

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3013

IN THE MATTER OF:

Served May 1, 1987

Application of COLEMAN COACH)
CORPORATION for a Certificate of)
Public Convenience and Necessity to)
Conduct Charter and Special)
Operations between Points in the)
Metropolitan District and to)
Conduct Regular-Route Operations)
between Fairfax City, Va., and)
Washington, D.C.)

Case No. AP-87-01

By application filed December 19, 1986, as amended, 1/ Coleman Coach Corporation seeks a certificate of public convenience and necessity for the transportation of passengers between Fairfax City, Va., and Washington, D.C., over regular routes described as follows:

From the junction of Routes 236 and 237, over Route 237 to Route 50, then over Route 50 to Warwick Avenue, then over Warwick Avenue to Bevan Drive, then over Bevan Drive to Orchard Street, then over Orchard Street to Route 655, then over Route 655 to Route 236, then over Route 236 to Route I-395, then over Route I-395 to 14th Street, S.W., then over 14th Street, S.W., to Independence Avenue, S.W., then over Independence Avenue, S.W., to 3rd Street, S.W., then over 3rd Street, S.W. and N.W., to Constitution Avenue, then over Constitution Avenue, N.W., to Pennsylvania Avenue, N.W., then over Pennsylvania Avenue, N.W., to 14th Street, N.W., then over 14th Street, N.W., to K Street, N.W., then over K Street, N.W., to 21st Street, N.W., serving all intermediate points, and serving the Pentagon as an off-route point.

1/ By its initial application Coleman Coach sought authority, inter alia, to conduct charter and special operations between points in the Metropolitan District. At the public hearing in this matter applicant amended its application by withdrawing its request for charter and special operations authority, thereby limiting its application to the request for regular route authority as described above.

From the intersection of 21st and K Streets, N.W., over K Street, N.W., to 14th Street, N.W., then over 14th Street, N.W., to Pennsylvania Avenue, N.W., then over Pennsylvania Avenue, N.W., to Constitution Avenue, N.W., then over Constitution Avenue, N.W., to 3rd Street, N.W., then over 3rd Street, N.W. and S.W., to Independence Avenue, S.W., then over Independence Avenue, S.W., to 14th Street, S.W., then over 14th Street, S.W., to Route I-395, then over Route I-395 to Route 495, then over Route 495 to Route 236, then over Route 236 to Route 655, then over Route 655 to Orchard Street, then over Orchard Street to Bevan Drive, then over Bevan Drive to Warwick Avenue, then over Warwick Avenue to Route 50, then over Route 50 to Route 237, then over Route 237 to junction Routes 236 and 237, serving all intermediate points and serving the Pentagon as an off-route point. 2/

Pursuant to Order No. 2961, served January 15, 1987, a public hearing was held. After amendment, Coleman Coach's application stood unopposed. 3/ Applicant presented one company witness and two public witnesses in support of the application.

PROCEDURAL ISSUE

On March 12, 1987, staff counsel filed a Petition to Reopen pursuant to Commission Rule No. 27-01. The reopening was sought for the limited purpose of receiving into evidence a compliance review of Coleman Coach Corporation performed by the United States Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety ("DOT") and a letter from Coleman Coach's insurance carrier to DOT regarding applicant's coverage. These items had been received by

2/ To the extent that this application could be interpreted to seek authority between points solely within the Commonwealth of Virginia, it has been dismissed for want of jurisdiction pursuant to the Compact, Title II, Article XII, Section 1(b). See Order No. 2961, served January 15, 1987.

3/ Protests were timely filed by The Airport Connection, Inc. ("TAC"); Webb Tours, Inc.; Gold Line, Inc.; and National Coach Works, Inc. ("NCW"). On February 17, 1987, TAC and Webb Tours each filed a Motion to Withdraw noting as reason therefor Coleman Coach's deletion of its request for charter and special operations authority. Those motions will be granted. At the hearing Gold Line and NCW withdrew their protests on the record after the Administrative Law Judge accepted Coleman Coach's limitation of its application to the above-described regular routes.

staff counsel eight days after the public hearing in this case. Staff counsel maintained that the information contained in these documents is relevant to the issue of Coleman Coach's fitness, in no way duplicates evidence already of record, and would have been introduced at hearing had the documents been available at that time. Applicant did not object to the petition. Rather, applicant petitioned for reopening of the record for the reception of additional new evidence which was timely filed. Applicant's added evidence consists of (1) a letter from DOT dated March 17, 1987, stating that a final safety rating for applicant had not yet been made, and enclosing a copy of the applicable safety regulation in 49 CFR 385, and (2) an affidavit of Mr. Coleman, applicant's vice-president, stating that it has since taken corrective action to preclude further violations of the safety regulations. Both petitions were granted by the Commission's Order No. 2992, served April 1, 1987. Under Title II, Article XII, Section 4(b) of the Compact, we are obliged to determine whether Coleman Coach is fit, willing, and able to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission enacted pursuant to the Compact. Because the Commission's safety regulations and insurance requirements for vehicles seating 16 passengers or more are identical to DOT's, the documents at issue are directly relevant to such a finding. Accordingly, the evidence submitted by the Commission's staff counsel and by applicant will be received of record.

