

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2548

IN THE MATTER OF:

Served April 13, 1984

Application of T & S BUS SERVICE,)
INC., for a Certificate of Public)
Convenience and Necessity to)
Perform Charter Operations)

Case No. AP-83-57

Investigation to Determine the)
Nature of Uncertificated Opera-)
tions, if Any, by JOHN B. TAYLOR)
and T & S BUS SERVICE, INC.,)
Between Points in the Metropolitan)
District)

Case No. MP-83-05

By Order No. 2492, served November 3, 1983, the Commission instituted an investigation on its own motion to determine whether John B. Taylor or T & S Bus Service, Inc. ("T & S" or "applicant"), were violating the Compact. On November 23, 1983, T & S Bus Service, Inc., filed an application for a certificate of public convenience and necessity to transport passengers and their baggage over irregular routes, in charter operations, between points within the Metropolitan District, restricted to regular coach service. ^{1/} Because unauthorized operations, if actually performed, would have a bearing on applicant's fitness to receive the desired certificate, the investigation and the application were consolidated for hearing pursuant to Order No. 2507, served December 2, 1983.

Gold Line, Inc. ("Gold Line"), and Eyre's Bus Service, Inc. ("Eyre's"), jointly protested the application, as did Airport Limo, Inc. ("Airport Limo"). All protestants appeared at the public hearing and presented evidence both in opposition to the application and regarding the matter under investigation.

At the initial public hearing held January 11, 1984, rulings were made on several pre-hearing motions of applicant. First, applicant's "Motion for a Shortened Proceeding" was denied. By that motion applicant sought to waive its right to an oral hearing or, in the alternative, requested that the Commission require all direct testimony to be prefiled. Because no waiver of hearing was made by the

^{1/} For purposes of this application, regular coach service is defined to mean vehicles with a manufacturer's designed seating capacity of 39 passengers or more.

protestants, that motion was denied. Second, the Administrative Law Judge delivered the ruling of the Commission on applicant's "Motion Requesting that a Member of the Commission Preside at Hearing or, in the Alternative, that an Administrative Law Judge Issue an Initial Decision." This motion apparently was made due to a concern that testimony on the issue of fitness might be offered by a member of the Commission's staff. 2/ The Commission denied this motion because its present procedures whereby each Commissioner receives and reviews the entire record in each proceeding are adequate to assure due process, and the instant proceeding is not so unique as to warrant a departure from that procedure. Third, the "Petitions for Issuance of Subpoena and Requests for Production of Documents" directed by applicant to Airport Limo, Inc., Eyre's Bus Service, Inc., and Gold Line, Inc., were denied for lack of sufficient specificity as to the documents requested and for want of a showing of general relevancy. Fourth, applicant's request by letter dated January 5, 1984, that the Commission issue a subpoena compelling the appearance of Ralph H. Earnhardt, director of marketing and sales for Gold Line/Gray Line in the Washington area, was denied on the basis that the subject on which applicant desired to question him, deregulation of Interstate Commerce Commission (ICC) carriers, was irrelevant to disposition of the issues in this case. Fifth, applicant's "Request for Interrogatories Directed to Commission Staff" was denied because the Commission's staff voluntarily submitted an affidavit which constituted sufficient compliance. Objections to all rulings were duly noted, and are hereby overruled.

John B. Taylor, president and general manager of T & S Bus Service, Inc., filed direct testimony on behalf of the applicant. According to that testimony, T & S Bus Service, Inc., was founded in 1977 as T & S Bus Rental Company, and it obtained Interstate Commerce Commission authority after being advised of the need for such authority by the ICC in 1981. T & S Bus Service, Inc., has also applied for authority to perform charter service in Maryland. No complaints have been filed with the ICC or the Maryland Public Service Commission and only one notice of violation has been issued by the ICC. That notice concerned failure to specify hours of service on a trip ticket.

According to Mr. Taylor's direct testimony, he spoke with this Commission's general counsel in September 1983 after receiving a letter from the Commission. 3/ He then directed his staff to take no new business involving transportation solely within the Metropolitan

2/ No such testimony was elicited during the course of the hearings.

