

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2904

IN THE MATTER OF:

Served September 8, 1986

Investigation of Compliance and Order to Show Cause Why Operating Authority Should Not Be Suspended or Revoked, Directed to:)	
EYRE'S BUS SERVICE, INC.)	Case No. MP-86-06
BELTWAY LIMOUSINE SERVICE, INC.)	Case No. MP-86-08
ROBERT COATES T/A ROBERT COATES LIMOUSINE SERVICE)	Case No. MP-86-09
COTTER LIMOUSINE OF WASHINGTON, INC., T/A COTTER EXECUTIVE VAN SERVICE)	Case No. MP-86-10
NIPPON TRAVEL, LTD.)	Case No. MP-86-11
WASHINGTON MOTOR COACH COMPANY, INC.)	Case No. MP-86-14
AL'S TRAVEL SERVICE, INC.)	Case No. MP-86-15
DIAMOND TRANSPORTATION SERVICES, INC.)	Case No. MP-86-25

By Order No. 2868, served June 17, 1986, and incorporated herein by reference, these investigations were instituted for the purpose of determining whether Certificate of Public Convenience and Necessity No. 17 of Eyre's Bus Service, Inc. ("Eyre's"); Certificate of Public Convenience and Necessity No. 25 of Beltway Limousine Service, Inc. ("BLS"); Certificate of Public Convenience and Necessity No. 67 of Robert Coates t/a Robert Coates Limousine Service ("Coates"); Certificate of Public Convenience and Necessity No. 69 of Cotter Limousine of Washington, Inc., t/a Cotter Executive Van Service ("Cotter"); Certificate of Public Convenience and Necessity No. 77 of Nippon Travel, Ltd. ("Nippon"); Special Authorization No. 97 of Washington Motor Coach Company, Inc. ("WMCC"); Certificate of Public Convenience and Necessity No. 101 of Al's Travel Service, Inc. ("Al's"); and Special Authorization No. 122 of Diamond Transportation

Services, Inc. ("DTS"); should be suspended or revoked for failure of the respective holders thereof to file an annual report in compliance with Title II, Article XII, Section 10 of the Compact in combination with Commission Regulation Nos. 65-01 and 70-09(v) promulgated thereunder. Eyre's, BLS, Coates, Cotter, Nippon, WMCC, Al's and DTS were made party respondents, in the investigation proceeding pertaining to each, and those investigation proceedings were consolidated for the purpose of hearing. Lastly, Order No. 2868 directed respondents to appear at the scheduled consolidated hearing and present such evidence as each may deem pertinent to show good cause why its operating authority from the Commission should not be revoked. The consolidated hearing was held on July 16, 1986.

SUMMARY OF EVIDENCE

William H. McGilvery, the Commission's Executive Director, testified that, as of February 28, 1986, all respondents herein (as well as all other carriers holding authority from the Commission) had been mailed annual report forms accompanied by a memorandum indicating that a signed and notarized report for 1985 was due in the Commission's offices no later than Wednesday, April 30, 1986. The memorandum called special attention to the Commission's leasing requirements. A review of the service list in these investigations indicated that all respondents had been served a copy of Order No. 2868, setting the matter for public hearing and assessing each respondent an amount preliminarily estimated to cover hearing costs. According to Mr. McGilvery, no 1985 report, request for extension of time, hearing assessment, or any written communication regarding this matter had been received from Nippon, WMCC, or Al's as of the date of the hearing. After Order No. 2868 was served but prior to the hearing, incomplete annual reports were received from Eyre's, Coates, and DTS. The annual reports of Eyre's and DTS indicated that those carriers leased vehicles; however, leases covering all vehicles so leased were not on file with the Commission as required by Commission Regulation No. 69. The report filed by Coates failed to indicate whether his equipment was owned or leased. No annual report, written explanation of failure to file report or request for extension of time had been filed with the Commission by Cotter. Mr. McGilvery testified that BLS had filed a notarized letter on June 13, 1986, indicating that it is unable to file the report because its records are inaccessible and under the control of another entity.

Frank Eugene Taylor, vice-president of respondent-Cotter, testified that his company had moved its offices on January 15, 1986. Mr. Taylor had been under the impression that Cotter's local agent had filed a change of address with the Commission. He had no actual knowledge until June 30, 1986, that the report, which in the past has been filed by Cotter's local agent and an accountant located in Connecticut, had not been filed. On that day Cotter's former attorney, who had been served a copy of Order No. 2868, called and informed him

that this investigation had been instituted. The annual report was being compiled at the time of the hearing, and Mr. Taylor expected to file it in three to five days.

John Robertson, president of respondent-BLS, testified that BLS sold the assets of the company to DD Enterprises, Inc. ("DD"), on January 31, 1986, and subsequently filed with the Commission an application to transfer its Certificate No. 25 to DD. Certain payments were to be made on January 31, 1986, and on April 15, 1986. A second note was to be paid over a seven-year period. On April 1, 1986, DD instituted litigation regarding the contract payments. In order to enable DD to operate its business in the same fashion as BLS, BLS had left its corporate records for 1985 and prior years with the new entity. BLS is willing to file a report and concedes that it is responsible for such a report, but it cannot file one at this time due to lack of accurate information. Through its attorney, BLS has requested specific records from DD for 1985. BLS expects to receive certain records in the next two weeks. However, at present it has no access to any records needed to file an accurate report for 1985.

DISCUSSION, FINDINGS, AND CONCLUSIONS

These matters come before us pursuant to Title II, Article XII, Section 4(g) of the Compact which provides in relevant part that:

Any such certificate . . . may . . . on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, . . . for willful failure to comply with any lawful order, rule, or regulation of the Commission . . . provided, however, that no certificate shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply within a reasonable time, not less than 30 days, to be fixed by the Commission, with a lawful order of the Commission commanding obedience to the rules or regulations or orders of the Commission, or to the terms, conditions, or limitations of such certificate found by the Commission to have been violated by such holder.

