

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 888

IN THE MATTER OF:

Served December 6, 1968

Joint Application of D. C. Transit )  
System, Inc., and Washington, Vir- )  
ginia and Maryland Coach Company )  
for Approval of Joint Sightseeing )  
Agreement. )

Application No. 496

Docket No. 175

APPEARANCES:

MANUEL J. DAVIS, Attorney for applicants.

S. HARRISON KAHN, Attorney for A. B. & W. Transit  
Company and the Gray Line, protestants.

IRA F. GADD, d/b/a Columbia Sightseeing Company,  
pro se.

This proceeding originated when D. C. Transit System, Inc. (Transit) and W. V. & M. Coach Company (W. V. & M) jointly filed a proposed tariff, containing fares for a joint sightseeing service. The service would be operated pursuant to the terms of an agreement between the two carriers.

The Commission treated the filing as an application for approval of the joint sightseeing agreement, with the proposed tariff being merely a subordinate portion of the application.

The matter was set for hearing. Notice of the application and hearing thereon was given as directed. Protests to the application were filed by the Gray Line and A. B. & W. Transit Company. A third carrier, Ira F. Gadd, d/b/a Columbia Sightseeing Company, filed a letter in opposition to the application.

At the hearing, the applicants presented the testimony of Mr. S. A. DeStefano. Mr. J. E. Brown testified for the Gray Line, and Mr. E. Fawbush for A. B. & W. Mr. Gadd testified on his own behalf.

Applicants' case can be described quickly. Both hold certificates of public convenience and necessity authorizing charter and special operations. Transit is authorized to originate group and individual sightseeing tours in the District of Columbia. All of its tours commence from a terminal building located at 1420 New York Avenue, N.W., Washington, D. C. W. V. & M. is authorized to originate special operations from a point on its regular routes in Virginia, and transport those passengers to points in the District of Columbia. It also is authorized to originate charter service from a broad, though defined, area in Northern Virginia, to points and places in the Metropolitan District.

From the testimony we adduce the following pertinent facts.

Transit is not authorized to originate sightseeing tours in Virginia and transport tour patrons to the District of Columbia. There is, however, no restriction on its right to sell sightseeing tours; these can, and are, sold throughout the United States, including Virginia. To overcome the lack of operating authority, Transit has treated the various individuals as though they constituted a group, then acted as the group's agent in chartering a bus from W. V. & M., which in turn transports the tour patrons from the Virginia motels to Transit's sightseeing terminal in the District of Columbia. The passengers transfer there to commence their sightseeing tour in Transit's buses.

Applicants' witness Mr. DeStefano testified that the two carriers proposed to consolidate their operating authority and operations into what would amount to a single service.

The mechanics of this operation are spelled out in the agreement before us. The agreement provides that the two carriers would offer a joint sightseeing service between points

on W. V. & M.'s regular routes and points within the Metropolitan District authorized to be served by Transit. Transit's sightseeing terminal in the District of Columbia would be used as an interline point where passengers will either change buses from one carrier to the other or continue their tour on the originating vehicle.

The joint service would be rendered at the fares set forth in the joint tariff filed with the agreement. The two carriers would jointly undertake the promotion of the joint sightseeing service; the cost of the promotional activities will be prorated, 10% to be paid by W. V. & M. and 90% to be paid by Transit. Each carrier would sell the sightseeing tickets. The carrier selling the tour will receive 20% of the fare collected, and the carrier performing that portion of the tour after the exchange of passengers has been made will receive 40% of the fares collected. Each carrier will pay its own expenses.

Mr. DeStefano stated that requests for this service originated with motel operators in Virginia. He gave no indication of similar requests being made by any actual or prospective tour patron.

The protestants' object on two principal grounds. First, that the carriers lack the requisite authority; second, that applicants failed to present any evidence of a need for the proposed joint service. Moreover, they assert that the existing arrangement is illegal and urge that it should be stopped.

We find at the outset that the record is barren of any evidence upon which we might find that there is a need for the proposed joint service. We have not been informed as to how the proposal would provide an improvement in service, how many people might use the service, or what financial results would be expected. In short, we have only the sparse notation that some motel operators have requested the joint service. Since no need has been demonstrated for the service, we need not reach the issue as to whether the carriers have the requisite operating authority to tack together to form the legal basis for the agreement. We are not asked herein to issue additional operating authority -- merely to allow the two

carriers to tack their existing authority together to provide a joint service. Whether the carriers' authority is susceptible of being tacked would require an interpretation of their respective certificates. In view of our finding that no need for the joint service has been made, we need not make such an inquiry.

However, the remaining point, i.e., the legality of the existing arrangement, remains for determination. This point was interjected obliquely, more in the nature of an equitable defense, by the protestants. While the facts surrounding this activity are clear, neither party addressed itself with particularity to the legal aspect of the existing arrangement. Hence, we feel that while the instant application should be denied, the parties should have the opportunity to brief the issue of the legality of the existing arrangement, so that we have the benefit of their explicit views and authorities before deciding this issue. It shall be so ordered, and this proceeding shall remain open for that sole purpose.

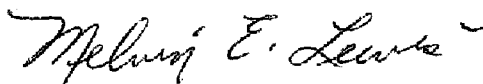
**THEREFORE, IT IS ORDERED:**

1. That the joint application of D. C. Transit System, Inc., and W. V. & M. Coach Company for authority to engage in a joint sightseeing service be, and it is hereby, denied.

2. That the parties may submit briefs on the issue of the legality of the existing sightseeing-charter arrangement; provided, original briefs will be filed on or before Friday, December 27, 1968, and reply briefs thereto may be filed on or before Friday, January 10, 1969.

3. That jurisdiction in this matter be retained accordingly.

**BY DIRECTION OF THE COMMISSION:**



**MELVIN E. LEWIS**  
Executive Director