

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment
Against BREMERTON-KITSAP
AIRPORTER, INC., in the Amount of
\$600

DOCKET NO. TC-100147

DECLARATION OF
JOHN FOSTER

JOHN FOSTER, under penalty of perjury under the laws of the state of Washington, declares as follows:

1. I am over 18 years of age, a citizen of the United States, a resident of the state of Washington, and competent to be a witness.
2. I am employed by the Washington Utilities and Transportation Commission (Commission) as Transportation Specialist 4 in the Motor Carrier Safety Section. I have been employed at the Commission for over 23 years, holding various positions. As a Transportation Specialist, my responsibilities include performing safety inspections and other related motor carrier activities in a Commission program which regulates transportation activities.
3. On February 18, 2010, Bremerton-Kitsap Airporter, Inc. (Bremerton-Kitsap or Company), through its President, Richard Asche, filed with the Commission an application for mitigation (Mitigation Request) in Docket TC-100147. I have read the Mitigation Request. In the Mitigation Request, Bremerton-Kitsap waives a hearing and asks for an administrative decision.
4. The Mitigation Request arises from a Notice of Penalties Incurred and Due for Violations of Laws and Rules issued by the Commission on February 3, 2010, in Docket TC-100147. In that Notice, the Commission issued a penalty of \$600 for six violations of WAC 480-30-216(5), which requires that no passengers be permitted to stand unless the vehicle is equipped with devices designed and permanently installed to provide stability and safety for standing passengers. The rule also requires that even if the vehicle is properly equipped, no passenger will be permitted to stand for a distance exceeding thirty-five miles.
5. As part of my job, I conducted an investigation of a safety complaint concerning Bremerton-Kitsap on January 21, 2010. A passenger traveling with Bremerton-Kitsap on December 29, 2009, complained of the bus being loaded beyond capacity with passengers standing in the aisles. My investigation resulted in an

investigation report dated February 1, 2010.¹ I identified the violations based on my investigation of trip records and inspection of the Company vehicle used on December 29, 2009.

Specific Issues Addressed by Bremerton-Kitsap in its Mitigation Request

The Company states that it did transport 30 passengers in a 24-passenger capacity cutaway bus, which has no devices permanently installed to provide stability and safety for standing passengers. The Company states that he has never seen such devices installed on cutaway airporter buses or vans.

6. Attachment B shows pictures of three buses equipped with hand holds mounted on the back of the aisle seats. These pictures were readily available on the Internet.² The buses are the same type as those used by Bremerton-Kitsap. As a part of my job, I have observed that other passenger carriers in the Puget Sound region operate these same types of buses, properly equipped for standees.

The Company states that passengers from SeaTac are boarded first-come, first-served and that in order to preclude overloading buses, boarding passes are color coded (limit 24). When 24 boarding passes are issued, a different colored pass is issued to the next group of 24 passengers who must then wait until the next departure.

The Company states that during the evening of December 29, a large number of returning holiday travelers requested transportation from SeaTac airport, and 30 passengers were waiting to board the bus. When the driver realized he was overloaded, he was ready to depart the airport. Although the driver could have insisted that the standing passengers remove themselves from the bus, there would have been anxiety and anger from the removed passengers. Moreover, there was the matter of ticket refunds and removal of baggage already stowed.

7. First and foremost, Bremerton-Kitsap is responsible for the safety of its passengers. If this bus had been in an accident or had made a sudden stop, the danger and potential harm to the standing passengers would have been much greater, due to the lack of required safety equipment.
8. The Company's ticketing procedures, as explained in the Mitigation Request, appear to be designed to avoid overloading buses. If the 30 waiting passengers had color-coded boarding passes and understood that the service provided is first-come, first-served, the first group of 24 passengers should have been transported

¹ A true and accurate copy of the investigation report is attached to this declaration as Attachment A.

² A true and accurate copy of pictures of three passenger mini-buses with mounted hand holds found on the Internet are attached to this declaration as Attachment B.

and the second group of passengers should have been made to wait for the next departure.

