

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1560

IN THE MATTER OF:

Served May 24, 1976

Application of HOLIDAY TOURS, INC.,)
for Certificate of Public Convenience)
and Necessity to Perform Special)
Operations)

Application No. 903

Docket No. 308

By Application No. 903, dated January 14, 1976, Holiday Tours, Inc. (Holiday) seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact, to perform special operations. The application sets forth a request for authority to transport passengers, together with mail, express, baggage and newspapers, over irregular routes, (A) from points within the District of Columbia to points within the District of Columbia; (B) from points within the District of Columbia to Alexandria, Arlington, Mount Vernon, and Fairfax County, Virginia, and return; (C) from points within Alexandria, Arlington, Mount Vernon, and Fairfax County, Virginia, to the District of Columbia, and return; (D) from points within the District of Columbia to Montgomery County and Prince George's County, Maryland, and return; and (E) from points within Montgomery County and Prince George's County, Maryland, to points within the District of Columbia, Alexandria, Arlington, Mount Vernon and Fairfax County, Virginia, and return.

Holiday would operate two services. One service would be a shuttle operated between hotels and motels located within the Metropolitan District and Holiday's office, Sixth Street and Pennsylvania Avenue, N. W., in the District of Columbia. The proposed charge is \$1.50 per person per one-way trip. The other service would be a loop tour service between points within the District of Columbia. The proposed charge is \$3 per person. The two services would be separate operations.

A formal protest to the application was filed by The Gray Line, Inc. (Gray Line) on February 9, 1976. That carrier holds Certificate of Public Convenience and Necessity No. 12, which authorizes, inter alia, the provision of round trip sightseeing or pleasure tours in special operations from points within the Metropolitan District, except the Dulles International Airport and Alexandria, Virginia, to points within the Metropolitan District. Gray Line contends that approval of Holiday's application would duplicate the authority granted to Gray Line and that the proposed operations by Holiday would be directly competitive and highly detrimental. Gray Line further contends that the public convenience and necessity does not justify or require authorization of any further or additional sightseeing tour services. Pursuant to Order No. 1492, served January 29, 1976, a public hearing was commenced on February 20, 1976, and continued to March 3, 1976.

PERTINENT BACKGROUND

The Commission has a long and involved history of proceedings and orders regarding Holiday. This history is recounted herein as relevant to the findings, conclusions, and directives set forth hereinafter.

Pursuant to Title II, Article XII, Section 4(a) of the Compact, Holiday 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. See Order No. 201, served September 17, 1962. The Commission considered the application to be a request for a certificate of public convenience and necessity pursuant to the provisions of Title II, Article XII, Section 4(b) of the Compact. The Commission found that Holiday failed to produce evidence to indicate that the proposed service sought to be performed was required by public convenience and necessity and that it had the financial ability to perform the transportation. See Order No. 169, served July 16, 1962. The Commission thus denied the application and Holiday sought reconsideration. The Commission thereupon reconsidered the record, modified the prior rulings, facts, opinions, findings and conclusions, and denied the application.

Holiday sought review of the Commission's denial in the United States Court of Appeals for the District of Columbia Circuit. The Court set aside the Commission's orders and remanded the case for further appropriate proceedings. The Court set forth the governing standard to be used by the Commission to determine whether Holiday was a bus operator using rented or chartered equipment and, thus, entitled to a "grandfather" certificate. That standard was stated to be:

"[T]he applicant . . . controlled and directed the bus transportation to such an extent as to make it responsible to the passengers and to the public for the operations." Holiday Tours, Inc. v. Washington Met. Area Trans. Com'n., 365 F.2d 672 (1965), at page 677.

The Commission found on remand that Holiday had not controlled and directed bus transportation on March 22, 1961, to the extent required to be considered a bus operator using rented or chartered equipment. The Commission, however, did find that Holiday was bona fide engaged in sightseeing operations by limousine, an exempt form of transportation for hire, and that Holiday had chartered buses operated by certificated carriers when it sold more individual tickets than the limousines could adequately and satisfactorily accommodate. The Commission accordingly denied Holiday's application for a "grandfather" certificate of public convenience and necessity. See Order No. 554, served December 29, 1965. Holiday then filed a petition for reconsideration which the Commission denied. See Order No. 573, served February 25, 1966.

