

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution TL-18866  
Rail Safety and Carriers Division  
October 8, 1998  
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**RESOLUTION**

**RESOLUTION DIRECTING THAT APPLICATION FILING FEES AND  
REGULATORY FEES PAID BY CERTAIN CHARTER-PARTY CARRIERS BE  
USED ONLY TO FUND ACTIVITIES PERMITTED UNDER FEDERAL LAW**

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Federal legislation which became effective June 9, 1998, preempted state regulation relating to the authority to provide charter bus transportation. The preemption is set forth in Section 4016 of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). This section includes a provision that the preemption shall not restrict the safety regulatory authority of a state with respect to motor vehicles or the authority to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization. Therefore, the Commission at least can continue to license carriers for safety and insurance purposes and can collect fees to fund these programs as well as other non-preempted programs.

Public Utilities (PU) Code Section 421 et seq. requires charter-party carriers and other transportation companies regulated by the Commission to pay a fee to the Commission to fund its regulatory activities. Fees collected are deposited in the Public Utilities Commission Transportation Reimbursement Account (PUCTRA). The fee level is determined annually by the Commission. Charter-party carriers currently pay a PUCTRA fee of 1/2 of 1% of gross revenue plus a minimum quarterly fee of \$10 or annual fee of \$25. Permit and certificate application fees paid by charter-party carriers pursuant to PU Code Section 5373.1 are deposited into this same account.

Review of the Commission's program of regulating charter-party carriers discloses that the majority of the time spent by the Commission and its staff is clearly dedicated to matters permissible under Section 4016. Additionally, as discussed later, not all operators regulated by the Commission as charter-party carriers are impacted by the preemption. Therefore, there is no need at this time to change the level of PUCTRA fees paid by charter-party carriers in response to the federal legislation. It is appropriate, though, for the Commission to ensure that the fees paid by charter-party carriers for operations which are affected by the new federal preemption ("preempted charter bus

transportation") be used only to fund passenger carrier activities permissible under federal law. More specifically, these funds should be dedicated to the following purposes:

- (1) Regulation of safety;
- (2) Administration of insurance regulations;
- (3) Commission activities to ensure compliance with items (1) and (2) above;
- (4) Any other regulatory programs permitted by Section 4016 for preempted charter bus transportation.

To accomplish this it will be necessary for the Commission to know what portion of the fees it collects from charter-party carriers is connected with preempted charter bus transportation. Therefore, with regard to application filing fees, we will need to determine whether all or part of the transportation that an applicant for charter-party carrier operating authority intends to perform falls under the Section 4016 preemption. In the case of the regulatory fees that charter-party carriers pay quarterly or annually, we will need to include on future PUCTRA reports a line where carriers can show the portion of their gross revenue that was derived from preempted charter bus transportation.

For carriers to accurately report this amount on their PUCTRA reports and for the Commission's staff to know how to allocate application filing fees, they will need to know more precisely what constitutes "charter bus transportation." Title 49 of the Code of Federal Regulations (49CFR), Section 390.5, relating to motor carrier safety regulations, defines charter transportation of passengers as:

"transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin."

While this definition is made for a different purpose, we are not aware of any conflicting federal definition of charter transportation.

Section 390.5, again relating to motor carrier safety regulations, also defines "bus" as:

"any motor vehicle designed, constructed, and or used for the transportation of passengers, including taxicabs."

However, the Congressional conference committee report on Section 4016 noted that the preemption provision relating to charter bus transportation "does not limit a State's ability to regulate taxicab service or limousine livery service." (In California, taxicabs are regulated locally by cities and counties.) It appears the intent of Congress was not to preempt state regulatory authority over vehicles the size of taxicabs and limousines. Thus, the definition in 49CFR, Section 390.5, is not useful in ascertaining the meaning of bus in Section 4016, nor are we aware of any other federal definition of bus that would be helpful in this regard. However, California law uses seating capacity as a criteria in determining the point at which a passenger carrying vehicle should be defined as a bus. In connection with vehicles used to transport persons for compensation, California Vehicle Code (CVC) Section 233 defines bus as:

"a vehicle designed, used, or maintained for carrying more than 10 persons, including the driver"

Use of this definition would appear to be consistent with the intent of Congress in its enactment of Section 4016 to not include smaller vehicles in the preemption.

The Commission will be further examining the preemption issue as it relates to its existing regulatory program. In the meantime, though, the staff will ask carriers as part of the PUCTRA report process to indicate how much of their reported gross revenue was derived from preempted charter bus transportation. The instructions to the report should include an explanation that the definitions to be used in determining whether transportation falls within this classification are (1) the definition of "charter transportation" contained in 49CFR, Section 390.5 and (2) the definition of "bus" applicable to transportation for compensation contained in CVC Section 233.

