

REGION V
FEDERAL TRANSIT ADMINISTRATION
U. S. DEPARTMENT OF TRANSPORTATION

ALLERTON CHARTER COACH, INC.)	Decision
Complainant)	
v.)	
)	
ROCK ISLAND COUNTY METROPOLITAN)		
MASS TRANSIT DISTRICT)	
Respondent)	
)	
and)	
)	
CHAMPAIGN-URBANA MASS)	
TRANSIT DISTRICT)	
Respondent)	
)	

BACKGROUND

By letter dated August 1, 2007, Allerton Charter Coach, Inc. (Allerton) filed a complaint with this office against Rock Island County Metropolitan Mass Transit District (MetroLINK) and the Champaign-Urbana Mass Transit District (CUMTD) under 49 CFR Part 604 alleging violations of the Federal Transit Administration's (FTA) charter service rules. Allerton alleges that both MetroLINK and CUMTD provided illegal charter service for the John Deere Classic, a professional golf tournament held in Moline, Illinois from July 9 to 15, 2007 and for an "unknown number of prior years". Allerton seeks from FTA a determination that the service in question constituted illegal charter service; a cease and desist order; and a withholding of future federal funds from MetroLINK and CUMTD for a pattern of violations associated with this service.

PROCEDURAL DETERMINATION

On January 14, 2008, FTA issued new charter service rules to take effect on April 30, 2008. As this complaint has been filed and the service in question has occurred prior to the effective date of the new rules, FTA has processed this complaint and applied the substantive charter service rules that were in effect prior to April 30, 2008. Therefore, this complaint has been adjudicated by the Regional Office and any remedies, appeals and judicial reviews shall be made pursuant to 49 CFR Part 604, subpart B. Further, all references herein to regulations provided under 49 CFR Part 604 shall be deemed to mean those regulations in effect prior to April 30, 2008.

FINDINGS OF FACT

1. Allerton is a company that offers to provide charter service transportation in all or part of the area served by MetroLINK's bus transportation service provided for the 2007 John Deere Classic golf tournament.

2. MetroLINK is a public body that provides public transportation services in and around the “Quad Cities” area of East Moline, Moline, Rock Island and Milan, Illinois and is a recipient of funds from FTA.
3. CUMTD is a public body that provides public transportation services and is a recipient of funds from FTA.
4. In 2007, a professional golf tournament was held at the Deere Run Golf Course (Golf Course) located in Silvis, Illinois. The tournament’s primary sponsor was the John Deere Company; the golf course was leased to the Tournament Players Club of Illinois, Inc.; and the tournament, known as the “John Deere Classic” (JDC), was operated by Quad Cities Golf Classic Charitable Foundation.
5. The JDC occurred during the dates of July 9 – 15, 2007.
6. MetroLINK provided bus transportation for those going to and from or working at the JDC. This bus transportation consisted of the following service to and from the Golf Course and the following parking locations:
 - Quad Cities Downs (designated to the public as “public parking”)
 - Moline High School (designated to the public as “public parking”)
 - Rock Island Fair Grounds (designated to the public as “VIP parking”)
 - Riverbend Industrial Center (designated to the public as “volunteer parking”)
 - Wells Fargo Bank (4101 John Deere Road)
7. Some of these parking locations and the Golf Course were located on or near MetroLINK’s regular fixed route service. However, with the possible exception of the Quad Cities Downs parking lot pick up, none of the four other pick up sites were regular MetroLINK bus stops.
8. MetroLINK asserts that where the bus transportation was along these fixed routes that intermediate bus stops shown on MetroLINK’s fixed route map served as extended deviated fixed routes and/or demand-response points for transportation to and from the Golf Course. MetroLINK reports that six out of 14 bus drivers of the JDC service received requests for and/or actually picked up and dropped off passengers at regular fixed route intermediate bus stops pursuant to a demand-request and seven out of 14 bus drivers actually picked up or dropped off passengers at regular fixed route intermediate bus stops at the passengers’ request.
9. While MetroLINK’s service may have run within its regular fixed route corridor and even on the same streets that made up its regular fixed routes, it is inaccurate to say that the JDC golf bus routes were the same MetroLINK’s regular fixed routes as noted in their regular route schedules or maps. None of the JDC golf bus routes were the exact same routes as MetroLINK’s regular fixed routes, but rather the JDC routes ran on only parts of two different regular fixed routes for part of each regular route’s distance. For example, the JDC bus route from Moline High School to the golf course traveled on part of regular fixed route Route 30 and part of regular fixed route Route 50. The JDC Will Call bus route also required the joining of regular fixed routes Route 90 and Route 50. Thus, the JDC routes did travel on the same roads as MetroLINK’s regular fixed routes, but they did not travel the same route as MetroLINK’s regular fixed routes.

