

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1604

IN THE MATTER OF:

Application of FRANK MARTZ)	Served September 14, 1976
COACH COMPANY to Acquire)	
Control of ATWOOD'S TRANSPORT)	Application No. 856
LINES, INC.)	Docket No. 283

On August 10, 1976, Frank Martz Coach Company (Martz) and Atwood's Transport Lines, Inc. (Atwood) filed a joint motion for reopening, reconsideration and modification of Atwood's certificated authority. Martz and Atwood request the Commission to reopen the proceeding in Application No. 856, Docket No. 283, and, upon consideration of the arguments set forth in the motion, modify Certificate of Public Convenience and Necessity No. 14 (Certificate No. 14) by including therein authority to render regular route service between Washington, D. C., and the site of the Energy Research and Development Administration (ERDA) near Germantown, Md.

By Order No. 1424, served May 2, 1975, the Commission approved Martz's acquisition of control of Atwood, subject to the conditions therein set forth. The Commission found in part that Atwood had failed to render reasonable, continuous and adequate service to the public pursuant to Certificate No. 14 with respect to regular route service between Washington, D. C., and the site of the United States Atomic Energy Commission 1/ near Germantown, Md. The Commission thereupon revoked that portion of Atwood's Certificate No. 14

1/ The site of the United States Atomic Energy Commission currently is the site of ERDA.

and reissued the Certificate, without such regular route authority, to Atwood as a wholly owned operating subsidiary of Martz.

Atwood and Martz then sought reconsideration of the Commission's revocation of the authority to perform regular route operations between Washington, D. C., and the site of the United States Atomic Energy Commission near Germantown, Md. Atwood and Martz submitted that the Commission's action constituted error for two reasons. First, the revocation was stated to be contrary to the Commission's previous decision in Order No. 541, served October 27, 1965, and, second, the revocation was stated to be contrary to the provisions of the Compact, Title II, Article XII, Section 4(g).

In Order No. 1436, served June 11, 1975, the Commission determined that a sufficient basis had not been presented warranting reconsideration of the revocation of the regular route authority between Washington, D. C., and the Atomic Energy Commission. The Commission found that the public policy expressed in Order No. 541 was no longer applicable and did not constitute a basis for merely suspending that portion of the authority which had been revoked. The Commission also found that the revocation proceeding described in the Compact, Title II, Article XII, Section 4(g) does not have to be initiated and completed before approving acquisition of control subject to the revocation of a portion of the underlying certificate in order to be consistent with the public interest.

The Compact, Title II, Article XII, Section 17 provides for judicial review of Commission orders. Neither Martz nor Atwood sought within the sixty-day statutory period review in the United States court of appeals of Orders No. 1424 and 1436. Rather, more than twelve months later, they seek to reopen the record in a proceeding which is administratively and judicially final for the purpose of reconsidering the action taken by the Commission in revoking a portion of Certificate No. 14 as a condition of the acquisition by Martz of control of Atwood. Obviously, the motion could be dismissed on this basis. However, the Commission, in its discretion,

has elected to consider the basis for the requested relief prior to disposing of the motion.

Atwood and Martz base the motion for reopening, reconsideration and modification upon the assertion that the Commission revoked Atwood's regular route authority between Washington, D. C., and the Atomic Energy Commission upon the belief that such operations could be rendered pursuant to Atwood's charter authority. As previously stated herein, the basis for the revocation was the failure of Atwood to render reasonable, continuous and adequate service to the public pursuant to the regular route authority in its Certificate No. 14. The Commission's statement in Order No. 1436 with respect to charter authority pertained to the stated intention of Martz to cause Atwood to bid on transportation service to and from the Atomic Energy Commission. The Commission merely indicated in Order No. 1436 that Atwood's charter authority included authority to render charter service pursuant to contract. See Commission Order No. 1361, served October 16, 1974. The Commission did not in Order No. 1424 revoke Atwood's regular route authority between Washington, D. C., and the Atomic Energy Commission upon the basis or belief that Atwood could render regular route service under its charter authority.

Atwood and Martz assert in the motion for reopening, reconsideration and modification that the Commission believed the revocation did not deprive Atwood of the right to continue to provide service for ERDA and that the regular route authority between Washington, D. C., and the site of ERDA near Germantown, Md., must be reinstated to avoid injustice and to permit Atwood to continue to provide the service. The Commission's determination in Order No. 1424 was based upon a finding that Atwood had failed to provide reasonable, continuous and adequate regular route service between Washington, D. C., and the site of the Atomic Energy Commission near Germantown, Md. The revocation of that authority certainly deprived Atwood of the right to continue to perform such regular route operations. The Commission did not believe and did not state that Atwood's charter authority included the authority to render regular route operations.

Atwood and Martz finally assert in the motion for reopening, reconsideration and modification that the regular route authority was inappropriately revoked as a result of the Commission's failure to have before it a full and complete record with respect to the involved service. Atwood and Martz submit that the record did not contain any indication that a contract with ERDA might include a provision requiring the carrier to permit members of the general public to use the transportation service upon the payment of seventy-five cents cash fare for a one-way rider. Atwood and Martz then argue that a recent solicitation for contract bids by ERDA describes a transportation service that has every attribute of regular route scheduled service. These attributes are stated to be multiple daily schedules, fixed termini service, operations over the shortest available route, and the occasional collection of per capita fares. Atwood and Martz argue that it is the collection of individual fares which precludes the passenger transportation for hire from being categorized as charter operations and requires that the service be rendered only under regular route authority.

The Commission did not inappropriately revoke a portion of Atwood's Certificate No. 14. The record in Application No. 856, Docket No. 283, clearly evinces a failure upon the part of Atwood to render reasonable, continuous, and adequate regular route authority between Washington, D. C., and the site of the Atomic Energy Commission near Germantown, Md. In addition, the passenger transportation for hire service attributed by Atwood and Martz to a recent solicitation for contract bids by ERDA would not constitute a regular route operation. The Commission's Regulation 51-04 defines regular route as follows:

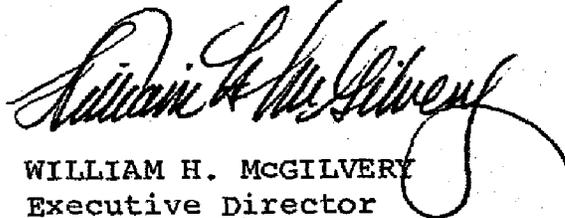
"The term "Regular Route Operation" means scheduled service over designated streets and highways between fixed termini for the purpose of performing mass transportation of passengers; provided, that the holder of regular route authority may conduct any type of operations between points on and over said route, including passengers in charter and special operations."

The solicitation as described by Atwood and Martz does not set forth "service over designated streets and highways". In fact, the solicitation form attached to the motion by Atwood and Martz contains no provision which designates streets and highways.

The Commission has considered each of the arguments and allegations set forth in the motion for reopening, reconsideration and modification of Certificate No. 14 filed by Atwood and Martz. None of the arguments or allegations therein set forth warrants a reopening of the proceeding involving Application No. 856 or the record designated Docket No. 283. Accordingly, the Commission shall deny the motion.

THEREFORE, IT IS ORDERED that the motion for reopening, reconsideration and modification of Atwood's certificated authority filed jointly by Frank Martz Coach Company and Atwood's Transport Lines, Inc., be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
Executive Director

