

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2908

IN THE MATTER OF:

Served September 10, 1986

Application of AMERICAN COACH)
LINES, INC., for a Certificate of)
Public Convenience and Necessity to)
Conduct Charter Operations between)
Points in the Metropolitan District)

Case No. AP-85-36

By application filed December 6, 1985, American Coach Lines, Inc. ("ACL" or "applicant"), seeks a certificate of public convenience and necessity to transport passengers over irregular routes in charter operations between points in the Metropolitan District, except round-trip, sightseeing or pleasure tours, from points within the Metropolitan District to points within the Metropolitan District, 1/ and except service between points in the Commonwealth of Virginia. 2/ Applicant also seeks authority to transport mail, express, and baggage in the same vehicle with passengers.

1/ Applicant holds WMATC Certificate No. 1 which, inter alia, authorizes transportation as follows:

IRREGULAR ROUTES:

Passengers and their baggage:

(a) CHARTER OPERATIONS:

Round-trip sightseeing or pleasure tours, between points in the Metropolitan District;

(b) SPECIAL OPERATIONS:

Round-trip sightseeing or pleasure tours, between points in the Metropolitan District.

RESTRICTED in (a) and (b) above against any intrastate transportation within the states of Maryland and Virginia.

2/ The Compact, Title II, Article XII, Section 1(b) excepts from the Commission's jurisdiction transportation "solely within the Commonwealth of Virginia."

A public hearing on the matter was scheduled to commence February 11, 1986, by Order No. 2813, served December 23, 1985, and incorporated herein by reference. The hearing commenced on that date and continued through February 14, 1986, with additional hearings held March 12, 13, 18, and 19, 1986. Applicant presented two company witnesses and seven public witnesses. The Commission staff subpoenaed an additional witness to testify about the applicant. Gold Line, Inc. ("Gold Line"), Eyre's Bus Service, Inc. ("Eyre"), National Coach Works, Inc. ("NCW"), The Airport Connection, Inc. ("TAC"), Webb Tours, Inc. ("Webb Tours"), and T&S Bus Service, Inc. ("T&S"), timely protested the application. All of the opposing carriers appeared at the hearing, cross-examined applicant's witnesses, and, with the exception of T&S, presented evidence in opposition to the application. Briefs were filed by the parties on May 5, 1986.

SUMMARY OF EVIDENCE

Peter Picknelly, ACL's treasurer, testified on behalf of applicant. Mr. Picknelly owns 50 percent of ACL's stock, and the remaining 50 percent is owned by Louis Magnano. Separately, Messrs. Picknelly and Magnano own other motor carriers and transportation-related businesses. These include Peter Pan Bus Lines, Inc.; Blue Bird Coach Lines, Inc.; Coach Builders, Inc.; Peter Pan World Travel; and Blue Bird World Travel. Jointly, ACL's owners have operated at least two other motor carrier companies in the Metropolitan District: U.S. Bus, Inc., and VIP Coach Services, Inc. The former operated a regular route service between Baltimore, Md., and Washington, D.C., via Laurel, Md. Mr. Picknelly described VIP as the name under which ACL operated prior to VIP's purchase in June 1984 of White House Sightseeing Corporation. ^{3/} According to Mr. Picknelly, ACL operated without incident after the purchase until a client questioned whether ACL had authority to perform charters not involving sightseeing within the Metropolitan District. As a result of this question, ACL filed a petition stating that it had been performing general charter operations under the impression that its certificate authorized those operations and asking for temporary authority to provide such service if the Commission should determine that it lacked that authority. After July 22, 1985, ACL terminated performing any

^{3/} By Order No. 2550, served May 1, 1984, and officially noticed herein, the Commission granted a motion of VIP Coach Services to dismiss Case No. AP-83-48, an application for a certificate of public convenience and necessity to conduct charter operations between points in the Metropolitan District; granted a motion of White House Sightseeing Corporation to dismiss Case No. FC-83-02, a formal complaint brought by White House against VIP and alleging unauthorized operations, leasing violations, and tariff violations; and dismissed Case No. AP-84-06, an application of VIP to acquire stock control of White House.

transfer services. ^{4/} Mr. Picknelly testified that he intends to comply with the Commission's rules and regulations in the future and that he has attempted to comply in the past.

ACL is affiliated with American Sightseeing International, an international trade organization the purpose of which is to promote sightseeing.

Peter Pan World Travel and Blue Bird World Travel are both full service travel agencies which, inter alia, sell motor coach tours. The agencies contract for ground transportation including airport transfers in the Washington area with ACL. The groups for whom these agencies arrange tours require transportation in the the District of Columbia, Northern Virginia, and Montgomery County, Md. Tour operators and wholesalers that have booked transportation outside the Metropolitan District on Peter Pan Bus Lines, Inc., or Blue Bird Coach Lines, Inc., are referred to ACL when they arrange tours into Washington, D.C. Including ICC movements, applicant earned revenues of \$225,000 in 1985 as the result of referrals from Peter Pan World Travel and Peter Pan Bus Lines. Brochures of the tours offered by these agencies were introduced in evidence and featured tours of the Washington metropolitan area. All tours began and ended outside the Metropolitan District and included coach transportation into and out of the Metropolitan District.

