

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2407

IN THE MATTER OF:

Served April 20, 1983

Interpretation and Enforcement of )  
Title II, Article XII, Section 1(c))  
of the Compact )

Case No. MP-83-01

Title II, Article XII, Section 1(a) of the Washington Metropolitan Area Transit Regulation Compact provides that the Compact applies (with certain exceptions) ". . . to the transportation for hire by any carrier 1/ of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service. . . ." Section 4(a) of Title II, Article XII, provides that [n]o person shall engage in transportation subject to [the Compact] unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation. . . ."

Notwithstanding the provisions of paragraph (a) of [Section 1, quoted above], this Act shall apply to taxicabs 2/ and other vehicles used in performing

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1/ The term "carrier" means any person who engages in the transportation of passengers for hire by motor vehicle, street railroad, or other form or means of conveyance. Title II, Article XII, Section 2(a) of the Compact.

2/ The term "taxicab" means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct. Title II, Article XII, Section 2(d) of the Compact.

bona fide taxicab service having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage. 3/

The purposes of this proceeding are (a) to provide a definitive interpretation of what transportation is partially exempted from regulation by Title II, Article XII, Section 1(c) of the Compact and (b) to provide a framework for assisting existing carriers which operate vehicles with a seating capacity of eight persons or less (excluding the driver) to comply with the regulatory requirements which pertain to their respective operations.

Section 1(c) was based on Section 203(b)(2) of the Motor Carrier Act of 1935 4/ which exempts (with certain exceptions) "taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini . . ." from regulation by the Interstate Commerce Commission. Said taxicab exemption was adopted by Congress in recognition of the fact that operation of taxicabs is essentially a local business having little impact on federally regulated interstate commerce. Buck v. California, 343 U.S. 99, 102, 72 S.Ct. 502, 504, 96 L.Ed. 775 (1952), rehearing denied 343 U.S. 932, 72 S.Ct. 756, 96 L.Ed. 1341 (1952). Inasmuch as the same principle of local regulation of taxicabs underlies our Section 1(c) exemption, it is useful to review those decisions of the Interstate Commerce Commission which deal with what operations constitute "bona fide taxicab service".

In Peters Common Carrier Application, 23 M.C.C. 611 (1940), Division 5 of the I.C.C. stated that the applicant had been engaged in a bona fide taxicab service, operating six-passenger sedans. The same vehicles were also used to transport groups such as athletic teams from high schools, colleges and universities to various points in neighboring states. In such service, Division 5 found that

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3/ Title II, Article XII, Section 1(c) of the Compact. Emphasis added.

4/ 49 U.S.C. §10526(a)(2), formerly 49 U.S.C. §303(b)(2). In subsection (a)(2) the words "taxicab or other" and "bona fide" are omitted as surplus. The words "specified places" are substituted for "fixed termini" for consistency. Historical and Revision Notes to Public Law 95-473, approved October 17, 1978.

. . . applicant has contracted for the transportation of groups and has not sold individual tickets. He intends to limit his future service to group transportation. Applicant therefore was, and is, a common carrier, of passengers, engaged in chartered-party operations in interstate commerce, and as such was, and is, subject to the provisions of the act and the rules and regulations promulgated by us thereunder to the same extent as a common carrier of passengers who has been and is engaged in the transportation of passengers in chartered-party operations in interstate or foreign commerce using vehicles with a seating capacity exceeding six passengers, exclusive of the driver. 5/

Similarly, in Gannon Common Carrier Application, 29 M.C.C. 662 (1941), the applicant operated six-passenger (exclusive of driver) sedan vehicles. The license and plates issued to him by the State of Maryland were the same as those issued to taxicab operators.

Applicant . . . does not cruise about the city in search of fares, nor does he operate from so-called taxicab stands. All arrangements for transportation are made at applicant's office either by telephone or by personal contact. Applicant furnishes his sedans with drivers for funerals, weddings and shopping tours, and to individuals and groups of persons for their private and business needs including trips to seashores, mountain resorts, and points of historical interest. He charges \$4 per hour for each vehicle while in operation, and \$2 per hour while waiting. His rate for vehicles used in connection with funerals is based on a flat charge of \$12 per car. 6/

\* \* \* His operations, and holding out to the public, may be said to resemble those of a taxicab operator only to the extent that he specializes in a service sometimes undertaken by taxicab operators as a side line. In our opinion he does not perform a bona fide taxicab service in the commonly accepted meaning of that term, and therefore his operations do not fall within the exemption provided by section 203(b)(2) of the act.

