

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1057

IN THE MATTER OF:

Served July 1, 1970

Application of D. C. Transit )  
System, Inc., for Authority )  
to Increase Fares. )

Application No. 613

Docket No. 216

On Friday, June 26, 1970, we issued our Order No. 1052 in the above-captioned proceeding. That order authorized certain fare increases for D. C. Transit including an increase in the intra-District of Columbia fare from 32 cents to 40 cents. The new fares were to become effective at 12:01 a.m. on Sunday, June 28, 1970.

We now have before us three petitions for reconsideration of that order filed by three separate groups: (1) the Government of the District of Columbia; (2) the Democratic Central Committee of the District of Columbia; and (3) a group whose identity is unspecified in the petition but whose petition is signed by attorneys named Edgar D. Cahn and Jean Camper Cahn.

A general comment on the nature of petitions for reconsideration might be appropriate at the outset. These pleadings serve a dual purpose. They can point out to the Commission some substantive error which the Commission has made in an order entered by it. The Commission can then actively reconsider the determinations made in the order in question on the basis of the new material brought before it. Petitions for reconsideration can, however, be regarded in other instances as a procedural step in perfecting appellate rights. The Compact states that decisions of the Commission can be appealed in the courts only by those who have filed petitions for reconsideration with the Commission. It further states that the petition must state specifically the errors claimed as grounds for reconsideration and that "no person shall in any court urge or rely on any ground not so set forth in such application." Compact, Article XII, Section 16. Thus, petitions for reconsideration often do not raise any issues which the Commission has not previously considered and discussed in the order in question. The purpose of such petitions is simply to identify the grounds on which the petitioner intends to rely in going to the courts.

The petitions here in question fall, for the most part, into the latter category. The issues raised are ones which have been presented to the Commission for its consideration prior to the issuance of Order No. 1052. They have been the subject of discussion in that order and in prior Commission rate orders.

I

THE CITY AND "CAHN" PETITIONS

1. The Effect of Section 6(a)(3) of the Compact

The petition filed by the Government of the District of Columbia and the "Cahn" petition (both of which are substantially identical in wording) both allege as error that the Commission did not give due consideration to the factors outlined in Section 6(a)(3) of Article XII of the Compact. That section reads as follows:

"In the exercise of its power to prescribe just and reasonable fares and regulations and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service."

The petitions merely set out the statutory standards and make a general allegation that we have failed to consider them. No attempt is made to state with specificity the way in which those standards, applied to the facts before us, make the action taken in Order No. 1052 improper. We will, nonetheless, take up the application of those standards to this case.

We did, in fact, give detailed consideration to the factors set out in Section 6(a)(3) before issuing Order No. 1052. However, we did not include any specific discussion of that fact in Order No. 1052 because we had discussed and analyzed the questions presented in great detail in Order No. 984, the last D. C. Transit rate order, issued just eight months ago. We there concluded that, given the facts and circumstances surrounding D. C. Transit, there was nothing in Section 6(a)(3) which would authorize us to deny a rate increase where the record clearly demonstrates that continued operation at present fares would fail even to cover operating expenses. In order to accommodate those persons who do not have our discussion of this point in Order No. 984 available to them, we will set out that entire discussion here, mutatis mutandis.

We know of nothing in either the Compact or the cases which would empower us to deny a rate increase when it has been shown as it has in this record, that the present fares will not even cover the company's operating expenses during the future annual period. The Compact explicitly requires not only that the company receive revenues sufficient to cover expenses but that it "be afforded the opportunity of earning such return as to make the carriers attractive investments to private investors." Compact, Article XII, Section 6(a)(4). Apart from this statutory provision, it is a basic principle of regulatory law that a utility may not be required to operate at a loss. To do so is to confiscate its property without due process of law. Bluefield Water Works and Improvements Co. v. West Virginia Public Service Commission, 262 U.S. 679, 690 (1923). These provisions of law are binding upon us and we have no right to ignore them.

It is suggested that we can somehow avoid the requirements of Section 6(a)(4) of the Compact because of the provisions of Section 6(a)(3).

We have carefully considered the provisions of Section 6(a)(3), quoted above, in this proceeding just as we have considered it in every past rate case. First, we think that this language must be read with Section 6(a)(4) to form a harmonious whole. Section 6(a)(4) imposes a flat, unequivocal obligation to cover expenses plus a fair return. There is nothing in Section 6(a)(3) which relieves us of that obligation on the basis of this record. Rather, it states that, in setting just and reasonable fares, we must give "due consideration" to certain factors.

