WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2156

IN THE MATTER OF:		Served October 24, 1980
Investigation of WHITE HOUSE SIGHTSEEING CORPORATION, et al., to Determine Compliance with WMATC Safety Regulations and to Evaluate Common Control and Corporate Status	)	Case No. MP-79-07
Application of VINARD L. PARIS for Approval to Acquire Control of a Carrier Operating in the Metropolitan District	)	Case No. AP-79-04

By applications filed March 30, 1979, Vinard L. Paris seeks temporary and permanent approval to control White House Sightseeing Corporation, holder of WMATC Certificate of Public Convenience and Necessity No. 1, 1/ and Baltimore-Solomons Bus Lines, Inc., holder of Interstate Commerce Commission (I.C.C.) Certificate of Public Convenience and Necessity No. MC-125706 (Sub-No.1). Pursuant to its I.C.C. certificate, Baltimore-Solomons is engaged in the regular-route transportation of passengers between Washington, D. C., and Solomons, Md. (a point outside the Metropolitan District), serving no intermediate points on that part of its regular route located inside the Metropolitan District. Baltimore-Solomons also engages in so-called "incidental" charter operations from service points in the area of its regular route, including Washington, D. C., pursuant to 49 U.S.C. 10932(c), 2/ which states

---

1/ White House also holds I.C.C. Certificate No. MC-110258, which is superceded and suspended by WMATC Certificate No. 1. See Compact, Title XII, Article XII, Section 20(a)(2).

2/ Formerly 49 U.S.C. 208(c).

> [u]nder regulations of the [I.C.C.], a motor common carrier transporting passengers under a certificate issued by the [I.C.C.] as the result of an application filed before January 2, 1967, . . . may provide transportation to any place subject to the jurisdiction of the [I.C.C.] . . . for special and chartered parties. 3/

Submitted with the application are the following documents: (a) a contract by which Vinard L. Paris purchased a majority of the stock of Baltimore-Solomons in May 1968, (b) a financial statement for Mr. Paris showing, as of December 31, 1979, 4/ current assets of $164,700, total assets of $1,184,700, long-term liabilities of $53,000 and a net worth of $1,131,700, (c) a financial statement for Baltimore-Solomons showing, as of December 31, 1978, current assets of $209, total assets of $41,724, current liabilities of $3,941, and a net worth of $11,033, and (d) a description of the operating rights held by Baltimore-Solomons. The application is unopposed.

By a motion filed August 21, 1980, applicant seeks dismissal of the application. 5/ Applicant contends that this Commission does not have jurisdiction over the acquisition by Mr. Paris of Baltimore-Solomons' capital stock because that company is not a carrier operating in the Metropolitan District.

Title II, Article XII, Section 12(a)(2), under which Commission jurisdiction was asserted, provides that

> [i]t shall be unlawful, without approval of the Commission in accordance with this section * * * for any carrier which operates in the Metropolitan District [White House] or any person [Mr. Paris] controlling, controlled by or under common control with, such a carrier . . . to acquire control, through ownership of its stock or otherwise, of any carrier [Baltimore-Solomons] which operates in such Metropolitan District.

There can be no doubt that Baltimore-Solomons is a carrier, defined by Title II, Article XII, Section 2(a) of the Compact as ". . . any person who engages in the transportation for hire by motor vehicle, street railroad or other form or means of conveyance." The ultimate jurisdictional question, then, is whether Baltimore-Solomons "operates in such Metropolitan District" within the meaning of the Compact.

3/ See also 49 C.F.R. 1054.

4/ Because this was filed March 30, 1979, we assume it means 1978.

5/ Should this motion be denied, it is urged in the alternative that the application be granted.

Applicant relies on Title II, Article XII, Section 1(a)(4) of the Compact which exempts regular routes such as Baltimore-Solomons' from our certificating jurisdiction and also provides that

> . . . any carrier whose only transportation within the Metropolitan District is within this exemption shall not be deemed a carrier subject to the Compact. . . . [Emphasis added.]

