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

REGION VII
Iowa, Kansas,
Missouri, Nebraska

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December 4, 2007

Mr. Scott Moore
Assistant City Manager
City of Wichita
455 N. Main St, 10th Floor
Wichita, KS 67202

Mr. Jay Banasiak
General Manager
Wichita Transit
777 Waterman
Wichita, KS 67202

Mr. Homer Price
River City Trolley and Charter L.L.C.
8154 West 16th Ct. N.
Wichita, KS 67212

Re: Charter Complaint No. 2007-06 Price v. Wichita Transit

Dear Sirs:

FTA previously advised you of receipt of the above referenced written charter complaint. FTA has reached a decision in the matter, and that decision is attached hereto. The decision requires the City to provide certain information to FTA within 10 days of the date of this letter. Therefore, please provide me with written evidence requested before or no later than December 14, 2007. You are also reminded to please provide the same information to the complainant.

If you have any questions regarding the charter complaint process please contact the Regional Counsel: Paula.Schwach@dot.gov or 816.329.3935.

Sincerely,

Mokhtee Ahmad

Mokhtee Ahmad
Regional Administrator

Cc: Elizabeth Martineau, TCC
Mr. Mike Vinson, Wichita Transit

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

Homer Price,
River City Trolley and Charter, L.L.C.
(Complainant)
v.

Charter Complaint No. 2007-06

City of Wichita, KS d/b/a
Wichita Transit
(Respondent)

DECISION

Background

The City of Wichita, with a population of approximately 320,000, and doing business as Wichita Transit ("WT" or the "City") operates a fleet of fifty-one vehicles, which includes two, FTA-funded trolley buses and forty-nine 26'–35' buses used for fixed-route service. The current peak requirement is for forty-three vehicles. WT also operates a fixed route fleet of five City-owned trolleys that offer transportation on Saturdays to core area attractions, provides transportation for the Wichita Historical Tours, and is available for charter. FTA did not participate in the purchase of these five trolleys. FTA-funded facilities include: the downtown Transit Center, which serves as the hub for transfers and customer services; and the Transportation Operations Center ("TOC") opened in 1999 and located at 777 East Waterman Street in Wichita, Kansas. The administration, daily operations, and maintenance services are provided from the TOC.

In 2005, FTA issued a Final Triennial Report to the City which contained the following finding and corrective action:

> Findings: During this Triennial Review of WT, a deficiency was found with the FTA requirements for charter bus. WT uses locally owned trolley buses for the provision of charter service. The locally owned buses are stored and maintained in a federally-funded maintenance facility. At the site visit, WT could demonstrate that this charter operation was physically and financially independent from and received no benefit from WT's provision of mass transit. In a letter dated July 21, 2005, WT requested guidance from the FTA, pertaining to the storage and maintenance of trolleys in a federally funded facility.
>
> Corrective Action and Schedule: Within 90 days, WT must provide the FTA Region VII Office with documentation of procedures to implement the separation of locally-owned charter vehicles from FTA funded mass transit operations.

August 11, 2005, FTA issued a charter advisory opinion to the City in response to a series of questions raised by Jay Banasiak, General Manager for Wichita Transit, a department of the City, in a letter of July 21, 2005. This advisory opinion is a public record which may be found on FTA's public website among other recent charter decisions. The questions raised by the City related to community event shuttles and trolley operations and service to public officials.

May 10, 2006, FTA received a letter from Mr. Homer Price, owner of River City Trolley and Charter, L.L.C., ("River City"), complaining that the City housed its privately funded trolleys in a federally funded facility, the Transit Operation Center and that Wichita Metro Transit Authority [1] in the year 2004 and continued to do so. This was followed by two more letters from complainant expanding the initial complaint to add service to a school prom in 2006 and other services. FTA advised the parties to attempt to conciliate the dispute. The parties did conciliate the dispute and the complaint was dropped. FTA issued no decision in the matter.

