

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1361

IN THE MATTER OF:

Investigation of Authority to	)	Served October 16, 1974
Perform CONTRACT OPERATIONS	)	Application No. 828
		Consolidated Docket No. 234

By a petition, filed February 15, 1974, the Washington Metropolitan Area Transit Authority (WMATA) requested that an investigation be instituted to determine whether a type of service that is performed pursuant to a contract for transportation on a regular basis for an extended period of time, over irregular routes, may be performed by carriers pursuant to charter authority issued by this Commission. By Order No. 1342, served July 12, 1974, that petition was consolidated with and made a part of the general investigatory proceeding in Docket No. 234, instituted by Order No. 1172, served October 4, 1971.

Opportunity was provided to any person desiring to submit a statement containing comments, opinions, and/or arguments on specific questions. A statement was filed by the National Capital Local Division 689, Amalgamated Transit Union, AFL-CIO (Union); and a joint statement was submitted on behalf of The Gray Line, Inc. (Gray Line), Central Delivery Service, Inc. (Central), and All States Limousine Service (All States). No Statement was filed by WMATA. On September 20, 1974, the Department of Defense (DOD) filed a petition requesting that the Commission issue an order setting a hearing on this matter and that the Commission permit DOD to file a statement setting forth its position.

Union is the recognized and certified representative for collective bargaining of the approximately 3,800 employees of WMATA. Union believes that WMATA is best suited to most efficiently provide regular-route and charter services in the metropolitan area of Washington. Union submits that WMATA has the same rights to perform contract services which D. C. Transit System, Inc., WV&M Coach Company, AB&W Transit Company, and WMA Transit Company had prior to the acquisition of the common carrier authority of these companies by WMATA. Union further contends that WMATA has the right to perform all charter service within the metropolitan area and over any route which WMATA may operate. In Order No. 1304, served February 21, 1974, the Commission discussed the basis for WMATA's performance of charter service within the Metropolitan District.

Gray Line, Central and All States filed a joint statement in which they contend that contract carriage is not embraced within the present statutory provisions of the Washington Metropolitan Area Transit Regulation Compact (Compact). They assert that the Compact placed in this Commission jurisdiction of motor passenger transportation within the Washington Metropolitan District which previously had been within the province of the Interstate Commerce Commission (ICC), District of Columbia Public Utilities Commission, and the State of Maryland Public Service Commission. They assert that the Interstate Commerce Commission Act empowers the ICC to regulate motor passenger carriers engaged in the transportation of persons in interstate or foreign commerce either as common carriers or contract carriers. They argue that the draftsmen of the Compact, despite the separate categories in the Motor Carrier Act, did not include statutory provisions for contract carriage of passengers within the regulatory provisions of the Compact. Furthermore, they contend that the Compact must be read in its entirety, and that the provisions establish that the regulatory concept provides only for the carriage of passengers by common carrier.

The joint statement by Gray Line, Central and All States emphasizes the contention that charter operations are not contract carriage. They argue that the ICC's regulations 1/ prohibit a common carrier of passengers from transporting special or chartered parties between the same points or over the same route so frequently as to constitute a regular scheduled or non-scheduled service. They assert that contract carriage generally provides for a series of transportation movements, and that the conduct of such repetitive service is not authorized by the concept of charter operations. Furthermore, they argue that the single movement of a group of persons constitutes common carriage and not contract carriage. They, thus, submit that the person holding itself out to perform individual movements of chartered groups is in fact holding itself out to the general public. They conclude that such holding-out has been universally recognized by Commissions and the Courts as an index of common carriage. DOD states that it is a substantial user of long term contract or contract charter services. DOD believes that continuation or expansion of contract or contract charter operations by carriers within the Metropolitan District is necessary to the public convenience and necessity.

#### DISCUSSION AND CONCLUSIONS

In order No. 1342, the Commission framed three questions to be considered and resolved in interpreting and applying the provisions of the Compact in regard to the performance of a form of transportation

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1/ See Regulations, Special or Chartered Party Service, Rule VI, 29 M.C.C. 25, 43.

in the nature of contract service. Each shall be treated separately herein. Consideration shall be accorded in view of the opinions, comments, and arguments stated hereinbefore, and in the appendix attached to Order No. 1342. For clarity, the questions have been restated.

A.

Whether a carrier may perform transportation for hire within the Metropolitan District in the nature of contract service without authority from this Commission?

The Commission is of the opinion that the Compact requires a person 2/ to have authority from this Commission to perform transportation for hire within the Metropolitan District. Clearly, the Commission has exclusive jurisdiction over the movement of passengers in transportation for hire between points within the Metropolitan District, except between points solely within the Commonwealth of Virginia. Necessarily, the carriers performing such transportation, whether or not they do so pursuant to contracts, are subject to the Commission's jurisdiction.

The foregoing conclusion is based on an analysis of the provisions of the Compact and its legislative history. Title II, Article XII, Section 20(a) provides, in part, as follows:

Upon the date this Act becomes effective, the applicability of all laws of the signatories, relating to or affecting transportation subject to this Act and to persons engaged therein, and all rules, regulations and orders promulgated or issued thereunder, shall except to the extent in this Act specified, be suspended, except that --

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(2) 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

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2/ As defined in the Compact, Title II, Article XII, Section 2(e).

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. (Emphasis added.)

The United States Senate Report 3/ states:

Section 20 deals with the applicability of other laws. This section is designed to remove the jurisdiction of the signatories over the transportation and persons subject to the compact and the removal of this jurisdiction is by suspension rather than repeal . . . . In order to protect the existing rights of carriers to engage in interstate special or charter operations under the certificates issued by the Interstate Commerce Commission, section 20(a)(2) expressly states that the suspension of certificates or permits issued by the Interstate Commerce Commission 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. (Emphasis added.)