On cross-examination, Mr. Picknelly described the relationship among the three companies that had been identified as performing Metropolitan District operations: viz., U.S. Bus, Inc., VIP Coach Services, Inc., and ACL. According to Mr. Picknelly, there are now three corporations named American Coach Lines, Inc. ACL, the Delaware corporation, was formerly U.S. Bus. While operating as U.S. Bus, that company performed charter operations between points in the Metropolitan District pursuant to Title II, Article XII, Section 1(a)(4) of the Compact. When U.S. Bus suspended regular route service, it also ceased charter service between points in the Metropolitan District. ACL, the D.C. corporation, is the applicant in this case. ACL, the Maryland corporation, is a mere shell. VIP Coach Services, Inc., performed dozens of unauthorized movements within the Metropolitan District. Upon becoming "aware of a problem," the company made an arrangement

^{4/} By Order No. 2738, served July 22, 1985, and officially noticed herein, the Commission denied an application of ACL to define the scope of Certificate No. 1 as authorizing general charter operations and denied an application for temporary authority to perform general charter operations because it did not meet the statutory standard required under the Compact, Title II, Article XII, Section 4(d)(3).

with Beltway 5/ whereby Beltway would perform the transportation for a fee, using VIP equipment and receiving a commission.

On cross-examination Mr. Picknelly also testified regarding his personal knowledge of existing regulatory terminology and the history of the VIP/White House purchase. With regard to the meaning of "round trip sightseeing or pleasure tours," Mr. Picknelly testified that "round trip" requires the point of origin to be the point of termination, and "pleasure tours" as interpreted by the ICC must be something significantly more than mere point-to-point transportation. The witness testified further that he has been aware of this Commission's existence and the need for WMATC authority to conduct charter operations within the Metropolitan District since VIP Coach filed its application. He is aware of the geographic limits of the Metropolitan District and knows that ICC authority does not cover transportation conducted within that area. Mr. Picknelly testified that he had been represented by counsel at the purchase of White House, and that he had read WMATC Certificate No. 1. The witness testified that he was generally knowledgeable regarding Order No. 2550, which spelled out the fact that WMATC authority is necessary for airport operations. Mr. Picknelly received and read Order No. 2738, and on the basis of that reading, understood (1) that WMATC Certificate No. 1 did not allow charter operations "between the airports and Washington or the area of the District," and (2) that ACL's simultaneous application for temporary authority was denied. After seeking reconsideration of that order from the Commission, Mr. Picknelly directed his attorney to file the instant application.

Finally, Mr. Picknelly testified regarding the type of transportation that he has directed or would direct be performed pursuant to his WMATC authority. Typical movements arranged by Peter Pan World Travel and Peter Pan Bus Lines include all ground transportation for tour groups which fly to Washington from Boston including sightseeing, airport transfers, 6/ and any other transportation needed while in Washington. Peter Pan Bus Lines which deals with groups needing transportation only has directed that ACL perform such service many times since July 22, 1985. Mr. Picknelly testified that he would also direct that intra-Virginia transportation be performed. He would do this pursuant to ACL's WMATC authority. He would also include, on the basis that it is covered by ACL's WMATC

5/ Beltway Limousine Service, Inc., is the holder of WMATC Certificate No. 25.

6/ A "transfer," as generally used in the industry and as used herein, means a charter operation providing bare expeditious point-to-point transportation. Such service is usually provided at a special "transfer rate" below the carrier's normal minimum charge.

authority, transportation for a group which comes to Washington by air, spends time sightseeing, then leaves by bus for New York City.

Leo Carroll, ACL's acting general manager, testified on behalf of applicant. At the time of the hearing, Mr. Carroll had been in that position for two weeks and planned to stay no more than two months before returning to his own (non-transportation) business in another state. Mr. Carroll had been employed as ACL's manager from May 1984 until January 1985. Mr. Carroll remained with ACL until May 1985 without a title but exercising the duties of comptroller. Prior to that Mr. Carroll had been employed by Blue Bird Coach for six years, first as a dispatcher and then as charter manager.

Mr. Carroll testified that ACL provides service pursuant to WMATC and ICC authority. The service is provided in 34 coaches ranging in vintage from 1974 to 1984. Over 65 percent of these vehicles are 1974 or 1975 models. Some have been refurbished by Blue Bird Coach Lines or Coach Builders, Inc. Between 20 and 22 of these vehicles are owned by ACL; the remainder are leased from the company's owners. ^{7/} Maintenance of these vehicles is performed in-house and consists of 6,000 mile check-ups in combination with daily checks of the vehicles by drivers. The company employs 75 persons including 55 drivers, approximately 20 of whom used to work for Gold Line.

For the 12-month period ended December 31, 1985, ACL realized \$744,817.46 income from WMATC operations, including \$337,926.79 in group charter operations. According to Mr. Carroll the charter operations category includes non-lectured sightseeing and general charter work of the type specifically excluded from Certificate No. 1

^{7/} At the time Mr. Carroll testified, ACL had not filed the lease agreements required by Commission Regulation No. 69. Since that time, ACL has filed and the Commission has approved leases applying to vehicles not owned by ACL. Taking official notice of the Commission's records, however, we note that prior to April 24, 1986, the certificate of insurance on file with the Commission for ACL indicated coverage only for vehicles owned by that corporation. Thus, until that time the leased vehicles were being operated within the Metropolitan District in contravention of the Compact, Title II, Article XII, Section 9(a) and Commission Regulation No. 62 dealing with security for the protection of the public.

by Commission Order No. 2738. 8/ Operating expenses including depreciation, lease of revenue vehicles, and state fuel taxes were \$718,856.16. The amount shown for leased vehicles was \$23,760. After interest expense of \$30,077.12, ACL showed a loss of \$4,115.82 for calendar year 1985. If its current application is granted, ACL projects increased annual charter revenues of \$140,000 and related expenses of \$90,600, thereby enabling an annual profit of \$49,400. The projection is based on prior service provided. Mr. Carroll believes that a grant of the authority requested would result in overall profitability for applicant due to more efficient use of equipment and personnel.

