

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2001

IN THE MATTER OF:

Served June 6, 1979

Application of AIRPORT LIMO, INC., )  
 For a Certificate to Perform )  
 Charter Operations Pursuant to )  
 Four Contracts )

Case No. Ap-78-56

By application filed December 29, 1978, Airport Limo, Inc., seeks a certificate of public convenience and necessity to perform charter operations pursuant to contract, over irregular routes, transporting (a) those airline crews of Braniff Airlines, Eastern Airlines and Air France having a prior or subsequent movement by air (i) between Dulles International Airport, Herndon, Va., and Washington National Airport, Gravelly Point, Va., on the one hand, and, on the other, points in the Metropolitan District, (ii) between Dulles International Airport and Washington National Airport via Columbia Island, a point located in the District of Columbia, and (iii) between Washington National Airport and Andrews Air Force Base, Md., and (b) guests of the Springfield Hilton Hotel between the Springfield Hilton Hotel, 6550 Loisdale Court, Springfield, Va., and the Capital Hilton Hotel, 16th and K Streets, N. W., Washington, D. C. Service is to be restricted to transportation performed under separate contracts with each of the named airlines and the Springfield Hilton Hotel. Pursuant to Order Nos. 1952 and 1968, served January 9, 1979, and March 1, 1979, respectively, and incorporated by reference herein, a public hearing on this application was held on March 28, 1979. No party appeared in opposition.<sup>1/</sup>

Airport Limo proposes the following rate structure:

<u>EASTERN AIRLINES</u>	<u>RATE PER VEHICLE</u>
Between:	
Washington National Airport and Dulles International Airport	\$17.95
Washington National Airport and District of Columbia	6.50
Dulles International Airport and District of Columbia	17.95

<sup>1/</sup> Copies of Order Nos. 1952 and 1968 were served on the Director of Metropolitan Washington Airports, a subpart of the Federal Aviation Administration which owns and operates National and Dulles Airports.

<u>AIR FRANCE</u>	<u>RATE</u> <u>PER VEHICLE</u>
Between:	
Washington National Airport and Dulles International Airport	\$28.50
Washington National Airport and District of Columbia	6.50
Dulles International Airport and District of Columbia	28.50

BRANIFF AIRLINES

Between:	
Washington National Airport and Dulles International Airport	28.50
Washington National Airport and District of Columbia	6.50
Dulles International Airport and District of Columbia	28.50
Washington National Airport and Andrews Air Force Base	25.00

SPRINGFIELD HILTON

\$60 per day of service or \$5 per passenger,  
whichever is greater

The higher fares to be charged Air France and Braniff result from the limited number of trips to be provided for those contractors.

At the public hearing representatives of Eastern, Braniff, Air France and the hotel, testified regarding their need for Airport Limo's service. Applicant presented evidence concerning its corporate structure, financial condition, existing operations,<sup>2/</sup> and equipment available for the proposed operations.

The Eastern Airlines representative expressed a need for service between Dulles and National Airports and hotels in Washington, D. C.; between the two airports; and between National and Andrews Air Force Base. He estimated that the airlines average two trips a week between Dulles and National, and anywhere from 10 to 25 one-way trips a week to and from hotels in Washington, D. C. He could recall only a very limited number of trips between National and Andrews but stated that there was potential need for the transportation of crews to Andrews to handle charter flights involving press personnel covering presidential travel. Eastern has been using Airport Limo's service since November 1978 pursuant to an oral agreement,

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<sup>2/</sup> Airport Limo presently holds Commission authority permitting the transportation of flight crews of airlines not party to this application.

despite the carrier's lack of appropriate authority. The rate structure used under the oral agreement is that proposed in Airport Limo's application.

