

described cost and revenue requirements apply. The data provide by the City, however, shows that it is meeting these requirements. Therefore, IMTA finds the City in compliance with this provision of the charter bus regulations.

IV. Conclusion

The RTS alleges that the service provided by the City through CATS from the Wakefield Apartments to the North Carolina State University violates Sections 3(f) or 3(g) of the IMT Act and the corresponding implementing regulations. As discussed above, IMTA finds the City and CATS are not in violation of these provisions or the regulations. The service in question is not prohibited school bus service since college students are not "students" within the terms of Section 3(g) or its implementing regulations. Furthermore, although the service is charter service, the evidence provided by the City shows that it is incidental to the provision of mass transportation and that, as a provider of intercity charter service, the City's annual charter revenues equal or exceed its annual charter costs.

Submitted by: Douglas G. Gold
Douglas G. Gold
Attorney-Advisor

Date: 24 January 1985

Approved by: Edward J. Gill
Edward J. Gill
Acting Chief Counsel

Date: Jan 28, 1985



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

400 7th Street S.W.
Washington, D.C. 20590

Clark

FEB 8 1985

Mr. John F. Fryer
Counsel for Transportation Regulation
U. S. House of Representative
Committee on Public Works and
Transportation
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Fryer:

Enclosed is the information that you requested from the Urban Mass Transportation Administration (UMTA) during a meeting on January 29, 1985, which you had with Douglas Gold, of my staff, and Daniel Harrant, Office of Budget and Policy. I hope that the information will assist in your review of various charter bus issues.

The first enclosure is a copy of UMTA's regulations on Charter Bus Operations (49 CFR Part 604). The second enclosure is a list of those UMTA recipients, according to the fiscal year 1983 submissions for the Section 15 Report, that provide charter bus service. The list indicates the charter revenues, hours, and miles provided.

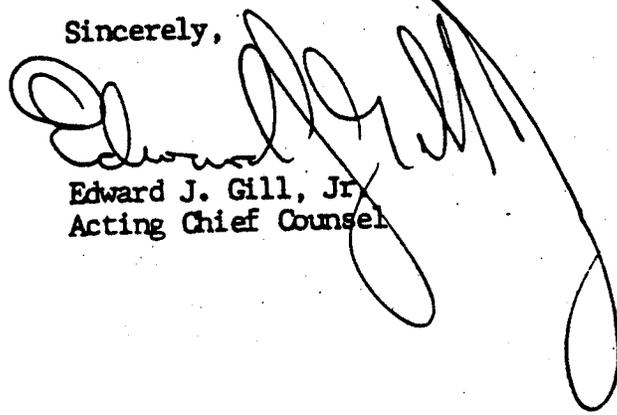
In addition, you requested UMTA's comments on a document prepared by the American Bus Association (ABA) entitled, "The Fight Against Subsidized Charter Bus Operations -- The Role of the American Bus Association." The document discusses, among other things, UMTA's charter bus regulation, the ABA's suggested revisions, both regulatory and statutory, and recent Interstate Commerce Commission actions granting expanded charter authority under the Bus Regulatory Reform Act of 1982. Since UMTA is in the process of rulemaking to revise the existing charter bus regulation, it would, in our opinion, not be appropriate to comment on the ABA's document.

Finally, Mr. Clyde Woodle asked what annual costs a private charter bus operator incurs to cover the acquisition and operations of a charter bus. A quick check with Mr. Harold Morgan, the ABA's Director of Statistical Research, estimates that based on a purchase price of \$180,000, financed at a 15 percent interest rate, a private operator spends at most \$25,000 per

year over the 10 year life of the bus in capital costs. Mr. Morgan also estimates an operating cost of \$1.80 per mile. Since buses travel on the average of 75,000 miles per year, the annual operating cost is \$135,000. If Mr. Woodle would like these figures fleshed out, we would be happy to try to do so.

If there is any additional information that UMTA can provide, please do not hesitate to contact me.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Edward J. Gill, Jr.', is written over the typed name and title.

Edward J. Gill, Jr.
Acting Chief Counsel

Enclosures



U.S. Department
of Transportation

**Urban Mass
Transportation
Administration**

Headquarters

400 7th Street S.W.
Washington, D.C. 20590

FEB 11 1985

Mr. Thomas W. Fisher
President
Tower Bus, Inc.
363 North Gratiot
Mount Clemens, Michigan 48043

Dear Mr. Fisher:

This responds to your letter concerning the decision rendered by the Urban Mass Transportation Administration (UMTA) on the complaint filed by you on behalf of Tower Bus, Inc., against the Southeastern Michigan Transportation Administration (SEMTA). In the complaint, you alleged that SEMTA, a recipient of Federal financial assistance from UMTA, violated the restrictions imposed on charter bus service and school bus service by the Urban Mass Transportation Act of 1964, as amended (UMT Act), and UMTA's implementing regulations, and the terms of a July 13, 1978, UMTA Order further restricting SEMTA's charter bus operations. UMTA's decision found that SEMTA was not in violation of either the statutory or regulatory provisions and that, although SEMTA had violated the Order, no remedial actions were necessary since the violations had ceased.

Your letter addresses several points. Let me respond to them in order. First, you state that UMTA has never conducted an on-site investigation of SEMTA. In October 1984, UMTA's regional staff in Chicago conducted an on-site visit of SEMTA. This was done as part of the Triennial Review which is required by Section 9(g)(2) of the UMT Act. The purpose of the Triennial Review is to ensure that UMTA's grantees are complying with statutory and administrative requirements. The regional staff examined SEMTA's charter records and noted several potential violations of the charter bus regulation's incidental use presumptions. These problems will be presented to SEMTA in the Triennial Review Report and SEMTA will be given the opportunity to respond. If SEMTA is unable to prove that the service in question did not violate the regulations, we will take appropriate actions.

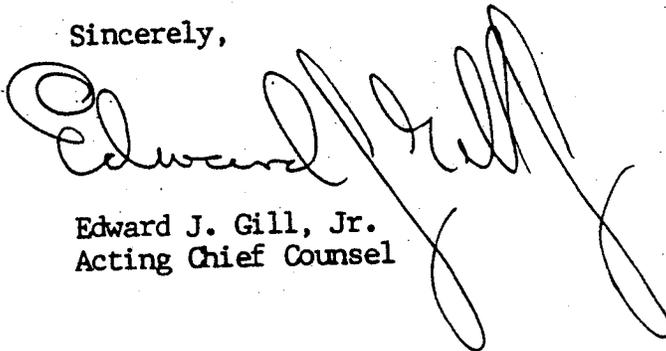
In your second point, you state that UMTA's decision accepts SEMTA's admission that it violated the July 13, 1978, UMTA Order, but does not find SEMTA guilty since SEMTA has ceased providing the prohibited service. This is not a correct reading of the decision. While the decision does state that UMTA accepts SEMTA's admission of violation, it does not state that SEMTA is not guilty. Rather, the decision states that UMTA is not imposing any remedial actions for the violations. The absence of any penalty is not equivalent to a finding of not guilty.

In this case, the decision clearly states why UMTA felt no remedial actions were necessary. First, there was no evidence of any violations after December 18, 1981. Second, SEMTA states that its voluntary extension of the prohibition on intercity charter service will remain in effect until it has satisfactorily complied with UMTA's regulation. Based on these points, UMTA did not feel further violations were likely to occur and that remedial action was unnecessary.

Your third point criticizes UMTA for permitting SEMTA to provide charter bus service without entering into a charter bus agreement as required by Section 3(f) of the UMT Act. This is not correct. SEMTA has entered into a charter bus agreement with UMTA. The decision states, "Although SEMTA has not entered into a written agreement under 49 C.F.R. §604.12, SEMTA is bound to comply with the provisions of 49 CFR §604.13 by the terms of Part II of the UMTA grant agreement." The provisions of 49 CFR §604.13 contain the terms of the standard charter bus agreement. As a result, UMTA considers that SEMTA is bound by the terms of the standard agreement and has, in effect, entered into the statutorily required agreement.

I believe that this information responds to the points you raised in your letter. If you would like to discuss the decision or this response, I would be happy to meet with or your representatives personally.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Gill, Jr.", written in a cursive style.

Edward J. Gill, Jr.
Acting Chief Counsel



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Administrator

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

JUN 24 1985

Mr. John Shoup
President, Tri-State Coach
Lines, Inc.
2101 West 37th Avenue
Gary, Indiana 46408

Dear Mr. Shoup:

This responds to your recent letter regarding the Northwest Indiana Regional Planning Commission's (NIRPC) transportation improvement plan. You are concerned that the grant funds that the NIRPC might receive from the Urban Mass Transportation Administration (UMTA) and pass through to private transportation providers would give those private operators an unfair competitive advantage in the charter bus market over operators such as Tri-State Coach Lines, Inc., which receive no UMTA subsidies. Let me assure you that your comments have been transmitted to UMTA's Regional Office in Chicago and will be taken into consideration when determining whether NIRPC's applications will be granted.

Since your concerns revolve mainly around the potential advantage which the subsidized private operators may enjoy in the charter market, I feel it is important to give you some background on the restrictions on charter bus service which UMTA imposes on its grant recipients. UMTA's regulations on Charter Bus Operations (49 CFR Part 604, copy enclosed) implement two provisions in the Urban Mass Transportation Act of 1964, as amended. Section 12(c)(6) of the Act defines "mass transportation" to exclude charter bus operations. A 1966 Comptroller General's Opinion, set forth in Appendix A to the regulation, however, states that UMTA has the discretion to permit recipients to use UMTA-funded equipment on an incidental basis to provide charter bus service so long as it does not detract from the provision of mass transportation service. The regulation, in Section 604.11, implements these restrictions by prohibiting a recipient from providing certain charter bus service on weekdays such as during peak periods. The regulation presumes that such service is not incidental. If a complaint were filed, a recipient could rebut these presumptions with factual evidence to show that the service in question does not detract from the provision of mass transportation.