According to Mr. Carroll, ACL performed airport transfers and general charter operations until July 22, 1985. On July 22, 1985, the date of service of Order No. 2738, supra, the company stopped performing airport transfers; notified customers that it would be unable to perform work currently on the books, and asked for an opinion of counsel as to what actually constituted round-trip sightseeing or pleasure tours. ACL "farmed out" 33 jobs to other carriers, including protestants. The amount of revenue which would have been generated by this work was \$12,262. The company also turned down service which it considered to be beyond the scope of its operating authority. Assuming ACL had performed all service about which it had inquires, it would have earned revenues of \$55,915.

Mr. Carroll also sponsored a list showing client locations. According to Mr. Carroll clients at these locations are responsible for approximately \$775,000 in WMATC revenues for ACL, about half of which come from operations which ACL has authority to perform. Mr. Carroll also sponsored a tour brochure indicating all tours offered by ACL. The brochure listed five half-day tours, one all-day tour, and one two-day tour. The tour brochure indicated per capita rates, but tours are available to pre-formed groups as well. No ancillary services were listed, described or alluded to in the brochure.

Finally, Mr. Carroll sponsored an exhibit designed to show the number of charter movements booked from March 1, 1985, through July 20, 1985. The exhibit indicated that ACL had bookings for 461 buses, 425

8/ On cross-examination, Mr. Carroll testified that non-lectured sightseeing as used by ACL represents "riding around and looking at the sights" or lectured sightseeing where the group provides its own guide. According to Mr. Carroll approximately 70 percent of the group charter work was performed prior to July 22, 1985. Of the total figure approximately \$250,000 was earned performing non-lectured sightseeing. The amount ACL grossed from "sightseeing" in 1985 (\$141,376) represents individually ticketed sightseeing. The amount labeled "group sightseeing" (\$265,513) represents package tours performed by ACL and trips on which ACL's driver served as guide.

of which were for local charter exclusive of airport transfers. This exhibit was not prepared in the ordinary course of ACL's business.

On cross-examination, Mr. Carroll testified regarding various charter orders which had been produced subject to the Commission's subpoenas. According to Mr. Carroll, other than the charter orders, there are no documents in ACL's files indicating the service it has performed. All changes other than those made orally after the service had begun are included on the orders. The orders were of six types. The first type involved a single airport transfer in combination with lectured sightseeing. The second type involved a single airport transfer in combination with non-lectured sightseeing. The third type involved a single airport transfer in combination with sightseeing the following day or days, followed on a different day by a one-way transfer to another point. The fourth type involved transportation for a period of days as follows: day-one airport transfers to D.C. hotel; day-two sightseeing (lectured or non-lectured); day-three airport transfer to point of origin. The fifth type involved intra-Virginia transportation. The sixth type involved point-to-point transfers.

The charter orders indicate, and Mr. Carroll so conceded, that the company charged varying hourly rates, non-hourly rates, and transfer rates. It is Mr. Carroll's opinion that a tariff represents "guidelines" regarding charges. ACL pays commissions of 20 to 30 percent on special operations and comparable commissions on charter operations. 9/ The witness also conceded that Charter Order No. 5057 indicating a transfer from National Airport to a Georgetown hotel on day one, followed by a transfer to New York City and return deadhead, did not constitute a round trip although "round trip" had been marked on the charter order.

With regard to the scope of ACL's operating authority, Mr. Carroll testified that he could not conceive of transportation that was not a sightseeing or pleasure tour. He stated his opinion that ACL was authorized to perform service which consisted of a transfer from National Airport to a District of Columbia hotel on day one, followed by sightseeing on day two, ending with a transfer from a District of Columbia hotel to either Dulles Airport or Union Station. The next day

9/ There was substantial testimony in this case regarding rates charged by various carriers. On November 25, 1985, the Commission contacted all WMATC certificated carriers advising them that Regulation No. 55-08 prohibits the charging of any rates other than those contained in approved tariffs. Since that time protestants Gold Line and T&S have filed tariffs clarifying their commission and discount policies. Webb Tours', TAC's, and NCW's tariffs already contained such provisions. A new tariff has now been approved for ACL which includes a minimum daily charge of \$140, and certain commissions and discounts of 10 percent.

Mr. Carroll testified that he now understood that such moves were not authorized and that he would not direct that they be performed. He conceded that a transfer from Union Station to a D.C. hotel, either alone or in combination with sightseeing on another day, was not authorized by applicant's Certificate No. 1. Nor is ACL authorized to do intra-Maryland or intra-Virginia transportation.

When Mr. Carroll first came to ACL he had a meeting with a WMATC representative about which he could remember nothing other than that it was cordial. Upon being given a copy of the Compact, Mr. Carroll looked through it but did not read it. He has never looked through the Commission's rules and regulations, and did not know if he had ever seen them. However, he testified that he later became familiar with those rules and regulations in January 1985 as a result of a petition in which he was not involved. Mr. Carroll further testified that he had done his best to comply with the Commission's rules and regulations.

In response to the Administrative Law Judge's direction that the witness review specific groups of service orders, Mr. Carroll produced 21 service orders that were within the scope of the Commission's subpoena but had not been supplied to protestants as required. These orders included one indicating a shuttle movement between National Airport and the Hotel Washington, an airport transfer, and three non-round trips. Mr. Carroll did not review any other orders because "they were in [applicant's] counsel's possession."

