

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3287

IN THE MATTER OF:

Served February 6, 1989

Application of PHOENIX TOURS, INC.,)
for Temporary Authority -- Charter)
and Special Operations)

Case No. AP-88-46

By application filed November 4, 1988, Phoenix Tours, Inc. (Phoenix or applicant), seeks temporary authority to transport passengers, together with mail, express, and baggage in the same vehicle as passengers, in charter and special operations between points in the Metropolitan District. 1/

Order No. 3258, served December 2, 1988, described applicant's proposed operations, provided notice thereof, and set a deadline for filing protests. On December 12, 1988, American Coach Lines, Inc. (American), filed a protest to the application and a request for oral hearing. On that same date a joint protest of Gold Line, Inc. (Gold Line), and National Coach Works, Inc. (NCW), was also filed.

The standards for temporary authority are set forth in the Compact at Title II, Article XII, Section 4(d)(3), as follows:

To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service. Such temporary authority unless suspended or revoked for good cause, shall be valid for such time as the Commission shall specify, but for not more than an aggregate of 180 days and create no presumption that corresponding permanent authority will be granted thereafter. (Emphasis supplied.)

In addition, the fitness of the applicant is always an issue. See Order Nos. 1643, and 3221 served January 24, 1977, and August 23, 1988, respectively.

American holds WMATC Certificate No. 103 which authorizes the transportation of passengers in charter and special operations between points in the Metropolitan District. 2/ American argues that Phoenix has failed to prove either (1) that an immediate and urgent need for the proposed services exist or (2) that there are no carriers capable

1/ To the extent this application could be construed to seek authority for transportation solely within the Commonwealth of Virginia, it has been dismissed. See Order No. 3258, served December 2, 1988.

of meeting such need. American points out that none of the numerous letters of support provide any date certain for the immediate requirement of services in a coach-sized vehicle. The letters also fail to suggest that efforts have been made to secure the services of existing carriers to perform such transportation as may be required. American Coach states that it has sufficient equipment and stands ready, and willing to serve any of the affiants' transportation needs.

Gold Line holds WMATC Certificate No. 14 which authorizes, inter alia, the transportation of passengers in charter and special operations between points in the Metropolitan District. NCW holds WMATC Certificate No. 26 which authorizes the transportation of passengers in charter operations between points in the Metropolitan District. The joint protest of Gold Line and NCW echoes the position put forth by American concerning the letters of support submitted with the application. Gold Line and NCW further state that applicant has not shown that existing services are unable to meet the current needs of the public.

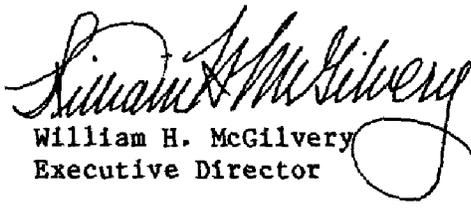
After careful review of the evidence in this case we are unable to find that applicant has established that the proposed service meets the criteria required by the Compact for a grant of temporary authority. There is no evidence in the record that would indicate that affiants have tried to secure service in 47-passenger coaches but have been unsuccessful due to the unavailability of existing carriers. Moreover, protestants collectively possess sufficient equipment to meet those needs of the affiants that may arise in the near future. The record clearly shows that not one but three existing carriers are capable and stand willing to provide the service for which Phoenix seeks temporary authority. The application of Phoenix Tours for temporary authority must therefore, be denied.

In light of the Commission's determination, no hearing will be held on the matter. Accordingly, the request of American Coach Lines, Inc., for an oral hearing on this matter is hereby denied.

The Commission takes note that Phoenix has filed applications for a certificate of public convenience and necessity to conduct special operations and charter operations. These applications will be viewed in a light independent of the temporary authority application.

THEREFORE, IT IS ORDERED that the application of Phoenix Tours, Inc., for temporary authority in Case No. AP-88-46 is hereby denied without prejudice.

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


William H. McGilvery
Executive Director

2/ Certificate No. 103 contains certain restrictions which have no significance in this matter.