

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3334

IN THE MATTER OF:

Served May 11, 1989

Application of POTOMAC VALLEY BUS )  
LINES, INC., for a Certificate of )  
Public Convenience and Necessity )  
to Perform Charter Operations )

Case No. AP-89-01

Application of VIRGINIA COACH )  
COMPANY for a Certificate of )  
Public Convenience and Necessity )  
to Perform Charter Operations )

Case No. AP-89-02

By application filed January 4, 1989, in Case No. AP-89-01, Potomac Valley Bus Lines, Inc. (Potomac), a Maryland corporation, seeks a certificate of public convenience and necessity to transport passengers, together with mail, express, and baggage in the same vehicle as passengers, in charter operations between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia.

By application filed January 6, 1989, Virginia Coach Company (Virginia Coach), a Virginia corporation, seeks a certificate of public convenience and necessity to transport passengers, together with mail, express, and baggage in the same vehicle as passengers, in charter operations between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia.

By Order No. 3278, served January 18, 1989, these applications were consolidated for hearing on the same record in response to a joint motion by Potomac and Virginia Coach. Pursuant to Order No. 3278, a public hearing was held on March 7, 1989. American Coach Lines, Inc. (American), filed a protest to the Virginia Coach application. However, American did not appear at the public hearing held on March 7, 1989, and presented no evidence. Accordingly, its interest in the application will not be further considered.

SUMMARY OF THE EVIDENCE

Mr. Robert Hansen, vice president of Potomac, testified on behalf of that applicant. Potomac was incorporated in Maryland in 1985. Potomac obtained a certificate of public convenience and necessity from the Interstate Commerce Commission (MC-185476) in 1985 authorizing it to operate as a common carrier by motor vehicle, in interstate commerce, transporting passengers in charter and special operations between points in the United States. In addition to its

Interstate Commerce Commission authority, Potomac received temporary authority from this Commission to conduct charter operations within the Metropolitan District for certain specified accounts effective in December 1988. During January and February 1989, Potomac operated a total of 31 trips pursuant to this temporary authority. In addition, it has booked the following number of trips within the Metropolitan District: 50 trips in March, 43 trips in April, 43 trips in May, and 50 trips in June.

Potomac operates two MCI coaches and one VanHool coach. 1/ The MCI's are approximately ten years old, seat 47 passengers, and are air-conditioned and restroom equipped. The VanHool is a new bus seating 49 passengers. It is a European-style coach specifically designed for touring operations. The passengers sit high in the bus, which has large wrap-around windows, thus affording the passengers a panoramic view. The VanHool is also air-conditioned and restroom equipped. The witness testified that Potomac is accepting delivery of a new VanHool coach in April 1989 to replace one of the MCI coaches.

To qualify for employment with Potomac, drivers must have a valid class C license issued by the State of Maryland, have a driving record free of violations, and have a good safety record with previous employers. Normally, only drivers who are personally known by witness Hansen are employed. Newly-hired drivers go through an extensive training program that includes riding with other drivers and passing the driver's road test required by the United States Department of Transportation (USDOT). Drivers are kept abreast of safety regulation changes through a company newsletter and meetings. Drivers receive a monetary bonus if they operate for a year without a chargeable accident.

Prior to being dispatched, each bus is thoroughly inspected by the driver. Minor mechanical defects are corrected by the drivers. In addition to a pre-trip inspection, each coach undergoes a thorough inspection every 10,000 miles. In the three years that Potomac has been conducting operations it has not been involved in any accident where it has been at fault. Potomac's USDOT safety rating is "satisfactory." 2/

Potomac's proposed tariff shows group charter rates of \$320 for the first 8 hours or less, plus \$40 for each additional hour. Lectured sightseeing charter service would be offered at \$45 an hour, with a four-hour minimum, plus a one-hour report charge. One-way transfers would be:

Washington National Airport	\$150
Washington Dulles International Airport	\$200

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1/ A third MCI coach on Potomac's equipment list has been removed from its fleet.

2/ USDOT uses three safety ratings: "satisfactory," "conditional," and "unsatisfactory."

Mr. Hansen testified that the eight-hour minimum was designed for long-haul movements. His intended proposed tariff for (non-sightseeing) trips between points within the Metropolitan District is \$40 an hour with a four-hour minimum, plus a one-hour report charge. If this application is granted, Mr. Hansen would amend Potomac's tariff to reflect this rate.

