

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2273

IN THE MATTER OF:

Served November 6, 1981

Application of TARA LINES, INC.,)
for Special Authorization to)
Perform Charter Operations Pursuant)
to Contract with the U. S. Depart-)
ment of Agriculture--SEA)

Case No. CP-81-13

By application submitted October 7, 1981, as supplemented and accepted for filing on October 19, 1981, Tara Lines, Inc., seeks authorization to operate pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1, transporting employees of the United States Department of Agriculture, Science and Education Administration (DASEA), in charter operations pursuant to a contract with DASEA, between the National Agricultural Library Building and Building 005, U. S. Highway 1, Beltsville, Md., on the one hand, and, on the other, the U.S.D.A. South Building, Independence Avenue, S. W., Washington, D. C. Applicant would also transport mail, express and baggage in the same vehicle with passengers.

Much of the evidence submitted in support of the application was described in Order No. 2264, served October 20, 1981, and incorporated by reference herein. Suffice it to say here that the contract is in conformance with Commission Regulation No. 70 which governs the processing of this application, and the only controversy raised by the pleadings concerns Tara's financial fitness.

On November 2, 1981, Beltway Limousine Service, Inc., filed a protest to the application. In essence, Beltway contends that the contract price (\$14 per vehicle hour) is so low that Tara cannot possibly cover its expenses without paying wages lower than those allegedly mandated by the Service Contract Act, 41 U.S.C. Section 351, et seq., and wage determinations issued thereunder by the U. S. Department of Labor.

Beltway's calculations for per-vehicle-hour variable expenses such as vehicles, gasoline, oil, insurance, and maintenance total \$15.66. In addition, Beltway contends that Wage Determination No. 66-146 (Rev.17) mandates drivers' wages at the rate of \$11.015 an hour. Labor expense including FICA, unemployment payments and workmen's compensation insurance, under this theory, would come to

\$13.66 per driver hour. According to Beltway's analysis, Tara's variable expenses of \$29.32 per vehicle hour would produce an operating ratio of 209.43 percent without including any allocation of fixed expenses. Obviously, such a result would not be compensatory. 1/

Both Tara and DASEA filed replies to Beltway's protest. Tara controverts many of the assumptions used by Beltway in making the above-described calculations of expenses. Significant differences exist between Beltway's estimated costs and Tara's actual known costs for vehicles, gasoline and insurance and between the two companies' estimates of maintenance costs. Using Tara's data and correcting for mathematical inaccuracies, our total for these expenses approximates \$7.68 per vehicle hour, only 49 percent of the total calculated by Beltway.

DASEA enclosed with its reply a copy of the actual wage (non)determination made by the U. S. Department of Labor for this specific contract. According to that document, ". . . no wage determination applicable to the specified locality and classes of employees [motor vehicle operator (WG-5)] is in effect . . ." as of July 16, 1981. 2/ According to 41 U.S.C. Section 351(a)(1) and (b)(1), therefore, the federally-prescribed minimum wage (plus certain benefits) may be paid. 3/ On this basis and accepting, arguendo, Beltway's calculations based on the prevailing minimum wage of \$3.35 an hour, 4/ our calculations would show total variable costs of \$11.82 per vehicle hour for an operating ratio of 84.43 percent (excluding allocable fixed costs and income taxes). Consolidating the appropriate data from Tara's income statements for 1980 and the first six months of 1981, administrative and general expenses plus taxes and licenses equate to approximately 3 percent of the carrier's revenues. Thus, an overall operating ratio of 87.22 percent is, in our view, the most accurate derivable projection possible.

1/ It is not clear, however, that the finding of noncompensatory rates would justify, ipso facto, denial of the application. Title II, Article XII, Section 6 of the Compact would appear to require that the Commission prescribe just and reasonable rates to replace any rates found to be "unjust, unreasonable, or unduly preferential or unduly discriminatory."

2/ The determination relied on by Beltway is dated June (illegible), 1981.

3/ See 29 U.S.C. 206(a)(1).

4/ Tara controverts these calculations but does not specify the alternative rates said to be applicable therefor.

As noted above, the Compact, Title II, Article XII, Section 6 requires that a carrier's rates be just, reasonable and not unduly preferential or discriminatory. In determining whether that standard is met, the Commission must consider many factors including, as here pertinent, ". . . the need of revenues sufficient to enable such carriers, under honest, economical and efficient management, to provide * * * adequate and efficient transportation service . . . at the lowest cost consistent with the furnishing of such service"

Prior decisions of this Commission clearly indicate that, under the Compact, a viable carrier's rates must be compensatory. ^{5/} Numerous decisions of the United States Supreme Court and various courts of appeal construing similar statutory provisions hold that, absent unusual and compelling circumstances, a carrier's rates should be compensatory on the basis of its fully distributed costs. Cf. American Commercial Lines v. Louisville & N. R. Co., 392 U.S. 571, 592, 88 S.Ct. 2105, 2116, 20 L.Ed.2d 1289 (1968), I.C.C. v. New York, N.H. & H. R. Co., 372 U.S. 744, 83 S.Ct. 1038, 10 L.Ed.2d 108 (1963), and U.S. v. Chicago, M., St.P. & P. R. Co., 294 U.S. 499, 506, 55 S.Ct. 462, 465, _____ L.Ed. _____ (1935).