Fred Mitchell, former general manager of ACL testified under subpoena requested by the Commission staff. Mr. Mitchell had been ACL's general manager from January 1985 through January 31, 1986, ten days prior to hearing. While general manager, Mr. Mitchell had responsibility for overseeing ACL's overall operations, and he was specifically responsible for charter operations. Prior to coming to ACL, Mr. Mitchell had been general manager of Gold Line. As a result of this position, Mr. Mitchell was familiar with the Compact and the Commission's rules and regulations. He was also aware of the Commission's jurisdiction over operating authority and the fact that operating authority was sometimes limited. It was Mr. Mitchell's understanding based on reading Certificate No. 1 that ACL had "complete local per capita and sightseeing authority." He had misgivings about local charter work which he directed to John Paris who oversaw special operations for the company. According to Mr. Mitchell, Mr. Paris claimed that the company was authorized to perform the operations and had been performing those operations "for years." Mr. Mitchell testified further that while he was at Gold Line, he believed White House "had all this authority and had been doing it for years." White House competed for straight charter work with Trailways and Gold Line. Mr. Mitchell confirmed that a client raised a question regarding the scope of ACL's authority.

By July 30, 1985, Mr. Mitchell had seen Order No. 2738 and a letter from ACL's attorney "interpreting" that order. Mr. Mitchell orally instructed the staff to adhere to the order. He gave no written instructions in this regard and established no procedures for monitoring or reviewing what the staff was booking. His instructions stressed that neither one-way trips nor hotel shuttles could be done. He did not stress the round-trip nature of the authority. However, he specified that hotel shuttles were authorized if the trip was for a group in town from another location and the group planned to sightsee on a different day.

Finally Mr. Mitchell testified that he had always been a "stickler" for tariffs. The situation he inherited from Mr. Carroll, who both preceded and succeeded Mr. Mitchell as applicant's manager, was one in which he had difficulty even finding a tariff. Rates consisted of gross and net rates whereby a customer might pay for the minimum four hours or might pay less. Mr. Mitchell testified that he left ACL for a combination of reasons including that he was overworked due to ACL's failure to hire necessary staff persons.

On cross-examination, Mr. Mitchell testified that it was his intent to obey Commission Order No. 2738. In attempting to comply with that order, the company had some problems in farming out work. The first move ACL attempted to farm out was mistakenly thought to have been scheduled for August 12, 1985. The move required nine coaches and was booked with TAC. The move actually had been scheduled for August 5 or 6. In an attempt to find a carrier to perform the move, which had an early morning pick-up, Mr. Mitchell called all protestants except NCW that morning. He booked some of the move with Webb Tours, and the remainder was booked with Hudson General. On a second occasion, a movement had been farmed out to TAC. When TAC cancelled on the day of the move, Gold Line performed the trip. A similar situation occurred when work was to be performed by Eyre but Eyre cancelled at the last minute. The work was booked and performed within hours by either TAC or Gold Line.

Also on cross-examination, Mr. Mitchell testified that both before and after issuance of the Commission's Order No. 2738, ACL assessed separate and specific charges for airport transfers. WMATC Tariff No. 4 signed by Mr. Paris indicated that the rates contained therein apply exclusively to round-trip sightseeing or pleasure tours. The tariff showed no rate for either a transfer or a shuttle operation. Mr. Mitchell conceded that one may assume that that tariff covered operations that Mr. Paris believed ACL could perform. Mr. Mitchell testified further that ACL was charging 30 to 50 percent below tariff, and that he found such charges "ridiculous" in light of his reputation for charging tariff. Mr. Mitchell filed and the Commission approved WMATC Tariff No. 5 increasing ACL's rates. After the effective date of that tariff, ACL tried to conform to its tariff. However, in some cases, ACL was locked into non-tariff rates on previously booked work.

John A. Fields, partner in Fi-Son Travel Associates, Washington, D.C., testified in support of the application. Fi-Son specializes in individual and group travel involving student, senior citizen, and church groups. Since the spring of 1985 Fi-Son has used ACL's service 11 times, including once for a one coach movement between points in the Metropolitan District, and has been very satisfied with its service. American is the first carrier called and the carrier used most frequently. If this application were granted Fi-Son would use ACL at the same level it has in the past.

Douglas Randolph, owner of Travel Planners, testified in support of the application. Travel Planners packages and sells tours to preformed groups including schools, churches, and social clubs. Its transportation needs include airport transfers in combination with local sightseeing and related transfers. In some cases the local portion of a trip is followed by an ICC movement. For this reason it is convenient to work with a single carrier that can perform both the ICC and the WMATC movements. During the preceding year, the company booked approximately 15 charters between points in the Metropolitan District. Seven of these movements required coaches; the remainder were performed in school buses. Points served were located in Montgomery and Prince George's Counties, Md., and the District of Columbia. These moves involved one to two vehicles. After ACL notified the witness that it would not be able to perform any local work except sightseeing, Travel Planners used Gold Line and McMichael School Bus Service, Inc. 10/ However, if this application were granted Travel Planners would use ACL for 90 percent of the local service it requires.

On cross-examination, Mr. Randolph conceded that he had used ACL only once for local service. Mr. Randolph used McMichael about eight or nine times because its school buses were available, lower priced, and acceptable to his customers. Mr. Randolph used Gold Line for local service about five times. The witness has never been unable to obtain transportation between two points in the Metropolitan District.

