

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1362

IN THE MATTER OF:

Application of YELLOW CAB)	Served: October 18, 1974
COMPANY d/b/a ALL STATES)	
LIMOUSINE SERVICE for)	Application No. 811
Temporary Authority)	
)	
Application of YELLOW CAB)	
COMPANY d/b/a ALL STATES)	Application No. 810
LIMOUSINE SERVICE for)	
Certificate of Public)	Docket No. 270
Convenience and Necessity)	

By applications, filed July 26, 1973, Yellow Cab Company, doing business as All States Limousine Service (All States) seeks temporary authority pursuant to Title II, Article XII, Section 4(d)(3) of the Compact and a certificate of public convenience and necessity pursuant to Title II, Article XII, Section 4(b) of the Compact, to transport aircraft crews having a prior or subsequent movement by air, between Dulles International Airport (Dulles) and Washington National Airport (National), on the one hand, and on the other, points located within the District of Columbia. All States filed as part of the applications a proposed tariff and a letter from Northwest Air Lines, Inc., (Northwest) supporting the proposed transportation service. All States also filed a motion to dismiss its temporary authority application.

The pervading issue presented for the Commission's determination by All States' motion to dismiss is whether the proposed service is subject to the regulatory provisions of the Compact. The carrier has made two separate arguments against the Commission's regulation of the proposed service.

First, All States submits that Section 203(b)(7)(a) of the Interstate Commerce Act exempted from regulation the transportation of persons by motor vehicle when incidental to transportation by aircraft. According to All States, at the time of the enactment of the Compact, the Interstate Commerce Commission had not eliminated the applicability of this exemption to the movement of persons in the Metropolitan District incidental to transportation by aircraft. All States contends that when the Compact was amended to include jurisdiction of Dulles, Congress was not advised that the provisions of Section 203(b)(7)(a) were being repealed with respect to the Metropolitan District. It argues that to hold that Section 203(b)(7)(a) is inapplicable would create an area of regulation completely different from that accorded the remainder of the United States, and that the intent and purpose of the Compact was to bring forward the regulatory philosophy of the Interstate Commerce Act.

The Commission does not believe that the exemption from regulation set forth in Section 203(b)(7)(a) of the Interstate Commerce Act is applicable to transportation of passengers by motor vehicle between Dulles or National and points within the Metropolitan District located in the District of Columbia or Maryland. See Compact, Title II, Article XII, Section 20. The Compact applies "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". See Title II, Article XII, Section 1(a) The Compact specifies five exceptions to the grant of jurisdiction. None are applicable to the transportation of passengers by motor vehicle when such transportation for hire is preceded or followed by transportation by aircraft.

Second, All States submits that the authority sought herein is clearly limited to common carrier service restricted to only a segment of the general public, namely, aircraft crews. Thus, it contends that there would be no holding out to the general public. However, All States concedes that there is uncertainty whether the Compact embraces the type of operation here involved.

The transportation service to be performed by All States would be rendered for aircraft crews employed by Northwest. The service would be provided pursuant to a contract between All States and Northwest. The tariff filed with the applications anticipates that Northwest would pay for the passenger carrier service to be performed by All States. Northwest's air line crews traveling in the vehicle would not be looked to for payment for the transportation service. The following rate schedule has been submitted by All States: (a) For a seven-passenger vehicle operating between National and the District of Columbia, \$4.00 per trip, and (b) for a twelve-passenger vehicle operating between Dulles and the District of Columbia, \$12.00 per trip.

The Commission is of the opinion that the proposed service is subject to the provisions of the Compact and properly within the regulatory jurisdiction of this Commission. The proposed service would involve 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.

Under Title II, Article XII, Section 4(d)(3) of the Compact, the Commission must base any decision to grant temporary authority to provide a specific service, upon the finding that there is an immediate and urgent need to a point or points within a territory having no carrier service capable of meeting such need. So finding, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority.

All States submits that the immediate and urgent need for the proposed service is occasioned by the daily operations of the air lines at the several airports. All States alleges that the existing transportation services between the airports and the District of Columbia cannot and do not meet the transportation needs of Northwest. The needs of Northwest require special service not available to the general public. The vehicles must not be subject to the discretion of the

dispatchers who may commingle the public generally for service to a wide variety of destinations located within the Metropolitan District. All States contends that Greyhound Airport Service, Inc., which holds permanent certificate authority to provide transportation services similar to the proposed services, has not engaged in providing transportation service tailored to suit the needs of the air line personnel.

In support of its applications, All States filed a letter from Northwest. That letter expresses the opinion that there is an immediate and urgent need for dependable, reliable and personalized transportation of Northwest crews, including pilots, engineers, stewardesses and stewards, between National or Dulles, on the one hand, and on the other, Washington, D. C. According to Northwest, it is essential that specialized transportation, coordinated exactly with flight requirements, be provided to insure compliance with Federal Aviation Administration (FAA) requirements for off-duty hours and "on-time" departures. Northwest opines that there currently is no comparable service available. Apparently Northwest's crews cannot use the usual common carrier bus services operating between the several airports and Washington, D. C., because the arrivals and departures of the carriers are not sufficiently coordinated with the flights to assure that their utilization would result in the crews complying with FAA regulations. Finally, Northwest indicates that the crews currently move to and from the Burlington Hotel located in the District of Columbia. Northwest states it would have no objection to the Commission's imposition of a restriction that would limit All States' transportation services to such hotel or hotels as may be selected by Northwest.

