

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3427

IN THE MATTER OF:

Served October 27, 1989

Application of EYRE BUS SERVICE,)
INC., for a Certificate of Public)
Convenience and Necessity --)
Charter Operations)

Case No. AP-88-45

SAFEWAY TRAILS, INC. --)
"Grandfather" Application)

Application No. 96

By application filed October 31, 1988, as amended, Eyre Bus Service, Inc. (Eyre or applicant), seeks a certificate of public convenience and necessity to transport passengers, together with baggage in the same vehicle as passengers, in charter operations between points in the Metropolitan District. 1/2/

By motion filed November 10, 1988, Eyre sought to consolidate Case No. AP-88-45 with Application No. 96, In re Safeway Trails, Inc. -- "Grandfather" Application, in which a Petition to Reopen filed by Eyre was pending. The motion was granted by Order No. 3337, served May 15, 1989, and incorporated herein by reference. Pursuant to Order No. 3337 a hearing on the consolidated cases was held on July 11, 1989. Eyre presented three company witnesses and three public witnesses. The matter is uncontested.

SUMMARY OF EVIDENCE

Mr. Harry Eyre, applicant's president, testified that his company began service in 1947 by operating school buses for Howard County, MD. In 1958 the company obtained authority from the Interstate Commerce Commission (ICC) to conduct operations in the Washington area. Mr. Eyre described these operations as ". . . Woodbridge and 10 mile radius into D.C., Virginia, Pennsylvania and later on we acquired states east of the Mississippi and a few years later we acquired 48 states." The company was incorporated in 1967 as Eyre's Bus Service, Inc. In 1979 it contracted to purchase an ICC regular route certificate from Safeway Trails, Inc. According to Mr. Eyre the route extended "[f]rom Baltimore to Washington via Columbia by Route 29 through 196 Burtonsville to White Oak, Silver Spring, 16th Street and

1/ To the extent this application could be interpreted to include transportation solely within Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b) by Order No. 3337.

2/ This application is interpreted to exclude charter transportation authorized by applicant's WMATC Certificate No. 17.

also in New Hampshire Avenue." 3/ Mr. Eyre testified that he was told at the time of the purchase that the certificate included certain incidental charter authority and that Safeway Trails had filed an application for grandfather rights with this Commission. Eyre's purchase of the described regular route authority and the incidental charter authority appurtenant to that regular route was approved by the ICC in the spring of 1979. Since that time applicant has continuously operated ". . . the regular route service and the charter service." Eyre 4/ conducts no other regular route operations. In 1982 Eyre, upon being informed by the Commission that it required operating authority, filed a petition to reopen Application No. 96 of Safeway Trails, Inc. By its petition Eyre asks the Commission to find that its ICC certificate authorized incidental charter operations for 10 miles on either side of the regular route. According to Mr. Harry Eyre, most of the Metropolitan District is encompassed by the territory claimed pursuant to this incidental charter authority in combination with the territory encompassed by WMATC Certificate No. 17. 5/

3/ No ICC certificates of public convenience and necessity were introduced into evidence.

4/ In 1987 Eyre's Bus Service, Inc., amended its articles of incorporation to delete the "s" after Eyre.

5/ Eyre holds WMATC Certificate No. 17 which authorizes, with certain restrictions, the following transportation:

IRREGULAR ROUTE

A. Charter Operations:

From Damascus, Md., and points in Montgomery County, Md., within 15 miles of Damascus, Md., except Rockville, Md., to points in the District of Columbia and Fairfax and Arlington Counties, and the Cities of Alexandria and Fairfax, Va., and return, round-trip only.

B. Special Operations:

From Damascus, Md., and points in Montgomery County, Md., within 15 miles of Damascus, Md., except Rockville, Md., to points in Montgomery and Prince George's Counties, Md., the District of Columbia, and Fairfax and Arlington Counties, Va., and return, round-trip only.

C. Restriction:

The transportation of passengers having a prior or subsequent movement by air is specifically prohibited.

On cross-examination, Mr. Eyre conceded that Safeway Trails' agent merely represented that Safeway Trails was selling a certificate that would authorize whatever transportation was encompassed by its terms. Also on cross-examination, Mr. Eyre testified that WMATC Certificate No. 17 is not a grandfather certificate.

