



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

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February 11, 2005

BY FACSMILE AND MAIL

Jeremy Kahn
Kahn and Kahn
1730 Rhode Island Ave., N. W., Suite 810
Washington, D. C., 20036

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

Re: Charter Complaint: Gray Line Seattle v. King County Metro: Seattle Home Show

Dear Messrs. Kahn and Treat:

This constitutes the Federal Transit Administration (FTA) Regional Administrator's final decision on the above noted complaint.

Initially, we would like to thank the parties for their expedited responses.

BACKGROUND

By letter dated January 6, 2005, Evergreen Trails, Inc., dba Gray Line Seattle (Gray Line) under 49 CFR Part 604, FTA's regulations covering charter bus service, filed a complaint against Seattle Metro (actually, King County Metro, hereinafter Metro) in connection with Metro's contemplated operation of a particular bus service to and from the Seattle Home Show during the period of February 19 to 27, 2005. By our letter dated January 19, 2005, FTA acknowledged receipt of the complaint and, pursuant to 49 CFR Section 604.15, directed the parties to seek informal conciliation of the complaint. By letter dated January 25, 2005, Gray Line appealed to the FTA Administrator seeking an expedited resolution of their complaint by the Administrator. By FTA's letter of February 4, 2005, the Administrator denied the appeal since, among other reasons, no final decision had been made by the Regional Office and remanded the complaint back to this office for timely processing. Gray Line wrote to FTA on February 4, 2005, to advise that a conciliation attempt occurred on February 2, 2005, but failed to reach a resolution. Then, by letter dated February 7, 2005, faxed to the parties, this office directed Metro to respond to the complaint.

By submission dated February 9, 2005, Metro submitted its answer to the complaint. By letter dated February 10, 2005, Gray Line submitted its rebuttal. At FTA's request, Metro submitted a copy of the 2004 agreement between Metro and the Seattle Home Show on February 11, 2005.

FTA recognizes that the bus service at issue is scheduled to occur starting February 19, 2005. FTA also recognizes that the regulations covering the charter complaint process at 49 CFR Section 604.15(c) provides the parties with certain timelines under that process.¹ With this recognition, FTA asked Metro for an expedited answer to the complaint. Metro has responded with an expedited answer but has also reserved the right to supplement the record prior to the expiration of the 30-day answer period. We have also asked Gray Line for an expedited rebuttal to Metro's answer.

Based on the documents and records submitted to the Regional Office and the judicial notice of certain undisputed facts, the following findings of fact and conclusions of law are hereby made.

FINDINGS OF FACTS

1. FTA takes judicial notice that King County Metro is a public transit service provider in the King County area. Metro is a recipient of grant awards from the FTA that provide funds used by Metro for, among other things, the acquisition of buses and preventative maintenance on those buses. The complained of service at issue here would utilize buses acquired or serviced by funds partially provided by FTA.
2. Gray Line is a licensed charter and tour bus company operating in the King County region. It is a willing and able provider of bus service for the Seattle Home Show at issue here.
3. The Seattle Home Show is an event that will occur in the Qwest Field Event Center located in the City of Seattle during the time period of February 19 through 27, 2005.
4. Metro has entered into an agreement with the Seattle Home Show to provide free (to riders) bus trips from and to three park and ride lot locations and the Home Show (Metro Home Show bus service).² These three park and ride lots are listed as follows:

¹ 49 CFR Section 604.15 provides in part: " (c) If the parties are unable to conciliate the dispute, either party may so notify the Regional Administrator in writing. The Regional Administrator shall send a copy of the complaint to the respondent and provide it with 30 days from the receipt of the notice to provide written evidence to show that no violation has occurred. The respondent shall provide a copy of this information to the complainant. (d) After the Regional Administrator receives that respondent's evidence, the Regional Administrator shall inform the complainant that it has 30 days from the receipt of the notice to rebut the respondent's evidence. The complainant shall provide a copy of its rebuttal to the respondent.

