

No. 2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of the Petition of  
White Glove Limousine, Inc. for  
Extension of Regular Route Common  
Carrier Certificate to Transport  
Passengers, Baggage and Packages  
Between Minneapolis-St. Paul  
International Airport and Stated  
Locations over Regular Routes

FINDINGS OF FACT  
CONCLUSIONS AND  
RECOMMENDED-ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the State Office of Administrative Hearings, on September 24 and 25, 1992, in Austin, Minnesota.

Appearances: Duane Wilson, Box 398, Rochester, Minnesota 55903, appeared on behalf of White Glove Limousine Service, Inc.; Andrew R. Clark, Kalina, Wills, Woods, Gisvold & Clark, Attorneys at Law, Suite 200, 941 Hillwind Road N.E., Minneapolis, Minnesota 55432-5964, appeared on behalf of Rochester Express Limousine Service, Inc., Rochester Transportation Systems, Inc., Lee Line Corp., Philipps Bus Service, Inc. and RSB Coaches; Brent W. Primus, Attorney at Law, 630 Norwest Midland Building, Minneapolis, Minnesota 55401-2350, appeared on behalf of International Express Corporation; Curtis M. Wiseman, Balyk & Wiseman, Attorneys at Law, 5 East County Road B, Suite 5, St. Paul, Minnesota 55117, appeared on behalf of Rochester Direct Corporation; and Paul O. Taylor, Harris & Taylor, Attorneys at Law, 2950 Metro Drive, Suite 301, Minneapolis, Minnesota 55425, appeared on behalf of Jefferson Lines, Inc. No appearance was made on behalf of Rochester City Lines or Richfield Bus Company.

The record closed on October 27, 1992, with the receipt by the Administrative Law Judge of the final memorandum of counsel. No memorandum of counsel was filed on behalf of either Jefferson Lines, Inc. or Rochester Direct Corporation.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the Rules of Practice of the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative

Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South  
St.

Paul, Minnesota 55075. Exceptions must be specific and stated and numbered  
separately. Proposed Findings of Fact, Conclusions and Order should be  
included, and copies thereof shall be served upon all parties. If desired,  
a

reply to exceptions may be filed and served within ten days after the  
service

of the exceptions to which reply is made. Oral argument before a majority  
of

the Board may be permitted to all parties adversely affected by the

Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

#### STATEMENT OF ISSUES

The issues to be determined in this proceeding are: whether the Petitioner, White Glove Limousine, Inc. has established the statutory requisites for an extension of its regular route common carrier certificate under Minn. Stat. DQG LI VXFk DQ H[WHQVLRQ LV JUDQWHG the appropriate scope of incidental charter rights also granted under Minn. Stat. 221.051 (1990).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. By Petition filed with the Transportation Regulation Board on April 2, 1992, White Glove Limousine, Inc. requested an extension of regular route common carrier authority to transport passengers, baggage and express between the St. Paul-Minneapolis International Airport, and related passenger and freight terminals and the Mall of America a/k/a the Mega Mall and Rochester - Austin - Albert Lea - Owatonna - Faribault, servicing all intermediate points. The route described in the Petition would take the carrier from Rochester to Austin and Albert Lea and then North on I-35 to the Minneapolis-St. Paul Airport and return. An alternate route for operating convenience is specified from Rochester west to Owatonna and then north to the Minneapolis-St. Paul Airport and return.

2. On April 3, 1992, the Board issued an ex parte order granting White Glove temporary authority to transport passengers and their baggage between the Minneapolis-St. Paul International Airport and Rochester - Austin - Albert Lea - Owatonna - Faribault, with stated restrictions.

3. The Board published notice of the Petition in its weekly calendar, commencing on April 10, 1992, and fixed May 1, 1992, as the final date for filing protests to the Petition. Timely protests were filed by International Express Corporation, Rochester Express Limousine Service, Richfield Bus Company and Rochester City Lines, Jefferson Lines, Inc., Rochester Direct

Corporation, Lee Line Corp., RSB Coaches and Philipps Bus Service.

4. By oral request, the Petitioner amended the request for authority to include service to and from the Rochester Airport. The Administrative Law Judge determined that only Rochester Transportation Systems, Inc. held

conflicting authority to the amendment and it was not represented in the proceeding. By letter dated August 25, 1992, Rochester Transportation Systems, Inc. was informed of the proposed amendment. Rochester Transportation Systems, Inc. filed a timely protest and was made a party to the proceeding.

5. The contested Petition was referred to the Office of Administrative Hearings for a contested case proceeding and notice of the hearing was published in the Board's weekly bulletin, commencing on July 24, 1992, up to and through the rescheduled hearing dates of September 24 and 25, 1992. At the request of the Petitioner, the hearing location was moved to Austin, Minnesota for the convenience of potential witnesses.

