

CHAPTER 2

POLICY CONTEXT

The purpose of this chapter is to present the federal and state policy context affecting the ability of the WSDOT to maintain and improve the State's intercity bus services, including the rural-to-urban services. It includes an overview of federal policy, including economic regulation, funding programs, and the remaining regulatory controls. It also includes an overview of the current major carrier/industry policies as well. State regulatory policy, and the WSDOT implementation of the primary federal funding program for rural intercity bus service are also discussed. Finally, a proposed program policy is presented as a recommendation for developing a program which uses available resources, including the private sector, to address the network needs identified, including the areas of service need that are not provided by the private market.

POLICY CONTEXT: FEDERAL AND STATE POLICY

Whatever policy the State of Washington develops regarding intercity bus transportation, it must exist within the context of the federal policy structures that have evolved over the past several decades. These federal statutes have been specifically designed to pre-empt state policy and regulation. In general, the federal policy is that interstate bus transportation is not regulated at the federal level in terms of entry (which carriers can serve which routes), exit (whether a carrier is allowed to abandon a route), or rates (the federal government no longer oversees rates at all). Federal regulation is limited to ensuring that carriers are financially responsible (have adequate insurance) and meet federal safety standards. Because it is recognized that the federal policy of deregulation has reduced service coverage and level in rural areas, federal policy also provides for financial assistance for intercity bus service to, from, or in rural areas. Federal policy also recognizes that there are benefits to ensuring that travelers have the ability to make connections between modes, including intercity bus, local transit, and intercity rail passenger services. Federal funding is available for constructing intermodal passenger facilities, including the intercity bus related portions. The following section presents more detail on these policies in terms of the statutory history, implementing agencies, and their programs.

Pre-Deregulation: Federal and State Economic Regulation

Intercity bus transportation developed initially during World War I and in the post war era as vehicles capable of carrying larger groups were developed, interurban railways went

bankrupt, and roads improved. Demand increased during the 1920s and 1930s, and some states began regulating bus services as a means of promoting stability, ensuring safety, and protecting the railways. Federal regulation of interstate bus service began with the Motor Carrier Act of 1935. This act placed interstate bus service under the authority of the Interstate Commerce Commission (ICC) providing for regulation of fares, route authority, service types, and financial responsibility on interstate services. The regulatory system was modeled on a framework that had previously been applied to the rail industry. Individual states continued to have regulatory authority over intrastate services, including both economic and safety regulation.

The ICC and state regulatory agencies limited competition on individual routes by allowing a limited number of firms (often a single firm) to operate on a particular route. This was called control over entry (to that particular market), and was accomplished by issuing “authority” to operate that service. Carriers without authority could not operate that service. Along with route authority, regulatory agencies also restricted the ability of firms to offer charters and tours, allowing them to originate such services only in areas where they held route authority. In effect, this control allowed firms to generate revenues well above costs on busy routes and in populated areas where they held the authorities. However, the same regulators also restricted the ability of the firms to eliminate service on routes that were unprofitable, typically in rural areas. This was called control over exit (from a route). The combination of control over entry and exits forced the firms to subsidize their own rural routes from the higher profit levels earned on busy routes (where the regulatory system protected their monopoly) and from charters and tours (again, where they had regulatory protection).

The regulatory agencies also controlled fare levels, which were set by the ICC for interstate trips and by the states for intrastate trips. State regulators often set intrastate fares at lower levels than the ICC-regulated interstate rates, again forcing carriers to subsidize shorter trips within states (including most rural services) from revenues earned on higher-fare interstate services. Such government involvement—dating from the 1930’s—demonstrates that both federal and state policies have long recognized a need to support rural bus services.

In the post-World War II period, intercity bus ridership declined somewhat, but in general, ridership levels were stable and rural services continued to operate until the Interstate Highway System began to open in the early 1960s. The intercity bus industry requested authority to shift services from the old U.S. and state highways to the interstate routes to provide better travel times and remain more competitive with the private auto. With intercity routes moving to the interstates, rural service frequencies declined. Remaining rural services often proved to be unprofitable and carriers began to request permission from federal and state regulators to abandon these routes. By the late 1960s, the decline in the number of places served by intercity carriers had begun. Initially the large firms sold the rural and branch line operating rights to small independent carriers (sometimes setting up a driver in his own business) with lower operating costs. Later, when the revenue did not support even the small low-cost carrier, the regulatory authorities would be forced to allow abandonment.

