

Regulations and Paratransit

Workshop 3 Resource Paper
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This paper discusses regulations that affect paratransit applications. The focus is on the institutional changes necessary to foster the development of paratransit, and a specific approach for accomplishing those changes is outlined.

REVIEW OF PROFILE OF REGULATORY FRAMEWORK

This review of the profile of the regulatory framework includes consideration of (a) rationale and justification for regulation, (b) determination of who is to be regulated, and (c) profile chart of the regulatory framework including regulators and their characteristics and areas subject to regulation.

Rationale and Justification for Regulation

Legislators at various levels of government have mandated that the use of public highways to transport passengers for pay is a public interest business. The result of that position has been the establishment and promulgation of a myriad of laws and ordinances concerning the use of roads and highways.

One can sense the intent and attitude of the legislators in the following language of the regulations of the Public Utility Commission of California (1): "It is the purpose of this [provision] to preserve for the public full benefit and use of public highways... to secure to the people safe, adequate and dependable transportation by carriers upon such highways, and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for regulation of all transportation agencies with respect to safety of operations and accident indemnity so that safe, adequate, and dependable service by all necessary transportation agencies shall be maintained in the full use of the highways preserved to the public."

Determination of Who Is to Be Regulated

When a state or local regulatory unit assumes jurisdiction over a transportation provider, it generally does so "over services where a motor vehicle and driver are used on a for-hire basis in the transportation of persons and baggage over either a fixed or variable route" (2). The determination of jurisdiction over the provider is generally

Table 1. Profile chart of regulatory framework.

Regulatory Body	Areas Subject to Regulation								
	Rates and Fares	Insurance	Equipment	Drivers	Route	Licensing and Taxes	Fees	Accounting	Entry Control
Federal									
Interstate Commerce Commission	x	x			x			x	x
Federal safety standards			x						
Airport commission	x	x	x	x	x		x	x	x
State									
Public utility commission or state corporation commission	x	x	x		x	x	x	x	x
Department of motor vehicles		x	x	x					
Airport commission	x	x	x	x	x		x	x	x
Secretary of state	x	x	x	x	x	x	x	x	x
Department of transportation	x	x	x	x	x	x	x	x	x
County									
Department of motor vehicles		x	x	x		x			
Public utility commission	x	x	x	x	x	x	x	x	
Airport commission	x	x	x	x	x		x	x	x
Department of transportation	x	x	x	x	x	x	x	x	x
City									
Department of motor vehicles		x	x	x		x	x		
Police department			x	x		x			
Taxi commission		x	x	x		x	x		x
Airport commission		x	x		x		x		
Department of transportation	x	x	x	x	x	x	x		
Joint metropolitan commission									
Port authority	x	x	x		x		x	x	x
Area transit commission	x	x	x		x		x		x
Airport commission	x	x	x		x		x		

Note: x indicates the area that is subject to regulation by the regulatory body.

legislated and, although the general areas subject to regulation are normally set forth in such legislation, such provisions are often vague and ambiguous. Consequently, any entity conducting a business that fits the above description is generally construed to be regulated. Normally, the criteria used to distinguish who should be subject to the respective regulations are based on a determination of passenger capacity, route designation, and service territory.

Profile Chart and Regulatory Framework

A profile chart reflecting the various types of regulators and the areas they may regulate is given in Table 1. Nine general areas are subject to regulation by any or all of 5 levels of government, which may operate through as many as 20 agencies or departments.

The Regulator

The job of the regulator is to promulgate and enforce the regulations that have been legislated. Practically everybody concerned with roads and highways has provided some input into the myriad of laws and ordinances either formally through the development of the legislation or informally through practice. In most instances, the various regulatory bodies are separate and distinct entities and operate with a high degree of autonomy in the territory that they govern. In fact, most of the regulations that they promulgate and enforce were legislated without due consideration and knowledge of the jurisdiction and regulatory powers of other regulatory bodies.

The consequences of these conditions are reflected in the following characteristics that are common to regulatory agencies:

1. Lack of uniformity in areas related to definition, jurisdiction, vehicle standards, reporting requirements, and enforcement;
2. Legislation that often contains ambiguous language;
3. Highly individual and subjective interpretation and application of regulatory requirements; and
4. Willingness to acknowledge the shortcomings of the system and the general interest to do the best job possible with what they have been given.

In those instances where legislators have attempted to respect the jurisdictions of regulatory bodies, the distinctions set forth in such legislation are generally based on passenger capacity, route designation, or service territory.

Areas Subject to Regulation

The principal areas subject to regulation and the matters on which regulatory bodies normally focus include the following.