Two of these factors themselves explicitly recognize the obligation to provide adequate revenues. Thus, we are to consider "the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service." Compact, Article XII, Section 6(a)(3). Our attention is thus specifically directed to the concept that we must provide revenues sufficient to enable the carrier to provide service. Operations at a loss will certainly not meet that standard.

It is suggested that this language somehow enables us to control the timing of an increase even though the evidence shows that loss operations will result. We see no merit in such a claim. For one thing, it must be borne in mind that if we deny this application, and the company wishes to seek another increase, it would have to file a new application in order to obtain an increase. All interested parties have full rights to participate in the new proceeding which would thus be started. These proceedings involve complex issues. Hence, a further period of 150 days, or five months, could well ensue before further action on fares was possible. Hence, losses could occur for a very substantial period if we accepted this theory. Such a result would not be consistent with the furnishing of service.

Moreover, even if we could control the timing of an increase on the basis of this language, it is questionable whether we should delay at this time. The company operated at a substantial loss in 1967 and at an even greater loss in 1968 and in 1969. Faced now with the fact that further losses would result if fares are not increased, it is difficult to accept the proposition that this is an appropriate time for delay, if that were within our power.

The next clause of Section 6(a)(3) directs our attention to "the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service." Here is a direct admonition to provide revenues sufficient to cover expenses. No management can provide satisfactory service for long if it is losing money on its operations.

Recognizing this, the thrust of the argument made under this language is that Transit's management is not honest, economical, and efficient and that if it were, the revenues under present fares would be sufficient. However, there are no facts of record to support these contentions. We have discussed certain management deficiencies in this opinion and we will direct that certain changes be made. But these problems relate only to improving the company's performance with respect to vehicle maintenance and scheduled service and neither our staff nor the protestants have presented facts indicating that the company's basic problems lie in inadequate management.

Indeed, it is crystal clear on this record that the financial problem of the company is due to a declining ridership trend and increasing labor costs. Much of the decline in ridership, it has been indicated, is due to conditions over which the company has no control whatever, namely, unrest in the city and the necessity for instituting a scrip system due to an enormous increase in bus robberies. The increasing labor costs stem from a cost-of-living clause in the labor contract which has had a heavy impact due to the steep inflation of recent years. We can find no basis in this record for saying that the need for additional revenues could be taken care of by a more honest, economical, and efficient management.

The third standard which Section 6(a)(3) requires us to consider is "the effect of rates upon the movement of traffic by the carrier. . .for which the rates are prescribed." It is pointed out that a fare increase causes a decrease in ridership, thus adversely affecting the "movement of traffic by the carrier." Hence, it is argued, application of this standard requires us to deny an increase. However, if this reasoning were valid, no increase in fares could ever be justified since they always cause some persons to stop riding buses. We believe, rather, that this standard is addressed to the proper design of a rate structure and that <sup>1/</sup> it inherently recognizes the need for revenues sufficient to cover expenses.

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<sup>1/</sup>Without such rates, there would eventually be no "movement of traffic" at all.

In this connection, it has been suggested that, under this standard, the company has been deficient in failing to give a discounted rate in the off-peak hours, thus increasing ridership. However, this contention overlooks the fact that this Commission has, in the recent past, considered the subject of discount fares, both as a general measure to increase ridership and as a desirable alternative for off-peak hours. See Orders Nos. 880 and 882.

For reasons fully discussed at pp. 15-18 of Order No. 880, issued October 18, 1968, we do not believe that a straight reduction in fares at all times, in the hope of increasing ridership, is a practicable solution to Transit's problems. There is no reasonable basis on which to expect an increase in ridership of sufficient magnitude that overall revenues would be increased.

As for fare reductions in off-peak hours, we considered that possibility in Order No. 882. It is an approach with some merit and we may yet take an opportunity to test it. However, our analysis of the conditions existing on this transit system at the time we considered the idea indicated that if such discounts were instituted, the peak-hour fare would have to be higher than it would with a straight fare applicable at all times. It further appeared that more people would be paying the peak-hour fare than the lower fare. In those circumstances, we judged that use of such a fare was not desirable. This is not to say that the matter should not be further considered as conditions change. If we were to have a basis for concluding that such a rate structure would be beneficial, we would try it out.<sup>27</sup> However, there is no basis in this record for concluding that such a structure would be desirable. In any event, it certainly cannot be said that the company's failure to institute such a system justified a denial of a fare increase at this time.

