

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2837

IN THE MATTER OF:

Served March 17, 1986

Application of V.I.P. TOURS for a)
Certificate of Public Convenience)
and Necessity to Conduct Special)
Operations--Prince George's County)

Case No. AP-85-35

By application filed December 5 and amended December 19, 1985, V.I.P. Tours ("V.I.P." or "applicant"), a general partnership, seeks authority to transport passengers together with mail, express, and baggage in the same vehicle with passengers, over irregular routes, in special operations between hotels and motels located in that portion of Prince George's County, Md., south of a line beginning at the Washington, D.C./Prince George's County, Md. border, thence along Maryland Highway 450 to Maryland Route 3, thence northerly along Maryland Route 3 to the Prince George's/Anne Arundel Counties, Md. border, and north of a line beginning at the Washington, D.C./Prince George's County, Md. border, thence along Maryland Highway 5 to U.S. Route 301, thence southerly along U.S. Route 301 to the Prince George's/Charles Counties, Md. border, on the one hand, and, on the other, Mt. 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. ("Mall Area"). By the terms of V.I.P.'s application, the authority sought would be restricted to lectured, round-trip sightseeing tours originating and ending at the above-described portion of Prince George's County, Md., and further restricted to the transportation of passengers in vehicles with a manufacturer's designed seating capacity not exceeding 15 passengers (including the driver).

Pursuant to Order No. 2812, served December 20, 1985, and incorporated herein by reference, a public hearing on the matter was held January 28, 1986, at which applicant presented an operating witness and a single public witness. No party appeared in opposition to the application.

SUMMARY OF EVIDENCE

Jimmie Lee Davenport, general partner of V.I.P. Tours, testified on behalf of applicant. V.I.P.'s three partners currently conduct sightseeing tours in the Mall Area and to Arlington National Cemetery and Mt. Vernon, Va., pursuant to WMATC Certificate No. 85. These tours are conducted in three 15-passenger vans ranging in vintage from 1978 to 1985. All vehicles are in good condition, regularly maintained, and inspected twice a year by the District of Columbia. Although no vehicle is kept in reserve as a backup vehicle, backup service is provided among the partners. Contact among the partners is maintained by CB radio. Hotels can contact V.I.P during the day by beeper and at home after 5 p.m. V.I.P. has a current certificate of insurance on file with the Commission and will abide by the Commission's rules and regulations.

In August 1985, V.I.P. began providing service to Days Inn-Capital Centre pursuant to temporary authority from this Commission. V.I.P.'s busy season extends from April 1 to October 1. After receiving temporary authority, V.I.P. made daily stops at Days Inn until October 1. After that date, Days Inn was called daily, and pickups were made when requested. During peak season, while operating under temporary authority, V.I.P. made pickups at 8:30 a.m., returning most people at approximately 1:30 p.m. Persons taking the longer "all-day" tour were brought back to the hotel at approximately 4:30 p.m. V.I.P. has been called back to the hotel for pickups as late as 11 a.m.

While serving the Days Inn-Capital Centre, V.I.P. transported approximately nine persons a day. In the off season, ridership averaged two persons. Revenues from these services, which are evenly divided between all-day tours and half-day tours, approximated \$5,000-\$6,000. Mr. Davenport considers the operation as it was conducted under temporary authority to have been profitable, adding to the net income of V.I.P.'s operations.

By this application, V.I.P. seeks authority to continue offering Days Inn service identical to that provided under temporary authority and to offer similar service to all hotels in that section of Prince George's County described in its application. Additional hotels would be served on a call and demand basis. According to Mr. Davenport, between 10 and 15 hotels are within the area described in its application and half of these are within four miles of Days Inn. When asked to name these hotels, Mr. Davenport could name only four hotels, one of which was not yet built.

The tour service to be provided would be identical to that V.I.P. provides pursuant to WMATC Certificate No. 85. Brochures would be placed in the lobby of each motel and personnel would call in the evening for next-day service, seven days a week. The route is

convenient because the partners live within the territory, driving into the city from there each day, and there is excess vehicle capacity. If necessary, the partnership could finance the purchase of additional equipment.

