

LOW-FYI



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

REGION VIII
Arizona, Colorado, Montana,
Nevada, North Dakota,
South Dakota, Utah,
Wyoming

Columbine Place
216 Sixteenth Street, Suite 650
Denver, Colorado 80202-5120
303/844-3242
303/844-4217 (fax)

John Barberis
Superintendent of Transportation
Regional Transportation District
1900 31st Street
Denver, CO 80216

June 6, 1997

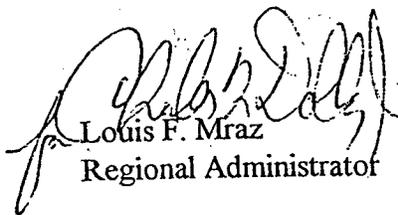
Dear Mr. Barberis:

You asked whether RTD may enter into a contract with Colorado Charter Lines whereby RTD will provide buses and drivers for service during Denver's Summit of the Eight.

Under 49 CFR section 604.9(b)(2), a recipient may enter into a contract with a private charter operator to provide charter equipment to or service for the private charter operator if the private charter operator is requested to provide charter service that exceeds its capacity. Colorado Charter Lines, via its advertisement for additional coaches, has indicated that the charter service required by the Denver Summit of the Eight exceeds its capacity. Therefore, the contract RTD proposes to enter into with Colorado Charter Lines is permissible under FTA's charter service regulations.

If you have any further questions, please contact Kristin O'Grady, Regional Counsel, of my staff.

Sincerely,


Louis F. Mraz
Regional Administrator



U.S. Department
of Transportation
Federal Transit
Administration

REGION I
Connecticut, Maine,
Massachusetts,
New Hampshire,
Rhode Island, Vermont

Volpe Center
55 Broadway Suite 904
Cambridge, MA 02142
617-494-2055
617-494-2865 (fax)

NOV 14 1997

Thomas Chilik, General Manager
Greenfield Montague Transportation Area
382 Deerfield Street
Greenfield, MA 01301

Dear Mr. Chilik:

Reference is made to your October 23, 1997, response to the charter complaint filed by Mr. Donald Sadler of Chapin & Sadler, Inc. Specifically, Mr. Sadler alleged that the Greenfield Montague Transportation Area (GMTA) performed impermissible charter service for a trip that was originally booked with Chapin & Sadler. In addition, he submitted evidence that GMTA advertises itself as a charter company in the local telephone directory.

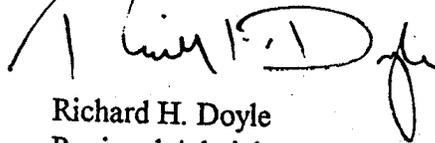
According to your response, GMTA did provide the charter service in question by transporting a group of passengers from the Blessed Sacrament Church to the Marian Fathers Shrine in Stockbridge. You explain that the violation occurred because your staff did not understand that this was a charter trip that should have been referred to a private operator, and maintain that you have taken corrective measures to avoid making such errors in the future. You also state that the reference to charter service will be deleted from the November 1997 issue of the telephone directory.

As you know, 49 U.S.C. 5323(d) and the Federal Transit Administration's (FTA) implementing regulation, 49 CFR Part 604, prohibit an FTA recipient from providing charter service using FTA-funded equipment or facilities if a private operator in its geographic area is willing and able to perform the service, unless one or more of the exceptions listed at 49 CFR § 604.9 apply. You are also reminded that applicants seeking FTA assistance must certify annually that they understand these requirements and that violation thereof may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

In light of the foregoing, FTA deems it incumbent upon GMTA to properly train its employees to ensure that violations of this sort do not occur in the future. Finally, we request that you forward a copy of GMTA's listing from the November 1997 issue of your telephone directory for our records.

We trust this information is helpful. If you have any questions, please call Margaret Foley at (617) 494-2409.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard H. Doyle". The signature is written in a cursive style with a large, looped "D" at the end.

Richard H. Doyle
Regional Administrator

cc: Mr. Sadler



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

REGION VII
Iowa, Kansas
Missouri, Nebraska

6301 Rockhill Road
Suite 303
Kansas City, Missouri 64131

August 18, 1998

Mr. Robert Roundtree
General Manager
City Utilities
P.O. Box 511
301 E. Central
Springfield, MO. 65801

Attn: Diane Hogan

Re: Charter Service

Dear Mr. Roundtree:

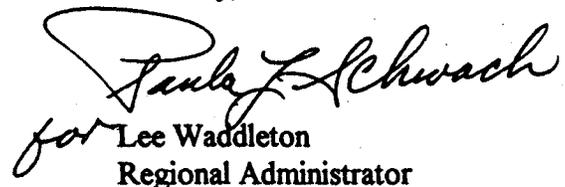
The Federal Transit Administration (FTA) has reviewed your letter dated July 13, 1998 requesting permission to use three, fully depreciated, 1979 fixed route buses which have been retired from service for charter services.

Vehicles purchased with FTA assistance in which there is a continuing Federal interest may not be used for charter services, and no federal operating subsidy can be used for maintenance or operating (including labor) costs of charter service unless an exception as outlined in 49 CFR Part 604 (a)(b) applies. However, pursuant to FTA Circular 5010.1B, Section 7 (g) and 49 CFR Part 18.32(e), federally-funded equipment which is no longer needed for transit purposes may be retained by the grantee. When, as represented by your staff in the teleconference with Regional Counsel, advertisement of the property has yielded no buyers or no buyers offering even \$5,000 per bus, the grantee (pursuant to 49 CFR Part 18.32(e)(1)) has no further obligation to FTA. What City Utilities does with this equipment now that it has extinguished the Federal interest is outside the scope of FTA's purview.

You are reminded that buses used for charter service may not be housed in an FTA-funded facility or maintained with FTA operating assistance.

If you have further questions or need additional information, you may contact Shannon Graves, Program Manager at (816) 523-0204.

Sincerely,


for Lee Waddleton
Regional Administrator



U.S. Department
of Transportation
Federal Transit
Administration

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

SEP 18 1998

Ms. Edith L. Lowery
Director/Grant Programs
Metropolitan Transit Authority
1201 Louisiana
Houston, Texas 61429

Dear Ms. Lowery:

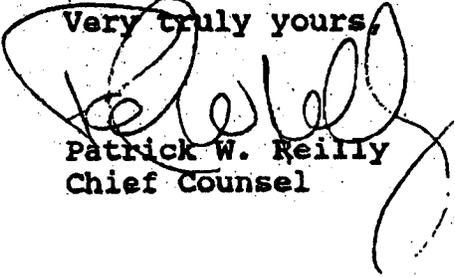
This responds to your letter of July 24, 1998, commenting on the Federal Transit Administration's (FTA) July 1, 1998, Federal Register notice seeking to extend the information collection requirements for charter service operations. You ask why recipients should be burdened with annual publication and reporting requirements if they do not intend to operate charters, or if they are aware of the existence of private providers.

FTA's charter regulation, 49 CFR Part 604, requires recipients to complete a process for determining if there are willing and able private operators only if they wish to provide charter service. A recipient not wishing to engage in charter operations is not required to follow this process. Similarly, a recipient need not publish a notice of its willingness to provide charter service if it is aware of at least one willing and able private operator within its geographic area. FTA's July 1 Federal Register merely announces the agency's intent to reinstate its information collection requirements for charter service operations, and does not propose any amendment to FTA's charter regulation.

I thank you for your comments, and hope that you find this information helpful.

Please contact Rita Daguillard at (202)366-1936 if you need further information.

Very truly yours,



Patrick W. Reilly
Chief Counsel

cc: Sylvia Barney, TAD



U.S. Department
of Transportation
Federal Transit
Administration

REGION I
Connecticut, Maine,
Massachusetts,
New Hampshire,
Rhode Island, Vermont

Volpe Center
55 Broadway Suite 904
Cambridge, MA 02142
617-494-2055
617-494-2865 (fax)

October 8, 1998

Ms. Pamela Pottle
Manager, Program Management
Maine Department of Transportation
Transportation Building
Station 15, Child Street
Augusta, ME 04330

Dear Ms. Pottle:

Reference is made to the enclosed letter from Theresa Samson, Vice President and General Manager of Hudson Bus Lines (Hudson), a private for-profit operator, regarding two issues involving the Western Maine Transportation Services a/k/a Pine Tree Transit (Pine Tree), a subrecipient of the Maine Department of Transportation (MDOT).

First, Ms. Samson complains that because Pine Tree is a private non-profit operator it was able to underbid Hudson and take over fixed-route services that her company had operated since 1959. As you know, the Federal Transit Administration's (FTA) "Notice of Recision of Private Enterprise Participation Guidance" was published in 59 Federal Register 21890 on April 26, 1994. FTA's new policy still requires consideration of private sector involvement consistent with statutory provisions, but allows local officials greater flexibility in making local transportation decisions. Under the new guidance, FTA specifically stated that it was eliminating the private sector appeal process and would instead monitor grantees' compliance through the transportation planning process, annual audits and triennial reviews. Therefore, FTA will not entertain the private sector issue raised by Ms. Samson.

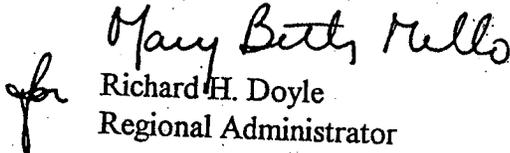
Next, Ms. Samson claims that her company will be adversely affected if Pine Tree is allowed to perform charter trips with FTA-funded assets as proposed in Pine Tree's legal notice of August 31, 1998. The notice states that Pine Tree is available to perform charter service "Mondays through Sundays from 12:01 a.m. to 12:00 midnight year round." Under FTA's charter service regulation, 49 CFR Part 604, a recipient who desires to provide any charter service using FTA-funded equipment or facilities must first determine if there are any private charter operators willing and able to provide the service. To the extent that there is at least one such private operator, the recipient is prohibited from providing charter service with FTA-funded assets, unless one or more of the exceptions in § 604.9(b) apply. Furthermore, any charter service provided by a recipient under an exception must be incidental. 49 CFR § 604.9(e). "Incidental charter service" is defined as service which does not interfere with or detract from the provision of mass transportation service, or does not shorten the mass transportation life of the equipment or facilities being used.