Mr. Hansen is familiar with the Compact and the Commission's rules and regulations and intends to assure Potomac's compliance with them.

With its application, Potomac submitted a balance sheet as of December 31, 1987, which showed total assets of \$185,329, including current assets of \$15,419 and fixed assets after allowance for depreciation of \$169,910. The balance sheet also showed loans due stockholders of \$40,038, long-term liabilities of \$149,276, capital stock of \$100, and a deficit to retained earnings of \$4,085. At hearing a balance sheet as of December 31, 1988, was introduced showing total assets of \$313,831, including current assets of \$15,520, and fixed assets after allowance for depreciation of \$298,311. The balance sheet showed loans from shareholders and capital stock in amounts unchanged from the previous statement, plus long-term liabilities of \$283,158, and a deficit to retained earnings of \$9,464. Potomac's income statement for the 12-month period ended December 31, 1987, shows gross receipts (less returns and allowances) of \$377,771 and operating expenses of \$348,946. Potomac was left with a net loss for 1987 of \$4,085 due to carry-over of a net operating loss from the previous year. For the year ended December 31, 1988, Potomac realized income of \$372,379 and operating expenses of \$377,758 resulting in a net loss of \$5,379. Mr. Hansen attributed this loss to a slight down-turn in business at the end of 1988, a situation he attributed to a temporary fluctuation. Mr. Hansen considers Potomac to be profitable and the loss to be merely a small "paper" loss. If this application is granted, Potomac projects revenues of \$20,000 from operations solely within the Metropolitan District during a 12-month period. Expenses attributable to those operations are expected to be \$18,400.

Mr. James Counselman, president of Virginia Coach, testified on behalf of that applicant. Virginia Coach was incorporated in Virginia in 1983. Virginia Coach currently holds operating authority issued by the Interstate Commerce Commission (MC-168428) authorizing it to conduct charter and special operations between points in the United States and regular route operations between points in Winchester, VA, and Washington, DC; operating authority issued by the Commonwealth of Virginia (B-372) authorizing it to conduct intrastate charter operations from points in northern Virginia to points in Virginia, and return; and operating authority issued by this Commission (WMATC Certificate No. 136) authorizing it to conduct charter operations between points in the Metropolitan District, restricted to service provided for The Convention Store. Virginia Coach also received temporary authority from this Commission to conduct charter operations within the Metropolitan District for specified accounts commencing in January 1989. Virginia Coach is conducting operations pursuant to all of its operating authority.

Virginia Coach operates a total of 18 vehicles. Two of these vehicles are 21-passenger minibuses; three are MCI-8 coaches, each with a seating capacity of 47; two are Prevost coaches, one with a seating capacity of 47 and one with a seating capacity of 49; four are MCI-102 coaches (two are 1985 and two are 1988 coaches); six are GMC Suburban buses; and one is a limousine. All of the coaches are air-conditioned and restroom-equipped, and the 1988 MCI coaches are also equipped with VCR's. All equipment is stationed in Virginia Coach's garage and maintenance facility in Purcellville, VA.

Virginia Coach has a certified driver trainer who is responsible for administering its driver-training program. The program takes prospective drivers about one week to complete. Virginia Coach employs 19 drivers, 13 of whom are full-time. Drivers must be at least 25 years of age, in good physical condition, drug-free, with a clean driving record, and must have passed USDOT's driving test and Virginia Coach's driver-training program. Virginia Coach distributes a monthly safety bulletin to its drivers and has two meetings yearly at which drivers are shown films on compliance with USDOT safety regulations, safe-driving tips, and other safety-related matters. Virginia Coach has a complete maintenance facility and employs two full-time mechanics. Buses are serviced every 6,000 miles and inspected when they return to the garage. Drivers are required to note any mechanical problems, no matter how small, so that the mechanics can immediately correct any problems. Virginia Coach's USDOT safety rating is "satisfactory."

Virginia Coach's tariff shows group charter rates of \$320 for the first eight hours or less of service, plus \$40 for each additional hour. Lectured sightseeing is listed at \$45 an hour with a four-hour minimum. At hearing Mr. Counselman explained that his company charges an eight-hour minimum to groups on long-haul trips where Washington is one stop on a multi-day journey. Virginia Coach's minimum for groups traveling solely within the Metropolitan District is five hours (four hours charter plus one hour travel time). A discount of 10 percent will be allowed for licensed tour brokers and travel agents. Mr. Counselman agreed to amend Virginia Coach's WMATC tariff to make these rates explicit.