² Metro has responded that Metro and the Home Show are still in the process of finalizing an agreement regarding the service and provided a proposed written agreement, a copy of which is attached. Metro asserts, among other things, that under an agreement with the Home Show, they will retain control over routes, schedule and selection of equipment. While no written agreement is in place at this time, Metro does not dispute that they have agreed to provide the Home Show service as outlined herein. Gray Line complains that there is no written agreement. FTA's alternatives are to

- South Bellevue Park & Ride, Bellevue Way and 112th Ave. SE
- Northgate Park & Ride, 5th Ave. NE and NE 112th Street
- South Renton Park & Ride, South Grady Way and Shattuck Ave. S.

5. The service is advertised at the following sites and in the following manner:

- King County Metro Bus website: <http://transit.metrokc.gov/> : "Notices: Transit Service for the Spring Home Show"
- King County Metro Bus Special Event webpage: http://transit.metrokc.gov/up/spelevent/sh_homeshow.html :

**Transit Service for the Seattle Spring Home Show
February 19-27, 2005**

- Regularly Scheduled Transit Service
- Special Free Park & Ride Weekend & Holiday Shuttles
- Northgate Park & Ride
- South Bellevue Park & Ride
- South Renton Park & Ride
- External links to other sites of interest
- More Metro Information

* * *

Special Free Park & Ride Weekend & Holiday Shuttles

February 19, 20, 21, 26 and 27, Metro also provides non-stop shuttles every half hour from the park and ride lots listed below. Park free and ride this special free service directly to and from the Home Show.

- Non-stop trips return every 30 minutes.
- Always read bus signage carefully before boarding to be sure of getting to your desired destination.
- All Home Show shuttles can accommodate two wheelchairs in their designated tie-down locations.
- Northgate Park & Ride

wait for a final written agreement, which would have the effect of delaying the determination of this complaint. Or to base the determination on the terms of the agreement that Metro represents them to be. Since Gray Line has been consistently seeking an expedited determination of their complaint, FTA has processed the complaint based on the terms of the agreement that is outlined by Metro. In any event, we note that Gray Line does not dispute the terms of the unwritten agreement, but questions the timing. We do not find the timing of the agreement to be dispositive of the case here.

•South Bellevue Park & Ride

•South Renton Park & Ride

- King County Bus Schedule webpage: Example of the schedule for Saturday service from the Northgate Park and Ride:

Northgate P&R - 423 spaces - 5th Ave NE/NE 112th St

Home Show shuttles do not serve the Northgate Transit Center in either direction.

→ **To Event Center:**

- Southbound on 5th Ave NE just outside the Northgate P&R

- Shuttles are signed "Special" with a yellow dash sign that reads "Northgate/Qwest Event Center"

› **To Northgate P&R:**

- Board shuttles northbound on Occidental Avenue S, in the cut-out area at the north end of Qwest Field between Qwest Event Center and S King Street.

- Shuttles are signed "Northgate P&R" with a yellow dash sign that reads "Northgate/Qwest Event Center"

› **Shuttle Schedules:**

Saturdays, February 19 & 26, 2005

Qwest			
Northgate P&R	Exhibition Center	Northgate P&R	
LV	ARR	LV	ARR
9:20	9:50	9:55	10:28
9:50	10:20	10:25	10:58
10:20	10:50	10:55	11:28
10:50	11:20	11:25	11:58
11:20	11:50	11:55	12:28
11:50	12:20	12:25	12:58
12:20	12:50	12:55	1:28
12:50	1:20	1:25	1:58
1:20	1:50	1:55	2:28
1:50	2:20	2:25	2:58
2:20	2:50	2:55	3:28
2:50	3:20	3:25	3:58
3:20	3:50	3:55	4:28

3:50	4:20	4:25	4:58
4:20	4:50	4:55	5:28
4:50	5:20	5:25	5:58
5:20	5:50	5:55	6:28
5:50	6:20	6:25	6:58
6:20	6:50	6:55	7:28
6:50	7:20	7:25	7:58
7:20	7:50	7:55	8:28
7:50	8:20	8:25	8:58
8:20	8:50	8:55	9:28
8:30	9:00	9:05	9:38

