

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2004

IN THE MATTER OF:

Served June 20, 1979

Proposed WMATC Regulation No. 70)
Concerning Charter Operations)
Pursuant to Contracts for)
Employee-Type Transportation)

Case No. MP-79-04

INTRODUCTION

By Order No. 1959, served February 9, 1979, and incorporated by reference herein, the Commission instituted this proceeding to determine whether the market-entry regulation of transporters of employees (and similar persons) by arrangement of employers (or similar third parties) in charter operations pursuant to contract should be modified to increase responsiveness to existing needs. All carriers holding authority from this Commission were made parties to the proceeding, notice was served on employers and government agencies which are active in, or have in the past participated in, charter operations pursuant to contract, and certain other persons and government agencies deemed to be interested in the proposed regulation. Notice was also posted as required by Commission Rule 6-02 and was published in the District of Columbia Register. 1/ Persons desiring to comment on the proposed regulation were directed to file statements no later than 30 days from the date of service of the order.

Comments, due on March 12, 1979, were timely filed by Edwards Trucking Company, Inc., Webb Tours, Inc., Ernest H. Bannister, Sr., (Bannister Enterprises, Inc.), Suggs Transportation Service, Inc., United States Department of Agriculture--Science and Education Administration, McMichael School Bus Service, Inc., Recreational Vehicle Rentals, Inc., Diamond Tours, Inc., and the City of Fairfax, Va. In addition, extensions of time to file statements were sought on March 12, 1979, by Atwood's Transport Lines, Inc., James M. Smith, Inc., Beltway Limousine Service, Inc., and Silver Spring Taxi, Inc., on behalf of the Montgomery County Department of Transportation and the National Institutes of Health.

1/ 25 D.C.Reg. 8104 (February 23, 1979).

Comments were subsequently filed by James M. Smith, Inc. (March 16, 1979), Montgomery County Taxicab Service Advisory Committee (March 21, 1979), and Beltway Limousine Service, Inc. (March 23, 1979), and all will be accepted for filing and given due consideration.

BACKGROUND

In 1974 the Commission conducted an investigation to determine whether a type of service that is performed pursuant to a contract for transportation on a regular basis for an extended period of time, over irregular routes, may be performed pursuant to a normal grant of charter authority. 2/ As a result of that investigation, the Commission found that the primary distinction between charter operations and charter-pursuant-to-contract operation is that "a charter service is usually for a particular itinerary that occurs only once whereas the contract charter carrier provides a periodically recurrent service." 3/ Commission Regulation No. 51-06(b) was promulgated by Order No. 1361, defining the scope of "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.

Since adoption of the charter-contract definition, a number of carriers have received authority solely to transport passengers under contract to an employer, school, or similar entity, and several previously certificated charter carriers have been providing employee-type transportation service within the scope of their broader charter authority.

In proposing a change in the market-entry procedure for carriers seeking to provide this form of transportation service, the Commission recognized that, perhaps, ". . . case-by-case market-entry control is basically incompatible with the inherent nature of most services now provided by charter-pursuant-to-contract carriers." 4/ The Commission noted that the existing certification procedure often results in serious timing problems. A purchaser of transportation may let a contract for bidding, select one of the bidding carriers a short time before service is scheduled to commence, and then must wait for the successful carrier to file an application, and for the Commission to process it, hold hearings if necessary, and issue a decision. If the carrier is not previously certificated, therefore, an almost impossible situation develops, making it difficult for the carrier to obtain proper authorization in time to

2/ See Order No. 1342, served July 12, 1974, and Commission Regulation No. 51-06(a).

3/ Order No. 1361, served October 16, 1974.

4/ Order No. 1959, p. 4.

commence service on the scheduled date. The alternative of obtaining temporary authority 5/ while an application for certification is pending often turns on the capability of an existing carrier to provide the sought service. Thus, an existing carrier can effectively block a short-term grant of authority and frustrate the carrier selection process of the transportation purchaser.

Similarly, carriers providing service under charter-pursuant-to-contract authority presently hold certificates which do not automatically terminate upon expiration of the underlying contract, enabling them to oppose (and delay, if not defeat) a new application for the same authority despite the fact that the purchaser of the involved transportation may be justifiably dissatisfied with the existing service. This practice is antithetical to a competitive market as desired by many contracting parties, and may well lead to the loss of competitive, quality operations. As was stated in Order No. 1959, "[b]y keeping the bidding system truly open this abuse can be avoided."

AUTHORITY FOR ADOPTION OF REGULATION

Under Title II, Article XII, Section 15 of the Compact, the Commission is empowered to ". . . perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of the Act." The Commission is charged with the responsibility to regulate ". . . transportation for hire by any carrier of persons between any points in the Metropolitan District and to [regulate] the persons engaged in rendering or performing such transportation service . . ." with exceptions not relevant to this proceeding. 6/ Title II, Article XII, Section 4(b) of the Compact sets forth the standard to be applied to the consideration of an application for a certificate of public convenience and necessity.

[T]he 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 this Act and the rules, regulations, and requirements of the Commission thereunder, and that such

5/ Compact, Title II, Article XII, Section 4(d)(3).