9. The driver should have advised the passengers that the bus could only transport 24 passengers and that standees are not permitted by regulation. The driver should not allow on board, nor collect fares from, any passengers that cannot be legally transported.
10. Finally, WAC 480-30-216(6) requires that carriers have standby equipment available “to ensure the reasonable operation of established routes and fixed time schedules.”³

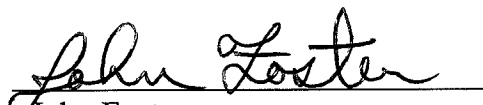
Bremerton-Kitsap states that it would support strengthening the “gotcha” provisions of WAC 480-30-216(5) to allow for the removal of any standing passengers regardless of when they presented themselves to the driver for boarding the bus.

11. WAC 480-30-216(5) already restricts carriers from overloading an improperly-equipped bus. The rule also states that even if the vehicle is properly equipped, no passenger will be permitted to stand for a distance exceeding 35 miles. On this route, the first stop was in excess of 35 miles, so no standees would have been allowed, regardless of the type of equipment operated.⁴
12. In addition, WAC 480-30-451 lists the circumstances under which a carrier can refuse service, including those where the company deems that providing the service would be hazardous, unsafe, or dangerous to persons or property.

Staff Recommendation

13. The Commission’s passenger carrier rules exist to ensure that the public is protected when traveling with a carrier regulated by the Commission. Bremerton-Kitsap transported passengers in an unsafe manner in violation of Commission rules. Therefore, Staff opposes mitigation and recommends the penalty stand.

Dated March 3, 2010 at Olympia, Washington.


John Foster

³ WAC 480-30-216(6)

⁴ See Attachment A. Documents obtained during the complaint investigation show that the first stop on the route was in Purdy, which according to the company’s mileage chart is 35.80 miles.

Attachment A

MEMORANDUM

February 1, 2010

Assignment No.: 110006
Industry Code: 230

To: Dave Pratt, Assistant Director for Transportation Safety

From: John Foster, Transportation Specialist 4

Subject: Bremerton-Kitsap Airporter, Inc. Permit Number: C-903
5748 Bethel Rd. SE
PO Box 1255
Port Orchard, WA 98366

On January 21, 2010 accompanied by UTC Investigator Tom McVaugh, I contacted Mr. Adrian Oliva, General Manager, at the above address in regards to a safety complaint received from Mr. Mark Myers.

In his complaint Mr. Myers states that he was a passenger on a Bremerton-Kitsap Airporter bus (unit # 7) on December 29, 2009 on a trip from SeaTac airport to Bremerton. Mr. Myers alleges that on this trip the bus was loaded with 33 passengers with many having to stand in the aisle.

Mr. Oliva stated that the attached passenger manifest (exhibit A) is correct and that there were 30 passengers on the bus on this trip.

An inspection of unit 7 found it to have a seating capacity of 24 passengers plus the driver. On this trip that would require six passengers to stand in the aisle.

Mr. Oliva agreed with this number and stated that whoever wrote "5 standing" on the manifest likely assumed that the 25 passenger rating for the bus excluded the driver.

Exhibits B and C are photographs of the interior of unit 7 and show that this bus has no standee line, handholds or any other provisions for standees. Therefore no passengers would be permitted to stand while the bus was in motion.

Mr. Myer also alleged that the luggage compartment was loaded so that the door did not close properly causing the warning buzzer to sound the entire trip. This part of his complaint could not be substantiated as the luggage had been unloaded.

Summary: Six violations of WAC 480-30-216 (5), allowing standing passengers on a vehicle not equipped with devices designed and permanently installed to provide stability and safety for standing passengers.

