

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3584

IN THE MATTER OF:

Served November 8, 1990

Application of BLUE LINES, INC.,)
and ALL ABOUT TOWN, INC.,)
Concerning Proposed Lease of)
Equipment)

Case No. AP-90-33

On July 31, 1990, Blue Lines, Inc. (Blue Lines or lessee), filed with the Commission a proposal to lease six buses from All About Town, Inc. (AAT or lessor). By Order No. 3541, served August 16, 1990, the Commission determined that this matter comes within the ambit of the Compact, Title II, Article XII, Section 12(a)(2)(i) and Commission Regulation No. 69. Order No. 3541 established procedures for the conduct of this case and granted temporary approval of the subject lease pursuant to the Compact, Title II, Article XII, Section 12(d). That temporary approval extends through February 12, 1991, unless otherwise ordered by the Commission.

On September 4, 1990, Gold Line, Inc. (Gold Line), filed an application for reconsideration of Order No. 3541. On September 14, 1990, Blue Lines filed a reply. By Order No. 3556, served September 17, 1990, Gold Line's application for reconsideration was dismissed in part and denied in part.

As of the issuance of Order No. 3556, this case remained open pursuant to the procedures established by Order No. 3541, and Blue Lines' temporary approval to lease the six buses from AAT was intact. The following pleadings filed in this case remain to be considered:

- * On August 31, 1990, Blue Lines filed a response to Order No. 3541;
- * On August 31, 1990, Gold Line filed a protest to this application and requested oral hearing;
- * On September 14, 1990, Blue Lines filed a reply requesting rejection of Gold Line's protest and dismissal of Gold Line's request for oral hearing; and
- * On September 21, 1990, Gold Line filed a response to Blue Lines' requests of September 14.

In its response to Order No. 3541, Blue Lines asserts that the Commission erred in finding the proposed lease to be subject to Section 12(a)(2)(i) because:

It is plainly not the lease of "any substantial part" of the equipment required to be utilized by All About Town in its WMATC operations and subject to WMATC jurisdiction. (Response, p. 3.)

This is a misstatement of Section 12(a)(2)(i) which requires Commission approval "for any carrier which operates in the Metropolitan District . . . to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any carrier which operates in such Metropolitan District" If the six buses are a substantial part of the properties of AAT, */ as we have found and here affirm, then Section 12(a)(2)(i) applies. Blue Lines next asserts that the terms of payment (lessee pays lessor 30 percent of gross revenues generated by the vehicles) and cancellation (not less than one day) contained in the proposed lease are in conformance with Regulation No. 69 because such terms are neither prescribed nor proscribed by Regulation No. 69. In Order No. 3541 the Commission noted the ongoing proceeding in Case No. FC-90-01, Formal Complaint of Gold Line, Inc., against All About Town., et al., and the Commission's directive in Order No. 3509, served June 4, 1990, that AAT, et al., cease and desist certain unauthorized operations. The Commission also said it would consider whether the proposed lease represents an attempt by AAT to comply with Order No. 3509 or whether it has the effect of violating the following requirement of Regulation No. 69-10:

Under no circumstances may any operating authority issued by this Commission to any carrier be leased, rented to, or used by any other person.

Hence, it is the overall effect of the proposed transaction with which the Commission is concerned. Finally, Blue Lines presents the Commission with its conclusion that the lease conforms with Regulation No. 69 and must be approved.

On August 31, 1990, counsel for Gold Line filed a protest to the proposed lease and a request for oral hearing. This was accompanied by an affidavit of Gold Line's vice president and general manager and by a copy of a notarized report by a private investigator retained by Gold Line. The private investigator's report was first submitted in Case No. FC-90-01 on July 31, 1990. Gold Line notes that the proposed lease transaction:

. . . requires approval of the Commission by order entered only after hearing held upon reasonable notice. And this application may not be approved unless this Commission finds upon the basis of the record before it that the proposed transaction is consistent with the public interest. (Protest, p. 2.)

*/ No party has disagreed that the six buses constitute a substantial part of the properties of AAT.

