

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2691

IN THE MATTER OF:

Served April 3, 1985

Application of ALEXANDRIA TRANSIT)
COMPANY for a Certificate of Public)
Convenience and Necessity to)
Perform Charter Operations)

Case No. AP-84-27

By application filed May 29, 1984, Alexandria Transit Company ("ATC" or "applicant") seeks a certificate of public convenience and necessity to conduct charter operations between points in Alexandria, Va., on the one hand, and, on the other, points in the District of Columbia.

Pursuant to Order No. 2565, served June 13, 1984, and incorporated herein by reference, a hearing on ATC's application was held on July 17 and 18, 1984, at which Gold Line, Inc. ("Gold Line" or "protestant"), and Airport Limo, Inc., doing business as Red Top Coach ("Red Top") ^{1/} appeared as protestants. At the close of the hearing, applicant filed a motion to dismiss the application on the theory that the proposed operations were exempt from Commission regulation under Title II, Article XII, Section 1(a)(2) of the Compact. Applicant's motion to dismiss was denied by Order No. 2636, served December 10, 1984.

FACTUAL BACKGROUND

ATC is a Virginia corporation organized and operated for the purpose of supplementing the regular route scheduled bus service provided by the Washington Metropolitan Area Transit Authority in Alexandria. The City of Alexandria, a political subdivision of Virginia ("Alexandria" or "City"), is ATC's sole stockholder. The members of ATC's Board of Directors are City officials, except for one who is ATC's general manager and an employee of ATE Management and Service Company ("ATE"), a private firm hired to run ATC's day-to-day operations. ATC's drivers and other operating personnel are employees of Transit Management Company of Alexandria ("TMC"), a wholly-owned subsidiary of ATE. If in the future a different management company is

^{1/} Airport Limo, Inc., d/b/a Red Top Coach changed its corporate name to Red Top Coach, Inc., during the course of these proceedings. On December 11, 1984, Red Top withdrew its protest. For this reason, Red Top's testimony has been omitted from consideration in this Order.

hired, ATE is obligated to transfer TMC to its successor. In this way, ATC will avoid any disruption in the continuity of its labor relations. 2/

ATC operates seventeen 31-passenger mini-buses, all of which were purchased by Alexandria. The buses are cleaned, fueled, and checked as to fluid levels daily. ATC has implemented a preventive maintenance program. Applicant has 22 full-time drivers as well as reserve part-time drivers. Each driver has a class B chauffeur's license and has undergone classroom training on bus safety procedures, practice driving classes, and actual on-street practice driving.

Applicant's buses are used in the morning and evening of each day during the work week to provide regular route scheduled bus service in Alexandria. Consequently, the charter service ATC proposes would be available as follows: (1) Monday through Friday between the hours of 10 a.m. and 3 p.m. and between 6:30 p.m. and 1 a.m., (2) between 6:30 a.m. Saturday and 1 a.m. Sunday, and (3) Sunday between 7 a.m. and 10:30 p.m.

ATC proposes to charge \$35 an hour for charter service, with a one-hour minimum. After the first hour, users would be charged in half-hour increments at the rate of \$17.50. Any profits generated by charter service 3/ would help subsidize the cost of providing regular route scheduled service. ATC projects a net loss of \$763,207 on its operations for the year ending June 30, 1985, assuming revenues of \$3,000 from charter service. ATC's operating losses are covered by Alexandria with public funds.

The Alexandria Chamber of Commerce ("Chamber") supports the application in the belief that the availability of additional charter bus service between Alexandria and Washington will benefit the Alexandria business community. The Chamber itself occasionally has a need for charter service. 4/ Its endorsement of this application

2/ For a more detailed discussion of ATC's operating structure, see Order No. 2636, supra.

3/ If fixed costs of operation are disregarded, ATC makes a "profit" on charter service because the variable costs arising from such service are approximately \$25.22 an hour, including depreciation. If actual fixed costs are allocated to charter operations, the cost of providing such service is approximately \$32.78 an hour. ATC's fixed costs of operation remain the same whether charter service is offered or not.

4/ The Chamber conducted no charter bus trips in 1983, conducted two in the first half of 1984, and had none planned at the time of the hearing.

rests on the premise that recent growth in the amount of office space available in Alexandria will give rise to a need for additional charter bus service to link Alexandria with Washington. In this regard, shortcomings in existing charter service cited by the Chamber are a lack of mid-sized equipment suitable for groups of 20 to 35 passengers and a lack of services that charge for one or two hours' use instead of imposing a multi-hour minimum charge. However, the Chamber's witness declined to characterize existing services as inadequate or unsatisfactory.

