation. GLNYS is insured in excess of government requirements.

**Responsibilities**

**LOCAL SIGHTSEEING TOURS:**

GLNYS assumes no liability or responsibility for traffic conditions, access to sites or other conditions beyond its control or for any injuries, damage, delay, inconvenience, additional costs incurred for any reason beyond its control. GLNYS reserves the right to substitute equipment as needed and/or substitute routes in case of weather, street closures and special events (i.e. parades, street fairs, etc.)

**NYC DUCKS TOUR:** Customers must reserve their departure date/time and check in at the NYC Ducks Tour boarding location no later than 15 minutes prior to scheduled departure. NYC Ducks Tour assumes no liability for injuries, loss, damage, delay, inconvenience, additional costs incurred for any reason beyond its control. NYC Ducks Tour reserves the right to alter and/or cancel operations, schedules and prices without notice. Tickets are non-refundable. Unused tickets can be rebooked for a future Ducks Tour, or are transferable, or may be used towards the purchase of another Gray Line New York Sightseeing product for a period of one year from date of purchase. Unused portions of credits are non-refundable.

**DAY TRIPS TO NIAGARA FALLS, PHILADELPHIA & WASHINGTON DC:**

GLNYS assumes no liability or responsibility for airline and train delays. In case of passengers required to overnight in either Niagara Falls, Philadelphia or Washington DC due to weather or cancellation of flights/train, any additional costs incurred by passengers for hotel accommodations, meals and personal expenditures will be the responsibility of the passengers. Proper documentation for Niagara Falls, Canada, is the responsibility of the passengers.

Accepted by Jetair Specialists

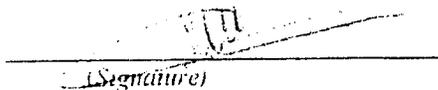
Date Jan 28 2009

 **Patricia Schaumans**  
Product Manager North America  
Tel. +32 (0) 15/40.73.24  
Fax +32 (0) 15/47.92.88  
e-mail: patricia.schaumans@vib.jetair.be

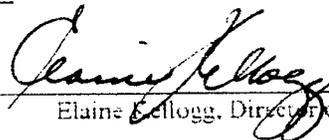
Signed by \_\_\_\_\_

(Title) \_\_\_\_\_

(Name)

  
(Signature)

For Gray Line New York Sightseeing

  
Elaine Kellogg, Director of Sales

Date Jan 28, 2009

Issued August 2008

**ADDENDUM TO CONTRACT  
VALID APRIL 1, 2009 TO MARCH 31, 2010**

between Gray Line New York Sightseeing (GLNYS), 49 West 45<sup>th</sup> Street, New York, NY 10036  
and

Company Name: \_\_\_\_\_

ETAIR

**TERMS & CONDITIONS**

**Vouchers:**

For day trips to Niagara Falls, Philadelphia and Washington DC. operator will be invoiced on the basis of confirmed reservations.

**Reservations:**

**Day trips to Niagara Falls, Philadelphia & Washington, DC: Reservations are required and must be made to the Reservations Dept. by fax at (212) 445-0850 or by email to [nylit@coachusa.com](mailto:nylit@coachusa.com)**

The following information is required for booking:

- Date requested:
- Tour name:
- Passport names (first & last) for each passenger:
- Citizenship:
- Language request:
- Contact/hotel in New York:

Reservations will be confirmed within 24 hours with a GLNYS booking number. The GLNYS booking number is very important. Any subsequent changes or cancellations must refer to GLNYS booking number and must be made by e-mail or fax. GLNYS must acknowledge changes and/or cancellations within 24 hours by return e-mail / fax. Passengers must call GLNYS Reservations Dept. at (1-800) 669-0051 Ext 3 or (212) 445-0848 Ext 3 at least 72 hours prior to departure date to reconfirm. Any reservation not reconfirmed will be subject to cancellation with penalties. Passengers can call the Reservations Dept. 7 days a week from 8.30am to 4.00pm (Eastern US time).

**Please be advised that requests more than 5 months in advance may be put on hold due to inventory restraints.**

**Niagara Falls Clients** will be picked up at their hotel (only between 23<sup>rd</sup> & 74<sup>th</sup> St). This will require *that we have hotel information at the time you make your reservation*. Passengers staying at hotels below 23<sup>rd</sup> Street or above 74<sup>th</sup> Street will be advised of where they will be picked up when they call to reconfirm. Transportation to the pick-up point will be the responsibility of the passengers.

**ADDENDUM TO CONTRACT  
VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Washington, DC and Philadelphia Clients** After reconfirming their reservation, passengers must go to the GLNYS Visitor Center (777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> Streets) **ONE DAY PRIOR** to departure, between 9am and 7pm to exchange their vouchers for their travel documents and other important information.

**Cancellations & No-Shows**

**For Niagara Falls confirmed reservations**

Cancellations or changes of date received at least 11 days prior to departure: No penalties  
 Cancellations or changes of date received between 10 days and 4 days of departure: 50% penalty  
 Cancellations or changes of date within 4 days of departure or no-shows: No refund

**For Washington DC and Philadelphia confirmed reservations**

Cancellations or changes of date received at least 3 days prior to departure: No penalties  
 Cancellations or changes of date received within 3 days of departure: \$75 p/person  
 Cancellations on day of departure or no-show: No refund

**Payment policies**

Vouchers redeemed will be invoiced on a monthly basis at net contract rates; invoices are due within thirty (30) days of receipt. Invoices must be paid in full. Failure to adhere to payment policies will result in cancellation of agreement and vouchers not being accepted.

**Rates & Tour Product:**

		RETAIL RATES		NET RATES	
		Adult	Child*	Adult	Child*
NF	One-day excursion to Niagara Falls by air	Peak Off-Peak	Peak Off-Peak	Peak Off-Peak	
PH	One-day trip to PHILADELPHIA by train				
WA	One-day excursion To Washington, DC by train				

Peak Season: June 15, 2009 to September 15, 2009, November 21-29, 2009, and December 12-20, 2009.

Off-Peak season: All other dates

**\*Child policy for Niagara Falls trip:** children ages are 18 months to 11 years. All children must be listed in the reservation in order to participate in a tour.

**Child policy for Washington DC and Philadelphia trips:** children ages 3 to 11 must have a child ticket in order to participate in a tour. Children 12 and older are considered adults.

ADDENDUM TO CONTRACT  
VALID APRIL 1, 2009 TO MARCH 31, 2010

**TOUR NF – DAY TRIP BY AIR TO NIAGARA FALLS**

**ESCORTED – AVAILABLE IN ENGLISH, FRENCH, GERMAN, ITALIAN, SPANISH**

Includes:

- Roundtrip airfare between New York and upstate New York.
- Local transfers in Manhattan (only hotels located between 23<sup>rd</sup> and 74<sup>th</sup> Streets) to/from New York airport and upstate New York airport to/from Niagara Falls
- Half-day guided tour of Niagara Falls from the American and Canadian sides
- Maid of the Mist boat ride (May–October) or Scenic Tunnels (November–April)
- Full buffet lunch at panoramic restaurant overlooking the Falls

**IMPORTANT: US Citizens:** Recently the US law changed regarding travel to Canada. US passports are now required to cross the border. For up to date info please review Department of Homeland Security web site (<http://www.dhs.gov/nrvlsec/crossingborders/>)

Possession of proper documentation is the responsibility of the passenger.

**Citizens of other countries:** Passport is required for travel. Non U.S. citizens may require Canadian visas and must inquire at time of booking. Possession of proper documentation is the responsibility of the passenger.

*Passengers without proper documentation may still book this tour. However, they must remain on the US side of the Falls. This time will be on their own (no tour guide or escort). They will still view the Falls, receive tickets for Maid of the Mist or Scenic Tunnels, all from the US side. Lunch money will be provided. The tour guide will make arrangements directly with the passengers for the return airport transfer pick up.*

Clients must reconfirm their reservation at least 72 hours prior to departure by calling our Reservations Dept. at 1-800-669-0051 Ext. 3 or (212) 445-0848. The Reservations Dept. will be open 7 days a week, 8:30am – 4:00pm. Passengers will be picked up and dropped off at their hotel. Vouchers must be presented to driver. Approx. one hour flight to Upstate New York; meet Gray Line guide on arrival and depart with private bus to Niagara Falls. After lunch, boat cruise (or Scenic Tunnels) and sightseeing tour, transfer back to upstate New York airport for return flight to New York. Transfer from airport to Manhattan hotels.

**Departures:** Daily, year-round except Thanksgiving ( November 26, 2009), Christmas (December 25, 2009) and New Year's day (January 1, 2010)  
Requires advance reservations and is subject to availability  
Pick-up time at hotel will be early am (between 4:45am and 9:30am depending on flight schedule). Return to New York early evening (between 7 pm and 9 pm depending on flight schedule).

**TOUR PH – ONE DAY EXCURSION BY TRAIN TO PHILADELPHIA**

Famous as "America's Birthplace" and home to the Liberty Bell and Independence Hall,

Philadelphia has more American history than any other city in the United States.

Travel through the streets and sights dating back to the first days of America.

Tour includes:

- Round-trip train ticket via Amtrak
- Round-trip transfers between midtown NYC hotels and NYC Pennsylvania Station
- Round-trip transfers between Philadelphia 30<sup>th</sup> Street Station and tour starting point
- Day pass for hop-on, hop-off sightseeing on Philadelphia Trolley Works
- Lunch at historic Reading Terminal Market in the heart of downtown

**ADDENDUM TO CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Departures:** Daily, year-round except Thanksgiving (November 26, 2009), Christmas (December 25, 2009) and New Year's day (January 1, 2010)

**Requires advance reservations by fax 212-445-0850 and is subject to availability**

Clients must reconfirm their reservation at least 48 hours prior to departure by calling our Reservations Dept. at 1-800-669-0051 Ext. 3 or (212) 445-0848. The Reservations Dept. is open 7 days a week, 8:30am - 4:00pm

Passengers **MUST** go to the Gray Line New York Sightseeing Visitor Center @ 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> & 48<sup>th</sup> Streets) **ONE DAY PRIOR to departure** and exchange their vouchers in order to receive their travel documents and other important information.

**TOUR WA - ONE DAY EXCURSION BY TRAIN TO WASHINGTON, DC**

Includes:

- Roundtrip train fare between New York and Washington (approx. 3 -4 hours each way)
- Round-trip transfers between midtown NYC hotels and NYC Pennsylvania Station
- Lunch at the food court inside Union Station
- 4-hour sightseeing tour in English (2pm-6pm)

**English (Tour C) with driver-guide; stop and visit Lincoln, Vietnam, Korean and Marine Corps (Iwo Jima) Memorials; Arlington Cemetery and Tomb of the Unknowns for Changing of the Guard; view from the coach: U.S. Capitol, Library of Congress, FBI Building, Embassy Row, Georgetown, US Navy Memorial.**

**Departures:** Daily except Independence Day (July 4, 2009), Thanksgiving (November 26, 2009), Christmas (December 25, 2009) and New Year's day (January 1, 2010)

**Requires advance reservations and is subject to availability**

Clients must reconfirm their reservation at least 48 hours prior to departure by calling our Reservations Dept. at 1-800-669-0051 Ext. 3 or (212) 445-0848. The Reservations Dept. is open 7 days a week, 8:30am - 4:00pm

Passengers **MUST** go to the Gray Line New York Sightseeing Visitor Center @ 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> & 48<sup>th</sup> Streets) **ONE DAY PRIOR to departure** and exchange their vouchers in order to receive their travel documents and other important information.

**Rates & Tour Product**

GLNYS agrees to maintain, to the best of its ability, the tours listed in the attached "Tour Descriptions". Circumstances beyond GLNYS's control may result in itinerary changes or cancellations; GLNYS will communicate these changes or cancellations to the Operator in writing with as much advance notice as possible. Passengers presenting a voucher issued by Operator prior to receipt of change/cancellation notice from GLNYS will be offered a similar tour or additional services representing the value of the tour originally purchased.

**Net and retail rates are attached.** All rates are inclusive of any local, State and Federal government taxes. Surcharges may also be charged for operational cost increases such as, but not limited to, fuel, government imposed fees, and/or third party attraction rate increases. Retail rates are subject to increase. GLNYS resellers will be advised of rate increases with a minimum 30-day advance written notice.

ADDENDUM TO CONTRACT  
VALID APRIL 1, 2009 TO MARCH 31, 2010

This Agreement shall be construed, governed, interpreted, enforced and litigated, and the relations between the parties determined in accordance with the laws of the State of New York without reference to principles of choice of laws. In the event of any litigation, action or other proceeding relating to or arising out of this Agreement, or the performance and enforcement of this Agreement, the parties hereto irrevocably consent and submit to the exclusive personal jurisdiction of the federal and/or state courts of the State of New York, sitting in New York County. Each of the parties consents that service of process may be made on them by registered mail or overnight courier (with delivery confirmed), to their respective addresses. Each of the parties hereto irrevocably waives any objection to services of process so made or to jurisdiction or venue in such federal or state courts of the State of New York sitting in New York County., including without limitation any objection based on the grounds of forum non conveniens.

**Insurance**

GLNYS has been providing tours for over 80 years. GLNYS is licensed by New York City Department of Consumer Affairs, New York State Department of Transportation and United States Department of Transportation. GLNYS is insured in excess of government requirements.

**Responsibilities**

GLNYS assumes no liability or responsibility for airline and train delays. In case of passengers required to overnight in either Niagara Falls, Philadelphia or Washington DC due to weather or cancellation of flights/train, any additional costs incurred by passengers for hotel accommodations, meals and personal expenditures will be the responsibility of the passengers.

Accepted by ETAIL  
(Company name)

Date FEB 3, 2009

Signed by PATRICIA SCHWAB  
(Name)

(Title) PRODUCT MANAGER

[Signature]  
(Signature)

For Gray Line New York Sightseeing

Date Feb 9, 2009

[Signature]  
Elaine Kellogg, Director of Sales

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

between Gray Line New York Sightseeing (GLNYS), 49 West 45<sup>th</sup> Street, New York, NY 10036 and

*(all information must be filled in)*

Company Name: QANTAS HOLIDAYS

Mailing Address: LEVEL 4, 197-201 HOWARD ST  
MASCOT NSW 2020

Billing Address: (if different from above): LOCKED BAG 4, MASCOT NSW 2020

Telephone: 612 9691 0636 Fax: 612 9691 0781

Contact Name: ALLISON STANDOR Title: CONTRACTS MANAGER

E-mail address: amepac@qantas.holidays.com.au Website: www.qantas.com

List any other branch/brand names that may also issue your company's vouchers \_\_\_\_\_  
\_\_\_\_\_

**TERMS & CONDITIONS**

**Vouchers**

New accounts must mail a voided sample of their voucher(s) along with this completed agreement. Gray Line New York Sightseeing (GLNYS) **cannot accept faxed or copies** of vouchers. Vouchers for sightseeing tours must be issued on company's original letterhead and include:

- Tour code and/or Gray Line tour name**
- Number of adult and child passengers & passenger name/s**
- If issued by a third party - voucher MUST clearly indicate "BOOKED AND PAYABLE BY [your company name]"**
- Date/year of tour \***

*\* Since most GLNYS tours do not require a reservation, except where noted, passengers can redeem their voucher at any time during their stay. Vouchers must be redeemed within the validity of the contract year i.e. any voucher issued for a tour date after April 1, 2009 must be redeemed by no later than March 31, 2010.*

For local sightseeing tours, operator will only be invoiced for vouchers redeemed. For day trips to Niagara Falls, Philadelphia and Washington DC, operator will be invoiced on the basis of confirmed reservations.

Vouchers with incomplete information or invalid tour codes/names will not be accepted. Passengers will be asked to pay for their tours on-site and advised to return their vouchers to issuing office for a complete refund.

<b>RESELLER CONTRACT</b> <b>VALID APRIL 1, 2009 TO MARCH 31, 2010</b>
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Child policy: children ages 3 to 11 must have a child ticket in order to participate in a tour. Children 12 and older are considered adults. If a voucher lists individuals older than 11 as children, GLNYS will collect a difference between child and adult fare for each of those individuals directly from the customers. **PLEASE NOTE: GLNYS will not refund for unused portions of a tour or for unused admissions.**

**Vouchers for local sightseeing** must be redeemed at one of the following mid-Manhattan locations:  
**GLNYS Visitor Center:** 777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> streets

**GLNYS Visitor Center:** street level entrance of Port Authority Bus Terminal on 42nd Street, just off the corner of 8th Avenue (for Woodbury Common Premium Outlets)

**Vouchers for Niagara Falls** must be presented to driver at morning transfer from hotel.

**Vouchers for Washington DC and Philadelphia** must be presented at GLNYS Visitor Center @ 777 8<sup>th</sup> Avenue when picking up travel documents one day prior to tour departure.

### Reservations

**City tours & local day trips:** No reservations. Double-decker bus tours, day trips to Woodbury Common, foreign-language tours and city tours by motorcoach and trolley **do not require** reservations. These tours are on free-sell and vouchers can be issued as needed without any notification to GLNYS.

**Harlem Gospel Tours and NYC Showbiz Insiders Tour:** These tours **REQUIRE** a reservation – please **SELL and REPORT** (Harlem tours -by **LANGUAGE**) to our Reservations Dept. by fax at (212) 445-0850 or by email to [nyfit@coachusa.com](mailto:nyfit@coachusa.com). Your reservation is automatically confirmed and you will not receive a confirmation number.

**NYC Ducks Tour:** Customer is required to make a reservation for a specific NYC Ducks Tours departure prior to boarding. It can be made in person at Gray Line Visitor Center 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> and 48<sup>th</sup> Streets).

**Unique Manhattan Helicopter flights:** Customer is required to make a reservation for a specific date and flight time at the time they exchange vouchers for boarding passes at Gray Line Visitor Center 777 8<sup>th</sup> Avenue (between 47<sup>th</sup> and 48<sup>th</sup> Streets).

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Day trips to Niagara Falls, Philadelphia & Washington, DC:** Reservations are required and must be made to the Reservations Dept. by fax at (212) 445-0850 or by email to [nyfit@coachusa.com](mailto:nyfit@coachusa.com)

The following information is required for booking:

- Date requested:
- Tour name:
- Passport names (first & last) for each passenger:
- Citizenship:
- Language request:
- Contact/hotel in New York:

Reservations will be confirmed within 24 hours with a GLNYS booking number. The booking number is very important. Any subsequent changes or cancellations must refer to GLNYS booking number and must be made by e-mail or fax. GLNYS must acknowledge changes and/or cancellations within 24 hours by return e-mail / fax. Passengers must call GLNYS Reservations Dept. at (1-800) 669-0051 Ext 3 or (212) 445-0848 Ext 3 at least 72 hours prior to departure date to reconfirm. Any reservation not reconfirmed will be subject to cancellation with penalties. Passengers can call the Reservations Dept. 7 days a week from 8.30am to 4.00pm (Eastern US time).