- o Seattle Home Show website: <http://67.100.40.180/info/showInfo.asp>

Free Metro shuttles
provided from:

- South Bellevue Park & Ride, Bellevue Way & 112th Ave SE
- Northgate Park & Ride, 5th Ave NE & NE 112th St
- South Renton Park & Ride, South Grady Way and Shattuck Ave S

Ride for Free Metro offers free weekend trips, Saturday and Sunday - **Courtesy of Crossroads Appliance** - from 3 Park & Ride locations. South Bellevue at Bellevue Way and 112th Ave SE Northgate at 5th Ave NE and NE 112th South Renton at South Grady Way and Shattuck Ave South Buses run about every 20 minutes...leaving lots 30 minutes prior to show opening and run continuously. Buses return to lots 5-10 minutes after show closes.

Courtesy of Crossroads Appliance.

6. The Metro Home Show bus service is also advertised in pre-printed timetables that are distributed at customer service centers located at the King Street Center and the Westlake Tunnel Station. In addition, Metro states that signage will be posted by Metro at the three designated park and ride lots and the Qwest Event Center informing customers of the service and stops.
7. The Metro Home Show bus service will: (a) depart from and arrive at the park and ride lots at regular designated bus stops; (b) depart from and arrive at the Qwest Event Center at a temporary stop designated by Metro; (c) provide direct route service without intermediate bus stops; (d) be at times and routes which are under the control of Metro; (e) will stop and depart the designated bus stops on the pre-determined published time schedules in accordance with Metro's standard operating procedures for the provision of fixed-route service; (f) will be open to the public regardless of whether the bus rider will be attending the Home Show; and (g) will be free of charge.
8. The Metro Home Show bus service is being provided pursuant to an agreement between

the Home Show and Metro and the cost to Metro of providing the service will be paid to Metro by the Home Show. (See footnote 2, above.)

9. The Metro Home Show bus service will only occur during the Home Show dates of February 19, 20, 21, 26 and 27, 2005. During the dates of February 19 through 27, 2005, Metro will also run its regularly scheduled transit service.
10. Metro's regularly scheduled bus service during the dates of the Home Show will not be affected.
11. The Metro Home Show bus service is designed to provide transportation to large numbers of the public and mitigate traffic congestion and parking impacts that could result in the area around the Qwest Event Center as a result of the Home Show.
12. Metro has operated service associated with the Home Show for at least the last six years. Last year's service provided trips for over 6,900 people to the area from outlying park and ride lots.

CONCLUSIONS OF LAW

1. FTA's charter regulations are found at 49 CFR Part 604, implementing Section 3(f) and Section 12(c)(6) of the Federal Mass Transit Act of 1964.
2. "Charter service" is defined in 49 CFR section 604.5e) as:

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 incidental use of FTA funded equipment for the exclusive transportation of school students, personnel, and equipment.
3. "Mass transportation" is defined in 49 U.S.C. Section 5302(a)(7) as:

transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or sightseeing transportation.
4. 49 CFR Section 604.9 provides, in part, that a recipient of financial assistance from FTA may only provide charter service under certain exceptions.
5. In additions to the definitions referenced above, FTA describes three elements distinguishing "mass transportation" from "charter service".

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. Thus anyone who wishes to ride on the service must be permitted to do so.

Blue Bird Coach Lines, Inc. v. Linton, 48 F.Supp. 2d 47 (DC Dist. Co. 1999), citing 52 Federal Register 11916, 11920 (April 13, 1987).

