



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

October 10, 1996

Rosemary Doyle, President
Cape Ann Travel Company, Inc.
d/b/a Cape Ann Tours
5 Whistlestop Mall
Rockport, MA 01966

Dear Ms. Doyle:

This responds to your letters of complaint alleging that the Cape Ann Transportation Authority (CATA) is performing impermissible charter service. Specifically, in your undated letter received in this office July 3, 1996, you claim that CATA is performing charter service for the joint Chambers of Commerce (COC) and is providing trolley service along the same route that Cape Ann Tours has operated over for the past eight years. In your letter of July 5, 1996, you contend that CATA violated charter regulations in connection with transportation service for the Boston Consulting Group (BCG); and you also complain because CATA selected the Cape Ann Transportation Operating Company (CATOC) as their operator instead of your company. CATA submitted responses to your complaint on July 11 and 12, 1996; however, you did not submit a rebuttal.

With regard to your allegation that CATA is providing impermissible charter service for the COC, CATA maintains that Federal funds and Federally funded equipment are not used to provide the "Rockport Shuttle" service. Furthermore, in support of its statement that the service is open to the public and operates as regularly scheduled service on a fixed-route system, CATA submitted a copy of the printed route schedule for the "Rockport Shuttle." Moreover, CATA claims that it does not provide transportation service solely for the use of any organization or group. In response to your claim that CATA operates trolley service over the same route you have used for the past eight years, CATA points out that its operations predate those of Cape Ann Tours; and while your company operates as a private for-profit charter and sightseeing business, CATA operates as a public transit provider.


Pursuant to FTA's charter service regulation, 49 CFR Part 604, a recipient of FTA funding may not provide charter service using FTA-funded equipment or facilities if there is a private operator in its geographic area willing and able to provide that charter service, unless one or more of the exceptions listed at 49 CFR 604.9(b) apply. Recipients are subject to the charter regulation but only to the extent that they use FTA-funded equipment or facilities to provide charter service. If

a recipient sets up a separate company that uses only locally funded equipment and facilities and operates the service solely with local funds, or the recipient is able to maintain separate accounts for its charter operators to show that the charter service is truly a separate division that receives no benefits from the mass transportation division, then FTA's charter rule does not apply. 52 *Federal Register* 42248 (November 3, 1987) According to CATA, no Federal funds or Federally funded equipment are being used to provide the "Rockport Shuttle" service. However, even if Federally funded equipment and facilities were used to provide the service in question, based upon CATA's July 11 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 which is defined under the Federal Transit Laws as service provided to the public and operating on a regular and continuing basis. 49 U.S.C. § 5307(a)(7).

Next, you assert that CATA "compounded" the alleged charter violations by notifying you of an opportunity to perform charter service for the BCG. To substantiate your claim, you submitted a copy of CATA's April 25, 1996, letter to you which states that, "[i]f you are interested and are able to provide transportation for the enclosed [BCG] schedules, please call...with a price quote as soon as possible." In his July 12, response Mr. Wallace explains that CATA only assisted the BCG in locating private operators to perform charter service, but did not supply any vehicles or equipment, Federally funded or otherwise, and did not contract with any operators to provide the service in question. In addition, you complain that CATA selected CATOC, a private nonprofit organization, as its operator instead of Cape Ann Tours. In this regard, FTA's jurisdiction is limited to requiring its grantees to follow the procurement standards set forth at 49 CFR § 18.36 and FTA Circular 4220.1D, "Third Party Contracting Requirements" in order to assure full and open competition. Otherwise, the choice of operator is to be made at the local level.

In conclusion, the FTA finds that CATA did not perform charter service in violation of Federal regulations. In accordance with 49 CFR § 604.19, you may appeal this decision within ten days of receipt to Gordon J. Linton, Administrator, Federal Transit Administration, 400 Seventh Street, S.W., Room 9328, Washington, D.C. 20590. You must include in your appeal the basis for the appeal and evidence to support your position and provide a copy of the appeal to CATA. I hope this information is helpful. If you have any questions, please contact me at (617) 494-2409.

Sincerely,


Margaret E. Foley
Regional Counsel

cc: CATA

