

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1458

IN THE MATTER OF:

Served October 15, 1975

Application of IRA F. GADD, t/a) COLUMBIA TOURS for Temporary Authority) to Perform Charter Operations))	Application No. 873
Application of IRA F. GADD, t/a) COLUMBIA TOURS for Temporary Authority) to Perform Special Operations))	Application No. 874
Application of IRA F. GADD, t/a) COLUMBIA TOURS for Certificate of) Public Convenience and Necessity to) Perform Charter Operations))	Application No. 878
Application of IRA F. GADD, t/a) COLUMBIA TOURS for Certificate of) Public Convenience and Necessity to) Perform Special Operations)	Application No. 879 Docket No. 291

By Application Nos. 873 and 874, filed August 12, 1975, Ira F. Gadd, trading as Columbia Tours (Columbia), seeks temporary authority pursuant to Title II, Article XII, Section 4(d)(3) of the Compact, and by Application Nos. 878 and 879, filed October 3, 1975, Columbia seeks a certificate of public convenience and necessity pursuant to Title II, Article XII, Section 4(b) of the Compact, to transport passengers, over irregular routes, in either charter operations or special operations, within a limited portion of the Metropolitan District.

The charter operations would consist of transporting groups of passengers between (A) points in Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, on the one hand, and on the other, points in the District of Columbia and (B) points in the District of Columbia, on the one hand, and on the other, points in either the District of Columbia or Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia.

The special operations would consist of transporting persons (A) from points within Fairfax and Arlington Counties and the cities of Alexandria,

Fairfax and Falls Church, Virginia, to the District of Columbia, and return, and (B) from points within the District of Columbia to points in both the District of Columbia and Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, and return.

PROPOSED SERVICES

Columbia would perform both the special operations and the charter operations in either a 45-passenger motor coach or a 15-passenger van. The services would be provided upon demand.

Columbia would provide eight separate tours to individual members of the general public. Tour B would involve a riding tour of downtown Washington, D. C., with stops at the White House, United States Capitol Building, Bureau of Engraving and Printing, and the Museum of Natural History. Tour CA would involve a riding tour of the Federal Triangle area of downtown Washington, D. C., and stops at the National Air and Space Museum, Lincoln Memorial, Arlington National Cemetery and Iwo Jima Memorial. Tour I is a combination of tours B and CA. Tour CM would involve a stop at Mount Vernon and either the John F. Kennedy gravesite in Arlington National Cemetery or old Christ Church in "Old Town" Alexandria. Tour T is a two day tour and consists of tours B, CA and CM plus a stop at the Washington Monument, one of the several Smithsonian Museums not otherwise included, the National Archives, Ford Theatre, and the Library of Congress or Jefferson Memorial. Tour 10 involves stops at the White House, United States Capitol Building, Museum of History and Technology, National Air and Space Museum, Lincoln Memorial, Iwo Jima Memorial and John F. Kennedy gravesite. Tour AM would involve stops at Mount Vernon, "Old Town" Alexandria, White House, United States Capitol Building, Museum of History and Technology or Museum of Natural History, Bureau of Engraving and Printing or United States Supreme Court, and John F. Kennedy gravesite. Tour N consists of an evening riding tour of downtown Washington, D. C., and stops at the Library of Congress, Ford Theatre, or the John F. Kennedy Center for the Performing Arts, Lincoln Memorial, Jefferson Memorial, Pentagon, Iwo Jima Memorial, and John F. Kennedy gravesite.

The following table sets forth the applicable fares for each tour.

<u>TOUR</u>	<u>ADULT FARE</u>	<u>CHILD FARE</u>
B	\$ 9.00	\$ 4.50
CA	9.00	4.50
I	15.00	7.50
CM	13.00	6.50
T	31.00	15.50
10	13.00	6.50
AM	21.00	10.50
N	9.00	4.50

The child fare would be applicable to persons between the ages of 5 and 12 years, and children under 5 years of age accompanied by an adult passenger and not occupying seats to the exclusion of farepaying passengers would be transported at no charge.

The rates applicable to charter operations would involve either cents-per-mile or hourly charges.

	<u>SEATING CAPACITY OF VEHICLES</u>	
	<u>15 Seats Or Less</u>	<u>16-45 Seats</u>
<u>Cents-Per-Mile</u>		
Revenue	\$ 0.65	\$ 0.90
Deadhead	0.55	0.70
<u>Layover Charge</u>		
Per hour or fraction thereof	8.00	10.00
<u>Hourly Charge</u>		
First 3 hours or fraction thereof	42.00	60.00
Each additional hour	12.00	15.00

The charge for a charter trip would be the mileage and layover charge or the hourly charge, whichever is greater.

PERTINENT BACKGROUND

The Commission has a long and involved history of applications and orders regarding Columbia. This history is recounted herein to indicate the complicated posture of Columbia as an applicant.