**Niagara Falls Clients** will be picked up at their hotel (only between 23<sup>rd</sup> & 74<sup>th</sup> St). This will require that we have hotel information at the time you make your reservation. Passengers staying at hotels below 23<sup>rd</sup> Street or above 74<sup>th</sup> Street will be advised of where they will be picked up when they call to reconfirm. Transportation to the pick-up point will be the responsibility of the passengers.

**Washington, DC and Philadelphia Clients** After reconfirming their reservation, passengers must go to the GLNYS Visitor Center (777 8<sup>th</sup> Avenue between 47<sup>th</sup> & 48<sup>th</sup> Streets) **ONE DAY PRIOR** to departure, between 9am and 7pm to exchange their vouchers for their travel documents and other important information.

**Cancellations & No-Shows**

**Local Tours**

Since there are no reservations for local city sightseeing tours, there are no cancellations or no-show penalties. If a voucher is not collected, operator will not be invoiced.

**Unique Manhattan Helicopter flights**

Once customer makes a reservation for specific date & flight time, their tour is non-refundable. No-shows will be billed.

**For Niagara Falls confirmed reservations**

- Cancellations or changes of date received at least 11 days prior to departure: no penalties
- Cancellations or changes of date received between 10 days and 4 days of departure: 50% penalty
- Cancellations or changes of date within 4 days of departure or no-shows: no refund

**For Washington DC and Philadelphia confirmed reservations**

- Cancellations or changes of date received at least 3 days prior to departure: no penalties
- Cancellations or changes of date received within 3 days of departure:  p/person
- Cancellations on day of departure or no-show: no refund

RESELLER CONTRACT  
VALID APRIL 1, 2009 TO MARCH 31, 2010

**Payment policies**

Redeemed vouchers will be invoiced on a monthly basis at net contract rates; payment for invoice is due within thirty (30) days of receipt. No-shows and applicable cancellation fees on Niagara Falls, Philadelphia and Washington day trips will be invoiced on the basis of operator booking.  
NOTE: Invoices must be paid in full. Failure to adhere to payment policies will result in cancellation of agreement and vouchers not being accepted.

**Rates & Tour Product**

GLNYS agrees to maintain, to the best of its ability, the tours listed in the attached "Tour Descriptions". Circumstances beyond GLNYS's control may result in itinerary changes or cancellations; GLNYS will communicate these changes or cancellations to the Operator in writing with as much advance notice as possible. Passengers presenting a voucher issued by Operator prior to receipt of change/cancellation notice from GLNYS will be offered a similar tour or additional services representing the value of the tour originally purchased.

**Net and retail rates are attached.** All rates are inclusive of any local, State and Federal government taxes. Surcharges may also be charged for operational cost increases such as, but not limited to, fuel, government imposed fees, and/or third party attraction rate increases. Retail rates are subject to increase. GLNYS resellers will be advised of rate increases with a minimum 30-day advance written notice. **Please return the first page of the rate schedule with your initials in order validate your rates when you return the signed contract.**

This Agreement shall be construed, governed, interpreted, enforced and litigated, and the relations between the parties determined in accordance with the laws of the State of New York without reference to principles of choice of laws. In the event of any litigation, action or other proceeding relating to or arising out of this Agreement, or the performance and enforcement of this Agreement, the parties hereto irrevocably consent and submit to the exclusive personal jurisdiction of the federal and/or state courts of the State of New York, sitting in New York County. Each of the parties consents that service of process may be made on them by registered mail or overnight courier (with delivery confirmed), to their respective addresses. Each of the parties hereto irrevocably waives any objection to services of process so made or to jurisdiction or venue in such federal or state courts of the State of New York sitting in New York County., including without limitation any objection based on the grounds of forum non conveniens.

**Notice**

Rates are based on agreement by Reseller to publish picture of current GLNYS double-decker bus and/or GLNYS logo in printed brochure and / or website. Copy of printed brochure must be sent to GLNYS by no later than December 15, 2008. GLNYS will reserve the right to terminate the contract, with a 60-day advance written notice, if Operator fails to adhere to these conditions.

Contracted rates are subject to a minimum production of 200 sightseeing passengers per calendar year; if this minimum production is not reached, contract will not be renewed.

\* NOTE: Our brochure will not be released in the market until 24 December 08. We will send it to you as soon as possible after release.  
Issued August 2008

**RESELLER CONTRACT**  
**VALID APRIL 1, 2009 TO MARCH 31, 2010**

**Insurance**

GLNYS has been providing tours for over 80 years. GLNYS is licensed by New York City Department of Consumer Affairs, New York State Department of Transportation and United States Department of Transportation. GLNYS is insured in excess of government requirements.

**Responsibilities**

**LOCAL SIGHTSEEING TOURS:**

GLNYS assumes no liability or responsibility for traffic conditions, access to sites or other conditions beyond its control or for any injuries, damage, delay, inconvenience, additional costs incurred for any reason beyond its control. GLNYS reserves the right to substitute equipment as needed and/or substitute routes in case of weather, street closures and special events (i.e. parades, street fairs, etc.)

**NYC DUCKS TOUR:** Customers must reserve their departure date/time and check in at the NYC Ducks Tour boarding location no later than 15 minutes prior to scheduled departure. NYC Ducks Tour assumes no liability for injuries, loss, damage, delay, inconvenience, additional costs incurred for any reason beyond its control. NYC Ducks Tour reserves the right to alter and/or cancel operations, schedules and prices without notice. Tickets are non-refundable. Unused tickets can be rebooked for a future Ducks Tour, or are transferable, or may be used towards the purchase of another Gray Line New York Sightseeing product for a period of one year from date of purchase. Unused portions of credits are non-refundable.

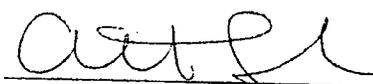
**DAY TRIPS TO NIAGARA FALLS, PHILADELPHIA & WASHINGTON DC:**  
GLNYS assumes no liability or responsibility for airline and train delays. In case of passengers required to overnight in either Niagara Falls, Philadelphia or Washington DC due to weather or cancellation of flights/train, any additional costs incurred by passengers for hotel accommodations, meals and personal expenditures will be the responsibility of the passengers. Proper documentation for Niagara Falls, Canada, is the responsibility of the passengers.

Accepted by QANTAS HOLIDAYS  
(Company name)

Date 12-9-08

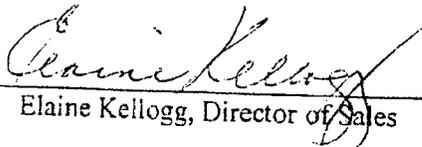
Signed by ALLISON SANDOR  
(Name)

(Title) CONTRACTS MANAGER

  
(Signature)

For Gray Line New York Sightseeing

Date 12-10-08

  
Elaine Kellogg, Director of Sales

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB DOCKET NO. MC-F-21035  
STAGECOACH GROUP PLC AND COACH USA, INC., et al.  
– ACQUISITION OF CONTROL – TWIN AMERICA, LLC**

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**VERIFIED STATEMENT OF  
PROFESSOR ROBERT D. WILLIG**

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**I. Qualifications and Assignment**

1. I am Professor of Economics and Public Affairs at Princeton University where I have held a joint appointment in the Economics Department and at the Woodrow Wilson School of Public and International Affairs for 30 years. Also, I am a senior consultant with Compass Lexecon. I have authored some 75 articles in the economics literature and a book on competition and the theory of industrial market structure. I am the co-editor of the *Handbook of Industrial Organization*, which summarizes the state of economic thinking on the organization of, and competition among, firms. My focus is microeconomics, with particular specialization in industrial organization, which is the field of economics that deals with competition among firms, and is therefore the area of economics that deals most directly with antitrust issues. In my teaching, I focus on courses covering microeconomics generally, and specialized courses on regulation, antitrust, and competition policy.
2. I have extensive experience analyzing economic issues arising under the law. While on leave from Princeton, I served as the Deputy Assistant Attorney General in the Antitrust Division of the United States Department of Justice from 1989 to 1991, and in that capacity served as the Division's Chief Economist. I led a group of 50 Ph.D. economists

and finance specialists, investigating competition matters such as mergers and acquisitions and possible anticompetitive behavior. I have appeared as an expert witness before Congress, federal and state courts, federal administrative agencies, and state public utility commissions on subjects involving competition, regulation, intellectual property rights, and antitrust. I also have served as a consultant to the Federal Trade Commission and the United States Department of Justice on antitrust and policy issues.

3. My curriculum vita, which includes a list of my publications, and a list of my testimony are presented in the Attachment. The opinions expressed here are based on those materials and on my knowledge and experience in antitrust economics, and on my knowledge and experience in advising clients on antitrust matters over the past 30 years. I have been assisted in a customary manner by the staff at Compass Lexecon. The opinions expressed here reflect the information and facts available to me at this time. I reserve the right to revise my opinions if additional information and facts make revisions appropriate.
4. I have been asked by counsel for the joint venture, Twin America, to consider the competitive and public-interest implications of the formation of that joint venture and to review and comment on the filing made by the New York State Attorney General in this matter.

## **II. Summary of Conclusions**

5. Based on my review of the economic evidence produced in this application, I conclude that the Twin America joint venture will not result in anticompetitive effects for consumers of transportation tour services or, more specifically, double-decker bus tour services, nor will it harm the public interest.
6. The economic data produced indicate that the joint venture is expected to result in an estimated cost savings of \$7 to \$11 million on the combined basis.<sup>1</sup> These cost savings are of the kind that creates benefits for consumers by improving the quality of services provided at lower costs. In addition, these cost savings will likely result in increased

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<sup>1</sup> COA 000243.

quantity and quality of services provided. The rationalization of productive and supporting assets benefits the public interest by releasing assets to more productive uses, both within the New York City marketplace and elsewhere.

7. My economic analysis of the marketplace also indicates that Twin America competes with other bus operations as well as other non-bus transportation tour services, including air, land, and water-based services. These services exert competitive discipline on Twin America's ability to raise price. In addition, the ease with which entry or repositioning by new or existing competitors into double-decker bus transportation tours can occur, which has been demonstrated by CitySights' own entry, would likely discipline any attempt by the joint venture to raise prices above competitive levels.
8. I have reviewed the comments provided by the New York State Attorney General (NYSAG) and find those comments to be inconsistent with economic logic and not reflective of accepted standard economic views of competitive effects, entry or market definition.
9. I provide a detailed discussion of my assessment of the economic evidence and support for these conclusions below.

### **III. Background**

10. On March 17, 2009, IBS and CitySights formed a joint venture that combined the New York City tour-bus operations of the two firms.<sup>2</sup> IBS operated under the trade name Gray Line New York, providing various transportation and sightseeing tour services. Gray Line contributed 87 total vehicles – 59 double-decker buses for sightseeing services, 12 motorcoaches used in local and interstate charter services, and 16 miscellaneous support vehicles. CitySights contributed 62 double-decker sightseeing buses to the joint venture along with eight additional buses it had committed to build by the end of 2009.<sup>3</sup>
11. The joint venture, Twin America, provides transportation tour services in New York City using double-decker buses and other vehicles. As part of its tourism services, Twin

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<sup>2</sup> International Bus Service (“IBS”) is a Coach USA controlled motor passenger carrier and is an operating subsidiary of Coach USA. CitySights Twin and IBS each holds 50% voting rights in the joint venture. IBS holds 60% of the economic interests and CitySights has 40%. Verified Statement of Ross Kinnear at ¶ 3.

<sup>3</sup> Verified Statement of Ross Kinnear at ¶ 4.

America provides transportation services from hotels in New Jersey to New York City and engages in joint arrangements with other carriers to provide transportation to passengers traveling between New York State from other states, including Pennsylvania, New Jersey, and the New England states. Twin America services are marketed and sold across the United States and internationally.

12. Twin America has maintained the two brand names of the originating companies – *Gray Line* and *CitySights NY* – and the distinct appearance of the respective buses. The joint venture, however, is one economic entity whose assets and operations are contained within a single legal company, which is jointly owned by IBS and CitySights Twin.<sup>4</sup> Tickets to the bus tours are sold through a variety of outlets: fixed locations (visitors' centers, travel agencies, wholesalers, and tour operators) as well as through street ticket sellers, hotel concierges, and the internet. As a general matter, ticket sellers earn a commission based on the dollar value of the tickets they sell.
13. Twin America competes within a broad industry of tourism services in the New York City metropolitan area and within a narrower segment of transportation tour services, which includes land, air, and water-based tour services. These services include water tours, such as *New York Water Taxi* and *Circle Line*, helicopter tours, and various other sight-seeing services offered to small and large groups. Within the narrower land-based transportation tour services segment, the Twin America joint venture competes with several other firms currently offering various types of bus tours in New York City. These include *On Board New York City*, *Big Taxi*, *On Location*, and *Harlem Spiritual*.

#### **IV. The Twin America Joint Venture Promotes the Public Interest**

##### **A. The Joint Venture Results in Efficiencies and Synergies**

14. The joint venture has estimated cost savings from the consolidation of \$7 to \$11 million on a combined basis.<sup>5</sup> There are major categories of anticipated cost savings and

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<sup>4</sup> Stagecoach Group PLC and Coach USA, Inc., et al., Acquisition of Control Twin America, LLC, Before the Surface Transportation Board, Verified Application.

<sup>5</sup> COA 000243.

efficiencies – (1) cross-ticketing, (2) implementation of best operating practices, and (3) rationalization of operating and back-office assets, including employees.

15. First, Twin America has implemented cross-ticketing on multilingual tours, and will introduce cross-ticketing on the Brooklyn route. If successful, Twin America will extend cross-ticketing to the Uptown and Downtown bus tours. This new service will enable customers to use both CitySights and Gray Line buses with one ticket. The purpose of cross-ticketing is two-fold – to reduce the wait time for passengers moving between attractions and more effectively to utilize assets by increasing the number of passengers per bus. The time between buses at most stops on the Brooklyn tour, for example, is generally 45-60 minutes. With cross-ticketing, the time between buses will be reduced to 30 minutes. The ability to "hop-on and hop-off" more frequent buses provides customers a major benefit. A study by Audience Research & Analysis, September 2008, entitled "Gray Line Hop-on Hop-off Tours, A Ridership Study," indicated that Gray Line riders were less satisfied with the waiting time at tour stops in 2008 compared with the results in 2002. By combining the operations of Gray Line and CitySights, Twin America is able to deploy buses in such a way as to reduce the wait-time for the passenger, thereby enhancing consumer benefits.
16. Twin America also benefits from cross-ticketing by increasing its occupancy per bus, which means fewer buses needed to serve the same ridership. This enables Twin America to free up its assets for more productive deployment elsewhere and generates cost savings by reducing expenses without adversely affecting Twin America's ability to serve its ridership. For example, Twin America will achieve reduced expenses for spare parts, maintenance and repair, and fuel. Rationalization of buses will also extend the life of each bus by increasing the rotation cycle. The rationalization and redeployment of these assets also provides a public-interest benefit by reducing the number of buses on identical routes, which translates into reduced traffic congestion, less fuel consumption, and reduced air pollution. These consumer and operational benefits could not occur in the absence of the joint venture.
17. Second, by combining the best administrative, management, and operational practices of each partner, Twin America will be able to reduce expenses. For example, Gray Line, as part of Coach USA, has benefited from Coach USA's experience in servicing and

maintaining its fleet of buses. These benefits can be applied to all Twin America's bus assets. Another example of best practices is selecting and applying across the combined entity a single payroll system which uses the best payroll staff and IT resources available from each joint venture partner. CitySights, for example, brings to the joint venture its expertise in internet and international sales and marketing, which the joint venture has started to apply to Gray Line's sales. Similarly, Gray Line's expertise and best practices in servicing large accounts also is being applied to CitySights' former operations. Gray Line's vast experience in procuring and managing insurance for its large fleet of buses is another source of efficient practices that will be applied to CitySights' former operations. Such best practices application is a merger-specific efficiency recognized in the economics literature.<sup>6</sup>

18. Third, the joint venture expects to achieve cost savings by rationalizing its productive and back-office operations. Specifically, it is consolidating call centers and offices, leasing new office space for the consolidated office functions, and is closing down satellite operation offices. The joint venture is combining the partners' accounting, IT, and sales and marketing functions. This consolidation will result in the trimming of the workforce, which is typical in most efficient joint ventures and asset mergers. These reductions in workforce are welfare-enhancing efficiencies in the sense that needlessly redundant labor resources and assets are released to the market to be deployed for more productive uses in the economy. This reallocation of resources benefits the firm in the long run by making it more efficient, which increases the likelihood that the firm will expand and create new job opportunities for other workers.

**B. The Efficiencies and Synergies Are in the Public's Interest**

19. Gray Line operated 79 double-decker tour buses prior to entering into the joint venture. The combination of Gray Line and CitySights' double-decker bus assets required Gray Line to contribute only 59 double-decker buses to the joint venture. This enabled Gray Line to redeploy 20 tour buses to its transportation tour bus operations in Chicago, where

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<sup>6</sup> Werden, Gregory, "An Economic Perspective on the Analysis of Merger Efficiencies," *Antitrust Magazine* Summer 1997. ("Efficiencies may involve intangible assets, such as superior technology. Making one merging firm's superior technology available to the other can lower the cost or improve its quality. Other examples are brand or corporate goodwill.").

demand for transportation tour services has been growing.<sup>7</sup> I include as Exhibit 1 charts comparing gross sightseeing revenues for New York City and Chicago over time. The chart shows that gross sightseeing revenues in New York City have been declining while sales in Chicago have been increasing.

20. This redeployment of buses resulted in net benefits to Chicago tourists that were being underserved and net benefits to New York City tourists by more efficiently using on-the-street assets, i.e., the consolidation is expected to result in a higher density of ridership per bus. This benefits the public by lowering fuel consumption, reducing air pollution, and lessening traffic congestion, while improving the wait-time for tour bus riders. The redeployment of these 20 double-decker buses did not reduce the quantity or quality of services provided in New York through the joint venture, while bringing significant new service opportunities to Chicago.
21. Application of best practices and rationalization of productive assets benefits the New York City public interest. For example, Werden identifies situations in which rationalization of assets will result in beneficial cost savings.<sup>8</sup> One such benefit occurs when the excess capacity of one merging firm is sufficient to allow the facilities or activities of the other merging partner to be shut down (in this case, redeployed to other service areas). This results in fixed costs savings and may also result in variable cost savings if the assets maintained (here, buses) have lower costs of producing the demanded services.
22. Werden also recognizes cost savings created when production for one of the merging firms can be profitably moved into productive capacity owned by the other merging firm. Cost savings created through rationalization is expected because cross-ticketing will increase the occupancy rate per bus, which will result in lower fuel and maintenance costs. In addition, by moving the underutilized back-office functions and management of both CitySights and Gray Line into one firm and shutting down the individual operations of each, additional cost savings are created.