The pleadings and statement in support of the temporary authority application do not fully satisfy the criteria for granting temporary authority, particularly, as they fail to show that no carrier service is capable of meeting the alleged immediate and urgent need. Accordingly, a hearing should be scheduled to develop a record upon which the Commission could properly dispose of All States' application for temporary authority. In view of the directive hereinafter setting a hearing on the application for a certificate of public convenience and necessity, the Commission shall dismiss without

prejudice the temporary authority application, and proceed directly to a determination on the application for permanent authority.

Title II, Article XII, Section 4(b) of the Compact provides as follows:

When an application is made under this section for a certificate. . . . , the Commission shall issue a certificate to any qualified applicant therefore, , if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied. (Emphasis added.)

Pursuant to this mandate, the Commission shall schedule a hearing to develop an appropriate record.

The Commission necessarily desires to fully develop the basis for any finding as to All States' fitness to perform the proposed transportation service and the existing requirements of the public convenience and necessity for such service. Therefore, the Commission shall require All States to submit and be prepared to support with competent witnesses the following exhibits:

- (A) A detailed balance sheet of applicant as of September 30, 1974;
- (B) A detailed income statement of applicant for the 12-month period ending September 30, 1974;
- (C) A projected statement of revenues and expenses, including taxes, for a one-year period, together with supporting details, including operating ratio;

- (D) A copy of the contract between All States and Northwest which forms the basis for the proposed service; and
- (E) A list of equipment, including specifications, which will be used to provide the proposed service.

The Commission shall direct All States to file six (6) copies of the statements and exhibits required hereinbefore and serve one copy on each party of record on or before Wednesday, November 13, 1974. All States shall be prepared to present representatives of Northwest who are able to support the claims that public convenience and necessity require such service.

The Commission believes that an additional matter should be considered. All States' application for a certificate of public convenience and necessity is for general authority to transport air line crews having a prior or subsequent movement by air, to or from Dulles or National and points within the District of Columbia. However, the exhibits and letter of support filed with the application indicate that the transportation service to be performed would be pursuant to a contract between All States and Northwest. Operations pursuant to this contract would constitute charter operations pursuant to contract. As such, the authority to be granted, if any, would necessarily involve only service pursuant to a specific contract. As a result, the authority applied for is broader than the operations proposed to be performed. Of course, the Commission has the power to grant only the authority found to be required by the public convenience and necessity.

THEREFORE, IT IS ORDERED:

1. That the motion to dismiss filed by Yellow Cab Company, doing business as All States Limousine Service, be, and it is hereby, denied.

2. That Application No. 811 of Yellow Cab Company, doing business as All States Limousine, for temporary authority to transport aircraft crews having a prior or

subsequent movement by air, between Dulles International Airport or Washington National Airport, on the one hand, and on the other, points located within the District of Columbia be, and it is hereby, dismissed without prejudice.

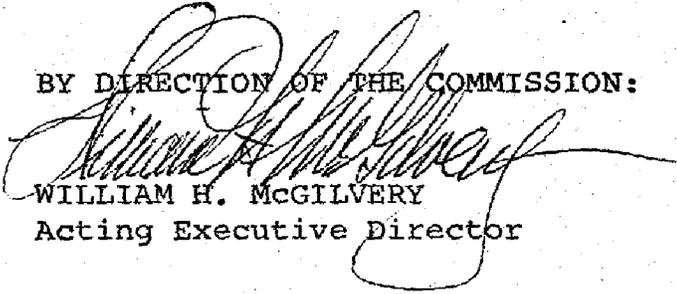
3. That Application No. 810 of Yellow Cab Company, doing business as All States Limousine Service, be, and it is hereby, scheduled for public hearing to commence Thursday, November 21, 1974, at 10:00 a.m., in the Hearing Room of the Commission, Room 314, 1625 Eye Street, N. W., Washington, D. C. 20006.

4. That Yellow Cab Company, doing business as All States Limousine, publish notice in the form prescribed by the staff of the Commission of such application and hearing in a newspaper of general circulation in the Metropolitan District no later than Saturday, October 26, 1974, and present at the hearing a certificate of publication from the selected newspaper.

5. That six (6) copies, the original to be submitted at the hearing, of the statements and exhibits required hereinbefore be submitted by Yellow Cab Company, doing business as All States Limousine, to the Commission and one copy served on each party of record on or before Wednesday, November 13, 1974.

6. That any person desiring to protest or otherwise to be heard on this matter shall notify the Commission, in writing, on or before Monday, November 11, 1974, and mail a copy of such notification to counsel of record for Yellow Cab Company, doing business as All States Limousine, S. Harrison Kahn, Esquire, Suite 733 Investment Building, Washington, D. C. 20005.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Acting Executive Director