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# The Rise and Fall of Bus Regulation

Elizabeth A. Pinkston

**T**WO YEARS AGO, Congress passed the Bus Regulatory Reform Act of 1982, seemingly as an afterthought to its previous deregulation of the three major transportation industries—airlines in 1978, trucks and railroads in 1980. But bus deregulation was in fact the culmination of a classic regulatory cycle. Bus companies began as upstart competitors challenging the railroads, they were transformed by regulation into complacent, non-threatening regulated monopolies, and they were finally forced back toward competition as the winds of deregulation swept through other parts of the transportation world.

In the 1910s and 1920s, public intercity passenger transportation was confined almost exclusively to railroads. The earliest intercity bus operators went into business around 1910, typically offering rides in ordinary four-door sedans between neighboring communities. As roads and vehicles improved, more areas came to be served and longer trips became possible. Buses, in short, began to offer a real alternative to the established railroads.

The railroads quite correctly recognized the bus industry for what it was—a competitive

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threat to their comfortably regulated monopolies—and they resolved to bring it under control. In many cases railroads petitioned state regulatory commissions to regulate buses as well as trucks and in some cases went to court to seek regulation. By the 1920s state governments began to buckle to the pressure, and bus companies began to draw together into industry associations at the state level.

Some of the early state regulatory schemes addressed only safety, others sought to prevent damage to the roads, and still others dealt with routes, rates, and other economic aspects of the industry. As time passed, however, more and more states patterned their regulation of the bus industry after that of the railroads and electric utilities, treating bus companies (quite inappropriately) as natural monopolies. The usual baggage of economic regulation quickly followed, as busy state regulators sought to protect both the industry and the public from “costly duplication of service” and “ruinous competition.” Bus company mergers were encouraged. By the early 1930s Greyhound Lines had amassed more than 40,000 miles of routes and had become the dominant carrier.

But competitive pressures will persist, notwithstanding the most sincere efforts of state regulators. When a 1925 Supreme Court deci-

sion effectively ruled out state control of interstate operations, some enterprising bus companies hit on the ingenious scheme of extending their service just across state lines—entering “interstate commerce,” so to speak, in order to escape the clutches of state regulators.

This set the stage for federal intervention. A 1928 Interstate Commerce Commission (ICC) report, undoubtedly stimulated by the 1925 Supreme Court decision, called for federal controls over interstate bus operations. Seven years later, when bus lines as well as truckers and household movers were under the heavy competitive pressures of the Great Depression, Congress heeded the carriers’ own pleas for protection and passed the Motor Carrier Act of 1935. And a thick fog of comprehensive regulation settled over all three industries.

### The Years of Strict Regulation

The 1935 act governed the interstate bus industry for the next forty-seven years. It required bus operators to petition the ICC for operating rights before beginning service on each interstate route and for approval of mergers or other transferrals of such rights. Furthermore, operators had to get ICC approval for all changes in rates, up or down. The commission had no power, however, to keep operators from discontinuing service on a route (short of threatening to revoke authority for other routes); that power was left to the states.

**Mergers versus Entry.** At first the ICC, like the state commissions before it, looked with favor on Greyhound’s acquisitions of smaller carriers. There were two rationalizations for this policy. First, it would make the industry financially stronger. Second, it would facilitate long-distance travel by reducing ticketing and baggage-checking transactions and by ensuring that connecting buses would use the same terminal. (Bus companies generally operate their own terminals, unlike airlines and railroads, which typically share “union” terminals with their competitors.) Eventually, however, the commission decided to curb Greyhound’s dominance. In 1947, in a move to increase competition in the industry, it encouraged several bus companies in the South and Southwest to form the bus system that became today’s

Trailways. The upstart firm expanded aggressively over the next two decades and emerged in the early 1970s with a market share approaching 20 percent.

Several thousand much smaller carriers filled the niches unserved by the two big carriers. They ranged in size from a few with fairly extensive regional networks to a great many that provided scheduled service over only one or a few city-pair routes. The latter often made most of their money from charter service. For many years, the ICC automatically granted “incidental” charter-service authority to holders of regular-route rights, the idea being that charter profits would help carriers support (cross-subsidize) their unprofitable scheduled (regular-route) service.

While the ICC was encouraging Trailways to emerge as a major competitor on long-distance routes, it continued to favor monopoly in short-distance markets. This policy was put into effect in two ways—by smiling on mergers that would consolidate or “rationalize” operations in those markets and by discouraging new

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entry. The commission’s anticompetitive stance on entry was clearly laid out in its 1936 decision, *Pan American Bus Lines Operation*, which established basic ICC policy in both the trucking and the bus industries for many years thereafter. The decision announced that the commission would consider three criteria in ruling on applications for new authority:

[1] whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; [2] whether this purpose can and will be served as well by existing lines or carriers; and [3] whether it can be served by [the] applicant . . . without endangering or impairing the operations of existing carriers contrary to the public interest.