49 CFR § 604.5(i). Thus, service performed during peak hours is not considered incidental. See Question and Answer 24, 52 Federal Register 42248, 42251 (November 3, 1987).

According to Ms. Samson, Hudson is a willing and able private operator. Therefore, Pine Tree will be prohibited from performing the proposed charter service with FTA-funded assets unless it is provided on an incidental basis under one or more of the limited exceptions. In this regard, please note that Pine Tree's legal notice states it will be available on a 24-hour basis, which would include prohibited service performed during peak hours.

Please look into the above matter and submit a written response to the FTA within thirty days of receipt of this notice and send a copy of your response to Hudson. By copy of this letter, Hudson is notified that it has thirty days from receipt of MDOT's answer to submit a rebuttal to the FTA with a copy to MDOT. If you have any questions, please call Margaret Foley, Regional Counsel, at (617) 494-2409.

Sincerely,


Richard H. Doyle
Regional Administrator

Enclosure: 52 Federal Register 42248 (Nov. 3, 1987)
59 Federal Register 21890 (Apr. 26, 1994)

cc: Ms. Theresa S. Samson
Hudson Bus Lines

November 10, 1998

Mr. Peter Hallock, Transportation Coordinator
Iowa Department of Transportation
100 E. Euclid Ave., Suite 7
Park Fair Mall
Des Moines, IA 50313

Re: NHTSA Safety Standards and
Definition of School Bus

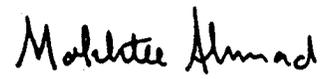
~~Dear Mr. Hallock:~~
^{Peter}

This letter is FTA's response to your correspondence of November 4, 1998. In that correspondence you requested a letter clarifying that vehicles purchased for coordinated public transit services are not considered school buses (despite NHTSA's regulations or guidance letters to state motor vehicle dealers' associations), even if the vehicles are used in part to provide non-exclusive transportation for children to and from Head Start and some transportation to and from public and parochial schools. You indicated that Iowa Department of Transportation's (IDOT's) subrecipients funded under the Section 5310 and Section 5311 Programs are having difficulty obtaining delivery of vehicles because they are unwilling to certify that such vehicles will never be used to transport students to or from schools or school events.

FTA encourages the coordination of public transportation services. Our regulations have long recognized the tripper service exception for non-exclusive transportation of school-age children by transit systems with fixed route service. (See 49 CFR 605.13, tripper service exclusion to prohibition of offering school bus services.) Similarly, for rural systems operating general public transportation as a demand response service, coordinated human services transportation like Head Start are allowable. While such coordinated human services transportation primarily serves elderly, persons with disabilities and generally transportation disadvantaged persons, it is not restricted from carrying other members of the general public, if the service is marketed as public transit service. (See Cir. 9040.1E, Chapter III, Eligibility. Also see Cir. 9070.1D, Chapter V, Vehicle Use.) 53 USC 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. However, the implementing regulation (49 CFR Part 605) does permit regular service to be modified to accommodate school students along with the general public.

FTA hopes that this clarification assists IDOT and its subrecipients in taking delivery of FTA-funded equipment in a timely manner so that you may continue to meet established milestones in the applicable grant(s).

Sincerely,

A handwritten signature in black ink that reads "Mokhtee Ahmad". The signature is written in a cursive style with a large initial 'M'.

Mokhtee Ahmad
Regional Administrator

Pls:MA



U.S. Department
of Transportation
Federal Transit
Administration

REGION I
Connecticut, Maine,
Massachusetts,
New Hampshire,
Rhode Island, Vermont

Volpe Center
55 Broadway Suite 920
Cambridge, MA 02142-1093
617-494-2055
617-494-2865 (fax)

NOV 25 1998

Ms. Theresa S. Samson
Vice-President & General Manager
Hudson Bus Lines
280 Bartlett Street
Lewiston, ME 04240

Dear Ms. Samson:

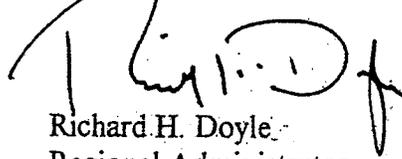
This letter responds to your August 31, 1998, complaint addressed to Gordon J. Linton, Administrator of the Federal Transit Administration (FTA), regarding a private non-profit operator working under contract for the Maine Department of Transportation (MDOT). Specifically, you complain that Western Maine Transportation Services, Inc., a/k/a Pine Tree Transit (Pine Tree), took over fixed-route service in the Lewiston-Auburn area previously operated by Hudson Bus Lines (Hudson). Furthermore, you infer that Pine Tree intends to perform charter service in violation of FTA's charter regulation, 49 CFR Part 604.

In its October 19, 1998, answer to the complaint, MDOT explained that both the Lewiston-Auburn Transit Committee (LATC) and MDOT reviewed the bidding process used in procuring the fixed-route service in question and determined that it was in total compliance with FTA's third party contracting criteria. As noted in our previous correspondence to you dated October 8 and November 5, 1998, FTA's new private sector policy allows local officials greater flexibility in making local transportation decisions and eliminates the private sector appeal process. Please be assured, however, that FTA will continue to monitor MDOT's procurement practices through the transportation planning process, annual audits and triennial reviews.

With regard to the charter service allegation, we note that Pine Tree sent you a letter on October 5, 1998 (copy enclosed), stating that it has determined there is at least one private operator willing and able to provide charter service in Pine Tree's service area; and therefore, it will only perform charter trips if one or more of the exceptions listed in 49 CFR § 604.9(b) applies. Moreover, MDOT has asserted that it will contact Pine Tree to insure that any charter service provided under an exception must be incidental as required by 49 CFR § 604.9(e). By copy of our letter of October 8, 1998, Hudson was provided thirty days from receipt of MDOT's answer to submit a rebuttal to the FTA. To date, we have not received your response. Accordingly, the FTA finds that this issue has been resolved.

In accordance with 49 CFR § 604.19, you may appeal this charter service decision within ten days of receipt to Gordon J. Linton, Administrator, Federal Transit Administration, 400 Seventh Street, S.W., Room 9328, Washington, DC 20590.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard H. Doyle". The signature is stylized with a large initial "R" and a circular flourish at the end.

Richard H. Doyle
Regional Administrator

Enclosure: 49 CFR Part 604
Pine Tree ltr to Hudson dtd 10/5/98

Cc: Pamela S. Pottle, Manager
MDOT Transportation Programs Unit



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

REGION V
Illinois Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 2410
Chicago, IL 60606-53232
312-353-2789
312-886-0351 (fax)

December 2, 1999

Richard N. Winston
Executive Vice President
For Transit Operations
Chicago Transit Authority
120 North Racine Avenue
Chicago, IL 60607

Dear Mr. Winston:

This letter responds to the Chicago Transit Authority's (CTA's) request for a special events charter exception under 49 CFR Section 604(b)(4) dated December 1, 1999, addressed to the Federal Transit Administration (FTA). The exception would allow the CTA to operate charter service for the "Aviation in the 21st Century – Beyond Open Skies Conference" to be held December 5-7, 1999, in Chicago.

The preamble to the charter regulation explains that the FTA will grant an exception under § 604.9(b)(4) only for events of an extraordinary, special and singular nature such as the Pan American Games and visits of foreign dignitaries, 52 Fed. Reg. 11925 (April 13, 1987). This event is an international aviation conference. Attendees will include fourteen Transportation Ministers and eight other heads of delegations. FTA understands that the City of Chicago has special concerns for the attendees' safety and seeks a higher level of security for these people. As a result, the City of Chicago has requested that the CTA provide mass transit buses, which have the necessary capacity and which do not contain undercarriage storage. Due to issues of security related to the attendees, as well as the unusual and unique nature of this event, the FTA recognizes the "Aviation in the 21st Century – Beyond Open Skies Conference" as the type of event envisaged by § 604.9(b)(4). CTA has also indicated that the use of the buses at the conference will not affect the CTA's ability to provide service to its passengers at all times of day, including rush hour periods.

For these reasons, I hereby authorize CTA to make FTA funded buses available to accommodate the need for a secure charter service during the "Aviation in the 21st Century – Beyond Open Skies Conference." CTA may, in accordance with the information provided to the FTA, utilize up to nine buses for the conference in the provision of this charter service.

CTA is reminded that, in accordance with 49 C.F.R. § 604.9(e), "Any charter service that a recipient provides must be incidental charter service." The regulations define "incidental charter

service” as service that does not interfere with or detract from mass transit use or shorten the mass transportation life of FTA funded facilities or equipment.

Sincerely,

Joel P. Ettinger
Regional Administrator

cc: Frank Kruesi
Duncan Harris



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

REGION VII
Iowa, Kansas,
Missouri, Nebraska

901 Locust Street
Room 404
Kansas City, MO 64106
816-329-3920
816-329-3921 (fax)

April 18, 2000

By Facsimile: 515-683-8671

Ms. Pam Ward, Administrator
Ottumwa Transit Authority
Ten Fifteen Regional Transit
105 E. Third Street
Ottumwa, Iowa 52501

Re: Charter and School Bus Complaint –
Unfair Competition

Dear Ms. Ward:

I have enclosed herewith a copy of a complaint dated February 15, 2000 from Mr. Jerry Kjer, General Manager of Southern Iowa Transit, Inc. ("SIT"). This complaint alleges that Ottumwa Transit Authority ("OTA") and Ten Fifteen Regional Transit ("10-15 Transit") performed impermissible charter service on a number of occasions listed in the written complaint from April 1998 to April 2000. In addition, Mr. Kjer claims that OTA is transporting student to school-sponsored sports activities.

