

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2083

IN THE MATTER OF:

Served February 20, 1980

Application of YELLOW BUS LINES, )  
INC., for a Certificate of Public )  
Convenience and Necessity to )  
Perform Charter Operations )

Case No. AP-79-14

By application filed October 2, 1979, Yellow Bus Lines, Inc., seeks a certificate of public convenience and necessity to transport passengers, together with mail, express and baggage in the same vehicle with passengers, in charter operations between points in the Metropolitan District, 1/ restricted to the performance of such transportation in school bus equipment. Pursuant to Order Nos. 2043 and 2048, served October 9 and October 17, 1979, respectively, and incorporated by reference herein, a public hearing on this application was held on December 4, 1979. McMichael School Bus Service, Inc. (McMichael), appeared in opposition to the application.

At the public hearing witnesses testified that Yellow Bus was formed in September 1979 by three former employees of Omnibus Corporation. Omnibus terminated operations pursuant to a consent order entered by the United States District Court for the District of Columbia as a result of the Commission's investigation into uncertificated operations performed by Omnibus subsequent to the Court's injunction restraining such illegal operations. 2/ Yellow Bus has purchased seven school buses, a "school" van, 3/ shop equipment and

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1/ Not including service between points solely within the Commonwealth of Virginia.

2/ WMATC v. Omnibus Corporation, Civil Action No. 78-0048 (D.C.D.C. September 13, 1979, not printed).

3/ This vehicle is a passenger van, painted yellow with school bus type markings and equipped with the warning flashers normally associated with school buses. Inasmuch as a witness for Yellow Bus stated at the public hearing that the van would be used solely for school work and not for charter work, the vehicle would be employed ". . . solely in transporting school children and teachers to or from public or private schools . . ." within the meaning of Title II, Article XII, Section 1(a)(3) of the Compact, and therefore, not subject to the certification requirements of the Compact. See Order No. 1593 (page 7), served August 13, 1976. Accordingly, this vehicle shall not be considered relevant to this application.

a service vehicle from Omnibus in addition to sharing the same telephone number and maintaining an office on premises leased from the owner of Omnibus.

Yellow Bus does not hold any authority from the Commission but does perform service locally transporting school children to and from schools and on school field trips pursuant to the exemption provided by Title II, Article XIII, Section 1 (a)(3) of the Compact. Evidence presented at the hearing indicates that Yellow Bus has provided certain other transportation as discussed below.

A witness from Yellow Bus testified that it presently has six buses in use (plus one used for spare parts), and operates three regular school routes in the morning and afternoon during the normal school year, one each for private schools in Silver Spring, Md., and Alexandria, Va., and one for the Alexandria, Va., public school system. Each route, performed under contract, requires one vehicle. The witness stated that, because of school field trips during the day, as many as four buses may be in use perhaps two times a week, and once or twice a month all six vehicles may be in use at the same time. She discussed the possibility of providing equipment for summer day camps if the company receives the requisite authority, in which case more equipment would be acquired if necessary. She further stated that she expected Yellow Bus to continue operating school service next September even if the company has authority to do other work.

With respect to the company's financial status, the witness acknowledged the current operating loss and explained that the initial cost of reconditioning purchased equipment and other start-up expenses led to the loss. Future expense, it is expected, would be covered by revenues. The witness also stated that asset reserves were not too deep and that the company has requested a loan from the Small Business Administration. She admitted the company had conducted a few trips outside the metropolitan area by "leasing" the certificate of a carrier regulated by the Interstate Commerce Commission and stated that she has turned away two or three telephone calls a day seeking charter service because the company does not hold authority to operate between points in the Metropolitan District.

Another witness from Yellow Bus similarly testified that she receives two or three telephone calls a day requesting local charter service and has informed inquiring former Omnibus customers, local colleges and government agencies that Yellow Bus cannot operate locally. She asserted that she has never knowingly arranged local service for any group other than school children for school-related functions.