1. Rates and fares. The regulatory body must protect the public interest and is, therefore, interested in monitoring the (a) amount charged to the public, (b) quality of service, and (c) reasonableness of compensation. The control over the rates and fares is exercised by requiring either the filing of rates and fares for information purposes or the filing of rates and fares by way of application for approval of changes. Normally, the basis of approval or rejection of rates is related to the maintenance of a predetermined rate of return. In most instances, the fares of the carriers who operate on fixed routes are more closely scrutinized. That condition also prevails where the rate is determined on a passenger basis rather than on a charter group basis.

2. Insurance. Normally, the regulatory body stipulates a minimum level of insurance coverage in the areas of liability, collision, and property damage and requires some evidence of such coverage. For instance, the California Public Utility Commission sets forth rules requiring that certain carriers of passengers provide adequate protection against liability imposed by law on such carriers for the payment of damages for personal injuries, including death resulting therefrom, and damage to or destruction of the property. In most instances, private operators will arrange insurance coverage greater than that required by regulatory bodies.

3. Equipment. A basis commonly used by regulatory bodies to distinguish various services and to determine jurisdictional control is the passenger capacity of the vehicle. Often, the passenger capacity is a criterion for classification and as such can trigger a further degree of control related to vehicle specification, safety standards, and color. Vehicle specifications and safety standards may include requirements related to factors such as the number of doors on the vehicle, warning lights, and adherence to federal safety standards.

4. Drivers. The most common element of regulation over drivers is related to driver licensing. In some instances, a driver must pass both a written test and a road test if a specific designation such as chauffeur is required on the license. In most instances, the operator will independently require a physical examination and some record of former employment and driving experience (i.e., accident experience and traffic violations).

5. Routes. Control over routes is generally restricted to the common carriers operating on fixed routes pursuant to a certificate of public convenience and necessity. In that instance, the exercise of control may include a review of the proposed method of operation, proper inspection of the vehicle, a detailed description of the route, and fares related to the movement of persons along that route. In the area of variable routes, control is normally limited to the description of boundaries within which persons can be picked up and discharged at any point.

6. Licensing and taxes. Normally, the public transportation carrier or operator or both must be properly licensed and registered as such with the regulatory body and further must make visible such licensing and registration through a tag, permit, or

markings on the vehicle.

7. Fees. It is not uncommon for a public utility commission or regulatory body to impose a fee or tax on public vehicles operating over defined regular routes. In most instances, those public vehicles operating on variable routes are not subject to a joint metropolitan area authority or airport commission.

8. Accounting. A regulatory body that exercises a high level of control will often require that operating and financial statements be filed in a form and format it prescribes. In addition, it retains the right to audit the records of the operating entity. The extent to which there is an accounting requirement is generally proportional to the extent of control of the other areas that are subject to regulation.

9. Entry control. Entry control generally relates to the number of vehicles, financial responsibility and fitness of proposed operator, and monopoly atmosphere with respect to service territory. In most instances, the degree of control exercised is greater with airport commissions and the regulatory bodies of public transportation operators traveling over defined, fixed routes. There is no common degree of enforcement of such control, and the control over factors such as the number of vehicles is normally exercised at the city and county levels.

REVIEW OF PROBLEM AREAS

Various private carriers have learned to operate under the respective governing bodies in accordance with the promulgated regulations. The discussion here is based on a review of the regulatory framework in relation to paratransit modes and the provision or lack of provision of adequate treatment under the existing regulatory framework for such modes. In that connection, the problems are of a practical rather than of a structural nature. They include

1. Lack of uniform definition with respect to classes of ground transportation,
2. Lack of uniformly acceptable nomenclature,
3. Lack of definition of boundaries in matters of jurisdiction,
4. Lack of commonly defined areas subject to regulation,
5. Lack of uniformly acceptable degrees of regulatory control,
6. Lack of common purpose and constituency of the regulatory bodies and the legislative entities responsible for establishing laws and ordinances, and
7. Lack of proper definition of the public interest.

The extent to which these problem areas represent either barriers to the development of paratransit or new problems created by the emergence of paratransit modes is subject to arbitrary judgments and will undoubtedly be influenced by whether one is a regulator or a provider of paratransit services.

Items 1 and 2 deserve consideration as a result of the emergence of the new modes of paratransit. For instance, rental cars and car pools have never been construed to represent a form of mass transportation. As a matter of fact, both of those modes of transportation are not far removed from private transportation, which is not defined as a business affected with a public interest beyond the matter of appropriate licensing and taxes. Further, terms such as taxicabs, hack, jitney, limousine, van bus, bus, omnibus, and charter bus are commonly defined more in terms of the type of service they provide to the end user than in terms of the language of regulations. One may properly inquire as to the distinction between a taxicab service that is provided via radio and a dial-a-ride service that uses a station wagon equipped with a radio. One might also question the difference between the dial-a-ride vehicle that has a passenger capacity of 8 or more persons and a limousine that has a similar passenger capacity and operates on a demand-responsive basis via radio.

