

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2819

IN THE MATTER OF:

Served February 4, 1986

Application of SHAW BUS SERVICE,)
INC., for a Certificate of Public)
Convenience and Necessity to)
Conduct Charter Operations)

Case No. AP-85-25

By application filed August 12, 1985, as amended August 19, 1985, Shaw Bus Service, Inc. ("Shaw" or "applicant"), seeks a certificate of public convenience and necessity to transport passengers, together with mail, express, and baggage in the same vehicle with passengers, in charter operations between points in the Metropolitan District. 1/

A public hearing on the matter was scheduled to commence October 1, 1985, by Order No. 2753, served August 29, 1985, and incorporated herein by reference. At the request of applicant's counsel, the hearing was rescheduled to November 12, 1985. 2/ The hearing commenced on that date and continued through November 14, 1985. Applicant presented two company witnesses and five public witnesses. Gold Line, Inc. ("Gold Line"), Eyre's Bus Service, Inc. ("Eyre"), National Coach Works, Inc. ("NCW"), The Airport Connection, Inc. ("TAC"), Webb Tours, Inc. ("Webb"), and T&S Bus Service, Inc. ("T&S"), timely protested the application. All of the opposing carriers appeared at the hearing, cross-examined applicant's witnesses, and, with the exception of T&S, presented evidence in opposition to the application.

SUMMARY OF EVIDENCE

Arthur Shaw, III, applicant's vice-president, is responsible for Shaw's day-to-day operations and testified as an operating witness for the company. Applicant has been providing passenger transportation for over 35 years. It began as a school bus operator and now holds authority from the Interstate Commerce Commission to transport

1/ As the application recognizes, the Commission's jurisdiction does not extend to transportation between points located solely within the Commonwealth of Virginia. To the extent this application could be interpreted to include such transportation, it was dismissed by Order No. 2753, served August 20, 1985, for want of jurisdiction.

2/ See Order No. 2771, served October 1, 1985.

passengers between points in the continental United States. In addition Shaw holds WMATC Certificate No. 100 authorizing transportation of passengers between points in the Metropolitan District for accounts of The Capital Informer and Full House Enterprises Corporation 3/ and WMATC Special Authorization No. 100-02 authorizing transportation pursuant to contract for The Close-Up Foundation. Pursuant to its WMATC authority, Shaw has been providing full charter service for its clients including airport transfers, shuttle service, and tours. In serving the clients of Full House and Capital Informer, Shaw has provided transportation in the Metropolitan District for business and professional groups, conventioners, tourists, including foreign tourists, athletes, and students.

Shaw operates 11 coaches, each of which seats 46 or 47 passengers. 4/ Five of the 11 coaches are less than three years old; the oldest coach is a 1972 model. Shaw has its own maintenance facilities. A regular program of preventive maintenance is followed which includes not only periodic tune-up but also regularly scheduled parts replacement. Drivers inspect vehicles before each trip and tender the vehicle to the mechanics if they find anything wrong. In addition, the vehicles are inspected by the Maryland Public Service Commission.

Shaw employs approximately 100 persons, 22 of whom, including 16 motor coach drivers, are dedicated to its coach charter service. Its drivers meet United States Department of Transportation standards, have previous motor coach experience, and attend safety seminars on a regular basis.

On April 30, 1985, applicant had a current-assets-to-current-liabilities ratio of four to one and owner's equity of \$333,015, of which \$320,471 was retained earnings. During the ten-month period ended April 30, 1985, Shaw had gross operating revenues of \$1,708,968 and net income, after taxes, of \$59,587. The company projects that, if the instant application is granted, it would have annual WMATC charter revenues of \$201,940 and that such charter operations would produce a profit, before taxes, of \$11,536. This projection is based on Shaw's WMATC operating experience and includes WMATC revenues that the company anticipates receiving for its service to The Capital Informer.

3/ Mr. Shaw testified Full House Enterprises Corporation is no longer doing business in the Metropolitan District.

4/ If this application is granted additional coaches can be acquired as necessary through financing from institutions with which Shaw regularly does business and through which it has financed equipment in the past.

within the Metropolitan District. Shaw received requests for service from Gold Line in January and February of 1985. Shaw has declined to assist protestants because it does not possess the necessary WMATC operating authority.