The proposed rate structure for the requested authority is as follows:

	<u>Within Beltway</u>	<u>Outside Beltway</u>
One-way Transfer . . . . .	\$ 55 . . . . .	\$ 60
Round-trip Transfer . . . . .	100 . . . . .	110
National Airport Transfer . . . . .	55 . . . . .	60
Dulles International Airport Transfer . . . . .	70 . . . . .	75

Proposed student tariff charges during normal school hours are as follows:

	<u>Within Beltway</u>	<u>Outside Beltway</u>
One-way Transfer . . . . .	\$ 45 . . . . .	\$ 50
Round-trip Transfer . . . . .	80 . . . . .	90
National Airport Transfer . . . . .	45 . . . . .	50
Dulles International Airport Transfer . . . . .	65 . . . . .	70

Proposed hourly charges are \$18 an hour with a minimum of three hours plus (a) one hour garage time or actual garage time, whichever is greater, when trip is inside the Beltway or (b) one and one-half hours garage time or actual garage time, whichever is greater, when any portion of the trip is outside the Beltway; except that a rate of \$16 an hour will be charged when the entire trip, including actual garage time, falls within school hours when equipment is not being held or utilized in school transportation service. 4/

In support of the application, witnesses representing several religious groups, the National 4-H Council, and a transportation consultant testified. The director of family recreation and camps at the Rockville Jewish Community Center stated that approximately 360 children attending the Center's summer camp will require daily transportation from local assembly points to the Center and return for eight weeks this summer, requiring six buses including one that would be used all day for shuttle trips. This witness had used the services of protestant McMichael the previous two summers and found them to be satisfactory, but was informed that McMichael would no longer provide the required transportation. The witness mentioned that she has occasional need for service at other times of the year and ~~uses~~ McMichael for those trips.

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4/ The tariff proposes what is essentially (1) a four-hour minimum for trips inside the Beltway and (2) a four and one-half hour minimum for trips where any portion of the transportation is outside the Beltway, with an additional charge when actual garage time exceeds one hour in (1) or one and one-half hours in (2). Yellow ~~Bus~~ should rephrase its rate structure correspondingly when it files its tariff with the Commission.

A representative of the New Idea Society of the Palisades Community Church in Washington, D. C. testified that she arranges trips for church groups, primarily senior citizens, and would require a bus about four times a year for excursions to dinner theaters and similar activities. In the past she has used Omnibus and, on one occasion, used Yellow Bus on a trip outside the metropolitan area. She was satisfied with the service and prefers to use school buses rather than comparatively expensive motor coaches. The witness understood that the one trip operated by Yellow Bus was performed solely by Yellow Bus with no other carrier being involved. She is not familiar with McMichael School Bus Service, Inc.

The pastor of the Guiding Light Full Gospel Church of Washington, D. C., testified that the church requires transportation for children going to Sunday school and for field trips and scouting activities. The church has purchased from Omnibus a bus which is being reconditioned and has need of additional service for inter-church functions as well as the above-mentioned activities. The pastor stated that Yellow Bus provided a bus for one trip outside the metropolitan area in the past 5/ and that he had no knowledge of the involvement of any other carrier in arranging for the transportation. He had used McMichael previously and was satisfied with the service but found it a little expensive, although he admitted a lack of familiarity with the existing tariffs of McMichael and Yellow Bus.

The pastor of the Christ Temple of Joy in Landover, Md., testified that he has recently established the church and is in the process of trying to organize various programs including those for children and senior citizens. He hopes to establish a day-care center and perhaps a summer camp. He mentioned that he would be interested in low-priced quality service but was unsure as to how often he would charter a bus. The pastor has called McMichael and believes that the cost of McMichael's service is too high. He has never used the services of Yellow Bus.

A local transportation consultant who conducts charter operations pursuant to Commission authority testified that, although he does not operate school buses, he has received telephone calls from persons seeking to charter school bus equipment. He has considered entering the school bus field but has not done so.