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5/ 23 M.C.C. 611 at 614.

6/ 29 M.C.C. 662 at 663.

In the service here considered applicant does not sell individual tickets, but on the other hand transports, for a stated amount per hour or per vehicle, individuals or parties who are entitled to the exclusive use of the vehicle furnished. He, therefore, is a common carrier of passengers engaged in chartered-party operations in interstate commerce, and as such was, and is, subject to the provisions of the act. 7/

Motor Carrier Operations, Washington, D. C., Mt. Vernon, Va.,  
51 M.C.C. 197 (1949) was an investigation instituted by the I.C.C. to determine whether the transportation of passengers for hire by motor vehicle by the respondents between Washington, D. C., and Mount Vernon, Va., and within the Washington, D. C., commercial zone without authority from the I.C.C. is lawful.

\* \* \* Some of the respondents actively solicit and provide round-trip tours to Mount Vernon along with other local sightseeing trips. Others go to Mount Vernon only occasionally. The normal and usual route to that point is over the Arlington Memorial Bridge thence over the Mount Vernon Memorial Highway, with detours to the National Cemetery and the Masonic Memorial when these points are included in the tour. None hold authority from this Commission to perform these operations. They have licenses from the District of Columbia issued for and covering each vehicle. These licenses, so far as here pertinent, are of two types both of which cover for-hire passenger vehicles having seating capacities of less than eight passengers, excluding driver or operator, operated from a private establishment or public space. One type represented by a license plate with the designation "H" is issued to operators who hold themselves out to transport anyone for hire, and are commonly referred to as taxicab operators; and the other type, represented by a license plate with the designation "L" is issued to others, who may not engage in such taxicab operations but are authorized to conduct sightseeing operations with vehicles, which, to distinguish them from the taxicabs, are commonly called limousines. 8/

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7/ 29 M.C.C. 662 at 664.

8/ 51 M.C.C. 197 at 198.

\* \* \* Some of the respondents hold "H" tags only and are clearly engaged in taxicab operations. None of these taxicabs has a capacity in excess of six passengers. They go anywhere in the area on demand of the patron and do not operate on a regular route or between fixed termini. Such operations are within the exemption of section 203 (b)(2) of the act. 9/

\* \* \* [An] element in the taxicab exemption is that the vehicle must be used in performing a bona fide taxicab service. In this connection it is noted that while for convenience in differentiating the operations, the District of Columbia regulatory authority, and the public, refer to the holders of "H" and "L" tags as taxicab operators, and limousine or sightseeing operators, respectively, the statute providing for their regulation does not make this distinction, and in fact refers to them collectively as "passenger vehicles for hire, whether operated from a private establishment or from public space." The annual license tax is the same for both types.

A taxicab has been defined as a self-propelled conveyance, held for public hire at designated places, subject to municipal control, charges for which are a stipulated fee or are upon a time or distance basis. And the predecessors of the modern taxicab were commonly known as cabs, cabriolets, hacks, hackney coaches, and perhaps by other names, being vehicles which were kept at fixed stands for hire to persons who desired their temporary use, or for the purpose of carrying persons on call between places designated by the person calling them at a rate of fare measured by the length of time of the use, or the distance traveled. Whitman's Black & White Cab Co., Inc., Com. Car. Applic., 47 M.C.C. 737, 739. Thus the mere designation of a vehicle as a sightseeing limousine does not preclude it being engaged in taxicab service. Section 203(b)(2) refers to "taxicabs, or other motor vehicles." The essential characteristic of taxicab service, as distinguished from special or charter service which also need not be operated on a regular route or between fixed termini, is its inherently local nature. Whitman's Black & White Cab Co., Inc., Com.

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9/ Id. at 199.