6/ Compact, Title II, Article XII, Section 1(a).

transportation is or will be required by the public convenience and necessity

Rules and regulations adopted by the Commission ". . . may prescribe the form or forms of all . . . applications . . . to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed." Furthermore, "[f]or the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters." ^{7/} Thus, the Commission finds that it has the requisite authority to promulgate the proposed regulation under the terms of the Compact.

While the Commission ordinarily performs its licensing functions on a case-by-case basis, it perceives the appropriate exercise of its rule-making authority as a vital means of efficiently carrying out its statutory mandate. The United States Supreme Court has recognized the propriety of rule making by a regulatory agency charged with licensing duties as an effective alternative to the case-by-case adjudication method. Where the litigation of certain issues would only be time wasteful by comparison to the comprehensive treatment of these issues through the rule-making process, the latter may be required in order to afford expeditious, effective relief in the public interest. Used Household Goods--Pack-and-Crate Operation, 131 M.C.C. 20, 28 (1978). See also Weinberger v. Hynson, Wetcott & Dunning, Inc., 412 U.S. 609, 93 S.Ct. 2469 (1973), F.P.C. v. Texaco, 377 U.S. 33, 84 S.Ct. 1105 (1964), rehearing denied 377 U.S. 974, 84 S.Ct. 1881 (1964), and United States v. Storer Broadcasting Co., 351 U.S. 192, 76 S.Ct. 763 (1956).

In Chemical Leaman Tank Lines, Inc. v. United States, 368 F.Supp. 925 (D.C.Del. 1973), the district court upheld the right of the Interstate Commerce Commission to adopt rules for the declaration of prospective licensing criteria which would govern later licensing applications. The court indicated that the rules reflect policy based upon the general characteristics of an industry and are designed to eliminate the needless, time-wasteful adjudication of issues not in dispute. Used Household Goods, supra. We find that the same considerations render appropriate the promulgation of proposed Regulation No. 70.

COMMENTS RECEIVED REGARDING THE PROPOSED REGULATION

Edwards Trucking Company, Inc., supports the proposed regulation because existing procedures fail to recognize the competitive bidding

^{7/} Title II, Article XII, Section 15 of the Compact.

process and contract demands of many government agencies. Edwards acknowledges its own frustration in the past with Commission procedures in charter-contract applications.

Webb Tours, Inc., believes that adoption of the proposed regulation is "a step in the right direction." Webb states that existing contract law offers sufficient protection to both parties to a contract and that existing inspection and insurance requirements are adequate to protect the public. Additionally, if either party to the contract fails to abide by the terms of the agreement, the involved service will cease to exist. Finally, Webb asserts that present Commission procedures increase the cost of service, whereas adoption of the regulation will reduce the cost of covered contract operations by reducing time delays and rendering oral hearings unnecessary.

Ernest H. Bannister, Sr., ^{8/} expresses the belief that the proposed regulation will benefit all potential contract bidders, particularly members of minority groups. Adoption of the regulation will offer all competent contract bidders a meaningful opportunity to secure government contracts, according to Bannister.

Suggs Transportation Service, Inc., believes that the proposed regulation will ease entry into the charter-contract field, and states that a more healthy financial environment will result from allowing smaller companies easier access to the market.

The United States Department of Agriculture, Science and Education Administration, is in favor of the proposed regulation, which it declares will open competition for the transportation of employees within the metropolitan area. The department decries the existing lack of competition and encourages the Commission's recognition of the inherent difference between charter-contract operations tailored to suit the needs of particular persons and carrier availability to the general public.

McMichael School Bus Service, Inc., generally expresses support for the proposed regulation, citing its own past experience in attempting to obtain authority to perform employee-type transportation service. McMichael refers to instances where the involved administrative and legal costs potentially exceeded the anticipated revenue margin of a particular contract, thereby precluding bidding on, or accepting, some contracts, even where no certificated carrier may have expressed any interest in performing the involved service. While indicating support for the underlying principle of the regulation, McMichael emphasizes strong reservations

^{8/} Mr. Bannister was formerly president of Bannister Enterprises, Inc., and presently operates as a sole proprietor trading as Bannister Transportation Service.

with regard to both the advisability and legality of certain facets of the proposal. Specifically, McMichael objects to the proposed notice requirement, the protest procedure, the lack of public (oral) hearings, and the delegation of decision-making power to the Executive Director.

With respect to the notice issue, McMichael feels that the expedited procedure described in subsection 06 of the proposed regulation fails to give actual notice to carriers already providing conflicting service. It requests that subsection 06 be amended to require that an applicant seeking authority under the proposed regulation serve notice on carriers which could be affected by the sought authority, pursuant to Commission Rule No. 5. ^{9/} As for the proposed protest procedures, McMichael asserts that the 10-day period for filing protests, including all evidence and argument relied on, is too short. McMichael suggests that the 10-day period be used to require protestants to file notice of opposition, with certain additional time allowed to file substantive material, with the added time perhaps keyed to a hearing scheduled on the matter.

McMichael contends that a hearing is necessary to determine each application in keeping with Title II, Article XII, Section 4(b) of the Compact. It further submits that a protestant should be allowed to argue that the public convenience and necessity would not be served through the award of authority to a particular applicant on a specific contract. In special circumstances where time is of the essence, McMichael suggests use of the temporary authority provision of the Compact to meet an expedited need for service.