Pursuant to Title II, Article XII, Section 4(a) of the Compact, Columbia seasonably filed an application for a "grandfather" certificate to authorize the transportation allegedly engaged in on March 22, 1961, the effective date of the Compact. Columbia also filed an application under Title II, Article XII, Section 4(b) of the Compact, for a certificate of public convenience and necessity, which basically duplicated the authority sought in the "grandfather" application. The Commission found that, as of March 22, 1961, Columbia was bona fide engaged solely in a taxicab operation and that such operations were not entitled to a certificate of public convenience and necessity under the "grandfather" provisions of the Compact. The Commission also found that the present and future public convenience and necessity did not require the proposed service. As a result of these findings, the Commission denied both applications. Cf. Order No. 397, served October 8, 1964.

After an application for reconsideration was denied, Columbia sought review in the United States Court of Appeals for the District of Columbia Circuit. The Court did not disturb the Commission's disposition with respect to the "grandfather" application but remanded the certificate of public convenience and necessity proceeding. Cf. Gadd v. Washington Metropolitan Area Transit Commission, 347 F.2d 791 (1965).

By Order No. 571, served February 25, 1966, the Commission granted Columbia a certificate of public convenience and necessity authorizing the transportation of passengers for hire as follows:

IRREGULAR ROUTES:

Passengers and their baggage:

SPECIAL OPERATIONS:

Round-trip, or one-way sightseeing tours;

(1) From points in the District of Columbia to points in the District of Columbia, the City of Alexandria and the Counties of Arlington and Fairfax, Virginia.

(2) From points in the City of Alexandria and Arlington County, Virginia, to points in the District of Columbia.

Then an application for reconsideration was granted and the certificate authority was modified with respect to the area of operations and the size of the vehicles to be used. Columbia was authorized to operate from points in the City of Alexandria and Arlington County, Virginia, to points in the District of Columbia and points in the City of Alexandria, Arlington and Fairfax Counties, Virginia, by way of the District of Columbia. The performance of the authorized transportation was restricted to vehicles having a seating capacity of not more than 17 passengers. Cf. Order No. 596, served April 22, 1966.

In 1968, upon the recommendation of the staff, the Commission served an order to show cause, directed against Columbia, in part as a result of alleged operations where passenger tours were originated in the District of Columbia. Cf. Order No. 768, served January 10, 1968. Columbia made an offer of settlement and proposal of adjustment so as to determine that controversy by consent without the necessity of a hearing and decision. The Commission approved the offer and proposal and ordered Columbia to cease and desist from all operations in violation of the Compact. Cf. Order No. 782, served February 28, 1968.

Columbia then filed an application to amend its Certificate of Public Convenience and Necessity No. 16. Columbia sought authority (a) to engage in irregular route, round-trip or one-way sightseeing tours between all points in the Metropolitan District; (b) to engage in irregular route charter operations between all points in the Metropolitan District; and (c) to remove the restriction limiting the authorized operations to vehicles having seating capacity of not more than 17 passengers. Columbia admitted that it had originated

unauthorized trips in the District of Columbia and that it would continue to conduct such operations regardless of the Commission's action with respect to its application to amend. The Commission found that Columbia was unfit. Columbia had deliberately and wilfully breached its written pledge not to engage in transportation unauthorized by its certificate and the cease and desist order of the Commission. The application was denied. Cf. Order No. 890, served December 9, 1968.

The Commission initiated a revocation proceeding. Cf. Order No. 891, served December 9, 1968. Columbia's sole defense was that it was unable to survive financially under the terms of its existing certificate. The Commission found that sufficient cause had not been shown to justify the wilful and deliberate violations by Columbia of its certificate. Accordingly, the Commission revoked Certificate of Public Convenience and Necessity No. 16. Cf. Order No. 973, served September 11, 1969, and Order No. 982, served October 20, 1969.

TEMPORARY AUTHORITY

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 findings that there is an immediate and urgent need to a point or points within a territory and that there is 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.

Columbia submits that the rapidly expanding population of Northern Virginia and the increasing number of tourists visiting the Washington metropolitan area have created an immediate need for comfortable sightseeing and charter services within the District of Columbia and Northern Virginia. Columbia further submits that the demand for passenger transportation services will dramatically increase during the Bicentennial year of 1976 as a result of the influx of visitors.

Columbia states that there are several carriers certificated by this Commission to perform special operations and/or charter operations in the area which it seeks to operate. However, Columbia further states, these carriers do not regularly provide special operations for sightseeing services from points in the District of Columbia to view such attractions as Dulles International Airport, Gunston Hall, Pohick Church and the Manassas Battlefields. Columbia is very familiar with these attractions and is certificated by the Virginia State Corporation Commission to carry passengers both for sightseeing purposes to view these attractions and by charter party for sightseeing and other purposes. Columbia also states that most of the certificated carriers operating special operations or charter operations for sightseeing services to attractions in the District of Columbia do not

regularly pick up passengers from points in Northern Virginia, other than from Arlington County and the city of Alexandria.