A representative of the National 4-H Council responsible, among other things, for arranging transportation for out-of-town groups visiting the metropolitan area, stated that, while the organization

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5/ The service assertedly was provided without cost inasmuch as the purchased Omnibus vehicle was not operating.

frequently uses motor coach transportation, it also has need for less expensive school bus service. The local 4-H unit has accommodations for 650 people and its transportation needs include sightseeing trips, excursions to Mount Vernon, visits to museums and government agencies, and movements from and to local airports. The 4-H has used the services of Omnibus in the past as an alternative to motor coach service and for airport transfers. The witness recalled using McMichael once or twice several years ago but expressed a personal preference for Yellow Bus. She stated that the 4-H would require from one to seven buses when chartering school bus equipment with an occasional need for all-day service.

The business administrator of the Calvary Baptist Church in Washington, D. C., indicated a need for one school bus twice a week for an eight-week period during the summer to transport children to the church's camp in Great Falls, Va. There would also be a need three or four times a year for other local trips. The witness stated that he had used McMichael's service in the past but the carrier experienced a problem with the summer camp route and declined to provide service after completion of the contract. The witness also mentioned use of Yellow Bus on a for-hire trip transporting adults between the church and a Wheaton, Md., location.

McMichael's vice-president offered testimony in opposition to the application, asserting that his company is capable of providing the service required by each witness who testified on behalf of Yellow Bus. He stated that McMichael's operates 38 school buses and is authorized to operate between all points in the Metropolitan District. He presented testimony in rebuttal to alleged service problems and contended that statements concerning the company's supposedly high rate structure did not withstand a comparison of McMichael's tariff with the proposed tariff of Yellow Bus. Accordingly to the witness, McMichael has realized a 15-20 percent increase in income from 1978 to 1979 but must maintain a strong volume of business to show a profit because of a high operating ratio. He expressed the possibility of a loss of traffic if applicant is granted a certificate to provide school bus charter service.

In accordance with Commission Rule 27-01 applicant petitioned the Commission on January 28, 1980, to reopen the record to receive additional evidence consisting of (a) two notarized letters from organizations supporting the application, (b) two assignments of agreements of sale, and (c) a newspaper article. McMichael filed its reply on February 4, 1980, asserting that the petition should be

denied. Acceptance of the tendered documents, according to McMichael, would deprive protestant of its right of cross examination. McMichael also notes that no request was made to depose the authors of the two letters at the time that applicant's counsel learned that they would be unavailable to testify at the hearing.

The two letters will not be admitted into evidence for the reasons propounded by protestant. The newspaper article constitutes hearsay, is of no probative value, and we see no reason to burden the record with it. The assignments, which transfer certain obligations from the principals of Yellow Bus to the corporation, are relevant, and we see little, if any, prejudice from their late filing. Accordingly, we will accept the assignments into evidence.

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 the 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 applicant has sustained its burden of proof regarding the matter of need for service to the extent that it seeks to serve the District of Columbia, Montgomery County, Md., the city of Alexandria, Va., Washington National Airport and Dulles International Airport. Evidence presented by applicant shows that a need for additional low-cost school bus service exists in the above-mentioned territory. Applicant's witnesses generally indicated that there is an insufficient availability of the type of equipment they require for their transportation needs. Under Title II, Article XII, Section 1(a)(3) applicant has provided heretofore exempt service in Alexandria, Va., and Silver Spring, Md., and has adduced further evidence showing an unfulfilled need for service originating elsewhere in Montgomery County, Md., the District of Columbia and at Dulles International and Washington National Airports. Evidence with respect to a need for service from points in Prince George's County, Md., is too speculative to warrant a grant of authority, and no evidence of a need for service originating at other points in the Metropolitan District was adduced. The one witness testifying to a possible need for service in Prince George's County had not tried McMichael's service and no reason exists to presume that such service would be inadequate. The Commission is not unmindful that the grant of authority introduces a second authorized carrier to the school-bus charter industry, but believes that the element of competition will encourage responsive

service and moderate prices, benefiting the traveling public. Furthermore, McMichael failed to establish that it will lose traffic as a result of the grant of authority made herein to applicant.

