

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1436

IN THE MATTER OF:

Investigation of FRANK MARTZ COACH)	Served June 11, 1975
COMPANY Acquisition of ATWOOD'S)	
TRANSPORT LINES, INC.)	
)	
Application of FRANK MARTZ COACH)	Application No. 856
COMPANY to Acquire Control of)	
ATWOOD'S TRANSPORT LINES, INC.)	Docket No. 283

By Order No. 1424, served May 2, 1975, the Commission approved Application No. 856, subject to certain conditions, and reissued Certificate of Public Convenience and Necessity No. 14 (Certificate No. 14). Among other findings, the Commission therein found that the prospective holder did not intend to render reasonable, continuous and adequate service to the public pursuant to that portion of Certificate No. 14 which authorized regular route operations between Washington, D. C., and the site of the United States Atomic Energy Commission 1/ near Germantown, Maryland. Accordingly, the Commission revoked that portion of Certificate No. 14.

On June 2, 1975, Atwood's Transport Lines, Inc. (Atwood) and Frank Martz Coach Company (Martz) filed an application for reopening, reconsideration and modification of Order No. 1424. The application refers solely to the revocation of Atwood's authority to perform regular route operations between Washington, D. C., and the site of the United States Atomic Energy Commission near Germantown, Maryland. Atwood and Martz submit that the Commission's action constitutes error for two reasons. First, the revocation is stated to be contrary to the Commission's previous decision in Order No. 541, served October 27, 1965. Second, the revocation is stated to be contrary to the provisions of the Compact, Title II, Article XII, Section 4(g).

An attendant matter also is presented for consideration by the application. The reissued Certificate No. 14 did not set forth all the charter authority previously contained in the certificate. This clerical problem

1/ The "Atomic Energy Commission" as used herein for convenience denotes the location of what was the site of the Atomic Energy Commission. That agency no longer exists.

will be corrected by issuing a certificate which clearly reveals the Commission policy to grant separate and severable charter and regular route rights. See Order No. 553, served December 23, 1965. The significant modification of Certificate No. 14, as appended to Order No. 1424, involves the charter operations and includes authority from points in a territory within one mile of the regular route between Washington, D. C., and the site of the United States Atomic Energy Commission near Germantown, Maryland.

DISCUSSION AND CONCLUSIONS

Order No. 541 had its origin in a formal complaint filed by D. C. Transit System, Inc. (Transit). The complaint alleged that Atwood had abandoned the operation of regular route transportation between Washington, D. C., and the Atomic Energy Commission site and that such abandonment was a wilful failure to comply with the provisions of the Compact, Title II, Article XII, Section 4(i). Transit's formal complaint requested the Commission to revoke Atwood's authority to render said regular route transportation.

The Commission found that Atwood's total cessation of operations was not adequate and continuous service as required by the Compact and Certificate No. 14. The Commission also concluded that the cessation was a voluntary and wilful act. See Order No. 541, at page 5. However, the Commission then found that it would not be in the public interest to revoke the pertinent regular route authority because such action may have forced the Atomic Energy Commission to discontinue its competitive bid practice and rely solely on Transit as the only carrier holding the requisite authority to provide the transportation service.

Since Order No. 541 was served, two significant events have occurred which negate the public policy set forth therein. First, Transit's Certificate of Public Convenience and Necessity No. 5 was canceled in its entirety and simultaneously a new certificate was issued authorizing only individually ticketed sightseeing. See Order No. 1260, served June 29, 1973. As a result of that action by the Commission, Transit no longer would be the only carrier with the requisite authority to provide the transportation service. Second, the Commission amended Regulation 51-06 to provide for authority to perform charter operations pursuant to contract. A certificated charter carrier may perform contract charter service within the broader scope of its charter authority. See Order No. 1361, served October 16, 1974, at page 6. Accordingly, Atwood could continue to bid for the Atomic Energy Commission service and, if successful, provide the service as a certificated charter carrier.

The Commission does not believe that Order No. 1424 should be reconsidered for the alleged error that the Commission was unaware of,

overlooked or ignored its prior outstanding Order No. 541. The application does not present a sufficient basis warranting reconsideration of the revocation of the regular route authority between Washington, D. C., and the Atomic Energy Commission. The public policy justifying the prior suspension is no longer applicable and does not constitute a basis for merely suspending that portion of the authority which has been revoked.