Braniff Airlines has no scheduled layovers in Washington, D. C., but flight cancellations occasionally necessitate crew transportation between Dulles and National Airports or between one of the airports and hotels in Virginia and the District of Columbia. Braniff provides White House press charter flights originating at Andrews Air Force Base and requires crew transportation from National Airport and nearby Virginia hotels to Andrews and return. These crews sometimes fly into National a day in advance, register at a hotel, and then require transportation to Andrews the following day. Braniff has been using Airport Limo's service since the fall of 1978 with at least some of the service provided in vehicles operated by Arlington Yellow Cab Company, Inc. A flat rate of \$25 per vehicle has been charged for trips between National and Andrews.

A representative of Air France testified that the airline has need for at least four one-way trips a week between Dulles and a hotel in Washington, D. C. In addition, there is an occasional need for service between National and Dulles in the event crew members are flown in from New York to National in emergency situations to handle scheduled flights departing Dulles. The witness also mentioned the possible need for transportation from National to Andrews for escort personnel or aircraft technicians in rare instances, but the application as filed by Airport Limo is limited to the transportation of airline crews, thereby precluding our consideration of the movement of other airline personnel. Pursuant to an oral agreement, Airport Limo has been providing service for Air France since November 1978.

The Springfield Hilton Hotel is supporting Airport Limo's application for authority between that hotel and the Capital Hilton Hotel in Washington, D. C., to transport hotel guests Monday through Friday into Washington, D. C., in the morning and back to the Springfield Hilton in the afternoon. Service would depart at 7:30 and 8:30 in the morning and 4:30 and 5:30 in the afternoon. The hotel asserts that the service is needed to offer guests easy access to the District of Columbia, thereby enhancing its competitive position with hotels located in the city. The Hilton is presently using Airport Limo's service for intra-Virginia transportation (not subject to this Commission's regulation) between National and Dulles Airports and the hotel. The proposed rate structure includes a \$5 per passenger one-way fare with the hotel guaranteeing a minimum collection of \$15 per trip. The hotel expects that there will be a sufficient number of passengers per trip to meet the guaranteed minimum. Presently, guests must rely on rented cars or taxicab service to travel to and from the District of Columbia.

The general manager of Airport Limo testified that Airport Limo is wholly owned by Allstate Messenger and Delivery Service, Inc. (Allstate),

which has guaranteed the debts and obligations of Airport Limo in order to satisfy Commission requirements regarding financial viability.<sup>3/</sup> The balance sheet presented at the hearing was that of Allstate, which presumably includes Airport Limo's financial picture, inasmuch as no separate balance sheet for Airport Limo had been prepared. Further testimony revealed that Allstate is wholly owned by Neal Nichols, who is also president of Transportation, Incorporated, a holding company which owns Air Transit, Inc., Red Top Cab and Arlington Yellow Cab Company, Inc.

Service has been provided for Air France and Eastern at Dulles Airport by Airport Limo in Arlington Yellow and Air Transit taxicabs, assertedly because applicant did not have appropriate Commission authority. Van service has been provided in Airport Limo equipment for Braniff between Crystal City, Alexandria, Va., and Andrews Air Force Base, but not until Airport Limo filed this application and the protest period passed without opposition, according to the witness. He stated that the airline service was hurriedly instituted when the airlines' previous carrier ceased passenger operations. Service has also been provided between the Springfield Hilton and the Capital Hilton in Arlington Yellow Cabs.

The hotel service is run with the cab meter turned on. The driver collects a \$5-per-passenger fare, and the difference between the per capita fare collected and the fare shown on the taxi meter is billed by Arlington Yellow Cab to Airport Limo which, ostensibly, is the provider of the service. This operation was described as a temporary arrangement between Airport Limo and Arlington Yellow Cab until Airport Limo could receive proper authority from the Commission. Braniff was supplied with van service on four occasions between a Virginia hotel near National Airport and Andrews Air Force Base, Md., at a per-trip rate of \$25. Service also has been provided to Air France by Air Transit, Inc., in taxicabs from and to Dulles Airport, with Airport Limo reimbursing Air Transit for the taxi-meter rate and Airport Limo billing Air France a flat \$28.50 per trip. This operation was also characterized as a temporary situation until the appropriate authority was issued by the Commission. Should Airport Limo be granted authority to serve Air France, it proposes to use two station wagon vehicles rather than a van inasmuch as the airline specifies separate vehicles for the cockpit crew and the flight attendants.