The record and orders were referred to the Court. The Court affirmed the Commission's conclusion that Holiday was not bona fide engaged in the

transportation of passengers in motor vehicles with a seating capacity in excess of eight passengers, exclusive of the driver, on or before March 22, 1961. The Court agreed that the record established Holiday's business to be that of operating a sightseeing business by limousine and, as such, not transportation by bus within the terms of the grandfather clause of the Compact.

HOLIDAY'S OPERATIONS

The record in this proceeding sets forth a description and explanation of the sightseeing tour services currently being conducted by Holiday. These services primarily consist of operations from hotels or motels within the Metropolitan District to points within the Metropolitan District.

The sightseeing tour services involve six separate tours. The all day tour is a riding tour of Washington, Arlington, Alexandria and Mount Vernon, with stops at the White House (when open), Smithsonian Institution, Capitol of the United States, Lincoln Memorial, Arlington National Cemetery, and Mount Vernon. The Washington and Arlington tour includes stops at the White House (when open), Smithsonian Institution, Capitol of the United States, Lincoln Memorial, and Arlington National Cemetery. The Arlington, Alexandria and Mount Vernon tour includes stops at the Arlington National Cemetery and Mount Vernon. The Washington, D. C., buildings and city tour includes stops at the White House (when open), Smithsonian Institution, Capitol of the United States, and the Lincoln Memorial. The combination observation tour of Washington and Arlington National Cemetery includes stops at President Kennedy's grave and Tombs of the Unknown Soldiers. The all day deluxe tour of Washington includes stops at either the FBI Building or Ford's Theatre, Washington Monument, White House (when open), Smithsonian Institution, Capitol of the United States, Lincoln Memorial, and Arlington National Cemetery. The following table summarizes the applicable per capita fares for each tour and the approximate length of each.

<u>Tour</u>	<u>Adult Fare</u>	<u>Child Fare</u>	<u>Time</u>
All Day	\$22.50	\$12.50	8-1/2 hours
Washington and Arlington	14.50	7.25	6-1/2 hours
Arlington, Alexandria and Mt. Vernon	16.00	9.00	6-1/2 hours
Washington, D. C., Buildings and City	9.00	4.50	4-1/2 hours
Combination Tour	9.00	4.50	3 hours
All Day Deluxe	20.00	10.00	---

The child fare is applicable to persons under the age of 12 when accompanied by an adult.

Holiday performs the individually-ticketed sightseeing tours in rented buses. Holiday sells the individual tickets for its sightseeing tours indirectly through commissioned accounts at local motels and directly pursuant to individual requests. The tickets bear Holiday's name and indicate which tour the individual passenger has purchased. Holiday uses driver-guides employed by the leasing bus companies. The driver-guides are selected by Holiday and, in some

instances, paid directly by Holiday. The driver-guides have been instructed and trained by Holiday in the separate tour itineraries and Holiday requires conformity. These itineraries have been developed by Holiday and are designed to provide the service described in its brochure or offered in its advertisement in the telephone directory. The sightseeing tours are the sole responsibility of Holiday and it would be responsible for the conduct of the tour as outlined in the brochure. Holiday also would be responsible to any passenger suffering injuries as the result of negligent operation of the bus. The carrier or company leasing a vehicle to Holiday is merely its instrumentality.

The record clearly indicates that Holiday has been operating these sightseeing tours for several years. Holiday asserts two bases as justification for its operations without a certificate of public convenience and necessity. First, Holiday states that the Commission conceded in the "grandfather" proceeding that Holiday could perform individually-ticketed sightseeing tours in rented or chartered buses without authority. Second, Holiday states that it has performed these services under the authority properly held by certificated carriers from whom it has leased buses.

The "grandfather" proceeding was to determine whether Holiday had been performing individually-ticketed sightseeing tours in rented or chartered buses as of March 22, 1961. The Commission found and the Court agreed that no such service was being rendered. The Commission did not find and the Court did not state that such operations would be accorded the exempt status applicable to limousines of eight passengers or less designed seating capacity. Holiday's first justification for its current operations is not supported by the record and decisions in the "grandfather" proceeding.

