



U.S. Department
of Transportation
**Federal Transit
Administration**

BEFORE THE FEDERAL TRANSIT ADMINISTRATION

District Union Local One of the United Food & Commercial Workers Union
Complainant

v.

Docket No.2006-02

Rochester-Genesee Transportation Authority,
Respondent.

DECISION

Summary and Background

The Federal Transit Administration (FTA) is hereby reaffirming and supplementing its January 18, 2007 Decision(Decision) on the above referenced matter (Docket No. 2006-02) brought by the United Food & Commercial Workers Union Local One (Union) against the Rochester Genesee Regional Transportation Authority (RGRTA). In its earlier Decision, FTA ordered that RGRTA cease and desist from school bus operations as soon as feasible. Subsequent to this Decision, the Union corresponded with FTA by letter dated February 27, 2007, requesting to participate fully in any administrative review of the Decision. By letter dated March 20, 2007, RGRTA requested that FTA reconsider its determination that the service in question was exclusive school bus service and find instead that it was legitimate public transportation. As this new decision explains, after reopening the Decision and reviewing all of the documents FTA relied upon in its Decision and the subsequent filings of both complainants and respondents, FTA reaffirms its Decision and finds that the service in question violates FTA's school bus regulations.

Administrative History

a. Decision

As noted above, on January 18, 2007 FTA issued its Decision on the original complaint filed in Docket No. 2006-02. FTA hereby incorporates by reference into this decision all filings and submissions of the parties leading up to the Decision as outlined therein.

b. RGRTA March 20, 2007 Letter

On March 20, 2007, RGRTA sent FTA a letter which raised several issues, namely:

1) Whether FTA's Decision encompassed the "seasonal routes" with numbers from 100 to 199.

As the Union stated in its December 28, 2006 second rebuttal, its complaint was confined to certain school bus routes, which did not include the "seasonal routes." In addition, FTA's Decision only addressed school bus service and, therefore, these routes were not included. Similarly, because the Decision only considered routes 99 and above, we will not address comments on routes below 99.

2) Whether FTA's Decision covered the 66, "Category 2" routes (270-373, 460-470, and 825-839) that were in existence prior to September 2006.

3) Whether the "Category 3" routes (420-434 and 530-639) established for the September 2006 school year, were in fact in violation of FTA's school bus regulations at 44 CFR part 605.. The "Category 3" routes involved service to four (4) high schools: Franklin High School; Dr. Freddie Thomas High School; Jefferson High School; and Frederick Douglass High School. Category 2 and 3 routes will be discussed below. RGRTA also provided "Preliminary Comments," an "Analysis of the Definition of Tripper Service," "Factual Clarifications" and "Proposed Modifications".

c. The Union's March 26, 2007 Letter

On March 26, 2007, the Union submitted a new complaint alleging that RGRTA had amended its agreement with the Rochester County School District (RCSD) to establish three new school bus routes (570, 571 and 572) in violation of FTA's school bus regulations.

d. FTA April 5, 2007 Re-opening

On April 5, 2007, FTA re-opened its Decision in order to consider comments from both parties before taking any further action. Therein, FTA treated RGRTA's March 20, 2007 letter as a "Reply" to the Union's second rebuttal dated December 28, 2006 and invited the Union to enter a Sur-Reply.

e. FTA Letter dated May 3, 2007

On May 3, 2007, FTA expanded the scope of this matter to include the Union's March 26, 2007 letter regarding the three new routes.

f. May 7, 2007 Union Parties Sur-Reply

The Union hand-delivered an undated Sur-Reply, printed on New York School Bus Contractors Association ("NYSBCA") letterhead, to FTA on May 7, 2007. The Union submitted the Sur-Reply on behalf of the NYSBCA, Laidlaw Education Services ("Laidlaw") and the Union ("the

Union Parties”). Laidlaw is a private school bus operator providing school bus service in the Rochester area. Jointly, they argue that RGRTA service is controlled and contracted for by RCSD and that the routes are not regularly scheduled bus routes.

