

**DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

**Docket No. FTA-2006-25365; Formula Grants for Other Than Urbanized Areas
Program: Notice of Program Guidance**

COMMENTS OF THE AMERICAN BUS ASSOCIATION

September 28, 2006

The American Bus Association (ABA) is pleased to submit the following comments on the Federal Transit Administration's (FTA) proposed section 5311(f) rural program guidance. The American Bus Association is the national trade association of the intercity bus industry. ABA has over 3,000 members; of those, over 800 member companies are bus operators. Therefore we have a strong interest in the section 5311(f) intercity bus program guidance and our comments will focus on that aspect of the guidance.

ABA believes FTA has done an excellent job in the Revised Circular of implementing the SAFETEA-LU changes in section 5311(f). Before turning to a discussion of those changes, however, ABA would like to propose an important addition to the Circular.

ABA proposes the addition of the following paragraph at the end of Chapter VIII,

Paragraph 11, Federal Share:

“FTA is aware that the 50% local match requirement for operating assistance for intercity bus services is problematic for states attempting to develop networks of intercity bus services since these services are, by definition, intercity, not local services. In order to encourage the development of such networks, FTA will allow a State to use the verifiable capital costs of the unsubsidized intercity bus network within its borders as local match for a project involving section 5311(f) services that make meaningful connections to that unsubsidized intercity bus network, provided that the entity operating the unsubsidized service approves of such use. In such cases, the project cost will be defined as the net operating cost of the subsidized service plus the capital cost of the unsubsidized intercity

bus network and any other local match as may be needed. Section 5311(f) funds can be used to fund up to 50% of that project cost.”

ABA, some states, and others have discussed this issue with FTA. We believe that this proposal will have a major positive impact on the development of section 5311(f) services that feed into the state’s intercity bus network since it will make it possible in many cases for the provider of those services to be fully compensated for them.

An integral element of any section 5311(f) service project is that the subsidized service make meaningful connections to other intercity bus service. Thus, it is logical to consider the network of unsubsidized service into which the 5311(f) service feeds as local match for the 5311(f) project since the project could not exist without the connection to the unsubsidized service.

This proposal will help to implement FTA’s policy of encouraging States to develop intercity bus networks within their borders, which connect with the national network of interstate service.¹ In the Revised Circular, FTA supports that policy on the planning side by requiring that any certifying State “demonstrate that it has conducted an assessment of statewide intercity mobility needs no more than four years prior to the date of certification” and by encouraging the inclusion of intercity bus service and intercity bus service providers in the statewide planning process.² The proposal to include the capital

¹ Chapter VIII, Paragraph 5 (page 57) of the Revised Circular provides in relevant part, “FTA encourages the State to look at the intercity bus transportation needs of the entire State and to work with neighboring States in order to adopt a program which will support a network of intrastate services and provide connections with a national network of interstate service”.

² Revised Circular, Chapter VIII, Paragraphs 3 and 4.

cost of the statewide intercity bus network as local match would provide equally strong support on the implementation side.

We recognize that the operating expenses of the unsubsidized service cannot be considered as local match since FTA would require that operating expenses only be considered as match to the extent that operating expenses exceeded the operating revenue derived from that service. However, the same operating revenue offset requirement does not apply to capital cost.

We also recognize that for network services to be accepted as local match, they would have to be considered eligible “in-kind contributions”. As such, the service must be “formally documented and supported, and represents a cost which would otherwise be eligible under the project”.³ Clearly, most, if not all, private operators have accounting systems that can document the costs of providing their services. Furthermore, the unsubsidized intercity bus networks in most states serve at least some nonurbanized areas, and thus would qualify as “otherwise eligible”.

Of course, the State could only use the capital cost of the network services as local match with the approval of the provider of those network services. Such approval would be necessary both because the network provider would have to make available to State the documentation showing its costs and would have to cooperate with the feeder service in order to make the connection work. In most, if not all, cases, the network provider would

³ Revised Circular, Paragraph 3.d., Page 31.

have a clear incentive to approve since its network would benefit from the new feeder traffic.

With regard to the definition of “capital cost” for network services, there is a list of capital costs which could be used to determine the extent of the network service costs that are eligible.⁴ However, we do not see any need to reinvent the wheel. Appendix G to the Revised Circular sets forth the applicable percentages that FTA will accept as the eligible capital cost of contracting for service.⁵ The percent of contract allowed for capital assistance without further justification is 50% for “Turnkey Contract (contractor provides vehicles, maintenance, and transit service)”.

These turnkey contract services (vehicles, maintenance, and service) are exactly what the network service provider is providing in the intercity bus context. Thus, we suggest that the same 50% rule be applied. In other words, the allowable capital costs for intercity network services will be deemed to be 50% without further justification.