Deregulation—The Bus Regulatory Reform Act of 1982, and the ICC Sunset Act

The advent of subsidized Amtrak competition in 1971 and airline deregulation in 1978 each had a negative impact on intercity bus ridership. By 1982, financial problems led much of the intercity bus industry to join federal policy-makers in supporting an end to much of the regulatory control held by the ICC and the states. Passage of the Federal Bus Regulatory Reform Act (BRRA) of 1982 essentially ended the federal government's economic control over interstate bus services, though control over insurance and safety requirements was retained. The BRRA also pre-empted state regulation of entry, exit, and fares. A second piece of legislation also affected federal and state regulation. The ICC Termination Act of 1995 eliminated the ICC legislation, and transferred the remaining oversight functions regarding financial responsibility (insurance) and safety to the U.S. Department of Transportation (USDOT), where they have become a function of what is now called the Federal Motor Carrier Safety Administration. Section 14501(a) of this statute also made clear that state regulation of intrastate services could not be applied to any services that operated on interstate routes or were subject to federal regulation, so carriers that participated in the national interline ticketing system (and were therefore offering interstate service) were definitely no longer subject to economic regulation by state public utilities commissions.

Many states reacted to state pre-emption by eliminating state economic regulation, often shifting safety and insurance regulation to other agencies such as the state police. However, the State of Washington continued the previous system of regulation of passenger carriers under the WUTC, but of necessity, its controls were limited to intrastate carriers providing only intrastate trips—which to a large extent turned out to be carriers providing ground transportation services to airports.

Federal Assistance for Intercity Bus Service—Federal Transit Administration (FTA) Programs

By the late 1980s and early 1990s, federal policy-makers began discussing the need to provide ongoing funding assistance for rural intercity routes, which led to the creation of the Section 18(i) program of assistance for rural intercity routes as part of the 1992 ISTEA transportation authorizing legislation. This program was subsequently codified as 49 USC S.5311(f), and is fully described in Chapter VIII of Circular 9040.1F. The basic outline of the program has remained the same since 1992, though there have been some changes and interpretations over the years as the program has been implemented. More recently, the passage of the latest federal transportation authorization bill, SAFETEA-LU, included language that has resulted in the most substantial change in the program to date. SAFETEA-LU also included some additional changes that affect the use of federal funds on intercity bus projects.

Federal Definition of Public Transportation Does Not Include Intercity Service

SAFETEA-LU included a change in the FTA definition of public transportation that affects the ability to use federal transit funds for intercity bus services. The new language excludes intercity bus transportation from the definition of public transportation that is supported with federal funding, with three exceptions—the S.5311(f) rural intercity bus assistance program,

intermodal facilities, and the S.3038 Over-the-Road Bus Accessibility Program to assist in purchasing accessibility equipment and training for private operators of over-the-road coaches. This means that public transit agencies that receive FTA funding cannot operate intercity bus service between urbanized areas—this is a market reserved to the private for-profit industry. The three types of intercity assistance that are allowed include the following programs.

Federal Section 5311(f)

Federal S.5311(f) funds are a key funding source for intercity bus operations and are used in a majority of states to subsidize targeted intercity bus services. Section 5311(f) is a subsection of the S.5311 formula allocation program for small urban and rural areas under 50,000 population, which allocates funding to each state's governor for distribution to local applicants. The amount of funds provided to each state is based on the non-urbanized population of the state.

Program funds can be used for capital, operating, planning, and administrative assistance to state agencies, local public bodies, non-profit organizations and operators of public transportation services. Fifteen percent of the annual apportionment must be used to support intercity bus service through the S.5311(f) component of the program unless the governor of the state certifies that all rural intercity bus needs are met. A partial certification is also possible, if the needs utilize less than the full 15 percent. If the governor certifies that intercity needs are met, the funding reverts to the overall S.5311 program for use on other rural transit projects. Under SAFETEA-LU, states planning to certify (partially or completely) are required to undergo a consultation process prior to certifying. The draft circular calls for the certification process to include identification of the intercity carriers, definition of the activities the state will undertake as part of the consultation process, an opportunity for intercity carriers to submit information regarding service needs, a planning process that examines unmet needs, and documentation that the results of the consultation process support the decision to certify—if, in fact, that is the final decision.

