

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1965

IN THE MATTER OF:

Served February 27, 1979

Proposed Regulation )  
Relating to LEASES OF EQUIPMENT )

Docket No. 388

By Order No. 1729, served August 5, 1977, and incorporated herein by reference, the above-captioned proceeding was instituted for the purpose of adopting regulations relating to leases of equipment. All carriers then certificated by the Commission were made parties to the proceeding and were invited to submit suggestions concerning the form and content of such regulations. In addition, notice of the proceeding and opportunity for comment were afforded to various governmental entities (including Interstate Commerce Commission and Urban Mass Transportation Administration), trade associations (including American Public Transit Association, National Association of Motor Bus Owners and Washington Area Motor Bus Owners), attorneys practicing before this Commission, and those persons reasonably identified as providing rental motor vehicles which might be used in for-hire transportation. Only The Gray Line, Inc. (Gray Line), 1/ filed comments and suggestions as summarized below.

Gray Line points out that this Commission, like the Interstate Commerce Commission, may be able to regulate passenger carriers subject to its jurisdiction without any leasing requirements. 2/ Gray Line, however, offers the following guidelines should the Commission decide to adopt regulations:

(1) Control and responsibility for the operations of a leased bus, with or without a driver, must rest with the lessee;

(2) The lessee must maintain detailed records with respect to its lease and the operation of leased buses;

---

1/ By Order No. 1912, served November 6, 1978, the Commission approved the sale of certain operating rights and assets of The Gray Line, Inc., to Atwood's Transport Lines, Inc.

2/ The leasing regulations adopted by the Interstate Commerce Commission apply only to carriers of freight. See 49 CFR 1057. Certain restrictions on leasing of equipment have been imposed on passenger carriers by I.C.C. case decisions.

(3) The leased vehicle must be physically identified as such and may only be utilized in providing such transportation services as the lessee is certificated to provide;

(4) All transportation services provided by leased buses must be in accordance with the Commission's rules and regulations and with the rules, regulations and rates specified in the lessee's tariff; and

(5) Under no circumstances may the provisions of the Compact be circumvented.

The Commission has considered Gray Line's comments and proposed guidelines as well as leasing regulations promulgated by various governmental agencies including the Virginia State Corporation Commission. The Commission is of the initial opinion that leasing regulations are necessary to effect the goals enumerated in Order No. 1729 <sup>3/</sup> and to decrease the rendition of unauthorized transportation services within the Metropolitan District. Accordingly, the Commission proposes to adopt the regulations set forth in Appendix A.

As stated in Order No. 1729, the Commission will give all interested parties an opportunity to comment on the proposed regulations. Particular attention is invited to proposed regulation 69-08 concerning prohibited relationships between lessors and drivers. The Commission is interested in any proposal which might be less restrictive without undermining the overall intent of these regulations. Full elaboration on any comments or proposed changes, with documentation where appropriate, will be most helpful to the Commission.

**THEREFORE, IT IS ORDERED:**

1. That the proposed regulations governing leases of equipment as set forth in Appendix A be, and they are hereby, published for the purpose of eliciting public comment thereon.
2. That all carriers certificated by the Commission after August 5, 1977, are hereby made parties to this proceeding, in addition to all those previously made parties.
3. That all persons including carriers interested in commenting on the form and content of the proposed regulation, as set forth in

---

<sup>3/</sup> Two further goals have presented themselves since our listing in Order No. 1729: (1) the assurance of equipment availability, and (2) the availability of equipment at an assured price. Our Order No. 1846, served May 17, 1978, alluded to the failure of a service due to an equipment supplier's refusal to continue providing equipment to a carrier at a price which had provided the basis for the carrier's firm contractual commitment to a customer. The situation could have been avoided under the regulations proposed herein.

Appendix A hereto, be, and they are hereby, directed to file their representations, in writing and under oath, at the office of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C. 20006, no later than Thursday, March 29, 1979.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director

PROPOSED WMATC REGULATION NO. 69

GOVERNING THE LEASING OF MOTOR VEHICLES

69. Lease of Equipment.

69-01. Applicability. This regulation shall apply to the lease of motor vehicles by any lessee-carrier subject to the jurisdiction of this Commission when the vehicles are to be used by said carrier for the transportation of passengers between points in the Metropolitan District.