6. By letter dated September 2, 1992, International Express Corporation withdrew its Protest, conditioned on a grant of authority in this proceeding not being expanded as a result of the hearing, except for the additional point of the Rochester Airport. International Express Corporation did not, therefore, participate in the hearing.

7. At the hearing herein, all of the remaining Protestants were made party intervenors in the proceeding, except Richfield Bus Company and Rochester City Lines. Richfield Bus Company and Rochester City Lines did not appear at the hearing. Their protests were, therefore, disallowed.

B. White Glove Limousine, Inc., is a Minnesota corporation headquartered in Rochester, wholly owned by Duane Wilson, its President. The Petitioner holds charter carrier authority to provide luxury limousine service from a number of counties in southern and central Minnesota to all points in Minnesota. The corporation also has regular route authority to provide service between Winona, Minnesota and Rochester, in vehicles with a seating capacity of 12 passengers or less.

9. On or about April 1, 1992, the Department suspended the authority of Northern Eagle Express Shuttle, Inc. to provide service between the Minneapolis-St. Paul International Airport and Rochester, Austin, Albert Lea, Owatonna and Faribault for failure to maintain the requisite certificate of insurance. Apparently, Northern Eagle Express Shuttle, Inc. ceased providing service because it found the route to be unprofitable with the level of service it provided. White Glove Limousine, Inc. applied for and received, ex parte, temporary regular route authority to transport passengers and their baggage between the Minneapolis-St. Paul International Airport and Rochester - Austin - Albert Lea - Owatonna and Faribault. EX parte Order, RRCC 709/TE-92, Order No. 2, April 3, 1992. The ex parte order issued by the Board also included other restrictions on the service to be provided.

10. White Glove will use the following equipment in providing the regular route service requested: a 1982 and 1985 Lincoln Town Car; a 1984 and 1988 stretch limousine; and a 1986 Ford 15-passenger van. A statement of assets and liabilities of the company, as of March 1, 1992, shows a positive net worth of \$225,500.00, largely represented by luxury vehicle equipment.

Pet. Ex. 3. The type of equipment in which White Glove proposes to provide service is depicted in Pet. Exs. 1 and 2. For 1991, the company had a net profit of about \$60,000.00 from all its operations.

11. Although White Glove had experienced some financial problems as a result of failing to withhold for federal tax liability, its delinquent accounts with the Internal Revenue Service have been entirely paid.

12. There is no evidence in the record of violations of transportation statutes or rules for which the company has been cited since it began providing service in 1985.

13. The Petitioner's vehicles are regularly maintained and kept in good condition and repair.

14. Under the temporary authority granted to White Glove to serve the routes in question, the company has advertised two trips per day in each direction. However, not all of the trips have been undertaken. The schedule published by White Glove requires a 24-hour advance reservation for any trip.

Without an advance reservation, a particular trip might not be run. There is no evidence in the record of the number of trips that have not been run as scheduled under the Petitioner's temporary authority because no reservations were made. The Petitioner's president, Mr. Duane Wilson, has also, in the past, operated his regular route service between Rochester and Winona, on a reservation basis. Mr. Wilson believes that requiring an advance reservation and not providing service unless at least one reservation is made meets the definition of regular route service contained in Minn. Stat. 221.011, subd. 9 (1990). White Glove Limousine Service, Inc. will, however, operate the proposed regular route service without an advance registration and make each trip scheduled irrespective of the absence of passengers, if the Board states that it must do so to provide a regular route service.

15. There is no evidence in the record of the number of passengers carried by White Glove on the routes in question since it began providing temporary service on April 3, 1992.

16. Austin Community College is a two-year institution of higher learning located in Austin, Minnesota. The college sometimes conducts national searches for its faculty and administrative officers. It is anticipated that in the next 12-month period, approximately 16-25 people may travel to Austin, primarily from the Minneapolis-St. Paul International Airport for such recruitment purposes. It is also possible that some faculty candidates may travel to Austin from the Rochester Airport. The college believes it would be appropriate for such candidates for employment to be transported in limousine service, rather than by private car or public bus. The college believes that the prospective employees should be met and picked up at the airport soon after arrival and be taken to Austin by a relatively direct route. Such prospective employees of the college would also need a

return trip from Austin to the airport. There is no evidence in the record as to whether prospective employees of the college interviewed while White Glove has been providing interim service have used the White Glove limousines between Austin and the Minneapolis-St. Paul International Airport or the Rochester Airport. There is no evidence in the record that students of Austin Community College would use the White Glove Limousine equipment in regular route service between Austin and the Rochester Airport or the Minneapolis-St. Paul International Airport.