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<sup>7</sup> Verified Statement of Ross Kinnear at ¶8.

<sup>8</sup> Werden, Gregory, "An Economic Perspective on the Analysis of Merger Efficiencies," *Antitrust Magazine*.

## **V. The Joint Venture Does Not Increase Market Power or Increase the Likelihood of Anticompetitive Effects**

23. While the analysis of mergers is at the core of the antitrust laws, it is important to note that the vast majority of all mergers and joint ventures present no anticompetitive risk whatsoever. The U.S. Department of Justice and the U.S. Federal Trade Commission, the two federal agencies charged with merger enforcement, investigate a small portion of mergers and challenge an even smaller portion of those they investigate.
24. In their Horizontal Merger Guidelines, the Department of Justice and the Federal Trade Commission describe their approach to analyzing mergers as follows:

The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time. In some circumstances, a sole seller (a “monopolist”) of a product with no good substitutes can maintain a selling price that is above the level that would prevail if the market were competitive. Similarly, in some circumstances, where only a few firms account for most of the sales of a product, those firms can exercise market power, perhaps even approximating the performance of a monopolist, by either explicitly or implicitly coordinating their actions.<sup>9</sup>

25. The combination of productive assets and back-office operations of the two joint venture partners, along with the decision-making for the joint venture housed within Twin America, suggests that the joint venture should be analyzed as if it were a merger for purposes of examining its competitive effects.<sup>10</sup>

### **A. The Business Justification for the Joint Venture Is Consistent with Creating a More Effective Competitor**

26. The New York City tourist industry is experiencing the impacts of the economic downturn and increased fuel costs. The economic and financial crisis, along with higher taxes on hotel rooms, has adversely affected the number of tourists choosing New York City as a destination, which in turn has adversely affected ridership and costs at both

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<sup>9</sup> Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Issued April 2, 1992, at § 0.1.

<sup>10</sup> Antitrust Guidelines for Collaboration Among Competitors, Issued by the Federal Trade Commission and U.S. Department of Justice, April 2000 at Section 1.3.

CitySights and Gray Line. Tourism in 2009 is down about 5.3%, compared with 2008. Although tourism reached a peak in 2008, the rate of increase in tourist visitors generally has slowed since 2006. This is apparent in hotel occupancy rates. Comparing occupancy rates in January-February 2008 and 2009, one sees a significant decline from 83% in 2008 to 65% in 2009. Occupancy rates in April 2009 compared with April 2008 also declined, although at lower rate. The corresponding statistics are presented in Exhibits 2 through 4 to this Statement.

27. Operations at both companies were experiencing upward pressures on prices. CitySights and Gray Line identified an opportunity to combine their operations in order to generate cost savings that would enable the joint venture to compete more effectively in this challenging economic environment. Specifically, a major cost of operating a double-decker transportation tour business is fuel expense. Exhibit 5 shows that fuel expense increased significantly beginning in the fourth quarter of 2007. Although fuel expense is down somewhat in the first quarter of 2009, it remains far above levels experienced prior to late 2007.
28. In sum, the joint venture expects to provide (1) tour bus consumers a higher quality service delivered at a lower cost of service, (2) better coordinated service with reduction in road congestion and enhanced tour value, and (3) cost savings and synergies arising from best practices and elimination of duplicative services.<sup>11</sup> Consumers and the public interest will gain positive net benefits from the formation and operation of the joint venture.

## **B. Competitive Dynamics of NYC Tour Buses**

### **1. Twin America Competes with Other Modes of Transportation Tourism**

29. Twin America competes with various transportation tour companies. It competes most directly with other land, air, and water-based tours. 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 transportation tours include Gordon's Guide

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<sup>11</sup> See COA 000218-19.

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.

30. 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. For example, the 2009 Concierge Choice Awards selected New York Helicopter as the *top tour operation* for the year. Other nominees were Gray Line, Circle Line Sightseeing at 42<sup>nd</sup> Street, and My Kind of Town. In the *transportation category*, NY Water Taxi was selected over nominees NY Waterway, Helicopter Flight Services, and Circle Line Sightseeing at 42<sup>nd</sup> Street.<sup>12</sup> Concierges' recognition of these different modes of transportation does not lessen the view that these services compete across various transportation modes for tourists' money and time.
31. Even with a particular mode of transportation tour services, such as double-decker bus tours, each competitor provides a means for tourists in New York City to see popular tour attractions, and each competes for tourists' time and money. Hop-on, hop-off services, for example, are not unique to double-decker buses. These services are also offered with coaches and trolleys. Even within the same mode of transportation tour services, each alternative is differentiated. For example, CitySights offered three basic double-decker tours – Downtown Tour, Uptown Tour, and Night Tour. In addition, passengers could select add-ons to these tours, such as access to particular tourist sites (like the Empire State Building) or additional transportation services (e.g., helicopter tours). It also offered a motorcoach tour to Woodbury Commons shopping and offers a Brooklyn Tour that consisted of both double-decker and motorcoach transportation services. These tours are shown in Exhibit 6.
32. Gray Line offered a wide variety of double-decker tours, including the All Loop tour, Brooklyn tour, Downtown tour, Essential New York, Uptown Loop, Night Loop, and

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<sup>12</sup> <http://cityguideny.com/viewcolumn.cfm?colid=19103>.

Classic New York.<sup>13</sup> In addition, Gray Line offered tours that were not on double-decker buses, such as the NYC Heritage Tour, Multilingual Tour, and Showbiz Insider Tour. It also offered multi-transportation tours, including Manhattan by Sail tour. These are shown in Exhibit 7.

33. A significant number of tickets are sold through internet sites and concierge services. At the same time, these services present consumers with a multitude of different options, including alternative modes of sightseeing. For example, a tourist seeking advice from a concierge on various attractions in New York City may be offered options via double-decker buses, helicopter tours, water tours, self-guided tours, Segway tours, limousine services, among other options. The same vast array of alternatives, including prices, is available through internet sites such as City Guide and Viator. I note that in 2008, New York City was visited by 47.0 million tourists, less than 5% of whom purchased tickets from either party to the joint venture. These figures indicate that bus-tours are not an obligatory part of the itineraries of most tourists.

## **2. Potential Entry and Repositioning Would Discipline Any Attempt by Twin America to Raise Price Above Competitive Levels**

34. The firms involved in the joint venture maintain that they compete with a wide array of land, air and water-based transportation tour services offered to New York City visitors as well as other sightseeing tour options that tourists can access directly or through other tour services. In evaluating the competitive effects of a joint venture, it is often necessary to define a relevant product and geographic market in which competition might be affected by the joint venture. As the Federal guidelines for analyzing joint ventures recognize, however, it may be possible to assess the competitive effects without defining a particular relevant market.<sup>14</sup>
35. In this case, it is not necessary to determine a precise relevant market definition because new entry or expansion by an existing firm would be expected to keep Twin America's services competitive. As noted in the Merger Guidelines:

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<sup>13</sup> I do not address Twin America's interstate and local charter services provided by motorcoach in this Statement.

<sup>14</sup> Antitrust Guidelines for Collaboration Among Competitors, Issued by the Federal Trade Commission and U.S. Department of Justice, April 2000 at Section 3.32.

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. Entry is that easy if entry 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.<sup>15</sup>

36. Transportation tour services are highly conducive to ease of entry and exit. Within the New York marketplace, both Coach USA and CitySights entered within the last ten years. Entry can and has occurred in a timely manner, at a reasonable cost, and of a magnitude sufficient to affect competition. Under these conditions, it is not necessary to determine the exact parameters of an antitrust market. Ease of entry would prevent anticompetitive outcomes. Nonetheless, existing sources of competition should ease any concerns about anticompetitive outcomes.

**a) Ease of Entry Is Exemplified by CitySights Entry into the NYC Marketplace**

37. CitySights' entry into providing transportation tour services reflects the type of entry that can occur to constrain an exercise of market power. CitySights LLC was incorporated in November 2004. To begin providing transportation tour services, CitySights incurred costs for regulatory approval, purchased double-decker buses, insurance, ticket sales agents, tour bus drivers and guides, marketing, and established back-office support and management operations. In Spring 2004, CitySights contracted with Craftsmen Limousine to construct a tour bus by placing an upper-deck on a Freightliner chassis. This initial model had only a top level for passengers. The bus was delivered in January 2005, inspected, and with a few modifications, was approved by the New York State Department of Transportation. CitySights then purchased the test bus and seven

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<sup>15</sup> Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Issued April 2, 1992, at §1.0.

additional buses. By the end of 2005, CitySights had ordered a total of 15 buses.<sup>16</sup> The buses were purchased for about \$225,000 per bus.

38. In addition to obtaining approval for the buses from the New York State Department of Transportation, CitySights also applied for and obtained a sightseeing license from the New York City Department of Consumer Affairs. The application required that CitySights' buses meet emission requirements. The fee for the license was \$35 per bus. Every two years, CitySights must renew these licenses. Next, CitySights applied to the New York City Department of Transportation for bus stops where passengers could be picked up and off-loaded. CitySights received approval for 50 stops.<sup>17</sup>
39. Another entry cost for CitySights was incurred for ticket sellers. These agents were found by advertising and word of mouth, and CitySights initially paid them a commission of \$4 for each ticket sold. CitySights also rented ticketing machines for approximately \$30 per month and purchased approximately \$5,000 of software to run the machines. CitySights also engaged the services of tour bus drivers and guides at an initial approximate cost of \$12 per hour for drivers.<sup>18</sup>
40. CitySights also incurred marketing costs of less than \$30,000 to design a marketing brochure, print brochures, design the graphics, and design a website including ability and commission for purchasing tickets online. In addition, CitySights set up back-office support and management services for its tour operations.<sup>19</sup> The totality of these costs was modest. The largest expense was the acquisition of double-decker buses, which are mobile assets that can be sold off in the event that entry is unsuccessful. The non-recoverable sunk cost of entry was very low relative to the expected revenues generated.
41. In sum, CitySights began operations in May 2005 with eight tour buses. By 2009, CitySights operated 62 double-decker buses and had committed to build another eight buses that it contributed to the Twin America joint venture. Exhibits 8 and 9 show the evolution of CitySights ownership and operation of double-decker and coach buses.

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<sup>16</sup> In 2006, CitySights decided that it would manufacture its own buses by purchasing used transit buses and hiring two body shops to convert the transit buses to double-decker buses. The costs ranged from \$90,000 to \$150,000, depending on the condition of the transit bus. Verified Statement of Zev Marmurstein at ¶ 9.

<sup>17</sup> Interview with CitySights.

<sup>18</sup> Interview with CitySights.

<sup>19</sup> Interview with CitySights.

Exhibit 10 shows the number of passengers served over time. I have reviewed the confidential profit & loss statements produced by CitySights and have confirmed that its profitability is affected by seasonality, being generally negative in the fourth and first quarters of each year as tourism slows down in New York, but CitySights has been profitable from the start of its operations.

**b) Costs and Timing of Entry and Exit Support Ability of Potential Entrants to Discipline an Exercise of Market Power**

42. The Horizontal Merger Guidelines defines ease of entry as “timely, likely, and sufficient in its magnitude, character and scope to counteract the competitive effects of concern.”<sup>20</sup> The agencies generally accept entry that would occur within two years, from initial planning to significant market impact, as meeting these guidelines. Planning, design and management, permitting, licensing, government and regulatory approvals, acquisition of buses, operation of support facilities, and promotion, marketing, and distribution, would all be milestones considered in assessing whether new entry would be doable within two years. Entry would be considered likely if it would be profitable to enter given pre-merger prices, in a scenario where those prices might hypothetically be elevated to supracompetitive levels by the merger at issue. The likelihood of entry also recognizes that the scale of entry can affect prices in the market at the time of entry. If the scale required to enter is larger than the likely available sales opportunities, entry could depress prices below the level necessary to be profitable. Entry would be unlikely if the minimum viable scale is larger than the sales opportunities available to the potential entrant. In assessing the available sales opportunities, the Guidelines consider (1) the output reduction of potential or hypothetical concern associated with the merger, (2) the entrant’s ability to capture a share of expected growth in the market, (3) the entrant’s ability to divert sales from the merging parties, and (4) any other reduction in output from the incumbent’s response to new entry.<sup>21</sup> The agencies consider entry to be sufficient if it

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<sup>20</sup> Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Issued April 2, 1992, at § 3.0.

<sup>21</sup> Department of Justice and Federal Trade Commission Horizontal Merger Guidelines, Issued April 2, 1992, at §3.3.

is likely to restore output to the level that existed prior to the merger. Generally, if such new entry is timely and likely, it will meet the sufficiency criteria.

43. I have applied these guidelines to transportation tour services in New York City. I determined that conditions support ease of entry in this marketplace. CitySights entered the marketplace in less than one year, well within the Merger Guidelines threshold for committed and uncommitted entry. Reaching a minimum viable scale of operations to sustain entry occurred at a relatively low level. CitySights' successful entry provides economic support for the likelihood of successful entry by other firms in the event of a hypothetical sustained supra-competitive price increase by the joint venture. The largest investment is the acquisition of buses. However, CitySights' entry demonstrates that entry can evolve over time with the initial acquisition of only a few buses with more buses added as operations grow. I understand that double-decker buses can be obtained from a variety of sources.<sup>22</sup>

44. Both Coach USA and CitySights had previous experience as operators of passenger transportation businesses. Their entries into transportation tour services were effectively repositionings from an adjacent service into this demand segment. The ability to acquire double-decker buses and secure regulatory approval makes existing rivals offering non-double-decker bus services, such as motorcoach tours, water tours, or air tours, likely firms to reposition into double-decker tours in the event the joint venture were to raise prices in a non-transitory fashion above competitive levels. These existing tour operations already have the infrastructure needed to sell tickets and market to consumers, and the knowledge to operate double-decker bus tours in New York City.

**c) Experience in Other Geographic Markets Supports Ease of Entry**

45. Transportation sightseeing tours are available in cities other than New York City. Exhibit 11 shows transportation sightseeing tours in Chicago, Washington DC, Los Angeles, San Diego, San Francisco, Miami, New Orleans, New York, Paris, and London. In addition, Big Buses in London recently entered the Philadelphia market. LesCar Rouge entered the Washington DC marketplace through a merger with Open Top Sightseeing in 2006, and

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<sup>22</sup> Double-decker bus manufacturers include Alexander Dennis, Ayats, Marcopolo S.A., Zhongda Industrial Group, Anhui Ankai Automobile Co. Ltd., Van Hool, and Ashokeley Land.

expanded to San Francisco in 2007 and Las Vegas in July 2009. Recent entry in other markets is indicative of ease of entry into transportation tour services and suggests that entry could and likely would occur in New York City if prices were to increase above competitive levels.

46. These data also suggest that the 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.

## **VI. The NYSAG's Assessment of Efficiencies and Synergies Is Inconsistent with the Economic Evidence**

47. I have seen no economic data to suggest that either CitySights or Gray Line exercised any market power in providing transportation tour services or that the joint venture has changed the competitive dynamics of the marketplace. Rather, CitySights' entry and the strategic adaptations of the joint venture are evidence that the marketplace is dynamically competitive, and that the consolidation is bringing pro-competitive efficiencies to its operations and to its customers. The NYSAG's evaluation of the joint venture is inconsistent with the economic facts.

### **A. The Relevant Markets Proposed by the NYSAG Lack Economic Support**

#### **1. Shares Calculated by the NYSAG Do Not Determine Whether a Joint Control Agreement Will Increase Market Power or Facilitate Its Exercise**

48. Market power is the ability profitably to increase price above competitive levels and exclude competitors. In general, market power can exist only where a firm or a group of firms acting in concert have a sufficiently large share of a relevant market. A firm or group of firms with a small market share will generally find attempts to manipulate market-wide prices unprofitable because other firms in the market will have an incentive to undercut them, thereby restoring the competitive balance between demand and supply.

This is a core concept of antitrust analysis. If Twin America does not have market power in a relevant market, then it cannot profitably or effectively raise prices by restricting the provision of tour bus services.

49. The NYSAG's office provides no economic support for its assertion that Twin America has market power and can unilaterally raise prices above competitive levels. It merely asserts this proposition on the basis that it identifies only one other provider of double-decker tours in New York City and that operator provides only one of four tours identified by the NYSAG as competitively relevant. As an economist, I do not find this assertion consistent with either the economic evidence on ease of entry or with the net benefits to consumers and the public interest from the joint venture's formation. I address my specific concerns with the NYSAG's analysis below.

**2. The Relevant Markets Asserted by the NYSAG Do Not Take into Account the Commercial Realities and Dynamic Nature of the Competitive Environment in Which Twin America Competes**

50. NYSAG identifies major tour routes as (1) downtown loop, (2) uptown loop, (3) all around town loop, and the (4) Brooklyn loop. The NYSAG counts whether the tour operator, CitySights and Gray Line and other tours operators, provide the tour. For example, since CitySights offers a tour that approximates each of these tours, it receives a count of four. Gray Line receives a similar count. The only other competitor identified by the NYSAG as offering one of these tours is Big Taxi, which offers the Downtown Loop tour. It receives a count of one. This methodology enables the NYSAG to find a total market offering of 9 tours, of which CitySights and Gray Line each account for 44.5% and Big Taxi 11% of the total number of tours offered. It concludes that the joint venture would have about 90% of the market.
51. This analysis is grossly misleading. The methodology ignores the actual sales associated with each tour, which differ considerably. For CitySights, its ridership numbers show that the Downtown bus tour accounts for 65% of riders compared with the Uptown tour's 20%, the Brooklyn tour at 5%, and the Night tour at 10%. For Gray Line, the majority of passengers purchased the All Loops sightseeing tour (64%), with the Downtown Loop

accounting for 16.7%, Essential NY for 16.6%, and Uptown loop for 2.8%.<sup>23</sup> Moreover, the NYSAG analysis artificially limits the relevant market to just four routes and ignores the availability of a wide array of alternative tours by all other transportation tour operators which compete for tourists' time and money.