69-02. Contract of Lease. No carrier subject to the jurisdiction of this Commission may charter, rent, borrow, lease or otherwise operate in revenue service any motor vehicle to which such carrier does not hold title, except in accordance with this regulation. No carrier subject to the jurisdiction of this Commission shall operate any motor vehicle as lessee thereof unless the contract of lease has been approved by the Commission. Such contract of lease shall be on a form prescribed by the Commission, \*/ and any addenda thereto shall be submitted along with the form. The motor vehicle(s) named in the contract of lease shall be operated by, and under the complete control of, the lessee, and no other, for the entire period of the lease, and for all regulatory purposes including insurance, rates and charges, vehicle identification and motor vehicle fuel and road taxes, such motor vehicle(s) shall be considered as the vehicle(s) of the lessee. During the period of any contract of lease, neither the lessor nor the lessee shall enter into any other contract or subcontract for lease or sublease of the same vehicle(s) without the approval of the Commission.

69-03. Administrative Action.

(a) Review by Executive Director. The Executive Director or his delegate shall review contracts of lease for compliance with the requirements of this regulation. Such initial determination shall be completed no later than the end of the third business day following receipt of the contract for lease.

(b) Approval by Executive Director. Where a contract of lease is acceptable for filing (see Commission Rule 8), and is in conformance with the requirements of this regulation, the Executive Director or his delegate shall approve such contract of lease by signing all copies, retaining the original for the Commission's files, and serving copies upon the lessor and the lessee.

---

\*/ See proposed form WMATC-L1, attached as Appendix B to this order.

(c) Review by the Commission. Where it appears to the Executive Director or his delegate that a contract of lease may not be in complete conformance with the requirements of this regulation, the Executive Director or his delegate shall forward such contract of lease together with his analysis thereof to the Commission for determination and shall serve notification of such action and analysis upon the lessee.

(d) Determination by the Commission. The Commission shall make a prompt determination on such contract of lease, with or without hearings or other formal proceedings, and shall, upon approval, return such contract of lease to the Executive Director or his delegate for signing as described above, or, upon disapproval, return such contract of lease to the lessee, specifying the reason(s) for disapproval.

69-04. Term of Lease. All contracts of lease shall be for fixed or continuous (open-ended) periods. A lease may be cancelled by the lessor or the lessee by filing with the Commission a notice of termination in accordance with the terms agreed between the parties, as specified in the approved contract of lease. Any lease may be cancelled by mutual consent by filing with the Commission a notice of termination at any time prior to the proposed termination date. All leases shall expire at 11:59 p.m. on the date of termination. Leases may be renewed by filing a new contract of lease as required by Regulation 69-02 when the terms of the lease have been changed, or by filing a notice of renewal when only the date of termination has been extended.

69-05. Lease to be Carried on Vehicle. The lessee shall at all times retain a copy of the lease, as approved, in each motor vehicle being operated under lease.

69-06. Identification. While being operated by lessee, each vehicle must carry a sign displayed on each side of the vehicle, either (a) so placed in a window as not to obstruct the view of the driver or passengers or (b) affixed to the side of the vehicle. Such sign shall be legible at a distance of 50 feet, shall be at least 12 inches in height and 24 inches in width, and shall contain the following information:

LEASED TO AND OPERATED BY:  
(NAME OF LESSEE CARRIER)  
WMATC CERTIFICATE NO. \_\_\_\_\_

The lessee shall remove such identification before relinquishing possession of the equipment (Regulation 68-02, promulgated by Order No. 1598, served August 25, 1976, is hereby repealed.)

69-07. Liability Insurance. Coincidentally with the filing of any contract of lease, there shall be filed a certificate of insurance for the operation of the leased vehicle(s) by lessee, or in the alternative

there shall be filed appropriate evidence that there is already on file with the Commission an appropriate certificate of insurance covering all motor vehicles owned or operated by the lessee for the for-hire transportation of passengers.

69-08. Drivers. The lease of a vehicle with a driver provided by the same lessor is prohibited, except as provided by Regulation 69-12(c)(1). For the purpose of this regulation, a driver provided by the lessor shall be deemed to include the lessor, his employees, any person controlling, controlled by or under common control with the lessor, and any person in a contractual relationship with the lessor. The lessee may operate a leased vehicle with a qualified driver who (a) is a bona fide employee of the lessee or (b) is obtained from a personnel supplier having no prohibited relationship with the lessor.

69-09. Inspections. It shall be the responsibility of the lessee, at the time of assuming possession of the leased vehicle(s), to inspect said vehicle(s) for the purpose of determining their suitability for use and their compliance with the safety regulations of the Commission. No lessee shall operate any vehicle which is not in compliance with WMATC safety regulations.

