

BEFORE THE  
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 382

IN THE MATTER OF:

Served September 11, 1964

Application of D. C. Transit )  
System, Inc., to Modify Cer- )  
tain Rates and Regulations for )  
Sightseeing Operations. )

Application No. 274

Docket No. 58

By the Commission (SKLAR dissenting).

APPEARANCES:

HAROLD SMITH, Attorney for D. C. Transit System, Inc.,  
Applicant.

S. HARRISON KAHN, Attorney for Gray Line, Inc.,  
Protestant.

D. C. Transit System, Inc., filed Supplement No. 3 to its WMATC Tariff No. 10, to become effective July 12, 1964. The Supplement provided for a five percent (5%) reduction in the price of any scheduled sightseeing tour operated by Transit when the bearer of a free coupon purchased a tour ticket at its main terminal, located at 1442 New York Avenue, N. W., Washington, D. C.

Protest to the proposal was entered by the Gray Line, Inc., a carrier authorized to engage in sightseeing operations in the Metropolitan District. The Supplement was suspended, and the use thereof deferred, pending hearing.

The matter was the subject of a hearing on August 5, 1964, at which the applicant and protestant appeared and each offered one witness.

The coupons are to be used only in locations where people do not want to be agents as such or handle money or tickets, or, as the supplement states, at ". . . parking lots, service stations, motels, restaurants, and etc." The proprietors of these establishments would receive a twenty-five percent (25%) commission for the sale of the sightseeing ticket.

It is the applicant's position that its current fares for sightseeing set forth in Tariff No. 10 have been approved as fair and reasonable, that it normally pays a thirty percent (30%) commission to a ticket agent, that under the practice set forth in the Supplement the "net result" will be the same to the Company, after paying a twenty-five percent (25%) commission and a five percent (5%) reduction in fare, thus equaling the thirty percent (30%) otherwise normally paid to its agents. Since its expenses will decrease five percent (5%) and its revenues decrease five percent (5%), these two factors will "wash out" and the Company will be left in the same financial condition as it would experience without the coupon device. For this reason, no statistical information was presented, the Company contending that if the present fare structure is fair and reasonable, the proposed program would produce the same results and therefore be fair and reasonable.

Our statutory instructions are set forth in Article XII, Section 6(a)(1) through 6(a)(4). Particularly, Section 6(a)(2) is the most salient for our inquiry here and provides, in part:

"(2) If, after hearing held upon reasonable notice, the Commission finds that any fare, regulation or practice relating thereto, so suspended is unjust, unreasonable, or unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District, it shall issue an order prescribing the lawful fare, regulation, or practice to be in effect."

The protestant advances a claim that this proposal is discriminatory against other riders and its acceptance would lead other sightseeing companies to seek similar promotional gimmicks, which, in turn, would lead to various destructive and disruptive competitive practices throughout the industry.

The Commission finds that the proposal is just and reasonable, and does not discriminate between riders or sections of the Metropolitan District. There is nothing in this record to indicate discrimination between riders of different carriers. Nor, we find, does the proposal discriminate between riders of the applicant. The coupons are available to any person at points of distribution. We think the proposal is analogous to token and commutation ticket usage, both of which have met with industry-wide approval. The Supplement should be approved.

THEREFORE, IT IS ORDERED that Supplement No. 3 to Tariff No. 10 of D. C. Transit System, Inc., be, and it is hereby, approved, and shall become effective October 10, 1964.

BY DIRECTION OF THE COMMISSION:



DELMER ISON  
Executive Director

SKLAR, Chairman, dissents.

The evidence reveals, and supports the resultant reasoning, that all other patrons for sightseeing tours would be required to pay a five percent (5%) higher fare than those fortunate enough to fall heir to a coupon. While some of these would receive additional service -- for example, origination at their hotel or motel -- those patrons seeking a ticket at the New York Avenue Terminal would receive exactly the same treatment as a coupon-bearer, and pay a five percent (5%) higher fare.

I find that the coupon device set forth in said Supplement No. 3 to Tariff No. 10, and the resultant fares thereby provided, are unduly preferential and unduly discriminatory between riders, are in derogation of the statutory mandate of Article XII, Section 6(a)(2), and should be denied.