3/ That letter stated in part "[I]t appears from information brought to our attention that you are offering services which constitute passenger transportation for hire subject to this Commission's jurisdiction. Such services must not be conducted without appropriate authority."

District. While considering whether his business in the Metropolitan District was sufficient to warrant applying for a certificate of public convenience and necessity, Mr. Taylor received Commission Order No. 2492 instituting an investigation to determine whether the Compact was being violated. Production of the documents requested in that order consisted of eight trip tickets for operations within the Metropolitan District. According to applicant, two of these tickets represented back-up service provided for a WMATC-certificated government contractor, two represented service provided for his banker for which the driver collected only his fee and certain costs for providing the service, and four tickets represented service which had been contracted for in advance with long-standing customers. Upon receiving the notice of investigation, applicant ". . . immediately ordered [its] staff to discontinue any questionable operations or any operations which might questionably be involved in moves within the Washington Metropolitan Authority." Mr. Taylor testified that there have been no unauthorized operations since that time and he stands willing to comply with the mandates of the Compact and the rules and regulations of the Commission. The witness estimated that inability to operate within the Metropolitan District between early November 1983 and late January 1984 has caused his company to lose \$5,000 in revenues.

Applicant owns one 39-passenger and eight 46-passenger coaches 4/ which would be used to provide the proposed service. These buses are in good mechanical condition. T & S has an established preventative maintenance program which is periodically reviewed by auditors from the United Bus Owners Association. The buses were recently inspected by the Maryland Public Service Commission. In connection with the United Bus Owners Association, T & S conducts driver and safety training courses. Applicant carries \$5,000,000 liability insurance on "all its vehicles."

Applicant projects an increase in revenues of 20 percent over 1982 if the requested authority is granted. He bases this figure on discussions with customers, the increased business which he believes the Washington Convention Center is likely to generate, telephone requests received and business judgment. He estimated that during the summer of 1983 he received approximately two calls a week requesting that T & S provide Gold Line with drivers and buses.

On cross-examination, the witness was unable to offer more specifics regarding the basis for his estimate of need for additional bus service within the Metropolitan District. He conceded that T & S had stipulated that it conducted operations without authority within

4/ Applicant lists one 19-passenger mini-bus on the equipment list submitted with his application. However, he does not intend to use that vehicle to perform charter work within the Metropolitan District.

the Metropolitan District. However, he was unable to estimate how much of his revenues at that time had been generated as a result of operations within the Metropolitan District. Mr. Taylor did not know how many groups he turned down in 1983 due to lack of authority. Although he testified that he received two calls per week from Gold Line during the period April to October, he was unable to recall the dates of the calls. When asked, he was able to specify no individual and only one organization that would start using his service if he receives authority.

Seven public witnesses appeared to testify in support of the application. Emily F. Durso is director of promotions in the Office of Business and Economic Development of the Government of the District of Columbia. She testified that tourism is the second largest industry in Washington, providing over 32,000 jobs for Washington residents. According to Ms. Durso, various groups have been working together to increase the number of visitors to the District, and the Mayor has made the encouragement of tourism a very high priority in his administration. The tourist market has a number of needs, one of which is transportation, and the Mayor's office wants Washington entrepreneurs to be able to take advantage of the opportunity created by such needs. Ms. Durso testified that the Convention Center is creating new business demands, one of which is transportation. She expressed a general opinion that competition would ultimately provide visitors with the best possible options of prices and service.

On cross-examination, the witness admitted that she did not know whether there were currently enough buses to meet present and future needs. She was not aware of any study of carriers authorized to conduct charter operations. She testified that she would support the application of anyone with a service to offer the District, it being her belief that the market place should determine whether there was a need for that service.

William W. Demarest, Jr., general manager of the Washington Convention Center, testified that bookings at the Convention Center were increasing each year and following the expected pattern of a gradual shift from local events to national and international conventions and trade shows. Out-of-town Convention Center visitors need transportation between their lodgings and the Convention Center. In fact, many major associations require as part of their function large bus movements from hotels to the convention facility and on to other sites they might be visiting during their stay.