Mr. Counselman is familiar with the Compact and the Commission's rules and regulations, including its safety regulations. Virginia Coach is currently complying with these and intends to continue complying.

At hearing Virginia Coach submitted balance sheets as of December 31, 1987, and December 31, 1988. The balance sheet as of December 31, 1987, shows total assets of \$476,099, including current assets of \$40,136, fixed assets after allowance for depreciation of \$422,622, and other assets of \$13,301. Current liabilities of \$132,722, long-term liabilities of \$464,357, common stock of \$1,000, and a deficit to retained earnings of \$121,980 are also listed. The balance sheet as of December 31, 1988, shows total assets of \$730,172, including current assets of \$76,275, fixed assets after allowance for depreciation of \$643,422, and other assets of \$10,475. Current

liabilities of \$194,271, long-term liabilities of \$767,708, common stock of \$1,000, a deficit to retained earnings of \$96,890, and "Cost of Treasury Stock" <sup>3/</sup> of \$135,917, resulting in total equity of (\$213,807), are also listed. For the year ended December 31, 1987, Virginia Coach had sales of \$954,536, other income of \$8,384, and operating expenses of \$996,459, resulting in a net loss of \$33,539. During the period January 1, 1988, through December 31, 1988, Virginia Coach had operating revenue of \$1,414,778 (approximately \$60,000 of which was due to operations in the Metropolitan District pursuant to Virginia Coach's Certificate No. 136), other income of \$6,061, and operating expenses of \$1,391,929, resulting in net profit of \$28,910. With its application Virginia Coach submitted a projected operating statement for the first twelve months of operations based on its 1987 operating experience. The statement projected revenues from operations in the Metropolitan District of \$30,000 and expenses of \$24,600. At hearing Mr. Counselman testified that based on Virginia Coach's 1988 experience he would project over \$100,000 in revenues from operations in the Metropolitan District during the first twelve months of operations if this application is granted. Expenses would be increased proportionately.

Ms. Lauryn McNeill testified on behalf of the Maryland - National Capital Park & Planning Commission in support of the application. She is a recreation specialist. The Planning Commission sponsors and pays for bus trips and excursions throughout the Metropolitan District. These trips, which are heavily patronized by senior citizens, normally originate at a point in Prince George's County, such as Riverdale, and involve travel to a point in the Metropolitan District and return. The trips are recreational and educational in nature, involving sightseeing in addition to bare transportation. The Planning Commission operates approximately 20 to 30 trips a year involving travel between points in the Metropolitan District. It requires coaches for these trips. The Planning Commission has used the services of Potomac for trips outside the Metropolitan District and, on one occasion, a trip from Riverdale to the Capital Centre in Largo. <sup>4/</sup> The witness testified that the Planning Commission was pleased with Potomac's service. Potomac's equipment is clean and well-maintained, and its drivers are courteous and conduct themselves as professionals. If the applications are granted, the Planning Commission would be in the position to tender both Potomac and Virginia Coach from 10 to 15 charter trips a year within the Metropolitan District.

Mr. Mark S. Fischer testified in support of the application on behalf of The Capital Informer, Inc., where he is employed as director of operations. Capital Informer designs, arranges, and manages the operation of diverse and often complex programs for major corporations,

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<sup>3/</sup> This number represents an amount paid to purchase a partner's share of the business.

<sup>4/</sup> Potomac's witness described this trip, for which Potomac admittedly has no operating authority, as a "mistake."

throughout the United States, as well as in foreign countries. The services it provides include city-wide shuttles, airport "meet-and-greet" services, local tours, social functions, and management meetings. Most of the programs that it operates are multi-faceted, involving a "package" in which transportation is one of the major components. Because of the nature of the services provided by Capital Informer, coaches are a necessity.

Capital Informer's services frequently begin when its client group arrives in Washington. The group is transported from an area airport to hotels throughout the Metropolitan District, including those located in downtown Washington, DC; Crystal City, Rosslyn, and Tysons Corner, VA; and Bethesda, MD. Throughout the group's stay in the area, transportation services are provided, including local tours and transfers.