The Compact, Title II, Article XII, Section 4(g) applies to the effective periods of certificates and the manner in which they may be suspended or terminated. Atwood and Martz contend that the Commission's revocation of the regular route authority did not comply with these provisions. First, Atwood and Martz state that there was no request for revocation. They submit that an indication by the Commission of the revocation of the authority would have resulted in the submission of evidence by the acquiring carrier of an intent to revitalize the authority. As an appendix to the application, Atwood and Martz submitted an affidavit by the vice-president of Martz. According to the affidavit, it is the desire and intent of Martz, if it acquires control of Atwood, to cause Atwood to bid on the transportation service to and from the Atomic Energy Commission and, if the successful bidder, to request that the suspension of its operating authority be lifted and, thereafter, to exercise that authority. Should Atwood be the successful bidder, it could perform the transportation service described pursuant to its charter authority by merely filing copies of the contract with the Commission, subject, of course, to Commission approval of the terms of the contract. In its charter authority, reinstated herein, Atwood holds all the authority it needs to operate such a charter service pursuant to contract. Second, Atwood and Martz state that the Commission may not on its own initiative revoke authority previously issued to a carrier without affording the carrier notice and hearing with respect to the revocation, a finding of wilful failure by the carrier and an order by the Commission directing the carrier to comply with the rules or regulations or orders of the Commission or with any term, condition or limitation of such certificate, and then another order by the Commission finding that the carrier has failed to comply with the prior order directing the carrier to comply. The Compact, Title II, Article XII, Section 12(b) does not mandate that the Commission must initiate and complete the revocation proceeding described in Section 4(g) of Article XII before approving an acquisition of control. Where, in the acquisition proceeding, the Commission finds that such approval must be subject to the revocation of a portion of the underlying certificate in order to be consistent with the public interest, the Commission may so condition approval of the transaction.

The Commission does not believe that Order No. 1424 should be reconsidered for the alleged error that the Commission failed to comply with the specific provisions of Article XII, Section 4(g) of the Compact. The Commission clearly has set forth its findings as required by Article XII,

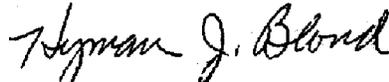
Section 12(b) and has subjected the transaction to a modification of Certificate No. 14 which is consistent with the public interest. The application does not present a sufficient basis warranting reconsideration of the revocation of the regular route authority between Washington, D. C., and the Atomic Energy Commission.

THEREFORE, IT IS ORDERED:

1. That the application of Atwood's Transport Lines, Inc., and Frank Martz Coach Company for reopening, reconsideration and modification of Order No. 1424, served May 2, 1975, be, and it is hereby, denied.

2. That Certificate of Public Convenience and Necessity No. 14 be, and it is hereby, reissued as attached hereto and made a part hereof.

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 14

ATWOOD'S TRANSPORT LINES, INC.*

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:

REGULAR ROUTES:

Passengers and their baggage, and express, mail and newspapers in the same vehicle:

Between Washington, D. C., and the Prince Georges-Charles County line, and all intermediate points, except intra-District points:

From Washington, over city streets to the District of Columbia-Maryland State line, thence over Maryland Highway 5 to Prince Georges-Charles County line, and return over the same route.

IRREGULAR ROUTES:

Passengers and their baggage, and express, mail and newspapers in the same vehicle:

* Atwood's Transport Lines, Inc., is a wholly-owned subsidiary of Frank Martz Coach Company.

Round-trip or one-way:

CHARTER OPERATIONS:

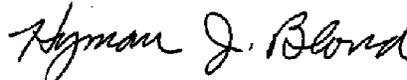
- (1) From Washington, D. C., to points in the Metropolitan District
- (2) From points in an area within one mile of the following route: From the District of Columbia-Maryland line over U. S. Highway 240 to junction Maryland Highway 118, thence over Maryland Highway 118 to the site of the United States Atomic Energy Commission to points in the Metropolitan District.
- (3) From points in an area within one mile of the following route: From the District of Columbia-Maryland line over Maryland Highway 5 to the Prince Georges-Charles County line to points in the Metropolitan District.

THIS CERTIFICATE IS RESTRICTED to provide that the operating authorities of Atwood's Transport Lines, Inc., and Frank Martz Coach Company shall not be combined or jointly operated, and to further provide that Atwood's Transport Lines, Inc., and Frank Martz Coach Company shall not enter an agreement or arrangement whereunder one of these carriers performs service as part of the service offered by the other carrier.

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 this certificate.

The operating authority granted by this Certificate is granted pursuant to Order No. 1436 , served June 11, 1975.

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director