Finally, McMichael contends that the Compact does not vest in the Executive Director the power to decide whether to grant or deny authority. While recognizing that the Compact permits some delegation of responsibility (Title II, Article XII, Sections 14 and 15), McMichael stresses that Title II, Article XII, Section 4(b) requires action by the Commission on all applications and Title I, Article VI requires a majority of Commissioners to approve Commission action (including approval by the Commissioner from a particular jurisdiction with respect to matters solely affecting that one jurisdiction). McMichael, however, indicates no reason why such approval may not be given in the context of a rule-making proceeding.

Recreational Vehicle Rentals, Inc., states that contracting officers for a transportation purchaser are sufficiently able to protect the public interest and, specifically, the interests of the passengers using the service. It asserts that there is inadequate competition in the charter-contract field, contrary to the public interest and due, at

^{9/} Rule No. 5 sets forth service requirements.

least in part, to existing case-by-case market-entry control and the ability of certificate holders to block issuance of new certificates. Recreational Vehicles supports the proposed regulation but suggests that there be a reduction of the paperwork required by subsection 04 thereof.

Diamond Tours, Inc., is in favor of the proposed regulation and cites its own experience in which it was unable to provide full service under a contract because of limitations in its operating authority. It points out that many contracts for service are reserved for small and/or minority enterprises which do not hold operating authority before award of the contract.

The City of Fairfax expresses approval of the proposed regulation, especially because, as a user of charter-contract service, it feels that the result will be increased competition in the field. The city adds that the regulation should include a "timely performance" criterion requiring strict adherence to agreed-on schedules.

James M. Smith, Inc., supports adoption of the proposed regulation with some modifications. Smith suggests that each qualified carrier be issued a master certificate manifesting its ability to bid on government-agency contracts to satisfy the requirements for entering the bidding process. Then written proof of authorization could be sent by the Commission to carriers actually entering into contracts for service. Smith asserts that the proposed minimum duration of the underlying contract (181 days) is too long, inasmuch as government agencies often let contracts for shorter periods of time, or have to award breached contracts to the next lowest bidder. As an alternative, Smith suggests that proposed Regulation No. 70-05 incorporate interim service in a manner similar to the existing provision for contractual extensions or renewals and further suggests that a protesting party be given the opportunity to challenge the authenticity or eligibility of a proposed operation.

Additionally, Smith recommends changes in the definitions of the terms a) qualifying association, b) government agency, and c) school, and inclusion of transportation for dependents of those traveling on official business. With respect to qualifying association, it asserts that the word 'corporations' should be inserted in No. 70-02(d) to allow the transportation of "individuals or corporations having a continuing common interest . . ." thereby permitting corporate members of trade associations to take advantage of the proposed regulation. Similarly, Smith desires the term "government agencies" as used in No. 70-02(e) concerning those persons traveling on official business to be expanded to include government-chartered organizations such as the Tennessee Valley Authority which do business in the Metropolitan District, and international agencies and agencies of sovereign nations, including foreign embassies and such organizations as the International Monetary

Fund and the World Bank. Smith believes that the definition of "school" in No. 70-02(f) should place nursery schools and kindergartens in the same status as elementary, secondary, and post-secondary institutions. Smith also feels that the definition of those traveling on official business [subsection 02(e)] should incorporate dependent transportation when those dependents require transportation to accompany, precede, or follow individuals traveling on official business.

The Montgomery County Taxicab Service Advisory Committee expresses interest in the proposed regulation but could not submit formal comments within the established time limit. The Committee's focus is on taxicab service pursuant to contract but that subject appears to be beyond the scope of this proceeding.

Beltway Limousine Service, Inc., opposes adoption of the proposed regulation and asserts that the Compact does not provide for the proposed action. Primarily, Beltway contends that the Commission must hold a public hearing pursuant to Title II, Article XII, Section 4(b) before granting authority to an individual applicant. It also states that the proposed regulation penalizes certificated carriers and rewards those who have ignored the Commission's authority, inasmuch as properly authorized carriers have expended significant resources to comply with existing procedures whereas new carriers would be able to obtain the benefit of providing service without suffering the costs of establishing public convenience and necessity. Rather than change Commission procedure, Beltway advocates that transportation purchasers change their methods of selecting qualified carriers, and that the Commission strengthen its qualification requirements instead of relaxing them.

The proposed regulation would weaken existing carriers, according to Beltway, in contravention of what it perceives as one of the principle purposes of the Compact; namely, to ensure that existing carriers be secure in their operations and even be given preferential treatment in the expansion of their services. Beltway contends that adoption of eased employee-type transportation market entry would actually lead to less competition in the field because such programs as the Small Business Administration "8(a)" set-aside program would allow qualified carriers to contract for service and by-pass the competitive bidding process completely. Such practices may cause the cessation of unprofitable operations performed by certificated carriers which rely on contract operations to help defray fixed costs.

Finally, Beltway believes that authorizing a new class of carriers would increase Commission enforcement problems. A thorough, in-depth investigation of an applicant's fitness to provide service assertedly would be difficult assuming that many new carriers would seek authority under the proposed regulation.

