



By application filed on July 10, 1963, D. C. Transit System, Inc., (D.C.) ("Transit"), seeks authority to acquire control, through stock ownership, of the Washington, Virginia and Maryland Coach Company, Inc., ("W. V. & M."), pursuant to Section 12, Article XII, Title II of the Compact<sup>1</sup>. The application seeks: (1) authority to acquire from W. George Faraco, twenty-seven thousand, seven hundred twenty (27,720) shares of the thirty-five thousand, three hundred (35,300) shares of the common stock of W. V. & M. now issued and outstanding; and (2) authority to issue forty-eight (48) promissory notes, each in the principal sum of \$20,833.33, bearing interest at the rate of 4½% per annum and maturing serially at three-month intervals.

W. George Faraco, in an agreement to sell the twenty-seven thousand, seven hundred twenty (27,720) shares of common stock to Transit, dated July 5, 1963, represents and warrants

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<sup>1/</sup> "12(a). It shall be unlawful, without approval of the Commission in accordance with this section --

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(2) for any carrier which operates in the Metropolitan District or any person controlling, controlled by, or under common control with, such a carrier (i) to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any carrier which operates in such Metropolitan District, or (ii) to acquire control, through ownership of its stock or otherwise, of any carrier which operates in such Metropolitan District."

that he has, or will have, full legal right and power to sell and deliver these shares to Transit, free and clear of all claims. The specific terms and conditions upon which the transaction is based is contained in an agreement between Mr. Faraco and Transit, which agreement was made a part of the record.

Pursuant to notice duly given, a public hearing was held on the application on August 14, 1963, before the Commission. Mr. Parker C. Peterman, Vice President and Director of Transit, testified for Transit in support of the application. Mr. Charles E. Hammond, Executive Assistant to the Public Utilities Commission (an advisory body of the Arlington County Board) testified on behalf of Arlington County. The participation of the other parties of record was limited to cross examination. The record in this case contains one hundred fifty-nine (159) pages of testimony and four (4) exhibits. The Commission has the benefit of briefs and reply briefs of the parties, which have all been filed.

Transit is a wholly-owned subsidiary of D. C. Transit System, Inc., a Delaware corporation. It is the major local transit operator in the Metropolitan District. Its operating rights and routes are a matter of record with this Commission.

W. V. & M. Coach Company likewise has its operating rights and routes on file with this Commission. Its operations

are mainly in the Virginia area contiguous to Washington, D. C., but some of its lines overlap those of D. C. Transit, within the District of Columbia.

Applicant contends that the proposed transaction will enable Transit to furnish better service to the riding public through coordination of schedules and transfer points. Transit was not in a position to produce any detailed plans in this regard. Applicant pointed out, however, that any changes in schedules and transfer points are dependent on the approval of this Commission.

The Arlington County Board was primarily concerned with the maintenance of high service standards as they affect the transit riders of Arlington County. The Board expressed concern that the profits generated by W. V. & M. might be used to pay off the purchase price to the detriment of adequate service standards; that the financial position of the Company might be such as to seriously interfere with the maintenance of a modern fleet of buses. The Board contended that the result in effect might be that "the maintenance of a reasonable fare structure" would be jeopardized. It was the position of the Arlington County Board that Transit should have more clearly delineated its method of financing and that inadequate proof had been shown that the acquisition was in the public interest.

The Board further pointed out that an instrument of record in the Arlington County Court House indicates that Mr. Faraco's stock is not presently free and clear of encumbrances.

Mr. Steffey, by way of cross examination, expressed concern that there might be a deterioration of service and higher fares resulting from the method of financing.

Protestant, The Gray Line, Inc., contended that the approval of the application may result in the reactivation of alleged dormant operating authority held by W. V. & M. Coach Company, viz., special trips to various race tracks within the Metropolitan District. It contends that new control through stock purchase is comparable to new control by transfer or merger, and, while the present organization could reactivate these rights, the Commission should not allow such rights to be reactivated by a new owner.

Local Divisions 689 and 1079 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO, are the collective bargaining representatives of certain classified personnel employed by D. C. Transit System, Inc., and W. V. & M. Coach Company, respectively. They ask that this Commission impose conditions with any approval of acquisition,

to protect employees of either carrier who may be adversely affected by such acquisition.

There were four main facets to this case: (1) financial; (2) operational; (3) employee relations; and (4) status of alleged dormant operating rights.

#### FINDINGS OF FACT

(1) **Financial.** The Commission finds that the basic transaction to be ruled on here is an agreement by Mr. Faraco to sell stock to Transit. As to the promises of delivery made by Mr. Faraco, this is a matter between him and his vendee. Of importance in this case is the fact that we are concerned with a sale of stock, an acquisition of control by Transit, and the retention by W. V. & M. Coach Company of its corporate identity.

As to the price paid for the stock, the Commission finds that the proper measure of value is not "book value" but "going-concern value", which encompasses the real worth of an operating concern by recognizing the operating value (as opposed to book cost less depreciation) of equipment and the basic values inherent in franchises and operating rights. The Commission is aware of the fact that the price paid is merely an investment by D. C. Transit's investors and remains isolated as an investor cost. For rate purposes, the original cost of W. V. & M.'s equip-

ment at the time it was first devoted to public use remains unchanged.

