

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1431

IN THE MATTER OF:

Application of YELLOW CAB)	
COMPANY d/b/a ALL STATES)	Served May 27, 1975
LIMOUSINE SERVICE for)	
Temporary Authority)	Application No. 811
)	
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 Application No. 810, dated July 26, 1973, Arlington Yellow Cab Company, Inc. (Arlington Yellow)^{1/} seeks a certificate of public convenience and necessity pursuant to Title II, Article XII, Section 4(b) of the Compact, to provide transportation of aircraft crews having a prior or subsequent movement by air, together with baggage, over irregular routes, between Dulles International Airport (Dulles), Herndon, Virginia, or Washington National Airport (National), Gravelly Point, Virginia, on the one hand, and on the other, points located within the District of Columbia. The transportation would be provided pursuant to contract. Arlington Yellow filed as part of the application a proposed tariff.

A petition to amend the scope of Application No. 810 was filed November 8, 1974, and was granted in Order No. 1371, served November 14, 1974. Arlington Yellow proposes to transport aircraft crews to and from Dulles or National under a contract with Northwest Air Lines, Inc. (Northwest) and to and from National under a contract with Delta Air Lines (Delta).

^{1/} The application was initially styled as Arlington Yellow Cab Company, Inc., d/b/a All States Limousine Service. All States Limousine Service was incorporated as of July 1, 1974 under the name All States Limousine Service, Inc., and does not engage in the transportation of passengers for hire.

The contemporaneously filed Application No. 811 for temporary authority was dismissed without prejudice by Order No. 1362, served October 18, 1974. That order also denied a motion by Arlington Yellow to dismiss the temporary authority application. The basis for the motion was the contention that the proposed service was not embraced by the provisions of the Compact. The Commission concluded therein that "the proposed service is subject to the provisions of the Compact and properly within the regulatory jurisdiction of this Commission." Order No. 1362 at page 3.

By Order Nos. 1362 and 1371, Application No. 810 was assigned for public hearing on December 11, 1974. The purpose of the public hearing was to fully develop the basis for any finding as to Arlington Yellow's fitness to perform the proposed transportation service and the existing requirements of the public convenience and necessity for the proposed transportation service. Greyhound Airport Service, Inc. (Greyhound) filed on October 23, 1974, a notice of intent to be heard at the hearing. Greyhound did not appear at the hearing.

As preliminary matters at the hearing, Arlington Yellow presented two separate contentions. First, it asserts that the Compact does not embrace or encompass the type of transportation to be performed. Second, it asserts that if the Commission has jurisdiction over the proposed transportation, then the authority granted should provide for a service responsive to any airline.

This Commission has previously concluded that it has jurisdiction over the proposed transportation. See Order No. 1362. Arlington Yellow herein contends that the proposed service is a contract service and that the Compact does not bestow upon this Commission jurisdiction over contract service. The contentions are similar to those raised by Arlington Yellow's prior motion to dismiss the temporary authority application. The Commission does not believe that the contentions by Arlington Yellow herein warrant further consideration of the prior conclusion in Order No. 1362.

Arlington Yellow requests that any certificate of public convenience and necessity authorize a class of service. Such authority would eliminate any need for Arlington Yellow to request certification by this Commission of the institution of any new service in the future. The justifications offered by Arlington Yellow in support of its request are that the service to be performed would be pursuant to a contract with each airline and that the service would be responsive to the separate needs of each airline. In this respect, Arlington Yellow has indicated that some air lines schedule only one or two weekly flights into the Washington metropolitan area and that other air lines are supplemental air carriers which perform nonscheduled charter service. The Commission does not believe that a grant of authority should certificate Arlington Yellow to provide service for any airline which desires the transportation of its crews between either airport and a point or place in the District of Columbia. Rather, the proposed service is a specialized and unique service and is designed for the particular airline being served. As a result, the Commission believes applications for authority to perform charter operations pursuant to contract require separate consideration.

Arlington Yellow is headquartered in Arlington, Va., and operates as a for-hire carrier engaging in several forms of regulated transportation of passengers within the Metropolitan District. It performs approximately 3,000 taxicab trips a day in 100 taxicabs. 2/ Arlington Yellow would use maxivans for the movement of the aircraft crews. These vehicles would be equipped with two-way radios. The vehicles are designed to transport fifteen passengers but Arlington Yellow would remove the back seat in order to make a baggage compartment. As modified, the vehicles would transport twelve passengers. Arlington Yellow provides a safety program and maintains the vehicles in its own garages.

