

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

The Tecumseh Trolley & Limousine,
Complainant,

v.

Charter Complaint
49 U.S.C. Section 5323(d)
Docket No. 2004-19

Capital Area Transportation Authority,
Respondent.

DECISION

Summary

On November 1, 2004, The Tecumseh Trolley & Limousine ("Tecumseh Trolley") filed a complaint with the Federal Transit Administration ("FTA") alleging that Capital Area Transportation Authority ("Respondent" or "CATA") had provided service in violation of FTA's charter regulation, 49 Code of Federal Regulations (C.F.R.) Part 604. The two services specifically complained of pertains to Respondent's providing service for the Ag Expo and service for fraternities. Respondent filed an answer dated December 9, 2004. Complainant filed a reply on February 9, 2005 (the response is dated Jan. 3, 2005). Respondent filed an additional response on May 6, 2005.

Upon reviewing the allegations in the complaint and the subsequent filings of the Complainant and the Respondent, FTA has concluded that one of the services in question does violate FTA's regulations regarding charter service. Respondent is hereby ordered to cease and desist in providing such illegal service in the future. Respondent is also ordered to disallow improper charter mileage for the vehicles that were used for the purposes of calculating useful life.

Complaint History

Complainant Tecumseh Trolley filed its complaint with the FTA on November 1, 2004. The complaint alleges that the Respondent had provided illegal charter service¹ by providing private charter service for the Ag Expo, as well as running a fraternity "bar hop" service.

Specifically, Complainant alleges the following: CATA ran a closed door shuttle service for the Ag Expo and that CATA was observed running "bar hop" services for individual fraternity houses. Complainant alleges that when he attempted to board the CATA bus, he was told that the bus was for a private party and he needed a student identification to board the bus.

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

On Dec. 9, 2004, CATA responded to the complaint. In its response, CATA stated that it did provide service for the Ag Expo, but that it does not intend to provide the service again. CATA states, however, that the service met the definition of mass transportation. CATA asserts that the service was advertised, open door, and CATA determined the number of buses, the routes and the schedule. CATA denies providing any "bar hop" service.

On Feb. 9, 2005, FTA received a reply from the Complainant dated Jan. 3, 2005. In its reply, the Complainant states that the "bar hop" service took place on Oct. 22, 2004. The service allegedly took place from the 300 block of Harrison Avenue in East Lansing, MI. Complainant also continued to assert that the service provided for the Ag Expo was impermissible charter service.

On May 6, 2005, CATA filed an additional response. In its response, CATA provided an affidavit that no CATA service was provided on Oct. 22, 2004, other than regularly scheduled line-haul service; copies of dispatch sheets showing that the only bus in service at the time in question was the regular Route 25 bus; and a letter from Michigan State University stating that there is no fraternity located at 335 Harrison Street.

Discussion

As Complainant has accurately stated, recipients of Federal financial assistance cannot provide charter service using Federally funded equipment or facilities, unless one of the limited exceptions applies. In the absence of one of the limited exceptions, the recipients are prohibited from providing the service. 49 C.F.R. Section 604.9(a). Respondent is asserting that it did not provide direct charter service for either the Ag Expo or a fraternity "bar hop" service.

A. Ag Expo

Under 49 C.F.R. Section 604.9(a), if a recipient desires to provide charter service, it must first determine whether there are any willing and able private charter providers. In the absence of one of the limited exceptions, the recipients are prohibited from providing the service. 49 C.F.R. Section 604.9(a). Complainant is not asserting that any of the charter exceptions apply, but rather that the service CATA provided was charter service.

The regulations define charter service 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).

Thus, a determination needs to be made as to whether Respondent's service meets the definition of charter by examining the elements required for charter service. In order to qualify as charter service, the following questions need to be answered:

1. Is this transportation service using buses funded with FTA money?
2. Is the service for a common purpose?

3. Is it under a single contract?
4. Is it for a fixed charge for the vehicle or service?
5. Is the exclusive use of the vehicles to travel together under an itinerary either specified in advance or modified after leaving the place of origin?

The Ag Expo service utilized buses that were funded with Federal funds. There was a common purpose, specifically for the Ag Expo. Although the Respondent indicates that CATA issued notices advertising the service as a "Special Route for Ag Expo"; a notice is not the normal procedure for adding new routes. It was a three-day event, not regularly scheduled service. The service was for a common purpose; the exclusive use of the vehicles was to transport individuals to the Ag Expo. Although the service was open to the public, it was not mass transportation. It was only for those individuals interested in attending the Ag Expo. CATA did not have a formal contract, but it had an arrangement with Michigan State University ("MSU").² MSU paid CATA to provide the service and CATA did not charge the riders for the service. The service was provided for a fixed charge for the service. This service did not involve additional buses on a regularly scheduled route, which would have not been charter service, but rather involved service that was added without following the required procedures for providing a new route. The specific itinerary was to transport Ag Expo attendees from Parking Lot 89 to the Pavilion and MSU Farms. Based on all the characteristics of the Ag Expo service, FTA determines that the service provided for the Ag Expo constituted charter service. The Respondent has not asserted that one of the charter exception applies; therefore, it constituted illegal charter service.

Although the Respondent cites to the *California Bus Association v. Sacramento Regional Transit District*, Charter Complaint No.2003-01, as a basis for the assertion that the Ag Expo service was mass transportation, the service at issue in the California case is distinguishable. The Downtown Circulator service was a regular service that the Grantee offered after following the public participation process for adding new service, including holding a public hearing. CATA does not argue that the Ag Expo service was intended to be new service. In fact, it indicates it does not intend to provide the service again.

B. "Bar Hop" Fraternity Service

Based on the evidence submitted, there is not enough proof that the alleged "Bar Hop" service occurred. The Complainant has provided no additional evidence other than his word that the alleged service took place. CATA has provided log records and an affidavit indicating that no other service was provided on the evening of October 22, 2005, other than regular line-haul service. Therefore, FTA makes no charter finding with regard to the alleged "Bar Hop" service.

Conclusion

Based on all the information provided, FTA finds that the Respondent provided illegal charter service for the Ag Expo. FTA makes no determination regarding the alleged "Bar Hop" service.

Remedy

² FTA confirmed in a telephone call with CATA's counsel on June 16, 2005, that the Ag Expo service was provided through a fee arrangement with Michigan State University, but there was not a formal contract.

Complainant has requested that Respondent immediately cease the charter operations at issue. CATA has indicated that it does not intend to provide service for the Ag Expo in the future. If Respondent desires to provide charter service in the future, it must follow the notice and review procedures for determining if there are any willing and able private charter operators pursuant to 49 C.F.R. Part 604.

Order

FTA finds that Respondent did provide impermissible charter service and orders it to cease and desist any such further service. Refusal to cease and desist in the provision of this service could lead to additional penalties on the part of FTA. Additionally, the mileage for improper charter use should not accrue towards the useful life of the Federally funded vehicles.

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

6/16/05

Date