Taking official notice of the Commission's records we find that, since the hearing in these matters, Eyre's, Coates, and DTS have completed their 1985 annual reports by correcting the deficiencies previously noted herein. For its part, Cotter has filed a completed 1985 annual report which has been accepted by the Executive Director for filing. Therefore, because these carriers have complied with the regulations which are the subject matter of the above-captioned investigations, the investigations as they apply to these respondents shall be discontinued.

Nippon, WMCC, and Al's, on the other hand, have each failed to file an annual report as required by the Compact, Title II, Article XII, Section 10 of the Compact in combination with Commission Regulation Nos. 65-01 and 70-09(v) promulgated thereunder. These carriers also failed to appear at the hearing herein and present any evidence showing good cause why their respective operating authorities should not be suspended or revoked as directed by Order No. 2868. They further failed to pay a hearing assessment as directed by Order No. 2868. Taking official notice of the Commission's records we note that, despite a letter informing these three respondents that a hearing had been held on July 16, 1986, and that briefs were due in this matter, no briefs or other written material regarding the matter have been received from any of them. Almost four months have elapsed since the reports here at issue were due, and more than 60 days have elapsed since respondents were directed to file such reports or such explanations as appropriate regarding failure to file. We have no choice but to interpret as willful these carriers' silence over such a long period of time and their failure to defend in the face of notice that such failure could result in revocation of operating authority. The Commission requests financial information on a routine basis only once a year. The information is of a reasonable nature covering the current structure and officers of the company, current vehicle information and operating information for a 12-month period. Such information not having been received, the operating authority of Nippon, WMCC, and Al's, shall be revoked.

This brings us to the matter of BLS. The record indicates that BLS, while responsible for operations in 1985, lacks control or access to the underlying documentation necessary to prepare an annual report for that year. This testimony is un rebutted. In light of this fact BLS's failure to file its annual report for 1985 cannot be considered willful. However, BLS's witness indicated his belief that this situation could be resolved in the coming months. BLS shall be directed to file monthly reports regarding the status of these records and its progress towards preparation of the report. Additionally, the investigation and show cause order directed to BLS in Case No. MP-86-08 will remain in effect pending receipt of its annual report for 1985 and its acceptance for filing by the Commission's Executive Director.

THEREFORE, IT IS ORDERED:

1. That the Investigation of Compliance and Order to Show Cause Why Operating Authority Should Not Be Suspended or Revoked, directed to Eyre's Bus Service, Inc.; Robert Coates t/a Robert Coates Limousine Service; Cotter Limousine of Washington, Inc., t/a Cotter Executive Van Service; and Diamond Transportation Services, Inc., in Case Nos. MP-86-06, MP-86-09, MP-86-10, and MP-86-25, respectively, are hereby discontinued.

2. That Certificate of Public Convenience and Necessity No. 77 of Nippon Travel, Ltd., is hereby revoked.

3. That Nippon Travel, Ltd., is hereby directed to pay to the Commission within 15 days from the date of this order the sum of \$6.37, said sum being the amount due to cover the cost of its hearing pursuant to the Compact, Title II, Article XII, Section 19.

4. That Special Authorization No. 97 of Washington Motor Coach Company, Inc., is hereby revoked.

5. That Washington Motor Coach Company, Inc., is hereby directed to pay to the Commission within 15 days from the date of this order the sum of \$6.37, said sum being the amount due to cover the cost of its hearing pursuant to the Compact, Title II, Article XII, Section 19.

6. That Certificate of Public Convenience and Necessity No. 101 of Al's Travel Service, Inc., is hereby revoked.

7. That Al's Travel Service, Inc., is hereby directed to pay to the Commission within 15 days from the date of this order the sum of \$6.37, said sum being the amount due to cover the cost of its hearing pursuant to the Compact, Title II, Article XII, Section 19.

8. That Eyre's Bus Service, Inc., is hereby assessed the sum of \$6.37, said sum being the amount due to cover the cost of its hearing pursuant to the Compact, Title II, Article XII, Section 19, and which sum has already been paid to the Commission by Eyre's.

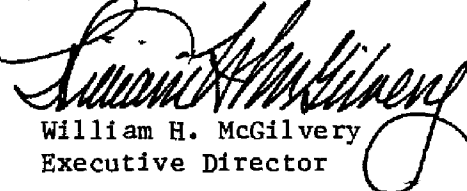
9. That any request for reconsideration within 30 days immediately following the service date of this order filed by Nippon Travel, Ltd.; Washington Motor Coach Company, Inc.; or Al's Travel Service, Inc., and based upon a completed 1985 annual report approved for filing by the Commission's Executive Director shall be considered grounds for reopening the case affected by such report pursuant to Commission Rule No. 27-02.

10. That Beltway Limousine Service, Inc., is hereby directed to file on or before the 15th day of each month following the service of this order, a statement containing the following: 1) a description of those 1985 financial and vehicle records in its control and the whereabouts of all other relevant records; 2) a description of any efforts made to obtain those records not in its control; 3) an estimated date, if possible, when it expects to obtain sufficient documentation to prepare a 1985 annual report; and 4) such other information as may be relevant.

11. That the investigation and order to show cause directed to Beltway Limousine Service, Inc., in Case No. MP-86-08, shall remain in

effect, at the discretion of the Commission, until an annual report for the year 1985 is received and accepted for filing by the Commission's Executive Director.

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



William H. McGilvery
Executive Director