

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1702

IN THE MATTER OF:

Served May 26, 1977

Application of ANNETTE H. MILLING)
T/A MILLING TOURS for Certificate of)
Public Convenience and Necessity to)
Perform Special Operations)

Application No. 933

Docket No. 322

Pursuant to Order No. 1665, served March 29, 1977, the above-captioned application was granted in part and denied in part. 1/ Specifically, issuance of a certificate of public convenience and necessity was authorized to enable applicant to transport passengers, in special sightseeing operations, over irregular routes, as follows:

- (1) From motels and motor inns located at points on that part of U. S. Highway 1 south of junction U. S. Highway 1 and Interstate Highway 495 at or near Alexandria, Va., and north of junction U. S. Highway 1 and Interstate Highway 95 at or near Woodbridge, Va., to points in the District of Columbia, and the City of Alexandria and Counties of Arlington and Fairfax, Va., and return.
- (2) From Holiday Inn, junction Interstate Highway 95 and Glebe Road, Arlington County, Va.; and Virginia Motel, 700 North Washington Street, Alexandria, Va.; to points in the District of Columbia and the City of Alexandria and Counties of Arlington and Fairfax, Va.; and return.

RESTRICTION: Restricted in (1) and (2) above to transportation performed in van-type vehicles and further restricted against transportation solely within the Commonwealth of Virginia. 2/

Order No. 1665 specifically denied authority to serve three points which were beyond the scope of the application. 3/ In addition, authority

1/ Order No. 1665 is incorporated herein by reference.

2/ This authority was granted subject to the subsequent filing of an appropriate tariff, itinerary, and evidence of suitable security for the protection of the public.

3/ These three points are Pentagon Motel, Harmony Place Trailer Park, and Nightingale Trailer Court.

to provide service as a motor coach carrier was denied, and applicant was directed to show cause, if any there be, why an order should not be entered directing applicant to cease and desist from future participation, directly or indirectly, in the provision of service by persons other than carriers holding appropriate authority, and to inform the Commission of applicant's ability, if any there be, to conduct its own operations in vehicles other than van-type vehicles.

By application filed April 27, 1977, Annette H. Milling trading as Milling Tours (Milling) seeks the following relief:

- (1) Issuance of the certificate authorized in ordering paragraph 1 of Order No. 1665, upon compliance with the conditions set forth in ordering paragraphs 3 through 6 of said order;
- (2) Staying of the denial and show cause parts of the order set forth in ordering paragraphs 2 and 7 of said order;
- (3) Leave to amend the application to include those points found to be beyond the scope of the application, subject to such procedural requirements as the Commission deems proper; and
- (4) That the proceeding be reopened for further hearing on the question of applicant's control of, and ability to provide, service in motor coaches.

Specifically, applicant alleges that, insofar as the application was denied, such decision was (a) arbitrary, capricious, an abuse of discretion and contrary to law, (b) in excess of the Commission's statutory authority, 4/ and (c) in violation of procedural due process.

The Compact, Title II, Article XII, Section 16, provides in part that, upon proper filing of an application for reconsideration, the Commission ". . . shall, either with or without hearing, rescind, modify, or affirm its order or decision."

Initially, the Commission notes, that in evaluating the territory to be served, it revised applicant's territorial description to exclude that part of U. S. Highway 1 located south of junction Interstate Highway 95 and north of Interstate Highway 495. See footnote 1, Order No. 1665. Upon further review, it appears that this determination was erroneous. Accordingly, and inasmuch as the application sought authority to serve points in this area, the grant of authority made in Order No. 1665 shall be expanded.

4/ Title II, Article XII, Section 4(b) of the Compact is relied on in support of this argument.