George L. Hill, owner of the Metropolitan Driving School, an organization which teaches people how to drive and also brokers tours, has hired T & S for interstate travel. If Mr. Taylor's application is granted, he would use T & S for airport transfers. He has used other local carriers for similar needs, including East Coast Parlor Car Tours, Tailgate, Silver Star, Thomas Motor Tours and Douglas Motor

Tours. 5/ He has not used Gold Line due to its rates and ". . . the need to assign all business to them." He prefers T & S because it offers service at a fair price, has clean, well-kept equipment and is dependable. On cross-examination, he testified that he had brokered no charter moves in the Metropolitan District in 1983 or 1982 and only one or two in 1981. Although he had a need for an airport transfer in the winter of 1983, he was not aware of Airport Limo's service.

Martin F. Fahey is a member of the Air Force Sergeant's Association, Temple Hills, Md., and The American Legion, Oxon Hill Post 248. As a result of his activity in these organizations, he has arranged transportation for groups by T & S. He has found applicant's service to be "outstanding" and if authority is granted would use that service about 20 times a year in the Metropolitan District. On cross-examination, he testified that he had contacted Gold Line in July 1983 on two occasions but that company had no equipment available. At that time he also called T & S and three other bus operators without success. He testified that a general summer problem was the unavailability of buses unless reserved well in advance -- a problem particularly acute on weekends. On cross-examination, Mr. Fahey testified that he had used T & S about three or four times in 1983. In addition T & S has provided buses free of charge for transportation to and from baseball games played by the Oxon Hill Post team.

Valerie Plater described herself as a self-employed companion to the elderly. She has used T & S since September 1978 mainly for interstate trips. On cross-examination she indicated that only about two of those trips had been within the Metropolitan District. She has never chartered any other buses. She testified that she prefers T & S because she has used them and been satisfied. Ms. Plater's interest is in a service that would provide tours in the Washington area. She would use this service approximately twice a month. She also sees a need for transportation in her work with the elderly for church services, recreation, and entertainment. Ms. Plater works in a volunteer capacity with various community services including Friendship House, the Office on Aging and the United Planning Organization. According to the witness, these agencies would use T & S if it is granted a certificate. On cross-examination she further testified that she had called Gold Line once but that they had no bus available for the requested date. The witness used Airport Limo once for transportation to Dulles in June 1982. Other than that she has used T & S exclusively. According to Ms. Plater, T & S turned down a request for service in the fall of 1983 due to lack of authority. However, the performance of illegal operations would not affect her support of applicant.

5/ None of these carriers held WMATC authority at the time of this hearing.

Patrick Sheriden is employed by Spirit of '76 Travel, a District of Columbia-based tour broker, and Mr. Sheriden states that he has arranged bus transportation within the Metropolitan District. He has used T & S in the past and found its service and operations to be excellent. He supports the application of T & S because there is a continuing need for additional providers of regular coach service within the Metropolitan District due to the inadequate service of existing carriers during peak season. According to Mr. Sheriden, Gold Line and Eyre's are sold out on weekends from mid-March to mid-June. Webb Tours, Inc., a carrier affiliated with, and used most frequently by, Spirit of '76 Travel, is also usually booked during April, May and June. Mr. Sheriden testified that T & S had turned down a request for service due to lack of certification. On cross-examination, however, he conceded that the request was refused because T & S was booked. According to the witness, a 30-day lead time is necessary to assure a booking during peak season and large groups usually book well in advance of 30 days. His agency has used Eyre's and Gold Line to provide service, and the service provided was adequate. Eyre's is fairly accessible in terms of making such arrangements. However, according to the witness, Gold Line is very difficult to reach by telephone.

William Tucker owns and operates Tucker Tours, a charter bus company. Mr. Tucker does no work within the Metropolitan District but refers customers who wish such transportation to applicant. If T & S obtains a certificate, he will recommend applicant's use within the Metropolitan District. He testified that he receives requests for local service several times a month.