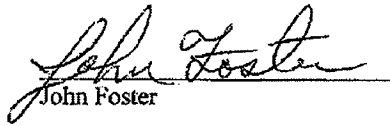

John Foster

EXHIBIT A 9116

BKAP KISSAP TRIP SHEET

Year: 2009 Starting Mileage: 20 Ending Mileage: 2 Trip Date: 10/29/09
 Vehicle No.: 7 Engine: Polaris Silygrade: 20 Breakdown: 2 Fuel: 20 Trip No.: 20
 Purdy: 20 Silygrade: 20 Fuel: 20 Breakdown: 2

PIU Time	Break-Up Point	Passenger Name/ Telephone No.	# Pass.	Surge Fare	Fare Collected
1					
2	BOM 1725		1	BOM	PT
3	BOM 1725		1	SAH 1725	
4	BOM 1725		1	BOM 1725	
5	BOM 1725		1	SAH 1725	
6	SAH 1725		1	BOM 1725	
7	BOM 1725		1	SAH 1725	
8	BOM 1725		1	BOM 1725	
9	BOM 1725		1	BOM 1725	
10	BOM 1725		1	SAH 1725	
11	SAH 1725		1	BOM 1725	
12	BOM 1725		1	SAH 1725	
13	BOM 1725		1	SAH 1725	

Driver: Gary Meeting
 Trip Date: 12-29-09
 Vehicle No.: 7 Starting A. Ending Mileage.: Trip No.: 20
 Bangor Poulsho Silverdale Bramerton Gorst Port Orchard Purdy Gig Harbor Tacoma
1 1 4 20 2

PIU Times	Pick-Up Point	Passenger Name/ Telephone No.	# Pass	Sugg. Fare	Fare Collected
1					
2	1 Bm	1725	1	Bm	RT
3	1 Bm	1725	1	SH	1825
4	1 Bm	1725	1	Bm	RT
5	1 Bm	1725	1	SH	RT
6	1 Bm	1725	1	Bm	1725
7	1 SH	RT	1	PO	RT
8	1 Bm	RT	1	Bm	RT
9	1 Bm	RT	1	Bm	1725
10	1 Bm	RT	1	PO	RT
11	1 SH	1825	1	Bm	1725
12	1 Bm	1725	1	Bm	1725
13			1	KAR	29 2008
14			1	Bm	1725
15			1	Bm	1725
16			1	Bm	1925
17			1	SH	1825
18			1	Bm	1725
19			1	Bm	1725
20			1	Bm	1725

Total Passengers Booked this run:

Driver's Signature: [Signature]

3/7/2002 9:39:13 AM

Cash Collected: _____
 Expenses: _____
 Total Submitted: 319.50

0.37

BKAP Kitsap Tripsheet

Driver: Gary

Vehicle No.: 7

Starting Mileage: _____

Ending Mileage: _____

Trip Date: 12-29-09

Trip No.: 20

Bangor 1 Poulsbo 1 Silverdale 5 Bremerton 30 Gorst 2 Port Orchard 7 Purdy 7 Gig Harbor 7 Tacoma

(30) JB 5 Standing #16

PU Time	Pick-Up Point	Passenger Name/ Telephone No.	# Pass	Sugg. Fare	Fare Collected
1					
2					
3					
4					
5		<u>Seafac</u>			
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

Total Passengers Booked this run:

