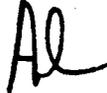


UMTA believes that its final rulemaking on the amendment reflects the intent of Congress as expressed in the Conference Report 100-498, as well as the many comments received on the NPRM. I share your confidence that the amendment will allow our recipients to serve the disabled, while fulfilling UMTA's statutory goal of limiting the use of federally funded equipment for purposes other than mass transit.

Sincerely,



Alfred A. DelliBovi



US Department
of Transportation

Urban Mass
Transportation
Administration

RECEIVED

MAR 22 1988
400 Seventh St. S.W.
Washington, D.C. 20590



Mr. Bryon Baxter
Director of Transportation
City of Davenport
2929 Fifth Avenue
Rock Island, Illinois 61202

Re: IL/RICMTD/87-12-01

Dear Mr. Baxter:

Thank you for your recent letter concerning transit service in the city of Davenport, Iowa.

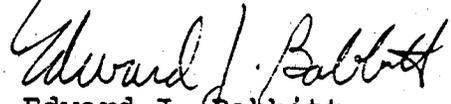
The first issue concerns the discontinuance of transit service on Route 11. The Urban Mass Transportation Administration (UMTA) acknowledges the city of Davenport's contention that it has followed the guidelines as established by the UMTA charter service regulation, and specifically, the public comment process, as required by 49 U.S.C. § 1607 (e)(3)(H), which provides for a locally developed process to solicit and consider public comment prior to raising fares or implementing a major reduction of transit service. UMTA considers the discontinuance of charter service on Route 11 to be in accordance with the charter service regulations.

The second matter involves transit service to the Quad City Thunder basketball games, alleged to be referred to as "chartered buses." The city of Davenport states that this service is scheduled service which is open to the public. UMTA recognizes that special service is not necessarily charter service, as defined at 49 CFR section 604.5(e) of UMTA's charter service regulations. In this instance, UMTA has determined that this service is not charter service.

Based on our investigation of facts involved in certain aspects of transit service conducted in the Quad Cities, UMTA has determined that there is no violation of the charter service regulation, or 49 U.S.C § 1607 (e)(3)(H), with respect to the discontinuance of service on Route 11 and service to accommodate Quad City basketball games.

UMTA, therefore, will not be taking any further action with respect to these matters.

Sincerely,


Edward J. Babbitt
Chief Counsel

BEFORE THE URBAN MASS TRANSPORTATION ADMINISTRATION

In the matter of: :
SUMMIT COACHES, :
Complainant, :
v. : IN-Ft. Wayne/88-06-01
FORT WAYNE PUBLIC TRANSPORTATION :
CORPORATION, :
Respondent/Recipient :

DECISION

SUMMARY

Summit Coaches ("Summit") filed an informal complaint with the Urban Mass Transportation Administration ("UMTA") on June 8, 1988, alleging that Fort Wayne Public Transportation Corporation ("FWPTC") has provided charter service in violation of the UMTA charter regulation, 49 CFR Part 604. UMTA's investigation finds that FWPTC has violated UMTA's charter regulation by using UMTA funded equipment in "charter" service, as that term is defined in the charter regulation, although FWPTC has labelled that service as "group demand service". UMTA does find, however, that two of the services offered by FWPTC come within UMTA's definition of mass transportation: the Lincoln Life service and the Target Store service. In addition, the attempted separation of the operations of FWPTC Charter Division from its Public Transit Division does not meet UMTA requirements. Neither may FWPTC use UMTA funded equipment and personnel whose salary is partially paid with UMTA funds to upgrade non-UMTA funded buses which later may be used for charter operations. UMTA orders FWPTC to cease and desist from such practices immediately.

COMPLAINT

Loser & Loser, Inc., d/b/a Summit Coaches, is a private bus operator located in Ft. Wayne, Indiana. On June 8, 1988, Summit's informal complaint referencing 24 possible violations of the charter regulation, 49 CFR Part 604, was forwarded to UMTA. Summit contends that certain of the transportation services provided by FWPTC are not "mass transportation" as defined in the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. app. § 1608 § 12 (c)(6) (UMT Act), but prohibited "charter bus operation", as defined in 49 U.S.C. § 1602, § 3(f). The other significant aspect of the complaint is the allegation that FWPTC is using UMTA funded equipment and facilities to assist in its charter service and does not have an entirely separate charter service division that uses no federally assisted resources. Summit specifically describes its complaint as follows:

On May 4th and 5th, 1988, three FWPTC chartered buses, which Summit believed to be funded by UMTA, transported passengers from the Marriott Hotel to the Magnavox and ITT plants.

On May 14, 1988, FWPTC chartered two buses to religious organizations, one bus to Bethel United Methodist Church and one to St. John's Lutheran Church.

On or about March 1, 1988, FWPTC chartered two UMTA funded trolleys to transport a movie actress, Lori David, and her friends to the Hollywood II Cinema.

On November 4, 1987, three FWPTC buses, marked "charter", two of them believed to be UMTA funded, were chartered by Fort Wayne National Bank to the Embassy Theatre. The next morning, the same three buses were intermingled among the rest of the fleet on FWPTC property. In a meeting on the morning of November 5, 1987, John J. Murphy, General Manager of FWPTC, admitted that two of the buses were UMTA funded and had been used for charter purposes in response to this complaint.

On April 27, 1988, four FWPTC buses, two of them believed to be UMTA funded, were chartered by A.R.M. Services to move passengers from a parked airplane to the terminal at Baer Field Airport.

On May 16, 1988, Foster Grandparents chartered one FWPTC UMTA-funded bus from the Senior Citizens Center to Hall's Guesthouse.

FWPTC non-UMTA funded buses are not headquartered or maintained off property by a private contractor, as claimed by FWPTC, but are repaired and maintained at the UMTA funded facility by UMTA funded employees. Additionally, the drivers for charters are dispatched from and the charter records are maintained at an UMTA funded facility.

Two UMTA funded employees, John Murphy and Mike Bill, respectively, manage and are in charge of the charter operations. Another UMTA funded employee answers the telephone for both the "charter division" and the "mass transportation division".

FWPTC advertises under "Buses-Charter and Rental" in the Yellow Pages of the Fort Wayne telephone directory using the same address and telephone number for the "charter division" as is used for its "mass transportation division".

On April 29, 1988, a FWPTC bus ran charter service from Hall's Guesthouse to the General Motors plant.

On May 13, 1988, a non-UMTA funded FWPTC bus ran charter service from Hanna Street to Calvary Temple Park.

On May 14, 1988, a non-UMTA funded FWPTC bus ran charter service to the Indianapolis Time Trials for the Fort Wayne Board of Realtors.

On May 17, 1988, a FWPTC bus ran charter service for a union group from the Holiday Inn to the B.F. Goodrich plant.

On May 21, 1988, a FWPTC bus ran charter service from American Plaza to the Foellinger Botanical Conservatory.

In December 1987, FWPTC ran charter service to Target Stores from various senior complexes.

At the time of the complaint, FWPTC was providing daily shuttle service for Lincoln Life's employees that was funded by Lincoln Life at \$19.50 per hour.

RESPONSE

By letter of July 13, 1988, UMTA advised FWPTC that the allegations contained in Summit's complaint would constitute violations of UMTA's charter service regulations and requested FWPTC to provide comprehensive data on the nature and scope of its charter bus operations. On August 5, 1988, FWPTC provided some of the requested material, but did not submit substantiating documentation until September 29, 1988.

The documentation submitted by FWPTC shows that the trips alleged by Summit to have been chartered with UMTA-funded vehicles were in fact provided with such vehicles. The documentation also shows that non-UMTA funded vehicles used for

charter operations were supported by UMTA-funded employees and facilities since FWPTC did not enter into the lease with JRR Corporation for separate storage and maintenance facilities for its non-UMTA funded equipment until August 2, 1988. FWPTC also acknowledges that UMTA funded employees are engaged in charter activities. FWPTC acknowledges that the Yellow Pages list FWPTC under the "charter" category for buses.

In its defense FWPTC claims that the services provided were not "charter" but "group demand response". FWPTC states that group demand response service differs from charter service since FWPTC "retains the right to remove the bus from its destination and to utilize it in normal mass transportation service....(and that) [i]n some instances, FWPTC has charged a fare to each individual user of demand response service."

FWPTC states that the provision of trolley service on or about March 1, 1988, was provided at the request of the county sheriff's department without cost as a community service.

In the case of the December 8, 1988, service to Target Store, FWPTC states that the service was made available by the store to provide transportation to senior citizens for special Christmas shopping and that such service is "mass transportation" as defined by UMTA in 52 Fed. Reg. 11920, April 13, 1987.

In the case of the daily shuttle to Lincoln Life for its employees, FWPTC claims that the service is "[r]egularly [s]cheduled [d]owntown [s]huttle service open to the general public at 25 cents fare. It is subsidized at \$19.50 per hour by Lincoln Life. Lincoln Life employees show their passes but do not pay a fare." In support of this claim FWPTC provided a published schedule for the service.

John J. Murphy, General Manager of FWPTC, stated in a meeting with Summit that "buses the FWPTC owned without federal involvement were being maintained in FWPTC's facility awaiting an agreement with JRR Corporation for storage and maintenance on its lot." FWPTC states that this situation continued until August 1, 1988, when the FWPTC Board approved the terms and authorized the execution of a contract with JRR Corporation. In support of this statement, FWPTC later provided an executed copy of the contract between FWPTC and JRR Corporation dated, August 2, 1988, which provides for both the storage and maintenance and repair of five non-federally funded buses.

Until the contract with JRR Corporation was executed, FWPTC states it attempted to separate out costs related to charters from the total costs incurred by means of a percentage based on relative monthly mileage. FWPTC acknowledges that this is not acceptable.

FWPTC also claims that it separates out the charter activities of employees whose salary is UMTA funded and provides documentation showing how this accounting is accomplished. The documentation indicates that the allocation is again made on a percentage basis of total time worked to time spent on "special division" work, and that percentage is applied to the following fringe benefits: insurance premiums, pensions and F.I.C.A. FWPTC states that it does not allocate the costs of the building in this calculation.