This provision was the subject of an amendment to the original draft of the Compact. That amendment and the legislative history thereof 6/ clearly contemplate the possibility of dual jurisdiction of this Commission and the I.C.C. over the same carrier. A carrier is not subject to the Compact if it performs only regular-route operations authorized by the I.C.C. which extend to points beyond the Metropolitan District. Baltimore-Solomons, however, also performs special and charter operations, over irregular routes, from Washington, D. C., to points outside the Metropolitan District, and such transportation occurs, in part, within the Metropolitan District and is not exempt under Title II, Article XII, Section 1(a)(4) of the Compact. Order No. 1424, served May 2, 1975.

Applicant also cites Title II, Article XII, Section 20(a)(2) of the Compact which provides that certificates and permits issued by the I.C.C. shall be suspended during the period of the Compact, ". . . provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by [Section 208(c) of] the Interstate Commerce Act. . . ." The import of that provision of the Compact is twofold. First, it provides for continuance of incidental special and charter operations extending beyond the Metropolitan District where an I.C.C. certificate or permit is suspended by the taking effect of the Compact. 7/ Second, it mandates that issuance of WMATC "grandfather" certificates to appropriate applicants, the I.C.C. rights of which were suspended by the taking effect of the Compact, should specifically include theretofore incidental special and charter rights for service inside of the Metropolitan District.

6/ See S.Rep. No. 1906, 86th Cong., 2d Sess. at 24 and 25 (1960) and H.Rep. No. 1621, 86th Cong., 2d Sess. at 22 (1960).

7/ Obviously, this provision is inoperative inasmuch as Baltimore-Solomons' Certificate No. MC-125706 (Sub.-No. 1) was never suspended.

The enabling legislation for the Compact 8/ specifically suspends not just I.C.C. certificates and permits, but I.C.C. jurisdiction and the Interstate Commerce Act itself to the extent ". . . inconsistent with or in duplication of the provisions of the compact. . . ." 9/ Title II, Article XII, Section 1(a)(4) of the Compact excepts from this Commission's jurisdiction and, correspondingly, from the suspension of I.C.C. jurisdiction, operations over a regular route between a point inside the Metropolitan District and a point outside the Metropolitan District. There is no such exception for service performed solely between points in the Metropolitan District whether or not they are incidental to an I.C.C. regular route. At the time that Baltimore-Solomons' I.C.C. authority was granted (May 1, 1965), the provision of the Interstate Commerce Act under which incidental rights were conferred was suspended with respect to operations within the Metropolitan District.

This analysis, of course, does not negate the possibility of Baltimore-Solomons providing service which partially takes place within the Metropolitan District. For example, that carrier under its incidental rights might pick up a charter group in the District of Columbia, spend a half-day engaged in local sightseeing operations, and then proceed on a through movement to some point or points beyond the Metropolitan District. Under these circumstances, we find that Baltimore-Solomons is a carrier which operates in the Metropolitan District within the meaning of Title II, Article XII, Section 12(a)(2) of the Compact. Accordingly, the motion to dismiss shall be denied.

Turning now to the merits of Case No. AP-79-04, we note that Title II, Article XII, Section 12(b) provides that if the Commission finds that, subject to such terms, conditions and modifications as it shall find to be necessary, the proposed transaction is consistent with the public interest, it shall enter an appropriate order approving and authorizing such transportation as so conditioned.

We find initially that the common control is consistent with the public interest. This condition has existed for some 12 years without serious detriment to the public, and because the clientele and territories to be served by these carriers are largely dissimilar, there does not appear to exist a significant opportunity for undue discrimination. We further find, however, that certain conditions should be imposed. The carriers have been operating on a combined

---

8/ 74 Stat. 1031, Pub.L. 86-794, D.C. Code (1973 Ed.) Section 1-1410 et seq.

