

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Hartshorne, Channel 252A, by adding Channel 300C2 at Mooreland, and by adding Reydon, Channel 264C2.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Caseville, Channel 289A, by adding Deckerville, Channel 297A, by adding Channel 256A at Harbor Beach, and by adding Port Sanilac, Channel 225A.

4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Alton, Channel 290A.

5. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Firth, Channel 229A.

6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 284A at Junction.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 604

[Docket No. FTA-97-2624]

RIN 2132-AA58

Charter Services Demonstration Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Withdrawal of rulemaking.

SUMMARY: This document withdraws the rulemaking in which the Federal Transit Administration (FTA) proposed to amend its requirements on charter bus service. On June 23, 1997, FTA issued a notice of proposed rulemaking (NPRM) in which it sought public comment on proposed amendments to the charter service regulations. Based on a review of the comments to the NPRM, FTA has concluded that there is no consensus that the proposed changes will improve the ability of public operators to utilize the existing

regulatory exceptions to the prohibition against providing charter service when a private charter operator is willing and able to do so. Accordingly, FTA hereby withdraws this rulemaking.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: All documents pertaining to this regulatory action, including the comments to the NPRM, may be viewed and copied at the Docket Management Facility, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001 between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document, and all documents entered into this docket, are available on the World Wide Web at <http://dms.dot.gov>.

Comments may also be viewed on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System ("DMS") Web page of the Department of Transportation (<http://dms.dot.gov>). On that page, click on "search." On the next page (<http://dms.dot.gov/search>), type in the four-digit docket number. The docket number for this rulemaking is 2624. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

I. Background

Pursuant to Section 3040 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), FTA established a demonstration program that would permit public transit operators to provide charter services for the purpose of meeting the transit needs of the government, civic, charitable, and other community activities that otherwise would not be served in a cost effective and efficient manner. Congress required the creation of this demonstration program in response to public transit operators' concerns that existing charter service regulations were causing certain transit needs to go unmet.

Public transit operators were particularly concerned about the effect of 49 CFR 604.9. This provision prohibits an FTA recipient from using FTA equipment or facilities to provide any charter service where there is at least one private charter operator that is willing and able to provide the charter

service, unless one of the exceptions set out in the regulations is met. Some FTA recipients asserted that they were unable to provide needed charter services to their communities when a private operator had indicated that it was "willing and able" but actually did not have the desire or capability to provide certain trips.

According to the Conference Report accompanying ISTEA, (H. Rpt. No. 404, 102nd Cong., 1st Sess. 424 (1991)), the demonstration program was intended to provide public transit operators with additional flexibility not afforded under the existing charter regulations, without creating undue competition for privately owned charter operators. The Conference Report also indicated that the results of the demonstration program were expected to provide Congress and FTA with data to determine the most effective method for providing charter services to local communities and whether the current regulations were in need of modification.

FTA selected the following public transit operators in four states encompassing large and medium sized cities, as well as rural areas, to participate in the demonstration program:

Monterey-Salinas Transit, Monterey, California;
Central Oklahoma Transportation and Parking Authority, Oklahoma City, Oklahoma;
Bi-State Development Agency, St. Louis, Missouri;
Yolo County Transit Authority, Yolo, California;
Isabella County Transportation Commission, Isabella County, Michigan;
Capital Area Transit Authority, Lansing, Michigan;
Marquette County Area Transportation Authority, Marquette, Michigan;
Muskegon Area Transit System, Muskegon, Michigan.

FTA authorized these public transit operators to conduct their demonstration programs beginning on August 9, 1993, and continuing through October 31, 1995.

II. Results of the Charter Demonstration Program

The data gathered as a result of the charter demonstration program did not support the public operators' claims of unmet needs for the groups for which the demonstration was primarily intended: government, civic, charitable, and other community activities. Although the public operators in each area identified groups that would not be

otherwise served in a cost-effective manner, the charter service provided during the demonstration did not serve a significant number of these groups or significantly increase the level of service to these groups. This information was submitted to Congress on June 16, 1998.

III. FTA's Recommended Action and Comments to the NPRM

The results of the demonstration program did not indicate the need for FTA to significantly alter its current service regulations. The results, however, did show that there may be a need for minor changes in order to improve the ability of public operators to utilize the existing exceptions to the prohibition against their providing charter service if a private charter operator is willing and able to do so.

In its June 23, 1997, NPRM, found at 62 FR 33793, FTA sought comment on the following proposals. FTA received twenty-five written comments on the NPRM from public transit authorities, private sector charter providers, trade associations, a union, and a member of Congress.

A. Definition of "Willing and Able" Private Operators and Review of the "Willing and Able" Determination Process

Proposed change: In order to exclude a private charter operator who may be incapable of providing service within a public transit operator's service area, FTA proposed to narrow the definition of "willing and able" contained in 49 CFR 604.5. The amended definition would have defined a "willing and able" operator as an operator having one bus or one van and possessing the legal authority to operate the service. That authority included having the necessary safety certifications, licenses and other legal prerequisites to provide charter service to parties located within a 125-mile radius of the recipient's service area.