The City executed a 2006 Charter Agreement with Mr. Price which outlined charters the City could provide by trip type. An addendum to this Charter Agreement was executed on December 21, 2006, and stated: "that Wichita Transit will forward to River City Trolley and Charter all trolley charter requests for two or less (sic) trolleys. In the event River City Trolley and Charter refuses a forward trolley request (unable or unwilling), River City Trolley and Charter will return the request back to Wichita Transit for normal scheduling."

Current Complaint

May 1, 2007, Mr. Homer Price, owner of River City, contacted FTA by e-mail complaining that the City "was still booking Trolley Charters even after our agreement had been signed." The agreement in question was one pursuant to the annual notice for willing and able providers required by 49 C.F.R. 604.9(a).[2] The complainant makes no claim that there was any problem with the annual notice.

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[1] Wichita Metro Transit Authority was a predecessor agency. The Wichita Metropolitan Transit Authority was created in 1966 by City Ordinance as a semi-autonomous agency of the City. By resolution dated February 20, 1975, the City designated WMTA as the recipient of all Federal capital and operating funds for public transit activities, effectively implementing the Kansas Transit System Act (Article 31 of Chapter 13 of the Kansas Statues Annotated). In 1997, a resolution was enacted to incorporate WMTA into the City's hierarchy, making WMTA a department of the City. The City of Wichita operates transit using the name to Wichita Transit (WT).

[2] 49 C.F.R. 604.9(a): "If a recipient desires to provide any charter service using FTA equipment or facilities the recipient must first determine if there are any private charter operators willing and able to provide the charter service which the recipient desires to provide. To the extent that there is at least one such private operator, the recipient is prohibited from providing charter service with FTA funded equipment or facilities unless one or more of the exceptions in Section 604.9(b) applies."

Instead the complaint is that the City violated the agreement entered into pursuant to the charter exception at 49 C.F.R. 604.9(b)(7).[3] Furthermore, complainant argues that the specific charter for a wedding party on Saturday, April 21, 2007, for which the couple chartered a trolley through the City, failed to "show up at the Cathedrial (sic) then left, did not even wait for the wedding party, so when the wedding party called the transit center they were sent a city bus out to take the wedding party from the Cathedral to the reception location, the driver would not let the wedding party make any stops in between locations to take pictures. The photogher (sic) and wedding party was very upset about this mishap and was blaming River City Trolley and Charter L.L.C until they spoke with me on April 28, 2007 and found out it was not me that they had booked the Charter with. This stains our reputation about how we conduct business. . . .River City Trolley was not given the opportunity to charter this wedding." [4] Complainant also states that the City was in noncompliance with FTA's charter rule in each of the following additional instances:

February 17, 2007	Two Trolleys to the Anchor for a Party
April 21, 2007	One Trolley for Alpha Phi at Larkspur
May 19, 2007	Personally observed 4 trolleys going out of the TOC, including one to a wedding at Eastminster Church, one to pick up the groom and his party; two other single trolley charters
May 25, 2007	Two Trolleys for Roxie Smith
May 26, 2007	Two Trolleys shuttling from a parking lot at 21st and Oliver to a wedding at a private residence a few blocks down from Oliver at 21st

Finally, Tara Xaypanya, the City's scheduler for trolleys, and Julie Price, the River City scheduler, had telephone contact regarding the above dates and Julie reports that Tara's "standard answer is they were all booked in June of 2006 before our first agreement was signed."

FTA did not recommend informal conciliation of the 2007 complaint believing based on an exchange with the complainant that it would not be useful to a full and continuing resolution. There is an indirect allegation in the instant complaint that privately-funded trolleys owned by the City of Wichita are housed within the FTA-funded Transit Operation Center[5].

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[3] 49 C.F.R. 604.9(b)(7): "A recipient may provide charter service directly to the customer where a formal agreement has been executed between the recipient and all private charter operators it has determined to be willing and able in accordance with this part, . . . "

[4] Page 2 of e-mailed complaint, dated May 1, 2007.

