

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2467

IN THE MATTER OF:

Served September 14, 1983

Application of GRIFFIN M. MURPHY )  
T/A MAXI-BUS TOURS for a )  
Certificate of Public Convenience )  
and Necessity to Conduct Charter )  
Operations and Special Operations )  
— Sightseeing Tours )

Case No. AP-83-20

Application of CONGRESSIONAL TOURS, )  
INC., for a Certificate of Public )  
Convenience and Necessity to )  
Conduct Charter and Special )  
Operations )

Case No. AP-83-30

Application of ALBERT STRANGE T/A )  
ALBERT STRANGE LIMOUSINE-MAXI VAN )  
SERVICE for a Certificate of )  
Public Convenience and Necessity )  
to Conduct Special and Charter )  
Operations )

Case No. AP-83-32

Application of ALBERT STRANGE T/A )  
ALBERT STRANGE LIMOUSINE-MAXI VAN )  
SERVICE for a Certificate of )  
Public Convenience and Necessity )  
to Conduct Charter Operations )

Case No. AP-83-33

Each of these applicants seeks authority to conduct individually-ticketed sightseeing operations, and each generally operates around the Mall area in Washington, D. C. Applicants also seek additional authority, as explained below, and, although there are some variations among the applications, they are so substantially alike that we believe that they should be consolidated for decision on a single record. Accordingly, the evidence regarding each applicant's fitness will first be summarized, and the public testimony will then be recounted. While several protests to these applications were received by the Commission, no protestant appeared in opposition or presented evidence; therefore, no further consideration will be given to the protests.

In Case No. AP-83-20, filed May 4, 1983, Griffin M. Murphy, a sole proprietor, trading as Maxi-Bus Tours, seeks a certificate of public convenience and necessity to perform both special and charter operations providing ". . . sightseeing of the historical and important buildings and sights in Washington Metropolitan area."

Mr. Murphy operates one 14-passenger van and proposes to provide two specific tours. Tour No. 1 consists of stops at the White House, Bureau of Engraving and Printing, Capitol, Smithsonian Institution and Arlington Cemetery and would last about six hours. The charge would be \$15 for adults and \$7.50 for children age 3-11. Presumably children under three would ride free. The second tour, called the "City Tour" consists of ". . . a mobile tour of Tour No. 1 for sightseeing and the taking of pictures with inside visits." This tour would last approximately two and one-half hours and be priced at \$7.50 for adults and \$3.75 for children age 3-11. The proposed tariff filed with the application contains rates and a tour description relevant to special operations. There was no reference to charter service in the tariff or in testimony at the public hearing.

Mr. Murphy stated that he conducts sightseeing tours during the peak season and drives a taxicab during the off-season, that he is a licensed tour guide (since 1962) and that his tour service is personalized to suit his passengers. Applicant described his vehicle maintenance procedures and stated that the vast majority of his service originated in the area of the Mall.

By application filed May 6, 1983, in Case No. AP-83-30, Congressional Tours, Inc., seeks authority to transport passengers and their baggage, in special and charter operations, between points in the Metropolitan District. Only special operations would be restricted to sightseeing.

Applicant's Tour A includes the White House, U. S. Capitol, Ford's Theatre, Bureau of Engraving and Printing and the Smithsonian Institution, Museum of American History. Tour B consists of Tour A plus the Lincoln and Jefferson Memorials and Arlington National Cemetery. Tour C embraces the White House, U. S. Capitol, Ford's Theatre, the African Art Museum, Mary Bethune Memorial and Frederick Douglas Home. Prices and approximate duration are set forth below.

	<u>ADULT FARE</u>	<u>CHILD FARE (age unspecified)</u>	<u>DURATION</u>
TOUR A	\$12.50	\$6.50	4 hours
TOUR B	\$15.00	7.50	6 hours
TOUR C	\$15.00	7.50	6 hours

CHARTER SERVICE is \$30 an hour within the Metropolitan District.