Car. Applic., supra. Compare Blue & Grey Sight Seeing Tours, Inc., Com. Car. Applic., 8 M.C.C. 124, in which applicant was found entitled to a certificate to continue special and charter operations, over irregular routes, to or from the Washington commercial zone (which did not include Mount Vernon at the time of decision) from or to points in nearby States including Mount Vernon and Arlington National Cemetery, in buses operated on schedule, and for which tickets were generally sold to individual passengers; Tanner Motor Livery Common Carrier Application, 32 M.C.C. 387, 392, wherein applicant's operations conducted with limousines were found to require appropriate authority from the Commission upon a showing, among other things, that long-haul operations were involved and that the only material difference between applicants' service by bus and limousine was in the carrying capacity of the vehicles; and Rubin and Greenfield Common Carrier Application, 33 M.C.C. 383, 388, in which report we distinguished between a local bona fide taxicab service, and a line-haul operation performed with the same six-passenger sedans, and found the latter to be a special operation subject to regulation. The operations under consideration, as herein described, to and from points within the defined commercial zone are essentially local. 10/

Relying on this rationale, the I.C.C. went on to find that ". . . the transportation of passengers in on-call service in taxicabs and so-called limousine-sightseeing vehicles, within the Washington, D. C., commercial zone, between Washington and Mount Vernon is a bona fide taxicab service." 11/

Finally, in Bevacqua Common Carrier Application, 73 M.C.C. 751 (1957), the I.C.C. drew upon the preceding cases and the Maloney decisions 12/ to reach the construction of Section 203(b)(2) in effect at the time of adoption of the Compact.

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10/ Id. at 200-201.

11/ Id. at 204. Emphasis added.

12/ See Maloney Broker Application, 64 M.C.C. 751 (1955) and Maloney Broker Application, 67 M.C.C. 621 (1956).

In resolving the issues here in the light of that [Maloney] decision, we are not unmindful of the relatively small and essentially local character of the operations of a majority of the applicants. In many respects, it is unfortunate that operations of this type should not be primarily controlled and regulated by local licensing authorities. This is particularly true at this late stage in the development of the field of sightseeing service in the Niagara Falls area when the equities of the applicants and the positions of the protestants are most difficult to appraise in the light of the public need and the public interest. The law as it stands today, however, leaves no reasonable alternative to regulation by this Commission of a large number of such operators.

\* \* \* To accommodate adequately the vast number of sightseers coming into the area, particularly on a seasonal basis, the present limousine operators provide a needed service and a reservoir of equipment and experienced personnel which equity and long continued business operations and service to the public dictate should be continued. For these operations to be continued lawfully under the holdings of the Maloney case, most of such operations will require that appropriate certificates be issued. These include the duly licensed limousine operators and those operating limousine services where no specific domestic license is required. The basic characteristics of these operations entail the active solicitation of passengers for planned or prescribed round-trip sightseeing tours, the use of printed advertising and handbills, the sale of tours by the operator himself or by an agent or broker in advance, and the issuance of tour tickets. As concluded in the Maloney case, operations of this type are not exempt under section 203(b)(2) of the act and operating authority is required for their continuance. 13/

\* \* \* Other applicants in a somewhat different category from those discussed in the previous paragraph hold only taxicab authority from Niagara Falls or Buffalo, and all seek exemption under section 203 (b)(2). Persons who thus are limitedly

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13/ 73 M.C.C. 751 at 760.

licensed and interested primarily in performing an ordinary taxicab service involving the usual local pickup and one-way delivery of fares may also, on an on-call basis or when hailed from the street or a hack stand, transport such passengers on local sightseeing drives without other authority if the rated capacity of their vehicles does not exceed six fare-paying passengers as described in the applications filed by these respective applicants. So long as such persons conduct their businesses without significant or aggressive solicitation, without holding out to the public of regular guided tours by advertisement or otherwise, or the sale of tickets by themselves or by brokers in advance, they may conduct sightseeing operations within the exemption of section 203(b)(2) as urged in their applications, and no operating authority is required, nor should it be granted. 14/

Hence, Federal law at the time that this Commission came into being (March 22, 1961) can be summarized as follows:

1. Taxicab service must be essentially local. 15/
2. Licensing of and issuance of operating authority to taxicabs is essentially a function of local government.
3. Transportation of groups pursuant to a single contract is charter service and is not exempt from regulation, including certification when performed in a vehicle that is not a locally licensed taxicab.
4. The main function of a taxicab is cruising the city or operating from taxicab stands in search of fares.
5. On-call sightseeing may be performed by taxicab operators without other authority.
6. On-call sightseeing is a bona fide taxicab service.
7. Neither a taxicab nor a limousine operator may hold himself out to the public to provide regular guided tours by advertisement or otherwise, and they may not directly or otherwise sell tickets in advance.

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14/ Id. at 761. Footnote omitted.

15/ Inasmuch as we consider only service in the Metropolitan District, this criterion requires no further discussion.



