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TO: All Interested Persons and Motor Carriers of Passengers

The Montana Public Service Commission (PSC) reports that part of a recent federal enactment, the Transportation Equity Act for the 21st Century, has pre-empted state regulation pertaining to the granting of authorities to provide interstate or intrastate "charter bus transportation." Combined with previous federal pre-emptions related to charter transportation the recent pre-emption renders state economic regulation of charter bus transportation a thing of the past.

Unlike a previous federal pre-emption pertaining to state regulation of rates in "charter transportation," which affected charter services in general, including limousine service, the recent pre-emption is limited to "charter bus transportation." A conference report accompanying the Act makes it clear that the pre-emption is not intended to limit the ability of a state to continue to regulate taxicab service and limousine service.

Interpreting and applying the details of the recent pre-emption may require further analysis. It is possible that future analysis will necessarily be on a case-by-case basis. However, in an effort to produce at least a preliminary opinion on the effect of the recent pre-emption, combining the commonly accepted meaning of "charter," in

the context of "charter bus transportation," with the Act's stated intent that pre-emption not extend to state regulation of taxicab services and limousine services, it is the PSC's opinion that the pre-emption of state regulation of "charter bus transportation" applies to transportation which has all of the following elements:

- (a) the transportation is of a group of passengers;**
- (b) the group of passengers has a common purpose;**
- (c) the transportation is based on a single contract;**
- (d) the contract is entered a reasonable time in advance of the transportation and does not result from a spontaneous, "curbside" agreement;**
- (e) the contract includes a single fixed charge, passenger fares not being assessed individually;**
- (f) through the contract the group of passengers acquires exclusive use of the motor vehicle;**
- (g) the transporting motor vehicle is not a limousine;**
- (h) the group of passengers travels together to a specified destination.**

The PSC intends to apply the above opinion as a starting point in responding to inquiries concerning the recent federal pre-emption. The PSC also intends to apply the above opinion as a starting point in any pre-emption related investigation and enforcement pertaining to state motor carrier laws. At this time the PSC does not intend to commence rulemaking or other formal or informal proceedings or inquiries pertaining to the recent pre-emption. However, the PSC is willing to consider comments and requests from any interested persons regarding the need for such further proceedings at this time.