Airport Limo owns ten 11-passenger vans, one eight-passenger van and three station wagons with five more 11-passenger vans on order. It does not own any taxicab equipment. The vehicles are located at Arlington, Va., and at Dulles and National Airports. Standby equipment is available on short notice and taxicabs of affiliated companies are also available in emergency breakdown situations. All vehicles, including those of Airport Limo, Arlington Yellow Cab and Air Transit, are covered by one general insurance policy according to the witness.

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<sup>3/</sup> For the year ended June 30, 1978, Airport Limo had a net operating deficit of \$21,087.51 as shown on the income statement submitted with its application.

The Compact, Title II, Article XII, Section 4(b), provides that a certificate of public convenience and necessity shall be issued by the Commission if it finds ". . . that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act 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."

The Commission finds that Airport Limo has sustained its burden of proof regarding the matter of need for service under contract to the following extent: (a) Eastern Airlines -- between Dulles International Airport and Washington National Airport, on the one hand, and, on the other, hotels and motels located in Washington, D. C.; between Dulles and National via Columbia Island, a point located in the District of Columbia; and between National and Andrews Air Force Base; (b) Braniff Airlines -- between Dulles and National, on the one hand, and, on the other, hotels and motels located in Washington, D. C., between Dulles and National via Columbia Island; and between National and hotels and motels located in Arlington County and Alexandria, Va., on the one hand, and, on the other, Andrews Air Force Base; (c) Air France -- between Dulles and hotels and motels located in Washington, D. C.; and between Dulles and National via Columbia Island; (d) Springfield Hilton -- between the Springfield Hilton and the Capital Hilton, Washington, D. C. The need shown for airline service is limited to the transportation of airline crews having a prior or subsequent movement by air, and that shown for hotel service is limited to the transportation of hotel guests.

With respect to applicant's compliance fitness, there is ample evidence of record concerning operations conducted for these contractors without appropriate certification. Airport Limo, already certificated by this Commission to perform operations for airlines not party to this application, has obviously been the provider of transportation service for the airlines and the hotel despite the use of taxicabs, as is evidenced by the billing system used wherein the taxi companies (Arlington Yellow Cab and Air Transit) bill Airport Limo, which in turn bills the involved airline. In its attempt to fulfill the airlines' and hotel's need for transportation service, applicant states that it established the taxicab operations as a temporary expediency while awaiting Commission approval for issuance of authority. A better alternative would have been to file an appropriately documented application for temporary authority pursuant to Title II, Article XII, Section 4(d)(3) of the Compact.

In any event, the use of taxicabs for service between fixed termini, does not exempt the operation from Commission regulation.<sup>4/</sup>

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<sup>4/</sup> In fact, Arlington Yellow Cab Company, Inc., held Commission Certificate No. 26 prior to transfer of the certificate to Airport Limo as approved by the Commission in Order No. 1819, served March 21, 1978.

The Compact generally excludes taxicabs from Commission regulation except with respect to ". . . (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage." Title II, Article XII, Section 1(c). However, the definition of the term "taxicab" is ". . . any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) . . . used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways as the passengers may direct." Title II, Article XII, Section 2(d). In the instant case we are concerned with operations between fixed termini, and, the transportation is neither at the passengers' direction nor solicited along the public streets and highways. Rather, testimony indicates that the transportation has been furnished as a result of oral agreements between Airport Limo and the hotel and airlines and an arrangement between Airport Limo and the two taxicab companies.

