

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1282

IN THE MATTER OF:

Application for Amendment of Certificate of Public Convenience and Necessity of:)	Served: November 8, 1973
)	Application No. 797
DIAMOND TOURS, INC.)	
)	
Application for Amendment of Certificate of Public Convenience and Necessity of:)	Application No. 799
)	
THE GRAY LINE, INC.)	Consolidated Docket No. 254

On December 5, 1972, Diamond Tours, Inc. (Diamond) filed an application to amend its Certificate of Public Convenience and Necessity No. 2 to provide operating authority, as follows:

Irregular Routes:

- (a) Charter Operations:
Round Trip or One Way:
From points within the Metropolitan District to points within the Metropolitan District.
- (b) Special Operations:
Round Trip or One Way:
From points within the Metropolitan District to points within the Metropolitan District.

Protests to the application were filed by Atwood's Transport Line, Inc. (Atwood), Blue Lines, Inc. (Blue Lines), The Gray Line, Inc. (Gray Line), Greyhound Airport Service, Inc. (Greyhound), Washington Metropolitan Area Transit Authority (WMATA), and White House Sightseeing Corporation (White House).^{1/} Each protestant requested that the Diamond application be set

^{1/}D. C. Transit System, Inc., has indicated in a letter received December 22, 1972, that it may file a protest pursuant to our rules of practice and procedure upon the issuance of an Order setting the application for hearing.

for oral hearing.

On December 21, 1972, Gray Line filed an application to amend its Certificates of Public Convenience and Necessity Nos. 3 and 12 to authorize the operation of motor vehicles for the transportation of passengers over irregular routes in charter and/or special operations, as follows:

A. Charter Operations:

- (1) Round Trip or One Way:
From Alexandria, Virginia, to points in the Metropolitan District.

B. Special Operations:

- (1) Round Trip Sightseeing and Pleasure Tours:
From the Dulles International Airport to points in the Metropolitan District.
- (2) One Way Sightseeing or Pleasure Tours:
From the Dulles International Airport and Alexandria, Virginia, to points in the District of Columbia.

Protests to the Gray Line application were filed by Blue Lines and White House.^{2/} Each protestant requested that the application be set for oral hearing.

A motion to consolidate and expedite the proceedings involving the subject applications was filed by Diamond on January 2, 1973. Counsel for The Gray Line interposed no objection to the motion. By letter received January 9, 1973, Gray Line joins Diamond in seeking expedited consideration of the applications. None of the parties objects to consolidation of the proceedings. Pursuant to our rule of practice and procedure 25-02, we shall order the proceedings to be consolidated for a determination of all matters involving common questions of law or fact.

The protestants generally contend that the present or future public convenience and necessity do not require the proposed services. Atwood states that it is not aware of any group requiring charter service which it or some other existing authorized carrier is not fully capable of providing. Blue Lines alleges that the service rendered by it and other certificated carriers is adequate to the present and future requirements of public convenience and necessity. Gray Line submits that approval of Diamond's application would adversely affect its existing services; impair its continued ability to render reasonable and satisfactory services; and that

^{2/}D. C. Transit System, Inc., has indicated in a letter received January 3, 1973, that it may file a protest pursuant to our rules of practice and procedure upon the issuance of an Order setting the application for hearing.

impairment would inevitably be adverse to the public interest. Greyhound avers that itself and other authorized carriers are able to fulfill the existing public need or demand for charter and special operations between either of the Washington airports, on the one hand, and on the other, any point or place within the Metropolitan District. Greyhound submits that if Diamond were to amend its application to exclude the proposed service from or to the Washington airports it would withdraw its opposition. WMATA and White House in their separate protests assert that there has been no substantial increase in public need for either charter or special operations. They contend that the public's need and demand for such services actually has declined substantially over the past several years.

The issue of whether the proposed transportation is or will be required by the public convenience and necessity as formulated by the various contentions of the protestants must be resolved prior to any determination by us as to either application. In view of the foregoing, we will order a hearing before a presiding officer, to be designated, in order to make an appropriate record of testimony by the applicants, the protestants and members of the public concerning demand for the proposed services. In order properly to determine whether each of the applicants is fit, willing and able to perform the transportation for which authority is sought or which is presently authorized, we shall require each of the applicants to submit, and be prepared to support with competent witnesses, the following exhibits:

- (A) A detailed balance sheet showing the financial condition of the carrier for the calendar year 1972 and as of the latest date available for the year 1973;
- (B) A detailed income statement of the carrier for the calendar year 1972 and as of the latest date available for the year 1973, including the operating ratio;
- (C) A projected statement of the carrier's net earnings after all taxes for the calendar year 1974, together with supporting details, including operating ratio;
- (D) A pro forma statement of the carrier's net earnings after all taxes for the calendar year 1974 assuming that the carrier's application herein were granted, together with supporting details, including operating ratio; and
- (E) A detailed list of the carrier's operating equipment, including the make, year, model and seating capacity of each vehicle and whether owned or leased.

