

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2404

IN THE MATTER OF:

Served March 30, 1983

Application of WEBB TOURS, INC.,)
for a Certificate of Public)
Convenience and Necessity to)
Engage in General Charter and)
Special Operations)
)

Case No. AP-82-11

By application filed August 5, 1982, Webb Tours, Inc., seeks a certificate of public convenience and necessity to transport passengers and their baggage, in special and charter operations, between points in the Metropolitan District. 1/ In essence, Webb seeks to broaden its existing authority to include special and charter operations which are not sightseeing or pleasure tours, to serve Dulles International Airport and points in Fairfax County, Va., and Prince George's and Montgomery Counties, Md., in special operations, and to use vans, motor coaches and double-deck buses interchangeably.

Airport Limo, Inc., Beltway Limousine Service, Inc., and Gold Line, Inc., filed protests to the application. At the public hearing commencing October 26, 1982, 2/ Webb asked that the application be amended to exclude special operations to and from Dulles International Airport and Washington National Airport. Upon acceptance of that restrictive amendment by the Administrative Law Judge, a stipulation was filed in which Airport Limo, Inc., withdrew its protest. Protestants Beltway and Gold Line appeared at the hearing and presented evidence in opposition to the application.

1/ To the extent this application could be construed as seeking authority to operate between points solely in Virginia, it was dismissed by Order No. 2356, served August 9, 1982.

2/ Originally the hearing was scheduled for September 15, 1982, but continuances were directed by Order Nos. 2366 and 2375.

Thirteen public witnesses appeared to testify in support of the application, and one public witness appeared pursuant to a subpoena to testify regarding the activities of the Washington Convention and Visitors Association. The chief operating officer of Webb testified as did the chief operating officers of the protesting carriers. We now proceed to a summary of this testimony.

J. Matthew Neitzey is Executive Director of the Prince George's Travel Promotion Council, a nonprofit organization which promotes travel and tourism in Prince George's County, Md. The Council anticipates an increase in tourism and travel over the next decade and an unquantifiable need for additional transportation service. The Council does not necessarily support any new service proposal, but asserts that there is a competitive need for Webb's service.

Mr. Neitzey is familiar with Webb's service inasmuch as Webb has occasionally donated equipment to the Council for use in certain promotional activities. Applicant's president also serves on the Council's Board of Directors. The witness feels that Webb could handle some of the anticipated tourist growth by using vehicles of various sizes. The Council has not made any formal study of transportation needs or the services now available. Mr. Neitzey, accordingly, had no opinion as to whether existing carriers could meet present or future transportation demands.

Margaret Elaine Curl is Director of Marketing for the Capitol Informer, Inc., a District of Columbia based convention services organization. Due to a vigorous marketing campaign, Capitol Informer's business has been expanding, and the witness anticipates that the soon-to-open Washington Convention Center will also help increase business. It is expected that transportation will be required from and to fringe parking areas for local shows and between the Convention Center and area hotels for out-of-town conventions.

For one convention (scheduled for June 1983), the witness needs 44 buses. Because Gold Line could commit only five buses, Ms. Curl has made arrangements to have school bus operators handle the operation. No other coach operators were contacted. She anticipates that buses will be needed for peak traffic hours, and that vans may be more effective for mid-day service. Ms. Curl opined that Gold Line operates excellent equipment, but she has experienced late pickups by that carrier. The witness did not know if existing van and minibus service was adequate, and did not know if protestant Beltway operates buses as well as vans. Nevertheless, this witness believes that there is insufficient equipment in the area to cover "large moves."

William Babb is the owner of Washington Group Tours, a tour wholesaler representing travel agents based outside of the metropolitan area. On occasion, his firm arranges passenger transportation for groups, and, in the past, has obtained equipment from Webb, Gold Line, Beltway, Vernoy Franklin and the Washington Metropolitan Area Transit Authority (Metro). Metro is unsatisfactory due to high prices, equipment that must be carefully selected and restrictions against rush-hour transportation. During peak tourism months, Mr. Babb has experienced difficulty in obtaining equipment especially when a "large quantity" of (5 to 10) buses is needed. At the same times, there can be problems securing minibuses, but Mr. Babb has had no problem obtaining vans.

Mr. Babb believes that the Washington Convention Center eventually will increase demand for larger quantities of bus equipment. Applicant's service, in the past, has been very good, and this witness would hire vehicles other than double-deck buses from Webb if appropriate authority were granted.

Glen Witucki is the Executive Director of the Tysons Transportation Association (TTA) a non-profit organization which provides employees of member companies with alternatives to private automobile transportation. TTA operates a mid-day shuttle for these employees using double-deck buses, and has received many inquiries from people interested in chartering such vehicles. Their requests are now referred to Webb. TTA also receives requests to charter its vans (used for employee van pools) and refers these inquiries to Beltway or International Limousine Service, Inc. The witness has not made any study or systematically contacted carriers to determine the quantum of service now available.