Under Section 6(a)(3) we must give due consideration, finally, "to the inherent advantages of transportation by such carriers" as Transit. Again, we find nothing in this standard which would justify this Commission in refusing to give Transit a rate structure which produces revenues sufficient to cover expenses. The inherent advantages of mass transit cannot be enjoyed long by anyone if the system is not allowed to be economically viable.

To sum up on the impact of Section 6(a)(3) of the Compact upon our consideration of the issues before us, we have pointed out the obligation imposed directly upon us by the unequivocal language of Section 6(a)(4) to provide revenues sufficient to cover expenses and provide a fair return. We then referred to the general principle of statutory construction that the various sections of a statute must be read and interpreted to form a harmonious whole. We then examined in detail each of the standards set out in Section 6(a)(3) and we find nothing in any of them which would justify us in overlooking the requirements of Section 6(a)(4) and making the company operate at a loss. We conclude, therefore, that in view of the facts of record here, we have no basis in the applicable law for

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<sup>27</sup>/We know that it has been tried in other cities and has not been considered a success.

adopting the city's suggestion that we refuse an increase because of the pendency before Congress of legislation providing for public ownership and interim subsidy.

The argument to the contrary comes down to this: Pointing to the standards of Section 6(a)(3) and to the recognized fact that rate increases lead to decreased ridership, it is argued that such increases should only be granted if there is no other reasonable alternative. This is a proposition with which we fully agree. In this case, as in all others, we would not grant an increase if there were a reasonable alternative course of action open to us.

## 2. Our Consideration of Issues Beyond the Proper Rate of Return

The City and Cahn petitions next allege as error that we have considered only the question of a reasonable rate of return without considering other factors relevant to the increase. We reject this allegation of error. We discussed in Order No. 1052, not only all the usual questions of financial analysis pertaining to a rate determination, but the entire range of broader questions relating to the increase. See Order No. 1052, pp. 25-29. The Vice Chairman expressed his own concern with these problems in a separate concurring opinion. See Appendix I. It should be noted that in that section we incorporated by reference the even more lengthy and detailed discussion of these problems set out at pages 24-32 of Order No. 984. We have discussed these same problems in other orders as well, see, e.g., Order No. 880, pp. 3-18. For convenience, those sections of the orders mentioned are appended hereto as Appendix II. This Commission is acutely aware of all the complex and terribly vexing problems which these rate increases raise. We have addressed ourselves to them repeatedly in our orders and every other forum available to us. We acted here only because there was no viable alternative available to us. In this connection, we have also appended to this order a statement made by the Commission Chairman upon the issuance of Order No. 1052 (see Appendix III) which expresses the serious concern which the Commission has with the issues beyond that of the proper rate of return for this company.

## 3. Rate of Return

The City and Cahn petitions next allege as error that, even if we should consider only the proper rate of return, "the rate of return which D. C. Transit has been receiving is just and reasonable in terms of its initial payment for the assets of Capital Transit Company and all subsequent contribution to capital." We discussed the determination of rate of return in great detail in Order No. 1052, pages 14-17. In addition, we incorporated by reference our rate of return discussion in two recent D. C. Transit rate orders, specifically Order No. 880, pages 23-26, and Order No. 984, pages 13-18. We will not repeat that entire discussion here. We believe that it fully justifies the rate of return determination we have made in this proceeding. We do note petitioners reference to the level of return in

relation to "its initial payment for the assets of Capital Transit Company and all subsequent contributions to capital." Petition, p. 2. Essentially, this is an attack on the return we have allowed on equity capital. The dollar return on equity allowed in Order No. 1052 is in the same general range as that allowed in all our recent Transit rate orders. In Order No. 684, for instance, we analyzed the return on equity in great detail. That ruling was affirmed by the court of appeals in Payne v. WMATC, 415 F2d 901, 913, (D.C. Cir. 1968), where the court said:

"We have carefully reviewed the record, and are satisfied that the Commission's findings and conclusions on the subject of rate of return are adequately supported by the evidence, and that the Commission has responsibly exercised its discretion in conformity with the standards enunciated in D. C. Transit System, Inc. v. WMATC, 350 F2d 753 (D.C. Cir. 1965), cert. denied 389 U.S. 847 (1967).

Finally, we note that the statement from the petition quoted above is somewhat misleading in light of the fact that Transit has not received any rate of return since the year 1966 -- its operations in each year since then having resulted in substantial losses.