RESPONSE TO COMMENTS AND SUGGESTED
MODIFICATIONS OF THE PROPOSED REGULATION

In summary, parties responding to publication of the proposed regulation generally express support for its adoption, emphasizing the need for a more streamlined approach to certificating charter-contract operations. Past problems causing delays in implementing service and lost contracts were enumerated in the comments received by the Commission. In fact, of the 12 statements received, only Beltway indicated unqualified opposition to the regulation's adoption. The other statements favored adoption, although several of them suggested modifications to alleviate prospective problems.

Comments submitted by Suggs Transportation Service, Recreational Vehicle Rentals and the City of Fairfax all were pro-adoption but proposed certain changes. Suggs feels that unless the protest standards are adjusted, the regulation will not achieve its desired effect. We believe that the system included in proposed Regulation No. 70-06 provides for expeditious action on protests, excluding the issue of public convenience and necessity which, of course, is to be determined herein. Recreational Vehicles seeks a reduction in the amount of paperwork required by certain portions of proposed Regulation No. 70-04. A review of the cited subsection shows that much of the information requested therein need be submitted only if it is not already on file. The other data required are those pertinent to the issue of fitness to perform the individual operation offered for approval under the regulation. The City of Fairfax's request that a "timely performance" requirement be added to the regulation is not within the scope of its intended purpose.

Lengthy comments were received from McMichael School Bus Service, James M. Smith, Inc., and Beltway Limousine Service. Beltway's comments, outlined above, manifest its opposition to the proposed regulation, asserting that the change in entry control would penalize existing certificate holders and be difficult to enforce, that there is presently sufficient competition in the industry, and that the Compact exists, in part, to ensure a measure of security to certificated carriers and give preference to expansion of their services. Essentially, the Commission believes that while the Compact certainly offers some protections to existing carriers, ^{10/} its purpose is not to stifle competition in the Metropolitan District or to offer blanket economic insurance to carriers already holding Commission authority. Furthermore, we do not agree that

^{10/} For example, Title II, Article XII, Section 4(d)(3) of the Compact specifies that before the Commission can authorize a grant of temporary authority, it must determine that there is an immediate and urgent need for the service with no carrier service capable of meeting such need.

the proposed regulation penalizes certificated carriers. They already are engaged in operations and have the experience and resources which give them an advantage over parties entering the field. Beltway has offered no proof, statistical or otherwise, that economic ruin or a cut-back in operations looms because of eased market entry in the contract-charter field. Beltway apparently assumes a static market for charter-contract service, which is an assumption we do not share. Moreover, the Commission does not believe that adoption of the proposed regulation will increase enforcement problems inasmuch as the information required with respect to fitness and the proposed protest procedures provide sufficient opportunity to investigate potential operations and implement appropriate actions. Adoption of the regulation will not weaken Commission authority, as asserted by Beltway but merely recognizes that there is a general need for a specific type of charter-contract service in the Metropolitan District.

Finally, Beltway argues that Title II, Article XII, Section 4(b) of the Compact requires that a hearing be held on each application to determine whether the criteria for a certificate have been met. As discussed previously, the Commission has the ability to proceed by rule making to declare prospective licensing criteria which would be used to govern later licensing applications. Chemical Leaman Tank Lines, supra. The proposed regulation reflects future Commission policy in the charter-contract field and obviates the case-by-case approach to the issue of public convenience and necessity in applications that fall into this category. The asserted need for a hearing invoked by Beltway applies in those instances where an application for a certificate is before the Commission. In this instance, the Commission is proceeding by rule making on its own initiative and is considering a general finding that the public convenience and necessity requires issuance of a special (master) certificate. Each application filed pursuant to the proposed regulation will be for permission to operate pursuant to that certificate rather than being an application for a new certificate. Beltway has a full opportunity to participate in the hearing on this proceeding and is exercising that opportunity. 11/ Moreover, Beltway, like any other protesting carrier, will have sufficient opportunity under the proposed regulation to present verified written evidence and argument in opposition to an applicant's asserted fitness to operate.

McMichael also expresses reservations about the notice and protest provisions and asserts that the lack of (oral) hearings and the delegation

11/ While no oral hearing was held, all parties could submit evidence and argument in written form. This satisfies the hearing requirement of Title II, Article XII, Section 4(b) of the Compact.

of authority to the Executive Director are contrary to Compact standards. The hearings issue, of course, has been discussed immediately above and need not be repeated here. With respect to McMichael's suggestion that the 10-day protest period be used to allow carriers to file a notice of opposition, the Commission believes that 10 days for filing evidence and argument is sufficient and the taking of written statements is in keeping with the need to expedite the Commission's action on applications coming within the parameters of the regulation.

Similarly, the notice requirements proposed by McMichael, including actual notice to affected carriers and posting of notice on applicant's vehicle are deemed too burdensome by the Commission, but we will adopt McMichael's suggestion that notice of the application be posted at the Commission through the permitted protest period. Moreover, actual notice should be provided, as it is now, by service of the Commission's order directing publication of notice on potentially affected persons.