Holiday's second basis also is not supported by the record. There is no evidence substantiating its claim that certificated carriers leased their authority to Holiday. As the previous discussion indicates, the operations have been devoted to the sale of per capita sightseeing tickets. However, Holiday claims that it has performed operations under the charter authority held by carriers operating within the Metropolitan District. As a result, the individual passengers believe the operation is per capita sightseeing 1/ and the carrier supplying the vehicle believes the operation is charter sightseeing. 2/

1/ Commission Regulation 51-07 defines Special Operations as the transportation of passengers for a special trip for which the carrier contracts with each individual separately.

2/ Commission Regulation 51-06(a) defines Charter Operations as the transportation of a group of passengers who, pursuant to a common purpose and under a single contract, has acquired the exclusive use of a vehicle or vehicles to travel together.

The Commission will not permit the rental of operating authority under "color" of a lease. Such fractionalization of authority would be contrary to the public interest because the "carrier" performing the service under the color of a certificate would not be the authorized person and the purpose of regulation would be defeated.

The Compact, Title II, Article XII, Section 4(a) provides, inter alia, that "No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation". Holiday clearly is engaged in transportation for hire between points in the Metropolitan District. The Commission has not issued a certificate of public convenience and necessity to Holiday to render individually-ticketed sightseeing tours. Accordingly, Holiday shall be directed to cease and desist from unauthorized operations.

HOLIDAY'S APPLICATION

The findings to be made by the Commission, after hearing, 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. Essentially, 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. In addition, approval by the Commission of the proposed tariff must be based on a finding that the tariff is just, reasonable, and not unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District. See Compact, Title II, Article XII, Section 6(a)(2).

Holiday is Walter Lee Davis. He owns and operates not only Holiday but also Holiday Gift Shops. These gift shops are located within the Metropolitan District. Davis sells souvenirs and tickets for the sightseeing operation at these shops. The conduct of the businesses are so intertwined that it is impossible on this record to distinguish the revenue generated by Holiday from the revenue generated by the gift shops. Walter Lee Davis' son operates a business known as Holiday Travel Club. Apparently, the primary business function of Holiday Travel Club is the leasing or rental of its sole asset, a motor coach, to Holiday. Thus, Davis' Holiday Gift Shops sell tickets for Holiday's tours which are performed at times in a vehicle leased or rented from Holiday Travel Club.

In support of its proposal for separate shuttle and loop tour services, Holiday presented the testimony of several witnesses. These witnesses receive commissions for the sale of Holiday's sightseeing tickets. Generally, they indicated that patrons of their motels would use Holiday's proposed shuttle

service into the downtown area of the District of Columbia. Each of these motels is located in close proximity to a Metrobus regular route serving downtown Washington, D. C. However, none of the motels is directly served by any certificated carrier. In addition, each motel has available to its patrons taxicab service to and from the downtown portion of the District of Columbia. None of these witnesses testified concerning the proposed loop service in the Mall area of the District of Columbia.

Holiday proposes to pick-up passengers at any motel or hotel in the Metropolitan District. These pick-ups would be pursuant to telephone requests by either the passenger or the manager of the motel or hotel. The passenger thus would be transported over an irregular route by way of an indeterminable number of stops from the motel or hotel to Holiday's office located at Sixth Street and Pennsylvania Avenue, N. W., Washington, D. C. At that point the shuttle service would terminate. The passenger also would be able to originate return shuttle service at that point. Holiday estimates that approximately ten motor coaches would be needed to perform this shuttle service. As previously indicated, Holiday owns no equipment. Rather, it would lease the equipment from either Holiday Travel Club or Metrobus. Holiday Travel Club apparently has recently purchased four vehicles which it would lease and Metrobus apparently is willing to lease vehicles to Holiday between the hours of 9 A. M. and 4:30 P. M.

Holiday proposes to operate a loop tour service in the Mall area of the District of Columbia. Holiday would stop at its office at Sixth Street and Pennsylvania Avenue, N. W., the Capitol Building, White House, the various Smithsonian Buildings, and the several prominent national monuments. A passenger on the loop tour service could board and alight from the vehicles as often as desired. The loop tour service vehicles would be operated by driver-guides who would render narrative interpretations of the sites being visited and viewed. The loop tour service would commence at approximately 9 A. M. Holiday apparently would have to lease or rent vehicles to perform the loop tour service.

