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## MAGAZINE FEATURES

# Could a Voice From the Hill Change the Charter Rule?

Recent upset to the Charter Rule occurring in Washington State has left motorcoach industry experts wondering what the future holds for the law. On Dec. 16, Congress approved and the Obama Administration signed the Omnibus Appropriations Bill, which included a provision from Sen. Patty Murray (D-Wash.) to exempt King County Metro Transit from the Charter Rule, allowing the agency to take precedence over private transportation companies to provide shuttle service for the Seattle Seahawks, Seattle Mariners and University of Washington Huskies sporting events.

While the provision is strictly meant to apply to charter service for these sports teams, it could be extended to other area events, meaning that potentially the Federal Transit Administration (FTA) would be unable to enforce the Charter Rule against King County Metro on any charter work, taking business away from an increasing number of private operators.

While the bill is not a permanent provision of the law, and so far is only in effect for the current fiscal year, chances are that if the bill is renewed, the provision will stay put.

### **Clarifying communication**

In 2008, clarifications were made to the Charter Rule, to enhance communication between public and private transportation and to make clearer which entity could take certain jobs. The Rule was also revised to add clarification on the appeal process, who to report to and penalties. The cornerstone of the original Charter Rule was a "willing and able" provision, meaning that if there was a private, willing operator who could provide the requested service and was able because they had the necessary equipment and met the requirements of the customer, then that operator had precedence over the public entity. It ensured that if there wasn't a private operator able or available, that the service would be done by a public agency, so the customer got service.

That intent did not change in the negotiated rulemaking. The revisions further clarified the "willing and able" provision and specified that the public entity could

seize opportunities to showcase itself. **"As a transit agency, if the mayor said '[there are] dignitaries coming to town, we want to be able to showcase our own service that we're paying for,' you weren't obligated to follow the willing and able rule and hire a private company when you had the service in your own backyard," explains Peter Pantuso, president, American Bus Association (ABA).**

**"[The clarifications] made the rule easier for everybody to understand: clearer definitions, clearer lines of who was responsible for what. Now those clear lines have been blurred, because you have a successful sports franchise that doesn't want to pay for service, and people buying tickets to go to a Seattle Seahawks football game, who are spending \$100 or more a ticket, don't want to pay an extra couple of dollars for transportation," he adds.**

#### **Fostering teamwork**

**While they worked on the clarifications, the Rule brought the public and the private sectors of the transportation industry together to put a meaningful rule in place that clarified how to share information. Pantuso says that the provision could have a ripple effect on the industry. "It would be very easy for other senators and members of Congress to all of a sudden follow the same model [as Washington State] for an agency that they represent. It could very quickly end up turning the Charter Rule around to the point where it was worse than when the negotiated agreement took place," he adds.**

**Pantuso points to examples of public and private operators working together more effectively over the last year, likely as a result of the clarifications. "The private sector stepped up to the plate, and provided excellent service for golf tournaments, the Kentucky Derby and the Hollywood Bowl Concert Series - all of those were done in an environment where they wouldn't been done before by the private sector." Many operators worked to develop relationships with the local transit agency. "It's been more of a partnership in the last year-and-a-half than it ever had been in the past, and it's unfortunate to see it moving in a different direction now," Pantuso says.**

Victor Parra, president, United Motorcoach Association (UMA), says that the exemption undermines the entire Charter Rule, creating a potentially dangerous precedent. "The whole Rule was [intended] to keep publicly funded transit out of work that has been the purview of the private sector. Given that the transits are subsidized by taxpayer dollars, there's no way we can compete. They offer the same service at a lesser price." He notes that while Sen. Murray said that she doesn't want any other jurisdictions or states to jump on board, that potentially could happen down the road.

Parra says that the Rule is valuable because it has promoted the need for the public and the private sector to work together at a time when deficits are climbing. He sees this teamwork as a way of reducing taxpayer expenditures and utilizing private sector resources to support the transportation needs of the community. "Government dollars, state and federal, are being squeezed," he adds. "This is a smart time to utilize private sector resources. Hopefully we'll see a lot more of that going forward. Instead of continuing to put out more money for publicly funded equipment, let's use private sector assets. They're there, they're paid for."

### **Competition contention**

Seattle-based Starline Luxury Coaches has been directly impacted by the provision. Gladys Gillis, CEO, says that as a result of the provision, Starline may be forced to cut the hours of many of their drivers. "If I can't let drivers work on the weekend to do a special event, that's full-time work, part of their 40 hours. If that work disappears, which it has, those drivers are going to have to ask for partial unemployment."

The Seattle Seahawks hired Starline to provide fan shuttles from area park-and-rides to the games for the 2009 season. Every Sunday, Starline supplied 15 to 17 buses for the shuttle service. The fare charged to the customer was exactly the same fare that King County Metro charged and produced taxable revenue. "The taxpayers paid the same amount as they would had [fans] been riding a Metro bus. Had Metro been running the service, tax dollars would have been supporting those buses, because Metro doesn't recover the fully allocated costs of running a bus," says Gillis.