10. At least some of the pick up and drop off points were not at regular fixed routes bus stops. (See for example, the Orange golf shuttle stop at the Riverbend Industrial Park that was four blocks from the nearest MetroLINK route; the Blue golf shuttle to the Fairgrounds pick-up point and the Moline High School pick-up point which were each hundreds of feet from the regular MetroLINK route or bus stop; and the Pink golf shuttle pick-up point which is not regularly served by MetroLINK's Colona Road route. Further, the VIP shuttle bus dropped passengers off inside the golf course main gate at the club house which was not a regular fixed route bus stop.
11. The JDC bus routes were not advertised by MetroLINK or noted in MetroLINK regular fixed route maps or schedules. Instead, the advertisement of the JDC park and ride locations was published by the JDC sponsor or affiliate.
12. At least one or some of the MetroLink buses had in their windows signs that read "The State Farm good Neighbor SHUTTLE".
13. Different groups of attendees were directed to different specific buses and dropped off at the different designated locations. Buses carrying persons from the public parking lots were dropped off at the golf course main gates. Buses carrying persons from the VIP parking lot were dropped off at the golf course club house.
14. The bus service was open to the public upon the payment of the designated fee.
15. A parking fee of \$3.00 was charged and a round trip express fare of \$2.00 was charged for those boarding at the designated parking lots, an amount consistent with MetroLINK's published bus fare. Passengers boarding along the routes were charged MetroLINK's published fare.
16. Fares collected at the parking lots were collected by the JDC and, after the event, were remitted to MetroLINK.
17. By written Coach Lease Agreement, last dated August 16, 2004, CUMTD agreed to lease seven buses to MetroLINK for the purpose of transporting passengers to and from the John Deere Classic from July 5 through July 11, 2004.
18. By written Intergovernmental Agreement (IGA) dated June 19, 2007, CUMTD agreed to lease 10 buses to MetroLINK during the period of July 9 through 16, 2007. As noted in the IGA, the stated purpose of the agreement was to assist MetroLINK in meeting "planned transit requirements".
19. By email dated July 2, 2007, FTA provided CUMTD approval to lease the buses to MetroLINK.
20. MetroLINK asserts that: (a) there was no "contractual relationship with the JDC or any affiliated entities"; (b) that they determined who and how fares were collected and the amount of the fare; (c) they determined the level of service regardless of who the passenger was (VIP or volunteer or other); and (d) for the bus service for the 2007 tournament, no employee or director of the JDC made a request to MetroLINK to provide the service.

21. By letter of May 10, 2007, from MetroLINK to FTA, MetroLINK represented that the service to be provided to the golf tournament was "supplemental service and is in MetroLINK's current service corridor (Route 55)." MetroLINK asserts that on the basis of this letter and subsequent communications with FTA, distributed Notice of Service request to local private charter operators FTA verbally approved of the service by MetroLINK as not violating FTA's charter rules.

CONCLUSIONS OF LAW

(Note: The Conclusions of Law hereinafter made are based on FTA charter regulations in effect prior to April 30, 2008.)

1. 49 CFR Section 604.15 provides as follows:

(a) An interested party ("complainant") who believes that a Recipient is in violation of the requirements of this part may submit a written complaint to the FTA Regional Administrator. The complainant shall also send a copy of the complaint to the recipient ("respondent").

* * *

(j) Interested Party means an individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient regarding charter service.