Mr. Ronald Eyre, applicant's vice-president, also testified for the company. Eyre owns an eight-acre site in Howard County, MD, on which it had built and maintains a 21,000 square foot facility containing what Mr. Eyre described as up-to-date maintenance equipment, modern administrative offices, and applicant's tour and charter department which is totally computerized. Mr. Eyre described the facility as state of the art. Eyre employs 85 persons full-time and 15 persons part-time; these numbers include approximately 40 drivers. Drivers must be over 21 years old and meet United States Department of Transportation (USDOT) requirements regarding driving record and a police and background check. Seven of Eyre's 40 drivers have been with applicant continuously for over 10 years. All repairs except "body work" are performed in-house. Eyre owns and operates 50 "intercity" coaches. The vehicles were manufactured between 1976 and 1988 and have an average age of five years. Twenty-five of these vehicles are used for "commuter service"; the remainder of the fleet is involved in charters and tours. Buses are checked daily. Eyre's safety rating issued by USDOT on May 22, 1988, is "satisfactory."

Eyre submitted certain financial information in Case No. AP-88-45 including balance sheets for April 30, 1988, and April 30, 1989. As of April 30, 1988, Eyre had current assets of \$654,601; fixed assets after allowance for accumulated depreciation of \$2,112,794; current liabilities of \$413,385; no long-term liabilities; and stockholders' equity of \$2,354,010. As of April 30, 1989, Eyre had current assets of \$830,505; fixed assets after allowance for depreciation of \$3,310,768; other assets of \$30,000; current liabilities of \$593,977; long-term liabilities of \$1,305,758; and stockholders' equity of \$2,271,538. For the 12-month period ended April 30, 1988, Eyre had operating revenue of \$4,967,907 and operating expenses of \$4,848,212, resulting in net operating income of \$119,695. For the 12-month period ended April 30, 1989, Eyre had operating revenue of \$5,540,940 and operating expenses of \$5,431,590, resulting in net operating income of \$109,350. For the year ended April 30, 1990, Eyre projects -- for activity in Washington, DC, only -- revenue of \$1,320,000 and expenses of \$1,289,200, resulting in net operating income of \$30,800. According to Mr. Eyre, Eyre operates profitably, has experienced a large growth in assets in a one-year period, and has a broad income base conducting charters many of which are offered to senior citizen groups; daily service to Atlantic City, NJ; contract commuter service; other contract service; a travel agency that offers individually-ticketed tours throughout North America; and limousine service. Mr. Eyre estimates that approximately 46 percent of applicant's total income is derived from charter operations, 20 percent of which are conducted within the Metropolitan District. Mr. Eyre testified that a recent ICC decision regarding incidental charter authority places a cloud on the legality of Eyre's operations within the Metropolitan District.

Mr. Ronald Eyre testified that he is familiar with the Compact and the Commission's rules and regulations. Eyre is complying with these and will continue to comply.

With its application Eyre filed a request to increase its rates from \$40 an hour with a four-hour minimum to \$50 an hour with a four-hour minimum plus \$100 positioning charge. Mr. Eyre testified the applicant needs the rate increase because the cost of operating equipment, including overhead, is higher than it was "years ago." Insurance has increased 400 percent, drivers' wages and the cost of equipment have also increased.

On October 20, 1989, applicant petitioned the Commission to reopen the record in Case No. AP-89-19 in order to receive notice of a "typographical error in Section II, Rule No. 1" of Eyre's proposed tariff. The petition is hereby granted, and it is hereby noted that Eyre's proposed intended minimum is not \$300 as originally shown but rather \$270 consisting of \$200 for four hours of service at \$50 an hour plus a positioning mileage charge of \$50 (20 to 35 miles) and an insurance surcharge of \$20.

Mr. Landon Browning, Eyre's scheduling administrator, testified for applicant. In 1960 Mr. Browning was employed by Safeway Trails, Inc. At that time Safeway Trails was conducting regular route service into Washington, DC as follows: from Washington, DC, over Maryland Highway 650 to its junction with U.S. 29 at or near White Oak, MD, thence over U.S. 29 to its junction with U.S. 40 at or near Ellicott City, MD, with a parallel route between White Oak and Burtonsville over Maryland 196, thence from Ellicott City over U.S. 40 to Baltimore. The majority of service was over Maryland 196 between White Oak and Burtonsville rather than U.S. 29. Safeway Trails sold that route to Eyre. Currently Eyre operates 10 round trips between Columbia, MD, and Washington, DC; 14 round trips between Columbia and the Silver Spring Metro Station; and two trips from Baltimore to Silver Spring or Washington over the routes formerly operated by Safeway Trails as amended to include the junction of Maryland 650 and U.S. 29 at White Oak over U.S. 29 serving Silver Spring and into the District over U.S. 29 and 16th Street. During the month of June 1989, Eyre transported over 17,000 persons between Columbia, MD, and Washington, DC, and intermediate points. Many of the regular-route trips are non-compensatory and are, in effect, supported by revenue from Eyre's charter department.

