

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2388

IN THE MATTER OF:

Served December 23, 1982

Application of LOUIS MILLER for)
Temporary Authority to Conduct)
Sightseeing Operations -- Va. to)
D. C.)

Case No. AP-82-13

Application of LOUIS MILLER for)
a Certificate of Public Convenience)
and Necessity to Conduct Special)
Operations -- Va. to D. C.)

Case No. AP-82-14

By applications filed October 20, 1982, Louis Miller 1/ seeks both temporary authority and a certificate of public convenience and necessity to engage in special operations, limited to sightseeing, transporting passengers from motels located on those parts of U. S. Highways 50 and 29 situated in the City of Falls Church and Arlington and Fairfax Counties, Va., to points in that part of the Metropolitan District located in the District of Columbia and the Commonwealth of Virginia and return. 2/

Pursuant to Order Nos. 2378 and 2384, served October 26 and November 22, 1982, respectively, and incorporated by reference herein, a public hearing on these applications was held on December 2, 1982. No party appeared in opposition. At the public hearing, applicant requested that the application in Case No. AP-82-13 seeking temporary authority be dismissed. His motion for dismissal was granted by the Administrative Law Judge.

1/ Mr. Miller is a sole proprietor doing business as National Capitol Tours.

2/ To the extent the applications may be construed as involving transportation between points solely in Virginia, they were dismissed by Order No. 2378 served October 26, 1982.

At the public hearing, applicant testified that he has operated a sightseeing service, National Capitol Tours, for approximately 30 years serving the City of Falls Church and Arlington and Fairfax Counties, Va. He stated that a number of years ago D. C. Transit and Gray Line operated in this area, but ceased providing service after a short while and no one else has entered the field. Since 1976 he has been using a 12-passenger van to provide service; prior to that he employed an eight-passenger Cadillac limousine. Operations have been conducted daily and would so continue, with pickups at various motels along Routes 50 and 29 situated in the above-described geographical area. 3/ There would be one round-trip a day with proposed fares at \$20 for adults and \$10 for children under ten years of age. A trip would include visits to the White House, the U. S. Capitol, the Smithsonian Institution Air and Space Museum and several memorials as well as a motor tour of Washington, D. C. Potential passengers would make arrangements for the tour at their motel the night before service is desired. Approximately 12 motels are now being served by Mr. Miller.

Applicant stated that maintenance is regularly performed by a mechanic and in the event of mechanical problems, a back-up vehicle can be rented on short notice. If applicant is unable to drive on a particular day, a licensed substitute driver is available to conduct the tour. If more passengers seek transportation than can be accommodated on the 12-passenger van, Mr. Miller stated that in the past he has procured additional vans from others who have equipment and a guide license. On occasion he has rented a bus, with driver, and provided his own licensed guide.

With respect to past operations, Mr. Miller stated that he was not aware that he was operating illegally until so informed recently by this Commission. National Capitol Tours' owners sought certification when this Commission was established, but were informed that the service they were then providing was exempt. 4/ Subsequently, in 1978 he was told by a Commission staff member to clarify his operating status, at which time he filed an application for temporary authority. He stated that he never heard anything further from the Commission and assumed that he was operating within the ambit of Commission authority.

3/ One motel on Route 123 in Fairfax County has been served in the past, but applicant stated he was no longer interested in providing service there. It is outside the territorial scope of this application.

4/ See Order No. 165, served June 26, 1962.

Upon learning that his operations in fact were in violation of the Compact, 5/ Mr. Miller agreed to entry of an order to cease and desist from further unauthorized operations. 6/

In support of the application, two motel representatives testified at the hearing. The first, the evening desk clerk of the White House Motel located on Routes 50 and 29 in Fairfax City, Va., stated that, among his duties, he is responsible for arranging sightseeing services for motel guests, selling tickets for Mr. Miller's tours. During the spring and summer seasons about 20-25 tickets a week are sold, according to the witness, while in the winter anywhere from three to eight tickets a month are sold. There is no other tour service available from the motel. The desk clerk stated that he has received favorable comments regarding the tour service and the motel has augmented its business through referrals from guests sending their friends who were desirous of taking advantage of the tour service picking up at the motel. There have been no complaints about the service, but several motel patrons were disappointed in learning that the tour service was not available in late September and October as a result of the above-referenced cease and desist order.

The owner of Pleasant Acres Motel testified that his motel and Holly Hill Motel are served by Mr. Miller. Pleasant Acres, located on Route 29 in Fairfax County, sends its tour passengers to Holly Hill, located on Route 50 in Fairfax City, where Mr. Miller picks up passengers. The witness is satisfied with the tour service and stated that there is no other tour service available from either motel or from neighboring motels which also have been served only by Mr. Miller.