Because Shaw has authority to provide transportation within the Metropolitan District for only two clients, it is "impractical" and "highly infeasible" to perform more than one movement per day in the Metropolitan District. If Shaw's application is granted, it would be able to utilize its equipment more efficiently in the Metropolitan District. Ms. Popp believes that the Washington metropolitan area requires increased charter bus service for the same reasons cited by Mr. Shaw as well as an additional factor: the construction of Tech World, an exhibition hall located directly across from Washington's Convention Center, intended to house trade shows of a technical nature.

Shirley Norwood, a partner in Tailors Tours, Ltd., testified on behalf of that organization in support of Shaw's application. Tailors Tours requires charter coach transportation approximately 40 times a year using from one to 30 buses a day on those occasions to supply service for conventions and meetings. Most movements use between two and six buses. Ninety percent of this transportation is to points within the Metropolitan District including major hotels and tourist attractions in the District of Columbia and Northern Virginia as well as points in Montgomery County, Md., and the Washington airports. Ms. Norwood has used Shaw's service outside the Metropolitan District once in the past and, if this application is granted, will use Shaw to provide approximately 20 percent of Tailors Tours' service needs, increasing that percentage at a later date if satisfied with Shaw's service. Ms. Norwood does not anticipate that her company's use of Shaw will require that business be withdrawn from equally qualified carriers, because convention business and the attendant requirement for shuttle transportation has increased in the Washington area during the nine-month period of March through November.

Tailors Tours has used many carriers including four of the protestants to supply transportation. Tailors Tours has not used Gold Line since one of its drivers refused to make a hotel pick-up as directed. The company has used TAC two times. One movement was without incident. The second movement was brokered through a non-WMATC carrier. TAC did not appear at the scheduled time but did provide return transportation. It is the witness's understanding that TAC's vehicle was booked for two moves and failed to get to the second one, the one booked by Tailors Tours. Tailors Tours uses Eyre but has not always been successful in obtaining sufficient equipment from that protestant. Webb is used principally for double deck buses. Tailors Tours has never used T&S or NCW.

Should this application be approved, Shaw proposes to establish an hourly charge for its WMATC charter service of \$38 where a sightseeing lecturer is not required and an hourly charge of \$45 where a sightseeing lecturer is required. 5/ These proposed rates are subject to a minimum of four hours and do not embrace any charge for deadhead mileage. Shaw also proposes to charge \$125 per vehicle for transfer service between Washington National Airport and a point or points in the Metropolitan District and to charge \$175 per vehicle for transfer service between Washington Dulles International Airport and a point or points in the Metropolitan District. These rates are reflected in Shaw's projected income statement and represent rates which it considers compensatory as well as comparable to rates of WMATC certificated carriers for similar service. The tariff does not provide for discounts of any kind, and Shaw does not intend to pay any commission to brokers. The tariff would apply to transportation in coaches only. 6/

It is Mr. Shaw's opinion that the Washington area is a rapidly growing market for charter service as evidenced by increased convention business and a peak season which extends from March through November. Because of this fact, Mr. Shaw believes that should this application be approved it would not be necessary for applicant to divert traffic from existing carriers in order to reach the company's projected WMATC revenue of \$201,940.

Peggy Popp, Shaw's director of charter operations, also testified as an operating witness. Ms. Popp finalizes charters and handles customer service, scheduling, and follow-up with coach charter customers. Under its current authority Shaw utilizes an average of 60 coaches a month for the provision of transportation between points in the Metropolitan District. Shaw receives requests for service within the Metropolitan District from persons other than representatives of the accounts it is authorized to serve on almost a daily basis. In addition, WMATC certificated carriers including Gold Line and Eyre 7/ have contacted Shaw and requested that it provide service for them

5/ These rates would also pertain to charter services provided under Shaw's existing Certificate No. 100 but not to contract services under its special Authorization No. 100-02.

6/ To the extent that this tariff constitutes a rate increase for the Capital Informer, that increase is hereby approved effective upon issuance to Shaw of a revised Certificate No. 100 consistent with this order.

7/ The calls for assistance from Eyre apparently occurred during the period in early 1985 when Gold Line was on strike and involved service for The Close-Up Foundation, a concern Shaw is authorized to serve.

