

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 897

IN THE MATTER OF:)	Served December 18, 1968
)	
D. C. TRANSIT SYSTEM, INC.,)	Formal Complaint No. 17
)	
Complainant,)	
v.)	
)	
PUBLIC SERVICE COORDINATED)	
TRANSPORT,)	
Respondent.)	

APPEARANCES:

MANUEL J. DAVIS and SAMUEL LANGERMAN, attorneys for
D. C. Transit System, Inc.

THOMAS J. McCLUSKEY, attorney for Public Service Coordi-
nated Transport.

ROBERT J. CORBER, attorney for National Association of
Motor Bus Owners, Intervenor.

By complaint filed March 3, 1967, D. C. Transit System, Inc., ("Complainant") alleges that Public Service Coordinated Transport ("Respondent") is performing passenger transportation for hire between points in the District of Columbia without a certificate of public convenience and necessity from this Commission as required by Article XII, Section 4 of the Washington Metropolitan Area Transit Regulation Compact. Public Service Coordinated responded and the National Association of Motor Bus Owners ("Intervenor") was granted leave to intervene.

Complainant and respondent stipulated the facts underlying the instant complaint. Briefly, they are as follows: Respondent is a common carrier of passengers operating pursuant to

authority from the Interstate Commerce Commission. In connection with that authority, it holds special operations authority and incidental charter rights. On October 14, 1966, respondent transported a charter party from Linden, New Jersey to the District of Columbia. The party returned via respondent on October 16, 1966. The party had accommodations at a local motel and during the course of their visit were transported by respondent to and from various points of interest within the Washington Metropolitan District. Only members of the charter party were transported on such tours and all such passengers commenced and ended this trip at Linden.

Briefs were filed in this matter and on January 26, 1968, the Commission entertained oral argument.

The basic question presented herein is simply this: Are respondent's local sightseeing operations subject to the jurisdiction of this Commission? Complainant contends that Article XII, Section 1(a)^{1/} of the Compact covers all transportation within the Metropolitan District except that which is part of a regular route operation between a point within and a point (or, perhaps points if interstate or foreign commerce is concerned) without the Metropolitan District. This exemption, complainant asserts, is confined to regular route operations. The services performed by respondent are irregular route, special and charter operations, says complainant; hence, the Compact requires a certificate for this service. Moreover, the legislative history, the need for a uniform system of regulation, and the obligation of the Commission to alleviate traffic problems in the Metropolitan District, according to complainant, support its position. In reply, respondent and intervenor state that the Compact gives the Commission jurisdiction over mass transit only and this does not include charter or special operations; that incidental charter rights have a regular route "personality" rather than irregular; that the congressional intent behind the Compact was not to include the type of operation herein concerned; that by Orders No. 311 and 366, the Commission has previously decided this question holding that such operations are not within its jurisdiction; and finally,

^{1/} "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except. . . ."

that certain judicial and administrative decisions indicate that the Commission does not have jurisdiction over respondent's operations.

The complaint raises questions both of statutory construction and of fact. Taking up the statutory problem first, the question we must resolve is whether the framers of the Compact intended that groups coming to Washington by charter bus who wish to engage in local sightseeing as a group must make use of a local certificated carrier rather than the charter operator who brought them here. We find nothing whatever in the statutory history of the Compact which indicates such an intent. Indeed, the framers, at least in one regard, took pains to exclude from the Compact's terms operations by carriers from outside the Metropolitan District. See Compact, Article XII, §1(a)(4).

Although this Compact has the force of Federal law, the basic feature envisioned by the framers is one analogous to the creation of a unit comparable to a state.^{2/} This, in fact, was conceded by complainant's counsel (Tr. 6). We are cited to no state or even city, attempting to exert the kind of far reaching authority which complainant would have us assert.

Complainants base their assertions as to our jurisdiction on the broad terms of Article XII, § 1(a) of the Compact, but that section is applicable only if the transportation in question is "between any points in the Metropolitan District." This brings us to the factual question which must be resolved.