Mary Wright testified that she is the Front Office Manager at the Holiday Inn, 6100 Richmond Highway in Fairfax County, Va. The Holiday Inn offers individually-ticketed sightseeing tours (operated by Webb), and, on occasion, has also used Webb for charters or group tours. Presently, Webb picks up passengers in a van and later transfers them to a double-deck bus. Mrs. Wright would prefer that the double-deck buses pick up at the Inn.

In one instance, a group arrived at approximately 4:30 p.m. and requested a tour that same evening. Webb was able to provide service although Mrs. Wright cannot remember whether a double-deck bus or a motor coach was used. The witness has not attempted to secure local bus or van service from any carrier other than Webb. Sometimes, transportation is required to and from Washington National Airport, but that service is beyond the ambit of this application. 3/ On two

3/ See footnote 1, supra.

occasions, full bus loads were transported between the Holiday Inn and the Capitol Centre ^{4/} in conventional motor coaches. Mrs. Wright does not know whether Webb provided the service or arranged for another carrier to render transportation. As far as she is concerned, she called Mr. Webb and "it was taken care of."

Paul Loukas owns three restaurants in (or near) the Georgetown section of Washington, D. C. He has had occasion to hire buses to transport restaurant patrons to and from RFK Stadium, Washington, D. C., and such other locations as George Mason, Catholic, and Maryland Universities. Webb has performed such service in charter operations when needed. This witness has no need for vehicles smaller than conventional motor coaches, and often requires double-deck buses because of their large seating capacity. Chartered transportees include fans of the Washington Redskins and students planning to eat and drink at one of the witness' restaurants.

William Crossett is the Innkeeper at the Holiday Inn, 2460 Eisenhower Avenue, Alexandria, Va. Webb provides regularly-scheduled, individually-ticketed sightseeing tours from that location. Frequently, the witness is requested by groups staying at the Inn to arrange a charter sightseeing tour or charter transportation to such points as Rosecroft Raceway, the Naval Research Lab or various shopping malls. Usually, the Innkeeper has these groups make their own arrangements for bus service, or he calls taxicabs to transport the passengers. Although no charter service has been requested from any carrier other than Metro, Mr. Crossett opined that no other carriers are willing to serve his facility.

Lou McGray is the manager of Howard Johnson's Motor Lodge at 5821 Richmond Highway in Fairfax County, Va. Webb currently serves that facility by picking up sightseers in a van, then transferring them to a double-deck bus for individually-ticketed tours. The witness would prefer to see the double-deck buses used for the pickups. The lodge seldom gets requests for charter service inasmuch as most groups arrange their own transportation.

Robert Donihi teaches foreign affairs seminars at various institutions in the Washington area. On many Fridays, his classes take field trips to the State Department, various embassies and other related facilities. This year, he has used Webb to transport his classes in double-deck buses on two occasions. At other times, the nature of the group would require use of a motor coach or vans.

^{4/} Prince George's County, Md.

Mr. Donihi has not had an occasion where he needed a bus and was unable to get one, and he has no complaints about any of the carriers he has used in the past. He also has no complaints about the availability of van or minibus service.

Edgar Sims, Jr., owns or manages three motels on U.S. Highway 1 in College Park, Md. At the time of the hearing, Gray Line (a trade name used by Gold Line, Inc.) provided individually-ticketed sightseeing service to these motels. Mr. Sims supports Webb's application because he desires an alternative to Gray Line, specifically during winter months when Gray Line discontinues direct pickups at his (and certain other) motels and instead makes a collective pickup at one other nearby motel. He also feels that the double-deck buses offer a unique service.

Mr. Sims feels that his motels will share in the business to be generated by the Washington Convention Center. Transportation to and from the Center would be required, but the quantity of such business has not been determined.

George W. Demarest, Jr., is the General Manager of the Washington Convention Center which was scheduled to house its first trade show beginning January 2, 1983. The Center is aiming at conventions and trade shows requiring in excess of 100,000 gross square feet of exhibit space and 3,000 sleeping rooms. Gatherings of smaller size could be accommodated in other area facilities. As of October 3, 1982, 42 multiple-day events were booked for the Center in 1983. It is anticipated that these events will bring approximately 114,000 out-of-town visitors to Washington, D. C. in groups ranging from 3,000 to 20,000 persons. For 1984, 22 major conventions and trade shows have been booked, representing total non-local attendance of 224,000 persons.

Larger groups, which require housing in several hotels, have greater needs for transportation by bus, and often have their own charter reservations made by staff personnel. Although three or four new hotels will soon be built near the Center, Mr. Demarest stressed that different groups have different housing and transportation needs. The witness stated that he has no way of knowing whether existing carriers will be able to handle the additional transportation needs that will be created by the Convention Center. The Center takes no position as to whether this application should be granted.

Leo Warring is the manager of UBS Travel, a travel agency which specializes in group business. Its past ground transportation needs have been for outbound service such as bus transfers to an airport. During the past year, however, UBS has been building its incoming business including conventions and groups desiring local sightseeing.