Among other arguments, the Sur-Reply alleges that the service at issue is state-mandated service for students who live over 1.5 miles from school and is meant to be third-party bus work. The Union Parties claim that the 66 “Category 2” RGRTA bus routes are school routes improperly taken over from Laidlaw Education Services in 1999.

With respect to the “Category 3” routes, the Union Parties claim that RCSD entered into a contract with RGRTA for routes 420-434 and 530-635 and cancelled certain Laidlaw routes as a result. Accordingly, the Union Parties argue that the school bus triple digit routes are not similar to regular routes and did not exist prior to the third party contracts with the RCSD.

The Union Parties request clarity on the matter of charter transportation as it relates to different RGRTA routes. As the subject matter of this complaint is limited to school bus transportation, FTA expresses no opinion on any charter matters as they relate to RGRTA.

g. RGRTA Letter of May 11, 2007

On May 11, 2007, RGRTA responded to the Union’s March 26, 2007 letter which requested the investigation of the three additional routes: 570, 571 and 572. RGRTA stated that the routes were not new and had been in operation since October of 2006. RGRTA submitted pages, apparently drawn from its website in May 2007, which indicated the hours of operation and the stops of the three routes.

RGRTA admitted that the routes are not included in its printed Schedule Book of Routes 99 and Above (“Schedule Book”). RGRTA explained that these routes were added at the request of RCSD after the Schedule Book had already been printed. Further, RGRTA stated that RCSD will not generally subsidize fares for students who live within 1.5 miles of the school but, due to a safety concern, RCSD made an exception and decided to contract for the service with RGRTA.

RGRTA suggests that RCSD has subsequently made other plans and is returning to its policy of not subsidizing fares. Accordingly, RGRTA will also be phasing out this route. FTA, therefore, notes that, while these routes are clearly school bus service, the issue is moot since RGRTA will no longer be operating these routes.

h. RGRTA Letter of May 21, 2007

On May 21, 2007, RGRTA responded to the Union Parties’ Sur-Reply delivered on May 7, 2007. In relevant part, RGRTA countered the Union’s argument regarding control of the routes by reference to a Subsidy Agreement with RCSD. The Subsidy Agreement expressly states that RGRTA retains exclusive control over the schedules, routes, types of equipment and number of buses for the routes at issue.

In answer to the Union's argument regarding students using RCSD identification cards as bus passes, RGRTA stated that RCSD issues the cards to students living more than 1.5 miles from the school but that the cards can be used on any bus routes with numbers above or below 99. RGRTA also stated that students living within 1.5 miles can board any bus, as does any member of the general public.

RGRTA's argument is based on the definition of "tripper service," specifically arguing that it can either be "designed" or "modified" to accommodate the needs of school students. RGRTA contends that its service is proper because it was designed to accommodate students and is not exclusive. Additionally, RGRTA notes that RCSD's lists of students and bus stops does not show who controls the routes.

In addition, RGRTA reiterated that all of the tripper buses operating on routes numbered above 200 stop only at public bus stops as required by FTA regulations. RGRTA submitted video clips apparently demonstrating that the buses on tripper service routes stop not only at the school, but at each bus stop along the route, as do other regularly-operating RGRTA buses.

RGRTA stated, with respect to start times at the schools changing from 7:30 to 8:30, that the shift indicated that RCSD conformed to RGRTA's schedules and not that RCSD controlled the route. Additionally, RGRTA stated that it is typical to operate tripper service only on school days, suggesting that this fact did not indicate school bus service. However, RGRTA acknowledged that, in future tripper service schedules, they would advertise that the service would operate only on school days to provide the public with an accurate schedule. RGRTA also offered to include in future schedules the exact dates of "Early Dismissal" from school so that the general public would again be aware of the actual schedule¹.

