

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1343

IN THE MATTER OF:

Application of EXECUTIVE LIMOUSINE)	Served July 25, 1974
SERVICE, INC., for a Certificate of)	
Public Convenience and Necessity to)	Application No. 805
Operate Between Dulles International)	
Airport and Washington, D. C.)	Docket No. 262

By petition, filed July 17, 1974, Greyhound Airport Service, Inc. (Greyhound) 1/ requests the Commission to reopen the proceeding involving the application of Executive Limousine Service, Inc. (Executive) for a certificate of public convenience and necessity. Greyhound further requests that the Commission reconsider Order No. 1336, served June 21, 1974, including Certificate of Public Convenience and Necessity No. 18. Greyhound submits that the evidence of record, the Commission's decision and order, and the controlling case law, all clearly justify and require the Commission to issue a corrected certificate which would authorize Executive to perform special operations by means of limousine type vehicles accommodating no more than 14 passengers, excluding the driver.

The errors claimed as grounds for such reconsideration 2/ are that a clerical or ministerial error was made in drafting the certificate and that the certificate issued did not properly and lawfully conform to the authority applied for by the application, as amended at the hearing, the service found to be required by the evidence offered in support of the application, and that authorized and intended to be granted in the findings and conclusions made by the Commission. The clerical or ministerial error alleged by Greyhound is that the Commission failed to include a restriction in Certificate No. 18 limiting the special operations to 14-passenger limousine service.

1/ Greyhound Airport Service, Inc., participated in this proceeding as a protestant.

2/ Compact, Title II, Article XII, Section 16.

Greyhound contends that reference to the transcript of record discloses that Executive sought by its application, amended at the hearing, 3/ authority " to perform limousine service in 14-passenger vehicles pursuant to a predetermined schedule between fixed terminal points." Order No. 1336 at 2. Greyhound submits that the findings and conclusions of the Commission "that approval of Executive's application to conduct limousine service . . . is required by the public convenience and necessity" 4/ and "that the public convenience and necessity requires the provision of limousine service" 5/ clearly disclose that the Commission intended to issue to Executive authority to transport passengers and their baggage in special limousine operations, limited to the transportation of not more than 14 passengers in any one vehicle, excluding the driver.

As support for the imposition of a restriction limiting the size of the equipment to be used in performing the service, Greyhound refers to cases involving the Interstate Commerce Commission and several prior decisions involving actions by this Commission. Although we often follow the principles set forth in decisions of the Interstate Commerce Commission, these decisions are not binding upon our determinations. We must decide not whether our decision comports with that which a different commission would have reached, or whether a different commission would have given greater or lesser weight to the factors relied on by us. Rather, we must determine whether we have properly taken into account controlling factors, or failed to take into account relevant factors.

3/ The following passage from the transcript refers to the formal application.

"Q. [L. C. Major, Jr.] Now, is your application restricted to limousine service?

A. [Jonathan Smith] If I am not incorrect, it is stated that our authority is to operate a limousine service.

Q. If it is not, you want it granted restricted to 14-passengers or less?

A. That is our intention at this time."
Transcript at page 59.

"MR. MAJOR: Obviously we have a great deal more than the size of the vehicle, but as I understand the witness, he has handled -- he has amended the application to specifically request service to accommodate the passengers, including -- excluding the driver.

THE WITNESS: That is correct."
Transcript at page 60.

4/ Order No. 1336 at 5.

5/ Order No. 1336 at 6.

Our decision in this proceeding was that the public convenience and necessity require the provision of limousine service by Executive between Dulles International Airport (Dulles) and the Burlington Hotel and between Dulles and Quality Inn-Capitol Hill with an intermediate stop at the L'Enfant Plaza Hotel. We clearly have the power and duty to specify in any certificate the service to be rendered, except that we may not attach maximum limitations to the quantity of the service to be furnished. We believe that the certificate should have contained a limitation with respect to limousine service. To the extent Certificate No. 18 does not limit the special operations 6/ authority to limousine service, we shall correct the certificate. Should difficulty arise in determining the parameters of service embraced by the phrase "limousine service", we have ample authority to clarify it. See Title II, Article XII, Sections 4(g), 13 and 15 of the Compact.