The other provision in the UMT Act that concerns charter bus service is Section 3(f). This provision was added by Congress in 1974 to protect private providers of intercity charter bus service from unfair competition by UMTA recipients. According to this provision, all applicants for UMTA assistance must enter into an agreement with UMTA. The regulation, in Section 604.13, sets forth the standard terms of this agreement. The two key provisions of this agreement require a recipient that provides any intercity charter service to cover its total annual charter costs (both intercity and intracity) with its charter revenues and prohibit a recipient

from charging a predatory rate on any charter route. The list of costs that must be included in this calculation is set forth in Appendix B to the regulation. The theory behind this approach is that, by requiring a recipient to fully allocate its charter costs and to cover its charter costs with revenues, the benefit of any UMTA assistance is neutralized and the recipient and any private intercity charter bus operators will be on an equal economic plane.

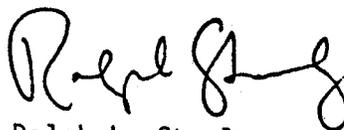
From your perspective, it is important to note that Section 604.12 clearly states that the regulation applies not just to UMTA recipients, but also to any operators for a recipient. In the situation you describe, the private operators to which the NIRPC would pass UMTA assistance would be bound to comply with the regulation. Therefore, by fully allocating costs according to the required cost allocation plan and ensuring that annual charter revenues equal or exceed charter costs, any advantage provided by UMTA subsidies should be neutralized.

I must stress, however, that these economic restrictions only apply if the recipient, or operator for the recipient, operates intercity charter bus service. The regulation defines "intercity charter bus service" generally as charter service outside the recipient's urbanized area. If a recipient, or operator for the recipient, operates charter service solely within the urbanized area, the only restrictions which the regulation imposes are those to ensure that the charter service is incidental to the provision of mass transportation. The regulation does not speak to the costs which must be charged for such service.

Since UMTA issued this regulation in 1976, both recipients and private intercity operators have complained. UMTA's recipients complain that the regulation is too burdensome and unduly restricts their ability to provide charter service which generates revenues to offset operating deficits. Private intercity charter operators argue that the regulations do not offer enough protections and that the cost data is too complex to be able to effectively review to determine if costs are being covered by revenues. Consequently, UMTA is in the process of revising the regulation. We published an advance notice of proposed rulemaking in October 1982 and are presently drafting a notice of proposed rulemaking. Although I admit that this represents a considerable time delay, let me assure you that this does not evidence any lack of desire on UMTA's part to issue an effective rule. Instead, rulemaking is, by its very nature, a complex process and when the issues involved, as they are here, are so multifaceted, the complexity escalates. We are diligently working on this revision and hope to publish it soon.

I hope that this has provided some useful information for you. If you have any additional questions, please do not hesitate to contact me.

Sincerely,



Ralph L. Stanley

Enclosure

Urban Mass Transportation Administration
UCC-32:DGOLD:KLY:6/4/85:426-1936
Control No. 003647:Due Date: 85-6-11
cc: UOA-1/UOA-~~2~~/UOA-3/UES-1/UES-10(2)/UBP/UGM/UGM-30
URU-5/Nancy Greene/URU-5/Rick Bacigalupo/
UCC-Chron/UCC-32/Gold/UCC-30/Munter
UCC-1/LaSala

File: IN: NIRPC §3(f) Inquiry

DECISION ON REQUEST FOR RECONSIDERATION

Raleigh Transportation Services

Complainant

v.

City of Raleigh, North Carolina

and

Capital Area Transit System

Respondents

I. SUMMARY

The Urban Mass Transportation Administration (UMTA) has reconsidered its decision in Raleigh Transportation Services v. City of Raleigh, North Carolina and Capital Area Transit System (January 28, 1985). On reconsideration, we still find no violation of the Urban Mass Transportation Act of 1964, as amended, or the implementing regulations, but base our finding instead on the conclusion that the service at issue is not charter service, but a form of mass transportation service.

II. Background

On January 28, 1985, UMTA issued its decision in response to the complaint filed by Raleigh Transportation Services (RTS) against the City of Raleigh, North Carolina (the City) and the Capital Area Transit System (CATS). In its complaint, the RTS alleged that the City and CATS violated the charter bus or school bus provisions in Section 3(f) and 3(g) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(f) and (g)) (UMT Act) and the implementing regulations (49 CFR Parts 604 and 605). UMTA concluded that the City and CATS were not in violation of either Section 3(f) or 3(g) of the UMT Act or the implementing regulations.

The service complained of is provided by the RTS through CATS to students to and from North Carolina State University in Raleigh. The origin of the service is the Wakefield Apartments in Raleigh. The service is alleged to be provided by one bus in continuous circulation from 7:00 a.m. to 6:00 p.m. Monday through Friday on 30 minute headways. During peak hours, from 7:00 a.m. to 10:30 a.m. and from 2:30 p.m. to 5:00 p.m., an additional bus is

alleged to provide service. The service is alleged to be paid for by the real estate management firm at the apartment complex and is for the exclusive use of the students living at the apartment complex. RTS alleges that the service operates closed door between the apartment complex and North Carolina State University.

UMTA held in its January 28, 1985, decision that the service does not violate the school bus restrictions in Section 3(g) of the UMT Act or its implementing regulations in 49 CFR Part 605 since college students are not "students" within the terms of these provisions. Furthermore, although UMTA concluded that the service is charter service, the evidence provided by the City showed that it is incidental to the provision of mass transportation and that, as a provider of intercity charter service, the City's annual charter revenues equal or exceed its annual charter costs.

III. Reconsideration

UMTA has decided to reconsider this decision since it is arguable that the service in question is a form of permissible mass transportation called subscription bus service and, therefore, UMTA did not have to reach the conclusion whether the service is school bus service or charter bus service.

IV. Discussion

UMTA's regulation on Charter Bus Operations (49 CFR Part 604) defines charter bus operations as:

transportation by bus of a group of persons who, pursuant to a common purpose, and under a single contract, at a fixed charge for the vehicles or service, in accordance with the carrier's tariff, have acquired the exclusive use of a bus to travel together under an itinerary, either agreed on in advance, or modified after having left the place of origin.

The initial decision compared this definition with the service in question and concluded that it is charter service. The decision states,

The service is by bus and transports a group of people, for a single purpose, under a contract, at a fixed charge, under an itinerary. Although charter service is generally thought of as a one time trip, e.g., a field trip, the UMTA definition is broad enough to include the recurring type of service provided here by the City through CATS.

This was an erroneous conclusion. When Congress enacted the Urban Mass Transportation Act of 1964, it defined "mass transportation" as "transportation by bus, or rail, or other conveyance, either publicly or privately owned, serving the general public (but not including school buses or charter or sightseeing service) and moving over prescribed routes." (Section 9(c)(5)). Congress amended this definition in 1968 to insert "which provides to the public general or special service" in lieu of "serving the general public" and inserting "on a regular and continuing basis" in lieu of "and moving over prescribed routes." This was accomplished by Section 702 of the Housing and Urban Development Act of 1968 (Pub. L. No. 90-448).

The legislative history explains why the revision was made. The language which was eventually enacted was proposed in Section 602 of H. R. 17989. The House Report prepared by the Banking and Currency Committee accompanying this bill states that the purpose of the proposed revision was to broaden the definition of mass transportation "to allow greater flexibility in developing and applying new concepts and systems in urban mass transportation programs." (H. R. Rep. No. 1785, 90th Cong., 2d Sess., reprinted in 1968 U.S. Code Cong. Ad. & News, 2941.) Under other provisions in the UMT Act, the Committee found that grants were funding research which was developing new concepts and innovations that had a great potential for the eventual improvement of urban mass transportation. These concepts and innovations, however, were not able to be funded for implementation since they did not fall within the definition of mass transportation. One example cited in the report is demand-responsive door-to-door service. Under the 1964 definition, demand-responsive door-to-door service would not qualify as mass transportation because it does not operate over a prescribed route.

The report also cites another instance of service that the Committee believed would benefit from Federal assistance but was not included in the term mass transportation. This service would serve "only a specific portion of the public rather than the 'general' public" such as "service from ghettos to specific places of employment, limited to those riders who work there." (Id. at 2941). Absent the 1968 revision, this would not be mass transportation since the service would not be offered to the public generally, but only to a specially defined segment of the public.

A review of the service in question in this complaint indicates that it is mass transportation service. The service is provided by publicly owned buses, offered to a special segment of the public, and operated on a regular and continuing basis. Our initial decision concluded that the definition of charter bus service, while generally thought of as a one-time trip, was broad enough to include the regularly and continually run service in question. While some frequently provided service may qualify as charter service, the service in question does not. It is provided five days per week, 11 hours per day, at 30 minute headways. This is clearly mass transportation operated to the public as special service.

V. Conclusion

On reconsideration, UMTA finds that it mischaracterized the service provided by the City through CATS in its January 28, 1985, decision. The service is not charter service, but mass transportation. Therefore, the January 28, 1985, decision is hereby revised to reflect this reasoning. Since UMTA finds the service to be permissible, we still do not find the City or CATS in violation of any provision of the UMT Act or the implementing regulations.

Submitted by: Douglas G. Gold
Douglas G. Gold

Date: JUN 24 1985

Approved by: Joseph A. LaSala, Jr.
Joseph A. LaSala, Jr.

Date: JUN 26 1985



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Administrator

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

JUL 31 1975

Mr. Robert A. Swanson
Roamin' Coaches
1204 Turner McCall Boulevard
Rome, Georgia 30161

Dear Mr. Swanson:

Secretary Dole has asked me to respond to your letter to her concerning Federal grants to the Rome Transit Department (RTD). You state that these grant monies enable the RTD to compete at lower prices with the charter service that Roamin' Coaches and other private operators provide. You request, therefore, application information for Federal grants to enable you to compete on a fair and equal basis.

Let me state at the outset that this Administration strongly supports the role of the private transportation company in the provision of transportation services to this Nation. The Urban Mass Transportation Administration (UMTA) believes that recipients of our grant funds, such as the RTD, should not be able to compete unfairly with private providers of mass transportation services. Our views of this subject are more fully expressed in the enclosed policy "Private Enterprise Participation in the Urban Mass Transportation Program."

