Colorado Department of Transportation Division of Transit and Rail

Statewide Intercity and Regional Bus Network Study

DRAFT TECHNICAL MEMORANDUM 1

POLICY CONTEXT UPDATE

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INTERCITY AND REGIONAL BUS POLICY CONTEXT UPDATE

This memorandum presents an update of the federal, state and carrier policy context affecting the ability of the Colorado Department of Transportation (CDOT) to maintain and improve both the intercity bus services in the state, and the regional services that are also a key focus of this study. The January 2008 Colorado Statewide Intercity and Regional Bus Network Study presented a great deal of background regarding the context and history of the policies in effect at that time (Chapter 1), and the reader may wish to review that documents as well, given that the focus of this memorandum is the change since that time. Much of the change that has taken place has been in Colorado transit programs and policies, with only limited changes in the federal policy context and in the carrier policies.

Colorado has implemented a number of the previous study's recommendations with regards to the use of Federal Transit Administration (FTA) Section 5311(f) funding for rural intercity bus service; and in addition there have been significant changes in the state's transit program and its ability to use state funding to support operation as well as capital needs, a change which has particular implications for regional service. So this discussion addresses both regional and intercity services, and the use of state funding and federal funding. An overview of the current major carrier/industry policies is also provided. CDOT implementation of the primary federal funding program for rural intercity bus service is also discussed.

FEDERAL POLICIES

Colorado's policies regarding intercity bus transportation exist within the context of the federal policy structures that have evolved over the past several decades. On the regulatory side, 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. These have not changed since the previous study.

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.

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, and this definition is continued in the MAP-21 bill. The language excludes intercity bus transportation from the definition of public transportation that is supported with federal funding. In SAFETEA-LU there were three exceptions—the S.5311(f) rural intercity bus assistance program, intermodal facilities, and the S.3038 Over-the-Road Bus Accessibility Program. Under MAP-21 the Section 3038 program has been eliminated, so there are now only the two exceptions for which federal funding can be used for intercity bus services. 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 two types of intercity assistance that are allowed include the following programs.

Federal Transit Administration Funding for Intercity Services—Section 5311(f)

As described in the previous study, there is a federal program of assistance specifically designed to provide assistance to the states to develop or maintain rural intercity bus services, including those services connecting rural areas with urban services and the national intercity bus network. This program has existed in the same general form since 1992, when it was created as part of the 1992 ISTEA transportation authorizing legislation. 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. The 2005 federal transportation authorization bill, SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users) included language that has resulted in more substantial changes, and the most recent reauthorization bill, Moving Ahead for Progress in the 21st Century (MAP-21), enacted in July, 2012 included some additional changes in this program.

Federal S.5311(f)—General Program Characteristics

Federal S.5311(f) funds are the only federal funding source for intercity bus operations and are used in a majority of states to support rural intercity bus services. S.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.

Consultation Requirement of SAFETEA-LU Continued Under MAP-21

The major program change under SAFETEA-LU was that states planning to certify (partially or completely) are required to undergo a consultation process prior to certifying, and state transit programs are being evaluated on this activity as part of their FTA State Management Review evaluations. The consultation process requires the 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. MAP-21 continues this requirement. The Colorado Statewide Intercity and Regional Bus Network Study of 2008 included the consultation process, and the current study is intended as the update to the consultation process, to keep Colorado in compliance with this requirement.

Requirement for A Meaningful Connection to the National Network of Intercity Bus Services—Continued Under MAP-21

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 specifically excluded. The S.5311(f) program is implemented by each state as part of its overall S.5311 program management activities. FTA guidance 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. The requirement that services funded under this program make a meaningful connection with the national network of intercity services has the effect of narrowing the definition of eligible intercity service under S.5311(f).

Statutes Now Specifically Allow the Use of the Value of Unsubsidized Connecting Service as In-Kind Operating Match

Obtaining local cash operating match has been a major program issue, particularly in states that provide no state operating assistance such as Colorado. In 2006 FTA 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. Subsequently this program was continued administratively through the end of SAFETEA-LU, but in the MAP-21 legislation it has now been given statutory language in the authorization so that it will be a part of the on-going program. In addition, the language restricting the amount of the allowable match to 50 percent of the fully-allocated cost was not included in the bill, implying that up to 100 percent of the value may be used—however FTA has not issued guidance on this change as of yet. With the increase in the allowable value of service as in-kind match, it will be easier to find enough match for services funded under this program. If the value of the in-kind match is sufficient, the impact of this pilot program is that it is possible to operate S.5311(f) connecting service without local cash match.

