



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

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

Transportation System Center
Kendall Square,
55 Broadway
Suite 904
Cambridge, Massachusetts 02142

November 7, 1996

Rosemary Doyle, President
Cape Ann Tours and Trolley
P. O. Box 278
Rockport, MA 01966-0378

Dear Ms. Doyle:

This is to advise you that we are not considering your letter of October 24, 1996, an appeal of the Federal Transit Administration's (FTA) October 10, 1996, decision because your letter does not meet the standard set forth at 49 CFR § 604.19 (copy enclosed) which requires that an appeal present 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. The October 10 ruling held that the service being provided by the Cape Ann Transportation Authority (CATA) is not impermissible charter service. In the preamble to the charter regulations, FTA states that the main features of charter are: 1) the service is by bus or van; 2) the service is to a defined group of people; 3) there is a single contract between the recipient and the riders, not individual contracts between the recipient and each rider; 4) the patrons have the exclusive use of the bus; 5) the charge for the bus is a set rate; and 6) the riders have the sole authority to set the destination. (52 *Fed. Reg.* 11919, April 13, 1987) (copy enclosed). Charter service is usually thought of as a one-time provision of service and the user, not the recipient, has the control of the service. *Id.*

In contrast, the Federal transit laws define "mass transportation" as service provided to the public and operating on a regular and continuing basis. 49 U.S.C. § 5302(a)(7) (copy enclosed). From this provision, FTA has identified three salient characteristics of mass transportation:

First, mass transportation is under the control of the recipient. Generally the recipient is responsible for setting the route, rate, and schedule, and deciding what equipment is used. Second, the service is designed to benefit the public at large and not some special organization such as a private club. Third, mass transportation is open to the public and is not closed door.

52 *Fed. Reg.* 11919-20.


As stated in FTA's October 10 decision, even if Federally funded equipment and facilities were used to provide the transportation in question, based upon CATA's July 11, 1996, response and the Rockport Shuttle route schedule submitted therewith, the service in question does not meet

the charter criteria of being provided under a single contract for the exclusive use of a defined group of people who have authority to decide the itinerary. 49 CFR § 604.5(e). Rather, the service falls more closely within the definition of permissible mass transportation because it is open to the public and operates on a regular and continuing basis.

Furthermore, the FTA found that CATA did not violate the charter regulations by notifying you of an opportunity to perform charter service for the Boston Consulting Group (BCG). You note in your October 24 letter that you were asked to submit a bid directly to CATA instead of to the BCG and although this request may have given the appearance that CATA was involved in providing the service, CATA explained in its July 12 response that it only assisted the BCG in locating private operators to perform charter service, but did not provide any vehicles or equipment and did not contract with any operators to provide the service. While FTA does not require grantees to give members of the public who request it the name of a "willing and able" private provider, we recognize that this information may be beneficial to the public and encourage grantees to provide it. 52 *Fed. Reg.* 42250 (November 3, 1987) (copy enclosed). Grantees who have a roster of several private providers may use their discretion in determining which names to give to a member of the public who calls. *Id.* In this case CATA went further and notified you of the opportunity to provide charter service and asked you to submit a price quote. The FTA recommends that in the future, if a member of the public calls CATA for charter services, CATA should only provide the names of willing and able private providers so as not to create the appearance that the charter regulations are being circumvented.

In your October 24 letter, you state that you have not been at the Whistlestop Mall address since July 1995. You complain because FTA forwarded CATA's responses to your complaint to that address, but also state that you did not see any sense in submitting a rebuttal thereto. Unfortunately, you do not usually put a return address on your correspondence, and it was not until the Post Office returned the October 10 decision that FTA first realized mail is no longer delivered to the old address. Please be assured that we will keep a record of your new address in our files. In order that our records remain accurate, we ask that you include your address on future correspondence so we will know whether you are still at the same location.

Sincerely,


Margaret E. Foley
Regional Counsel

cc: Joseph Randazza, Acting Administrator, CATA

Enclosures: 49 CFR Part 604
49 U.S.C. 5301, et seq.
52 *Fed. Reg.* 11916 (April 13, 1987)
52 *Fed. Reg.* 42250 (November 3, 1987)