



U.S. Department
of Transportation
**Federal Transit
Administration**

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NOV 6 2002

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Sandy Draggoo, Executive Director
Capital Area Transportation Authority
4615 Tranter Avenue
Lansing, MI 48910

RE: Amended Charter Decision
Indian Trails Inc., Complaint #2002-10
Classic Caddy Limousine, Complaint #2002-01
The Tecumseh Trolley & Limousine, Complaint # 2002-04

Dear Mr. Chandler and Ms. Draggoo:

This letter serves as the Federal Transit Administration's (FTA) response to your letter dated October 18, 2002, as well as an amended decision for the earlier charter decision dated Oct. 11, 2002. The Region is aware that since your letter, the Capital Area Transportation Authority (CATA) has appealed the Region V decision to the FTA Administrator; however, the Region is still addressing the issues raised in your letter, as well as amending its earlier charter decision based on new information.

First, as to the points you raised in your letter, I will address them in the order you have raised them as follows:

1. CATA indicated that it never received the original complaint. However, CATA was sent a copy of the complaint dated March 7, 2002, via registered mail on April 2, 2002. The complaint was received by CATA on April 9, 2002, and signed for by Gloria Cortes.
2. CATA indicated that it never received the information from Tecumseh Trolley. However, CATA was sent the information from Tecumseh Trolley on July 11, 2002, via registered mail. The material from Tecumseh Trolley was received by CATA on July 15, 2002, and signed for by C. Fitzgerald.
3. CATA stated that there was no evidence that any of the private operators lacked capacity. However, on October 10, 2002, Tecumseh Trolley acknowledged to FTA that it did not lack capacity when it signed the Indication of Interest form. Therefore, FTA had evidence that at least one private operator did not lack capacity when it executed the Indication of Interest form. If the private operators had capacity constraints, they should have been leasing CATA's buses, not CATA's trolleys, since the buses have a

larger capacity than the trolleys. Although FTA does not require the transit agency to investigate the private operator's capacity constraint representation, if there is evidence of false statements or fraud, then the transit agency should conduct an inquiry to determine whether the operator truly lacks capacity when it leases one of the transit agency's vehicles.¹ It is ultimately the transit agency's responsibility to comply with the charter regulations. The use of the trolleys by a private operator should be incidental service. In this case, the trolleys are only being used for charter service. This use does not fit the definition of incidental use.

4. CATA stated it should not be held responsible if a private operator misrepresented that it lacked capacity. See prior answer. Tecumseh Trolley's documentation states that CATA may have been booking charters for Indian Trails to use its trolleys. The documentation states that based on contacting several brides who had rented the trolleys for their weddings, the brides were unaware that Indian Trails was even involved with the vehicle rental. If that is the case, which in and of itself is a violation of the regulations, CATA should have been aware whether Indian Trails truly lacked capacity.
5. CATA contends that the International Art Fair service was not charter service. The service provided by CATA for the International Art Fair was not on a regularly published route. A private operator indicated that it would have been willing and able to provide the service.
6. CATA states that the guidance regarding fully recovering allocated costs should not apply in this case, since the trolleys are state funded. FTA is amending its decision because it was based on the misrepresentation by CATA that the trolleys were 100% state funded. Michigan DOT and CATA's

¹ The question and answer for No. 32 from Charter Questions and Answers from 52 FR 42248 (November 3, 1987) states the following:

32. *Question:* When a private operator requests buses from a grantee to run a given charter service, what is a grantee's responsibility to assure the circumstances fit the limited exceptions set forth in § 604.9(b)(2)?

Answer: The above-cited regulation allows grantees to contract with private operators only when and to the extent that the private operator lacks equipment that is accessible to the elderly and handicapped or lacks capacity. UMTA will allow its grantees to use their reasonable, good faith judgment as to whether the requirements of the regulations have been met, and, in the absence of apparent fraud or falsified statement, will not require them to look behind a request for the use of their buses by a private operator.

However, if a private operator continuously leases the transit agency's trolley vehicles week after week, as Indian Trails did in the documentation that Tecumseh Trolley supplied, it should raise the question as to whether the private operator truly has a capacity constraint.

own counsel have now acknowledged that the trolleys were partially funded with Federal Highway Administration (FHWA) funds. The applicability section of the charter regulations, 49 CFR Sec. 604.3(b), states that the charter regulations apply to all recipients of Federal financial assistance under "Sections 103(e)(4), 142(a), or 142(c) of Title 23 United States Code which permit the use of Federal-Aid Highway funds to purchase buses." The definition of the "Acts" under Sec. 604.5(b) also includes the same sections of the U.S. Code. The charter regulations apply to the trolleys even if they are maintained and housed separately from the rest of CATA's vehicles. CATA should not be leasing the trolleys for charter use **unless** one of the charter exceptions applies.

7. CATA contends since the service was open to the public, it was not exclusive. The service was provided exclusively for attendees of the International Art Fair.

Second, based on the new information that the trolleys were funded with FHWA funds, FTA amends its earlier decision dated October 11, 2002. The trolleys cannot be used for any indirect or direct charter service unless one of the charter exceptions applies. CATA must immediately cease and desist using the trolleys for charter service. CATA has been aware of the charter issue since its triennial finding in October 2000, and it has been aware of the charter complaints since April 2002. It has had a great deal of time to make alternate arrangements. It should have stopped taking charter trolley bookings a long time ago.

Federal funds were provided for the lease purchase of the trolleys to use them for mass transportation. CATA has acknowledged that the trolleys are only being used for special service, primarily private wedding charters. This use does not fit the definition of mass transportation.

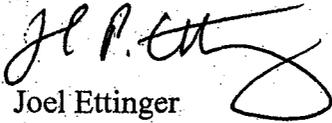
By this letter, FTA amends its earlier decision, which allowed CATA to separate the trolleys from a federally funded facility and use them for charter service. The trolleys were federally funded; therefore, they cannot be used for charter service unless one of the exceptions applies.

FTA finds that CATA has been providing impermissible charter service and orders it to cease and desist any such further service. Refusal to cease and desist in the provision of this service could lead to additional penalties on the part of FTA. Additionally, the mileage for improper charter use should not accrue towards the useful life of the Federally funded vehicles.

In accordance with 49 C.F.R. § 604.19, the losing party may appeal this decision within ten days of receipt of the decision. The appeal should be sent to Jennifer Dorn, Administrator, FTA, 400 Seventh Street, S.W., Room 9328, Washington, D.C. 20590.

CATA has ten days to amend its appeal based on this amended decision.

Sincerely,



Joel Ettinger
Regional Administrator

cc: Robert McAnallen, Classic Caddy Limousine (w/enc.)
Steve Pixley, The Tecumseh Trolley & Limousine (w/enc.)
Gordon Mackay, Indian Trails, Inc. (w/enc.)
Robert Gardella w/enc.