Frequently Capital Informer requires a large fleet of vehicles to meet its transportation requirements. In November 1988, it required 30 to 50 vehicles a day for four consecutive days for one group, and 80 vehicles a day for five consecutive days for another group. Similar arrangements will be required in the future for work which Capital Informer has booked.

Due to an increase in Capital Informer's own business as well as an increase in the demand for coaches in the Metropolitan District and a reduction in the size of the fleets of some of the local bus companies, Capital Informer is experiencing ever-increasing difficulty obtaining the amount and type of equipment it needs. Capital Informer's representative testified that he is familiar with the equipment and service provided by both applicants. The company has used Virginia Coach's service on trips outside the Metropolitan District. If these applications are granted, Capital Informer would use the services of each applicant several times a month, primarily for tours and hotel transfers involving small groups. Geographically such moves would be concentrated in the District of Columbia and Northern Virginia.

Ms. Pat Neimeyer, the proprietor of Four Star Tours, testified on its behalf in support of the application. Four Star operates group tours both on an interstate and local basis. It specializes in tours for the military and for students. Its local transportation requirements include sightseeing trips and airport and train station transfers. Four Star operates about 30 tours a year between points in the Metropolitan District, averaging two coaches a trip. Its tours involve Washington, DC, and Fairfax, Arlington, Alexandria, and Falls Church, VA. Four Star has used Virginia Coach's service for multi-day tours involving trips to Williamsburg and Richmond combined with Metropolitan District tours. Four Star has eight other trips booked with Virginia Coach for this spring. Four Star is satisfied with the service it has received from Virginia Coach because that carrier has provided modern, clean equipment staffed with professional, courteous drivers. Four Star has not used Potomac's service but has spoken with its representative and believes that its equipment is good and the company is well-staffed. Four Star's representative is especially

interested in Potomac's VanHool coaches. If these applications are granted Four Star will use the service provided by both applicants almost exclusively for its transportation needs.

Ms. Charlotte Timms testified in support of the applications on behalf of The Convention Store where she is employed as vice president of the transportation division. The Convention Store designs and runs shuttle bus systems and other specialized bus transportation. Its clients require service throughout the central portion of the Metropolitan District for shuttle movements between hotels and the Convention Center. The Convention Store also operates charter sightseeing trips to points of interest within the Metropolitan District, such as Mount Vernon, VA. The Convention Store's transportation requirements are substantial; it averages 25 buses twice a month for conventions alone. The Convention Store also requires luxury-style buses to meet its "steady, day-in, day-out volume business."

The Convention Store has used Virginia Coach 5/ and has been pleased with the quality of the service. Ms. Timms has found Virginia Coach to be reliable; its equipment is always clean and its drivers are courteous. For this reason, The Convention Store supports expansion of Virginia Coach's authority. Because its own business is increasing and its demand for coaches, including luxury coaches such as the VanHool, is growing, The Convention Store supports Potomac's application. If Potomac's application is granted The Convention Store would use Potomac several times a month as part of a large shuttle system and for local tour work. Geographically the use would include Washington, DC; Arlington, VA; and Montgomery County, MD.

#### DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, the Commission looks to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact, which provides:

. . . the Commission shall issue a certificate . . . 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 complete review of the records in Case Nos. AP-89-01 and AP-89-02, we find both applicants capable of providing the proposed services and willing to conform to the Compact and the Commission's

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5/ Virginia Coach holds WMATC Certificate No. 136 which authorizes it to conduct charter operations between points in the Metropolitan District for the account of The Convention Store.

rules and regulations. Applicants are both experienced passenger carriers. They both emphasize the importance of safety in their respective operations by engaging in daily and regularly-scheduled preventive maintenance programs for their equipment. Their drivers undergo safety training. Both applicants are relatively young and, perhaps as a result, are thinly-capitalized, have limited financial resources, and have recently experienced small operating losses. Nonetheless, applicants' ongoing operations in combination with their assets show that each has the ability to provide the service that each proposes. Moreover, the additional revenues which will be generated by the Metropolitan District operations will help to improve each applicant's financial position.

We turn now to the matter of whether applicants have satisfied their burden of proving that the public convenience and necessity require the proposed services. In determining whether an applicant has met its burden of proof, the Commission relies on the test enunciated in Pan-American Bus Lines Operation (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

We find that the evidence adduced in support of the applications establishes a sufficient need for service to require the granting of both applications. Four witnesses testified in support of both applications. <sup>6/</sup> Collectively, the testimony of these witnesses demonstrates that there is a sufficient volume of business to support the entry of both carriers into the market.