17. Ms. Diane Amacher of Salt Lake City, Utah, travels from Salt Lake City to Austin, Minnesota from the Minneapolis-St. Paul International Airport,

about six -- eight times per year. Ms. Amacher has used the service of White Glove on several occasions between the Minneapolis-St. Paul International Airport and Austin. She appreciates the service provided by White Glove because its luxury equipment can pull up to the front of the main terminal, on both the ticketing and baggage levels. The driver of the limousine has offered to assist her with her luggage. The public bus, operated by Jefferson Lines, when it arrives at the Minneapolis-St. Paul International Airport, must park to the side of the lower level and discharge its passengers there, even though their ultimate destination is the second floor ticketing level of the airport. The Jefferson drivers do not assist the public with their luggage. Ms. Amacher has found the time schedule of White Glove more suited to her arrival and departure times than the schedule of Jefferson. She also believes that White Glove has fewer stops between the Minneapolis-St. Paul International Airport and Austin than does Jefferson. The somewhat higher rate charged by White Glove over Jefferson is not a disincentive for Ms. Amacher to use Petitioner's service. Her convenience in entering and exiting the airport was much more important to her than the relatively small amount of extra cost involved in using White Glove luxury equipment over the Jefferson coach. Ms. Amacher might use transportation other than White Glove between Austin and the Minneapolis-St. Paul International Airport. She does, however, like to have the availability of White Glove's equipment at the airport as an option in the event that its arrival and departure times would be consistent with her flights. White Glove will also wait a limited period of time when a person making a reservation has a delayed flight.

18. Gertrude Morin of Albert Lea is an elderly person who is unable to drive a vehicle. On several occasions, Ms. Morin has taken a White Glove limousine from the Minneapolis-St. Paul International Airport to Albert Lea. Ms. Morin was completely satisfied with the White Glove service. The chauffeur was on time and helped her with her luggage. Because the equipment was able to discharge passengers at the main level of the terminal, Ms. Morin was not required to walk a long distance or carry her luggage, as she would have had to do if she had taken the Jefferson bus. Ms. Morin used the White Glove service because it fit in better with her flight schedule than did the Jefferson bus. Ms. Morin, in the future, would use either the White Glove Service or the Jefferson coach, based upon which conveyance could provide more timely or convenient service. Ms. Morin had no real complaints about the Jefferson coach service.

19. All Continents Travel of Albert Lea has arranged service between Albert Lea and the Minneapolis-St. Paul International Airport for clients. On some occasions it has provided persons with the White Glove number. The

company has not received complaints about the White Glove service and, in fact, has received positive responsive comments on the performance of the White Glove chauffeurs. There is no evidence in the record of the number of persons booked through All Continents Travel that have used the White Glove service to the Minneapolis-St. Paul International Airport. The company believes that the availability of the White Glove service is important because the chauffeurs can help the elderly and handicapped with their baggage. Moreover, limousines are given access to the airport that buses do not enjoy. Chauffeurs can assist passengers in checking luggage and provide wheelchair assistance for the handicapped and elderly. Finally, the White Glove service is somewhat more direct than the Jefferson service from Albert Lea to the Minneapolis-St. Paul International Airport. The travel agency also believes that the limousines used by White Glove are more comfortable, quiet and

uncrowded than the Jefferson coach. This, they believe, is important to business travelers, the elderly and handicapped. All Continents Travel confirmed that White Glove currently requires a 24-hour advance reservation if service is to be provided.

20. The Owatonna Chamber of Commerce supports the White Glove application. Owatonna has over 40 industries operating on a national and international basis. Many flights annually arrive at the Minneapolis-St. Paul International Airport carrying high level business executives destined for Owatonna and return. The Chamber believes that the luxury equipment provided by White Glove would fill a need if there were only one stop between Owatonna and the Airport. The Chamber is not aware of the current transportation service offered by Protestants between Owatonna and the Minneapolis-St. Paul International Airport. It is aware, in a general way, of service provided by Jefferson. The Chamber has not requested Jefferson to expand its service or change its current service to Owatonna in any way.

21. Travel Headquarters, located in Owatonna, believes that the service provided by White Glove with luxury equipment fulfills a need. The travel agency books approximately two trips a month for White Glove to the Minneapolis-St. Paul International Airport. That number of trips may increase during the winter and spring months, as the weather becomes more inclement. The travel agency believes the White Glove service is necessary because Jefferson Lines does not assist passengers with their baggage and cannot discharge passengers at the ticketing level of the airport. Moreover, the agency does not believe that Jefferson's two or three scheduled trips to the airport per day from Owatonna are sufficient to service all Owatonna's needs. The company believes that an early pickup in Owatonna would be required for persons who have early flights. Jefferson does, however, make a 4:00 a.m. pickup in Owatonna with an arrival at the Minneapolis-St. Paul International Airport of 5:35 a.m. for early flights. Travel Headquarters testified that White Glove requires a reservation, and, in the absence of reservations, service might not be provided. Travel Headquarters also uses the charter limousine service of White Glove on a regular basis.