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 as sought herein.

5/ See Case No. MP-82-12, Order No. 2369, served September 14, 1982.

6/ Order No. 2379, served October 29, 1982.

Evidence presented by applicant shows a need for special operations service in vehicles with a maximum manufacturer's designed seating capacity of 15 passengers. Motel representatives on the Route 29 and Route 50 corridor stated that no other tour service is available for motel guests. In addition, no other carriers or tour services appeared in opposition to the application further indicating a lack of available service. Inasmuch as the scope of the application did not include service to points on Route 123 and applicant stated that he had no desire to provide service in that area despite previous operations there, no further consideration need be given to that service.

With respect to the matter of fitness, we find that Mr. Miller is financially and otherwise fit to operate. While we certainly note that applicant has been providing service similar to that applied-for herein for a number of years, he properly ceased operations, consenting to the entry of a cease and desist order, upon learning of the need for Commission certification. National Capitol Tours was informed that its operations were exempt from Commission certification in 1962 when it operated an eight-passenger vehicle. When Mr. Miller purchased a van seating in excess of eight passengers in 1976, Commission certification was required. He testified that he believed that his 1978 filing for authority was sufficient to meet our requirements. His voluntary cessation of operations upon institution of our investigation proceeding in 1982 and consent to the cease and desist order, in conjunction with testimony from motel witnesses that he stopped providing service, evidences his willingness to abide by Commission rules and regulations.

With respect to testimony that Mr. Miller has relied on uncertificated carriers in the past to assist with passengers that National Capitol Tours lacked capacity to transport, the Commission admonishes the carrier to adhere strictly to the provisions of the Compact and the rules and regulations promulgated thereunder, specifically Commission Regulation No. 69 governing the leasing of motor vehicles. Any person other than Mr. Miller who becomes involved in the provision of these tours should be an employee of Mr. Miller, subject to his direction and control, the withholding, workman's compensation and unemployment laws of federal and local jurisdictions, and the safety regulations of this Commission and the U. S. Department of Transportation, Bureau of Motor Carrier Safety. For purposes of vehicle identification for National Capitol Tours, the carrier will be assigned WMATC No. 80. Finally, Mr. Miller is reminded that for a vehicle seating 12 passengers or more, Commission Regulation No. 62 requires minimum insurance coverage of \$100,000 for bodily injury or death of one person, \$500,000 for bodily injury or death of all persons in any one accident and \$50,000 for loss or damage in any one accident to the property of others.

THEREFORE, IT IS ORDERED:

1. That the application in Case No. AP-82-13 for temporary authority is hereby dismissed.

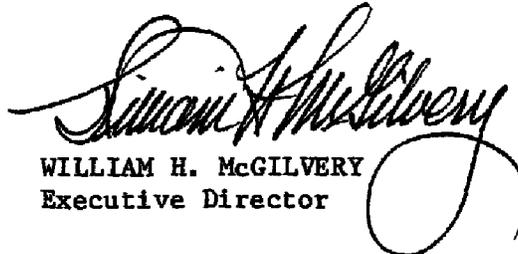
2. That the application of Louis Miller, operating as National Capitol Tours, is hereby granted as follows: to transport passengers, in special operations limited to sightseeing, from motels located on those portions of U. S. Highway 29 and U. S. Highway 50 situated in the City of Falls Church and Arlington and Fairfax Counties, Va., to points in the District of Columbia and return, restricted to service in vehicles with a maximum manufacturer's designed seating capacity of 15 passengers including the driver and restricted against transportation solely between points in the Commonwealth of Virginia.

3. That Louis Miller operating as National Capitol Tours is hereby directed to file (a) a certificate of insurance as required by Commission Regulation No. 62, (b) two copies of its WMATC Tariff No. 1 as required by Commission Regulation No. 55 and (c) an affidavit of compliance with Commission Regulation No. 68 governing identification of motor vehicles, for which purpose WMATC No. 80 is hereby assigned.

4. That upon timely compliance by Louis Miller operating as National Capitol Tours with the directives set forth in paragraph 3 above, an appropriate Certificate of Public Convenience and Necessity No. 80 will be issued.

5. That unless compliance with the provisions of the preceding paragraph is effected within 30 days from the date of service hereof or such additional time as the Commission may authorize, the grant of authority made herein shall be void and the application shall stand denied in its entirety effective upon expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director