

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2603

IN THE MATTER OF:

Served September 12, 1984

Application of FRANK LEE for a )  
Certificate of Public Convenience )  
and Necessity to Engage in Special )  
Operations -- Sightseeing )

Case No. AP-84-29

By application filed June 8, 1984, as amended July 2, 1984, Frank Lee, a sole proprietor, seeks a certificate of public convenience and necessity to transport passengers with their baggage in special operations, over irregular routes, restricted to lectured round-trip sightseeing tours, between Arlington National Cemetery, Alexandria and Mt. Vernon, Va., 1/ 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., and further restricted to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver).

By Order No. 2569, served June 26, 1984, and incorporated by reference herein, Mr. Lee's application was scheduled for public hearing on July 31, 1984. No protests or requests to be heard regarding the application were filed. At the hearing, Mr. Lee testified and offered two public witnesses in support of his application.

Mr. Lee testified that he has been conducting tours using a taxicab since 1949. He has recently purchased a van which, by this application, he proposes to use for the same purpose. The van offers

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1/ To the extent that this application could be interpreted to include transportation between points located solely within the Commonwealth of Virginia, the application is dismissed pursuant to the Compact, Title II, Article XII, Section (1)(b).

the advantage of increased room and hence greater convenience than a sedan. According to Mr. Lee, the van has been registered as a public vehicle in the District of Columbia but has not been used commercially.

Mr. Lee proposes to offer three tours: (1) a building tour which lasts approximately four hours and includes stops at four buildings or memorials, (2) a city tour which lasts approximately four hours and includes stops at the Lincoln Memorial, Alexandria, Va., and either Arlington National Cemetery or Mount Vernon, Va., and (3) a combination tour which lasts approximately seven hours and combines the building and city tours. Mr. Lee's application lists the following buildings and memorials from which customers may select: Ford's Theater, the White House, Bureau of Engraving and Printing, the Capitol, Smithsonian Institution, Lincoln Memorial, Jefferson Memorial, Arlington National Cemetery, and Viet Nam Memorial. <sup>2/</sup> Mr. Lee proposes an adult rate of \$12.50 for the Building Tour, \$15 for the City Tour, and \$27.50 for the Combination Tour. The rate for children ages five to eleven would be \$6.25 for the Building Tour, \$7.50 for the City Tour, and \$13.75 for the Combination Tour. Children under five would be free at all times.

Mr. Lee will conduct the proposed service in a 1984 van having a manufacturer's designed seating capacity of 12 passengers including the driver. All maintenance and repairs will be done by the dealer. The vehicle will be driven by Mr. Lee who testified that he has been involved in no chargeable accidents or moving violations in the last three years.

With his application, Mr. Lee submitted a balance sheet reflecting his assets and liabilities as of April 1984. In reference to that balance sheet, he testified that the \$10,000 shown as cash is retained in a bank and dedicated solely to his business. His van was financed by a four-year note listed at \$21,000, an amount representing the \$16,000 cost of the van plus interest and financing fees. Mr. Lee also submitted an operating statement for calendar year 1983 which reflects income and expenses from both tours and taxi operations. No expense for insurance was included in the operating statement. On cross-examination, Mr. Lee offered his current policy with The Traveler's Company in the amount of \$25,000. He testified that, upon being granted authority from the Commission to operate, he would acquire the requisite coverage for vehicles seating 12 passengers or more.

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<sup>2/</sup> Mr. Lee's tariff lists the following stops in the Building Tour: White House, Capitol, Air and Space Museum, Archives, Smithsonian Institution, Museum of History and Technology, Washington Monument, and Jefferson Memorial. Applicant will be directed to file a tariff consistent with the grant of authority herein.