69-10. Compact Requirements. Under no circumstances may any operating authority issued by this Commission to any carrier be leased, rented to, or used by any other person.

69-11. Leases to Non-Carriers. Notwithstanding the "applicability" provision of Regulation 69-01, no carrier subject to the jurisdiction of the Commission shall lease any motor vehicle without prior written consent of the Commission to any person for the transportation for hire of passengers between points in the Metropolitan District, unless such person holds a certificate of public convenience and necessity or temporary authority issued by the Commission. To obtain such prior written consent, it shall be the burden of the lessor to demonstrate by clear and convincing proof that the transportation to be performed is not subject to regulation by the Commission.

69-12. Leases for Non-Consecutive Periods of Three Days or Less. Notwithstanding the provisions of Regulation 69-02, 69-03, 69-04, 69-05, 69-07, and 69-08, leases for non-consecutive periods of three days or less shall be permitted without prior filing for approval:

(a) provided that the motor vehicle(s) covered by such lease shall be operated by and under the complete control of the lessee, and no other, for the entire period of the lease, and for all regulatory purposes, including but not limited to insurance, applicable rates and charges, vehicle identification, and motor vehicle fuel and road taxes, such vehicle(s) shall be considered as the vehicle(s) of the lessee,

(b) further provided that such leases shall not exceed in the aggregate 10 days in any calendar year,

(c) and further provided that (1) such leases for vehicle(s) and driver(s) are between carriers, both of which hold WMATC authority to provide the service involved, or (2) such leases for vehicle(s) only are between carriers, both of which hold WMATC authority,

(d) and further provided that the terms of such lease are reduced to writing and such writing is filed with the Commission no later than 10 days following the lease period.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

CONTRACT OF LEASE

(TRANSPORTATION FOR COMPENSATION)

*See 70  
Clean up large  
fuel tank*

Whereas, \_\_\_\_\_,  
(name)

of \_\_\_\_\_,  
(address)

hereinafter referred to as lessor, wishes to enter into an agreement of  
lease with \_\_\_\_\_, of  
(name)

\_\_\_\_\_, hereinafter  
(address)

referred to as lessee, who holds authority from the WMATC to transport  
passengers for compensation, as described in WMATC Certificate No. \_\_\_\_\_,  
or in temporary authority pursuant to Order No. \_\_\_\_\_, for the purpose of  
leasing from said lessor \_\_\_\_\_  
(make, description, seating capacity and

serial number of vehicle(s) to be leased)

or motor vehicle equipment more fully described in Appendix A attached  
hereto and made a part hereof, and said lease shall begin on \_\_\_\_\_

\_\_\_\_\_ and shall be ended \_\_\_\_\_  
(termination date)

\_\_\_\_\_ or "continuous")

The lessor and lessee agree by the filing of this contract of  
lease with the WMATC that the motor vehicle(s) named in this lease shall

be operated by and under the complete control of the lessee, and no other, for the period of the lease; and for all regulatory purposes including, but not limited to, insurance, rates and charges, vehicle identification, and motor vehicle fuel and road taxes, such motor vehicle(s) shall be considered as the vehicle(s) of the lessee. The lessee agrees to operate each vehicle under the lease with a qualified driver in his employ who is subject to the direction and control of the lessee or a qualified driver obtained from a personnel supplier not controlling, controlled by, or under common control or contractual relationship with the lessor.

For and in consideration of the leasing of the equipment herein described, the lessee agrees to pay to the lessor \_\_\_\_\_ or as set out in Appendix B attached to this lease.

This contract of lease is for a  fixed  continuous period. However, this lease may be cancelled by the lessor or the lessee by filing with the Commission a notice of termination not less than \_\_\_\_\_ days prior to the proposed termination date. (to be agreed upon)

Any lease may be cancelled by mutual consent by filing with the Commission a notice of termination at any time prior to the proposed termination date. This lease shall expire at 11:59 p.m. on the date of termination.

During the period of this lease, neither the lessor nor the lessee shall enter into any other contract or subcontract for lease or sublease of the same vehicle(s) and no person other than the lessee shall operate said vehicle(s) without the approval of the Commission pursuant to Regulation No. 69-02.

No agreement or contract between the parties to this lease shall in any way alter, change or amend the terms of this contract of lease.

By the signatures of the lessor and the lessee, or their lawful agents, they are severally and jointly bound thereby:

\_\_\_\_\_ (Seal)  
Lessor

\_\_\_\_\_  
Witness

\_\_\_\_\_ (Seal)  
Lessee

\_\_\_\_\_  
Witness

-----

WMATC action: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_