Don Hildebrand, director of transportation for Washington, Inc., a convention and meeting planning organization established in 1967, testified on behalf of that organization in support of Shaw's application. Washington, Inc., uses charter bus service an average of 20 days a month for tours, shuttles, and transfers. The duration of use as well as the number of buses required for a given movement vary greatly. However, most moves exceed three hours in length. During a recent 55-day period, Washington, Inc., used an average of seven buses a day for 28 days. Washington, Inc.'s clients require transportation throughout the District of Columbia, to points in Montgomery County, Md., and to Arlington County, Va. July, August, and January are slow months for Washington, Inc., but the remainder of the year is fairly active, and Mr. Hildebrand believes that the Convention Center is causing a continuing expansion of convention business in Washington. From time to time Mr. Hildebrand is unable to secure equipment on short notice. If this application is granted, Washington, Inc., would try Shaw's services and, if satisfied, would continue to use Shaw for movements where applicant was capable of providing all equipment. It is Mr. Hildebrand's opinion, based on his projections of Washington, Inc.'s business for 1986 and 1987, that business would be provided Shaw without withdrawing business from other carriers.

Eyre provides 90 percent of the charter transportation booked by Washington, Inc., and that carrier's equipment and drivers are generally satisfactory. However, there have been instances in the past year when Washington, Inc., contracted with Eyre for buses and was provided, without notice, equipment owned by other carriers. On another occasion, Eyre provided its equipment but without its usual drivers. Problems resulted because the drivers were unfamiliar with Washington. Washington, Inc., last used Gold Line in the Spring of 1985. On that occasion Gold Line transported a group from Capitol Hill to a Washington restaurant. The buses returned to the restaurant at the specified time. Because the dinner group was not ready to board and there was no area at the restaurant for the buses to wait, the drivers were asked to return in 20 to 25 minutes. The drivers indicated that they had met their schedule and were returning to the garage. Mr. Hildebrand called Gold Line's dispatcher who tried to reach the drivers by two-way radio without success. The buses returned for the pick-up after 30 taxis had been obtained to transport the party and approximately one bus load had been loaded into the taxis for the return trip. Washington, Inc., uses Webb's double-deckers when specifically requested by customers and is satisfied with the service. Washington, Inc., has never used NCW because it was thought to be under the same management as Gold Line. If NCW's management, drivers, and equipment were separate from Gold Line, Mr. Hildebrand would have no objection to using it although he noted that NCW has never solicited Washington, Inc.'s business. Mr. Hildebrand is interested in using TAC

and has called its charter department twice to obtain information. Neither call has been returned. Washington, Inc., has never used T&S. 8/

Elaine Curl, president of the Convention Store, testified on behalf of that company in support of the application. Since opening for business on August 1, 1985, the Convention Store has booked 100 hours of charter coach service in Washington resulting from 15 to 20 service orders. Convention clients typically require transportation for three purposes: sightseeing tours, shuttle systems, and point-to-point transfers. The transportation required may last from two to 20 hours. The Convention Store's primary need for transportation is between points in the District of Columbia. Transportation in Montgomery County, Md., where a large client is located, and in Northern Virginia as the result of a large shuttle movement booked for March is also needed. Ms. Curl anticipates that the Convention Store's need for transportation will increase as the company grows. In addition Ms. Curl believes that the need for charter transportation in the Metropolitan District as a whole will continue to increase due to need generated by the Convention Center in combination with Tech World and new hotels in the area which will expand existing meeting facilities. According to Ms. Curl, who was employed by Capital Informer for three years before beginning to operate her own company and who before working for Capital Informer was director of convention services for Gold Line, groups coming to Washington have increased in size since the Convention Center opened with the typical trade show client requiring 20 to 30 buses. Moreover, although Washington used to be a "sightseeing town," the season is now evenly spread over ten months, dropping off only in August due to the heat and in December due to the holidays.

Ms. Curl used Shaw while at Capital Informer. The quality of Shaw's service was consistently high, its equipment attractive and well-maintained, and its drivers good. She would like to be able to use Shaw's service at the Convention Store. Although TAC has provided all service for the Convention Store to date and TAC would continue to be her first choice, a grant of authority to Shaw would give her an additional excellent company from which to choose. While at Capital Informer, Ms. Curl used Eyre and was not dissatisfied. She does not use its service now because TAC is less expensive. Ms. Curl has not used Gold Line for 18 months because she finds that carrier's drivers inflexible, outspoken, and difficult to work with in general. Ms. Curl

8/ Washington, Inc., used Shaw once in 1984 or 1985 for a movement within the Metropolitan District. Mr. Hildebrand did not book that move and did not know whether it was booked through an agency other than Washington, Inc. Since then Mr. Hildebrand has requested service from Shaw and was informed that Shaw would not perform the service because it lacked the required authority.

has never used Webb's coach service and has not used Webb's double-decker service for approximately three years because she finds the company "less professional than others available in Washington, D.C." Ms. Curl was unfamiliar with NCW and has never used T&S.