UBS has used Webb in the past and been pleased with the quality of its service. On occasion service in a motor coach, minibus or van may also be required, and twice in 1982 Webb provided a double-deck bus for an airport transfer. On another occasion, Webb provided a motor coach to UBS for local service. The witness could relate no complaints about past services received from either protestant, but stated that he has had occasion to request buses and found no equipment available.

John H. Bowe is a manager with Century 21 United, a real estate firm located in Fairfax, Va. Mr. Bowe's section deals in commercial and industrial investment real estate and the sale of small businesses. In September 1982 he used Webb to transport a group and stated that eight other companies could not meet his needs on that occasion. Mr. Bowe has never actually tried to use a van or minibus service.

Austin Kinney is the Executive Vice President of the Washington Convention and Visitors Association. A nonprofit group, the Association attempts to attract tourists and conventions to Washington, D. C., and acts as the sales and booking agent for the Washington Convention Center. The District of Columbia attracted approximately 14 million people last year and a continuing growth in the number of visitors is anticipated. A corresponding increase in the need for transportation services is also expected.

In particular, shuttle services between the Center and various hotels will be required, and the services could involve all types of equipment. City buses (such as those operated by Metro) generally are the best type of vehicle for shuttle services. In 1984, approximately .25 million new delegates will come to Washington, D. C., an increase which Mr. Kinney considers to be small when compared to existing tourism. He is not aware of any transportation complaints generally from past conventions and has not heard any complaints specifically about applicant or protestants Gold Line and Beltway. He is aware that Beltway is preparing to meet the needs of future conventions.

Ralph Webb, applicant's president, testified on behalf of the applicant. Webb owns two Prevost motor coaches, two vans and nine double-deck buses. 5/ In addition, applicant operates two deluxe

5/ Four of these buses are being restored and are not currently tagged.

double-deck buses (hereinafter referred to as Neoplans) which it is acquiring under a lease-purchase agreement. Webb could lease additional equipment if needed.

Webb maintains a garage and maintenance facility in northeast Washington and employs four full-time mechanics. Vehicles and maintenance work have passed inspections conducted by the District of Columbia and Webb's insurers. Drivers are tested and trained before being allowed to operate with passengers aboard. Mr. Webb has not received any written complaints from customers about the company's service.

Current restrictions on its use of equipment are said to reduce Webb's flexibility and efficiency. Webb would prefer to have the freedom to use whatever type of vehicle matches the needs and desires of its customers.

Applicant has used his vans to transport small groups to and from such points as Atlantic City, N. J., New York, N. Y., and Williamsburg, Va., and would also like to use them for local service. 6/ For example, when there are insufficient sightseers to warrant operation of a double-deck bus, a van might be used to conduct a tour. Similarly, territorial restrictions on use of the double-deck buses has, according to Mr. Webb, hampered operations in the summer when tours are more heavily patronized.

Webb has transported passengers in both one-way and round-trip transfer operations because staying ". . . technically within our jurisdiction . . ." would have caused ". . . difficulty in terms of handling customers' requests for service." "We know," said Mr. Webb, "the need is there for point-to-point because we have been doing it, unbeknown to us, unknown to us until it was pointed out we weren't supposed to do this." 7/

While there are some days when all of Webb's equipment is fully utilized, there are many days when buses are idle. Unauthorized carriers underbid applicant's tariff price and thereby siphon off business which Webb otherwise might enjoy. Current capacity of Webb's fleet is 620 seats including 496 in the seven double-deck buses. Webb

6/ Under the terms of its current WMATC certificate, the vans may be used only as support vehicles for the double-deck buses.

7/ Webb's certificated operations are restricted to sightseeing and pleasure tours.

has not solicited government contracts because obtaining the necessary operating rights under WMATC Regulation No. 70 8/ is, according to the witness, too cumbersome. If Webb had general charter authority, it would bid on government contracts.

Mr. Webb expressed concern that his current authority "may" not allow him to conduct charter operations that are not sightseeing and pleasure tours. Moreover, he is unsure that use of the Neoplans in the Metropolitan District may be improper inasmuch as those buses are not of British manufacture. 9/

It is Webb's opinion that competition in the motor carrier industry has declined due to mergers and revocations. However, Mr. Webb further stated that "[c]ompetition may be just as stiff, but it comes, I think, from the fact that certain companies are stronger as a result of acquisitions being larger."

Mr. Webb foresees an expanding demand for transportation service from both existing and new businesses including the Washington Convention Center. Currently, Webb is operating at a profit, and anticipates that a grant of this application would increase profitability. Applicant's balance sheet and operating statement, both dated December 31, 1981, are summarized below, together with a summary of projected revenue and expenses predicated on a grant of this application.

	<u>BALANCE</u> <u>SHEET</u>	<u>OPERATING</u> <u>STATEMENT</u>	<u>REV. & EXPENSE</u> <u>PROJECTIONS</u> <u>10/</u>
Current Assets	\$ 13,601	\$343,130	Operating Income \$435,057
Total Assets	135,471	373,392	Total Income 435,057
Current Liab.	36,304	298,040	Operating Exp. 357,328
Total Liab.	117,437	337,446	Total Expenses 404,334
Equity	18,034	35,946	Net Income 30,723

8/ See Order No. 2004.