Under 49 USC 5323(d) of the Federal Transit Laws and under 49 CFR Part 604, FTA's implementing regulations, a recipient of FTA financial assistance may not provide charter service using FTA-funded facilities or equipment if a private operator in the recipient's geographic area of operations is willing and able to provide the service, unless one or more of the exceptions listed at 49 CFR 604.9 apply.

Furthermore, 49 USC 4323(f) of the Federal Transit Laws prohibits the use of FTA-funded equipment or operations in the provision of service exclusively for the transportation of school students and school personnel in competition with private school bus operators. However, under FTA's implementing regulations, 49 CFR Part 605, grantees may provide "tripper service." Tripper service is regularly scheduled mass transportation service which is open to the public and which is designed to accommodate school students and personnel using various rare collections or subsidy systems. 49 CFR 605.3 states that buses used in tripper service must be clearly marked as open to the public and may not carry designations such as "school bus." These buses may stop only at a grantee's regular service stop and must travel within a grantee's regular route of service as indicated in published route schedules.

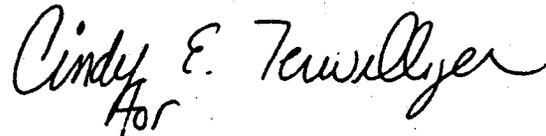
Please note that with regard to the charter complaint, FTA's regulations define a process. More particularly, 49 CFR 604.15 provides that the Regional Administrator shall advise the complainant and respondent to attempt to conciliate the dispute informally. However, it is apparent from correspondence between the parties, that such a process would only result in delay and not in resolution satisfactory to the parties.

Accordingly, FTA requests that OTA and 10-15 Regional Transit submit a written response to the complaint to the Regional Office within 30 days of the date of this letter and send a copy of the same to SIT. OTA and 10-15 Regional Transit should also submit copies of any relevant published route schedules to this office. SIT, by copy of this letter, is advised of its right to rebut the OTA and 10-15 Regional Transit response within 30 days.

In addition, FTA Regional staff will conduct a site visit to assist it in fact-finding. This visit will occur on Monday, April 24, 2000. Staff will contact you regarding estimated time of arrival. Please be available and plan on making certain records available for this site visit.

If either party has any questions, please contact Ms. Paula L. Schwach, Regional Counsel, at 816-329-3935.

Sincerely,

Handwritten signature of Cindy E. Tawilger in cursive script. Below the signature, the word "For" is written in a smaller, simpler font.

Mokhtee Ahmad
Regional Administrator

Enclosure

cc: Mr. Jerry Kjer, IDOT

May 18, 2000

By Facsimile: 515-683-8671

Ms. Pam Ward, Administrator
Ottumwa Transit Authority
Ten Fifteen Regional Transit
105 E. Third Street
Ottumwa, Iowa 52501

Re: Charter and School Bus Complaint –
Unfair Competition

Dear Ms. Ward:

On February 15, 2000, Mr. Jerry Kjer, General Manager of Southern Iowa Transit, Inc. ("SIT"), filed a complaint alleging that Ottumwa Transit Authority ("OTA") and Ten Fifteen Regional Transit ("10-15 Transit") performed illegal charter service on a number of occasions listed in the written complaint from April 1998 to April 2000. In addition, Mr. Kjer claimed that OTA transported students to school-sponsored sports activities.

Following receipt of the complaint, OTA and 10-15 Transit were invited to submit a written rebuttal of the complaint. You have chosen not to do so.

On April 24, 2000, Leah Russell, Director of Operations, and Paula Schwach, Regional Counsel, made a site visit to Ottumwa to ascertain what the routes in question were like, what services were being provided, and what was the rationale of OTA and 10-15 Transit for the services in question.

FTA's conclusions are as follows:

1. 10-15 Transit has on two occasions as described in the complaint provided bus service to school age children for trips to Pioneer Ridge (a nature center) from and to a public school site using FTA-funded equipment/rolling stock. This service was provided without charge and in order to prevent a deadhead bus. The service was under a verbal contract with the school district. This service was previously provided by SIT. We find that such service constitutes charter service and competes with the private sector. This is a violation of 49 USC 5323(d) of the Federal Transit Laws and under 49 CFR Part 604, FTA's implementing regulations, because a private operator, SIT, in 10-15 Transit's geographic area of operations is willing and able to provide the service, and none of the exceptions listed at 49 CFR 604.9 apply.

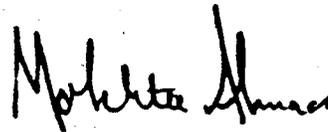
2. OTA operates a bus referred to as the Mid-Day Circulator. The destination of the Mid-Day Circulator is a water recreational/teaching facility called "the Beach." The riders are school age children and or school staff going to a common destination (the Beach) from a single point of pick up (the school) for a common purpose (swimming lessons offered by the school district) under a single contract between the school district and OTA. This description contains all of the elements of the very definition of charter service save one: clientele.

The only item in issue is whether this clientele has the exclusive use of the vehicle. Practically speaking, while the service is advertised as open to the public on the public access television channel, the route changes so frequently depending on which school is currently participating in the swim program offered by the local school district that the schedule is not reliable. The public access channel is arguably a niche market and not a medium designed for broad, general audiences. No schedule is available in paper format as are the fixed route and tripper service schedules. While drivers have been advised to allow members of the general public access to the Mid-day Circulator and have done so on at least one occasion, such ridership is so rare as to be merely incidental if not co-incidental. This appears to violate the spirit of the charter regulations. This is not to say that a Mid-day Circulator could not be designed which would accommodate some school children as well as the general public. However, we find that as currently designed, the service is charter service.

Accordingly, FTA requests that OTA and 10-15 Regional Transit cease providing service to Pioneer Ridge immediately. The Mid-Day Circulator is more problematic because of the potential ramifications of breach of contract with the school district. Therefore, FTA requests that OTA present this office with an exit plan or otherwise advise us as to how the service will be modified to meet the requirements of the Federal Transit Laws within 30 days. Any such plan must be implemented with all due speed but not later than 60 days from the date of this letter. Please provide the complainant, SIT, with a copy of any response to FTA.

If either party has any questions, please contact Ms. Paula L. Schwach, Regional Counsel, at 816-329-3935.

Sincerely,



Mokhtee Ahmad
Regional Administrator

Enclosure

cc: Mr. Jerry Kjer, SIT
Mr. Samil Sermet, IDOT

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

United Limo, Inc.,
Complainant

v.

Charter Complaint
49 U.S.C. Section 5323(d)

South Bend Public Transportation Corporation,
Respondent.

DECISION

Summary

On September 13, 1999, United Limo, Inc. ("Complainant") filed a complaint dated August 31, 1999, with the Federal Transit Administration ("FTA") alleging that South Bend Public Transportation Corporation ("Respondent") is providing a service in violation of FTA's charter regulation, 49 Code of Federal Regulations (C.F.R.) Part 604. The service specifically complained of pertains to Respondent's bus service to the Notre Dame/St. Mary's Complex located in South Bend, Indiana. Respondent filed an answer dated December 22, 1999. Complainant filed a response on February 4, 2000. Respondent filed additional information on March 13, 2000, and Complainant responded on April 18, 2000. Upon reviewing the allegations in the complaint and the subsequent filings of both the Complainant and the Respondent, FTA has concluded that the service in question does violate FTA's regulations regarding charter service. Respondent is hereby ordered to cease and desist in providing such illegal service.

Complaint History

Complainant filed its complaint with the FTA on September 13, 1999.¹ The complaint alleges that the Respondent is providing illegal charter service² by providing private charter service for the University of Notre Dame Du Lac and St. Mary's (collectively referred to as the "schools")³ beginning on August 23, 1999. Specifically, Complainant alleges that this service is not open to the public because: (1) the service is to provide shuttle service among the schools; (2) the service is pursuant to a contract between the schools and the Respondent; (3) the service is on private property that is gated and secured; (4) the schools are billed for the service on a monthly basis; (5) hours of operation are prescribed by the schools; (5) the schedule for the service is to be

¹ Complainant filed its original complaint on August 31, 1999, with the Michiana Area Council of Governments ("MACOG"). On September 29, 1999, MACOG filed a Motion to Dismiss with the FTA. MACOG contends they should not be a party to this action because they do not handle federal funds for the Respondent as the Complainant alleges in their complaint. MACOG in their Motion to Dismiss correctly points out that Respondent is a direct recipient of federal funds from the FTA; the funds do not pass through MACOG. FTA agrees with this factual assertion and dismisses MACOG as a party to this complaint.

² Respondent receives Section 5307 and 5309 funds from FTA; therefore, they must comply with the charter regulations.

³ The Respondent is also providing service to Holy Cross College, but it is not a signatory to the agreement.

distributed by the schools (and the drivers); (6) collection of fares is at the discretion of the schools; and (7) Respondent agrees not to allow any advertising on the buses inconsistent with the missions of the schools. Complainant also asserts that Respondent entered into its agreement for charter service with the schools without giving the Complainant proper notice and an opportunity to offer its service. Complainant requested a cease and desist order or in the alternative a loss of federal funds.⁴

Respondent filed its answer on December 22, 1999. In it, Respondent denied that it was providing illegal charter service, and attached as an exhibit a copy of the agreement between itself and the schools dated November 22, 1999. Respondent asserts that its service is not illegal because it is offered to the general public. Respondent also claims their legal notice was posted prior to their entering negotiations with the schools. Respondent alleges that it consulted with FTA staff before providing the service.

Complainant responded on February 4, 2000. This reply reiterated the assertion that Respondent's service is an illegal charter operation and that Complainant was not provided proper notice for an opportunity to offer its own charter service. Complainant again requested a cease and desist order.

Respondent requested leave to file a further response on February 23, 2000, and subsequently filed a response on March 13, 2000. Respondent again claimed that the service is open to the public and attached a map of the service as an exhibit.