In addition to prohibiting unfair competition in the provision of mass transportation services, UMTA restricts the charter bus services which our recipients provide. UMTA's regulations on Charter Bus Operations (49 CFR Part 604, copy enclosed) implement two provisions in the Urban Mass Transportation Act of 1964, as amended. Section 12(c)(6) of the Act defines "mass transportation" to exclude charter bus operations. A 1966 Comptroller General's Opinion, set forth in Appendix A to the regulation, however, states that UMTA has the discretion to permit recipients to use UMTA funded equipment on an incidental basis to provide charter bus service so long as it does not detract from the provision of mass transportation service. The regulation, in Section 604.11, implements these restrictions by prohibiting a recipient from providing certain charter bus service on weekdays such as during peak periods. The regulation presumes that such service is not incidental. If a complaint were filed, a recipient could rebut these presumptions with factual evidence to show that the service in question does not detract from the provision of mass transportation.

The other provision in the UMT Act that concerns charter bus service is Section 3(f). This provision was added by Congress in 1974 to protect private providers of intercity charter bus service from unfair competition by UMTA recipients. According to this provision, all applicants for UMTA assistance must enter into an agreement with UMTA. The regulation, in

Section 604.13, sets forth the standard terms of this agreement. The two key provisions of this agreement require a recipient that provides any intercity charter service to cover its total annual charter costs (both intercity and intracity) with its charter revenues and prohibit a recipient from charging a predatory rate on any charter route. The list of costs that must be included in this calculation is set forth in Appendix B to the regulation. The theory behind this approach is that, by requiring a recipient to fully allocate its charter costs and to cover its charter costs with revenues, the benefit of any UMTA assistance is neutralized and the recipient and any private intercity charter bus operators will be on an equal economic plane.

I must stress, however, that these economic restrictions only apply if the recipient, or operator for the recipient, operates intercity charter bus service. The regulation defines "intercity charter bus service" generally as charter service outside the recipient's urbanized area. If a recipient, or operator for the recipient, operates charter service solely within the urbanized area, the only restrictions which the regulation imposes are those to ensure that the charter service is incidental to the provision of mass transportation. The regulation does not speak to the costs which must be charged for such service.

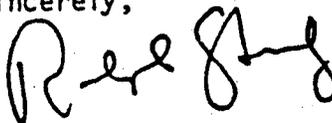
Since UMTA issued this regulation in 1976, both recipients and private intercity operators have complained. UMTA's recipients complain that the regulation is too burdensome and unduly restricts their ability to provide charter service which generates revenues to offset operating deficits. Private intercity charter operators argue that the regulations do not offer enough protections and that the cost data is too complex to be able to effectively review to determine if costs are being covered by revenues. Consequently, UMTA is in the process of revising the regulation. We published an advance notice of proposed rulemaking in October 1982 and are presently drafting a notice of proposed rulemaking. Although I admit that this represents a considerable time delay, let me assure you that this does not evidence any lack of desire on UMTA's part to issue an effective rule. Instead, rulemaking is, by its very nature, a complex process and when the issues involved, as they are here, are so multifaceted, the complexity escalates. We are diligently working on this revision and hope to publish it soon.

I would point out, however, that the §604.40 of the existing charter bus regulation provides that an interested party may file a written complaint alleging a violation of the terms on a charter bus agreement. If you believe evidence of a violation exists, you may wish to file a formal complaint consistent with the regulations.

You request application information so that Roamin' Coaches can receive UMTA assistance like the RTD. Unfortunately, the UMT Act does not enable UMTA to make capital or operating grants directly to private providers of mass transportation service. The UMT Act does permit a recipient to pass the grant funds through to a private company. This mechanism, however, comes into play if the private operator provides mass transportation services for the recipient. If so, the private operator can then use the equipment for charter services, but the private operator steps into the shoes of the recipient and the above-described regulation would apply to restrict that service. If the private provider would only provide charter service, no UMTA funds could be passed through by the recipient.

I want to assure you that your comments will be considered when reviewing any future bus applications submitted by the RTD. Although our records do not indicate any currently under review, we will keep your comments on file. In addition, if after reviewing the enclosed regulation you believe the RTD's charter bus service is not in compliance, you may file a formal complaint with UMTA.

Sincerely,



Ralph L. Stanley

2 Enclosures

Urban Mass Transportation Administration
 UCC-32:DGOLD:KLY:6/25/85:426-1936
 Control No. 8506100061: Due Date: 85/7/02
 cc: P/C/UOA-1/UOA-2/UOA-3/UES/UES-10(2)/UGM/UGM-30/UBP/URO-4/
 UCC-Chron/UCC-32/Gold/UCC-30/Munter/UCC-1/LaSala



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Administrator

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

AUG 15 1985

Mr. John Shoup
President
Cardinal Charter and Tours
P. O. Box 271
Middlebury, Indiana 46540

Dear Mr. Shoup:

Thank you for commenting on my letter of June 24, 1985, in which I advised you of the Urban Mass Transportation Administration (UMTA) rules applicable to charter operations and addressed your concerns regarding the lease of subsidized equipment by a private operator. As I understand your current question, you are concerned that a private operator providing mass transportation by leasing equipment from a public body for a fee is in a favored position with respect to competition with other charter operators if it also provides charter service, in that the competition does not have equipment available for charter operations at this subsidized rate. This is true; however, under the UMTA charter regulations the lessee must account for such equipment as if it had purchased it, rather than at the actual lease rate in computing its cost, if it is engaged in intercity charter bus operations. If the lessee is only engaged in intracity operations, this requirement would not be applicable under the charter regulation. However, the transit operator in leasing UMTA financed equipment to private companies for mass transit operations should compete that transaction so as to obtain the best and most economical contract possible. This would mean that the lease rate should take into consideration revenues or income (including charter revenues) that the operator would realize in operating the equipment.

As with your initial inquiry, I have forwarded your June 28, 1985, letter and my reply to the Regional Office for consideration in processing grants for the Northwest Indiana Regional Planning Commission. I am also providing you with a copy of our policy on "Private Enterprise Participation in the Urban Mass Transportation Program." This policy provides that the local planning and programming process establish procedures for the most feasible participation of private mass transportation providers in the UMTA programs.

I hope I have satisfactorily answered your question. If you have any additional questions, do not hesitate to contact me.

Sincerely,

Ralph L. Stanley

Enclosure



U.S. Department
of Transportation

**Urban Mass
Transportation
Administration**

The Administrator

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

SEP 18 1985

*Chase
C. ...*

The Honorable Virginia Smith
House of Representatives
Washington, D.C. 20515

Dear Virginia:

Secretary Dole has asked me to respond to your letter forwarding the concerns of such constituents as Ms. Florence Engelhaupt of Spencer, Nebraska. Ms. Engelhaupt complains that the restrictions imposed by the Urban Mass Transportation Administration (UMTA) on the charter service that the UMTA recipient in Boyd County, Nebraska, provides are too burdensome.

UMTA's regulations concerning the charter bus service which our recipients can provide with UMTA assistance are based on the provisions in Sections 3(f) and 12(c)(6) of the Urban Mass Transportation Act of 1964, as amended. Section 12(c)(6), the first enacted provision, defines "mass transportation" to specifically exclude charter bus service. A 1966 Comptroller General's Opinion holds, however, that UMTA funded equipment can be used to provide charter bus service on an incidental basis, i.e., so it does not interfere with or detract from the provision of mass transportation service. Section 3(f), which Congress added to the UMT Act in 1974, prohibits UMTA recipients from competing unfairly with those private intercity charter bus operators that are willing and able to provide such service.

UMTA issued the charter bus regulation in 1976. It is found at 49 CFR Part 604. The regulation implements Section 12(c)(6) by presuming that any charter service provided with UMTA assistance on weekdays during peak periods, extending 50 miles beyond the urban area, or requiring the use of a bus for more than 6 hours in one day is not incidental. A recipient is permitted, however, to rebut these presumptions to show that the charter service in question did not interfere with the provision of mass transportation. There are no restrictions on weekend charter service.

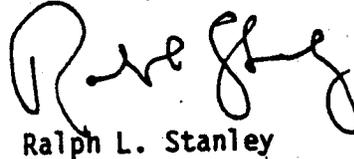
The regulation implements the protections in Section 3(f) by requiring a recipient that provides intercity charter service to cover its total annual charter costs with charter revenues. In addition, the regulation prohibits such recipients from charging a predatory rate for any charter service.

The regulation applies to recipients of funds under Section 18 of the UMT Act such as the provider of the handi-bus service Ms. Engelhaupt describes. For these recipients, which are generally small operators in rural areas, it is important to note that the regulation's provisions implementing Section 3(f) do not apply unless the recipient earned more than \$15,000 in charter revenues during its most recently completed fiscal year. Since few Section 18 recipients earn such charter revenues, the cost and revenue provisions in the regulation are usually inapplicable.

Based on discussions with the Nebraska Department of Roads, it is UMTA's understanding that the Section 18 recipient Ms. Engelhaupt refers to earned \$15,000 or less from charter services during its most recently completed fiscal year. Therefore, the recipient can do any and all charter service with UMTA assistance so long as the service is incidental as described above. In that regard, charter service could go beyond the 50-mile limit as Ms. Engelhaupt desires, but if it does so on weekdays, the recipient would have to be able to prove, if requested, that the charter service did not interfere with the provision of mass transportation. For Section 18 recipients, UMTA measures the 50-mile limit from the perimeter of the recipient's service area since the service is not provided in an urban area.

I hope that this information has been helpful. If you need any additional assistance, please contact UMTA's Regional Administrator, Mr. Lee O. Waddleton, 6301 Rockhill Road, Suite 100, Kansas City, Missouri, 64131, (816) 926-5053.

Sincerely,



Ralph L. Stanley

URBAN MASS TRANSPORTATION ADMINISTRATION

UCC-32:DGOLD:KLY:9/9/85:426-1936

Control No. 850830-033:Due Date: 9/9/85

cc: I/C-1/P-1/B-1/S-1/S-10/J-1/VOA-1/VOA-2/VOA-3/UES-1/UES-10(2)

UGM/UGM-30/UBP/URO-7/UCC-Chron/UCC-32/Gold/UCC-30/Munter/UCC-1/LaSala



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Administrator

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

JUL 27 1986

Mr. Sherman P. Flogstad
General Manager
Rogue Valley Transportation District
3200 Crater Lake Avenue
Medford, Oregon 97501

Dear Mr. Flogstad:

This responds to your letter requesting that the Urban Mass Transportation Administration (UMTA) reconsider its decision to not enter into a charter bus agreement with the Rogue Valley Transportation District (RVTD). Your letter also provides information in response to allegations of two violations of UMTA's cease and desist order of January 28, 1986.