#### 4. The School Fare

These were the points raised in common in the City and Cahn petitions. The City raises one additional point. They contend that in failing to raise the school fare, we were arbitrary and capricious. We must say that we find it somewhat startling that the City makes this particular argument. It is a particularly surprising charge in view of the fact that the City was a formal participant in the proceedings leading to the issuance of Order No. 1052, and never suggested that the school fare should be adjusted although it had every opportunity, and, if it wanted its position considered, the obligation to do so. The City knew months ago what the company was proposing. It certainly could easily have anticipated the implications of the company's proposals for the amounts for school fare subsidies. Yet, it never even raised this question until the filing of this petition.

Some historical background is appropriate here. The school fare for some years has been 10 cents. That fare clearly does not cover the cost of carrying school children. Since we are obligated under the Compact to set fares which permit the company to recover all of its costs, the net effect of a 10-cent fare with nothing more is to require the bus rider to subsidize the cost of transporting school children in the District of Columbia. This is clearly the responsibility of the community at large and in our judgment it was grossly unfair to impose this burden on the bus rider. Recognizing this fact, we strongly urged upon the Congress in 1968 that the schoolfare subsidy law be amended in order that D. C. Transit could receive such a subsidy, thus easing the burden on the bus riding public. Congress recognized the validity of this argument and

enacted Public Law 90-605 under which D. C. Transit is permitted to collect from the D. C. Government the difference between the school fare and lowest adult fare. Thus, a serious injustice to the bus riding public was eliminated.

Now the District of Columbia Government, while contending on the one hand that we should refuse to raise fares because of the serious burdens which such increases impose upon the residents of the District of Columbia, is simultaneously arguing that we should impose a further burden on a segment of that bus riding public by raising the school fare in order to save the District of Columbia from paying additional subsidies. We reject the District of Columbia contention.

In our judgment, the enactment of P.L. 90-605 was an indication by Congress that it was willing to provide the funds from public revenues to support the school fare at a 10-cent level. The fare was at that level when the law was amended to permit Transit to receive a subsidy. The Congress might have required some specific level for the school fare. It did not do so. In the absence of such an indication, we see no such obligation to raise school fares that our failure to do so could be termed arbitrary and capricious, particularly where the question was never raised during the hearing. In view of the present provisions of the school fare subsidy law, and the circumstances in which that law was enacted, we will not accept the suggestion of the District of Columbia Government that we impose the burden of a higher school fare on the bus riding school children and their parents.

## II

### THE PETITION OF THE DEMOCRATIC CENTRAL COMMITTEE OF THE DISTRICT OF COLUMBIA

We turn now to the petition of the Democratic Central Committee. They raise just one substantive point. This is the contention that we erred in acting upon the pending rate application while certain appeals from other Transit rate orders are pending in the courts,<sup>3/</sup> and while the Payne remand is before the Commission.<sup>4/</sup> This question was raised and considered by the Commission at the outset of the proceedings leading to Order No. 1052. One of the parties moved to dismiss the application on the ground that pending appeals made it inappropriate to act. We denied that motion. The argument ignores the specific provisions of the Compact. When an application for a rate increase is filed with us, we must act on it within 150 days, otherwise, the fares proposed go into effect. We can deny an application only on the basis of a hearing record. If that record contains facts which establish a present need for additional

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<sup>3/</sup> Appeals from Order No. 981 issued October 17, 1969, in response to the remand in Williams v. WMATC, 415 F2d 922 (D.C. Cir. 1968) are pending, as are other appeals from earlier rate orders.

<sup>4/</sup> Payne v. WMATC, 415 F2d 901 (D.C. Cir. 1968).

revenues, we have an obligation to take affirmative action on the application. We see no latitude to avoid that action simply because certain prior rate orders have been appealed and are pending in the courts.

In the Payne case, we were instructed by the court to undertake a study of the possibility of discrimination in the D. C. Transit fare structure in the metropolitan area. In Order No. 1052, at pages 22-23, we discussed the status of our consideration of the remand in question. We pointed out the very considerable work that has been accomplished in response to that remand and explained the circumstances which have caused our deliberations to be still unfinished. We also pointed out the fare structure established in Order No. 1052 was wholly consistent with the findings of the consultant who did the Payne study for us. Under the circumstances, we felt that we could proceed to an issuance of Order No. 1052 consistently with our obligations in the Payne remand.

