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

Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

OCT - 4 2005

Mr. David N. Smith
Director of Sales
Oleta Coach Lines, Inc.
Post Office Box 466
Williamsburg, VA 23187

Re: Charter Service Docket Number 2004-11

Dear Mr. Smith:

I write in response to your appeal dated August 2, 2004, of the decision by Mr. Herman Shipman, then the Acting Regional Administrator of the Region 3 office of the Federal Transit Administration (FTA), on the charter service complaint filed by Oleta Coach Lines (Oleta). As you know, Oleta's complaint pertained to bus service provided by the Colonial Williamsburg Foundation (CWF), Williamsburg Area Transit (WAT), and Yorktown Trolley (Yorktown). Mr. Shipman determined that the services provided by WAT, a recipient of financial assistance from FTA, were mass transportation, not charter service within the meaning of FTA's charter service regulations at 49 CFR Part 604. Mr. Shipman's decision did not address Oleta's complaints against CWF's and Yorktown's services, however, since neither CWF nor Yorktown are recipients of financial assistance from FTA, thus, they are not regulated by FTA in any way. I apologize for the delay in this response to your appeal, but I find no reason to overturn Mr. Shipman's decision.

FTA's Charter Service appeal procedure states that:

> The Administrator will only take action on an appeal if the appellant presents evidence that there are new matters of fact or points of law that were not available or not known during the investigation of the complaint.

49 CFR 604.19 (b).

New Matters of Fact

Although the Regional Administrator stated that his decision was limited to consideration of Oleta's complaint about service by WAT, Oleta submitted further information regarding the issue of federal funding for CWF and Yorktown as well as material in support of its claims concerning WAT. With respect to CWF and Yorktown, Oleta contended that an FTA website, www.fta.dot.gov/265 8076 ENG HTML.htm, showed that in Fiscal Year (FY) 2002 CWF had an unobligated allocation of $990,029 and that in

FY 2002 Jamestown/Yorktown and Colonial Williamsburg had an unobligated allocation of $1,467,067. Oleta interpreted this to be an indication of FTA funding for CWF and Jamestown/Yorktown contrary to the statement in the Acting Regional Administrator's decision.

The fact that there were unobligated allocations to CWF and Jamestown/Yorktown does not demonstrate that these two entities received grant monies from FTA. As stated in the decision, FTA does not fund either the vehicles or service being provided by CWF and Yorktown. The unobligated allocations only show that there was an earmark of funds for those entities, but no grant was ever issued to either of them for these funds. Indeed, CWF is ineligible to receive any grants from FTA because it is not a public entity. For these reasons, the information on the FTA website does not change the conclusion reached by the Acting Regional Administrator that there is no evidence of FTA funding for CWF or Yorktown.

With respect to service provided by WAT, Oleta made several assertions in support of its claim that WAT was a "closed door" charter service not open to the general public. First, it stated that advertisements are not in shopping centers or grocery stores, but are placed in hotels and resorts. Second, Oleta claimed that the service occurred only in the summer during the busiest time of the season and not throughout the entire year. Third, Oleta indicated that all advertisements state that the service is available to pass holders of Jamestown or Yorktown tickets. Fourth, Oleta provided a newspaper article in which Mike Litterst, the spokesperson for the National Park Service, stated "if the shuttle proves popular, local attractions will develop a way to pay for the rides if the Federal government stops the grant."

The fact that advertisements are not found at shopping centers or grocery stores, but are present at hotels and resorts is information that was not in the record. However, it does not constitute a new fact because it was information that was available during the investigation of the complaint. Likewise, the newspaper article is not new information because it was available during the investigation.

The claim that service was provided by WAT was only in the summer, during the busiest time of the season, is already documented in the record. The advertisement of WAT service is also documented in the record. This information does not constitute a new fact that was not known during the investigation of the complaint. Oleta has not provided any new matters of fact within the meaning of 49 CFR 604.19 (b) to constitute grounds for an appeal.

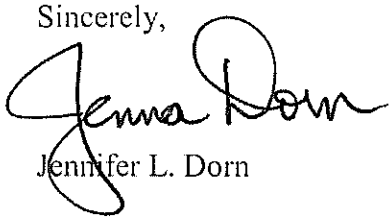
New Points of Law

No new points of law were raised in the appeal letter sent by Oleta. Therefore, Oleta has not presented any new points of law that would constitute grounds for me to act on this appeal.

Conclusion

I have considered the evidence submitted by Oleta in support of its appeal. Oleta has not presented any new matters of fact or points of law that were not available or known during the time that the original investigation was pending. Therefore, I will not take any action on this appeal. Accordingly, the August 2, 2004, decision by the Acting Regional Administrator is the final FTA decision in this matter.

Sincerely,



Jennifer L. Dorn

cc: Colonial Williamsburg Foundation
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