2. The Complainant, Allerton Charter Coach, Inc., is an Interested Party as that term is provided in Section 604.15(j).
3. "Charter service" is defined at 49 CFR Section 604.15(e) as follows:

Charter Service means transportation using buses or vans, or facilities funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge (in accordance with the carrier's tariff) for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after having left the place of origin. This definition includes the incidental use of FTA funded equipment for the exclusive transportation of school students, personnel, and equipment.

4. The service at issue here was conducted by Respondent MetroLINK and used buses that were funded, in part, by the FTA under 23 U.S.C. Section 142 and 49 U.S.C. Chapter 53.
5. The service at issue here transported persons pursuant to a common purpose and at a fixed charge in accordance with tariffs established by MetroLINK. The bases upon which this finding is made include, but may not be limited to, the following collective facts:
 - a. The MetroLINK buse(s) displayed placard sign(s) that indicated the service was a shuttle service.

- b. MetroLINK's service was from five off-site parking locations, only one of which could be considered at a regular MetroLINK bus stop. Photos of the various parking lot stops showed the buses stopped within the parking lot next to a temporary tent.
- c. As noted in the attached event-provided brochure of off-site parking locations, different parking sites (and, consequently, the bus service to the golf course) were provided for different categories of attendees. Advertised were two sites for "public parking", a third site for "VIP parking", a fourth site for "volunteer" parking, and a fifth site for "Will Call". There were different designated drop off points at the golf course for the non-VIP/volunteer patrons versus the VIP and volunteer patrons.
- d. MetroLINK JDC service routes were not the same as its regular fixed routes, but rather were a combination of regular fixed routes. The pick up points (parking lots) and drop off points (at and within the golf course) were not regular fixed route stops.
- e. We are not persuaded by MetroLINK's argument that this service was its regular service because the routes were "an extension of the routes". MetroLINK did not show any of these "extensions" in their usual and customary method of advertising its regular fixed route bus service.
- f. We are not persuaded by MetroLINK's argument that this service constituted "demand-responsive" service. At least one FTA definition of "demand-response" service provides that such service is *not* fixed route service. (See 49 CFR Section 37.3) MetroLINK, however, claims that this service was fixed route (or an extension thereof). (See MetroLINK letter dated January 28, 2008, page 3.) MetroLINK then claims that if not an extension of the fixed route, then "certain" locations were demand-response points. However, even if six out of the fourteen bus drivers received demand-responsive requests for intermediate bus stop pick ups or drop offs, such actions do not mean that the *entire* JPC bus service was demand-responsive service. (See also, the new charter rules currently found at 49 CFR Section 604.3(c) that now codifies the inapplicability of "demand response" service as service that does not constitute charter service.)
- g. We also do not find the fact that some of the buses report making pickups or drop offs at intermediate stops persuasive that the JDC service was regular fixed route service. MetroLINK did not provide detailed evidence of how many such stops were made out of the entire seven days of service. Given the specialized notice of the JDC bus service pick up points; the absence of information of these special JDC bus runs on MetroLINK's regular route information notices to the public; that the JDC bus routes were not the same as its regular fixed routes; that the pick up and drop off points were not regular fixed route stops; we find it is reasonable to conclude that the JDC bus service may have only coincidentally served the general public who were not patrons of the JDC golf tournament. (See *McGill, Inc. v. Greensboro Transit Authority* (July 1, 1998); and *Kemp's Bus Service, Inc. v. Rochester-Genesee Transportation Authority* (September 18, 2002).