FWPTC claims that the 1987 Yellow Pages advertisement was inserted without its knowledge and states that no Yellow Pages advertising of charter operations was done in 1988. The copies of the pertinent Yellow Pages provided by FWPTC, however, shows a line listing for FWPTC under "buses-charter & rental" for 1988 with the same telephone number listing shown for regular bus service.

Summit reviewed the information provided by FWPTC in its September 29, 1988, letter to UMTA and stated that it believed that FWPTC has provided, and is continuing to provide charter service in violation of the 49 C.F.R. Part 604 regulations. Summit requested UMTA to direct it and FWPTC to attempt conciliation of this charter service complaint in accordance with the procedure described in § 604.15 (b) of the regulations.

On October 28, 1988, UMTA advised FWPTC that Summit's allegations would be treated as a formal complaint under 49 CFR 604.15 and directed the parties to attempt conciliation of the dispute for a period of 30 days. At the end of the 30-day period no settlement had been reached, but UMTA was advised by Summit that the issues between the parties were narrowed to four: (1) has FWPTC's use of UMTA funded equipment in what it now acknowledges to be "charter" operations, violated any UMTA regulations; (2) has FWPTC used UMTA funded equipment in "charter" service, as that term is defined in Federal regulations, although FWPTC has labeled that service as "regularly scheduled service" or "group demand response"; (3) are the operations of the FWPTC Charter Division sufficiently separated from its Public Transportation Division to meet UMTA requirements; and (4) may UMTA funded equipment and personnel whose salary is partially paid with UMTA funds be used to upgrade non-UMTA funded buses which later may be used for charter operations.

On November 30, 1988, UMTA notified FWPTC that it must respond to Summit's complaint within 30 days of receipt of the notice. On December 28, 1988, FWPTC submitted a request for a 10-day extension of time to file its response. UMTA granted FWPTC until no later than January 13, 1989 to submit its response. The FWPTC's response is postmarked January 13, 1989, but was not received by UMTA until January 18, 1989.

In its response, FWPTC maintains that their "demand response service" does not come within the definition of "charter service" as contained in the regulations. FWPTC relies on Federal Register Vol. 52, No. 70, 11919 for a definition of "charter service": "the service was to a defined group of people; there was a single contract between the recipient and the riders, not individual contracts between the recipient and each rider; the patrons had the exclusive use of the bus." FWPTC claims that their "group response service" is available to members of more than one group since the bus does not wait at the destination of any group but is available for such other service as it may be able to provide until it is time to pick up passengers for the return trip. It then returns to pick up the members of the different groups at whatever times they desire. FWPTC states, hypothetically, that "there could be separate contracts between each group on the bus and the PTC; no group had the exclusive use of the bus and there was not necessarily service to a defined group of people because there could have been service to several such groups."

FWPTC states that it also provides individual demand response service which is primarily designed for the handicapped, who pay \$2.00 for the service. The service is also available to non-handicapped individuals for \$4.00.

FWPTC states that if charter trips were equipped with UMTA funded vehicles, it was because it failed to comprehend the importance of using only non-UMTA funded vehicles for that purpose. FWPTC believes it has corrected the problem by the creation of the "special services division" and fully informing all employees of the necessity of using only non-UMTA funded vehicles for charter purposes.

FWPTC states in its response that it has been working to segregate the costs of charter bus operations to ensure that UMTA funds are not expended. Since August 1988, FWPTC claims, all buses used in the charter operation are non-UMTA funded and have been stored and maintained at JRR Corporation's property.

FWPTC maintains that it has allocated all costs of the charter service to the Special Services Division, including employee payroll and expenses, utilities and building maintenance. FWPTC requests UMTA's opinion as to whether its cost allocations are adequate.

FWPTC states that its downtown shuttle service is partially funded by Lincoln Life Insurance Company and that Lincoln's employees ride without charge. But, FWPTC maintains, the service is available to anyone in the downtown area who pays the normal fare. Lincoln's payment, says FWPTC, is offset by any revenue collected from paying customers. FWPTC states that this shuttle service falls clearly within the definition of "mass transportation" contained in 52 Fed. Reg. 11919, April 13, 1987.

In concluding its response, FWPTC denied Summit's allegation that it is upgrading non-UMTA funded buses, using UMTA funded facilities, for use in charter service. Instead, the FWPTC claims that it plans to buy 13 more buses, using non-UMTA funds, and place them in its Special Services Division.

REBUTTAL

The response was forwarded by UMTA to Summit. Summit then had 30 days to submit a rebuttal. Summit requested and received a 10-working-day extension of time, until March 10, 1989, to submit its rebuttal. Summit's rebuttal is dated March 10, 1989.

Summit challenges the response of FWPTC and maintains that the service which FWPTC calls "demand response" is in fact charter service; that the shuttle service for Lincoln Life is charter service rather than "mass transportation"; that FWPTC's violations of UMTA's charter regulations are persistent and continuing; that FWPTC uses UMTA funded facilities and employees in support of its charter services; that FWPTC's method of allocating costs of charter services is unsound; and that FWPTC's charter service is not "incidental" to its mass transportation service.

Summit claims that FWPTC's argument that its service is "demand response" rather than charter service is disingenuous. First, Summit points to FWPTC's own definition of "demand response service". The distinguishing characteristic of "demand response service", as defined by FWPTC, is that the buses are available for other service. Summit analyzed the "demand response" data provided by FWPTC on September 29, 1988, in response to UMTA's request. Summit concluded that the definition is more theory than fact since for numerous trips the data showed that there could not have been any other service provided either because of time constraints or because FWPTC is not permitted to originate traffic outside FWPTC's service area.

Summit contends that if FWPTC's definition of "demand response service" was accepted, "all the buses parked outside of stadiums, sports arenas, racetracks, theaters, theme parks, and historical sites for a period of three hours or more would be engaged in group response if they were available for hire during that period by other groups." While Summit agrees that UMTA's definition of charter service includes the concept of exclusive use, Summit claims that FWPTC has contrived its definition of demand response service to circumvent the charter regulation.

Further, Summit asserts that FWPTC's actual "demand response service" does not coincide with its own definition. Because FWPTC does not inform its "demand response" clients that they might have to share a bus, and because buses used in "demand response" are so rarely shared, in most cases the "demand response" client has the exclusive right to the bus.

Summit contends that other facts which lead to the conclusion that FWPTC's "demand response service" is really "charter service" are that the buses carry no destination designation, the schedule is established to accommodate the "demand response party", and no schedules or fare information are published for the information of the general public.

Summit challenges the claim of FWPTC that the service provided to Lincoln Life employees is "mass transportation". As authority, Summit relies on UMTA's definition of "mass transportation" contained in the preamble to the charter service regulation. Mass transportation "(1) is under the control of the grantee; (2) designed to benefit the public at large; and (3) is open door. 49 Fed. Reg. 11920 (April 13, 1987)."

Summit states that the Lincoln Life shuttle service is operated by FWPTC in accordance with Lincoln Life's contract and the service is only operated when Lincoln Life's employees are going to or returning from work. Lincoln Life employees pay no fare, Summit claims, and any revenue generated reduces the amount paid by Lincoln Life. Summit states that only a very few members of the general public ride the buses.

Summit compares the Lincoln Life service to service provided by the Utica Transit Authority which was determined by UMTA to be impermissible charter service.^{1/} While the Utica service was provided "on an open-door basis in that any member of the public

^{1/} UMTA made this determination in a letter to Barry Shulman dated December 28, 1988.

could board, including senior citizens, it appears that the true purpose of the trip was to provide charter service for the senior citizens, and not for the public-at-large. UMTA believes that under the circumstances, there was probably little public ridership during the trip in question."

Summit claims that FWPTC's violations of the charter service regulations are persistent and continuing. Summit infers that Summit's use of non-UMTA funded equipment for its charter services for some 13 months after UMTA's charter regulation became effective was not the result of ignorance and inadvertence. Summit reports that even after the submission of FWPTC's response in which it declared that it had taken measures to inform all its employees of the necessity of using only non-UMTA funded equipment for charter trips, FWPTC, in February 1989, used an UMTA funded minibus in its charter service for the Fort Wayne Home and Garden Show. Summit also casts doubt on whether in December 1988, FWPTC could have transported a reported "650 youth and 10 local celebrities all over the city on PTC buses" solely in the five non-UMTA funded buses owned by FWPTC. As another aspect of FWPTC's continuing violation of the charter service regulation, Summit points to FWPTC's current advertisement in the Yellow Pages under "Buses-Charter and Rental".

Summit contends that FWPTC uses UMTA funded facilities and employees to support its charter operations. To illustrate FWPTC's lack of credibility on this issue, Summit points out several contradictions between the facts FWPTC has represented to UMTA and the facts as known to Summit. Summit states that in an October 5, 1987 letter from FWPTC to UMTA, FWPTC claimed to have purchased the Federal interest in 15 buses, while UMTA's files only reflect purchase of the Federal interest in three buses. In particular, FWPTC claims to have purchased the Federal interest in bus number 192, but according to Summit that bus remains federally funded and is consistently used for charter service.

Additionally, the same FWPTC letter states that the buses used for charter operations are maintained off FWPTC's property by a private contractor. Summit points out that this is patently false since FWPTC did not enter into the contract with JRR Corporation until August 2, 1988. Summit also claims that FWPTC engaged in a subterfuge to remove the buses used for charter operations from FWPTC property just prior to UMTA officials arrival on site to conduct an audit on July 23, 1988; that FWPTC allowed an UMTA funded bus which is regularly used in charter operations to receive an extensive engine overhaul at the FWPTC facility; that as of March 10, 1989, buses identified by FWPTC to have been purchased for FWPTC's charter operation are stored on FWPTC property. Summit acknowledges that in FWPTC's response, FWPTC states that the identified buses are not the buses which FWPTC intends to upgrade for charter use, but Summit claims that FWPTC's statement is at variance with its earlier statement.

In its Rebuttal, Summit points out that FWPTC's claim that it is no longer engaged in advertising its charter services alongside its regular mass transportation services is belied by FWPTC's current advertisement contained in the Yellow Pages.

Summit notes a new development with regard to FWPTC's bus operators. According to Summit, while FWPTC stated in its response that all demand response and charter service has been performed by private contract operators, in January 1989, an arbitrator interpreting the Collective Bargaining Agreement between FWPTC and its union ruled that all such service must be performed by union operators in the future.