Under the S.5311(f) program, intercity bus service is defined as regularly scheduled bus service for the general public which operates with limited stops over fixed routes connecting two or more urban areas not in close proximity, has the capacity to carry passenger baggage, and makes meaningful connections with scheduled intercity bus service to points outside the service area. Feeder services to intercity bus services are also eligible. Commuter service is excluded. The S.5311(f) program is implemented by each state as part of its overall S.5311 program management activities. In the most recent draft circular, FTA has added guidance that makes clear that S.5311(f) funded intercity services must take schedule considerations into account to have a meaningful connection with scheduled intercity bus services to points outside the service area, adding a dimension (schedule) to the definition of a meaningful connection. Furthermore, FTA suggests that services that include a stop at the intercity bus station as one among many stops should not properly be considered for S.5311(F) funding, but instead should utilize other federal funding programs. Both of these new interpretations have the effect of narrowing the definition of eligible intercity service under S.5311(f).

For both S.5311 and S.5311(f) capital funds, the maximum federal share is 80 percent of the net cost, and for operating assistance, 50 percent of the net cost. Net cost or operating

expenses are those expenses that remain after operating revenues, which at a minimum include farebox revenues, and are subtracted from eligible operating expenses. FTA has also issued guidance for a two-year pilot program permitting use of the value of capital used in connecting private unsubsidized service as an in-kind match for S.5311(f) operating funds. In such projects the carrier providing the in-kind match is also part of the project. FTA will require that the project demonstrate that the carrier providing the in-kind match is agreeable to the use of its in-kind value for the project. If the value of the in-kind match is sufficient, the impact of this pilot program is that it may be possible to operate S.5311(f) connecting service without local cash match. Obtaining local cash operating match has been a major program issue, particularly in states that provide no state operating assistance.

State administration, planning, and technical assistance in support of intercity bus service are eligible at 100 percent federal share if applied against the 15 percent cap on state administration expenses. The amount of S.5311 funds used for planning of intercity bus service is not limited by the 15 percent cap. However, the federal share of any planning assistance for intercity bus not included in the 15 percent allowed for state administration is limited to 80 percent of the planning cost.

For projects that may have both a rural and urban component (for example, a bus terminal located in an urbanized area, but served by rural routes), recipients can use S.5311(f) funds as a portion of the overall project funding. Their use for capital projects in urbanized areas is limited to those aspects of the project that can be clearly identified as a direct benefit to services to and from non-urbanized areas. Such projects have to be included in both the metropolitan Transportation Improvement Program (TIP) and the State Transportation Improvement Program (STIP).

With regard to eligible recipients, for the S.5311(f) program only, FTA allows states to pass-through funds to private intercity bus carriers directly as subrecipients, if they are willing to accept the federal terms and conditions. Carriers may decide not to be recipients directly, and prefer to be third-party contractors to a subrecipient (which may be the state itself or a local public entity or nonprofit organization). As a third-party contractor, a carrier is able to isolate its other (non-assisted) operations from the requirements associated with a federal and/or state grant.

Recent Guidance on the Use of the Value of Capital on Connecting Unsubsidized Service as In-kind Match for Operating Assistance

On October 20, 2006 FTA executive management approved a two-year pilot project allowing states to use the capital costs of unsubsidized private sector intercity bus service as in-kind match for the operating costs of connecting rural intercity bus feeder service. This decision, and the guidance that followed, closely follow a proposal developed on behalf of WSDOT as part of this project. In that proposal, it was suggested that FTA include language in the Revised Circular that would allow S.5311(f) projects to use the capital cost portion of connecting services on the unsubsidized intercity bus network as in-kind local match for operating projects. This approach is intended to be similar in concept to the permitted use of human service transportation funds for match by S.5311 and S.5307 providers.