The staff will use these same definitions to determine whether all or part of an application filing fee should be included with those monies that will be used only to fund activities permissible under Section 4016. The current application for charter-party authority requires applicants to provide information that will be useful in this regard. One such item is a list of equipment to be operated, which includes vehicle seating capacity. From this the staff can determine whether each vehicle to be used is defined as a bus under the CVC. The applicant is also required to provide a brief description of the services it intends to provide, which can be used by the staff to determine whether the applicant will be performing charter transportation as defined by 49CFR, Section 390.5.

There may be cases where an applicant intends to use vehicles of various sizes, some of which fall under the Section 4016 preemption and some of which do not. When the staff encounters an application where the nature of the proposed services falls under the federal definition of charter transportation, but only some of the vehicles on the equipment list are buses under California law, the staff should allocate the filing fee to the preempted

charter bus transportation category proportionally based on the number of vehicles meeting the definition of a bus versus the total number of vehicles listed. There may also be cases where the applicant intends to conduct different types of services, some of which meet the federal definition of charter transportation and others which do not. For example, an applicant for a Class A charter-party carrier certificate (defined in PU Code Section 5383) may propose to conduct both (1) charter services of the type that fall under the federal definition of charter transportation and (2) round-trip sightseeing tour service on an individual-fare basis, which would not be covered by the federal definition because there is not a single contract for exclusive use of the vehicle. The staff should ask the applicant to provide a percentage estimate of preempted versus non-preempted transportation services under Section 4016 and then allocate the filing fee between the two categories based on that percentage.

#### FINDINGS

1. Section 4016 of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) generally preempted state regulation relating to the authority to provide charter bus transportation effective June 9, 1998.
2. Section 4016 of TEA-21 provides that this preemption of charter bus transportation shall not restrict the safety regulatory authority of a state with respect to motor vehicles or the authority to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.
3. The Congressional conference committee report on Section 4016 noted that the charter bus transportation preemption does not limit a state's ability to regulate taxicab or limousine livery service.
4. The Commission clearly can continue to regulate carriers performing charter bus transportation preempted by Section 4016 in regards to safety and insurance.
5. Carriers performing preempted charter bus transportation within California are still required to obtain charter-party authority from the Commission and to pay the applicable application filing fee for such authority.
6. Carriers must still pay PUCTRA regulatory fees on revenue derived from preempted charter bus transportation.
7. There is no need at this time to change the level of fees paid to the Commission by charter-party carriers in response to Section 4016.

8. Application filing fees paid by those applicants for charter-party operating authority intending to perform preempted charter bus transportation, and regulatory fees paid by carriers on gross revenue earned from such transportation, all of which are deposited in the Public Utilities Commission Transportation Reimbursement Account, should be used only to fund activities permissible under Section 4016.
9. To ensure that application filing fees for charter-party operating authorities are used only to fund activities permissible under federal law, it is necessary for the Commission's staff, using information furnished by the applicant, to determine if all or part of the proposed transportation services are subject to Section 4016's preemptive provisions.
10. To ensure that the regulatory fees which charter-party carriers pay are used only to fund activities permissible under federal law, it is necessary for the staff to request that carriers report on their quarterly and annual PUCTRA reports the amount of gross revenue generated by transportation services that are subject to Section 4016's preemptive provisions.
11. To distinguish preempted charter bus transportation from other charter-party transportation it is appropriate to use the definitions of "charter transportation" contained in 49CFR, Section 390.5, and "bus" contained in CVC Section 233.

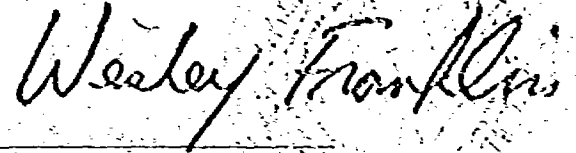
**THEREFORE, IT IS ORDERED that:**

1. All monies paid into the Public Utilities Commission Transportation Reimbursement Account by charter-party carriers in connection with charter bus transportation subject to the preemptive provisions of Section 4016 of TEA-21 shall be used by the Commission solely for the purposes of (1) regulation of safety; (2) administration of insurance regulations; (3) Commission activities to ensure compliance with Items (1) and (2); and (4) any other regulatory programs permitted by Section 4016 for preempted charter bus transportation.
2. For purposes of determining which monies deposited into PUCTRA were paid by carriers in connection with preempted charter bus transportation under Section 4016, the definitions of "charter transportation" from 49CFR, Section 390.5, and "bus" from CVC Section 233 shall apply.
3. The staff shall implement any reporting and recording measures necessary to determine the portion of application filing fees and regulatory fees that are connected with preempted charter bus transportation, including providing a place on quarterly and annual PUCTRA reports where carriers can report gross revenue generated by preempted transportation.

4. The Executive Director shall cause a copy of this resolution to be mailed to each charter-party carrier holding a permit or certificate issued by the Commission.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted by the Commission at its regularly scheduled meeting on October 8, 1998, the following Commissioners voting favorably thereon:



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Wesley M. Franklin  
Executive Director

RICHARD A. BILAS  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners