

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2817

IN THE MATTER OF:

Served January 22, 1986

Application of CRW TRANSPORTATION)
SYSTEM ENTERPRISES for a)
Certificate of Public Convenience)
and Necessity to Conduct Special)
Operations)

Case No. AP-85-26

BACKGROUND AND PROCEDURAL ISSUES

By application filed August 13, 1985, as amended August 26, 1985, CRW Transportation System Enterprises ("CRW" or "applicant"), a general partnership, seeks a certificate of public convenience and necessity to transport passengers in special operations between points in Washington, D.C., as follows: (1) between specified motels and hotels and selected tourist attractions ("shuttle service"); 1/ (2) between the Air and Space Museum and the Museum of American History, on the one hand, and, on the other, the Pavilion (12th and Pennsylvania Avenue, N.W.), Chinatown (7th and H Streets, N.W.), and the Waterfront area along Maine Avenue, S.W.; and (3) between the hotels and motels served in the aforementioned shuttle service, on the one hand, and, on the other, points in the District of Columbia. 2/

Pursuant to Order No. 2759, served September 4, 1985, and incorporated herein by reference, notice was published that an application for a certificate to transport passengers in special operations, between points in Washington, D.C., had been filed. Webb Tours, Inc. ("Webb Tours" or "protestant"), timely protested the application. At the public hearing held on October 10, 1985, protestant appeared and presented a company witness while applicant presented a partnership witness and three public witnesses.

Before summarizing the testimony adduced at the hearing, a procedural issue must be resolved. Applicant, through its managing general partner, William E. Wright, stated at the hearing that it was seeking a broad grant of authority which would allow applicant to expand its service within Washington, D.C., in the future. Specifically, applicant sought not to be limited to the hotels, motels,

1/ This service will be discussed more fully below.

2/ This service would be available only to groups of ten or more.

and points of interest listed in its application. 3/ In response to questions by the Administrative Law Judge, applicant stated a desire to have the flexibility to add or subtract hotels, motels, and points of interest as needed to meet market demands. 4/ Applicant contended that the points listed in the application were representative of the structure of the service.

Protestant argued at the close of the hearing that it objected to the manner in which applicant was allowed to "amend" its application at the hearing without the required public notice. Protestant contended that the published notice did not indicate that the applicant was seeking broad authority and therefore other interested parties were not aware of the gravity of the proceedings.

The short answer to protestant's contentions is that the record clearly indicates that the public notice published on September 13, 1985, in a newspaper of general circulation in the Metropolitan District specifically stated that the applicant was seeking a certificate "to transport passengers in special operations between points in Washington, D.C." (emphasis added). This Commission can conceive of no broader or fairer notice to prospectively affected parties.

Moreover, it is doubtful whether this particular protestant has standing to raise this objection. As noted above, the published notice was broad enough to put all affected carriers on notice. If there were any doubts as to the scope of the requested certificate, carriers were legally entitled to file a protest and appear at the public hearing. Other than Webb Tours, no carrier chose to file a protest. Protestant cannot now claim to be the shieldbearer for all affected carriers. Accordingly, protestant's objection is overruled.

SUMMARY OF EVIDENCE

Mr. Wright testified that the goal of CRW is to provide transportation between hotels and major tourist attractions within

3/ The hotels and motels to be served initially are: Washington Sheraton Hotel; Shoreham Hotel; Holiday Inn (1900 Connecticut Avenue, N.W.); Howard Johnson Wellington Hotel; Holiday Inn (2101 Wisconsin Avenue, N.W.); Georgetown Marbury House; Guest Quarters; The Downtown Motel; Best Western Envoy Hotel; Best Western Regency Hotel; Washington Econolodge; The Budget Motor Inn; and Master Host Inn. Points of interest to be served initially are: the White House; the Capitol Building; the National Art Gallery; the Museums of Natural and American History; and the Air and Space Museum.

4/ Any additions or subtractions would be points within the District of Columbia.

the District of Columbia. The primary focus of CRW's service would be to provide a service to individuals who are unfamiliar with the District of Columbia. Mr. Wright emphasized that CRW is not interested in providing lectured sightseeing tours -- only point-to-point transportation.

In describing the proposed service, Mr. Wright described three types of service. The first, a hotel-motel shuttle, would provide a round-trip service between hotels with which CRW has letters of agreement and tourist attractions located primarily in the area of the Federal Mall. CRW would provide a scheduled service from hotels to any of several points of interest where a passenger could disembark. The passenger would be able to reboard, at any time scheduled, and either continue to another attraction or return to the passenger's hotel. The second, the lunchtime shuttle, would provide a service from the Mall area to the Pavilion, Chinatown, and the Southwest waterfront area and back to the Mall. The third, the reserved evening and weekend service, would provide a per capita transfer service. By prior arrangement, CRW would transport at least 10 guests of the hotels served by CRW from those hotels to a point in the District of Columbia as requested, with return service to the hotels.

Although he testified that neither he nor any of his partners had any previous experience in providing the type of service proposed, Mr. Wright stated that general partner Frederick J. Conway was familiar with the transportation for hire industry as evidenced by Mr. Conway's work as a hacker and his membership on the D.C. Hacker's Board. Mr. Wright further testified that the partnership has joined the United Bus Owners Association ("UBOA") and as a result has obtained much information useful in the formulation of a business plan for the proposed service.

Mr. Wright also testified regarding CRW's preparations to offer the proposed service and applicant's financial status. In order to demonstrate that CRW had investigated the feasibility of its proposed service, applicant submitted several documents. These documents (Exhibit 4) demonstrate that applicant made a survey of various hotels and that the hotels have evidenced some acquiescence to and possible use of the proposal. 5/ Mr. Wright introduced a detailed price proposal covering the lease or the purchase of 21-passenger mini-buses from a Maryland bus and equipment company. CRW intends to obtain 25-passenger vehicles which would increase the overall price slightly.

5/ Protestant objected to the admission of Exhibit 4 on the ground that the signatories of the documents were not available for cross examination. The Administrative Law Judge admitted the documents to a limited extent. We think that the Administrative Law Judge's ruling was well-founded and have weighed the exhibit according to its limited function.

Applicant has contacted a Ford dealership in Northeast Washington concerning the maintenance of its vehicles and procurement of back-up vehicles. Applicant chose this dealership due to the reputation of its mechanics and because the vehicles CRW plans to use are manufactured by Ford Motor Company. Additionally, CRW has indicated plans to institute an in-house driver training program. Mr. Wright also explained CRW's efforts to obtain the requisite insurance for the vehicles that would be used in the proposed service.

In discussing CRW's financial status Mr. Wright submitted several documents (Exhibit 3). Those documents indicated that CRW's total assets and liabilities as of October 1, 1985, were \$9,967.97. CRW projects its first year total revenue at \$235,500 with total expenses estimated at \$198,524 before taxes. The projected income after taxes is \$22,383.

Projected revenues were derived from a calculation based on serving ten hotels and transporting 3,900 passengers a month for the hotel shuttle, 1,170 passengers a month for the lunchtime shuttle, and 754 passengers a year for the reserved weekend and night shuttle. Thus, 76 percent of applicant's passenger volume and 88.1 percent of its total revenue would be derived from the hotel shuttle, 22.8 percent of its passenger volume and 10.1 percent of its total revenue would come from the lunchtime service and 1.2 percent of its passenger volume and 1.8 percent of its revenue from the reserved weekend service. Mr. Wright stated that all figures were based on an assumption that the buses would operate at 2/3rds capacity with the passenger composition being 2/3rds adult passengers and the remainder being children. Mr. Wright also stated that in determining its operating ratio, CRW consulted the transportation industry profile in the Robert Morris Associates Annual Statement Studies.

Mr. Glenn S. Levine, sales manager of the Howard Johnson Wellington Hotel, testified on behalf of the applicant as a public witness. Mr. Levine has been employed by the hotel since May 1984 and has held the position of sales manager since May 1985. According to Mr. Levine at least 60 Wellington guests a week would use CRW's service if this application is granted. Mr. Levine testified that his hotel is not located near a Metrorail station and tour groups are not comfortable using the ground service provided by Metrobus which is accessible from his hotel. The result is that the hotel has a difficult time marketing itself to out-of-town tour operators. Mr. Levine cited an example of a lost booking due to his hotel's location. He opined that if a service were available such as that proposed by applicant, tour operators would look more favorably on his hotel.

According to Mr. Levine the Wellington's convention clients would also prefer the availability of a scheduled shuttle service. Conventioneers like his hotel because it is less expensive than larger,

better located hotels; however, convention clients perceive transportation from the Wellington to the large hotels as a problem which a service like that proposed by CRW would greatly alleviate. The primary problem with available ground transportation, i.e., Metrobus and taxicabs, is the perceived difficulty of obtaining it and the inconvenience in using it.

Mr. Tejev Safai, general manager of the Econolodge, testified on behalf of the applicant as a public witness. Mr. Safai testified that he has been employed by hosteleries along the New York Avenue corridor for seven years and is quite familiar with the transportation needs of the area. Mr. Safai stated that the proposed service would benefit guests at his motel because it is not served by Metrorail and parking in downtown Washington is limited and expensive.

Mr. Safai also was representing the interests of the Best Western Regency and the Best Western Envoy. After a meeting with the managers of these two motels, Mr. Safai was given the responsibility of conveying the needs of those motels at the hearing. Mr. Safai testified that the transportation needs of the other motels are similar to those of the Econolodge. The witness further testified that he receives requests for the type of service proposed by CRW on the average of ten to 25 times a day. He opined that the other motels would receive approximately the same number of requests. The witness further testified that transportation services from the New York Avenue market to downtown are inadequate and very inefficient.

Mr. Jerome L. Holbrook testified in support of the application. Mr. Holbrook has owned and managed The Budget Motor Inn for 24 years. The Inn is not served by Metrorail. Inn guests who wish to travel to downtown Washington must either take a Metrobus to Union Station and transfer or use a taxi. According to the witness, taxicab service is difficult to obtain for the short trip downtown. Mr. Holbrook stated that the service proposed by CRW would provide his customers with a means of transportation to tourist centers without the expense of a lectured sightseeing tour. If this application were granted, at least 60 guests a week from the Inn would use CRW's service between September 1 and November 15. More than 240 passengers a week would use the service between April and August 30.

Mr. Ralph Webb, owner and general manager of the Spirit of '76 Tours Company, testified on behalf of protestant. Mr. Webb presented an operating statement (Exhibit 6) which indicated that Webb Tours, the owner of Spirit of '76 Tours Company, had total income of \$756,427 for the first eight months of 1985 and total expenses for the same period of \$747,937 resulting in a net profit of \$8,490. As evidenced by revenues of \$31,625 from per capita sightseeing tours and \$1,134 from a

per capita transportation service, 6/ protestant derives approximately four percent of its business from special operations. While acknowledging that CRW's proposed service is different from the lectured sightseeing service Webb Tours offers, Mr. Webb maintained that if CRW's revenue projections are accurate, CRW could decimate Webb Tours' business. If that were to happen, Mr. Webb opined that the sightseeing service would likely be "shut down." However, it is Mr. Webb's opinion that the service proposed by CRW would not be successful.

Upon cross-examination, Mr. Webb testified that his company does not regularly serve any of the motels along the New York Avenue corridor and that the overlap between service points of Webb Tours and the proposed CRW service was de minimus as to other hotels. Mr. Webb also testified that the Webb Tours service that yielded revenues of \$1,134 most closely resembled the type of service CRW is proposing. Furthermore, upon questioning by the Administrative Law Judge, Mr. Webb conceded that he was concerned that CRW may begin a sightseeing tour service in the future, and that this concern constituted a part of the basis for Webb Tours' protest.

DISCUSSION, FINDINGS, CONCLUSIONS

The disposition of CRW's application is governed by the Compact, Title II, Article XII, Section 4(b) which provides in pertinent part as follows:

[T]he 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.

6/ Mr. Webb testified that the \$1,134 figure represented the revenue from a service started in April 1985. This service allowed a passenger to be transported from the origination point of the lectured sightseeing tour to a drop point along the tour. According to Mr. Webb the charge for this service is \$2 each way, although Webb's most recent tariff on file with the Commission indicates a rate of \$3 one way and \$5 round trip. Mr. Webb also stated that this particular service is not advertised aggressively and is not very lucrative.