Arlington Yellow would provide the proposed service as required. Generally, the crews to be transported would be stationed at points other than the Metropolitan District. Arriving and departing area airports, they require transportation to and from hotels located within the District of Columbia. This transportation requirement is the result of agreements between the airline and organizations of crew members and flight attendants.

2/ Motor vehicles for hire designed to carry eight persons or less, not including the driver.

The contract between Arlington Yellow and an airline would provide that persons other than crew members may not be accommodated in the same vehicle. Special points of boarding and debarking the vehicles are provided at the airports. At Dulles, the vehicle would be authorized by the Federal Aviation Administration to operate directly to and from the airplane parked on airfield loading ramps.

The compensation to be paid Arlington Yellow by the airline is usually determined by negotiation. The rate per vehicle trip is dependent upon the number of hours and the distance involved in the transportation. The competition by other carriers would be considered by Arlington Yellow in negotiating the rate. The rate would be paid by the airline without cost to the crew member being transported.

Several financial statements portraying Arlington Yellow's position on June 30, 1974, were submitted. A balance sheet indicates total assets of \$369,157, including current assets of \$160,582 and net fixed assets of \$208,565, total liabilities of \$231,523 and total equity of \$137,634. Arlington Yellow's income statement for the year ended June 30, 1974, shows total revenues of \$931,072 and total costs and expenses of \$863,520. The operations generated income of \$67,552 before taxes and other income and related expenses.

DISCUSSION AND CONCLUSIONS

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.

The Commission believes that the record supports a finding that Arlington Yellow 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.

With respect to the nature of the proposed service, the Commission is of the opinion that Arlington Yellow would be a contract charter carrier.

"[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." Investigation of Authority to Perform CONTRACT OPERATIONS, Order No. 1361, served October 16, 1974, at page 5. Arlington Yellow would enter a "continuing written contract" with each airline. The contract would require Arlington Yellow to transport a defined class of persons. Arlington Yellow would be required to provide a vehicle for the purpose of transporting the aircraft crews and their baggage. The contract would restrict the vehicle occupancy to only members of the aircraft crews. The transportation would be required on a recurring basis over a period of time.

The district manager of transportation services for Northwest supported Arlington Yellow's application. Northwest is a domestic and international air carrier with frequent flights to and from Dulles and National. As a result of the air operations at Dulles, Northwest's crews often move to and from planeside directly to and from accommodations in the District of Columbia. Northwest would require transportation in each direction for approximately two flights per day at National. The usual crew complement would be three cockpit and seven cabin personnel for a flight at Dulles and three cockpit and three or four cabin personnel for a flight at National.

The witness for Northwest stated that the service would be required 24 hours a day and seven days a week. The service must be tailored to meet the needs of the crew because the airline is required to have transportation available within forty-five minutes after arrival of the aircraft and the crew is required to be at the airport one hour before departure of the aircraft. The time of arrival or departure of flights is irregular as a result of weather conditions, flight operations, and the diversion of flights. The witness for Northwest stated that safety, reliability, cost and the type of service were the factors considered when selecting a carrier to perform the proposed service.

The Commission believes that the record supports a finding that the public convenience and necessity requires the transportation of Northwest's aircraft crews together with their baggage between either Dulles or National and the District of Columbia. The Commission further finds that approval of this portion of Arlington Yellow's application is required by the public convenience and necessity. The authority to be granted shall be limited to charter operations pursuant to a specific contract between Arlington Yellow and Northwest.

The station manager for Delta supported Arlington Yellow's application. Delta operates flights to and from National. It would require transportation in each direction for approximately four flights per day. The normal crew complement requiring transportation would be limited to the three cockpit personnel.

The witness for Delta stated that the service must be tailored to meet the needs of the crew. The service would be required seven days a week. The airline is required to have transportation available within a reasonable length of time after arrival of the aircraft and the crew is required to be at the airport one hour before departure of the aircraft. The time of arrival or departure of flights is irregular as a result of weather conditions, flight operations, and the diversion of flights. The witness for Delta stated that safety, service, reliability and cost were the factors considered when selecting a carrier to perform the proposed service.