The president and major shareholder of Congressional, a licensed tour guide, testified that the company operates a 1983 21-passenger minibus, that regular maintenance procedures are scheduled and that, in the event of mechanical failure, other carriers would be used to continue tour service. The witness stated that the size of his vehicle enables him to transport larger groups than van operators and, when necessary, carry luggage along with passengers. The witness states that he would operate as a "backup" service for other carriers which had more work than they could handle. However, no carrier testified that such help was needed, and, as recounted below, there was no public testimony in this case regarding charter operations.

By application filed May 9, 1983, in Case No. AP-83-32, Albert Strange, a sole proprietor, seeks a certificate of public convenience and necessity to transport passengers and their baggage, in special operations, "individually and in groups to area racetracks, professional football and basketball games, to the seashore, and other special trips wherein each individual contracts separately with operator; to conduct sightseeing tours in the same manner as above." It appears from applicant's tariff that charter operations are also proposed, and that applicant would serve the Metropolitan District.

The tariff includes rates for a 7-passenger limousine (\$28 an hour) and 15-passenger van (not less than \$8 a person depending on the destination of the trip), and for individually-ticketed sightseeing as follows:

Regular Building Tour	\$15
Substitute Building Tour	15
City	6
Arlington Tours	11
Mt. Vernon	15

Also, city tours would be available at hourly rates. Hence, this application can best be interpreted as seeking general charter and special operations authority, without equipment restrictions, between all points in the Metropolitan District.

In Case No. AP-83-33, filed May 10, 1983, Albert Strange seeks charter authority to transport passengers and their baggage between points in the Metropolitan District as follows: "from no definite terminus, engage in transporting groups of passengers traveling together to area racetracks; transporting performers and other designated persons under single contract to theatres [and] hotels for the Washington Performing Arts Society; transporting handicapped child[ren] to school; transporting groups of passengers traveling together to their designated points of interest on sightseeing tours."

The tariff proposed with this application prescribes a rate of \$28 an hour for either limousine or van service with additional charges "as may be required." Other information submitted with this application is the same as described above for Case No. AP-83-32.

Mr. Strange, a licensed tour guide, testified that his revenue vehicles are inspected semi-annually by the District of Columbia and he described maintenance provisions for his equipment. Mr. Strange operates seven days per week, if so requested, and offers service to sporting events at the Capitol Centre, RFK Stadium and local racetracks.

In Case No. AP-83-20, three witnesses testified as to the need for sightseeing transportation service. The first witness, a vendor for over thirty years, testified that he works in the Mall area in Washington, D. C., and receives inquiries from tourists regarding the availability of sightseeing service, perhaps as many as ten times a week during peak season. The witness stated that he refers tourists to applicant herein as well as other tour guides operating on the Mall. The second witness, a vendor located at 15th and E Streets, N. W., Washington, D. C., testified that he has referred tourists (as many as 15 families a week) seeking guide service to applicant as well as other tour guides stationed in the area of the Mall. The third witness, an attorney employed by the U. S. Department of Commerce, states that he has referred numerous tourists to the tour guides stationed on the Mall, especially applicant herein, and that he has received favorable feedback from those referred to applicant for service.

In Case No. AP-83-30, three witnesses testified on behalf of the applicant. The first witness stated that he has used applicant's service four or five times in the past arranging transportation for two social clubs, and he has future plans for a large family reunion. Generally, charges have been per capita rather than charter rates. The witness lauded the past service and emphasized the flexibility that applicant offers in providing transportation. Past service includes such points of interest as Mount Vernon, the Capitol, the Lincoln Memorial, the Federick Douglas Home and the Mary Bethune Memorial.

The second witness, the president and founder of the United Black Fund and owner of the Washington Informer newspaper, as well as Chairman of the D. C. Development Corporation, testified that there is a great need for tours specifically structured to include black historical landmarks in Washington, D. C. He further stated that he has personally used applicant's tour service and has referred others to applicant.

The last witness, director of operations of Big Brothers, National Capital Area, stated that he knows applicant's president, and

that, while he has not yet used applicant's services, he hopes to start doing so this summer, specifically for trips to camping sites, picnic areas and other attractions in the local area, paying for the service on a per-capita basis.