Thus, applicant's burden is twofold; it must prove (1) its fitness, and (2) public convenience and necessity requiring the proposed service.

We turn first to the issue of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operations (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service 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 lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant produced three public witnesses. Based on the testimony, we find that CRW proved that its proposed service meets an expressed public need for transportation between hotels and motels and points of interest in Washington and thereby would serve a useful public purpose.

The record before us amply supports our conclusion. All of the witnesses testified to the fact that their smaller hotels and motels are not readily accessible to Metrorail transportation. The impact of this fact lies in the observed behavior of guests of these hotels and motels. The majority of the guests are uncomfortable with using currently available forms of ground transportation other than the Metrorail. It appears that these guests view the other forms of transportation as either inadequate, unreliable, or inaccessible. Although the problem seems particularly acute in the New York Avenue corridor, the testimony indicates that guests of the uptown hotels have similar experiences where Metrorail service is lacking. The need for Applicant's service is further demonstrated by the number of guests projected to use it. The Howard Johnson Wellington alone places the number of guests likely to use such a service at a minimum of 60 guests per week.

The record indicates that hotel and motel guests need two categories of service. The first category includes reliable service from smaller hotels to the larger convention hotels and to the Convention Center. While it is conceivable that regular taxicab service could fill this need, the issue is a question of the desires, perceptions, and behavioral patterns of the riders targeted for the proposed service. The record indicates that convention-goers prefer a service with a known, convenient embarking point and time schedule which would take them from the door of their hotels to the door of

their destinations. Taxicabs, while being able to offer door-to-door service are not scheduled and must be sought.

The second need is bare transportation to the tourist attractions. While the record reflects that at least one certificated carrier, Blue Lines, Inc., does provide a service to some hotels and motels, this service is wholly dissimilar from the service proposed by CRW. Blue Lines offers the public a lectured sightseeing tour, not mere point-to-point transportation. While sightseeing tours are a valuable service to the public, the tours do not meet the needs of every individual. In fact, the record, as reflected by the testimony of CRW's public witnesses, supports a conclusion that a large number of tourists would prefer viewing the sights of Washington on their own. Protestant's witness even acknowledged that there were benefits to service of the type applicant proposes.

People who want to sightsee on their own can use a taxicab or limousine service, use Metrorail or Metrobus service, or use private automobiles. The perceived problems with Metrobus service have been previously discussed. The use of private automobiles entails three major disadvantages -- the lack of parking near the tourist attractions, the expense of such parking as does exist, and traffic congestion. All the public witnesses expressed displeasure with the taxicab service. Again, this displeasure was founded upon comments received by the witnesses from the hotel guests for whom the proposed service was designed. The common thread of the criticism was the lack of dependability of the taxicab service; one could not know when a taxicab would arrive. This problem appears more pronounced along the New York Avenue corridor.

Webb Tours has 10 double-deck buses, three coaches, and one van. Protestant claims that most of this equipment remains idle for the majority of the year. Protestant contends that it or other certificated carriers can provide the service applicant proposes. Protestant further asserts that granting applicant a certificate will divert revenues and result in a loss of business to protestant. However, the testimony also indicates that the specific type of service proposed by CRW is not aggressively pursued by protestant. Moreover, the record demonstrates that protestant's services do not meet the transportation needs indicated by applicant's witnesses.

This brings us to the final aspect of the Pan-American analysis: whether the proposed service can be provided without endangering or impairing the operations of existing carriers contrary to the public interest. Protestant testified that its special operations services are unprofitable. Webb Tours contends that if CRW makes or exceeds its income projections, protestant's revenues would decrease by half, making it unable to continue any sightseeing business. However, there are several flaws in protestant's claim of injury. First, during 1985 only 4 percent of Webb Tours' income was

derived from special operations of any type. An even smaller portion of protestant's income (.15 percent) was derived from a service which only arguably resembles the service proposed by CRW. Furthermore, protestant's witness testified that the revenue derived from these similar operations would no more than double in the next year. Thus, even if applicant's service were to supplant protestant's comparable service, the loss to protestant would be minimal. Therefore, unless protestant completely changes the focus of its operations, CRW and protestant will be operating two different services. While we are cognizant of protestant's concerns, the record indicates no basis for expecting a major shift away from sightseeing tours, and we do not view the proposed service as a threat to existing carriers.