52. Moreover, bus routes are not markets. Consumers can readily substitute, routes can be easily reconfigured, and suppliers can reposition assets to serve particular routes in response to any supra-competitive pricing. For example, if a hypothetical monopolist were to raise the price for these particular tours, another transportation tour operator could acquire double-decker buses, obtain regulatory approval, ticket agents, and drivers and guides, and compete for tourists in less than one year's time. For these reasons, I disagree with the NYSAG that individual bus tours and their current providers represent a relevant market and market participants for purposes of assessing the potential competitive effects arising from the Twin America joint venture.

53. In sum, the NYSAG's analysis ignores the ability of other transportation tour operators to reposition to compete with the joint venture if prices were to rise to supra-competitive levels. The NYSAG's analysis is static and fails to acknowledge or incorporate the commercial realities and dynamic nature of competition within the marketplace that I discuss earlier in this report.

**B. The NYSAG's Assessment of Efficiencies and Synergies Is Inconsistent with the Economic Evidence**

54. The NYSAG recognizes Twin America's cost savings, but interprets these savings as creating barriers to entry for potential rivals, and harm to consumers or employees. Specifically, the NYSAG identifies (1) increased barriers to entry through volume discounts, (2) firing or reducing the hours or wages of Twin America employees, and (3) reducing the number of buses or frequency of tours. The NYSAG's assessment of efficiencies is misguided and inconsistent with economic theory and antitrust economic analysis. I address these concerns below.

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<sup>23</sup> Audience Research & Analysis, September 2008 entitled "Gray Line Hop-on Hop-off Tours, A Ridership Study" CS0000936-968 at 942.

**1. The Efficiencies and Synergies Created by the Joint Venture Do Not Increase Barriers to Entry**

55. The NYSAG asserts that the joint venture's fuel, spare parts, and insurance cost savings would likely only be achieved through volume discounts, and new entrants would be unable to obtain these same economies of scale. As I describe in Section IV.A above, Twin America's fuel, spare parts, and insurance cost savings are not generated from new volume discounts but rather by applying the parties' experience in efficiently operating and maintaining buses to the contributed bus assets. Therefore, volume discounts cannot be a barrier to entry to potential rivals. The minimum viable scale of operations to be successful is low, as exemplified by the successful CitySights' entry in 2005 with just eight buses and expansion to 70 buses within just a few years.

**2. Cost Savings Resulting From Rationalization of Productive Assets Increase Total Welfare**

56. The NYSAG further asserts that the claimed cost savings in advertising expenses would likely derive from consolidating the number of advertisements or firing employees. Likewise, The NYSAG asserts that Twin America's elimination of duplicative back-office and other administrative and management functions is harmful to employees, implying that these savings are not in the public's interest.

57. The NYSAG fails to recognize in its assessment that the public interest is served by efficient allocation of labor and physical assets. Consumer welfare and, in turn, the public's interests are well-served when the same output and quality of service can be achieved with fewer resources and at lower costs. The Twin America joint venture meets these goals. The joint venture does not eliminate any bus routes or options for consumers. In fact, by combining its services, the joint venture will be able to offer consumers more frequent access to buses on the same routes. It will achieve this enhancement in services with fewer resources and at lower costs by eliminating duplicative advertising and back-office operations. The trimming of redundant employees results in total welfare benefits by making these productive, but under-employed, workers available to other productive operations, possibly even existing or potential new rivals. These types of cost savings have long been recognized as benefiting the public interest.

**3. Cost Savings Do Not Need to Be Directly Passed on to Consumers in the Form of Lower Prices in Order to Benefit Consumers and the Public Interest**

58. I take issue with the NYSAG's assertion that consumers only benefit from a merger when cost savings from the merger are passed along in the form of lower prices. Cost savings need not be passed on to consumers immediately through lower prices in order for consumers to benefit from the cost savings created by the Twin America joint venture. As I have indicated above, consumer welfare and the public interest are enhanced when the same output and services can be provided at lower costs with fewer resources. In general, such efficiencies are likely to inure to consumer welfare over time, if not right away, as the lower costs allow more and higher quality of service to be sustainable and motivated in marketplaces subject to new demands and dynamic forces of competition.

59. As I explained above, the ease of entry into transportation tour services also constrains existing participants from raising prices above competitive levels. There is no economic evidence that the Twin America joint venture is able to exercise market power to raise prices by restricting output when faced with easy entry of new rivals or expansion by existing rivals. In such a setting, cost savings and synergies of operations are likely to be passed on to consumers in the form of lower prices and higher quality of service over time and as restored consumer demand permits.

**C. The Joint Venture's Impact on Ticket Agents Is Not Anticompetitive**

60. The NYSAG expresses concern that the joint venture can eliminate competition for marketing with ticket agents, such as concierges, museums, helicopter, and boat tour operators, and that the joint venture may foreclose entrants from gaining access to these sales sources due to volume discounts, exclusivity, or lack of bargaining power.<sup>24</sup> Based on my review of the economic evidence produced, I believe the NYSAG's concerns are unfounded. Twin America depends on independent ticket agents to sell its products. Many of these agents, such as concierges, museums, helicopter, and boat tour operators, also sell competing products. Twin America must pay ticket agents enough commission

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<sup>24</sup> NYSAG Comments at 6.

to induce these agents to sell Twin America's products. If it reduces commissions below the level necessary to induce a sale, Twin America makes less money. On the other hand, it makes no economic sense to pay a commission greater than necessary to induce the ticket agent to make the sale.<sup>25</sup>

61. The majority of Twin America's ticket sales are made by street sales. These agents literally stand on the street attempting to convince consumers to buy a ticket. The consumer has many sightseeing options, as I described above in Section V.B. Twin America has no economic incentive to reduce commissions to these ticket agents to a level that would reduce their incentive to make a sale. This would represent not only a loss of commission to the ticket agent, but also a loss of resulting revenues to Twin America.

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 November 17, 2009



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Robert D. Willig

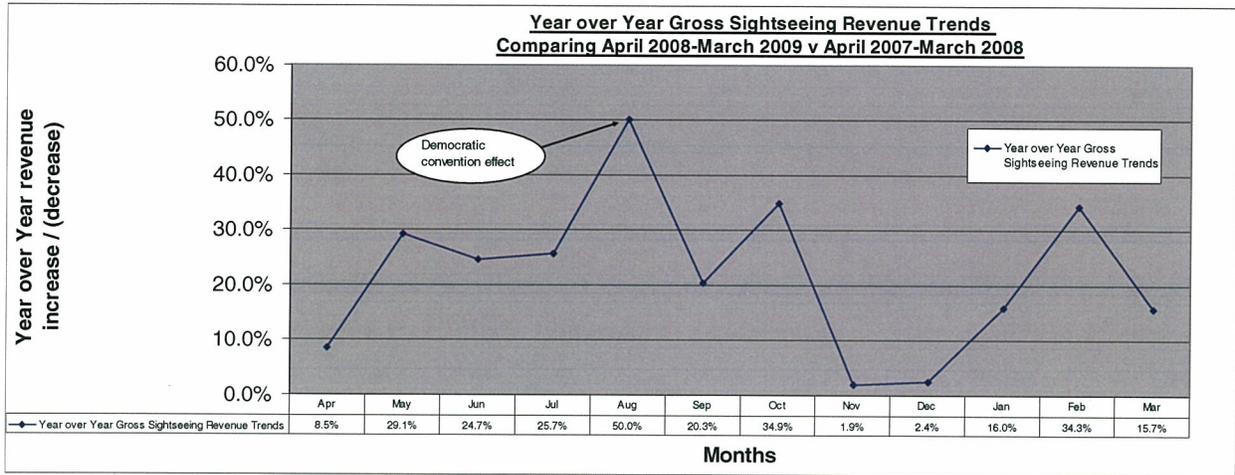
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<sup>25</sup> The NYSAG may be concerned that the joint venture will enable Twin America to reduce payments to certain ticket agents such as concierges or other particular ticket agents. Reduced commissions are not in and of itself evidence of an exercise of market power by the joint venture. The reduced payment may reflect previous overpayment of commissions due to the market power exercised by the ticket agent. For example, I note that both CitySights and Gray Line paid commissions to certain hotel concierge services, specifically CGS, that were significantly higher than those paid to other ticket agents. Higher concierge commissions are not necessarily in consumers' interest or the public interest. This may reflect the market power of concierges due to incomplete information available to tourists rather than socially beneficial competition among double-decker bus tour operators.

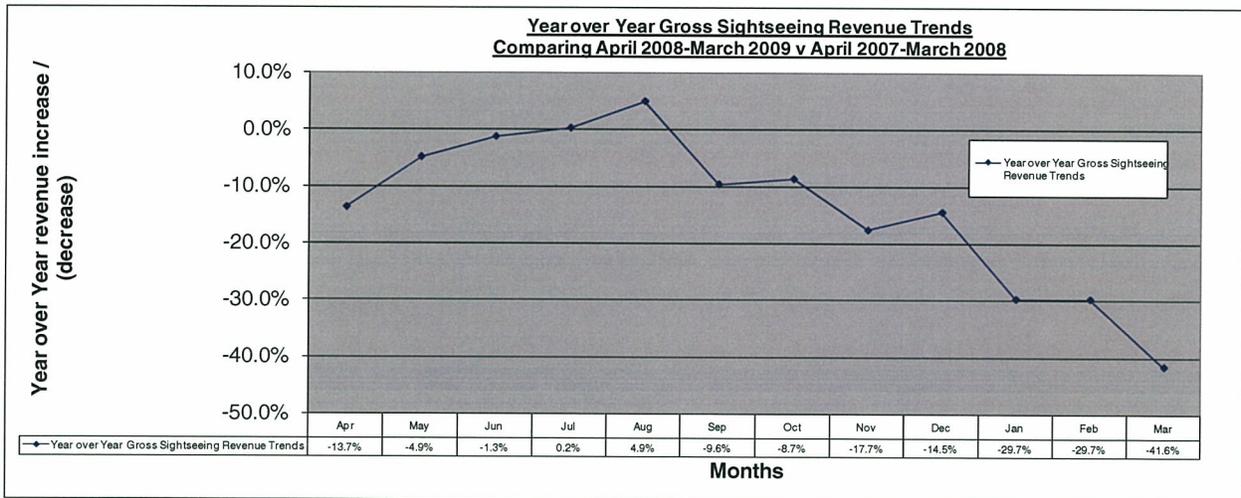
# EXHIBITS

## EXHIBIT 1

Chicago Trolley & Double-Decker Co.



Gray Line New York City



## EXHIBIT 2

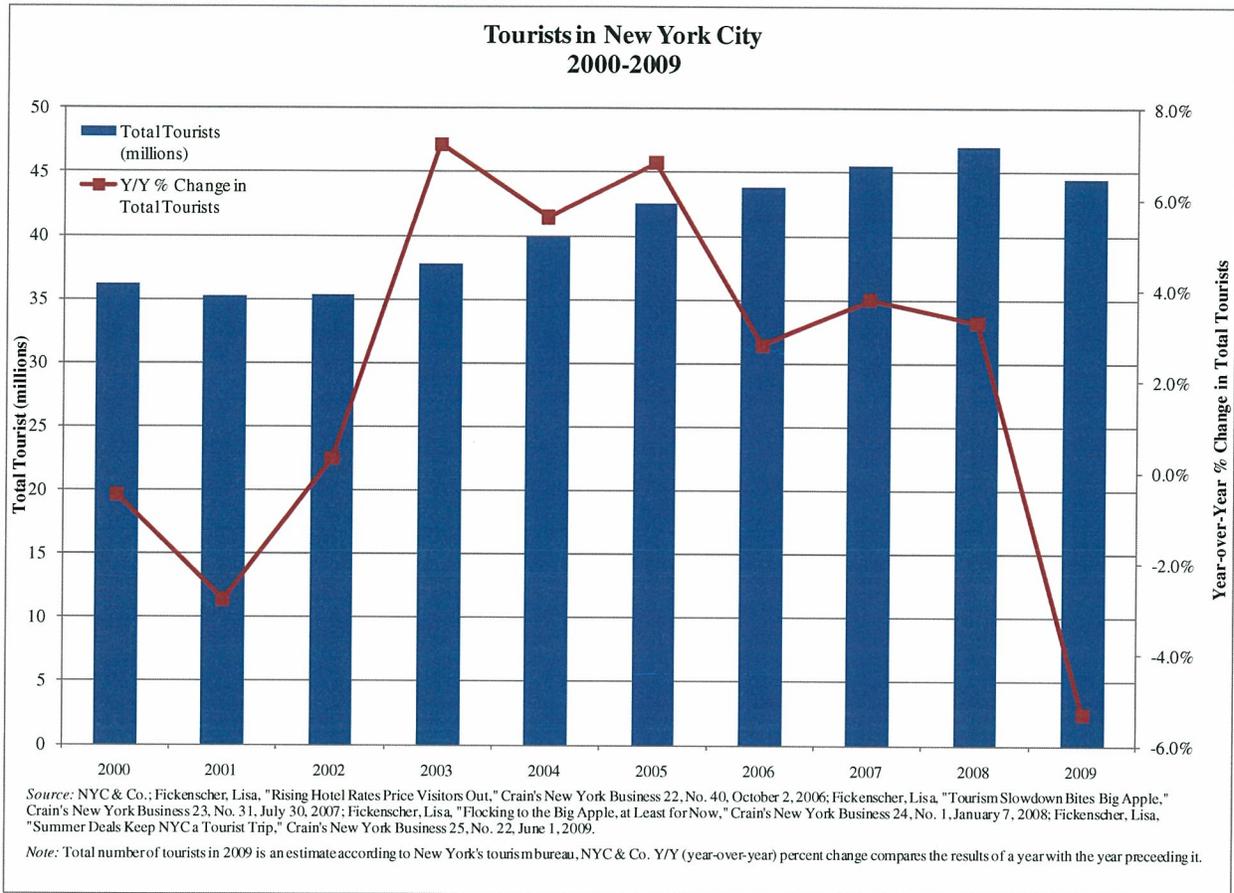
### Tourists in New York City 2000-2009

Year	Foreign Tourists (millions)	Total Tourists (millions)	Y/Y % Change in Total Tourists
2000	N/A	36.2	-0.5%
2001	N/A	35.2	-2.8%
2002	N/A	35.3	0.3%
2003	N/A	37.8	7.2%
2004	6.0	39.9	5.6%
2005	6.6	42.6	6.8%
2006	7.0	43.8	2.8%
2007	N/A	45.5	3.8%
2008	9.8	47.0	3.3%
2009	N/A	44.5	-5.3%

Source : NYC & Co.; Fickenscher, Lisa, "Rising Hotel Rates Price Visitors Out," *Crain's New York Business* 22, No. 40, October 2, 2006; Fickenscher, Lisa, "Tourism Slowdown Bites Big Apple," *Crain's New York Business* 23, No. 31, July 30, 2007; Fickenscher, Lisa, "Flocking to the Big Apple, at Least for Now," *Crain's New York Business* 24, No. 1, January 7, 2008; Fickenscher, Lisa, "Summer Deals Keep NYC a Tourist Trip," *Crain's New York Business* 25, No. 22, June 1, 2009.

Note: Total number of tourists in 2009 is an estimate according to New York's tourism bureau, NYC & Co. Y/Y (year-over-year) percent change compares the results of a year with the year preceding it.

### EXHIBIT 3



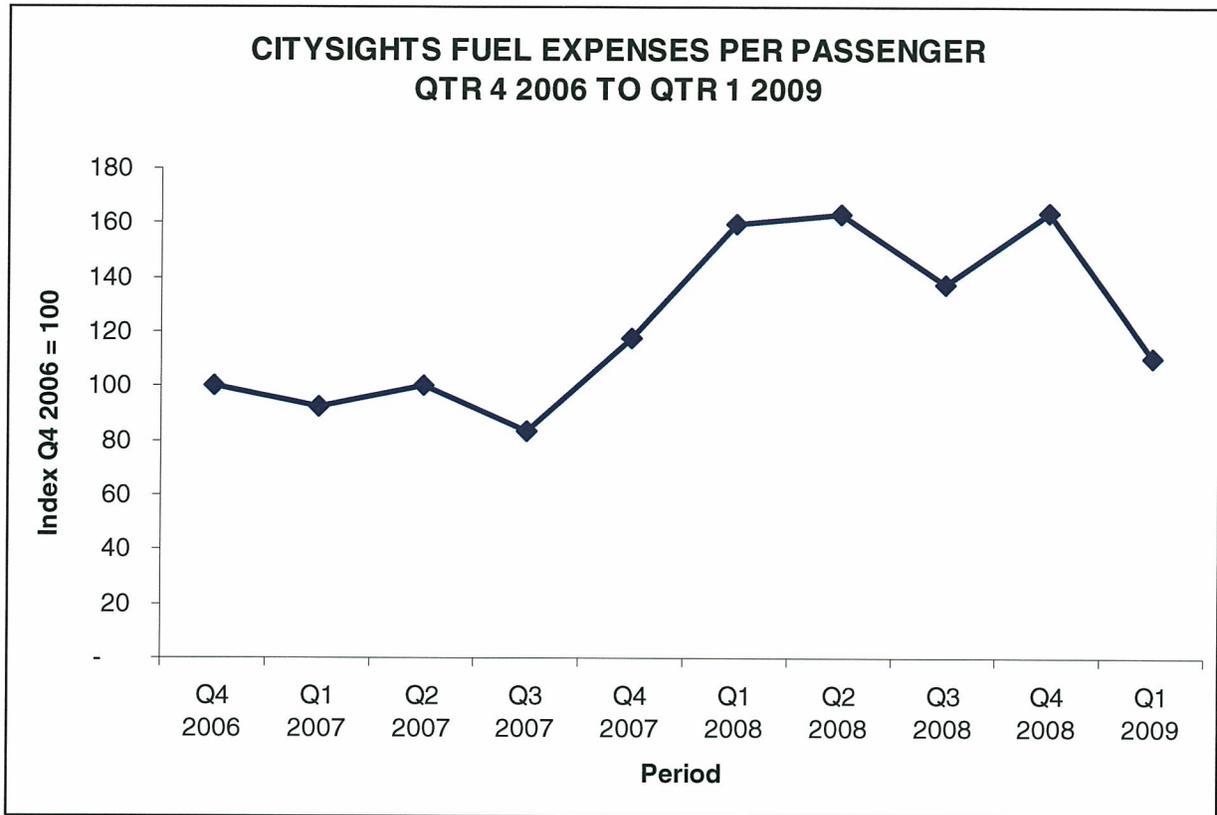
#### EXHIBIT 4

### Hotel Room and Occupancy Rates in New York City January 2005 - April 2009

Time Period	Avg. Room Rate	Avg. Occupancy Rate
January-July 2005	\$217	85%
January-July 2006	\$241	84%
January-June 2007	\$273	84%
January-February 2008	\$358	83%
April 2008	\$302	87%
January-February 2009	\$304	65%
April 2009	\$224	85%

*Source:* Fickenscher, Lisa, "Rising Hotel Rates Price Visitors Out," Crain's New York Business 22, No. 40, October 2, 2006; Fickenscher, Lisa, "Tourism Slowdown Bites Big Apple," Crain's New York Business 23, No. 31, July 30, 2007; Fickenscher, Lisa, "Summer Deals Keep NYC a Tourist Trip," Crain's New York Business 25, No. 22, June 1, 2009.