Gold Line presented two witnesses in opposition to the application. Doris Greathouse, sales office manager for Gold Line, was presented for the purpose of rebutting applicant's witness Patrick Sheriden. According to Ms. Greathouse, Spirit of '76 Travel ordered service from Gold Line only once. That order was placed by someone other than Mr. Sheridan and was canceled prior to the service date. The witness testified that she has given Mr. Sheriden 35 to 50 quotes but he has never actually used Gold Line. She further testified that neither she nor her assistant, Debra Day, to whom she might have referred Mr. Sheriden, had ever told him Gold Line was booked. Although she conceded on cross-examination that there have been times when Gold Line has been without available buses, such times have never coincided with a request from Mr. Sheriden. When Gold Line does not have buses available, the company either refers the customer to another carrier or obtains service for the customer through another company, for example, Eyre's, Franklin Bus, Metro, Dillon, Monumental, or Hudson General. Ms. Greathouse testified that she has never called Eyre's and found them unable to provide transportation. With regard to Gold Line's availability by telephone, the witness testified that her business card has only two numbers on it. If those numbers are busy, the call is

transferred to a switchboard which takes a message and she returns the call. In all, 18 separate telephone lines enter the charter reservations department.

Ronald K. Chesnick is manager of operations for Gold Line and is responsible for that company's day-to-day operations. Gold Line holds operating authority from both the ICC and WMATC. Within the Metropolitan District, Gold Line operates certain regular-route service, conducts individually-ticketed sightseeing tours, and provides general charter service, including contract charter work, group sightseeing and transfers. To perform this work, Gold Line maintains a fleet of 105 buses valued at approximately \$10,000,000. This is the largest for-hire fleet in the area with the exception of Metro's. All buses are equipped with two-way radios and public address systems. The company's fleet is continually being updated with newer equipment. During peak season 35 of Gold Line's buses are available for charter.

Gold Line introduced a list of all charter movements from January through September 1983 within the Metropolitan District. This list indicates that 3,446 bus trips generated revenues of \$1,650,392.25, representing approximately 20 percent of the company's total revenues. According to the witness, Gold Line's revenues have decreased from 1982 to 1983. In both years the company recognized a net loss after taxes. The witness was unable to allocate specific portions of its operating income and expense figures to operations within the Metropolitan District.

According to Mr. Chesnick, the Metropolitan District is an extremely competitive market. Gold Line's principal competitors are Eyre's, White House Sightseeing Corporation (American Sightseeing), East Coast Parlor Car Tours, Greyhound, Webb Tours (Spirit of '76), Beltway Limo and Airport Limo. Both Beltway Limo and Airport Limo have recently increased the size of their fleets. The witness testified that ICC deregulation has increased competition to Gold Line's disadvantage since that company's high overhead resulting from its large fleet and employment of unionized personnel necessitates its charging higher rates than new, smaller competitors. ^{6/} Gold Line has decreased the size of its fleet and increased the size of its sales force in an effort to improve its financial position. The witness testified that he considers T & S to have good equipment, safe drivers and good insurance, but Gold Line is opposing the application of T & S because the creation of new competition adversely affects Gold Line. According to Mr. Chesnick, the customer does not benefit in the long run by deregulation. Although rates may be reduced in the short run, the cost of doing business remains unchanged.

^{6/} Gold Line's rates are \$38/hour for non-sightseeing and \$45/hour for lectured sightseeing. Both types of service require a four-hour minimum.

During the six months Mr. Chesnick has been with Gold Line, he is unaware of a single instance when that company had a request for charter work and was unable to obtain equipment to provide service. He testified that leasing equipment is a common practice because the cost to any one carrier of unilaterally maintaining a fleet sufficient to meet demand in the peak season is prohibitive. Thus, Gold Line leases from other carriers and other carriers lease from Gold Line as needed during that period.

Robert D. Collegeman, general manager of Eyre's Bus Service, Inc., a WMATC-certificated carrier, and vice president of Eyre Tour and Travel, Ltd., and Eyre Bus Service, Inc., of Virginia, testified for Eyre's Bus Service, Inc. Mr. Collegeman testified that Eyre's is a relatively small, family-owned and operated bus company.

