

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1395

IN THE MATTER OF:

Application of GEORGETOWN)	Served January 8, 1975
SIGHTSEEING TOURS, INC., for a)	
Certificate of Public Convenience)	Application No. 842
and Necessity)	
		Docket No. 268

APPEARANCES:

ALBERT M. WHITE, Attorney for Georgetown Sightseeing Tours, Inc., applicant.

JEREMY KAHN, Attorney for The Gray Line, Inc., protestant.

JOHN R. WAGLEY, appearing on behalf of Citizens Association of Georgetown, intervenor.

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

BY THE COMMISSION:

By Application No. 842, filed July 29, 1974, as amended September 16, 1974, Georgetown Sightseeing Tours, Inc. (Georgetown) seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact, to perform both special operations and charter operations. Georgetown seeks authority to transport passengers over irregular routes from hotels or motels within the District of Columbia to that area of Washington, D. C., known as Georgetown, and return. The Georgetown area is defined by the application as that portion of northwest Washington, D. C., located east of 37th Street and the campus of Georgetown University, south of R Street, north of the Potomac River, and west of 27th Street and the southernmost segments of the Rock Creek and Potomac Parkway system.

Pursuant to Order No. 1344, served August 8, 1974, a hearing was held September 12, 1974. The Gray Line, Inc. (Gray Line) appeared at the hearing as a protestant. In addition, the Citizens Association of Georgetown was present and made a statement with respect to the proposed service.

The testimony of Ms. Catherine White, chairperson of the Board of Directors of Georgetown, was developed on the record. As a result of that testimony, it appeared to the Administrative Law Judge presiding at the hearing on behalf of the Commission that the service proposed to be provided was greater than the authority requested in the application. For that reason, the hearing was adjourned until a later date pending the submission of a suitable amendment to the initial application.

Following the filing of an amendment to the initial application, the Commission served Order No. 1350 on September 19, 1974. That Order required Georgetown to publish notice of the amendment and scheduled the amended application for continued hearing on October 15, 1974. Gray Line appeared at the continued hearing as a protestant.

Georgetown seeks Commission approval to operate a sightseeing business exclusively in the Georgetown area with supportive hotel or motel pickup and delivery service. The proposed service would originate and terminate at a hotel or motel within the District of Columbia. The service would involve a tour of the Georgetown area. The tour would proceed along a route within the Georgetown area. The tour would consist of the viewing of historical sites and explanations of the historical significance of each site.

Georgetown proposes to offer the tours seven days a week with eight tours each day. The first tour would commence at 10:00 a.m. and the last tour would terminate at 6:00 p.m. Georgetown would pick up members of the public at their hotel or motel, transport them to the Georgetown area, proceed along the tour route, and then return these persons to their hotel or motel. There would be no stops within the Georgetown area and persons using the service would be required to embark and disembark only at their hotel or motel.

Georgetown would acquire two 15-passenger, radio-equipped, 1975 Dodge Maxi-vans. The vehicle would be suitable for transporting a maximum of thirteen passengers in addition to a driver and a guide. These vehicles would operate so as to provide a tour each hour. In addition, Georgetown plans to enter into a maintenance contract for service on the vehicles.

Georgetown initially plans to employ eight persons. These would include two full-time drivers and two part-time drivers. The remaining four employees would be part-time guides. In addition, the owners of the business would be involved in managing its daily operations.

Georgetown proposes to acquire office space within the Georgetown area. The office would be used exclusively for managing the proposed operations. There would be no space made available for persons either to wait for the tour or to board a vehicle operating on the tour route.

Rather, any person desiring to use the tour service would be directed to proceed to either a hotel or motel in the District of Columbia for pick-up.

Protestant Gray Line holds Certificate of Public Convenience and Necessity No. 12 from this Commission. That certificate, as pertinent to this proceeding, authorizes Gray Line to perform special operations and charter operations within the District of Columbia. Gray Line has available thirty-eight motor coaches ranging in seating capacity from 38-passenger to 53-passenger and approximately twelve 7-passenger limousines to provide service to the public pursuant to this authority.

Gray Line provides to the public a tour which includes part of the Georgetown area. This tour primarily embraces several historical sites within Washington, D. C., and stops to view parts of the Arlington National Cemetery. The tour by motor coach requires approximately four hours and the fare for an adult is \$10 and for a child \$5. Gray Line also offers this tour by exclusive car and guide for between one and seven passengers at a charge of \$56, excluding admissions or other expenses.

Pursuant to its charter operations authority, Gray Line provides a shopping and browsing tour of the Georgetown area. This tour involves picking up a pre-formed group at an originating point and transporting it to the Georgetown area. Gray Line provides a brief riding tour of the main streets of the Georgetown area and a description of the shopping areas. In more than half of these tours, a luncheon is included. In those tours including lunch, Gray Line transports the group to and through the Georgetown area prior to lunch and leaves the group at a restaurant. The motor coach then leaves and the tour involves walking and shopping within the Georgetown area. The motor coach returns at a designated time and place and transports the group to the originating point.