In Case Nos. AP-83-32 and AP-83-33, heard jointly, five witnesses testified on behalf of applicant. The first witness, Director of the Institute of Gerontology, University of the District of Columbia (UDC), stated that among the many facets of the Institute, transportation of the elderly is a problem frequently encountered. Specifically, transportation to various recreational and educational activities is required encompassing as many as 1,000 - 2,000 persons for larger events, as well as smaller groups. An added problem, according to the witness, is the special need for extra care and time taken to transport the elderly, which applicant has indicated he is willing to provide at reasonable cost.

The second witness, bell captain at the Harrington Hotel, Washington, D. C., stated that he has arranged with applicant to provide sightseeing service for families and small groups, and that he has never received complaints from any passengers. He has been able to arrange, on short notice at virtually any hour of the day, for Mr. Strange to provide transfer service to local airports, when taxicab service was not immediately available. With respect to sightseeing work, applicant is called perhaps two or three times a week during peak season; other carriers, in the past, have failed to show up as requested, according to the witness. The third witness, Dean of the College of Education and Human Ecology, UDC, stated that the college includes the Institute of Gerontology as well as 14 other units that have transportation needs from time to time. She testified that the several units have access to golf courses, bowling centers, health, physical education and leisure study facilities with a need to transport 10 to 15 people to classes at varying sites within and without the Washington Metropolitan District. Additionally, she testified that the college has an early childhood development center and is seeking to get more parents involved in accompanying children on varying trips. Adult education units conducting seminars also have a need for the kind of services the applicant could provide.

The witness provided some examples of need for services as follows: an international program for which transportation must be provided including pickups at local airports and transfers to school locations (for review of educational projects) or social and cultural events. Where the institution is given a number of free tickets for use by senior citizens, such gifts do not include transportation and the college finds it extremely difficult to arrange transportation service at an affordable cost. The Dean of the College further testified that the size of the early childhood center groups generally

ranges from 15 to 60 students, whereas undergraduate student groups would involve 10 to 15 persons requiring transportation to various points in the Metropolitan District. The witness also testified that the college's units would use the applicant's services perhaps 5 to 10 times each month for groups of 10 to 15 persons and that she was familiar with special operations and charter transportation services and would be using both types of services. Most of such need would be in the District of Columbia, but would also include points in Maryland and Virginia.

The Director of Parish Ministry for Old St. Mary's Roman Catholic Church in Washington, D. C., testified that she is familiar with the applicant as a member of the community in which the parish services its members and senior citizens. She testified that senior members of the parish, and of the Judiciary House adjacent to the parish, require transportation services at various times, that the parish could not afford to provide such transportation from its limited budget nor could it rely solely on members to volunteer services. She testified that the service need includes transportation for groups of 10 to 15 people for outings to cultural and social events. She testified that she had discussed several possibilities for utilizing Mr. Strange's services and that, although they did not talk about actual rates for service, she stated the applicant was very much aware of her interest in his services and that the applicant knew their needs. The Director further testified as to her personal knowledge of what others in the community have said about him and his sensitivity to the needs of senior citizens for transportation services on shopping, sightseeing, recreational and cultural trips and tours.

The last witness, the Director of Religious Education for the Church of the Nativity, and also National Secretary of the National Black Catholic Clergy Caucus testified that he does the yearly transportation planning for the national organization and much of the local planning which comes under this region. He testified that his previous employment with the Archdiocese of Washington as Associate Director of Religious Education for the entire Archdiocese afforded him much exposure to the transportation needs of that religious organization. He testified that there is need for transporting high school students to Howard University, American University, and Catholic University for special events, and for transporting children to children's museums, the Museum of African Art, the Washington Cathedral, educational and cultural programs at various embassies, theme parks such as Wild World, and to Rock Creek Park. The witness stated that, with regard to elementary schools in the District of Columbia, the ordinary group size would be 30 students plus teachers. Special groups might average 10 students plus teachers. This past year there were 24 such school trips. In addition, the national clergy group would require local sightseeing service in groups of perhaps 10

people at a time. While the witness has not personally used applicant's service, he stated that his family and neighbors had used the service and found it satisfactory.