All three criteria made it very hard for would-be entrants to secure new operating authority.

The third, in particular, seemed designed to keep new firms from encroaching on the monopoly positions of existing firms.

To make matters worse, the ICC interpreted the criteria restrictively. During the 1960s, according to my research, it denied more than a third of the requests for regular-route authority, giving as its reason in 60 percent of the cases that "no need" had been shown for the service. And even when it approved a request, it often granted narrower authority than had been sought—more limited in route structure or in other ways. The ICC's restrictive entry policy undoubtedly also had a profound effect on the number and nature of applications for new authority, both by new firms and by existing firms seeking to expand. Why bother to apply, when the legal costs of doing so were high, the wait for decisions long, and the prospects of approval slim? Since the ICC continued to smile on the "rationalization" of route structures, mergers and acquisitions remained the most practical way for ambitious carriers to expand.

**Rates.** Typically bus fares were set collectively under the auspices of a national rate bureau—the National Bus Traffic Association, which enjoyed immunity from the antitrust laws. There was, accordingly, little innovation in rate-setting. The only prominent discounts were those providing unlimited travel within a given period for a fixed price. And these fares were intended to attract passengers from other transport modes, not from other bus companies: Greyhound and Trailways typically offered identical terms and honored each other's tickets. The ICC was relatively relaxed about

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approving requests for fare increases—the increases were moderate in a period of low inflation and few passengers complained. Up to 1970 the ICC conducted only two full-scale investigations of nationwide rate increases (the

form that rate changes generally took), and in both cases it gave the carriers the full amount they asked for.

Bus fares were also regulated by state regulatory commissions which, unlike the ICC, typically showed great vigor in monitoring rate increases; state regulators were perhaps eager to protect their own constituents at the expense of outsiders.

Why were interstate bus fares not checked more effectively by competition from other modes of transportation? There were several reasons. Airlines, with their fares still tightly regulated and generally far higher than bus fares, focused on business and time-sensitive travel. And the railroads increasingly viewed passenger travel as an unprofitable nuisance for which they did not care to compete. It should be noted, however, that after Amtrak (the National Railroad Passenger Corporation) was formed in 1971 and began plowing heavy subsidies into the few remaining routes, competing bus companies did begin to set fares on parallel bus routes much lower than elsewhere. The remaining source of competition against buses was the private car. And to all intents and purposes the bus industry simply surrendered to that sphere of competition all potential bus travelers able and willing to drive themselves. The buses were left serving customers who had no real alternative—the poor, the young, the elderly, and the handicapped.

**Management Decisions.** In addition to entry and rates, federal and state regulators also preempted management decisions on a variety of other matters. The regulators precisely defined each bus route, specifying exactly which highways could be used. They also carefully prescribed the size of the bus and the places where passengers could be picked up or discharged. And in some states, they even specified schedules—how many buses could run on what route and at what times. Little room remained for innovative marketing by industry management.

**The Wages of Regulation.** The results were pretty much as one might expect. The lack of competition, to start with, severely undercut bus companies' incentives to keep costs down. This was especially true with labor costs. Greyhound, for example, found it convenient simply to share its monopoly profits with labor. The

company claimed at the time of the 1983 strike that its labor costs were 30 to 50 percent higher than those of other major bus companies, and it ultimately extracted from its employees a 15 percent cut in wages and benefits. Trailways, with more decentralized bargaining, fared somewhat better. Its regional subsidiaries typically negotiated independently with various unions, and operated mostly in the low-wage South.

Needless to say, high industry costs were passed through to consumers. Regulatory fare-setting provided at best uneven pressure for cost control. Fares were dramatically higher, for example, on most ICC-regulated interstate routes than on comparable intrastate routes regulated by more aggressive state commissions. In the end, many travelers—those who could—switched to cars and airplanes. By 1977, according to the Census of Transportation, nearly two-thirds of bus passengers were under age twenty-five or over age sixty-four (compared with two-fifths of all travelers) and 60 percent had family incomes under \$15,000 (compared with 40 percent of all travelers). This was but one of the signs of a moribund industry.

### The Late 1970s: Change at the ICC

In many respects, the path to bus decontrol was similar to that of airline deregulation. First came a flurry of studies from academics and federal transportation officials. Next, Congress began taking an interest, with committee hear-

ings and reports increasingly endorsing regulatory reform. Then, the White House lent its support and, as it did, the regulators began to implement important reforms on their own. In the bus case, this point arrived in the mid-1970s.

