

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2935

IN THE MATTER OF:

Served November 19, 1986

Application of MADHU SUDAN for a)
Certificate of Public Convenience)
and Necessity to Conduct Special)
Operations--Sightseeing Tours)

Case No. AP-86-17

By application filed May 14, 1986, Madhu Sudan, a sole proprietor, seeks a certificate of public convenience and necessity to transport passengers in special operations, over irregular routes, between points in the District of Columbia and Arlington National Cemetery and Mt. Vernon, Va., restricted to sightseeing tours. 1/

A public hearing was held on June 24, 1986, pursuant to Order No. 2862, served May 16, 1986. The application was protested by V.I.P. Tours ("V.I.P." or "protestant"). Applicant testified on his own behalf and presented two public witnesses. Protestant appeared at the hearing, cross-examined applicant's witnesses, and presented evidence on its own behalf.

SUMMARY OF EVIDENCE

Applicant is licensed by the District of Columbia as a taxicab driver and a tour guide. He has been providing passenger transportation for hire in the Metropolitan District for five years. During those years, applicant has provided taxicab and limousine service, including sightseeing services at per capita rates. Applicant denied being aware that individually-ticketed sightseeing service requires a certificate of public convenience and necessity. After being informed that he was in violation of the Compact, applicant agreed to cease unauthorized operations.

Applicant proposes to offer four tours. The basic tour would include "indoor and outdoor views of the following attractions: The White House, Capitol, Smithsonian, Bureau of Engraving and Printing, National History Building, Ford's Theatre, Washington Monument, Jefferson Memorial, Lincoln Memorial and Vietnam Memorial." For an additional fee, an alternative, second tour would permit substitution

1/ To the extent that this application could be interpreted to include transportation between points located solely within the Commonwealth of Virginia, the application was dismissed by Order No. 2862 for lack of jurisdiction.

of other buildings located in the central business district of Washington, D.C. 2/ The third tour proposed by applicant includes Arlington National Cemetery in addition to the buildings included in the basic tour. The fourth tour proposed by the applicant includes a tour of Mt. Vernon only.

Applicant plans to conduct the proposed service in a new 15-passenger van which would be garaged at his home. Applicant is an auto mechanic and would repair and maintain the vehicle. A preventive maintenance program consisting of oil changes every 2,000 miles, brake cleaning every three months, and regular monitoring of fluids would be followed. Lights and brakes would be checked daily. The vehicle would be driven by applicant who testified that he has a clean driving record.

Applicant expects to generate most of his business from corporations, agencies, 3/ universities, and embassies. Although applicant is seeking authority to initiate tours on The Mall, he believes that a very small amount of his expected business will be generated from working that area. He only intends to work The Mall if he does not have any business scheduled for a specific day.

A balance sheet dated May 1, 1986, and submitted with the application, indicates current assets of \$25,000 and fixed assets, after depreciation, of \$33,300. The statement of financial condition indicated no current liabilities, long-term liabilities of \$27,200, 4/ and equity of \$31,600. The bulk of applicant's current assets and long-term liabilities consists of a \$20,000 line of credit promised Mr. Sudan by one of his public witnesses. The terms of the loan agreement were not made clear in the initial application or at the June 24, 1986, hearing. By direction of the presiding Administrative Law Judge, applicant filed an executed Note and Agreement with the Commission on June 27, 1986. The note provides for repayment over a four-year period, repayment to begin two years from the date of the loan at an interest rate of 12 percent. A projected operating statement for the first year estimates WMATC operating revenues of

2/ Applicant defined "central business district" as including the following areas: The Mall, Downtown, Smithsonian, Capitol and Embassy Row. His tariff also defines the substitution area as that bounded by the Capitol Building on the east, the Jefferson Memorial on the south, the Lincoln Memorial on the west and the White House on the north.

3/ Applicant did not specify what type of agency he plans to serve.

4/ Applicant testified that \$7,200 included under long-term liabilities were actually monies due on a credit card account and had been paid in full as of the date of public hearing.

\$36,000 and total income of \$49,000. Operating expenses for the same period are projected to be \$35,400 with net income after allowance for depreciation and taxes of \$2,740.

Dr. Bhajan S. Badwal, professor at the University of the District of Columbia ("U.D.C."), testified in support of the application. Dr. Badwal has known the applicant for at least ten years. He has referred patrons to applicant in the past and expects to continue his referrals. Dr. Badwal makes transportation referrals when professors visiting U.D.C. desire sightseeing services and when the Indian Embassy asks him to suggest a transportation provider for visiting Indian dignitaries. He referred transportation for ten to 15 groups last year, ranging in size from eight to ten persons. This figure included referrals made to applicant, as well as those made to another WMATC carrier, Beltway Limousine Service, Inc., and included referrals for transportation outside the Metropolitan District. Based on this experience, Dr. Badwal estimates that he will be able to refer business to the applicant between three and five times a month. The referrals may require use of applicant's service three to four days a week. He expects that the size of the groups would range from ten to 15 persons.

