



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

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Delaware, District of Columbia,
Maryland, Pennsylvania,
Virginia, West Virginia

Federal Transit Administration
Region III
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August 2, 2004

Mr. David N. Smith
Director of Sales & Marketing
Oleta Coach Lines, Inc.
P.O. Box 466
Williamsburg, Virginia 23187

Re: Complaint concerning "Historic Triangle Shuttle" Service provided by
Williamsburg Area Transport, Colonial Williamsburg Foundation and Yorktown Trolley
Charter Complaint No. 2004-11

Dear Mr. Smith:

This letter is in response to your June 7, 2004 letter as supplemented by your July 16, 2004 letter and information you provided by e-mail and telefax. Your complaint concerns service being provided by Williamsburg Area Transport (WAT) in conjunction with Colonial Williamsburg Foundation (CWF) and Yorktown Trolley (Yorktown) from May 28-September 6, 2004 in an area known as the "Historic Triangle." In your complaint you alleged that you came up with the idea of connecting the Historic Triangle via Charter Bus in the year 2000 and started doing your runs the following year. You have continued to provide this service but you have noticed a decrease in your numbers since Memorial Day weekend when these three providers initiated their service in the same area. You are bothered that taxpayers' money is being used to put you out of business.

FTA has reviewed the record and appreciates the seriousness of your concern. However, because FTA does not fund either the vehicles or service being provided by CWF and Yorktown, or regulate their operations in any way, FTA's review will be limited to whether its grantee, WAT, in providing the Jamestown Area Shuttle service, is in violation of the prohibition in the Federal Transit Laws against the provision of charter service or whether this service is appropriately characterized as mass transportation.

As a recipient of financial assistance from FTA, WAT is prohibited from providing charter service if there is a private charter company that is willing and able to do so. See 49 U.S.C. 5323(d) as implemented by 49 CFR Part 604. Grantees wanting to provide charter service are required to follow procedures in 49 CFR Part 604 which include publishing a notice of their intention to provide charter service and inviting willing and able private charter operators to identify themselves. If at least one private operator is willing and able to provide charter service, the FTA recipient is precluded from doing so except under specific exceptions in the regulation.

The regulation that implements Section 5323(d) defines "charter service" in 49 CFR Section 604.5 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 or origin....”

Mass transportation is defined in the Federal Transit Laws 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.” (See 49 U.S.C. Section 5323(a)(7).)

In your June 7, 2004, letter, you enclosed brochures describing your service and the new service about which you complain. Your brochure describes two tours in the historic triangle area. The first is called “Oleta’s Jamestown/Yorktown Four Site Excursion.” According to your brochure, this tour begins at 8:30 and ends at 5:30 p.m. and runs Mondays, Fridays and Saturdays and costs \$38 per person. It includes admission to Jamestown Settlement, Historic Jamestown, Yorktown Victory Center and Yorktown Battlefield. Transportation is by deluxe motor coach and includes cost of admission to the tourist attractions. The second tour is “Oleta’s Historic Triangle Tour.” Your brochure indicates that this tour runs on Tuesdays from 8:00 a.m. to 4:30 p.m. and includes an exclusive visit to the “Glebe” (site of the first land cleared by Jamestown settlers), admission to Jamestown Settlement, a ferry ride (round trip) across the James River, lunch at the Surrey House (inclusive), scenic tour down the Colonial Parkway, and admission to the Yorktown Victory Center. The \$65 per person price includes all admission tickets, transportation by deluxe motor coach, and lunch at the Surrey House. Your brochure states also that all Oleta Tours begin at the Williamsburg Transportation Center and that “[t]ours may be cancelled if minimum attendance requirements aren’t met. Group discounts available.”

The service about which you complain – the “Historic Triangle Shuttle” – according to the National Park Service/Colonial National Historical Park April 2004 brochure you enclosed - is being sponsored by the National Park Service in conjunction with several other organizations “to evaluate and plan service for the 400th anniversary of the founding of Jamestown in 2007.” The service is comprised of three segments, all operating between May 28 and September 6, 2004 as a demonstration.