Professional Corporate Services ("PCS") does business as two Alexandria travel agencies: Old Town Travel Agency and Travel Point and Meetings. It arranges airport transfers, local sightseeing, and point-to-point transfers for groups of 15 to 100 people. PCS is familiar with ATC's operating equipment and believes that it is appropriate for transporting the small "executive type" group, in that it fills a gap between 20-passenger mini-buses and 47-passenger coaches. PCS's witness testified about a potential charter in June 1985 that could involve transporting a group of 25 to 30 persons from Alexandria to Washington and back again. The witness testified that there have been no occasions in the last three years when she was unable to secure charter service from existing carriers. She also stated, however, that there are some situations when it is unsatisfactory to use a full-sized motor coach to transport a group of 20 to 30 passengers. This happens when the resulting appearance of wastefulness reflects adversely on PCS's reputation for efficiency in the eyes of its client.

The Office of Historic Alexandria ("OHA") is an agency of the City government. In June 1984 it used charter bus service to transport 170 people from Washington to Alexandria and back again in connection with a convention. An attempt was made to use ATC for this movement. When ATC refused service due to lack of appropriate authority, another carrier was selected. The carrier which handled the trip was 20 minutes late in picking up the group and one hour late arriving in Alexandria. OHA anticipates a need for charter bus service again in 1985 and 1988 when other conventions are scheduled.

The Alexandria Tourist Council ("Council"), another department of the City government, assists tour planners, tour group leaders, and bus operators in arranging itineraries and entertainment for pre-formed groups coming to Alexandria. Usually transportation arrangements have been completed by someone other than the Council when a group arrives in Alexandria. Occasionally, however, a group needs assistance in arranging transportation during its stay. When this situation arises, the group usually needs transportation on two days' notice or less. It is the Council's practice in such situations to advise the group of available transportation options and let it select a carrier.

On some occasions the Council itself makes arrangements for charter bus service between Alexandria and Washington. Twice in 1984

the Council made such arrangements, 5/ once to help OHA transport the group of 170 persons mentioned previously, and the other time to transport a group of 25 pipers to Washington to participate in a parade. In the latter instance, an existing carrier was contacted at 4 p.m. on Friday and was able to provide the needed transportation the next day.

The Council's witness testified that during the three months preceding the hearing, a need for charter service within the scope of this application had come to her attention on three or four occasions. The Council's witness further testified that during peak season in the spring and fall, she receives one or two calls a week from groups of 20 to 30 people inquiring about transportation between Alexandria and Washington. The Council's witness identified the options presently available to such groups as being scheduled bus and subway service, 6/ cabs, and vans. The witness further testified that she knew of one small group that did not make the trip from Washington to Alexandria after being advised of the available modes of transportation.

Protestant Gold Line is authorized, inter alia, to conduct charter operations between points in the Metropolitan District. Within the past two years, Gold Line has reduced its fleet from approximately 130 to 99 coaches for the purpose of upgrading the quality of its fleet and tailoring its size to meet the market demand. Gold Line operates no 31-passenger buses. It has 28-30 full-sized buses available during non-commuter periods (from 9 a.m. to 4 p.m.) which it could make available for use in charter service in Northern Virginia. In 1983 Gold Line conducted 94 charter movements from Alexandria to Washington, resulting in revenues of \$42,146. It estimates that during the same period at least twice as many movements originated in Washington and terminated in Alexandria, producing approximately twice as much revenue.

Gold Line actively solicits charter business between Alexandria and Washington through advertising, direct mailings, outside sales personnel, and membership in organizations such as the Washington Convention Bureau and the Alexandria Chamber of Commerce. Gold Line's rate for charter service is \$38 an hour, or \$3 an hour more than the rate proposed by applicant. Gold Line has a four-hour minimum, which includes three hours' service and one hour's garage time. According to Gold Line's witness, operating for a shorter period of time is

5/ The Council had no occasion to make charter arrangements in 1983.

6/ The witness used the term "public transportation," which we infer means scheduled bus and subway service, as opposed to charter service such as proposed by applicant.

uneconomical. Although Gold Line infrequently is called upon to provide charter service on less than two weeks' notice, it is capable of providing charter service between Alexandria and Washington on 1-1/2 hours' notice. The average charter movement is booked 30-60 days ahead of time, and requests for charter service on less than 24 hours' notice are rare. Protestant's witness was unaware of any instance when protestant had refused or been unable to handle a charter movement between Washington and Alexandria.

Gold Line's income statement indicated an overall operating loss of \$270,000 for the first half of 1984, compared with net operating income of \$273,000 for the same period in 1983. Protestant's operating ratio for the first six months of 1984 was 105.4 percent, compared with a ratio of 94.5 percent for the same period in 1983. The 1984 loss was partially offset by sale of equipment which reduced the loss to \$69,000. Gold Line's decrease in revenues from 1983 to 1984 was 5 percent, but charter revenues for June 1984 showed an increase. Maintenance expenses were up approximately \$250,000 from 1983, but Gold Line's witness did not know the reason for the increase.