The supporting witnesses require charter transportation throughout the Metropolitan District for sightseeing tours; city-wide and hotel shuttles; hotel, airport, and train station transfers; and other general purposes. All witnesses need over-the-road coaches or luxury coaches to meet their client's requests. All are familiar with applicants' equipment and proposed service and would use both Potomac and Virginia Coach on a regular basis if these applications are granted. In addition, the witnesses testified that their respective businesses were increasing, thereby increasing the demand for service within the Metropolitan District. Thus we find that granting the applications will serve a useful public purpose responsive to a public

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<sup>6/</sup> Inasmuch as Virginia Coach is already authorized to provide service for The Convention Store, the testimony of its witness has been considered only with regard to Potomac's application.

need and demand. As no opposition to the applications was voiced at hearing in rebuttal to this evidence, we conclude that the applicants' proposed services will not materially affect the operations of existing carriers.

THEREFORE, IT IS ORDERED:

1. That in Case No. AP-89-01, Potomac Valley Bus Lines, Inc., is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers, together with mail, express, and baggage in the same vehicle as passengers, over irregular routes, in charter operations, between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia.

2. That in Case No. AP-89-02, Virginia Coach Company is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers, together with mail, express, and baggage in the same vehicle as passengers, over irregular routes, in charter operations, between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia.

3. That Potomac Valley Bus Lines, Inc., and Virginia Coach Company are each hereby directed to file with the Commission the following: (a) two copies of its WMATC tariff amended as discussed in the body of this order; (b) an equipment list specifying make, year, model, serial number, seating capacity, and license plate number and jurisdiction for each vehicle to be used in WMATC operations; (c) equipment leases in accordance with Commission Regulation No. 69 covering all vehicles not owned; (d) a certificate of insurance in accordance with Commission Regulation No. 62; and (e) an affidavit of identification of vehicles pursuant to Commission Regulation No. 67 for which purpose WMATC No. 152 is hereby assigned to Potomac Valley Bus Lines, Inc., and WMATC No. 136 has been assigned to Virginia Coach Company.

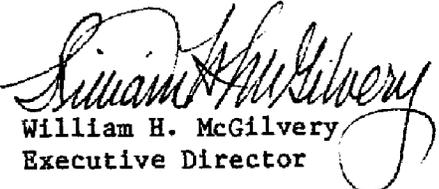
4. That unless Potomac Valley Bus Lines, Inc., complies with the requirements of the preceding paragraph within 30 days from the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority to said applicant contained herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

5. That unless Virginia Coach Company complies with the requirements of Ordering Paragraph No. 3 within 30 days from the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority to said applicant contained herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

6. That upon the timely compliance of Potomac Valley Bus Lines, Inc., with the requirements of this order, a certificate of public convenience and necessity will be issued in the form and as worded in Appendix A to this order.

7. That upon the timely compliance of Virginia Coach Company with the requirements of this order, a certificate of public convenience and necessity will be issued in the form and as worded in Appendix B to this order, which certificate will cancel existing Certificate No. 136.

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

  
William H. McGilvery  
Executive Director

NO. 152

POTOMAC VALLEY BUS LINES, INC.

UPPER MARLBORO, MARYLAND

By Order No. 3334 of the Washington Metropolitan Area Transit Commission issued May 11, 1989;

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 No. 3334;

THEREFORE, IT IS ORDERED that the said carrier be, and 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:

CHARTER OPERATIONS, transporting passengers, together with mail, express, and baggage in the same vehicle as passengers, between points in the Metropolitan District;

RESTRICTED against transportation of passengers 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 so to do shall constitute sufficient grounds for suspension, change, or revocation of the certificate.

NO. 136

VIRGINIA COACH COMPANY  
PURCELLVILLE, VIRGINIA

By Order Nos. 3100 and 3334 of the Washington Metropolitan Area Transit Commission issued December 31, 1987, and May 11, 1989;

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. 3100 and 3334;

THEREFORE, IT IS ORDERED that the said carrier be, and 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:

CHARTER OPERATIONS, transporting passengers, together with mail, express, and baggage in the same vehicle as passengers, between points in the Metropolitan District;

RESTRICTED against transportation of passengers 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 so to do shall constitute sufficient grounds for suspension, change, or revocation of the certificate.