Following recommendations in the previous study, this approach has been used extensively in Colorado to fund most of the rural intercity services that have been implemented, using the value of in-kind miles provided by Greyhound Lines as the local operating match. This funding approach is discussed in more detail in the 2008 Colorado Statewide Intercity and Regional Bus Network Study.

S.3038 Over-the-Road Bus Accessibility Program Grants Eliminated by MAP-21

This program was authorized as part of TEA-21, continued under SAFETEA-LU, and eliminated under MAP-21. It made 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] As the regulations addressing private operators of Over the Road Buses (OTRBs) required large fixed-route carriers (such as Greyhound and Megabus) to be fully accessible by October 2012, this program was not continued.

Federal Motor Carrier Safety Administration (FMCSA)

The other major federal policy framework affecting intercity bus service is the regulatory framework of the FMCSA. FMCSA is an agency of the U.S. DOT, a 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 CDOT 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 CDOT 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. The major changes in FMCSA oversight in recent years have included a stepped-up focus on intercity bus passenger carrier safety enforcement, particularly focusing on carriers that have identified safety issues. Changes have been made to make it more difficult for a carrier that is shut down for safety violations to reopen the next day under a different name.

CARRIER POLICIES

In order to use the in-kind match provisions of the S.5311(f) program, the firm providing the in-kind miles to be valued is also considered part of the project, and it must provide written documentation of its participation in the project, the services to be considered as connecting

[1] 49 CFR Part 37, published in the Federal Register on September 28, 1998 (63 FR 51670).

services, and the cost of those services (to quantify the value). This means that for these intercity programs, carrier policies are also a factor.

Greyhound Lines

Greyhound Lines (including its wholly-owned subsidiaries such as Americanos USA) 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, now owned by FirstGroup PLC of the United Kingdom. Greyhound is the largest private carrier in Colorado, and its policies regarding coordination with other services must be recognized in the development of intercity bus programs.

Although Greyhound has discontinued most of its rural services to focus on limited-stop services between larger urban areas, it is still interested in continuing to receive traffic from the rural areas it was forced to withdraw from, 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.

After shedding almost all of its S. 5311(f) funded services in the 2004-2005 period, Greyhound Lines itself now will seek to obtain S. 5311(f) funding for its own operations, including operations, vehicle and technology capital, and capital for intermodal facilities. This represents a change from the policies expressed by the firm in 2007-8.

However, the firm is still quite supportive of rural connecting service that is operated by other providers, public and private, and it will provide the value of in-kind miles to these other operators provide the firms and the services meet Greyhound criteria. 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 has developed a manual outlining this overall coordination approach, which is available on the internet. The firm 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—Continuation of Previous Policies

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 are other Colorado providers Burlington Trailways, Prestige Bus Lines and Black Hills Stage Lines.

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. 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. These policies continue to be in effect.

"Curbside" Operators

A major development in the intercity bus industry over the past several years has been the growth of intercity bus services provided by firms that offer a different type of service. Often called "curbside operators" because they typically do not use bus stations, agents or terminals (but pickup and drop off passengers at the curb), these firms typically sell tickets over the internet, operate express services with limited stops, offer low fares (sometimes selling a few seats on each departure at very low prices), and they often offer amenities such as on-board wi-fi. Often they cater to a specialized market, perhaps with an ethnic base. In general they do not interline or participate in NBTA but operate very independently. Although the concept was initially developed by bus firms connecting the Chinatown areas of major eastern cities, it is now part of the overall industry and is credited with creating an expanded market for intercity bus travel. Greyhound initially sought to compete with these carriers in the northeast by developing a separate brand, Boltbus, which has now expanded to the Pacific northwest. Using this service model, Megabus has become a major competitor in regions across the country. Megabus is a brand used by Coach USA, which is owned by Stagecoach(UK). Greyhound has competed with Megabus in many regions by offering its own Greyhound Express services, which emulate the amenities, pricing, and limited-stop nature of these services.