Even before charter-pursuant-to-contract operations were specifically categorized as a distinct class of transportation in 1974, ^{6/} the Commission required the filing of contracts involving WMATC carriers and prior Commission approval of changes in contract rates. ^{7/} Nothing in the Commission's consideration of charter-pursuant-to-contract applications, before or after the effective date of Commission Regulation No. 70, ^{8/} has suggested that the Commission either has changed the standards by which rates are to be evaluated or delegated its rate responsibilities to persons executing contracts with WMATC carriers.

The evidence of record establishes that Tara's proposed rate is compensatory and fully acceptable under the standards set forth in Title II, Article XII, Section 6 of the Compact. In all respects, it

^{5/} Compare, however, Democratic Central Comm. of D.C. v. WMATC, 158 U.S.App.D.C. 107, 485 F.2d 866 (1973), cert. denied, 415 U.S. 935, 94 S.Ct. 1451, 93 L.Ed.2d 493 (1974), and Market Street Railway v. Railroad Commission, 324 U.S. 548, 65 S.Ct. 770, 89 L.Ed. 1171 (1948).

^{6/} Order Nos. 1342 and 1361, served July 12 and October 16, 1974.

^{7/} See Commission Regulation Nos. 56-03 and 56-06.

^{8/} Adopted by Order No. 2004, served June 20, 1979.

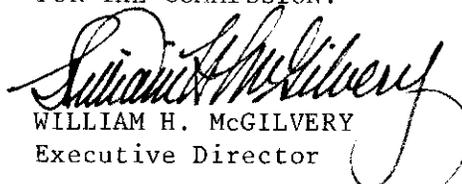
is found that Tara is fit within the requirements of Commission Regulation No. 70. It is further found that this application should be granted effective immediately.

One other point raised by Tara warrants comment. It is asserted that 41 U.S.C. Section 356(3) 9/ renders the wage determination requirements of the Service Contract Act inapplicable to cases handled under Commission Regulation No. 70. Nothing in this order should be construed as constituting agreement with such a proposition. No citation has been given to support a finding that the above-quoted exemption applies to contracts which are accepted as tariffs; instead, the better-reasoned view would be that the quoted provision is applicable only to carriage performed under a general tariff. 10/ Any prospective applicant which assumes that this Commission will rely on 41 U.S.C. 356(3), without more, to render nugatory a wage determination of the U. S. Department of Labor does so at its own peril.

An appropriate authorization to operate pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 shall be issued herewith.

IT IS SO ORDERED.

FOR THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director

9/ This chapter shall not apply to -- any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect.

10/ It is noted that, under the federal regulatory scheme, the rates of contract carriers are published in schedules, not tariffs.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

AUTHORIZATION NO. SP-57-04
TO OPERATE PURSUANT TO
SPECIAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 1

TARA LINES, INC.

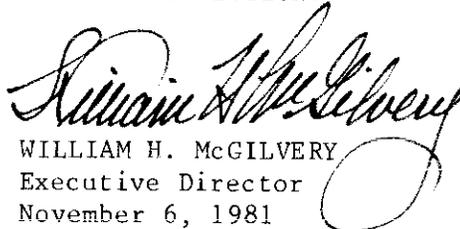
STAFFORD, VIRGINIA

BE IT KNOWN, that pursuant to Special Certificate of Public Convenience and Necessity No. 1 issued by the Washington Metropolitan Area Transit Commission by Order No. 2004, served June 20, 1979, and effective July 23, 1979, and pursuant to Order No. 2273, approving the issuance of this authorization, the above-named carrier may engage in the transportation of passengers, in charter operations pursuant to contract, between points in the Metropolitan District, as follows:

CHARTER OPERATIONS PURSUANT TO CONTRACT with the United States Department of Agriculture, Science and Education Administration, to transport its employees between the National Agricultural Library Building and Building 005, U.S. Highway 1, Beltsville, Md., on the one hand, and, on the other, the Department of Agriculture South Building, 14th Street and Independence Avenue, S.W., Washington, D.C.

This authorization is valid until September 30, 1982.

FOR THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director
November 6, 1981