Summit relies on a previously issued UMTA opinion as authority for the proposition that mere bookkeeping separation between charter accounts and mass transportation accounts is not sufficient to comply with the UMTA charter regulation.^{2/} Further, Summit contends that FWPTC's cost allocation between its Special Services Division and its Mass Transportation Division inequitably transfers losses from its charter service to its UMTA subsidized mass transportation service. As evidence of this allegation, Summit directs attention to FWPTC's audit report dated December 31, 1987. The audit report shows that the Special Services Division's operating loss was reduced by \$135,567.00 revenue from receipts at the Fort Wayne Municipal Garage.

Summit alleges that FWPTC's alleged "break-even" rate of \$19.50 per hour for its Special Services Division is in fact subsidized by UMTA since \$19.50 per hour is substantially below Summit's "break-even" rate and since FWPTC's Special Services Division has experienced a substantial actual loss.

Summit contends that because FWPTC uses the same telephone number for both its Special Services Division and its Mass Transportation Division it probably uses the same UMTA funded personnel to perform both functions.

Finally, Summit submits that FWPTC's substantial charter and "demand response" service in no way meets the basic UMTA requirement that any charter service allowed pursuant to the exceptions to the charter regulation must be "incidental".

2/ Memorandum Opinion Re: Manchester Transit Authority Charter Operations, dated July 14, 1987.

DISCUSSION

The first question to be determined, among the four issues agreed to by the parties and UMTA on October 28, 1988, as stated above, is whether FWPTC's use of UMTA funded equipment in what it now acknowledges to be "charter" operations, violated any UMTA regulations. The answer is in the affirmative. UMTA's charter regulation, 49 C.F.R. Part 604 (April 13, 1987), provides that a recipient may provide charter service that uses equipment or facilities provided under the UMT Act or under 23 U.S.C. 103 (e)(4), 142(a), or 142(c) only to the extent that there are no private charter service operators willing and able to provide the charter service, unless one or more of the exceptions in 49 C.F.R. 604.9 applies. Prior to providing its charter service there is no indication that FWPTC utilized any of the necessary procedures to determine whether there were any willing and able operators (although Summit's complaint is evidence that there is at least one potential willing and able operator). Neither does FWPTC make a case that any of the recognized exceptions contained in the charter regulation apply.

The second question which requires determination is whether FWPTC used UMTA funded equipment in "charter" service, as that term is defined in Federal regulations, although FWPTC has labelled that service as "regularly scheduled service" or "group demand response". It is apparent from the evidence submitted by Summit, and FWPTC acknowledges, that FWPTC regularly provides bus service to private groups at their request. Summit claims that the service provided is prohibited charter service within the meaning of the UMTA regulation, while FWPTC maintains that the service, which FWPTC labels "demand response", is mass transportation.

Further, Summit claims, and FWPTC acknowledges, that some of this service was rendered with the use of UMTA funded equipment. FWPTC submits, however, that it has remedied the lack of instruction to FWPTC employees which resulted in the inappropriate use of UMTA funded equipment in its "demand response" service. Summit maintains that despite FWPTC's claim that it no longer uses UMTA funded equipment to provide its "demand response" service, FWPTC continues to use UMTA funded equipment for such service.

The parties are also in dispute as to the nature of FWPTC's provision of service on behalf of Target Stores, Inc. and Lincoln Life. FWPTC claims that these services are not charter service or "demand response", but fall squarely within the definition of mass transportation.

In these contexts, therefore, it is necessary to compare charter service, "demand response" service and mass transportation. UMTA defines mass transportation as being provided to the public on a regular and continuing basis. In addition, UMTA has expressed three other characteristics by way of illustration. "First, mass transportation is under the control of the recipient. . . . [s]econd, the service is designed to benefit the public at large and not some special organization such as a private club. . . . [t]hird, mass transportation is open to the public and is not closed door." 52 Fed. Reg. 11920 (1987).

FWPTC adds no new facts to the information submitted by Summit relating to the Target Store service. According to the newspaper article submitted by Summit, Target Store chartered FWPTC buses "to shuttle shoppers to and from nursing homes, apartments and senior citizens' centers" on December 8, 1987, in accordance with schedules published therein. The service was instituted to provide senior citizens, disabled people and their companions with "hassle-free" shopping at the store. The store would be closed to other shoppers when this occurred.

FWPTC claims that the "Lincoln Life" service it provides is regularly scheduled downtown service. It is open to the public at twenty-five cents fare and there is a published schedule of its operations. Lincoln Life employees do not pay a fare, but their employer subsidizes the operation of the service with payment of \$19.50 per hour to FWPTC. Summit claims that the service is really charter service since it operates only when Lincoln Life is open for business, is used almost exclusively by Lincoln Life employees who do not pay any fare and the fee Lincoln Life pays to FWPTC is reduced by the amount of any extraneous fares received from non-Lincoln Life employees.

In comparing FWPTC's Target Store service and Lincoln Life service with UMTA's definitions of prohibited charter service and mass transportation it is apparent that the two services for different reasons come within UMTA's definition of mass transportation.

The Target Store service was specially rather than regularly scheduled since it was a once a year event and there was no schedule promulgated by the FWPTC. Target Store specified the time and route for the service and Target Store itself paid FWPTC for the use of the buses rather than the individuals who took advantage of the service. Thus Target Store rather than FWPTC was in control of the service. The service was limited to the elderly, handicapped and disabled and their companions and its destination was to Target Store which would only be open to this specific group. Even though this service meets the definition of charter service, since it constituted exclusive service for the elderly and handicapped, it is considered to be "mass transportation" under the UMT Act. 52 Fed. Reg. 42252, November 3, 1987.

The Lincoln Life service, for different reasons, comes within UMTA's definition of mass transportation. The service operates regularly and FWPTC has and provided to UMTA a published schedule of the service offered. FWPTC lists revenue from this service in its regular operations, not in either its "demand response" or charter service, evidencing the control FWPTC assumes over this service. Although Lincoln Life pays for the cost of the service on behalf of its employees, the service is not restricted to them and a member of the general public can use the service for twenty-five cents. Thus UMTA considers the service regularly scheduled service, in the control of FWPTC, beneficial to the public at large and open-door.

FWPTC does not take a position as to whether the Lori David trolley service was charter service or mass transportation, but relies on its statement that the trolley service was provided free of cost as a public service to the community at the request of the county sheriff's department. UMTA has ruled that cost is irrelevant in distinguishing mass transportation from charter service. See Question and Answer 27(a) of UMTA's "Charter Service Questions and Answers," 52 Fed. Reg. 42248, 42252, November 3, 1987. The service was provided for a singular occasion at the request of the sheriff's department. The transportation service did not benefit the public at large, but was limited to Lori David and her coterie of friends. Therefore the service was neither regular nor under FWPTC's control, and neither beneficial nor open to the public.

The largest number of specific complaints regarding the provision by FWPTC of charter service have been distinguished by FWPTC as "group demand response". In answering the question whether FWPTC has used UMTA funded equipment in "charter" service, as that term is defined in federal regulations, in providing such service, it is again useful to compare UMTA's definitions of mass transportation and charter service with the service FWPTC calls "group demand response".

FWPTC makes several distinctions between "group demand response" service and charter service. In contrast to FWPTC's understanding of the term charter service, in which all passengers are members of the same group and the bus is used exclusively for the group, in "group demand response" service the bus is available to members of more than one group, FWPTC retains the right to remove the bus from its destination and to utilize it in regular mass transportation. For the greatest part, fares are not collected from individual passengers. FWPTC bases its position on a narrow reading of the definition of charter service contained in

the regulation. FWPTC focuses only on one aspect of the regulation; "that the service was to a defined group of people . . . there was a single contract between the recipient and the riders, not individual contracts between the recipient and each rider . . . the patrons had the exclusive use of the bus." 52 Fed. Reg. 11919 (April 13, 1988). FWPTC overlooks the rest of the definition of charter service as well as the definition of mass transportation. FWPTC's position is not supportable when the so-called "demand response service" is examined against the complete definition and intent of the regulation as well as the system in actual operation instead of mere theory.

FWPTC's "demand response" service is not regularly scheduled and continuing service within the FWPTC's control, rather it is provided to singular events at the request of outsiders. The possibility that the bus could be used for more than one group at the same time does not bring the service outside the definition of charter service. The services do not benefit the public at large but are for the use of private organizations. Also, because there are no published schedules or any marking on the buses indicating their designations, the service is essentially closed door. Further, an examination of the "Daily Charter/Demand Response Records submitted by FWPTC shows that in fact the services are rendered exclusively to only one group per bus and that many of the trips are of insufficient duration for the FWPTC to be providing regularly scheduled service using the same equipment during the "demand response" party's excursion, contrary to FWPTC's hypothesis.

In determining whether the operations of the FWPTC Special Services Division are sufficiently separated from its Public Transportation Division to meet UMTA requirements, UMTA is particularly mindful of the prohibition against using UMTA funded equipment or facilities to provide charter service unless one or more of the exceptions applies, 49 C.F.R. § 604.9 (a). "Facilities" in the context of the charter regulation applies to offices and other administrative locales. Any expense for items such as depreciation, utilities, labor, etc., incurred by the entity providing charter service must be accounted for separately and not charged to any UMTA grant, 52 Fed. Reg. 42252 (November 3, 1987).

Clearly, prior to the time any costs were allocated to the Charter Division, UMTA funded equipment and facilities were being used to support FWPTC's charter service. FWPTC does not rely on any of the recognized exceptions to the provision of charter service with UMTA equipment to justify its charter operations. Instead, FWPTC

has recently instituted a system of allocating certain selected employee salaries and expenses to its Charter Division. From an examination of FWPTC's Attachment # 5, describing the method for allocating administrative costs and the December 31, 1987 Audit Report, it appears that FWPTC has not fully allocated the costs of its charter services. For example, FWPTC allocates the costs of medical insurance, pension plan and FICA, but does not allocate all employee fringe benefits, including but not limited to, sick leave, holiday pay, vacation pay, unemployment taxes and worker's compensation.

Additionally, FWPTC indicated in its Response that it had not yet discovered a satisfactory method of allocating the operation and maintenance of its building. This is also evidenced by Summit's allegations that FWPTC uses the same telephone number, office and responsive personnel to operate its charter service as its mass transportation service.