9/ Authorized vehicles described in Webb's WMATC certificate are British manufactured double-decker buses.

10/ The projections assertedly include only WMATC revenues and expenses. Revenue and expenses in connection with non-WMATC operations and non-carrier operations are included in the Operating Statement Column.

Except for equipment notes and accounts payable, Webb's other significant liability is a loan payable to Mr. Webb.

Webb agrees that the demand for passenger transportation in the Metropolitan District is highly seasonal. From November through March of each year, for example, typically more than half of Webb's fleet (and, he estimates, probably everyone else's fleet) sits idle.

On cross-examination, Mr. Webb stated that applicant purchased two Prevost motor coaches in 1981, knowing at the time that its authority from this Commission was restricted to British double-deck buses. The coaches were purchased primarily for intra-Maryland or Interstate Commerce Commission work. The Neoplans, which are of German manufacture, have been used for both I.C.C. and WMATC service, and a copy of the lease agreement for the Neoplans was filed with this Commission. 11/

Webb holds no authority from the I.C.C. and it has not filed a tariff with that body. Nevertheless, applicant has operated many trips subject to I.C.C. regulation such as between Washington, D. C., on the one hand, and, on the other, Baltimore, Md., and Atlantic City, N. J. Webb claims that it has leased the I.C.C. operating rights of an entity generally called "AEC" and assumes that entity has filed a tariff with the I.C.C. Depending on the trip, Webb charges either mileage rates (\$1.55 a mile for the motor coaches or \$3 a mile for the Neoplans) or hourly rates equal to those in its (inapplicable) WMATC tariff. Such operations (as well as intra-Maryland trips) were conducted in vehicles owned or leased by Webb, driven by Webb's employees and under Webb's control. Webb states that it is actively soliciting and accepting any requests for interstate charter service.

Webb acknowledges having transported charter groups in one-way service within the Metropolitan District although such movements are not authorized by its WMATC certificate. Mr. Webb's position, however, is that ". . . the people just charter the bus for four hours; . . . [the tariff minimum]. They were not charged for one way. They were charged for rental of the bus for four hours. It is their business to direct us."

11/ Although the Neoplans are not manufactured in Britain, counsel for the Commission had informally advised applicant that its certificate restriction was intended to describe a type of vehicle rather than a locus of manufacture. We agree and an appropriate correction shall be made to Webb's certificate.

When Webb receives requests for service which it cannot meet, it either locates additional equipment or refers the caller to other carriers such as Gold Line, Beltway or International Limousine Service, Inc. In one instance (October 23, 1982) that Mr. Webb can recall, Gold Line could not provide a bus. Normally, he has no idea whether or not the referred callers receive service. Webb has made no formal surveys of the adequacy of existing transportation.

When Webb experienced a breakdown of his vans, he operated a double-deck bus, in special operations, in Fairfax County. Why applicant failed to lease other vans instead was not explained. With respect to one airport transfer, Mr. Webb considered it a pleasure tour because "I didn't think they were going away on business." "I suppose you could call the whole thing a pleasure tour if they are going on a trip. I do, when I am going somewhere." Mr. Webb admitted having been advised prior to this trip that point-to-point operations were not authorized by Webb's certificate. Mr. Webb also opined that a trip to a football game is a pleasure tour because "I see no business attached to it at all."

Webb first commenced I.C.C. operations in 1981 when the Prevost coaches were purchased. At that time Webb had negotiated an oral arrangement with Blue Lines, Inc., to ". . . run under their rights." While Mr. Webb knew that this Commission prohibits such activities, he claims that ". . . the I.C.C. is another matter." Assertedly, Webb ". . . ran under their [Blue Lines'] tariff," and Webb didn't apply for its own I.C.C. authority because it was "[t]oo busy with other things. . . ."

Subsequently, a "lease arrangement" was made with Joy Bus Service. 12/ A written lease, executed November 11, 1981, as explained by Mr. Webb, calls for the lease of Webb's two motor coaches to Joy until November 1982. The rental price is 75 percent of gross revenue. The lease, which purports to be for equipment only, makes no mention of operating rights. 13/ Nevertheless, Webb was the operator of these buses. As Mr. Webb stated ". . . we were under lease to Joy Bus Company (sic). He has copies of all our drivers' records and so forth. Everything was in his file. Each job that we ran went into his file. It was supposedly the best way to do it [operate under another carrier's operating rights]."

12/ According to the records of the Interstate Commerce Commission, Section of Applications, Evaluations and Authorities, Joy Bus Service holds a certificate of public convenience and necessity.

13/ Despite agreeing to provide a complete lease, Webb submitted only a partial copy.

