

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1051

IN THE MATTER OF:

Served June 19, 1970

Application of WMA Transit Company )  
for Temporary Authority to Establish )  
Routes X-1 and X-3. )

Application No. 609

Docket No. 211

In Order No. 1044, issued May 27, 1970, we granted inter alia temporary 180-day authority to the WMA Transit Company (WMA) to operate regular route rush-hour service between Laurel, Maryland, via Maryland Route 197 and the Baltimore Washington Parkway, and Farragut Square in the District of Columbia. Greyhound Lines, Inc. (Greyhound) and Atwood's Transport Lines, Inc. (Atwood's), who opposed the granting of that authority, filed, on June 18, 1970, a petition for reconsideration of Order No. 1044, and requested that we reverse our action with respect to the described WMA service.

Petitioners assert numerous errors in our order and have presented voluminous argument in support of their contentions. Summarized, their position is as follows: (1) requisite findings were not made regarding urgent and immediate need for the service and such findings could not have been made because other carriers were providing the service WMA was seeking to perform; (2) none of the witnesses, who were apartment house managers, who testified in support of the WMA application, had a personal need for the service, nor had any of them ever requested service over the route involved from either Trailways or Greyhound, both of whom were certificated to provide the service; and that no showing was made that the WMA service is required; (3) none of the witnesses indicated any dissatisfaction with the present services provided by Greyhound and Trailways; (4) the Commission failed to take into account the competitive impact of a new service by WMA on Greyhound and Trailways; and (5) the record shows that there is not sufficient traffic to support additional service over the route involved by a "third" carrier between the terminal points involved.

We will deny the petition for reconsideration.

Before WMA filed its application to provide service from Laurel over Route 197, neither Greyhound nor Trailways was exercising their ICC certificate authority to provide that service. Only as a reaction

to the WMA application did Greyhound inaugurate its service on Route 197. Greyhound admits that a need for service on this route existed but that it was totally unaware of that need until its attention was brought to it by the filing of the WMA application. At that point, Greyhound's petition asserts that it "determined that inasmuch as it possesses the certificate authorizing service between Laurel and Washington via Maryland Highway 197 and the Baltimore-Washington Parkway and must of necessity protect and defend its present Laurel-Washington operations from any unwarranted and destructive duplication thereof, it immediately made arrangements to commence operating two round-trip schedules daily via that route." Thus it is apparent that Greyhound's primary concern in the entire episode has been to preserve its certificate rights and its concern has not been primarily to seek out areas of need and to meet those needs with service. Petitioners argue that the residents of Laurel should have sought out Greyhound and Trailways, but we consider that the carrier who is entrusted with a certificate of public convenience and necessity cannot meet its responsibilities by assuming a passive attitude and expect individual members of the public to petition for service and bear the burden of showing need for service.

Furthermore, we do not consider that the Compact should be so narrowly read as to preclude us from authorizing a service in deference to a carrier which has not itself discerned the need and is providing the service only as a reaction to the application of a carrier who first saw the potential, and primarily to protect dormant certificate authority. We cannot agree that service provided on that basis is service by a carrier truly capable of meeting the need. Indeed, neither this Commission nor the riding public in Laurel has any real assurance that Greyhound would continue this service or improve it if WMA were taken off the route as Greyhound requests.

In the case of WMA, we have a carrier certificated by this Commission providing local mass transit services. It is a carrier which we are able to require to provide added service and can thus assure adequate bus transportation to Laurel commuters directly to places other than the downtown Greyhound and Trailways terminals.

We should make our theory clear. We may grant temporary authority when there is "and immediate and urgent need" for service. We believe that this record shows, and indeed we believe Greyhound and its fellow protestants admit that there is a clear need for service from Laurel along Route 197 to Washington. Greyhound suggests that we may not act because that need is now being met by it. However, it candidly admits that it is meeting that need only to protect its operating rights. We do not consider that provision of service under those circumstances precludes us from action under Section 4(d)(3). We

have the power to have that need met by a willing carrier subject to our jurisdiction.

Moreover, our grant of authority to WMA was a temporary grant. The temporary period of operation by WMA will provide some actual experience to test what has so far only been argued and conjectured. If Greyhound and others are providing adequate service as Petitioners allege, little diversion, if any, by WMA from those carriers is likely to occur, given the fact that the fares of those other carriers are substantially lower than that of WMA. If the traffic is such that WMA decides to seek permanent authority, we will be able to make a more precise judgment as to the number of carriers that should serve this particular market which will in turn have a substantial bearing on whether permanent authority will be granted.

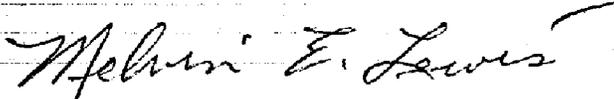
Finally, we should like to add a word with respect to the regulatory philosophy that we have applied in this situation. Petitioners make much of their certificate rights and have charged that WMA's only interest in seeking to provide this service is to gain an additional advantage not apparent on the face of its application in order to divert traffic from Greyhound and Trailways. We recognize the importance to carriers of their certificate rights and we accept those concerns as a matter which should be given consideration by us. However, we believe that in such situations our overriding responsibility is to protect the best interests of the riding public. If their interests are served, as they are here, by a grant of temporary authority, that fact is of greater importance than the alleged threat to the operating rights of some other carrier.

In our judgment, based on what was presented in this case, the need for the service in question is demonstrated and WMA should be given the opportunity to meet it.

THEREFORE, IT IS ORDERED:

That the Petition for Reconsideration of Order No. 1044 of Greyhound Lines, Inc., and Atwood's Transport Lines, Inc., filed June 18, 1970, be and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



MELVIN E. LEWIS  
EXECUTIVE DIRECTOR