DISCUSSION AND CONCLUSIONS

In its post-hearing brief, ATC urges us to abandon the "public convenience and necessity" standard set forth in the Compact at Title II, Article XII, Section 4(b), and to apply, instead, the new "fitness only" standard found in the Interstate Commerce Act ^{7/} since its amendment by the Bus Regulatory Reform Act of 1982. ^{8/} The applicant's argument is that both the Compact and the Interstate Commerce Act are federal laws which regulate the same subject matter. According to ATC, since the standards of these two statutes are in conflict, the newer standards set forth in the Interstate Commerce Act prevail under the so-called "doctrine of implied repeal."

The short answer to ATC's argument is that the doctrine of implied repeal has no application in this case. The Compact and the Interstate Commerce Act are not in conflict. The enabling legislation passed by Congress to bring the Compact into existence provides that during the life of the Compact, the applicability of the Interstate Commerce Act is suspended within the Metropolitan District. See H.J. Res. 402, Pub.L.No. 86-794, Sec. 3, 74 Stat. 1031 (1960), and the Compact, Title II, Article VIII and Article XII, Sec. 20(a)(2). Where there is no potential for overlapping application of separate statutes, there is no conflict between them and, hence, no implied repeal of one by the other. Runyon v. McCrary, 427 U.S. 160, 172, fn.10 (1976).

^{7/} See 49 U.S.C. 10922.

^{8/} Pub.L.No. 97-261, 96 Stat. 1103 (1983).

Moreover, even if there were a potential for conflicting application of the Compact and the Interstate Commerce Act, it is doubtful that passage of the Bus Regulatory Reform Act of 1982 would be held to have implicitly repealed the Compact. "It is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum," Radzanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976). The Bus Regulatory Reform Act of 1982 is general in scope and deals with passenger transportation on a national level. The Compact, on the other hand, is narrow and precise and was authorized by Congress for the specific purpose of remedying the problems caused by multilateral jurisdiction unique to the Metropolitan District. See Universal Interpretive Shuttle Corp. v. WMATC, 393 U.S. 186 (1968), and the legislative history of the Compact cited therein.

Rejecting its argument on the doctrine of implied repeal, the ineluctable conclusion is that ATC's application must be decided under the standard of "public convenience and necessity" set forth in Title II, Article XII, Section 4(b) of the Compact. In applying this standard, we are guided by the analysis of its meaning first set forth in Pan American Bus Lines Operation, 1 M.C.C. 190, 203 (1936):

The question, in substance, is whether the new operation or service will serve a useful purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Evaluating this record in light of these guidelines, we find that the public convenience and necessity require the applicant's proposed service for the reasons discussed below.

The evidence shows a likelihood of increased public demand and need for charter transportation between Alexandria and Washington. The recent and rapid increase in the amount of office space in Alexandria

is a factor that deserves consideration in this regard. 9/ Commercial activity in Alexandria and Washington is closely interrelated. As business activity in Alexandria increases, it reasonably follows that there will likely be more need for public transportation between that city and Washington than there has been in the past.

Futhermore, it is apparent that the authorization of ATC's service will expand the range of price and equipment options available to the public. Existing carriers do not offer 31-passenger buses like ATC's, nor do they have a rate structure comparable to ATC's innovative proposals for a one-hour minimum charge and for billing in one-half hour increments after the first hour. There are indications that these unique features of ATC' service will serve a useful purpose in many situations where existing service would not be appropriate. For example, ATC's service would make it possible to transfer a group of 31 passengers or less between a point in Alexandria and a point in Washington for as little as \$35, whereas the same movement would cost at least \$125 10/ under Gold Line's tariff.

9/ The evidence of increased office space presented in this case is analogous to the evidence of construction of the Washington Convention Center which was presented in Case No. AP-82-11, Application of Webb Tours, Inc. In Order No. 2404 denying that application, we intimated that the fact of the Center's opening was entitled to little probative weight in support of the application because no witness could quantify the increased need for charter service the opening of the Convention Center might stimulate and, consequently, there was no showing that existing carriers would be unable to meet any increased need. In upholding our decision on other grounds in Webb Tours, Inc. v. WMATC, 735 F.2d 599 (D.C. Cir. 1984), the Court of Appeals suggested "that when and if Webb resubmits its application the Commission give renewed consideration to its conclusions concerning the proper emphasis to be accorded the issue of competitive impact and the proof necessary to establish future need for the proposed service arising from operations of the Convention Center." Our new approach to such issues in general as a result of the Court's suggestion in Webb is apparent in the instant decision.