Complainant's approach assumes that the trip in question can be broken down into separate parts -- the trip to Washington; the excursion within Washington; the return to New Jersey. We consider this an artificial distinction. In our view, the operation in question constitutes one continuous trip and the excursion within Washington is an integral and inseparable part thereof. Obviously, the mere fact of a stop in Washington does not make any movement of a charter party thereafter a separate and distinct transportation service over which we should assert jurisdiction. So to hold would lead to ridiculous results. Any group passing through the area which makes more than one stop in the Metropolitan District would have to be transferred to a certificated carrier following the first stop.

^{2/} Hearings Before Special Subcommittee of Committee on the Judiciary, U.S. Senate, H.J. Res.402, 86th Cong., 2d Sess. [June 24, 1960], p. 125.

Nor need we get into hairsplitting distinctions as to when a stop becomes sufficient to invoke our jurisdiction. We think the more important factor is the general nature of the trip. The bus is chartered to bring the riders here as a group, to remain together as a group while they visit the sights of the city, and to return to their home city as a group. The trip is an integral whole and cannot legitimately be split into its component parts for regulatory purposes. For this reason, we find that it does not fall under our jurisdiction over transportation between points in the Metropolitan District.

We are not unmindful of the full implications of the position urged by complainant. It does not simply involve one busload of persons from New Jersey who came to Washington for a visit. There are literally thousands of buses and millions of persons who come here under similar circumstances annually. Acceptance of complainant's position would mean that all those persons would be subjected to the inconvenience and expense of transferring to local carriers for their visits throughout the city while the vehicles that brought them here lay idle. We do not think this was a result that was intended when the Compact was drafted nor would it be tolerated for long if we sought to permit it.

We turn now to several of the other contentions or issues presented by the parties. First of all, Article XII, Section 20(a)(2)^{3/} is not relevant to the situation at hand.

Under the Interstate Commerce Act, a carrier holding regular route authority per a certificate of public convenience and necessity was authorized by statute to transport charter and special operation parties from a point on its regular route to any point in the United States.

^{3/} Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits, issued by the Interstate Commerce Commission to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act and the rules and regulations promulgated thereunder by the Interstate Commerce Commission, notwithstanding any other provisions of this Act.

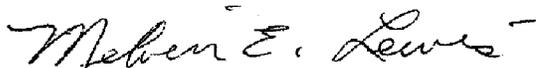
When the Compact was enacted, carriers domiciled in the Washington Metropolitan District had their I.C.C. certificates suspended. Without a savings clause, the basis for continuing charter and special operations party trips to points outside the Metropolitan District would thus have been eliminated. Section 20(a)(2) is that savings clause; its sole function in the Compact is to permit local carriers to continue interstate charter operations from the Metropolitan District to points outside it. Those operations remain under the jurisdiction of the I.C.C. Since the respondent is not a local carrier subject to our jurisdiction whose I.C.C. certificate was suspended, it is not a carrier falling within the scope of this section.

Secondly, respondent and intervenor contend that due to the fact that incidental charter rights were derived from regular route operations, these rights maintain a regular route personality and as such are exempt -- Article XII, Sec. 1(a)(4). Despite what can be said in respondent's favor, it seems clear that charter operations are irregular route in nature and in fact. To contend otherwise, in our estimation, does violence to established principles of jurisprudence and transportation law.

Several other minor or ancillary issues have been advanced, but do not require comment. What we are holding today is simply that on the record before us -- the pleadings, the oral argument, and the stipulation of facts -- the transportation herein challenged does not fall within the scope of our jurisdiction. The operation which we have evaluated is one continuous round-trip charter operation from and to New Jersey not constituting transportation for hire between points in the Metropolitan District. We will dismiss the complaint of D. C. Transit.

THEREFORE, IT IS ORDERED that Formal Complaint No. 17 filed by D. C. Transit System, Inc., be, and it is hereby, dismissed.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS
Executive Director