6. The *Blue Bird Coach Lines* case has not been overturned judicially nor have subsequent administrative rulings by FTA, particularly Complaint Docket 2002-02, refuted or moderated that ruling and, therefore, is precedent for reviewing charter complaints.
7. None of the exceptions to allow a recipient of FTA funds to operate charter service listed in 49 CFR Part 604 applies to the Metro Home Show bus service.
8. Service to regularly scheduled but relatively infrequent events (sporting events, annual festivals) that is open door, with the routes and schedules set by the grantee is not charter service. (See FTA Questions and Answers, number 27c, 52 Federal Register 42248, November 3, 1987.)
9. In applying the definition of "charter service" and the three- prong test, both referenced above, to the Metro Home Show bus service, while some criteria of the definition of "charter service" applies, not all criteria are met and all of the criteria in the three prong test determining mass transportation are met.
10. The Metro Home Show bus service includes the use of buses funded in part by FTA; is under a single contract; and is under an itinerary specified in advance.
11. However, the Metro Home Show bus service is not for the "exclusive use" of a single group of persons.
12. As to the first prong of the test for mass transportation -- under the control of the recipient -- the Metro controls the route, schedule, and equipment used. Metro has established a published route schedule and announced that there will be no fares charged for the Metro Home Show bus service. The first prong of the test has been met.
13. As to the second prong of the test -- designed to benefit the public at large -- the Metro Home Show bus service will be open to the public. While it is clearly evident that the Metro Home Show bus service is intended to serve Home Show goers, that, in and of itself is not determinative of this factor. In *Blue Bird Coach Lines*, it was alleged that a recipient's bus shuttle service to carry passengers from the Rochester area to football and basketball games in Buffalo (150 miles round trip) and Syracuse (190 miles round trip) from designated departure areas to the stadium parking lot for the games and departed after the games ended or when all passengers were accounted for, was charter service. In rejecting this claim, and specifically as to prong two, the Court stated:

Granted that sports fans are not the general public but a "subset of the general public," A.R. 37, "the service is designed so that anyone can board the bus, no reservations are required and, according to the brochure, fares are paid as you board." There is no evidence in the record that the shuttle service customers formed a "well-defined and cohesive enough group to be considered a 'special

organization”

48 F.Supp. 2d at 51.

Here, the same can be held for the Home Show: The Metro Home Show bus service is designed to be open to anyone. No reservations are noted as a requirement. While no fares will be charged unlike the *Blue Bird* case, whether fares are collected from individuals or the cost of service is subsidized by a donor does not determine whether bus service is charter. (See FTA Questions and Answers, number 27a.) 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.

14. The third prong is that the transportation service is open to the public. As previously noted, the service is open door. And, the availability of the service, including the specific boarding times and locations have been well publicized. The notification of the service, locations and schedules of service are available on the Metro bus website, at various bus centers, the Qwest Field Center, at the Home Show website and will be posted at the three park and ride sites.
15. This case is distinguished from the charter decision of Charter Service Complaint Docket No. 2002-02 Appeal From the Regional Administrator's Decision Re: Rochester-Genesee Regional Transportation Authority (RGRTA) cited by Gray Line. That case involved bus service provided by RGRTA from various senior citizens' complexes to the Wegman's grocery store. There, among the references made, we stated:

RGRTA provided a newly revised "grocery shuttle outline" showing layovers at the store of from 40 to 100 minutes from arrival to leaving. According to the "grocery shuttle outline," the buses do not proceed to any other destination once they arrive at the store; the buses idle and wait for the grocery store customers to complete their shopping before leaving the store.

(See also the decision of *Ladies Professional Golf Association Wegmans Rochester International Golf Tournament*, cited by the RGRTA appeal wherein we stated that in the *LPGA* case, "RGRTA would hold buses until the course was clear. A general note to the schedule stated that, "Closing times are approximate. The gauge is one-half hour after the last group comes off from the 18th hole. ... The evidence presented establishes that LPGA controlled the service by requiring an indefinite schedule based on whether the golf course was clear...")

In this case, the buses are not scheduled to operate based on use and direction by either the Home Show or its patrons. The bus schedules show a specific time for departure. In fact, the schedule says that if you miss the bus, you can take a regular Metro bus back to the park and ride lot. (See Finding of Fact No. 5, above.)