Alberta Clapper Moran, president of Creative Management Associates, Inc. ("CMA"), Beltsville, Md., testified on behalf of that company in support of Shaw's application. CMA arranges meetings and conferences as well as business and personal travel. CMA requires charter transportation in coaches between points in the Metropolitan District approximately four times a year, usually in two to three bus movements of four to six hours duration. In 1985, CMA required charter coach transportation between the District of Columbia and Prince George's County, Md., and Alexandria, Va. CMA has used Shaw for interstate moves outside the Metropolitan District with satisfactory results. Ms. Moran characterized the service as above average, offering good equipment, flexible drivers, and management which went "one step above what's necessary." If this application is granted CMA will use Shaw for all its coach charter work in the Metropolitan District which it projects will be six to seven occasions during the year. CMA's representative does not believe that in using Shaw exclusively she would be diverting traffic from certificated carriers which are equally capable of providing the service despite the fact that Gold Line has provided all service requested by CMA to date in 1985. This is because CMA's witness finds Gold Line's service "mediocre" in that she was forced to make a number of follow-up calls to confirm CMA's reservation with Gold Line, to obtain details of service, and to ask for an invoice. CMA has used none of the other protestants, and they have not solicited its business.

Susan Holbrook, marketing coordinator for the Conference Management Division of Courtesy Associates, testified on behalf of that company in support of Shaw's application. One aspect of Courtesy Associates' business is the procuring of ground transportation for corporations and associations holding meetings in Washington. Courtesy Associates handles at least three major conferences a month in the Metropolitan District and requires a minimum of 500 buses a year for charter service. The bulk of transportation required is between points in the District of Columbia. However, Courtesy Associates also needs charter service on a regular basis to points in Bethesda, Md., and Arlington and Alexandria, Va. Transportation arranged includes shuttle systems, spouse programs including tours, and transfers. For this reason trips range in length from three to 12 hours; the average trip lasts approximately seven hours. Courtesy Associates uses Eyre, Gold Line, and TAC to meet its transportation requirements. Its representative has never called on Webb, T&S, or NCW for service. However, Ms. Holbrook is familiar with the quality of Shaw's service through Capital Informer, and, if the application is granted, Courtesy Associates intends to use Shaw's services approximately once a month. Ms. Holbrook believes that using Shaw will not take business from other

carriers because Courtesy Associates' need for charter service is growing and can be expected to continue to expand due to growth in the "association market." According to Ms. Holbrook, associations are growing in size and like to come to Washington for meetings because it allows lobbying activity. Increased size of associations means larger groups which result in an increased need for equipment. In peak season, which for Courtesy Associates is the Fall, equipment is generally chartered six months in advance. Courtesy Associates' witness would be hesitant to charter equipment only 30 days in advance during this time.

Mordecai E. Buckingham, president and a principal stockowner of TAC, testified on behalf of that carrier in opposition to Shaw's application. TAC holds WMATC Certificate No. 111 which authorizes airport ground transportation both in charter and special operations between points in the Metropolitan District, and general charter operations between points in the Metropolitan District, except points in Montgomery County, Md. Approximately 86 percent of TAC's work in the Metropolitan District is airport ground transportation which it subsidizes with profits from its general charter service. TAC has access to 34 coaches. Fourteen of the coaches are owned by the Federal Aviation Administration ("FAA") and, absent express permission from FAA, may be used only for charter work involving a party with a prior or subsequent movement by air. Eight of the coaches are owned by the Maryland State Aviation Administration ("SAA") and under certain circumstances may be leased to TAC for general charter work at the rate of \$8 an hour. The remaining 14 buses are either owned or leased with an option to purchase by TAC or an affiliate. At non-peak times TAC has some unutilized coaches. During the three-month period ended September 30, 1985, TAC had total revenues of \$1,150,339 and a net loss of \$72,469. TAC opposes this application because it needs charter revenues to support the losses being encountered in providing service at the Washington area airports pursuant to its contract with the FAA.