Inasmuch as the service performed in taxicabs does not fall within the above-referenced exemption, the operations are unlawful without certification. If any of the affiliated taxicab companies desire to provide similar service, or to perform in an emergency backup capacity, it must first obtain its own certificate from the Commission. Because of the inter-related corporate structure of the several entities and the common ownership of Allstate and Transportation, Incorporated, issuance of authority to Airport Limo and to a commonly controlled taxicab entity would also require approval by the Commission pursuant to Title II, Article XII, Section 12 of the Compact.

Airport Limo is cautioned not to use taxicab vehicles for any of its certificated operations even as temporary replacement equipment in the future. None of the taxicab companies can provide fixed-termini service for the Hilton Hotel or any of the airlines without first receiving authority from the Commission. Inasmuch as the taxicab service was implemented in the belief that there was no need for certification, however, and because Airport Limo vehicles were used on only a few occasions for Braniff Airlines, the past unlawful operations conducted by applicant do not appear to warrant a finding of unfitness. A cease-and-desist requirement, however, will be imposed and applicant is cautioned that future violations may result in the suspension or revocation of Airport Limo's operating rights.

It is difficult for the Commission to assess the financial viability of Airport Limo because of the shortage of financial information. Although Allstate is acting as the financial underwriter of applicant, the Commission requires that Airport Limo submit financial statements consisting of its own asset, liability, revenue and expense data in all future filings instead of merely presenting Allstate's balance sheet. See generally Commission Regulation Nos. 64 and 65-03, and Title II, Article XII, Section 10 of the Compact. The Commission shall take official notice of Exhibit H-20 in Application No. 1024, a corporate resolution of Allstate, agreeing to cover all financial losses incurred by Airport Limo

for whatever period is necessary, subject to certain loan interest terms, and specifying that the Commission will be given 60 days prior written notice if this financial arrangement is terminated.

While this resolution satisfies our concerns about Airport Limo's financial viability, it is of little aid in evaluating the proposed rate structure for the hotel and the airlines. Inasmuch as the proposed fares are the result of arms-length negotiations between apparently competent parties, however, the fare structure for the airlines shall be approved subject to our continuing jurisdiction over a carrier's tariff. The rate to be charged for the hotel transportation, however, does not meet Commission regulations. The either/or proposal (\$5 per passenger or \$15 per trip, whichever is greater) conflicts with the type of service sought in the application, charter operation pursuant to contract. Commission Regulation No. 51-06(b) defines charter operation pursuant to contract as ". . . the transportation of persons under a single written contract which provides for the exclusive and periodically recurrent use of a vehicle or vehicles to meet the distinct need of the passengers." On the other hand, Commission Regulation No. 51-07 defines special operation as ". . . the transportation of passengers for a special trip, for which the carrier contracts with each individual separately." The \$5 component of the proposed rate is akin to a special operation tariff, whereas the \$15 charge more properly fits the concept of charter operations pursuant to contract, which is what this application covers. Authorization of such charter service, however, presents other problems.

Applicant intends to contract with the Springfield Hilton but can do so only at a flat rate. Presumably then, the hotel would initiate per capita charges to at least cover the cost of the service. These rates would not be the subject of any tariff and the Commission would lack jurisdiction over charges established by an entity that is not a carrier. Accordingly, the traveling public would be at the mercy of the Springfield Hilton, and the actual cost of transportation to the users may or may not bear any relationship to the standards set forth in Title II, Article XII, Section 6 of the Compact.

Moreover, the proposed contract would not involve "a group of passengers who, pursuant to a common purpose and under a single contract, has acquired the exclusive use of a vehicle or vehicles to travel together." Commission Regulation No. 51-06(a). Under applicant's proposal, no group of passengers is involved. The contract merely provides a guaranteed revenue while conferring no rights on the hotel guests. This part of the application, therefore, cannot be approved inasmuch as the service proposed is not charter operations pursuant to contract and is beyond the scope of the application.

