

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

United Motorcoach Association,
Complainant,

Charter Service Complaint
49 U.S.C. Section 5323(d)
Charter No. 2007-03

v.

Janesville Transit System,
Respondent.

DECISION

Summary

On February 22, 2007, the United Motorcoach Association (UMA) filed a complaint with the Federal Transit Administration (FTA) against Janesville Transit System (JTS), a recipient of Section 5307 funds. The UMA on behalf of Riteway Bus Service, a member of its organization, alleged violations of FTA's charter bus regulations, 49 U.S.C. Sections 5302(a)(10) and 5323(d), as amended, and 49 Code of Federal Regulations (CFR) Part 604. UMA alleged that JTS had issued a defective "willing and able" notice and conducted a deficient "willing and able" determination process.

On April 3, 2007, FTA received JTS's response to the complaint filed by the UMA. JTS stated that its notice and process were not deficient and that FTA in its most recent Triennial Review (TR) had not found any problems with JTS's "willing and able" notice. On May 28, 2007, UMA filed its rebuttal.

Upon reviewing the allegations in the complaint and the subsequent filings of all the parties, FTA has concluded that JTS issued a deficient "willing and able" notice and that its determination process was deficient. JTS should immediately cease and desist from providing unauthorized charter service until it properly completes the "willing and able" determination process.

Complaint History

On February 22, 2007, UMA filed a complaint with the FTA against JTS¹. UMA alleged violations of 49 U.S.C. Sections 5302(a)(10) and 5323(d), as amended, and 49 CFR Part 604 as it relates to the operation of unauthorized charter bus service. UMA alleges that JTS's annual "willing and able" notice is deficient and its process impermissibly finds

¹ JTS was a recipient of Section 5307 funds; therefore, it was required to comply with the charter bus regulations.

qualified private operators unqualified. UMA also stated that JTS's charter operations constituted a "pattern of violations." Attached to its complaint, UMA included a letter from Riteway Bus Service, Inc. stating that it was disqualified by JTS because it did not have two-door urban transit type coaches which were air-conditioned and wheelchair ramp equipped and also that JTS asked for a letter of authority from the Public Service Commission of Wisconsin stating that Riteway had authority to provide service in the City of Janesville. Also attached are a letter and notice from JTS dated February 12, 2007, and a letter of inquiry from JTS dated April 18, 2005, asking additional questions.

On March 26, 2007, JTS responded to the complaint. It stated that FTA determined in its TR dated November 22, 2005, that there were no deficiencies with its annual "willing and able" notice or its determination process. JTS also asserted that its process had not changed in over five years. JTS stated that a "willing and able" provider must demonstrate it has the "physical capability to actually provide the categories of revenue vehicle specified..." It also stated that it asked for the additional documentation from Riteway in order to ascertain that it had the "requisite legal authority" to provide the service. JTS explained why its service would not constitute a "pattern of violations." Finally, JTS stated that the service it is providing would qualify under the Government Officials exception under the proposed new charter regulations. Attached to the response is JTS's TR results dated November 22, 2005; its March 2007 annual "willing and able" notice; and correspondence between JTS and Riteway and the annual notice for 2005.

After receiving an extension, the UMA filed its rebuttal with the FTA on May 28, 2007. In its rebuttal, the UMA reiterated its original allegations, but withdrew its contention that JTS's actions constitute a "pattern of violation."

Discussion

A. Regulations

Under 49 C.F.R. Section 604.9(a), if a recipient desires to provide charter service, it must first determine whether there are any willing and able private charter providers. If there is at least one willing and able provider, the recipient is prohibited from providing charter service unless one of the exceptions applies. *Id.* The recipient must follow all the procedures for determining willing and able private operators under 49 C.F.R. § 604.11. The public participation process requires at a minimum that a notice be placed in a newspaper of general circulation and a notice is required to be sent to all private charter service operators in the proposed geographic charter service area. 49 C.F.R. § 604.11(b)(1) and (2). The notice needs to include among other items, the categories of revenue vehicle. *Id.* at (c)(2). FTA only recognizes two categories of revenue vehicle, buses and vans. 49 C.F.R. § 604.5(d). The notice that JTS issued was deficient in that it stated that in order to be determined "willing and able" a private provider needed to have "two door urban transit coach [sic.], air conditioned and wheelchair ramp equipped." *See*, JTS annual "willing and able" notice attached to its response dated March 26, 2007. To qualify as "able" under 49 CFR Part 604, Riteway only needed to have a bus. Therefore, JTS's "willing and able" process was deficient when it determined Riteway

was not qualified because it did not have a vehicle with the specific characteristics listed in its notice.