Under both "arrangements", employees of Webb Tours, Inc., drove buses owned by Webb. Webb paid the drivers' salaries and paid corresponding unemployment insurance premiums and FICA taxes. Mr. Webb presumes that applicant's insurance would have covered if any driver's negligence had caused an accident. Webb had no discussion with Blue Lines regarding the latter's insurance and, as far as Mr. Webb knows, applicant was not a named insured on Blue Lines' policy. With respect to operations purportedly conducted under the lease agreement with Joy Bus, both the lease and Mr. Webb's testimony confirm that any risk of loss due to negligent operation would have been with Webb and its insurer.

Prior to June 1, 1982, Webb conducted some operations with the Neoplans. On that date, a letter over the subscription "AEC I, A Limited Partnership by AEC Investors, Inc., General Partner" recites, as pertinent

that AEC I, LTD, . . . believes it has certain rights and privileges by virtue of authority granted to it by the Interstate Commerce Commission. * * *
Whatever operating authorities are owned by Lessor [AEC I, LTD] . . . are hereby assigned to the Lessee, Webb Tours, Inc.

The subject operating rights, however, had been issued to AEC Limited of Bel Air, Md., not AEC I, LTD or AEC Investors, Inc., which Mr. Webb described as a group of Philadelphia lawyers. Mr. Webb assumes, but does not know, that the subject operating rights became effective 14/ and that a tariff was filed with the I.C.C. 15/ Mr. Webb has never seen such a tariff, but assumes that it exists and contains rates corresponding with what Webb has been charging. Remarkably, Mr. Webb also testified that AEC Limited, doing business as Silver Line, 16/ is

14/ The effectiveness of Certificate No. MC-153975 (Sub-No. 2) issued to AEC Limited is conditioned upon compliance with 49 CFR 1043, 1044 and 1300 through 1310.

15/ Separate searches of I.C.C. records at the requests of counsel for Gold Line and our General Counsel failed to turn up a tariff filed in the name of any of the AEC entities. Directory assistance for Bel Air, Md., has no telephone listing for AEC Limited. According to the officer in charge of the I.C.C. District Office in Baltimore, Md., AEC Limited (a Maryland corporation) is actively engaged in conducting its own interstate operations.

16/ Directory assistance has no telephone listing for Silver Line in Bel Air, Md., and the I.C.C. District Office in Baltimore, Md., has no record of a carrier using that name.

conducting its own interstate operations pursuant to the same Certificate No. MC-153975 (Sub-No. 2) but at tariff rates understood to be different from those in effect for Webb. As far as Mr. Webb knows, no application for I.C.C. approval of a transfer of the subject operating rights has been filed. 17/

John D. Robertson, the president of Beltway Limousine Service, Inc., testified for that company in opposition to the application. Beltway is authorized by the Commission to engage in special operations between National and Dulles airports, on the one hand, and, on the other, specified hotels in Prince George's and Montgomery Counties, Md., and (2) charter operations between points in the Metropolitan District. 18/ Charter operations include group sightseeing tours, general charter and transfer work and charter operations pursuant to contract for various corporations and government agencies. Beltway's fleet of 55 vehicles includes two limousines, 35 vans, 12 (19-21 passenger) minibuses and three motor coaches. Beltway is willing to purchase new or additional equipment as business warrants.

Thirty-five of Beltway's vehicles are now committed to contracts, three are dedicated to airport service and 17 are generally available. 19/ Additional equipment can be obtained on a daily rental basis, but, during the last six or nine months, Beltway has handled all service requests with its existing fleet. 20/ The only occasions in the past year when Beltway has turned down a request to charter a van or minibus is when the customer has an overdue (4- to 6-month old) unpaid account.

Mr. Robertson serves on the Board of Directors of the Convention Visitors Association, and Beltway conducts its own marketing efforts to generate new transportation business. In addition to local marketing, Beltway's sales personnel have been soliciting out-of-town

17/ No record of such a case could be found by the I.C.C.'s Section of Applications, Evaluations and Authorities. Approval of such a transaction is apparently required by 49 U.S.C. 11343.

18/ Charter operations originating in the Virginia portion of the Metropolitan District must be conducted in vehicles with a seating capacity of 15 passengers or less.

19/ Most contract vehicles are also available for evening and weekend work.

20/ Beltway always keeps at least five revenue vehicles in reserve as back-up equipment.

and European accounts. Because of additional competition in the charter-pursuant-to-contract market, Mr. Robertson believes that Beltway must expand its non-contractual operations. Mr. Robertson also opined that authorized carriers are meeting the demands of the transportation public as they currently exist and that competition among carriers is as keen now as at any time since 1974 when Beltway started doing business.

Mr. Robertson feels that Beltway is well qualified to provide service for large groups, citing his own experience as a past convention manager for the Washington Hilton Hotel, a recent convention of 9,000 people for which Beltway arranged transportation, and the Kemper Open golf tournament for which Beltway provides shuttle service. 21/

Beltway believes that a grant of the sought authority, given protestant's current financial position, ". . . would be a tremendous hardship on us. Reduced contract revenues (due to increased competition) coupled with additional expenses for training and marketing in the non-contractual market create a financial dilemma which, says Mr. Robertson, would be exacerbated by the entry of additional carriers into the charter market. To date, Beltway was not showing a profit.

