

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1681

IN THE MATTER OF:

Served May 4, 1977

Application of VERNON FRANKLIN to)
Remove Vehicle Restriction and Amend)
Certificate of Public Convenience)
and Necessity No. 6, for Correspond-)
ing Temporary Authority, and for)
Authority to Change Tariff)

Application No. 992

Docket No. 372

Vernon Franklin, an individual, holds Certificate of Public Convenience and Necessity No. 6, issued October 23, 1964, by this Commission. Certificate No. 6 authorizes the irregular-route transportation service specified below.

Charitable and public supported groups, including but not limited to, public, parochial and private schools, churches, Boy and Girl Scouts, and similar groups, and their baggage;

CHARTER OPERATIONS:

Round-trip or one-way;

From points within Arlington and Fairfax Counties, and the Cities of Alexandria, Falls Church and Fairfax, Virginia, to points within the District of Columbia and within the Counties of Montgomery and Prince Georges, Maryland.

RESTRICTED: to the performance of such transportation in school bus type vehicles only. Further restricted that this grant of authority shall not be subject to transfer in any manner or form. (Emphasis added.)

Franklin's current WMATC Tariff No. 2, issued January 20, 1970, and effective February 20, 1970, sets the following charter rates per vehicle:

<u>Hourly Charges</u>	<u>Bus Capacity</u>		
	<u>40-Passenger</u>	<u>44-Passenger</u>	<u>57-Passenger</u>
Minimum Service Charge	First 3 hours \$24	First 3 hours \$32	First 3 hours \$40
Transportation Charge Per Hour Thereafter	\$6	\$8	\$10

OR

Mileage Charges

Transportation Charge Per Mile	\$0.50	\$0.55	\$0.75
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By Application No. 992, filed April 19, 1977, Franklin seeks removal from Certificate No. 6 of the restriction underlined above, so that over-the-road motor coaches may be utilized in certain charter operations. The effect of removing the restriction would be to allow Franklin to conduct a new type of service and compete with those charter operators now authorized to use motor coaches. Accordingly, this application is tantamount to a new application for operating authority, and the provisions of the Compact, Title II, Article XII, Section 4(b) must apply. Pursuant to this statutory mandate, a public hearing shall be scheduled.

Submitted as an appendix to the application is a four-page document captioned "WMATC TARIFF No. _____, TARIFF OF VERNON FRANKLIN", which sets forth the following rates and charges: 1/

School Type Buses

Hourly Charges

Bus Capacity

Minimum Service Charge

60 Passengers or greater
First 3 hours - \$40

Transportation Charge Per
Hour Thereafter

\$10

OR

Mileage Charges

Transportation Charge Per Mile

\$0.75

Inter-City Coaches

<u>Capacity of Bus</u>	<u>Minimum Charges First 4 Hours</u>	<u>Rate Per Hour Thereafter</u>	<u>Rate Per Mile</u>
38 passengers	\$60	\$10	\$0.60
41 passengers	80	15	.70
46 & 47 passengers	95	19	.95

This document bears no issue or effective date, but presumably reflects the rates which Franklin would charge in the event Application No. 992 is granted. Moreover, the proposed tariff eliminates Franklin's holding-out

1/ Subsequent pages in this appendix are labeled "VERNON FRANKLIN, WMATC TARIFF NO. 3".

to provide service in school buses with certain seating capacities and therefore constitutes a tariff change within the meaning of Title II, Article XII, Section 5(c) of the Compact. Accordingly, notice to the public and a public hearing thereon are required. Inasmuch as no effective date for this tariff has been proposed, it shall not be necessary for the Commission to suspend the proposed tariff pursuant to Title II, Article XII, Section 6(a)(1) of the Compact. In the interim, of course, Franklin must continue to offer service in accordance with the provisions of its current Certificate No. 6 and WMATC Tariff No. 2.