Ms. Bernice Bernstein, president of Heritage Tours, Ltd., testified on its behalf in support of the application. Heritage Tours is a destination management planning company based in Washington; it handles "extracurricular aspects" for area conventions. Such services include sightseeing tours, transfers from hotels to receptions and parties, and airport transfers. A group needing this service may exceed 1,000 persons. Heritage Tours requires up to 25 coaches at a time. Heritage Tours seeks the availability of applicant's proposed charter service between points throughout the Metropolitan District. Heretofore, it has used applicant's service between points in that

District, except those in Prince George's County, MD. In the latter respect, Heritage Tours anticipates that clients will require service to Prince George's County in the future, and it wants to be able to satisfy such a demand when it arises. If this application is granted, Heritage Tours would use Eyre exclusively unless precluded by vehicle unavailability.

Ms. Lydia Mpi, staff associate with Washington Resources, a division of the National 4-H Council (the Council), testified on behalf of the Council in support of Eyre's application. The Council provides the funding for 4-H clubs internationally. The Council conducts various educational programs for its members at its center in Chevy Chase, MD. Although the center has space for lodging and meetings, the Council requires hotel transfers for program participants whom the Council is unable to accommodate. In addition, the Council requires transportation for sightseeing tours, airport transfers, and other general charter transfer service. The Council arranges transportation for approximately 100 groups a year. As many as 400 participants might need transportation at any one time. The Council needs transportation throughout the Metropolitan District inasmuch as the Council, although offering set packages, gives its clients the opportunity to go anywhere in the Metropolitan District. If this application is granted, the Council would use Eyre's charter service.

Ms. Auleen Hall, travel consultant for the Leisure World travel office, testified in support of the application on behalf of Leisure World of Maryland Corporation. Leisure World is an adult community of about 6,000 persons located in Silver Spring, MD. The community offers many activities, one of which is prearranged travel, i.e., day trips and long-distance travel packages put together by Ms. Hall's office for Leisure World's residents and their friends and relatives. The office arranges between one and four trips weekly, all of which originate and terminate at Leisure World. Trip destinations include points of interest in Montgomery County, Northern Virginia, and the District of Columbia. The travel office wishes to have a carrier that is authorized to provide charter service between all points in Washington, DC, and its environs. If this application is granted, the travel office would use Eyre almost exclusively, as it presently does.

DISCUSSION AND CONCLUSIONS

Application No. 96 is governed by the Compact, Title II, Article XII, Section 4(a) which provides in relevant part that

. . . if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such Certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act.

Safeway Trails, Inc., timely filed such an application. By Order No. 366, served June 17, 1964, the Commission dismissed Safeway Trails' application noting "[i]t appears . . . that the transportation for which authority is sought is exempt from the jurisdiction of the Commission pursuant to Section 1(a)(4) Article XII, Title II, of the Compact, as amended." The dismissal was without prejudice to the right of Safeway Trails to prosecute its grandfather application in the event a subsequent determination were made that the transportation for which authority was sought comes within the Commission's jurisdiction.

By Order No. 3337, the Commission reopened Application No. 96 for the purposes of determining (1) whether and to what extent Eyre is a successor-in-interest to Safeway Trails; (2) whether and to what extent the evidence of record in Application No. 96 may be applied to Eyre thus requiring the Commission to consider Eyre's application under the standards established by the Compact, Title II, Article XII, Section 4(a); and (3) whether and to what extent Eyre, if found to be a successor-in-interest to Safeway Trails, may perform transportation within the Metropolitan District which transportation is exempt from the Commission's jurisdiction pursuant to the Compact, Title II, Article XII, Section 1(a)(4). 6/