In Question and Answer 26 of UMTA's Charter Service "Questions and Answers," 52 Fed. Reg. 42248, 42252, November 3, 1987, UMTA concluded that, ". . . if there is a willing and able private provider, a transit authority may not allow its separate charter entity to use, on an incidental basis, the UMTA-funded garage in connection with its charter operations, even if the separate charter entity were to pay the transit authority rent and fees for such incidental use." (Emphasis original). The opinion is based on 49 C.F.R. 604.9 (a), which prohibits the recipient "from providing charter service with UMTA-funded equipment or facilities," and UMTA notes that the term "facilities" applies to offices and other administrative locales. Therefore, FWPTC may not continue its charter service using a system of cost allocation.

Summit also pointed out that according to the December 31, 1987 Audit Report, FWPTC had subsidized its Special Services Division with the receipts from the Municipal Garage. This practice is entirely inconsistent with the charter regulation and UMTA directs that the Audit Report be revised so that the UMTA funded revenues do not in any way offset the expenses of the Special Services Division and that no such accounting practices be followed in any future financial statements.

For the reasons set forth above it would also be inconsistent with the charter regulation for UMTA funded equipment and personnel whose salary is partially paid with UMTA funds be used to upgrade non-UMTA funded buses which later may be used for charter operations.

CONCLUSION

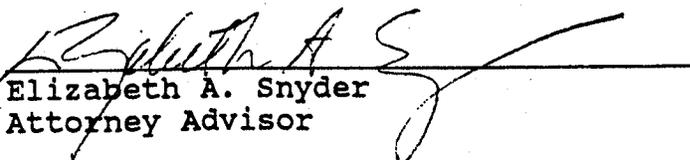
UMTA's examination of the administrative record shows that FWPTC has engaged in charter operations within the meaning of the charter regulation; has used UMTA funded equipment in "charter service", as that term is defined in federal regulations. UMTA finds that the Lori David trolley service was prohibited charter service. Additionally, the "group demand response" service which FWPTC regularly provides does not meet UMTA's definition of mass transportation, and is also prohibited charter service. UMTA does find, however, that the Target Store service and the Lincoln Life service meet the criteria for mass transportation. UMTA directs FWPTC to cease and desist from all prohibited charter service immediately.

UMTA further finds that FWPTC's system of cost allocation between its Special Services Division and its Mass Transportation Division has been both incompletely and improperly executed. FWPTC has failed to fully allocate personnel and building operating expenses. But UMTA notes that the entire cost allocation concept is not proper in these circumstances since it allows FWPTC to participate in charter operations through its Special Services Division to a greater extent than a private charter operator operating under contract to the FWPTC. UMTA also specifically directs FWPTC to revise any financial statements which transfer revenues from the Mass Transportation Division to the Special Services Division to offset losses incurred by the Special Services Division.

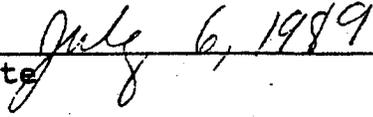
FWPTC is further advised that it would be improper under the charter regulation to use UMTA funded equipment and personnel whose salary is partially paid with UMTA funds to upgrade non-UMTA funded buses which later may be used for charter operations.

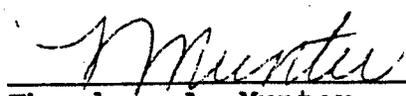
In reviewing the December 31, 1987, Audit Report UMTA noted that the FWPTC is also providing school service. By way of information and proscription, UMTA takes this opportunity to advise FWPTC that if this service is exclusive school bus service, it is prohibited, 49 U.S.C. app. § 1602 § 3(g), and is further regulated by the provisions of 49 C.F.R. Part 605. Should FWPTC be providing exclusive school service in violation of UMTA's statutory and regulatory requirements, it should cease and desist immediately.

UMTA received a letter dated June 7, 1989, from FWPTC stating that as a result of an arbitration decision, FWPTC had ceased all charter operations. To the extent the issues raised by Summit's complaint are not resolved, however, UMTA issues this decision.

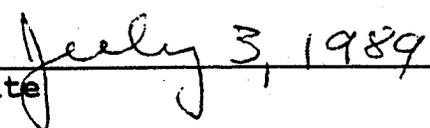

Elizabeth A. Snyder
Attorney Advisor

Date




Theodore A. Munter
Deputy Chief Counsel

Date





U.S. Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

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

JUL 14 1989

U-11-30
Chron

Mr. Richard Rohde, General Manager
South Bend Public Transportation Corporation
901 East Northside Boulevard
Post Office Box 1437
South Bend, Indiana 46624

Dear Mr. Rohde:

It has been brought to my attention that the South Bend Public Transportation Corporation (SBPTC) published a charter service notice on June 23, 1989, that is defective.

The notice states that in order for a private bus operator to be considered "willing and able" it must submit written evidence that the private operator has the "desire and physical capability to actually provide the categories of revenue vehicle specified." The categories of vehicles specified in the notice are "35-foot advanced design air-conditioned buses" and "the 'Transpo Trolley,' a specialty vehicle".

The Urban Mass Transportation Administration (UMTA) stated in Question and Answer number three of "Charter Service Questions and Answers" 52 Fed. Reg. 42248, 42249, November 3, 1987, that in its notice a grantee may describe its own service in any way, but that it "must make it clear in the notice that private operators are not required to respond in similar detail. Instead, private operators are required to show only that they have . . . the desire to perform the service plus at least one bus or van." And in Question and Answer number six, supra at 42249, UMTA stated that "[i]n order to prove that it is 'able' to provide the service, the charter operator does not have to demonstrate that it has any particular capacity level; in other words, a charter operator is as willing and able if it has one bus as it would be if it had one hundred buses." Enclosed for your information is a copy of the "Charter Service Questions and Answers".

Therefore it appears that SBPTC's notice is not in conformance with UMTA's charter regulation, 49 C.F.R. 604.9, since it could inhibit an operator, who otherwise would be considered willing and able, from responding to the notice. Please revise the charter service notice as indicated to conform to UMTA's regulation and republish it.

Sincerely,



Theodore A. Munter
Deputy Chief Counsel

Enclosure

cc: Charles A. Webb, Esq.



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

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

JUL 17 1989

File Cl. in the
600 20
Chron

Mr. John L. Carter
Director of TALTRAN
555 Appleyard Drive
Tallahassee, Florida 32304

Dear Mr. Carter:

Please find enclosed a copy of a letter from Charles A. Webb, Esq., informing the Urban Mass Transportation Administration (UMTA) that the City of Tallahassee (TALTRAN) has apparently published a notice expressing its willingness to provide charter service in a manner that violates UMTA's charter service regulations, by specifying that TALTRAN would be employing handicapped accessible as well as non-accessible buses or vans.

UMTA's charter service regulations limit the description of charter service a recipient may include in its notice, "... to the days, times of day, geographic area, and categories of revenue vehicle, but not the capacity or duration of the charter service." UMTA specifically defined categories of revenue vehicles in the regulations to mean, "bus or van," 49 CFR 604.5(d), in order to preclude other subcategories of vehicles, such as accessible or non-accessible vehicles, from influencing the determination of which private operators would be found willing and able.

It is UMTA's view that by offering to provide service in coaches or vans described as handicapped accessible and non-accessible and asking private providers to submit a statement that they have the "desire and the physical capability to actually provide the categories of revenue vehicle specified...", TALTRAN has implied that private operators will not be found "willing and able" if their buses or vans differ from those specified in the notice.

This practice violates the requirements of 49 CFR 604.11(c)(5)(i) and (ii), which provide that the recipient's public notice must state that the evidence to determine whether a private charter operator is willing and able should include only a statement that the private operator has the desire and physical capability to provide one or both "categories of revenue vehicle" specified in 49 CFR 604.5(d), i.e., buses or vans, and that the

private operator has the requisite legal authority to provide the service.

The notice TALTRAN published is unduly restrictive because it discourages private operators with different capabilities from informing TALTRAN that they are willing and able to provide charter service. Therefore, TALTRAN should immediately publish a nonrestrictive notice in strict accordance with UMTA regulations in order to determine which private operators are willing and able.

Should you have any questions concerning this requirement, please contact Rita Daguillard of my staff at 202/366-1936.

Sincerely,


Theodore A. Munter
Deputy Chief Counsel

Enclosure

cc: Charles A. Webb, Esq.

George T. Snyder, Jr.
Executive Vice President, ABA

BEFORE THE URBAN MASS TRANSPORTATION ADMINISTRATION

In the Matter of:

BLUE BIRD COACH LINES,	}	
Complainant	}	
	}	
v.	}	NY-09/88-01
	}	
JAMESTOWN AREA TRANSIT SYSTEM,	}	
Respondent	}	

DECISION

SUMMARY

Blue Bird Coach Lines, Inc. (Blue Bird) filed this complaint with the Urban Mass Transportation Administration (UMTA) on September 19, 1988. The complaint alleged that the Jamestown Area Transit System (JARTS) had provided service in violation of UMTA's charter regulation, 49 CFR Part 604. The complaint specifically alleged that JARTS was using both its own buses and buses owned by the Jamestown City School District (the District) in charter service under contract with the District. After a thorough investigation, UMTA has determined that JARTS has serviced and maintained in an UMTA-funded garage vehicles used for charter and school service, in violation of 49 CFR Part 604 and 49 CFR Part 605. UMTA orders JARTS to correct these violations within three months of receipt of this order.

COMPLAINT

Blue Bird filed this complaint on September 19, 1988, against JARTS, alleging that JARTS is in violation of UMTA's charter regulation. The complaint specifically alleges that JARTS had been the successful bidder on a contract calling for the use by JARTS of "substitute buses"¹ in transporting students in charter

¹According to the specifications of the contract, a copy of which is attached to the complaint, "substitute buses" are vehicles provided by the contractor which are to be furnished on days when buses owned by the District are undergoing maintenance or are out of service for any reason.

service to and from school, and for the use of JARTS-owned buses in transporting students in charter service to destinations beyond the District. Even if some of the buses operated by JARTS under the contract are not UMTA-funded, the complaint alleges, they are serviced, garaged, and maintained in a facility funded by UMTA, in violation of 49 CFR Part 604.²

The complaint moreover states that JARTS has used UMTA funds to purchase transit buses to be used in school service. UMTA funds, the complaint points out, may lawfully be used by JARTS only for "mass transportation..." which, as defined in Section 12(c)(6) of the Urban Mass Transportation Act of 1964, as amended (UMT Act), specifically excludes both school bus and charter service.