As for the manner in which Transit is to raise the funds to pay its debt to Mr. W. George Faraco, the Commission recognizes that this is a management problem. It is within the discretion of Transit's finance officers to control this in keeping with Transit's other cash needs and financial status. This Commission has the authority to prevent financial abuses, whether it be in dividend policies or management of funds, should the occasion arise, under Sections 3 and 13, Article XII, Title II, of the Compact.

The Commission finds that the "employment contract" between Transit and Faraco is an additional cost of the stock being purchased by Transit. The ten-year contract at \$7,000 per year is obviously not compensation for services because of the wording: "...shall devote...so much of your time as you deem necessary". Also, \$7,000 per year is hardly inducement enough for an individual in Mr. Faraco's position to agree to a non-compete status.

The Commission has taken judicial note of a sale by Mr. W. George Faraco of his residence, Walnut Hill. The purchaser is a subsidiary of D. C. Transit System, Inc. (Delaware).

(2) Operational. The Commission finds that the acquisition of control in this instance augurs well for a more unified and efficient transportation service in the Northern Virginia area and the portions of D. C. contiguous thereto. The joining of forces by W. V. & M. and Transit may permit better coordination of schedules and routes and transfer points between the two operating units. The Commission is fully cognizant of the potentialities for better service in this situation, and likewise knows the intricate and detailed problems involved in the basic planning. At a future time, after thorough and painstaking work, any revisions in service must come before this Commission for its consideration and, if in the public interest, its approval.

The time for analysis of service and related matters is when changes are properly brought before this Commission.

(3) Employee Relations. The Commission finds that the protective conditions proposed by Intervenors Local Divisions 689 and 1079 are properly subject to the Collective Bargaining Contracts between management and labor. Under the present application, each of the two companies retains its corporate identity, and the Bargaining Contracts remain in effect. Each provides for arbitration of questions and disputes.

(4) Alleged Dormant Operating Rights. The Gray Line, Inc., protestant, has requested that the approval be denied, or in the alternative, that the approval be conditioned upon the revocation of the race track authority held by W. V. & M. that was previously issued to it by the Interstate Commerce Commission. The revocation request is premised on the argument that the rights have become dormant and should not be permitted to be revived by a "new owner" (new controlling stockholder) capable of supplying new financial resources to the authority holder. Transit counters this argument with the assertion that this is not the proper proceeding in which to raise this issue. We need not decide this legal issue for the reason that, although Protestant argues that the rights are dormant, the record is devoid of even a scintilla of proof of dormancy. Without facts showing dormant rights there can be no legal question before us for decision.

#### CONCLUSIONS OF LAW

In accordance with the Findings of Fact set out above, the Commission concludes that the Application of D. C. Transit System, Inc. (D.C.), to acquire control, through purchase of stock, of the W. V. & M. Coach Company, Inc., is consistent with the public interest.

The Commission also concludes that the granting of authority to D. C. Transit System, Inc. (D.C.), to issue forty-eight promissory notes, maturing serially over a twelve-year period, in payment of the purchase of stock, is consistent with the public interest.

ORDER

THEREFORE, IT IS ORDERED:

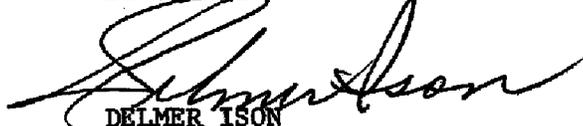
1. That the application of D. C. Transit System, Inc. (D.C.), for approval to acquire control of Washington, Virginia and Maryland Coach Company, Inc., be, and it is hereby, granted, effective thirty (30) days from the date of this Order, or upon the approval of other Agencies exercising jurisdiction over this matter, whichever last occurs.
2. That the authority sought by D. C. Transit System, Inc. (D.C.), to issue forty-eight (48) promissory notes, payable to W. George Faraco, or his order, be granted, effective the date of this Order.
3. That D. C. Transit System, Inc. (D.C.), debit Account 405-B, Investments in Affiliated Companies-Stock, in the amount of \$1,570,000, to reflect the known cost of such investment, crediting pertinent Liability and Suspense Accounts.

4. That escrow fees and all other direct costs incurred by D. C. Transit System, Inc. (D.C.), in connection with this transaction be likewise charged to Account 405-B.

5. That plans for allocating joint operating costs and overheads between D. C. Transit System, Inc. (D.C.), and Washington, Virginia and Maryland Coach Company, Inc., be first submitted to Washington Metropolitan Area Transit Commission for its approval.

6. That the Commission is of the opinion from the evidence and all the facts of record that the Application of D. C. Transit System, Inc., for approval of acquisition of control of Washington, Virginia and Maryland Coach Company, Inc., through stock ownership, is in the public interest.

BY DIRECTION OF THE COMMISSION:

  
DELMER ISON  
Executive Director