Any person who wishes to be heard on the proposed applications should be prepared with his presentation on the day of hearing. In order that all

parties will have an opportunity to be aware of what evidence the other parties intend to submit on these issues and thus be able to fully cross-examine, we will require that all direct evidence in the nature of prepared testimony and supporting exhibits as required herein shall be submitted on or before Monday, December 10, 1973, in such a manner that six (6) copies shall be filed with the Commission and one copy served on each party of record.

THEREFORE, IT IS ORDERED:

1. That Application No. 797 of Diamond Tours, Inc., and Application No. 799 of The Gray Line, Inc., be, and they are hereby, consolidated.
2. That Application No. 797 of Diamond Tours, Inc., and Application No. 799 of The Gray Line, Inc., be, and they are hereby, scheduled for public hearing before a presiding officer, to be designated, on a consolidated docket to commence Tuesday, December 18, 1973, at 10:00 a.m., in the Hearing Room of the Commission, Room 314, 1625 Eye Street, N. W., Washington, D. C. 20006.
3. That the applicants post notice, in the form prescribed by the staff of the Commission, of these applications and of the aforementioned hearing in all their vehicles no later than Friday, November 23, 1973.
4. That the applicants publish notice, in the form prescribed by the staff of the Commission, of these applications and of the aforementioned hearing in a newspaper of general circulation in the Metropolitan District no later than Friday, November 23, 1973.
5. That the evidence in the nature of prepared testimony and the exhibits required of each applicant as hereinbefore described shall be submitted in such manner that six (6) copies shall be filed with the Commission and one copy served on each party of record on or before Monday, December 10, 1973.
6. That any person desiring to be heard on these matters shall notify the Commission, in writing, on or before Tuesday, December 4, 1973, and mail a copy of such notification to the counsel of record for Diamond Tours, Inc., Renn G. Fowler, Esq., c/o Diamond Tours, Inc., Union Station Plaza, 201 F Street, N.E., Washington, D. C. 20002, and to the counsel of record for The Gray Line, Inc., S. Harrison Kahn, Esq., Suite 733 Investment Building, 1511 K Street, N. W., Washington, D. C. 20005.

BY THE DIRECTION OF THE COMMISSION:

Hyman J. Blond

HYMAN J. BLOND
Executive Director

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION



1625 I STREET, N. W.
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November 2, 1973

MEMORANDUM TO:

Vice-Chairman Sullivan _____

Judge Shannon _____

FROM: Donald J. Balsley, General Counsel

SUBJECT: Application No. 797 - Diamond Tours, Inc.
Application No. 799 - Gray Line, Inc.

The attached draft order would consolidate the above applications and set a hearing before Mr. Blond, presiding officer.

The applications involve common questions of law and fact concerning the demand for charter and special services in the Metropolitan Area. The effect of granting either or both of the applications would be to authorize the carrier(s) to provide charter and special service throughout the Metropolitan Area.

The applications present a fundamental question to the Commission. The parties of record have presented the issue of whether there is a demand for charter and/or special services not presently being adequately met by existing certified carriers. Under the provisions of the Compact, Article XII, Section 4(e), the Commission may not issue a certificate to an applicant -

to operate over the routes of any holder of a certificate until it shall be proved to the satisfaction of the Commission, after hearing, upon reasonable notice, that the service rendered by such certificate holder, over such route, is inadequate to the requirements of the public necessity and convenience; and provided further, if the Commission shall be of opinion that the service rendered by such certificate holder over such route is in any respect inadequate to the requirements of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy

before any certificate shall be granted to operate over such route; ***

Accordingly, the record developed at the hearing on these applications would be the basis of a determination that there is, or is not, a need for more services. However, no matter what the cause of any need for more services, the presently certificated carriers would have to be accorded an opportunity to provide the services prior to the issuance of any new certificates or amending of existing certificates. Thus the hearing scheduled in the attached draft order could merely provide the basis, assuming there is a showing of need, for an order requiring the presently certificated carriers to supply any authorized service. After 30 days the Commission could schedule another hearing and determine if the presently certificated carriers are properly providing service to the public. If not, within the Commission's discretion, a new certificate could be issued or an existing certificate revoked or appropriately amended or modified.

While it would appear to be difficult for a carrier to overcome the obstacles to obtain an expansion of its certificate under the above circumstances, we must assume that these applicants are prepared to prove their cases. Therefore, I recommend that the applications be set for hearing.

Respectfully,