22. The Albert Lea Chamber of Commerce believes that a luxury shuttle from Albert Lea to the Minneapolis-St. Paul International Airport provides a needed service. There is no evidence in the record of the number of passengers that use White Glove service from Albert Lea to the Minneapolis-St. Paul International Airport. The Chamber of Commerce believes that the business community would prefer a luxury shuttle over a public bus service because a more direct trip to the Minneapolis-St. Paul International Airport would save business persons valuable time. The Chamber also believes that usage of the

shuttle service would increase if permanent authority were granted and more people became aware of the service. The Chamber could not provide an accurate estimate of future usage of the White Glove service from Albert Lea to the Minneapolis-St. Paul International Airport.

23. Rochester Transportation Systems, Inc. holds regular route authority to transport passengers and parcels between Rochester Municipal Airport and hotels and motels in Rochester, Minnesota. A statement of its authority, represented by RRCC 581, is contained in Prot. Ex. 4. A schedule of its trips to the Rochester Airport from Rochester is contained in Prot. Ex. 5. The schedule is published in the local Rochester newspapers and distributed in the vicinity of the Rochester Airport. Rochester Transportation System, Inc.

operates a 1969 MCI 47 passenger coach, a 1971 MCI 39 passenger coach and a 1988 Ford 15 passenger van. All vehicles are clearly marked Rochester Transportation, Inc. The company also maintains a desk and employee at the Rochester Airport. Since 1989, traffic from the Rochester Airport to Rochester for Rochester Transportation System, Inc. has declined 4% 9% per year. The company operates on a minimally profitable basis and 10 20% of its revenues are derived from the shuttle service. If there is a significant interruption in these revenues, Rochester Transportation Systems, Inc. would consider dropping its service to the airport. It believes that a grant of additional authority to serve the Rochester Airport would decrease the profitability of its airport operation and, perhaps, result in it ceasing to provide that service. It has dropped limousine service between Rochester and the Rochester Airport because of a lack of usage.

24. Rochester Express Limousine Service, Inc. holds authority to provide regular route service as stated in Prot. Ex. 10. That authority allows the company to transport passengers, baggage, U.S. mail and small packages between the Minneapolis-St. Paul International Airport on the one hand and the City of Rochester on the other hand, serving no intermediate points. The authority is restricted to using "maxi-van" vehicles which seat 12 persons or less. Rochester Express Limousine Service provides six round trips per day between Rochester and Minneapolis-St. Paul International Airport. It takes approximately 95 minutes to provide service between Rochester and the Minneapolis-St. Paul International Airport. The company operates two Ford maxi-vans and has another van which could be made serviceable on short notice. The company has a lease at the airport for a desk on the lower level of the baggage area. Rochester Express Limousine Service makes its scheduled trips to the airport whether it has passengers or not. Its current charge to provide service to the Minneapolis-St. Paul International Airport is \$22.00, as compared to a White Glove charge of \$32.00. Rochester Express Limousine Service, Inc. believes that any diminution in its traffic volumes would jeopardize its ability to continue providing service. The company believes that White Glove Limousine has not been operating as a regular route carrier on either its Winona or Minneapolis-St. Paul International Airport trips because the Petitioner requires an advance reservation and may not make a trip

if no reservations are received. The company does not consider "on-call" service to be a regular route service. Rochester Express also believes that the route requested by the Petitioner cannot be operated profitably making four trips per day in the size equipment the Petitioner intends to use.

25. The continued ownership of the Rochester Express authority reflected in RRCC File 681, RRCC Order No. 2049-1, dated April 7, 1981, is open to some question. As a result of civil litigation and a transfer proceeding before the Board, the authority currently held by Rochester Express Limousine Service, Inc. may be transferred to Protestant Rochester Direct Corporation. Rochester Direct Corporation's interest is stated in its Protest, dated May 1 1992. Rochester Direct Corporation did not provide additional evidence in the proceeding. If the transfer is ordered by the Board, Rochester Direct Corporation will provide the same service as is being provided by Rochester Express Limousine Service, Inc.

26. Jefferson Lines is an interstate and intrastate regular route common carrier of passengers, baggage and express. Jefferson Lines is currently experiencing some financial difficulty and reorganization. Its authority is currently owned by Jefferson Partners. Jefferson Lines operates coach

equipment over the routes at issue in this proceeding, except for service between Rochester and Owatonna. Jefferson has 70 pieces of coach equipment nationwide. It would require four - six coaches to provide service over the routes in question. Jefferson has approximately 40 employees in Minnesota. It operates between the cities to be served under the Petition and the Minneapolis-St. Paul International Airport in accordance with the system time table contained in Prot. Ex. 13 and Prot. Ex. 14. The time-table was established after the company made a study of ridership to set its schedules for the most appropriate pick up times. Jefferson has not been asked by any passengers or civic groups in the cities to be served under the Petition to increase its service to individual locations or to vary the times of the service provided. Jefferson operates, as noted, according to a regular schedule and no advance reservation is required. Its coach equipment traverses its routes irrespective of ridership. On a system-wide basis, Jefferson is operating at a break-even position. Its revenues are approximately \$1.25 per mile and its costs range from \$1.25 - \$1.50 per mile. Jefferson maintains a desk at the Minneapolis-St. Paul International Airport which is serviced by a company employee between the hours of 7:00 a.m. and 8:00 p.m. Jefferson does not provide service to Rochester Airport.