**Entry.** It was about then that the ICC began encouraging more new entry by approving a larger share of applications. Thus, the number of applications for charter and special authority rose sharply in 1977, as Table 1 shows, and applications for regular-route service followed two years later. Moreover, from 1978 on, applicants were seeking broader geographical authorities with fewer restrictions on routes, stops, vehicle size, and so on—a quality change not captured in the figures. Finally, as of 1978, the number of ICC-regulated bus companies began to increase substantially. This suggests that many of the new applications came from new entrants to the interstate market, including undoubtedly some firms previously confined to intrastate service.

In 1979 the ICC formalized its more lenient entry policy with three new initiatives. First, the commission decreed that only carriers currently operating a given route or carriers that had applied for such authority would be allowed to protest a new application for that route. This reduced protests filed merely to slow the authorization process and discourage would-be competitors.

The second initiative was billed as an experiment in energy conservation. In May 1979 the ICC announced plans to allow existing carriers to offer almost any additional regular-route service they wanted to during the coming summer. To get the new authority, all they had to do was apply—in other words, the “public convenience and necessity” was left to look after itself. The experiment was too short to count as a competitive revolution, but at least a dozen carriers expanded their services for the summertime period, led by Greyhound with nine new routes and Trailways with five. Most notable were the innovative new services targeted at specific passenger groups. One

**Table 1**  
TRENDS IN ENTRY ACTIVITY, 1970–84

Calendar Year	Number of Applications for New Authority <sup>a</sup>			Percent granted <sup>b</sup>	Number of companies <sup>c</sup> (estimated)
	Regular	Charter & special	Total		
1970	—	—	—	—	1,000
1975	—	—	—	—	950
1976	34	108	142	78	1,000
1977	35	150	185	—	1,050
1978	32	144	176	90	1,100
1979	59	180	239	98	1,200
1980	40	170	210	100	1,330
1981	70	430	500	99	1,420
1982	74	392	466	99	1,520
1983	274	1,895	2,169	99	2,300
1984	—	—	—	—	3,000

<sup>a</sup>Applications published in the *Federal Register* only. <sup>b</sup>Granted as a whole or in part. <sup>c</sup>ICC-regulated only.

Sources: ICC, American Bus Association, Greyhound Inc., and Mandex Inc.

company offered Florida–New Jersey service designed for Spanish-speaking passengers; another offered luxury service (complete with snacks, stereo music, and card tables) to southern Californians bound for Las Vegas.

The third ICC initiative was to cut back on the 1936 *Pan-American* decision. Applicants were no longer required to address whether the proposed service “can and will be served as well by existing lines or carriers.” And burdens of proof were shifted so that the *existing* carrier had to show that the *competitor’s* proposal would impair its operations “contrary to the public interest.”

With these 1979 actions, the ICC officially shifted its emphasis to promoting competition and away from protecting existing competitors. Needless to say, not many established bus companies were pleased at the prospect.

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**Rates.** At the same time, ICC regulation of bus fares was taking some interesting twists. It was not until 1973 that the commission first rejected—if only in part—an industry request for a nationwide general rate increase. As inflation accelerated in the 1970s, the industry-wide rate bureau, the National Bus Traffic Association, returned to the ICC more and more often to ask for general rate hikes. Table 2 shows the rate escalation that began in 1974. Seeking to avert the need for continual rate proceedings, the ICC adopted a scheme that provided for automatic approval of rate surcharges as fuel prices rose. These arrangements were heavily used in the bus, trucking, and railroad industries after the “oil shocks” of 1974 and 1979–80.

During the 1970s there was also some movement in the opposite direction, toward price-cutting. On occasion, carriers sought selective fare cuts on routes facing competition from Amtrak or from newly deregulated air carriers. (Even these actions generally were taken collectively, through the rate-bureau apparatus, thereby holding competition between

**Table 2**  
NATIONWIDE GENERAL INCREASES IN BUS FARES,  
1965–83

Year	Percent Increase		Year	Percent Increase	
	Nominal	Real		Nominal	Real
1965	10	8	1975	10	1
1966	0	–3	1976	9	3
1967	5	2	1977	11	6
1968	5	1	1978	5	–3
1969	10	5	1979	18	7
1970	5	–1	1980	9	–4
1971	5	1	1981	20	10
1972	5	2	1982	8	2
1973	3	–3	1983	10	7
1974	16	5			

Sources: Edward Ramsdell, *An Examination of Interstate Motor Passenger Fare Increase Proceedings*, pp. 1–2; National Bus Traffic Association; ICC.

bus lines to a minimum.) And from time to time, some carriers flirted with fare innovation, offering special discounts for unemployed customers or for trips at off-peak times. The only promotional fare that survived over the long run, however, was the single-price fare allowing unlimited travel for a fixed period.