Herman Vogel, president of D.C. Tours, Inc., testified in support of the application. D.C. Tours is a "destination management company" with a varied clientele which handles all services connected with tourism as well as conventions and meetings. A major component of the work of D.C. Tours is planning transportation of passengers in the metropolitan area. In a one-year period D.C. Tours charters at least 1,000 buses. Service is required throughout the Metropolitan District.

10/ McMichael School Bus Service, Inc., held WMATC Certificate No. 24 until February 7, 1986, when that certificate was revoked by Order No. 2823. Prior to revocation, McMichael's certificate had been suspended since November 19, 1985, by Order No. 2791.

An average D.C. Tours movement requires from five to twelve buses. Larger movements require from 60 to 80 coaches. In selecting service, D.C. Tours seeks a reliable company with clean, uniform equipment, courteous and knowledgeable drivers, and proper billing procedures. Fleet size is also important because the more equipment a company has, the more a client can hire and the more likely it is that the equipment will be uniform. D.C. Tours has used ACL and has found it to meet these requirements. Until July of 1985, ACL supplied about 90 percent of D.C. Tours' transportation needs including local charter and sightseeing and ICC movements. In July ACL notified Mr. Vogel that it would be necessary to curtail service. Thereafter, Mr. Vogel restricted his use of ACL. If this application were granted, D.C. Tours would use ACL for local service "to the limit of the equipment" which represents at least 90 percent of D.C. Tours' service needs. It is Mr. Vogel's opinion that ACL's service is needed in the metropolitan area for general charter work and airport transfers.

D.C. Tours has used all protestants except TAC. Mr. Vogel testified that due to the name and logo painted on the buses, he would never use TAC. D.C. Tours has not used Gold Line or Eyre in the last few years. Although D.C. Tours used to be a heavy user of Gold Line's service, it stopped mainly due to accounting problems which resulted in double billing. It also experienced problems with on-time performance and quality of drivers. D.C. Tours stopped using Eyre because it placed a priority on commuter transportation service and because it asked for payment "up front." Webb Tours has a limited amount of equipment available including double-deck buses which are not to everyone's liking.

Fleet size is an important consideration for D.C. Tours and, admittedly, both Gold Line and Eyre have larger fleets than ACL. D.C. Tours ceased doing business with Gold Line in 1982. Ten percent of the transportation required by D.C. Tours consists in long distance movements or bare transfers; the remaining 90 percent is sightseeing, 60 percent thereof being mainly sightseeing which requires either airport transfers or some shuttle movements; and 30 percent thereof being mainly shuttle work to which some sightseeing is attached. After July, D.C. Tours' use of ACL within the Metropolitan District was very limited.

Kenneth Victor, sales manager for the mid-Atlantic region of Indirect Travel, testified in support of the application. Indirect Travel is a wholesaler of group travel. Its clientele is almost exclusively senior citizens. Indirect Travel's headquarters are located in Floral Park, N.Y., and its regional office is in Alexandria, Va. Indirect Travel arranges four to seven coach trips a year between points in the Metropolitan District. The transportation required extends throughout the Metropolitan District and generally entails movements from churches, senior citizen centers, and community colleges to shopping areas, restaurants, and dinner theaters. Usually a single

coach is used; at most two coaches are required. Indirect Travel has used American Coach almost exclusively for the past three years, i.e., since its owners began operating as VIP Coach. The service rendered is excellent. Mr. Victor would like to see ACL's application granted because he does not want to change local firms. On cross-examination, the witness testified that he had a local movement booked with ACL at the end of March involving a transfer from Andrews Air Force Base to a theater in Alexandria, Va. The group had bought its own theater tickets and asked Mr. Victor to arrange transportation.

Gerald Deuteran of the Alexis Park Resort Hotel, Las Vegas, Nev., testified that he formerly was director of sales with the Arltech Hotel Group which owns and manages five Sheraton Hotels in the Washington area. In that capacity, he referred Sheraton clients to ACL for local transportation. He made referrals to ACL despite the fact that, prior to working for Arltech, Mr. Deuteran worked for Gold Line. Mr. Deuteran's experience with applicant was very good. The witness believes that ACL's service is needed in the Metropolitan District.

Jeannet Fulks owns T.S.&R. Services, Inc., an agency located in the Washington Hilton Hotel, serving customers staying at the Hilton and requiring transportation for tours or transfers. T.S.&R. requires between one and five coaches for charter work two to three times a month, mainly for local service. Geographically, its transportation needs include Montgomery and Prince George's Counties, Md., the District of Columbia, the metropolitan airports, and Springfield, Va. Because most transportation which T.S.&R. handles is arranged at the last minute, its primary service requirement is equipment availability. It also looks for punctual service, neat drivers, and clean equipment. In 1985 T.S.&R. used ACL between eight and twelve times for local transportation mainly for tours and transfers. In late July or early August, T.S.&R. was advised by ACL of the limitations in its charter authority. After that time, T.S.&R. had trouble obtaining coaches for transfers. If this application were granted, ACL would handle at least half of T.S.&R.'s business.

T.S.&R. has used Gold Line and is an agent for that company's per-capita tour services. Over a period of five to seven years, T.S.&R. experienced difficulty in obtaining buses from Gold Line in a number of instances, resulting in some loss of business. In addition, in the last two years Gold Line has hired many new drivers some of whom are unfamiliar with the Washington area. T.S.&R. has never used NCW, TAC, or T&S, but it has used Eyre in the past. If ACL were forced to discontinue operations in the Washington area it would more than likely cause a problem because Gray Line 11/ is usually booked. If this

11/ Gold Line, Inc., is a member of a nationwide sightseeing association called "The Gray Line." Accordingly, this reference is to protestant Gold Line.

application were not granted and ACL were restricted to sightseeing only, it would cause a problem for T.S.&R. because it needs transfer service.

