

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

TLC Charters & Tours,
Complainant,

v.

Charter Service Docket No. 2005-10
49 U.S.C. Section 5323(d)

Toledo Area Regional Transit Authority,
Respondent.

DECISION

Summary

On May 6, 2005, TLC Charters & Tours ("TLC") filed a complaint with the Federal Transit Administration ("FTA") alleging that Toledo Area Regional Transit Authority ("TARTA" or "Respondent") was providing charter service in violation of FTA's charter regulation, 49 Code of Federal Regulations ("C.F.R.") Part 604.

On June 13, 2005, TARTA responded to TLC's complaint. On June 14, 2005, TLC responded to TARTA's response. On June 23, 2005, TLC confirmed that it did not intend to provide any other response.

Upon reviewing the allegations in the complaints and the subsequent filings of both the Complainant and the Respondent, FTA has concluded that with regard to the complaint, TARTA is not currently violating the charter regulations.

Complaint History

TLC filed its complaint with the FTA on May 6, 2005. The complaint alleges that TARTA is illegally providing lunchtime service that violates the charter regulations. TLC attached a newspaper announcement from the *Toledo Blade Newspaper* advertising a service called "Call-A-Trolley."

On June 13, 2005, TARTA filed a response to the complaint. In its response, TARTA indicated that the lunchtime service being provided is mass transportation, not charter service. TARTA also makes reference to a discussion with the Regional office on June 6, 2005, and TARTA's request for guidance as to whether the lunchtime service was charter service or not.

On June 14, 2005, TLC filed a response indicating its position that the lunchtime service is charter service not mass transportation based on FTA's earlier decision in *September Winds Motor Coach, Inc., and Tecumseh Trolley & Limousine Service v. TARTA*, Case No. 2004-02. Additionally, TLC points out that the Regional Office cannot provide guidance, but can only state the law "as it stands." TLC indicated on June 23, 2005, via email that it did not intend to provide any further rebuttal evidence and FTA could proceed with its determination.

Discussion

If a recipient of federal funds¹ like the Respondent, wishes to provide charter service, then it must comply with the charter regulations. Charter service is defined as the following:

transportation using buses or vans, funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, for a fixed charge for the vehicle or service, who have acquired the exclusive use of the vehicle or service in order to travel together under an itinerary either specified in advance or modified after leaving the place of origin. Includes incidental use of FTA funded equipment for the exclusive transportation of school students, personnel, and equipment. 49 C.F.R. § 605.5(e).

The issue in this case is whether TARTA's lunchtime service regulation is charter service or mass transportation. The Complainant refers to FTA's prior decision in *September Winds Motor Coach, Inc., and Tecumseh Trolley & Limousine Service v. TARTA*, Case No. 2004-02, for the proposition that the service is illegal charter, and TARTA refers to Region IX's charter decision addressed to SunLine Transit Agency and Jim Seal Consulting Services, dated January 15, 2002 (the "SunLine decision"), for the proposition that the service is mass transportation.

The Complainant is correct that FTA previously determined that TARTA's "Trolley Direct Trip for Six" constituted impermissible charter service. However, the current "Call-A-Trolley" is distinguishable from the "Trolley Direct Trip for Six," which was determined to be impermissible charter service. The current lunchtime service is a service under the control of the recipient, who is responsible for setting the route, rate, schedule, and deciding the equipment to be used. It is open to the public and is not closed door. The service is regular fixed route service with route deviations. The route deviations are for dropping riders off at site-specific destinations. The route deviations are based on individual rider's requests, not a group of persons. After the rider is dropped off at the site-specific deviation, the vehicle continues on the regular fixed route system. The prior service required that a group of six request that the vehicle pick up the group and drop the group off at a specific destination. The vehicle was not operating along a regular fixed route.

As the SunLine decision discussed "[s]ite-specific route deviation combines fixed route and demand response service, both of which FTA has determined to be mass transportation." In the case of TARTA's "Call-A-Trolley" service, TARTA runs a regular fixed route service, but riders can request a site-specific route deviation. After the deviation, TARTA returns to its regular fixed route. The SunLine decision recommends that the transit agency publish the availability of the service which TARTA has done through its website and the advertisement in the newspaper. Unlike the "Trolley Direct Trip for Six" which required six people and involved the groups being both picked up and dropped off, the "Call-A-Trolley" service runs along a regular fixed route with a regular published schedule.

Therefore, FTA determines that the "Call-A-Trolley" service qualifies as mass transportation, and TARTA is not in violation of the charter regulations. FTA recommends that TARTA implement

¹ Respondent receives Section 5307 and 5309 funds from FTA; therefore, they must comply with the charter regulations.

its offer to change its website and schedule to list possible destinations for deviations that are within the service area. Implementation of this change would be helpful for riders who may not be familiar with how the route deviation process works.

Regarding the allegation that the regional office may not provide technical assistance, it is appropriate for the Regional office to provide technical assistance to Grantees on FTA programs. The purpose of providing technical assistance is to ensure that Grantee's comply with all FTA requirements including the charter regulations. In this case, since TARTA was already under a remediation plan and the complaint process had been initiated, a request for technical assistance would have been referred to Program Management Oversight for a response.

Conclusion

FTA determines that the "Call-A-Trolley" service does not violate the charter regulations because it qualifies as mass transportation.

Appeal Rights

In accordance with 49 C.F.R. § 604.19, the losing party may appeal this decision 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.

Donald Gismondi

Donald Gismondi
Acting Regional Administrator

8/31/05
Date