Applicant has demonstrated on the record no desire to conduct lectured sightseeing tours. The sole protestant admitted that it was concerned that CRW might enter the sightseeing market if granted a certificate of public convenience and necessity. The intentions of applicant and the concerns of protestant can easily be accommodated by restricting a grant of authority in a manner consistent with applicant's expressed intentions.

We turn now to the matter of applicant's fitness. The concept of fitness as used in Section 4(b) involves three elements: (1) financial capacity to undertake the proposed venture; (2) operational capability to provide transportation service safely and efficiently; and (3) willingness to abide voluntarily by the law and the Commission's regulations. The record firmly demonstrates applicant's willingness to abide by the law and regulations. Applicant has responded quickly and adequately to all Commission orders. Moreover, there is no reason to believe that applicant will not continue to do so in the future. As for operational fitness, CRW has made considerable preparations to begin operations should this application be granted. Applicant has taken major steps to obtain, either by purchasing or by leasing, two new mini-buses. Applicant has also taken steps to procure the requisite vehicle insurance and has formulated a plan for maintenance of its vehicles. The feasibility of CRW's proposed service has been investigated with area hotels and industry representatives.

On the other hand, applicant's financial fitness is an area of concern. While applicant's projected revenues and expenses are based on estimations which are not unreasonable, applicant has not assembled the capital that would be necessary to undertake this venture, and there is a question as to whether CRW would be able to secure the funding to provide service reliably. This doubt is compounded by the reluctance, as expressed by Mr. Wright, of CRW to open lines of credit or use other means of commercial borrowing.

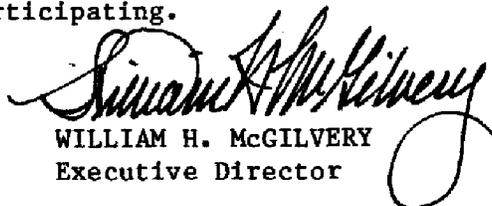
The record indicates (Exhibit 2) that if CRW purchases its vehicles, it will incur an initial cost of \$5,000 plus the cost of the tags, title, and registration fees (estimated by applicant as \$800) for

the two vehicles. The taxes on these vehicles would be approximately \$4,346 which reflects the 6 percent D.C. sales tax on the purchase price indicated by Exhibit 2. Mr. Wright testified that he anticipates the monthly payment on the vehicles to be approximately \$2,000 regardless of whether the decision is to lease or to buy. Based on the projected cost of insurance (Exhibit 3), at a minimum, CRW will have to pay \$6,600 (20 percent of \$33,000) to insure its vehicles. If applicant were to lease its vehicles, CRW would have to pay a security deposit of no less than \$2,120, \$6,600 to insure the vehicles, \$4,346 in sales tax on the leasing arrangement, and \$800 for tags, title, and registration of the vehicles. Thus, if applicant purchases the vehicles, its initial outlay will be approximately \$18,866; if CRW leases, its initial outlay will be approximately \$13,866. Neither of these figures include monthly costs for gas and oil, driver's wages, ordinary maintenance of equipment, nor administrative overhead costs as projected by applicant's operating statement. These outlays will cost CRW approximately \$11,085 a month. By combining the monthly costs from applicant's operating statement with the estimated initial vehicle related costs discussed above, the total outlay required by applicant for its first month of proposed service will at least be in the \$25,000 to \$30,000 range. This record indicates applicant's assets are less than \$10,000.

We note that applicant's general partners have pledged to contribute to the working capital base of CRW, according to Mr. Wright's testimony, before the beginning of the new calendar year. Applicant also indicates that it is in the process of obtaining capital-contributing limited partners. These arrangements should have been completed in time for applicant to be able to make the required showing of financial fitness. As matters now stand applicant has rested on a record which clearly shows financial inability to undertake the proposed service.

THEREFORE, IT IS ORDERED that the application of CRW Transportation System Enterprises in Case No. AP-85-26 is hereby denied.

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


WILLIAM H. MCGILVERY
Executive Director