WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2271

IN THE MATTER OF:		Served November 2, 1981
Application of INTERNATIONAL LIMOUSINE SERVICE, INC., for Special Authorization to Perform Charter Operations Pursuant to Contract -- U. S. Department of Energy	)	Case No. CP-81-11
Application of INTERNATIONAL LIMOUSINE SERVICE, INC., for Special Authorization to Perform Charter Operations Pursuant to Contract -- U. S. Department of Interior, Bureau of Mines	)	Case No. CP-81-12

By application filed October 6, 1981, in Case No. CP-81-11, International Limousine Service, Inc., seeks authorization to operate pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 under a contract with the United States Department of Energy (DOE), transporting DOE employees, together with mail, express and baggage, in the same vehicle with passengers, over irregular routes between DOE facilities as follows:

A) Between 12th Street & Pennsylvania Avenue, N. W., 2000 M Street, N. W., and the Forrestal Building, 1000 Independence Avenue, S. W., Washington, D. C.

B) Between 12th Street & Pennsylvania Avenue, N. W., 600 E Street, N. W., and the Forrestal Building, Washington, D. C.

C) Between the Forrestal Building, 600 E Street, N. W., and 12th Street & Pennsylvania Avenue, N. W., Washington, D. C.

By application filed October 6, 1981, in Case No. CP-81-12, International also seeks authorization to operate pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 under a contract with the United States Department of Interior, Bureau of Mines (Mines), transporting Mines employees and persons traveling on Mines business, together with mail, express and baggage, in the same vehicle with passengers, over irregular routes between the Columbia Plaza Office Building, 2401 E Street, N. W., the Department of Interior, 1800 C Street, N. W., both Washington, D. C., and the Avondale Research Center, Avondale, Md.

The evidence submitted in support of these applications was summarized in Order No. 2259 and 2260, both served October 9, 1981, and need not be repeated here. Those Orders are incorporated herein by reference, and, based on the facts as set forth therein, it is found that both contracts conform to the requirements of Commission Regulation No. 70. 1/

Pursuant to said Orders, verified protests were filed in each case by Beltway Limousine Service, Inc., and on October 30, 1981, International filed "responses" to these protests. Inasmuch as the same issues are raised in both protests, the cases are being decided together.

Noting that International's bid price in Case No. CP-81-11 is $9.95 a trip, Beltway (the incumbent contract operator) asserts that International cannot possibly generate revenues sufficient to cover its variable expenses. Comparing daily revenues ($496.60) against estimated expenses 2/ ($599.95), Beltway believes that applicant would lose approximately $102.45 on each day of operation under the contract with DOE. According to Beltway's calculations, International would lose $25,817.40 over the life of the contract for an operating ratio (excluding allocable fixed expenses and taxes) of 120.81 percent. Inasmuch as International failed to file any meaningful projection of revenue and revenue deductions to be generated by the proposed operations, 3/ Beltway's estimates are virtually uncontroverted.

1/ See Order No. 2004, adopting Regulation No. 70, served June 20, 1979, and effective July 21, 1979.

2/ Expenses include vehicles (including a back-up vehicle), gasoline, insurance, maintenance, payroll (per Dept. of Labor Wage Determination No. 75-593, dated June 25, 1981), and overtime.

3/ See Commission Regulation No. 70-04 and item number 7 of the application. The late-filed data submitted by International, as described below, presents only totals and cannot be analyzed or verified.

Beltway raises the same contention in Case No. CP-81-12. 4/ Under the Mines contract, International would receive revenue of $125 a day. Beltway's calculations show daily variable expenses of $148.38 for an operating ratio (again, excluding allocable fixed expenses and taxes) of 118.70 percent. These estimates also are virtually uncontroverted. 5/

Beltway submits that ". . . the only way a carrier can rationalize this type of loss is by overcharging in other parts of its operations." An affidavit submitted by Beltway's controller indicates that International has been charging charter groups fares higher than those permitted by applicant's WMATC Tariff No. 1.

Beltway's controller, using the name of another corporation (hereinafter referred as W. L.), ordered two charter services from International. For one trip, from the Sheraton National Hotel in Arlington, Va., to Andrews Air Force Base, Md., W. L. prepaid $145.22 including four hours service ($137 or $34.25 an hour) and six percent "D. C. Tax" ($8.22). For the second trip, sightseeing for four hours in the District of Columbia, W. L. prepaid $202.07 including four hours service ($118 or $29.50 an hour), six percent "D. C. Tax" ($7.08), a 15 percent "service charge" ($17.17) and "guide service ($59.29). Both invoices attached to the controller's affidavit corroborate the controller's testimony and the payments appear to be receipted by applicant's president. 6/ For the services described, the correct charges, according to International's tariff, should have been $79.50 and $114; hence the overcharges evidenced by the invoices are 82.67 percent and 77.25 percent, respectively.