i. June 11, 2007 Union Letter

On June 11, 2007, the Union replied to RGRTA's May 11, 2007 letter which addressed the three additional routes. This letter was accompanied by an undated e-mail letter from NYSBCA indicating its total support of the Union's position. The Union stated that RGRTA's May 11, 2007 letter reinforced its position that the school bus routes operate at the request of RCSD and are discontinued when no longer requested or subsidized by RCSD. The Union alleged that the purpose and intent of these routes demonstrated that they are effectively controlled by RCSD. According to the Union, the service typifies home to school service under contract to a school district. Finally, the Union pointed out the fact that school routes were not published on the RGRTA website in the same manner as routes below 99 in the "schedules and maps" section. The Union claims that this discrepancy illustrates the different nature of the school bus and regular routes.

j. The Union's June 25, 2007 Letter

The Union's June 25, 2007 letter ("June 25 Submittal") responded to RGRTA's May 21, 2007, letter which rebutted the Union Parties' Sur-Reply. The June 25 Submittal incorporated by

reference as part of Exhibit One, written comments prepared by Laidlaw, also dated June 25, 2007 (“Laidlaw Comments”).

The June 25 Submittal also includes an Appendix A that consists of four maps depicting the approximate 65 routes Laidlaw purportedly operated for RCSD prior to September 2006. Appendix A also overlays these routes with those presently operated by RGRTA. The Union alleged that the illustration demonstrates that the former Laidlaw school routes closely parallel what RGRTA conversely believes to be “tripper” routes.

Exhibit Two of the June 25 Submittal is a PowerPoint presentation to RCSD representing RGRTA’s current triple-digit school routes as well as future additional school routes. The Union pointed out that Exhibit Two of the June 25 Submittal distinguished between “regular line service” and service “directly routed from neighborhoods.” In the June 25 Submittal, the Union alleged that the loss of routes in September 2006 resulted in a \$2.1 million annual loss to Laidlaw. The Union also claimed that the Subsidy Agreement between RCSD and RGRTA in Exhibit A showed the routes for which RCSD received state reimbursement and through which RCSD met its state requirement to provide home-to-school transportation to all students. The Union asserted that most of these routes were previously operated by Laidlaw and that, despite the plain language of the Subsidy Agreement giving control to RGRTA, RCSD controlled the routes through subsidization. The Union emphasized that the school service substituted for service previously provided by a private operator and served stand-alone neighborhood routes. The Affidavit of Ralph Frisch (part of Exhibit One to the June 25 Submittal) stated that in March of 2006, RCSD advised Laidlaw that it would be taking away 65 routes that Laidlaw had historically operated and would transfer those routes to the RGRTA.

With respect to the school start times, the Union rebutted RGRTA’s statement and asserted that the change in start times was unrelated to RGRTA’s schedule, and instead, originated from an RCSD proposal to follow later start times based on a California student study. The Union claims that this demonstrates RCSD’s control over RGRTA’s routes and schedules. The Union also submitted an Exhibit Three which announces the creation of new summer routes that RGRTA says are designed to accommodate the needs of school students. The Union predicted that this would cause a further loss of school bus runs for Laidlaw in the summer.

The Union, through the Laidlaw Comments, explored the purpose of the school bus prohibition and referred to the amendments brought about by the Safe, Accountable, Flexible, Efficient, and Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”). The Union argued that the tripper service provision, as demonstrated by a Conference Report in the legislative history of SAFETEA-LU, was meant to be a narrow exception. The Conference Report, which discussed the amendment relating to the withholding of grant funds, stated that the new section applies when public agencies violate the “narrowly defined conditions” under which transportation providers may provide school bus transportation. The Union argued that this narrow exception, through RGRTA’s actions, is being transformed into a general rule allowing unlimited school bus transportation in contravention of the purpose of the statute. The Union also claimed that when the “tripper service” definition was adopted into the regulations in 1976, it was narrowly drawn to protect private school bus operators. In closing, the Union reiterated its belief that RGRTA’s school bus routes are not modifications to its regularly scheduled routes.