Blue Bird attaches to its complaint copies of the bid proposal and specifications for the service in question, as well as a copy of the school transportation contract between JARTS and the District.

Blue Bird requests that the Chief Counsel withdraw funds for equipment and facilities from JARTS, order such other remedies as may be appropriate, and direct JARTS to cease and desist from providing charter service in violation of 49 CFR Part 604.

RESPONSE

By letter dated September 14, 1988, UMTA advised Blue Bird that the allegations in its complaint, if substantiated, might constitute violations of UMTA's school bus regulation, 49 CFR Part 605, and UMTA's charter regulation, 49 CFR Part 604. UMTA stated that under the procedure set out in these regulations, the parties should attempt local conciliation for thirty (30) days. UMTA indicated that it would begin an investigation if no resolution were reached within this period.

On October 21, 1988, Blue Bird wrote to inform UMTA that it had met with JARTS to attempt local conciliation of the dispute. As a result of the discussion, stated Blue Bird, only one issue remained in dispute, namely whether certain buses, not funded by UMTA, have been engaged in charter service using UMTA-funded facilities.

²There is no specific provision of 49 CFR Part 604 which prohibits grantees from servicing and maintaining their non UMTA-funded charter vehicles in an UMTA-funded facility. However, UMTA has interpreted the language of the regulation as imposing this prohibition. See Q&A 26 of UMTA's "Charter Service Questions and Answers," 52 Federal Register 42248, November 3, 1987.

By letter of November 3, 1988, UMTA informed the parties that it would focus its investigation of the complaint on this issue.

JARTS response is dated January 3, 1989. In its response, JARTS states that the gravamen of the complaint, as contained in paragraphs 7, 8 and 9, is that JARTS has violated the charter regulation by successfully bidding on a contract to transport students "to and from school" and to "destinations beyond the Jamestown City School District." Although it was initially alleged, JARTS states, that "the buses used in such charter operations were UMTA-funded," it is now conceded that JARTS "had not used UMTA funds to purchase buses which were used in school services."

JARTS indicates that it is difficult to respond to the complaint, since the essence of the allegation has been removed. The complainant has, says JARTS, taken a shotgun approach with the hope that one pellet would strike. JARTS indicates that it will focus its response on the school bus complaint.

JARTS explains that the transition from private to public ownership of transit operations occurred in June 1962, when the Jamestown City Council authorized the acquisition of the Jamestown Motor Bus Transportation Company, Inc. (JMBTC). For the years ending December 30, 1972, and December 30, 1973, states JARTS, the audited financial statements of the JMBTC clearly reflect the existence of a school bus contract for both these years. Accordingly, JARTS maintains, there is clear evidence of the provision of school bus service prior to the enactment of Section 3(g) of the Urban Mass Transportation Act of 1964, as amended (UMT Act).

In 1973 and 1974, JARTS explains, Congress enacted Section 3(g) of the UMT Act, which provides that if a public transit authority or its predecessor operated school bus service during the twelve months immediately prior to the date of enactment, said operator could continue to provide said school bus service. Moreover, JARTS points out, counsel for Blue Bird has conceded that JARTS uses no federally funded vehicles in providing this service.³

³The preamble to UMTA's school bus regulation explains that even if a federally assisted operator is allowed to engage in school bus operations under one of the exemptions listed in Section 3(g) of the UMT Act, the operator cannot use federally funded buses, facilities or equipment in those operations. 41 Federal Register 14127, April 1, 1976.

Accordingly, states JARTS, it is a "grandfathered" recipient and can lawfully engage in school bus operations.

Moreover, JARTS asserts, the complainant has not shown that it is an interested party as defined by Part 604.5(j). The UMT Act, JARTS states, was carefully crafted to make a distinction between charter bus operations and school bus operations. The complainant, JARTS points out, has failed to allege that it engages in school bus operations, or that it can comply with the "Transportation Specifications" developed by the City. JARTS also states that there is no allegation that the complainant and the respondent are in competition. Thus, argues JARTS, the complainant has no standing to challenge the awarding of the school district's transportation contract to JARTS.

Furthermore, states JARTS, it has serious concerns regarding the motivation for the filing of the present complaint. On June 1, 1988, JARTS states, the complainant submitted a proposal to be the management firm for JARTS. Instead of selecting the complainant, JARTS explains, the City selected another management company to manage and operate the system effective July 1, 1988. It appears, contends JARTS, that in retaliation for that decision, the complainant filed the instant complaint on or about August 11, 1988. Undoubtedly, JARTS asserts, if the complainant had been selected as the new management firm, the present complaint would not have been filed.

JARTS describes itself as a "non-urbanized area," i.e., an area with a population of less than 50,000. Assuming arguendo, states JARTS, that the charter regulation applies in this case to the school buses owned by the school district, the requirements for an exception would be met since there would be a clear hardship for the "customer" - the City School District - in that the complainant is "located too far" from the region of the service.⁴ JARTS points out that the complainant has no garage facility in Jamestown, and has its home office some fifty (50) miles from Jamestown. The complainant's garage and maintenance facility, states JARTS, is located some 30 miles away in Fredonia, New York. Accordingly, JARTS argues, the spirit and the letter of the charter regulation mandate this exception.

⁴Subsection 604.9(b)(3)(ii) of the charter regulation provides that a recipient in a non-urbanized area may petition UMTA for an exception to provide charter service if the charter service provided by the willing and able private charter operator would create a hardship on the customer because the willing and able private operator is located too far from the origin of the charter service.

Further assuming arguendo, states JARTS, that the school bus operations of Jamestown are charter service, the plain language of Section 3(f) of the UMT Act restricts only "intercity" charter service using federally financed buses. JARTS maintains that its school bus operations are essentially within the Jamestown area, and it is clear that intra-city or intra-urban service is not affected by the UMT Act.

JARTS concludes by stating that the complainant has failed to meet the standing requirements by showing that it is an interested party because it has not alleged or shown any financial interest which is adversely affected by the school bus contract awarded to JARTS. Moreover, contends JARTS, there has been no showing by the complainant that it is willing or able to perform the school bus contract as evidenced by the fact that for over a quarter of a century, it has neither bid upon or responded to the school district's announcements. It is clear, states JARTS, that the respondent has complied with all applicable requirements and is not in violation of the charter regulation.

REBUTTAL

By letter of January 11, 1989, UMTA forwarded a copy of the response to the complainant, and provided it with 30 days to submit a rebuttal. The complainant's rebuttal is dated February 2, 1989, and addresses JARTS' arguments in the order in which they appear in the response.

First, Blue Bird states that JARTS' claim that it is qualified under the "grandfather" clause of Section 3(g) of the UMT Act is irrelevant to the issues raised in the complaint. Blue Bird states that it has not alleged that JARTS may not lawfully engage in school bus operations within the meaning of 49 CFR Part 605. Its complaint, states Blue Bird, is not concerned with the transportation of school children in "school bus operations" as defined in 49 CFR 605.3, except to the extent that such operations involve the transportation of school children in charter service using UMTA-funded facilities. Blue Bird states that service provided by JARTS to the City of Jamestown pursuant to the Invitation to Bid is charter service as defined in 49 CFR 604.5(e).⁵

⁵Under 49 CFR 604.5(e), 'Charter Service' means transportation using buses or vans, or facilities funded under the Acts of a group of persons, who pursuant to a common purpose, under a single contract, at a fixed charge (in accordance with the carrier's tariff) for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after having left the place of origin. This definition includes the use of UMTA funded equipment for the exclusive transportation of school students, personnel, and equipment. (Emphasis added).

Second, Blue Bird maintains that it is an interested party within the meaning of 49 CFR 604.5(j). Blue Bird states that it has a financial interest which is adversely affected by the provision of charter service for school children in UMTA-funded coaches, and by the provision of service for school children in non-UMTA funded coaches which are maintained in an UMTA-funded facility. Blue Bird states that if such operations were not conducted, it would be willing and able to handle the traffic.

Third, Blue Bird denies that it challenges the awarding of the school district's transportation contract to JARTS. If the contract service were performed without the use of UMTA-funded equipment or facilities, Blue Bird states, it would not object and would indeed have no standing to challenge of provision of the contract service.

Fourth, Blue Bird maintains that the complaint was filed in good faith. Blue Bird acknowledges that it made an offer to serve as the management firm for JARTS. However, states Blue Bird, to suggest that the filing of the complaint was motivated by some improper and unspecified purpose is both snide and ludicrous. Blue Bird indicates that if it had been selected, there would have been no need to file the complaint, since it would not have provided charter service using UMTA-funded equipment or facilities.

Fifth, Blue Bird rebuts JARTS' argument that the challenged service is inapplicable under the hardship exception of 49 CFR 604.9(b)(3). The hardship exception, Blue Bird points out, is not self-executing, but must be specifically requested and granted by UMTA in accordance with the procedure specified in the regulation. Blue Bird states that to the best of its knowledge, no such request has been made.

Sixth, Blue Bird challenges JARTS' argument that the Jamestown school operations, even if they can be considered charter service, are not prohibited by UMTA's charter regulation, since the regulation restricts only intercity charter service. JARTS' argument, states Blue Bird, is based on the erroneous assumption that Section 3(f) of the UMT Act is the only basis for the charter regulation. Blue Bird recognizes that Section 3(f) addresses only charter service performed outside a grantee's urban area. The regulation, however, states Blue Bird, is also based on Section 12(c)(6) of the UMT Act, which is not limited to the charter operations of UMTA grantees which are conducted outside their urban areas. Blue Bird lists various adverse conditions in the private charter industry which UMTA, according to the preamble to the current charter regulation, prompted UMTA to implement the new rule in order to protect the industry.