You argue that Section 604.18 of the charter bus regulation, upon which UMTA relied to deny signing an agreement, is not appropriate. You state that the language in this provision authorizes UMTA to consider various materials submitted by the recipient when deciding whether to enter into an agreement, but not the existence of private operators willing and able to provide the proposed service.

UMTA disagrees. Section 604.18 states,

The Administrator will consider the comments filed by private charter bus operators prior to making any findings regarding either the application's certification of costs, cost allocation plan, or other aspects of its proposed charter bus operations. (Emphasis added.)

The regulatory language "other aspects of its proposed charter bus operations" is broad enough to include any facet of the proposed charter service and the context in which it would be provided. The context certainly includes the existence of private operators and comments that they are willing and able to meet current demands and provide that service which the recipient proposes. Your letter includes no new information that would call into question the conclusions that we drew from the previous material which you submitted. Therefore, we continue to decline to enter into a charter bus agreement with the RVTD.

Your letter provides several other objections to our decision. These objections are presented in the form of citations to the regulation with an explanation of the provisions cited and, in some cases, an explanation of how the provision is not applicable to the RVTD.

The sections you cite relate to general provisions in the regulation such as purpose and scope, or to the incidental use presumptions. A charter bus agreement is required by UMTA when the recipient desires to provide charter bus service outside of its urban area. The regulation provides procedural steps that must be followed and the documentation that must be submitted before the agreement can be entered into. Since these procedures and documents concern notice, costs and private sector comments, statements concerning purpose, scope and incidental use, presumptions are not relevant or germane to granting a charter bus agreement.

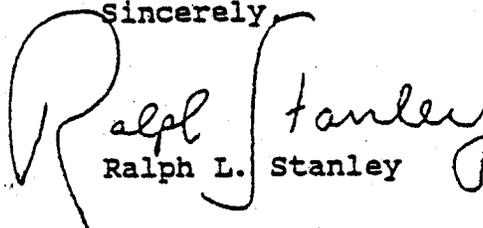
It is important to understand the type and extent of charter bus service that the RVTD may provide consistent with UMTA's regulation and the limitations imposed by the cease and desist order of January 28, 1986. Since UMTA's regulation only applies to charter service that in some way uses UMTA assistance, a recipient may provide any and all charter bus service, regardless of time or destination, that uses only local funds.

In addition, under UMTA's regulations, a recipient may provide any and all charter bus service using UMTA funded equipment and facilities within its urban area so long as the service is incidental to the provision of mass transportation service. UMTA's cease and desist order does not in any way affect the RVTD's ability to provide incidental intracity service using UMTA funded equipment and facilities.

UMTA has sent a copy of your response concerning the alleged violations of the cease and desist order to the complainant, York Tours, Inc. (York), and provided it with 30 days to rebut the response. A copy of this letter is enclosed. UMTA will endeavor to issue a written determination of compliance with the order within 30 days of receipt of York's rebuttal.

If you have any additional questions concerning these matters, please contact Mr. Douglas G. Gold, the attorney assigned to this complaint, at (202) 426-1936.

Sincerely,


Ralph L. Stanley

Enclosure



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

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

FEB 6 1987

Mr. Dean P. Bell
Executive Director
Chief General Manager
Regional Transit Authority
Suite 1600
Ten-O-One Howard Building
New Orleans, Louisiana 70113

Dear Mr. Bell:

This responds to your letter in which you seek the Urban Mass Transportation Administration's (UMTA) approval of the augmented fixed route service which the Regional Transit Authority (RTA) provides for conventions and special events. You state that this service is not charter service.

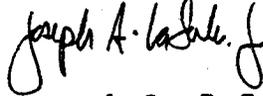
You describe the service as existing fixed route service that uses two shuttles in the French Quarter. The RTA augments this service with additional vehicles and service hours to meet the special needs of conventions or special events. You state that this service had not, at the time you wrote been fully implemented and that it is designed to incorporate a private/public sector partnership.

Let me state clearly that it is not possible to give you a definitive response to your question. It appears from the facts that you have provided that the service would probably be mass transportation and not charter service. This assumes that the service is open to the public, that the RTA makes all of the service decisions including setting fares and schedules pursuant to the same process it follows to make all other mass transportation service decisions, and that the service is designed for the general public and not a special group such as a private club. Since the answers to some of these questions are not contained in your letter, UMTA can only state that the service appears to be permissible.

I am very glad to learn that you are developing this service in concert with the private sector. The involvement of private mass transportation entities is very important for UMTA and your initiatives in this area for the convention service reflects your understanding our goals. Please note that to the extent that the service is restructured to meet the needs of each convention, you should consider putting this extra service to bid to maximize the involvement of the private sector.

If you have any further questions regarding this service, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. LaSala, Jr." The signature is written in black ink and is positioned above the typed name.

Joseph A. LaSala, Jr.
Chief Counsel

Durango Transportation, Inc.)
 Complainant)
)
 v.)
)
 City of Durango, Colorado)
 Respondent)

Re: CO-09/85-01

INTRODUCTION

On September 26, 1985, Durango Transportation, Inc. (DTI), by its attorney Nancy P. Bigbee, Esq., filed a complaint with the Urban Mass Transportation Administration (UMTA) alleging that the City of Durango, Colorado (Durango), a recipient of financial assistance from UMTA, violated Section 3(e) of the Urban Mass Transportation Act of 1964, as amended (UMT Act), and does not have the legal capacity under Section 3(a)(2)(A)(i) of the UMT Act to carry out the financed projects. After a thorough review of the materials submitted by the parties and UMTA's own records, UMTA finds that Durango complied with Sections 3(e) of the UMT Act. Further, we find that given the evidence submitted we must accept Durango's assertion of legal capacity under Colorado law unless or until a Colorado administrative body or court of competent jurisdiction decides to the contrary.

COMPLAINT

On September 26, 1985, DTI filed its complaint with UMTA. In its complaint, DTI alleges that Durango violated Section 3(e) of the UMT Act since it did not consider private transportation providers to the maximum extent feasible in the provision of transportation services funded by UMTA. The service in question includes the Opportunity Bus service provided to elderly and handicapped persons funded under Section 18 of the UMT Act, which provides formula grants to non-urbanized areas, and the general mass transit service to and from the La Plata County Airport and the Purgatory Ski Area funded under Section 3 of the UMT Act, which provides discretionary capital grants.

Second, the complaint alleges that Durango has not compensated DTI for the competing service which it provides from the airport to the ski area. The complaint alleges that such compensation is required by Section 3(e)(4) of the UMT Act.

Third, the complaint alleges that Durango does not have the legal capacity to operate the mass transportation service for which it has received UMTA assistance. This legal capacity is required by Section 3(a)(2)(A)(i) of the UMT Act. The complaint states that Durango selected as the provider of the Opportunity Bus service the Club Esfuerzo which did not have operating authority from the Colorado Public Utilities Commission (PUC).

The complaint provides a lengthy discussion of the negotiations between DTI and Durango for the purchase by Durango of some or all of DTI's PUC operating authority which DTI claims was needed to enable Durango to provide the airport to ski area service. The complaint states that the sale was never consummated and as a result, Durango entered into an intergovernmental agreement with La Plata County as an alternative means to enable it to provide this service. The complaint alleges that this agreement attempts to substitute the intergovernmental agreement for the necessary PUC authority and, thus, renders the service illegal. DTI states that it has challenged the validity of this agreement before the PUC and that a PUC Interim Order of September 20, 1985, supports its position.

The complaint asks that UMTA deny Durango additional funding and that Durango refund UMTA for past funding of illegal services.

RESPONSE

UMTA sent a copy of DTI's complaint to Durango on December 4, 1985, and provided it with 30 days, from the date of receipt, to respond to DTI's allegations. Durango received this material on December 16, 1985, and by letter dated January 3, 1986, it requested an extension of 30 days to respond. UMTA responded by letter dated January 13, 1986, granting the request in part by extending the deadline for 15 days until January 29, 1986. UMTA received Durango's response on January 29, 1986.

Durango's response describes the activities it has done to involve the private sector in the provision of mass transportation services since 1976. The response describes the specific actions Durango took in 1983, 1984, and 1985 in relation to its applications for operating and administrative assistance under Section 18. Specifically, the materials include copies of the public notices and individual notices to DTI of various hearings on the applications, copies of requests for proposals to provide the service for which UMTA assistance was received, evaluations of the various bids received, and explanations of why a particular bid was accepted.

The materials also describe what Durango did in 1983 to involve the private sector in the provision of the service to and from the airport and the ski area. This service is assisted by the only UMTA section 3 capital assistance which Durango has received. In connection with this grant application, Durango describes the negotiations between it and DTI for the purchase and sale of some or all of DTI's PUC authority.

Durango also includes evidence of its legal authority to provide the services for which it has received UMTA assistance. Durango believes that the intergovernmental agreement between it and La Plata County is legal and is sufficient to enable it to provide the airport and ski area service. Durango asserts that the Interim Order issued by the PUC on September 20, 1985, does not address the merits of the validity of the intergovernmental agreement and that the matter is pending before the PUC. Durango recognizes UMTA's concern over the validity of this agreement, yet asserts that UMTA has no jurisdiction over the issue.

Finally, Durango states that DTI is not a private provider of mass transportation service and, therefore, not entitled to the protections afforded by Section 3(e) of the UMT Act. Durango's argument is based on a letter sent by UMTA's Regional Office in Denver to DTI on March 6, 1984. This letter states that, based on the information to date, it does not appear that DTI provides mass transportation as defined in the UMT Act since most, if not all, of the service DTI provides is closed-door and seasonal. Furthermore, the letter states that even if DTI does provide mass transportation the service which Durango operates does not compete with or supplement that service and, therefore, the protections in Section 3(e) would not apply to DTI.