Finally, we also understand that the network capital cost that a State can consider as local match probably cannot extend beyond the boundaries of that State (unless a joint project between more than one state is involved). However, even with that limitation, the ability to use the unsubsidized network capital cost as local match will greatly enhance the State’s ability to use section 5311(f) funds to develop a comprehensive bus network within its borders. Each state network, in turn, will connect with other state networks to

⁴ Revised Circular, Page 25.

⁵ Revised Circular, Page 101.

provide a more comprehensive national network. We strongly urge the inclusion of this proposed paragraph in the Revised Circular.

Turning to FTA's implementation of the SAFETEA-LU changes, the primary section 5311(f) modification contained in SAFETEA-LU is the addition of the requirement that prior to a certification that there are "no unmet intercity bus needs in a State", there must be "consultation with affected intercity bus providers".

FTA proposes to implement this requirement in a manner that will create meaningful consultation and a planning process that should lead to a more coordinated and comprehensive intercity and local rural transportation network. We fully support FTA's proposal. FTA's new consultation process requirements are set forth in Chapter VIII, Paragraph 4. of the Revised Circular (pages 56-57). Paragraph 4.a. contains the general definition of consultation. We agree with this definition.

Paragraph 4.b. details the four required elements of the consultation process – identification of providers; consultation activities; opportunities for providers to submit proposals; and a "direct correlation" between the results of the consultation and a determination that the State's intercity service needs are being adequately met. Each of these four elements is important, but we would particularly emphasize the critical nature of the "direct correlation" requirement.

Consultation can only be meaningful if there is a rational relationship or direct correlation between the information produced during the consultation and the determination made after the consultation. In other words, if the consultation demonstrates that there are, in fact, significant unmet intercity bus needs in the State and substantial proposals are presented to meet those needs, a certification that there are no unmet bus needs would render the consultation process meaningless because there is no “direct correlation” between the process and the result.

When there is no direct correlation between the process and the results, FTA should not accept the certification. It appears that that is what FTA has in mind. Chapter VIII, Paragraph 3 provides that every three years, FTA will evaluate the evidence that the State has followed its process and that “[A]s part of oversight FTA will examine the basis for a Governor’s certification”. This replaces prior language, which said: “FTA normally will not look behind a Governor's certification”.

Together, Paragraphs 3 and 4 indicate that there must be a direct correlation between the consultation process and a subsequent certification and that during its review process, FTA will assess the basis for a certification to ensure that there is, in fact, such direct correlation. The implication of these paragraphs is that if there is no such direct correlation, FTA will not accept the Governor’s certification and will require that 5311(f) funds be used to meet unmet intercity bus needs. Although this is what is implied, there should be a clear statement to that effect. Thus, ABA suggests the addition of language in either Paragraph 3 or 4 making it clear that FTA will reject the certification if it finds that

there is no direct correlation between the certification and the results of the consultation process.

With regard to the consultation process ideas set forth in Paragraph 4.c., FTA has done a commendable job of providing a comprehensive list of suggested consultation activities. ABA has several suggested modifications

ABA recommends changing the language of Paragraph 4.c.(2)(a). We do not think that informing intercity bus carriers of a State's intent to certify is an appropriate way to start the consultation process. It implies that a State has made a judgment about certification that should not be made prior to consultation. Furthermore, it suggests that consultation should be limited to those situations where the State is considering certifying, rather than including intercity bus operators in the State rural planning process on an ongoing basis.

We recommend striking the language of section 4.c.(2)(a) and substituting the following:

“(a) Inform intercity bus carriers of the State's rural planning process and encourage their participation in that process, and where a State is considering possible certification, provide an opportunity to submit comments and/or request a public meeting to identify unmet needs and discuss proposals for meeting those needs.”

In Paragraph 4.c.(3)(a), we agree that it is appropriate for a State to work in partnership with the American Bus Association in periodic assessment of needs; however, there should be no implication that this is intended to preclude States from working with carriers on an individual basis. Thus, we propose adding “and/or carriers individually” after “Association” in line 2 of Section 4.c.(3)(a).

In Paragraph 8 on page 59 of the Revised Circular, FTA adds a new paragraph to the definition of “eligible activities”. This paragraph recognizes that all aspects of intercity bus terminals are now eligible for FTA joint development funding. ABA believes that it is an excellent idea to describe this new eligibility in the “eligible activities” section.

ABA notes that the proposed guidance on joint development projects, including implementation of the new intercity bus terminal eligibility, was published in the Federal Register on September 12, 2006. It would be appropriate to reference that guidance in this paragraph. ABA also notes that the joint development eligibility criterion for intercity bus terminals is “physical or functional” relationship to public transportation facilities, not “physical and functional” relationship. This correction should be made in the last sentence of the new paragraph.

ABA has several comments with regard to Paragraph 9, Feeder Service. First, the new material added in the last two sentences of Paragraph 9 is factually correct, but we suggest modifying the language to make it clear that there are ways to provide meaningful feeder services to the intercity bus network that do not bring down on the rural transit provider the full panoply of FMCSA regulations.