As part of this approach, the value of the capital cost portion of the total cost of the connecting unsubsidized services is used as in-kind match because the operating cost portion of these miles is offset by the revenues, and so it would not be eligible for operating assistance in the absence of a net operating deficit (and therefore would not be eligible to be considered as an in-kind contribution). Based on the precedent of the FTA regulations permitting 50 percent of the total cost of a turnkey operating contract to be considered as eligible for the 80 percent capital match ratio, FTA has allowed 50 percent of the total per-mile cost of the unsubsidized connecting intercity bus service be considered as the in-kind capital contribution of the intercity bus company to the rural intercity bus project.

The project definition includes connecting unsubsidized service on a specified segment, in terms of both costs and revenues. As in the case of most intercity bus services, costs are based on the cost per-mile. The length of the segment and the frequency of the connecting service determine the number of bus-miles operated in turn setting a limit on the value of the in-kind contribution. The capital cost portion of the unsubsidized segment is included. Depending on the project definition, the amount of unsubsidized service may provide enough in-kind match to cover the net operating deficit of the rural feeder service. FTA recognizes that the amount of in-kind match may not be enough to fully fund the feeder service, and that additional cash match may be required. However, if the in-kind match exceeds the amount needed, the excess cannot be used to increase the federal share above the actual operating deficit of the project.

In cases where the unsubsidized (from an operating perspective) connecting intercity service is already operated with FTA-funded capital for vehicles, the percentage used for in-kind will need to be adjusted, following the guidelines provided by FTA for determining percentage of contract cost eligible for capital under capital cost of contracting in cases where the buses are FTA-funded. This circumstance would necessarily reduce the amount of in-kind generated.

A major part of the rationale for this approach is based on the call for “meaningful connections with scheduled intercity bus service to more distant points” contained in the FTA Circular. Because the proposal for valuing unsubsidized service as local match involves defining the project in terms of a meaningful connection, FTA’s guidance requires that the private operator has consented to the arrangement in the project, and it must acknowledge that the service it provides is covered by the labor warranty and other requirements.

This approach is a direct response to WSDOT proposals and examples, and in the development of the WSDOT program, it should be incorporated as the major means of providing operating assistance for rural intercity feeder services. Because this essentially supplants the need for local operating match, it will have the effect of utilizing the available S.5311(f) operating funds at twice the rate that has been the case, where WSDOT or localities provided local match for 50 percent of the net operating deficit. In addition, it means that the policy guidelines and project designs will need to conform to the FTA guidance for such projects, and that the private carriers providing the unsubsidized segments will need to be full participants in program and project design.

Other Federal Programs—Bus and Bus Facility Program—Intermodal Terminals

In addition to assistance for maintaining or developing rural intercity services, a second aspect of intercity bus service that is addressed by federal transit policy and funding is support for intermodal terminals—i.e. passenger terminals that are served by more than one transit mode or carrier. There are many such terminals around the country that are served by private for-profit intercity bus companies, in which passengers can change carriers. Many of them also have intercity or commuter rail passenger service, and most have local bus transit or other transit service.

Often intermodal facilities are joint development projects that also include commercial office space, retail space, or even residential units. These projects are typically developed by local transit or development authorities, who act as the applicant for federal and available state funding. Private for-profit intercity bus firms have been involved, either as partners (contributing some of the local capital match), or tenants (leasing docking space for buses, counters, offices, and paying a pro rata share of common space), or sometimes both (paying a pro rata share of operating expenses, but not having to lease because of participation in the local match). Funding for these projects has generally come from the FTA capital programs—particularly the Bus and Bus Facilities funding (formerly Section 9), much of which is earmarked by Congress for specific projects, but also as an eligible capital project under S.5307, S.5311, or S.5311(f). Congestion Mitigation Air Quality (CMAQ) program capital funding has also been used for intermodal facilities, including both terminal buildings and park and ride lots.

In the past FTA guidance about private intercity bus operator participation has been interpreted by some to require that these firms be treated as if they are the same as any other non-transit private use—i.e. FTA funds could not be used to build or operate portions of a project used by the private carriers. In these cases, the projects often required the high rents expected of commercial tenants, or bus companies to fund the full cost of facility improvements attributable to the intercity carriers. However, in SAFETEA-LU, a revision to the transportation authorization makes it clear that private intercity carriers should be considered as eligible to benefit from federal transit funding in these projects—the intercity bus portion of an intermodal facility is now eligible under the Bus and Bus Facilities program. Preliminary guidance about this change has been issued by FTA.