Eyre's holds ICC authority. In addition, within the Metropolitan District, Eyre's conducts charter operations including charter work pursuant to its position as successor in interest to certain ICC rights purchased from Safeway Trails. Eyre's has requested the reopening of the Safeway Trails grandfather application and the issuance to it of a broader WMATC certificate of public convenience and necessity should the Commission find that such authority is required. In the interim, Eyre's continuance of operations is lawful.

Mr. Collegeman sponsored a statement of Eyre's charter revenues for the months of May, June and July 1983. This statement indicated that revenues derived from work within the Metropolitan District, exclusive of contract charter work, constituted 31 percent of Eyre's total revenues for that period. Eyre's conducts its operations using 65 full-size coaches and one van, cumulatively valued at approximately \$4,000,000. The company has 21 buses available for charter during the peak season which Mr. Collegeman described as April through October, inclusive. In addition all 66 vehicles are available on weekdays between 9 a.m. and 2:30 p.m. and on weekends.

According to Mr. Collegeman, it is not economically feasible for any one carrier to own enough equipment to meet all charter needs due to the seasonality of that business. However, the company has arrangements with Gold Line, Greyhound and Trailways to obtain equipment when additional buses are needed for service within the Metropolitan District. He also testified that Eyre's had been hurt economically by increased competition resulting from ICC deregulation, as well as illegal operations within the Metropolitan District. In this latter regard, he pointed to the complaint which Eyre's had lodged with the Commission against T & S. The witness testified that grants of additional authority did not generate new traffic. Nor did lower fares generate more traffic, in Mr. Collegeman's opinion, but merely moved business from one carrier to another. For fiscal year 1984, he expects Eyre's to do no more than break even.

Samuel D. Kaplan, vice president and treasurer of Airport Limo, Inc., testified for that company. Airport Limo holds a certificate of public convenience and necessity from WMATC for special and charter operations. Within the Metropolitan District it operates both scheduled service between area hotels and the Washington airports and charter operations. Mr. Kaplan testified that the bus charter market has excess capacity. Due to a change in airport operations, Airport Limo will be doubling its own capacity in a few months. In his opinion, granting the application of T & S would only exacerbate the problem of oversupply.

According to Mr. Kaplan, Airport Limo anticipates a loss of about \$225,000 before taxes for fiscal year 1983. An operating statement sponsored by Mr. Kaplan indicated that charter revenues have increased almost 100 percent for the nine-month period ended July 31, 1983, over a similar period for the preceding year. About 90 percent of these revenues came from charter work performed within the Metropolitan District.

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.

Where allegations of unauthorized operations have been made, we look first to the evidence regarding those allegations in order to determine whether applicant has satisfied his burden of proof regarding compliance fitness. Here, T & S has stipulated to unauthorized operations. However, applicant since has filed for the proper authority. In addition, applicant produced testimony that it has ceased all unauthorized operations and stands willing to comply with the mandates of the Compact and the rules and regulations of the Commission. The issue thus becomes whether applicant can be expected to comply with the regulations if authority is granted. Based on the record in this case, we determine this issue affirmatively. No evidence has been introduced of unauthorized operations following Mr. Taylor's filing of an application. Moreover, a review of applicant's ICC record indicates general compliance with the Interstate Commerce Act subsequent to certification. For these reasons, we find applicant fit to hold a certificate of public convenience and necessity

and discontinue the investigation into its unauthorized operations. T & S is admonished, however, that future violations will be viewed more harshly.

Turning to the evidence in support of the application, we find that a sufficient need for certain additional service has been demonstrated. We note the testimony of Ms. Durso that, with the advent of the Washington Convention Center, the city acquired the capacity to host conventions with attendance in excess of 20,000 persons, whereas previously the District could accommodate groups no larger than 12,000. We note further the testimony of applicant's witness Demarest, based on over 20 years of experience, regarding the nature of the convention business. According to Mr. Demarest there is a lag between initial availability and use of a convention facility, the result being that facilities are initially used by local groups with a gradual transition to dominance by national and international gatherings. The Convention Center is now entering its third year of operations and a list of bookings sponsored by Mr. Demarest indicates that it will be the site of numerous national and international conventions which, due to their size, formerly would have been held in some other city. This list demonstrates that the Center is following the industry pattern. Thus, it seems reasonable to expect an increased need for charter transportation in the Washington area. In fact, the evidence of protestants Eyre's and Airport Limo indicates that charter business for these companies has increased in the past year. The nine coaches operated by T & S would obviously be inadequate for transporting 20,000 persons, but the demands of large convention groups on all carriers, particularly protestants which operate comparatively large fleets, is likely to result in reduced service availability to smaller groups such as the Air Force Sergeant's Association and The American Legion.