Complainant filed an additional reply on April 18, 2000. Complainant reasserted its prior position in its reply. It also addresses the references the Respondent makes to conversations with FTA employees as to the legality of the service being provided. Complainant asserts any opinions offered by FTA would be advisory not controlling.⁵

Discussion

As Complainant has accurately stated, recipients of federal financial assistance can provide charter service in very limited circumstances. In the absence of one of the limited exceptions, the recipients are prohibited from providing the service. 49 C.F.R. Section 604.9(a). Complainant is not asserting that any of the charter exceptions apply, but rather that the service they are providing is not charter service.

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, for a fixed charge for the vehicle

⁴ The Complainant has requested that MACOG withhold federal funds, but as previously indicated the Respondent is a direct recipient of federal funds from the FTA.

⁵ Although Respondent makes assertions that it consulted with FTA staff regarding the legality of the service, Respondent provided no written documentation that it sought a formal legal opinion from the FTA. Any conversations with FTA staff would have been of a general nature, since it would be difficult to determine the type of service being provided without viewing the contract between the Respondent and the schools. Respondent did not provide a copy of the contract for FTA legal review until after the complaint had been filed.

or service, who have acquired the exclusive use of the vehicle or service in order to travel together under an itinerary either specified in advance or modified after leaving the place of origin. Includes incidental use of FTA funded equipment for the exclusive transportation of school students, personnel, and equipment. 49 C.F.R. § 605.5(e).

Thus, a determination needs to be made as to whether Respondent's service meets the definition of charter by examining the elements required for charter service. In order to qualify as charter service, the following questions need to be answered:

- a) Is this transportation service using buses funded with FTA money?
- b) Is the service for a common purpose?
- c) Is it under a single contract?
- d) Is it for a fixed charge for the vehicle or service?
- e) Is the exclusive use of the vehicles to travel together under an itinerary either specified in advance or modified after leaving the place of origin?

Each of these elements is discussed below. If Respondent's service includes each of these elements, then it is charter service. If it is charter service, a determination needs to be made as to whether it is permissible charter service.

A. Is this transportation service using buses funded with FTA money?

The Respondent receives federal money for its buses and its capital maintenance expenses. It is a publicly funded transportation service. Its primary source of funding is dollars it receives from the FTA. Respondent's purpose is to provide public transportation through a bus system. The buses it uses are purchased with federal money.

B. Is the service for a common purpose?

The Agreement dated November 22, 1999 (the "Agreement"), between Respondent and the schools⁶ includes several relevant provisions, which relate to the question as to whether the service provided is charter service. The Agreement discusses that its purpose is to provide a public shuttle bus service between the University of Notre Dame campus, the Saint Mary's College campus, and the Holy Cross College campus. The service runs between the schools on private property owned by the schools, since the Agreement states that the schools grant Respondent the right to use their roads and highways for the shuttle service. The Agreement also states that the University of Notre Dame du Lac agrees to keep its key card controlled gate operational during the shuttle service. Since the campus is gated and the service runs on private property, the shuttle service is not open to the public.

C. Is it under a single contract?

The Agreement serves as the single contract for the shuttle service.

⁶ The Agreement as previously indicated is between the Respondent and the University of Notre Dame du Lac and the Corporation of Saint Mary's College Notre Dame.

D. Is it for a fixed charge for the vehicle or service?

The Agreement states that Respondent will provide at least two buses on a daily basis to run the shuttle service between the schools during the hours of operation prescribed by the schools. The schools will determine the actual number of buses used and the days and hours of service. The schools will pay \$32 per hour per vehicle during the hours the shuttle operates. The hours will include fifteen minutes in each direction for deadheading each bus between the Respondent's garage and the school campuses. Therefore, there is a fixed charge for the vehicle for which the schools will be charged.

E. Is the exclusive use of the vehicles to travel together under an itinerary either specified in advance or modified after leaving the place of origin?

Under the Agreement, the Respondent shall set the schedule for the shuttle service during the hours set by the schools. The Respondent shall also set the routing. The schools and the drivers will distribute the schedule. The schools can decide to levy a fare at a later date, and then their billing for the shuttle service will be reduced accordingly.

Other provisions of the Agreement include the restriction on advertising on the shuttle buses. In the Agreement it states that the Respondent agrees to no advertising inconsistent with the schools' mission. The Agreement does state that the Respondent assumes responsibility and liability for the service. It also states that the Respondent is not an agent of schools, but it is a public carrier.

Examining all the indicators of the service, it is clear that the service being provided by the Respondent is a charter service. Respondent's own reply dated December 22, 1999, states, "We were informed that the cost of the service for a year must be provide...so that comparisons could be made with other providers who might also be interested in the service." Respondent must have known at the time this was charter service or why would other providers be interested. In fact, Respondent indicates in their reply dated March 13, 2000, that they provided their annual notice to provide charter service and received no responses from private providers, so they clearly knew this service was a charter service.

Respondent fails to provide evidence to back up its assertion that it is providing a public shuttle service. In its reply dated March 13, 2000, it states, "We [Respondent] carry the public on the shuttle trips, including students, non-students, parents of students, visitors to our area, sports fans, and other persons from the community." However, the Agreement indicates that the route starts and ends at the gates to the Schools and payment for service is hourly by the schools. Included in the hourly calculations is the time spent deadheading the vehicles.

The two cases Complainant cites, Greyhound Lines, Inc. v. City of New Orleans, 29 F. Supp. 2d 339 (E.D. LA. 1998) and Blue Bird Coach Lines, Inc. v. Linton, 48 F. Supp. 2d 47 (D.D.C. 1999), expand on the interpretation of charter service. The Greyhound case involved Greyhound buses being used for transporting passengers from their hotels to the Convention Center. The Court in making its determination that this was charter service stated that the service Greyhound provided was only available to clients of The Convention Store, not to the general public.

Payment came through a contract not individual paying passengers. Both these criteria were used to define charter service. In the Blue Bird case, the Court determined the service being provided by the Rochester-Genesee Regional Transit Authority of roundtrip transportation from Rochester to Buffalo and Syracuse for football and basketball games was not charter service. The service was widely advertised and open to the public. Individuals paid their own fare; it was not under a fixed contract. A finding that the service provided by the Respondent is charter service is consistent with both these cases.

In addition to the facts listed above, in the questions and answers section of the implementing charter regulations in the federal register, an on-point question was posed. The question asked whether service within a university complex according to routes and schedules requested by the university would constitute charter service. The answer indicated that "if the service is 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 [Question 27(d)]." 52 FR 42248 (November 3, 1987) (DOT Charter Service Questions and Answers) The description of the service as set forth in the answer indicates that factually the Respondent's service is more like the former rather than the latter type of service.

Finally, it is interesting to note that from 1996 through 1999, the Complainant provided charter service to the schools. The description of the service in Complainant's complaint is identical to the service at issue here. Complainant states, "On July 26, 1996, [Complainant] United entered into a written charter service agreement with the University of Notre Dame Du Lac and Saint Mary's College, to provide specified charter motor carrier transportation services on a scheduled per vehicle per hour basis, invoiced monthly, with payment due within thirty (30) days." The service being provided by the Respondent is the same service and the terms of the Agreement are the same.

The Respondent has entered into a contract with two universities to provide shuttle service among three schools. The buses, which were purchased with federal dollars, are for the exclusive use of the shuttle service. The two schools are being billed for the use of the buses. The schools and the drivers are providing the schedules; the schedules are not available to the public with the other regular route information. The shuttle service is conducted on private roads and on a gated campus. The schools monitor the advertisements on the shuttles and they decide the hours of operation. The Respondent is clearly providing a private charter service.

Acceptable Charter Service

If a recipient of federal funds, like the Respondent wishes to provide charter service, then it must comply with the procedural requirements. The regulation states the following:

If a recipient desires to provide any charter service using FTA equipment or facilities the recipient must first determine if there are any private charter operators willing and able to provide the charter service ... To the extent that there is at least one such operator, the recipient is prohibited from providing charter service with FTA funded equipment or facilities unless one or more of the exceptions applies, 49 C.F.R. Section 604.9(a).

There are a number of exceptions listed for providing charter service. However, the Respondent has not contended that one of the exceptions to the charter regulations applies in this case. Instead, the Respondent claims that even if this is a charter service, the Complainant failed to respond as a willing and able charter service to the solicitation for service. Respondent alleges they were not provided the opportunity to respond.

The regulations clearly state that before a recipient provides charter service it must determine if there is any willing and able charter operator. 49 C.F.R. § 604.9(a). In order to determine if there is at least one private charter operator willing and able to provide the service, the recipient must complete a public participation process. 49 C.F.R. § 604.11(a). The regulations under 49 C.F.R. § 604.11(a) require that the recipient complete the following:

- (1) At least 60 days before it desires to begin to provide charter service...
- (b) The public participation process must at a minimum include:
 - (1) Placing a notice in a newspaper, or newspapers, of general circulation within the proposed geographic charter service area;
 - (2) Send a copy of the notice to all private charter service operators in the proposed geographic service and to any private charter service operator that requests notice;
 - (3) Send a copy of the notice to the United Bus Owners of America, 1300 L Street, NW., Suite 1050, Washington, DC 20005 and the American Bus Association, 1100 New York Avenue, SW, Suite 1050, Washington, DC 20005-3934.
- (c) The notice must:
 - (1) State the recipients name;
 - (2) Describe the charter service that the recipient proposes to provide limited to days, times of day, geographic area, and categories of revenue vehicle, but not the capacity or the duration of the charter service;
 - (3) Include a statement providing any private charter operator...at least 30 days... to submit written evidence...
 - (4) State the address to which the evidence must be sent;
 - (5) Include a statement that the evidence necessary for the recipient to determine if a private charter operator is willing and able includes the following:
 - (i) A statement that the private operator has the desire and the physical capacity to actually provide the categories of revenue vehicle specified, and
 - (ii) A copy of the documents to show that the private charter operator has the requisite legal authority to provide the proposed charter service and that it meets all necessary safety certification, licensing and other legal requirements to provide the proposed charter service.
 - (6) Include a statement that the recipient shall review only that evidence submitted by the deadline, shall complete its review within 30 days of the deadline, and within 60 days of the deadline shall inform each private operator that submitted evidence what the results of the review are.
 - (7) Include a statement that the recipient shall not provide any charter service using equipment or facilities funded under the Acts to the extent that there is at least one willing and able private charter operator unless the recipient qualifies for one or more of

the exceptions in 49 C.F.R. § 604.9(b).

