

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3135

IN THE MATTER OF:

Served March 21, 1988

Application of KEITH JONES to)
Transfer Certificate No. 43 to)
CUSTOM TOURS OF WASHINGTON, INC.)
)

Case No. AP-88-01

Application of HENRY LICHTENSTEIN)
to Transfer Certificate No. 87 to)
CUSTOM TOURS OF WASHINGTON, INC.)
)

Case No. AP-88-02

By application filed January 19, 1988, Keith Jones, a sole proprietor trading as Custom Tours of Washington, D.C. ("transferor"), seeks approval to transfer his Certificate of Public Convenience and Necessity No. 43 to Custom Tours of Washington, Inc. ("transferee").

Certificate No. 43 authorizes the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers in sightseeing tours:

- (1) From motels and motor inns located at points on that part of U.S. Highway 1 south of junction U.S. Highway 1 and Interstate Highway 395 at or near Arlington, Va., and north of junction U.S. Highway 1 and Interstate Highway 95 at or near Woodbridge, Va., to points in the District of Columbia, and the City of Alexandria and Counties of Arlington and Fairfax, Va., and return.
- (2) From Holiday Inn, junction Interstate Highway 395 and Glebe Road, Arlington County, Va.; and Virginia Motel, 700 North Washington Street, Alexandria, Va.; to points in the District of Columbia and the City of Alexandria and Counties of Arlington and Fairfax, Va.; and return.

RESTRICTED IN (1) AND (2) ABOVE:

- (a) to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver; and

(b) against transportation solely within the Commonwealth of Virginia.

By separate application also filed January 19, 1988, Henry Lichtenstein, a sole proprietor ("transferor"), seeks approval to transfer his Certificate of Public Convenience and Necessity No. 87 to Custom Tours of Washington, Inc. ("transferee").

Certificate No. 87 authorizes the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers, restricted to lectured, round-trip sightseeing tours, between Mount 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 of 15 passengers or less (including the driver).

The above-captioned applications were consolidated and a public hearing scheduled by Order No. 3120, served January 29, 1988, and that order is incorporated herein by reference. A review of the record indicates that Keith Jones notified the public of the pending applications by publishing notice in the Washington Post on Saturday, February 6, 1988, and posting similar notice in vehicles. No formal protests or requests to be heard were filed in either case. */

*/ Due to a misunderstanding on the part of transferors, Keith Jones was delayed in publishing and posting notice of the applications. Mr. Jones filed a request that the scheduled hearing (and, by implication, protest date) not be affected by the delay. In consideration of the lack of protests in these cases, that motion is hereby granted.

By separate motions filed January 19, 1988, transferors, Messrs. Lichtenstein and Jones, sought waiver of the March 1, 1988, public hearing and requested that a decision be rendered on the evidence of record. Order No. 3125, served February 17, 1988, cancelled the hearing and referred the motions to the Commission for decision. In the absence of protests, and given the nature of these applications, we shall grant transferors' requests. We now turn to the merits of the proposed transfers.

These matters are governed by Title II, Article XII, Section 4(h) of the Compact which provides that certificates may be transferred if the Commission finds such transfers to be consistent with the public interest.

We begin by noting that transferor, Keith Jones, has continued operations under his certificate pending Commission determination of his transfer application. Therefore, dormancy of Certificate No. 43 is not an issue in the case. Transferor, Henry Lichtenstein, has ceased operations under his certificate and is presently uninsured. Such lack of operations could indicate that there is no longer a need for the service previously performed under Certificate No. 87. It appears, however, that the cessation of operations by Mr. Lichtenstein under Certificate No. 87 is not so substantial as to render his certificate dormant. Transferor failed to operate for only a brief time while engaged in negotiations with transferee.

