



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

Headquarters

East Building, 5th Floor – TCR
1200 New Jersey Avenue, SE
Washington, DC 20590

March 4, 2020

Julie Timm
Chief Executive Officer
Greater Richmond Transit Company
301 East Belt Blvd.
Richmond, VA 23224

Re: FTA Complaint No. 19-0136

Dear Ms. Timm:

This letter notifies you that the Federal Transit Administration (FTA) Office of Civil Rights has completed its investigation of the above-referenced complaint filed against Greater Richmond Transit Company (GRTC). The FTA Office of Civil Rights is responsible for ensuring that providers of public transportation comply with Title VI of the Civil Rights Act of 1964, as implemented by the U.S. Department of Transportation (DOT) at 49 CFR Part 21, and FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This letter outlines the results of our investigation and the additional documentation needed from GRTC.

In the FTA complaint investigation process, we analyze allegations for possible Title VI deficiencies by the transit provider. If deficiencies are identified, they are presented to the transit provider to correct them within a predetermined timeframe. If FTA cannot resolve the apparent violations of Title VI or the DOT Title VI regulations by voluntary means, formal enforcement proceedings may be initiated against the public transportation provider, which may result in the suspension or termination of federal funds. FTA also may refer the matter to the U.S. Department of Justice for enforcement.

Allegations

The complainant made the following primary allegations against GRTC:

1. GRTC updated its Title VI program and changed both its disparate impact policy and disproportionate burden policy thresholds in anticipation of forthcoming service changes as a way to avoid hitting thresholds that would qualify as an impact and a burden.
2. The service changes implemented in 2018 included eliminating routes and replacing them with a route with less coverage, and reducing the span and coverage of other routes, which resulted in a disparate impact on the basis of race, color, or national origin.
3. The public engagement component of the changes in the disparate impact and disproportionate burden policies was inadequate.

After receiving this complaint, FTA sent an information request to GRTC, as authorized by 49 CFR § 21.9(c), to respond to the allegations and provide background documents.

Analysis

FTA's investigation included a review of the material GRTC submitted in response to FTA's request for information, the 2018 service equity analysis, and GRTC's current Title VI program, dated September 2016, on file. After reviewing the documents, FTA cannot conclude that a Title VI violation occurred in connection to the service changes. However, the documents raised potential concerns and questions regarding GRTC's service equity analysis methodology and the agency's adherence to its Title VI program. These questions and concerns, along with our request for corrective actions, are detailed below. Through this letter, we are instructing GRTC to ensure in its upcoming Title VI program submission that it clearly explains how its methodology adheres to FTA's Title VI Circular 4702.1B requirements, that this methodology is applied appropriately during all equity analyses, and that GRTC otherwise ensures that it is following its Title VI program.

GRTC Demographics

FTA's Title VI Circular 4702.1B requires transit providers in urbanized areas of 200,000 or more and that operate 50 or more fixed route vehicles in peak service to collect ridership data, define minority transit routes, and monitor the performance of their transit system to ensure the end result of policies and decision-making is equitable. Circular 4702.1B, Chap. IV-7. FTA advises recipients to identify minority and non-minority routes or lines by either Census data or ridership surveys:

The transit provider would select either ridership or population of the service area and conduct an analysis using the same comparison population. Transit providers are cautioned not to "mix and match" their comparison populations. Ridership of affected route(s) should be compared to ridership of the system, and Census blocks or block groups should be compared with the population of the service area. Circular 4702.1B, Chap. IV-15.

While either Census data or ridership surveys are permissible tools for identifying minority and non-minority routes or lines, origin-destination ridership surveys tend to be more accurate, as people who live in particular Census tracts do not necessarily use public transportation at the same rate or percentage as each demographic group that resides in a particular Census tract.

