

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1761

IN THE MATTER OF:

Served October 26, 1977

Application of ATWOOD'S TRANSPORT )  
LINES, INC., for Certificate of Public )  
Convenience and Necessity to Perform )  
Charter Operations )

Application No. 1004

Docket No. 389

By Application No. 1004, filed June 10, 1977, Atwood's Transport Lines, Inc. (Atwood's), seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact, to transport passengers, in charter operations, over irregular routes, between points in that part of the Metropolitan District located within the Capital Beltway (except Washington, D. C.), on the one hand, and, on the other, points in the Metropolitan District.

Pursuant to Order No. 1730, served August 5, 1977, as subsequently modified by Order Nos. 1739 and 1743, the Commission assigned the above-entitled application for oral hearing on September 7, 1977. No protests were filed by any carrier and no interested party appeared at the hearing to intervene or express any opposition to the application.

Recently, there has been a difference of opinion between Atwood's and the Commission with respect to the scope of the charter operations which Atwood's is now authorized to provide, with Atwood's contending that its grandfather certificate No. 14, served October 23, 1964, authorized more extensive charter operations than are permissible under certificate No. 14, issued June 11, 1975, as an attachment to Order No. 1436. The question has been submitted to the United States Court of Appeals for the District of Columbia, but by agreement of the parties involved, all action by the court on these matters is to be held in abeyance until final action has been taken by this Commission on this application. The granting of this application would render moot the issues involved in the pending court litigation.

Title II, Article XII, Section 4(b) of the Compact provides that the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the transportation covered by the application, if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied.

Turning first to the issue of public convenience and necessity, Atwood's relies upon both its past operations conducted under "color of right" and representative public witness support. Insofar as Atwood's past operations are concerned, it presented an abstract of charter movements performed by it between points within the territory involved by this application during the first six months of 1977. That abstract discloses that, for the said six-month period, Atwood's operated a total of 356 individual charter movements, a number of which were multiple bus movements, for an average of approximately 59 charter trips per month. Approximately 242, or 70 percent, of those charter trips originated at Washington National Airport.

Atwood's also presented a list of the various customers for whom it had provided charter service more than once during the above-specified six-month period. Reference to that list discloses that Atwood's provided charter service for a total of 113 different groups, including a substantial number of customers located beyond the Metropolitan District. Charter operations during the first six months of 1977 were provided for persons located in the District of Columbia, California, Colorado, Connecticut, Florida, Illinois, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, New York, Ohio, Rhode Island, South Carolina, Texas, Utah, Virginia and Wisconsin.

From such charter operations Atwood's derives revenue totalling approximately \$138,000 annually. That figure does not include the annual revenue which Atwood's enjoys by virtue of its charter operations for these groups provided under Atwood's Interstate Commerce Commission authority between points within the Metropolitan District and such out-of-town points as Williamsburg, Va., Philadelphia, Pa., and New York, N. Y. Atwood's is fearful that, should this application be denied, it will lose not only the revenue derived from charter operations within the territory of this application, but also the revenue derived from those related I.C.C. operations. Several of Atwood's customers expressed a preference for doing business with a single carrier thereby simplifying their charter bus arrangements and minimizing their workload and responsibilities in connection therewith. Atwood's estimates that its annual gross income from the subject charter operations and related "follow-up" service in the Metropolitan District will total approximately \$248,000 and its operating expenses approximately \$230,000, thereby providing Atwood's with an annual net profit of approximately \$18,400. These figures do not reflect any revenue to be derived by Atwood's from related interstate charter services.

Although primarily relying upon the nature and extent of its past charter operations referred to above, Atwood's also presented a number of public witnesses and affidavits from witnesses residing in Florida and Illinois who were unable personally to attend the hearing on this application. 1/

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1/ Counsel for the Commission's staff waived the right to cross-examine these out-of-town witnesses and, of course, the absence of other parties precludes any prejudicial effect that might otherwise be engendered by the acceptance of affidavits in lieu of oral testimony.