The Citizens Association of Georgetown (Association) appeared as an intervenor. The Association is comprised of approximately 1,250 dues-paying members. It takes an active part in preserving the historical significance of the Georgetown area.

Mr. Alcott Deming, first vice-president of the Association, made a statement on behalf of the intervenor. He stated that the Association preferred to see tourists travelling to the Georgetown area in minibuses rather than automobiles or larger motor coaches because the minibuses create a smaller emission problem and do not create as much congestion on the streets. In addition, Mr. Deming stated that the Association was gratified to learn that Georgetown did not plan to mount a loudspeaker on the vehicles or to stop in front of the historical sites.

The findings to be made by the Commission 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. 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. With respect to the second finding, Georgetown has developed a record upon which the Commission is urged to find that the proposed service "will be required".

Georgetown seeks authority to perform both special operations and charter operations. The term special operation means the transportation of passengers for a special trip, for which the carrier contracts with each individual separately. See Commission Regulation 51-07. By the term charter operation is meant the transportation of a group of passengers which, pursuant to a common purpose and under a single contract, has acquired the exclusive use of a vehicle or vehicles to travel together. See Commission Regulation 51-06(a). Although these operations are distinct, the record reflects that Georgetown has developed only the need for a transportation service which would benefit individual passengers. Therefore, the testimony as presented by Georgetown and Gray Line shall be summarized without any delineation between proposed special operations and proposed charter operations.

Georgetown presented the testimony of a single witness. Ms. White testified about the fitness, willingness and ability of the applicant and concerning the need for the proposed service. She indicated that the owners of Georgetown had invested cash of \$21,000 and acquired some office supplies and made deposits on the purchase of equipment. The dedication of these items to the business has resulted in an initial capital investment by the owners of \$25,975.

Ms. White testified that the Bicentennial Coordination Center for Washington, D. C., the Metropolitan Washington Council of Governments, and the U. S. Department of Transportation have prepared a joint study which projects that approximately 2,700,000 people will tour the Georgetown area in 1976. On this basis, the Metropolitan Washington Council of Governments has designated the Georgetown area as a major historic and tourist attraction in 1975 and 1976. Ms. White further testified that the applicant has researched the historical background of the Georgetown area. As a result of that research, she stated that there were several places in the Georgetown area which had architectural and historical importance. Georgetown urges this Commission to find a nexus between the projected influx of tourists and the presence of historical sites. That conclusion then would support a finding that the public convenience and necessity will require the proposed service.

The witness for Georgetown further stated her belief that the proposed service would benefit the residents of the Georgetown area. Ms. White stated that those residents are interested in preserving it as an historical area in the District of Columbia. She opined that the proposed service would increase the public awareness of its historical value. As a result, she believed that there would be more public support for preserving the Georgetown area. At the same time, Ms. White indicated that the use of the maxi-van vehicle would enable people to view the Georgetown area without significantly increasing the air pollution or traffic congestion.

Gray Line presented the testimony of James A. Stoutenburgh, vice president of sales. He stated that Gray Line opposes Georgetown's application because the proposed service would be competitive and the performance of the proposed service may be unsatisfactory to the detriment of the sightseeing industry. Gray Line is specifically concerned with that portion of Georgetown's request for authority to perform special operations which might affect that part of Gray Line's Washington, Arlington National Cemetery and Georgetown tour which passes through a small portion of the Georgetown area. With respect to Georgetown's request for authority to perform charter operations, Mr. Stoutenburgh testified that Gray Line opposed any proposed service which would be competitive with the custom service offered as shop and browse tours or exclusive use of a 7-passenger limousine.

Mr. Stoutenburgh testified that Gray Line does not have a structured tour of only the Georgetown area. Rather, a current Gray Line tour embraces a portion of the Georgetown area and offers a portion of the service proposed. He further indicated that Gray Line did not foresee instituting a tour similar to that proposed by Georgetown. According to Mr. Stoutenburgh, there would not be a demand by the members of the public for such a transportation service.

The Commission believes that the record supports a finding that Georgetown is 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. Georgetown is a new business entity and as such has no history upon which to base a finding as to fitness. However, the capital invested by the owners and the tentative financing arrangements appear to be satisfactory. Georgetown's plans for operating the business are apparently suitable and feasible for providing the proposed service.

The Commission further believes that the record supports a finding that the public convenience and necessity requires the transportation of

passengers over irregular routes from hotels or motels within the District of Columbia to the Georgetown area for the purpose of viewing historical sites. The application by Georgetown seeks authority to perform both special operations and charter operations. With respect to special operations, the record adequately supports a grant of the application. However, the record fails to present an adequate basis for granting the application for authority to perform charter operations. There is no indication that the proposed service would provide benefits to a group of passengers that would not be supplied under special operations. Significantly, the rate structure for the charter service involves a schedule based on the number of persons and the stated fare for special operations with a minimum amount should the number of passengers not be sufficient to generate a specified amount of revenue. In addition, the record contains no testimony to substantiate the claim that groups would use the proposed service in charter operations rather than special operations.

