

April 19, 2006

VIA FEDERAL EXPRESS

Ms. Marisol Simon
Regional Administrator, Region V
Federal Transit Administration
200 West Adams Street
Suite 320
Chicago, Illinois 60606-5232

Re: Charter Bus Complaint; Champaign-Urbana MTD

Dear Ms. Simon:

This is a complaint by my client, Allerton Charter Coach, Inc. (“Allerton”) against the Champaign-Urbana Mass Transit District (“MTD”) for violations of the charter bus service regulations at 49 CFR Part 604.

Allerton is a corporation organized under the laws of the State of Illinois. It is lawfully engaged as a motor carrier of passengers in the private business of providing charter and other passenger transportation services by bus in and around the cities of Champaign-Urbana, Illinois. Allerton is located at 714 South Sixth Street, Champaign, Illinois, which is within the urban district where MTD is authorized to provide bus service. Allerton has a number of 47-passenger buses currently available for intrastate charters, and has responded to the MTD’s charter service notices as a willing and able private operator for the past several years.

MTD is a recipient of financial assistance under the Federal Transit Act within the meaning of 49 C.F.R. § 604.5(l) and is engaged in providing mass transportation services in and around the cities of Champaign-Urbana, Illinois.

Prior Charter Complaint Decision

Allerton has previously filed a complaint against MTD for violations of the charter service rules in Part 604. Charter Complaint 2004-10. The FTA Regional Administrator issued a decision in that case, *Allerton Charter Coach, Inc. v. Champaign-Urbana Mass Transit District*, decided February 8, 2005, finding that MTD provided 73 illegal charter bus strips in less than one year and ordering the MTD to immediately cease and desist any further charter bus service. *Slip op.* at 8-9. The Regional Administrator’s

decision added that “[r]efusal to cease and desist in the provision of this service could lead to additional penalties on the part of FTA.” *Id.* at 9.

Complaint Re Service to University of Illinois Foundation

On August 16, 2005 the MTD sent a request to then-Regional Administrator Donald Gismondi seeking permission to perform direct charter bus service for the University of Illinois Foundation Annual Meeting on September 21-24, 2005. A copy of the request is attached as Exhibit A hereto. The request refers to a memo from Peoria Charter Coach (“PCC”), another private charter bus operator, “requesting that the [MTD] have permission to do the . . . charter.”

Exhibit B hereto is an August 1, 2005 memo from PCC to Rita Lee Lenz, director of Management Information at MTD, stating that PCC “desires to enter into a contract with the Champaign-Urbana Mass Transit District to lease vehicles from the District under the following exception set forth in the Federal Transit Administration’s Charter Regulations: Section 604.9(2)(ii) [sic]¹ – The private operator is unable to provide equipment accessible to elderly and handicapped persons itself.” The request was for service to the University Foundation for the dates September 21-24, 2005.

The August 1, 2005 memo states that the service will require several buses with service that can accommodate “at least 10” wheelchairs, and that number of wheelchairs “could be more.” Further, the memo asserts that PCC “does not have vehicles available to transport ten or more people using wheelchairs.” PCC requested the MTD “to contract with the Peoria Charter Coach Company to provide the requested vehicles.”

Regional Administrator Gismondi signed the MTD’s request for permission (Exhibit A) granting the agency’s approval for the charter service on September 6, 2005. The MTD then provided the charter bus service directly to the University Foundation and billed the Foundation directly for \$12,450.00. A copy of the invoice, marked “paid 12-16-05,” is attached hereto as Exhibit C.

This charter bus service was in blatant violation of the FTA regulations and the agency’s prior order of February 8, 2005. It constitutes a continuation of the sham dealings and pattern of charter violations set out in that order, and for the reasons set forth more fully below Allerton demands that the FTA impose a significant penalty of withholding federal funds from the MTD in accordance with the analysis in *American Bus Association, Inc. v. Akron Metro Regional Transit Authority*, Charter Service Docket No. 2005-05, decided March 22, 2006.

¹ The correct cite is § 604.9(b)(2)(ii).

Lack of FTA Inquiry

First, there is nothing to indicate that the FTA Regional Administrator made any inquiry to question the need for buses to transport “at least 10” and “could be more” wheelchairs. Neither the MTD nor PCC submitted any documentation of such a request from the University Foundation, and the FTA apparently failed to conduct any further inquiry.² This is an inexcusable lapse in oversight by the FTA given the MTD’s history of charter rules violations.

In the February 8, 2005 decision the Regional Administrator found that for a significant number of years the MTD had an arrangement with another private bus operator, Illini Swallow, under which the MTD would operate charters for Illini Swallow and pay Illini Swallow a ten percent commission, or finder’s fee. The Regional Administrator held that this arrangement is a violation of the charter regulations. *Slip op.* at 6.

Based on this prior finding, when the Regional Administrator received the August 16, 2005 request from the MTD to provide charter service on behalf of PCC the FTA should have investigated whether there was an actual need for wheelchair accessible vehicles or if this was merely another thinly-disguised sham arrangement to avoid the charter service restrictions.

Relationship Between MTD and PCC

The “request” from PCC to the MTD to contract for wheelchair accessible buses is a ruse to avoid the charter bus rules by claiming an exception to those rules to cover up another illegal arrangement between MTD and a private bus operator.