REBUTTAL

UMTA sent a copy of Durango's response to DTI on February 24, 1986, and provided it with 15 days from receipt to rebut the response. On March 12, 1986, DTI requested a two week extension due, among other reasons, to the volume of Durango's response. UMTA agreed to the extension and set the deadline at March 28, 1986. UMTA received the rebuttal on March 28, 1986.

DTI states in its rebuttal that Durango's response supports its position that the planning and programming process it followed was intended to and did operate to prevent the meaningful

participation of DTI in the proposed transportation system. DTI states that Mr. Olson, the current owner, had purchased DTI in 1982 when the services at issue were first being planned. Since DTI had been at that time an unsuccessful company, the complainant asserts that it was not considered seriously as a potential provider.

DTI states that the surveys that Durango relied on to support the provision of a mass transportation system are flawed since a small sample was used and because they do not actually show the wide-spread support that Durango alleges.

DTI states that Durango did not properly understand the bid it submitted in response to the 1983 RFP. DTI submitted a bid for the mass transportation shuttle service and not the demand-responsive service. DTI did, however, offer to cooperate with the provider that Durango selected for the demand-responsive service. DTI states that Durango ignored its offer to cooperate. Moreover, DTI states that its bid for the shuttle service was lower than the bidder that Durango selected and that a consideration of the fully allocated costs was not made.

Finally, DTI states that Durango totally ignored the issue of whether the other bidder had the allegedly requisite PUC authority.

DTI states that the bidding for the 1984 Section 18 service was made difficult because at the time, DTI was under contract to sell its PUC authority to Durango. Also, DTI states that Durango requested more detailed information in 1984 and less time was provided to furnish it. Since DTI had had little success in 1983 and 1984, there was nothing to indicate that it should attempt to participate in 1985.

The rebuttal also provides a detailed response to the points Durango had made concerning the unsuccessful transfer of DTI's PUC authority.

DISCUSSION

Before this decision examines Durango's actual compliance with the private sector provisions, it is important to address several basic issues raised by the parties.¹

¹ UMTA notes that on May 2, 1986, complainant contacted UMTA to inform UMTA that it was attempting to settle the complaint. UMTA verbally agreed to suspend further action until word was received that settlement attempts were unsuccessful. UMTA sent a letter to the parties dated June 25, 1986, setting forth this position. Complainant informed UMTA by letter dated July 17, 1986, that the settlement negotiations proved fruitless and requested that UMTA resume its deliberations on the complaint.

Is DTI Entitled to the UMT Act's Protections?

In its response, Durango asserts that DTI is not a private provider of mass transportation and, therefore, not entitled to the protections afforded by Section 3(e) of the UMT Act. Durango supports this position with a letter sent by UMTA's Regional Counsel in Denver, Colorado, which states that it appears that DTI is not an existing provider of mass transportation. The letter reaches this conclusion because the facts show that the service that DTI provides within the City of Durango can be exclusive if the patron so desires and is seasonal. This is not consistent, the letter states, with the definition of "mass transportation" in Section 12(c)(6) of the UMT Act which requires such service to be open to the public and to be operated on a regular and continuing basis.

We do not disagree with this conclusion. The letter, however, is written in terms only of the service which DTI provides within the City of Durango. The letter clearly states that the service that UMTA has not found to be mass transportation is the service which DTI provides "in-town", not all of the service which DTI provides.

A significant portion of the service which UMTA funds in this complaint is in La Plata County, outside of the City of Durango. The determination made by UMTA's Regional Counsel does not address this service. Since the allegation may be construed to include this service too, and is un rebutted by the complainant, the record before UMTA is inconclusive on this issue. Therefore, for the purposes of this complaint, UMTA will assume that DTI is a private provider of mass transportation and is protected by Section 3(e) of the UMT Act for at least the service that Durango provided with UMTA funds outside of the City of Durango.

Compensation Under Section 3(e)(3) of the UMT Act

DTI claims that Durango has violated Section 3(e)(3) of the UMT Act since it has not compensated DTI for the competitive and supplemental service which Durango is providing between the airport and ski area. Section 3(e)(3) requires that a recipient pay a private operator "just and adequate compensation...for acquisition of...franchises or property to the extent required by applicable State or local law." (Emphasis added.)

In this case, there has been no determination by a competent body at the State or local level that compensation is due by Durango to DTI. Until such time, there is no requirement under the UMT Act that Durango pay DTI. If a determination is made by a competent body at the State or local level, UMTA will review any request by Durango for funding the payment and make a determination whether payment is permitted under the UMT Act.

Legal Authority

A continuing thread that runs through this complaint is that Durango has not had and still does not have the required legal authority to operate the service which UMTA has or is funding. DTI argues that the Club Esfuerzo, Durango's contractor, did not have the proper PUC authority to operate the "Opportunity Bus" and that Durango failed to take proper notice of this when it reviewed the bids for this service and awarded the service. Similarly, DTI argues that the current intergovernmental agreement between Durango and La Plata County does not give Durango the authority to operate the airport to ski area service. UMTA notes that this latter issue is currently before that body.

At this time, UMTA is convinced, based on the evidence presented, that Durango does have the required legal capacity to carry out the projects which UMTA has funded consistent with Section 3(a)(2)(A)(i) of the UMT Act. Under Section 3(a)(2)(A)(i) of the UMT Act, the Secretary may not make a grant unless the Secretary determines that the applicant has or will have the legal capacity to carry out the proposed project.² This determination is based on assurances submitted by the applicant, usually in the form of an opinion of counsel which stating that the applicant has the legal authority under the applicable State or local law. In this case, UMTA has in its files the necessary State assurances and the opinions of counsel which enabled UMTA to make the findings of legal capacity.³

UMTA is aware that the PUC did provide its opinion in a December 30, 1983, letter to DTI that the Club Esfuerzo did not have the necessary PUC authority to operate the in-town UMTA funded service. The PUC stated that Durango could only operate bus service within the city without PUC authority if the employees are City of Durango employees. As noted in the complaint, Durango

² This authority has been delegated to the Administrator of UMTA in 49 CFR Sections 1.45 and 1.51.

³ Two district courts have upheld this procedure as not arbitrary, capricious, or an abuse of discretion. Parker v. Adams, Civil No. 78-652 (W.D.N.Y. memorandum opinion filed Nov. 15, 1987); Philadelphia Council of Neighborhood Organizations v. Coleman, 437 F. Supp. 1341 (E.D. Pa. 1977). aff'd without opinion 578 F. 2d. 1375 (3rd Cir. 1978).

remedied this problem immediately and on January 1, 1984, began operating this service using city employees.

To date, there has been no other determination to put UMTA's findings into question. Therefore, unless an adverse finding is made, UMTA must rely upon Durango's assurance that it has the required legal capacity under Colorado to carry out the UMTA funded projects.

Having dispensed with these basic issues, we will now turn to an examination of Durango's actions to involve the private sector in the planning and programs for which it has received UMTA funds.

The standard which guides UMTA in reviewing any private sector complaint is the policy statement that UMTA issued on October 22, 1984, 49 Fed. Reg. 41310. In this notice, UMTA stated that we will only entertain complaints from private enterprise organizations on procedural grounds. The policy lists three such procedural grounds. First, that the local recipient had not established procedures for the maximum feasible participation of private transportation providers consistent with Section 8(e) of the UMT Act and the spirit of the policy. Second, that the local procedures were not followed. Third, that the local process does not provide for the fair resolution of disputes. By limiting our scope of review, UMTA states in the policy that we will not review disputes when the complaint is with the substance of local decisions concerning the service provided or the service provider. 49 Fed. Reg. 41312. Thus, UMTA will not substitute its own judgment for that of the recipient.

On January 10, 1983, the State of Colorado Department of Highways (CDOH), the UMTA recipient for the Section 18 program, issued a notice to inform applicants of its new application procedures.⁴ The notice state that the following three elements are added to the application procedure:

1. Applicants must hold a planning meeting inviting all the service providers in their area along with Colorado Department of Highway staff members.
2. Applicants must prepare, and publish public notices of, specific requests. They must also notify non-applicant

⁴ Section 18 of the UMT Act authorizes the Secretary of Transportation to apportion funds to the Governor of each State for public transportation projects in non-urbanized areas. The funds, apportioned annually, are made available on a population-based formula and may be used for capital, operating, and administrative projects. UMTA makes the grant of these funds directly to the State which in turn distributes them to eligible subrecipients.

providers individually. In this way, commercial service operators will have a maximum opportunity to participate in the programs.

3. An appeals process must be in place for service providers whose proposals were requested by the applicant.

Durango states that it adopted this process and followed it in its application process for the grants in question.

UMTA finds that this process is the type that the October 22, 1984 calls for. While this process was adopted and put into practice before UMTA published that policy, it covers the elements that UMTA indicated are important for the meaningful participation of and consideration of the private sector in the provision of transportation services.

A review of the factual record shows that Durango followed this process during the application process for each of the grants in question. First, Durango applied for Section 18 assistance in 1983. The record shows that Durango held a planning meeting on March 3, 1983, to discuss the City's transportation needs in light of the City's interest in applying for UMTA Section 18 funds. The minutes state that DTI attended the meeting. Durango provided notice that this meeting would be held by publishing a notice in the local newspaper on 27, 1983, and by sending an announcement personally to DTI on February 18, 1983.

Pursuant to the private sector participation process, Durango also published a notice inviting bids from interested parties to provide the service that would be funded by the UMTA grant on April 8, 1983. The record shows that a copy was sent by certified mail to DTI. DTI responded and submitted a bid for the service. It appears that only one other operator submitted a bid.

After an examination of the bids, Durango informed DTI on June 3, 1983, that it had decided to award the contract to the other bidder. In its rebuttal, DTI takes issue with several aspects of the bid evaluation process. In particular, DTI focuses on the issue whether the successful bidder had the appropriate legal authority to provide the service and whether Durango reviewed the bids based on the fully allocated costs of the two bidders.

In the October 22, 1984 private enterprise policy, UMTA states that we will not review the substance of local decisions. We note here, however, that the record does explain Durango's decision not to award to DTI. It appears that Durango accepted the successful bidder's statement that it had the proper operating authority. DTI's mere challenge of that, without a definitive statement by a local body with jurisdiction to decide that question, provides no reason to doubt the veracity of the bidder's assertion.