[5] Ibid. Complainant states that he personally observed trolleys leaving the Wichita Transit Center, i.e., the TOC. Since the TOC was not a stop on the chartered trip, the inference is that the trolleys were stored there and dispatched from there. This would make the privately funded vehicles subject to the charter rule because the TOC is a "facility" within the meaning of 49 C.F.R. 604.9(a).

The City's Response

July 27, 2007, the City provided a copy of the first page of the Charter Agreement between the parties for services provided on February 16, 2007, April 21, 2007, May 26, 2007, and May 19, 2007. The charters were all for one trolley except for the February 16 and the April 21, 2007 charters. These contracts were entered into on September 19, 2006, and January 16, 2007, respectively. The City indicated that it "does not advertise to charter trolleys but takes requests when called upon and, if the request is for two trolleys or less (sic), forwards them to RTC [River City] for their scheduling." The City stated that "Federally-funded trolleys (two) are not used for charters and are considered part of the bus division, operating on regular fixed bus routes as well as our Q-line route." City-owned trolleys also operate Q-Line routes, as necessary, and have Q-line advertising on them. The City stated that "it has performed only 38 charters since January 1, 2007."

In response to the specific instances of non-compliance complained of by River City, the City replied as follows:

1. February 17, 2007, was booked on January 16, 2007, when the addendum to the agreement for threshold size was new and not all staff was totally familiar with the addendum yet.
2. April 21, 2007—two trolleys for E. Wooten was contracted September 19, 2006; agreement for two trolleys started December 23, 2006.
3. April 21, 2007, was a referral to River City of Alpha Phi and River City referred the party back to the City. Evidence has been provided to support this assertion in the form of e-mail exchanges between the City's scheduler and River City's scheduler dated March 28, 2007.
4. May 19, 2007, only two (not four) vehicles were chartered to Mr. Tom Boles. Other vehicles observed leaving the transit [operations] center on that date could have been regular route, test drives, or other reasons; no other charters were scheduled that day.
5. May 25, 2007—two trolleys for Roxy Smith: contract was signed June 29, 2006.
6. May 26, 2007—two trolleys for Pat Dehart: contract signed June 27, 2006.
7. Wichita Transit has proposed to the City Council that it discontinue its trolley division, including selling or leasing the three City-owned trolleys and transferring the two Federally-funded trolleys to the bus division. The City would thereafter not charter any trolleys pursuant to the exception at Section 49 C.F.R. 604.9(b)(7).

River City's Reply of July 29, 2007

1. River City agrees generally with response 1 and 2 above, except as follows:
   (a) The May 25, 2007, service is not the correct date. The service must have occurred on May 25, 2006, because Mr. Price had a signed contract with her that was dated September 25, 2006, and Ms. Roxie Smith decided to

go with the City charter after signing this agreement with River City. Ms. Smith had contact with RCT three days before her charter looking for another vehicle but the City could not provide her with a third because all of its trolleys were booked; and,

(b) The May 19, 2007 service could not have been only two trolleys chartered to Mr. Boles. While City claims other trolleys observed leaving the TOC were engage in public transportation, the buses were out too late on a Saturday night for the service to be a regular route, and there were no mechanics on duty for test drives so late.

2. River City disputes that not all relevant transit employees were familiar with the Charter Agreement immediately. There is only one person by the name of Tara (Xaypanya, the Wichita Transit Scheduler) that is a Charter Employee and when the agreement between the City and River City was signed with Mr. Showalter of the City, a copy of the agreement was laid on her desk that same day. Therefore the February 17 booking was a violation of the agreement.
3. River City did not respond to City's item 4. River City did request a copy of the 38 charters that the City had "rented" since January 1, 2007. The City did not respond to this request. River City did not seek the documents pursuant to the Kansas Open Records Act.

The City's Second Response of August 6, 2007

The City provided the website for the "Q-Line."[6] The City also indicated that "we also use the trolleys for regular route service."