EXHIBIT 5



## EXHIBIT 6

### CitySights Tours December 2008

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Tour
A Taste of NY Liberty Helicopters Tour
AA/Town + E/S/Bldg + SOL-El Ferry
AA/Town + E/S/Bldg A/Tour + SOL-El Ferry
AA/Town + The New Yorker Helicopter Tour
AA/Town Tour
AA/Town, E/S Bldg, Woodbury C
AA/Town, SOL-El Ferry + Top of Rock
AA/Town, T/R Obsv, Woodbury C
All Around Town + Big Apple Liberty Helicopter
All Around Town + Empire State Building Observator
All Around Town + Madame Tussauds
All Around Town + S/O/Liberty Ferry
All Around Town + T/O/Rock Observatory
Brooklyn Tour
Circle Line 2 Hour Cruise
Circle Line 3 Hour Cruise
Circle Line 75 min Cruise
D/Town + NY-NY Liberty Helicopter
D/Town, SOL-El Ferry + E/S/Bldg
D/Town, SOL-El Ferry + Top of Rock Observatory
Downtown + E/S/Bldg + NY Skyride
Downtown + E/S/Bldg Observatory
Downtown + Madame Tussauds
Downtown + NY W/way 90min Cruise
Downtown + S/O/Liberty Ferry
Downtown + Taste/NY Liberty Helicopter
Downtown + Top-of-Rock Observatory
Downtown + Unique Manhattan Heli Tour
Downtown Tour
Empire State Building Observatory
Escorted Language Manhattan Tour
Express Unique Manhattan Heli Tour
Harlem Gospel Tours
Land & Sea Thrill Ride
Lights of the Holiday Tour
Madame Tussauds
New York Skyride
Night Tour
Night Tour + Empire State Bldg Observatory
Night Tour + T-O-Rock
NY Waterway 90 min Harbor Cruise
NY-NY Liberty Helicopter
Sex & the City HotSpots
Shop Hop Top 3Day w T/O/Rock
Shop Hop Top 3Day w/E/S/Bldg
Statue of Liberty Ferry
Super Downtown 1 w/Top of Rock Observatory
Super Downtown 2 w/Empire State Building Observatory
Super New York 1 w/Top of Rock Observatory
Super New York 2 w/Empire State Building Observatory
The Big Apple Liberty Helicopter Tour
The New Yorker Helicopter Tour
Top of Rock Observatory
Unique Manhattan Heli Tour
Uptown Treasures & Harlem Tour
Woodbury Common Outlet Mall

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Source: CitySights

Note: The same price was applied to all variations of all around town, shop hop, and downtown tours.

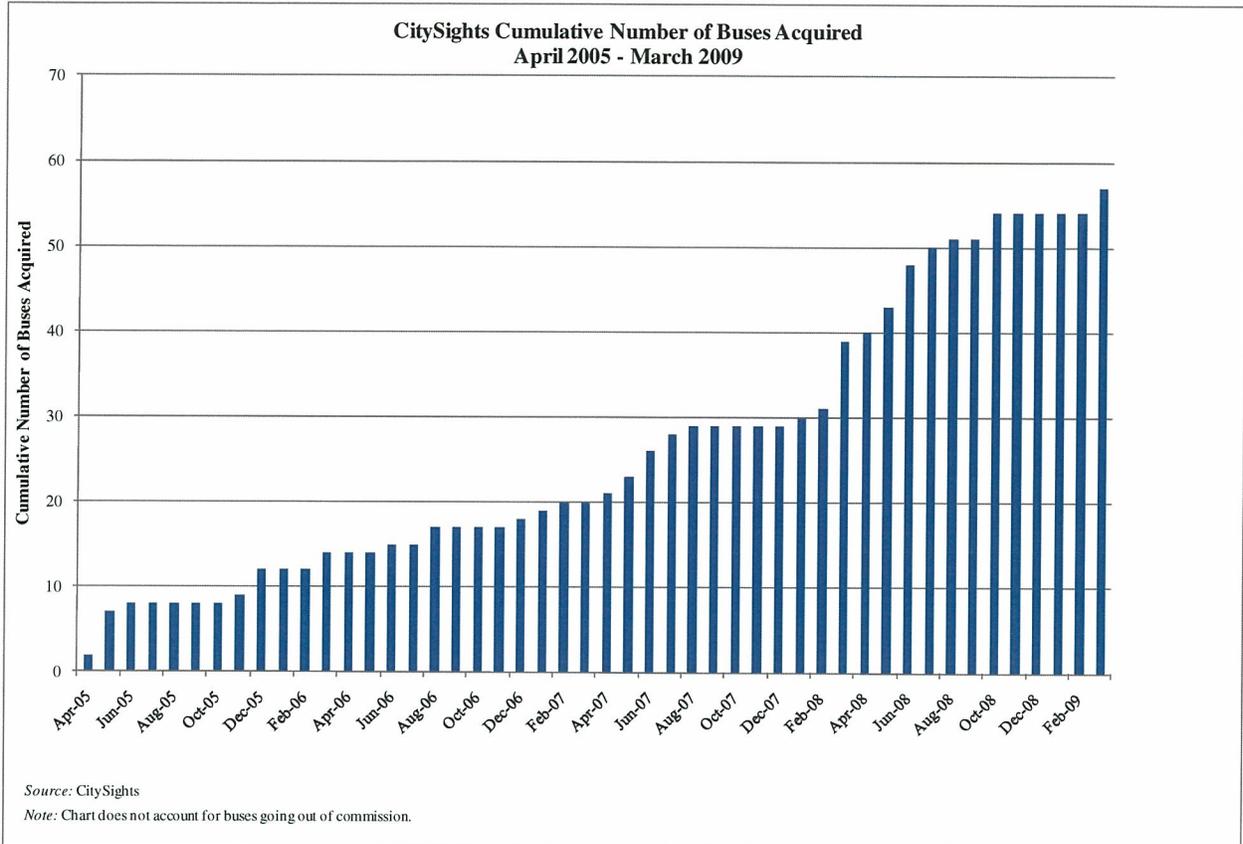
## EXHIBIT 7

### Gray Line New York Tours

Code	Tour Description
<i>City Tour by Double Decker Bus</i>	
AL	All Loops
AL3	All Loops/72 Hour At Time of Original Purchase Only
ALTOR	All Loops with Top of the Rock
BL	Brooklyn Loop
DML	Downtown Loop
DNL	Downtown & Night Loop
ENC	Essential New York
FSNY	Freestyle New York
SNT	Statue By Night Tour
ENS	Classic New York
NL	Night Loop/Holiday Lights
UD	UpTown& Downtown Loop
UML	Uptown Loop
UNL	Uptown & Night Loop
INYM	In A New York Minute
VIPT	3-Day VIP Package
SPAHL	NYC Ducks & All Loops Combo (Mon - Wed)
SPAHLW	NYC Ducks & All Loops Combo (Thurs - Sun)
<i>Grayline Tours not on a Double Decker Bus</i>	
SPH	NYC Ducks(Mon - Wed)
SPHW	NYC Ducks(Thurs -Sun)
HCHT	NYC Heritage Tour
MC	Manhattan Comprehensive
ML	Multilingual Tour
MLA	Multilingual Tour & All Loops
SI	ShowBiz Insider Tour
DLS	Downtown & Statue Liberty
DLE	Downtown & Empire State Building
DSI	Discover Staten Island
<i>Combination Tours (Bus-Boat-Helicopter)</i>	
MBS	Manhattan By Sail
MBSAL	Manhattan By Sail With All Loops
GAHC	Statue of Liberty Express
LWT	Land & Water Taxi
MW3	WHEELS & WATER 3HR
MW2	WHEELS & WATER 2HR
NYW3	LAND & SEA & ALL LOOPS
NYW4	LAND & SEA & NIGHT LOOP
UT	Manhattan Helicopter
MNUTD	Manhattan Helicopter Land & Sky
HEL2	Liberty Helicopter
HLLA	LAND & AIR w ALL LOOPS
<i>Day Trips</i>	
NF	NIAGARA FALLS(April 5 - June 14)
NF	NIAGARA FALLS(June 15 -Sept 15)
WA	WASHINGTON BY TRAIN
WC	WOODBURY COMMONS
Total Tours Offered	
44	

Source: Gray Line Tour Prices 07-09.xls

### EXHIBIT 8



**EXHIBIT 9**  
**CitySights Average Number of Buses in Operation by Type**  
**August 2006 - March 2009**

Month-Year	Avg. Number of Double Deckers	Avg. Number of Coach	Avg. Number of Total Buses	Y/Y% Change in Avg. Total Buses
Aug-06	16	1	17	N/A
Sep-06	16	1	16	N/A
Oct-06	15	0	15	N/A
Nov-06	15	0	15	N/A
Dec-06	16	1	16	N/A
Jan-07	10	2	12	N/A
Feb-07	8	3	11	N/A
Mar-07	11	2	13	N/A
Apr-07	16	0	16	N/A
May-07	21	0	21	N/A
Jun-07	24	0	24	N/A
Jul-07	27	0	27	N/A
Aug-07	29	0	29	73.6%
Sep-07	26	0	26	62.2%
Oct-07	26	0	26	72.6%
Nov-07	27	0	27	77.3%
Dec-07	30	1	31	91.5%
Jan-08	24	1	24	101.1%
Feb-08	21	1	22	94.0%
Mar-08	26	2	27	110.0%
Apr-08	32	1	33	107.7%
May-08	38	1	39	89.8%
Jun-08	43	2	45	85.7%
Jul-08	48	2	50	83.6%
Aug-08	50	2	52	79.6%
Sep-08	41	2	43	62.8%
Oct-08	41	2	43	63.1%
Nov-08	40	2	42	55.1%
Dec-08	39	2	41	30.0%
Jan-09	26	2	28	16.8%
Feb-09	28	2	30	36.2%
Mar-09	40	2	42	55.9%

*Source:* Daily sales recap.xls; Daily sales recap 2008.xls; Daily sales recap 2009.xls; CS0000006-15

*Notes:* Table considers days in which the total number of buses used was positive. Numbers may be off due to rounding. Y/Y (year-over-year) percent change compares the results of a month-year with the same month in the year prior.

**EXHIBIT 10**  
**CitySights Number of Passengers**  
**August 2006 - March 2009**

Month-Year	Passengers	Y/Y % Change in Passengers
Aug-06	22,931	N/A
Sep-06	15,725	N/A
Oct-06	13,395	N/A
Nov-06	10,760	N/A
Dec-06	17,916	N/A
Jan-07	8,791	N/A
Feb-07	10,873	N/A
Mar-07	12,573	N/A
Apr-07	18,563	N/A
May-07	21,590	N/A
Jun-07	34,789	N/A
Jul-07	53,046	N/A
Aug-07	50,778	121.4%
Sep-07	33,257	111.5%
Oct-07	39,823	197.3%
Nov-07	30,798	186.2%
Dec-07	41,063	129.2%
Jan-08	22,543	156.4%
Feb-08	20,468	88.2%
Mar-08	37,436	197.7%
Apr-08	38,944	109.8%
May-08	63,583	194.5%
Jun-08	75,680	117.5%
Jul-08	100,570	89.6%
Aug-08	112,593	121.7%
Sep-08	64,867	95.0%
Oct-08	63,010	58.2%
Nov-08	45,661	48.3%
Dec-08	58,938	43.5%
Jan-09	26,615	18.1%
Feb-09	26,432	29.1%
Mar-09	38,956	4.1%

*Source:* Daily sales recap.xls; Daily sales recap 2008.xls; Daily sales recap 2009.xls; CS0000006-15

*Notes:* Table takes into account end-of-the-month adjustments. Y/Y (year-over-year) percent change compares the results of a month-year with the same month in the year prior. Numbers may be off due to rounding.

## EXHIBIT 11

### Selected Sightseeing Bus Tours in Chicago, Illinois

Operator	Days Operational	Tour Duration	Ticket Price		Types of Tours/Destinations
			Adult	Child	
Chicago Architecture Foundation	Sunday and Wednesday	3.5 hours	\$40.00	\$35.00	2016 Highlights by Bus
	Sunday through Saturday	1.5 hours	\$32.00 (Sat/Sun), \$28.00 (Mon-Fri)	\$32.00 (Sat/Sun), \$28.00 (Mon-Fri)	River Tour of Chicago Architecture
Chicago Bus Tours and Sightseeing	Tuesday through Sunday	2.25 hours	\$34.95	\$14.95	Chicago City Mini-Bus Tour
Chicago History Museum	Saturday (Oct 17, Nov 14, Dec 12)	4 hours	\$45.00	\$45.00	Devil in the White City (World's Columbian Exposition)
	Saturday (Oct 24)	4 hours	\$45.00	\$45.00	The Wizard of Oz
	Saturday (November 7)	4 hours	\$45.00	\$45.00	Murder and Mystery in Chicago
	Saturday (Dec 5)	4 hours	\$45.00	\$45.00	Sacred Spaces
Chicago Trolley & Double Decker	Sunday through Saturday	2 hours	\$29.00	\$17.00	Hop on Hop Off Bus Tours
Gray Line	Sunday through Saturday (May-Sep)	4 hours	\$45.00	\$23.00	Land and Lake Tour
	Jun 15, 2009 and Sep 7, 2009	3 hours	\$40.00	\$40.00	American Girl Historical Chicago Tour
	Saturdays	4 hours	\$54.00	N/A	Chicago Club Crawl
	Saturdays	4 hours	\$45.00	\$30.00	The White City - 1893 Columbian Exposition Tour - Bus and Walk Tour
	Sunday through Saturday	2 hours	\$25.00	\$12.50	Panoramic & Scenic North Side Tour - Bus and Walk Tour
	Sunday through Saturday	2 hours	\$25.00	\$12.50	Historic Chicago South Shore Tour - Bus Tour with Stops
	Sunday through Saturday	4 hours	\$40.00	\$20.00	Inside Chicago - The Grand Tour: Bus Tour with Stops
	Sunday through Saturday (Oct-May)	Varies	\$63.00	\$53.00	Day on the Museum Campus - Bus Tour with Stops
	Sunday through Saturday (Oct-May)	5.5 hours	\$52.00	\$32.00	Grand Tour & Chicago Style Pizza

Source: Company websites and links therein. Websites accessed on October 16, 2009, and November 15, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals. Chicago Trolley & Double Decker Co. is owned by Coach USA. The Gray Line company operating in Chicago is a competitor of Coach USA.

### Selected Sightseeing Bus Tours in San Francisco, California

Operator	Days Operational	Tour Duration	Ticket Price		Types of Tours/Destinations
			Adult	Child	
San Francisco Comprehensive	Sunday through Saturday	Varies	\$65.00	\$50.00	Bus Tour Visiting Various City Sights (Hop on Hop Off)
Sightseeingworld	Sunday through Saturday	Varies	\$70.99	\$51.99	5 different loops of the city, including Alcatraz
	Sunday through Saturday	Varies	\$25.99	\$14.49	Downtown Bus Tour (Hop on Hop Off)
	Sunday through Saturday	Varies	\$45.99	\$27.99	4 City Loops (Hop on Hop Off)
Gray Line	Sunday through Saturday	1.25 hours	\$14.00	\$8.00	San Francisco Trolley Hop
	Sunday through Saturday	2.25 hours	\$33.00	\$22.00	San Francisco Trolley Hop with Bay Cruise
	Sunday through Saturday	2.25 hours	\$27.00	\$16.00	San Francisco Trolley Hop with Aquarium of the Bay Tour
	Sunday through Saturday	2.5-3.5 hours	\$24.00	\$12.00	Motorized Cable Car Tour
	Sunday through Saturday	3.5 hours	\$43.00	\$26.00	Motorized Cable Car Tour with Bay Cruise
	Sunday through Saturday	3.5 hours	\$41.00	\$20.00	Deluxe Guided Bus Tour
	Sunday through Saturday	4.5 hours	\$60.00	\$34.00	Deluxe City Tour with Bay Cruise
	Sunday through Saturday	4.5 hours	\$50.00	\$26.00	Deluxe City Tour with Wax Museum Tour
Open Top	Sunday through Saturday	2-1/2 hours	\$66.00	\$34.00	Open Top by Night
	Sunday through Saturday	1-3/4 hours	\$30.00	\$16.00	Hop-On, Hop-Off
	Sunday through Saturday	Varies	\$54.00	\$29.00	Sausalito
	Sunday through Saturday	Varies	\$50.00	\$36.00	Bay Quakers
	Sunday through Saturday	Varies	\$59.95	\$32.95	Academy of Sciences--Golden Gate Park
San Francisco Tours	Thursday through Sunday	7 hours	\$90.99	\$65.99	San Francisco City and Alcatraz Tour (Minibus)
	Sunday through Saturday	7 hours	\$69.99	\$40.99	Alcatraz and San Francisco Deluxe City Combo Tour (Bus)
	Sunday through Saturday	Varies	\$22.99	\$14.99	San Francisco Hop-on Hop-off Double Decker Bus Tour (Bus)

Source: Company websites and links therein. Websites accessed on October 23, 2009, and November 15, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

