

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER 3432

IN THE MATTER OF:

Served November 9, 1989

Application of SUGGS TRANSPORTATION)
SERVICES, INC., for a Certificate)
Authorizing Charter Operations)

Case No. AP-89-29

By application filed May 16, 1989, Suggs Transportation Services, Inc. (applicant or STS), seeks a certificate of public convenience and necessity to transport passengers, together with baggage in the same vehicles as passengers, in charter operations between points in the Metropolitan District, restricted against transportation solely within the Commonwealth of Virginia, */ and further restricted to transportation of passengers in vehicles having a manufacturer's designed seating capacity of 26 passengers or less, including the driver.

Pursuant to Order No. 3358, served June 16, 1989, a public hearing was held on this matter on August 1, 1989. Applicant presented one company witness and four public witnesses. Gold Line, Inc. (Gold Line or protestant), and National Coach Works, Inc. (NCW or protestant), timely protested the application. Protestants appeared at the hearing, cross-examined applicant's witnesses, and presented evidence in opposition to the application.

SUMMARY OF EVIDENCE

Mr. Harold Suggs, applicant's president, is responsible for STS's overall operations with a specific focus on the company's management and growth, and testified as an operating witness for the company. Applicant provides a diversified transportation service that includes courier service, warehouse and mailroom management, and interoffice moving, as well as certain passenger transportation service. For seven years, STS has been providing contract charter service throughout the Metropolitan District pursuant to Commission Regulation No. 70. In addition, STS holds certain operating authority from the Interstate Commerce Commission (ICC). According to Mr. Suggs, STS's ICC authority is used for over-the-road, "long-haul" movements. However, within the Metropolitan District the greatest demand is for smaller vehicles such as those STS here seeks authority to operate. According to Mr. Suggs, there is a tremendous need for this service, and STS receives requests every day that it must refuse due to lack of authority. STS holds numerous special authorizations to perform contract work for various government agencies. The special authorizations are issued pursuant to Commission Regulation No. 70

*/ See Compact, Title II, Article XII, Section 1(b).

which requires a contract for a fixed period in excess of 180 days. The terms of Regulation No. 70 prevent STS from obtaining special authorization to perform contract work for shorter periods. STS has filed this application in order to be able to react "spontaneously" to solicitations to bid on this short-term work without going through additional proceedings before the Commission.

Applicant operates six 26-passenger minibuses, twenty-five 15-passenger vans, two "stretch" limousines seating seven passengers, four 6-passenger sedans, and additional cargo vehicles. All passenger vehicles would be used to provide the proposed service if this application is granted. STS is financially able to acquire additional equipment if necessary. STS intends to specialize in providing charter service in "small" vehicles, i.e., 26-passengers or less.

STS employs 90 persons full-time and additional part-time labor as needed. Forty percent of these people are engaged in STS's cargo operations (facilities management and warehouse and mailroom operations). Fifty percent of the employees are drivers, and ten percent are office staff.

STS has an ongoing preventive maintenance program for each vehicle based on the manufacturer's guidelines with some modifications. The modifications are based on how STS uses a given vehicle. As examples Mr. Suggs mentioned that although a manufacturer might suggest oil change and lubrication every 7,000 miles, STS services the vehicle every 3,500 miles when it knows that that particular vehicle is used on a daily basis. Where vehicles are driven over 200 miles a day, a complete system check is performed every 3,500 miles as well. In addition each vehicle is inspected by the driver and shop foreman or his assistant before it leaves the lot. STS employs two full-time mechanics each of whom is assigned a helper. Together the mechanics are available from 6:30 a.m. to 7:00 p.m. Those repairs that cannot be handled internally are contracted out.

STS operates a safety program and introduced into evidence as Exhibit No. 8 a document describing that program. The person in charge of the safety program works in conjunction with STS's insurance agent. As part of the program a training session on safe driving habits is conducted monthly. Drivers are given cash rewards, time off, and personal recognition for safe driving.