Questions to the Parties from FTA of August 20, 2007

In an effort to resolve inconsistencies within a party's response and/or between a party's response and documents provided, FTA raised the following questions with the parties by e-mail on August 20 and again on November 20, 2007, because neither party responded to the August 20, 2007 e-mail:

1. Each party states in its response that the charters of the following dates were for two vehicles: February 17, 2007, May 19, 2007 (wedding), May 25, 2007 and May 26, 2007. The plain language of the signed agreements for May 25 and May 26 specify one vehicle. Do the parties wish to agree that the number of vehicles provided in each instance was two vehicles as claimed by both Mr. Price and Mr. Banasiak?
2. What was the understanding, if any, between the parties when the addendum was signed with regard to agreements for service entered into prior to the date of the addendum? Was this specifically discussed between the parties? The agreement does not address this issue.

[6] The City states that the Q-Line is public transportation and in the response of November 20, 2007, from River City, River City disputes this but provides no evidence to support its claim and no argument to support the statement.

3. With regard to the specific charter trips complained of by Mr. Price and to which the City has responded, can the city identify which of these trips used City-owned trolleys as opposed to FTA-funded vehicles? If the City can distinguish between vehicles on this basis, what evidence does it have to support the distinction?
4. Is River City Trolley and Charter, L. L. C., the only private provider to respond to the City's willing and able annual notice?
5. Would the City please reconcile the two statements from its July 27 letter: (a)"Federally-funded trolleys (two) are not used for charters and are considered part of the bus division, operating on regular fixed bus routes as well as our Q-line route." (b) "It is WT's intent to sell or lease three trolleys the city owns and transfer two trolleys to the bus division."

Responses of the Parties to FTA's Questions of August 20, 2007

A. Mr. Price for River City

A1. River City was told all the charters were for two vehicles; if they were not for two, River City should have provided the services under both Agreements.

A2. River City should provide all services for two or fewer vehicles.

A3. Mr. Banasiak for the City would have to respond.

A4. River City was the only trolley charter service company responding to the City's willing and able annual notice.

A5. River City believes the Q-line service is also charter service.

B. Mr. Banasiak for the City

A1. No response.

A2. Any signed contracts for a 2 trolley charter requests by the City prior to the date of the addendum would be honored by the City, as well as any 1 trolley charter requests prior to August 6, 2006, the date of the original agreement with River City.

A3. Only city owned trolleys (5) are assigned charters, while all FTA owned trolleys (2) are part of the fixed route fleet and do not do charters. All of the City's vehicles are numbered, including City-owned trolleys. Charter sheets indicate all pertinent information about the charter, including the specific trolley number assigned to that charter. [Note: the City then faxed to FTA the charter sheets for the complained of dates of service.]

A4. River City was the only private provider with trolleys that responded to the City's willing and able notice. Other private providers did respond to our notice but none had trolleys and were not interested in doing trolley work.

A5. The City has ceased providing charters, unless there is an outstanding contract before August 4, 2006, for one trolley, or [before] the December 21, 2006, date of the addendum with River City for two trolleys. It is the intent of the City to take 2 of the 5 city-owned trolleys and transfer them to the bus division and operate them on fixed routes. The three other city-owned trolleys will either be sold or leased, depending on what the private sector is interested in. [Note: the City then faxed to FTA the notice of public hearing scheduled for December 6, 2007 at 10:00 A.M. to "offer the general public and private transportation providers the option to lease or buy Wichita Transit's trolleys" and to "receive input from the general public and private transportation providers regarding providing trolley charter services for special events in Wichita in 2008."

The Law Applied—Discussion

49 C.F.R. 604.9(a) provides: " If a recipient desires to provide any charter service using FTA equipment or facilities the recipient must first determine if there are any private charter operators willing and able to provide the charter service which the recipient desires to provide." For the FTA's charter rule to be applicable, either the vehicles used to provide the charter service must have been purchased in part using FTA funds, since this is what constitutes "FTA equipment," or facilities which have been funded in part using FTA funds must have been used to store, maintain and/or operate vehicles (whether publicly or privately funded) used in providing charter service.

