

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1346

IN THE MATTER OF:

Application of COLUMBIA TRANSPO)	Served August 22, 1974
COMPANY, INC., for a Certifi-)	
cate of Public Convenience and)	Application No. 837
Necessity)	
	Docket No. 266

APPEARANCES:

DAVID V. MASON, Attorney for Columbia Transpo Company, Inc., applicant.

JORDAN S. HIMELFARB, Attorney for Washington Metropolitan Area Transit Authority, protestant.

DONALD J. BALSLEY, JR., Counsel for Washington Metropolitan Area Transit Commission.

BY THE COMMISSION:

By Application No. 837, dated June 11, 1974, Columbia Transpo Company, Inc. (Columbia) seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact, to transport employees and guests of The International Business Machines Corporation (IBM) among IBM's facilities located at 10215 Fernwood Road, Bethesda, Md.; 10401 Fernwood Road, Bethesda, Md.; and 18100 Frederick Pike, Gaithersburg,

Md.^{1/} Columbia has filed, as part of the application, a tariff setting forth fares, rules, and regulations for the proposed service.

Pursuant to Order No. 1338, served June 27, 1974, a hearing was held July 25, 1974, and continued to August 1, 1974, to develop an appropriate record. Washington Metropolitan Area Transit Authority (WMATA) appeared at the hearing as a protestant. WMATA performs charter operations, pursuant to the provisions of the National Capital Area Transit Act of 1972, between points within the Metropolitan District. WMATA has authority to operate, and is operating, regular route operations within its "transit zone," which is generally coextensive with the Metropolitan District over which this Commission exercises jurisdiction.

In its protest, WMATA submits that it is a competitor with companies doing charter business in the Metropolitan District, that it knows of no substantial increase in public need for charter services within the Metropolitan District, and that the public's need and demand for such services can be satisfied by the present carriers. WMATA contends that approval of the application would adversely affect its existing services and that this impairment would eventually and inevitably be adverse to the public interest. WMATA also contends that the operation proposed by Columbia is mass transit and that WMATA is the only qualified carrier to perform such a transit operation.

The protest filed by WMATA contains no statement to support its contention that Columbia is proposing to perform mass transit or, moreover, that WMATA is the

^{1/} The Commission's Order No. 1303, served February 19, 1974, granted Columbia temporary authority to transport employees and guests of IBM among IBM's facilities in Gaithersburg and Bethesda, Montgomery County, Maryland. Such temporary authorization became effective February 25, 1974, and will be effective through August 24, 1974.

only carrier qualified to perform such operations. At the hearing, WMATA did not submit any testimony. Thus, the record contains no evidence upon which it could be found that approval of Columbia's application would seriously impair WMATA's operations.

The findings to be made by the Commission, after hearing, with respect to applications for certificates of public convenience and necessity are set forth in Title II, Article XII, Section 4(b) of the Compact. Essentially, the Commission must make two separate findings. First, the applicant must be "fit, willing and able" to perform the proposed transportation properly and to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder. Second, the proposed transportation "must be or will be required" by the public convenience and necessity. In addition, approval by the Commission of the proposed tariff must be based on a finding that the tariff is just, reasonable, and not unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District. See Compact, Title II, Article XII, Section 6(a)(2).

Columbia is wholly owned by Columbia Catering Company. As support for its financial fitness, Columbia submitted several statements of income. For the period June 15, 1973, to May 31, 1974, inclusive, Columbia experienced an operating deficit of \$16,295. However, the statement of income for the temporary authority operations by Columbia for IBM discloses that for the period April 3, 1974, to May 31, 1974, inclusive, Columbia had net income of \$644. For the month of June, 1974, Columbia's entire operations generated approximately \$1,263 in income.

The Commission is of the opinion that Columbia's financial condition is marginal. However, Columbia's temporary authority operations for IBM resulted in a rate of return of approximately 7 percent for the period April 3, 1974, to May 31, 1974, inclusive. The Commission

believes that the record supports a finding that Columbia is fit, willing and able to perform the proposed transportation.

Columbia presented the testimony of Maurice M. Beal, program manager of transportation rates and services for the System Products Division of IBM. According to this witness, IBM seeks to provide its employees and guests with a suitable means of travelling among its several facilities in Montgomery County, Md. As part of this endeavor, IBM solicited bids from several carriers, including WMATA, to perform the proposed operations. The result of the solicitation was an agreement between IBM and Columbia providing for transportation services among IBM's facilities.

