



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

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Jeremy Kahn  
Kahn and Kahn  
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Washington, D. C., 20036

DEC 12 2005

Noel R. Treat  
Office of the Prosecuting Attorney, King County  
E550 King County Courthouse  
516 Third Ave.  
Seattle, Washington 98104

Re: Remand of Appeal of Charter Complaint Decision: Gray Line Seattle v. King County Metro:  
Seattle Home Show

Dear Messrs. Kahn and Treat:

This provides the Federal Transit Administration (FTA) Region 10 reconsideration of the above-noted matter.

#### BACKGROUND

By letter dated February 11, 2005, FTA provided this Regional Administrator's determination regarding a charter complaint filed by Evergreen Trails, Inc., dba Gray Line of Seattle (Gray Line) under 49 CFR Part 604 against King County Metro (Metro). The subject of the complaint was Metro's proposed bus service to the February 2005 Seattle Home Show (Home Show bus service). The Regional Administrator found that the proposed Home Show bus service was not charter but rather mass transportation and denied the complaint.

By letter dated February 16, 2005, Gray Line filed a "limited" appeal of the decision to the FTA Administrator. This appeal was limited to seeking deletion of the last sentence in Conclusion of Law number 13. By letter dated October 4, 2005, the Administrator sent the matter back to this office for reconsideration of that statement and any other procedural steps deemed appropriate.

#### DISCUSSION

49 CFR Section 604.19(b) provides:

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.

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Gray Line's appeal sought the deletion of the last sentence of Conclusion of Law number 13 with provides as follows:

"Finally, with last year's service providing trips for over 6,900 people, the Metro Home Show bus service assists in alleviating traffic and parking congestion to and around the Home Show site and, therefore, benefiting the public in general."

In support of its limited appeal, by which they concede that its disagreement does not justify a basis for appeal under the rules, Gray Line contends that:

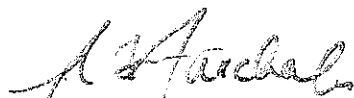
"... the final sentence as now written quite holds that if a recipient has operated service in the past and such service transported passengers who might otherwise driven autos, then continued operation is justified under the Charter Rules. ... Performance of the same service at an earlier time is irrelevant to the determinations required to be made under the Charter Rules."

On remand of the appeal to this office, we have reviewed Gray Line's letters of November 15, 2005 and December 7, 2005 and King County's letter of December 6, 2005.

#### FINDING OF RECONSIDERATION

1. The Administrator's letter remanding the decision back to this office is limited to reconsideration of the last sentence in Conclusion of Law number 13 and does not extend to reconsideration of the decision to deny Gray Line's complaint. As such, the complaint continues to be denied.
2. The sentence at issue is not intended nor does it provide any such rule on charter bus interpretation that Gray Line fears. That sentence does NOT hold and does NOT provide a rule or finding that past operation of similar service is justification for continued service under FTA's charter rules. Particular service challenged as allegedly charter service under FTA's charter rules will be evaluated on its own merits and past service holds no relevance as precedence for continued service.
3. Rather, that sentence is intended to provide factual (see Finding of Fact number 12) support for the conclusion that the Home Show bus service as proposed will provide a public benefit, the second prong in determining "mass transportation" under *Blue Bird Coach Lines, Inc. v. Linton*, 48 F.Supp. 2d 47 (DC Dist. C. 1999).
4. The sentence in question will remain but with this clarification.

Finally, your letter of December 7, 2005, seeks information on any further procedural steps on remand of your complaint and appeal. Please be advised that this letter concludes this action.



R. F. Krochalis  
Regional Administrator

cc. FTA Administrator

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