Finally, Blue Bird maintains that contrary to JARTS' apparent belief, it is not required to show that it is willing and able to perform the school bus contract awarded to JARTS. It was the responsibility of JARTS, states Blue Bird, in accordance with the procedure set forth in the charter regulation, to determine whether any private bus operators in the area are willing to handle any of the charter service within the purview of 49 CFR Part 604.

Blue Bird states that for the above reasons, the Chief Counsel should find that there has been a continuing pattern of violation of 49 CFR Part 604 by the respondent, and that the respondent should consequently be barred from receipt of further Federal transportation assistance.

ADDITIONAL RESPONSE OF JARTS

By letter of February 7, 1989, JARTS stated that the complainant's rebuttal had narrowed the issues, and that it would therefore be appropriate to file an additional response. Accordingly, JARTS requested leave to file such additional response within fifteen (15) days. UMTA granted JARTS' request by letter dated February 16, 1989.

JARTS' additional response is dated March 8, 1989. JARTS therein maintains that it has not in the past, and does not now use UMTA funded buses to satisfy the requirements of the school district contract. The contract, states JARTS, is serviced by "District-owned vehicles," and it is only in the event that District-owned vehicles are unavailable that JARTS vehicles may be used. In practice, says JARTS, this has never happened.

JARTS moreover maintains that its incidental service under the school contract is authorized by 49 CFR 605.12.⁶ JARTS argues that the complainant would transform a traditional school bus contract into charter bus service. This, states JARTS, would be contrary to both the regulations and the clear intent of Congress. JARTS states that in satisfying the provision of the school bus contract, it utilizes only District-owned equipment, whether it be for regular school transportation or for incidental service. These vehicles, JARTS indicates, are serviced and maintained in an UMTA funded garage in conformance with the charter regulation.

⁶Subsection 49 CFR 605.3(b) defines "incidental" as "the transportation of school students, personnel and equipment in charter bus operations during off peak hours which does not interfere with regularly scheduled service to the public."

With regard to the issue of good faith, JARTS maintains that Blue Bird's failure to specifically address the issue in its response raises a serious question as to motivation and whether it has "clean hands." JARTS moreover argues that if the complainant had been selected as the management company, it would have used the same school district buses serviced by the same garage facilities to satisfy the school district's requirements.

Responding to the question of its failure to request a hardship exception, JARTS maintains that no such request was required, since its operations are clearly school bus operations well within the regulatory definition. However, states JARTS, assuming such a request was required, it would have been entitled to the exception.

JARTS concludes by stating that at all times from 1962 to the present, JARTS has operated the school transportation services in Jamestown, which includes the recognized incidental service transporting school students, personnel and equipment to extracurricular activities. During the current contract period, states JARTS, it has never used UMTA funded buses for this purpose.

BLUE BIRD'S COMMENT ON JARTS' ADDITIONAL RESPONSE

By letter of March 20, 1989, Blue Bird provided a brief comment on JARTS' additional response. JARTS contends, Blue Bird states, that UMTA funded facilities lawfully may be used to service and maintain non-UMTA funded equipment where such equipment is used in providing "incidental service" for extracurricular activities beyond the school district. Contrary to JARTS' impression, Blue Bird states, "school bus operations" are limited to the transportation of school children from home to school and do not extend to extracurricular activities far beyond the boundaries of the school district. Blue Bird cites the Federal Motor Carrier Safety Regulations (49 CFR Part 305) and the Federal Highway Administration Regulations (49 CFR Part 390) in support of its position.

Even assuming, states Blue Bird, that the challenged charter bus operations of JARTS are "incidental" in nature, such incidental charter operations violate the 49 CFR Part 604 regulations.

DISCUSSION

In its letter of November 3, 1988, UMTA agreed to focus its investigation of this complaint on the issue of whether non UMTA-funded vehicles allegedly used in charter service are being serviced and maintained in an UMTA-funded garage. However, subsequent submittals by the parties also raise other issues which UMTA believes it is necessary and appropriate to address.

1. Standing

The first question to be addressed is that of standing. JARTS contends that Blue Bird lacks standing to file this complaint, since it is not a school bus operator and does not have a financial interest which is affected by the school service contract being performed by JARTS, and is therefore not an "interested party."

This contention, however, overlooks the fact that the Blue Bird's complaint was filed under the charter regulation, 49 CFR Part 604. The complaint as originally submitted essentially alleged that the service being provided by JARTS was charter service, since it involved the use of UMTA-funded facilities and equipment in transporting students for non school-related activities. Such operations are indeed charter service as defined by 49 CFR 604.5(e). Since Blue Bird identifies itself in the complaint as a private charter operator which would be able to perform these operations if JARTS were not performing them, it has a financial interest which may be adversely affected by the actions of JARTS, and thus may properly be determined an "interested party" under 49 CFR 604.5(j).

2. Good faith of the complainant

The next question to be dealt with is that of Blue Bird's motivation in bringing this complaint. JARTS asserts that the complaint is not brought in good faith, and states that it was filed in retaliation against the awarding by JARTS of its management service contract to another firm.

UMTA cannot be certain of the underlying motivations of Blue Bird in filing this complaint, nor should such an inquiry be necessary. Subsection 604.15(b) of the charter regulation merely requires that a complaint be "not without obvious merit" and "state grounds upon which relief should be granted." The regulation does not require that the complainant be of any particular mental disposition or attitude. As long as the complaint meets the threshold requirements cited above, it can be properly entertained by UMTA, despite the state of mind of the complainant at the time that it was filed.

3. Applicability of the hardship exception

JARTS argues that even if its school operations are charter service, they are permissible under the "hardship" exception of 49 CFR 604.9(b)(3). JARTS states that it meets all the requirements of this subsection, and would have been entitled to a hardship exception had it requested one. The charter regulation mandates the granting of this exception, states JARTS, since Blue Bird is located "too far" from the origin of the service, thereby creating a hardship on the customer, the school district.

UMTA disagrees. The regulation in no instance mandates the granting of a hardship exception; the regulation allows the UMTA Administrator to grant such an exception when he determines, on the basis of the information provided, that there are reasonable grounds to do so. Moreover, JARTS cannot assume an automatic finding that the private provider is located "too far" from the origin of the service. Q&A 38 of UMTA's "Charter Service Questions and Answers," 52 Federal Register 42248, November 3, 1987, points out that UMTA has no fixed guidelines for determining what is "too far," but will examine the information submitted by a recipient on an individual basis.

Until JARTS has submitted its request and information and has received notification of the Administrator's decision, it should not assume that it should or will receive a hardship exemption, nor should it perform charter operations in accordance with this assumption.

4. UMTA's authority to regulate intra-city charter operations

JARTS argues that even if its school bus operations are charter service, they are permissible, since Section 3(f) of the UMT Act restricts only "intercity" charter service. JARTS maintains that its school bus operations take place within the Jamestown area, and are thus intracity service, not affected by the UMT Act.

The crux of JARTS' argument is that UMTA has exceeded its statutory authority in promulgating the charter regulation, which prohibits both intercity and intracity charter operations.

It should be pointed out that JARTS' argument with respect to this issue is disingenuous, since Exhibit E of the "Transportation Specifications" clearly indicates that JARTS is to provide service for extracurricular activities outside its urban area. Thus, even under the restrictive interpretation of UMTA's authority proposed by JARTS, the service in question would be prohibited to the extent that it involves the use of UMTA-funded equipment or facilities.

Even admitting, however, that JARTS is providing no intercity charter service, its argument was raised and rejected in two

previous administrative proceedings.⁷ UMTA's response is the same in this case as it was in those two instances. First, UMTA has addressed the question of statutory authority on pages 11930-1 of the preamble to the charter regulation (52 Fed. Reg. 11916 et seq., April 13, 1987). UMTA's extensive discussion refutes the argument of lack of statutory authority, and explains the legal basis for the rule. Second, since, under the terms of the charter regulation, UMTA is limited in these proceedings to an examination of the merits of the complaint, it does not consider this a proper forum for considering a challenge to the legality of the rule.

5. JARTS' service for extracurricular school activities

The preamble to UMTA's school bus regulation, at page 14128, explains that "school bus operations" generally take place during peak morning and evening hours. The transportation of students and personnel during off-peak hours is said to be charter service, governed by 49 CFR Part 604. The trips provided by JARTS for extracurricular school activities, some of which involve overnight service outside the school district, are clearly not "school bus operations" providing peak hour transportation to and from school, but rather charter service as defined by 49 CFR 604.5(e).

JARTS states, and Blue Bird concedes, that no UMTA-funded vehicles are used to provide this service. In its additional response, however, JARTS affirms that the locally funded vehicles utilized for these trips are serviced and maintained in an UMTA-funded garage. JARTS indicates that it considers such use of an UMTA-funded facility to be in conformance with UMTA regulations.

JARTS' position is in direct contradiction with an UMTA ruling set forth in Q&A 26 of the above-cited "Charter Service Questions and Answers." Q&A 26 explains that even when a grantee provides charter service with locally funded vehicles, such vehicles may not be stored or maintained in an UMTA-funded facility, even if the separate charter operation were to pay rent and fees for such use. Accordingly, even though UMTA concludes that JARTS has used no UMTA-funded vehicles in providing extracurricular charter service under the school contract, JARTS is nonetheless in

⁷Washington Motor Coach Association v. Municipality of Metropolitan Seattle, WA-09/87-01, March 21, 1988; and, B&T Fuller Double Decker Bus Company v. VIA Metropolitan Transit, TX-02/88-01, November 14, 1988.

violation of the charter regulation to the extent that it services and maintains its charter vehicles in an UMTA-funded garage. In order to come into compliance with the charter regulation, JARTS must either store and maintain its charter buses in a separate facility which was not purchased with UMTA funds, or it must reimburse UMTA for the part of the UMTA-funded garage which is used for charter operations.

6. JARTS' use of an UMTA-funded garage in school bus operations

Information provided by JARTS, and uncontradicted by Blue Bird, indicates that JARTS may lawfully provide school bus service, since it was doing so more than twelve months prior to the enactment of Section 3(g), and thus falls under the "grandfather" exception. Moreover, both JARTS and Blue Bird appear to agree that JARTS uses only locally funded vehicles in providing the service.