Publicity about these new services and the fact that many more middle-class riders have used them have led some to see these services as eliminating the need to fund the more traditional type of rural intercity service. However, these services generally do not service small rural points, but instead link major cities, often serving smaller locations only if they have a major university population. The growth of these services may have had negative impacts on traditional ("legacy") services with stops in smaller towns, as firms such as Greyhound have had to eliminate such stops in order to compete with the curbside operators on schedule. Also, the fact that they do not interline with the rest of intercity bus network means that development of connecting services (or use of in-kind match) has been difficult, even aside from the fact that they do not typically use existing bus or intermodal stations (unless required to by law).

In Colorado the "curbside" service operators have focused on providing low-cost express services from major cities to Mexico, south Texas, or Los Angeles. Carriers such as El Paso-Los Angeles Limousine and Paisanos have focused on this particular segment of the market. There are currently no Megabus routes, although the development of Megabus networks in Texas and California offers the potential for Megabus to serve Colorado while linking those networks with its previous Midwest network. Megabus has recently announced that it is willing to provide the value of in-kind miles to connecting carriers, though not to participate in interline ticketing arrangements with them. Megabus has also begun to seek access to public intermodal facilities. Although this new kind of service has had a limited impact on Colorado to date, the possibility exists that such service could develop in the state, with likely policy impacts in the sense that:

- Greyhound might need to compete by eliminating even more stops;
- Applicants for S. 5311(f) might seek to use in-kind miles from these carriers (posing issues if they do not interline or belong to NBTA—are they part of the national intercity bus network?); or,
- Seeking to use public terminals or park and ride lots.

CHANGES IN STATE POLICY AFFECTING INTERCITY AND REGIONAL SERVICES

The 2008 study focused on the policies of the Colorado Department of Transportation (CDOT) with regards to the use of S. 5311(f) because that appeared to be the only funding source available to fund operation of intercity or regional services, other than Congestion Mitigation and Air Quality (CMAQ) funding. At that time available state funding could only be used for capital projects, and the defined mission of the state's transit program was more limited. Although that study identified a significant number of regional service needs, there was no available program or funding designed to address such needs. Since then restructuring of the state's transit program and a redefinition of its role have combined with availability of state funding to provide a changed environment regarding the state role.

Creation of the Division or Transit and Rail

In 2009 the state legislature enacted Senate Bill 09-094, creating a new Division of Transit and Rail (DTR) within CDOT. It was granted the following powers and duties:

- Developing a statewide transit and passenger rail plan to be incorporated into the statewide transportation plan;
- Promoting, planning, designing, building, financing, operating, and contracting for transit services, including passenger rail, bus and advanced guideway systems;
- Establishing and modifying fares and schedules for state-provided transit services;
- Administering state and federal funds appropriated for interregional transit services, advanced guideway services, passenger rail services, and transit-related projects;
- Coordinating with railroads regarding tracks, facilities, and transit services;
- Representing the state on intercity rail facility development; and
- Coordinating with regional transportation authorities (RTAs) and other organizations or entities pertaining to transit, passenger rail, or advanced guideway systems.

This language was a significant change in that it included broad authority to operate or contract for services, and specifically interregional services. The bill also established an interim transit and rail advisory committee to be appointed by the CDOT Executive Director in consultation with the state Transportation Advisory Committee (TAC). Subsequently a long-term Transit and Rail Advisory Committee (TRAC) was formed in January 2011, with 18 members, to advise DTR.

DTR's primary functions include:

- Administration of federal grant programs;
- Administration of the state grant programs (FASTER);
- Transit and rail planning;
- Agency and stakeholder coordination;
- Compliance with federal requirements; and
- Performance measurement and asset management.

DTR has completed the Colorado State Freight and Passenger Rail Plan, making CDOT eligible for Federal Railroad Administration funding, and a Statewide Transit Plan is now underway as part of the statewide transportation planning process.