The crucial issue presented by Greyhound's petition is whether the certificate should be restricted with respect to the size of the limousine equipment to be used. Greyhound refers to Certificate of Public Convenience and Necessity No. 13, issued to Montgomery Charter Service, Inc. (Montgomery) on October 23, 1964, as an example of a certificate issued by this Commission containing a restriction on the size of the vehicle. As stated in Order No. 383, served September 11, 1964,

The United States Court of Appeals for the District of Columbia Circuit has ordered the Commission to issue unto Montgomery Charter Service, Inc., without further proceedings, a 'grandfather' certificate of public convenience and necessity authorizing such transportation as it was 'legally and in good faith engaged in' prior to the amendment of Section 1(c) of the Compact. Order No. 383 at 1 (footnote omitted).

We do not believe that the Montgomery decisions are dispositive. That proceeding involved a "grandfather" proceeding under Title II, Article XII, Section 4(a) of the Compact.

The Commission has issued to Vernoy Franklin Certificate of Public Convenience and Necessity No. 6 containing a restriction upon the type of vehicles to be used. The Commission stated in Order No. 213, served November 1, 1962, the following:

6/ Regulation 51-07 provides the following:

Special Operation. The term 'Special Operation' means the transportation of passengers for a special trip, for which the carrier contracts with each individual separately.

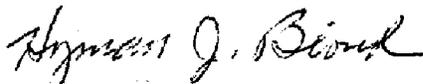
Charter service conducted in school bus vehicles will entice very few customers from those now utilizing the service of the protestants, and yet will enable youth and other similar organizations to secure bus transportation at a price these organizations can afford. Order No. 213 at 4.

We have found that the limousine service to be performed by Executive "would not result in harmful or destructive competition." Order No. 1336 at 5. Accordingly, we do not believe that Certificate No. 18, issued to Executive, must be restricted to the seating capacity of the vehicle.

THEREFORE, IT IS ORDERED:

1. That the petition for reopening, reconsideration, and correction of certificate, filed July 17, 1974, by Greyhound Airport Service, Inc., be, and it is hereby, denied.
2. That Order Nos. 1336, served June 21, 1974, and 1336-A, served July 1, 1974, be, and they are hereby, amended to incorporate the findings stated hereinbefore.
3. That Certificate of Public Convenience and Necessity No. 18 issued to Executive Limousine Service, Inc., be, and it is hereby, corrected as attached hereto and made a part hereof.

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 18

EXECUTIVE LIMOUSINE SERVICE, INC.
ARLINGTON, VIRGINIA

By Order No. 1336 of the Washington Metropolitan Area Transit Commission issued June 21, 1974;

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. 1336 and 1343.

THEREFORE, IT IS ORDERED, that the said carrier be, and it is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder 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 herein 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:

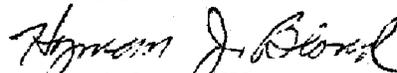
IRREGULAR ROUTES:

SPECIAL OPERATIONS; limited to limousine service:*

- (1) Between the Dulles International Airport, Chantilly, Virginia, on the one hand, and on the other, the Burlington Hotel, Vermont Avenue at Thomas Circle, N. W., Washington, D. C.
- (2) Between the Dulles International Airport, Chantilly, Virginia, on the one hand, and on the other, the Quality Inn-Capitol Hill, 415 New Jersey Avenue, N. W., Washington, D. C., with an intermediate stop at L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, S. W., Washington, D. C.

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.

BY DIRECTION OF THE COMMISSION:



HYMAN J. BLOND
Executive Director

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IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

SPECIAL OPERATIONS; limited to limousine service:*

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HYMAN J. BLOND
Executive Director