On cross-examination, Mr. Robertson conceded that there are advantages to a transportation user being able to deal with only one carrier for all sizes of equipment. He feels that Beltway is such a "full-service" company. Beltway also concedes that broader territorial authority is advantageous to marketing efforts. In situations where a customer needs both bus and van equipment, Beltway occasionally charters a bus from Gold Line or Metro to handle part of the service. Beltway bills the customer according to Beltway's tariff and pays Gold Line, for example, the rate called for in Gold Lines tariff.

Fred H. Mitchell, vice president and general manager of Gold Line, Inc., testified for that company. Gold Line holds operating authority from both the I.C.C. and WMATC. Within the Metropolitan District, Gold Line operates regular-route services to specified racetracks, conducts individually ticketed sightseeing tours and provides general charter service including group sightseeing and transfers.

21/ Attendance for the 1982 Kemper Open was estimated to be 27,000 persons.

Gold Line introduced comparative operating statements for the months of September 1981 and 1982 and for the first nine months of those years. Individually ticketed sightseeing revenues have declined for the first three quarters of 1982 by approximately \$387,000 or 14.5 percent of the comparable 1981 base. During the same period, drivers' wages increased by \$345,000 or approximately 19 percent and insurance and safety costs were up 49 percent or approximately \$95,000. Overall, Gold Line showed net incomes of approximately \$364,000 and \$609,000 for the referenced periods in 1982 and 1981, respectively.

Gold Line picks up sightseeing passengers at various hotels and motels around the Metropolitan District. Due to the seasonal demand for this type of service, the number of buses involved in these pickups varies from a low of five schedules in the winter to a high of 13 schedules during periods of peak demand. Mr. Mitchell attributes Gold Line's decline of sightseeing revenues to the general economy and a decline in tourism, particularly foreign travel. As competitors in this facet of transportation, Mr. Mitchell lists White House Sightseeing Corporation (an affiliate of American Sightseeing), Webb, Blue Lines, Inc., and Tourmobile, a carrier operating pursuant to a contract with the U. S. Department of Interior under a Congressional exemption from normal regulatory provisions.

Mr. Mitchell believes that Gold Line operates a fleet of buses that ". . . is newer and better kept and superior to any other." As of October 29, 1982, Gold Line operated 110 buses, 104 of which were equipped with rest rooms and baggage compartments. Gold Line maintains its own garage facility and has 40 employees. 22/ When vans or limousines are required as well as buses, they are obtained from Admiral Limousine Service. 23/ Gold Line has been updating its fleet by purchasing 10 new MCI coaches each year. All buses are equipped with two-way radios.

Approximately one year ago, Gold Line operated 131 buses. It has reduced the size of its fleet because the average demand for equipment since that time has been approximately 95 buses a day. During the peak sightseeing season, Gold Line needs up to 64 buses to

22/ Presumably, Mr. Mitchell means 40 mechanics. Gold Line's 1981 annual report shows 240 employees including 40 mechanics.

23/ Admiral Limousine Service holds no authority from this Commission. It's commonly controlled affiliate, Executive Limousine Service is certificated to conduct charter operations in vehicles with a seating capacity of 15 passengers or less.

operate commuter, regular-route and sightseeing schedules. 24/ Approximately once a month during the peak season Gold Line receives requests for more equipment than it owns. On those occasions, it charters vehicles from other carriers such as Eyre's Bus Service, Inc. Mr. Mitchell could recall no instance in the last two years where Gold Line was unable to provide buses for booked movements. If business conditions so warrant, Gold Line would be willing and able to increase its fleet.

Because of decreased business and increased expenses, Gold Line has furloughed or terminated some employees in addition to selling 21 buses. Absent the gain from its sale of buses, Gold Line would have shown a net loss for the first nine months of 1982. Accordingly, the company is considering further reducing equipment and personnel, and Mr. Mitchell believes, given current economic conditions and the off-peak months ahead, that the company will have serious trouble trying to "stay the course."

Gold Line opposes this application because it believes that there is insufficient business for existing carriers. In Mr. Mitchell's opinion, ". . . it is an already crowded area for buses." 25/

Title II, Article XII, Section 4(b) of the Compact provides that

. . . the 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 transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied.

24/ Only about 50 buses are needed during the "off season."

25/ In connection with a statement by Webb that Gold Line could not rent equipment on October 23, 1982, Mr. Mitchell stated that, in addition to its own equipment, Gold Line rented seven buses from Eyre's to meet its own service obligations on that date. Although more buses were available from Eyre's, Mr. Mitchell did not want to rent an extra bus and then release it to a competitor.