The original Compact, 16/ however, did not completely preserve the above-numbered distinctions. As originally enacted, Section 1(c) read as follows.

Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles having a seating capacity of eight or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District and (ii) requirements for minimum insurance coverage.

It was not until 1962 that the phrase "used in performing bona fide taxicab service" was added to Section 1(c). 17/

As described by the Court in Montgomery Charter Serv., Inc. v. WMATC, 325 F.2d 230 (D.C.Cir. 1963), the omission of said phrase was quite significant. The Court disagreed with our interpretation of the original Section 1(c) that "[t]he operation of any motor vehicle, regardless of size, operated between fixed termini on schedule must have the approval (i.e., a certificate of public convenience and necessity) of the Commission." 18/ After holding that the words "approval of the Commission" in Title II, Article XII, Section 2(d) 19/ referred only to rates and insurance coverage and was not synonymous with "certificate of public convenience and necessity," 20/ the Court noted the passage of the amended version of Section 1(c). "[T]his new legislation amends Section 1(c) to read as the Commission erroneously contend[ed] the original Section 1(c) should have been read." 21/ Hence, the Court said, as of October 9, 1962, any vehicle engaged in for-hire transportation of passengers between points in the Metropolitan District where such transportation did not also constitute bona fide taxicab service was subject to ". . . the full panoply of regulation imposed by Section 4 et seq. [of the Compact] . . ." regardless of the seating capacity of the vehicle.

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16/ Pub. L. 86-794, September 15, 1960, 74 Stat. 1031.

17/ Pub. L. 87-767, October 9, 1962, 76 Stat. 764.

18/ 325 F.2d 230 at 233.

19/ See footnote 2, supra.

20/ Id. at 234.

21/ Id. at 235.

As a matter of practice, the Commission has not stringently enforced the "full panoply" of its jurisdiction over vehicles with a seating capacity of eight passengers or less in addition to the driver thereof. We have prescribed minimum insurance requirements 22/ and rates 23/ for transportation by taxicabs and by other vehicles used in performing bona fide taxicab service between points in the Metropolitan District but which are not licensed and regulated as taxicabs by one of the local jurisdictions within the Metropolitan District. In circumstances where we have become aware of carriers offering service in such vehicles between fixed termini or on regular schedules, such carriers have been made to comply with the "full panoply" of regulation. 24/

We are aware, however, that many operators of limousines and (in the last few years) vans have been operating beyond the regulatory scheme established by the framers of the Compact. In fact, most of these operators appear to share a belief that all vehicles with a seating capacity of eight persons or less and not operating on regular schedules or between fixed termini are totally exempt from regulation. Obviously, such a belief is inconsistent with federal precedent.

Just as obviously, however, a clarification of the applicable law on this subject is long overdue, and our silence on this matter may well have contributed to the erroneous belief described above. Under such circumstances, we believe that a complete investigation of this subject should be undertaken in lieu of merely issuing a policy statement. Accordingly, we invite comments from all interested persons including, but not limited to, operators of vans and limousines for hire, on the following questions.

1. What operations conducted by vehicles with a seating capacity of eight passengers or less, other than taxicabs, should be considered "bona fide taxicab service"? (Under current law, including District of Columbia statutes and regulations limiting solicitation and acceptance of passengers along public streets to licensed taxicabs, only on-call sightseeing has been affirmatively classified as a bona-fide taxicab operation. Lack of vigorous enforcement, however, may have encouraged uncertificated operations of so-called V.I.P. limousines.)

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22/ Order No. 67, served October 9, 1961, and Commission Regulation No. 62-03.

23/ Cf. Order No. 2336, served May 7, 1982.

24/ Cf. Order Nos. 383 and 1869, served September 11, 1964, and August 7, 1978.

2. Where operations should be certificated under Title II, Article XII, Section 4(b) of the Compact, but such operations have heretofore been conducted under a good-faith belief that they were exempt, what, if any, special evidentiary considerations should apply when such operators file applications for a certificate of public convenience and necessity?

3. Where operations need not be certificated but are subject to interstate rate requirements, what procedures and considerations, if any, should be used to establish a rate structure other than that established by Order No. 2336? 25/ (Specific consideration should be given to whether rates should be established on a per-carrier basis, on an industry-wide basis, according to the type(s) of vehicles utilized and their cost, or according to some other criteria.)

4. What registration and reporting requirements should be imposed on operators of "other vehicles" to assure that the rates established therefor are just and reasonable and provide an opportunity to earn an adequate rate of return?

