

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2920

IN THE MATTER OF:

Served October 9, 1986

Application of COLEMAN COACH )  
CORPORATION for Temporary Authority)  
-- Mantua and Fairfax City )

Case No. AP-86-32

By application filed August 4, 1986, and completed September 2, 1986, Coleman Coach Corporation ("Coleman" or "applicant") seeks temporary authority to provide regular route service between Fairfax City, Va., and Washington, D.C., as described in the appendix to this order. 1/ 2/

The proposed service would be conducted using five coaches, including one 1982, three 1976, and one 1974. The 1982 coach is leased and a copy of the lease accompanied the application. All vehicles are registered in Virginia with the exception of one 1976 coach which is temporarily registered in Pennsylvania.

The proposed service would be offered Monday through Friday with morning departures from the Fairfax City Parking Area at 6:10 a.m. and 7:10 a.m. Pickups would be made at the following intersections and places: (1) Route 237 and Old Pickett Road, (2) Routes 50 and 123, (3) Route 50 and Warwick Avenue, (4) Hechinger's, 11200 Main Street, (5) Main Street and Route 123, (6) Route 236 and Pickett Road, and (7) the Pentagon. Buses would depart downtown Washington at 4:30 p.m. and 5:20 p.m. beginning at 21st and K Streets, N.W., and picking up passengers along K Street, N.W., at 21st, 18th, 17th, 16th, 15th, and 14th Streets; along 14th Street, N.W., at New York Avenue and F Street, N.W.; along Pennsylvania Avenue, N.W., at 12th, 10th, and 7th Streets;

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1/ On September 2, 1986, Coleman withdrew that portion of its application pertaining to authority to serve commuters traveling between Mantua, Fairfax County, Va., and Washington, D.C., stating ". . . it now appears that there is not an immediate and urgent need for its services."

2/ To the extent this application could be construed to include transportation solely within in the Commonwealth of Virginia, the application is dismissed for want of jurisdiction pursuant to Title II, Article XII, Section 1(b) of the Compact.

at Constitution Avenue, N.W., and 3rd Street; and along Independence Avenue, S.W., at 4th, 7th, and 14th Streets and the Forrestal Building. Applicant notes that traffic congestion along Route 236 might occasionally cause it to vary its route using either Route 66 or Route 50 into Washington, D.C. Coleman proposes a one-way fare of \$3 per person with a two-week ticket available for \$55.

Applicant is seeking temporary authority in order to replace service which it asserts had been provided previously by Gold Line, Inc., and was terminated on June 9, 1986. The application is supported by eight notarized letters from persons who used Coleman's service prior to August 2, 1986. Three of these persons state that they had formerly ridden Gold Line. All persons expressed satisfaction with Coleman's service, citing its reliability, convenience, courtesy of its drivers, and reasonable price. If this application is granted affiants would continue to use Coleman's service.

In response to the Commission's invitation that applicant supplement the record regarding its compliance fitness, Coleman, by its attorney, responds that it is willing and able to comply with applicable statutes and regulations "of the various governmental entities having jurisdiction over its operations." Applicant states that its previous unauthorized operations were performed in the good faith belief that its Interstate Commerce Commission Certificate, MC-169186 (Sub-No. 1) authorized such operations, and asks that it not be faulted for that reliance despite the fact that it continues to believe such reliance was correct.

#### DISCUSSION AND CONCLUSIONS

Title II, Article XII, Section 4(d)(3) of the Compact commits the granting of temporary authority to the Commission's discretion upon a finding that there is an immediate and urgent need for service to a point or points or within a territory having no carrier service capable of meeting that need. The purpose of temporary authority is to provide an interim service when none exists and there is preliminary evidence of need. Temporary authority is statutorily limited to 180 days during which period a carrier has sufficient time to apply for and, if the evidentiary burden of Title II, Article XII, Section 4(b) of the Compact is met, receive a certificate of public convenience and necessity.

Notice of this application was published by Order No. 2892, served August 7, 1986, on all private and public carriers as well as various governmental entities which might be affected by granting temporary authority to applicant. No carrier protested the application as it relates to the Fairfax City-Washington route; nor was any indication of existing similar service brought to our attention. Consequently, we find that there is no carrier service capable of

meeting the need alleged for the specific transportation proposed by Coleman.

Turning to applicant's evidence of immediate and urgent need, we note that the proposed service would replace transportation provided by a certificated carrier until recently. We hold that discontinuance of pre-existing service in combination with evidence that persons who would use applicant's service include those who formerly relied on that discontinued service constitutes prima facie evidence of immediate and urgent need. Such evidence being un rebutted, we find there is immediate and urgent need for Coleman's proposed service.

We turn now to Coleman's fitness. Fitness is an issue to be determined before granting any application. Applicant appears to be financially and operationally able to conduct the proposed operations at least for the temporary authority term. We are concerned, however, regarding applicant's continued reliance on its ICC certificate as a basis for performing the proposed operations. Applicant's ICC certificate authorizes transportation between Winchester, Va., and Washington, D.C. However, Coleman seeks to conduct interstate operations between points wholly within the Metropolitan District. Exclusive jurisdiction over such transportation has been conferred by Congress on this Commission. Executive Limousine Service, Inc., v. Goldschmidt, 628 F. 2d 115, 120 (1980). In conferring such jurisdiction on the Commission, Congress suspended the Interstate Commerce Act for the duration of the Compact. Compact, Title I, Article VIII. Because the evidentiary record is silent regarding unauthorized operations after August 4, 1986, a date by which it is clear that Coleman had become aware of the need for WMATC authority and because of our concern for the needs of regular route passengers, we shall make a preliminary finding that applicant is fit as to compliance. Applicant is hereby advised that any future reliance on ICC authority within the Metropolitan District will be to its detriment.