Procedural Determination Discussion

The regulation under 49 C.F.R. § 604.11 clearly sets forth the procedures for determining if any willing or able private charter operators exist. The onus is upon the recipient to provide a “public participation process.” At a minimum, the recipient is required to provide any private charter operator with at least 30 days to submit written evidence to prove that it is willing and able, and then it must inform each private operator what the results are at least 60 days before the deadline.

The Complainant has indicated that it is a “willing and able” charter service within the geographic area in question. It provided the charter service to the schools the three prior years. The Respondent does not challenge this assertion. In a letter dated August 16, 1999, written by the Complainant to the Respondent, the Complainant clearly notifies the Respondent of its desire and willingness to provide charter service to Notre Dame University. The letter further reminds Respondent of the requirements contained in 49 C.F.R. § 604 to publish a notice in the newspaper and to send a copy of the notice to the United Bus Owners Association and the American Bus Association. However, 49 C.F.R. § 604.11(b)(2) also requires the Respondent to send a “copy of the notice to all private charter service operators in the proposed geographic charter service area and to any private charter service operator that requests notice.” Respondent admits in their reply dated March 13, 2000, that they failed to send a notice to the Complainant. They state they received no responses to their annual notice. However, they do not attach a copy of their notice, so it is not clear what their “annual notice” referred to or where it was published.

Respondent seems not to understand the procedural requirements of the charter regulations. In its reply briefs, it discusses that the schools indicated that no private charter operators had replied to their request for a proposal. The Respondent indicates that this is one of the reasons it did not send a notice directly to the Complainant. However, the regulations are clear, the procedural notice requirement applies to the Respondent not the schools. 49 C.F.R. § 604.11(a). Respondent was required to send Complainant a copy of the notice, as a private charter operator in the geographic area, and because they had indicated an interest in providing the service. 49 C.F.R. § 604.11(b)(2).

Respondent appears not to have complied with additional procedural requirements regarding published notice. In Respondent’s reply dated December 22, 1999, it states, “This year, our legal notice was posted shortly before the negotiations were undertaken with the University of Notre Dame for the public shuttle service about which the complaint stemmed. A copy of the notice was not mailed directly to [Complainant] United Limo, Inc. at that time, because [Respondent] TRANSPO took their owner’s telephone call to us inquiring into charter provisions as an indication of their availability for charter service.” The regulations require that notice be published at least 60 days before recipient desires to begin providing the service. 49 C.F.R. § 604.11(a)(1).

Respondent failed to properly determine whether there were any willing any private charter operators willing and able to provide the service to the schools. Therefore, since Respondent has not raised any of the exceptions that would apply to providing charter service, it is prohibited

from providing charter service with FTA funded equipment or services under 49 C.F.R. § 604.9(a).

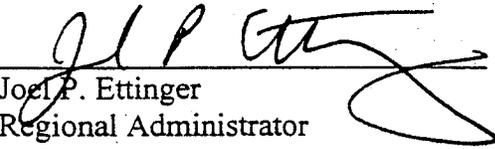
Remedy

Complainant has requested that Respondent immediately cease the charter operations at issue and begin the notice and review procedures as required under 49 C.F.R. Part 604. Complainant has requested in the alternative that there be a loss of federal funds. FTA does not need to address this question since it will be granting the cease and desist order. FTA grants Complainant's request for the cease and desist order and orders Respondent to cease providing charter service to the schools, and if they desire to provide charter service, they must follow the notice and review procedures for determining if there are any willing and able private charter operators.

Conclusion and Order

FTA finds that Respondent 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.

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 Nuria Fernandez, Acting Administrator, FTA, 400 Seventh Street, S.W., Room 9328, Washington, D.C. 20590.


Joel P. Ettinger
Regional Administrator

5-27-00
Date



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

REGION V
Illinois Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 2410
Chicago, IL 60606-53232
312-353-2789
312-886-0351 (fax)

August 3, 2000

Thomas P. Kujawa
Managing Director
Milwaukee County Transit System
1942 North 17th Street
Milwaukee, WI 53205-1697

Dear Mr. Kujawa:

This letter serves as the Federal Transit Administration's (FTA) response to your request dated June 28, 2000, for a waiver of the charter regulations for the trolley replica buses. Unfortunately, the FTA charter regulations, which can be found at 49 Code of Federal Regulations Part 604, do not distinguish between trolley replica buses and regular buses. Unless one of the charter exceptions applies, you cannot provide charter service with the trolley replica buses. FTA would be happy to review any request to provide charter service under one of the charter exceptions. However, since you are not applying for consideration under one of the charter exceptions, your request for a waiver from the charter regulations is denied. Should you have any questions, please contact our office.

Sincerely,

Joel P. Ettinger
Regional Administrator



U.S. Department
of Transportation
Federal Transit
Administration

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 2410
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

September 20, 2000

Mr. W. James Chamberlain
President
Mackinaw Trolley Company
PO Box 358
101B East Central
Mackinaw City, MI 49701

RE: Use of Public Funds for Private Charters

Dear Mr. Chamberlain:

This letter serves as the Federal Transit Administration's (FTA) response to your letter dated August 26, 2000, concerning charter operations by recipients of federal funds. In your letter, you indicated that Charlevoix County Public Transportation in Boyne City, Michigan has been using a federally funded vehicle for private charter operations and you asked that the FTA investigate this situation. You should also have provided a copy of your complaint to Charlevoix County. However, FTA will be sending them a copy along with this letter.

Under 49 CFR § 604.15(b), parties to charter disputes shall first attempt to resolve the dispute informally through discussions between the recipient and complainant. A period of informal conciliation shall last for up to 30 days from the date of receipt of this letter, unless an extension is mutually agreed upon by both parties. If you are unable to reconcile this matter between both parties, either party may send notification to this office. The FTA will send a copy of the notification to the other party and the respondent shall have 30 days from the receipt of notification in which to provide written evidence which responds to the complaint. The complaining party will then have 30 days from receipt of the Respondent's response to respond to the Respondent's evidence. The FTA will then review the evidence and prepare a written decision.

If it is determined that further investigation is necessary or an informal evidentiary hearing is necessary, you will be informed in writing. Either party may request an informal evidentiary hearing prior to the Regional Administrator's decision. The Regional Administrator may grant or deny the request. If such a hearing is determined to be necessary, the date and location will be prearranged by consultation with both parties. Any new evidence presented at the informal evidentiary hearing shall be submitted to the Regional Administrator within 10 days after the hearing. Deadlines may be extended in writing by the Regional Administrator.

The regulations regarding filing complaints for charter violations can be found at 49 CFR Section 604.15. Should you have any questions, please contact Nancy-Ellen Zusman of my staff at (312)353-2789.

Sincerely,


Joel Ettinger
Regional Administrator

cc: Charlevoix County Public Transportation w/enclosure
Mr. Paul France, Air Bear Transportation Company



U.S. Department
of Transportation
Federal Transit
Administration

The Deputy Administrator

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

OCT 5 2000

Mr. Richard A. White
General Manager
Washington Metropolitan Area Transportation Authority
600 Fifth Street, N.W.
Washington, DC 20001

Dear Mr. White:

This letter responds to the Washington Metropolitan Area Transportation Authority's (WMATA) October 5, 2000 request for a special events charter exception under 49 CFR Section 609.4(b)(4).

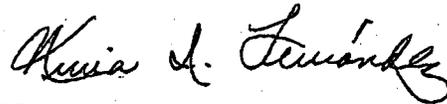
WMATA seeks to operate charter service for attendees of the International Transportation Symposium scheduled for October 9-12, 2000 in Washington, D.C. (the "Symposium"). The Symposium is being sponsored by the United States Department of Transportation, the Government of the District of Columbia, and the Greater Washington Board of Trade.

WMATA bases its application on safety and security concerns for the Symposium's attendees, whom will include Secretary of Transportation Rodney E. Slater, foreign transportation ministers, Members of Congress, governors, mayors, Members of Parliaments, international transportation, manufacturing and shipping industry executives, trade association experts, and labor leaders. Your application points out that, "WMATA has its own Metro Transit Police Department, which has extensive experience with special events with heightened security issues." Also as part of WMATA's application, you included a letter from the Government of the District of Columbia, addressed to you, requesting that WMATA obtain a charter exception in connection with the Symposium. That letter points out that, "public transit buses should be used to respond to [the safety] concerns" surrounding the Symposium. The FTA notes that public transit buses do not contain undercarriage storage compartments.

The preamble to the FTA's charter regulation explains that the FTA will grant an exception under Section 604.9(b)(4) for events of an extraordinary, special and singular nature such as the Pan American Games and visits of foreign dignitaries. 52 Fed.Reg. 11925 (April 13, 1987). Based on a review of the safety and security considerations in connection with the Symposium, the FTA grants WMATA an exception to operate charter service in connection with this special event.

The FTA reminds WMATA that, "Any charter service that a recipient provides must be incidental charter service." 49 CFR Section 604.9(e). The regulations define "incidental charter service" as service that does not interfere with or detract from mass transit use, and which does not shorten the mass transportation life of FTA funded facilities or equipment.