## EXHIBIT 11 (CON'T)

### Selected Sightseeing Bus Tours in Los Angeles, California

Operator	Year Established	Days Operational	Passenger		Ticket Price		Types of Tours/Destinations
			Capacity per Bus	Tour Duration	Adult	Child	
LA City Tours	1981	Sunday through Saturday	N/A (Minibus)	5.5 hours	\$65.00	\$50.00	LA City Tour, Movie Star Homes
		Sunday through Saturday	N/A (Minibus)	2 hours	\$36.00	\$26.00	Hollywood's Movie Star Homes
		Sunday through Saturday	N/A (Minibus)	3 hours	\$49.00	\$39.00	Hollywood Tour & Movie Stars' Homes Tour
		Sunday through Saturday	N/A (Minibus)	5.5 hours	\$65.00	\$50.00	Beach Tour & Shopping Tour
Los Angeles Shuttle Tours	N/A	Sunday through Saturday	35	5 hours	\$60.00	\$50.00	Los Angeles Shuttle Tour
Guideline Tours	N/A	Sunday through Saturday	30	4.5 hours	\$55.00	\$45.00	Tour #1 Grand City Tour
		Sunday through Saturday	30	3 hours	\$44.00	\$39.00	Tour #1A Movie Stars' Homes Tour
LA Tours	N/A	Sunday through Saturday	N/A	4.5 hours	\$55.00	\$35.00	Grand Tour of Los Angeles
		Sunday through Saturday	N/A	3 hours	\$44.00	\$39.00	LA City Tour & Movie Stars' Homes
VIP Tours	N/A	Sunday through Saturday	14, 24-28, 48-58	4.5 hours	\$55.00	\$35.00	Los Angeles City Tour and Hollywood
		Sunday through Saturday	N/A	3/4 day	\$69.00	\$49.00	Movie Stars' Homes in Beverly Hills
Los Angeles Sightseeing Tours and Charters	N/A	Sunday through Saturday	N/A	5 hours	\$54.00	\$44.00	Los Angeles City Tour and Movie Stars' Homes
Beverly Hills Trolley Tours	N/A	Saturday and Sunday	N/A	40 minutes	\$10.00	\$5.00	Trolley Tour through Beverly Hills
Amazing LA Tours from Santa Monica	N/A	Sunday through Saturday	N/A	6 hours	\$85.00	\$75.00	Beverly Hills / Hollywood Premiere Tour & Movie Stars' Homes
		Sunday through Saturday	N/A	3 hours	\$95.00	\$85.00	Movie Stars' Homes in Beverly Hills
CalActive	N/A	Sunday through Saturday	N/A	8 hours	\$79.00	\$64.00	Full Day Tour of Hollywood
Neon Cruises	N/A	Saturday	N/A	N/A	\$55.00	\$55.00	Neon Cruise
Gray Line Tours	N/A	Sunday through Saturday	N/A	4 hours	\$65.00	\$55.00	Beverly Hills / Hollywood City Tour & Movie Stars' Homes
		Sunday through Saturday	N/A	6 hours	\$85.00	\$75.00	Beverly Hills / Hollywood Premiere Tour & Movie Stars' Homes

Source: Company websites and links therein. Websites accessed on October 26, 2009, and November 15, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

## Exhibit 11 (con't)

### Selected Sightseeing Bus Tours in San Diego, California

Operator	Year Established	Days Operational	Passenger		Ticket Price		Types of Tours/Destinations
			Capacity per Bus	Tour Duration	Adult	Child	
Gray Line	1981	Sunday through Saturday	N/A	4 hours	\$30.00	\$17.00	City tour through San Diego
		Sunday through Saturday	N/A	Varies	\$59.00	\$51.00	Hollywood's Hop-On & Hop-Off Double-Decker Tour
Five Star Tours	1972	Sunday through Saturday	8-12, 30, 52	5 hours	\$33.00	\$19.00	San Diego City Photo Tour
		Sunday through Saturday	N/A	5 hours	\$25.00	\$13.00	Open Top Double Decker Bus City Tour
San Diego City Tour	N/A	Sunday through Saturday	N/A	4 hours	\$34.95	\$16.95	San Diego City Tour
		Sunday through Saturday	N/A	5 hours	\$40.95	\$18.95	San Diego City Tour with Seaport Village
		Tuesday, Friday, Saturday	N/A	10.5 hours	\$61.95	\$28.95	San Diego City Tour with Tijuana Mexico Tour
City Sightseeing San Diego	N/A	Sunday through Saturday	N/A	1 hour	\$25.00	\$15.00	San Diego City Tour

*Source:* Company websites and links therein. Websites accessed on October 26, 2009 and November 15, 2009.

*Note:* Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

## EXHIBIT 11 (CON'T)

### Selected Sightseeing Bus Tours in New York City, New York

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
Big Taxi Tours	1999	Sunday-Saturday (May-October) Thurs., Fri., Sat., Sun., Mon. (Mar-Apr, Nov-Dec) Call to reserve (Jan-Feb)	N/A	Varies	\$25.00	\$15.00	Hop on Hop off Bus Tour
				Varies	\$50.00	\$30.00	Hop on Hop off Bus and Boat Tour
CitySights	N/A	Sunday-Saturday	N/A	Varies	\$86.00	\$65.00	Hop on Hop off Bus Tour (Super New York Tour) (72 hours)
				Varies	\$54.00	\$44.00	Hop on Hop off Bus Tour (All Around Town)
				Varies	\$44.00	\$34.00	Hop on Hop off Bus Tour (Downtown Tour)
Gordon's Guide	N/A	N/A	N/A	N/A	\$445-\$699		Overnight City Tour
Gray Line	N/A	Sunday-Saturday (except Christmas and New Year's)	N/A	Varies	\$49.00	\$39.00	Hop on Hop off Tour (All Loops Tour) (48 hours)
				Varies	\$59.00	\$49.00	Hop on Hop off Tour (All Loops Tour) (72 hours)
				Varies	\$79.00	\$56.00	Hop on Hop off Tour (Wheel and Water Cruise)
				Varies	\$39.00	\$29.00	Hop on Hop off Tour (Downtown Loop)
OnBoard	N/A	Sunday-Saturday	15, 33, 35, 55	5.5 hours	\$69.99	\$54.99	Hop on Hop off Bus Tour
				3 hours	\$44.99	\$44.99	Hop on Hop off Bus Tour
My NYC Party	N/A	N/A	18, 24, 28, 35, 40, 50	N/A	N/A	N/A	Special events
Party Ride	1998	N/A	20-30, 35, 40, 44	N/A	N/A	N/A	Special events

Source: Company websites and links therein. Websites accessed on October 16, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

### Selected Sightseeing Bus Tours in Miami-Fort Lauderdale-Key West, Florida

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
Charter Buses Inc.	N/A	Sunday through Saturday	15, 29, 35, 50, 57	N/A	\$59.00	\$59.00	Fantasy Fest Key West
Gray Line	N/A	Sunday through Saturday	N/A	6 hours	\$55.00	\$45.00	Biscayne Bay Boat Tour, Miami City Tour
				4 hours	\$49.00	\$49.00	Vizcaya Museum & Gardens Tour
				4-5 hours	\$50.00	\$40.00	Everglades Airboat Adventure Tour
Miami Bus Charters	1999	Sunday through Saturday	14, 32, 57	3.5 hours	\$43.95	\$28.95	Historic Miami City Tour
				4-5 hours	\$55.95	\$40.95	Everglades Tour
Miami Jet Tours	1994	N/A	11, 14, 32, 56	N/A	\$45.00	\$35.00	Miami City Tour
					\$65.00	\$45.00	Everglades Tour
					\$35.00	\$30.00	Biscayne Bay Water Tour
					\$79.00	\$69.00	Key West One-Day Tour
					\$55.00	\$45.00	Night City Tour
Sawgrass Tours	N/A	Sunday through Saturday	41, 56	N/A	N/A	N/A	South Beach, Miami Seaquarium
Trolley Tours	~1984	Sunday through Saturday	N/A	Varies	\$29.00	\$14.00	Hop on Hop off Tour (Key West)
Twin Hearts Tours	N/A	Sunday through Saturday	40, 59	N/A	Competitive	Competitive	Port of Miami
					Competitive	Competitive	Port Everglades
Viator	1999	Sunday through Saturday	N/A	6 hours	\$49.99	\$49.99	Miami City Tour

Source: Company websites and links therein. Websites accessed on October 16, 2009, and November 15, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

## EXHIBIT 11 (CON'T)

### Selected Sightseeing Bus Tours in Washington, DC

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
BlueRidge	1991	Sunday through Saturday	3 to 61	N/A	N/A	N/A	
CitySightseeing	1998	Sunday through Saturday (April 1-October 15) Sunday through Saturday (March 26-October 31)	N/A	0.75 hours	\$14.00	\$7.00	River Cruise Boat Trip
				1.5 hours	\$20.00	\$10.00	City Night Tour
				1-1.5 hours	\$30.00	\$15.00	Hop on Hop off Tours (24 hours)
				1.75-2.25 hours	\$39.00	\$19.00	Bus and Boat Tour (24 hours)
GrayLine	N/A	Sunday through Saturday	N/A	Varies	\$35.00	\$18.00	Hop on Hop off Tour (48 hours)
Haymarket Transportation	N/A		10, 36, 57	N/A	N/A	N/A	National monuments and memorials
Open Top Sightseeing (partners with		Sunday through Saturday		Varies	\$35.00	\$18.00	Hop on Hop off Tour (48 hours)
OnBoard	N/A	Sunday through Saturday	N/A	6 hours	\$59.99	\$44.99	City Tour (DC It All!)
				3 hours	\$39.99	\$39.99	City Night Tour (DC The Lights!)
				2 hours	\$29.00	\$29.00	Hop on Hop off (RoundAbout Tour)
Tourmobile Sightseeing	1969	Sunday through Saturday	N/A	Varies	\$27.00	\$13.00	Hop on Hop off (American Heritage Tour 24 hours)
Trolley Tours (aka Old Town Trolley	~1984	Sunday through Saturday	N/A	Varies	\$35.00	\$18.00	Hop on Hop off (48 hours)
				1.5 hours	\$32.00	\$16.00	Amphibious Tour (DC Ducks)
				2.5 hours	\$35.00	\$18.00	City Night Tour (Monuments by Moonlight Tour)
Viator		Sunday through Saturday	N/A	6 hours	\$49.99	\$49.99	National monuments and memorials
				Varies	\$33.29	\$33.29	Hop on Hop off Trolley Tour (24 hours)

Source: Company websites and links therein. Websites accessed on October 16, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

### Selected Sightseeing Bus Tours in New Orleans, Louisiana

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
Celebration Tours	N/A	Sunday through Saturday	12, 49	2.5-3 hours	\$49.00	\$49.00	City Tour
				5.5 hours	\$85.00	\$85.00	Plantation Tour
GrayLine	1924	Sunday through Saturday (Oct 1-Nov 25) Tues., Thurs., Sun. (Jun 1-Nov 25) Sunday through Saturday (March 1-Nov 25) Sunday through Saturday (Nov 27-Dec 31) Sunday through Saturday	N/A	2 hour	\$29.00	\$13.00	City Tour (Super City Tour)
				4.5 hours	\$49.00	\$21.00	Plantation Tour
				3.75 hours	\$48.00	\$24.00	Swamp & Bayou Tour
				3 hours	\$35.00	\$28.00	Hurricane Katrina Tour
New Orleans Tours	> 30 years experience		25, 47, 55	N/A	N/A	N/A	N/A
Tours by Isabelle	1979	Sunday through Saturday	13	3.5 hours	\$65.00	\$65.00	Post-Katrina Tour
				8.5 hours	\$125.00	\$125.00	Plantation Tour
				4 hours	\$95.00	\$95.00	Airboat Tour

Source: Company websites and links therein. Websites accessed on October 16, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

## EXHIBIT 11 (CON'T)

### Selected Sightseeing Bus Tours in Paris, France

Operator	Year Established	Days Operational	Tour Duration	Ticket Price		Types of Tours/Destinations
				Adult	Child	
GrayLine	N/A	Sunday through Saturday	Varies	\$40.60	\$21.00	Hop on Hop off Tour (24 hours)
			Varies	\$60.20	\$26.60	Hop on Hop off Tour (72 hours)
L'Opentour	N/A	Sunday through Saturday	Varies	\$43.24	\$22.41	Hop on Hop off Tour (24 hours)
Open Top Sightseeing		Sunday through Saturday	Varies	\$34.00	\$17.00	Hop on Hop off Tour (48 hours)
Paris Vision	1980s ~1939	Sunday through Saturday	2 hours	\$35.79	\$35.79	City Tour (Paris Express)
			5 hours	\$61.14	\$61.14	City Tour (Paris Panoramic Tour)
			5 hours	\$140.17	\$140.17	City Tour (Paris Musts)
			10 hours	\$147.63	\$147.63	Palace of Versailles & Paris
Viator	1999	Sunday through Saturday	Varies	\$35.79	\$17.90	Hop on Hop off Tour (48 hours)

Source: Company websites and links therein; <http://www.oanda.com/convert/classic>. Websites accessed on October 20, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

### Selected Sightseeing Bus Tours in London, England

Operator	Year Established	Days Operational	Passenger Capacity per Bus	Tour Duration	Ticket Price		Types of Tours/Destinations
					Adult	Child	
The Big Bus Company	1991	Sunday through Saturday	(80 total buses)	Varies	\$34.35	\$34.35	Hop on Hop off Tour (24 hours)
GrayLine (Golden Tours)	1984	Sunday through Saturday	N/A	2.5 hours	\$35.99	\$27.81	City Tour
				4.5 hours	\$76.88	\$68.70	City Tour, Cruise
London Tours	N/A	Sunday through Saturday	N/A	Varies	\$40.95	\$14.95	Hop on Hop off Tour (24 hours)
The Original London Sightseeing Tour	1951	Sunday through Saturday	N/A	Varies	\$35.99	\$16.36	Hop on Hop off Tour (24 hours)
Viator	N/A	Sunday through Saturday (April-October) Sun., Mon., Wed., Fri., Sat. (November-March)	50	8 hours	\$130.85	\$130.85	City/Landmark Tour

Source: Company websites and links therein; <http://www.oanda.com/convert/classic>. Websites accessed on October 19, 2009.

Note: Age range of "child" may not be the same across tour bus operators. For some operators, tours shown represent a sampling of all tours available; the list of operators does not purport to be exhaustive. Prices may not include tax or savings through special offers, such as Internet bookings or group deals.

# **ATTACHMENT**

December 2008

## Curriculum Vitae

**Name:** Robert D. Willig

**Address:** 220 Ridgeview Road, Princeton, New Jersey 08540

**Birth:** 1/16/47; Brooklyn, New York

**Marital Status:** Married, four children

**Education:** Ph.D. Economics, Stanford University, 1973  
Dissertation: Welfare Analysis of Policies  
Affecting Prices and Products.  
Advisor: James Rosse

M.S. Operations Research, Stanford University, 1968.

A.B. Mathematics, Harvard University, 1967.

### Professional Positions:

Professor of Economics and Public Affairs, Princeton University, 1978-.

Principal External Advisor, Infrastructure Program, Inter-American Development Bank, 6/97-8/98.

Deputy Assistant Attorney General, U.S. Department of Justice, 1989-1991.

Supervisor, Economics Research Department, Bell Laboratories, 1977-1978.

Visiting Lecturer (with rank of Associate Professor), Department of Economics and Woodrow Wilson School, Princeton University, 1977-78 (part time).

Economics Research Department, Bell Laboratories, 1973-77.

Lecturer, Economics Department, Stanford University, 1971-73.

### Other Professional Activities:

OECD Advisory Council for Mexican Economic Reform, 2008 -,

Senior Consultant, Compass Lexecon, 2008 -,

Director, Competition Policy Associates, Inc., 2003-2005

Advisory Board, Electronic Journal of Industrial Organization and Regulation Abstracts, 1996-.

Advisory Board, Journal of Network Industries, 2004-.

Visiting Faculty Member (occasional), International Program on Privatization and Regulatory Reform, Harvard Institute for International Development, 1996-2000.

Member, National Research Council Highway Cost Allocation Study Review Committee, 1995-98.

Member, Defense Science Board Task Force on the Antitrust Aspects of Defense Industry Consolidation, 1993-94.

Editorial Board, Utilities Policy, 1990-2001

Leif Johanson Lecturer, University of Oslo, November 1988.

Member, New Jersey Governor's Task Force on Market-Based Pricing of Electricity, 1987-89.

Co-editor, Handbook of Industrial Organization, 1984-89.

Associate Editor, Journal of Industrial Economics, 1984-89.

Director, Consultants in Industry Economics, Inc., 1983-89, 1991-94.

Fellow, Econometric Society, 1981-.

Organizing Committee, Carnegie-Mellon-N.S.F. Conference on Regulation, 1985.

Board of Editors, American Economic Review, 1980-83.

Nominating Committee, American Economic Association, 1980-1981.

Research Advisory Committee, American Enterprise Institute, 1980-1986.

Editorial Board, M.I.T. Press Series on Government Regulation of Economic Activity, 1979-93.

Program Committee, 1980 World Congress of the Econometric Society.

Program Committee, Econometric Society, 1979, 1981, 1985.

Organizer, American Economic Association Meetings: 1980, 1982.

American Bar Association Section 7 Clayton Act Committee, 1981.

Principal Investigator, NSF grant SOC79-0327, 1979-80; NSF grant 285-6041, 1980-82; NSF grant SES-8038866, 1983-84, 1985-86.

Aspen Task Force on the Future of the Postal Service, 1978-80.

Organizing Committee of Sixth Annual Telecommunications Policy Research Conference, 1977-78.

Visiting Fellow, University of Warwick, July 1977.

Institute for Mathematical Studies in the Social Sciences, Stanford University, 1975.

#### **Published Articles and Book Chapters:**

“The 1982 Department of Justice Merger Guidelines: An Economic Assessment,” (with J. Ordovery) reprinted in Economics of Antitrust Law, Benjamin Klein (ed.), Edward Elgar, 2008.

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“Competitive Rail Regulation Rules: Should Price Ceilings Constrain Final Products or Inputs?,” (With W. J. Baumol), Journal of Transport Economics and Policy, Vol. 33, Part 1, pp. 1-11.

“Economic Effects of Antidumping Policy,” Brookings Trade Forum: 1998, 19-41.

“Interview With Economist Robert D. Willig,” Antitrust, Vol. 11, No. 2, Spring 1997, pp.11-15.

