



U.S. Department
of Transportation

**Federal Transit
Administration**

Deputy Administrator

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

JUN - 7 2006

Mr. Richard P. Schweitzer, P.L.L.C.
1776 K Street, NW
Suite 800
Washington, DC 20006

Re: Charter Service Docket Number 2004-10

Dear Mr. Schweitzer:

On February 8, 2005, Mr. Joel Ettinger, formerly the Regional Administrator for Region V of the Federal Transit Administration (FTA), issued a charter service decision in response to a complaint filed by Allerton Charter Coach, Inc. (Allerton). Allerton's complaint concerned approximately 75 instances of documented service provided by Champaign-Urbana Mass Transit District (CUMTD). In addition, Allerton complained of three more instances of charter service: (1) orientation service for students at the University of Illinois (U of I); (2) wheelchair accessible bus service for vendors at a U of I football game; and (3) service for the InterVarsity Christian Foundation (IVCF). Finally, Allerton complained that CUMTD had an arrangement with a private provider, Illini Swallow, in which it operated charters on behalf of Illini Swallow for a 10 percent fee.

The decision found that the various services provided by CUMTD, except for the service provided to the IVCF, were prohibited charter service within the meaning of FTA's charter service regulations in 49 CFR Part 604. The decision stated that there was not enough information to determine whether the service for the IVCF constituted a charter violation, but found that the service was more like mass transportation than charter service. On February 16, 2005, Allerton appealed the decision as it concerned the IVCF service. I apologize for the delay in responding to Allerton's appeal and any inconvenience that this may have caused.

FTA's Charter Service appeal procedure states that:

The Administrator will only take action on an appeal if the appellant presents evidence that there are new matters of fact or points of law that were not available or not known during the investigation of the complaint.

49 CFR 604.19(b).

New Matters of Fact

In the request for an appeal Allerton stated that the decision did not take into account all of the facts with relation to the IVCF service. Allerton then detailed the following facts: the CUMTD was supplementing existing routes to meet IVCF's needs; the service was run between the U of I Assembly Hall and the dormitories at the direction of the charter service customer; the service would be used by few non-IVCF attendees since the dormitories were closed for winter break; and the CUMTD buses were lined up at the University Assembly Hall and dispatched as the buses filled.

In order for me to act on this appeal, evidence must be presented of new matters of fact that were not available or not known during the investigation of the complaint. 49 CFR 604.19(b). Most of the information provided by Allerton references information that was provided in Allerton's complaint. Information that was already provided to the FTA during the investigation of the complaint does not constitute a new matter of fact. The only information provided that was not directly stated in the complaint was that CUMTD buses were lined up at the University Assembly Hall and dispatched one at a time. This information, however, is not substantiated by any evidence as required by 49 CFR 604.19(b).

Therefore, Allerton has not provided any new matters of fact within the meaning of 49 CFR 604.19(b) to constitute grounds for an appeal.

New Points of Law

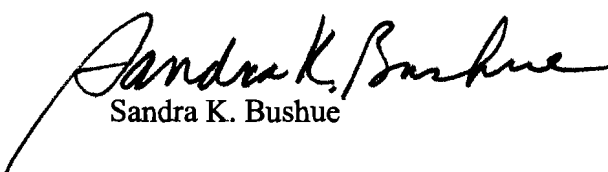
Allerton argued that the service provided to IVCF was not mass transportation because it was not regular and continuing service. The IVCF convention occurs only once every three years for a period of one week. *Kemp's Bus Service, Inc. v. Rochester-Genesee Regional Transportation Authority*, Charter Service Complaint Docket No. 2002-02 (Sept. 18, 2002), held that service to a golf tournament occurring only once a year was not regular and continuing service.

The Charter Service appeal procedure requires "new points of law that were not available or not known during the investigation of the complaint." 49 CFR 604.19(b). The information that Allerton presents in its appeal request does not constitute a new point of law. The information provided is the same information that was provided by Allerton in its complaint and was considered by the Regional Administrator at the time of the investigation. Therefore, Allerton has not provided any new points of law within the meaning of 49 CFR 604.19(b) to constitute grounds for an appeal.

Conclusion

I have considered the evidence submitted by Allerton in support of its appeal. Allerton has not presented any new matters of fact or points of law that were not available or known during the time that the original investigation was pending. Therefore, I will not take action on this appeal. Accordingly, the February 8, 2005, decision by the Regional Administrator is the final FTA decision in this matter.

Sincerely,


Sandra K. Bushue

cc: Mr. William Volk
General Manager
Champaign-Urbana Mass Transit District
801 East University Avenue
Urbana, IL 61801

Mr. Edward Gill
Thompson Coburn LLP
Suite 600
1909 K Street, NW
Washington, DC 20006

Ms. Elizabeth Martineau, TCC-20
Mr. Don Gismondi, TRO-5
Ms. Nancy-Ellen Zusman, TRO-5