Although the Regional Administrator had found that the MTD could not lawfully provide a finder’s fee to Illini Swallow in exchange for “contracting” out charter bus service, the MTD is now trying the same approach with Peoria Charter Coach. Exhibit D hereto is a series of monthly invoices from MTD to PCC dated from June 2005 through February 2006 each for \$1,000.00 for “Parking Facilities Rental” or “Building Rental” or “Storage Facilities Rental.” The September 2005 and the December 2005 invoices are marked “Trade for Services” for \$1,000.00 each; the other invoices are marked “paid” with a date and check number

Allerton asserts that MTD is providing parking facilities at no cost or below market cost in exchange for “referrals” of charter service like the University Foundation transaction. Allerton questions whether PCC actually transferred any money to MTD for

² In the past Allerton has requested MTD to lease wheelchair accessible buses to Allerton for charter service, but the MTD has refused to engage in such leases.

the “parking” or other services despite the notations of payment by check on seven of the nine invoices in Exhibit D; the two invoices marked “Trade for Services” raise further questions about what value, if any, PCC provided in exchange for parking and services at MTD facilities.

What the MTD clearly did was accept a referral of charter service valued at \$12,450.00 from PCC. Like the illegal arrangement with Illini Swallow, this was service that the MTD could not provide without a straw man arrangement with a private operator. Allerton asserts that:

1. the University Foundation never actually asked for or needed wheelchair accessible buses without coaching from the MTD or PCC;
2. PCC never intended to provide the service to the University Foundation and merely intended to pass the service on to the MTD;
3. the FTA never investigated whether the request for accessible service was real or concocted as a sham to avoid the charter rules; and
4. the MTD provides PCC with access to parking and perhaps other services at MTD facilities and uses that arrangement as a mechanism for commission payments for charter referrals to the MTD such as the University Foundation service.

Thus, this referral arrangement with PCC is substantially the same as the illegal commission arrangement with Illini Swallow. Allerton requests that the FTA investigate the nature of the arrangement between PCC and the MTD, the amount of money that has changed hands between the two entities, the nature and extent of any services provided by the MTD for PCC and *vice versa*, and the nature and extent of any charter bus service that was referred between the two entities.

Direct Charter Service

Even if the FTA finds that the arrangement between the MTD and PCC is proper, the MTD may not provide direct charter service to the University Foundation under the accessible service exception. As the Regional Administrator stated in the February 8, 2005 decision, the exception “is not for providing direct charter service, but for leasing vehicles or service to a private provider, so the private provider can provide the service.” *Slip op.* at 6-7.

Despite this requirement, the MTD provided direct charter service to the University Foundation and billed the Foundation directly. *See* Exhibit C. The invoice requires payment directly from the University Foundation to the MTD and there is no indication that the service was actually provided by PCC using MTD buses. In fact, there is no mention of PCC on the invoice.

Abuse of Exception

Moreover, the MTD and PCC have colluded to abuse the exception for lack of accessible capacity set out in § 604.9(b)(2)(ii). Subsection 604.9(a) states plainly that a recipient of federal funds may not provide charter service if there are any willing and able private operators, unless one of the exceptions in § 604.9(b) applies. Subsection 604.9(b)(1) states that a recipient may provide charter service if there are no willing and able private operators. Allerton is a willing and able private operator.

Although § 604.9(b)(2)(ii) allows a recipient to contract with a private operator to provide charter equipment or service if the private operator is unable to provide equipment accessible to elderly or handicapped persons itself, Allerton contends that this exception must be read in context with the rest of § 604.9(a) and (b), *i.e.*, even if one private operator does not have sufficient accessible capacity a transit agency may not contract to provide the service if there are any *other* willing and able private operators. This is the only interpretation that fully implements the intent of the willing and able requirement – otherwise, transit agencies could continue to scheme to avoid this restriction through sham private operators or by colluding with legitimate private operators that seek an easy commission.

Before MTD accepted the referral to provide charter service it should have checked with the other willing and able private operators, including Allerton, to determine if they could provide the service. The lack of capacity exemptions should be interpreted to allow all willing and able private operators in a service area to have the first opportunity to serve a charter customer before a transit agency may contract to provide equipment or the service.

Additionally, if a private operator cannot provide a wheelchair accessible vehicle for a customer, the charter rules exception should not allow the transit agency to handle the entire service, but merely to lease those vehicles necessary to meet the accessibility needs. For example, if the service requires 20 buses, and one must be wheelchair accessible, the transit agency should lease a single accessible vehicle and private operators should provide the other 19 vehicles.

Remedy

The Regional Administrator's prior decision stated that "[r]efusal to cease and desist in the provision of [illegal charter] service could lead to additional penalties on the part of FTA." *Id.* at 9. The Regional Administrator ordered the MTD to cease and desist providing illegal charter service and ruled that the MTD's commission arrangement with Illini Swallow violated the charter rules. Nevertheless, the MTD is continuing to provide illegal charter service and had developed a new referral and commission arrangement with a complicit private operator to circumvent the charter rules.

Ms. Marisol Simon

April 19, 2006

Page 6

The Regional Administrator also found that MTD's 73 previous violations of the charter rules over a ten-month period constituted a pattern of violations. Since then this Regional Administrator's office has issued its decision in *American Bus Association, Inc. v. Akron Metro Regional Transit Authority*, Charter Service Docket No. 2005-05, in which the FTA withheld \$622,500 in federal funds from the offending transit agency for a pattern of violations of the charter rules.

Allerton requests that the Regional Administrator find that the University Foundation service and the sham arrangement with PCC constitute a continuation of the pattern of illegal charter bus service by the MTD and order a withholding of funds as set out in the *Akron* ruling.

Respectfully submitted,

Richard P. Schweitzer
Counsel for Allerton Charter Coach, Inc.

cc: William L. Volk, Champaign-Urbana Mass Transit District