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**Invited Conference Presentations:**

- Northwestern Law Research Symposium: Antitrust Economics and Competition Policy  
"Discussion of Antitrust Evaluation of Horizontal Mergers" 2008
- Inside Counsel Super-Conference  
"Navigating Mixed Signals under Section 2 of the Sherman Act" 2008
- Federal Trade Commission Workshop on Unilateral Effects in Mergers  
"Best Evidence and Market Definition" 2008
- European Policy Forum, Rules for Growth: Telecommunications Regulatory Reform  
"What Kind of Regulation For Business Services?" 2007
- Japanese Competition Policy Research Center, Symposium on M&A and Competition Policy  
"Merger Policy Going Forward With Economics and the Economy" 2007
- Federal Trade Commission and Department of Justice Section 2 Hearings  
"Section 2 Policy and Economic Analytic Methodologies" 2007
- Pennsylvania Bar Institute, Antitrust Law Committee CLE  
"The Economics of Resale Price Maintenance and Class Certification" 2007
- Pennsylvania Bar Institute, Antitrust Law Committee CLE  
"Antitrust Class Certification – An Economist's Perspective" 2007
- Fordham Competition Law Institute, International Competition Economics Training Seminar  
"Monopolization and Abuse of Dominance" 2007
- Canadian Bar Association Annual Fall Conference on Competition Law  
"Economic Tools for the Competition Lawyer" 2007
- Conference on Managing Litigation and Business Risk in Multi-jurisdiction Antitrust Matters  
"Economic Analysis in Multi-jurisdictional Merger Control" 2007

World Bank Conference on Structuring Regulatory Frameworks for Dynamic and Competitive South Eastern European Markets	
“The Roles of Government Regulation in a Dynamic Economy”	2006
Department of Justice/Federal Trade Commission Section 2 Hearings	
“(Allegedly) Monopolizing Tying Via Product Innovation”	2006
Fordham Competition Law Institute, Competition Law Seminar	
“Monopolization and Abuse of Dominance”	2006
Practicing Law Institute on Intellectual Property Antitrust	
“Relevant Markets for Intellectual Property Antitrust”	2006
PLI Annual Antitrust Law Institute	
“Cutting Edge Issues in Economics”	2006
World Bank’s Knowledge Economy Forum V	
“Innovation, Growth and Competition”	2006
Charles University Seminar Series	
“The Dangers of Over-Ambitious Antitrust Regulation”	2006
NY State Bar Association Antitrust Law Section Annual Meeting	
“Efficient Integration or Illegal Monopolization?”	2006
World Bank Seminar	
“The Dangers of Over-Ambitious Regulation”	2005
ABA Section of Antitrust Law 2005 Fall Forum	
“Is There a Gap Between the Guidelines and Agency Practice?”	
2005	
Hearing of Antitrust Modernization Commission	
“Assessment of U.S. Merger Enforcement Policy”	2005
LEAR Conference on Advances in the Economics of Competition Law	
“Exclusionary Pricing Practices”	2005
Annual Antitrust Law Institute	
“Cutting Edge Issues in Economics”	2005
PRIOR Symposium on States and Stem Cells	
“Assessing the Economics of State Stem Cell Programs”	2005
ABA Section of Antitrust Law – AALS Scholars Showcase	

“Distinguishing Anticompetitive Conduct”	2005
Allied Social Science Associations National Convention “Antitrust in the New Economy”	2005
ABA Section of Antitrust Law 2004 Fall Forum “Advances in Economic Analysis of Antitrust”	2004
Phoenix Center State Regulator Retreat “Regulatory Policy for the Telecommunications Revolution”	2004
OECD Competition Committee “Use of Economic Evidence in Merger Control”	2004
Justice Department/Federal Trade Commission Joint Workshop “Merger Enforcement”	2004
Phoenix Center Annual U.S. Telecoms Symposium “Incumbent Market Power”	2003
Center for Economic Policy Studies Symposium on Troubled Industries “What Role for Government in Telecommunications?”	2003
Princeton Workshop on Price Risk and the Future of the Electric Markets “The Structure of the Electricity Markets”	2003
2003 Antitrust Conference “International Competition Policy and Trade Policy”	2003
International Industrial Organization Conference “Intellectual Property System Reform”	2003
ABA Section of Antitrust Law 2002 Fall Forum “Competition, Regulation and Pharmaceuticals”	2002
Fordham Conference on International Antitrust Law and Policy “Substantive Standards for Mergers and the Role of Efficiencies”	2002
Department of Justice Telecom Workshop “Stimulating Investment and the Telecommunications Act of 1996”	2002
Department of Commerce Conference on the State of the Telecom Sector “Stimulating Investment and the Telecommunications Act of 1996”	2002
Law and Public Affairs Conference on the Future of Internet Regulation	

“Open Access and Competition Policy Principles”	2002
Center for Economic Policy Studies Symposium on Energy Policy	
“The Future of Power Supply”	2002
The Conference Board: Antitrust Issues in Today’s Economy	
“The 1982 Merger Guidelines at 20”	2002
Federal Energy Regulatory Commission Workshop	
“Effective Deregulation of Residential Electric Service”	2001
IPEA International Seminar on Regulation and Competition	
“Electricity Markets: Deregulation of Residential Service”	2001
“Lessons for Brazil from Abroad”	2001
ABA Antitrust Law Section Task Force Conference	
“Time, Change, and Materiality for Monopolization Analyses”	2001
Harvard University Conference on American Economic Policy in the 1990s	
“Comments on Antitrust Policy in the Clinton Administration”	2001
Tel-Aviv Workshop on Industrial Organization and Anti-Trust	
“The Risk of Contagion from Multimarket Contact”	2001
2001 Antitrust Conference	
“Collusion Cases: Cutting Edge or Over the Edge?”	2001
“Dys-regulation of California Electricity”	2001
FTC Public Workshop on Competition Policy for E-Commerce	
“Necessary Conditions for Cooperation to be Problematic”	2001
HIID International Workshop on Infrastructure Policy	
“Infrastructure Privatization and Regulation”	2000
Villa Mondragone International Economic Seminar	
“Competition Policy for Network and Internet Markets”	2000
New Developments in Railroad Economics: Infrastructure Investment and Access Policies	
“Railroad Access, Regulation, and Market Structure”	2000
The Multilateral Trading System at the Millennium	
“Efficiency Gains From Further Liberalization”	2000
Singapore – World Bank Symposium on Competition Law and Policy	
“Policy Towards Cartels and Collusion”	2000

CEPS: Is It a New World?: Economic Surprises of the Last Decade “The Internet and E-Commerce”	2000
Cutting Edge Antitrust: Issues and Enforcement Policies “The Direction of Antitrust Entering the New Millennium”	2000
The Conference Board: Antitrust Issues in Today’s Economy “Antitrust Analysis of Industries With Network Effects”	1999
CEPS: New Directions in Antitrust “Antitrust in a High-Tech World”	1999
World Bank Meeting on Competition and Regulatory Policies for Development “Economic Principles to Guide Post-Privatization Governance”	1999
1999 Antitrust Conference “Antitrust and the Pace of Technological Development” “Restructuring the Electric Utility Industry”	1999 1999
HIID International Workshop on Privatization, Regulatory Reform and Corporate Governance “Privatization and Post-Privatization Regulation of Natural Monopolies”	1999
The Federalist Society: Telecommunications Deregulation: Promises Made, Potential Lost? “Grading the Regulators”	1999
Inter-American Development Bank: Second Generation Issues In the Reform Of Public Services “Post-Privatization Governance” “Issues Surrounding Access Arrangements”	1999 1999
Economic Development Institute of the World Bank -- Program on Competition Policy “Policy Towards Horizontal Mergers”	1998
Twenty-fifth Anniversary Seminar for the Economic Analysis Group of the Department of Justice “Market Definition in Antitrust Analysis”	1998
HIID International Workshop on Privatization, Regulatory Reform and Corporate Governance “Infrastructure Architecture and Regulation: Railroads”	1998
EU Committee Competition Conference – Market Power “US/EC Perspective on Market Definition”	1998

Federal Trade Commission Roundtable “Antitrust Policy for Joint Ventures”	1998
1998 Antitrust Conference “Communications Mergers”	1998
The Progress and Freedom Foundation Conference on Competition, Convergence, and the Microsoft Monopoly Access and Bundling in High-Technology Markets	1998
FTC Program on The Effective Integration of Economic Analysis into Antitrust Litigation The Role of Economic Evidence and Testimony	1997
FTC Hearings on Classical Market Power in Joint Ventures Microeconomic Analysis and Guideline	1997
World Bank Economists --Week IV Keynote Making Markets More Effective With Competition Policy	1997
Brookings Trade Policy Forum Competition Policy and Antidumping: The Economic Effects	1997
University of Malaya and Harvard University Conference on The Impact of Globalisation and Privatisation on Malaysia and Asia in the Year 2020 Microeconomics, Privatization, and Vertical Integration	1997
ABA Section of Antitrust Law Conference on The Telecommunications Industry Current Economic Issues in Telecommunications	1997
Antitrust 1998: The Annual Briefing The Re-Emergence of Distribution Issues	1997
Inter-American Development Bank Conference on Private Investment, Infrastructure Reform and Governance in Latin America & the Caribbean Economic Principles to Guide Post-Privatization Governance	1997
Harvard Forum on Regulatory Reform and Privatization of Telecommunications in the Middle East Privatization: Methods and Pricing Issues	1997
American Enterprise Institute for Public Policy Research Conference Discussion of Local Competition and Legal Culture	1997
Harvard Program on Global Reform and Privatization of Public Enterprises	

“Infrastructure Privatization and Regulation: Freight”	1997
World Bank Competition Policy Workshop “Competition Policy for Entrepreneurship and Growth”	1997
Eastern Economics Association Paul Samuelson Lecture “Bottleneck Access in Regulation and Competition Policy”	1997
ABA Annual Meeting, Section of Antitrust Law “Antitrust in the 21st Century: The Efficiencies Guidelines”	1997
Peruvian Ministry of Energy and Mines Conference on Regulation of Public Utilities “Regulation: Theoretical Context and Advantages vs. Disadvantages”	1997
The FCC: New Priorities and Future Directions “Competition in the Telecommunications Industry”	1997
American Enterprise Institute Studies in Telecommunications Deregulation “The Scope of Competition in Telecommunications”	1996
George Mason Law Review Symposium on Antitrust in the Information Revolution “Introduction to the Economic Theory of Antitrust and Information”	1996
Korean Telecommunications Public Lecture “Market Opening and Fair Competition”	1996
Korea Telecommunications Forum “Desirable Interconnection Policy in a Competitive Market”	1996
European Association for Research in Industrial Economics Annual Conference “Bottleneck Access: Regulation and Competition Policy”	1996
Harvard Program on Global Reform and Privatization of Public Enterprises “Railroad and Other Infrastructure Privatization”	1996
FCC Forum on Antitrust and Economic Issues Involved with InterLATA Entry “The Scope of Telecommunications Competition”	1996
Citizens for a Sound Economy Policy Watch on Telecommunications Interconnection “The Economics of Interconnection”	1996
World Bank Seminar on Experiences with Corporatization “Strategic Directions of Privatization”	1996

FCC Economic Forum on the Economics of Interconnection Lessons from Other Industries	1996
ABA Annual Meeting, Section of Antitrust Law The Integration, Disintegration, and Reintegration of the Entertainment Industry	1996
Conference Board: 1996 Antitrust Conference How Economics Influences Antitrust and Vice Versa	1996
Antitrust 1996: A Special Briefing Joint Ventures and Strategic Alliances	1996
New York State Bar Association Section of Antitrust Law Winter Meeting Commentary on Horizontal Effects Issues	1996
FTC Hearings on the Changing Nature of Competition in a Global and Innovation-Driven Age Vertical Issues for Networks and Standards	1995
Wharton Seminar on Applied Microeconomics Access Policies with Imperfect Regulation	1995
Antitrust 1996, Washington D.C. Assessing Joint Ventures for Diminution of Competition 1995	
ABA Annual Meeting, Section of Antitrust Law Refusals to Deal -- Economic Tests for Competitive Harm	1995
FTC Seminar on Antitrust Enforcement Analysis Diagnosing Collusion Possibilities	1995
Philadelphia Bar Education Center: Antitrust Fundamentals Antitrust--The Underlying Economics 1995	
Vanderbilt University Conference on Financial Markets Why Do Christie and Schultz Infer Collusion From Their Data? 1995	
ABA Section of Antitrust Law Chair=s Showcase Program Discussion of Telecommunications Competition Policy 1995	
Conference Board: 1995 Antitrust Conference	

Analysis of Mergers and Joint Ventures	
1995	
ABA Conference on The New Antitrust: Policy of the '90s Antitrust on the Super Highways/Super Airways	1994
ITC Hearings on The Economic Effects of Outstanding Title VII Orders "The Economic Impacts of Antidumping Policies"	1994
OECD Working Conference on Trade and Competition Policy "Empirical Evidence on The Nature of Anti-dumping Actions"	1994
Antitrust 1995, Washington D.C. "Rigorous Antitrust Standards for Distribution Arrangements"	1994
ABA -- Georgetown Law Center: Post Chicago-Economics: New Theories - New Cases? "Economic Foundations for Vertical Merger Guidelines"	1994
Conference Board: Antitrust Issues in Today's Economy "New Democrats, Old Agencies: Competition Law and Policy"	1994
Federal Reserve Board Distinguished Economist Series "Regulated Private Enterprise Versus Public Enterprise"	1994
Institut d'Etudes Politiques de Paris "Lectures on Competition Policy and Privatization"	1993
Canadian Bureau of Competition Policy Academic Seminar Series, Toronto. "Public Versus Regulated Private Enterprise"	1993
CEPS Symposium on The Clinton Administration: A Preliminary Report Card "Policy Towards Business"	1993
Columbia Institute for Tele-Information Conference on Competition in Network Industries, New York, NY "Discussion of Deregulation of Networks: What Has Worked and What Hasn't"	1993
World Bank Annual Conference on Development Economics "Public Versus Regulated Private Enterprise"	1993
Center for Public Utilities Conference on Current Issues Challenging the Regulatory Process "The Economics of Current Issues in Telecommunications Regulation" "The Role of Markets in Presently Regulated Industries"	1992 1992

The Conference Board's Conference on Antitrust Issues in Today's Economy, New York, NY	
"Antitrust in the Global Economy"	1992
"Monopoly Issues for the '90s"	1993
Columbia University Seminar on Applied Economic Theory, New York, NY	
"Economic Rationales for the Scope of Privatization"	1992
Howrey & Simon Conference on Antitrust Developments, Washington, DC	
"Competitive Effects of Concern in the Merger Guidelines"	1992
Arnold & Porter Colloquium on Merger Enforcement, Washington, DC	
"The Economic Foundations of the Merger Guidelines"	1992
American Bar Association, Section on Antitrust Law Leadership Council Conference, Monterey, CA	
"Applying the 1992 Merger Guidelines"	1992
OECD Competition Policy Meeting, Paris, France	
"The Economic Impacts of Antidumping Policy"	1992
Center for Public Choice Lecture Series, George Mason University Arlington, VA	
"The Economic Impacts of Antidumping Policy"	1992
Brookings Institution Microeconomics Panel, Washington, DC,	
"Discussion of the Evolution of Industry Structure"	1992
AT&T Conference on Antitrust Essentials	
"Antitrust Standards for Mergers and Joint Ventures"	1991
ABA Institute on The Cutting Edge of Antitrust: Market Power	
"Assessing and Proving Market Power: Barriers to Entry"	1991
Second Annual Workshop of the Competition Law and Policy Institute of New Zealand	
"Merger Analysis, Industrial Organization Theory, and Merger Guidelines"	1991
"Exclusive Dealing and the <u>Fisher &amp; Paykel</u> Case"	1991
Special Seminar of the New Zealand Treasury	
"Strategic Behavior, Antitrust, and The Regulation of Natural Monopoly"	1991
Public Seminar of the Australian Trade Practices Commission	
"Antitrust Issues of the 1990's"	1991
National Association of Attorneys General Antitrust Seminar	
"Antitrust Economics"	1991

District of Columbia Bar's 1991 Annual Convention "Administrative and Judicial Trends in Federal Antitrust Enforcement"	1991
ABA Spring Meeting "Antitrust Lessons From the Airline Industry"	1991
Conference on The Transition to a Market Economy - Institutional Aspects "Anti-Monopoly Policies and Institutions"	1991
Conference Board's Thirtieth Antitrust Conference "Antitrust Issues in Today's Economy"	1991
American Association for the Advancement of Science Annual Meeting "Methodologies for Economic Analysis of Mergers"	1991
General Seminar, Johns Hopkins University "Economic Rationales for the Scope of Privatization"	1991
Capitol Economics Speakers Series "Economics of Merger Guidelines"	1991
CRA Conference on Antitrust Issues in Regulated Industries "Enforcement Priorities and Economic Principles"	1990
Pepper Hamilton & Scheetz Anniversary Colloquium "New Developments in Antitrust Economics"	1990
PLI Program on Federal Antitrust Enforcement in the 90's "The Antitrust Agenda of the 90's"	1990
FTC Distinguished Speakers Seminar "The Evolving Merger Guidelines"	1990
The World Bank Speakers Series "The Role of Antitrust Policy in an Open Economy"	1990
Seminar of the Secretary of Commerce and Industrial Development of Mexico "Transitions to a Market Economy"	1990
Southern Economics Association "Entry in Antitrust Analysis of Mergers"	1990
"Discussion of Strategic Investment and Timing of Entry"	1990
American Enterprise Institute Conference on Policy Approaches to the Deregulation of Network Industries	

"Discussion of Network Problems and Solutions"	1990
American Enterprise Institute Conference on Innovation, Intellectual Property, and World Competition	
"Law and Economics Framework for Analysis"	1990
Banco Nacional de Desenvolvimento Economico Social Lecture	
"Competition Policy: Harnessing Private Interests for the Public Interest"	1990
Western Economics Association Annual Meetings	
"New Directions in Antitrust from a New Administration"	1990
"New Directions in Merger Enforcement: The View from Washington"	1990
Woodrow Wilson School Alumni Colloquium	
"Microeconomic Policy Analysis and Antitrust--Washington 1990"	1990
Arnold & Porter Lecture Series	
"Advocating Competition"	1991
"Antitrust Enforcement"	1990
ABA Antitrust Section Convention	
"Recent Developments in Market Definition and Merger Analysis"	1990
Federal Bar Association	
"Joint Production Legislation: Competitive Necessity or Cartel Shield?"	1990
Pew Charitable Trusts Conference	
"Economics and National Security"	1990
ABA Antitrust Section Midwinter Council Meeting	
"Fine-tuning the Merger Guidelines"	1990
"The State of the Antitrust Division"	1991
International Telecommunications Society Conference	
"Discussion of the Impact of Telecommunications in the UK"	1989
The Economists of New Jersey Conference	
"Recent Perspectives on Regulation"	1989
Conference on Current Issues Challenging the Regulatory Process	
"Innovative Pricing and Regulatory Reform"	1989
"Competitive Wheeling"	1989
Conference Board: Antitrust Issues in Today's Economy	
"Foreign Trade Issues and Antitrust"	1989

