

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 730

IN THE MATTER OF:

Served August 11, 1967

Application of Warren D.)
McMichael for Certificate)
of Public Convenience and)
Necessity.)

Application No. 432

Docket No. 146

APPEARANCES:

WARREN D. McMICHAEL, pro se, applicant.

S. HARRISON KAHN, Attorney for A. B. & W. Transit Company
and Baltimore-Solomons Bus Lines, protestant.

STANLEY H. KAMEROW, Attorney for WMA Transit Company,
protestant.

Warren D. McMichael filed an application for a certificate of public convenience and necessity to authorize the transportation of passengers, and their baggage, in charter operations from points within Prince Georges County, Maryland, to points within the District of Columbia, Montgomery and Prince Georges Counties, Maryland, and portions of Virginia located in the Metropolitan District, and return, on irregular routes, utilizing school-bus type vehicles.

Notice of the application and hearing thereon was given as required. The matter was heard before an examiner on June 6, 1967. Formal protests to the application were filed by WMA Transit Company (WMA), A. B. & W. Transit Company (A. B. & W.), and the Baltimore-Solomons Bus Lines, Inc.

The transcript of the record includes 69 pages of testimony and four exhibits. The applicant presented his own testimony and that of two witnesses. WMA presented the testimony of two of its officers. Neither A. B. & W. nor Baltimore-Solomons offered any testimony or exhibits.

The application was amended at the hearing, whereby the origin territory was restricted to that part of Prince Georges County, Maryland, south of the John Hanson Highway. The application was further amended to limit the scope of the authority requested to the transportation for non-profit charitable organizations that sponsor children's recreational activities, such as school- and church-affiliated Boy Scout and teenage clubs, fire departments, majorette groups and similar non-profit charitable organizations furnishing or sponsoring athletic events, picnics, parades and related events.

Upon the evidence adduced, it appears that Mr. McMichael purchased a fleet of three school buses in March, 1967, and has been engaged since then in transporting children to and from school, pursuant to a contract with the St. Mary's School District in Maryland. The vehicles are ten years old, and only two are now in operation. The applicant stated that he is employed at Andrews Air Force Base, Prince Georges County, Maryland.

He proposes to operate his service with the use of part-time drivers, including himself. His wife would operate an answering service from his home, taking bookings and arranging the details of the operation.

In analyzing the applicant's evidence as to the need for the proposed transportation, we find he has presented us with contradictions. He asserts, on the one hand, that his service is needed by a limited class of the public because public transportation is not available to them at fares they can afford, and that his rates will be substantially lower than those charged by the protestant carriers and will be within the economic means of that limited class.

On the other hand, Mr. McMichael repeatedly asserted that he had no knowledge of the level of fares charged by the protestants for similar service. He made no attempt to procure the tariffs of the protestants*, from which he could have given his version of the comparability of the fares available and proposed.

Two other witnesses testified in support of the application. Mrs. Shepherd, the director of the Silver Hill Volunteer Fire Department Majorette Corps, stated that she had inquired into the services offered by WMA and the Greyhound Corporation for the purpose of transporting groups of 60 to 130 girls to fire department parades in and around Prince Georges County, Maryland, but had found that their rates exceeded the means of the youngsters. This factor, she claimed, required her groups to utilize car pool arrangements by the parents of her majorettes. She further stated that the applicant had informed her that he would charge a rate that the groups could afford, although no specific rates were discussed.

The second witness, Mr. Alspach, is the father of a majorette in Mrs. Shepherd's corps. He stated that bus transportation should be available at a small rate. He had no knowledge, however, of the rates of the protesting carriers or the proposed rates of the applicant.

WMA presented the testimony and exhibits of two company officials. They stated that their company is presently engaged in the type of transportation proposed by the applicant, as well as regular route, special and charter operations. They presented an exhibit showing a fleet of 132 buses, varying in type from school buses to new, air-conditioned, two-way radio equipped city transit vehicles. The WMA evidence further reveals that for the first quarter of 1967, it had a net operating loss of \$79,000 in regular route operation, a net operating income of \$53,000 from charter and contract work, and a resulting system net operating loss of \$26,000. WMA's witnesses stated that, in their opinion, the grant of the application would adversely affect the company, and that revenue received from charter work serves as an offset to the fixed costs of the carrier.

* Even though they were on file in the office of the Commission.

Based upon the evidence adduced, the Commission finds that the existing carrier service is and will be adequate to meet the requirements of the public convenience and necessity. In fact, aside from the claim pertaining to rates, the record is devoid of any showing of a need for the proposed transportation.

There is, however, the remaining issue of the rates. The decision of the Supreme Court in Interstate Commerce Commission v. J-T Transport Company, 368 U.S. 81, 82 S. Ct. 204, establishes the principle that in the field of transportation, rates may be taken into account in a certificate proceeding in determining the need for the service where the public -- or a section of it -- is priced out of the protestant's services.

While the applicant raises this claim, he has failed to bare the facts to substantiate his allegation. Normally, such a failure would warrant dismissal of the application.

We are not unmindful, however, of our statutory responsibility to affirmatively insure and improve transportation facilities in the Metropolitan District. The charter tariff of the principal protestant, WMA, is readily available and subject to official notice. Therefore, we shall take such notice and make appropriate comparisons of the fares stated therein with the proposed fares set forth in the application. The Commission finds that on a mileage basis, applicant's proposed rates are higher than those of WMA. If computed on an hourly basis, for the first 4 hours, the applicant's rate is higher; for 5 or more hours, WMA's rate is higher. Thus the applicant's claim is not just unproved, but actually contrary -- in most instances -- to the facts.

Based upon the evidence adduced and our findings thereon, the Commission concludes that the proposed transportation is not and will not be required by the public convenience and necessity, and that the application should be denied.

THEREFORE, IT IS ORDERED that the application of Warren D. McMichael for a certificate of public convenience and necessity be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:


RUSSELL W. CUNNINGHAM
Acting Executive Director