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 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.

A finding of fitness is a prerequisite under the Compact to a grant of authority, and each applicant has the burden of establishing its fitness properly to perform the proposed service in keeping with the terms and conditions of the applicable statutory and Commission requirements.

Insofar as compliance fitness is concerned, the Commission does not believe that the prior operations rendered by any of the applicants, in light of the circumstances involved herein, warrant the conclusion that applicants will not, in the future, comply with pertinent regulatory requirements. There is some question as to the accuracy of advice which may have been given these applicants at the sources of the other licensing they require. It appears that the applicants relied upon inaccurate information provided by apparently authoritative sources. While there is also some question as to how far each carrier should reasonably have trusted such advice to the exclusion of independent inquiry and investigation, the Commission, in its discretion, will confer the benefit of the doubt on the carriers. The carriers ceased operations and filed appropriate applications expeditiously after being informed in late April 1983 of the necessity so to do, thus supporting the conclusion that applicants do not intend to disregard the provisions of the Compact and our rules, regulations and orders thereunder. In fact, applicants in Case Nos. AP-83-20 and 30 applied for temporary authority, further indicating their willingness to comply with applicable regulatory requirements.

The evidence shows that applicants are financially able to provide the proposed transportation. Each of the applicants has sufficiently demonstrated the ability to provide at least a portion of the proposed transportation in a reasonably efficient, expeditious and

safe manner, as discussed below. From the data submitted, it appears that their operations are financially viable, and that their vehicles are suitable for the transportation proposed.

The Commission must also consider whether the subject transportation is required by the public convenience and necessity, as required by Title II, Article XII, Section 4(b) of the Compact, supra.

With respect to special operations sightseeing service, the evidence elicited at the public hearings held in these proceedings, both individually and considered collectively, shows that the public has a need for the services proposed herein. While there are certificated carriers providing structured sightseeing tours, none appeared in opposition to these applications. There appears to be a need for a more informal tour service in the Mall area. In addition, as pointed out by a number of witnesses, out-of-town persons parking downtown, and some other tourists in the downtown Washington, D. C., area are interested in a tour service arranged on short notice in the immediate area rather than at hotel and motel sites. Furthermore, the long duration of applicants' operations, coupled with the lack of opposition to these cases, indicates that the grants of authority made herein will not have a material adverse effect on existing carriers.

The witnesses have been laudatory about the services provided by applicants, and it is clear that applicants are experienced in providing sightseeing tours. The ability to tailor service to the specific demands of a small group and to offer a more intimate tour appeals to a number of the witnesses, who also characterized the larger tour operations as more structured and impersonal. Many of the witnesses mentioned the positive feedback they received from people they referred to the various applicants.

The evidence presented in Case No. AP-83-20 limits its scope to special operations sightseeing service presented in the Mall area and the grant of authority will be consistent with that showing. In Case No. AP-83-30 the evidence of record indicates a need for special operations sightseeing service originating in the District of Columbia and extending to points in the Metropolitan District as reflected by testimony concerning a need for tour service encompassing black historical landmarks, as well as service for the local Big Brothers organization. In both cases, there is a total absence of support for the requests to conduct charter operations.

In Case Nos. AP-83-32 and AP-83-33, applicant introduced extensive evidence of need for transportation in the Metropolitan District. A portion of the evidence referred to local special operations sightseeing work originating at various points in the District of Columbia as well as at the Mall. The applicant himself

discussed special operations service provided for local sporting events, but did not present any supporting evidence in regard to this service. Similarly, evidence regarding service from or to local airports was insufficient to warrant issuance of authority therefor. Significant testimony was presented regarding the need to transport elderly passengers and preschool, secondary and post-secondary students from points in Washington, D. C., to points throughout the Metropolitan District. The stated need for this type of service is both per capita and charter. Support for charter service was limited to facilities of the University of the District of Columbia and the Archdiocese of Washington, and the evidence indicates only a need for service to those accounts. Our grant of authority below will be delimited accordingly.