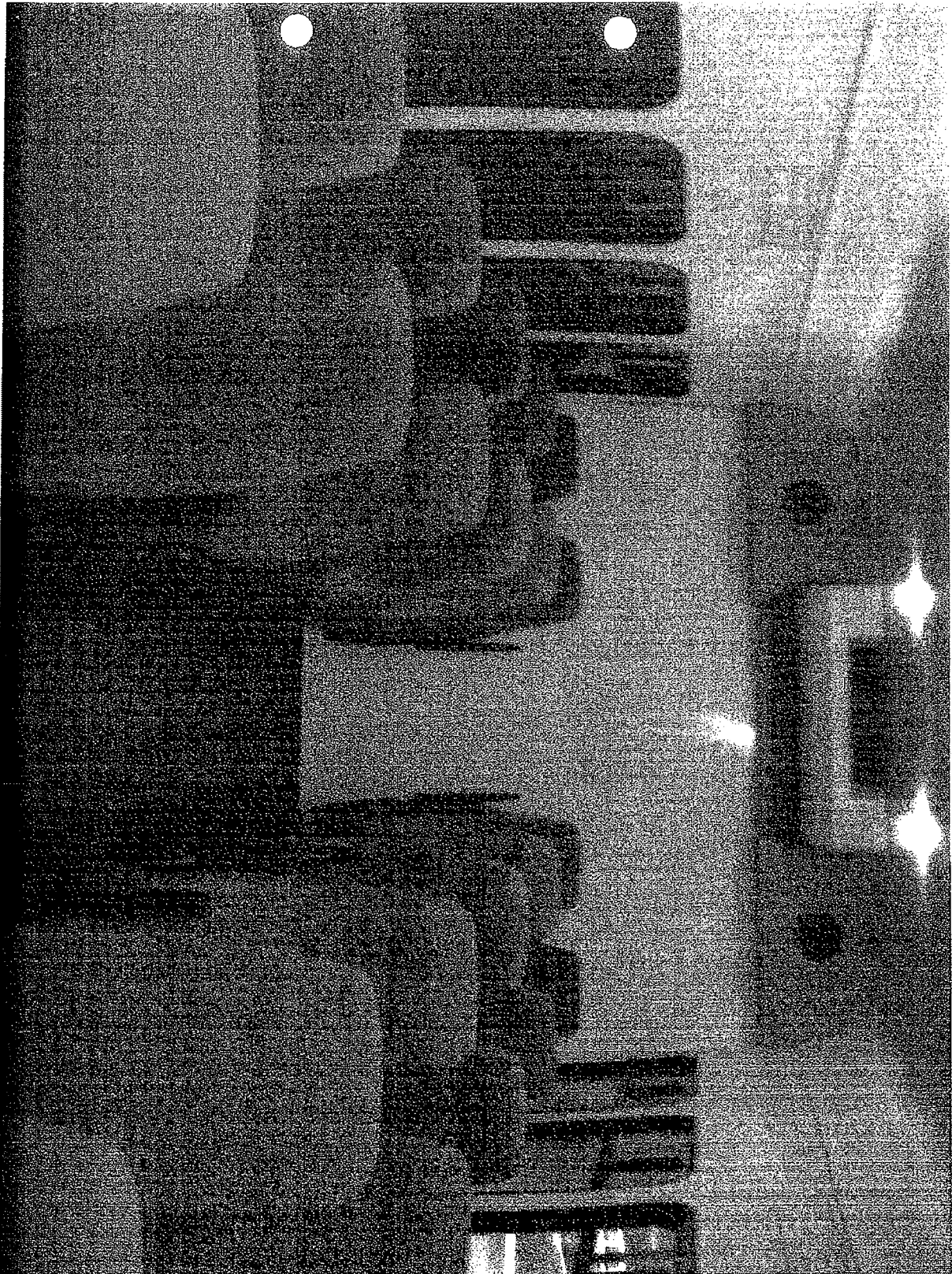
Driver's Signature: _____

Cash Collected: _____
 Expenses: _____
 Total Submitted: _____

12/29/09 9:33 AM



EXHIBIT B



BREMERTON – KITSAP AIRPORTER, INC.

P.O. BOX 1255
PORT ORCHARD, WA. 98366
(360) 876-1737 FAX. (360) 876-5521

July 11, 2009

Mileage chart

Bangor Sub Base	64.62 Miles
Keyport (Poulsbo)	63.12 Miles
Silverdale Hotel	58.26 Miles
Comfort Inn	52.07 Miles
Burwell 76	51.66 Miles
Gorst 76	47.9 Miles
Sedgwick 76	44.12 Miles
Purdy	35.80 Miles
Inn @ Gig Hbr	30.00 Miles
Dennys (Tacoma)	24.52 Miles
Ft. Lewis	37.00 Mil
Mc Chord (AFB)	28.7 Miles

BREMERTON-KITSAP AIRPORTER, INC.