Ralph Webb, president and general manager of Webb Tours, Inc., trading as Spirit of '76, testified for that carrier in opposition to Shaw's application. Webb Tours holds WMATC Certificate No. 33. Since April 1, 1985, Webb has been authorized to transport passengers in charter and special operations between points in the Metropolitan District without restriction as to vehicle size. Prior to that date its charter operations authority was restricted to the use of double deck buses. Webb operates ten double-deck buses and three 47-passenger coaches. During the first nine months of 1985, Webb recognized a net profit of \$21,010, 2-1/2 percent of gross revenues. Webb's financial statement reflected \$4,000, the equivalent of 100 hours of service, paid to other carriers to perform service which Webb had booked but for which it lacked available equipment. Additional financial statements submitted by Webb indicated that it operated profitably in 1984 and 1983. The most profitable portion of Webb's business is its operation

of double-deck buses. Webb's president indicated that his company is currently operating its 47-passenger coaches at a break-even point.

Webb is opposing the instant application to protect its stability and to enable it to realize some profit on its investment in the 47-passenger coaches purchased prior to April 1, 1985, and used at that time in interstate operations. Webb's president believes that approval of this application would divert business from his company to Shaw to the detriment of Webb Tours and other certificated carriers. According to Mr. Webb the need for charter service in the Metropolitan District is increasing by 3 to 5 percent a year; however, available bus capacity is increasing at a faster rate.

Gold Line's vice president and general manager, Charles L. Cummings, and its comptroller, Stanley Johnson, testified for that carrier in opposition to Shaw's application. Gold Line holds WMATC Certificate No. 14 authorizing, inter alia, the transportation of passengers in charter operations between points in the Metropolitan District. Gold Line operates 89 motor coaches. It maintains a complete garage facility at Tuxedo, Md., and a sales and charter office in southwest Washington. It actively solicits charter business within the Metropolitan District and has eight full-time sales people working in its charter office.

Mr. Cummings assumed his current position with Gold Line in June 1985 and since that time has instituted certain policies intended to improve Gold Line's service. Weekly meetings are held with drivers for the purpose of motivating them to do a better job and to train them to be sales oriented. In addition, the general manager of Gold Line has been meeting personally with potential clients. Mr. Cummings met with Washington, Inc.'s, witness for the purpose of discussing the resumption of its use of Gold Line. That meeting had been arranged at the request of the owner of Washington, Inc., prior to the hearing, and Mr. Cummings was not aware when he attended the meeting that Washington, Inc., was supporting this application or that a representative of Washington, Inc., had testified in the case. If Gold Line provides adequate service, Washington, Inc., will utilize that company. In the spring of 1985, Mr. Cummings met with representatives of The Capital Informer. Since that meeting Gold Line has handled \$20,000 to \$22,000 worth of business for Capital Informer. In addition, during the week of the hearing Gold Line handled a group for Capital Informer requiring 26 buses a day. Gold Line has not received any complaints from Capital Informer with respect to its recent service. With respect to CMA's complaint that it was required to request an invoice from Gold Line after paying for a movement by credit card, Gold Line's general manager explained that, as far as his company is concerned, use of a credit card is the same as paying by cash. In such circumstances Gold Line does not bill a customer unless that customer specifically requests a bill. Mr. Cummings intends to solicit Tailors Tours charter coach business personally.

Gold Line opposes this application because it believes that approval thereof would divert revenues from Gold Line to its detriment. Given the carrier's current financial situation, any diversion of its existing business is considered a serious problem. During 1984 Gold Line had total revenues of \$9,877,185, and a net operating loss of \$869,404. In that same year, its revenue from charter service provided within the Metropolitan District approximated \$2,634,768. If the expenses of the company were allocated between the various transportation services which it provides in proportion to the revenues derived from those services, Gold Line's charter service within the Metropolitan District in 1984 would have reflected a net operating loss of \$231,917.

During the eight-month period ended August 31, 1985, Gold Line had total revenues of \$6,128,258, and a net operating loss of \$718,296. During this same period Gold line's revenues from charter service provided within the Metropolitan District approximated \$1,904,323. If the expenses of the company were allocated among the various transportation services it provides in proportion to the revenues derived from those services, Gold Line would have encountered an operating loss of \$223,207 during this eight-month period in the provision of charter service within the Metropolitan District.

