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DEPARTMENT OF TRANSPORTATION
Federal Motor Carrier Safety Administration

DEPT. OF TRANSPORTATION
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Docket No. FMCSA-2000-7017 — 6

SAFETY REQUIREMENTS FOR OPERATORS OF SMALL PASSENGER-CARRYING COMMERCIAL MOTOR VEHICLES USED IN INTERSTATE COMMERCE

COMMENTS OF TEXAS BUS ASSOCIATION, INC. IN RESPONSE TO NOTICE OF PROPOSED RULEMAKING

Identity of Texas Bus Association, Inc.

Texas Bus Association, Inc. (TBA) is a trade association of Texas-based bus companies providing scheduled intercity passenger service in interstate and foreign commerce and charter service throughout the continental United States, Canada and Mexico. Attached as Appendix A is a brochure listing the members of TBA with their Texas offices and showing the routes in Texas over which daily scheduled passenger service is provided.

One or more TBA members provide scheduled passenger service to and from each of the ports of entry between the United States and Mexico between Brownsville and El Paso and they have experienced the proliferation of “camionetas” or commercial van operators transporting passengers for compensation between points in Texas and points in Mexico.

Statement of Position

The evidence in this and the preceding dockets established that in just three years (1996, 1997 and 1998) there have been 15 fatal crashes in the State of Texas involving vans transporting 9 or more passengers. TBA believes there were more but because many of the crashes are investigated by

local authorities and because the vans are not identified in any manner as being operated as a commercial vehicle the crash is not reported as such. Certainly there have been more fatal van crashes in 1999 and 2000 which have gone unreported as a commercial motor vehicle crash because of the inability to identify the vehicle as such. While reliable statistics are unavailable to determine the dollar costs in personal injuries and property damage resulting from commercial van crashes FMCSA properly recognizes that there are serious safety management problems with some commercial van operations and by applying the FMCSRs to these operations there will be a reduction in the number of fatal crashes and the costs resulting from personal injuries and property damage.

The currently effective rule changes requiring camionetas and other commercial van operators to file a motor carrier identification report (Form MCS-150), comply with the identification regulations in 49 CFR 390.21, and maintain an accident register pursuant to 49 CFR 390.15 will identify those van operators which hold themselves out to the public as transporters of passengers for compensation and which will come within the mileage limitation. **Identification, however is not enough.**

Driver and Vehicle Safety

From past experience TBA knows that many of the camionetas are individuals who transport people for compensation. Of course, there are businesses conducting commercial passenger transportation with multiple vehicles and full-time drivers. The proposal to make the driver qualifications and hours of service regulations applicable to these individuals and companies is a long-needed step to improving the safety of operation of the camionetas. Since the information required to be maintained by and about drivers as well as other records to be maintained by these regulations has been unavailable because unregulated, the records to be maintained will provide FMCSA with

much of the data from which the scope and extent of camioneta operations can readily be determined.

The vehicle inspection, maintenance, and repair regulations should be made applicable to these for-hire van operators to insure the public which chooses to use the service and the public using the highways that these vehicles are in a safe condition. Without vehicle inspections and/or accident reports involving for-hire van crashes, there is no method of determining whether the crash was caused by vehicle defects, driver error, overloading, or a combination thereof.

If, as anticipated, the U.S./Mexico border is opened to Mexican-owned and operated commercial motor vehicles it is patently obvious that the FMCSRs will be only means of assuring that the public using the highways in the United States and the passengers using the van services can be protected from a safety standpoint as much as possible. The Mexican for-hire van operations should be subject to the same safety standards as Mexican motorcoach operators and the vans should not be allowed into the United States until they demonstrate compliance with the applicable safety regulations.