Having correctly apprehended the essence of this proceeding, Gold Line goes on to assail the procedures established by Order No. 3541. The Commission has reviewed those procedures and notes that they provide for: protests, including evidence and argument; requests for oral hearing, including justification therefor; responses by the parties to the lease concerning issues raised by Order No. 3541, along with any other relevant evidence and argument; service upon interested parties; and replies to any of the above-described pleadings. Upon reexamination, the Commission finds these procedures to be adequate, fair, and reasonable. The parties have amply availed themselves of their opportunities to be heard. The Commission has considered Gold Line's request for oral hearing and finds it to be unjustified and unwarranted in the circumstances. All the relevant issues have been suitably presented and argued on the pleadings as they relate to consideration of the rather straightforward issue of whether the Commission should find the lease of six buses from one carrier to another to be consistent with the public interest. It is the Commission's view that the proceedings to date are those required by the Compact and are quite elaborate enough for the purpose. The material facts of the proposed transaction are not in dispute. What remains in dispute is the conclusion to be drawn from these facts, specifically, whether or not the proposed transaction is an unlawful lease of Blue Lines' operating authority to AAT and a subterfuge to hide continuance of illegal service. Every reasonable opportunity for the parties to amplify and argue this issue has been given and taken.

On September 14, 1990, Blue Lines filed a reply requesting rejection of Gold Line's protest and dismissal of Gold Line's request for oral hearing. Blue Lines asserts that Gold Line's filing, consisting of a protest signed by counsel accompanied by an affidavit and verified report, does not meet the requirement of Order No. 3541 permitting the filing of a notarized protest. Therefore, according to Blue Lines, the protest should be rejected, Gold Line is not a proper party, and its request for oral hearing must be dismissed as moot. On September 21, 1990, Gold Line filed a response urging the Commission to deny the requests of Blue Lines for rejection of the protest and dismissal of the request for oral hearing. The Commission accepts the August 31 filing of Gold Line as being in substantial compliance with Order No. 3541.

The Commission takes official notice of an affidavit filed by John Paris in Case No. FC-90-01. John Paris is (or was) president and part owner of AAT. The following excerpt from John Paris' affidavit of September 14, 1990, tends to fill in details that are otherwise missing from this case.

All About Town has now completely discontinued its local charter and per capita fare sightseeing operations subject to WMATC jurisdiction, effective August 20, 1990.

Those changes which have occurred are as follow:

1. The six All About Town coaches have been leased to Blue Lines with WMATC approval.

2. To the best of my knowledge, the drivers for those coaches are now employees of Blue Lines, paid by Blue Lines from Blue Lines' funds. No employee of All About Town drives these coaches.

3. I have resigned from All About Town and have become an employee of Blue Lines, paid by Blue Lines, to direct part of Blue Lines' sightseeing activities.

4. The leased coaches have been properly identified and bear the legend "leased to and operated by Blue Lines Sightseeing, WMATC No. 10."

5. All About Town has completely discontinued its local sightseeing service. In my employment by Blue Lines, I manage a sightseeing business which is conducted under the name "Blue Lines Sightseeing, d/b/a All About Town." Brochures advertising the service bear this legend; all other paperwork accompanying this business bears the same legend.

Although I am neither an employee nor officer of All About Town, I am aware of its activities, since it is owned by my wife, Cathi.

All About Town is today engaged in limited passenger transportation activities only. These consist of (1) interstate charter service subject to regulation by the Interstate Commerce Commission, and (2) local service to Rosecroft Raceway in Prince George's County, Maryland, as described in WMATC Certificate No. 131. All About Town is not engaged in any other passenger transportation activities. (Affidavit of John Paris, pp. 4 and 5.)

The Commission finds the form of the proposed lease to be in conformance with Regulation No. 69. It has been copied from the form set out in the regulation and, where there are blanks to be completed, these have been filled in. As we noted in Order No. 3541, the proposed lease provides that it may be cancelled on as little as one-day's notice, and that consideration to lessor is somewhat unusual, in that it is "30% of gross revenues generated by said vehicles operating pursuant to [Blue Lines'] WMATC Certificate No. 10 subject to the jurisdiction of the WMATC." The Commission has examined Regulation No. 69 and finds that it does not specifically prevent such terms. It does, however, say that:

Under no circumstances may any operating authority issued by this Commission to any carrier be leased, rented to, or used by any other person.

The Commission stated its intention to determine whether the proposed lease has the effect of violating the above-quoted provision of Regulation No. 69-10.