The cost of insurance to Gold Line for 1986 involves an increase over 1985 of \$320,000. This significant cost increase will further accentuate the operating losses being experienced by the company. In this respect, Gold Line projects that it will operate at a loss during 1986. The largest single expense incurred by Gold Line in its operations is drivers' wages. Gold Line's drivers are members of a union. In early 1985 the company underwent a strike following which it entered into a new contract with its drivers which provided some financial relief to the carrier.

On cross-examination, Gold Lines's comptroller testified that, based on the method of allocating revenues and expenses to WMATC operations, profitability could not be determined. The company does not use actual expenses in reporting WMATC revenues and expenses. Although it could be done, the witness testified that this practice would require that duplicate books be kept and was not economically feasible.

Stephen Rowland, director of operations for NCW, testified on behalf of that carrier in opposition to Shaw's application. NCW holds WMATC Certificate No. 26 which authorizes it to conduct charter operations between points in the Metropolitan District. Although affiliated with Gold Line, NCW is operated separately from that concern. NCW owns and operates five coaches and solicits charter business within the Metropolitan District. However, its predominant business is bus remanufacturing. NCW's witness was unable to testify as to that company's transportation-related finances or traffic volume.

NCW opposes Shaw's application because a grant of authority to an additional carrier will make it more difficult for NCW to become an established carrier. 9/

Raymond Hendrickson, assistant to the president of Eyre's Bus Service, Inc., testified on behalf of that carrier in opposition to Shaw's application. Eyre holds WMATC Certificate No. 17 authorizing charter transportation within a portion of the Metropolitan District. 10/ Eyre currently operates 66 motor coaches, and it actively solicits charter bus business in the Metropolitan District. For the fiscal year ended April 30, 1985, Eyre had gross income of \$4,692,839 and an operating loss of \$18,418. The company recognized a net profit of \$10,813 after allowance for sale of motor vehicles and Virginia rights and after adjustment for interest income, "discounts allowed," and pension plan costs. Eyre opposes this application for three reasons: (1) its belief that existing charter service within the Metropolitan District is adequate to the public's needs, (2) its belief that the Metropolitan District is already a highly competitive market place insofar as charter business is concerned, and (3) its belief that should Shaw's application be granted, revenues would be diverted from Eyre to its detriment.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, we look to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact as follows:

. . . the Commission shall issue a certificate . . . ,
if it finds, after hearing held upon reasonable
notice, that the applicant is fit, willing and able
to perform such transportation properly and to
conform to the provisions of this Act and the rules,
regulations, and requirements of the Commission
thereunder, and that such transportation is or will
be required by the public convenience and necessity
. . . .

Based on a review of the record in this case, we find applicant to be capable of providing the proposed service and willing to conform to applicable rules and regulations imposed by the Compact and the Commission acting pursuant to the Compact.

9/ NCW acquired its authority by purchase from Red Top Coach, Inc. The transfer of authority was approved in early 1985.

10/ Eyre has pending a Petition to Reopen Application of Safeway Trails. Eyre filed this petition as a successor in interest to certain regular route authority purchased from Safeway Trails.

Applicant is a carrier experienced in providing charter service pursuant to existing authority from this Commission as well as from the Interstate Commerce Commission. Evidence introduced at the hearing reflects that it has operated within the scope of its WMATC authority consistent with the rules and regulations of this Commission. Shaw operates 12 coaches which are well-maintained and regularly inspected. This equipment is already in use on a limited basis in the Metropolitan District. Expansion of Shaw's WMATC authority will allow applicant to utilize its equipment more efficiently. Applicant's drivers are experienced, and the company has in place a staff capable of coordinating charter arrangements in the Metropolitan District. The balance sheet and operating statement of Shaw introduced at the hearing indicate a financially healthy company which can be expected to continue service of high calibre.

We turn now to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operations (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public 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 operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant produced five public witnesses. Based on their testimony we find that Shaw proved that its proposed service meets an expressed public need, thereby serving a useful public purpose, between all points in the Metropolitan District.

Although only five companies appeared in support of the application, those companies, cumulatively, were responsible for arranging for hundreds of motor coaches to provide transportation for their clients throughout the Metropolitan District. All of the witnesses believed that additional bus service beyond that presently authorized, was required in order to meet their existing and projected needs. In that regard, the supporting witnesses testified to the growth in convention and meeting business in the Metropolitan District which has occurred and would continue as a result of the Convention Center, additional hotels and tour sites, and the development of Tech World adjacent to the Convention Center property.