In its 2018 equity analysis, GRTC states that it used American Community Survey (ACS) data and this data was then "multiplied by the number of annual trips traveling through each block group and aggregated" using the Transit Boardings Estimation and Simulation Tool (TBEST). This process is confirmed in GRTC's Title VI program, where it states that the methodology compares "the demographic and ridership data being used for the analysis" and that there will be a comparison between the "ridership population that will be affected by the change as compared to the general ridership population using percentages of the affected population and percentages of population of the service area."

In the June 2019 response to FTA's request for information, GRTC states that it uses ACS data and that using "ridership data would have limited the dataset." However, elsewhere in the response, it states that equity analyses are conducted by "multiplying the amount of trips currently offered in each block group by the minority and low income populations, as well as non-minority, and non-low-income." This response to FTA suggests that GRTC might have used a combination of Census data and ridership data in its service equity analyses.

As stated above, either Census data or ridership survey data should be chosen and used for an accurate analysis and should not be “mixed and matched,” as the mixing of these two sources of data may lead to inaccurate conclusions as to whether the service changes resulted in disparate impacts or disproportionate burdens. In its upcoming program and analyses, GRTC must more clearly explain its use of Census or ridership data and how the data was applied. See the Conclusion section below for the specific corrective action.

Major Service Change, Disparate Impact, and Disproportionate Burden Policies in Service Equity Analysis

FTA’s Title VI Circular states that in setting a threshold for the major service change policy, the disparate impact policy, and the disproportionate burden policy, the “threshold for analysis shall not be set so as to never require analysis; rather, agencies shall select a threshold most likely to yield a meaningful result in light of the transit provider’s system characteristics.” Circular 4702.1B, Chap. IV-13.

In GRTC’s 2014 Title VI program, the disparate impact and disproportionate burden thresholds were listed at 10 percent. In its subsequent Title VI program submission to FTA, GRTC raised the threshold for its disparate impact and disproportionate burden policies, stating that a “threshold shall be a 20-percentage point difference” between minority or low-income populations in the proposed service change area compared with minority or low-income populations in the larger GRTC service area. GRTC states that this analysis is an application of the 4/5ths rule, taken from the employment law context.

FTA’s Equal Employment Opportunity (EEO) Circular 4704.1A defines the 4/5ths rule as the following:

Four-fifths rule is a disparate impact analysis which measures the effect an employment practice has on a protected class. When the selection rate for any race, sex, or ethnic group which is less than four-fifths (4/5) (or 80 percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of disparate impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of disparate impact.

The 4/5ths rule is used for employment practices when assessing hires, promotions, terminations, and training opportunities for minority populations compared against non-minority populations, and FTA has no guidance about its application for service and fare equity analyses. We recognize, however, that local agencies have discretion in how they set their exact methodology for conducting these analyses.

In its Service Equity Analysis for Proposed April 2018 Service Changes, GRTC states on page 16 that the 2013 ACS data shows an average of 54 percent of the population as minority. This analysis states that if service increases, minorities must receive at least 34 percent of the benefit and if service decreases, minorities cannot bear more than 74 percent of the burden. For low-income populations, GRTC states that 2013 ACS data shows an average of 28 percent of the population of the GRTC service area is low income; if service increases, low-income populations must receive at least 8 percent of the benefit and if service decreases, low-income populations cannot bear more than 48 percent of the burden. Again, GRTC states that this is the application of the 4/5ths rule.

GRTC's application of the 4/5ths rule to assess for disparate impacts or disproportionate burdens was not correctly applied as it was interpreted to identify a +/- 20 percent range, a 40 percent range between acceptable benefit or burden, in the affected population. However, a correct application of the 4/5ths rule measures the impact by assessing the impact ratios—here disparate impact and disproportionate burden—between the identified populations, not simply adding a +/- 20 percent range to the identified population.

Further, in the response to FTA's request for information, GRTC responds that the "20 percentage point is based on the current minority median population of 63 percent for the service area by block group. Therefore a delta within +/- 12.6 percentage point is considered acceptable." The minority percentage cited in this response is different than the 54 percent cited in the service equity analysis. While GRTC acknowledges that a correct application of the 4/5ths rule would include a plus or minus that would not affect more than 4/5ths of the population, this acknowledgment contradicts the math and analysis applied in the actual service analysis for the 2018 service change.