State Grant Programs for Transit (FASTER)

The other significant change in policy since the previous study is the creation of a state transit grant program. This program name, FASTER, stands for Funding Advancement for Surface Transportation & Economic Recovery, included state funds for a wide variety of transportation projects from an increase in the state's vehicle registration fees. The legislation provides for $15 million per year for state transit projects. Five million of that is dedicated to local transit grants, and $10 million is dedicated to statewide and regional multi-modal transit projects. The local pool is allocated by formula to the six Engineering Regions for selection and award, while DTR (with assistance from DTD and the Office of Policy and Government Relations) selects the projects for award from the $10 million statewide pool

The greater authority and mission of DTR, combined with the ability to use state funds for statewide projects, provides a much different state policy context than existed five years ago. DTR has used this authority and funding to propose the creation of a state operated (or more likely contracted) network of bus services in the I-70, I-25 south and I-25 north corridors, linking areas outside the Denver Regional Transit District (RTD) service area with the Denver core. DTR has even obtained an opinion from the Attorney General's Office agreeing that DTR has the authority to implement a plan of this type using the state FASTER transit funds. DTR is working through the TRAC on the planning and implementation of these regional services.

Administration of Federal Grant Funds for Intercity Services

DTR's Transit Grants Program also uses federal funding for capital and operating assistance to support local, regional, and intercity public transportation services. It oversees the FTA Sections 5311, 5311(f), and 5307 programs (for small urbanized areas), providing funding under a competitive program of public transportation grants, in which all applicants submit grant applications every two years, and a competitive review process conducted by a designated committee selects the projects.

Following the recommendations of the previous study, DTR does not certify that there are no unmet rural intercity needs, and it has used the S.5311(f) funds to develop and maintain a network of rural intercity services. For FY 2013 the selected projects use 12.13% of the overall Section 5311 allocation, so DTR may need to do a partial certification if it intends to use the remaining 2.87 percent for non-intercity projects—though it may elect to roll those funds forward within the program. By using the in-kind match program offered by FTA, DTR has funded these services without having to use state funds for match, and with only limited local share requirements (primarily on capital grants). The rural intercity program has issued grant solicitations for specific corridors based on the previous plan, and in response to changes in the network provided by the private intercity carriers. An interagency review committee scores the applications.

In addition to the extensive use of the in-kind match program, one way in which the CDOT intercity program has been a national model is through coordination with neighboring states to provide rural intercity services. Initially Colorado and Utah partnered to reinstate the bus service on the U.S. 40 corridor between Denver and Salt Lake City, with Utah providing vehicle capital and Colorado operating funding. Subsequently, CDOT worked with the Kansas Department of Transportation to implement daily service between Pueblo and Wichita (KS) using S. 5311(f) funding.

While there are a number of very specific program elements that are part of or implied by this program, the major policy change in comparison with the previous study is that there is now an ongoing program fully utilizing the available federal funding for rural intercity bus to provide a statewide network of low-frequency "life-line" services that provide connectivity to the major population centers and the national network of intercity bus services. To this point it has not used state funding for match, and has been basically constrained to the level of funding provided by 15% of the state's S.5311 allocation—which has been adequate to provide extensive coverage but very limited service frequency.

SUMMARY OF CHANGES IN THE POLICY CONTEXT

The major changes in the policy context for regional and intercity services in the state have occurred in the state program. The creation of a new state Division of Transit and Rail with significantly broader powers, combined with availability of state funding that can be used for regional or interregional services, creates a different environment for consideration of transit needs for regional or intercity connections. Although limited, the state funding can be used to operate or contract for services, and the state has the authority to set fares and schedules for such services. This makes CDOT a transit operator, a role that it has not had in the past.

Changes in federal policy regarding intercity bus have been more limited. MAP-21 included statutory authority for the in-kind match program that has been used successfully by Colorado to build a network of rural intercity services without having to use local or state funds for operating match. So CDOT can be secure that administrative directives at FTA will not eliminate the ability to continue the program using the same tools. The MAP-21 language also removed the language limiting the value of in-kind match to 50% of the fully-allocated cost of the unsubsidized service, so the program is unlikely to be constrained by not having enough unsubsidized connecting service. The end of the S. 3038 accessibility program has little direct impact on the state, because it provided funding directly from FTA to the private carriers, and only for accessibility equipment and training.

The policies of the carriers have also not changed significantly, though there is increased competitive pressure on the traditional "legacy" intercity bus carriers such as Greyhound from firms that offer "curbside" services. This could have an impact in the future if the state is called upon to provide more funding to serve smaller points that have been eliminated, or if Greyhound is forced to reduce its services providing fewer in-kind miles for match. The curbside operators do have different operating policies, generally not interlining or connecting with other carriers, and not participating in the programs such as S.5311(f) or providing in-kind match (though Megabus has made positive statements about doing so).