Starline created revenue, approximately \$66,000, and paid tax on it, created jobs and reduced the number of employees drawing on partial unemployment, Gillis points out. "We didn't use any tax dollars, and our customer survey results were fantastic," she says.

However, after her provision victory, Sen. Murray's office put out a press release, dated Dec. 9, claiming that private transportation operations to "UW, Mariners and Seahawks games" run by Starline, (who is not mentioned by name in the release) "imposed more costly service" and used buses "that were unable to accommodate handicapped fans." (Gillis contends that Starline charged the exact same \$4 fare at their assigned park-and-rides as King County Metro, and that all their vehicles are ADA-equipped.)

Gillis adds that, in the release, Murray mis-classified what was merely a revision to a long-standing law, the Charter Rule, as a Bush Administration law, and said that it "wasn't fit for the Obama Administration."

She points out that the Rule has been in place for 35 years and the revisions were no more than a clarification of the law as it always existed. "Sen. Murray

has decided to paint it with a broad brush as a function of the Bush Administration," she says.

Like Pantuso and Parra, Gillis stands firmly by the Charter Rule. She describes it as well-thought out and well debated by all sides. "I think that there are a few pockets and, unfortunately, Seattle's one of them, where transit administration of leadership is very old school, and doesn't see a role for private operators in solving the deficit in the transportation struggle," she explains. "My hope is that all of the politicians that have an opportunity to consider this issue can find enough time to recognize the joint rulemaking process is very involved and there's so much more information than their staffers could ever explain to them." As Gillis sees it, the clarification of the Rule has helped transit agencies across the country get out of doing work that they were pressured into by politicians. "It created this graceful way of stepping aside for transit agencies and allowed more work for the private industry. That additional work has created jobs, reduced unemployment claims, created tax revenue, paid back into the local budget - all the things that free enterprise is designed to do," she says.

Gillis stresses that the FTA spent nearly a year identifying stakeholders across the country. When the Rule clarifications were completed and reviewed, public and private operators, as a cross-functional group, agreed to 80 percent of the Rule. "To come along a year or two later, and cast it as a Bush Administration rule that was not well-thought-out and doesn't really fit under the Obama Administration, is pretty unfounded."

Kevin Desmond, GM, King County Metro Transit, sees the situation differently. He recalls the joint service that King County performed with Starline for the University of Washington Huskies games last year. "We worked within the rules, but the rules did not ultimately yield an acceptable service to the various sponsors. We ended up doing the service for the University of Washington, so the rules really didn't work anyway, and the only loser was the public." In 2008, Starline, per the rules, through King County's brokering, signed a contract with University of Washington, and took a management fee to direct the agency service. Desmond explains that King County was under contract to Starline, not directly to the University. "We provided [nearly] all the service to University of Washington football games and, yet, the private sector company took the fee, because of the way the rules played out. This year, same arrangement," he adds.

Desmond says that shuttle service for the first two games did not run smoothly with the motorcoaches provided, because they were over-the-road, high floor buses with one door and narrower aisles. This slowed down loading time, generating fan criticism. Both Starline and the University asked King County to step in and operate the service for the rest of the season. "We operate low floor, articulated buses with front and back doors. Transit buses are designed for quick on and off. Over-the-road coaches are designed for long distance, more

comfortable travel," Desmond points out. After sporting events, with everyone leaving at the same time, the primary purpose of shuttle service is to get fans off the sidewalk and streets quickly. Transit buses are ideally suited to this type of situation. "We provided well over a hundred coaches to that service, [for] a huge outflow of fans after the game. The over-the-road coaches were simply not suited for that type of operation, so we had to step in," he adds.

A lot of concern was raised in Seattle over the University games shuttle service, as well as with service that King County had provided to Seattle Mariners baseball and the Seahawks football games. There was press support for continued operation of Metro transit special services, Desmond says. The dialogue focused on the taxpayers' right to the service they paid for, he adds. Responding to constituents' feedback, Sen. Murray inquired into the Charter Rule revisions, and the effect on her Seattle constituents.

Desmond confirms that King County Metro was in contact with Sen. Murray's office regarding the provision. "This was the senator's initiative, but we certainly had started the ball rolling about two years ago, right after the new [regulations] were issued," he says. The timing, he adds, was very close to when King County was about to sign an annual contract with the Seattle Mariners baseball team. "After a series of conversations with the FTA, we eventually developed a waiver request and we were granted it," he notes.

King County took on shuttle service to the Seattle Mariners games in 2009 after they canceled private shuttle service, because they could not arrive at a suitable deal with the private sector, says Desmond. "The private sector proposal on the Mariners service last year would have charged considerably more money to the Mariners and the fans, so providing special shuttles would have defeated the purpose," he adds.

Desmond says that King County Metro is working with the FTA to develop a suitable approach for the sponsors. "The Mariners season starts in just two to three months. [They] have to decide if they want to renew service with us next year and then we'll work through whatever procedures and policies....We want to make sure the taxpayers of the Seattle Metropolitan region get their money's worth from Metro and we're able to provide a service to these major events."

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