WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1670

IN THE MATTER OF: Served April 13, 1977

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| Application of FRANK MARTZ COACH COMPANY to Acquire Control of ATWOOD'S TRANSPORT LINES, INC. | ) ) ) | Application No. 856<br><br>Docket No. 283 |

By joint petition filed February 11, 1977, 1/ Atwood's Transport Lines, Inc. (Atwood), and Frank Martz Coach Company (Martz) request the Commission to reopen this proceeding for the purpose of correcting the manner in which the charter authority held by Atwood is specified in its Certificate of Public Convenience and Necessity No. 14 (Certificate No. 14) issued June 11, 1975. Atwood and Martz support the petition with an argument that a clerical error was made in describing the charter authority when Certificate No. 14 was revised pursuant to Order No. 1436. Accordingly petitioners submit that the charter authority previously issued to Atwood in the initial "grandfather" Certificate of Public Convenience and Necessity No. 14, dated October 23, 1964, (grandfather certificate) has been revoked. Petitioners contend that the clerical error inadvertently and unlawfully resulted in an unauthorized revocation of charter authority.

Petitioners essentially are seeking to have the Commission issue a revised Certificate No. 14. The revised Certificate would authorize Atwood to originate charter service to any point in the Metropolitan District from an area which would include all points within one mile of the city limits of the District of Columbia. Significantly, such points would include Washington National Airport. The petitioners submit that such authority was included within the grandfather certificate. Petitioners have proposed the following description of the revised charter authority.

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1/ This is the second joint petition seeking to reopen Application No. 856, Docket No. 283, and have the Commission reconsider Order Nos. 1424 and 1436, served May 2, 1975, and June 11, 1975, respectively, for the purpose of modifying the authority specified in Certificate of Public Convenience and Necessity No. 14.

(1) From Washington, D. C., to points in the Metropolitan District.

(2) From points in an area within one mile of the following route: From Washington, D. C., over city streets to the District of Columbia-Maryland line, thence over U. S. Highway 240 to junction Maryland Highway 118, thence over Maryland Highway 118 to the site of the United States Atomic Energy Commission, to points in the Metropolitan District.

(3) From points in an area within one mile of the following route: From Washington, D. C., over city streets to the District of Columbia-Maryland line, thence over Maryland Highway 5 to the Prince George's-Charles County line, to points in the Metropolitan District.

The critical revision would be the inclusion in (2) and (3) of the phrase "From Washington, D. C., over city streets to the District of Columbia-Maryland line". Petitioners contend that Certificate No. 14 is deficient because it does not include the proposed phrase.

The Commission believes that the joint petition warrants an interpretation of the disposition previously ordered with respect to Atwood's grandfather Application No. 35. The original grandfather certificate authorized charter operations (a) from Washington, D. C., to points in the Metropolitan District, and (b) from points on its regular routes (as described in (2) and (3) above) and a territory within one mile thereof, to points in the Metropolitan District. Service on route (2) included no intermediate points, and service on route (3) included all intermediate points except intra-District points. If, as Atwood contends, this original certificate authorized charter service from all points within one mile of Washington, D. C., then an inadvertent revocation has indeed occurred, for it is clear that revised Certificate No. 14 does not authorize such service.

It is axiomatic that a certificate of public convenience and necessity, once lawfully issued, must be interpreted according to the terms of the certificate itself. The Commission is precluded from looking behind the face of the certificate to the underlying record unless the certificate is patently ambiguous or contains a clerical error. Similarly, petitioners are precluded from collaterally attacking the validity, scope and administrative finality of a certificate, absent a clear showing of ambiguity or clerical error therein. Petitioners are here challenging the revised certificate on the ground of clerical error, and do not allege any defect in the grandfather certificate.

For the following reasons, the Commission finds that grandfather Certificate No. 14, dated October 23, 1964, is clear and unambiguous on its face, and further concludes that the charter authority specifically conferred therein does not embrace the origin of charter movements from all points within one mile of Washington, D. C. Accordingly the omission of such authority from revised Certificate No. 14, issued June 11, 1975, was not a clerical error but rather an accurate restatement of Atwood's originally-conferred charter rights.

A certificate must be construed in such a manner as to ascribe validity to all the terms thereof. Adoption of petitioners interpretation would reduce the grant of authority "From Washington, D. C., to points in the Metropolitan District" to a meaningless redundancy. We believe that the separate authorization of charter service from Washington, D. C., clearly warrants the conclusion that duplicating authority from Washington, D. C., as a point on Atwood's regular routes is not granted in the grandfather certificate, and the language "a territory within one mile thereof" clearly then would not relate to those parts of Atwood's regular routes located within Washington, D. C.