It appears that DTI claims that Durango did not review the bids based on fully allocated costs because its bid was \$500.00 lower than the successful bidder's bid and because Durango did not deduct from DTI's bid price the expected revenues, as estimated by the successful bidder, as DTI had indicated in its bid.

At the outset, it is critical to understand that UMTA has never stated that our guidance in the private sector policy to evaluate bids based on fully allocated costs requires the service contract to be awarded to the lowest bidder. There are always other factors that may be more important than cost that weigh in favor of one bidder.

In this case, it is true that DTI's bid was lower than the successful bidder's costs by \$500.00. If Durango had deducted the estimated revenues from the bid, the difference would have been greater. The successful bidder, however, deducted this same amount in its expense/revenue statement and thus it appears that the difference in the two bids would have remained \$500.00. UMTA concludes that the arguments that DTI has made do not show that Durango did not evaluate the bids on a fully allocated cost basis.

The private sector participation process required by the CDOH and adopted by Durango includes an appeals process. The letter informing DTI that it had not been selected as the provider also informed DTI of the procedure that was available to it to appeal Durango's decision.

DTI took advantage of this appeals process and filed an appeal with the City Council on June 14, 1983. The City Council considered the appeal on June 21, 1983 and upheld Durango's decision. DTI appealed this decision to the CDOH which upheld Durango's decision on September 8, 1983.

UMTA notes that DTI also could have filed a protest with UMTA under our bid protest procedures as set forth in UMTA Circular 4220.1A. Under these procedures, however, a protest now would not be timely.

The process that Durango followed in 1984 for the next Section 18 application is nearly identical to that which it followed in 1983. Durango published a notice and sent a copy of the notice directly to DTI on February 17, 1984, announcing a February 24, 1984, planning meeting to discuss "possible coordination and mutual assistance between transit service providers and sponsoring organizations." DTI attended the meeting. On February 27, 1984, Durango sent a notice inviting the submission of bids to provide the assisted service. DTI did not actually submit a bid to provide the service, but stated in a letter to Durango dated April 3, 1984, one day after bids were due, that it disputed the specifications.

The request for bids, however, did contain a provision to explain how a potential bidder could protest the specifications to seek clarification. On April 25, 1984, the Durango City Attorney informed DTI that since it had failed to follow these procedures and that since no bid was received, Durango considered that DTI did not respond to the bid solicitation.

In 1985, Durango followed this same process. On January 21, 1985, Durango sent a notice to DTI informing it of the meeting that would be held to discuss transportation service. The record shows that DTI did attend. Durango, pursuant to its process, published a notice on January 28, 1985, inviting bids to provide the assisted service. DTI did not respond and participated no further in the process for 1985.

Based on these facts, therefore, UMTA finds for the 1983, 1984 and 1985 Section 18 applications that Durango did follow a process for the consideration of private enterprise and that the process did provide for the fair resolution of disputes. The fact that DTI choose to participate in some, but not all of these application processes is not relevant. Since Durango followed a process that is consistent with UMTA's policy, we find no violations with the UMT Act.

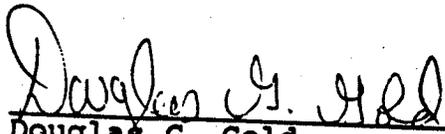
In 1983, Durango also applied to UMTA for Section 3 funding to purchase vehicles and related equipment to provide mass transportation including service from the airport to the ski area. The planning process for this service began in early 1983 and included several meetings with private operators, including DTI on February 25, March 11, and March 25, 1983. Durango published notice of a public meeting to discuss the Section 3 grant application and sent a copy to DTI on March 24, 1983.

On this same date, Durango informed DTI that it was considering several alternatives involving DTI to provide the service using UMTA funded equipment. These alternatives included leasing the equipment to DTI to perform the service, and the purchase by Durango of some or all of DTI's operating authority.

The course that Durango opted for was to purchase some or all of DTI's authority since it appears that DTI was not interested in a leasing arrangement. These two parties then entered into protracted negotiations for the sale of this authority, a process which UMTA notes is not finished and is the subject of pending litigation. While this process has been going on for several years, this is not in any way an indication of Durango's lack of compliance with Section 3(e) or UMTA's policy on the involvement of the private sector. Rather, the facts show that for the Section 3 grant, Durango followed the same process of notice and involvement that it followed for the Section 18 grant applications and that due to difficulties between the parties, communications broke down. While this is a regrettable situation, it is not a violation of either the UMT Act or the implementing policies.

CONCLUSION

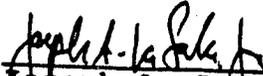
After a thorough review of the evidence presented, UMTA finds that Durango did comply with Section 3(e) of the UMT Act and the implementing policies in its grant applications for Section 18 grants in 1983, 1984 and 1985, and for a Section 3 grant in 1983. Durango adopted a process for the consideration and involvement of the private sector as specified by the CDOH and followed that process in the grant applications at issue. UMTA finds that this satisfies UMTA's requirements and that Durango is in compliance with those requirements.



Douglas G. Gold
Attorney-Advisor

FEB 24 1987

Date



Joseph A. LaSala, Jr.
Chief Counsel

FEB 24 1987

Date



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Administrator

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

MAY - 1 1987

Dear Colleague:

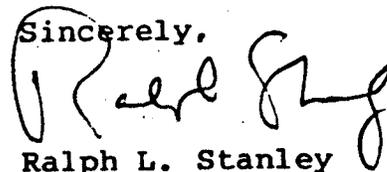
Enclosed you will find a page change for the Urban Mass Transportation Administration (UMTA) Section 9 Circular developed to reflect an important change in UMTA's treatment of income received pursuant to a contract for the nonexclusive transportation of school children in mass transportation service.

In response to an audit by the Department of Transportation's Inspector General (IG), UMTA reevaluated current policy on the treatment of contract revenue received for such service. UMTA concurred with the IG's finding that contract revenue earned by providing such service is revenue from the operation of mass transportation service and, as such, should be treated as farebox revenue.

Therefore, contract revenue received from the nonexclusive transportation of school children must be deducted from operating expenses before calculating net project cost for operating assistance projects under all UMTA programs. Correspondingly, these revenues may no longer be counted toward the local match under any UMTA program, except as otherwise provided for in the statute.

I am confident that you will agree that the new treatment of these contract revenues is more reflective of the nature of the service from which such revenues are derived. This revised treatment of contract revenue from the nonexclusive transportation of school children is effective for all applications filed after the date of this letter.

Sincerely,



Ralph L. Stanley

Enclosure



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Deputy Administrator

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

JUN 22 1987

Dear Colleague:

This is to remind you that UMTA's new charter service regulations, 49 C.F.R. Part 604, have been in effect since May 13, 1987.

For those recipients that have been providing charter service with UMTA-assisted facilities and equipment and would like to continue to do so, the public notification process set forth at 49 C.F.R. § 604.11 must be completed by August 11, 1987. Because of the time requirements outlined in the regulation, to meet this August 11, 1987, deadline, the recipient's notice must be published no later than July 11, 1987. Promptly after publication of notice by those grantees planning to provide charter service, it is requested that the recipient send a copy of its public notice to the appropriate Regional Office.

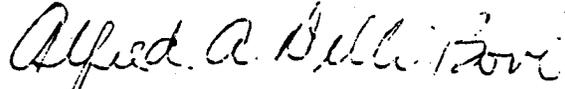
After August 11, 1987, the recipient may provide charter service only if the recipient has determined that there are no private operators that are willing and able to provide the service in question. If the recipient does not complete its public participation process and decisionmaking by August 11, 1987, UMTA will assume that the recipient has elected to withdraw from the operation of charter service except for those instances where service is provided under one of the exceptions outlined in the rule.

For those recipients that have not been providing charter service with UMTA-assisted facilities and equipment and for those recipients that have withdrawn from charter service but would like to resume offering charter service, the recipient must first fulfill the public notification and decision process of 49 C.F.R. §§ 604.11 and 604.13.

If a recipient operates charter service after August 11, 1987, without engaging in an adequate public participation process designed to notify willing and able private operators of its desire to operate charter service, the recipient will be in violation of the regulation and may be operating in violation of its grant agreement. In order that your Federal assistance not be jeopardized, recipients are also reminded that the procedures for exceptions must be followed when service is proposed under one of the exceptions contained in 49 C.F.R. § 604.9.

In addition, grant applications submitted after May 13, 1987, must be accompanied by a charter agreement as set forth in 49 C.F.R. § 604.7(b). If a recipient does not intend to submit a grant application to UMTA during fiscal year 1987, the recipient must still submit a copy of its charter agreement to the appropriate Regional Office, as set forth at 49 C.F.R. § 604.7(b), by July 12, 1987.

Sincerely,

A handwritten signature in cursive script that reads "Alfred A. DelliBovi". The signature is written in dark ink and is positioned above the printed name.

Alfred A. DelliBovi



Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

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

JUL 7 1987

Ms. Carol L. Bertran
Privatization Coordinator
Service Development Department
Beaver and Island Avenues
Pittsburgh, Pennsylvania 15233

Dear Ms. Bertran:

This is in response to your request of May 14, 1987, for a determination of the category of the commuter club service operated by the Port Authority of Allegheny County.

In your letter, you described this service as follows:

1. The service is by bus.
2. Buses serve commuters working from 8:00 a.m. to 5:00 p.m. in Downtown Pittsburgh.
3. The charge for the bus is predetermined by the Port Authority at a set rate per day.
4. No contract exists between the Port Authority and the riders.
5. The service is part of the Port Authority's scheduled pick service and operates on a regular and continuing basis.
6. The routing, including origin, destination, and stops, is predetermined and part of the Port Authority's picked scheduled work. The routing may only be changed by the driver notifying Port Authority's Traffic Control if deviation of routing is requested due to congestion, road conditions, etc. This is a standard operating procedure.
7. The service is designed to benefit the public at large and is not limited to employees of certain companies. Anyone wishing to ride on the service is invited to do so by contacting the club bus officer.
8. Riders are guaranteed a seat and receive a monthly Port Authority pass which entitles them to ride the commuter bus and also offers them transportation on certain other regularly-scheduled routes.

