

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1289

IN THE MATTER OF:

Application of AIRWAY GROUND)
TRANSPORTATION SERVICE, INC.,) Served: December 6, 1973
for Temporary Authority to Oper-)
ate Between Washington National) Application No. 821
Airport, Dulles International)
Airport and points in the Wash-) Docket No. 256
ington Metropolitan Area)

On November 28, 1973, Airway Ground Transportation Services, Inc., (Airway), filed an application for temporary authority pursuant to Section 4(d)(3) of the Compact. Airway seeks temporary authority to operate bus and limousine service for passengers and their baggage between the Washington National Airport, (National), or the Dulles International Airport, (Dulles), on the one hand, and, on the other, points within the Metropolitan District, as defined in the Compact. As a part of its application Airway submitted a proposed tariff naming fares and rules and regulations governing the service for which temporary authority is sought.

At the same time that it filed its application for temporary authority, Airway filed a motion to consolidate hearing of its application with the hearing of Application No. 804 of Executive Limousine Service, Inc., (Executive), scheduled December 11, 1973, by Order No. 1285, served November 19, 1973. A reply to the motion for consolidated hearing was filed December 3, 1973, by Greyhound Airport Service, Inc., (Greyhound), a named party in Application No. 804.

In support of its application for temporary authority, Airway alleges that there is an immediate and urgent need for the service because no other carrier would be authorized to operate

at National and Dulles after December 31, 1973, and, thus, there would be no available carrier service. However, Greyhound holds Certificate of Public Convenience and Necessity No. 7, authorizing charter operations and special operations between National or Dulles, on the one hand, and, on the other, points in the Metropolitan District, except points in Virginia. The application of Airway seeks temporary authority, as of January 1, 1974, to provide service which Greyhound is authorized to perform by the certificate issued by this Commission.

A hearing will be held to develop on the record the basis, if any, for Airway's allegation that there would be no other authorized carrier operating at National and Dulles after January 1, 1974. The hearing on Airway's application for temporary authority to provide a service over the route of a certificated carrier necessarily draws into issue the adequacy of the service being rendered by Greyhound, and its responsiveness to the alleged immediate and urgent need for service in the area and between the points involved. Accordingly, it is appropriate that Greyhound be made a party to this proceeding.

The motion to consolidate filed by Airway requests that the hearing on its temporary authority application be consolidated with the hearing on Executive's Application No. 804. Airway premises its request for consolidation on the statement that both National and Dulles are under the exclusive jurisdiction of the Federal Government. Airway alleges that its temporary authority application is made pursuant to its exclusive right to operate at National and Dulles beginning January 1, 1974, under a contract with the Federal Aviation Administration, (FAA). It argues that Executive is seeking authority from this Commission to operate a limited overlapping service to Dulles. According to Airway's argument, the common question of fact in each application involves Federal authorization to provide airport service.

In its reply to the motion for consolidated hearing, Greyhound joins in the pending motion of Airway for a consolidated oral hearing. Greyhound therein contends there are numerous issues presented by the temporary authority applications of Airway and Executive involving the public interest and, that before any authority is granted in either of these proceedings, there should be a full and fair oral hearing. In addition,

Greyhound argues that the consolidated proceeding on the temporary authority applications of Airway and Executive are of such importance as to justify and require that the oral hearing be held before and presided over by the members of this Commission, rather than a presiding officer, even if this necessitates the postponement of the current hearing date.

The motion and reply do not contain legal support of the allegation that this Commission is required to make a factual determination as to the jurisdiction of the FAA to authorize carriers to provide airport passenger service. The motion and reply do not aver any nexus between the Commission's jurisdiction and the alleged exclusive jurisdiction of the Federal government. The Commission's position is that it has jurisdiction co-extensive with the Metropolitan District for the regulation and improvement of transit therein. See Compact, Article II. Pursuant to this grant of jurisdiction the Commission has authority to permit a carrier to provide a service for a temporary period of not more than an aggregate of 180 days for which there is an immediate and urgent need and no carrier service capable of meeting such need. See Compact, Article XII, Section 4 (d)(3). Further, the Commission has the primary responsibility of assuring that any need for transit within the Metropolitan District is met.