The intent of Regulation No. 69 is clear. The motor vehicles named in the contract of lease are to be operated by, and under the complete control of, the lessee, and no other, for the entire period of

the lease. For all regulatory purposes including insurance, rates and charges, vehicle identification and motor vehicle fuel and road taxes, such motor vehicles are to be considered as the vehicles of the lessee. During the period of the lease, neither the lessor nor the lessee may enter into any other contract or subcontract for lease or sublease of the same vehicles without Commission approval. The lease of a vehicle with a driver provided by the same lessor is prohibited. Inspection and compliance with safety requirements are the responsibility of the lessee.

An insurance certificate showing Blue Lines as the named insured for the six vehicles is on file with the Commission, as is an affidavit of identification in compliance with Regulation No. 69-06. The lease is in the proper form. The drivers, according to John Paris' affidavit, "are now employees of Blue Lines, paid by Blue Lines from Blue Lines' funds. No employee of All About Town drives these coaches." The quotation carries the implication that the drivers may previously have been employees of AAT, but, even assuming that were the case, it is not in contravention of Regulation No. 69. John Paris has "become an employee of Blue Lines, paid by Blue Lines, to direct part of Blue Lines' sightseeing activities." He has "resigned from All About Town," at least to the extent possible for the spouse of the owner. Again, we do not find this circumstance to be proscribed by Regulation No. 69.

Is this a bona fide lease of vehicles that meets the requirements of Regulation No. 69? The Commission finds that it is. Looking at the proposed lease from Blue Lines' perspective, we note that the Compact specifically reserves a carrier's right to add to its equipment:

. . . no terms, conditions, or limitations [of a certificate] shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require. [Compact, Title II, Article XII, Section 4(b).]

Blue Lines apparently has seized a business opportunity that it believes will be profitable. As long as it conducts operations in accordance with the Compact and regulations and within the authority of its Certificate No. 10, and at the rates in Blue Lines' tariff, the Commission perceives no violation by Blue Lines. If, for example, this proposed transaction were with a non-carrier vehicle leasing company, it would be routine.

The Commission's concern, then, is whether AAT, with or without the knowing assistance of Blue Lines, is attempting to continue unauthorized operations under the subterfuge of leasing vehicles to Blue Lines. The Commission finds, with regard to AAT, that the proposed transaction represents a good faith undertaking to (a) stop using the six vehicles in unauthorized operations, and (b) find an

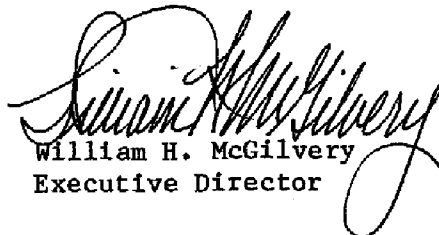
alternative use for the capital represented by AAT's investment in these six vehicles. This specific arrangement also provides alternative employment for John Paris, an understandable objective in light of the very limited legal operations AAT is authorized to conduct. The Commission finds the proposed transaction to be consistent with the public interest, subject to the conditions set forth below.

The Commission finds that it is not in the public interest for Blue Lines to conduct business as All About Town, as described in John Paris' affidavit. Blue Lines is directed to cease this practice, to recall its advertising brochures, to stop displaying this legend on its paperwork, and otherwise to abandon doing business as All About Town. Such a practice would be confusing, if not misinformative, to the public. AAT is nothing more to Blue Lines than a lessor of vehicles. If the Commission is to believe applicants, All About Town, Inc., and Blue Lines, Inc., are separate entities, separately managed. It is the very essence of applicants' position that this case involves a straightforward, arm's length, bona fide lease of equipment, and nothing more.

THEREFORE, IT IS ORDERED:

1. That Blue Lines, Inc., is hereby directed to cease and desist doing business as All About Town, as elaborated in the text of this order.
2. That Blue Lines, Inc., is hereby directed to file with the Commission, within 15 days of the date this order is issued, an affidavit explaining in detail the steps taken to comply with the directive of the paragraph above.
3. That timely compliance with the directives of this order is required, and no extensions of time for compliance are contemplated.
4. That, upon satisfactory compliance with the above directives, the Commission will issue a further order granting approval of the proposed equipment lease involved in this application.
5. That in the event Blue Lines, Inc., fails timely to comply with the directives of this order, the application in Case No. AP-90-33 shall stand denied in its entirety, effective upon the expiration of the time allotted for compliance.

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


William H. McGilvery
Executive Director