Applicant's proposed tariff shows group charter rates as follows:

<u>Seating Capacity of Vehicle</u>	<u>Rate Per Hour</u>
26 Passengers (Minibus) Minimum - 4 Hours	\$40.00
15 Passenger (Van) Minimum - 4 Hours	\$34.50

4-7 Passengers (Limousine)	\$57.50
Minimum - 3 Hours	
4-6 Passengers (Sedan)	\$27.50
Minimum - 4 Hours	

Certain "rules" were made part of the tariff. Rule No. 1 provides that STS reserves the right to provide larger equipment than requested. At hearing Mr. Suggs testified that Rule No. 1 was intended to cover situations in which STS was required, due to lack of vehicle availability, to provide additional (smaller) vehicles or larger vehicles than contracted for at no additional cost to the client. The vehicles provided would not have a manufacturer's designed seating capacity in excess of 26 passengers (including the driver). Rule No. 6, as proposed, provides for a cancellation charge but makes no mention of a cancellation deadline. According to Mr. Suggs, STS intends the charge to become effective when cancellation occurs on less than 24 hours notice. Mr. Suggs testified that he is willing to amend the proposed tariff to reflect STS's intent as described at hearing for Rule Nos. 1 and 6.

With its application STS submitted a balance sheet as of March 31, 1989, showing current assets of \$747,906, including \$234,213 cash, plus fixed assets after allowance for depreciation of \$298,860. Current liabilities of \$223,684, long-term debt of \$17,159, and equity of \$805,923 are also shown. For the three months ended March 31, 1989, STS had contract revenue of \$776,596 and related operating expenses of \$765,290 resulting in net earnings of \$11,306. For the year ended December 31, 1988, STS had contract revenue of \$3,461,960, and related operating expenses of \$3,336,641, resulting in net earnings of \$125,319. STS projects that, if this application is granted, it would receive \$180,000 revenue from the proposed service during the first 12 months of operation and that the proposed service would produce a profit before taxes of \$17,939.

Mr. Suggs is familiar with the Compact and the Commission's rules and regulations, including the Commission's safety regulations. He testified that STS currently abides by them and will continue compliance in the future.

Mr. Milton Harrison Boyd testified in support of the application on behalf of HB&A, a diversified management consulting firm specializing in human resource development. Mr. Boyd is the company's president and owner. HB&A has offices within the Metropolitan District. HB&A conducts approximately 40 training programs a year for its clients. The company is in the process of expanding its seminar base. About 20 percent of HB&A's seminars are performed within the Metropolitan District, away from the client's work site, necessitating HB&A's use of charter service for short-term shuttles between the training site and work site or common pick-up points throughout the Metropolitan District. As a result, HB&A's representative will need charter transportation for groups ranging in size from 15 to 25, about 12 times during the coming year. HB&A has used applicant for ICC

passenger transportation and for cargo transportation and has found the company to be reliable, flexible, and "cost-competitive." If this application is granted, HB&A would use the service that STS proposes.

Mr. John Reed, vice president of Diplomat Limousine and Livery Service, Inc. (Diplomat), testified in support of the application on Diplomat's behalf. Diplomat provides charter transportation in vehicles seating seven passengers or less between points in the Metropolitan District. Diplomat has about 300 corporate accounts in the Metropolitan District and a contract with the Metropolitan Washington Airports Authority pursuant to which it provides luxury limousine service under the "Washington Flyer" umbrella. Diplomat receives three or four requests a day for the transportation of charter groups requiring 15-passenger vans or a minibus. The requests are for service throughout the Metropolitan District. Diplomat has no authority to perform such transportation and no vehicles with which to provide it. Therefore, Diplomat refers the requests to carriers it believes will provide satisfactory service and with which it has a working relationship. According to Mr. Reed, there are few carriers in the Metropolitan District able to transport groups of 15 passengers on short notice. If this application is granted Mr. Reed would refer requests for charter transportation in vehicles seating more than seven but fewer than 25 persons to STS.

Mr. Robert Lee Green, Sr., testified in support of the application on behalf of K&M Seafood Wholesalers, Inc. Mr. Green is an agricultural consultant. He conducts seminars in Beltsville, MD, and requires charter transportation once a week in vehicles seating 10 to 12 persons between points in the District of Columbia, on the one hand, and, on the other, Beltsville, MD, which is located in Prince George's County. If this application is granted, Mr. Green would use STS's service exclusively.

