

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1667

IN THE MATTER OF:

Served April 5, 1977

Application of SHAW ENTERPRISES,)
INC., T/A UNITED INN OF AMERICA for)
Certificate of Public Convenience and)
Necessity to Perform Charter Opera-)
tions Pursuant to Contract)

Application No. 964

Docket No. 359

By Application No. 964, filed August 31, 1976, Shaw Enterprises, Inc., trading as United Inn of America (Shaw) seeks a certificate of public convenience and necessity pursuant to Title II, Article XII, Section 4(b) of the Compact, to perform charter operations pursuant to contract. Shaw seeks authority to transport persons who are outpatients of the National Institutes of Health (NIH), over irregular routes, between the United Inn of America, 8130 Wisconsin Avenue, Bethesda, Maryland, on the one hand, and, on the other, the clinic center at NIH. The shuttle transportation service would be performed pursuant to a contract between Shaw and NIH. 1/

Pursuant to Order No. 1637, served December 22, 1976, Shaw was granted leave to amend its application to include the transportation, in charter operations pursuant to contract, of persons who are outpatients of NIH over irregular routes from and to various shopping centers and other specified points in the Metropolitan District. 2/ Order No. 1637, furthermore, scheduled a public hearing to commence on Tuesday, February 8, 1977, at 9:30 a.m. at the Commission.

At the hearing Shaw testified that it owns a 1971 16-passenger, air-conditioned Mercedes diesel bus. It also leases on a long-term basis a 24-passenger GMC Transmode bus 3/ with an automatic wheelchair lift.

1/ The duration and purpose of the contract were set forth in Order No. 1628 which is incorporated by reference herein. The proposed transportation services constitute a part of an integrated contract primarily for the performance of non-transportation services.

2/ A detailed description of these points appears in Order No. 1637, and is incorporated herein by reference.

3/ Shaw has entered into a five-year lease agreement with Central GMC, and GMC performs maintenance services on both of Shaw's buses.

The driver can operate this wheelchair lift so as to lift the wheelchair from the curb onto the bus and vice versa. This bus accommodates two wheelchairs in a locked position. Shaw employs two full-time drivers and two relief drivers, all of whom are suitably licensed to operate these buses. Both buses are insured in case of accident. 4/

At the hearing, Shaw introduced a document entitled "United Inn of America Transportation Division Revenue and Revenue Deductions" for the period October 1, 1976, through September 30, 1977. It shows a projected gross income of \$62,700 from the transportation portion of its contract with NIH. After total projected expenses of \$57,985 are deducted, Shaw shows an anticipated net earning of \$4,715.

Testifying in Shaw's behalf at the hearing was Steven C. Groban, Chief of the Outpatient Department in the Clinical Center at NIH. Mr. Groban testified that NIH has a continuing need for the transportation service to be provided by Shaw as well as to the fact that no other carrier has offered to provide similar services.

FINDINGS AND CONCLUSIONS

The preliminary finding the Commission must make, in light of the fact that the transportation involved herein constitutes only an incidental portion of an integrated contract involving primarily non-transportation services, is whether the Commission has jurisdiction over Shaw's application. Title II, Article XII, Section 1(a) of the Compact provides that "this Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to persons engaged in rendering or performing such transportation service . . ." with certain exceptions not here pertinent. Correspondingly, Section 2(a) of the same Article defines the term "carrier" as "any person who engages in the transportation of passengers for hire by motor vehicle"

The Commission initially finds that it has jurisdiction herein. Shaw's proposed transportation services are within the Metropolitan District. Although no specific sum is designated in Shaw's contract with NIH for transportation services, the cost of transportation was clearly a factor in applicant's bid proposal to NIH for the contract. Applicant, unlike some hotels which provide "free" shuttle services, cannot terminate the transportation service at will since it has a contractual obligation to provide the transportation. Moreover, the transportation aspect of the contract is severable from the non-transportation aspects, involves separately identifiable personnel, and is not an essential element of the main

4/ On February 10, 1977, Shaw submitted a certificate of insurance concerning the above-mentioned buses. Each bus is insured for bodily injury and property damage.

non-transportation service. Accordingly, Shaw's operations constitute transportation for hire, and Shaw, therefore, is a carrier within the definition of Title II, Article XII, Section 2(a). See Joseph L. Ritter, Broker Application, 9 F. Carr. Cas. 441, Para. 32, 663 (1952); Cain Broker Application, 2 M.C.C. 633 (1937); Peerless Stages, Inc., Investigation, 86 M.C.C. 109 (1961), aff'd per curiam 371 U.S. 22 (1962).