SUMMARY OF TESTIMONY

Darnell J. Coleman, Coleman Coach's vice-president, testified for applicant. Coleman Coach is a Virginia corporation formed approximately three and one-half years ago for the purpose of transporting passengers for hire. Applicant proposes service between Fairfax City, Va., and Washington, D.C., as described above. Applicant would serve all intermediate points and the Pentagon as an off-route point. The service would be offered Monday through Friday and would replace service formerly offered residents of Fairfax City by the City through contract with Gold Line. That service was terminated in June 1986 with the opening of the Vienna Metrorail station. Applicant proposes a one-way charge of \$3 per person. A 20-ride ticket would be offered for \$55. Fares would not vary with point of pickup or departure. Coleman Coach would operate the proposed route using two of its four MCI coaches. These vehicles are registered in Virginia. Three had been inspected in Virginia, two in the two weeks preceding the hearing and one in September 1986. One vehicle was "in the shop," and applicant presented no inspection papers for that vehicle. Mr. Coleman testified that all buses had been inspected, but previous inspection certificates had been stolen. He admitted he had been told by his attorney to have the buses reinspected, but testified that the

advice "just went over my head." 4/ Mr. Coleman testified that buses are serviced after each charter and that buses used in commuter work are used for charter work on the weekends. Oil and fuel filters are changed and general maintenance on the buses is performed every 10,000 miles. Drivers inspect buses daily according to United States Department of Transportation inspection sheets. The check includes inspection of the vehicle's lights, horn, brakes, tires, and fluids. Applicant employs one full-time driver for the commuter run and Mr. Coleman drives one bus himself. At the time of hearing, Coleman Coach held \$5,000,000 liability insurance. That insurance had been cancelled effective March 3, 1987. According to Mr. Coleman this is because applicant is unsatisfied with its agent and is switching to another agent, a process which necessitates a new policy being written. He expects his current insurance carrier to continue coverage.

Mr. Coleman testified that he is "generally aware" of laws which govern operation of buses and intends to abide by such laws and regulations. He is not familiar with the Compact but has read it. He is not familiar with Commission rules and regulations but intends to familiarize himself with them.

In June 1986, Coleman Coach began the Fairfax City-Washington, D.C., commuter service proposed in this application before becoming aware of the necessity for WMATC operating authority. Prior to that, Coleman Coach had been operating between the Mantua area in Fairfax County, Va., and Washington, D.C. In August 1986, applicant became aware that WMATC operating authority was required to conduct that service. Coleman Coach continued operating the route for which authority is here sought after that point in time. According to Mr. Coleman applicant operated the route as a car pool transporting between six and eight persons a day and thereby not realizing a profit. Mr. Coleman conceded that Coleman Coach had been formed for the specific purpose of transporting passengers for hire. He also admitted that he earns money transporting passengers.

With its application Coleman Coach submitted a balance sheet dated August 31, 1986, showing current assets of \$1,684 and fixed assets of \$93,265, after allowance for vehicle depreciation of \$45,840. The balance sheet showed long-term liabilities of \$110,768 and equity

4/ Virginia law requires that vehicles be inspected annually. When a vehicle passes inspection, it is given a sticker. Code of Virginia [1986] §46.1-318. By Order No. 2920, served October 9, 1986, Coleman Coach was granted temporary authority to become effective upon filing of specific items including evidence that its vehicles had been inspected by a signatory to the Compact and evidence of insurance. See Order No. 2976, served February 6, 1987. Those specified items were never filed and, therefore, the temporary authority never became effective.

of (\$15,819). Equity consists of \$2 common stock, \$5,158 paid-in capital, \$161 retained earnings, and \$21,140 year-to-date loss. An operating statement for the 12-month period ended August 31, 1986, showed total revenues of \$291,125 and total expenses of \$312,265 resulting in a net loss of \$21,140. Although he showed a somewhat generalized knowledge of the applicant's finances, Mr. Coleman was unable to elaborate substantially on specific items in the firm's balance sheet. He did state that payments on vehicles plus insurance totaled about \$9,000 a month.

Eva Chang lives in Fairfax, Va., and testified in support of the application. Ms. Chang has been using Coleman Coach's service since mid-June 1986, the second week of its inception. Ms. Chang boards at the intersection of Virginia Street and Va. Rte. 236, Fairfax City, Va., and disembarks at the intersection of 4th Street and Independence Avenue, S.W., Washington, D.C. She last used Coleman Coach's service on February 18, 1987, the day before the hearing. She was charged \$2.75. Ms. Chang likes Coleman Coach's service because of its relative speed. The same trip on alternate public transportation may take as long as two hours.