The brochure describes the three segments and provides schedules for each one. The first segment, the “Historic Triangle Shuttle,” is operated by CWF between the Colonial Williamsburg Visitors Center and Jamestown Settlement, with an intermediate stop at Historic Jamestowne, and between Colonial Williamsburg Visitor Center to Yorktown Battlefield and Victory Center. Three trips per day leave Williamsburg for Jamestown (at 9 and 11 a.m. and 1 p.m.) and three trips per day leave Williamsburg for Yorktown (at 10 a.m., 12 p.m. and 2 p.m.). A fourth trip each day is indicated on the schedule leaving Historic Jamestowne for Jamestown Settlement at 5:00 p.m. and leaving the Yorktown Battlefield for the Victory Center at 3:45 p.m.

The Yorktown Trolley provides the second segment, “Yorktown Trolley.” It is a continuous shuttle service between the Yorktown Battlefield Visitor Center and the Yorktown Victory Center, along with five other stops in between. This service runs daily from 10 a.m. – 6 p.m. every 35-40 minutes.

The third segment, the "Jamestown Area Shuttle," is provided by WAT. The brochure states that it is a continuous shuttle service running daily from 9 a.m. – 5 p.m. every 20 minutes. It connects Historic Jamestown Visitor Center, the Jamestown Settlement and the Glasshouse. The National Park Service brochure indicates further that "[s]ervice is available for Historic Jamestown and Jamestown Settlement ticket holders and is provided by Williamsburg Area Transport." The brochure also notes that: "[t]he Jamestown Area Shuttle and Yorktown Trolley are strictly public transportation service and do not provide guide or tour service around any of the attractions at Jamestown or Yorktown."

By letter dated June 30, 2004, FTA notified WAT of your complaint and requested information concerning the shuttle service being provided by WAT in the Historic Triangle area, specifically whether it should be considered charter service or public transportation. (As explained above, FTA did not write either CWF or Yorktown Trolley as neither is an FTA grant recipient and thus neither is subject to the requirements of the Federal Transit Laws.)

Richard Drumwright, General Manager of WAT, responded by letter dated July 13, 2004, explaining that the service being provided by WAT is on a fixed schedule, open to the general public, and not for the exclusive purpose for any group with an itinerary, and thus, should not be considered charter service. He explained that the WAT service is a two-mile, one-way service "making stops around Historic Jamestowne, Jamestown Island, and the Glasshouse" between 9 a.m. and 5 p.m., every 20 minutes. He indicated that if there is an overlap between the service provided by Oleta and WAT, it is on the two-mile segment connecting Historic Jamestowne, the Glasshouse, and the Jamestown Settlement. (Parenthetically, from Oleta's brochure, it appears that the Oleta tour that operates in this area is "Oleta's Jamestown/Yorktown Four Site Excursion." "Oleta's Historic Triangle Tour" does not appear to go to Historic Jamestowne.) He also enclosed a "Justification for Use of Cooperative Agreement" relative to WAT's agreement with the National Park Service to provide the service.

On July 16, 2004, you responded to Mr. Drumwright's letter taking issue with his statement that the service is open to the general public. You explain that advertisements of the service indicate that only holders of passes are permitted to ride his bus. You provided a copy of a May 27, 2004 Memorandum from the President of the Williamsburg Hotel and Motel Association describing the Historic Triangle Shuttle. In this memorandum the following is stated:

"Departing from the Colonial Williamsburg Visitor Center, the Historic Triangle Shuttle provides service to both the Jamestown and Yorktown areas four times daily from 9:00 a.m. – 5:00 p.m. Complimentary service is available to holders of passes to any Jamestown or Yorktown attraction, but a bus pass is required, and the pass is available at the Colonial Williamsburg Visitor Center. *Additional complimentary shuttle service will be available between Historic Jamestowne and Jamestown Settlement.* The Yorktown trolley will provide complimentary shuttle service between the Yorktown Battlefield Visitor Center and the Yorktown Victory Center, along with five other stops throughout the Yorktown area." (Italics added.)