10/ The record correctly indicates Gold Line's hourly rate is \$38 with a four-hour minimum, which includes three hours of "live" time and one hour of "garage" time. We also note that Gold Line's tariff provides a flat "transfer" rate of \$125 for a "Transfer between any two points in the Metropolitan District located within the Capital Beltway." This latter is the lowest rate that would apply to the example above, and official notice of this rate is useful in the interest of complete information.

Also, as between ATC and Gold Line, we note that ATC is located in Alexandria, while Gold Line is located in Tuxedo, Md. In order to provide service from Alexandria to Washington, Gold Line would have to "deadhead" equipment to Alexandria in many cases, 11/ but ATC would not. This advantage in operational efficiency, while not of paramount importance, nevertheless affects the public interest in terms of conserving fuel resources. Either carrier might have to "deadhead" equipment to Washington for trips beginning there.

We find it to be in the public interest to make available to the public the benefits to be gained by ATC's entry into the expanding Alexandria-Washington charter market. In this regard, we recognize that Gold Line's existing service has not been shown to be inadequate in any material respect. This fact, in and of itself, however, is not dispositive of the question whether ATC's proposed service is required by the public convenience and necessity. See Schaffer Transp. Co. v. U.S., 355 U.S. 83 (1957); P.C. White Truck Line, Inc. v. ICC, 551 F.2d 1326 (D.C. Cir. 1977). What matters is that, in this particular case, it does not appear that Gold Line's ability to continue rendering reasonably adequate service will be impaired as a result of competition by ATC to such an extent as to warrant denial of this application. See May Trucking Co. v. U.S., 593 F.2d 1349 (D.C. Cir. 1979).

ATC's capabilities are limited when compared with Gold Line's. ATC's equipment is far less luxurious than Gold Line's, and its hours of charter operation will be far more limited than Gold Line's. ATC's proposed service is not a reasonable substitute for Gold Line's service in many situations, just as Gold Line's service is not an appropriate alternative to ATC's proposed service in some situations, as indicated above. In short, while there will be competition between them, there is enough disparity in the operations conducted by the two carriers to foreclose the possibility that ATC can or will usurp to any significant extent the market share held by Gold Line.

We find ATC to be fit, willing, and able to perform the proposed service and to comply with the Compact and our regulations thereunder. ATC has a fleet of buses capable of providing charter service over the short distance between Alexandria and Washington, and its financial viability is supported by a subsidy from the City of Alexandria. ATC has turned down requests for service in the Metropolitan District due to lack of authority, which indicates its ability and willingness to abide by the law.

One final matter deserves comment. We note from some of the questions posed by Gold Line's counsel at the hearing that there is a

11/ The cost of such deadheading is the factor involved in the one hour of "garage time" included in Gold Line's four-hour minimum charge.

concern over the implications of ATC's subsidy from the City of Alexandria. We take it that the gist of the concern is that ATC may have an unfair competitive advantage. We do not find the fact of ATC's subsidy to be a factor weighing against a grant of this application. Should ATC seek to abuse its public subsidy by cutting its charter rates in an effort to compete unfairly, we are empowered to take appropriate remedial action under Title II, Article XII, Section 6 of the Compact.

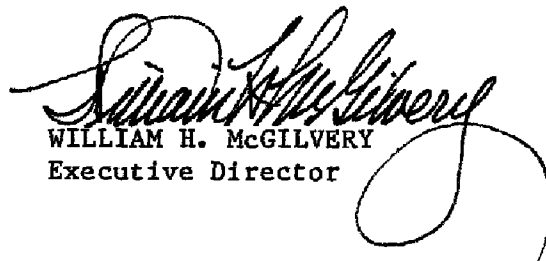
THEREFORE, IT IS ORDERED:

1. That the application of Alexandria Transit Company for authority to conduct charter operations transporting passengers between points in Alexandria, Va., on the one hand, and, on the other, points in the District of Columbia, is hereby granted.

2. That Alexandria Transit Company is hereby directed to file the following: (a) two copies of its tariff in compliance with WMATC Regulation No. 55; (b) evidence of security for the protection of the public in compliance with WMATC Regulation No. 62; and (c) an affidavit certifying identification of its vehicles in compliance with WMATC Regulation No. 68, for which purpose WMATC Certificate No. 119 is hereby assigned.

3. That unless Alexandria Transit Company complies with the requirements of the foregoing paragraph within 30 days from the date of service of this Order, or such additional time as the Commission may direct, the grant of the application made herein shall be void and such application shall stand denied in its entirety upon the expiration of the said compliance time.

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


WILLIAM H. MCGILVERY
Executive Director