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February 18, 2005

VIA HAND DELIVERY

Ms. Jennifer Dorn
Administrator
Federal Transit Administration
400 Seventh Street, S.W.
Washington, D.C. 20590

Re: Charter Service Docket No. 2004-10; Allerton Charter Coach, Inc. v. Champaign-Urbana Mass Transit District, Appeal of Decision

Dear Ms. Dorn:

This letter is an appeal pursuant to 49 CFR §604.19 of one portion of the February 8, 2005 decision of the FTA Region V Administrator in the charter bus complaint case brought by Allerton Charter Coach, Inc. ("Allerton") against the Champaign-Urbana Mass Transit District ("the MTD"). Charter Service Docket No. 2004-10. A copy of the decision of the Regional Administrator and the relevant portions of the Complaint are attached hereto.

The sole issue for this appeal is the Regional Administrator's decision that certain bus service performed by the MTD, namely service provided to the Intervarsity Christian Fellowship ("IVCF") on the campus of the University of Illinois, was probably more like mass transportation and not charter bus service. Regional Administrator's Decision at 7. The Decision states that the FTA lacked sufficient information to determine whether the service was charter service or mass transportation. Despite the purported lack of information, however, the Regional Administrator found that the service "seems more like mass transportation than charter service."

The Regional Administrator based this holding on the fact that the service was on the MTD's regular fixed route, the MTD was to set the times of operation of the routes, and the routes were to be publicized and open to the general public. *Id.* This decision is erroneous on two grounds.

First, this portion of the decision fails to take into account all of the facts alleged in Allerton's Complaint with respect to the nature of the service. Allerton's Complaint

noted that the MTD was to "supplement existing routes" to meet IVCF's needs. Allerton Complaint at 8. It further stated that the service was to be run between the University's Assembly Hall and dormitories at the direction of the charter service customer. *Id.* It also noted that the service would be used by few, if any, non-IVCF attendees because it was to take place at a time when the dormitories were closed for winter break. *Id.* These factual allegations were unrefuted by the MTD. The Regional Administrator, however, gave no weight to these facts, which militate against a finding that the service was mass transportation.

In addition, the service apparently was not run as regularly scheduled service. The MTD buses were lined up at the University Assembly Hall and dispatched one at a time to destinations as the buses filled. This is not consistent with a finding that the service was on a "regular fixed route."

Second, the Regional Administrator failed to take into account Allerton's argument that the service did not constitute "mass transportation" because it was not "regular and continuing" service as required in the definition of mass transportation in 49 U.S.C. § 5302(a)(7). *Id.* Allerton informed the Regional Administrator that the IVCF convention occurs only once every three years for a period of one week. Pursuant to the Region II Regional Administrator's decision in *Kemp's Bus Service, Inc. v. Rochester-Genesee Regional Transportation Authority* (Sept. 18, 2002), such service does not qualify as regular and continuing and therefore is not mass transportation.

In the *Kemps* decision, the Region II Administrator held that service to a golf tournament operating only one week a year was not regular and continuing service and therefore was not mass transportation. Although that decision was appealed to your office, that particular holding was not reversed or amended on appeal. *Kemp's Bus Service, Inc. v. Rochester-Genesee Regional Transportation Authority*, Charter Service complaint Docket No. 2002-02 (January 2, 2003). Herein, service that occurs only one week every *three* years is likewise outside the "regular and continuing" requirement for mass transportation.

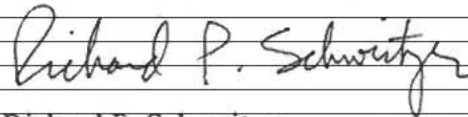
As Allerton originally argued, the service conducted for IVCF is clearly charter service. Simply because some of the charter routes, operated with "supplemented" service, happen to overlap the MTD's existing routes does not make it "more like mass transportation." The service was run at the direction of the IVCF, and few, if any, non-IVCF attendees used the service. Moreover, the service was run under a single contract (Exhibit G to the Complaint) and the passengers paid no fares. Further, the fact that the service was not regular and continuing *by statutory definition* means that it was not mass transportation.

For these reasons, the decision of the Regional Administrator with respect to the IVCF service is clearly erroneous and not in accordance with law. Allerton respectfully

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requests that the FTA set aside that portion of the decision, and issue an order for the MTD to cease and desist providing prohibited charter service to IVCF.

Sincerely,



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

cc (via hand delivery): Edward Gill
Counsel for CUMTD