The contract, dated March 20, 1974, provides, inter alia, that Columbia would perform the proposed service among three IBM facilities located in Gaithersburg and Bethesda in twelve-passenger vehicles. Passengers travelling in the vehicle would not be charged for the transportation service. IBM would pay Columbia pursuant to the following rate schedule: (a) for each vehicle and driver operated between 8:00 a.m., and 5:00 p.m., on Monday through Friday, except on official IBM holidays, \$102.00 per day; (b) for additional services with the same vehicle which cause increased mileage and/or driver overtime, \$0.15 for each mile above the normally scheduled miles and \$7.05 for each hour of driver overtime; (c) for overtime hours caused by unusual traffic or IBM caused delay in returning at the end of the day, \$7.05 for each hour of driver overtime; and (d) for additional transportation services on an "as required"^{2/} basis with additional vehicle(s) and driver(s), \$12.75 per hour measured from the time that Columbia's vehicle leaves its Chevy Chase terminal until the time that it returns,

^{2/} "As required" service is to ensure IBM that Columbia can and would provide additional service if the time comes when passenger count exceeds the carrying capacity of the present scheduled vehicles.

except that if such services are provided on Sundays or holidays, the rate would be \$17.45 per hour. The contract provides for expiration on March 20, 1975, or by either party upon 30 days written notice to the other party.

The record indicates that there have been three scheduled trips each day per vehicle during the period of the temporary authority granted by Order No. 1303, served February 19, 1974. The passenger count has averaged between 100 and 150 per week and two twelve-passenger vehicles have been used. Mr. Beal's testimony further indicates that IBM's employees and guests would travel among the several facilities in Montgomery County during the contract period.

The record supports a finding that the public convenience and necessity requires the transportation of employees and guests of IBM among IBM's facilities located at 10215 Fernwood Road, Bethesda, Md.; 10401 Fernwood Road, Bethesda, Md.; and 18100 Frederick Pike, Gaithersburg, Md. The Commission further finds that approval of Columbia's application is required by the public convenience and necessity.

The Commission believes that the authority to be granted to Columbia must contain two restrictions^{3/}. First, the operation shall be limited to limousine service. Second, the authority shall be limited to operations performed pursuant to contract with IBM.

Columbia seeks approval of a tariff naming rates and rules governing the requested transportation authority. As previously indicated, the rates and rules are the result of an agreement between IBM and Columbia. Although the rates and rules are negotiated and agreed to by the person

^{3/} The Commission has the power to attach to the issuance of a certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require subject to specified limitations not here relevant. See Compact, Title II, Article XII, Section 4(b).

rendering the service and the person using the service, the Commission "may suspend any fare, regulation, or practice shown in a tariff . . . at any time before such fare, regulation, or practice would otherwise take effect." See Compact, Title II, Article XII, Section 6(a)(1). The Commission has given consideration to, among other things, the financial condition of Columbia, its revenue requirements, and whether Columbia is being operated economically and efficiently. The Commission concludes that the proposed rates are just, reasonable and not unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District.

The Commission has considered the other matters pressed by the parties but finds they do not warrant action contrary to that which is now directed.

THEREFORE, IT IS ORDERED:

1. That Columbia Transpo Company, Inc., be, and it is hereby, issued Certificate of Public Convenience and Necessity No. 19 as attached hereto and made a part hereof.
2. That the Tariff filed as part of Application No. 837 of Columbia Transpo Company, Inc., be, and it is hereby, approved.
3. That Columbia Transpo Company, Inc., be, and it is hereby, directed to file WMATC Tariff No. 1 together with its contract, dated March 20, 1974, with the International Business Machines Corporation, in accordance with the authority granted herein, such tariff to be effective upon acceptance by the Executive Director.

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 19

COLUMBIA TRANSPO COMPANY, INC.

By Order No. 1346 of the Washington Metropolitan Area Transit Commission issued August 22, 1974;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 1346;

THEREFORE, IT IS ORDERED, that the said carrier be, and it is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions and limitations as are now or may hereafter be attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation authorized by this certificate of public convenience and necessity shall be limited to the performance of service pursuant to agreement between Columbia Transpo Company, Inc., and International Business Machines Corporation, provided, however, that written notice must be filed by the carrier with the Commission within five (5) days of any cancellation or termination of the aforementioned agreement, and further provided that any change in or amendment to the aforementioned agreement shall be filed with the Commission for approval at least fifteen (15) days prior to the proposed effective date of such change or amendment, and further provided that

any change or amendment to the aforementioned agreement which would involve new authority shall be subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact and the Rules and Regulations of the Commission.

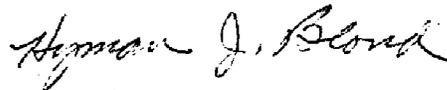
IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

CHARTER OPERATIONS, under contract, limited to limousine service for the transportation of employees and guests of the International Business Machines Corporation among its facilities located at 10215 Fernwood Road, Bethesda, Md.; 10401 Fernwood Road, Bethesda, Md.; and 18100 Frederick Pike, Gaithersburg, Md.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous and adequate service in pursuance of the authority granted herein, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of this certificate.

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director

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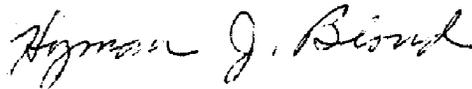
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BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director