Discussion

As stated above, this decision supplements FTA's Decision of January 18, 2007. In that Decision, we found that RGRTA's school bus routes numbered above 99 were impermissible school bus operations in violation of FTA's school bus regulations at 49 C.F.R. Part 605. Since the Decision was issued, FTA has engaged in a lengthy consideration of allegedly new and clearer information presented by the parties.

In FTA's Decision, we compared the service provided by RGRTA to the tripper service definition at 49 C.F.R. § 605.3 which provides:

Regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry destinations such as "school bus" or "school special". These buses may stop only at a grantee or operator's regular service stop. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules. 49 C.F.R. § 605.3.

We concluded that the service was not "tripper service" within the meaning of this definition. We noted that, in SAFETEA-LU, "mass transportation" was redefined as "public transportation." 49 U.S.C. § 5302(a)(10). In addition, SAFETEA-LU made it mandatory for FTA to bar a recipient or an operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if FTA finds that a recipient has violated its school bus transportation agreement. 49 U.S.C. § 5323(f)(2).

In its earlier Decision, FTA compared the service provided by RGRTA to the following elements of the "tripper service" definition: 1) regularly scheduled mass transportation service; 2) designed or modified to accommodate the needs of school students; 3) fare collection or subsidy system; and 4) open to the public with regular service stops and published schedules.

Although our findings have not changed with respect to each of these elements, we will expand upon and clarify some points and respond to others raised by the parties to this Complaint.

RGRTA has emphasized several issues in its submissions. The first issue we will address is the question of what constitutes "mass transportation" or "public transportation." RGRTA has stated that FTA did not consider what constitutes "mass transportation" in its analysis. We note at the outset that this is one of the elements of the tripper service definition which FTA did in fact consider. However, in light of the further submissions, and to further clarify our decision, we will discuss "public transportation" and its purpose at greater length.

The term "Public Transportation" means: "transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus,

charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in chapter 243 (or a successor to such entity).” 49 U.S.C. § 5302(10).

A. Public Transportation Service

From the outset, it is clear that school bus transportation is expressly excluded from the definition of public transportation. The legislative history of the Urban Mass Transportation Act of 1964, as amended by section 3(g) of the National Transportation Assistance Act of 1974, added a provision requiring grantees such as RGRTA to enter into agreements not to engage in “schoolbus operations exclusively for the transportation of students . . . in competition with private school bus operators.”

As stated in the original preamble to the Urban Mass Transit Administration (UMTA) (now FTA) school bus regulations, “these regulations added a new Part 605 to UMTA regulations to protect private school bus operators who are in competition with federally-assisted operators in providing transportation for school students, personnel and equipment.” 41 Fed. Reg. 14127 (April 1, 1976). UMTA summarized as follows: “These regulations are issued to provide economic protection for private school bus operators who must compete with federally-assisted operators in providing transportation for schoolchildren, personnel and equipment.” 41 Fed. Reg. at 14128.

This legislative and regulatory history further supports the findings we made in our earlier Decision. In that Decision, we quoted from *Chicago Transit Authority v. Adams*, 607 F.2d 1284, 1293 (7th Cir. 1979), wherein the court recognized that, “Congress intended to bar grantees from competing with private operators in daily bus transportation to and from the students’ school of regular attendance.” Further, the court stated that “UMTA has interpreted the Acts to prohibit federally-funded buses in school bus operations so as to preserve these buses for use in mass transportation.” *Id.* at 1294. Therefore, when we analyze RGRTA’s purported “tripper service,” we look at the purpose behind the service as well as the characteristics of the service to determine whether the routes are indeed public transportation.