The new charter regulation, which went into effect on May 13, 1987, defines "charter service" and distinguishes it from "mass transportation".

Under 49 CFR 604.5, "charter service" means transportation using buses vans, of a group of persons, who, pursuant to a common purpose, under a single contract and at a fixed charge, have acquired the exclusive use of the vehicle to travel together under an itinerary either specified in advance or modified after having left the place of origin. The preamble to the regulation moreover explains that "charter service" is usually thought of as the one-time provision of service, and that the user, not the recipient, has control of the service.

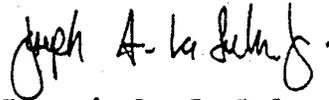
On the other hand, "mass transportation" is defined in section 12(c)(6) of the UMT Act as service to the public, either general service or special service, on a regular and continuing basis. In the preamble to the new regulation, UMTA offers additional guidance on the nature of mass transportation, by providing three characteristics which distinguish it from "charter service".

First, the preamble explains, mass transportation is under the control of the recipient. This means that the recipient is responsible for setting the route, rate, and schedule. Second, the service is designed to benefit the public at large, and not some special organization. Third, mass transportation is open to the public. Anyone wishing to ride on the service must be allowed to do so.

Applying these definitions and guidelines to the commuter club service described in your letter, the service is clearly "mass transportation" and not "charter service". First, you state that Port Authority sets the rate, schedule, and subject to slight deviations for traffic and road conditions, the destination for the service. Second, the service is apparently designed to benefit the public, in this case commuters working in downtown Pittsburgh. Third, you describe the service as open to the public, and that anyone wishing to ride it is entitled to do so. Fourth, there is no contract between Port Authority and the riders: the latter receive a monthly pass which entitles them to ride the commuter bus. Finally, the service as you describe it is regular and continuous, and is not the type of one-time provision of service envisaged in the charter regulation.

Accordingly, UMTA considers the Port Authority of Allegheny County to be mass transportation rather than charter service, in keeping with the definition of 49 CFR Part 604 and its interpretative guidelines.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph A. LaSala, Jr.", written in dark ink.

Joseph A. LaSala, Jr.
Chief Counsel



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Deputy Administrator

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

AUG 12 1987

Mr. Jack R. Gilstrap
Executive Vice President
American Public Transit Association
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Jack:

In light of a number of questions both the American Public Transit Association (APTA) and the Urban Mass Transportation Administration (UMTA) have received about the effective date of UMTA's charter bus regulation, we are pleased to take you up on your offer to print a concise statement on this matter in Passenger Transport.

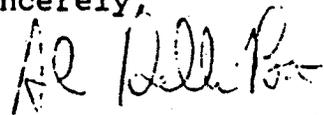
If an UMTA grantee was providing charter bus service on May 13, 1987, and desires to continue to provide such service, section 604.11(a)(2) of the regulation (52 Federal Register 11935) provides that the grantee must complete a public participation process not more than 90 days after May 13, 1987. In other words, a recipient of UMTA funds may not provide charter bus service using UMTA facilities or equipment after August 11, 1987, unless it has completed its public participation process, and no private charter operator is willing and able to provide the service. Of course, a grantee may provide charter service on an incidental basis if it has been granted one of the exceptions by UMTA which are outlined in the rule. If a recipient was not providing charter service on May 13, 1987, but desires to do so, it must first complete a public participation process at least 60 days before initiating charter service.

The regulation provides that if UMTA determines that a violation has occurred, the Chief Counsel may order such remedies he determines are appropriate given the facts and circumstances of each case. The regulation further provides that the Chief Counsel may bar the recipient from the receipt of UMTA funding if he determines that there has been a continuing pattern of violation of the regulation.

As you know, this regulation, which is a priority of this Administration, was developed over a period of years, including a lengthy notice and comment period. The regulation is now in place and our enforcement efforts are underway.

Our regional offices and headquarters staff are available to provide any additional information or guidance that our recipients or APTA may need regarding the regulation.

Sincerely,



Alfred A. DelliBovi

URBAN MASS TRANSPORTATION ADMINISTRATION

UCC-10:DDUFF:hb:366-4011:AUGUST 11, 1987

KEY WORD: Charter Bus Regulations

FILE NAME: Gilstrap

COPIES TO: UCC-10

UCC-1

UCC-30

UCC-CHRON

UOA-2

UES-10(2)



U.S. Department
of Transportation
**Urban Mass
Transportation
Administration**

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

1050 17th Street
Prudential Plaza
Suite 1822
Denver, Colorado 80265

Charter

August 12, 1987

Mr. Chester Colby, General Manager
RTD
1600 Blake Street
Denver, CO 80202-1399

Dear Ed:

This is to notify you that UMTA has approved RTD's arrangement for leasing charter buses to private operators as being in compliance with current charter regulations.

An additional question has also been posed to Headquarters concerning the possible treatment of lessees as "recipients" under the new regulations. If lessees were to be considered recipients for the purposes of the regulations, they would be subject to the same public notice requirements and charter service restrictions as grantees.

We have recommended that occasional lessees of charter equipment not be treated like recipients, since such treatment would likely preclude the types of leasing arrangements specifically permitted by the regulations, i.e., leasing to a private operator who lacks either the required capacity or handicapped accessible equipment.

We will inform you if we receive any further guidance on this point. Thank you for your cooperation.

Sincerely yours,

Helen M. Knoll
Regional Counsel

cc: James Rea, Colorado Western Stages, Inc.
Jack Brooks, RTD

DECISION

KRAFTOURS CORPORATION,
Complainant,

vs.

HARRIS COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY,
Respondent/Grantee

}
}
}
}
}
}
}

OK-02/86-01

I. SUMMARY OF DECISION

This decision is in response to a complaint filed on February 24, 1986, with the Urban Mass Transportation Administration (UMTA) by Kraftours Corporation (Kraftours). In its complaint, Kraftours claimed that National Transit Services (NTS), a privately-owned bus company, was operating charter bus service without UMTA authority while under contract with the Harris County Metropolitan Transportation Authority (MTA), the Houston, Texas grantee of UMTA. UMTA's subsequent examination of the facts and materials submitted by the parties revealed that, with the exception of route cards displayed on NTS vehicles, the charter service in question was not performed using UMTA-funded equipment or operating assistance. Consequently, UMTA concludes that there has been no substantial violation of the charter restrictions in the UMT Act of 1964 on the part of either NTS or MTA.

II. BACKGROUND

A. Complaint

Kraftours' complaint of February 24, 1986, claimed that NTS had, for the previous two months, been engaged in operating charter service in interstate commerce. It specifically alleged that NTS had used publicly-funded buses to provide charter service from Houston, Texas, to Red Rock, Oklahoma, for the purpose of transporting passengers to participate in bingo games on Indian reservations.

By letter of April 3, 1986, UMTA informed MTA of the complaint filed by Kraftours. The letter stated that Kraftours' allegations, if true, could constitute a violation of the charter bus restrictions in Section 3(f) of the Urban Mass Transportation Act of 1964, as amended, and the implementing regulations, 49

C.F.R. 604.¹ The letter also pointed out that if MTA contracts with NTS, the charter bus restrictions apply to NTS to the extent that it operates charter service using UMTA-funded equipment. Since the service in question appears to have been operated outside of the MTA service area, and if MTA had earned more than \$15,000 in charter revenues during the past fiscal year, the letter stated, MTA would have to have entered into a charter bus agreement and submitted a cost allocation plan to UMTA before MTA or NTS could provide charter services. UMTA noted that MTA had not entered into any such agreement. UMTA therefore stated that it was treating Kraftours' letter as a formal complaint, and provided MTA with 30 days from the receipt of UMTA's letter to respond to the complaint.

B. Response to Complaint

MTA responded to the complaint by letter dated April 9, 1986. In this letter, MTA stated that NTS operated commuter bus services for MTA under contract with compensation based on the number of revenue hours provided. MTA explained that no UMTA grant-funded equipment or operating assistance was utilized in this service, and that NTS owned its vehicles and provided all operators, fuel, and other supplies necessary to operate the services. MTA stated that NTS performed no charter services for or under contract to MTA, and that consequently, it was of the opinion that NTS' charter operations did not fall within the purview of the Federal statute or regulations.

C. Rebuttal

UMTA sent a copy of MTA's initial response to Kraftours on April 26, 1986, and provided it with 30 days from the date of receipt to rebut MTA's response. By letter dated May 20, 1986, Kraftours took exception to the notion that NTS was exempt from the UMTA charter bus regulations by virtue of the fact that it operated without direct funding from MTA. Kraftours alleged that the vehicles NTS used in providing charter service had been purchased pursuant to the contract with MTA. According to Kraftours, "...National Transit certainly would not own these numerous, new vehicles ... were it not for the contract to the Grantee to provide regular route services...". Consequently, Kraftours stated, NTS had been placed in a position to compete

¹The charter service regulation in effect as the time of this complaint has been replaced by a new rule which became effective on May 13, 1987. Under this new rule, recipients and subrecipients UMTA funds may not engage in charter operations if there is a private operator "willing and able" to perform the service. Therefore, had this complaint been decided under the new regulation, and assuming that Kraftours could be considered a "willing and able" private operator, NTS would be prohibited from performing the charter service cited herein.

unfairly with the private sector, in violation of the UMT Act of 1964.

Kraftours claimed that NTS not only used these vehicles purchased pursuant to the contract with MTA, to unlawfully and flagrantly conduct charter bus operations, but it also attempted to mislead the public into believing that it was providing charter service under MTA authority. Kraftours alleged that the NTS vehicles involved in these activities displayed MTA advertisement, MTA vehicle numbers, and MTA license plates, thereby holding themselves out in the eyes of the public as operating under the auspices of MTA.

To illustrate its claims, Kraftours cited an incident which occurred on April 19, 1986 involving an NTS vehicle. On that occasion, Kraftours alleged, an NTS bus "in Houston Metro livery" was seen by an employee of Kraftours in a service station at the intersection of the Oklahoma Cimmarron Turnpike and state road #77. This vehicle, it was claimed, displayed MTA advertising on the outside and inside, and also bore an Indian reservation bingo parking sticker. Claiming that a violation of the UMTA regulations had thus occurred, Kraftours requested that UMTA take action to prevent a recurrence of such alleged unfair trade practices.