Holiday currently has a secretary-bookkeeper in its office. It also has employees in the Holiday Gift Shops and two drivers to operate a station wagon belonging to Holiday and the motor coach owned by Holiday Travel Club. The record contains no evidence that these seven or eight employees would be sufficient to manage the operation of the two proposed services. Holiday estimates that approximately ten vehicles initially would be required to provide adequate and continuous service. The record indicates that this estimate was not based upon an analysis of the number and locations of motels and hotels within the Metropolitan District. There has been no analysis or survey of the potential passengers or the number of motels or hotels which may have to be served.

The protestant Gray Line submitted evidence which substantiates the allegations, statements, and submissions set forth in its formal protest.

Gray Line operates a scheduled pick-up service from designated motels and hotels within the Metropolitan District to its main office in conjunction with its individually-ticketed sightseeing tours. Metrobus has instituted seventeen radial routes serving fringe parking areas and portions of the Metropolitan District. These radial routes provide transportation to and from the Mall area in the District of Columbia.

The Commission finds that Holiday is not capable of rendering the proposed shuttle service. It does not have sufficient personnel and suitable equipment. The financial structure of Holiday would not provide an adequate basis for the acquisition of the necessary and essential facilities, equipment and personnel for the rendering of a reasonable, continuous and adequate service to the public. Accordingly, the Commission shall deny Holiday's Application No. 903.

PROCEDURAL REQUEST

An additional matter presented to the Commission during this proceeding requires comment. On the second day of hearing, Landmark Services, Inc. (Landmark) appeared at the proceeding and filed a written motion for leave to file protest out of time, a motion for continuance, and a formal protest. Landmark holds no authority from this Commission but states that it renders interpretive transportation services pursuant to a concession contract with the United States Department of the Interior. Landmark further states that such services include the transportation of passengers for hire by motor vehicles on the Federal Mall within the District of Columbia and between the Mall and the United States Capitol grounds within the District of Columbia. Landmark alleges that neither Application No. 903 nor Order No. 1492 were properly served as required by Commission Regulation 54-03. A further allegation set forth by Landmark is that notice by publication does not comport with the requirements of due process because Holiday would be a competing carrier to Landmark.

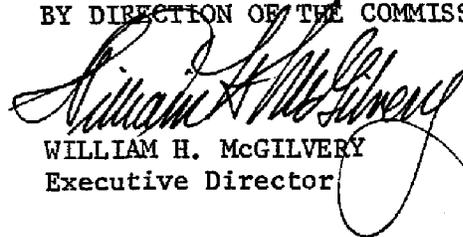
The Commission has determined that Holiday's Application No. 903 should be denied. Landmark's motion for leave to file protest out of time thereby is rendered moot and the Commission need not formally consider and act upon it. If it appears at a later stage in this proceeding that Landmark may have an interest, the Commission then will entertain a new request to be heard filed by Landmark. For the purpose of this decision, however, it is sufficient to merely dismiss without prejudice Landmark's motion for leave to file protest out of time.

The Commission has considered the other matters presented by the record but finds they do not warrant action contrary to that which now is directed.

THEREFORE, IT IS ORDERED:

1. That the motion for leave to file protest out of time filed by Landmark Services, Inc., be, and it is hereby, dismissed without prejudice.
2. That Holiday Tours, Inc., be, and it is hereby, directed to cease and desist from performing transportation for hire between points within the Metropolitan District until such time as a certificate of public convenience and necessity authorizes such operations.
3. That Application No. 903 of Holiday Tours, Inc., be, and it is hereby, denied.
4. That Holiday Tours, Inc., be, and it is hereby assessed \$476.60, being the amount outstanding for the cost of the hearing, and directed to deliver said amount to the office of the Commission, Room 316, 1625 I Street, N. W., Washington, D. C. 20006, on or before Friday, May 28, 1976, pursuant to the provisions of the Compact, Title II Article XII, Section 19.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
Executive Director