Because no certificates of public convenience and necessity were introduced into evidence at any stage of these proceedings, the Commission is unable to make any findings as to whether Eyre is a successor-in-interest to Safeway Trails. Eyre's petition to reopen Application No. 96 contains an order of the ICC served April 23, 1979, in In re Eyre's Bus Service, Inc., Purchase (Portion) of Safeway Trails, Inc., and approving the sale of a certificate generally consistent with the testimony of Mr. Harry Eyre and Mr. Landon

6/ Section 1(a)(4) provides

This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service, except . . . transportation performed in the course of an operation over a regular route, between a point in the Metropolitan District and a point outside the Metropolitan District, including transportation between points on such regular route within the Metropolitan District as to interstate and foreign commerce, if authorized by certificate of public convenience and necessity or permit issued by the Interstate Commerce Commission, and any carrier whose only transportation within Metropolitan District is within this exemption shall not be deemed to be a carrier subject to the Compact; provided, however, if the primary function of a carrier's entire operations is the furnishing of mass transportation service within the Washington Metropolitan Area Transit District, then such operations in the Metropolitan District shall be subject to the jurisdiction of the Commission

Browning. The effectiveness of the approval was contingent on consumation of the sale. If the sale of the ICC certificate described in that order was indeed consumated, then, inasmuch as Application No. 96 shows that Safeway Trails was conducting operations pursuant to that certificate at the inception of the Compact, Eyre would be a successor-in-interest to the grandfather rights which attach to that certificate. To the extent that these grandfather rights attach, Eyre would be entitled to prosecute an application under the standards established by the Compact, Title II, Article XII, Section 4(a). The practical effect of this right would be the issuance of a certificate of public convenience and necessity commensurate with the operations being conducted in good faith by Safeway Trails under the certificate acquired by Eyre. Section 4(a) requires issuance of such certificate without a finding of public convenience and necessity and without a hearing. The issue of whether and to what extent Eyre may perform charter transportation within the Metropolitan District which is exempt from the Compact pursuant to Title II, Article XII, Section 1(a)(4) were Eyre to have the status of a successor-in-interest to part of the operating rights performed by Safeway Trails in 1961 as introduced into evidence in Application No. 96 cannot be discussed on this record due to the absence of evidence as to the actual scope of this grandfather right at issue. However, we note that within the Metropolitan District the ICC has indicated that the incidental charter rights flowing from ICC regular-route certificates would be limited to charter moves between points on that route. See In re American Coach Lines, Inc., Petition for Declaratory Order, decision served September 14, 1988. This Commission finds that interpretation consistent with the letter and spirit of the Compact and adopts the interpretation as contained in that ICC order as its own.

Case No. AP-88-45 is governed by the Compact, Title II, Article XII, Section 4(b) which provides in relevant part that

. . . the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the transportation covered by the application, 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

Eyre has applied for authority to conduct charter operations throughout the Metropolitan District without restriction as to geography or vehicle size. Based on a review of the entire record in this case, the Commission finds Eyre fit operationally, financially, and as to compliance. Eyre is an established carrier with over 40 years experience performing passenger transportation of all types including charter operations. Applicant has 25 coach-type vehicles available for the proposed service. The evidence indicates that applicant's vehicles are adequately maintained, and its drivers

appropriately licensed and monitored. Eyre's satisfactory safety rating supports these conclusions. Eyre's comprehensive facility in Glenelg, MD, enables the company to be centralized and relatively self-sufficient. This centralization should facilitate fast and accurate charter bookings, enable applicant to monitor equipment continuously and make needed repairs promptly, and provide management the base necessary to supervise closely the company's day-to-day operations. These factors should result in a carrier responsive to its clients' needs. Eyre is a financially healthy corporation having substantial capitalization and a healthy ratio of current assets to long-term liabilities. Its recent operating history has been profitable, and the proposed operations entail no additional expenses. Eyre is already a WMATC certificated carrier, and its vice-president is familiar with the Compact and the Commission's rules and regulations. It is the testimony of Eyre's vice-president that applicant is in compliance currently with these and is willing and able to remain in compliance.