On cross-examination, Ms. Fulks conceded that seven of the twelve trips for which she had used ACL in 1985 involved sightseeing. Ms. Fulks last used a coach for local point-to-point transportation in the fall of 1985. The last time T.S.&R. needed but could not obtain equipment was related to a night-time sightseeing tour of Washington in the fall of 1985. This was the only time in 1985 it was unable to get equipment and, on that occasion, ACL also was unable to supply any vehicles. During situations when it is having trouble getting service, T.S.&R. has never contacted T&S or NCW. On redirect Ms. Fulks testified she was unable to get service from Gold Line three or four times in February or March. On those occasions, Ms. Fulks, who always calls Gold Line first, was forced to call other carriers from whom she received service.

Shirley Norwood, co-owner of Tailored Tours, Ltd., Bethesda, Md., testified in support of the application. Tailored Tours is involved in the planning of conventions and meetings, including social activities in connection therewith. In this capacity it arranges motor coach transportation for trade associations, corporations, and individuals. The transportation includes tours, shuttles, and airport transfers in combination with tours. Tailored Tours requires coach transportation approximately 40 times a year with about 80 percent of those bookings involving local service within the metropolitan area. Its movements require from one to 30 buses, and up to 40 for convention shuttles. It seeks reliable transportation featuring clean, air-conditioned equipment, good drivers, and concerned management. If ACL were granted authority it would handle 80 percent of Tailored Tours' business.

Tailored Tours has not used Gold Line for five years because of two unpleasant experiences involving an unclean bus and uncooperative drivers. When ACL advised that it would be unable to provide certain kinds of services, Tailored Tours asked Webb to perform two coach shuttles. Working eight weeks in advance, Webb arranged service on the first night using two coaches, but advised that a double-deck bus would be provided on the second night because its coaches were booked. Ms. Norwood testified that her clients did not want that kind of equipment but she "talked them into it." It is Tailored Tours' experience that Eyre provides only a limited amount of equipment for local use in the metropolitan area. Tailored Tours had one unsatisfactory experience with TAC. In this connection, Tailored Tours had booked a tour with Carter Tours, and Carter had led Tailored Tours to believe that TAC would provide the transportation. However, TAC did not make the scheduled pick-up although it did handle the return leg of the trip. Tailored Tours' understanding was that TAC had booked two jobs at the same time, one of which was an airport transfer.

Most groups for which Tailored Tours arranges transportation require some sightseeing service. During the past 12 months, it has had no need for airport transfers and has arranged only two shuttles.

Raymond Hendrickson, assistant to the president of Eyre's Bus Service, Inc., testified on behalf of that carrier in opposition to ACL's application. Eyre holds WMATC Certificate No. 17 authorizing charter transportation within a portion of the Metropolitan District. 12/ Eyre currently operates 66 motor coaches, and it solicits charter coach business in the Metropolitan District. For the fiscal year ended April 30, 1985, Eyre had gross income from all operations (including ICC operations) of \$4,766,972 and an operating loss of \$136,290. The company realized a net loss of \$30,852 after allowance for sale of motor vehicles and Virginia rights and after adjustment for interest income and "discounts allowed." Eyre's revenue from WMATC operations for the two-month period April 1 through May 31, 1985, was \$208,640. However, the witness was unable to allocate expenses to WMATC operations or to indicate what if any of that revenue was derived from sightseeing service. It expects its insurance premiums to increase by \$500,000 in the next year. Eyre opposes this application because it believes that existing charter carriers within the Metropolitan District have sufficient equipment to meet the public's needs, and that the addition of any new carriers to the market will only lower the high quality of available service.

Stephen Rowland, director of operations for NCW, testified on behalf of that carrier in opposition to ACL's application. NCW holds WMATC Certificate No. 26 which authorizes it to conduct charter operations between points in the Metropolitan District. NCW is affiliated with, but operated separately from, Gold Line. Although its predominant business is bus remanufacturing, NCW owns and operates five coaches and actively solicits charter business within the Metropolitan District. NCW had revenues of \$62,069 from service in the Metropolitan District in its first nine months of operation. It is estimated that these operations reflected a profit of \$7,016. NCW also performs ICC and intra-Virginia operations, and these were not profitable. NCW opposes ACL's application because it is a new carrier trying to become established in a competitive market, and a grant of authority to an additional carrier will make it more difficult for NCW to become established. 13/

12/ Eyre has pending a Petition to Reopen Application of Safeway Trails. Eyre filed this petition as a successor in interest to certain regular route authority purchased from Safeway Trails to obtain authority to operate pursuant to Title II, Article XII, §1(a)(4) of the Compact.

13/ NCW acquired its authority by purchase from Red Top Coach, Inc. The transfer of authority was approved in early 1985.

Gold Line's vice president and general manager, Charles L. Cummings, and its comptroller, Stanley Johnson, testified for that carrier in opposition to ACL's application. Gold Line holds WMATC Certificate No. 14 authorizing, as here pertinent, the transportation of passengers in charter operations between points in the Metropolitan District. Gold Line operates 89 motor coaches. It maintains a complete garage facility at Tuxedo, Md., and a sales and charter office in southwest Washington. It actively solicits charter business within the Metropolitan District and has ten full-time sales people working in its charter office. Gold Line holds the Washington area Gray Line franchise and consequently offers substantial sightseeing service in the Metropolitan District.