In this instance, the River City complains that its principal personally observed charter vehicles leaving the TOC.[7] The City did not deny that trolley vehicles came and went from the TOC but instead admitted in its July 27 response that 2 vehicles chartered to a Mr. Tom Boles left the Center. Even though the actual charter sheets maintained by the City indicate that these vehicles were not FTA-funded vehicles, they appear to have been dispatched from the TOC. This would be allowable: (a) if the City complied with the requirement of 49 C.F.R. 604.9(a) to annually determine if there are willing and able private providers; and if it complied with the requirements of 49 CFR 604.9(b)(7) to enter into an annual agreement with all such providers as to the types of trips the City would provide; and if trolley trips were among these types of trips.

The City argues that it determined the willing and able providers and that it entered into an agreement with all of several willing and able charter providers, including River City, and this allowed the City to provide charter service pursuant to the exception at 49 CFR 604.9(b)(7).[8] This exception requires (a) that the agreement allows the City to operate

[7] See *supra* note 5.
[8] See *supra* note 3.

the specific type of charter trip;[9] and, (b) that the agreement is provided for in the annual notice to willing and able providers before undertaking any charter service[10].

In this instance, there is not claim of failure to publish the annual notice. There is also not a claim, which could have been made, that the City's notice improperly distinguished between trolleys and buses instead of treating both as rubber-tired vehicles eligible to perform any and all charter requests except those for vans.[11] The claim is that the City provided charter service in violation of its agreement with River City. The parties agree that the August 4, 2006, Charter Agreement required the City to refer all requests for a single trolley to River City and that the December 2006 Addendum to the August 4, 2006, Charter Service Agreement required the City to refer all charters requesting two or fewer vehicles to River City. The parties disagree as to the meaning of these agreements. The City argues that contracts entered into prior to the Agreement for service occurring after the Agreement and prior to the Addendum did not have to be referred to River City. River City argues that any trip for a single trolley provided subsequent to the Agreement and for two trolleys subsequent to the Addendum had to be referred to River City.

1. Annual Notice Violations. In this instance, the documents provided by the City indicate plainly that it took bookings and entered into agreements in 2006 with customers to provide charter service in 2007. The first page of the agreement between Roxy Smith and the City indicates that the agreement was entered into on June 29, 2006, for one trolley to be provided on Friday, May 25, 2007. The first page of the agreement between Erin Wooten and the City indicates that the agreement was entered into on September 19, 2006, for two trolleys on Saturday, April 21, 2007. This was prior to the December 21, 2006, annual notice. 49 C.F.R 604.9(b)(7) requires the City not to "undertake" any charter service before the agreement was reached pursuant to an annual notice. Yet the City entered into written agreements to provide service before it provided the annual notice and before it entered into the required subsequent annual agreement with all willing and able providers. Since the City did not produce in this case a subsequent annual agreement with River City, FTA assumes that the City believed the Addendum to the August 4, 2006 Charter Service Agreement fulfilled the requirement for an annual agreement after the December 29, 2006, termination date of the underlying agreement[12].

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[9] 49 CFR 604.9(b)(7)(i).

[10] 49 CFR 604.9(b)(7)(ii.

[11] See 52 FR 42248, 42252 (publication of Questions and Answers related to implementation of the Charter Rule; specifically, Q&A 25):

> "25. *Question:* If the customer insists on a particular type of equipment that the willing and able private operator does not have, for example, a trolley lookalike, articulated or double-decker bus, may the grantee provide the service?
>
> *Answer:* The regulation recognizes only two categories of vehicles, i.e., buses or vans. Trolleys, artics, double-deckers and other types of specifically modified equipment are placed in one of these categories and are subject to the same rules as all other equipment. Therefore, the grantee would be able to provide the service only if one of the regulatory exceptions applies."