27. Over the years Jefferson has experienced a reduction in the number of trips and towns served in southern Minnesota. Over the past 20 years, its bus ridership, particularly intrastate ridership, has deteriorated. In the past 3.5 years both increased competition on its routes and the deteriorating economy have accelerated its decline in ridership. Jefferson notes that both Greyhound and Trailways stopped providing service to southern Minnesota because of a lack of ridership. Several companies, in the past, have provided service down Highway 35 from the Minneapolis-St. Paul International Airport and have, temporarily, eroded the business of Jefferson to towns along Highway 35. Jefferson opposes the White Glove application because it believes White Glove would erode its current essentially break-even position in Minnesota intrastate traffic.

28. Lee Line Corp. holds charter carrier permit authority to transport passengers under charter from Red Wing and points located within a 50-mile radius of Red Wing to all points in Minnesota. Lee Line Corp.'s interest in this proceeding relates to incidental charter rights that the Petitioner might receive as a result of Minn. Stat. 221.051 (1990). Lee Line Corp. did not provide any testimony in this proceeding. Prot. Ex. 12 contains a statement of the Lee Line Corp. authority.

29. RSB Coaches holds charter carrier permit 19031. Its authority is statewide, Prot. Ex. 11. RSB Coaches did not provide any testimony in the

proceeding. Its interest is limited to incidental charter rights which might be granted to the Petitioner under Minn. Stat. 221.051 (1990).

30. Protestant Philipps Bus Service, Inc. holds statewide grandfathered charter carrier permit authority represented by Charter Permit 38877. Philipps did not provide testimony in this proceeding. Its interest is limited to the incidental charter rights that might be granted to the Petitioner under Minn. Stat. 221.051 (1990).

31. There is no evidence in the record of a need for White Glove to provide service to Faribault or the Mall of America, a/k/a the Mega Mall.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.
2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.
3. From Petitioner's experience, knowledge of the rules and financial condition, it is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4 (1989).
4. Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department.
5. The service to be offered by the Petitioner is a regular route service, even if an advance reservation is required to provide service.
6. The Petitioner has not established a need to provide additional service to or from the City of Rochester, the Rochester Airport, Faribault or the Mall of America, a/k/a the Mega Mall.
7. The existing carriers that serve the city of Rochester and the Rochester Airport, including Rochester Express Limousine Service, Inc. and Rochester Transportation Systems, Inc. provide a level of service to the city of Rochester that is appropriate. Further, the Petitioner has not established any service advantage that it could offer over the service offered by the two Protestants previously enumerated who service Rochester. Protestant Jefferson Lines also provides service at the city of Rochester for passengers to the Minneapolis-St. Paul International Airport.
8. The service Petitioner would offer over the Highway 35 corridor between Austin, Albert Lea, Owatonna, and the Minneapolis-St. Paul International Airport in luxury sedan or limousine equipment and small vans provides a service benefit over that provided by Protestant Jefferson Lines. The White Glove luxury sedan equipment and van would have direct access to both the ticketing and baggage levels of the main airport terminal. Passengers would not be required to transport luggage from the bus parking area. Moreover, with the limited number of passengers transported, the chauffeur would be able to provide assistance to passengers in checking or transporting their luggage, as necessary. This service is especially important to the handicapped and elderly. Some business travelers also would prefer more direct service in luxury equipment.
9. Jefferson Lines, the only active Protestant providing regular route service between locations stated in Conclusion 8, supra, and the

Minneapolis-St. Paul International Airport cannot provide the service benefits stated in the previous Conclusion.

10. Given the difference in charges between the Petitioner and Jefferson, the two companies are not essentially competing for the same traffic.

11. A grant of extended regular route common carrier authority to the Petitioner to provide service from Austin to the Minneapolis-St. Paul International Airport and return may decrease, to some extent, the ridership available to Jefferson Lines. It will not, however, significantly jeopardize their financial viability so as to affect the availability of necessary transportation service to the public.

12. A grant of regular route common carrier authority to provide service between Austin and the Minneapolis-St. Paul International Airport will not have an adverse effect on transportation service furnished by any railroad.

13. It is appropriate to limit any grant of regular route authority to provide service between Austin and the Minneapolis-St. Paul International Airport to the use of luxury sedan equipment, limousines and vans carrying not more than 12 passengers.