In addition, SAFETEA-LU creates a funding source for the intercity bus facilities by authorizing \$35 million per year under the Bus and Bus Facilities discretionary program (Section 3011) for intercity bus facilities—a total of \$175 million over the life of the bill, beginning in FY 2005. The program is administered by FTA, and is likely to fit within the general Bus and Bus Facilities program. This funding could potentially be a source of capital for intermodal facilities in Washington State—it is likely that this funding will be considered as having been applied to the earmark projects that have intercity components, so it may not represent a new additional source. SAFETEA-LU contains an extensive list of Washington State projects, including funds for the King Street Station renovation in Seattle, and relocation of the Olympia Bus Station.

Section 9 funding has also been used in the past in other states for buses, including not only rural and urban transit buses, but also intercity buses that were made available for use by

private firms. While this has not been common, it is another way to provide vehicle capital for rural intercity services.

Section 3038 Over-the-Road Bus Accessibility Program Grants

This program was authorized as part of TEA-21, and it continues under SAFETEA-LU. It makes funds available to private operators of over-the-road buses to pay for the incremental capital and training costs associated with compliance of the final DOT rules on over-the-road accessibility.¹ The Section 3038 program is unusual in that it is conducted directly by FTA (including its regional offices) rather than being managed by state recipients. The solicitation for applications is conducted on a national basis, with federal funding to provide up to 90 percent of the costs of accessibility equipment (such as wheelchair lifts, access doors, folding seats, interlocks, tie-downs, etc. and the labor cost for installation) and training. The funds can be spent on the incremental costs of this equipment on a new coach, or used to retrofit existing coaches. In FY 2006, \$5,568,750 was provided to regular-route carriers, and an additional \$1,856,250 to charter and other operators of over-the-road buses. Over-the-road buses are defined as buses with a high seating deck with luggage compartments below. The definition of intercity, fixed-route over-the-road bus service is essentially the same as that for the S.5311 program: “regularly scheduled bus service for the general public, using an over-the-road bus that: operates with limited stops over fixed routes connecting two or more urban areas not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points”. The only difference is the focus on the over-the-road bus. In FY 2006, Northwestern Trailways received \$36,000, and Wheatland Express received \$38,863. These project levels should be sufficient to make one coach at each of the firms fully accessible. Greyhound Lines received \$2,803,950 for its national fleet. In terms of a potential state role, WSDOT could encourage Washington carriers to apply for funding, could assist them in preparing grant applications, and could potentially provide the ten percent local match. However, it should be noted that the bus industry associations have provided models for grant applications, and the ten percent carrier match is not a major barrier to participation (it is likely that the cost of having a vehicle out of service for a retrofit is a larger barrier). Greyhound Lines has received grants from a number of states for S.5311 capital funding for the incremental costs of lifts and training, but that is outside this program.

Another Possible Source of Federal Funds for Intercity Bus--Congestion Mitigation and Air Quality Funding

CMAQ funding is FTA funding available in air quality non-attainment areas for projects that reduce emissions, such as transit projects that attract patrons from single-occupant autos. The funding can be used for capital projects or operating assistance, although operating assistance is limited to three years. CMAQ has been used for park and ride lots, intermodal terminals, and coaches that are used by private for-profit intercity firms. New Hampshire DOT has been a leader in the use of this funding source to build a network of services that provide intercity trips to downtown Boston (commuters and intermodal connections to Amtrak and

¹49 CFR Part 37, published in the Federal Register on September 28, 1998 (63 FR 51670).

intercity bus services) and to Logan Airport. The New Hampshire approach used CMAQ capital to build the facilities, which were then used by the private firms, who also operate and maintain them. Buses have also been provided to private carriers. More recently a major expansion of park and ride commuter lots designed to increase bus and ride-sharing while I-93 is being rebuilt has led New Hampshire to also use CMAQ to provide operating assistance for this commuter-oriented service.

Job Access Reverse Commute Funding (JARC)

The needs analysis/outreach effort for this study identified a number of cases in which a need for longer-distance commuter services was seen as the primary issue. As noted above, commuter services cannot be funded with S.5311(f), and FTA notes that such services may be a valid need, but should be funded with other programs. In addition to the basic S.5307 and S.5311 programs, the JARC program is a potential funding source for commuter services. Under SAFETEA-LU JARC funding has become a formula program, and local human service coordination plans must be developed to establish local needs and project evaluation criteria. This planning effort is currently underway in Washington State, and it may well identify some longer-distance work trip needs that should be addressed outside the intercity bus program.