Mr. Steven Shapiro, attorney with Continental Telecom Computer, Inc., Fairfax, Va., testified in support of the application. Mr. Shapiro has been employed by the corporation for six months. He does not arrange transportation for the corporation, but if this application is granted, he would introduce applicant to the persons at Continental Telecom who are responsible for arranging transportation for out-of-town clients and guests. Mr. Shapiro is unfamiliar with the procedures used by Continental Telecom in selecting a carrier. He has not referred business to the applicant in the past nor to any other sightseeing service within the last two years.

Jimmie L. Davenport, general partner of V.I.P. Tours, testified on behalf of that carrier in opposition to the application. V.I.P. holds WMATC Certificate No. 85 which authorizes, among other things, transportation in special operations, between Mt. Vernon and Arlington National Cemetery, Va., and points in a specified portion of the District of Columbia that encompasses The Mall, restricted to round-trip sightseeing service. If this application is granted it would authorize applicant to engage in the same special operations as protestant. It is V.I.P.'s contention that The Mall is adequately served by existing WMATC carriers. V.I.P. would have no objection to the application if the authority does not permit service originating or ending at The Ellipse.

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 which provides that:

. . . 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 (Emphasis supplied.)

Based on a review of the entire record in this case, we find that applicant has failed to sustain the burden of proof imposed by the Compact. In determining whether an applicant has met its burden of proving public convenience and necessity, the Commission relies on the test enunciated in Pan-American Bus Lines Operations, (1 MCC 190, 203 [1936]). The Pan-American test consists of three parts:

- (1) whether the new operation or service will serve a useful public purpose responsive to a public demand or need;
- (2) whether this purpose can and will be served as well by existing lines or carriers; and
- (3) 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.

Based on the evidence contained in the record, and on the testimony put forth by applicant's two public witnesses, we have determined that the applicant has not met the requirements of proving that the proposed operation would serve a useful public purpose responsive to a public demand or need as set forth in the first part of the Pan American test.

The testimony of the applicant's supporting witnesses fails to show that the proposed service would be responsive to a public need or demand. The projected use of the service is speculative and dependent on forces beyond the control of the witnesses. Neither witness is responsible for arranging transportation services for his respective place of employment or any organization that would require the use of applicant's sightseeing services. Neither was authorized to speak in favor of the application on behalf of his respective employer. Neither witness has any need personally for applicant's service.

Applicant's first public witness, Dr. Badwal, testified that he expects to make referrals to the applicant at least three to five times a month. Referrals at this rate would approximate a total of 48 for the upcoming year. Last year Dr. Badwal suggested sightseeing tours to between ten and 15 groups. This figure included referrals made to the

applicant and Beltway Limousine as well as out-of-town travel not here at issue. His projected 300 percent increase is based solely on his association with the Indian Embassy and U.D.C. Dr. Badwal, however, is not responsible for arranging such transportation, but may or may not be consulted when the Embassy needs such service. There is no evidence of record that indicates the 1985 demand for service will continue, let alone expand.

Applicant's second public witness, Mr. Steven Shapiro, has been employed for six months as an attorney by Continental Telecom Computer, Inc. There is no evidence in the record to suggest that he has any authority over transportation decisions. He has never referred business to the applicant in the past, nor has he referred sightseeing business to anyone within the last two years.

In addition to providing service to pre-arranged tour groups, the application also seeks authority to pick up and discharge tour passengers at The Mall. This portion of the application is protested, and the protestant's testimony that currently-authorized carriers adequately handle total Mall passenger demand is not rebutted. The applicant submitted no evidence to show any need for additional service at The Mall. The evidence suggests that, notwithstanding the applicant's lack of interest in serving The Mall, the volume of pre-arranged business will not be sufficient and he will necessarily seek passengers at The Mall. On the record presented, we find that the Pan American test has not been satisfied with respect to either operation.

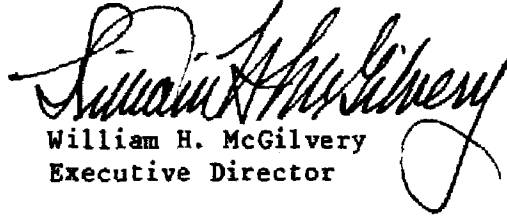
Having found no evidence that the public convenience and necessity require applicant's proposed service, we do not reach the issue of his fitness. We caution Mr. Sudan, however, that evidence of unauthorized operations could constitute grounds for denying any future application filed with the Commission.

THEREFORE, IT IS ORDERED:

1. That the application of Madhu Sudan for a certificate of public convenience and necessity is hereby denied in its entirety without prejudice.
2. That Madhu Sudan is hereby directed to cease and desist from transporting passengers for hire between points in the Metropolitan District, except in operations which are specifically

covered in Title II, Article XII, Section 1(c) of the Compact as further interpreted by Commission Order No. 2559, served May 21, 1984.

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



William H. McGilvery
Executive Director