

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1656

IN THE MATTER OF:

Served March 8, 1977

Application of ATWOOD'S TRANSPORT )  
LINES, INC., for Temporary )  
Authority to Conduct Charter )  
Operations - Dulles International )  
Airport )

Application No. 982

By application filed February 18, 1977, Atwood's Transport Lines, Inc. (Atwood's), seeks temporary authority to transport passengers, over irregular routes, in charter operations, between Dulles International Airport (Dulles) and points in the Metropolitan District. 1/ Service would be performed in over-the-road motor coaches at the rate of \$80 per one-way transfer.

In support of the application, Atwood's asserts that it has been serving Dulles since that facility opened in November, 1962, and that applicant only recently became aware of the 1963 amendment to the Compact which included Dulles in the territorial jurisdiction of this Commission. Accordingly, Atwood's was unlawfully providing service from and to Dulles until February 11, 1977, when such service was discontinued on the advice of counsel.

Applicant believes that it has been the single largest provider of charter service from and to Dulles, and that denial of this application would be detrimental to the public and have an adverse financial effect on Atwood's. During the last six months of 1976, Atwood's handled 429 such charter movements generating revenues of \$34,320. In addition, it ascribes another \$25,000 to \$35,000 of gross revenue to related services under its existing authority for airport transfer groups. Letters of support for the application were filed by International Travel Arrangers, Educational Tours, Close Up Foundation, Traveland Tour Service, Inc. and Japan Travelers Service.

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1/ Atwood's existing certificate authorizes charter service from points in the District of Columbia to points in the Metropolitan District, and to the extent said authority would be duplicated by a grant of authority herein, the application shall be dismissed.

As of February 11, 1977, Atwood's has arranged for the subject service to be performed by either The Gray Line, Inc., 2/ or Greyhound Airport Service, Inc. 3/ These carriers, however, have represented to applicant that they will not oppose either this application or a subsequent request for corresponding permanent authority. Atwood's also notes that White House Sightseeing Corporation 4/ holds conflicting authority, but asserts that this carrier lacks sufficient equipment to handle the volume of charter work involved.

Atwood's further argues that when for-hire motor vehicle transportation from and to Dulles was made subject to this Commission's jurisdiction, carriers performing such service should have been afforded an opportunity to file "grandfather" type applications. It also apparently contends that the so-called "incidental to aircraft exemption" as defined by the Interstate Commerce Commission is binding on this Commission inasmuch as we have never formally declared said exemption to be inapplicable, 5/ citing the Compact, Title II, Article XII, Section 21.

The Compact, Title II, Article XII, Section 4(d)(3) provides that the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority providing (i) that there is an immediate and urgent need for service to a point or points or within a territory, and (ii) that there is no carrier service capable of meeting such need. The Commission finds that Atwood's has failed to meet the statutory criteria. While the evidence indicates that the public, to a certain extent, may have come to rely on Atwood's unauthorized service,

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2/ As pertinent, The Gray Line, Inc., is authorized to transport passengers in charter operations between Dulles, on the one hand, and, on the other, points in the Metropolitan District (except Virginia).

3/ Greyhound Airport Service, Inc., holds authority to conduct charter operations between Dulles, on the one hand, and, on the other, points in the Metropolitan District (except Virginia), restricted to the transportation of passengers and aircraft crews having a prior or subsequent movement by air.

4/ White House's charter operations are restricted to round-trip pleasure or sightseeing operations only.

5/ Service to and from Dulles, to a certain extent, had been exempt from the certification requirements of the Interstate Commerce Act. See section 203(b)(7a) of that Act 49 U.S.C. 303(b)(7a).

the record fails to establish that existing authorized carriers cannot provide such service as the public may require. Both The Gray Line, Inc., and Greyhound Airport Service, Inc., hold appropriate authority as noted above, and these carriers operate substantial fleets of motor coaches. Averaging Atwood's total operations for the last six months of 1976, approximately two to three charter trips a day are involved. The record affords no basis to conclude that existing carriers cannot provide this quantum of service. In fact, the above-named carriers are now filling the "breach" created by Atwood's cessation of unauthorized operations, and it has not been suggested that the service of these two carriers has been deficient in any material respect. 6/

In addition to the above-discussed statutory criteria, the Commission has always considered, in light of the urgency of the public need, an applicant's fitness properly to provide service under temporary authority. Central to the question of fitness, of course, is an applicant's willingness and ability to conform to the provisions of the Compact and the rules, regulations and requirements of this Commission thereunder. Here, applicant allegedly has been conducting unauthorized operations for approximately 14 years with little, if any, justification. We note that Atwood's is one of the larger carriers subject to regulation by this Commission, and its alleged ignorance of the 1963 amendment to the Compact strains credulity. Moreover, we must absolutely reject applicant's implication that omission of a "grandfather" clause with respect to service at Dulles was a legislative oversight. It is clear that the burden of proof in a "grandfather" proceeding is still that of public convenience and necessity. 7/ In such cases, however, evidence of past operations is typically relied on to meet that burden of proof. Also, the Commission cannot agree that there was no declaration as is said to be required by Title II, Article XII, Section 21 of the Compact. 8/ Assuming, arguendo, that such a declaration was required to void previous Interstate Commerce Commission actions, we cannot conceive of any clearer or more forceful statement than legislative enactment of an amendment to the Compact. While the Commission is mindful of the fact that Atwood's has ceased its Dulles operations, it nevertheless appears that the carrier has been remiss in its duty to

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6/ Of course, the mere fact that these carriers have not protested this application does not compel a grant of authority unless there is a showing that the carriers are not capable of meeting the purported service need.

7/ The Compact, Title II, Article XII, Section 4(a) authorizes the Commission to issue a certificate of public convenience and necessity upon proof of past bona fide transportation subject to the Act ". . . without requiring further proof that public convenience and necessity will be served . . ." (Emphasis added.)

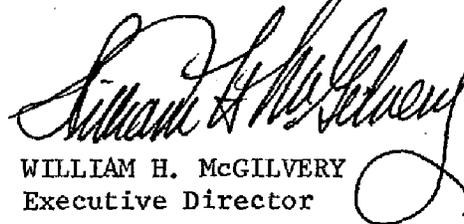
8/ See also Compact, Title II, Section 20.

acquaint itself with the provisions of the Compact and the Commission's requirements thereunder. We therefore remind applicant of this continuing responsibility, and admonish it strictly to conform its future operations to all pertinent regulatory requirements.

One further matter requires discussion. A letter of agreement attached as Appendix B to Exhibit D in support of the application provides that The Gray Line, Inc., will lease buses from Atwood's at a price of \$76 a day to perform charter service to and from Dulles. Although not specifically stated in this letter, it appears possible that Atwood's will also be providing drivers to operate this leased equipment. Accordingly, we caution both applicant and The Gray Line, Inc., that where a single party provides both vehicle and driver, the Commission presumes that said party is responsible for and in control of the transportation service. Under long-standing motor carrier law, the party controlling and responsible for the transportation is considered to be the carrier within the meaning of Title II, Article XII, Section 2(a) of the Compact. Cf. United States v. Drum, 368 U.S. 370, 82 S.Ct. 408 (1962). All parties are hereby admonished strictly to conform any leasing arrangements to this standard.

THEREFORE, IT IS ORDERED that Application No. 982 of Atwood's Transport Lines, Inc., except to the extent dismissed hereinabove, be, and, it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY  
Executive Director