We further find that Eyre has met its burden of proving that the public convenience and necessity require the proposed service. Eyre presented three public witnesses. All require charter coach transportation. Two witnesses represented entities that require transportation for hundreds of persons at one time. One of these entities, Heritage Tours, Ltd., requires as many as 25 coaches at one time. The third witness represented the travel services provided for a residential community of 6,000 persons. Together these witnesses require transportation between all points in the Metropolitan District. The transportation required includes sightseeing tours, hotel and airport transfers, and general charter transportation. All witnesses would use Eyre as their primary transportation provider if this application is granted. For these reasons the Commission finds that the service proposed by Eyre in this application will serve a useful public purpose responsive to a public need. The record indicates that the public witnesses do not believe that the proposed service can or will be provided as well by existing carriers. This testimony is unchallenged. There are no protests to this application. The Commission finds that no carrier will be materially affected by a grant of this application. For these reasons, we find under the circumstances of these consolidated cases that the standards established by Pan-American Bus Lines Operation (1 M.C.C. 190, 203 [1936]) et seq. have been met.

We note that Eyre testified that it offers individually-ticketed sightseeing tours. Such tours are considered special operations and are not encompassed by the instant application. It is assumed that the operations mentioned are either movements outside the Metropolitan District authorized by Eyre's ICC authority or encompassed by the authority contained in its WMATC Certificate No. 17. Lest there be any doubt, Eyre is hereby placed on notice that a certificate of public convenience and necessity is required from this Commission in order for Eyre to conduct any special operations between points in the Metropolitan District.

We now turn to the matter of Eyre's request for a rate increase. A late-filed exhibit indicates that under its current tariff Eyre projects a net operating loss of \$220,000. Eyre's projection under the proposed tariff was filed with the application and projects net operating income from the proposed service of \$30,800. The Commission's finding of financial fitness, while not based on this projection, assumes that past profitability will continue. This exhibit in combination with testimony at hearing indicates that a rate increase is required if Eyre's is to be able to provide adequate and efficient transportation at the lowest cost consistent with furnishing such service. The corrected tariff proposed by Eyre shall be approved. For clarity Eyre is directed in Section II, Rule No. 1 of its proposed tariff to delete "\$300.00" and insert "\$200.00" under the category "Minimum Charge." "Note 1" in Rule No. 1 describes the insurance surcharge as one that is "added" to the "Minimum Charge." Section II, Rule No. 2 of the tariff details "Positioning Mileage" and states that it is a charge "in addition."

THEREFORE, IT IS ORDERED:

1. That in Case No. AP-88-45 Eyre Bus Lines, Inc., is hereby conditionally granted authority to transport passengers, together with baggage in the same vehicles as passengers, in charter operations between points in the Metropolitan District, contingent upon timely compliance with the terms of this order.

2. That Eyre Bus Lines, Inc., is hereby directed within 30 days of the service date of this order, to file with the Commission the following: (a) three copies of its WMATC Tariff No. 11 in accordance with Commission Regulation No. 55 as proposed in this application, amended as discussed in the body of this order; (b) an equipment list specifying make, model, serial number, vehicle number, license plate number (with jurisdiction), and seating capacity of each vehicle to be used in the Metropolitan District; (c) an affidavit of identification pertaining to each of those vehicles in accordance with Commission Regulation No. 67 for which purpose WMATC No. 17 has been previously assigned; and (d) a lease in accordance with Commission Regulation No. 69 or evidence of ownership pertaining to each vehicle to be used in the Metropolitan District.

3. That upon timely compliance with the terms of this order WMATC Certificate No. 17 of Eyre Bus Lines, Inc., shall be amended to conform with the Appendix to this order.

4. That Application No. 96 is hereby denied as it relates to Eyre Bus Service, Inc.

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


William H. McGilvery
Executive Director

NO. 17

EYRE BUS SERVICE, INC.

At a session of the Washington Metropolitan Area Transit Commission held on the 14th day of November, 1968, and pursuant to Order Nos. 825, 825a, 3337 and 3427, served June 4 and June 11, 1968, and May 15, and October 27, 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. 825, 825a, 3337, and 3427;

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, except that this Certificate does not authorize any transportation solely within the Commonwealth of Virginia:

IRREGULAR ROUTES:

PART A

CHARTER OPERATIONS

Passengers, together with baggage in the same vehicle with passengers, between points in the Metropolitan District.

PART B

SPECIAL OPERATIONS

From Damascus, MD, and points in Montgomery County, MD, within 15 miles of Damascus, MD, except Rockville, MD, to points in Montgomery and Prince George's Counties, MD, the District of Columbia, and Fairfax and Arlington Counties, and the Cities of Alexandria and Fairfax, VA, and return, round-trip only.

AS TO PART B, the transportation of passengers having a prior or subsequent movement by air is specifically prohibited.

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.