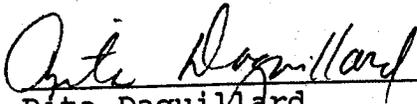
However, as is indicated in its additional response, JARTS apparently believes that vehicles used in school bus operations, like those used in charter service, may be stored and maintained in an UMTA-funded garage. Again, JARTS has erred with regard to this question. Subsection 605.12 of UMTA's school bus regulation clearly provides that a grantee may not engage in school bus operations using UMTA-funded facilities or equipment. The preamble to the regulation, at page 14127, specifically states:

Even if a federally assisted operator is allowed to engage in school bus operations under one of the exceptions listed in sections 3(g) and 164(b), the operator cannot use federally assisted buses, facilities and equipment in those operations.

JARTS' use of an UMTA garage to service and maintain vehicles used in school operations is thus in direct violation of UMTA's school bus regulation. In order to come into compliance with the school bus regulation, JARTS must either service and maintain its school buses in a separate facility which was not purchased with UMTA funds, or it must reimburse UMTA for the part of the UMTA-funded garage which is used for school operations.

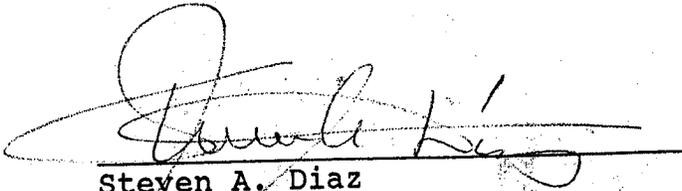
CONCLUSION

On the basis of its investigation, UMTA concludes that JARTS is providing charter service under its contract with the school district. Although JARTS uses locally funded vehicles in these charter operations, it services and maintains them in an UMTA-funded garage, in violation of 49 CFR Part 604. Similarly, JARTS' school bus operations are performed using locally funded vehicles which are also serviced and maintained in an UMTA-funded garage, in violation of 49 CFR Part 605. In order to come into compliance with UMTA requirements, JARTS must either service and maintain its charter and school buses in a facility which was not purchased with UMTA funds, or it must reimburse UMTA for the part of the UMTA-funded garage which it uses for charter and school operations. JARTS should report to UMTA within 90 calendar days of receipt of this decision on the measures that it has taken to comply with this order.


 Rita Daguiard
 Attorney-Advisor

AUG 08 1989

 (Date)


 Steven A. Diaz
 Chief Counsel

AUG 08 1989

 (Date)



US Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

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

file charts

AUG 21 1989

Mr. Jeffrey Nelson
Rock Island County Metropolitan
Mass Transit District
2929 5th Avenue
Rock Island, Illinois 61201

Re: IL-Metro/89-06-01

Dear Mr. Nelson:

Thank you for your recent response to the above-cited complaint. Your letter states that the service cited in the complaint is mass transportation. You maintain that it is provided by the Rock Island Metropolitan Mass Transit District (RICMTD) on a regularly scheduled basis to homes currently on the market, and that RICMTD has received no complaint that persons have been denied access to this route.

Your letter fails, however, to provide information sufficient to allow the Urban Mass Transportation Administration (UMTA) to determine the nature of the service in question. In this connection, I draw your attention to the preamble to UMTA's charter regulation, 52. Fed. Reg. 11916, 11920 (April 13, 1987), which describes "mass transportation" as having the following three characteristics:

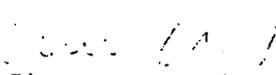
- 1) the service is under the control of the grantee;
- 2) it is designed to benefit the public at large;
- 3) it is open to the public.

UMTA views service as being under the control of the grantee when the grantee, and not a third party, sets the route, rate and schedule, and decides what equipment is used. UMTA considers that service is in conformance with the second element of the definition when it is intended to meet the needs of the general public as opposed to those of a particular organization or specified group of users. Finally, in determining whether service is open door, UMTA considers whether it stops at the grantee's regularly scheduled stops, appears in the grantee's printed schedules, and has a substantial level of public ridership.

Service which does not have these characteristics is charter service, and is impermissible under UMTA's charter regulation, 49 CFR Part 604.

Please provide, within fifteen (15) days of receipt of this letter, information, including supporting documentation, which will allow UMTA to determine to which category RICMMD's home tour service belongs. Should you have any questions in the meantime, you may address them to Rita Daguillard of my staff at 202/366-1936.

Sincerely,


Steven A. Diaz
Chief Counsel

cc: Charles A. Webb, Esq.



US Department
of Transportation

Urban Mass
Transportation
Administration

The Deputy Administrator

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

AUG 25 1989

Mr. Ronald P. Spall
Vice President
Grant County Convention and
Visitors Bureau
215 South Adams Street
Marion, Indiana 46952

Dear Mr. Spall:

This responds to your recent letter concerning the use by the Grant County Convention and Visitors Bureau ("Grant County") of buses owned by the City of Marion ("the City"), a recipient of Urban Mass Transportation Administration ("UMTA") funds, to transport conventioners within the county. You indicate that Grant County and the City have recently been advised by a consultant to the State of Indiana Department of Commerce that such use of UMTA-funded equipment may jeopardize the City's Federal transportation assistance.

You maintain that Grant County's use of the vehicles in question should be permitted for two reasons. First, you state, Grant County does not "charter" the UMTA-funded buses, but uses them to provide a free community service. Second, you explain that there is no private provider of charter service within the area, since the closest one is located 35 miles away.

Neither of these reasons, however, exempts Grant County or the City from the prohibition on the use of UMTA-funded equipment for charter service. In connection with your first point, I draw your attention to Q&A #27(a) of UMTA's "Charter Service Questions and Answers," 52 Fed. Reg. 42248, 42252 (November 3, 1987), which states:

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

Grant County's use of UMTA-funded buses to transport groups of conventioners indeed meets the criteria of "charter service" provided on page 11919 of the preamble to UMTA's charter regulation, 49 CFR Part 604 (49 Fed. Reg. 11918 et seq., April 13, 1987), since it is: (1) by bus; (2) to a defined group of people; (3) there are no single contracts between the recipient and individual riders; (4) the patrons have exclusive use of the bus; (5) the riders have sole authority to set the destination. Accordingly, though the service is provided for free, it falls under the prohibition of the charter regulation.

With regard to your second argument, I would like to point out that distance from the service area is not a factor that UMTA recipients may take into consideration in determining that a private operator is willing and able to provide charter service. Section 604.11 of the charter regulation provides that to be determined willing and able, a private operator need only demonstrate that it has the capability to provide the required categories of revenue vehicles, and the legal authority to operate charter service in the area where it desires to provide such service. To the extent that there is such a willing and able private operator in the City's service area, the City may make UMTA-funded vehicles available for charter service only under one of the exceptions to the regulation.

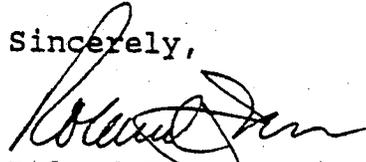
One exception which may be applicable to the situation you describe is that of section 604.9(b)(7) of the regulation, which permits a recipient to provide particular types of charter service when there is an agreement to this effect between the recipient and all the private charter operators it has found willing and able. Under the procedure set forth in this section, the recipient's annual public charter notice must have provided for this type of agreement. If it did not, the recipient must, before undertaking the charter trip(s) in question, amend its charter notice to specifically refer to such agreement.

Moreover, under section 604.9(b)(3), a recipient in a non-urbanized area (i.e., an area with a population of less than 50,000) may petition UMTA to provide charter service directly when charter service provided by willing and able charter operators would create a hardship on the customer because the private operators are located too far from the origin of the charter service. Before any such exception is granted, however, the recipient must petition the UMTA Chief Counsel to grant such an exception, and give notice of its request to any private operator it has determined willing and able. The private operators will then have 30 days to submit written comments to the recipient on

request. The question of what is "too far" from the charter point of origin will be decided by UMTA's Chief Counsel on a case-by-case basis.

I trust that this responds to your inquiry and clarifies the points raised in your letter.

Sincerely,



Roland J. Gross



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Deputy Administrator

400 Seventh St. S W
Washington, D C 20590

Copy
File

SEP 12 1989

The Honorable Cass Ballenger
House of Representatives
Washington, D.C. 20515

Dear Mr. Ballenger:

This is in response to your letter requesting information regarding the concerns of your constituent, Christopher D. Turner, of Boone, North Carolina, about the federal regulations governing charter service by public transportation agencies. Mr. Turner describes a problem experienced by AppalCART, the local transportation authority. He states that there should be an exception to the charter service regulation for rural and low income areas and that a private operator should have at least three buses in order to be considered a "willing and able" carrier.

Five limited exceptions to the basic prohibition of the charter service regulation are set out in 49 C.F.R. 604.9(b). Two of these exceptions may be applicable to AppalCART's situation. The regulation provides that

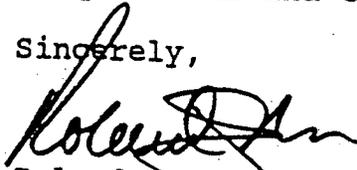
- (2) A recipient may enter into a contract with a private charter operator to provide charter equipment to or service from the private charter operator if: (i) The private charter operator is requested to provide charter service that exceeds its capacity;
- (3) A recipient in a non-urbanized area may petition UMTA [Urban Mass Transportation Administration] for an exception to provide charter service directly to the customer if the charter service provided by the willing and able private charter operator or operators would create a hardship on the customer because: The willing and able private operator or operators are located too far from the origin of the charter service.

These aspects of the regulation are further explained in question twenty of "Charter Service Questions and Answers" 52 Fed. Reg. 42248, 42251, November 3, 1987, several reprints of which are enclosed for your convenience.

The regulation also specifies that a "willing and able" private charter operator need only express in writing its desire to perform, have the physical capability of providing the categories of revenue vehicles specified in the notice and possess the required legal authority to operate charter service in the area where it desires to provide such service. Questions five and six of the enclosed reprints address this point.

I trust that this responds to your questions and concerns.