The references to Permits in section 20(a)(2) and the supporting legislative history indicate that certificates issued by the ICC to common carriers, and permits issued by it to contract carriers were intended to be suspended upon adoption of the Compact. Under Title II, Article XII, Section 4 of the Compact, certificates of public convenience and necessity were to be issued by this Commission.

The exception proviso of section 20(a)(2) was intended to preserve the special and charter rights which each holder of a regular-route passenger certificate issued by the ICC received under section 208(c) of the Interstate Commerce Act. That provision granted each holder of such a certificate incidental rights to transport special and charter parties from the territory of its regular route. Without that saving provision, the suspension of the ICC common carrier certificate might have been deemed also to suspend the incidental special and charter rights which these carriers enjoyed outside the Metropolitan District and beyond the jurisdiction of this Commission under the Compact.

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3/ See S. Rep. No. 1906, 86th Cong., 2d Sess. at 20 (1960) and H. Rep. No. 1621, 86th Cong., 2d Sess. at 18 (1960).

Further, and basic to the logic of the argument proffered by Gray Line, Central, and All States, it is important to note that while the Compact, Title II, Article XII, Section 1.(a) "Transportation Covered" does not, admittedly, refer specifically to contract carriers, neither does it refer to common carriers. Its language is clear and simple:

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 -- (Emphasis added.)

B.

Whether a certificate authorizing a carrier to perform charter operations over irregular routes, within specified areas, also authorizes by implication, the performance of contract service over irregular routes within specified areas?

The Commission is of the opinion that a certificated carrier authorized to perform charter operations over irregular routes, within specified areas, may also perform contract charter service over irregular routes within such specified areas upon compliance with the Commission's Regulation 56-03, regarding the filing of contracts.

The Commission's Regulation 51-06 defines charter operation as follows:

The term "charter operation" means the transportation of a group of passengers who, pursuant to a common purpose and under a single contract, has acquired the exclusive use of a vehicle or vehicles to travel together.

The Commission is of the opinion that a contract charter carrier is any person which engages in transportation of passengers for hire under a continuing written contract for the furnishing of transportation services through the provision of a vehicle or vehicles to meet the distinct need and for the exclusive and periodically recurrent use of the contracting party.

Comparison of a charter carrier with a contract charter carrier indicates that each provides a vehicle or vehicles for the exclusive use of the customer and that the service is designed to meet a distinct need of the customer. The distinction between a charter carrier and a contract charter carrier is that a charter service is usually for a particular itinerary that occurs only once whereas the contract charter carrier provides a periodically recurrent service.

The Commission believes that within the guidelines of the Compact the performance of a contract charter service on a periodically recurrent basis has a sufficient nexus with charter service to provide a suitable basis for finding that a certificated charter carrier may perform contract charter service within the broader scope of its charter authority. However, a carrier with authority to perform contract charter service to a specific person would not be able to hold itself out to the public to render charter service.

C.

What would be the nature of the authority, if any, that must be granted pursuant to the provisions of the Compact, to a person seeking to perform contract service within the Metropolitan District?

The Commission believes that the authority to be granted to a person seeking to perform contract charter service within the Metropolitan District must be charter pursuant to contract. The transportation to be furnished must be through the provision of a vehicle or vehicles to meet the distinct need and for the exclusive and periodically recurrent use of the contracting party.

Having determined that the proposed operation qualifies as contract carriage, it becomes necessary to consider whether the issuance of a certificate of public convenience and necessity would be consistent with the public interest under Title II, Article XII, Section 4 of the Compact. Such a determination involves consideration of the fitness, willingness and ability of the carrier to perform such transportation and whether such transportation is or will be required by the public convenience and necessity.

In view of the conclusions herein that contract service is subject to the Commission's jurisdiction and that the Compact mandates that authority be issued prior to its performance, the Commission believes that Regulation 51-06 should be amended. The amendment will embrace as subsection (a) the current definition of "Charter Operation" and will include subsection (b) defining "Contract Operation Pursuant to Contract".

Pursuant to the provisions of Title II, Article XII, Section 15 of the Compact, the Commission shall prescribe an appropriate amendment to Regulation 51-06. The amended regulation shall be effective upon the service of this order.

THEREFORE, IT IS ORDERED:

1. That the Department of Defense petition requesting that a hearing be scheduled be, and it is hereby, denied.

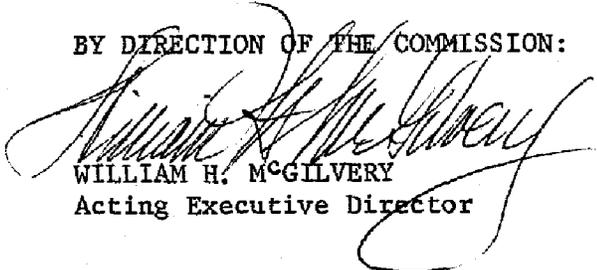
2. That the Department of Defense petition seeking leave to file a statement of position be, and it is hereby, granted.

3. That Regulation 51-06 be, and it is hereby, amended as follows:

51-06. Charter Operation.

- (a) The term "Charter Operation" means the transportation of a group of passengers who, pursuant to a common purpose and under a single contract, have acquired the exclusive use of a vehicle or vehicles to travel together.
- (b) The term "Charter Operation Pursuant to Contract" means the transportation of persons under a single written contract which provides for the exclusive and periodically recurrent use of a vehicle or vehicles to meet the distinct need of the passengers.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY  
Acting Executive Director