9/ D.C. Code (1973 Ed.) Section 1-1412.

basis and, operationally speaking, function almost as a single entity. The same vehicles, facilities and personnel serve both companies. So that this Commission may properly exercise its regulatory responsibilities over White House, we will require certain procedures for identification of motor vehicles and record keeping.

In accordance with WMATC Regulation No. 68, all vehicles owned by White House should be identified on both sides with the words "White House Sightseeing Corporation - WMATC No. 1" in letters readily visible at a distance of 50 feet. When these vehicles are in service for Baltimore-Solomons, an additional sign should be displayed stating "In Service for Baltimore-Solomons Bus Lines, Inc. - I.C.C. No. MC-125706". In this manner, WMATC and I.C.C. inspectors will be able to distinguish vehicles engaged in WMATC operations from those providing I.C.C. service.

Pursuant to Commission Regulation No. 64-02 we shall also require that separate books and records be regularly maintained. Revenue figures are easily maintained on a jurisdictional basis. Such variable expenses as drivers' wages, benefits and fuel costs are also readily measurable without undue administrative hardship. White House, together with its accountant, should devise formulas for allocating other expenses such as telephones, rent, and depreciation in a manner that is consistent with the Uniform System of Accounts and generally accepted accounting principles. We fully anticipate that the slight inconvenience to White House will be more than offset by the benefits realized in future tax filings, rate filings, and reporting requirements of both WMATC and I.C.C.

In Case No. MP-79-07, four issues were raised: safety compliance, common control, the meaning of the carrier's "expense reimbursement" account, and overcharges of the public in violation of Title II, Article XII, Section 5(d) of the Compact and Commission Regulation No. 55-08 promulgated thereunder. At the hearing on these matters held pursuant to notice on August 21, 1980, it was stipulated that the carrier's safety compliance problems had been solved, and certain records from the Maryland Public Service Commission were introduced to support that stipulation. White House's accountant explained that the questioned account was income attributable to Baltimore-Solomons' operations which is carried over to the books of White House on a no-gain/no-loss basis. That practice, as well as unauthorized common control, has already been dealt with. Accordingly, the only issue left is the question of overcharging the public. 10/

10/ The record developed in this case also appears to warrant a finding that White House has engaged in unauthorized one-way transfer operations between points in the Metropolitan District in contravention of Title II, Article XII, Section 4(a) of the Compact and the terms of Certificate No. 1. Inasmuch as that issue is not properly before us, we shall make no formal finding. The Commission expressly reserves its jurisdiction, however, to raise this matter in a future proceeding.

The facts here are clear and White House does not contest them. On or about December 1, 1979, White House unilaterally increased all its fares and charges without filing a new tariff with the Commission. While the company asserts that its economic situation required those increases, it realizes that such an exigency, even if true, does not lawfully justify its action. During the period reviewed by the staff, White House imposed incorrect charges on almost 90 percent of its passengers. The net variance between lawful tariff charges and actual charges amounted to 16.7 percent of revenues. Moreover, White House continued to collect unauthorized fares after being otherwise directed by Order No. 2119, served June 12, 1980. By extrapolating the calculations made by the staff, we find that White House collected at least $48,628 in unauthorized fares during the period December 1, 1979, through August 21, 1980. 11/

Likewise, there can be little doubt that White House's violations were knowing and wilfull as opposed to resulting from ignorance or inadvertance. White House has an affirmative duty to become familiar with the terms of the Compact and the Commission's rules, regulations and orders thereunder. As the company's new president correctly stated, "ignorance is not excuse", particularly for the period June 12 through August 21, 1980, where the carrier was specifically ordered to charge only the fares contained in its WMATC Tariff No. 2. 12/

This is not the first time that White House has instituted a unilateral, unapproved general fare-increase, 13/ although its first effort so to do was found not to be wilfull. 14/ At that time, White House was reminded of the proscription set forth in Commission Regulation No. 55-08 that

> (n)o carrier shall charge or demand or collect or receive a greater or less or different compensation for transportation, or for any service in connection therewith, than the rates, fares and charges specified in its currently effective tariff.