By petition (letter) submitted together with the above-described application, Franklin seeks temporary authority to utilize vehicles other than school buses in his ongoing operations. The petition states that applicant can provide service in motor coaches at a more competitive price than is available from existing certificated carriers. Assertedly, many school groups desire such service, and Franklin does not operate enough school buses to provide the level of service said to be required.

Nine letters of support were received from Senior Citizens of Northern Virginia and various schools. These letters generally praise the quality of Franklin's service and state that it would be a convenience to have motor coach service available from applicant. One letter from the senior citizens group alludes to its dissatisfaction with "some other bus lines", but the reference is not specific enough to support the necessary finding that no other carrier service is capable of meeting the asserted need. The other eight letters do not recite any attempts to obtain motor coaches from other certificated carriers and there is generally no showing that the service available from other carriers is unsatisfactory. 2/

The Compact, Title II, Article XII, Section 4(d)(3) authorizes the Commission, in its discretion and without hearing or other proceedings, to grant temporary authority for the provision of service where ". . . there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need" (Emphasis added.) The Commission finds that applicant has failed to satisfy either statutory criterion and perforce must deny Franklin's request for temporary authority.

The evidence, as noted above, merely suggests that having applicant's motor coaches available would be a convenience. The public convenience, while a consideration in connection with applications for permanent authority, is an insufficient basis to support a grant of temporary authority. The signatories to the Compact clearly intended to require a higher burden of proof in temporary authority proceedings where certain procedural safeguards,

2/ Carriers affected by this application, according to Franklin, are Blue Lines, Inc., The Gray Line, Inc., Greyhound Airport Service, Inc., Greyhound Bus Lines, Inc., McMichael School Bus Service, Inc., Trailways Charter Bus and Washington Metropolitan Area Transit Authority (WMATA).

such as public notice and hearings, are not mandatory. We also note that the Interstate Commerce Act, in language substantially identical to that quoted above, also requires a more compelling showing than convenience in order to obtain a grant of temporary authority. Moreover, applicant has failed to allege or prove that satisfactory service cannot be obtained from WMATA or appropriately certificated carriers. While it is alleged that Franklin's rates may be somewhat lower than those of competing carriers, this factor in and of itself is insufficient to warrant a finding that existing carriers are incapable of providing adequate service. See Order No. 1671, served April 13, 1977, and cases cited therein. This disposition of the temporary authority request, of course, raises no presumption as to the disposition of the balance of the application.

Pursuant to Title II, Article XII, Section 19 of the Compact, Franklin will be assessed an amount preliminarily estimated to cover the expenses of the hearing scheduled herein.

THEREFORE, IT IS ORDERED:

1. That Application No. 992 of Vernoy Franklin be, and it is hereby, scheduled for public hearing to commence Monday, June 13, 1977, at 9:30 A. M., in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

2. That Vernoy Franklin be, and he is hereby, required to publish once in a newspaper of general circulation in the Metropolitan District notice of the application and hearing in the form prescribed by the staff of the Commission no later than Wednesday, May 11, 1977.

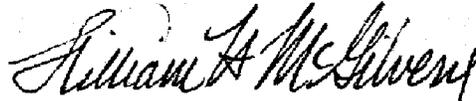
3. That Vernoy Franklin be, and he is hereby, required to post said notice of the application and hearing in each of his vehicles continuously from May 11, 1977, through the day of the hearing.

4. That any person desiring to protest shall file a protest in accordance with Commission Rule 14, or any person desiring to be heard on this matter shall notify the Commission, in writing, on or before Friday, May 27, 1977, and shall mail a copy of such protest or notice to counsel of record for Vernoy Franklin, Edward M. Holland, Esquire, 2054 North 14th Street, Arlington, Virginia 22216.

5. That Vernoy Franklin be, and he is hereby, assessed \$350 pursuant to the provisions of the Compact, Title II, Article XII, Section 19, 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 Tuesday, May 31, 1977.

6. That Application No. 992 of Vernoy Franklin, to the extent it seeks temporary authority as described herein, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director