Sincerely,



Nuria I. Fernandez
Acting Administrator



U.S. Department
of Transportation
Federal Transit
Administration

REGION VIII
Colorado, Montana,
North Dakota,
South Dakota,
Utah Wyoming

Columbine Place
216 Sixteenth Street Suite 650
Denver, CO 80202-5120
303-844-3242
303-844-4217 (fax)

November 9, 2000

Mr. Todd A. Holland, President
Ramblin' Express, Inc.
4360 Buckingham Drive, Suite 100
Colorado Springs, Colorado 80907

Decisions

RE: Alleged Charter Service, City of Colorado Springs

Dear Mr. Holland:

We are in receipt of your letter of October 24, 2000 in which you have essentially alleged that the City of Colorado Springs is providing charter service by running federally funded buses from Colorado Springs to/from Mile High Stadium in Denver for Denver Broncos football games.

Charter Service means transportation using buses or vans, or facilities funded under the Acts of a group of persons who, pursuant to a common purpose, under a single contract, at a fixed charge (in accordance with the carrier's tariff) 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 having left the place of origin. This definition includes the incidental use of FTA funded equipment for the exclusive transportation of school students, personnel, and equipment. (49 CFR §604.5(e)).

What the City of Colorado Springs appears to be running is a route that goes to Mile High Stadium. This is similar to the Bronco Bus and Rockies Bus that RTD runs. The key is that this is not exclusive use under one contract. The service is available to anyone who wants to buy a ticket and ride the bus. Therefore, based on the information which you have provided it does not appear that the service which you have described falls within the definition of charter service.

Should you have further questions or comments, please feel free to contact us.

Yours truly,



Lee O. Waddleton
Regional Administrator



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

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 2410
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

December 7, 2000

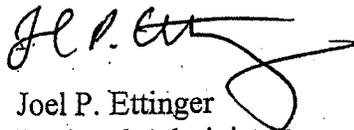
Barry S. Bland
President/CEO
Indianapolis Public Transportation Corporation
1501 West Washington Street
Indianapolis, IN 46222

RE: Request for Waiver of Charter Regulations

Dear Mr. Bland:

This letter serves as the Federal Transit Administration's (FTA) response to your request dated November 16, 2000, for an exception to the charter regulations. Specifically, the Indianapolis Public Transportation Corporation (IndyGo) wants a waiver of the charter regulations so that it may provide charter service for the World Police & Fire Games in Indianapolis this summer. IndyGo requested the waiver under 49 C.F.R. § 604.9(b)(4), the special events exception. Unfortunately, FTA can only grant this exception to the extent that private charter operators are not capable of providing the service. You indicated in your letter that 10,000 individuals would be coming in for the event. Nancy-Ellen Zusman of my staff confirmed with Elizabeth Johnson of your staff by telephone on December 5, 2000, that this is not a private capacity issue. Additionally, two private charter operators submitted negative comments in response to IndyGo's public notice proposing to provide the charter service for the event. Based on the information FTA has received to date, the Agency cannot grant your request for an exception, due to the fact there is no evidence private charter operators are not capable of providing the service. Therefore, FTA is denying your request for an exception, because it does not meet the requirements of 49 C.F.R. § 604.9(b)(4). Should you have any questions regarding this matter, please feel free to contact Ms. Zusman. She can be reached at (312) 353-2789.

Sincerely,



Joel P. Ettinger
Regional Administrator



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

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 2410
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

December 20, 2000

Hank Sokolnicki
Planning/Grants Administrator
Miami Valley Regional Transit Authority
600 Longworth Street
P.O. Box 1301
Dayton, OH 45401

Re: Response to Request to Provide Incidental Charter Service Limited to Special Categories of Revenue Vehicles

Dear Mr. Sokolnicki:

This letter serves as the Federal Transit Administration's (FTA) response to Miami Valley Regional Transit Authority's (MVRTA) inquiry dated November 22, 2000, regarding a request to provide incidental charter service limited to special categories of revenue vehicles. It is also a follow-up to our subsequent telephone conversation on the same topic on November 30, 2000. Thank you for providing me with a copy of an FTA letter on this topic from November of 1992.

Since we spoke, I have researched the question and have been able to confirm, as I indicated to you on the telephone, that the charter regulations only distinguish between two types of vehicles, buses and vans, see 49 C.F.R. Section 604.3(e). If a grantee wishes to provide charter service, they must first determine whether there are any private willing and able charter providers, otherwise one of the exceptions listed under 49 C.F.R. Section 604.9(b) must apply. FTA is aware that the advice it provided to MVRTA in 1992 indicated differently. However, the interpretation contained in our letter to you today is the correct statement of the regulation. Grantees in their public notice soliciting private willing and able charter providers can only specify bus or van with regard to the type of vehicle.

FTA's Triennial Review Guide dated October 2000, states this interpretation also. Under the explanation of the charter annual service notice, the Guide states, "The grantee's notice must be limited to a description of the ... categories of revenue vehicles for service. Only two categories of vehicles can be specified: buses and vans. A bus is a bus whether it is an intercity bus, a transit bus, or a trolley. A private operator does not have to demonstrate that it has any particular type of bus to be considered 'able.'" (Guide at 16-2)

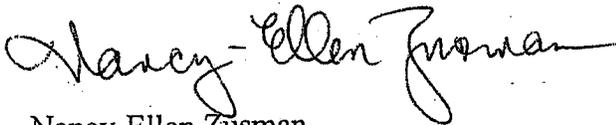
This specific question was also addressed approximately seven months after the final charter regulation was published. UMTA (the precursor agency to FTA) published a number of questions and answers regarding the charter regulations. One of the question and answers were as follows:

25. *Question:* If the customer insists on a particular type of equipment that the willing and able to [sic] private operator does not have, for example, a trolley lookalike, articulated or double-decker bus, may the grantee provide the service?

Answer: The regulation recognizes only two categories of vehicles, i.e., buses or vans. Trolleys, artics, doubledeckers and other types of specifically modified equipment are placed in one of these categories and are subject to the same rules as all other equipment. Therefore, the grantee would be able to provide the service only if one of the regulatory exceptions applies. (Federal Register, Vol. 52, No. 212, pg. 42252, November 3, 1987)

MVRTA if it wishes to provide charter service will need to reissue its public notice to determine if there are any private willing and able charter providers for the type of service (bus or van) it wishes to provide. FTA apologizes for any confusion its prior advice may have caused. Should you have any further questions regarding this matter, please feel free to contact me. I can be reached at (312) 353-2789.

Sincerely,



Nancy-Ellen Zusman
Regional Counsel



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

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 2410
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

February 8, 2001

Ty E. Livingston
Director of Planning & Marketing
Greater Peoria Mass Transit District
2105 N.E. Jefferson Ave.
Peoria, IL 61603

Re: Review of Agreement for Direct Charter Service

Dear Mr. Livingston:

This letter serves as the Federal Transit Administration's (FTA) response to Greater Peoria Mass Transit District's (CityLink) request dated September 15, 2000, regarding review of its Agreement for Direct Charter Service. It is also a follow-up to our subsequent telephone conversations on the same topic on February 7, and 8, 2001

The issue CityLink raised is whether it could specify in its agreement with commercial charter operators that it would be using replica trolleys, as opposed to buses or vans, as indicated in its annual notice. I have researched the question and have been able to confirm, as I indicated to you on the telephone, that the charter regulations only distinguish between two types of vehicles, buses and vans, see 49 C.F.R. Section 604.3(e). If a grantee wishes to provide charter service, they must first determine whether there are any private willing and able charter providers, otherwise one of the exceptions listed under 49 C.F.R. Section 604.9(b) must apply. Grantees in their public notice soliciting private willing and able charter providers can only specify bus or van with regard to the type of vehicle. The agreement utilized under Section 604.9(b)(7) must be consistent with a Grantee's annual notice. In other words, the agreements should only list buses or vans when discussing the type of charter service the Grantee is intending to provide.

FTA's Triennial Review Guide dated October 2000, states this interpretation also. Under the explanation of the charter-annual service notice, the Guide states, "The grantee's notice must be limited to a description of the ... categories of revenue vehicles for service. **Only two categories of vehicles can be specified: buses and vans.** A bus is a bus whether it is an intercity bus, a transit bus, or a trolley. A private operator does not have to demonstrate that it has any particular type of bus to be considered 'able.'" (Guide at 16-2)

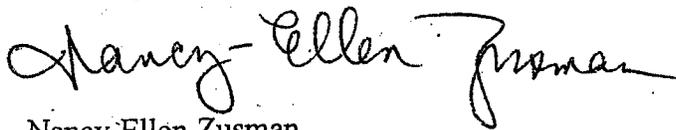
This specific question was also addressed approximately seven months after the final charter regulation was published. UMTA (the precursor agency to FTA) published a number of questions and answers regarding the charter regulations. One of the question and answers were as follows:

25. *Question:* If the customer insists on a particular type of equipment that the willing and able to [sic] private operator does not have, for example, a trolley lookalike, articulated or double-decker bus, may the grantee provide the service?

Answer: The regulation recognizes only two categories of vehicles, i.e., buses or vans. Trolleys, artics, doubledeckers and other types of specifically modified equipment are placed in one of these categories and are subject to the same rules as all other equipment. Therefore, the grantee would be able to provide the service only if one of the regulatory exceptions applies. (Federal Register, Vol. 52, No. 212, pg. 42252, November 3, 1987)

CityLink if it wishes to provide charter service will need to renegotiate its agreement with the private charter operators to determine if there are any private willing and able charter providers for the type of service (bus or van) it wishes to provide. FTA apologizes for any confusion its prior advice may have caused. Finally, you may want to clarify in your agreement that CityLink is offering to provide charter service pursuant to 49 C.F.R. Section 604.9(b)(7). This provision is a regulation, not a circular as referenced in your agreement. Should you have any further questions regarding this matter, please feel free to contact me. I can be reached at (312) 353-2789.