Gold Line opposes this application because it believes that approval thereof would divert revenues from it in what is already a highly competitive market. Given the carrier's current financial situation, any diversion of its existing business is considered a serious problem. During 1984 Gold Line had total revenues of \$9,877,185, and a net operating loss of \$869,404. In that same year, its revenue from charter service provided within the Metropolitan District approximated \$2,634,768. If the expenses of the company were allocated between the various transportation services which it provides in proportion to the revenues derived from those services, Gold Line's charter service within the Metropolitan District in 1984 would have reflected a net operating loss of \$231,917.

During the 12-month period ended December 31, 1985, Gold Line had total revenues of \$8,270,893, and a net operating loss of \$1,142,135. During this same period Gold Line's revenues from charter service provided within the Metropolitan District approximated \$2,544,359. If the expenses of the company were allocated among the various transportation services it provides in proportion to the revenues derived from those services, Gold Line would have encountered an operating loss of \$868,070.

The cost of insurance to Gold Line for 1986 involves an increase over 1985 of \$320,000. This significant cost increase will further accentuate the operating losses being experienced by the company. In this respect, Gold Line projects that it will operate at a loss of \$500,000 during 1986 even after imposition of a surcharge to cover this increase.

Ralph Webb, owner and general manager of Webb Tours, Inc., trading as Spirit of '76, testified for that carrier in opposition to ACL's application. Webb Tours holds WMATC Certificate No. 33 authorizing transportation of passengers in charter and special operations between points in the Metropolitan District. Webb Tours operates ten double-deck buses and three 47-passenger coaches. For the year ended December 31, 1985, Webb Tours realized a net profit of \$31,985, or 2.8 percent of gross revenues. Although expenses are not

allocated between WMATC operations and non-WMATC operations, Mr. Webb testified that revenues are about evenly divided between the two categories and a fair allocation procedure would assign approximately 50 percent of expenses to WMATC operations, resulting in approximately equal profitability for the two types of service. Webb Tours' president believes that approval of this application would enable diversion of business from his company. Such diversion would adversely affect Webb Tours' operations, particularly when viewed in light of the fact that it anticipates a dramatic increase in its insurance premiums in 1986. Moreover, it is Mr. Webb's experience that available bus capacity in the Metropolitan District is increasing at a faster rate than the need for charter service in the same area.

Mr. Webb testified that on February 20, 1986, ACL operated its buses -- numbers 411, 417, 423 and 428 -- between College Park, Md., and the Hyatt Regency Hotel (Capitol Hill), Washington, D.C. Those operations, in connection with which Webb Tours also was providing transportation, involved transferring members of various fraternities and sororities to a large dance being held at the Hyatt Regency. Information regarding the participation of ACL coaches in the move was provided to Mr. Webb by his drivers pursuant to instructions issued to them in the ordinary course of business.

Mordecai E. Buckingham, vice-president of TAC, testified on behalf of that carrier in opposition to ACL's application. TAC holds WMATC Certificate No. 111 which authorizes airport ground transportation both in charter and special operations between points in the Metropolitan District, and general charter operations between points in the Metropolitan District, except points in Montgomery County, Md. TAC has access to 39 coaches. Fourteen of the coaches are owned by the Federal Aviation Administration ("FAA") and, absent express permission from FAA, may be used only for charter work involving passengers having a prior or subsequent movement by air. Eight of the coaches are owned by the Maryland State Aviation Administration and pursuant to an agreement on file with the Commission may be leased to TAC for general charter work at the rate of \$8 an hour. The remaining 17 buses are either owned or leased with an option to purchase. TAC often has idle coaches on hand. During the five-month period ended November 30, 1985, TAC had total revenues of \$2,129,599 and net income of \$34,997. TAC opposes this application because it needs revenues from general charter to remain financially healthy while providing extensive scheduled service at the Washington area airports pursuant to its contract with the FAA.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In determining whether to grant a certificate of public convenience and necessity, we look to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact as follows:

. . . the Commission shall issue a certificate to any qualified applicant therefor, . . ., 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

Based on a thorough review of the entire record in this case, we find that ACL has failed to meet its burden of proof on the issue of fitness.

There is no serious challenge raised on the record to ACL's operational or financial fitness. With respect to ACL's operational fitness, we find that applicant's vehicles are safe, well-maintained, and operated by experienced drivers. Similarly, we find that ACL is financially fit. Despite a small operating loss for calendar year 1985, ACL's assets are considerable, its expenses reasonable, and its tariff competitive.

However, we further find that ACL has failed to establish that it is fit, willing, and able to comply with the provisions of the Compact and the Commission's rules and regulations. The record in this case indicates that ACL has:

1. knowingly and wilfully transported charter groups in one-way movements in violation of the Compact, Title II, Article XII, Section 4(a), WMATC Certificate No. 1, and Order No. 2738;
2. knowingly and wilfully conducted charter operations which were not restricted to sightseeing and pleasure tours in violation of the Compact, Title II, Article XII, Section 4(a), WMATC Certificate No. 1, and Order No. 2738;
3. knowingly and wilfully charged rates other than those on file with the Commission in violation of the Compact, Title II, Article XII, Section 5(d), and Regulation No. 55-08; and
4. knowingly and wilfully operated vehicles which were leased and for which no evidence of insurance was on file with the Commission in violation of the Compact, Title II, Article XII, Section 9(a), and Regulation Nos. 62 and 69.