14. As a result of Conclusions 3 - 13, supra, the Petitioner has established that the public convenience and necessity requires a grant of additional regular route authority between Austin and the Minneapolis-St. Paul International Airport over I-90 and I-35 with the limitations stated in Conclusion 13, supra.

15. It is appropriate under Minn. Stat. 221.051 (1990) to grant to the Petitioner incidental charter authority from the counties of Freeborn, Mower, Steele, Rice, Dakota, Scott and Hennepin to all points in Minnesota and return. It is also appropriate, however, to limit that incidental charter authority to providing service in luxury sedans, limousines and vans carrying not more than 12 passengers.

16. Any Conclusion more properly termed a Findings of Fact, and any Finding of Fact more properly determined a Conclusion are hereby expressly adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based on the foregoing Conclusions, the Administrative Law Judge recommends to the Transportation Regulation Board that it issue the following:

#### ORDER

IT IS HEREBY ORDERED that the Petitioner's current regular route common carrier authority be extended to authorize the transportation of passengers and baggage and express between the Minneapolis-St. Paul International Airport and Austin - Albert Lea - Owatonna over the following route:

Over I-90 from Austin to Albert Lea and there north on I-35 to Owatonna there to Faribault and continuing on either I-35W or I-35E to the Minneapolis-St. Paul International Airport and returning over the same route.



Alternate route for operation convenience only:

Beginning at Austin, Minnesota, and extending over Minn. Highway 218 to Intersection of U.S. Highway 14, and then Highway 14 to I-35 and return over the same route.

Restrictions:

1. Restricted to the use of luxury sedan vehicles, limousines and vans with a maximum seating capacity of 12 passengers or less; and
2. Restricted against service between on-route or off-route points including the Minneapolis-St. Paul International Airport lying north of Owatonna, Minnesota.

Incidental charter authority is also granted from the counties of Freeborn, Mower, Steele, Rice, Dakota, Scott and Hennepin to all points in Minnesota and return; restricted to providing service in luxury sedans, limousines and vans with a seating capacity of not more than 12 passengers.

Dated this                    day of November, 1992.

BRUCE D. CAMPBELL  
Administrative Law Judge

#### NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Audio Magnetic Recording; No Transcript Prepared.

#### MEMORANDUM

White Glove Limousine Service, Inc. has requested an extension of its regular route authority to transport passengers baggage and express between Rochester, Austin, Albert Lea, Owatonna, Faribault, Mall of America and the Minneapolis-St. Paul International Airport over a specified route. The Petition does not limit the type of equipment to be used. Moreover, in the Petition, White Glove requests a full grant of incidental charter rights, pursuant to Minn. Stat. 221.051 (1990), with no restriction on the type of charter equipment to be used.

Under Minn. Stat. 221.071, subd. 1 (1990), White Glove must first establish that it is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4 (1989). Although some of the Protestants questioned portions of the balance sheet presented by the Petitioner and raised some concerns about its financial stability, White Glove has the necessary resources to provide the



service proposed in the Petition. Irrespective of the exact value of the transportation equipment White Glove operates, the company has a significant net worth and last year made a significant profit. See Finding 10, supra. It is true that White Glove, in the past, did have some federal tax liabilities.

It has, however, liquidated all of its past tax indebtedness. There is no evidence in the record of past transportation violations or citations against

White Glove. Its equipment is regularly maintained and kept in appropriate working order. The Administrative Law Judge therefore concludes that the Petitioner is fit and able to provide the proposed extended regular route service stated in the Petition.

Minn. Stat. 221.071, subd. 1 (1990) requires that the Petitioner establish that the public convenience and necessity require granting all or a portion of the Petition. The analysis to be used under Minn. Stat. 221.071,

subd. 1. (1990), was summarized by the predecessor to the Transportation Regulation Board in GWNCO, PC 113/A-81-1107, Order No. 1, October 26, 1982. See Pettitton-of-American Freight-systems, inc., 380 N.W.2d 192, 197 (Minn. App. 1986); Hyman Freightways Inc., 488 N.W.2d 503 (Minn. App. 1992). See also, New Ulm Freightlines inc., IRCC 649/A-75-24, April 24, 1979.

There is no argument that existing service along the route from Rochester through Austin, Albert Lea, Owatonna, Faribault and the Minneapolis-St. Paul International Airport is inadequate. See Quinn Distributing Co. v. Quast TrAnsfer- Inc., 288 Minn. 442, 181 N.W.2d 696 (1970); Monson Dray Line v- Murphy Motor Freightlines, 259 Minn. 382, 107 N.W.2d 850 (1961).