Modifying existing regulations will require a fundamental understanding of the nature of problem areas in items 6 and 7. Because of the different levels of government involved with the respective regulatory bodies, any effort to make changes that affect any one of them becomes a political issue by nature. Further, any modification or

change that could be construed to be substantial in nature would certainly require a review of the definition of what efforts are truly in the public interest.

Items 3, 4, and 5 were considered problem areas by various practitioners long before the emergence of paratransit. The degree to which items 3, 4, and 5 may be considered to represent barriers or obstacles to the development of paratransit will vary substantially depending on one's perspective. For instance, a taxicab operator may view an acceptable degree of control quite differently from a dial-a-ride operator or a limousine operator. Also, one taxicab operator may have a different view from another depending on the regulatory body and the areas of regulation under which they operate. Most common problem areas fall under the categories of areas of regulation, matters of jurisdiction, and the degree of regulatory control.

The following observations are made in regard to item 3. In the area of rates and fares, some problems arise as a result of a state body adhering to traditional approaches to rate determination without considering local factors. For example, a state public utility commission sets the fares on all types of transportation including taxicabs, limousines, and buses. The persons who determine the appropriate rate and fare structure are located in the state capital and generally make judgments based on a formula related to the collected input of all the cities and counties. The formula is based on maintaining a rate structure balance among the different classes of services throughout the state. Consequently, a fare increase request prompted because of conditions related to climate, road care, service territory, or peculiar equipment requirements tailored to an end user is not given adequate consideration. The state has an interest in maintaining control over its regulatory function for it imposes a levy on the providers of transportation based on a percentage of their income. Although a local authority may be more knowledgeable with respect to local conditions and therefore better able to administer an equitable rate review, the state is not inclined to relinquish such authority because of the loss of the revenue source. As a practical matter, experienced carriers are aware of this situation and circumvent the problem of distance and firsthand knowledge through measures such as persistent cultivation and programming of the decision makers.

In regard to item 4 and problems related to the lack of uniformity in areas subject to regulation, an excellent example can be found in the matter of "standards" and "acceptable modification of standards" used in setting forth vehicle safety and other specifications. Often, low passenger capacity vehicles such as limousines and vans are required to meet standards developed for substantially higher passenger capacity vehicles such as buses. The principal reason for such requirements arises as a result of a lack of established standards for a vehicle capacity of more than 6 and fewer than 18 or 20 persons.

In regard to item 5 and problems related to the lack of uniformity in the degree of regulation, there is a lack of uniformity with respect to form and degree of enforcement.

CONCLUSION

Some institutional changes could facilitate but are not necessarily needed to foster the proper development of paratransit. The principal areas that require further review are the jurisdictional matters, the areas that are subject to regulation, and the degree of enforcement of such regulations. Any meaningful study will have to be based on an analysis of the circumstances that exist within specific levels of government and states. Because the problems that have been highlighted are not necessarily applicable at all the regulatory levels, any effort to alleviate the existence of specific problems will have to be undertaken on a local rather than a national level.

Furthermore, the prospects for radical changes are not bright, for any attempt to forge a change will require the support of diverse and conflicting interests.

RECOMMENDATIONS

The options available to facilitate the development of paratransit can be divided into 3 general categories.

1. Substitute new regulations for all existing regulations;
2. Modify existing regulations where appropriate; and
3. Defer any attempt to eliminate or to modify existing regulations and foster discussion of ways to alleviate problems that impede the orderly and timely development of paratransit.

Obviously, the first option is not a practical one. Any effort to modify existing legislation requires extensive personal and financial resources to communicate with all the various regulatory bodies and to assist in the development of the support required for legislative or policy changes. Therefore, the second option is also not practical.

Only option 3 warrants consideration. The following measures represent an effective start in stimulating an interest in the institutional changes in the regulatory framework that are prerequisite to fostering the development of paratransit:

1. Develop and establish guidelines with respect to matters of jurisdiction;
2. Develop and establish guidelines with respect to appropriate areas that ought to properly be subjects of regulation;
3. Develop and establish guidelines with respect to appropriate mechanisms for effective control and regulatory enforcement;
4. Develop and implement programs to properly promulgate information with respect to regulatory structure, potential problem areas, and recommendations for review by regulatory agencies and legislative bodies; and
5. Develop recommendations with respect to acceptable equipment standards, driver qualifications, and insurance coverage.

REFERENCES

1. General Provisions and Definitions: Chapter 8—Charter Party Carrier of Passengers. California Public Utility Commission.
2. Rules and Regulations Governing Passenger Stage Corporation: General and NU98-A. California Public Utility Commission.