All of the above violations occurred after the Commission directed ACL by Order No. 2738 to cease and desist from the general charter operations it had been conducting since May 1984. That order directed ACL to limit itself to round-trip sightseeing or pleasure tours. Most important, the cited order not only set forth a comprehensive interpretation of the phrase "round-trip sightseeing or pleasure tours," but it also explained and upheld the legality of that limitation being included in applicant's charter certificate.

There can be no doubt based on this record and the matters officially noticed herein that ACL's principals, its management, and its counsel know exactly what constitutes a chartered round-trip sightseeing or pleasure tour. ACL segregates the revenues from such tours, which it terms group sightseeing, from the other revenues including "non-lectured sightseeing," a category ACL combines with transfers and shuttles. Blue Bird Coach Lines, Inc., Peter Pan Bus Lines, Inc., and Peter Pan World Travel offer such tours in the Washington area. Moreover, Mr. Picknelly testified that he is familiar with ICC case law (albeit in cases involving special operations rather than charter operations) which specifies that something more than bare transportation must be included in a so-called round-trip sightseeing or pleasure tour. Following issuance of the above-cited Order No. 2738, applicant's counsel issued a letter interpreting the phrase relying appropriately on ICC cases and cautioning that the trips must originate and terminate at the same point, and must include legitimate sightseeing as opposed merely to pointing out one or two landmarks in transit. Counsel further cautioned against transporting a group round-trip "with American offering nothing other than pure transportation service." Mr. Mitchell, applicant's general manager at the time, instructed his staff to comply with counsel's interpretation of ACL's authority. Despite this fact the record indicates more than 60 trips which were not round-trip and at least 25 trips in which ACL supplied transportation only. One of ACL's own public witnesses testified that he had booked one such trip to be performed by ACL in March. The rates charged for these trips usually varied substantially from the rates contained in ACL's tariff, a practice ACL had been reminded as recently as November 1985 was contrary to Commission Regulation No. 55-08. Moreover, the rates charged leave little doubt that bare transportation was being purchased from ACL. ACL's actions in light of the Commission's repeated warnings in the form of official orders leave us little choice but to deny this application. We cannot and shall not reward such behavior by a grant of expanded authority.

Moreover, ACL is hereby placed on notice that any future violations of the Compact or the Commission's rules or regulations are likely to result in injunctive proceedings as well as the termination of its privilege to operate as a carrier of passengers within the Metropolitan District. It is only the evidence that applicant took some steps towards compliance with Order No. 2738 that persuades us not to commence immediately an investigation to determine whether ACL's

Certificate No. 1 should be suspended or revoked. Accordingly, this application shall be denied without prejudice to the filing of another application after a reasonable period, at which time applicant will be expected to establish unequivocally that it has brought its operations into compliance, thus curing the fitness problem that exists on this record.

Because of this finding we do not reach the question of whether the public convenience and necessity require applicant's charter service. We note, however, that ACL's evidence on this point was extremely weak. One witness had no requirement for transportation of any type within the Metropolitan District. A second witness had required a single coach within the past year. A third witness required coaches on seven occasions, never requiring more than two coaches at a time. The fourth witness required buses for charter movements on 15 occasions, on at least eight of which he chose to use school buses. T.S.&R., Tailored Tours, and D.C. Tours require larger numbers of coaches. However, it appears that most of the transportation needs of those companies are sightseeing related.

Finally, because applicant's operating witnesses have expressed disagreement with, or lack of understanding of the, Commission's definition of round-trip sightseeing or pleasure tours, we shall address that phrase briefly. We begin by noting that the term is not ours but comes to us as the result of certificating grandfather carriers holding identical authority from the ICC. Because the transportation authorized pursuant to that terminology arose in varying contexts, a single, all-encompassing definition is not possible. However, a review of the major cases in that area indicates that to fall within that category (1) the passenger must originate and terminate at the same point, and (2) the service must include for the price charged something of significance and value more than bare, expeditious, point-to-point transportation.

Thus, lectured sightseeing tours where the guide is provided by ACL and the price of the guide/lecturer is included in the hourly rate charged a group would fall within the ambit of WMATC Certificate No. 1. The same would be true of multi-day trips within the Metropolitan District where ACL made all arrangements thus controlling the package and including within the price of the package the price of an ACL guide, and the price of any other events or places to which the group will be transported, e.g., price of hotels, meals, theater admission. 14/ The Commission would expect appropriate descriptive

14/ Although ACL's current tariff indicates that tour services incidental to the tour as described in tour brochures or other advertising literature are included in its price, the evidence does not indicate that there are any such services actually performed or provided.

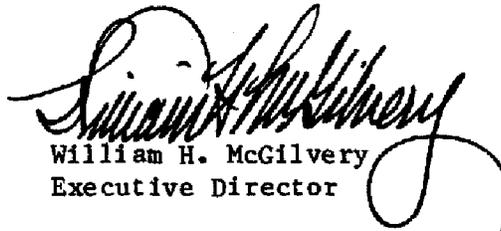
material to be available concerning such packages. WMATC Certificate No. 1 would not authorize transportation where all arrangements had been made by a group escort or broker and ACL's sole purpose was to provide the necessary transportation. In such cases only the round-trip sightseeing leg of the journey (provided ACL supplies the guide) would be authorized by Certificate No. 1.

THEREFORE, IT IS ORDERED:

1. That the application of American Coach Lines, Inc., is hereby denied.

2. That American Coach Lines, Inc., remains under direction that it cease and desist from any operations outside the scope of its Certificate No. 1 as described in Order No. 2738, served July 22, 1985, and as further described in this order.

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


William H. McGilvery
Executive Director