To determine whether service is public transportation, FTA considers the intent of the grantee as demonstrated by the effort undertaken to make schedules accurate and available to the general public. The Union pointed out, and RGRTA acknowledged, that the general public does not know which days are “Early Dismissal” days and could not possibly discern the schedule on those days. In addition, RGRTA acknowledged that it did not incorporate the school vacation schedule into its Schedule Book and that the general public did not have access to an accurate schedule for such days when the buses are not running. FTA has found that lack of public outreach in publishing an accurate schedule is one more indicia that the service is not public in nature and, therefore, not public transportation.

Whether the RGRTA service is public transportation tripper service or school bus operations is also evidenced by RGRTA’s Power Point presentation to RCSD in Exhibit Two of the Union’s June 25 Submittal. In what RGRTA terms a “partnership” with the RCSD, RGRTA offers to the RCSD that if students miss the “direct neighborhood” bus provided by RGRTA, access to RGRTA’s “regular line service” will be available. This “direct neighborhood routing” service is the current school bus service that RGRTA provides to students of the RCSD. Even RGRTA, in

presenting its Power Point presentation, recognized the difference between the two types of service. In our earlier Decision, we discussed how these school routes are not regularly scheduled public transportation. This was clear from the treatment these routes received in the RGRTA printed schedules and the RGRTA website schedules. These “direct neighborhood” routes operate like school routes to and from school every day and replace the operation of the private bus providers.

In determining whether service is public transportation, FTA also considers whether the service is under the control of the recipient. In RGRTA’s letter of May 11, 2007, RGRTA explained that three new routes were added at the behest of RCSD. RGRTA further explained that this service would be discontinued soon as RCSD no longer desired it and that RCSD would not be receiving a state subsidy for these routes because the route serves children that live under 1.5 miles from their school. This elucidates the process by which RGRTA decides to operate routes. While RGRTA’s Subsidy Agreement with RCSD states that RGRTA controls and designs its routes and fares, it is clear that the routes are developed at RCSD’s request and that it is RCSD that essentially determines whether service is necessary.²

These factors indicate that the service in question is not public transportation. That said, the service cannot be considered tripper service but for purposes of argument, we will discuss “tripper service” below.

B. Tripper Service

In the preamble to FTA regulations instituting the “tripper service” definition, we explained that the “tripper requirement was added to prevent federally-assisted operators from operating special routes for schoolchildren which are *not generally available* to the public.” 41 Fed. Reg. at 14127(emphasis added).

In order to be tripper service, a route must qualify as public transportation and be part of regularly scheduled service. A public transportation route should first confer benefits to the general public and then be designed or modified to accommodate school children. As FTA found in its Decision, RGRTA provides legitimate tripper service on its routes below number 100 where students travel on regular public transit routes or where the routes have been modified to meet the students’ needs. These routes appear on RGRTA’s regular route map, on RGRTA’s regular timetables, on its website and are generally routes that operate at different times during the day. Tripper service, as its definition states, is mass transportation which is designed to meet students’ needs; it is not designed for school children and then given the label or some indicia of public transportation. The school service in question is not designed to be generally available to the public. The routes are specifically designed for school children and only incidentally serve

² Also, when FTA (or UMTA) implemented these regulations, a regulatory scheme was put in place to allow for exemptions for public agencies that were also operators of school bus systems to be grandfathered in and allowed to continue operating its school bus transportation systems under an exemption. 49 C.F.R. § 605.11. RGRTA is not grandfathered and this regulatory framework shows that these types of partnerships are not permitted today. RGRTA has what RGRTA has termed a “partnership” with the school district to operate all of these school bus services on its behalf; however, this did not provide a basis for the use of Federal monies in school bus transportation before and it does not provide one today. Instead, it illustrates the nature of the operation as school bus and not public transportation.

members of the general public.

We have said that operators should not operate routes that are not generally available to the public. We quoted in our Decision from our January 28, 2005 Federal Register Notice on tripper service that, “tripper service is intended to make ordinary transit bus service available to school children; it is not intended to substitute for school bus transportation.” 70 Fed. Reg. 4081, 4082 (Jan.28, 2005).