Ernestine Middleton of Columbia, S.C., testified in support of the application. 3/ Ms. Middleton took Mr. Lee's full tour about three years ago. She found the tour educational and worthwhile. She would use Mr. Lee's service again and has recommended it to friends and co-workers. Ms. Middleton testified that she would prefer a tour offered in a van to one offered in a cab because the van is more comfortable and offers a better view. Ms. Middleton has used no other sightseeing service in the Washington, D.C. area.

Susie M. Cox of Upper Marlboro, Md., also testified in support of the application. Ms. Cox has taken Mr. Lee's tour. She testified that she found the tour to be adventurous and especially enjoyed the Archives and historic buildings. She would use applicant's service if he is granted a certificate. She has referred relatives to Mr. Lee in the past and expects to recommend his service in the future, perhaps as early as the weekend following her appearance as a witness in this case. She further testified that she herself intends to use Mr. Lee's service in late September or early October to introduce her grandchildren to the city's sights.

In determining whether to grant a certificate of public convenience and necessity, we look to the standards enunciated in the Compact which are as follows:

. . . 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; 4/

Based on a review of the record in this case, we find that applicant has met the burden of proof imposed by the statute.

Applicant has the equipment and financial stability necessary to conduct the proposed service. His driving record is clear. The record in this case indicates no history of illegal operations within the Metropolitan District. Mr. Lee further indicated his willingness to abide by such regulations as the Commission prescribes by his agreement on cross-examination to comply with certain rules about which

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3/ On cross-examination, Ms. Middleton testified that she came to Washington solely for the purpose of offering her testimony in this proceeding.

4/ Compact, Title II, Article XII, Section 4(b).

he apparently required clarification. Based on this evidence, we find applicant fit to perform the proposed service and to conform to the provisions of the Compact and rules and regulations issued by the Commission pursuant to the Compact.

In addition, we find that the testimony of Mr. Lee's public witnesses constitutes a prima facie showing that the public convenience and necessity require the proposed service. Both testified that they had used Mr. Lee's taxi tour service in the past, had recommended it to friends and relatives who had also used it, and intended to continue to recommend it in the future. One witness planned to recommend it to specific people a few days after the hearing and to use it herself later this year. Both witnesses testified that, although they had taken Mr. Lee's tour by cab, they would have preferred the comfort and view offered by a van. In Order No. 2447, served August 9, 1983, we found there was a need for informal tour service in the Mall area of the type proposed by Mr. Lee. Although that order certificated nine carriers who had applied to provide such service, none protested the instant application. Thus, inasmuch as Mr. Lee has been operating similar services by cab for over thirty years, we can only infer from the lack of protests that his use of a larger vehicle will not materially affect currently certificated carriers.

**THEREFORE, IT IS ORDERED:**

1. That Frank Lee is hereby granted authority to transport passengers with their baggage in special operations, over irregular routes, as follows:

Between Arlington National Cemetery, Alexandria, and Mount Vernon, 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 lectured round-trip sightseeing tours; and

FURTHER RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed

seating capacity of 15 passengers or less (including the driver).

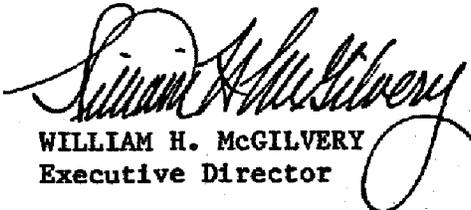
2. That, in all other respects, the application of Frank Lee is hereby denied.

3. That Frank Lee is hereby directed to amend his tariff to be consistent with his application as discussed in footnote 2 to the body of this Order.

4. That Frank Lee is hereby directed to file the following: (a) a certificate of insurance in compliance with Commission Regulation No. 62, (b) two copies of WMATC Tariff No. 1 amended as directed in the preceding paragraph, and (c) two copies of an affidavit certifying compliance with Commission Regulation No. 68 governing identification of vehicles for which purpose WMATC Certificate No. 113 is hereby assigned.

5. 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 in its entirety effective upon the expiration of the said compliance time.

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

  
WILLIAM H. MCGILVERY  
Executive Director