The Commission finds that approval of Georgetown's application for authority to perform special operations is required by the public convenience and necessity. The Commission further finds that approval of Georgetown's application for authority to perform charter operations is not required by the public convenience and necessity.

The Compact bestows upon the Commission "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". See Compact, Title II, Article XII, Section 4(b). This grant of power to the Commission is subject to a restriction not herein relevant. The Commission believes that the authority granted to Georgetown should contain a restriction on vehicle size. As previously stated, Georgetown proposes to use 15-passenger vehicles. The certificate issued pursuant to the authority granted herein shall contain a restriction limiting the seating capacity of the vehicles to 15 persons or less.

The Compact requires each carrier to "file with the Commission, and keep open to public inspection, tariffs showing (1) all fares it charges for transportation subject to this Act, . . . , and (2) to the extent required by regulations of the Commission, the regulations and practices of such carrier affecting such fares." See Compact, Title II, Article XII, Section 5(a). The Commission shall direct Georgetown to file such a tariff with respect to the special operations authority granted herein.

Georgetown has submitted as part of its application a proposed tariff. The tariff sets forth rates for both special operations and charter operations. The Commission shall consider only the rates with respect to special operations. Georgetown anticipates that the rates for special

operations would be \$4 per person except persons between the age of 10 years and 5 years would be charged \$2, and there would be no charge for persons under the age of 5 years.

Georgetown estimates that the performance of the proposed special operations would involve a total expense of \$73,135.28 for the future 12-month period from April 1, 1975, to March 31, 1976. The projected expense includes an estimate for local and Federal income taxes. That estimate is based on projected revenues of \$115,200 for the same period. Although the Compact requires consideration of "all taxes properly chargeable to transportation operations", the Commission believes that the proposed rate structure should be considered before income taxes. See Compact, Title II, Article XII, Section 6(a)(4). The projected revenue deductions without inclusion of income taxes is \$38,915.28 for the future annual period.

The Commission's discussion of the projected revenues and revenue deductions should not be construed as a finding with respect to the accuracy of the estimates. Georgetown's revenue projection is based on a full-load of a specified passenger mix for each tour offered in an annual period. The Commission does not believe that the projected revenues are accurate because the underlying assumption of the number of persons to be carried appears to be unrealistic. With respect to the projected expenses, Georgetown has estimated salaries on the basis of the use of college students as employees with a pay scale of \$2.50 per hour for drivers and \$2 per hour for guides. The projected wage expense appears to be conservatively estimated. In addition, Georgetown projected gas and oil expense of \$22,728 for the future period. Georgetown assumed that the two vehicles would travel 72 miles a day. That estimate was based on a projection of a 5.5 mile tour route and an average of 3 mile pickup and delivery. The distance of several hotels or motels within the District of Columbia is considerably in excess of 3 miles. As a result, the assumption of daily mileage appears to be extremely conservative. Of course, the gas and oil expense would be greater as the mileage increases. The Commission believes that the projected revenues are overstated and the projected revenue deductions are understated.

Although the Commission does not find that the estimates by Georgetown are accurate, the proposed rate structure appears to be compensatory. Based on Georgetown's projections of passengers to be carried, a load-factor of approximately 35 percent would generate revenues sufficient to compensate it for the projected expenses. Accordingly, the Commission concludes that the proposed rate structure for special operations is 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 Application No. 842 of Georgetown Sightseeing Tours, Inc., be, and it is hereby, granted in part and denied in part.
2. That Georgetown Sightseeing Tours, Inc., be, and it is hereby, issued Certificate of Public Convenience and Necessity No. 22, as attached hereto and made a part hereof.
3. That Georgetown Sightseeing Tours, Inc., be, and it is hereby, directed to file WMATC Tariff No. 1 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. 22

GEORGETOWN SIGHTSEEING TOURS, INC.
WASHINGTON, D. C.

By Order No.1395 of the Washington Metropolitan Area Transit
Commission issued January 8, 1975.

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.1395 ;

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 service to be
performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

SPECIAL OPERATIONS:

Individually ticketed sightseeing within that area of Northwest Washington,
D. C., located
east of 37th Street and the campus of Georgetown University,
south of R Street,
north of the Potomac River, and
west of 27th Street and the southernmost segments of the Rock Creek
and Potomac Parkway system,

including transportation from hotels and motels within the District of Columbia to such area for the purpose of such sightseeing, and return.

RESTRICTED to the performance of such operations in vehicles with a seating capacity of fifteen (15) persons or less.

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

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director