The thrust of the "need" testimony of the Petitioner was that his service to be provided in smaller luxury equipment would more particularly meet the needs of business travelers, the elderly and the handicapped. Business travelers and high level potential employees of businesses and public institutions may require transportation between the cities in question and the Minneapolis-St. Paul International Airport in more commodious equipment than is afforded by a public coach service. Moreover, the smaller luxury equipment and vans have access to the airport that is not shared by larger coach equipment. Coaches must park to one side of the airport terminal at the lower level. There is no evidence in the record that either skycaps or bus drivers assist passengers with bringing their luggage from the bus parking area to the upper level ticketing area of the airport. Likewise, there is no evidence in the record that assistance is available to bring the luggage from the baggage claim area to the buses for departures from the airport. This extra assistance and shorter walking distance is most important for the elderly and the handicapped. The Administrative Law Judge finds that the additional

service that White Glove proposes to offer by using smaller, luxury equipment is a substantial benefit to the public, currently not available from competing carriers. *American Freight Systems, Inc*, 380 N.W.2d 192 (Minn. App. 1986); *Quinn Distributing Co. v. Quast Transfer- Inc.*, supra.

The Administrative Law Judge has found that the Petitioner has not shown a need for such additional service at the Rochester Airport or for the city of Rochester. There is no evidence in the record that passengers at the Rochester Airport have difficulties similar to those experienced by passengers at the Minneapolis-St. Paul International Airport. The difference in size of the airports makes that unlikely. Moreover, Protestant, Rochester Transportation Systems, Inc. currently provides appropriate service from the airport to the city of Rochester. As regards travel between Rochester and the

Minneapolis-St. Paul International Airport, service is currently provided by Protestant Rochester Express Limousine Service. That is a direct service from the city of Rochester to the Minneapolis-St. Paul International Airport terminal, with no intermediate stops. A more direct service to the Minneapolis-St. Paul International Airport could not be imagined. Rochester Express Limousine Service also is limited to using smaller equipment, so that its passengers could receive the same access to airport facilities and driver assistance that White Glove indicates it will offer. The Administrative Law Judge does not believe, therefore, that the Petitioner has shown a need for additional service at the Rochester Airport or from Rochester to the Minneapolis-St. Paul International Airport. The existing Protestants adequately satisfy and requirements for service demanded by the public convenience and necessity.

The Administrative Law Judge also finds that the Petitioner has not established a need for such additional service at either Faribault or the Mall of America, a/k/a the Mega Mall. No witness testified either directly or indirectly about the existence of any such need.

The Protestants argue that the testimony supporting the existence of need is both general and limited in amount. The Administrative Law Judge believes it would be practically impossible to cause large numbers of prospective airport passengers to provide testimony. In this respect, the situation is like that encountered when establishing a need for additional household goods moving authority. In *Five Star-Trucking v, Minnesota Transportation Regulation Board*, 370 N.W.2d 666, 670-71 (Minn. App. 1985), the Court recognized that such need may be sporadic and intermittent. In such circumstances testimony regarding need from persons other than actual customers may be crucial. *Five Star*, 370 N.W.2d at 671.

Regarding service along the Highways I-90 and I-35 corridor, the Administrative Law Judge finds that the service benefits previously described would be a significant improvement over existing service offered. The only Protestant providing a service from Austin, Albert Lea and Owatonna to the Minneapolis-St. Paul International Airport and return is Protestant Jefferson Lines. Given the differences in the types of equipment used and differences in fares charged, the Administrative Law Judge does not find that Jefferson Lines and White Glove are competing for the same customers. It could be argued, however, that any loss of ridership between the towns mentioned and the Minneapolis-St. Paul International Airport must of necessity come at the expense of Jefferson. If White Glove were not providing temporary service or if it did not obtain regular route authority, one could conclude that Jefferson Lines would carry those passengers. At the hearing, however, witnesses testified that they used private automobiles to transport persons to the Minneapolis-St. Paul International Airport rather than use the public bus in many situations, particular those involving dignitaries, and high level business executives.

The Administrative Law Judge does not believe that the White Glove

service will have a substantial negative impact on Jefferson. It is true that

Jefferson is in poor financial condition in the state of Minnesota. This is not, however, the result of competition on the lines in question. It is a result of the general overall economy and fewer persons using public bus transport. The witness from Jefferson lines merely stated in a general way the alarming financial condition of the company. He did not provide ridership

figures on the routes in question or their profitability. The Administrative

Law Judge concludes that a grant of authority to White Glove to serve the route between Austin and the Minneapolis-St. Paul International Airport would have only negligible negative impact on Protestant Jefferson Lines.

The Administrative Law Judge has recommended that the grant of regular route authority be limited to providing service in luxury sedans, limousines, and vans with a passenger capacity of not more than 12 persons. This restriction is proposed because the only need demonstrated by the Petitioner relates to the provision of service in such equipment. It is the type and size of the equipment to be used that establishes the need. The Administrative Law Judge, therefore, believes it appropriate to limit the grant of additional authority given to providing service in such equipment.