- h. We find that, given the totality of the circumstances and these collective facts, it is reasonable to conclude that the service at issue was for a common and singular purpose: to provide shuttle bus service for patrons of the golf tournament and not MetroLINK's regular fixed route bus service.
6. The service in question constituted "exclusive use" of the bus service. The JDC bus routes were not advertised by MetroLINK or noted in MetroLINK regular fixed route maps or schedules. Instead, the notice of the JDC park and ride locations was published by the JDC sponsor or affiliate. Thus, while the service was open to any member of the public to use (although that might also be a point of dispute with regards to the VIP and volunteer shuttles) upon the payment of the required fare, given the totality of the circumstances and the collective facts, as stated above, we find that it would be reasonable to conclude that the service was intended to meet the needs of the JDC golf tournament patrons and not those of the general public who were not JDC golf tournament patrons. See, *McGill, Inc. v. Greensboro Transit Authority* (July 1, 1998) and *Kemp's Bus Service, Inc. v. Rochester-Genesee Transportation Authority* (September 18, 2002).
7. We are unable to conclude that there existed a contract or agreement between MetroLINK and the JDC, the John Deere company, State Farm or anyone affiliated with the golf tournament. MetroLINK declares that there was no such contract or agreement. (MetroLINK letter dated January 28, 2008: "More specifically, any coordination and cooperation achieved between the JDC and MetroLINK occurred without the guidance of any written contractual terms. MetroLINK's lack of a contractual relationship with the JDC or any affiliated entities vested MetroLINK with total control of the bus transpiration service." (Emphasis added.) MetroLINK's letter dated August 4, 2008: "For the period applicable to this Inquiry No. 12, no employee or director of the John Deer Classic made a request to MetroLINK to provide the bus service.") Allerton counters that MetroLINK's carefully worded response does not preclude them from having a contract with another entity associated with the tournament. However, as noted above, MetroLINK expressly declares that they had "no contractual relationship with the JDC or any affiliated entities..." (Emphasis added.) Allerton then argues that it is improbable that MetroLINK autonomously conceived, designed and operated this service in synchronization with the golf tournament's needs and activities. FTA also notes that MetroLINK concurs that the JDC determined the classification of passengers (VIPs, volunteers, etc.) and that the fares at the parking lots were collected by those other than MetroLINK then remitted to MetroLINK. However, given MetroLINK's express declaration and lack of other specifically presented evidence, FTA can not conclude definitively that there was an agreement or contract between MetroLINK and the JDC golf tournament or anyone affiliated with the tournament to provide the shuttle bus service. It is possible, for example, that MetroLINK, based on past experience, recognized a need for the service and provided it without an agreement or contract with JDC or anyone affiliated with it. While it could well be concluded that MetroLINK did not act in a vacuum, Allerton has not provided proof of such an agreement or contract other than circumstantial evidence.
8. Allerton's complaint also argues that MetroLINK inadequately informed private operators of the planned JDC bus service opportunity. Since we find that the service in question has not been proven to be prohibited charter service, we conclude that the adequacy of MetroLINK's notice is not subject to evaluation under this action.

9. Allerton also argues that MetroLINK, in violation of the FTA charter rules, improperly requested particular types of vehicles. Again, as found above, since we have concluded that MetroLINK's service was not proven to be charter, we need not address this argument.
10. Allerton's complaint argues for a finding of a pattern of violations by MetroLINK in conjunction with its request for the imposition of a higher level of remedies. However, Allerton provided no evidence of MetroLINK's bus service to past JDC tournaments. Thus, we are unable to find that service MetroLINK may have provided to the JDC prior to 2007 violated FTA's charter service rules.
11. We conclude that CMUDT did not violate the FTA charter regulations. While their buses were used in the disputed service, CMUDT provided the buses by lease agreement under the representation that the buses were to be used for MetroLINK's transit purposes. Any violation of the charter rules would have fallen unto MetroLINK and not CMUDT.

CONCLUSION

FTA finds, herein, that MetroLINK and CMUDT did not violate FTA's charter rules (as existed at the time) for the 2007 service to the JDC. We note that this decision was not influenced by the apparent pre-approval of FTA leading up to the leasing of the buses and the service being provided. We find that there was not sufficient information provided to FTA at that time for what the service actually would entail and, in fact, FTA's position at the time was based on representations that the service would be a supplement to MetroLINK's regular fixed route service. We conclude, in fact, that the service here was not regular fixed route service. However, as noted above, we are also compelled to conclude that just because the service was not fixed route service, does not automatically mean under FTA's old regulations that the service was charter.

ORDER

FTA finds that Respondents have not been providing impermissible charter service.

In accordance with 49 C.F.R. §604.19, the losing party may appeal this decision within 10 days of receipt of the decision. The appeal should be sent to James Simpson, Administrator, FTA, 1200 New Jersey Avenue, Room E57-314 - East Building, Washington DC 20590.



Marisol Simón
Regional Administrator

Date: 9-26-2008