



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

Headquarters

1200 New Jersey Avenue S.E.  
Washington DC 20590

**Before the Federal Transit Administration  
U.S. Department of Transportation  
49 CFR Part 604**

**Request for an Advisory Opinion and Cease and Desist Order:**  
*Miller Transportation, Re: Transit Authority of River City*  
Docket No. FTA-2008-0023

**Advisory Opinion and Cease and Desist Order 08-23 ("Connected")**

On August 12, 2008, John Miller, President of Miller Transportation (Miller), requested an advisory opinion concerning parking lot shuttle service on the University of Louisville (UL) campus provided by the Transit Authority of River City (TARC), a recipient of Federal Transit Administration (FTA) funds. The request for the advisory opinion asserts that UL sent out a request for proposals to private and publicly-funded bus operators. From that request for proposals, Miller alleges that TARC was selected to provide shuttle service for the UL campus. On August 22, 2008, Miller followed up with an additional request for a cease and desist order and an advisory opinion which asserts that UL determines the number of buses, hours of operation, as well as dates for TARC to provide the shuttle service on the UL campus. Service is alleged to be provided completely within the UL campus and with origin and termination at a UL parking lot requiring a UL permit to enter. Miller also alleges that although a pass to ride the shuttle is available to the public, an application for the pass is only available upon 48 hour prior notice.

**1. Additional Information Submitted by the Parties**

On August 21, 2008, TARC responded to Miller's advisory opinion request stating that the service is open to the public and is controlled by TARC. TARC attached a copy of the route information for the UL campus shuttle service (the service is known as the "Cardinal Shuttle" or "Route 94" or "Black Loop"), as well as a copy of the Memorandum of Agreement (MoA), dated August 1, 2008, for this year's UL campus shuttle service by TARC for UL. Under the MoA, TARC will be paid \$445,000 for the UL campus shuttle service based on a charge of \$20.92/student.

Subsequently, on August 22, 2008, Miller filed a supplementary request for an Advisory Opinion and Cease and Desist Order related to the UL campus shuttle service. Specifically, Miller states that the UL shuttle is an exclusive circulator that does not connect with any of TARC's regular routes and is paid for by UL. The service, according to Miller, is the same type of service that FTA addressed in Question 23 of Appendix C

to the recently revised charter regulation. Question 23 addresses whether it is charter when a university pays for a shuttle service that does not “connect” to the transit agency’s regular routes. FTA’s answer to that question is that it is charter service because the shuttle is provided at the request of a third party for the exclusive use of a bus or van at a negotiated price. See, 73 FR 44927, 44933 (August 1, 2008). Miller asserts the UL shuttle service is neither an extension of TARC’s regular fixed routes nor does it connect with any other TARC routes. Furthermore, Miller believes Route 94 is controlled by UL. To support its contentions, Miller notes the fact that TARC’s trip planner does not identify Route 94 for service to the UL campus when the service includes a destination on the UL campus. In addition, Miller alleges that printed route maps do not show that Route 94 connects with any other routes in TARC’s system. All other route maps show connection points. Miller also alleges that TARC and UL operate half the service with each of their buses and that the UL buses are for students only. Consequently, Miller states in its request for an advisory opinion and cease and desist order that the UL shuttle service represents a loss to Miller of approximately \$500,000.

On August 27, 2008, TARC responded to Miller’s supplemental request. Specifically, TARC states that Route 94 is connected to other TARC routes and is open to the public. TARC acknowledges that UL does have one bus that it operates along Route 94, but that TARC does not control that one UL bus.

Both TARC and Miller filed additional information regarding the shuttle service in question on September 11, 2008. Miller in its filing included a number of prior MoAs between TARC and UL that allegedly demonstrate UL controlled the previous UL campus shuttle service. TARC in its final submission again stated that Route 94 is public transportation and not “charter” since it is in TARC’s system map, adjoins several other fixed routes, and is a public route.

## 2. Regulatory Requirements

Under 49 CFR Section 604.3(a)(1), charter service is “transportation provided by a recipient at the request of a third party for the exclusive use of bus or van for a negotiated price.” The regulation also lists several “characteristics” of charter service that FTA may consider when determining whether service is charter. Those characteristics are: (1) A third party pays the transit provider a negotiated price for the group; (2) Any fares charged to the individual members of the group are collected by a third party; (3) The service is not part of the transit provider’s regularly scheduled service, or is offered for a limited period of time; or (4) A third party determines the origin and destination of the trip as well as scheduling.