The decision further states:

In addition, the "grocery shuttle outline" does not look anything like the schedules and maps contained in RGRTA's regular service schedules. ... RGRTA provided

maps and schedules that are partially hand-drawn and hand-written, do not include details like location of bus stops or bus stop arrival and departure times, and that do not appear anything like RGRTA's other maps and schedules. The only documents that include definite arrival and departure times at specific stops also include specific details to the bus driver about where and when to take a service road and what direction to take at a stop-sign along with directions to "pick up group" and "drop off group." The schedule also states, "Please stop at First Federal Bank for any passengers requesting to get off at that location." ... The schedules are not published in the same format as the regular service RGRTA provides. The schedules indicate extended layovers so that Wegmans customers can conduct their business.

In this case, the Metro Home Show bus service schedule is published on the Metro Bus schedule website in great detail showing very specific departure and arrival times and locations. And, unlike the RGRTA's Wegman grocery bus service, the Metro Home Show bus service provides no indication that ad hoc route departures are allowed.

Finally, the RGRTA decision states:

FTA looks not only at who rides the bus in determining if it is open door, but also at the intent of the recipient in offering the service. To determine the intent, FTA considers what attempts the recipient has made to make the service known. For instance, FTA has found that publishing the service in the grantee's pre-printed schedules is the best marketing effort. *Washington Motor Coach Association v. Municipality of Metropolitan Seattle*, WA-09/87-01 (March 21, 1988). In its Appeal, RGRTA argued that it widely advertised the LPG routes to the general public. But according to its July 15, 2002, response to FTA, RGRTA only issued a news release, placed the information on its automated telephone system for passengers, and made it available at its Midtown Sales Center and Reception Desk. There was no evidence of advertising on inside and outside bus cards, radio, or television. These limited publicity efforts evidence that the service was designed to benefit the LPG rather than the public at large.

In the case here, the notice of service, schedule and location of the Metro Home Show bus service is advertised at numerous locations. (See Finding of Fact No. 6.) If the Metro Home Show bus service was only advertised on the Home Show's website, an argument could be made that the bus service was effectively limited to Home Show patrons since they would likely be the only ones who accessed the Home Show website and learned of the Metro bus service. However, having the Metro Home Show bus service on Metro's general bus website and other public locations clearly show that the public at large has notice of the available service.

16. Gray Line argues that the Metro Home Show bus service is not mass transit because it does not stop at a regular bus stop but at the north end of the Quest Event Center. (See Gray Line rebuttal of February 10, 2005, "Rebuttal", pages 2 and 3.) The *Blue Bird* case provides us guidance. In that case, the service challenged terminated at the "stadium parking lot". (48 F.Supp.2d at 48.) No mention was made whether the stop was at a designated bus stop. In this case, the termination point and boarding point at the Home Show has been identified in their website as: "on Occidental Avenue S, in the cut-out area

at the north end of Qwest Field between Qwest Event Center and S King Street.” Whether the stop is a regularly designated bus stop or not is not determinative of the question of charter service. The question is whether the stop is clearly defined for the public so that the public has adequate notice of where the service will go to and leave from in order to judge whether to avail themselves of the service. In this case, we find that it does.