[12] We note that if the City entered into a 2007 agreement which began on December 30, 2006, following the termination of the 2006 agreement and on the same terms which both the parties represent constituted the agreement, then the violations noted herein still occurred and all of the rationale for the decision still

The City violated 49 C.F.R. 604.9(b)(7) when it entered into two charter service agreements prior to the required annual notice and prior to the execution of a subsequent annual agreement with all willing and able providers, including River City, and then provided the trips. Were FTA to allow grantees to enter into binding contracts for service with individual customers in advance of the annual notice and formation of an annual agreement related to types of trips for any given year, then new entrants to the private, charter market would be discouraged.

2. Breach of the Agreement with River City—February 16, 2007 Charter Service. In this instance, the first page of the agreement between Mr. Eric Wilson of Sullivan Higdon & Sink and the City indicates that the agreement was dated January 16, 2007, and that it was to provide two trolleys for service on Friday, February 16, 2007. This violated the December 2006 Addendum to the August 4, 2006, Charter Service Agreement that required the City to refer all charter requests for two or fewer vehicles to River City. A violation occurred even if the City provided the charter inadvertently as it claims because the Addendum was new.

3. No Breach of the Agreement with River City—April 21, 2007 Charter Service. The faxed charter service scheduling sheet for April 21, 2007, indicates that the City provided a single trolley to Ashlyn Edwards for a trip between Alpha Phi (sorority house) and the Larkspur Restaurant. This would have violated the December 2006 Addendum to the August 4, 2006, Charter Service Agreement that required the City to refer all charter requests for two or fewer vehicles to River City, but for the fact River City referred the party back to the City. Evidence has been provided to support this assertion in the form of e-mail exchanges between the City's scheduler and River City's scheduler dated March 28, 2007. The April 21, 2007 charter trip was not a charter violation on the grounds cited by complainant.

4. Breach of the Agreement with River City—May 19, 2007 Charter Service. The faxed charter service scheduling sheet for May 19, 2007 indicates that the City provided two trolleys to Tom Bowles for a wedding at Eastminster Church, and the City admitted that the trolleys "left" from the TOC. The vehicles were not FTA-funded vehicles; however, because the weight of the evidence suggests that the two vehicles (at a minimum) were dispatched from the TOC, which is an FTA-funded facility, the vehicles were subject to the charter rule. Therefore, the chartering of these two trolleys violated the December 2006 Addendum to the August 4, 2006, Charter Service Agreement that required the City to refer all charter requests for two or fewer vehicles to River City.

5. No Breach of the Agreement with River City--May 25, 2007 Charter Service. The City-provided first page of the agreement between Roxie Smith and the City indicates that one trolley was provided. The faxed scheduling sheet for the service and the

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applies. City has not provided such an agreement despite FTA's e-mailed inquiry of November 21, 2007, requesting additional support for the response that there was an August 4, 2006 agreement and a December 21, 2007 agreement. Furthermore the date of the August 4 agreement is in doubt because the type-written year has been marked through by hand such that the date of commencement could have been 2005 or 2006. However, since River City has not disputed the date of the agreement, FTA has accepted the date as 2006.

notations thereon for actual service reflect that three vehicles were scheduled. Mileage for three vehicles is noted on the scheduling sheets. River City has provided hear say evidence that only two vehicles were provided. FTA finds the scheduling sheets to be more credible evidence than hear say. Therefore, FTA finds that because the number of vehicles provided exceed two, there was no violation of the December 2006 Addendum to the August 4, 2006, Charter Service Agreement that required the city to refer all charter requests for two or fewer vehicles to River City.

6. No Breach of the Agreement with River City--May 26, 2007, Charter Service. The City-provided faxed scheduling sheet for service show that it was for three trolleys for Patricia DeHart to take wedding guests from the Northeast corner of 21st and Oliver to Crestview Lake. Therefore, FTA finds that because the number of vehicles provided exceed two, there was no violation of the December 2006 Addendum to the August 4, 2006, Charter Service Agreement that required the city to refer all charter requests for two or fewer vehicles to River City.