As noted, applicant specifically requests that its application for reconsideration not act to stay the conditional grant of a certificate authorized by Order No. 1665. Absent such request, of course, the grant would automatically be stayed. See Compact, Title II, Article XII, Section 16. Applicant has filed with the Commission, as required by Order No. 1665, an appropriate tariff, itinerary, and evidence of suitable security for the protection of the public. Accordingly, a certificate of public convenience and necessity authorizing operations in van-type vehicles, as attached hereto and made a part hereof, shall be issued. Moreover, applicant shall be afforded an opportunity to present further evidence of its ability, if any, properly to conduct its own operations in motor coaches as contemplated by Order No. 1665. Also, should applicant so desire, it may show cause, if any there be, why an order should not be entered directing applicant to cease and desist from future participation, directly or indirectly, in the provision of service by persons other than carriers holding appropriate authority. A public hearing shall be scheduled, and applicant shall be assessed an amount preliminarily estimated to be sufficient to cover the expenses of the hearing. See Compact, Title II, Article XII, Section 19.

The Commission can see nothing to be gained by granting a stay of the partial denial of Milling's application. Obviously, applicant may not lawfully perform operations for which it does not hold a certificate irrespective of whether authority therefor has been specifically denied. Also, no proper or sufficient cause has been shown for staying the so-called show cause part of Order No. 1665 except to the extent set forth above.

Leave to expansively amend the application shall also be denied inasmuch as the proposed amendment is not timely and would require additional notice to the public, opportunity for protests and, perhaps, an additional hearing resulting in the overall delay of this entire proceeding. It does not appear that such delay would be in the best interest of the parties, nor does the Commission find the proposal to be administratively feasible. Denial of leave to amend Application No. 933, of course, shall be without prejudice to the filing of a separate application to serve points not considered herein.

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration of Annette H. Milling trading as Milling Tours, except to the extent granted herein, be, and it is hereby, denied.

2. That Certificate of Public Convenience and Necessity No. 43, as attached hereto and made a part hereof, be, and it is hereby, issued to Annette H. Milling trading as Milling Tours.

3. That Application No. 933 of Annette H. Milling trading as Milling Tours be, and it is hereby, scheduled for further public hearing as delimited above, said hearing to commence on Monday, June 20, 1977, at 9:30 A. M. in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

4. That Annette H. Milling trading as Milling Tours be, and is hereby, assessed \$300 pursuant to the provisions of the Compact, Title II, Article XII, Section 19, and directed to deliver said amount to the offices of the Commission, Room 316, 1625 I Street, N. W., Washington, D. C. 20006, on or before Monday, June 13, 1977.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 43

ANNETTE H. MILLING

ALEXANDRIA, VIRGINIA

By Order Nos. 1665 and 1702 of the Washington Metropolitan Area Transit Commission issued March 27, 1977, and May 26, 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 Nos. 1665 and 1702;

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

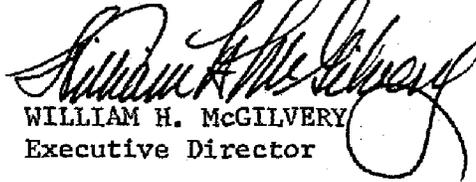
SPECIAL OPERATIONS, transporting passengers in sightseeing tours:

- (1) From motels and motor inns located at points on that part of U. S. Highway 1 south of junction U. S. Highway 1 and Interstate Highway 95 at or near Arlington, Va., and north of junction U. S. Highway 1 and Interstate Highway 95 at or near Woodbridge, Va., to points in the District of Columbia, and the City of Alexandria and Counties of Arlington and Fairfax, Va., and return.
- (2) From Holiday Inn, junction Interstate Highway 95 and Glebe Road, Arlington County, Va.; and Virginia Motel, 700 North Washington Street, Alexandria, Va.; to points in the District of Columbia and the City of Alexandria and Counties of Arlington and Fairfax, Va.; and return.

RESTRICTION: Restricted in (1) and (2) above to transportation performed in van-type vehicles and further restricted against transportation solely within the Commonwealth of Virginia.

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