Applicant's proposed tariff includes a four-hour "Building Tour" for \$15.50 (\$9.25 for children) and a six and one-half hour "Combination Tour" for \$21.75 (\$12.40 for children). There is no extra charge on either tour for children under five, and a discounted rate of \$13 for the Building Tour and \$18 for the Combination Tour is offered to groups of 10 to 14 persons. The proposed rate for military personnel is \$14.25 per person for the Building Tour and \$19.75 per person for the Combination Tour. These rates reflect a \$3 surcharge for service originating in Prince George's County rather than in that section of downtown Washington where V.I.P.'s certificate authorizes it to operate. The charge has been calculated to cover the cost of gas for that portion of the trip.

Mt. Vernon is included in V.I.P.'s Combination Tour, and it anticipates some demand for night tours. Applicant is willing to amend its tariff to provide for such service. V.I.P.'s discount structure, although slightly different from that stated in its WMATC Tariff No. 1 for similar groups being picked up on the Mall, is required to provide for commissions to hotel ticket agents and still remain competitive. Respecting the military discount rate, the evidence establishes that, although the proposed tariff does not so specify, this discount would be available only to groups of 10 or more military personnel.

Applicant's balance sheet as of June 30, 1985, shows total assets of \$25,040, consisting of \$2,000 current assets and \$23,040 fixed assets. It further reflects current liabilities of \$4,000, long term liabilities of \$16,000 and earned surplus of \$5,040. An operating statement for the period January 1 through June 30, 1985, shows revenues of \$32,000 and expenses of \$21,500, resulting in net operating income of \$10,500. If this application were granted, V.I.P. projects revenues of \$30,000 and operating expenses of \$14,250 from the newly-authorized service for the first 12 months of operations, resulting in net operating income of \$15,750.

Constance B. Crayton, general manager of Days Inn-Capital Centre, testified on behalf of that hotel in support of the application. Families, senior citizens, and military personnel comprise the bulk of Days Inn's clientele. When these persons request tour service, they are primarily interested in the Mall Area. Ms. Crayton has had an opportunity to observe V.I.P.'s service during the period of its temporary authority. During peak season, V.I.P. made daily stops at the hotel at 8:30 a.m. During non-peak season V.I.P. has called the hotel daily at 8:20 a.m., making pickups at the hotel as needed. During peak season the service was used most days with as many as 12 persons being picked up at one time. When guests were interested

in late morning or early afternoon pickup, V.I.P. provided that service.

Days Inn has found applicant's service, as provided under temporary authority, to be satisfactory. Its vehicles appear neat and clean. Clients enjoy the special attention paid them, as well as the pace of V.I.P.'s tour. Customers find the smaller van more personal than a large coach. They can hear well and there is no long wait prior to entering or leaving the vehicle.

Days Inn is served by Gold Line from mid-March to September 1. Guests are picked up by Gold Line at 7:30 a.m. and returned at 7 p.m. Service is provided in coaches. No service is provided in the off season. V.I.P.'s service provides a special benefit to Days Inn in that it allows the hotel to provide guests with tour service on a year-round basis. The hotel intends to promote V.I.P.'s service by advertising its availability, making its tour brochures available to guests, and selling tickets.

On cross-examination, Ms. Crayton testified that Days Inn is the only hotel in the immediate area, the hotel nearest it being two and one-half miles away. No other Days Inn is located in Prince George's County, Md., and Days Inn-Capital Centre belongs to no consortium of local hotels. The witness has no connection with nearby hotels and does not know what sort of tour service is available to them.

DISCUSSION, FINDINGS, AND CONCLUSIONS

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; */

Based on a review of the record in this case, we find that applicant has met the burden of proof imposed by the statute insofar as members of the traveling public staying at Days Inn-Capital Centre are concerned.

Applicant has the equipment and financial stability necessary to conduct service originating at Days Inn. In fact, pursuant to

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

temporary authority, it had been performing that service satisfactorily for approximately five months at the time of hearing without impairing service obligations imposed by its certificate of public convenience and necessity. Furthermore, due to the relatively nearby location of Days Inn to the points where V.I.P. garages its vehicles, the service would add little expense to V.I.P.'s certificated operations but would enable increased revenues, thereby making this part of the proposed service both feasible and profitable. V.I.P. is shown to be willing and able to abide by the Commission's rules and regulations. Taking official notice of the Commission's records, we find abundant indication of compliance by applicant with the Compact and the Commission's rules and regulations. Based on this evidence, we find applicant fit to perform service as described below and to conform to the Compact and the rules and regulations issued by the Commission pursuant to the Compact.

