July 31, 2017

Ms. Daphne Y. Jefferson
Deputy Administrator
Federal Motor Carrier Safety Administration

U.S. Department of Transportation

1200 New Jersey Avenue, SE

Washington, DC 20590-0001

Dear Ms. Jefferson:

On behalf of the [state / regional association / company], we are providing comments on the Federal Motor Carrier Safety Administration’s (FMCSA’s) “Proposal in response to petitions for reconsideration; request for public comments,” concerning the Lease and Interchange of Vehicles; Motor Carriers of Passengers final rule (L&I rule), Docket No. FMCSA-2012-0103” (Proposal).

The [state / regional association / company], is filing comments in order to meet the July 31, 2017 deadline; however, based on our June 30 request for clarification and extension of the comment period, we continue to seek clarification of the Agency’s process in terms of revising the L&I rule; and, because the Proposal does not contain proposed regulatory text on which to comment, we anticipate another opportunity to provide comment to actual proposed regulatory text in the context of a formal notice of proposed rulemaking (NPRM), to revise the L&I rule.

[Please describe your company and business that you do. How long you have been in business, what type of services you offer, how many passengers you carry annually.]

[Please insert real world examples of how this rule would negatively impact your members or your company]

As the industry has consistently argued, the L&I rule poses a significant threat to our industry in multiple ways. Initially, and most significantly, it inappropriately broadens the term “lease” to capture charter and like operations, turning current industry practices on their head. This creates unnecessary operational burdens on compliant motorcoach operators, while doing little to target the safety concern of non-compliant carriers, the Agency’s stated justification for the rule. Further, we believe the L&I rule may exacerbate the problem of non-compliant carriers by creating safe havens and encouraging broker operations, which the Agency has no authority to regulate, a position echoed by the insurance industry. As well, the L&I rule imposes burdensome marking requirements that are impractical, whereas there are less burdensome ways to address the Agency’s concerns.

The industry has actively participated in the rulemaking process concerning this rule, including filing a petition for reconsideration following publication of the final rule in May of 2015. Since that filing, we have appreciated the Agency’s efforts to engage with the industry in an effort to better understand industry practices and address concerns with the rule. Recently, we welcomed the Agency’s notice extending the compliance date of the 2015 rule, and we are pleased to see FMCSA advancing actions to address the petitions for reconsideration. However, as previously stated, we are anxious to see proposed regulatory text and have the opportunity to respond by providing comments to a formal notice of proposed rulemaking. With this understanding and on this basis, we are submitting the following comments in support of FMCSA developing proposed regulatory text for publication in an NPRM.

**A. Proposed Regulatory Revisions**

Initially, we were forced to rely on the Notice of Intent FMCSA published on August 31, 2016, where the Agency identified four categories of concern with the L&I rule that it was willing to consider for revision:

1. “Exclusion of ‘chartering’ (i*.e.* subcontracting) from the leasing requirements”;
2. “Amending the CMV requirements for the location of temporary markings for leased/interchanged vehicles”;
3. “Changing the requirement that carriers notify customers within 24 hours when they subcontract service to other carriers”; and
4. “Expanding the 48-hour delay in preparing a lease to include emergencies when passengers are not actually on board a bus.”

Following publication of the August 2016 Notice of Intent, on October 31, 2016, FMCSA held a public roundtable where all four categories were discussed. Yet, the Proposal limits its discussion to only two of the four categories, albeit, we believe, with the intent of addressing all four categories; however, it is unclear from the text of the Proposal on how each of the categories would be addressed in a revised final rule. For these reasons, we believe it important to clearly specify how all four categories would be addressed and do so through an NPRM that includes proposed regulatory text.

From our perspective, we believe all four categories of concern can be addressed through very limited changes to the current L&I rule text. We agree with FMCSA’s statement in the Proposal, “Subjecting passenger carriers with operating authority to the full requirements of the leasing rule is not necessary.” (82 Fed. Reg. p. 27769) Based on this statement, we propose the following regulatory text, which we believe would address all four categories of concern.

Revise Title 49 of the Code of Regulations, section 390.5, by adding the following underlined text:

**§390.5 Definitions**

\* \* \* \* \* \* \*

*Interchange* means –

…..

(2) The act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another such carrier, at a point which both carriers are authorized to serve, with which to continue a through movement. As used in § 390.21(f) and subpart F of this part, the term does not include the act of providing a passenger-carrying commercial motor vehicle by one motor carrier of passengers to another, if the act is occurring between or among commonly owned and controlled motor carriers, provided the driver of such carrier carries and upon demand of a law enforcement official produces a summary document identifying the carriers subject to common ownership and control, including USDOT numbers and business addresses; or, the act is occurring pursuant to a revenue pooling agreement approved by the Surface Transportation Board (STB) in accordance with 49 U.S.C. 14302, provided the driver of each vehicle operating under the agreement carries and upon demand of a law enforcement official produces a summary document identifying the parties to the agreement, including their USDOT numbers and business addresses.