The delegation of authority to the Executive Director in subsections 06 and 07 is consistent with the terms of the Compact inasmuch as the decision-making process required by Title II, Article XII, Section 4(b) is being executed by the Commission in considering this regulation and a general finding of public convenience and necessity. See also Section 15 of Title II, Article XII, cited previously. Finally, if review by the full Commission is desired, an application for reconsideration may be filed. See proposed Regulation 70-08.

James M. Smith, Inc., advances several modifications as set forth previously. Briefly, it suggests use of a master certificate issued to qualified parties to manifest eligibility to bid on contracts, written proof of authorization when an application is approved, decrease of the 181-day minimum contracting period, opportunity for protesting carriers to challenge authenticity of proposed service, and expansion of certain definitions in subsection 02.

The Commission believes that there is no need to issue a carte-blanche master certificate inasmuch as, without predetermined fitness consideration, we cannot ensure a carrier's actual qualification to a transportation purchaser. Instead, it seems that a bidder could attach a copy of Regulation No. 70 to its proposal, thus informing the purchasing party of its ability to perform operations subject only to fitness approval. Written proof of actual Commission authorization to operate is already provided for in proposed Regulation No. 70-07. As for the contention that the 181-day minimum contract period is too long, we believe that this time frame will prevent abuses of the eased market-entry system and appropriately preserve the short-term charter market for carriers holding general charter authority. Applications may still be filed for charter-pursuant-to-contract authority beyond the scope of Regulation 70, and up to 180 days temporary authority may be granted where statutory criteria are met.

Protesting carriers already have an opportunity to confront the issue of whether a proposed operation is authentic in subsection 06 which provides that ". . . protests may challenge . . . the conformance of the proposed operation to the provisions of this regulation." Furthermore, if a disgruntled carrier feels that another is operating what is essentially a sham service to circumvent Commission procedure, it may always file a complaint in accordance with Commission Rule Nos. 10 and 11. The Commission does, of course, retain its power to initiate investigations on its own motion where it is deemed necessary.

Smith also suggests modification of several definitions included in No. 70-02, in particular "qualifying association," "governmental agency," and "school," and recommends broadening "person traveling on official business" to include dependents. The Commission agrees that the term "school" should be clarified to include public and private pre-school groups that otherwise meet the definition proposed in No. 70-02(f). Similarly, the Commission feels that the term "qualifying association" should be expanded to include corporate members with common interests and a common origin or destination area so as to embrace members of trade associations. Thus revised, proposed Regulation No. 70-02(d) would identify "qualifying associations" as ". . . voluntary association(s), whether incorporated or unincorporated, of individuals or corporations having a continuing common interest and a common area . . . of origin or destination." The Commission, however, declines to redefine governmental agency to include agencies of foreign nations and international agencies because of the potential difficulties in enforcing the regulation, both as to scope and definition of the categories. We will not redefine "persons traveling on official business" to include dependents inasmuch as no need has been shown for this type of transportation service on this record and the Commission has not found in its past experience that there has been any significant call for this form of transportation.

Statements of support filed herein, as well as our experience in past application proceedings before the Commission, indicate the need for transportation services which are geared to a charter-contract type of arrangement. Present regulatory procedures result in delays in obtaining authority to operate, even though a carrier may be low bidder on a particular contract or may have negotiated with a transportation purchaser to provide a specially designed service attuned to certain specific needs. By adopting the proposed regulation, all carriers would be in a position to bid for available traffic with the knowledge that, subject to meeting fitness criteria, they would be able to commence operations in a short period of time. Similarly, transportation purchasers would be put in a better position by knowing that, as long as the involved carrier appears financially and otherwise fit, there is a strong likelihood that it will receive authority to provide service, rather than, as sometimes happens under situations arising in the existing framework, finding the potential charter-contract carrier unable to obtain operating rights within a reasonable time.

Benefits from a more competitive industry, such as lower prices, more responsive service, and incentive to maintain quality operations should accrue to the traveling public and to taxpayers generally with respect to government contracts. Despite criticism by Beltway that adoption of the regulation harms existing carriers, the Commission believes that certificated carriers have the advantage of partaking in the involved traffic already, and should have little difficulty in competing with newcomers in the field. Moreover, by streamlining the certification process and easing the burdens of regulation in this area, it is anticipated that more persons will be encouraged to make charter contracts available, thereby increasing the market for existing carriers and newcomers alike.

The Commission's chief function is regulatory in nature, working for the ". . . improvement of transit and the alleviation of traffic congestion within the Metropolitan District on a coordinated basis . . ." ^{13/} not guaranteeing the economic advantages of individual carriers. See generally Transportation of Government Traffic, 129 M.C.C. 623 (1978).

A review of applications filed with the Commission in 1978 shows that, of the 56 applications submitted, eight involved matters other than operating rights, 15 were for special operations and/or regular-route authority, and the balance were for charter-pursuant-to-contract authority, encompassing both certificate and temporary authority applications. While not all of the applications in the last group would necessarily fit the criteria of the proposed regulation it is readily apparent that a significant number of applications before the Commission are adversely affected by the existing cumbersome procedures. Streamlining those procedures will clearly promote an open market and increased price-and-service competition ". . . without the impediment of certificated contract-charter carriers blocking the entry of other qualified potential carriers on the sole basis of their existing certificates." ^{14/}

Parties purchasing charter-contract services in 1978 included, but were not limited to, the following: United States Customs Service, The Washington School for Secretaries, United States Department of the Navy, United States Nuclear Regulatory Commission, Marymount College, Southeast Neighborhood House, Inc., United Airlines, and Pan American World Airways. These parties presumably negotiated the contractual arrangements openly and knowingly as business transactions and were not in the same position as an individual passenger using motor carrier transportation on a take-it-or-leave-it basis. The charterers described

^{13/} Title I, Article II of the Compact.