In its upcoming program and analyses, GRTC must more clearly set its disparate impact and disproportionate burden policies, explain their application, and ensure consistency between the information in its Title VI program and how it conducts equity analyses. We also recommend that GRTC consider adopting methodology to render more precise results than the EEO 4/5ths rule.

Public Participation

FTA requires recipients of federal funds to comply with the public participation requirements of 49 U.S.C. §§ 5307(b), which requires programs of projects to be developed with public participation, and 5307(c)(1)(I), which requires a locally developed process to consider public comment before raising a fare or carrying out a major reduction in transportation service. FTA outlines these public participation requirements in the Title VI Circular and in the Environmental Justice Circular 4703.1.

The complainant alleges that the public participation plan for change in the disparate impact and disproportionate burden policies was inadequate. The complainant purports that GRTC's public outreach consisted of an online survey that was only open for two weeks and that a hardcopy survey was only administered on one day.

In response to FTA's request for information, GRTC provided information about the public outreach for the disparate impact and disproportionate burden policies, stating that two public meetings were conducted on August 17, 2016, where there were hardcopy surveys. GRTC also states that the online survey was available for 21 days. GRTC states the meetings were advertised on all buses and in the newspaper for two weeks prior to the meetings.

GRTC also provided information about the outreach process related to the 2018 service changes. GRTC held over 15 public meetings in March and April 2017 and conducted in-person and online surveys. GRTC states it held five meetings in August 2017 to present the changes made to the initial recommended network based on public input from the March and April 2017 meetings.

With the information provided, GRTC has followed its public participation plan outlined in its Title VI program before updating its disparate impact and disproportionate burden policies and before implementing its 2018 service change. The Title VI Circular notes that recipients have "wide latitude to determine how, when, and how often specific public participation activities should take place, and

which specific measures are most appropriate.” Title VI Circular, Chap. III-5. FTA does not require further action or information from GRTC in this area.

Conclusion

As described above, while the investigative results do not support a finding that GRTC has violated Title VI, the documents FTA reviewed raised potential concerns and questions regarding GRTC’s service equity analysis methodology, its application of disparate impact and disproportionate burden policies, and the agency’s adherence to its Title VI program submission.

Based on our investigation, we are requiring GRTC to take the following corrective actions in its upcoming Title VI program submission and service equity analyses:

1. Documentation of GRTC’s major service change, disparate impact, and disproportionate burden policies, and how the policies are compliant with Title VI with thresholds that would not be so high as to never require an analysis. Explain how the thresholds are most likely to yield meaningful results in light of system characteristics, and how GRTC will ensure consistency between the information in its Title VI program and how it conducts equity analyses. If there are changes to any policies from prior Title VI program submissions, note and explain the changes.
2. The methodology and results of service equity analyses conducted since the last Title VI program submission, as well as the methodology for service equity analyses for the period until the next Title VI program submission (*i.e.*, the next three years). Explain how the methodologies compare and allow GRTC to document the impacts of either (1) the majority-minority population Census tracts to the changes to the non-minority population Census tracts, or (2) the majority-minority bus routes with the changes to the non-minority population bus routes.
3. GRTC’s plan for its required origin–destination ridership survey, including methodology, completion date, and access to data.

To facilitate the incorporation of these corrective actions into GRTC’s upcoming Title VI program submission, FTA is extending GRTC’s due date for its Title VI program submission to October 1, 2020. We are available to offer a technical assistance phone call to discuss this letter. If you would like to arrange a meeting or have any questions about the requested information, please contact Morgan Hecht via email at [REDACTED]. Thank you for your assistance.

Sincerely,



Dawn Sweet
Director, Headquarters Operations
Office of Civil Rights

cc: FTA Region 3
Complainant