The routes in contention are the more than 100 triple-digit routes designed for school students which either were or may have been previously operated by private operators. A sampling of these routes indicates that, although they follow portions of one or more of RGRTA’s regular system routes, they primarily operate once in the morning at school opening time and/or once in the afternoon at school closing time. Moreover, the routes pick up around a neighborhood and then proceed independently and directly to the schools for some longer period of time and do not rejoin one of its regular system routes. The school is the final stop for most of these routes, and most do not make stops in the preceding ten or sometimes fifteen minutes. This time period corresponds with the 1.5 mile area around the school that RCSD is unwilling to subsidize because there is no state reimbursement. Therefore, there are no stops.

It is clear that RGRTA’s purported “tripper routes” do not follow the same routes as regular RGRTA routes. For example, when one examines Route 424, it starts in a neighborhood, joins a regular public transportation route (Route # 8A/8B) for a brief period but then goes without stops (“express”) to the school destination for the last ten to fifteen minutes. It has a different origin and destination point than the regular route and it is not a logical continuation of any pre-existing RGRTA bus route. Looking at route 350, we also see that its origin point is further along the route than the regular route that it most closely resembles (Route #1/Lake). It also goes through a neighborhood and then parallels Route #1/Lake for a brief period and then, at a later point, goes express for the last ten minutes. Similarly, Route 639 parallels a portion of a regular route (Route # 7 and 14) and then goes express to a school without any opportunity for stops for members of the general public and without any particular connection points to regular public transportation routes. As we said in *Travelways, Inc. v. Broome County DOT*, an acceptable modification is where a bus deviates from its regular path, makes a loop and returns to its regular path of travel continuing along the route. (FTA Dec. 4, 1985). RGRTA’s school-designed routes do not fit this description; however, even such a modification to rejoin a route would not transform this service into public transportation since its overall form and substance defeats the purpose of the school bus regulation.

We have noted and RGRTA has pointed out at page 17 of its March 20, 2007 letter, that in general, RGRTA public transportation buses stop approximately every two to three minutes and do not go express for the last ten or fifteen minutes of its routes. RGRTA’s school bus service has different origin points from its regular routes as well as new school destination points. The school bus service also runs express shortly after leaving the neighborhoods straight to the schools that they serve. As noted above, this is in contradiction to the way its regular route service operates. Although RGRTA is correct that the school routes are available on its website, the information is not available in the same manner as information regarding regular routes and it is difficult to retrieve. Further, for many routes the graphic representations are far inferior to that

provided for a regular route; they only depict a few stops with a small map not to scale. RGRTA's school bus routes are not integrated with its public transportation system routes and are not shown on its regular system maps or timetables.³ Therefore, it is clear that these routes do not qualify as public transportation tripper service. Our survey of routes displayed in Appendix A to the Union's June 25 Submittal/Frisch Affidavit demonstrated that the routes that RGRTA began operating in September 2006 for RCSD closely parallel those previously operated by Laidlaw. From this review, it is clear that these routes replace or substitute for private school bus service in direct contravention of the purpose of FTA regulations.

The sheer magnitude and number of routes that RGRTA is systematically taking over from private school bus providers (whether "Category 2" or "Category 3" routes) and which are then subsidized by RCSD, demonstrates the nature of RGRTA's service. RGRTA stands to receive over 7 million dollars for the upcoming school year in RCSD subsidy for transporting school students. This is a massive displacement of the private school bus operator and amounts to exactly the type of daily competition to and from the schools which the Chicago Transit Authority decision found the statute was intended to prevent. RGRTA competes directly with private providers with Federally-funded buses.⁴ RGRTA operates a school bus system that stands alone, confers no additional benefit to the general public and absorbs Federal resources that would otherwise be available for public transportation purposes⁵.