Persons currently conducting operations which may fall within the scope of this proceeding are urged, as a prologue to their comments, to provide a description of their operations, including type and number of vehicles utilized, the seating capacity thereof, the rates charged for each type of service operated and the most recent operating statements for such services. Such persons are further urged to include in their comments a statement regarding the impact which our exercise of regulatory jurisdiction might have on competition within the so-called "limousine" market place.

Following receipt of the comments solicited herein, it is anticipated that we will publish an order containing proposed policies and/or rules of procedure and/or regulations regarding the partial exemption from regulation conferred by Title II, Article XII, Section 1(c) of the Compact. After an opportunity for comment on our proposals, it is our intention to promulgate final policies, rules and/or regulations on this subject. 26/ Inasmuch as this proceeding may have a serious effect on the (presumed) legal rights of various persons, anyone who may be affected by this proceeding is reminded that they have an absolute right to representation by legal counsel in any proceeding before the Commission.

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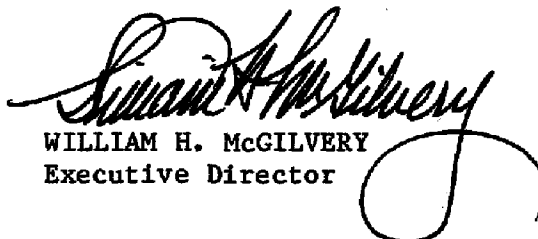
25/ A copy of that rate structure is reproduced as an appendix to this Order.

26/ Subject to Title II, Article XII, Section 16 of the Compact.

THEREFORE, IT IS ORDERED:

1. That an investigation be, and it hereby is, instituted regarding the subject matter of this proceeding.
2. That any person having an interest in this proceeding file an original and five conformed copies of their comments thereon, in writing and (where factual matters are asserted) under oath, no later than Friday, May 27, 1983, and such evidence and comments should be specifically directed to the questions and issues raised in this order.
3. That any person who believes that an oral hearing on the matters raised in this proceeding would be useful should include in his filing a petition for an oral hearing and a statement of why an oral hearing is both necessary and more convenient than a statement of evidence and argument submitted in writing.
4. That the staff of the Commission cause to be published once, in a newspaper of general circulation in the Metropolitan District a notice of this proceeding, and serve by first-class mail, postage prepaid, a copy of this order on all WMATC certificated carriers and on as many persons as it can determine may be operating as carriers in the Metropolitan District without certificates of public convenience and necessity issued by this Commission.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS CLEMENT, SCHIFTER AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director

INTERSTATE TAXICAB RATES  
FOR TAXICAB SERVICE WITHIN THE  
WASHINGTON METROPOLITAN AREA TRANSIT DISTRICT  
(in taxicabs not licensed and regulated by any  
political subdivision located within the  
Metropolitan District or for which taxicab rates  
have not been specifically established by WMATC)

- \$1.70 First mile or part thereof
- .50 Each additional 1/2 mile, or part thereof
- .75 Each additional passenger in a pre-formed party  
(provided, however, that one child five (5)  
years of age or younger shall be transported  
without charge for each individual of at least  
sixteen (16) years of age in a pre-formed  
party.)

Hand baggage, including large bags of groceries or articles of similar size, in excess of one piece per passenger shall be charged for at the rate of 15¢ for each such piece. Briefcases and parcels of comparable size shall not be considered as hand baggage.

Trunks or similar large articles shall be charged for at the rate of \$1.25 each. A trunk is herein defined as a piece of baggage having a minimum dimension or cubic content in excess of 32 inches by 18 inches by 9 inches or 3 cubic feet.

The charge for personal service shall be 65¢; taxicab service in response to a telephone call, 65¢ in addition to all other authorized charges; dismissal of a taxicab without using it after response to a telephone call, 65¢ in addition to the charge for responding; waiting time, a/ 75¢ for each 5 minutes or fraction thereof.

The charge for a taxicab employed on an hourly basis shall be as follows: for the first hour or fraction thereof -- \$9;  
for each additional 15 minutes or fraction thereof -- \$2.25.

There shall be no additional charge for service during traffic rush hours or snow emergency periods.

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a/ Waiting time shall include time consumed while taxicab is waiting and available to the passenger beginning 5 minutes after the time of arrival at the place to which it has been called. No charge shall be made for premature response to a call.