Even assuming, arguendo, that the grandfather certificate was ambiguous, reference to the underlying Order No. 380, served September 11, 1964, supports the construction of Certificate No. 14 warranted by the terms thereof. Specifically, at page 2 of said order, the Commission found that

> Under the Interstate Commerce Act, a holder of regular route authority also held incidental authority to engage in charter operations. Under this incidental authority a carrier could originate charter trips within the territory served by its regular route. In the absence of proof of actual operations to the contrary, the Commission concludes that applicant should be granted authority to originate trips in charter operations in the territory served within one mile of its regular routes to points in the Metropolitan District. No one contested the right of applicant to originate trips in charter operations from points within the District of Columbia to points in the Metropolitan District.

Significantly, the Commission specifically separated the origination of charter operations within one mile of the regular routes from the origination of charter operations within the District of Columbia.

Petitioners contend that the District of Columbia was a terminal point on the regular routes operated by Atwood. However, a review of Application No. 35 reveals that Atwood's regular routes within the District of Columbia were subject to the jurisdiction of the Public Utilities Commission of the District of Columbia (P.U.C.) prior to the formation of this Commission. The P.U.C. had authorized Atwood to operate buses in interstate passenger carrier service over the following route:

> OUTBOUND: From 1717 H Street, Northwest, west on H Street to 18th Street, and north on 18th Street and Connecticut Avenue to the District of Columbia line.
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> INBOUND: From the District of Columbia line, south on Connecticut Avenue and 17th Street, Northwest to H Street, and west on H Street to 1717 H Street, Northwest.
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> See P.U.C. Order No. 4519, dated March 17, 1959.

Assuming that the grandfather certificate issued to Atwood did permit the origination of charter services from any point within one mile of its intra-District regular route, the regular-route service between 1717 H Street, N. W., and the District of Columbia line was merely a small portion of the District of Columbia. Certainly, it is obvious that the entire District of Columbia was not a terminal point on the regular route serving the Atomic Energy Commission. Further, it should be noted that both the grandfather and existing certificates do, in fact, authorize the origination of charter services from all points within one mile of the route described by the P.U.C.

With respect to the regular-route service to the Prince George's-Charles County line, Atwood did not request such authority as part of its grandfather application. However, Atwood submitted a copy of its Interstate Commerce Commission Certificate of Public Convenience and Necessity No. MC-108452 (Sub-No.6), which disclosed regular-route authority between Washington, D. C., and Point Lookout, Md. The Commission issued a grandfather certificate to render that portion of this regular-route service operated within the Metropolitan District, but the Commission expressly prohibited Atwood from serving any intra-District points. Rather, Atwood was permitted to board or discharge passengers at a location within the District of Columbia. The entire area comprising the District of Columbia obviously was not a terminal point on this regular route, either. Here, as with the previously discussed route, both the grandfather and existing certificates do in fact, authorize the organization of charter services from points within one mile of this regular route.

The Commission also believes the language of the grandfather certificate refutes the petitioners argument that the District of Columbia was a terminal point on the regular-route service. Each description of the authority contains the same precise expression: "From Washington, D. C., over city streets to the District of Columbia-Maryland line." This phrase was not meant to authorize Atwood to operate a regular route along the streets which form the boundary between the District of Columbia and Maryland. 2/ In order to accept the petitioners' argument that Atwood had charter authority to originate such service at any place within one mile of the District of Columbia, the Commission would have to find that Atwood was rendering regular-route service along the boundary streets. The grandfather application record does not support such a finding.

Moreover, in considering the scope of charter rights incidental to Atwood's regular routes, the I.C.C. had previously rejected such a broad view of the territory assertedly served by Atwood's regular routes. See Alexandria, B. & W. Transit Co. v. Atwood's Transport, 86 M.C.C. 399 (1961).

Based upon this review of Atwood's grandfather certificate, the Commission finds that Atwood never had authority to originate charter service to any point in the Metropolitan District from an area which would include all points within one mile of the city limits of the District of Columbia. The Commission further concludes that even if the grandfather certificate was found to be ambiguous, the record in Atwood's Application No. 35, viewed in the light of applicable law, would not support a finding different from that warranted by the Certificate itself. Accordingly, the Commission finds no clerical or other error in Atwood's Certificate No. 14 issued June 11, 1975.

THEREFORE, IT IS ORDERED that the joint petition of Atwood's Transport Lines, Inc., and Frank Martz Coach Company requesting the reopening of proceeding for correction of erroneous description of charter authority be, and the same hereby is, denied.

BY DIRECTION OF THE COMMISSION:

WILLIAM H. McGILVERY
Executive Director

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2/ The boundary between the District of Columbia and Virginia is not a street, but, rather, the Virginia side of the Potomac River.