In considering whether an applicant has met these criteria, we ask, in substance, whether the proposed operation will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing carriers; and whether it can be served by applicant with the operation proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 26/ By weighing these factors, including the relative advantages of increased competition in the passenger carrier industry of the Metropolitan District, we seek to balance the competing interests of the applicant, the existing carriers and the travelling public to determine "the public convenience and necessity." 27/ Now we proceed to draw out and crystallize these competing interests so that they can be judged ". . . with as much delicacy as the prospective nature of the inquiry permits." 28/

The Prince George's Travel Promotion Council, the Tysons Transportation Association, Mr. Sims, Mr. Donihi, Lou McCray, the Washington Convention Center and the Washington Convention and Visitors Association have not had any occasion to use charter bus service and have expressed no opinion indicating that existing carriers cannot handle any future transportation needs. With respect to vans and minibuses specifically, Capitol Informer, Washington Group Tours, Mr. Loukas, UBS and Mr. Bowe expressed either no need for such service or had no complaints about the availability of existing service. It is well-settled that transportation users should at least have occasion to try the service of existing carriers and find such service wanting before a grant of competing authority is warranted. Where a potential user of service tells groups to make their own arrangements or calls taxicabs to handle the trip, one cannot merely assume that existing carriers would not have provided satisfactory service.

A careful review of this record fails to reveal a single instance where charter customers have made reasonable requests for service and have actually gone without. Capitol Informer and Washington Group Tours did offer specific examples of difficulty in chartering substantial numbers of buses during peak seasons. We

26/ Cf. Pan-American Bus Lines Operation, 1 M.C.C. 190, 203 (1936).

27/ United States v. Pierce Auto Lines, 327 U.S. 515, 535-536, 66 S.Ct. 687, 697-698, 90 L.Ed. 821 (1946).

28/ Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 293-294, 95 S.Ct. 438, 446, 42 L.Ed.2d 449 (1974), citing ICC v. J-T Transport Co., 368 U.S. 81, 89, 82 S.Ct. 204, 209, 7 L.Ed.2d 147 (1961).

believe, however, that it is unrealistic to expect any one carrier to meet every demand for transportation that it may receive. It is equally unrealistic to expect carriers to maintain fleets designed to meet unusual business demands. So to do would result in expensive capital equipment sitting idle much of the time. Such a practice would require a carrier to bear extraordinary capital costs and debt service, leading inevitably to higher rates being imposed on the public.

Several witnesses opined that the Washington Convention Center will generate a substantial growth in demand for charter service. No doubt, some growth will occur and it may well be that an overall expansion of carrier capacity will be stimulated thereby. On this record, however, no witness connected with the Convention Center could either quantify the increased demand or project whether existing carriers' services may be inadequate. It is uncontroverted that Beltway and Gold Line, at least, are soliciting convention business and planning to meet future service requests, and have expressed the willingness to add equipment as demand warranted. Hence, to the extent that increased public need may exist in the future, we find on the evidence of record that no showing has been made that existing carriers will be unable to meet that need.

With respect to special operations, one witness from College Park, Md., and two witnesses from points on Richmond Highway in Fairfax County, Va., expressed a desire for applicant's sightseeing service in double-deck buses. None of these witnesses established any real deficiency in existing services. The witness from College Park expressed dissatisfaction with Gray Line's off-season pickup arrangements, but we find that it would be unreasonable to ask that carrier to provide the same quantum of service during winter months as it renders during the peak sightseeing season. A common carrier's obligation is to render reasonable, continuous and adequate service and we find that Gold Line (doing business as Gray Line) is meeting that obligation to the College Park community.

Although the evidence is somewhat more compelling for the Richmond Highway motels, particularly because applicant is already serving those points and may be able to do so more efficiently if double-deck buses operated directly from those points, we nevertheless find that the public convenience and necessity would be better served by denying this aspect of the application. Applicant's proposal is to use vans, motor coaches and double-deck buses interchangeably with operating efficiency dictating the vehicle(s) chosen on any given day. The public testimony (witnesses Wright and McCray) in this case reemphasizes our findings in Order Nos. 1536 and 1563 29/ generally

29/ Served April 15 and June 1, 1976, respectively.

that service in double-deck buses is a unique attraction and that use of conventional equipment as a replacement for double-deck buses should entitle the consumer to cancel a trip and secure a refund of monies paid to Webb. ^{30/} Approval of the operation proposed by Webb would deprive the public of the unique double-deck service on a guaranteed basis and leave to Webb the option of substituting conventional coaches or vans.

Testimony regarding a need for special operations other than sightseeing is virtually nonexistent in this record. To the extent that some services could be construed as (or converted to) special operations, such as trips to football games or to Mr. Loukas' restaurants, we find no evidence that appropriately licensed existing carriers have even been requested to provide such service.

We further find that to increase competition in the general charter and special operations markets at this time would not be consistent with the public convenience and necessity. The record is clear that competition for existing motor carrier business is brisk. Both protestants have less than optimal operating ratios and would be adversely affected by an additional authorized carrier sharing in a depressed level of business.