In addition we find that the testimony of V.I.P.'s public witness constitutes a prima facie showing that the public convenience and necessity require service of the type proposed by applicant where that service originates and terminates at Days Inn-Capital Centre. That hotel regularly receives requests for sightseeing service to the Mall Area. The evidence indicates that the need for service is year round and, during peak season, almost daily. Hotel guests have availed themselves of V.I.P.'s service during the temporary authority period in groups of varying size, some of whom requested late morning, early afternoon, and even evening pickups. V.I.P. would provide the only sightseeing service available to the hotel on a year-round basis. Although Days Inn is currently served by Gold Line, that carrier makes a single pickup at 7:30 a.m., returning passengers at 7 p.m. The service is provided using coaches. Applicant's proposed service is different from Gold Line's and fills certain gaps in service provided by that carrier by offering later pickups, earlier returns, and year-round service.

At this point it is noted that, although applicant seeks authority to provide service from and to points in a substantial portion of Prince George's County, Md., the evidence establishes a need for its round-trip service only from the Days Inn-Capital Centre Hotel in Capitol Heights, Md. There is no showing that the proposed service is needed or even that it would be used from any point other than the aforementioned hotel. Thus, despite the lack of any opposition to this application, we are compelled to conclude that applicant has failed to sustain its statutory burden of establishing a need for its service at points other than the described hotel in Capitol Heights, Md.

We turn now to the matter of V.I.P.'s proposed tariff. Applicant stated on the record that it offers a trip to Mt. Vernon as part of its all-day Combination Tour and that night tours thereto may be provided. V.I.P.'s proposed tariff does not include Mt. Vernon in the description of the combination tour nor does it list a night tour

despite the fact that neither V.I.P.'s Building Tour nor its Combination Tour could be completed at night. V.I.P. shall be directed to amend its tariff to include these items if it wishes to offer them. In addition, V.I.P.'s current discount policy as approved by the Commission differs from that stated in its proposed tariff. According to applicant, use of a similar discount is precluded due to the amount of commissions which it pays Days Inn. Moreover, V.I.P.'s discount policy with regard to military personnel means something other than the plain wording of its proposed tariff would indicate. Specifically, the evidence of record shows that the discount would apply only to groups of 10 or more military personnel, whereas the language of the tariff indicates no such restriction. Applicant is reminded that Order No. 1639, served December 28, 1976, requires

1. That all carriers conducting individually ticketed sightseeing operations within the Metropolitan District be, and they are hereby, directed to keep and maintain on file for a period of three years adequate and complete records and accounts listing (a) all agents and others to whom commissions are paid for the generation of passengers for sightseeing service, (b) the rates of commission at which said agents or others are paid, and (c) the gross dollar amount of all sales and commissions, individually and in the aggregate.

2. That rates of commission in excess of 20 percent of the net transportation price paid to agents or others for the generation of passengers for sightseeing service be, and they are hereby, declared to constitute unreasonable operating expenses and shall not be allowable as justification for any proposed tariff, change or supplement to a tariff.

We find that the discount structure proposed by applicant for its Prince George's County service is unduly discriminatory as between riders or sections of the Metropolitan District. Therefore, pursuant to the Compact, Title II, Article XII, Section 6(a)(2), we shall direct applicant to amend its proposed tariff to reflect a discount structure for the service herein authorized which is identical to the discount structure currently on file. Adoption of this structure cures any discrepancy between the face of the tariff and applicant's oral testimony.

THEREFORE, IT IS ORDERED:

1. That V.I.P. Tours is hereby granted authority to transport passengers in special operations, over irregular routes, in round-trip lectured sightseeing tours between Days Inn-Capital Centre, Capitol Heights, Md., on the one hand, and, on the other, and Mt. 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 not exceeding 15 passengers (including the driver).

2. That, in all other respects, the application of V.I.P. Tours is hereby denied.

3. That V.I.P. Tours is hereby directed to amend its tariff as discussed in the body of this Order to include Mt. Vernon, Va., and an evening tour where applicable and to adopt a consistent discount policy.

4. That V.I.P. Tours is hereby directed to file two copies of WMATC Tariff No. 2 amended as directed in the preceding paragraph.

5. That unless applicant complies with the requirements of the preceding paragraphs within 30 days of the date of this Order, 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 