11/ 16.7 percent variance multiplied by the carrier's income for July and two-thirds of August 1979, plus the $32,902 conceded by White House for the period December 1979 through June 1980.

12/ Order No. 2119, page 4, and Order No. 2121, served June 20, 1980, page 2.

13/ See Order No. 1514, served March 12, 1976.

14/ Order No. 1572, served June 22, 1976.

Under these circumstances the Commission finds that White House has knowingly and wilfully violated Title II, Article XII, Section 5(d) of the Compact, Commission Regulation No. 55-08 and the directives of Order Nos. 1572, 2119 and 2121 and, during the period December 1, 1979, through August 21, 1980, inflicted deliberate overcharges on its passengers in an amount of at least $48,628.

Having so found, we must consider an appropriate remedy. Among choices considered but not deemed advisable at this time are suspension or revocation of the carrier's certificate under Title II, Article XII, Section 4(g) of the Compact and referral for criminal prosecution under Title II, Article XII, Section 18(d) of the Compact. While these acts are certainly within the power of the Commission, we are inclined to afford the new management of White House an opportunity to correct the mistakes of the past before imposing such penalties.

Absent other significant mitigating circumstances, however, the Commission concludes that remedial action must be taken if we are to fulfill our duty to the general public. First, the amount of $48,628 shall be established as a non-cash reserve account entitled "Commission Ordered Reserve" on the books of White House. Said amount shall be deducted from revenues that the Commission would otherwise allow White House to earn in future rate proceedings.

In determining this remedy, we have considered the nature, severity and deliberateness of the violation, the alleged mitigating circumstances, the overall financial posture of White House, 15/ the need for restitution to the public, the responsibility of the Commission to uphold the law and the effect of this action on the confidence of the public and the security of the local carrier industry. While no further penalty will be imposed at this time, White House is cautioned that the Commission will closely monitor its compliance and reserves the right to institute further administrative and judicial proceedings in the event that other violations are discovered. Further violations will warrant more severe action.

15/ That carrier's balance sheet dated December 31, 1979, shows $17,519 in current assets, total assets (less reserve for depreciation) of $341,836, current liabilities of $10,081, total liabilities of $133,385 (including $72,928 due stockholders) and net equity of $208,451 (including $203,451 earned surplus).

THEREFORE, IT IS ORDERED:

1. That the motion of applicant in Case No. AP-79-04 to dismiss for want of jurisdiction is hereby denied.

2. That the application in Case No. AP-79-04 is hereby granted subject, however, to the conditions (a) that applicant identify its motor vehicles in the manner directed in this Order and (b) that separate books and records be regularly maintained for White House Sightseeing Corporation and Baltimore-Solomons Bus Lines, Inc., in the manner directed in this Order and that White House Sightseeing Corporation fully comply with the mandates of Commission Regulation No. 64-02 governing accounting records.

3. That White House Sightseeing Corporation is hereby directed to file with the Commission an affidavit setting forth in detail its compliance with the directives of the preceding paragraph no later than 30 days from the date of service of this order.

4. That White House Sightseeing Corporation establish a non-cash reserve account entitled "Commission Ordered Reserve" on its books in the amount of $48,628, such reserved account to be used at the discretion and by order of the Commission to offset the need for additional revenues in future rate proceedings.

5. That in all other respects Case No. MP-79-07 is hereby discontinued subject to the right of the Commission, which is hereby expressly reserved, to reopen this proceeding or institute further administrative or judicial proceedings to assure the compliance of White House Sightseeing Corporation with the requirements of the Compact and the rules, regulations and orders of the Commission thereunder.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS SCHIFTER AND SHANNON:

WILLIAM H. McGILVERY
Executive Director