Monica Marsolais, Fairfax City, Va., also testified in support of the application. Ms. Marsolais would board the proposed service at the intersection of Bevan Drive and Warwick Avenue, Fairfax City, Va., and would disembark at the Forrestal Building on Independence Avenue, S.W., Washington, D.C. She would probably use the service daily. Ms. Marsolais is not aware of any private bus company which provides similar service. Existing publicly-provided transportation takes approximately one and a quarter hours as opposed to 45 minutes on Coleman Coach. Ms. Marsolais last used applicant's service on February 17, 1987, two days before the hearing. She paid \$2.75 for the service.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, we look to the standard 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 Coleman Coach has failed to meet its burden of proof on the issue of fitness.

Pursuant to a cooperative agreement between the Commission and DOT, effective September 28, 1971, the Commission has adopted DOT's safety laws and regulations as its own. A compliance review completed by DOT on October 31, 1986, resulted in a recommendation of an unsatisfactory safety rating for Coleman Coach. The actual rating is pending. The report of the compliance review indicates violations so pervasive as to cause us to find Coleman Coach operationally unfit. Specifically, despite Mr. Coleman's testimony to the contrary, the DOT report indicates the buses are not inspected as required. On none of the 43 trips checked during the compliance audit had vehicle inspection reports been prepared. Coleman Coach drivers were found to have been allowed or required to drive more than 10 hours with some frequency. On one occasion a driver drove 17 hours prior to being off duty eight consecutive hours. Coleman Coach attempted to hide the extent of such practices by requiring or permitting drivers to make false entries of duty status. Ten violations of this type, representing 12 percent of the trips examined, were found. No driver qualification files of any sort were maintained on half of the drivers employed by Coleman Coach. Other operating and record keeping violations abound. 5/ Moreover, during the period applicant's operations were being scrutinized by DOT,

5/ The DOT audit completed October 31, 1986, revealed 239 safety violations as follows: four instances of failing to maintain a driver qualification file on each driver employed; three instances of failing to maintain driver's employment application in the driver's qualification file; eight instances of failing to maintain inquiries into driver's driving and employment record in the driver's qualification file; one instance of failing to maintain notation of annual review of a driver's driving record in his qualification file; eight instances of failing to maintain the original of the signed road test, and/or the original or copy of the certificate, in the driver's qualification file; eight instances of failing to maintain the driver's written examination certificate and/or questions and answers given in the driver's qualification file; three instances of requiring or permitting a motor vehicle to be operated not in accordance with the laws, ordinances, and regulations under which it is being operated; six instances of requiring or permitting a driver to drive more than 10 hours; four instances of requiring or permitting a driver to drive after having been on duty 15 hours; one instance of a missing nut on the right rear drive axle wheel; 104 instances of failing to require drivers to make a record of duty status; 36 instances of failing to require drivers to prepare a record of duty status in the form and manner prescribed (drivers failing to show total hours, total miles driven, document/trip identification); 43 instances of failing to require drivers to prepare driver vehicle inspection reports; 10 instances of requiring or permitting drivers to make false entries upon a record of duty status (drivers showing off duty when actually on duty and/or driving).

Coleman Coach operated for over one month without adequate insurance. In light of the fact that applicant's basic liability insurance has been cancelled, this is of great concern.

We also are unable to find Coleman Coach financially fit. The corporation is basically uncapitalized and, in fact, has negative equity.

Finally, we find that Coleman Coach 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 Coleman Coach has:

1. knowingly and willfully transported passengers for hire between points in the Metropolitan District without appropriate operating authority in violation of the Compact, Title II, Article XII, Section 4(a);
2. knowingly and willfully charged rates for which no tariff was on file with the Commission and effective in violation of the Compact, Title II, Article XII, Section 5(d) and Commission Regulation No. 55-08; and
3. knowingly and willfully transported passengers for hire between points in the Metropolitan District without adequate insurance for the protection of the public as required by the Compact, Title II, Article XII, Section 9(a) and Commission Regulation No. 62.

Although a finding as to fitness is always prospective, evidence of an applicant's past violations creates a rebuttable presumption that such lack of compliance will continue. Mr. Coleman's lack of familiarity with the Compact and the Commission's rules and regulations, despite six month's time to familiarize himself with those items, together with applicant's history of violations, fail to lend credibility to its assertions of present or future compliance. 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 that it has cured 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 service. We note, however, that both of applicant's public witnesses have alternate, albeit less convenient, public transportation available to them.

THEREFORE, IT IS ORDERED:

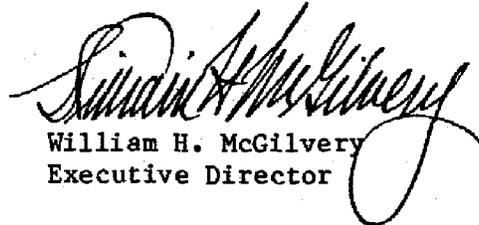
1. That the Motion to Withdraw filed by The Airport Connection, Inc., and Webb Tours, Inc., is hereby granted.

2. That the additional documents submitted by the Commission's staff counsel and by applicant, as previously described in the body of this order, are hereby received in evidence.

3. That the application of Coleman Coach Corporation is hereby denied in its entirety.

4. That Coleman Coach Corporation is hereby directed to cease and desist from transporting passengers for hire between points in the Metropolitan District.

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


William H. McGilvery
Executive Director