With regard to the request for documentation that a private provider has the "legal authority" to provide the service, the private provider does not need a letter from a specific local entity such as the Public Service Commission of Wisconsin. The private provider needs to provide documentation that it has the legal authority to provide charter service. Letters of incorporation or other documents that demonstrate its legal authority to provide charter service should be sufficient.

B. Annual Notice

On February 17, 2007, and February 24, 2005, the Recipient published annual notices in the *The Janesville Gazette*. The notices proposed that the Respondent intended to provide charter service using "two door urban transit coach [sic.], air conditioned and wheelchair ramp equipped." The notices were misleading, since they did not properly state what type of revenue service the Respondent intended to provide, namely bus or van service. The notices stated that if a private provider could not provide service with vehicles with specific characteristics, then it could not qualify as a willing and able charter provider. The notices were deficient because of the additional requirements regarding the vehicle characteristics.

C. Prior Triennial Finding

Although FTA's most recent JTS TR did not find charter violations related to the annual "willing and able" notice and determination process, it does not prevent FTA from finding that JTS is violating the charter regulations. It is unclear what information was provided to the TR reviewers. If the reviewers had been provided with all the facts, the findings could have been completely different. If the TR reviewers were told that JTS was disqualifying private providers because it did not have vehicles with specific characteristics or because it did not provide specific documentation that was not required under the charter regulations, then the incorrect information may have been the basis for determining that the Respondent was in compliance with the charter regulations when in fact it was not. The TR process is an overview of a Grantee's operations; it is not a detailed examination of day-to-day operations.

D. Pattern of Violations

FTA agrees that there is no pattern of violations under this set of facts. JTS was only proposing to provide charter service for "elected and appointed officials, employees, and duly authorized others in the course of their official duties on behalf of the City; and in support of the official functions and operations of the government of the City of Janesville." See, JTS Annual Willing and Able Notice for 2005. The charter service provided was of an extremely limited duration and occurrence. JTS is also correct that under the proposed new charter regulation, there will be an exception for government officials.

Conclusion

FTA based on a review of all the evidence concludes that the annual notice issued by JTS for "willing and able" private providers was deficient and that its determination process was also deficient. As a recipient of federal assistance, JTSS violated the charter bus regulations by operating charter service when there may have been a "willing and able" private provider. Therefore, FTA finds that JTS violated 49 CFR Part 604.

Remedy

Complainant has requested that Respondent immediately cease and desist its charter operations. FTA finds that Respondent has been providing impermissible charter service and orders it to immediately cease and desist any such further service. Because the service provided was incidental because it was of such limited duration, the mileage which accrued to the vehicles did not add to their useful life.

Appeal

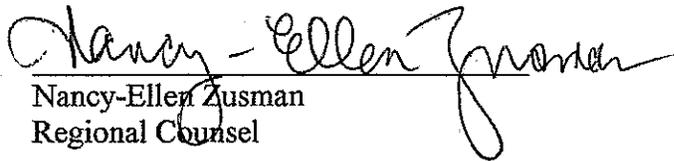
In accordance with 49 C.F.R. § 604.19, the losing party may appeal this charter decision within ten days of receipt of the decision. The appeal should be sent to James Simpson, Administrator, FTA, 1200 New Jersey Avenue, SE, 5th Floor- East Building, Washington, D.C. 20590.



Marisol Simon
Regional Administrator

12-31-2007

Date



Nancy-Ellen Zusman
Regional Counsel

12/31/07

Date