^{14/} Order No. 1959, p. 6.

in the proposed regulation, similarly, are in a position to provide by contract for many of the same protections which the Commission must extend for persons with less bargaining power. Government agencies are further protected by their procurement regulations.

Weighing the evidence presented in this proceeding and Commission experience in the charter-contract field, we find that the public convenience and necessity requires issuance of the special (master) certificate of public convenience and necessity set forth in proposed Regulation 70-09. There exists a large public demand for this type of service which the Commission feels can be better served by implementing expedited market-entry procedures. The actions taken herein, we believe, will encourage the growth of the charter-contract market to the benefit of the public and all carriers. Consequently, existing carriers should not be adversely affected, and, in any event, the benefits of this action clearly outweigh the negative impact, if any, which might be engendered. The Commission further believes that the sophisticated bargaining capacity of the transportation purchasers covered by Regulation No. 70 is sufficient to protect passengers using the involved service from predatory carrier practices. Moreover, the relationship between the transportation purchasers and the traveling groups is sufficiently enduring to motivate the purchaser to avail itself of contract (or Commission complaint) remedies at the behest of the group.

The Commission, of course, must pass on the fitness of a carrier in each individual case, a key element in the application procedure set forth in Title II, Article XII, Section 4(b) of the Compact. The burden of establishing its fitness remains with the applicant and it must provide a tariff, including a copy of the executed contract, evidence of adequate insurance and financial viability, evidence of satisfactory inspection of its vehicles, and such other data as are necessary for the Commission to assure itself that the applicant is fit, willing, and able properly to perform the requested service and to conform to appropriate regulatory requirements.

Pursuant to the provisions of Title II, Article XII, Sections 4(b) and 15 of the Compact, the Commission will hereby issue Special Certificate of Public Convenience and Necessity No. 1 and adopt Regulation No. 70 subject to the modifications discussed above, said certificate and regulation to become effective 31 days from the date of service hereof unless otherwise ordered by the Commission.

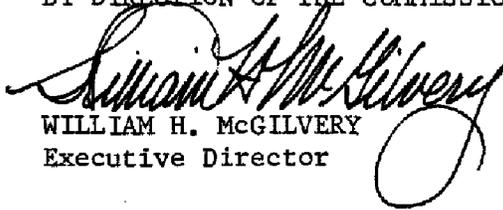
THEREFORE, IT IS ORDERED:

1. That statements filed by James M. Smith, Inc., Montgomery County Taxicab Service Advisory Committee, and Beltway Limousine Service, Inc., are hereby accepted into the record.

2. That Special Certificate of Public Convenience and Necessity No. 1 be issued in the form set forth in Regulation No. 70-09 to become effective on the 31st day following the date of service hereof unless otherwise ordered by the Commission, said Special Certificate to be retained at the offices of the Commission.

3. That Regulation No. 70, as set forth in the Appendix hereto, is hereby adopted and prescribed to be effective on the 31st day following the date of service hereof unless otherwise ordered by the Commission.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director

REGULATION NO. 70

70. Charter Operations Pursuant to Contract with Employers and Similarly Situated Persons.

70-01. Applicability. This regulation shall apply to persons engaged, or proposing to engage, in the irregular-route transportation for hire of employees, trainees, students, members of qualifying associations and persons traveling on official business, in charter operations (except sightseeing and pleasure tours) pursuant to contract with an employer, school, qualifying association or government agency, between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia. [See Compact, Title II, Article XII, Section 1(b).]

70-02. Definitions. For the purposes of this regulation, the following definitions shall apply:

(a) An "employee" is an individual engaged in providing service for another on a regular basis, in exchange for wages or salary subject to the income tax withholding provisions of the Internal Revenue Code.

(b) An "employer" is a person or governmental agency which regularly pays to individuals, in exchange for services, wages or salary subject to the income tax withholding provisions of the Internal Revenue Code.

(c) A "governmental agency" is any instrumentality of the United States, the signatories to the Compact or any political subdivision thereof.

(d) A "qualifying association" is a voluntary association, whether incorporated or unincorporated, of individuals or corporations having a continuing common interest and a common area, for purposes of transportation subject to this regulation, of origin or destination.

(e) A "person traveling on official business" is an individual other than an employee, student, trainee or member of a qualifying association (i) who is engaged in providing goods or services to the contracting employer, school, governmental agency or qualifying association, (ii) whose transportation is specifically authorized by the contracting employer, school, governmental agency or qualifying association, and (iii) whose transportation promotes the convenience of the contracting employer, school, governmental agency or qualifying association in obtaining said goods or services.

