



U.S. Department
of Transportation
Federal Transit
Administration

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

Kemps Bus Service, Inc.
Complainant

v.

Docket No.2004-01

Rochester-Genesee Transportation Authority,
Respondent.

AND

Coach USA Western New York
Complainant

v.

Docket No.2004-03

Rochester Genesee Regional Transportation Authority

DECISION

Summary

The Federal Transit Administration (FTA) is hereby issuing a joint decision on the two above referenced matters brought by Kemps Bus Service, Inc. (Kemps), Docket No. 2004-01 and Coach USA Western New York (Coach), Docket No. 2004-03, respectively against Rochester Genesee Regional Transportation Authority (RGRTA). Both complaints relate to service provided by RGRTA at two Rochester Universities, the Rochester Institute of Technology and the University of Rochester. Upon reviewing the allegations in the complaint and the subsequent filings of both complainants and respondents, FTA has concluded that the service in question does not violate FTA's regulations regarding charter service.

Complaint History

a. Kemps Complaint

Kemps files its complaint by letter dated Jan. 10, 2004 (Kemps Complaint). The Kemps Complaint alleges that RGRTA's provision of service pursuant to a subsidy agreement with RIT/Univ. of Rochester is a violation of FTA's charter regulation as the universities were also inviting bids for service from private companies. RGRTA filed its Response by letter dated April

7, 2004 (RGRTA Response). RGRTA's Response denied that it was providing illegal charter service, and attached as exhibits a variety of documents to demonstrate that RGRTA had significantly changed its service around the campus so as to comply with FTA regulations. RGRTA recalls that Kemps brought a similar complaint previously in 2002 and that FTA issued a decision on this related matter in September 2002 (Rochester Decision). In the Rochester Decision, FTA made a finding that RGRTA had engaged in impermissible charter service around the university. Subsequent to the Rochester Decision and its appeal, RGRTA modified their service in order to comply with FTA's requirements. RGRTA references these changes in defense of its current service.

Kemps by letter dated May 4, 2004 filed its Reply and argues that RGRTA's service is charter service pursuant to a contract whereby the university sets the parameters for the service.

b. Coach Complaint

Coach filed its Complaint with FTA by letter dated April 4, 2004. By that complaint, Coach also raises the prior Rochester Decision and recognizes that RGRTA took steps subsequent to that decision to modify its service. Specifically, Coach acknowledges that RGRTA submitted information to FTA for FTA's review to determine if RGRTA had brought its service into compliance with FTA's charter regulations. Coach references FTA's June 16, 2003 letter in which FTA found RGRTA's service to be in compliance and approved a draft subsidy agreement between the university and RGRTA. Coach maintains that elements of the university's RFP to private providers for campus service demonstrate that RGRTA's separate subsidized service is charter.

By letter dated May 20, 2004, RGRTA submitted its Response to the Coach Complaint. Essentially, RGRTA argues that following the earlier Rochester Decision, RGRTA modified its subsidy agreement and manner of providing service in order to comply with FTA guidelines and received FTA's approval. Further, RGRTA submits that nothing has changed in the interim to convert the service back into impermissible charter service.

Coach submitted its rebuttal Reply by letter dated June 18, 2004. In that Reply, Coach largely argues that because the universities sought responses to a Request for Proposals to provide transportation services around the campus from private bus companies at the same time that they were in discussions with RGRTA, this evidences that the service provided by RGRTA is in reality charter, under the control of the university and, not mass transit service.

Discussion

As with any charter matter, the threshold issue is whether the service provided by RGRTA is impermissible charter service or mass transportation.

The regulations define charter service as the following:

transportation using buses or vans, funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after leaving the place of origin.
49 C.F.R. § 605.5(e).

Mass transportation, on the other hand, is defined as service provided to the public that is regular and continuing general or special transportation. 49 U.S.C. Section 5302 (a)(7). FTA has articulated features that derive from this definition and assist in the analysis of whether service is charter or mass transportation. Mass transportation is under the control of the recipient; the recipient generally sets the route, rate and schedule and decides on the equipment; the service benefits the public at large and not some special organization and it is open to the public. 52 Fed. Reg. 11920, April 13, 1987.

In the DOT's "Charter Service Questions and Answers", 52 Fed. Reg. 42248 (November 3, 1987), Question 27(d) asked whether service within a university complex according to routes and schedules requested by the university would constitute charter service. FTA's answer indicated that if the service were for the exclusive use of students and the university sets fares and schedules, the service would be charter. However, such service operated by a recipient which sets fares and schedules and is open door, though it serves mainly university students, would be mass transportation.

When FTA issued the Rochester decision, it went through this analysis to determine the type of service in question. At that time, FTA concluded that the university service was charter service and directed RGRTA to cease and desist from such service. RGRTA, at that time, took steps to modify its service so that it would meet the definition of mass transportation.

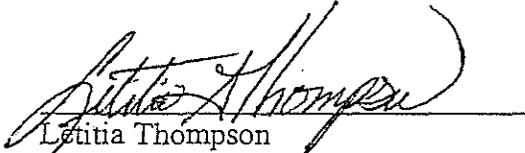
Specifically, RGRTA made changes to its subsidy agreement with RIT, making sure that the service would be under the control of RGRTA. RGRTA has control over its routes, fares and schedules. Secondly, the service is designed to benefit the public at large. RGRTA has placed signs with the RTS logo along the routes and published the routes on the official RGRTA website. Many of these campus routes connect with other of RGRTA's routes throughout the system. RGRTA has reached out to the general public and created an "open door" service. Such posting of bus stop signs and connections are indicators of opportunity for public ridership. California Bus Ass'n v. Sacramento Regional Transit District, FTA Charter Complaint #2003-01.

Lastly, Complainants have raised the issue of the University's issuance of an RFP has a strong indication that the service around the campus is ultimately charter in nature. FTA has acknowledged that a subsidy for service can be provided and this alone does not necessarily transform mass transit service into impermissible charter service. June 16, 2003 letter of G. McBride to P. Yesawich. Under RGRTA's contract, RGRTA has retained control over its routes, schedules and its payment is not tied to hours of service. As FTA pointed out in Seymour Charter v. Knoxville Transit Authority, TN-09/88-01, a transit authority can modify its agreement so as to no longer link payment to hours of service and, instead, receive an annual subsidy from a university. Similarly, the fact that a university would simultaneously engage in a solicitation is not an unusual event and is not proof that service is charter, where such circumstances do not otherwise exist. See Letter of Aug. 18, 1988 of A. Dellibovi to P. Hamric.

Accordingly, as FTA revisits the question of RGRTA's current provision of university service and applies the balancing test factors to the elements of this situation, FTA concludes that the service in question is closer to mass transportation than charter service.

Conclusion and Order

FTA finds that Respondent has been providing mass transportation service. Therefore, 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.


Letitia Thompson
Regional Administrator

07/14/04
Date