PO Box 1255, Port Orchard, WA 98366

(360) 876-1737 -- fax (360) 876-5521

www.kitsapairporter.com

18 January 2010

Washington Utilities and
Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

RE: Complaint 108146- Marc Myers

Dear Ms. Smith,

In response to your email of January 14, 2010 the following response is submitted inre subject complaint:

- (1) Our agent is stationed at SeaTac airport each day at 11:00AM until 8:20PM to sell tickets and otherwise assist the driver to expedite SeaTac departures.
- (2) Our agent dispenses color coded boarding passes to customers to ensure that busses are not overloaded. Please see <http://kitsapairporter.com/index.php/Information/>
- (3) For the last run in the evening of December 29, 2009 our driver carried 30 passengers in his 24 passenger capacity bus long after our agent had departed. Our driver states on his attached trip sheet that five passengers were standing. He also reports that he was extremely busy on the last run of the evening writing tickets and loading baggage for at least 30 people who wanted to board his bus. When he finished loading luggage he found that 30 passengers had already boarded his bus and were eager to go.
- (4) Mr. Myers claims that his round trip ticket entitled him to priority boarding of the bus, which is not true.
- (5) Mr. Myers indicates that the luggage compartment buzzer continued to sound which he thought indicated that the door was open. Investigation found that the switch was inoperable, and the door was secure, otherwise luggage would have been spilled on the roadway. The switch has been repaired.

If Mr. Myers had safety concerns about the overloaded bus, I am curious as to why he did not get off the bus before it departed the airport. Perhaps his reasons are the same as the other 29 passengers.

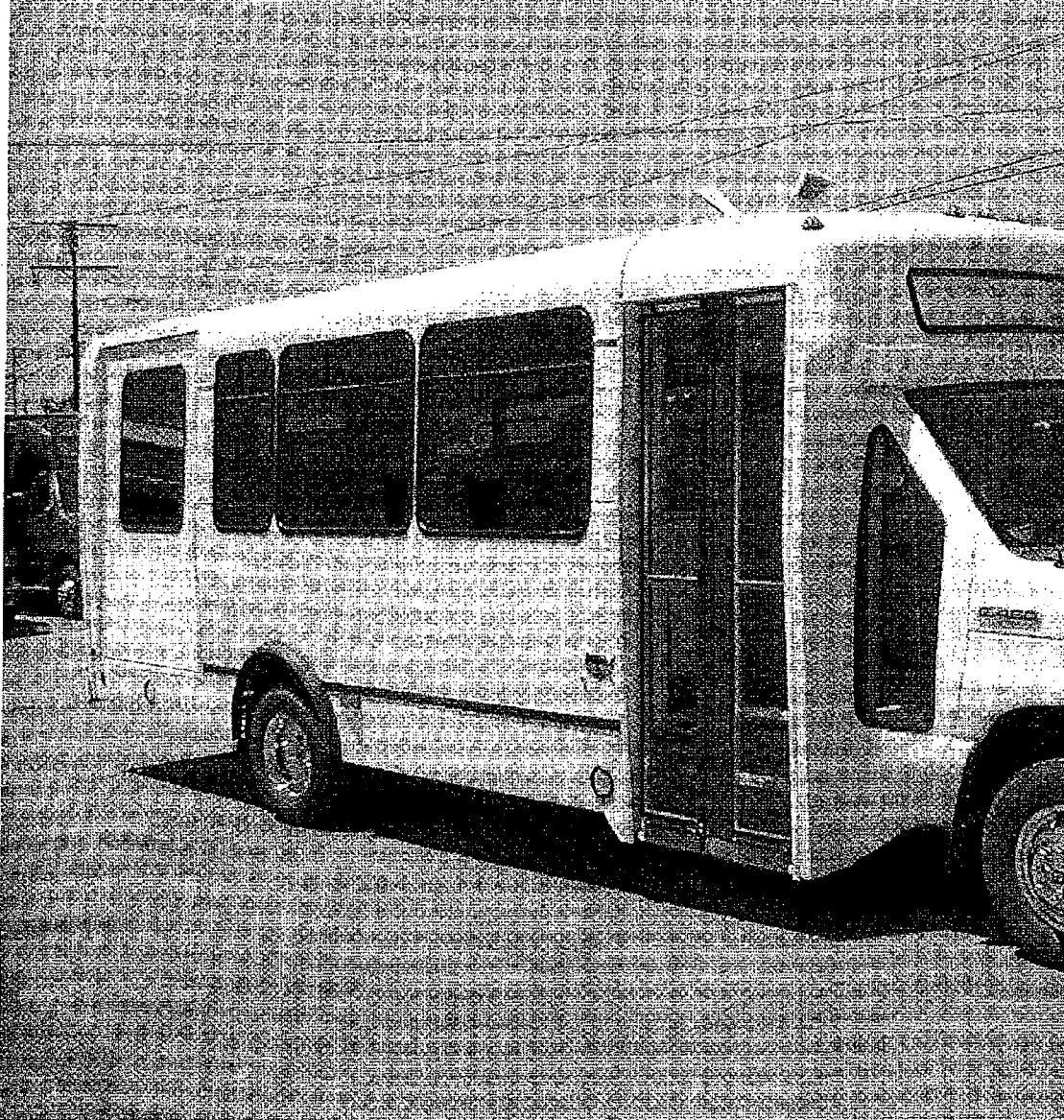
Admittedly, the bus was loaded beyond the rated capacity of the bus (24 passengers). There was no violation of WAC 480-30-216 however, as it is presently written. Perhaps it should be revised striking the 150% of its rated seating capacity load limit. We would be amenable to such a change.