At best, then, Webb's evidence of public convenience and necessity is marginal. This Commission has granted applications based on showings of a likely future need for service and, arguably, could make a finding of future need from some of the testimony of record. Given applicant's fitness problems on this record, however, no useful purpose could be served by an affirmative finding of future need.

With respect to Webb's operational fitness, we find that applicant operates safe, well-maintained equipment and has no history of operational complaints from users of its service. Similarly, we find that Webb is financially fit; in fact, the company is in its best financial posture since commencing operations.

We further find that Webb has failed to establish that it is fit, willing and able properly to comply with the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder. The record in this case reveals that Webb has:

^{30/} Webb was directed by Order No. 1563 (p.2) to include such a provision in its tariffs but has failed so to do. An appropriate correction will be ordered.

1. Knowingly and wilfully transported charter groups in one-way movements in violation of Title II, Article XII, Section 4(a) of the Compact and its Certificate No. 33;
2. Knowingly and wilfully operating double-deck buses from points in Fairfax County, Va., to points in the Metropolitan District in violation of Title II, Article XII, Section 4(a) of the Compact and its Certificate No. 33;
3. Knowingly and wilfully conducted charter operations that were not restricted to sightseeing and pleasure tours in violation of Title II, Article XII, Section 4(a) of the Compact and its Certificate No. 33.

All of this comes on top of our findings in Case No. MP-81-11 that Webb had violated Title II, Article XII, Section 5(d) of the Compact by overcharging its passengers in excess of \$43,000. 31/

There can be no doubt, based on this record and the matters officially noticed herein, that Webb has placed economic considerations above regulatory requirements. This Commission finds little exculpation in such self-serving statements as "I didn't have time" or in the ex post facto filing of an application seeking legitimization of past wrongs. Accordingly, we find that Webb has demonstrated a blatant disregard for the requirements of the Compact and this Commission's rules and regulations thereunder. Such behavior cannot be rewarded by a grant of new authority.

The evidence in this case fully warrants the commencement of an investigation to determine whether Webb's Certificate No. 33 should be suspended or revoked. The Commission certainly reserves its right to instigate such a proceeding in the future. Although we choose not to take such action in this Order, Webb is admonished strictly to comply with the regulations governing motor carriers of passengers for hire, and Webb is warned that any future violations of the Compact or this Commission's rules, regulations or requirements will be treated with the gravest severity. The slightest deviation by Webb from the terms and conditions of its operating rights and tariffs are likely to result in both criminal and civil injunctive proceedings as well as the termination of its privilege to operate as a carrier of passengers within the Metropolitan District.

31/ See Order No. 2329, served April 9, 1982.

This application shall be denied without prejudice to the filing of another application after a reasonable period, at which time applicant should be able firmly to establish that it has brought its operations into compliance, thus curing the fitness problem that exists on this record. Then, too, the new Convention Center will have been in operation for more than a year, and better evidence may be available as to the effect of that facility on the local transportation market. A stronger evidentiary showing, generally, than that presented on this record would be useful.

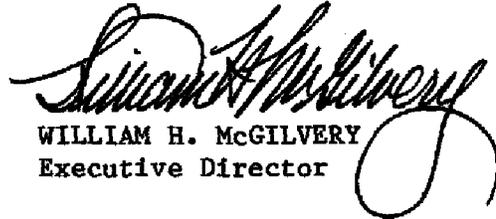
Finally, it is noted that, on January 6, 1983, applicant filed a request for oral argument on the issues in this proceeding. The staff filed a reply to this request on January 7, 1983, together with a conditional motion to require applicant (should oral argument be permitted) to specify the issues which would be argued. On January 10, 1983, Beltway filed its opposition to the request for oral argument. In our opinion, neither the complexity nor the importance of any issue in this case requires oral argument. See Rule No. 24-02 of the Commission's Rules of Practice and Procedure. The request shall be denied, and the conditional motion is, therefore, moot.

THEREFORE, IT IS ORDERED:

1. That the request of applicant, filed January 6, 1983, for oral argument is hereby denied.
2. That Certificate of Public Convenience and Necessity No. 33 issued to Webb Tours, Inc., be amended by changing Restriction 1 therein from "operations in British manufactured double-deck buses" to "operations in British style double-deck buses."
3. That, except to the extent granted herein, the above-captioned application of Webb Tours, Inc., is hereby denied without prejudice to the filing of another application after a reasonable period, at which time applicant should be able firmly to establish that it has brought its operations into compliance and that it is fit, willing and able properly to comply with the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder.
4. That Webb Tours, Inc., is directed within 10 days from the date of service hereof to file an appropriate supplement to its WMATC Tariff No. 2 containing the cancellation and refund provisions required by Order No. 1563.
5. That failure timely to comply with the directive set forth above shall result in the immediate suspension of WMATC Certificate No. 33.

6. That Webb Tours, Inc., is hereby directed to cease and desist from all transportation of passengers for hire between points in the Metropolitan District except to the extent that such transportation is expressly authorized by Webb's WMATC Certificate No. 33.

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


WILLIAM H. MCGILVERY
Executive Director