

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2468

IN THE MATTER OF:

Served September 14, 1983

Application of WASHINGTON MOTOR)
COACH COMPANY, INC., for Special)
Authorization to Perform Charter)
Operations Pursuant to Contract)
with Washington Workshops)
Foundation)

Case No. CP-83-06

By application filed June 16, 1983, Washington Motor Coach Company, Inc., seeks authorization to conduct charter operations pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 under a contract with Washington Workshops Foundation (WWF) transporting youth educational tour groups, accompanied by teachers, between points within the Metropolitan District.

The contract, to run for a period of six months ending December 18, 1983, is expected to provide income of \$17,723 for a representative five-month period, and require the dedicated use of three motor coaches. The basic rate structure includes a charge of \$110 per day for each vehicle with extra transfers charged at \$55 per vehicle for each transfer (\$40 for each transfer performed in a 15-passenger van). The applicant's balance sheet as of May 1, 1983, (shortly after incorporation) shows current assets of \$8,000, other assets (bus equipment) of \$35,000 and total liabilities of \$35,000.

Washington Motor Coach was incorporated in Virginia in March, 1983. It's President, Charles R. Nixon, Jr., has been engaged in the transportation business since 1971, working for such carriers as D.C. Transit System, East Coast Parlor Car Tours, Capital City Coach, and Arrowhead Bus and Limousine Equipment, Inc. In addition Mr. Nixon has, from time to time, owned buses which he chartered to other carriers. Washington Motor Coach owns and operates 13 suburban-type buses.

On April 20 and 21, 1983, applicant's buses were observed by the Park Police at the Jefferson Memorial, and applicant was cited with four notices of violation for operating without authority.

On April 26, 1983, Mr. Nixon met with the Commission's General Counsel and was told that he needed authority to legally conduct the charter operations including the charter-pursuant-to-contract operations for the Washington Workshops Foundation. Subsequently the contract charter operations application was filed and, on July 26, 1983, an oral hearing was held. 1/

At the oral hearing Mr. Nixon testified that his operations for Washington Workshops Foundation were being conducted on the assumption that they were exempt from Commission regulation. He had never sought an opinion from the Commission or any attorney concerning the correctness of this assumption, but was basing the assumption upon the Interstate Commerce Commission advice that such operations were exempt from its regulation.

Mr. Nixon also produced records for the Commission's review showing that he was leasing the applicant's buses, with drivers, to other carriers conducting operations within the jurisdiction of the Commission. There were no written leases covering the operations, which the witness described as overload situations. That is to say, when the authorized carriers had trips scheduled but not enough available equipment to cover the movement, they would call the applicant and it would provide the needed equipment. The applicant would then bill the authorized carrier for the services rendered. Mr. Nixon testified that he was not familiar with the Commission's leasing regulations, but assumed that, as he was dealing with authorized carriers, the operations were in compliance with all applicable regulations.

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. . . ." Moreover, Commission Regulation No. 70 provides that applications of this type are to be granted if the applicant establishes its fitness.

1/ The parties to the case, applicant and the staff, stipulated to waive so much of Regulation No. 70 as might otherwise have precluded an oral hearing and an initial determination by the Commissioners.

We find that applicant is generally fit, financially and otherwise, properly to perform the operations authorized herein. Although its past operations have not been conducted in total compliance with this Commission's regulations, it appears that the applicant is making diligent efforts to conform its operations to the applicable regulatory requirements and, we believe, has evinced its willingness to conduct its future operations in compliance with the lawful orders of this Commission. To be sure that there are no further erroneous assumptions, however, we will include a cease-and-desist provision in this Order. Applicant is cautioned that future violations, including any resulting from applicant's failure to obtain competent legal advice, may well result in severe administrative and judicial sanctions.

Inasmuch as it appears that no transportation is to be conducted pursuant to the existing contract, as the Washington Workshops Foundation's "season" runs from January through June, we will condition the actual issuance of authority granted herein upon the filing of an appropriate contract 2/ between applicant and Washington Workshops Foundation for 1984.

THEREFORE, IT IS ORDERED:

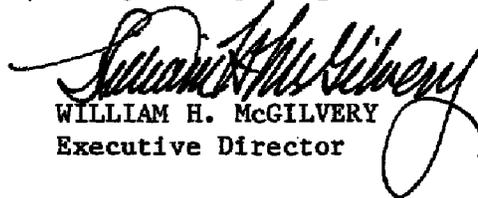
1. That the application of Washington Motor Coach Company, Inc., is hereby granted to the extent set forth below.
2. That, upon compliance with the conditions set forth below, an appropriate authorization to operate pursuant to Special Certificate of Public Convenience and Necessity No. 1 shall be issued to permit CHARTER OPERATIONS, transporting students and teachers, between points in the Metropolitan District pursuant to a continuing contract with Washington Workshops Foundation.
3. That Washington Motor Coach, Inc., is hereby assigned WMATC No. 97 for the purposes of identifying its vehicles.
4. That applicant file with the Commission within 30 days from the date of service of this Order two copies each of (a) its WMATC Tariff No. 1 including an executed contract between the carrier and Washington Workshops Foundation for its 1984 year, (b) an affidavit that applicant has complied with WMATC Regulation No. 70-10, and (c) two copies of a certificate of insurance conforming with WMATC Regulation No. 62.

2/ The contract should be included in applicant's WMATC Tariff No. 1 two copies of which must be filed in conformance with Commission Regulation No. 55.

5. That, unless applicant complies with the directives of the preceding paragraph within the time established therefor or such additional time as may be granted, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

6. That Washington Motor Coach, Inc., is hereby directed to cease and desist, directly or indirectly, from transportation of passengers for hire between any points in the Metropolitan District unless and until appropriate authority therefor is issued by this Commission.

BY THE DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON: SCHIFTER, Vice Chairman, not participating.


WILLIAM H. MCGILVERY
Executive Director