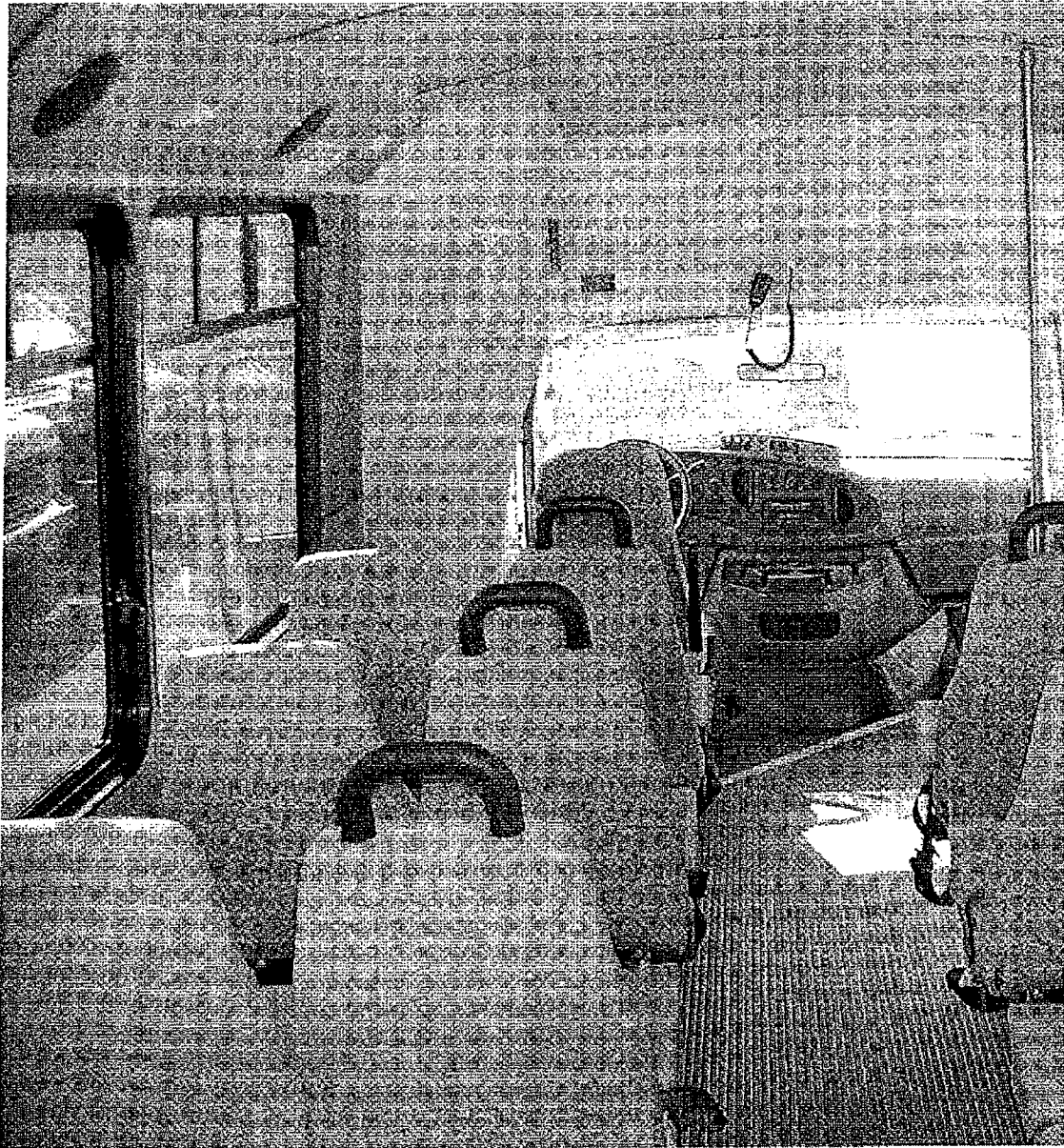
Sincerely,

Richard E. Asche
President

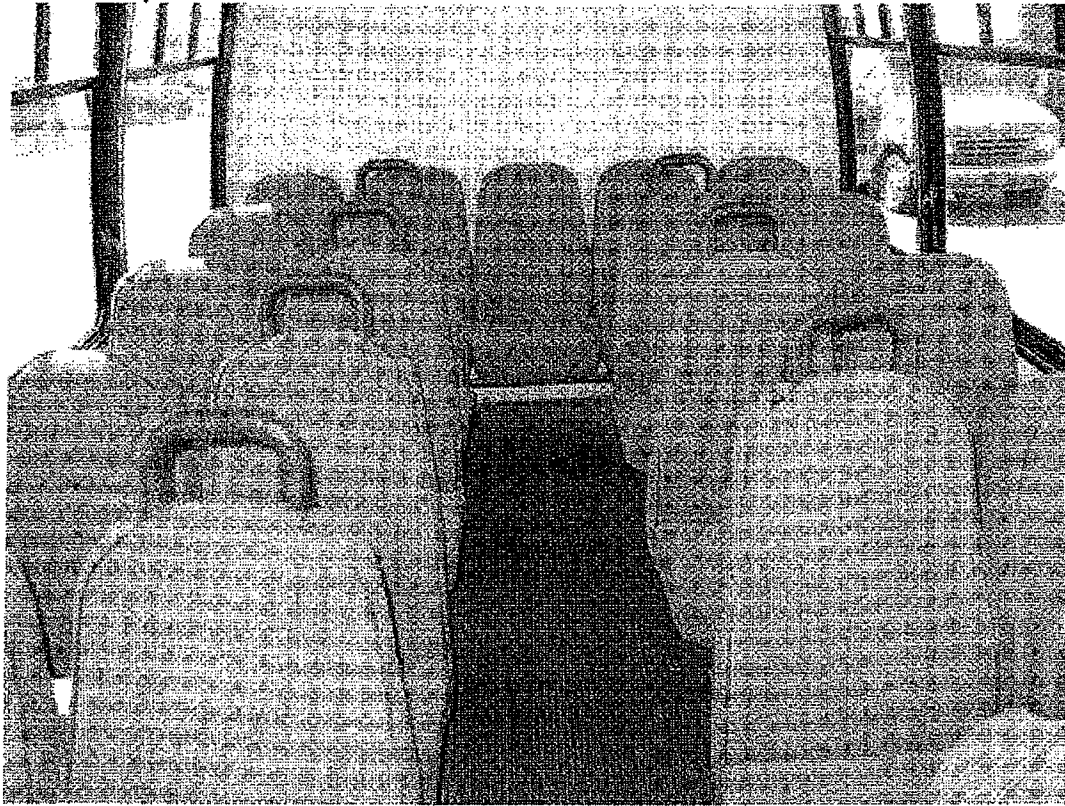
1 Enclosure

Attachment B











<http://www.nationsbus.com/uploadphoto/532/2724.jpg>

2/25/2010