FTA also proposed to amend 49 CFR 604.13(e) to allow public transit operators to look behind evidence that a private charter operator is "willing and able" to provide the requested service if it had valid reasons to believe that the operator was unable to effectively serve local charter needs. The public transit operator would have been required to inform FTA of the finding and FTA would then have made a determination regarding the private operator in question.

Comments: The comments filed generally did not support the proposal to limit the definition of "willing and able" to private charter operators located within 125 miles of the service

area. Only two commenters expressed support for FTA's proposed change. Twelve commenters suggested that the 125-mile radius was too large and should be reduced. Among the reasons relied on by these commenters were increased burdens on public transit agencies due to surveying additional private operators, increased costs to consumers resulting from the extra drive time to reach the charter group, and a low probability that private charter operators would travel the 125 miles to serve some charter groups.

Eleven commenters submitted alternative suggestions for limiting the definition of "willing and able." Seven of these comments proposed modifications of the geographic limit, which ranged from only the service area to a 75-mile radius. Two commenters favored limiting the definition to a radius of a one hour drive from the service area. In addition, two other commenters recommended that FTA change the existing regulations to permit public transit operators to provide charter service to local governments, nonprofit agencies, and community groups.

Four commenters asserted that no change should be made to the current regulations. They reasoned that any change in the current regulations would create unfair competition for private operators and that the 125-mile radius was arbitrary and the proposal was unclear in how the boundary was to be calculated. It was also argued that private charter operators outside the geographic limit should be considered "willing and able" because they may choose to serve the area by positioning vehicles in remote locations or by using the terminal facilities or vehicles of competitors.

Three comments were filed supporting FTA's proposal to allow public transit operators to look behind evidence that a private charter operator is "willing and able" to provide the requested service where it has valid reasons to believe that the operator is unable to effectively serve the local charter needs. One commenter opposed the change stating that it would only invite disputes between private and public entities.

B. Extension of Non-Urbanized Area Hardship Exception to Small Urbanized Areas

Proposed Change: Under 49 CFR 604.9(b)(3), an FTA recipient may petition FTA for an exception to provide charter service directly to the customer in non-urbanized areas (population under 50,000) if the charter service provided by the "willing and able"

private operator would create a hardship on the customer due to state-imposed minimum duration requirements. FTA proposed to extend this exception to small urbanized areas (population between 50,000 and 200,000).

Comments: Seven comments were filed supporting an extension of the non-urbanized area hardship exception to small urbanized areas. Four comments were filed objecting to the extension of the hardship exception. These commenters objecting stated that the extension would cause unfair increases in competition and asserted the results of the charter demonstration project failed to provide evidence of unmet needs. Finally, one commenter added that the hardship exception applies to hardship from state-imposed minimum charges and that few states may actually impose such charges.

C. Amendment of the Exception for Formal Agreements With All Private Charter Operators

Proposed Change: Under 49 CFR 604.9(b)(7), if a public transit operator obtains a written agreement with all "willing and able" private operators, it can provide certain specified types of charter services directly to the customer. Some FTA recipients have asserted that it is often impossible to obtain such an agreement with all of the various organizations. Therefore, FTA proposed to amend 49 CFR 604.9(b)(7) to provide that only a two-thirds majority of all local private operators would be required for a formal charter agreement.

Comments: Three commenters stated that FTA should not reduce the level of agreement required under the formal agreement exception to two-thirds of local operators. These commenters based their opposition on the possible unfair injury that the change might have on those carriers not a party to the agreement. One of these commenters suggested that if a reduction is necessary, the two-thirds determination should be based on percentage of revenue, passengers miles, or some other criteria in order to ensure that large carriers are not penalized where a sufficient number of small carriers agree to the exception.

Six commenters supported the proposed reduction in the exception for formal agreements to two-thirds. Six other commenters suggested that FTA go further and reduce the minimum required to create a formal agreement to a simple majority of "willing and able" charter operators.

D. Implementation of an Outreach Program To Foster a Better Understanding of the Charter Regulations and Exceptions

Proposed Change: The demonstration program revealed that many public and private operators have an incomplete understanding of FTA's charter requirements and how to use them effectively to serve the charter needs in their communities. Therefore, FTA proposed to implement an outreach program for public and private operators to provide them with a better understanding of how to better utilize the charter regulations and exceptions. The outreach program would have included the distribution of brochures and literature to public and private operators describing the charter bus

regulations and exceptions, and examples of how to best utilize the exception process. FTA also proposed to sponsor seminars and information sessions on the charter requirements at meetings and conferences sponsored by various industry groups.

Comments: Eight commenters supported the outreach program as set out in the NPRM. One commenter expressed the view that the outreach program should be designed with the customer in mind. Another commenter stated that an outreach program was unnecessary because the regulations are clear, but the problem is that the exceptions are too restrictive. One commenter stated that an outreach program was unnecessary because

nearly all public operators were familiar with these long-standing regulations.

IV. Conclusion

FTA has decided not to make any changes to the charter bus regulations in 49 CFR Part 604. The current rule is not being changed at this time because there is no consensus that the proposed changes will improve the ability of public operators to utilize the existing exceptions to the prohibition against their providing charter service when a private charter operator is willing and able to provide such service.

Issued on: September 13, 2001.

Jennifer L. Dorn,
Administrator.

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