Subsequently, and on numerous occasions during the course of this proceeding, you telephoned this office to learn the status of FTA's review of this matter and to offer additional information for FTA's consideration. You were informed that FTA's decision on this matter would be based on the written record and that any further information any of the parties wanted to present for FTA's review had to be in writing. Accordingly, the record reflects that you sent several e-mails and telefaxed material to FTA on July 23, 2004 with additional information on Oleta's service. For example, in one e-mail, you indicated that "during the 2003 Fiscal Year you had 32 trips that you ran from January to December. During the 2004 year to date, you have run 8 total trips." Additionally, you sent FTA a copy of your July 3, 2004 letter to WAT warning that legal action will be taken if WAT's service is not immediately discontinued. You enclosed a copy of minutes of a June 15, 2004, LTGW meeting to which you were invited, but weren't able to attend. You also forwarded these same minutes to FTA by e-mail dated July 2, 2004. On July 26, 2004, you telefaxed an undated newspaper article and a memorandum dated July 26, 2004, from Everette H. Newman, III, Presidents Park, in Williamsburg. The memorandum, addressed to "Whom It May Concern," stated:

"We are a new business trying to establish ourselves in our first year of business. Oleta Tours provides a bus service to our site weekly. They are the only bus service that we receive and if they are unable to compete in the marketplace then the results are a negative effect on our business...."

Also on July 26, 2004, you sent an e-mail from Mike Stevens, the Proprietor of the Surrey House, attesting to the fact that Oleta Tours is providing a great service to the visitors to the Historic Triangle.

Finally, on July 30, 2004, FTA telefaxed Mr. Drumwright a copy of Oleta's July 16, 2004 rebuttal as it appeared that Mr. Drumwright had not received a copy. On the telefax, FTA asked two questions as there appeared to be an inconsistency on the record. The questions were (1) whether passes are required to be presented by or individual fares collected from the individual riders of the Jamestown Area Shuttle; and (2) Is payment for the service (\$44, 000 pursuant to a cooperative agreement with the National Park Service) based on the hours of service being provided by WAT?

Mr. Drumwright's response, sent to FTA by e-mail on August 2, 2004, was as follows with respect to the first question:

"The Jamestown Area Shuttle provided by WAT is a complimentary service available to any person who many arrive at Jamestown by car or by the bus service offered by the Colonial Williamsburg Foundation.

"WAT does not collect individual fares or require riders to pay for a pass before using our service that shuttles the general public between parking lots of Historic Jamestowne, the Glasshouse, and Jamestown Settlement twenty. [sic] We do not require persons to have admissions tickets to ride this service, although it is encouraged because individuals wanting to enjoy these facilities must have tickets or pay an admission."

With respect to the second question his response was as follows:

Payment is based upon a budget of \$45,000 incorporated in a cooperative agreement between the United States Department of the Interior, National Park Service, Colonial National Historical Park, and Williamsburg Area Transport. The budget prepared by WAT includes line items for fuel, maintenance, insurance, cleaning contract, communication equipment, labor, and administration based on service days, vehicle hours, and miles.

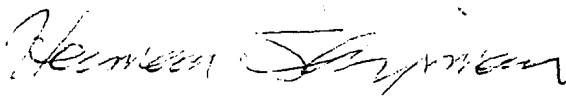
After review of the information on the record, FTA finds that the "Jamestown Shuttle Service" being provided by WAT fits within the definition of "mass transportation," not "charter service."

There is a published schedule. The service runs daily on a continuing basis from 9-5 every 20 minutes. The service is open to the general public and not for the use of any particular group of persons. The individual riders have no control of the route or destination of the vehicle. They simply board the vehicle and go from stop to stop. Although fares are not collected from the individual passengers as they board the vehicle, FTA has held in a prior case where a grantee received an annual grant from an entity instead of pursuant to a contract that linked payment to hours of service, the service in question constituted mass transportation service. (See December 28, 1988 letter to Patrick L. Hamric, General Manager, LEXTRAN, in Re: Blue Grass Tours and Charter v. Lexington Transit, KY-88/08-01.) In this instance, as explained in the "Justification for Use of Cooperative Agreement" enclosed by WAT with its July 13, 2004 letter, WAT and the National Park Service have entered into a cooperative agreement that reflects an approximate total of \$45,000 for the service.

Based on this analysis, FTA finds that WAT is not in violation the charter prohibition of the Federal Transit Laws with respect to the Jamestown Area Shuttle service being run by WAT. FTA declines to order WAT to cease this service.

Pursuant to 49 CFR 604.19, any appeal of this decision must be made within ten days of receipt of the decision. The appeal should be sent to Jennifer Dorn, Administrator, FTA, 400 Seventh Street, S.W., Room 9328, Washington D.C. 20590.

Sincerely,



Herman C. Shipman
Acting Regional Administrator

Cc: Richard Drumwright, Williamsburg Area Transport
Dorothy Geyer, National Park Service
Charles M. Badger, Virginia Department of Rail and Public Transportation