\* \* \* \* \* \* \*

*Lease*, as used in §390.21(f) and subpart F of this part, means a contract or arrangement in which a motor carrier grants the use of a passenger-carrying motor commercial motor vehicle to another motor carrier, with or without a driver, for a specified period for the transportation of passengers, in exchange for compensation. The term lease includes an interchange as defined in this section, or other agreement granting the use of a passenger-carrying motor commercial motor vehicle for a specified period, with or without a driver, whether or not compensation for such use is required. The term *lease* does not include a contract, subcontract, sublease, rental or charter arrangement between two or more passenger-carrying motor carriers where all parties have operating authority.

\* \* \* \* \* \* \*

With these changes, further, we believe paragraphs (b)(2) and (3) of Section 390.301 are no longer necessary, and so should be removed from the text to avoid confusion.

**B. Explanation of Revisions**

We believe by revising the definition of “lease,” to exclude arrangements (i.e. contracts, subcontracts, subleases, rental or charter arrangements) between two or more passenger-carrying motor carriers with operating authority, from the requirements of subpart F and 390.21(f), the Agency will achieve its objective of excluding carriers with operating authority from unnecessary requirements and address numbers 1, 3, and 4 of the categories identified for revision. Further, by revising the definition of interchange to exclude operations conducted under revenue pooling arrangements or under common ownership and control, FMCSA will remain consistent with its stated objective of relieving carriers with operating authority from unnecessary requirements while still ensuring law enforcement officials can properly determine operating authority or lack thereof, and address the fourth and final category identified for revision.

We also believe these revisions will enable FMCSA to more effectively pursue its goal of ensuring passenger carriers are unable to evade Agency oversight and enforcement by entering into questionable lease arrangements to operate under the authority of another carrier that exercises no actual control over such operation. The rule will provide a tool for the Agency to focus its resources and compliance efforts on carriers attempting to continue operating without holding operating authority or a valid lease arrangement evidenced by documentation as specified in the rule.

Also, in further support of the need for FMCSA to provide an NPRM with proposed regulatory text, we believe it critical for the industry to understand how the Agency plans to interpret revisions to the regulations. For example, in the Proposal, we are concerned the Agency may be conflating the concept of “operating” with “driving” a commercial motor vehicle (CMV); and “owning” and “maintaining” a CMV in compliance with FMCSRs, as a singular responsibility. In our industry, these situations are not always the case. For example, the Proposal reads as follows:

*The purpose of the rule is to identify the motor carrier operating a passenger-carrying CMV that is responsible for compliance with the Federal Motor Carrier Safety Regulation (FMCSRs) and ensure that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMV(s) and driver(s).*

(80 Fed. Reg. 30164; 82 Fed. Reg. 27768)

The motor carrier operating (*i.e.*, driving) the CMV is not always the motor carrier owner who is responsible for vehicle compliance. These two responsibilities may or may not belong to a single motor carrier. The industry believes an NPRM would provide FMCSA an opportunity to further refine its explanation in the preamble, to reduce confusion and assist the industry in understanding the Agency’s goal, such as:

The purpose of the rule is to identify (i) the motor carrier that is responsible for operating a passenger-carrying CMV in compliance with Federal Motor Carrier Safety Regulation (FMCSRs); and (ii) the motor carrier that is responsible for maintaining the passenger-carrying CMV in compliance with the Federal Motor Carrier Safety Regulation (FMCSRs).

# In conclusion, we urge the Agency to clarify its efforts to undertake revisions of the L&I rule. We believe the Agency should: 1) publish a formal notice of proposed rulemaking (NPRM); 2) include proposed regulatory text in the NPRM for comment; and 3) clarify in the NPRM the Agency’s position with regard to all four categories identified as areas for regulatory revision, per the August 31, 2016, notice of intent. Only in this way can industry members thoughtfully and productively respond to FMCSA’s efforts to revise the rule and hopefully avoid further appeals, requests for reconsideration, or other delays of the implementation of this rule. To assist the Agency, we have outlined above proposed revisions to the L&I rule, in line with FMCSA’s objective to eliminate unnecessary burdens to carriers with operating authority and address all four categories identified for revision.

# We appreciate FMCSA’s consideration of our comments and the efforts undertaken by the Agency to modify a well-intentioned, but nonetheless overly burdensome rule.

Respectfully,