The remaining 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.

The Commission finds that the applicant is 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. The evidence shows that Shaw is well able to provide the proposed transportation. It has buses which are mechanically sound, well maintained and sufficient in seating capacity to render the proposed transportation. In addition thereto, it has a sufficient number of properly licensed drivers to carry out the schedule of proposed services. Furthermore, the proposed operation appears to be financially viable.

The Commission also finds that the proposed transportation is required by the public convenience and necessity. Applicant and its witness from NIH testified as to the need for this service, and also testified that no other carrier has approached NIH to provide this sort of needed service. Accordingly, the public convenience and necessity clearly will be benefited.

Pursuant to Title II, Article XII, Section 5(a), applicant will be required to file its WMATC Tariff No. 1 within 20 days from the date of service hereof.

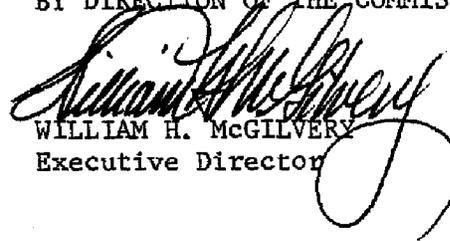
THEREFORE, IT IS ORDERED:

1. That Application No. 964 of Shaw Enterprises, Inc., as amended, for a certificate of public convenience and necessity to perform charter operations pursuant to contract, be, and it is hereby, granted.
2. That Certificate of Public Convenience and Necessity No. 41 be, and it is hereby, issued to Shaw Enterprises, Inc., as attached hereto and made a part hereof.

3. That Shaw Enterprises, Inc., within 20 days from the date of service of this order, file its WMATC Tariff No. 1, to be effective upon acceptance by the Executive Director.

4. That the temporary authority granted to Shaw Enterprises, Inc., by Order No. 1628, served November 18, 1976, be, and it is hereby, cancelled.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 41

SHAW ENTERPRISES, INC.

BETHESDA, MARYLAND

By Order No. 1667 of the Washington Metropolitan Area Transit Commission issued April 5, 1977;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier 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, for the reasons and subject to the limitations set forth in Order No. 1667;

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 thereof 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 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:

IRREGULAR ROUTES

CHARTER OPERATIONS, PURSUANT TO CONTRACT to transport persons who are participants in the Special Ambulatory Care Program of the National Institutes of Health:

- (1) Between United Inn of America, 8130 Wisconsin Avenue, Bethesda, Maryland, and the Clinical Center, National Institutes of Health, Bethesda, Maryland.
- (2) From United Inn of America, 8130 Wisconsin Avenue, Bethesda, Maryland, to shopping areas at Montgomery Mall, White Flint Mall, Bethesda, Chevy Chase, Silver Spring and Wheaton, Maryland, and the Friendship Heights area of the District of Columbia, and return.
- (3) From United Inn of America, 8130 Wisconsin Avenue, Bethesda, Maryland, to the Monument and Georgetown areas of Washington, D. C.,

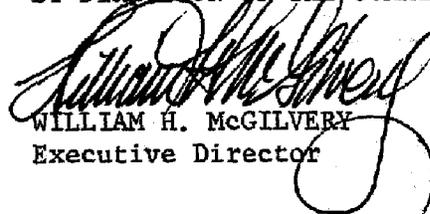
Mt. Vernon, Olde Towne Alexandria, and Arlington Cemetery, Virginia, Cabin John Regional Park and Wheaton Regional Park, Maryland, and Rock Creek Park in the District of Columbia and Montgomery County, Maryland, and return.

RESTRICTIONS: The authority granted in (2) above may be operated on Saturdays and Sundays only. The authority granted in (3) above may be operated only six times in any one calendar year.

IT IS FURTHER ORDERED that the operations authorized by this certificate of public convenience and necessity shall be limited to the performance of service pursuant to a continuing contract or contracts between Shaw Enterprises, Inc., and the National Institutes of Health, provided, however, that written notice must be filed by the carrier with the Commission within five (5) days of any cancellation or termination of any of the aforementioned agreements, and further provided that any change in or amendment to any of the aforementioned agreements shall be filed with the Commission for approval at least fifteen (15) days prior to the proposed effective date of such change or amendment, and further provided that any change or amendment to any of the aforementioned agreements which would involve new authority shall be subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact and the Rules and Regulations of the Commission.

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 the certificate.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director