

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 814

IN THE MATTER OF:

Served May 3, 1968

Application of D. C. Transit)
System, Inc., for Temporary) Application No. 435
Authority to Operate a Mall)
Shuttle Service.

On April 6, 1967, D. C. Transit System, Inc. filed an application for temporary authority to operate a tour shuttle service on the Mall of the District of Columbia. A corresponding application (No. 432) for permanent authority was filed on May 8, 1967. A similar application for permanent authority to operate on the Mall was filed by the Washington Sightseeing Company on July 11, 1967.

At the time these applications were filed, the entire matter of a Mall Shuttle service was the subject of litigation involving this Commission, the Department of Interior, a company chosen by that Department as its concessionaire to operate a Mall Shuttle service, and a number of other companies presently operating in the Washington Metropolitan District. The question at issue in that litigation was whether the Interior Department's concessionaire is required to obtain a certificate of convenience and necessity from this Commission as a prerequisite to conducting operations on the Mall. On June 30, 1967, the U. S. Court of Appeals ruled that such a certificate was necessary. A petition of certiorari seeking review of this ruling was filed with the Supreme Court on December 31, 1967 and certiorari was granted on March 4, 1968. Hence, the litigation concerning Mall Shuttle service is still in progress at this time.

The Commission had previously informed D. C. Transit, on May 5, 1967, that it had determined "not to take any action upon this application at the present time." It was our feeling that, in view of the litigation then in progress on this entire matter, it would be best to withhold action on the applications of D. C. Transit and others until the courts had spoken finally on the

applicable law. We were reinforced in this conclusion by the fact that on May 31, 1967, the Secretary of the Interior had formally opposed this application, stating that permission to operate the proposed service over park roads in the Mall "...has been, and is, expressly refused..." It was clear, therefore, that any action by us on these applications would not result in actually providing bus service but would merely be another element in an ongoing litigation.

The matter remained in this posture until March 29, 1968, when applicant filed a motion requesting that the application for temporary authority be assigned for hearing. Before the Commission could take any action whatever on this motion for immediate hearing, D. C. Transit filed an application for "reconsideration of our decision not to assign the matter for hearing." This put the matter in the peculiar posture of seeking reconsideration of an order which has never been entered. An even stranger turn was taken when D. C. Transit went to court to appeal this non-existent order.

Meanwhile, the Commission, in response to D. C. Transit's March 29 motion, was attempting to reassess the current situation and determine whether further action on the applications of D. C. Transit and others were appropriate. We learned on May 1, 1968, by a letter from the Director of the National Park Service that the Park Service plans to furnish Mall Shuttle service directly by its own employees this summer. This service would be exempt from the jurisdiction of this Commission under the provisions of Article XII, Section 1(a)(2) of the Compact. The Park Service letter reiterated the position of the Park Service that it would not grant permission to any private operator to enable it to provide similar service on the Mall.

In light of these facts, it is clear that there is no immediate and urgent need for D. C. Transit to provide the service for which it seeks temporary authority. Further, it is clear that a grant of such authority to D. C. Transit would not result in the actual provision of service by it but would merely lead to further litigation between D. C. Transit, the Interior Department, and, possibly, this Commission.

Accordingly, it is clear to us that D. C. Transit's motion for immediate hearing on its application for temporary authority,

as well as the application itself, should be denied. The application for temporary authority could, of course, be renewed at some future date if conditions so warranted. We are also entering an order today (Order No. 815), disposing of D. C. Transit's motion for hearing on its application for permanent authority.

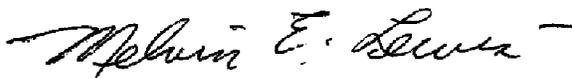
THEREFORE, IT IS ORDERED:

1. That the motion of D. C. Transit System, Inc., for immediate hearing on Application No. 435 be, and it is hereby, denied.

2. That the application filed on April 11, 1968, by D. C. Transit System, Inc., seeking "reconsideration" of an order which was never entered be dismissed.

3. That the Application No. 435 of D. C. Transit System, Inc., seeking temporary authority be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS
Executive Director