In addition, the word “exclusive” in the definition of charter is defined as “service that a reasonable person would conclude is intended to exclude members of the public.”

Finally, in considering a request for a cease and desist order the Chief Counsel “may grant a request for a cease and desist order if the interested party demonstrates, by a preponderance of the evidence, that the planned provision of charter service by a

recipient would violate this part.” 49 C.F.R. Section 604.24(a). Furthermore, the “Chief Counsel shall consider the specific facts shown in the signed, sworn request for a cease and desist order, applicable statutes and regulations, and any other information that is relevant to the request.” 49 C.F.R. Section 604.23(b).

### 3. Analysis

FTA examined TARC’s website. The UL shuttle service does appear on TARC system maps and its route information is posted with other TARC routes. The UL shuttle service, however, does not share a bus stop with any other route. In order to utilize the UL shuttle service in conjunction with one of the other routes that serves the UL campus, riders, in many cases, must walk significant distances. For the UL shuttle service, the distances to other routes range from .19 miles to .65 miles to .83 miles. Additionally, based on representations by Miller, riders cannot obtain transfers from the UL shuttle service to other routes, unlike other buses in the TARC system. Furthermore, when FTA examined TARC route maps, only the 94 Route showed no connection points with other TARC routes.

Thus, FTA’s analysis of the UL shuttle service turns on the definition of “connected.” The agency in drafting the charter regulations meant “connected” to mean routes that share a bus stop or station that would allow a rider to travel easily between routes with a transfer ticket and without a significant walking distance.<sup>1</sup> The UL shuttle service is not connected to any other routes in TARC’s service. While TARC indicated that the UL shuttle service does not appear on a number of trip planner requests as a result of a software issue, FTA believes that it does not appear in the trip planner because the route does not connect to other routes in a useful way. This fact leads FTA to conclude that the service is “exclusive” because the lack of connectivity would lead a reasonable person to conclude that the service is designed to exclude members of the public. Accordingly, the service is charter because it is service provided at the request of UL for the exclusive use of a bus or van for a negotiated price of \$445,000.00.

Furthermore, the service also meets at least two characteristics of charter. Namely, UL pays for the group (students and faculty) to ride the service and UL determines the origin and destination of the trip as well as the scheduling.

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<sup>1</sup> FTA conducted research on whether the term “connected” has been defined by FTA in the past or in the transit industry. The closest definition FTA could find was from the National Transit Institute Transit Academy, which defined “connectivity” as “the ability of a public transportation network to provide service to the maximum number of origin and destination trip pairs through the optimal integration of routes, schedules, fare structures, information systems, and modal transfer facilities.” NTI Transit Academy 2004 Service Planning and Schedules Definitions. Considering this definition, FTA believes that Route 94 does not represent the optimal integration of TARC routes because the route is isolated from TARC’s other routes.


#### 4. Cease and Desist

Given the above analysis, it is appropriate to issue a cease and desist order in this case. Miller demonstrated by a preponderance of the evidence that it is more likely than not that TARC is providing unauthorized charter service to the UL campus through Route 94. In order to perform this service within the charter regulations set out at 49 C.F.R. Part 604, TARC would have to send a notice to the list of registered charter providers describing the service and providing an opportunity for registered charter providers to bid on the service. To that end, and given that the school year at UL is well underway, TARC will have sixty (60) days to send notice to the list registered charter providers and allow such providers fourteen (14) days to respond to the notice. If no registered charter provider responds affirmatively to the notice, then TARC may provide the service under the exception contained in 49 C.F.R. Section 604.9.

This advisory opinion and cease and desist order applies only to the service described in Miller's letter dated August 12, 2008, and is based on the facts as presented by the opinion requester. Should new or different facts be presented or the facts of the actual service provided differ in any way, which are deemed significant by FTA in the determination of charter service, this opinion shall have no force or effect.

For these reasons, we advise Miller Transportation that its request for a cease and desist order is hereby **GRANTED** because TARC's UL shuttle service constitutes "charter" service. TARC has a sixty (60) day transition period to cease providing the service.

Dated this 21<sup>st</sup> day of October 2008.

  
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Severn E.S. Miller  
Chief Counsel