The Commission believes that the record supports a finding that the public convenience and necessity requires the transportation of Delta's aircraft crews together with their baggage between National and the District of Columbia. The Commission further finds that approval of this portion of Arlington Yellow's application is required by the public convenience and necessity. The authority to be granted shall be limited to charter operations pursuant to a specific contract between Arlington Yellow and Delta.

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).

At the hearing, Arlington Yellow requested that its rates not be publicly disclosed because it bids for these contracts in competition with other carriers. Arlington Yellow believes that disclosure of the rates would put it at a competitive disadvantage.

The Commission must, of course, be aware of the rates in accordance with the provisions of the Compact, Title II, Article XII, Sections 5 and 6. However, the question here presented is whether at the request of the carrier, the Commission should treat rate information as confidential. In the case of contract operations, the Commission believes that such a request may be granted if the carrier shows good cause and if such confidentiality is not inconsistent with the public interest.

The Commission believes that good cause for the request exists in the possibility that the rate information, if publicly available, could conceivably be used against Arlington Yellow competitively. The Commission further believes that confidentiality of contract rates is not inconsistent with the public interest in that the rate payer, being a party to the contract, is already aware of the rates and would gain no further information through a tariff. Besides rate information, a tariff bears other information of a technical and administrative nature. A tariff also contains information of interest and importance to the users of the service (in this case the riders, as opposed to the rate payer), such as rules, regulations and practices applicable to the actual transportation service. The Commission shall require Arlington Yellow to file, in accordance with Title II, Article XII, Section 5 of the Compact and WMATC Regulation 55, a tariff for each contract for which authority is granted herein. These tariffs will be public documents. However, with respect to the rates, these tariffs may state that the rates are held confidential pursuant to this Order. Arlington Yellow will be required to file copies of its contracts and full detail of the rates, either as part of its contracts or separately. These rates will be treated as confidential, except as part of a formal proceeding where the Commission considers disclosure to be in the public interest.

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. 810 of Arlington Yellow Cab Company, Inc., be, and it is hereby, granted.

2. That Certificate of Public Convenience and Necessity No. 26 be, and it is hereby, issued to Arlington Yellow Cab Company, Inc., as attached hereto and made a part hereof.

3. That Arlington Yellow Cab Company, Inc., be, and it is hereby, directed to file WMATC Tariff Nos. 1 and 2 in accordance with the authorities granted herein, such tariffs to be effective upon acceptance by the Executive Director.

4. That Arlington Yellow Cab Company, Inc., be, and it is hereby, directed to file with the Commission, within ten days of service of this order, a copy of the contract between Arlington Yellow Cab Company, Inc., and Northwest Air Lines, Inc., and a copy of the contract between Arlington Yellow Cab Company, Inc., and Delta Air Lines, Inc.

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. 26

ARLINGTON YELLOW CAB COMPANY, INC.

ARLINGTON, VIRGINIA

AFTER DUE INVESTIGATION, it appearing that the above named carrier has complied with all applicable provisions of the Washington Metropolitan Area Transit Regulation Compact, and the requirements, rules and regulations prescribed thereunder and therefore 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 and the Commission so finding;

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:

CHARTER OPERATIONS PURSUANT TO CONTRACT to transport Northwest Air Lines aircraft crews together with their baggage, having a prior or subsequent movement by air, between Dulles International Airport, Herndon, Virginia, or Washington National Airport, Gravelly Point, Virginia on the one hand, and on the other, the District of Columbia.

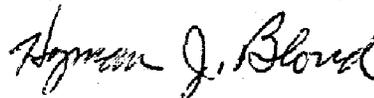
CHARTER OPERATIONS PURSUANT TO CONTRACT to transport Delta Air Lines aircraft crews together with their baggage, having a prior or subsequent movement by air, between Washington National Airport, Gravelly Point, Virginia, on the one hand, and on the other, the District of Columbia.

IT IS FURTHER ORDERED that the charter operations pursuant to contract authorized by this certificate of public convenience and necessity shall be limited to the performance of service pursuant to the agreement between Arlington Yellow Cab Company, Inc., and Northwest Air Lines, Inc., or the agreement between Arlington Yellow Cab Company, Inc., and Delta Air Lines, Inc., 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.

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.

The operating authority granted by this Certificate is granted pursuant to Order No. 1431, served May 27, 1975.

BY DIRECTION OF THE COMMISSION



HYMAN J. BLOND
Executive Director