Included among the persons appearing and testifying in support of the application were Tsuneo Ono, Manager, Japan Travel Service; Robert McGinnis, the owner and operator of a bar and restaurant in Tuxedo, Md.; Rioichi Kamenosono, the owner and operator of Fuji International Travel Agency; William E. Beard, the local representative of Cosmopolitan Travel Service; and Joan Ryan, the owner and operator of Creative Bus Tours, Inc. Affidavits of support were introduced on behalf of Valerie M. Slotnick on behalf of Regina Tours, a travel agency located in Chicago, Ill.; William J. Bailey, Jr., Secretary-Treasurer of Cosmopolitan Travel Service, a travel agency located in Jacksonville, Fla., which originates tour business from points in the States of Florida, South Carolina and Georgia; and James M. Gibbs, Vice President and principal stockholder of Trans World Travel, Inc., a travel agency located in Highland Park, Ill. <sup>2/</sup> Each of these persons presented testimony relating to use being made by them of Atwood's existing charter service between various points and places involved in this application and all but one also uses Atwood's related interstate charter bus service for travel to and from points beyond the Metropolitan District. Moreover, all these witnesses testified that they had received excellent charter bus service from Atwood's and commented favorably on the nature and condition of applicant's motor buses, the caliber of its drivers, and the dependability of its service. Several indicated that they had previously used charter bus service of other carriers, but had found service by such other carriers to be unsatisfactory and substantially inferior to that provided them by Atwood's. All testified that they were appearing in support of this application because of their genuine need and demand for Atwood's charter service and the fact that the loss of Atwood's charter service, which they all are now enjoying, would adversely affect their present operations. Several have never been solicited by any carrier other than Atwood's and all have been dependent upon and made extensive use of Atwood's service in the past. In addition, three of Atwood's most senior drivers testified with respect to the fact that Atwood's has long been engaged in the provision of such charter service as is proposed by this application.

Atwood's is currently certificated to conduct both regular-route and charter operations by this Commission, and the evidence of record clearly shows that it is fit, financially and otherwise, to conduct the proposed charter operations. As proof of its fitness, Atwood's introduced a list of equipment as of April 30, 1977, showing that it then owned and operated a total of 55 buses obtained at an original cost in excess of \$2,400,000 and having a book value of more than \$1,700,000. Atwood's also presented a balance sheet statement as of May 31, 1977, disclosing that it has total assets of \$2,939,273, total liabilities of \$2,738,000, earned surplus of slightly more than \$175,000, and a net worth in excess of \$201,000. Atwood's has been operating at a profit.

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<sup>2/</sup> On September 19, 1977, an additional affidavit in support of the application was submitted by Mitchell L. Slotnick on behalf of Educational Tours, Inc., of Northbrook, Ill. This affidavit has been accepted for filing as correspondence.

While we certainly do not condone applicant's past operations conducted beyond the scope of its Certificate No. 14, we do note that Atwood's past charter operations were openly conducted, under a "color of right" based on its belief that such operations were in fact authorized by the language of its certificate. Moreover, the carrier has moved expeditiously and properly to obtain the necessary authority to continue such charter operations after its existing authority was interpreted by this Commission as being less broad than Atwood's had believed. Under these circumstances, the Commission believes that it is proper to afford consideration and weight to such long-continued substantial operations in determining the public need and demand for the continuation of applicant's service, rather than considering such unauthorized operations as evidence of unfitness.

In view of the above, the Commission hereby finds that Atwood's is fit, willing and able properly to perform the charter operations proposed by this application and to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder, and that Atwood's proposed charter operations are required by the public convenience and necessity.

THEREFORE, IT IS ORDERED:

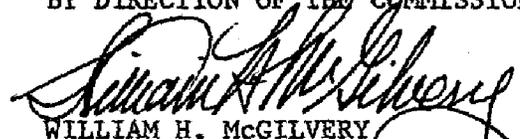
1. That Application No. 1004 of Atwood's Transport Lines, Inc., be, and it is hereby, granted.

2. That Atwood's Transport Lines, Inc., be, and it is hereby directed to file (a) two copies of an appropriate supplement to WMATC Tariff No. 18 in accordance with the authority granted herein, such tariff to be effective upon acceptance by the Executive Director, and (b) a notarized statement of compliance with Commission Regulation No. 68, no later than 20 days from the date of service hereof.

3. That upon timely compliance with the requirements of the last preceding paragraph, an appropriately revised Certificate of Public Convenience and Necessity No. 14 be issued to Atwood's Transport Lines, Inc.

4. That unless Atwood's Transport Lines, Inc., complies as directed hereinabove within said 20 days, or such other time as may be authorized by the Commission, the grant of authority made herein shall be null and void and Application No. 1004 shall stand denied in its entirety.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director