With respect to the matter of fitness, Yellow Bus appears financially fit to conduct operations. Despite existence of a current net operating loss, evidence shows that start-up costs and equipment reconditioning expenses contributed a major share of the loss. Moreover, the grant of authority made herein is more likely to improve applicant's financial position than to engender economic harm.

Insofar as compliance fitness is concerned, the Commission must admonish applicant to adhere strictly to the provisions of the Compact and the rules and regulations promulgated thereunder. While the service provided for the Calvary Baptist Church transporting adults from Washington, D. C., to Wheaton, Md., has been explained as inadvertently offered because the church had always purchased service for school children in the past, other operations asserted to be provided under agreement with Blue Lines, Inc., insinuate applicant into the type of practices which ultimately led to the Court-ordered termination of operations by Omnibus. Yellow Bus should be aware that this Commission does not permit one carrier to "operate under" or to "lease" the rights of another and presumes that the entity providing vehicle and driver is the carrier. See also order No. 2011, served July 24, 1979, and Commission Regulation 69 governing leases of equipment. The Commission will closely monitor applicant's operations.

The grant of authority herein will be limited to the performance of transportation in school bus vehicles in conformance with the application and the evidence of record. The Commission will conduct an inspection of applicant's equipment. Yellow Bus is reminded that the transportation of school children in the Metropolitan District, outside the geographical area herein authorized, is no longer exempt 6/ from Commission jurisdiction 7/ and requires appropriate authorization. 8/ School contracts concerning service provided within the scope of authority granted herein must be filed with the Commission. Additionally, no service solely between points in the Commonwealth of Virginia is authorized. See Title II, Article XII, Section 1(b) of the Compact.

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6/ See Order Nos. 521 and 1593, served September 2, 1965, and August 13, 1976, respectively.

7/ Except in vehicles used solely in transporting school children and teachers to and from public or private schools. See footnote 3, supra.

8/ See Commission Regulation 70, Order No. 2004, served June 20, 1979.

THEREFORE, IT IS ORDERED:

1. That the late-filed documents tendered by applicant, except to the extent accepted herein, are rejected.

2. That Yellow Bus Lines, Inc., is hereby granted authority to transport passengers in charter operations, together with baggage in the same vehicle with passengers, from points in the District of Columbia, Montgomery County, Md., the city of Alexandria, Va., Washington National Airport, Gravelly Point, Va., and Dulles International Airport, Herndon, Va., to points in the Metropolitan District, and return, restricted to transportation in school bus vehicles only and restricted against transportation solely between points in Virginia.

3. That the application, except to the extent granted above, is hereby denied.

4. That Yellow Bus Lines, Inc., is hereby directed to file with the Commission (a) notice that its equipment is available for inspection, (b) a certificate of insurance as required by Commission Regulation 62, (c) an affidavit of compliance with Commission Regulation 68 governing identification of motor vehicles, (d) two copies of its WMATC Tariff No. 1 as required by Commission Regulation 55, such tariff to be effective upon acceptance by the Executive Director and (e) certificates of good standing to conduct business in Maryland, Virginia and the District of Columbia.

5. That Yellow Bus Lines, Inc., must file a copy of each contract with public or private schools for the transportation of school children in the Metropolitan District, and such contract filings shall be kept current.

6. That upon compliance by applicant with the directives set forth in paragraph 4 above and successful inspection of applicant's equipment, an appropriate certificate of public convenience and necessity will be issued.

7. That in the event applicant fails to comply with the directives set forth above within 30 days, or such further time as may be authorized by the Commission, the grant of authority made herein will be considered void and the application will stand denied in its entirety effective upon expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS SCHIFTEK AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director 