(f) A "school" is (i) a public preschool, elementary, secondary or post-secondary school operated by a signatory to the Compact (including the Federal government) or a political subdivision thereof, (ii) a private preschool elementary or secondary school offering instruction deemed equivalent by a signatory or political subdivision thereof to the instruction given in a public school or (iii) a private school which is duly accredited by a signatory or political subdivision thereof or by another bona fide source of accreditation.

(g) A "student" is an individual enrolled in a public or private school.

(h) A "trainee" is an individual employee undergoing a course of instruction sponsored by his employer.

70-03. Scope. This regulation governs the filing and processing of applications for authority to conduct charter operations pursuant to contract with an employer, school, qualified association or governmental agency, transporting employees, trainees, students, members of qualifying associations and persons traveling on official business, between points in the Metropolitan District. Such operations shall be conducted pursuant to the special certificate of public convenience and necessity set forth in subsection 70-09 of this regulation and shall be subject to the terms, conditions and limitations of said special certificate.

70-04. Applications to Operate Pursuant to the Special Certificate. Motor carriers desiring to perform operations pursuant to the special certificate of public convenience and necessity set forth in subsection 70-09 of this regulation must file with this Commission a sworn and notarized application in the form prescribed by the Commission and containing the following: (1) the name and address of the applicant and the applicant's representative to whom inquiry may be made; (2) a precise description of the group to be transported and the points to and from which service is to be rendered; (3) a map of the area or points to be served; (4) a tariff, consisting of a title page [see Regulation No. 55-04] and a full and complete copy of the executed transportation contract between the applicant and the contracting employer, school, qualifying association or government agency; (5) a schedule for the proposed service (if not included in the contract); (6) a copy of applicant's articles of incorporation or partnership agreement (unless already on file with the Commission, in which instance reference to the case number in which such filing has been made shall suffice) or a statement that applicant is a sole proprietorship; (7) a full and complete current financial statement of the applicant including a recent balance sheet, a recent operating statement and a projection of revenue and revenue deductions to be generated by the subject contract operations, including allocable fixed expenses; (8) a current list of applicant's revenue vehicles, including make, model, year, serial number and passenger seating capacity (including the driver), evidence that said vehicles have been licensed, inspected and approved for transportation for hire operations by one or more of the signatories to the Compact, and a designation of which vehicles will be used for rendering service under the subject contract; (9) a full and complete statement of any authority

issued by this Commission to applicant; (10) designation of the applicant's resident agent for service of process [see Rule No. 5-04], if necessary; (11) a valid certificate of insurance [see Regulation No. 62 as amended by Order No. 1598, served August 25, 1976] or a statement that such a certificate is already on file with this Commission; (12) a statement of operational feasibility; and (13) a statement demonstrating the applicant's fitness to perform the proposed service including a certification that the applicant (or its chief operating officer) is familiar with the terms of the Compact and the rules, regulations and requirements of the Commission thereunder and will fully comply therewith, and also including detailed references to any proceedings, either completed or pending, in which applicant has been found unfit or in which its fitness is under investigation by this Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the Interstate Commerce Commission or the United States Department of Transportation.

In addition, a sworn and notarized statement (which may be in letter form) from the contracting employer, school, qualifying association or government agency must be filed and it must contain the following information: (i) the identity of the contracting party in sufficient detail to permit determination of its status as a contracting party to which this regulation applies; (ii) the category of persons to be transported in sufficient detail to permit determination of their status as a ridership class to which this regulation applies; (iii) whether the subject transportation service has been rendered in the past and, if so, by what means of transportation; (iv) the number of persons in the group to be transported and a description of the service to be rendered; and (v) a statement that the contracting party has investigated the qualifications of the applicant and is satisfied with its ability properly to perform the proposed transportation.

70-05. Terms of Contracts. All contracts and extensions and renewals of contracts filed pursuant to this regulation shall be for fixed terms of not less than 181 days. Authorization to perform operations pursuant to the special certificate of public convenience and necessity set forth in subsection 70-09 of this regulation terminates contemporaneously with the expiration of the underlying contract unless an appropriate tariff supplement including a continuous contract extension or renewal (which may be for a fixed term of less than 181 days) is filed at least five days prior to the expiration date of the underlying contract. Written notice must be filed by the carrier with the Commission within five days of any cancellation or termination of such contract, renewal, or extension. Any proposed change, modification or amendment to such contract, renewal or extension shall be filed with the Commission for approval at least five days prior to the proposed effective date of such change or amendment provided, however, that any change, modification or amendment which would involve a new contractor, a new group of passengers or new points of service shall be subject to the application provisions of subsection 70-04 of this regulation.

70-06. Processing of Applications to Operate Pursuant to the Special Certificate. The Executive Director or his designee shall review applications to operate pursuant to the special certificate of public convenience and necessity set forth in subsection 70-09 of this regulation. Within three working days from the date of filing of an application under this section, the Executive Director or his designee shall direct publication of notice of the application and shall post notice thereof at the Commission for the 10-day protest period. Protests shall be due no later than 10 days after the date on which notice is published. Protests shall be filed in writing, sworn and notarized, and shall contain all evidence and argument upon which the protestant would rely. Inasmuch as the issue of public convenience and necessity has already been determined in Case No. MP-79-04, protests may challenge only the fitness of the applicant or the conformance of the proposed operation to the provisions of this regulation. Upon expiration of the time set for filing of protests, the Executive Director or his designee shall review the pleadings and make a determination (a) of the applicant's fitness and (b) of the conformance of the proposed operation with the provisions of this regulation.