Intrastate Operations Under MCSAP

Apparently because 32% of the fatal van crashes happened in Texas, Florida, and California FMCSA is unwilling to require that states adopt and enforce compatible standards for commercial vans operating in intrastate commerce even though FMCSA requires compatible standards for motorcoaches in intrastate commerce as a condition to a state's participation in MCSAP. Failure to require compatible standards for intrastate commercial van operations in Texas will effectively neuter the entire proposal because the camionetas will provide no "interstate or foreign" transportation. Passengers will simply be told (and any corresponding paperwork will show) they are being transported from, for example, Dallas to Laredo, Texas even though the original and continuing intent

is that they will be transported through Laredo into Mexico. Even the best enforcement personnel, state or federal, would have an extremely difficult time proving that the hypothetical operation described is actually in interstate or foreign commerce. Based on TBA's previous experiences with the camionetas, FMCSA should never underestimate their ingenuity to evade any form of regulation. In order to eliminate the possibility that these for-hire van operators could escape applicability of the safety regulations by providing only "intrastate" operations. Why provide the camionetas with another loophole to avoid regulation? FMCSA should require states participating in the MCSAP program to adopt and enforce compatible safety standards for commercial vans in both interstate and intrastate commerce.

Identity of Entities Subject to the Regulations

TBA understands and appreciates FMCSA's dilemma in identifying which commercial van operations will be subject to the FMCSRs and which will not. However, TBA agrees with Greyhound Lines, Inc. that making that determination on the basis of "directly compensated" may not be the best test.

Again, based on prior experiences with camionetas, TBA believes that "directly compensated" presents a fertile field for their ingenuity to labor in. In the past, it was almost impossible to obtain proof that the camionetas transportation was "for hire" because of the various ways in which the payment for the transportation was handled.

TBA agrees with Greyhound that perhaps a better determining factor would be a primary business test such as either of the two suggested by Greyhound, "primarily engaged in providing surface transportation" or "hold themselves out to the public as providers of transportation services". TBA, like Greyhound, prefers "primarily engaged in providing surface transportation" but either of

the two suggested identifying definitions would avoid what TBA perceives to be not only a confusing test but also a loophole for the camionetas to slip through.

Safety Fitness Standards

Providing that commercial van operators will be covered by the same fitness procedures and standards used to evaluate other interstate motor carriers is the very heart of attempting to reduce the number of commercial van fatalities and crashes. Enforcement of the safety regulations is vital to program because a regulation without enforcement means nothing.

Conducting compliance reviews on and issuing safety ratings to commercial van operators should ferret out the worst of the operators for penalties and even injunctions while at the same time making others bring their operations into compliance. These enforcement tools are used for all interstate motor carriers and it is right that they be applicable to commercial van operators.

CONCLUSION

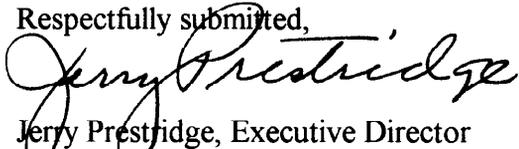
TBA believes the evidence available concerning commercial van crashes and fatalities demonstrates the urgent need to bring these commercial transportation services under broad and enforceable safety regulations. FMCSA is to be applauded for this rulemaking to do so. TBA does, however, respectfully request FMCSA to give favorable consideration to TBA's two suggested modifications to the final regulations.

Since it cannot be determined from the GES and FARS data whether the van crashes involved interstate or intrastate commerce and since 68% of the fatal van crashes occurred in states other than Texas, California and Florida and since there is no way to determine accurately whether those crashes involved interstate or intrastate commerce, in order to achieve the maximum effect of the needed safety regulations, FMCSA should require states participating in the MCSAP program to adopt

compatible standards for commercial van operations in intrastate commerce.

Rather than trying to determine whether the van operator was compensated directly or indirectly, FMCSA should adopt a primary business test which would simply determine either whether a person or company is “primarily engaged in providing surface transportation” for compensation in vehicles carrying between 9 and 15 people or whether the entities “hold themselves out to the public as providers of transportation services” for compensation in vehicles carrying between 9 and 15 people.

Respectfully submitted,

A handwritten signature in black ink that reads "Jerry Prestridge". The signature is written in a cursive style with a large initial "J".