Sincerely,



Nancy-Ellen Zusman
Regional Counsel

cc: Derek Davis



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

REGION VII
Iowa, Kansas,
Missouri, Nebraska

901 Locust Street
Suite 404
Kansas City, MO 64106
816-329-3920
816-329-3921 (fax)

July 19, 2001

Ms. Gloria J. Young
Manager of Safety & Instruction
1200 East 18th Street
Kansas City, MO 64108

Re: Charter Service for American Dental Assoc.

Dear Ms. Young:

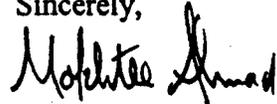
The Federal Transit Administration (FTA) has received your letter dated June 7, 2001 regarding charter service. It is our understanding that Kansas City Area Transportation Authority (KCATA) wishes to provide transportation for attendees to the American Dental Association Convention being held October 12-15, 2001 in the Kansas City area. Specifically, KCATA wishes to provide a shuttle service to transport convention attendees to restaurants and entertainment areas throughout the city.

The preamble to the charter regulation explains that the FTA will grant an exception under Section 604.9(b)(4), the exception which you have requested, only for events of an extraordinary, special and singular nature such as the Pan American Games and the visits of foreign dignitaries. (See 52 Fed. Reg. 11925, April 13, 1987.) Regularly scheduled yearly or periodic events would not qualify for the exception. (See "Charter Service Questions and Answers," 52 Fed. Reg. 42251, November 3, 1987.) While the FTA did grant a "special event" exception to several transit authorities in Iowa for the 1988 World Ag Expo, an international agricultural exposition which had been held in the United States only twice in twenty years and which was expected to draw between 200,000 and 300,000 visitors, the American Dental Association Convention does not appear to be an event of a singular nature. This convention is held periodically and only the location within the United States changes. Your letter provides no support for the proposition that the convention is the type of activity intended by the regulation's "special event" exception.

For these reasons, FTA has determined that KCATA must follow the public participation process set forth at 49 CFR 604.11 and thereby determine if there is a willing and able private provider of charter service. If no willing and able operator exists, KCATA can provide charter service for the convention so long as this service is incidental charter service. Your telephone conversation with Regional Counsel, Paula L. Schwach, indicated that the service would be provided outside of peak service hours and from 6:30PM to 11:00PM. Incidental charter service may not interfere with or detract from providing mass transportation service or shorten the mass transportation life of the equipment being used. (See also, 52 Fed. Reg. 42251-42252.)

For a copy of the FTA Charter Service Regulations, go to http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr604_99.html. If you have questions, please contact Shannon Graves at (816) 329-3926 or Paula L. Schwach, Regional Counsel at (816) 329-3935.

Sincerely,



Mokhtee Ahmad
Regional Administrator

Cc: Elizabeth Martineau, TCC



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

REGION VII
Iowa, Kansas,
Missouri, Nebraska

901 Locust Street
Suite 404
Kansas City, MO 64106
816-329-3920
816-329-3921 (fax)

October 3, 2001

Ms. Gloria J. Young
Manager of Safety & Instruction
1200 East 18th Street
Kansas City, MO 64108

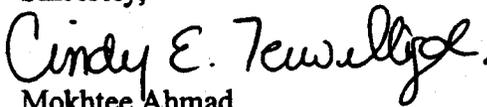
Re: Charter Service for American Dental Assoc.

Dear Ms. Young:

On October 1, 2001, this office received your request for a waiver of the charter regulations pursuant to 49 CFR 604.9(b)(1). Attached to your letter was documentation of your efforts to comply with the public participation process set forth at 49 CFR 604.11 and your resulting determination that there is no willing and able private provider of charter service for transportation for attendees to the American Dental Association Convention being held October 12-15, 2001 in the Kansas City area. Specifically, KCATA notified private charter operators and the American Bus Association of the opportunity to provide a shuttle service to transport convention attendees to restaurants and entertainment areas throughout the city. No provider indicated either the willingness or the ability to participate in this service; many private providers are providing other service related to the convention.

FTA finds based on your letters dated August 1, and the attachments thereto, and September 18, 2001 that no willing and able operator exists, and therefore, KCATA is granted a waiver pursuant to 49 CFR 604.9(b)(1) and may provide charter service for the convention so long as this service is incidental charter service.

If you have any questions related to this waiver, please contact Paula L. Schwach, Regional Counsel at (816) 329-3935.

Sincerely,

Mokhtee Ahmad
Regional Administrator

Cc: Elizabeth Martineau, TCC



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

REGION V
Illinois, Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 2410
Chicago, IL 60606-5253
312-353-2789
312-886-0351 (fax)

OCT 11 2001

Joseph A. Calabrese, CEO
General Manager/Secretary-Treasurer
Greater Cleveland Regional Transit Authority
1240 W. Sixth Street
Cleveland, OH 44113

RE: Charter Service

Dear Mr. Calabrese:

The Federal Transit Administration (FTA) is aware that on August 5, 2001, the Greater Cleveland Regional Transit Authority (GCRTA) transported a group of American Public Transportation Association (APTA) participants from Cleveland, OH to Pittsburgh, PA. The purpose of the trip was to view Pittsburgh's various transportation facilities. The trip was in conjunction with APTA's 2001 Intermodal Operations Planning Workshop which was in Cleveland, OH from August 6-August 8, 2001. GCRTA has indicated that it did not charge the participants for the trip, and no regular GCRTA service was impacted by the use of the buses.

The question of what type of service was provided turns on whether the service provided qualifies as charter service or mass transportation. The definition of charter service under 49 C.F.R. § 604.5(e) is "transportation using buses... funded under the [FTA Act and those parts of 23 U.S.C. 103 and 142 that provide for assistance to public bodies for purchasing buses] 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..." The service provided by GCRTA was not open to the public. GCRTA used federally funded equipment to provide transportation for a specific group of individuals to travel from Cleveland to Pittsburgh.

Although GCRTA did not charge for this service, FTA has interpreted cost as being irrelevant. In 1987, UMTA (FTA's precursor agency the Urban Mass Transportation Administration) issued a series of charter questions and answers. Question 27(a) was whether service provided for free, but otherwise meets the criteria in the definition of charter would fall within the definition of charter. The answer was as follows:

"Cost is irrelevant in determining whether service is mass transportation or charter service. Thus, service which meets the criteria set by UMTA, i.e., service controlled by the user, not designed to benefit the public at large, and which is provided under a single contract, will be charter regardless of the fact that it is provided for free.

As a general rule, free charter service would be "non-incidenta" since it does not recover its fully allocated cost, and could not be performed by an UMTA recipient, even under one of the exceptions to the charter regulations." (52 Fed. Reg. 42252 (Nov. 3, 1987))

Based on the information GCRTA has provided regarding this trip, FTA views this trip as unauthorized charter service. GCRTA controlled the service, and it was not for the benefit of the public at large. It was provided on a one time basis for transportation between two destinations.

Since GCRTA provided unauthorized charter service, it should extend the useful life of the vehicles in question by the amount of mileage that was used for the trip from Cleveland to Pittsburgh. In future, GCRTA should cease and desist from the practice of providing unauthorized charter service.

Should you have any questions regarding this matter, please feel free to contact me. I can be reached at (312) 353-2789.

Sincerely,

Louise Carter, Director
Office of Operations and Program Management



U.S. Department
of Transportation
Federal Transit
Administration

REGION V
Illinois Indiana,
Michigan, Minnesota,
Ohio, Wisconsin

200 West Adams Street
Suite 2410
Chicago, IL 60606-53232
312-353-2789
312-886-0351 (fax)

OCT 23 2001

T. J. Ross
Executive Director
PACE
550 West Algonquin Road
Arlington Heights, IL 60005

RE: Charter Regulation Requirements

Dear Mr. Ross:

The Federal Transit Administration (FTA) is aware that on September 27, 2001, PACE provided thirty-five (35) buses based on a request from the White House. The buses were used to transport approximately 4,000 airline employees from sites beyond O'Hare Airport to a White House event with the Secretary of Transportation. The buses were used over a two-hour time period. PACE was reimbursed for the use of the buses. FTA does not know whether regular PACE service was impacted by the use of the buses.

FTA is aware that the White House indicated that for specific security reasons it wished to utilize PACE buses. A one-time event of this type would probably have qualified as an exception to the charter regulations under the special events exception. FTA is aware that this was a special request from the White House with a very narrow timeframe. FTA would have responded extremely quickly to either a written or verbal request (followed up later with a written request) for an exception. However, PACE did not seek the Administrator's approval for an exception. This letter is being sent as a reminder that PACE is required to follow the charter regulations, including the procedural requirements.

The charter regulations prohibit recipients from providing charter service with FTA funded equipment unless one of the specific charter exceptions applies. 49 Code of Federal Regulations (CFR) § 604.9(a). Under the regulations, there is a charter exception that applies for special events to the extent that private charter operators are not capable of providing the service. 49 CFR § 604.9(b)(4). However, in order to utilize the exception the recipient needs to petition the Administrator for an exception. *Id.* The petition should describe the event, explain how it is special, and explain the amount of charter service the private operators are not capable of providing. 49 CFR § 604.9(d). Additionally, the service provided can only be incidental. 49 CFR § 604.9(e). Incidental service means that the service does not interfere with or detract from the provision of mass transportation service. 49 CFR § 604.5.

As you well know, the service provided by PACE was not open to the public. PACE used federally funded equipment to provide transportation for a specific group of individuals for a specific purpose. The service provided clearly falls within the definition of charter. PACE did not petition for an exception to the charter regulations. FTA is bringing this matter to your attention so that should a similar situation occur, you will contact FTA immediately. Should you have any questions regarding this matter, please feel free to contact me.

