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created by the 1983 RTA Act to unify the numerous disparate suburban bus agencies that existed at that time. In doing so, fares, branding, and management were made consistent throughout the region.<sup>6</sup>

5. Other public agencies have been relying more on contracting over the past 10 to 15 years, at least for part of their operations. Such combinations of public and private operators in one local network are often driven by the necessity for transit agencies to cut their expenses by giving up routes that are not

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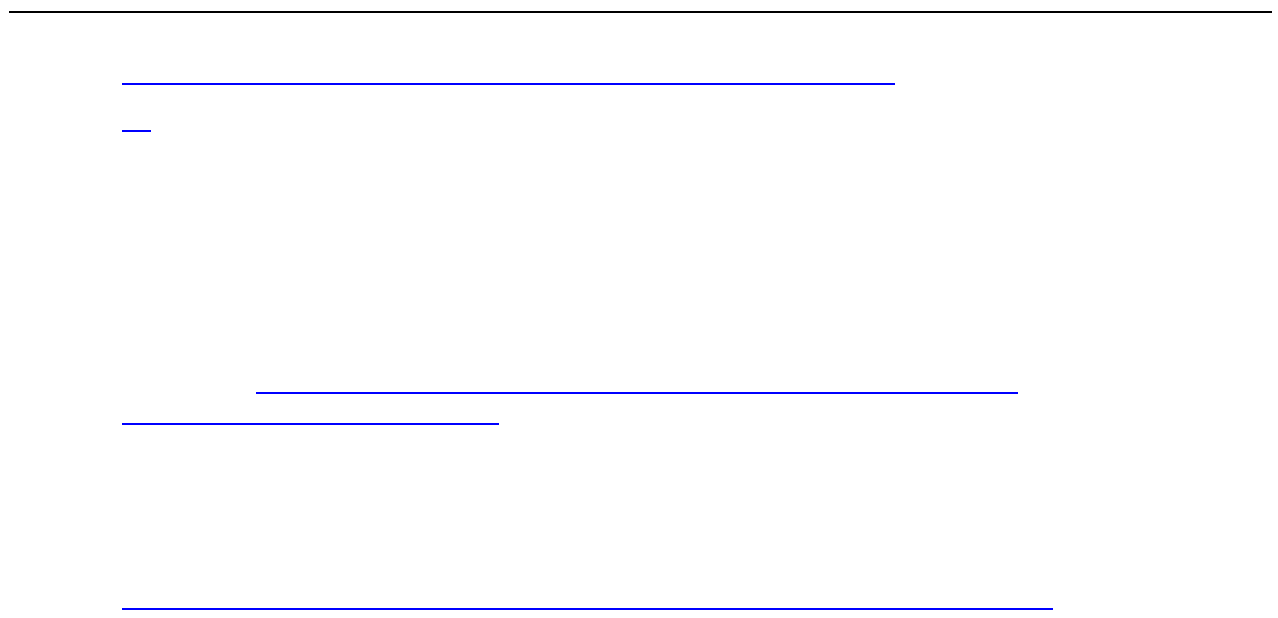
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routes made the bus industry economically unprofitable.



antitrust laws and from all other law, including state and municipal law, as necessary to carry out the arrangement.<sup>22</sup>

11. With respect to mergers and acquisitions, federal law<sup>23</sup> requires STB approval for carriers whose aggregate gross operating revenues for the prior year exceeded \$2 million. The STB will approve a transaction when it finds that the transaction is consistent with the public interest. In doing so, the STB must consider at least:

1. the effect of the proposed transaction on the adequacy of transportation to the public;
2. the total fixed charges that result from the proposed transaction; and
3. the interest of carrier employees affected by the proposed transaction.

12. With either pooling agreements or mergers and acquisitions, the STB can maintain continued oversight of an approved transaction. It can impose conditions on approval, and with respect to mergers and acquisitions, it can provide interim approval authority. STB approval provides an automatic antitrust exemption and preemption from other federal, state and local laws.

#### **4. Rate and Route Regulation**

13. Generally, rates and services are not regulated. But carriers must establish reasonable “through routes”<sup>24</sup> with other carriers of the same type and individual and joint rates applicable to those routes. The STB has the authority to prescribe through routes and related conditions.<sup>25</sup> Federal law provides a strong federal preemption of state and local regulation relating to scheduling, rates, and service.<sup>26</sup>

#### **5. Recent Antitrust Enforcement and STB Regulation**

##### **5.1 *Twin America LLC***

14. The Antitrust Division of the U.S. Department of Justice (Division) has had very little antitrust enforcement activity related to regional and local bus service.<sup>27</sup> The Division recently challenged a joint

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America LLC, had resulted in higher prices for hop-on, hop-off bus tours in New York City. The complaint said that the formation of Twin America gave Coach and City Sights a monopoly over the more than \$100 million New York City hop-on, hop-off bus tour market and enabled Coach and City Sights to increase prices to consumers by approximately 10 percent for tourists visiting some of New York City's leading attractions, including the Empire State Building, Times Square, and Central Park. The lawsuit

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