D. Supplementary Response

UMTA forwarded a copy of Kraftours' rebuttal to MTA on July 7, 1986, and requested that MTA respond to it within 15 days. By letter of July 23, 1986, MTA filed a supplementary response, in which it stated that Kraftours rebuttal contained a number of misstatements of fact or incorrect conclusions from accurate facts.

MTA first of all denied that NTS operated in MTA livery. MTA pointed out that its own red, white and blue graphics scheme was substantially different from the red stripe on white bus paint scheme used by most NTS buses. MTA enclosed color photos of both an MTA and an NTS bus, to illustrate the difference in color schemes. Second, as concerns Kraftours' allegation that NTS buses carried MTA advertisement, MTA noted that when NTS buses were operated in contract service, they carried a car card in the rear and a dash sign indicating the particular route they are serving. According to MTA, these signs were to be used by NTS only when it was providing service for MTA, and were to be removed when the buses were not providing such service. Third, MTA denied that NTS buses carried MTA license plates, and stated that they instead carried commercial license plates.

MTA stated that it did not have sufficient information about NTS' business affairs to respond to Kraftours' assertion that the vehicles in question had been purchased specifically by NTS for

the purpose of fulfilling its obligations under the contract with MTA. MTA pointed out that it had a service contract with NTS, and that it considered the fact of whether NTS used its existing fleet or purchased new vehicles, to be of no bearing or relevance. In support of its assertions concerning the nature of the agreement between itself and NTS, MTA attached to its supplementary response a copy of the contract.

On August 12, 1986, UMTA sent to Kraftours a copy of MTA's supplementary response and the attached documents, and stated that it would endeavor to issue a decision as soon as its current work load permitted. Kraftours acknowledged receipt of MTA's supplementary response by letter to UMTA dated August 25, 1986. However, Kraftours stated that the supplementary response had not addressed the issues raised in its rebuttal, and indicated that it maintained all of the allegations made in its letter of May 20, 1986.

III. DISCUSSION

The issue in this case is whether the charter restrictions in the Urban Mass Transportation Act of 1964, as amended, and the implementing regulations in effect at the time of the complaint, 49 C.F.R. 604, applied to the interstate charter service provided by NTS. If they did not, neither MTA, as a direct UMTA grantee, nor NTS, as a contractor operating under its authority, can be cited for a failure to comply.

One of the principal goals of the above-cited charter restrictions was to protect private charter operators from unfair competition on the part of recipients of UMTA assistance. 49 C.F.R. 604.13 indeed provided that in order to engage in charter bus operations outside its urban area, the recipient must enter into a special agreement, aimed at assuring "...that the financial assistance granted under this mass transportation grant project will not enable the grantee, or any operator of project equipment for the grantee, to foreclose private operators from the intercity charter bus industry...".

These restrictions on charter bus services were applicable, under 49 C.F.R. 604.2, only to recipients of UMTA financial assistance for the purchase or operation of buses. NTS was thus subject to requirements of 49 C.F.R. 604 only to the extent that it used UMTA-funded buses or operating assistance in performing its charter services. In order to determine whether these provisions applied, then, it must first be established that NTS was indeed such an "operator of project equipment" for UMTA's grantee, MTA.

Kraftours alleged this fact in its letter of May 20, 1986, in which it stated that the vehicles used by NTS in its charter operations were purchased pursuant to the contract between NTS and MTA. Kraftours based this assertion on "outward appearances" and its observation that "...National Transit would not own these

numerous, new vehicles ... were it not for the contract with the Grantee...". In order to make a determination on this point, however, it is necessary to go beyond outward appearances and observations, to examine the facts presented by the parties, and the provisions of the contract between NTS and MTA.

In its initial response to Kraftours' complaint, MTA stated that NTS used no UMTA-funded equipment or operating assistance in its charter operations. MTA maintained that NTS owned its vehicles, and provided all operators, fuel, and other supplies necessary to perform such services. MTA also stated that NTS performed no charter services for or under contract to MTA.

An examination of the contract between NTS and MTA bear out the latter's affirmations on these points. Article 3 of the contract describes the services to be performed by NTS as the providing of commuter bus service over six MTA bus routes. There is no provision for charter, or any other than regularly scheduled route service. It is also provided that NTS shall furnish all personnel, passenger buses, equipment, and maintenance facilities necessary for the performance of these services.

Under Article 11 of the contract, the only property to be furnished by MTA to NTS are transit fareboxes, farebox cards, signage and sign holders. It is moreover specifically provided that such property shall only be used in the performance of the contract. There is no provision for the supplying of vehicles or other capital equipment by MTA to NTS.

Article 7 states that NTS shall be paid on the basis of the number of service hours scheduled by MTA. Under the terms of this provision, NTS is compensated only for services actually performed, and in accordance with a variable rate based on the level of performance provided to MTA for each scheduled trip.

This examination of the contract does not, then, support Kraftours' assertion that NTS was using publicly funded buses for charter operations, in violation of the UMTA charter bus regulations. NTS merely provides services for MTA, and in so doing, uses its own equipment, personnel and facilities. NTS is neither the recipient of direct UMTA grants, nor an operator of project equipment for the grantee.

Since it has been established that the buses used by NTS in its charter operations were not UMTA-funded, it is not necessary to reach the subsidiary allegation raised in Kraftours' letter of May 20, 1986, namely that NTS was "holding itself out in the minds of the public as operating under the auspices" of MTA. Even admitting, arguendo, that NTS was attempting to create the impression that it was operating charter service under the authority of MTA, its activities could be prohibited under the charter bus regulations only if they were performed using UMTA-funded equipment or operating assistance. As a private operator,

using its own vehicles to perform services outside the scope of its contract with UMTA's grantee, MTA, NTS was not subject to the restrictions of the then existing charter regulations, 49 C.F.R. Part 604. The trade practices it used in its charter operations, no matter how unfair they may have seemed to Complainant, were of no concern to UMTA.

Moreover, there is no clear indication that NTS was indeed trying to associate itself with MTA in the minds of the public. The photos submitted by MTA do show certain similarities in the appearance of NTS and MTA buses, but there were also substantial differences. While MTA buses used a red, white and blue graphics scheme and bear the word "METRO" in large letters, the NTS buses had a red on white bus color scheme and no lettering.

Kraftours letter of May 20, 1986, also alleged that NTS buses carried "Metro advertising" while performing charter services. According to MTA's response of July 23, 1986, the "advertisement" referred to were probably the route cards which NTS buses carried in the dash and rear while performing regular contract service. Under Article 11 of the MTA/NTS contract, these signs were to be used by NTS only when performing contract services. NTS' failure to remove them during charter operations would constitute a violation of the contract. Moreover, since this signage was supplied to NTS by MTA under Article 11 of the above-mentioned contract, it was UMTA-funded equipment, and, in keeping with the provisions of 49 C.F.R. Part 604, should not have been used in the performance of charter services. However, since a new charter regulation has gone into effect since the time of this complaint which presumably precludes NTS from performing charter operations, UMTA feels that it is not necessary to issue an order enjoining NTS from using the signage while engaged in "private" service. NTS' use of the signage constituted a relatively minor violation of the then existing charter rule, so that no sanction against NTS or MTA would have been warranted on that basis alone.

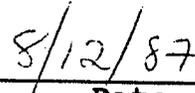
IV. CONCLUSION

UMTA's examination of the evidence presented reveals that the charter operations performed by NTS were outside the scope of its contract with UMTA's grantee, MTA, and, with the exception of signage displayed on NTS vehicles, did not involve the use of UMTA-funded equipment or operating assistance. As such, they did not fall within the ambit of the charter restrictions in the UMT Act and implementing regulations in effect as the time of the

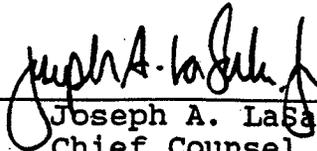
complaint, 49 C.F.R. 604. UMTA therefore finds that there was no violation warranting sanction against MTA or NTS.



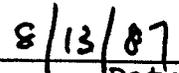
Rita Daguillard
Attorney-Advisor



Date



Joseph A. LaSala, Jr.
Chief Counsel



Date



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

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

AUG 26 1987

A
SEP 1987
RECEIVED

Mr. David Ryan
General Counsel
Topeka Metropolitan Transit Authority
201 North Kansas
Topeka, Kansas 66603

Dear Mr. Ryan:

Enclosed is a copy of a letter from Mr. Craig D. Busskohl of Arrow Stage Lines pertaining to the decision of the Topeka Metropolitan Transit Authority (TMTA) that Arrow Stage Lines is not a willing and able private operator pursuant to the Urban Mass Transportation Administration's (UMTA) charter service regulations, 49 C.F.R. section 604.13.

UMTA questions your rejection of Arrow Stage Lines on the grounds that it has not submitted evidence of its authority to provide charter service in the City of Topeka, Kansas. Please submit a detailed legal opinion stating the specific requirements that must be met to provide service within the city, with all pertinent citations and references to the organization that regulates charter operations within the city. Absent valid State law to the contrary, UMTA presumes that a charter operator licensed to provide service in any part of a State is authorized to provide service within any city of that State.

UMTA finds TMTA's notice that it intends to provide charter service in trolley buses to be unreasonably restrictive pursuant to the provisions of 49 C.F.R. section 604.11(c)(2). Pursuant to the definition of categories of revenue vehicles at 49 C.F.R. section 604.5(d), the only categories of revenue vehicles that may be specified are buses and vans. By offering to provide charter service in trolleys, TMTA's notice discourages private operators whose capabilities are different from informing TMTA that they are willing and able to provide charter service. Moreover, it is contrary to the provisions of UMTA's regulations to find a private operator not willing and able because it does not offer to provide charter service in trolleys.

Therefore, if TMTA did publish such a notice and no private operator is found by TMTA to be willing and able to provide charter service, then TMTA must publish a notice which comports properly with the requirements of the regulations. The new