While no specific request for authority was enunciated with respect to a specific vehicle size, the evidence in Case Nos. AP-83-20, 32 and 33 referred to vehicles with a designed seating capacity of 15 passengers or less, while the evidence in Case No. AP-83-30 indicated that applicant's equipment is a 21-passenger minibus. As a result, the grants of authority herein will be restricted to the types of equipment referenced in each application. In addition, a restriction will be imposed against the solicitation of passengers in the territory specified below in accordance with D. C. Police Regulations (January 1983), Article II, Section 8(e)(7).

**THEREFORE, IT IS ORDERED:**

1. That the applicant in Case No. AP-83-20 is hereby granted authority to transport passengers to the following extent:

Special operations, restricted to lectured round-trip sightseeing tours, between Mount Vernon and Arlington National Cemetery, Va., and points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N. W., and Rock Creek Parkway, N. W., thence along Constitution Avenue, N. W., to 17th Street, N. W., thence along 17th Street, N. W., to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to 10th Street, N. W., thence along 10th Street, N. W., to F Street, N. W., thence along F Street, N. W., to 9th Street, N. W., thence along 9th Street, N. W., to Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., to Constitution Avenue, N. W., thence along Constitution Avenue to its junction with 2nd Street, N. E.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver); and

FURTHER RESTRICTED against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.

2. That the applicant in Case No. AP-83-30 is hereby granted authority to transport passengers to the following extent:

Special operations, restricted to lectured round-trip sightseeing tours, from points in the District of Columbia to points in the Metropolitan District, and return.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity for 16 to 21 passengers (including the driver); and

FURTHER RESTRICTED against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.

3. That the applicant in Case Nos. AP-83-32 and AP-83-33 is hereby granted authority to transport passengers as follows:

(A) Special operations from points in the District of Columbia to points in the Metropolitan District, and return.

(B) Charter operations from those facilities of the University of the District of Columbia and the Archdiocese of Washington located in the Metropolitan District to points in the Metropolitan District, and return.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver); and

FURTHER RESTRICTED in (A) against the solicitation of passengers on any public space south of a line beginning at the junction of the east side of East Executive Avenue and the center line of Pennsylvania Avenue, N. W., thence along Pennsylvania Avenue, N. W., and a line extending along the northern boundary of the White House and the Executive Office Building to the west side of 17th Street, N. W.; and

FURTHER RESTRICTED IN (B) to transportation performed for the account of either the University of the District of Columbia or a church or school operated under the aegis of the Archdiocese of Washington.

4. That the applications enumerated in paragraphs one through three above, except to the extent granted herein, are hereby denied.

5. That each of the applicants herein is hereby directed to file an affidavit of compliance with Commission Regulation No. 68 governing identification of motor vehicles, for which purpose the following carrier numbers are assigned:

Case No. AP-83-20	-----	WMATC No. 93
Case No. AP-83-30	-----	WMATC No. 94
Case Nos. AP-83-32 and 33	-----	WMATC NO. 95

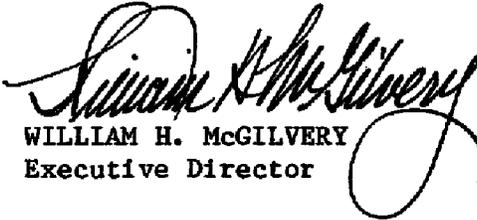
6. That each of the applicants herein is hereby directed to file an affidavit that all advertising materials contain the statement required by Commission Regulation No. 71 (formerly Regulation No. 69).

7. That each of the applicants herein is hereby directed to file two copies of its WMATC Tariff No. 1 as required by Commission Regulation No. 55, in conformance with the grants of authority herein, such tariff to be effective upon acceptance by the Commission.

8. That upon timely compliance by each applicant with the directives set forth above including the filing and approval by the Commission of a tariff as required in paragraph above, an appropriate Certificate of Public Convenience and Necessity will be issued.

9. That, in each application, unless compliance with the directives of the preceding paragraphs 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 to any non-complying applicant 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 WORTHY, SCHIFTER AND SHANNON:



WILLIAM H. MCGILVERY  
Executive Director