Sincerely,



Roland J. Gross

Enclosure



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

The Deputy Administrator

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

file Charter

OCT - 6 1989

The Honorable Phil Gramm
United States Senator
712 Main Street, Suite 2400
Houston, Texas 77002

Dear Senator Gramm:

This responds to your recent letter enclosing correspondence from your constituent, Jack Ussery of the Texas Department of Mental Health and Mental Retardation in Corpus Christi. Mr. Ussery expresses disappointment that a Federal agency would prohibit a transit authority from transporting retarded citizens in the event of a destructive hurricane. An attachment to Mr. Ussery's letter indicates that he was advised by VIA Metropolitan Transit (VIA) of San Antonio, Texas that the Urban Mass Transportation Administration's (UMTA) charter regulation prohibits VIA from operating outside its service area, even in emergency situations.

The information which VIA provided to Mr. Ussery is inaccurate in two respects. First, UMTA's charter regulation, 49 CFR Part 604, prohibits an UMTA grant recipient from providing charter service when there is a private operator willing and able to provide the service. If there is no such willing and able private operator, the UMTA recipient may provide any charter service it chooses, as long as such service is "incidental," i.e., it does not interfere with or detract from the recipient's mass transit service. The regulation does not contain any geographic restriction: any limits on charter operations outside the recipient's service area are not mandated by UMTA. Bona fide emergency operations are, similarly, not limited by this UMTA regulation.

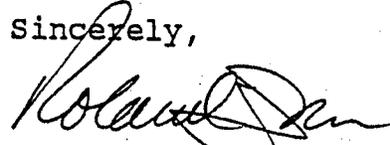
Second, even if there is a willing and able private operator, UMTA has provided a special exception which allows recipients to perform charter operations in emergency situations. Q&A #45 of UMTA's "Charter Service Questions and Answers," 52 Fed. Reg. 42248, 42255, states:

"UMTA will allow recipients to perform otherwise prohibited charter service in the case of a serious emergency, in which time is of the essence in transporting victims or rescue workers. The types of emergency situations contemplated under this exception are man-made and natural disasters, such as fire, chemical spills, floods or hurricane."

Accordingly, UMTA's charter regulation would not prohibit VIA from providing the type of emergency service requested by Mr. Ussery.

I trust that this responds to your inquiry.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roland J. Mress".

Roland J. Mress

Enclosure:
Transmittal Correspondence

cc: Washington Office



U.S. Department
of Transportation

Urban Mass
Transportation
Administration

Headquarters

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

Chron *clote*

NOV 22 1989

Brent A. Sheffer, Manager,
Financial Planning Budget
Central Ohio Transit Authority
1600 McKinley Avenue
Columbus, Ohio 43222

Dear Mr. Sheffer:

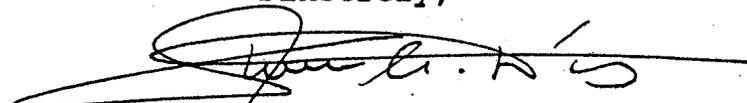
Please find enclosed a copy of a letter from Charles A. Webb, Esq., which requests that the Urban Mass Transportation Administration (UMTA) inquire as to the legality of a service being provided by the Central Ohio Transit Authority (COTA) for Seniors on the Town.

You are reminded that under UMTA's charter regulation, 49 CFR Part 604, recipients of UMTA funds may not provide charter service if there is a willing and able private operator, except under one of the exceptions to the rule. However, it should be noted that exclusive service for the elderly and handicapped is "mass transportation" under the definition of the Urban Mass Transportation Act of 1964, as amended (UMT Act), and is not considered to be charter. UMTA has ruled that in order to qualify as "exclusive," the service in question must be open to all elderly and handicapped in a particular service area, and not restricted to a particular group of elderly and handicapped persons. See, Q&A #27(b) of UMTA's "Charter Service Questions and Answers," 53 Fed. Reg. 42248, 42252 (November 3, 1989).

Please provide, within thirty (30) days of receipt of this letter, specific information concerning the nature of COTA's service to Seniors on the Town. Your response should explain who controls the service (i.e., sets the rates, routes and schedules), whether it was designed to accommodate the needs of a particular group as opposed to those of the general public or a specific segment thereof, and whether it is open, if not to the general public, at least to all the elderly and handicapped in COTA's service area.

When UMTA has received this information, it will make a determination in this matter.

Sincerely,


Steven A. Diaz
Chief Counsel

Enclosures

cc: Charles A. Webb, Esq.

BEFORE THE URBAN MASS TRANSPORTATION ADMINISTRATION
OFFICE OF CHIEF COUNSEL

In the matter of:

SEYMOUR CHARTER BUS LINES,	}	
Complainant	}	
	}	
v.	}	TN-09/88-01
	}	
KNOXVILLE TRANSIT AUTHORITY,	}	
Respondent	}	

DECISION

SUMMARY

Seymour Charter Bus Lines (Seymour) filed this complaint with the Urban Mass Transportation Administration (UMTA), alleging that the Knoxville Transit Authority (K-TRANS) was providing charter service in violation of the Urban Mass Transportation Administration's (UMTA) charter regulation, 49 CFR Part 604. The complaint specifically alleged that Seymour had contracted to provide charter service for the University of Tennessee (the University). Applying a balancing test to the service in question, UMTA concludes that it is charter service as defined by 49 CFR 604.5(e). UMTA orders K-TRANS to cease and desist from providing the service as it is currently configured. K-TRANS must report to UMTA within 90 days on the measures it has taken to comply with the terms of this order.

COMPLAINT

Seymour filed this complaint with UMTA on August 19, 1988. The complaint alleged that K-TRANS was providing charter service in violation of UMTA's charter regulation, 49 CFR Part 604. The complaint specifically alleged three violations. According to the first two allegations, set forth in paragraphs 5 and 6 of the complaint, K-TRANS had established brokering arrangements with Loy Bus Lines and Mays Bus Lines. In paragraph 7 of the complaint, Seymour alleged that K-TRANS had successfully bid on a contract for charter service to the University, at a charge that was less than its fully allocated cost of providing the service.

By letter of September 23, 1988, UMTA advised Seymour that its allegations stated a complaint under 49 CFR 605.15. The letter directed Seymour to attempt local conciliation for thirty days. If no resolution were reached at the end of this period, the

letter stated, either party could write to UMTA to request a formal investigation.

On October 27, 1988, Seymour wrote to UMTA to state that it had met with K-TRANS on the previous day. As a result of discussions which took place, Seymour stated, it was withdrawing its allegations that K-TRANS had established brokering arrangements with Loy Bus Lines and May Bus Lines. Seymour stated, however, that the parties had been unable to reach an agreement on the nature of K-TRANS' service to the University. Seymour maintained that the service was charter service, and therefore prohibited by UMTA's charter regulation.

RESPONSE

By letter of November 21, 1988, UMTA advised Seymour and K-TRANS that it would proceed with a formal investigation of the remaining allegations concerning K-TRANS charter service for the University. UMTA gave K-TRANS 30 days to respond to the complaint.

K-TRANS' response was dated December 21, 1988. K-TRANS noted that it was making no response to the allegations of paragraphs 5 and 6 of the complaint concerning K-TRANS' brokering arrangements with Loy Bus Lines and Mays Bus Lines, since those allegations had been withdrawn by Seymour.

Responding to the allegations in paragraph 7, K-TRANS stated that it has been providing service to the University of Tennessee campus and to certain student apartments operated by the University. K-TRANS explained that it had been operating, as part of the mass transit system of the city for many years, service to and from the campus and to and from 5 off-campus apartments occupied by married and graduate students.

In June 1988, stated K-TRANS, the University issued a request for quotations. K-TRANS indicated that it was providing service to the University not under a separate contract, but "pursuant to the request for quotations issued by the University and the response of K-TRANS." K-TRANS denied that the service was charter service, or that service was being provided in violation of the UMTA charter regulation.

K-TRANS stated that the schedule for the Route 22 service, a copy of which was attached to its response, showed that the service provided for the University community was divided into two parts. The first part, explained K-TRANS, was known as the Campus Route, and connected the main campus with the University Agricultural Campus along Weyland Drive, a main thoroughfare of the City. K-TRANS stated that no fare was charged for this intercampus service.

The second part of the service, according to K-TRANS, was provided to five (5) separate apartment complexes which housed married and graduate students. K-TRANS explained that the service to the

married student apartments ran along a principal thoroughfare, through residential and commercial areas. K-TRANS maintained that the buses stopped and picked up at any K-TRANS stop along the way. Each rider, stated K-TRANS, paid a fare for this service.

K-TRANS stated that in its request for quotations, the University requested the use of 45-passenger buses, set the departure times from the campus and the apartments and the times during which the service would operate, and set the fare to be charged for students. Otherwise, K-TRANS maintained, the service was totally under the control of K-TRANS.

K-TRANS explained, notably, that it set the number of vehicles used to provide the service, handled all operational details, and determined the routes to be followed. K-TRANS stated that for the most part, the buses operated along publicly dedicated and maintained streets, were open to the public at regular fares, and stopped at all of K-TRANS' regular stops. Moreover, stated K-TRANS, the service appeared in K-TRANS' regularly published schedules, which were distributed to the general public. K-TRANS acknowledged that the service was geared to meet the needs of the University community, but stated that it was not tied exclusively to University class schedules, and had operated on a modified schedule during vacation periods. These factors, K-TRANS maintained, confirmed that the service was "mass transportation" as defined on page 11920 of the preamble to UMTA's charter regulation (52 Fed. Reg. 11916 et seq., April 13, 1987).¹

K-TRANS further contended that the service was for the benefit of the public-at-large, since University students were members of the public as was any group which lives in a particular sub-division or series of apartment complexes. College students were not, maintained K-TRANS, a restricted, nurtured group as would be secondary students served by a school bus, but were members of the local community.

On the other hand, K-TRANS submitted, the service was not "charter service," because, among other things, the patrons did not have a common purpose or constitute a defined group, they had not acquired exclusive use of the bus, they did not travel under an itinerary specified in advance or have authority to set the destination, and each rider paid an individual fare.

Responding to the allegation of paragraph 9 of the complaint concerning K-TRANS' failure to bid fully allocated costs for the University contract, K-TRANS acknowledged that the successful bid price was \$22.75 per hour, but stated that determination as to

1) "Mass transportation" is herein defined as having the following three basic characteristics: 1) it is under the control of the grantee (i.e., the grantee sets the rate, route, fares and schedules); 2) it is designed to meet the needs of the general public as opposed to those of a particular group; 3) it is open to the public.