C. Exclusive School Bus Service

RGRTA placed heavy emphasis on the requirement in FTA regulations at § 605.14 that a grantee must enter into an agreement with FTA that it will not engage in *exclusive* school bus operations. Citing this, RGRTA justifies its current school service as technically non-exclusive. RGRTA claims that its service is open-door and that anyone can board. Although FTA has explained above why the service is not public transportation in the first instance and how the service, if allowed, would completely defeat the purpose of the school bus prohibition, we will address what makes service "exclusive."

In an October 12, 1982 advance notice of proposed rulemaking (subsequently withdrawn for lack of need by 55 Fed. Reg. 334, Jan. 4, 1990), FTA analyzed what would constitute "exclusive" school bus service in order to seek public comment on whether prohibited service was being conducted. FTA proposed six factors which could be considered in determining what is "exclusive." *See* 47 Fed. Reg. 44795, 44804. The factors pertinent to the analysis at hand are: whether the service operates only during school hours and during the school year; whether the school bus routes are part of the recipients' scheduled service; whether the route's origin and destination is a school; and whether the bus service only takes students and school personnel to and from school. From these factors, it is clear that "exclusive" does not mean that if one or more members of the public are capable of riding a bus, then the service would not be exclusive.

³ RGRTA in its March 20, 2007 letter suggested that it could print a separate map for tripper routes; however, they preferred not to integrate these routes with its regular public transportation route map.

⁴ That RGRTA took over routes previously operated by Laidlaw before September 2006 is also substantiated by the Frisch Affidavit, paragraph.2.

⁵ Moreover, our regulation provides that a "grantee agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement..." 49 C.F.R. § 605.15(a) (2). RGRTA's extensive operation and the way in which it has been structured, clearly amounts to a means to avoid the school bus requirements.

Exclusivity is determined by a combination of factors which, when weighed together, reveal whether the service in question is public in nature or not.

RGRTA stated in its March 20, 2007 letter that it picked up approximately 6500 non-student fare-paying passengers which demonstrates that the service is not exclusive. RGRTA has also acknowledged, however, that this represents an insignificant proportion of the riding passengers. Furthermore, we do not know what percentage of these riders may be school personnel and, therefore, a part of school bus operations. As FTA stated in its Decision, although technically the service may not be 100% exclusive under RGRTA's analysis, from RGRTA's own statements and the manner of operation, it is clear that the service generally and substantially transports school students and that it does not meet the needs of the general public. RGRTA's routes do not operate like public transportation routes and they compete directly with private providers substituting its service for school bus transportation. This is the same type of system-wide service that private operators would normally perform and is in direct competition with private operators.

Conclusion and Order

FTA hereby reaffirms its earlier Decision that the substance of RGRTA's service contravenes the purpose and intent of the statutory school bus prohibition and FTA's regulations. FTA finds that RGRTA's school bus services with route numbers over 200⁶ are prohibited school bus operations. Routes of this nature, which are designed primarily for school children rather than the general public and which constitute daily competition with the private sector provider, are not public transportation and are prohibited. Therefore, in accordance with 49 C.F.R. § 605.33, it is ordered that RGRTA cease and desist and not reinstitute such service prior to the commencement of the fall 2007 academic year.

In addition, SAFETEA-LU mandates that FTA must bar a recipient or operator from receiving Federal transit assistance in an amount the Secretary considers appropriate if it finds that a recipient has violated its school bus transportation agreement. 49 U.S.C. § 5323(f)(2). FTA finds that it is appropriate to bar RGRTA from receiving an amount not to exceed the amount it has received in subsidy for school bus operations in the 2006 school year, less the amount of documented direct variable costs that RGRTA incurred in operating the service. RGRTA is directed to provide information that FTA can use in calculating this amount within 60 days of this decision.

This decision is subject to judicial review pursuant to the Administrative Procedures Act, 5 U.S.C. 701-706.



Brigid Hynes-Cherin
Regional Administrator

July 30, 2007
Date

⁶ Routes between number 99 and 200 (Category 1) are routes that are not within the scope of this decision and, some of these routes, have been previously determined to be public transportation.