Federal Motor Carrier Safety Administration

The other major federal policy framework affecting intercity bus service is the regulatory framework of the FMCSA. As noted above, the FMCSA is an agency of the USDOT, and is one remnant of the regulatory authority formerly exercised by the Interstate Commerce Commission. FMCSA does not have any role in the economic regulation of the intercity bus industry, rather its focus is on ensuring that the firms providing service in interstate commerce are financially responsible (have the required levels of insurance), and operate within the federal safety requirements. Thus the FMCSA requirements are important to WSDOT in that intercity bus carriers in the state that offer interline service to interstate passengers must meet FMCSA requirements, with some limited exceptions. In addition, FMCSA policing of insurance and safety allows WSDOT to address these issues by requiring FMCSA registration and compliance, rather than having to do these things itself as part of its intercity bus program.

In general, all commercial motor vehicle operators that transport passengers for-hire across state lines must register with the FMCSA. “For-hire” means that the operator receives compensation, even if it is not directly from passengers (for example if Medicaid pays for the trip). This is true for non-profit agencies as well as for-profit firms. A commercial motor vehicle is a motor vehicle used in interstate commerce to transport passengers if it has a gross vehicle weight rating (or weight, or gross combination weight) in excess of 10,001 pounds, or is designed or used to carry more than eight passengers, including the driver, for compensation, or is designed or used to carry more than 15 passengers, including the driver, and is **not** used to transport passengers for compensation. There are exceptions for school bus service, operations entirely within a commercial zone, and taxicab service. There are specific definitions for commercial zones in the law, including listing of specific zones and a generic definition for other locations not specifically listed.

The commercial vehicle operator transporting passengers for-hire in interstate service must apply for a license, filing a Form OP-1(P) (paper) or on-line, and an application fee. The applicant must present evidence of the proper insurance and designate a process agent (a representative who can receive court papers that might be served in any court proceeding against the carrier). Generally the operator must pay a fee to a process agent for these services. The required insurance levels are based on the seating capacity of the vehicle (the largest vehicle in the operator's fleet or the number of passengers, whichever is greater). The liability insurance coverage per occurrence is \$5 million for vehicles having capacity of 16 or more passengers, and \$1.5 million for 9 to 15 passenger vehicles. Once the operator has a license, they receive an MC (for motor carrier) number, and a USDOT number. The USDOT number and the name of the operator must be marked on the buses. There is no separate fee to obtain the USDOT number.

Commercial vehicle operators that provide interstate service and receive funding under S.5311(f) (or S.5311, S.5307, or S.5310), or contract to provide service funded by these programs, do not have to meet the insurance requirements listed above, but must carry insurance at the highest levels required by any of the states in which they operate. Also, the application fee for the FMCSA license is waived—but the operator must still file and obtain an MC number and a USDOT number. These exemptions and exceptions for FTA grantees and contractors receiving FTA funding are not widely known in the FMCSA system, and applicants may need to contact FMCSA offices directly and explain their status as recipients of FTA funding in order to receive the fee waiver and the alternative insurance requirements. It should be noted that operators receiving S.5311(f) funding who wish to interline with Greyhound Lines or be part of NBTA interline ticketing system, will need to meet FMCSA levels of insurance which are higher than the amount required of FTA recipients.

FMCSA is also responsible for safety regulations affecting commercial motor vehicles operated in interstate commerce. In addition to the requirements for the appropriate USDOT numbers and vehicle markings, FMCSA sets requirements for driver qualifications, driver medical examinations, hours of service limits, records of duty status, vehicle safety inspections, and documentation of vehicle repair and maintenance. FMCSA regulations include the Commercial Driver's License (CDL) requirements for both interstate and intrastate commercial transportation (for operators of vehicles designed to transport 16 or more passengers). FMCSA regulations also include drug and alcohol testing, however, if the operator is receiving FTA funds the FTA drug and alcohol and drug-free workplace requirements apply. In the State of Washington, the CDL program, medical exams, and vehicle licenses are administered by the Driver and Vehicle Services branch of the Department of Licensing, while commercial vehicle driver and vehicle safety requirements and inspections are under the Commercial Vehicle Enforcement section of the Washington State Patrol.