Denial of this part of the application, however, shall be without prejudice to the filing of a similar application for special operations authority. If, after publication of notice of such an application, no protests are received, applicant may, if it so desires, waive its right to a hearing

and request that the Commission take official notice of the findings made in this order. See Commission Rules of Practice and Procedure Nos. 15, 22 and 23-07.

Before the grant of authority set forth herein becomes effective, applicant must present two copies of its tariff(s) including an executed contract between the carrier and each of the individual airlines. Service between Dulles and National will be restricted to transportation via a route traversing the District of Columbia (Columbia Island), inasmuch as the Commission is precluded by the Compact, Title II, Article XII, Section 1(b), from certificating transportation between points solely in the Commonwealth of Virginia. Finally, directives will be entered to prevent future record-keeping and unauthorized-operations problems.

THEREFORE, IT IS ORDERED:

1. That Airport Limo, Inc., is hereby granted authority to perform charter operations pursuant to contract with the following airlines, over irregular routes, transporting airline crews having a prior or subsequent movement by air, together with their baggage in the same vehicle with passengers:

(1) Eastern Airlines - (a) between Dulles International Airport, Herndon, Va., and Washington National Airport, Gravelly Point, Va., on the one hand, and, on the other, hotels and motels located in Washington, D. C., (b) between Dulles International Airport and Washington National Airport, via a route traversing the District of Columbia, and (c) between Washington National Airport and Andrews Air Force Base, Md.; (2) Braniff Airlines - (a) between Dulles International Airport and Washington National Airport, on the one hand, and, on the other, hotels and motels located in Washington, D. C., (b) between Dulles International Airport and Washington National Airport via a route traversing the District of Columbia, and (c) between Washington National Airport and hotels and motels located in Arlington County and Alexandria, Va., on the one hand, and, on the other, Andrews Air Force Base; and (3) Air France - (a) between Dulles International Airport and hotels and motels located in Washington, D. C., and (b) between Dulles International Airport and Washington National Airport, via a route traversing the District of Columbia, restricted in each case against transportation between points solely within the Commonwealth of Virginia.

2. That the application of Airport Limo, Inc., in Case No. AP-78-56, except to the extent granted above, is hereby denied.

3. That Airport Limo, Inc., is hereby directed to file two copies of an appropriate WMATC tariff, including an executed contract between

the carrier and each airline in accordance with the authority granted herein, such tariff to be effective upon acceptance by the Executive Director.

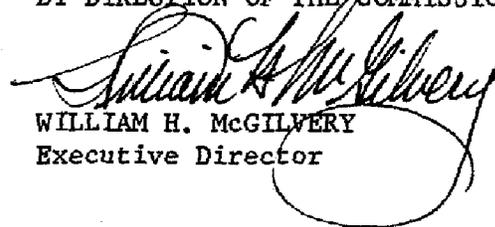
4. That upon compliance with the conditions set forth in paragraph (3) above, an appropriately revised Certificate of Public Convenience and Necessity No. 26 shall be issued to Airport Limo, Inc.

5. That in the event Airport Limo, Inc., fails to comply with the directives set forth in paragraph (3) above within 30 days from the date of service hereof, or within such additional time as may be authorized by the Commission, the grant of authority made herein shall be considered null and void and the application shall stand denied in its entirety effective upon expiration of the said compliance time.

6. That Airport Limo, Inc., is hereby directed to maintain separate records and accounts with respect to its finances, including but not limited to assets, liabilities, revenues and expenses and, in all future filings with the Commission, to submit financial statements and all other pertinent data based solely on the operations of Airport Limo, Inc., as an individual entity.

7. That Airport Limo, Inc., is hereby directed to cease and desist from engaging, directly or indirectly, in any transportation for hire of passengers between points in the Metropolitan District subject to the certification requirements of the Compact by any instrumentality, including taxicabs, unless said instrumentality has first obtained appropriate authority from this Commission.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY  
Executive Director