Sincerely,

Joel Ettinger
Regional Administrator



U.S. Department
of Transportation
Federal Transit
Administration

REGION I
Connecticut, Maine,
Massachusetts,
New Hampshire,
Rhode Island, Vermont

Volpe Center
55 Broadway, Suite 920
Cambridge, MA 02142-1093
617-494-2055
617-494-2865 (fax)

DEC 13 2001

Mr. Robert B. Kennedy
Lowell Regional Transit Authority
Gallagher Intermodal Transportation Center
145 Thorndike Street
Lowell, MA 01852

Dear Mr. Kennedy:

This letter will confirm that the Federal Transit Administration (FTA) authorized the Lowell Regional Transit Authority (LRTA) to provide charter service under a special events charter exception pursuant to 49 CFR Section 609.4(b)(4). Specifically, the office of U. S. Senator Robert Smith requested LRTA to provide a 25-passenger, or larger, CNG-powered bus to transport staff and press to various events in Western New Hampshire during a two-day tour which was officially called "The Bob Smith Environmental Bus Tour."

LRTA based its application on the nature of the service which was to inform the public about the need for an expanded natural gas infrastructure and for CNG filling stations in the State of New Hampshire and across the country. Your application pointed out that LRTA notified three private charter bus operators to determine whether these companies would be able to perform the service. None of the private operators had the capacity to provide the necessary service.

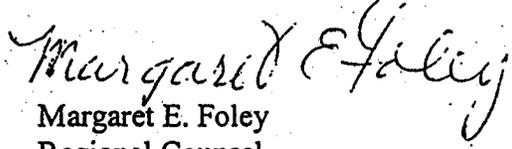
The FTA has not defined "special events," but intends that they cover only events of an extraordinary and singular nature. 52 Fed. Reg. 42251 (November 3, 1987). Based on a review of the considerations in connection with the Environmental Bus Tour, the FTA granted LRTA an exception to operate charter service in connection with this special event.

The FTA reminds LRTA that a request for a special events exception must follow the process set forth at Section 604.9(d). This process provides, in part, that a recipient must submit its petition for an exception to FTA at least 90 days prior to the date of the charter service and that any exception granted is only good for the particular special event specified. Moreover, any charter

service that a recipient provides must be incidental. 49 CFR Section 604.9(e). The regulations define "incidental charter service" as service which does not interfere with or detract from the provision of mass transit use, or which does not shorten the mass transportation life of FTA funded facilities or equipment.

I hope this information is helpful. If you have any questions, please feel free to call me at (617) 4949-2409.

Sincerely,


Margaret E. Foley
Regional Counsel



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

Administrator

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

C-16-01

DEC 27 2001

Dear Transportation Colleague:

The events of September 11 have introduced significant challenges for America's transportation network. Long recognized as the world's finest system for transporting passengers and goods, this network is the foundation of the world's strongest economy and most open society. We are now challenged to maintain that vigor and effectiveness in the face of a new and menacing threat.

Many of the private sector components of our transportation infrastructure were dealt a considerable economic blow by the September 11 attack. The airline industry was severely impacted, but so, too, was the private over-the-road bus industry. The bus industry reports that members experienced cancellation rates in charter and tourism business of up to eighty percent. Revenues from these services are considered crucial to maintaining intercity bus transportation networks, which serve over 4,000 communities.

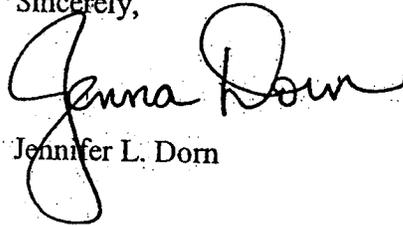
The interconnected nature of America's transportation network requires that we work together to maintain the vitality and effectiveness of every component of our system. Local transit agencies, especially in rural areas, are providing connecting feeder and distributor services to intercity operators. Local transit operators have become ticket agents for both local and intercity service. Intercity over-the-road bus operators have become contractors to public governmental agencies, particularly providing long distance commuter services, and have made their resources available for special events in times of unusually high demand. The fact is, the health of every component – public and private – affects the health and effectiveness of our entire passenger transportation system.

As public transit agencies move to expand service, it is important to respect the needs of private sector agencies to operate effectively in a competitive marketplace for services that do not receive subsidies. In 1987, the Federal Transit Administration (FTA) issued charter service rules, as required by Federal law, to ensure that publicly funded services do not put private services at a competitive disadvantage. FTA also affords flexibility within its rules for public agencies to meet special community needs when it is not practical for the private sector to respond in a cost-effective manner.

I have enclosed a brochure that highlights and reviews the key provisions of the FTA charter service regulation and the specific responsibilities of FTA grant recipients. Please take a few moments to review this information.

Public and private mass transportation providers have much to offer each other and the riding public--America is depending upon all of us to keep our communities safe and moving.

Sincerely,

A handwritten signature in black ink that reads "Jennifer L. Dorn". The signature is written in a cursive style with a large, looping initial "J".

Jennifer L. Dorn

Enclosure



U.S. Department
of Transportation
Federal Transit
Administration

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 2210
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

JAN 15 2004

Mr. Richard Cromwell
General Manager and CEO
SunLine Transit Agency
32-505 Harry Oliver Trail
Thousand Palms, CA 92276

Mr. Jim Seal
Jim Seal Consulting Services
2431 32nd Street
Santa Monica, CA 90405

Dear Messrs. Cromwell and Seal:

It has come to our attention that Federal Transit Administration (FTA) failed to issue its final determination letter in response to correspondence submitted by the SunLine Transit Agency (SunLine) and the California Bus Association (CBA) concerning the reconfiguration and reinstatement of SunLine's group trip service. We regret this omission, and herewith transmit FTA's decision.

Background

On February 10, 1997, the FTA issued a decision finding that SunLine's fixed-route group trip service was charter service in violation of 49 CFR Part 604. SunLine was ordered to discontinue operating the service and advised that if it wished to reinstitute group trip operations, it must reconfigure the service to conform to FTA's mass transportation guidelines. Shortly thereafter, the FTA granted a temporary stay of its decision based on SunLine's revelation that the information it had provided to FTA prior to the February 10 decision was outdated; the parties had resolved their differences during an October 1996 meeting; and the charter infractions had been corrected. In response, CBA denied that the issues were resolved and claimed that SunLine was still performing impermissible charter service.

Both parties filed supplemental documentation, with SunLine maintaining that the group trip operation is "fixed route deviation service" within the meaning of mass transportation, and CBA continuing to claim that the group trip violates the charter regulation. Thereafter, in response to FTA's request for clarification of its supplemental information, SunLine stated in its January 21, 1998, letter:

"There were a total of 164 group trips during the period 9/1/97 through 1/4/98. 100% of these group trips were for schools. None of the schools requested a

deviation... 69 of the 164 trips included a deviation of $\frac{1}{4}$ mile or less. We made the decision to 'deviate' from the exact fixed route in order to provide a safer boarding point for these students, almost all of who are grade schoolers. The deviation in these cases means that the bus leaves the exact route, travels a few blocks to a convenient, on the street (never on school property) location, boards the children, and immediately returns to the exact fixed route. This routing assures that no bus stop is missed in making these deviations."

Discussion

Based on the supplemental information gathered since issuing its February 10 decision, FTA finds that SunLine has not made the changes necessary to bring the group trip service within the definition of mass transportation. There may be several ways, however, that SunLine could provide the service, which would be consistent with Federal law and regulation.

First, according to SunLine, SunBuses have used computerized rolling head signs to display regular route designations for all routes since June 1996. Moreover, the number of group trips performed, including 69 deviations over a four-month period, may justify placing a bus stop in front of all schools served as well as the group trip destination points. Finally, adopting this reconfiguration would assure that group trip pick-up and drop-off points would be published in the regular fixed-route schedule.

Second, SunLine might consider implementing site-specific route deviation service as an alternative that would offer SunLine a degree of route flexibility while limiting overall schedule impact. Under this approach, certain major trip generators or destinations, such as public housing or group homes, senior centers, service agencies, and so forth are identified on the advertised schedule. Deviation requests are only accepted for these specific sites. Customers and agencies can request that new sites be considered and these may be included on the schedule the next time the routes are adjusted or schedules updated. Site-specific route deviation combines fixed route and demand response service, both of which FTA has determined to be mass transportation. The fact that it combines aspects of both rather than being simply one or the other would not make it any less mass transit, as long as it is available to any individual or group within the service area.

According to SunLine, "100%" of its group trips are performed for schools, which clearly establishes that the service is performed exclusively for students and school personnel rather than for the general public. Therefore, if SunLine does decide to reconfigure its service as site-specific route deviation, it must take steps to vigorously advertise and promote the service to ensure that the public is aware of whatever routes or deviation possibilities are offered. Generally, this marketing effort is best evidenced by publication of the service in the recipient's preprinted schedules and doing other types of advertising as well. SunLine's success in these marketing efforts to the general public will be determined by the diversity of the clientele requesting deviations and the percentage of deviation requests that can be attributed to each; i.e. group homes/20%.

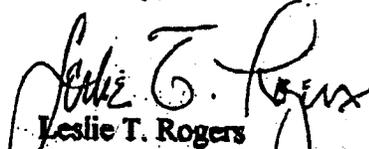
Conclusion

In conclusion, SunLine's group trip service is charter service rather than mass transportation and therefore, results an impermissible user of FTA funded facilities and equipment. Under FTA's charter regulation, SunLine may not provide charter service using FTA funded equipment or

facilities if there is a private operator in its geographic area willing and able to provide that charter service unless one or more of the exceptions listed in 49 CFR § 604.9(b) apply. Furthermore, any charter service provided by SunLine under an exception must be incidental. Moreover, if SunLine wishes to provide direct charter service it must engage in the public notice process set forth in 49 CFR § 604.11. If, as a result of the public notice process, SunLine determines that there is no willing and able private operator, it may provide charter service.

In accordance with 49 CFR § 604.19, either party may appeal this decision within ten days to Jennifer L. Dorn, Administrator, Federal Transit Administration, 400 Seventh Street, S.W., Room 9328, Washington, DC 20590.

Sincerely,


Leslie T. Rogers
Regional Administrator