No one carrier owns sufficient equipment to meet the demand for charter bus operations during the peak season. As a result, even large carriers must lease equipment on occasion in order to honor requests for charter service. The record indicates that most carriers are sold out 30 days in advance during peak season. There is also some evidence that, even allowing 30 days lead time, persons may not be able to obtain the type of transportation most preferred during peak season. We do not mean to imply that we require a single carrier to maintain throughout the year equipment sufficient to meet demand which exists for only four to six months. Moreover, we are aware that the problem of seasonal demand has been exacerbated in recent years by generally poor economic conditions and a reduced overall demand for local bus service. However, the evidence in this case clearly indicates that the larger bus carriers regulated by this Commission are now meeting peak season demands only with significant effort.

The testimony of Mr. Demarest specifically references a trend in Convention Center bookings toward more use by out-of-town groups

which will require local bus service. In addition, both general economic indicators and specific transportation demand indicators (such as passenger usage of Dulles International Airport) indicate a strong probability that the demand for charter bus service is likely to increase in the very near future.

Protestants assert that the Metropolitan District is a competitive market and that applicant's entry into that market would negatively affect protestants' already unstable financial situations. However, protestants base this claim on operating statements and other financial data which fail to separate operations in the Metropolitan District from operations conducted under ICC authority. Because the policy of deregulation implemented by the ICC has undoubtedly hurt those carriers operating in interstate operations outside the Metropolitan District such statements cannot be relied on as totally accurate indications of a company's financial health for WMATC purposes. Also, the 1982 and 1983 operating statements are unadjusted and thus do not reflect the stronger demand for bus service which we see emerging in the 1984 "peak season." In any event, we find that the convenience to the public of having the below-designated service available from T & S will outweigh the harm to protestants which may be engendered by a grant of this application.

The Commission finds that the public convenience and necessity requires additional charter bus service between points in the District of Columbia and Prince George's County, Md., on the one hand, and, on the other, points in the Metropolitan District. No witnesses testified regarding a need for service in the balance of the Metropolitan District. For the reasons stated above, the application of T & S Bus Service, Inc., shall be granted to this extent.

THEREFORE, IT IS ORDERED:

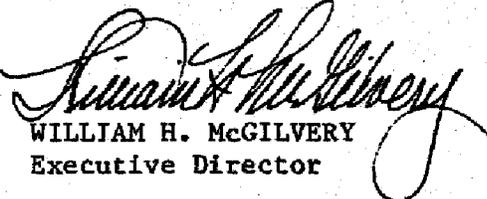
1. That the investigation to determine the nature of uncertificated operations, if any, by John B. Taylor and T & S Bus Service, Inc., between points in the Metropolitan District is hereby discontinued.
2. That T & S Bus Service, Inc., is hereby authorized to transport passengers and their baggage, over irregular routes in charter operations, between points in the District of Columbia and Prince George's County, Md., on the one hand, and, on the other, points within the Metropolitan District, restricted to vehicles with a manufacturer's designed seating capacity of 39 passengers or more, subject to compliance with the directives set forth below.
3. That applicant is hereby directed to file two copies each of its WMATC Tariff No. 1, an affidavit certifying compliance with Commission Regulation No. 68 governing identification of vehicles, for

which purpose WMATC No. 109 is hereby assigned, and a certificate of insurance complying with Commission Regulation No. 62.

4. That unless applicant complies with the requirements of the preceding paragraph within 30 days, or such additional time as the Commission may direct, the grant of authority herein shall be void and the application shall stand denied effective upon the expiration of said compliance time.

5. That, except to the extent granted herein, the application of T & S Bus Service, Inc., is hereby denied.

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


WILLIAM H. MCGILVERY
Executive Director