McKinsey & Co. Mini-MBA Conference	
"Economic Analysis of Pricing, Costing, and Strategic Business Behavior"	1989
	1994
Olin Conference on Regulatory Mechanism Design	
"Revolutions in Regulatory Theory and Practice: Exploring The Gap"	1989
University of Dundee Conference on Industrial Organization and Strategic Behavior	
"Mergers in Differentiated Product Industries"	1988
Leif Johanson Lectures at the University of Oslo	
"Normative Issues in Industrial Organization"	1988
Mergers and Competitiveness: Spain Facing the EEC	
"Merger Policy"	1988
"R&D Joint Ventures"	1988
New Dimensions in Pricing Electricity	
"Competitive Pricing and Regulatory Reform"	1988
Program for Integrating Economics and National Security: Second Annual Colloquium	
"Arming Decisions Under Asymmetric Information"	1988
European Association for Research in Industrial Economics	
"U.S. Railroad Deregulation and the Public Interest"	1987
"Economic Rationales for the Scope of Privatization"	1989
"Discussion of Licensing of Innovations"	1990
Annenberg Conference on Rate of Return Regulation in the Presence of Rapid Technical Change	
"Discussion of Regulatory Mechanism Design in the Presence of Research, Innovation, and Spillover Effects"	1987
Special Brookings Papers Meeting	
"Discussion of Empirical Approaches to Strategic Behavior"	1987
"New Merger Guidelines"	1990
Deregulation or Regulation for Telecommunications in the 1990's	
"How Effective are State and Federal Regulations?"	1987
Conference Board Roundtable on Antitrust	
"Research and Production Joint Ventures"	1990
"Intellectual Property and Antitrust"	1987
Current Issues in Telephone Regulation	

"Economic Approaches to Market Dominance: Applicability of Contestable Markets"	1987
Harvard Business School Forum on Telecommunications "Regulation of Information Services"	1987
The Fowler Challenge: Deregulation and Competition in The Local Telecommunications Market "Why Reinvent the Wheel?"	1986
World Bank Seminar on Frontiers of Economics "What Every Economist Should Know About Contestable Markets"	1986
Bell Communications Research Conference on Regulation and Information "Fuzzy Regulatory Rules"	1986
Karl Eller Center Forum on Telecommunications "The Changing Economic Environment in Telecommunications: Technological Change and Deregulation"	1986
Railroad Accounting Principles Board Colloquium "Contestable Market Theory and ICC Regulation"	1986
Canadian Embassy Conference on Current Issues in Canadian -- U.S. Trade and Investment "Regulatory Revolution in the Infrastructure Industries"	1985
Eagleton Institute Conference on Telecommunications in Transition "Industry in Transition: Economic and Public Policy Overview"	1985
Brown University Citicorp Lecture "Logic of Regulation and Deregulation"	1985
Columbia University Communications Research Forum "Long Distance Competition Policy"	1985
American Enterprise Institute Public Policy Week "The Political Economy of Regulatory Reform"	1984
MIT Communications Forum "Deregulation of AT&T Communications"	1984
Bureau of Census Longitudinal Establishment Data File and Diversification Study Conference "Potential Uses of The File"	1984
Federal Bar Association Symposium on Joint Ventures "The Economics of Joint Venture Assessment"	1984

Hoover Institute Conference on Antitrust "Antitrust for High-Technology Industries"	1984
NSF Workshop on Predation and Industrial Targeting "Current Economic Analysis of Predatory Practices"	1983
The Institute for Study of Regulation Symposium: Pricing Electric, Gas, and Telecommunications Services Today and for the Future "Contestability As A Guide for Regulation and Deregulation"	1984
University of Pennsylvania Economics Day Symposium "Contestability and Competition: Guides for Regulation and Deregulation"	1984
Pinhas Sapir Conference on Economic Policy in Theory and Practice "Corporate Governance and Market Structure"	1984
Centre of Planning and Economic Research of Greece "Issues About Industrial Deregulation" "Contestability: New Research Agenda"	1984 1984
Hebrew and Tel Aviv Universities Conference on Public Economics "Social Welfare Dominance Extended and Applied to Excise Taxation"	1983
NBER Conference on Industrial Organization and International Trade "Perspectives on Horizontal Mergers in World Markets"	1983
Workshop on Local Access: Strategies for Public Policy "Market Structure and Government Intervention in Access Markets"	1982
NBER Conference on Strategic Behavior and International Trade "Industrial Strategy with Committed Firms: Discussion"	1982
Columbia University Graduate School of Business, Conference on Regulation and New Telecommunication Networks "Local Pricing in a Competitive Environment"	1982
International Economic Association Roundtable Conference on New Developments in the Theory of Market Structure "Theory of Contestability" "Product Dev., Investment, and the Evolution of Market Structures"	1982 1982
N.Y.U. Conference on Competition and World Markets: Law and Economics "Competition and Trade Policy--International Predation"	1982

CNRS-ISPE-NBER Conference on the Taxation of Capital "Welfare Effects of Investment Under Imperfect Competition"	1982
Internationales Institut für Management und Verwaltung Regulation Conference "Welfare, Regulatory Boundaries, and the Sustainability of Oligopolies"	1981
NBER-Kellogg Graduate School of Management Conference on the Econometrics of Market Models with Imperfect Competition "Discussion of Measurement of Monopoly Behavior: An Application to the Cigarette Industry"	1981
The Peterkin Lecture at Rice University "Deregulation: Ideology or Logic?"	1981
FTC Seminar on Antitrust Analysis "Viewpoints on Horizontal Mergers "Predation as a Tactical Inducement for Exit"	1982 1980
NBER Conference on Industrial Organization and Public Policy "An Economic Definition of Predation"	1980
The Center for Advanced Studies in Managerial Economics Conference on The Economics of Telecommunication "Pricing Local Service as an Input"	1980
Aspen Institute Conference on the Future of the Postal Service "Welfare Economics of Postal Pricing"	1979
Department of Justice Antitrust Seminar "The Industry Performance Gradient Index"	1979
Eastern Economic Association Convention "The Social Performance of Deregulated Markets for Telecom Services" 1979	
Industry Workshop Association Convention "Customer Equity and Local Measured Service"	1979
Symposium on Ratemaking Problems of Regulated Industries "Pricing Decisions and the Regulatory Process"	1979
Woodrow Wilson School Alumni Conference "The Push for Deregulation"	1979
NBER Conference on Industrial Organization "Intertemporal Sustainability"	1979

World Congress of the Econometric Society "Theoretical Industrial Organization"	1980
Institute of Public Utilities Conference on Current Issues in Public Utilities Regulation "Network Access Pricing"	1978
ALI-ABA Conference on the Economics of Antitrust "Predatoriness and Discriminatory Pricing"	1978
AEI Conference on Postal Service Issues "What Can Markets Control?"	1978
University of Virginia Conference on the Economics of Regulation "Public Interest Pricing"	1978
DRI Utility Conference "Marginal Cost Pricing in the Utility Industry: Impact and Analysis"	1978
International Meeting of the Institute of Management Sciences "The Envelope Theorem"	1977
University of Warwick Workshop on Oligopoly "Industry Performance Gradient Indexes"	1977
North American Econometric Society Convention "Intertemporal Sustainability"	1979
"Social Welfare Dominance"	1978
"Economies of Scope, DAIC, and Markets with Joint Production"	1977
Telecommunications Policy Research Conference "Transition to Competitive Markets"	1986
"InterLATA Capacity Growth, Capped NTS Charges and Long Distance Competition"	1985
"Market Power in The Telecommunications Industry"	1984
"FCC Policy on Local Access Pricing"	1983
"Do We Need a Regulatory Safety Net in Telecommunications?"	1982
"Anticompetitive Vertical Conduct"	1981
"Electronic Mail and Postal Pricing"	1980
"Monopoly, Competition and Efficiency": Chairman	1979
"A Common Carrier Research Agenda"	1978
"Empirical Views of Ramsey Optimal Telephone Pricing"	1977
"Recent Research on Regulated Market Structure"	1976
"Some General Equilibrium Views of Optimal Pricing"	1975
National Bureau of Economic Research Conference on Theoretical Industrial Organization	

"Compensating Variation as a Measure of Welfare Change"	1976
Conference on Pricing in Regulated Industries: Theory & Application	
"Ramsey Optimal Pricing of Long Distance Telephone Services"	1977
NBER Conference on Public Regulation	
"Income Distributional Concerns in Regulatory Policy-Making"	1977
Allied Social Science Associations National Convention	
"Merger Guidelines and Economic Theory"	1990
Discussion of "Competitive Rules for Joint Ventures"	1989
"New Schools in Industrial Organization"	1988
"Industry Economic Analysis in the Legal Arena"	1987
"Transportation Deregulation"	1984
Discussion of "Pricing and Costing of Telecommunications Services"	1983
Discussion of "An Exact Welfare Measure"	1982
"Optimal Deregulation of Telephone Services"	1982
"Sector Differentiated Capital Taxes"	1981
"Economies of Scope"	1980
"Social Welfare Dominance"	1980
"The Economic Definition of Predation"	1979
Discussion of "Lifeline Rates, Succor or Snare?"	1979
"Multiproduct Technology and Market Structure"	1978
"The Economic Gradient Method"	1978
"Methods for Public Interest Pricing"	1977
Discussion of "The Welfare Implications of New Financial Instruments"	1976
"Welfare Theory of Concentration Indices"	1976
Discussion of "Developments in Monopolistic Competition Theory"	1976
"Hedonic Price Adjustments"	1975
"Public Good Attributes of Information and its Optimal Pricing"	1975
"Risk Invariance and Ordinally Additive Utility Functions"	1974
"Consumer's Surplus: A Rigorous Cookbook"	1974
University of Chicago Symposium on the Economics of Regulated Public Utilities	
"Optimal Prices for Public Purposes"	1976
American Society for Information Science	
"The Social Value of Information: An Economist's View"	1975
Institute for Mathematical Studies in the Social Sciences Summer Seminar	
"The Sustainability of Natural Monopoly"	1975
U.S.-U.S.S.R. Symposium on Estimating Costs and Benefits of Information Services	
"The Evaluation of the Economic Benefits of Productive Information"	1975

**Research Seminars:**

Bell Communications Research (2)	University of California, San Diego
Bell Laboratories (numerous)	University of Chicago
Department of Justice (3)	University of Delaware
Electric Power Research Institute	University of Florida
Federal Reserve Board	University of Illinois
Federal Trade Commission (4)	University of Iowa (2)
Mathematica	Universite Laval
Rand	University of Maryland
World Bank (3)	University of Michigan
Carleton University	University of Minnesota
Carnegie-Mellon University	University of Oslo
Columbia University (4)	University of Pennsylvania (3)
Cornell University (2)	University of Toronto
Georgetown University	University of Virginia
Harvard University (2)	University of Wisconsin
Hebrew University	University of Wyoming
Johns Hopkins University (2)	Vanderbilt University
M. I. T. (4)	Yale University (2)
New York University (4)	Princeton University (many)
Northwestern University (2)	Rice University
Norwegian School of Economics and Business Administration	Stanford University (5) S.U.N.Y. Albany

### **Robert Willig Expert Testimony Provided in the Last Four Years**

1. Store Cards Inquiry before the UK Competition Commission, Report of Robert Willig on behalf of General Electric Consumer Finance, 2/12/2005; testimony 3/4/2005.
2. Masimo Corporation v. Tyco Health Care Group L P. and Mallinckrodt, Inc.; United States District Court, Central District of California Western Division; Case Number CV02-4440 MRP; Expert Report 2/19/2004; Deposition, 4/2/2004; jury trial testimony, 3/10-11/2005.
3. In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Western Wireless Corporation to ALLTEL Corporation, Declaration of Robert D. Willig, Jonathan M. Orszag and Yair Eilat, Submitted to the Federal Communications Commission (WT Docket No. 05-50), March 29, 2005.
4. Statement re competitive access; to the Australian National Competition Council; on behalf of Rio Tinto Iron Ore, written statement 5/4/2005.
5. Metropolitan Intercollegiate Basketball Association v. National Collegiate Athletic Association, et al; Civil Action No. 01-0071 (MGC); Declaration, 1/16/2004; Reply Declaration 4/8/2004; Expert Report, 6/13/05; Deposition, 6/18/05.
6. In re Public Offering Fee Antitrust Litigation and Issuer Plaintiff Public Offering Fee Antitrust Litigation, In the U.S. District Court for the Southern District of New York, 98 Civ. 7890 (LMM) and 00 Civ. 7804 (LMM); Expert Report 5/25/2005; Deposition, 9/15/2005; Rebuttal Report 1/09/2008.
7. Mylan Pharmaceuticals Inc., Mylan Laboratories Inc., and UDL Laboratories Inc., v. Clifford Chance US LLP, and Clifford Chance Rogers & Wells LLP, In the United States District Court For The Northern District Of West Virginia, Civil Action No.: 1:03 CV 16; Expert Report 3/31/2006, Deposition 7/28/2006.
8. MBDA UK Limited, BAE SYSTEMS PLC, BAE SYSTEMS Defense Limited, and BAE SYSTEMS (Dynamics) Limited v. RAYTHEON COMPANY, American Arbitration Association, AAA-ICDR Case No. 50-180-T-00462-04, Declaration 4/12/2006; Deposition 4/27/2006, Testimony 5/19/2006.
9. Tessera, Inc. v. Micron Technology, Inc. et al, In the United States District Court For The Eastern District of Texas, Marshall Division, Civil Action No. 2-05cv94, Expert Report, 6/23/2006.
10. Bob L. McIntosh and Chris Petersen (d/b/a C-K Farms) v. Monsanto Company, et al., In the United States District Court for the Eastern District of Missouri, Civil No. 4:01cv00065RWS, Expert Report, 7/10/2006, Deposition 8/23/2006.
11. The SCO Group, Inc. v. International Business Machines Corporation, In the United States District Court For The District of Utah, Civil No. 2: 03-CV-0294 DAK, Expert Report 7/17/2006, Deposition 10/6/2006.

12. GlaxoSmithKline Holdings (Americas) Inc. & Subsidiaries v. Commissioner of Internal Revenue, In the United States Tax Court, Docket Nos. 5750-04, 6959-05, Expert Report 8/31/2006.
13. New England Carpenters Health Benefits Fund et al.v. First Databank, Inc., and McKesson Corp. In the United States District Court for the District of Massachusetts, Civil Action: 1:05-CV-11148-PBS, Expert Report 1/24/2007; Rebuttal Expert Declaration 5/07/2007; Expert Declaration 10/15/2007; Rebuttal Expert Declaration 11/08/2007; Expert Declaration 11/28/2007. Expert Declaration 5/21/08. Expert Report 10/1/08.
14. Affidavit On Behalf of The NRG Companies, before the State of New York Public Service Commission, CASE 06-M-0878 - Joint Petition of National Grid PLC and KeySpan Corporation for Approval of Stock Acquisition and other Regulatory Authorizations, 7/11/2007.
15. In The Matter of Applications for the Transfer of Control of Licenses and Authorizations From Dobson Communications to AT&T, Declaration of Robert D. Willig and Jonathan M. Orszag, Submitted to the Federal Communications Commission on behalf of AT&T, July 12, 2007.
16. American Express Travel Related Services Company, Inc. v. Visa U.S.A. Inc., et al, In the U.S. District Court for the Southern District of New York, Civil Action No.1:04-CV-08967-BSJ-DEF; Expert Report 7/23/2007; Rebuttal Report 12/18/2007; Deposition 01/23-24/2008; Declaration 3/21/2008.
17. Jason White, Brian Polak, Jovan Harris, and Chris Craig on Behalf of Themselves and All Others Similarly Situated v. National Collegiate Athletic Association, In the United States District Court Central District of California Western Division, No. CV 06-0999 VBF (MANx); Expert Report 9/6/2007.
18. In re OSB Antitrust Litigation, In the United States District Court for the Eastern District of Pennsylvania, Master File No. 06-CV-00826 (PSD); Expert Report 9/24/2007; Deposition 11/15/2007.
19. In re Universal Service Fund Telephone Billing Practices Litigation, MDL No. 1468, All Cases, In the United States District Court for the District of Kansas; Expert Report 10/05/2007; Deposition 11/30/2007.
20. Cindy Cullen, Wendy Fleishman, on Behalf of Themselves and All Others Similarly Situated v. Albany Medical Center, Ellis Hospital, Northeast Health, Seton Health System, and St. Peter's Health Care Service, In the United States District Court for the Northern District of New York, Civil Action No. 06-CV-0765/ TJM/ DRH; Expert Report 2/29/2008; Deposition 3/27-28/2008.
21. In the Matter of Verizon New Jersey, Inc. – Resolution for Assistance Resolving Interconnection Negotiations with US Cable of Paramus/Hillsdale, Time Warner Cable,

Cablevision, and Comcast; Before the State of New Jersey Office of Board of Public Utilities, Docket No. CO07070524; Expert Report 4/21/2008; Testimony 5/12/2008.

22. In the Matter of Rambus Inc. v. Micron Technology, Inc., et al. In the Superior Court of the State of California County of San Francisco, Civil Action No. 04-431105; Expert Report 11/08/2008; Supplemental Expert Report 12/19/2008, Deposition Testimony 5/7/2009-5/8/2009

23. AT&T and Centennial; Before the Federal Communications Commission; WT Docket No. 08-246; Expert Report 11/20/2008.

24. In the Matter of Lisa Reed and Cindy Digiannantonio v. Advocate Health Care, et al. In the Northern District of Illinois Eastern Division, Civil Action No. 06 C 3337; Expert Report 1/20/2009; Supplemental 2/27/2009; Deposition Testimony 3/23/2009-3/24/2009.

25. In the Australian Competition Tribunal: Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 23 May 2006 under Section 44H(9) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Mount Newman Railway Line, By: Fortescue Metals Group Limited; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Robe Railway By: Robe River Mining Co PTY LTD & ORS; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Hamersley Rail Network, By: Hamersley Iron Co PTY LTD & ORS; Re: Application for Review of the Deemed Decision by the Commonwealth Treasurer of 27 October 2008 under Section 44H(1) of the Trade Practices Act 1974 (CTH) in Relation to the Application for Declaration of Services Provided by the Goldsworthy Railway, By: BHP Billiton Iron Ore PTY LTD and BHP Billiton Minerals PTY LTD; Expert Report 6/30/2009 and 9/18/2009, Testimony 11/2/2009-11/6/2009.

**CERTIFICATE OF SERVICE**

I certify that I have this 17<sup>th</sup> day of November 2009 served a copy of the foregoing Reply of Twin America, LLC by Federal Express on:

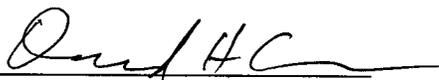
U.S. Department of Transportation  
Federal Motor Carrier Safety Administration  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

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

U.S. Department of Transportation  
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David H. Coburn