Mr. Ernest W. Norwood testified on behalf of the United States Information Agency (USIA) in support of the application. In his capacity as administrative officer for the office of administration and technology, Mr. Norwood oversees scheduling of shuttle service provided by STS for the Department of State (State). All work done for USIA must be done pursuant to a specific contracting process. According to Mr. Norwood, STS has provided excellent service for State for about four years, and Mr. Norwood would recommend STS highly to anyone else interested in using its service.

Mr. John Oakman, NCW's president, testified on behalf of that carrier in opposition to the application. NCW holds WMATC Certificate No. 26 which authorizes it to conduct charter operations between points in the Metropolitan District. NCW operates 14 coaches; all coaches have been rebuilt and refurbished by NCW in its own shops, and five of the coaches were acquired within the last 12 months. Mr. Oakman considers all of NCW's equipment to be in "first class" operating condition and suitable for the provision of all types of charter service including shuttles, tours, and airport transfers. NCW operates

no vehicles with a seating capacity of less than 25 passengers and does not intend to acquire such vehicles. Although its bus refurbishing business operates profitably, NCW's passenger transportation operations have not been profitable. As of June 30, it had experienced a net loss for 1989 of \$35,428.10. NCW continues to operate under advances from its affiliated company, Frank Martz Coach Company, Inc. NCW is affiliated with Gold Line through common ownership of stock by Mr. Frank M. Henry. Mr. Oakman believes that service in vehicles seating between 15 and 26 passengers is competitive with NCW's operations, inasmuch as NCW's tariff and STS's proposed tariff are substantially the same and because NCW provides service to groups of approximately 25 passengers. Given enough advance notice, NCW can even remove seats, thereby configuring the vehicle to accommodate only a small group. NCW opposes STS's application on the grounds that sufficient service is currently available to the public to meet the transportation needs of persons wanting charter service in a 15- to 25-passenger vehicle.

Mr. Stanley Johnson, Gold Line's comptroller, testified on behalf of that carrier in opposition to the 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 offers charter service, including shuttles, tours, and airport transfers, throughout the Metropolitan District. Gold Line operates 52 motor coaches, one executive motor coach, and two 22-passenger vehicles. Gold Line is in the process of purchasing one additional 22-passenger vehicle and plans to add at least six more 22-passenger vehicles to its fleet this year. Gold Line currently provides service in minibuses and coaches to charter groups ranging in size from 15 to 25 persons.

For the 12 months ended December 31, 1988, Gold Line realized total operating revenue of \$8,278,858, of which \$4,967,338 was from operations within the Metropolitan District. Total operating expenses for the same period were \$7,613,313, resulting in net operating income of \$665,545 for an operating ratio of 92. Gold Line opposes this application on the grounds that (1) any new entry into the market adversely affects its business and (2) no additional charter service is needed in the Metropolitan District at this time.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, the Commission looks to Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove that it is fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and Commission's rules, regulations, and requirements thereunder. Section 4(b) further requires that the applicant prove the proposed service is required by the public convenience and necessity.

Based on a review of the entire record in this case, the Commission finds STS fit -- operationally, financially, and as to compliance. Applicant is a carrier experienced in providing charter service pursuant to contract under existing authority from this Commission as well as charter service as a common carrier pursuant to a certificate issued by the ICC. STS operates passenger vehicles that are well-maintained and regularly inspected. Applicant's drivers are experienced, and the company has in place a staff capable of coordinating charter arrangements in the Metropolitan District. STS's balance sheet and operating statement introduced at hearing indicate a financially healthy company which can be expected to sustain the proposed operations. Evidence at hearing shows that STS is currently in compliance with the Compact and the Commission's regulations and intends to continue that compliance.

As 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]) and its progeny 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 four public witnesses. Based on the testimony of three of those witnesses, the Commission finds that STS has proved that its proposed service meets an expressed public need, thereby serving a useful public purpose, between all points in the Metropolitan District.