ABA has worked hard to encourage rural transit providers to develop feeder services into the national bus network. FTA has been very supportive of that effort. ABA has found that some rural transit agencies are discouraged from developing such feeder services because they do not want to deal with FMCSA safety and insurance regulations.

To help meet these concerns, FTA's guidance should emphasize that rural transit services which feed intercity bus service with meaningful connections can provide that service without any FMCSA regulatory involvement as long as the rural transit service does not physically cross state lines and does not interline with the intercity bus service.

Furthermore, even if the feeder service does interline with the intercity bus service, the feeder service is not bound by FMCSA's insurance regulations, as long as the feeder service does not physically cross state lines. In that circumstance, the carrier would have to comply with FMCSA registration and safety requirements, but would not be bound by FMCSA insurance requirements. Only if the rural feeder service physically crosses state lines and interlines with intercity bus services would the full panoply of FMCSA regulations apply. It also would be useful for FTA to note in the guidance that a rural transit agency's costs of compliance with FMCSA safety and insurance regulations are eligible for section 5311(f) funding to the extent that they are incurred in providing eligible feeder service.

ABA also believes that Paragraph 9 should make clear that feeder service is only eligible for section 5311(f) funding if it makes "meaningful connections with scheduled intercity bus service to more distant points". It would make little sense to require eligible intercity bus service providers to make meaningful connections to other scheduled intercity bus providers and not impose the same standard on feeder services.

Thus, we urge adding “, and which makes meaningful connections with scheduled intercity bus service to more distant points.” at the end of the first sentence of Paragraph 9. Of course, it would be inappropriate to add the phrase “if such service is available” in this context because, by definition, feeder services can only be eligible for funding if there is intercity bus service available to feed into.

Paragraph 9 indicates that eligible feeder service “may be demand responsive”. We agree that demand responsive feeder service does not in itself fail to meet the test of making meaningful connections with intercity bus services. However, there are many factors (e.g., weather, accidents, change of plans, etc.) that can impede a customer's ability to properly schedule a return intercity bus trip with a demand responsive feeder service. Thus, we suggest that FTA add language to this paragraph encouraging feeder services to make regularly scheduled connections with intercity bus services. Given the substantial increases in section 5311(f) funding, the development of scheduled feeder services should be much more achievable than it has been in the past.

We have one final point about Paragraph 9. ABA believes that FTA should apply the same “merit based selection” standard to eligible feeder services that it applies to eligible intercity bus services in Paragraph 6. Thus ABA suggests adding language to Paragraph 9 which makes clear that States should also use a merit based selection process for feeder services to ensure that such feeder service will provide meaningful connections to the intercity bus service and is the best, or only, provider available to offer service at a fair and reasonable cost.

Finally, ABA believes that the Sample Intercity Bus Certification⁶ should be further modified to reflect the changes made in the certification and oversight process. The prior FTA Circular stated that "FTA normally will not look behind a Governor's certification"; whereas, the Revised Circular states that "As part of oversight FTA will examine the basis for a Governor's certification".⁷ The Revised Circular also provides that a certifying State "must demonstrate that it has conducted an assessment of statewide intercity bus mobility needs no more than four years prior to the date of certification" and that "[E]vidence that the State has followed its process will be evaluated every three years".⁸

ABA believes that any certification letter should demonstrate that it has complied with these new standards. Thus, we propose that the sample certification letter contain the following paragraphs after the first paragraph:

"The State has conducted an assessment of statewide intercity bus mobility needs between (fill in dates), which dates are no more than four years prior to the date of this certification. What follows is a description of the assessment process and findings:...

Prior to this certification, as required by 5311(f)(2), the State consulted with affected intercity bus operators. That consultation process contained the four elements required by the Circular and involved the following activities: (description of activities and how they complied with required elements):

Considering the state assessment and the results of the consultation process, the basis for the certification that there are no unmet intercity bus needs in the State is (explain in detail):"

⁶ Revised Circular, Appendix E, Page 99.

⁷ Prior and Revised Circulars, Chapter VIII, Paragraph 3.

⁸ Revised Circular, Chapter VIII, Paragraph 3.

These paragraphs would replace the second paragraph and the second bracketed paragraph in Appendix E of the Revised Guidelines. We believe that this language is needed so that FTA has an initial view of whether a State is complying with the new standards and can move quickly where corrective action appears necessary.

ABA greatly appreciates the opportunity to submit comments on this important topic.

Respectfully submitted:



Clyde J. Hart, Jr., Esq.
Senior Vice President, American Bus Association
Counsel, Bus Industry Safety Council
700 13th Street, N.W.
Suite 575
Washington, D.C. 20004
Phone: 202. 218-7228
Email. chart@buses.org