The first service was provided as scheduled, but International did not show up for the second service. Subsequently, Mr. Fogliarino returned the $202.07 check and refunded $43.58 on the first service. 7/ Mr. Fogliarino's letter explains the overcharge and refund as a "computation error".

4/ Beltway is also the incumbent operator on the contract involved in this case.

5/ Failure to provide the required projections was noted in Order Nos. 2259 and 2260, but International did not file supplements until October 30, 1981, and, as noted above, such supplements are so conclusory as to be meaningless.

6/ The receipts are initialed "R. F.", which corresponds with the controller's testimony that he dealt personally with Mr. Remi Fogliarino.

7/ Even so, an overcharge in excess of 27 percent of the correct fare remains unrefunded.

International's responses, alluded to above, include affidavits showing revenue and revenue deductions as follows:

	Revenue	Revenue Deductions
CP-81-11	$125,143.04	$119,726.70
CP-81-12	31,500.00	27,588.82

No further breakdown is supplied and International states that countering Beltway's calculations on a point by point basis should not be required. International criticizes certain aspects of Beltway's expense calculations, such as maintenance, vehicle costs and fuel costs, but presents no alternative bases upon which other conclusions can be based.

With respect to the allegations of overcharging, International's president avers, as pertinent, that Beltway's controller insisted on tips for drivers and specifically requested the "guide service" referenced above. International apparently realizes that it should not have collected D. C. sales tax, but it submits copies of checks and payment stubs indicating that sales tax remittances were made to the District of Columbia Department of Finance and Revneue. 8/ International further contends that it has committed no impropriety inasmuch as one overcharge was fully refunded 9/ and the second check was returned.

International's history with this Commission has been somewhat checkered, to say the least. Originally, this carrier was discovered to be performing uncertificated charter service, and, although a certificate was ultimately granted for such service, International was admonished ". . . to become familiar with the provisions of the Compact and the Commission's rules, regulations and requirements thereunder." 10/

Only last year, in Case No. AP-80-22, the Commission found International unfit because it again conducted substantial operations without appropriate authority. International was ordered at that time to cease and desist from providing any service subject to regulation by this Commission without first obtaining the appropriate authority. 11/

8/ International states that it intends to recoup the money involved and make refunds to its customers.

9/ However, see footnote 7, supra.

10/ Order No. 1633, served December 2, 1976.

11/ Order No. 2168, served November 24, 1980.

Thereafter, in Case No. AP-80-26, a certificate was granted to International based, in large part, upon certain assurances that the carrier understood its responsibilities under the Compact and would be most conscientious in meeting those responsibilities. The Commission, however, retained ". . . jurisdiction to reopen [Case No. AP-80-26] or to institute a new proceeding for a redetermination of International's fitness, compliance, financial or operational to conduct the service authorized. . . ." 12/

It appears that, once again, International has failed to meet its obligations under the regulatory scheme of the Compact. Title II, Article XII, Section 5(d) of the Compact provides that "[n]o carrier shall charge, for any transportation subject to this Act, any fare other than the applicable fare filed by it under this section and in effect at the time." 13/ Commission Regulation No. 55-08 contains a similar prohibition. The evidence of record clearly shows that the above-quoted admonition has been ignored on at least two occasions. The intimation that International desired to cancel the second service order because it suspected a trap does little to sustain the cautious optimism about this applicant's fitness that was expressed in Order No. 2187.

Reference to the quarterly reports filed by International suggests that the overcharging instances specified by W. L. are not isolated events. International's profit and loss statements 14/ show "provision for tips" of $7,815.73 and $17,928.40. No expense item for tips paid or for D. C. sales tax is shown. However, "D. C. Sales Tax Payable" is recorded on the carriers balance sheets 15/ as a liability in amounts of $556.11 and $1,567.57. 16/ In any event, nothing in International's tariff permits the collection of sales taxes or "guide service" fees as separate additional charges. Likewise, nothing permits imposition of an 18-percent service charge on balances outstanding more than 30 days as is stated on the bottom of International's invoices.

12/ Order No. 2187, served January 26, 1981.

13/ D. C. Code (1981 Ed.) §1-2411.

14/ Respectively, "for the month (sic) ended March 31, 1981" and "for the month (sic) ended June 30, 1981."

15/ Respectively for March 31 and June 30, 1981.

16/ It appears there is no law requiring a carrier to collect or pay over any sales tax to the District of Columbia for service subject to regulation under the Compact. cf. D. C. Code (1981 Ed.) §47-2001(n)(2)(A) and §47-2002.

Weighing the evidence of record in light of International's history before this Commission, it is impossible to make the affirmative finding of fitness required by Commission Regulation No. 70-07 as a condition precedent to granting these applications. Accordingly, it is not necessary, at this point, to rule on the apparent inconsistencies between the proposed contract prices and the requirements of Title II, Article XII, Section 6 of the Compact.

The applications in Case Nos. CP-81-11 and CP-81-12 are hereby denied.

IT IS SO ORDERED.

FOR THE COMMISSION:

WILLIAM H. McGILVERY
Executive Director