Jerry Prestridge, Executive Director
Texas Bus Association, Inc.
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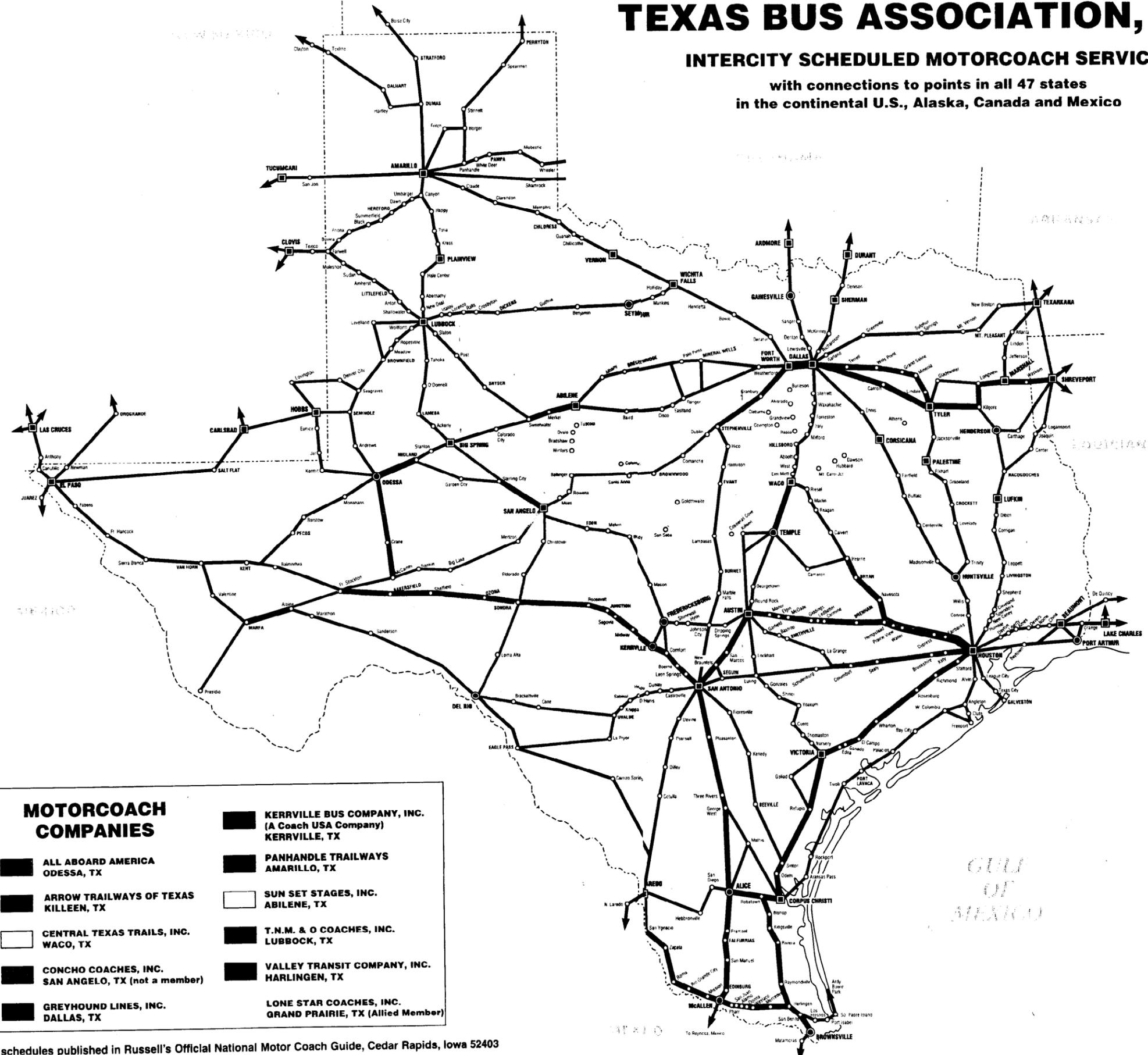
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* Based on schedules published in Russell's Official National Motor Coach Guide, Cedar Rapids, Iowa 52403