The Protestants argue that the service Petitioner proposed to provide is not, in fact, a regular route service. This argument is made because the Petitioner, while operating under temporary authority, has required an advance registration of 24 hours for passengers. If at least one advance reservation is not made along the route, all or a portion of a particular trip may not occur. There is no evidence in the record of how often a trip has not been undertaken because of a lack of advance reservations. White Glove also apparently operates its service between Winona and Rochester on a similar reservation system.

One of the distinguishing characteristics of regular route service is that service is provided according to a fixed schedule. Protestants argue that the service to be provided by White Glove is essentially an "on-call" service and, hence, not within the definition of regular route service contained in Minn. Stat. 221.011, subd. 9 (1990): See also Minn. Stat. 221.011, subd. 11 (1990). The governing characteristic of operating on a fixed schedule, as opposed to "on-call" service is whether there is a pattern of departures and arrivals which the public comes to know and rely upon for its transportation needs. Application\_of\_Wendell Moore (unpublished), slip op. at 3-4, (Minn. Railroad & Warehouse Commission) August 14, 1961; Murphy Motor Freight Lines, -Inc. y.-Hyman-Freightways- Inc., 0295-BT, November 20, 1972; Minnesota Department of Public Service v, New-Ulm-Transfer, Inc,, C-BT-IRCC & LS 31677, CC & LS 28454-1 (Minnesota Public Service Commission), April 14, 1976 Quast\_TrAnsfer, Inc.\_v.. Minnesota Transportation Regulation Board, 428 N.W.2d 462 (Minn. App. 1988); D & A Truck Line, RRCC 515V IRCC 6955/C-89-54, 1991 WL 80680 (Minn. App. 1991) (unpublished).

The Administrative Law Judge believes that having the regular schedules published by the Petitioner makes the service a regular route service, even if a particular trip is not made because of a lack of reservations. The schedule is fixed in that one cannot arrange the time of the pickup as one could with an "on-call" service. If service is to be undertaken, it must occur according to the time schedule of the Petitioner. The customer can rely on the

availability of the Petitioner's service according to the fixed schedule, if that customer or another customer makes a reservation. Each customer, then, has the ability, by making a reservation, to require the transportation service to occur according to the fixed schedule of the Petitioner. This is, in reality, no different than requiring a person who wishes a regular route pick up to contact the carrier's dispatch facility to request that the carrier stop for a pick up.

Requiring a reservation is also reasonable in the context of small luxury equipment that is only likely to be used by a distinct segment of the travelling public. Almost all patrons will be traveling in conjunction with airline trips. Most customers plan airline trips well in advance according to known arrival and departure times. Under such circumstances, it is not unreasonable to require advance reservations for the transportation service.

If the Board disagrees with the conclusion of the Administrative Law Judge that the service to be offered by White Glove with advanced reservations is a regular route service, the Petitioner has stated that it would run all trips irrespective of reservations, if required to do so by the Transportation Regulation Board. Therefore, the fact that the Petitioner's interpretation of Minn. Stat. 221.011, subd. 9 and subd 11 (1990), differs from the position of the Protestants does not require a rejection of the request for additional authority. If the Board disagrees with the conclusion of the Administrative Law Judge relating to the requirement of reservations, it should clearly specify in its order that all trips must be completed irrespective of advance reservations.

Protestants also argue that the service offered by White Glove meets the definition of "personal transportation service", as that term is defined in Minn. Stat. 221.011, subd. 34 (1992). The Administrative Law Judge does not believe that the service offered by White Glove is in fact a "personal transportation service". A personal transportation service may not be provided over a regular route and it must involve a charge of more than a taxi cab fare for a comparable trip. Neither of the conditions mentioned would be true of the service to be provided by White Glove.

The Administrative Law Judge has recommended to the Board that it authorize incidental charter rights under Minn. Stat. 221.051 (1990), from the counties of Freeborn, Mower, Steele, Rice, Dakota, Scott and Hennepin to all points in Minnesota and return. The Board does not have discretion in granting incidental charter rights to regular route carriers of passengers. Minn. Stat. 221.051 (1990). It may, however, impose reasonable terms and conditions on the exercise of such authority. The Administrative Law Judge believes that a reasonable term or condition to be imposed on the grant of incidental charter rights under Minn. Stat. 221.051 (1990), would limit White Glove to providing such service in luxury sedans, limousines and vans with a capacity of not more than 12 passengers per vehicle. This is the only kind of equipment that White Glove operates. The need it has demonstrated for regular route service has also been limited to that kind of equipment. Most importantly, all of the business experience and expertise of the Petitioner is related to the operation of smaller, luxury equipment. Under such circumstances it is reasonable to limit the incidental charter authority granted pursuant to Minn. Stat. 221.051 (1990), to operations in luxury sedans, limousines and vans with a passenger capacity of not more than 12 persons.

B.D.C.

-15-