Geographically, service would be required between hotels, tourist sites, restaurants, convention and meeting facilities and government facilities located throughout the Metropolitan District.

Qualitatively, the supporting companies were familiar with Shaw's service, either through use outside of the Metropolitan District or discussions with other convention coordinators, and found that service to be suited to their needs in terms of its responsiveness, flexibility, maintenance of vehicles, dependability, and courtesy and knowledge of its drivers and management personnel. Shaw's service was repeatedly characterized as equal to or superior to that available from certificated carriers.

Shaw's application is heavily protested. Protestants assert that existing service is adequate to the public need for charter operations. However, the testimony of applicant's witnesses taken cumulatively indicates that protestants do not completely meet the need for existing service and that the need is continuing to increase. Although protestants control approximately 190 coaches, the record is replete with indications that carriers are not always able to supply sufficient equipment. Protestants utilize their equipment for service both within and without the Metropolitan District. The bulk of transportation within the Metropolitan District required on this record is for conventions and trade shows. According to one witness with ample experience in the convention business, a single typical trade show client requires 20 to 30 buses. The record indicates that protestants double-book equipment and utilize equipment and drivers from other companies. Persons wishing to charter coaches must make arrangements six months or more in advance to secure vehicles. Moreover, approximately half of the available equipment is controlled by Gold Line, which three of Shaw's five witnesses were unwilling at the outset of the hearing to use due to past experience with that carrier's service. The supporting witnesses also testified that the quality of existing service is deficient in several respects. There were complaints regarding failure of the carrier to appear for the pick-up at the time designated, and ununiformed and inexperienced drivers. In comparison, the supporting witnesses found the services of Shaw to be excellent in terms of equipment, dependability, flexibility, and driver demeanor. Accordingly, the evidence supports the conclusion that the public purpose found to exist will not be served as well by existing authorized carriers.

This brings us to the final aspect of the Pan-American analysis: whether the proposed service can be provided without endangering or impairing the operations of existing carriers contrary to the public interest. This analysis involves more than mere allegations of diversion of revenue inasmuch as any grant of similar authority may divert some prospective sales. The question is whether the public interest will be harmed by the effect of that prospective diversion on existing carriers. It is important to note that the burden of proof on this point shifts to protestants.

The record in this case indicates that increased need for coach charter service would allow Shaw's services to be utilized without

significantly affecting the amount of business currently given equally capable authorized carriers. In addition, some witnesses testified that if this application is granted they would use Shaw only for small movements for which applicant could supply all equipment needed.

The most that can be said for protestants' cases is that two of them (Gold Line and TAC) have shown their overall operations to be currently unprofitable for one reason or another, and that they fear potential diversion of traffic by Shaw. No carrier presented evidence regarding the actual finances of its Metropolitan District operations. Even assuming arguendo that there would be a substantial diversion of traffic by Shaw (and the record does not support that proposition), protestants have made no showing that the public interest would be harmed thereby.

THEREFORE, IT IS ORDERED:

1. That the application of Shaw Bus Service, Inc., as amended, to transport passengers and baggage in charter operations between points in the Metropolitan District, restricted against transportation solely within the Commonwealth of Virginia, is hereby granted.

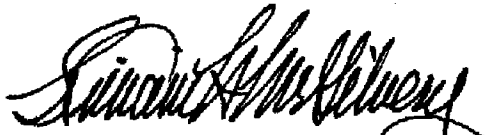
2. That Shaw Bus Service, Inc., is hereby directed to file two copies of its WMATC Tariff No. 2, cancelling its WMATC Tariff No. 1, and containing the following rates for charter service:

AIRPORT RATE: A charge of \$125 per vehicle shall apply to service between Washington National Airport and any point in the Metropolitan District and \$175 between Washington Dulles International Airport and any point in the Metropolitan District.

HOURLY RATE AND MINIMUM: Except where an airport rate applies, an hourly charge of \$38 without sightseeing guide and \$45 with sightseeing guide shall apply. Passengers shall be charged for a minimum of four hours.

3. That unless Shaw Bus Service, Inc., complies with the requirements of this Order within 30 days from the date of service hereof, or within such additional time as the Commission may provide, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

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


WILLIAM H. MCGILVERY
Executive Director