Columbia submits that a grant of the temporary authority applications would not in any measurable way damage the currently certificated carriers. Columbia states that annually it receives requests from 50 or 60 parties seeking charter service, particularly on weekends, for sightseeing and other trips within the District of Columbia or between the District of Columbia and Northern Virginia. Usually, it has not been able to comply with these requests because of conflicting commitments, lack of authority to conduct operations in the District of Columbia, or other reasons. Columbia believes that a number of carriers are currently rendering transportation services similar to those sought to be performed under these applications and are transporting substantial numbers of passengers to and from points within the District of Columbia, without the proper authority. Columbia submits that this situation has continued for some time without complaint from the certificated carriers. Columbia believes it is possible to conclude that there is sufficient business available for all carriers now operating in the District of Columbia, both certificated and uncertificated, and that there exists an immediate need for the service of additional certificated carriers.

Columbia admits that it has conducted charter operations or special operations within the District of Columbia involving small numbers of passengers. The justifications for such unauthorized operations are stated to have been economic expediency and the need to survive as a small businessman. The rendering of unauthorized operations presents a question of the carrier's fitness. The burden of establishing fitness properly to perform a proposed transportation service rests upon the applicant. In view of the Commission's directive hereinafter scheduling the permanent authority applications for hearing, the issue of fitness will be there considered.

Columbia shall be granted temporary authority pending a decision on the applications for a certificate of public convenience and necessity. The Commission believes that there is an immediate and urgent need for the proposed services and that there is no existing carrier service capable of meeting this specific need. Of course, the grant of temporary authority creates no presumption that corresponding permanent authority will be granted.

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. Columbia shall be assessed an amount preliminarily estimated to be sufficient to cover the expenses which the Compact, Title II, Article XII, Section 19(a) requires the carrier to bear.

The reason for the hearing is to fully develop the basis for any finding as to Columbia's fitness to perform the proposed transportation service and the requirements of the public convenience and necessity for the proposed services. Columbia shall be required to submit and be prepared to support with a competent witness a statement projecting revenues and revenue deductions, including taxes for a one-year period, allocated between special operations and charter operations. Columbia shall be directed to file six (6) copies of the statement and serve one copy on each party of record on or before November 11, 1975. Columbia shall be prepared to present evidence that it is fit, willing and able to perform the proposed services and to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission thereunder. Columbia also shall be prepared to present evidence that the public convenience and necessity require permanent authorization of the proposed service.

THEREFORE, IT IS ORDERED:

1. That Application Nos. 873 and 874 of Ira F. Gadd, t/a Columbia Tours be, and they are hereby, granted.
2. That Ira F. Gadd, t/a Columbia Tours be, and it is hereby, granted temporary authority to transport passengers, over irregular routes, in charter operations between (A) points in Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, on the one hand, and on the other, points in the District of Columbia and (B) points in the District of Columbia, on the one hand, and on the other, points in either the District of Columbia or Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, and in special operations (A) from points within Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, to the District of Columbia, and return, and (B) from points within the District of Columbia to points in both the District of Columbia and Fairfax and Arlington Counties and the cities of Alexandria, Fairfax and Falls Church, Virginia, and return.
3. That Ira F. Gadd, t/a Columbia Tours be, and it is hereby, required to file forthwith an appropriate tariff stating rates as proposed

in Application Nos. 873 and 874, pursuant to the temporary operating authority granted herein to be effective October 15, 1975 such tariff to be filed on or before Monday, October 20, 1975.

4. That unless otherwise provided by order of the Commission the temporary authority granted herein shall become effective October 15, 1975 and shall remain in effect through April 12, 1976.

5. That Application Nos. 878 and 879 of Ira F. Gadd, t/a Columbia Tours be, and they are hereby, scheduled for public hearing to commence Tuesday, November 18, 1975, at 10:00 A. M. in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

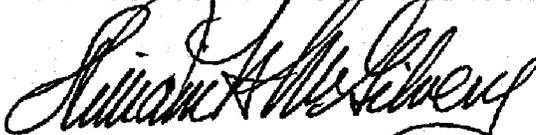
6. That Ira F. Gadd, t/a Columbia Tours publish notice in the form prescribed by the staff of the Commission of such application and hearing in a newspaper of general circulation in the Metropolitan District and post notice in each of its vehicles, no later than Friday, October 24, 1975, and present at the hearing a certificate of publication from the selected newspaper and a certification of posting.

7. That six (6) copies, the original to be submitted at the hearing, of the statement required hereinbefore be filed by Ira F. Gadd, t/a Columbia Tours with the Commission and one copy served on each party of record on or before Tuesday, November 11, 1975.

8. That any person desiring to protest shall file a protest in accordance with Commission Rule 14, or any person desiring to be heard on this matter shall notify the Commission, in writing, on or before Friday, November 7, 1975, and shall mail a copy of such protest or notice to counsel of record for Ira F. Gadd, t/a Columbia Tours, Clive L. DuVal 2D, 2007 Fifteenth Street North, Arlington, Virginia 22201.

9. That Ira F. Gadd, t/a Columbia Tours be, and it is hereby, assessed \$300 pursuant to the provisions of the Compact, Title II, Article XII, Section 19 and directed to deposit said amount in the name and to the credit of the Washington Metropolitan Area Transit Commission in the American Security and Trust Company, 1612 K Street, N. W., Washington, D. C., on or before Friday, November 14, 1975.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director