17. Gray Line also argues (Rebuttal page 2) that Metro’s own labeling of its service as “Regular Scheduled Transit Service” and “Special Free Park and Ride Weekend & Holiday Shuttles” is evidence that the Metro Home Show bus service is not mass transit. Again, the Blue Bird case is instructive. In that case, the Court also made special note that the service at issue was “shuttle service”. However, again, the Court gave that label no special weight in its analysis or determination. (48 F.Supp.2nd at 47.)
18. Gray Line then argues (Rebuttal page 3) that the distinction between “regular” transit service which stops at regular bus stops “within walking distance” of Qwest Center for which fares must be paid and the “shuttle” service operated “directly” to and from Qwest Center where there is no established bus stop (see our response, above) and for which there is no fare characterizes the Qwest service as not being transit. As noted above at Conclusion of Law No. 13, the issue of free subsidized fare or being charged a fare is not determinative of the question of charter service.
19. Gray Line discusses (Rebuttal page 4) that they question the timing of the fact that there is no final agreement between Metro and the Home Show. FTA also finds that this lack of agreement is difficult to understand. (See our footnote 2, above.) Nevertheless, we find that the lack of final agreement is not evidence that the service in question is charter service. In fact, the very definition of charter service includes that the service is pursuant to “a single contract”. Additionally, waiting for Metro and the Home Show to finalize its contract would only frustrate the timely consideration of the charter complaint by FTA. However, FTA does recognize that the Home Show service has not yet occurred and the lack of a final agreement at this point in time is not a violation of FTA regulations or determinative of charter service. Therefore, on the basis that: (a) Metro has not disputed that they will provide the Home Show service under an agreement with the Home Show; (b) Gray Line has not offered any evidence that the terms of the “agreement” between Metro and the Home Show are or will be anything other than as represented by Metro, FTA finds, for the purposes of resolution of the charter complaint before the actual complained of service actually occurs, that there is an agreement between Metro and the Home Show to provide the Metro Home Show bus service as described herein and under the terms as Metro has represented.
20. Gray Line also questions (Rebuttal page 4) the request by FTA that Metro respond whether the Metro Home Show bus service will cause Metro to cut back, restrict or limit Metro’s normal bus service. Gray Line asserts that such a question implies a misapplication of the rules of what determines charter service. FTA has given no weight to the response to this question on its determination of charter service in this decision.
21. Finally, Gray Line argues that Metro’s response of referencing a “proposed agreement” is an after-the-fact effort of justification of its service as not charter service in an effort to “skirt” or “thwart” FTA’s charter rules. (Rebuttal page 5.) The lack of final agreement is difficult for FTA to understand. However, as we have noted above, the service in question has not yet occurred. And, we note of significance the fact that, notwithstanding the lack

of final agreement, the Metro Home Show bus service is already being advertised to the public with schedule, routes and free service, all critical terms that Metro states will be included in a final agreement with the Home Show. There is no evidence presented that the finalization of an agreement at this time is with the intent to circumvent or "thwart" the FTA charter rules. Even if done without the intent to "thwart" the rules, if the late finalization of the agreement causes Metro to include in the terms of service actions that make the service not charter service, the fact that the service has not yet occurred is material. So long as the actions taken by Metro to make this service mass transit service is achieved in a timely and appropriate manner to provide adequate public notice of the service as additional transit service and the service otherwise meets the definition of mass transit service, the question of whether service constituted charter or mass transit service is judged in accordance with FTA's definitive regulations and guidance as supplemented by caselaw and precedent. In this case, we do not find that the facts of when and how these particular elements of the Metro Home Show service may have occurred rises to the level to make the service charter service.

22. For the foregoing reasons and facts, the Metro Home Show bus service does not meet the definition of "charter service" as provided in the FTA regulations.

Based on the foregoing findings of fact and conclusions of law, the complaint by Gray Line is denied.

This determination, while final, is based on the representations of Metro regarding the terms and conditions of the service, the agreement for which is not finalized. Should the Metro Home Show bus service occur on terms that are materially different from those represented here, FTA reserves the right to reconsider this determination to deny the complaint. Metro is directed to finalize its agreement with the Home Show forthwith, supply FTA with a copy of that agreement or withdraw the proposed service.

APPEALS RIGHT

The losing party may appeal this decision to the Administrator within 10 days of the receipt of this decision pursuant to 49 CFR Section 604.19. The appellant shall include in its appeal, the basis for the appeal and evidence to support the position. The appellant shall send a copy of the appeal to the prevailing party. The appeal should be sent to: Administrator Jennifer L. Dorn, Federal Transit Administration, 400 Seventh Street, SW, Washington, D. C. 20590 and marked Charter Appeal.

Sincerely,



R. F. Krochalis
Regional Administrator