HB&A and K&M Seafood themselves require charter transportation for groups ranging in size from 10 to 25 persons. Diplomat's 300 corporate clients require charter transportation for groups ranging in size from 8 to 25 persons. Taken together the testimony of these witnesses shows a need for charter service in vehicles with a manufacturer's designed seating capacity of 25 persons or less throughout the Metropolitan District. Three of the four public witnesses have used STS's services either for transportation authorized by the Commission pursuant to Commission Regulation No. 70 or for transportation outside the Metropolitan District. All found STS's transportation satisfactory and would recommend applicant to others without reservation. In finding that applicant's new operation would serve a useful public purpose responsive to a public demand or need, we are not unmindful of the testimony of Mr. Suggs that, despite his company's many years of experience providing service pursuant to contract for various government agencies, he must often refuse short-term work requested by his clients due to his lack of a

certificate. See Case No. CP-89-04, Application of Suggs Transportation Services, Inc., for Special Authorization to Perform Charter Operations Pursuant to Contract with Federal Aviation Administration.

The service proposed by applicant cannot be provided as well by protestants, nor does the granting of this application endanger or impair the operations of protestants. Protestant NCW does not operate or intend to operate either 15-passenger vans or 26-passenger minibuses and, although its representative testified it would use 47- or 49-passenger buses or reduce the number of seats in its buses upon request, it does not operate the type of equipment required and proposed by applicant. Gold Line does not operate, nor does it intend to operate any 15-passenger vans. It operates only two 22-passenger vehicles and has one additional 22-passenger vehicle on order. In short, Gold Line does not operate the type of equipment proposed to be used by applicant. Further, the general allegations of protestants that the granting to the application will adversely affect them are simply too general to be persuasive in view of evidence showing that one of the affiliated companies has never been profitable but operates through subsidies from a third affiliate, and the other affiliated protestant is financially healthy and specializes in moving large (coach-sized) groups.

THEREFORE, IT IS ORDERED:

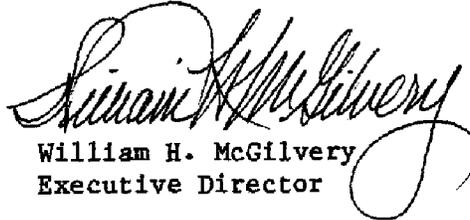
1. That Suggs Transportation Services, Inc., is hereby conditionally granted authority, contingent upon timely compliance with the terms of this order, to transport passengers, together with baggage in the same vehicle as passengers, in charter operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 26 passengers or less, including the driver, and further restricted against transportation solely within the Commonwealth of Virginia.

2. That Suggs Transportation Services, Inc., is hereby directed within 30 days of the date of service of this order to file with the Commission the following: (a) three copies of its WMATC tariff with appropriate amendments to Rule Nos. 1 and 6 as discussed in the body of this order; (b) an equipment list specifying make, model, serial number, vehicle number, and license plate number (with jurisdiction) for each vehicle to be used in WMATC operations; (c) a certificate of insurance in accordance with Commission Regulation No. 62; and (d) an affidavit of identification of equipment in accordance with Commission Regulation No. 67, for which purpose WMATC No. 79 has been previously assigned.

3. That unless Suggs Transportation Services, Inc., complies with the requirements of the preceding paragraph within 30 days from the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority contained herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

4. That upon timely compliance with the requirements of this order, Suggs Transportation Services, Inc., will be issued Certificate of Public Convenience and Necessity No. 79 in the form contained in the Appendix to this order.

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



William H. McGilvery
Executive Director

NO. 79

SUGGS TRANSPORTATION SERVICES, INC.

By Order No. 3432 of the Washington Metropolitan Area Transit Commission issued November 9, 1989;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passenger within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3432;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

CHARTER OPERATIONS transporting persons, together with baggage in the same vehicle as passengers, between points in the Metropolitan District;

RESTRICTED against transportation solely within the Commonwealth of Virginia; and

FURTHER RESTRICTED to transportation of passengers in vehicles having a manufacturer's designed seating capacity of 26 passengers or less (including the driver).

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure so to do shall constitute sufficient grounds for suspension, change, or revocation of the certificate.