In reviewing the record we find that transferee is a newly formed District of Columbia corporation. Mr. Keith Jones is president of the corporation and his brother, Mr. Wendell Jones, is vice-president. The corporation's balance sheet reflects \$2,000 in assets, \$2,000 in equity, and no liabilities. The corporation leases a 15-passenger vehicle from Mr. Keith Jones. If the applications are approved, transferee will use the vehicle for all operations under the certificates. Transferee's participation in these matters evidences a familiarity with and willingness to abide by the requirements of the Compact and the Commission's rules and regulations. No discernible change in the market is expected as a result of the transfers. Based on these considerations, we find the transfers to be in the public interest.

In a final matter, transferee requests Commission approval to consolidate Certificate Nos. 43 and 87 into one Certificate No. 43. Transferee's request is hereby granted, and Certificate No. 87 is retired.

THEREFORE, IT IS ORDERED:

1. That the motions of Keith Jones and Henry Lichtenstein to waive public hearing are hereby granted.

2. That the applications of Keith Jones and Henry Lichtenstein to transfer Certificate Nos. 43 and 87 to Custom Tours of Washington, Inc., are hereby conditionally granted contingent upon compliance with the terms of this order.

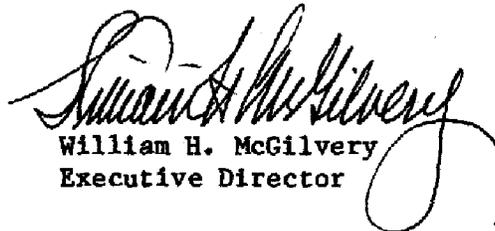
3. That Certificate Nos. 43 and 87 are hereby consolidated, and Certificate No. 87 is hereby retired.

4. That Custom Tours of Washington, Inc., is hereby directed to file with the Commission (a) three copies of its WMATC Tariff No. 1; (b) a certificate of insurance in accordance with WMATC Regulation No. 62; (c) an affidavit of identification of vehicles pursuant to Regulation No. 67 for which purpose WMATC No. 43 is assigned; and (d) an affidavit that the agreement with Henry Lichtenstein has been consummated.

5. That unless Custom Tours of Washington, Inc., complies with the preceding requirements within 30 days from the service date of this order, or such additional time as the Commission may direct or allow, these applications shall stand denied in their entirety, effective upon the expiration of the time for compliance.

6. That upon compliance with the conditions set forth in the preceding paragraphs, Certificate of Public Convenience and Necessity No. 43 will be issued to Custom Tours of Washington, Inc., in the form and as worded in the appendix to this order.

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


William H. McGilvery
Executive Director

NO. 43

CUSTOM TOURS OF WASHINGTON, INC.

UPPER MARLBORO, MARYLAND

By Order Nos. 1702, 2000, 2129, 2447, 2483, 2505, 3073, and 3135 of the Washington Metropolitan Area Transit Commission issued May 26, 1977; June 6, 1979; July 17, 1980; August 9, October 7, and December 2, 1983; September 23, 1987; and March 21, 1988;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order Nos. 1702, 2000, 2129, 2447, 2483, 2505, 3073, and 3135;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions and limitations as are now, or may hereafter be, attached to the exercise of the privilege granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

PART A

SPECIAL OPERATIONS, transporting passengers in sightseeing tours:

- (1) From motels and motor inns located at points on that part of U.S. Highway 1 south of junction U.S. Highway 1 and Interstate Highway 395 at or near Arlington, Va., and north of junction U.S. Highway 1 and Interstate Highway 95 at or near Woodbridge, Va., to points in the District of Columbia, and the City of Alexandria and Counties of Arlington and Fairfax, Va., and return.
- (2) From Holiday Inn, junction Interstate Highway 395 and Glebe Road, Arlington County, Va.; and

Virginia Motel, 700 North Washington Street, Alexandria, Va.; to points in the District of Columbia and the City of Alexandria and Counties of Arlington and Fairfax, Va.; and return.

PART B

SPECIAL OPERATIONS, transporting passengers, restricted to lectured, round-trip sightseeing tours, between Mount 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 IN PARTS (A) AND (B) ABOVE:

- (1) to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver; and
- (2) against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change or revocation of the certificate.