Finally, we note that the authorization written below differs somewhat from the various maps and route descriptions provided by applicant, which our staff believes contain certain errors. Therefore, this authorization represents staff's interpretation of applicant's request. Applicant is advised to review it carefully and to notify the Commission at once of any discrepancies, so that we can correct them.

THEREFORE, IT IS ORDERED:

1. That Coleman Coach Corporation is hereby granted temporary authority to transport passengers in regular route operations between Fairfax City, Va., and Washington, D.C., as follows:

From the junction of Routes 236 and 237, over Route 237 to Route 50, then over Route 50 to Warwick Avenue, then over Warwick Avenue to Bevan Drive, then

over Bevan Drive to Orchard Street, then over Orchard Street to Route 655, then over Route 655 to Route 236, then over Route 236 to Route I 395, then over Route I 395 to 14th Street, S.W., then over 14th Street, S.W., to Independence Avenue, S.W., then over Independence Avenue, S.W., to 3rd Street, S.W., then over 3rd Street, S.W. and N.W., to Constitution Avenue, N.W., then over Constitution Avenue, N.W., to Pennsylvania Avenue, N.W., then over Pennsylvania Avenue, N.W., to 14th Street, N.W., then over 14th Street, N.W., to K Street, N.W., then over K Street, N.W., to 21st Street, N.W., serving all intermediate points, and serving the Pentagon as an off-route point.

From the Intersection of 21st and K Street, N.W., then over K Street, N.W., to 14th Street, N.W., then over 14th Street, N.W., to Pennsylvania Avenue, N.W., then over Pennsylvania Avenue, N.W., to Constitution Avenue, N.W., then over Constitution Avenue, N.W., to 3rd Street, N.W., then over 3rd Street, N.W. and S.W., to Independence Avenue, S.W., then over 14th Street, S.W., to Route I 395, then over Route I 395 to Route 495, then over Route 495 to Route 236, then over Route 236 to Route 655, then over Route 655 to Orchard Street, then over Orchard Street to Bevan Drive, then over Bevan Drive to Warwick Avenue, then over Warwick Avenue to Route 50, then over Route 50 to Route 237, then over Route 237 to junction Routes 236 and 237, serving all intermediate points and serving the Pentagon as an off-route point.

2. The authority granted by the preceding paragraph shall become effective upon written notice from the Commission's Executive Director and remain in effect for 180 days thereafter unless otherwise ordered by the Commission.

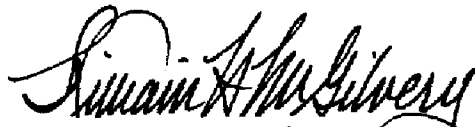
3. That Coleman Coach Corporation is hereby directed to file with the Commission the following: (1) a certificate of insurance in conformance with Regulation No. 62; (2) two copies of its WMATC tariff as described in its application in conformance with Regulation No. 55; (3) an equipment list specifying make, model, serial number, vehicle identification number, license plate number and jurisdiction for each vehicle to be used in WMATC operations; (4) proof that all vehicles to be used in WMATC operations are registered with and have been inspected by a Signatory jurisdiction to the Compact; and (5) an affidavit of vehicle identification in conformance with Regulation No. 68.

4. That unless Coleman Coach Corporation complies with the requirements of the preceding paragraph within 30 days of the date

of issuance of this order, or such additional time as the Commission may allow or direct, the grant of authority contained herein shall be void, and the application shall stand denied in its entirety upon expiration of the said compliance time.

5. That in order to allow time for the orderly processing of its application for a certificate authorizing the operations for which temporary authority is herein granted, applicant is advised to file such application within 45 days from the date of service of this order.

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

  
William H. McGilvery  
Executive Director

Route Description

From Fairfax City, Virginia to Washington D.C.:

Beginning at the intersection of Route 236 and Route 237, north on Route 237 to Route 50, then west on Route 50 to Warwick Avenue, then northwest on Warwick Avenue to Bevan, then north on Bevan to Orchard, then west on Orchard to Route 655, then south on Route 655 to Route 50/236 then east on Route 236 to Interstate 495, then south on Interstate 495 to Interstate 395, then north on Interstate 395 to Pentagon to Interstate 395 to 14th Street, then north on 14th Street to Independence Avenue, then east on Independence Avenue to 3rd Street, then north on 3rd Street to Constitution Avenue, then west on Constitution Avenue to Pennsylvania Avenue, then west on Pennsylvania Avenue to 14th Street, then north on 14th Street to K Street, then east on K Street to 21st Street.

From Washington, D.C. to Fairfax City, Virginia:

Beginning at the intersection of 21st Street and K Street, N.W., then east on K Street to 14th Street, then south on 14th Street to Pennsylvania Avenue, then east on Pennsylvania Avenue to Constitution Avenue, then east on Constitution Avenue to 3rd Street, then south on 3rd Street to Independence Avenue, then west on Independence Avenue to 14th Street, S.W., then north on 14th Street to Interstate 395, then south on Interstate 395 to Pentagon to Interstate 395 to Interstate 495, then north on Interstate 495 to Route 236, then west on Route 236 to Route 655, then north on Route 655 to Orchard, then east on Orchard to Bevan, then south on Bevan to Warwick Avenue, then southeast on Warwick Avenue to Route 50, then east on Route 50 to Route 237, then south on Route 237 to junction Routes 236 and 237.