There is no common question of fact upon which the hearings could be consolidated. See Rule of Practice and Procedure 20-02. Airway alleges that there is an immediate and urgent need to provide bus and limousine service to persons traveling between Dulles or National and points in the Metropolitan District for the reason that no other carrier will be authorized to do so on January 1, 1974. Airway asserts it has been granted the exclusive right by the FAA to operate between the aforesaid points. Airway has not substantiated its allegation that the FAA has granted an exclusive right to it to perform bus and limousine service for persons traveling between Dulles or National and points in the Metropolitan District. There is no documentation in the record of the basis for Airway's belief that the FAA has the exclusive right to grant operating authority to a carrier to perform a service in the Metropolitan District. Moreover, there is no statement of the factual issue involved in the Executive temporary authority application which is common to a factual issue in the Airway temporary authority application.

Accordingly, there is no basis established by the pleadings upon which we could grant the motion to consolidate.

Greyhound has not established that a presiding officer would not be qualified to develop an adequate and complete record at the hearing. See Rule of Practice and Procedure 20-03. A temporary authority application is based on the immediate and urgent need of the public for the provision of transit services which no other carrier is capable of meeting. The Commission is not persuaded that a presiding officer would be unable to develop a complete and adequate record upon which the Commission can determine whether approval of a temporary authority is warranted. Accordingly, the Commission shall designate an appropriate presiding officer to hold the hearing herein scheduled.

In view of our decision to schedule a hearing on the temporary authority application, we shall require Airway to submit and be prepared to support at the hearing, with competent witnesses, a balance sheet as of January 1, 1974, an income statement for the proposed period of temporary operations, and a revenue and cost analysis giving effect to the proposed operations under the proposed tariff. These exhibits shall be submitted on or before Friday, December 14, 1973, in such manner that six (6) copies shall be filed with the Commission and one copy served on each party of record.

THEREFORE, IT IS ORDERED:

1. That Application No. 821 of Airway Ground Transportation Services, Inc., be, and it is hereby, scheduled for public hearing before a presiding officer, Tuesday, December 18, 1973, at 10:00 A.M., in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

2. That Greyhound Airport Service, Inc., appear at the public hearing herein scheduled and show cause, if any there be, why the aforesaid application of Airway Ground Transportation Services, Inc., should not be granted.

3. That the applicant publish notice, in the form prescribed by the staff of the Commission, of the application and of the aforementioned hearing in a newspaper of general circu-

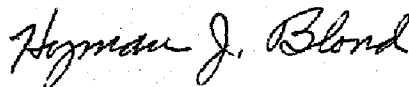
lation in the Metropolitan District no later than Tuesday, December 11, 1973.

4. That the evidence in the nature of prepared exhibits, as set forth hereinbefore, shall be submitted in such manner that six (6) copies shall be filed with the Commission and one copy served on each party of record on or before Friday, December 14, 1973.

5. That any person desiring to be heard on these matters shall notify the Commission, in writing, on or before Friday, December 14, 1973, and mail a copy of such notification to the counsel of record for Airway Ground Transportation Services, Inc., Milton Eisenberg, Esquire, 600 New Hampshire Avenue, N.W., Washington, D. C. 20037, and the counsel of record for Greyhound Airport Service, Inc., L. C. Major, Esquire, Suite 301 Tavern Square, 421 King Street, Alexandria, Virginia 22314.

6. That the motion to consolidate the temporary authority application filed by Airway Ground Transportation Services, Inc., with the temporary authority application filed by Executive Limousine Service, Inc., be, and it is hereby, denied.

BY THE DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director