7. Remedies Available. The Federal Transit Law, at 49 U.S.C. 5323(d)(2)(B) requires that FTA correct any violation that has occurred. In doing so, FTA has broad contract remedies pursuant to the Master Agreement. However, FTA has no authority to require direct payment of the fees and/or profits earned from improper charter services to complainant as complainant has requested. Furthermore, at 49 U.S.C. 5323(d)(2)(C) FTA as the delegate of the Secretary is required to "bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if the Secretary finds a pattern of violations of the agreement." While FTA has not engaged in a final rulemaking to implement 49 U.S.C. 5323(d)(2)(C) and the concept of a "pattern of violations," it has received and is considering public response to its Notice of Proposed Rulemaking, published February 15, 2007 in the *Federal Register* (72FR 7526). Clearly, a "pattern of violations" is not a single instance of unauthorized charter service. In order to prove a pattern of violations, a single complaint would have to include multiple violations which are related.

In the current instance, FTA finds that the City, a recipient and operator of transit: violated the annual notice requirements by entering into at least two contracts (which the City subsequently fulfilled) for charter service prior to issuing its annual notice to identify willing and able private providers and prior to reaching agreement with all such willing and able private providers; dispatched at last two of its non FTA-funded trolley vehicles from an FTA-funded transit facility making them subject to the charter regulation, and then breached the agreement with the complainant River City by providing improper charter service on February 16, 2007, and again on May 19, 2007. Finally, FTA finds that the grantee: had previously been found in its triennial review of 2005 to have violated the charter regulation by storing its non-FTA-funded trolleys in the TOC without complying with 49 CFR Part 604; and, had previously been provided with an advisory charter opinion, dated August 11, 2005 related to use of trolleys and shuttle service, that explicitly stated that the notice given soliciting willing and able providers must be annual notice and that any agreement entered must be entered annually. FTA

finds that although there is a single complaint, this accumulation of related violations is sufficient to find that a pattern of violations exists.

Conclusions and Specific Remedies Ordered:

1. FTA orders the City of Wichita to cease and desist from all improper charter operations using FTA-funded equipment and/or facilities. The City must remove its privately-owned vehicles from the FTA-funded TOC and must not maintain, store, operate or dispatch or otherwise perform any function related to the vehicles from this facility (and any other FTA-funded facility) unless the City fully complies with the 49 CFR Part 604.
2. FTA orders the City of Wichita to republish its annual charter notice if it wishes to provide any charter service using FTA-funded equipment and/or facilities. In this notice, the City shall not distinguish between any vehicle types except buses and vans. Trolleys shall be treated as buses.
3. FTA finds that a pattern of violations exists because the grantee: violated the annual notice requirements by entering into at least two contracts (which the City subsequently fulfilled) for charter service prior to issuing its annual notice to identify willing and able private providers and prior to reaching agreement with all such willing and able private providers; dispatched at last two of its non FTA-funded trolley vehicles from an FTA-funded transit facility making them subject to the charter regulation, and then breached the agreement with the complainant River City by providing improper charter service on February 16, 2007, and again on May 19, 2007. These five violations, coupled with the aggravating circumstances of a similar finding in the 2005 triennial review, receipt of an advisory opinion dealing with trolley service, and receipt of a previous complaint by this same complainant, clearly indicate a pattern of violations.
4. FTA hereby bars the City from receipt of an amount of funds, which represents the profit earned by the City from conducting the unauthorized charter operations. These funds will be withheld from Section 5307 funds apportioned in FY2007 but not yet obligated in any grant to the City. The City shall provide FTA within ten days of the date of this letter with an accounting of the fees earned, the fully allocated costs and how derived, and the net profit for the trips which occurred on February 16, April 21, May 19 and May 25, 2007, so that FTA can make a final determination of the amount to be withheld.
5. Notwithstanding the bar described in item 4 above, FTA requires the City to maintain its current level of effort and financial support to paratransit subrecipients.