### The Bus Regulatory Reform Act of 1982

The ICC’s deregulatory initiatives in busing (and trucking, too) were not immediately welcomed by Congress. Senator Howard Cannon (Democrat, Nevada) lectured the commission in late 1979 and demanded that deregulation stop until new legislation had been passed. Perhaps for that reason, the ICC’s initiatives languished until Congress came around.

Bus reform could logically have been folded into the Motor Carrier Act of 1980 along with trucking reform. Congress and the Carter administration chose, however, to focus on one industry at a time in order to improve the chances of getting a trucking bill. Once that was done, the Carter ICC turned its attention to pressing Congress for a solidly deregulatory bill, but was unable to finish the job. That left bus industry reform to the Reagan administration. “We see no need,” Transportation Secretary Drew Lewis told a House committee in May 1981, “to continue any Federal economic regulation of the intercity bus industry.” Congress was sympathetic: the new chairman of the Senate Commerce Committee, Robert Packwood (Republican, Oregon), strongly supported economic deregulation, and the Democratic

House continued to go along.

The bus industry was still of two minds on deregulation, but the major players were at least growing fickle. Trailways, which had spurred on the reformist ICC in 1978-79, did a sudden turnaround in mid-1979 when new management took control of the company. About the same time, Greyhound, which had opposed the ICC's reform efforts, also reversed course, apparently having decided to try to bend to its purposes the changes that were surely coming. Most of the smaller carriers were skeptical about deregulation, fearing the results of competition. Whether large or small, however, all bus companies faced the serious problem of overly stringent state regulation of rates, schedules, and route abandonments. Because of the rate controls, many intrastate routes were unprofitable; because of the exit controls, operators could not drop those routes. Thus,

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Virtually all carriers would be able to benefit from such freedom, but Greyhound could benefit most because it was locked into the greatest number of unprofitable routes. Trailways also suffered from the excesses of state regulation, but it simultaneously benefited from Greyhound's even worse regulatory problems. Trailways' ambivalence about deregulation reflected this apparent quandary.

Not surprisingly, the Bus Regulatory Reform Act passed in September 1982 was a compromise. For the deregulators, the act has relaxed entry controls, freed up rates, and removed some antitrust immunity. For industry, it has provided some of the desired relief from state regulation and substantially preserved antitrust immunity.

- *Entry conditions* have been eased. Applicants for regular-route (scheduled) service no

longer have to prove that their proposed service is "required by the public convenience and necessity." Instead they need only show themselves to be "fit, willing, and able" to provide the service, unless a protester convinces the ICC that the service would be "not consistent with the public interest." This change formally shifts the burden of proof to those protesting the application. In making a public interest finding, however, the ICC must consider whether issuance of the certificate will impair the ability of any other bus operator to continue to provide a substantial portion of its regular-route passenger service.

Those seeking to provide charter and special service, or begin regular-route service to communities that are not currently served, have an even easier time. They need establish only that they are "fit, willing, and able" to provide the service. Their entry is presumed to be consistent with the public interest.

- *Rate regulation* has been greatly reduced. The act establishes a "zone of rate freedom" within which a carrier acting independently may raise or lower fares without ICC approval. That zone is to expand over the three years ending November 1985. The ICC will then lose all authority over rate-setting by carriers acting alone, but it will retain its authority over collective ratemaking—at least over those forms of collective ratemaking that remain legal.

- *Antitrust immunity* has been curtailed. The 1982 act effectively abolishes some types of collective ratemaking by subjecting them to antitrust restraint. Thus, intra-industry discussions of rates on single-line movement (requiring only one carrier) and of rates on joint-line movements are now no longer protected by antitrust immunity.

The industry, however, has won two crucial battles in this area. It retains immunity for intra-industry discussions of general rate changes—such as a 10 percent across-the-board hike on all routes—which are the mainstay of the rate-setting process. It also retains immunity for discussions of promotional or innovative fare changes—such as a thirty-day unlimited travel pass that a group of companies will honor, heretofore the major source of rate competition in the industry. However, the act did refer the question of continued immunity to the Motor Carrier Ratemaking Study Commission (set up by the 1980 trucking act); it

recommended in March 1984 that all immunity for buses be ended by January 1, 1986. If the ICC does not go along with this recommendation, it is to be hoped that Congress will. There certainly appears to be no justification for preserving the arrangement that has allowed the bus lines to engage in collective price-fixing for so long.