CARRIER POLICIES

In addition to the federal funding and regulatory policies, the intercity bus program in the State of Washington must recognize and work with the private sector industry that provides most of the intercity service—in part because federal policy does not allow the state to participate in

providing intercity bus service between urbanized areas, and in part because it would cost a great deal of public funding to replace the extensive network of service provided by the private carriers. In the development of a program at this time, the private intercity bus industry is also a key participant in the state's intercity bus program because of the recent FTA regulatory guidance allowing the use of the value of capital on unsubsidized connecting intercity bus service as in-kind operating match for S.5311(f) operating grants. Project designs utilizing this approach to funding need to include the unsubsidized private carrier providing the connecting service as part of the overall project design and application. This means that the private carriers are part of the program, along with the state and the local S.5311(f) grantee (or contractor).

Greyhound Lines is the only national network of scheduled intercity bus service, and it performs a critical function in linking the other smaller regional services around the country. It is a private for-profit firm, owned by Laidlaw. Greyhound is the largest carrier in Washington, and its policies regarding coordination with other services must be recognized in the development of intercity bus programs. Like the airlines, intercity bus ridership fell after 9/11/01, and during the same period Greyhound faced increased competition from independent and ethnic bus companies in many parts of the country. It also faced the costs of implementing the Americans with Disabilities Act (ADA), and the increases in fuel and insurance costs. With a change in management, Greyhound has undergone a system restructuring during the last two years, eliminating low ridership stops and routes. Basically, in order to fully utilize its fleet, and return to profitability, it has focused service on routes between larger urbanized areas, responding to customer requests for more frequent express services. Local service with many intermediate stops, routes serving non-urbanized locations, and many routes not operating on the Interstate highways or other expressways have been dropped. Nationwide almost a thousand rural and small urban places lost service under this restructuring.

However, Greyhound is interested in continuing to receive traffic from these areas, primarily by increasing its coordination with smaller regional intercity carriers and increasingly with public transit providers operating services connecting the rural areas with the Greyhound stops in urbanized areas. S.5311(f) funding is intended to provide exactly this type of service, and the firm wants to expand its cooperation with states and rural transit operators. However, Greyhound Lines itself does not currently seek to obtain S.5311(f) funding for its own operations (though it is interested in capital for intermodal facilities).

Greyhound has taken a number of steps to facilitate increased coordination with rural feeder operators. It has worked with the USDOT, states, and transit operators to develop an approach to insurance that will allow Greyhound to quote connecting rural transit services in its schedule information system without requiring that they carry the full private sector insurance levels called for by the FMCSA. Greyhound has supported the development of the concept of using the capital value of its services as in-kind match for operating assistance on connecting subsidized services under S.5311(f). And it has worked with the NBTA to develop a way for rural feeders to participate in the interline ticketing system.

Greyhound's view of coordinated rural-intercity service includes the following elements:

- Connecting service (to Greyhound) should be scheduled, not demand-responsive (so the schedule information system can quote times to customers).
- Connecting carriers should have proper operating authority and insurance levels.
- Connecting service should be operated at least five days per week.
- Connecting service should not duplicate existing service, either by Greyhound or another carrier or subsidized transit service.
- Connecting carriers should offer proper ticketing and package express service.
- Connecting carrier information should be available nationwide as part of the national intercity bus network.

Greyhound offers several ways to coordinate on ticketing and information. These include a role for the rural connecting carrier as a formal interline partner (accepting Greyhound tickets and package express service over the national bus network and providing tickets that are accepted by other carriers in the interline system), or as a Commission Agent (selling Greyhound tickets and package express service for a percentage commission), or simply allowing Greyhound terminal access with no joint ticketing. If a connecting carrier wishes to be included in Greyhound's national schedules and telephone/internet schedule information system, it must be an interline partner.