70-07. Determination by Executive Director. Where the Executive Director or his designee determines the above-referenced issues favorably to an applicant, said determination shall be reduced to writing and communicated to the parties of record. Upon receipt of such notification, operations may be commenced by the carrier pursuant to the special certificate of public convenience and necessity set forth in subsection 70-09 of this regulation. Where the Executive Director or his designee determines either above-referenced issue against an applicant, said determination shall be reduced to writing and communicated to the parties of record. Upon issuance of such determination, the application shall stand denied.

70-08. Reconsideration. Upon receipt of an application for reconsideration of a determination by the Executive Director or his designee, the Commission shall make a prompt determination, with or without hearings or other formal proceedings, and shall issue an appropriate order. Applications for reconsideration filed under this regulation shall be governed by Title II, Article XII, Section 16 of the Compact.

70-09. Certificate. The special certificate of public convenience and necessity granted by Order No. 2004, reads as follows:

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
SPECIAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 1
CHARTER OPERATIONS PURSUANT TO CONTRACTS FOR EMPLOYEE-TYPE TRANSPORTATION

By Order No. 2004 of the Washington Metropolitan Area Transit Commission issued June 20, 1979;

AFTER DUE INVESTIGATION, it appearing that the described carriers have complied with the requirements of the Washington Metropolitan Area Transit Regulation Compact and the rules and regulations of the Commission there-

under and, therefore, are entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as carriers, for the reasons and subject to the limitations set forth in Order No. 2004 and Commission Regulation No. 70;

THEREFORE, IT IS ORDERED, That the said carriers are hereby granted this special certificate of public convenience and necessity as evidence of the authority of the holders to engage in transportation as carriers by motor vehicles subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges granted to the said carriers.

IT IS FURTHER ORDERED, And made a condition of this certificate that the holders thereof shall render reasonable, continuous and adequate service to the contracting parties in pursuance of the authority granted and the tariffs filed in accordance with such authority and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of this certificate as to any such holder.

AND IT IS FURTHER ORDERED, That the transportation service to be performed by the said carriers shall be as follows:

CHARTER OPERATIONS PURSUANT TO CONTRACT,
transporting employees, trainees, students,
members of qualifying associations and persons
traveling on official business, over irregular
routes, between points in the Metropolitan
District (except between points solely within
the Commonwealth of Virginia as specified in
Title II, Article XII, Section 1(b) of the
Compact), restricted against the performance
of sightseeing or pleasure tours.

TERMS, CONDITIONS AND LIMITATIONS.

(i) The charter operations pursuant to contract authorized by this special certificate of public convenience and necessity shall be limited to the performance of service pursuant to continuous bilateral contracts as set forth in the carriers' respective tariffs filed pursuant to Commission Regulation No. 70.

(ii) The authority granted herein, to the extent that it duplicates any authority otherwise granted to or held by a participating carrier, shall not be construed as conferring more than a single operating right.

(iii) The authority granted herein is not transferable by sale or otherwise.

(iv) The authority granted herein terminates automatically, with respect to any contract or contract extension or renewal filed pursuant to Commission Regulation No. 70, when said contract, renewal or extension expires without being extended or renewed in accordance with Regulation No. 70-05, or when the contract, renewal or extension is otherwise cancelled or terminated.

(v) The authority granted herein may be suspended for failure to comply with the requirements of the Compact and the Commission's rules, regulations and orders thereunder, including, but not limited to, failure of the carrier to maintain a current certificate of insurance or to file required reports.

70-10. Identification. Any carrier authorized to conduct operations pursuant to the special certificate of public convenience and necessity set forth in subsection 70-09 of this regulation shall be issued a special identification number unless said carrier also holds a regularly-numbered certificate of public convenience and necessity. Carriers not holding a regularly-numbered certificate of public convenience and necessity shall identify all motor vehicles operated as required by Commission Regulation No. 68; provided, however, that, for purposes of Regulation No. 68-01, the carrier shall substitute for a certificate number its special certificate number in the following form: "WMATC Special No . . .".

70-11. Special Provisions for Carriers Heretofore Certificated Specifically to Perform Charter Operations Pursuant to Contract. Within 30 days from the effective date of this regulation, the Executive Director or his designee, shall issue authorization to all carriers heretofore certificated specifically to conduct charter operations pursuant to contract to continue such operations pursuant to the special certificate of public convenience and necessity set forth in subsection 70-09 of this regulation to the extent said operations are the subject of effective tariffs (including contracts) then on file with the Commission. No application pursuant to subsection 70-04 shall be required for issuance of such authorization. Upon the 60th day after the effective date of this regulation all certificates of public convenience and necessity authorizing charter operations pursuant to contract (except the special certificate set forth in subsection 70-09 of this regulation) shall, to that extent, stand terminated and no charter operations pursuant to contract shall be conducted pursuant thereto. The Executive Director or his designee shall cause revised certificates of public convenience and necessity to be issued as appropriate.