- *State regulation can now be preempted* by the ICC in some areas, specifically abandonment and rate decisions. First, if a bus company wants to abandon a route and does not get permission from the state agency within 120 days, it may petition the ICC. Anyone who objects must show that the abandonment would be inconsistent with the public interest or that continuing the service would not constitute an unreasonable burden on interstate commerce. Unless the ICC finds the proffered evidence compelling, it must grant the original company's petition. Second, a similar preemption procedure is established for rate change requests. The ICC must set an intrastate rate if the state does not act on a rate request within 120 days and if the ICC finds that the existing intrastate rate causes unreasonable discrimination against, or imposes an unreasonable burden on, interstate commerce.

### The Early Effects of Deregulation

Though the Bus Regulatory Reform Act is only two years old, it already appears to have been highly successful in stimulating competition. New entry jumped explosively in 1983, the first full year of operations under the act. As Table 1 shows, the number of regular-route applications nearly quadrupled that year, and the number of charter and special service applications, the categories now treated most leniently, roughly quintupled. Applicants requested permission to begin serving nearly 55,000 miles of new routes—equal to 20 percent of the industry's pre-1983 route network.

Another aspect of the new entry activity should comfort the critics who feared that Greyhound would monopolize the industry under deregulation. According to the ICC, more than half the applications during the first year (54 percent) were from carriers that previously had not held ICC authority (*The Intercity Bus Industry*, 1984). Furthermore, Greyhound re-

ported in January 1984 that it had filed only sixteen of the 274 applications for regular-route authority in 1983, while the Trailways system had accounted for seventy-seven, or 29 percent.

So far, however, all of this has had little effect on the overall level of interstate fares, perhaps largely because the industry still has antitrust immunity for collective ratemaking in the two crucial areas noted earlier. The most recent general rate increase was 10 percent, secured in March 1983. Nevertheless, some bus company officials see signs that the cartel is breaking down under the weight of entry by new carriers and divergence between Greyhound's objectives and those of other companies. There has been scattered rate-cutting

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on particular routes, primarily by Greyhound and Trailways. Head-to-head fare competition between these two is occurring in the Chicago–Minneapolis, Boston–New York City, and Chicago–Milwaukee markets. In each case Greyhound is matching Trailways' fares on buses that depart at the same time as Trailways', while charging higher fares for other times. Peak/offpeak fare differentials have emerged in Florida and Arizona, where intrastate service was deregulated a year or two before the bus reform act was passed. We can expect this pattern to be followed in interstate service in the coming years.

In the long run, the act's biggest impact on rates may come from the provision that enables the ICC to preempt state commission rulings on intrastate rates. As of November 1984, bus companies had filed forty-seven petitions asking the ICC to set aside unrealistically low state rates. The commission had granted thirty-six and dismissed two for lack of jurisdiction, leaving nine still pending. In addition, the ICC's new power to preempt state abandonment regulation is also offering bus companies some relief. As of November 1984, they had filed thirty-

six petitions asking the ICC to step in to allow them to discontinue service. The ICC had granted thirty-two and dismissed two for lack of jurisdiction, leaving two pending.

Abandonment does not seem to have posed a major problem for consumers, however. The 1984 ICC study found that, as of September 1983, bus companies had eliminated or were proposing to eliminate 1,322 communities from their time schedules. This looks bad, but analysis shows that many of those communities are suburbs of larger cities or communities with

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other ready access to nearby bus services. In all, the study found that only one-half of 1 percent of the population of the continental United States lives in the 776 nonmetropolitan communities slated to lose service. The number of people in these communities that had actually used the discontinued service was, of course, much smaller still.

### Conclusion

Counting the winners and losers in this seventy-year saga is not simple. The rise of regulation in the 1920s and 1930s surely benefited the regulated railroads, some segments of the bus industry, and some bus company employees. But the industry as a whole plainly languished, and in the end consumers were inadequately served and the stagnation engendered by regulation persuaded even the largest bus operators that change was in order. Deregulation, for its part, has certainly led to some service cutbacks and has forced Greyhound employees to accept lower wages. But it has also enabled bus companies to respond to consumer demands for new services, and the wage adjustments will probably enhance employees' long-run job security.

The bus operators' challenge to the regulated railroads in the 1920s and 1930s surely *should* have been answered by selective deregulation

of the railroads, rather than by regulation of the bus companies. But it wasn't. For fifty years thereafter, regulation fed on regulation. Only in the past decade has the direction finally been reversed. Deregulation in one sector of the transportation industry now drives deregulation in the next. By all appearances the consequences have been very much in the overall public interest. ■

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