For liability reasons, Greyhound requires that its interline partners have FMCSA authority to operate (an MC number and a USDOT number)—even if they do not themselves operate in interstate service. However, Greyhound accepts different insurance levels so that an FTA funding recipient might not need the full \$5 million in coverage. Greyhound requires \$1.5 million combined single limit liability for vehicles with a seating capacity of 15 or less, \$2 million for vehicles with a capacity of 16-30, and \$5 million for vehicles with a capacity over 30. Under FMCSA rules, interstate commercial vehicle operators that receive FTA funding are only required to have the highest insurance levels required by the states served. For access to Greyhound terminals other carriers are required to have general liability insurance with a combined single limit of at least \$1 million.

Interlining and the National Bus Traffic Association

The NBTA is a non-profit association created by the bus industry in 1933 as a clearinghouse for interline ticket revenue, as a tariff publisher, and to deal with interline baggage and package express in terms of liability and revenue. It currently has 59 member firms that provide scheduled intercity bus service. Greyhound is a member, as is Northwestern Trailways.

Interline tickets allow a passenger to buy a single ticket that provides travel over two or more different bus companies. The NBTA clearinghouse allows the different firms that provide transportation on a particular ticket to collect their proportionate share of the revenue based on the part of the trip that carrier provided. The proportionate share is calculated based on the ratio

of the miles a particular passenger was transported on that carrier to the total miles of the passenger's trip. This is called the mileage prorate. The participating carriers submit their bill for their share of these revenues on a monthly basis, and the NBTA clearinghouse processes all of these claims.

Normally membership involves placing some equity into the "bank" that provides liquidity to this function, along with other qualifications (including a number of requirements on the ticket itself). However, to facilitate participation in interline arrangements by S.5311(f) funded operators or other transit agencies, NBTA has created a category of membership called a Sponsored Membership, in which a rural connector can participate in the interline system through a member carrier that is their Sponsoring Member (most likely an interline partner). The rural connector pays only a \$100 annual membership fee to NBTA, and it can then sell interline tickets on the sponsoring carrier's ticket stock from originating points on the sponsoring carrier's routes. The sponsored rural transit connector would be required to honor tickets issued by other NBTA members for services originating on their lines. The sponsoring NBTA member secures the "reclaims" for the sponsored member. It should be noted that Greyhound is an NBTA member, and participation as a sponsored interline partner would make the rural connector a Greyhound interline partner, with schedules and fares quoted on the nationwide Greyhound telephone/internet information system.

The new policies of the intercity bus industry, particularly the Greyhound and NBTA interlining policies, provide a significant opportunity for transit operators, particularly those receiving S.5311(f), to become an integral part of the national intercity bus network. Requiring S.5311(f) contractors or subrecipients to participate to the extent possible would make a great of sense, and would likely result in higher ridership and revenue than would otherwise be the case.

EXISTING STATE OF WASHINGTON POLICY REGARDING THE INTERCITY NETWORK

Washington has two complementary approaches to maintaining intercity connections in the state, with some overlap (current and potential) in terms of jurisdiction and role. One approach is the remaining elements of the economic regulation of private for-profit carriers under the WUTC. The other approach is the joint federal-state provision of capital and operating assistance to maintain and improve intercity service under FTA's S.5311(f) program, which is administered by the state DOT.

Washington Utilities and Transportation Commission

While federal deregulation of passenger carriers under the BRRA of 1982 pre-empted state regulation of fares, entry and exit for interstate services, and the ICC sunset legislation in 1989 expanded this pre-emption, Washington continues to control entry, exist and fares for passenger carriers that are completely intrastate, other than taxi cabs. Firms must demonstrate that the public convenience and necessity requires that they operate a particular service in order to obtain the WUTC authority to operate it. If another carrier already has that authority, it would

require a demonstration that the existing carrier is not meeting the public need, and a decision by the Commission to grant new authority. Rates are also regulated, and the WUTC is currently in the process of a regulatory review to determine the best basis for rate regulation—rate of return, operating ratio, etc.—or whether the state should basically end economic regulation of intrastate transportation. The WUTC does not regulate Washington’s public transit services, though public transit agencies organized under the PTBA tax district legislation are required to compensate WUTC certificate holders if they initiate service on the route and schedule granted under the WUTC Certificate of Authority. Private non-profit transportation services need to register, provide certain driver qualifications, and provide evidence of insurance if they are providing “special needs” transportation. The WUTC does not provide any operating assistance in the form of federal or state funds.