There are no other substantive errors alleged in the Democratic Central Committee petition. They refer to the undesirable effects of a fare at the level authorized in Order No. 1052. We are acutely aware of the problems and discuss them in Order No. 1052. The Chairman of the Commission also alluded to these problems in the statement appended hereto as Appendix III. As that statement indicates, we have proposed a means for easing the burden which these fares impose on low income groups. We have also urged repeatedly, both by public statements and by direct appeals to Congress, the need to provide a general subsidy for the company's operations so that it can provide service at a fare which maximizes ridership. Six months ago, the Chairman of the Commission addressed a letter to the Mayor of the District of Columbia urging that the City and this Commission work together to develop a legislative program providing selective subsidies for certain portions of the company's ridership. A copy of that letter is attached as Appendix IV. No reply was ever received. Indeed, no action has been taken on any of the Commission's proposals by those empowered to act.

We are thus forced to provide the necessary revenues through the farebox. We hope that prompt action will be taken by the City Government and by Congress to provide effective relief from the fare levels here authorized. Until such action is taken, however, we must discharge our statutory responsibilities, however distasteful they are to us.

### III

#### THE REQUEST FOR FURTHER HEARINGS

The District Government has supplemented its petition with a letter, filed on June 29, 1970, asking that we schedule further hearings in this matter.<sup>5/</sup> We cannot grant this request. The District was a formal party

<sup>5/</sup>The letter restates in general terms the allegations of error contained in its petition. Thus, it asserts that our decision was based on a desire to grant the company a reasonable rate of return and that we "did not give due consideration to the matters of public interest" which we are required to consider under the Compact. We take this to be a restatement of their allegations concerning Section 6(a)(3) of the Compact, discussed above. They also restate their allegation that we erred in failing to raise the school fares.

to this proceeding, was represented by counsel at every session of the hearings, and presented testimony to us in its turn at the hearings. In these circumstances, it is clear that granting the City further hearings would not be in accord with established principles of administrative law. The rule was stated forcefully by the court of appeals in this circuit in Colorado Radio Corp. v. FCC, 118 F2d 24, 26 (D.C. Cir. 1941) where the court said:

"We cannot allow the appellant to sit back and hope that a decision will be in its favor, and then, when it isn't, to parry with an offer of more evidence. No judging process in any branch of government could operate efficiently or accurately if such a procedure were allowed."

The vitality of this ruling was reaffirmed in Springfield Television Broadcasting Co. v. FCC, 328 F2d 186 (D.C. Cir. 1964) where the court, in an opinion by Judge Wright, applied this language to an attempt to reopen the hearings by a person who had not been a party to the original proceedings. A similar ruling by the Pennsylvania PUC was upheld by the courts when the City of Philadelphia sought additional hearings after a Commission ruling had been issued. City of Philadelphia v. Pa. PUC, 185 Pa. Superior Ct. 598, 138 Atlantic 2d 698 (1958).

We are not insensitive to the serious concern which the District Government properly has with the fares of D. C. Transit because of the impact of those fares on the people of the District. However, we must treat their pleadings to this Commission in accordance with those principles of law which guide our treatment of all other litigants before us. Just as we would require the company to rest on the record made at the hearings which preceded our order, we must require the City to do the same.

We have spoken repeatedly, both in this order and in Order No. 1052, of the serious financial condition of the company and the threat this poses to continuity of service. Our concern with these problems reinforces our determination that application of the legal principles which preclude reopening the hearings at this time is clearly in the public interest.

These same comments apply to the request of the Democratic Central Committee that we hold public hearings on their petition.

#### IV

#### PROCEDURAL DEFECTS

We note that in several respects all three petitions have serious procedural defects. For instance, none of them has any indication that it has been served on the parties to the proceeding, contrary to the provisions of Rule 4-07 of our Rules of Practice and Procedure. In addition, one petition signed by Edgar S. Cahn and Jean Camper Cahn as "Attorney for Petitioners" has no indication whatever on it as to who the petitioners are. The Compact does require that petitions for reconsideration be filed by "persons affected." Unless the petition shows on its face who the petitioners are, we can make no determination whether they are proper applicants for reconsideration. In ordinary circumstances, we would require all of the petitioners to file certificates of service before considering the petitions and, in the case of the

"Cahn" petition, we would dismiss it as improperly filed. However, in view of the court's action staying our order until we act on these petitions, we have considered their merits. We mention these defects only to ensure that our action here will not be regarded as precedent in the future for the acceptance of seriously defective petitions.

V

THE ISSUANCE OF ORDER NO. 1052

Since the timing of the release of our Order and the effective date thereof have become a subject of public discussion and comment in the United States Court of Appeals since its issuance, we will take this opportunity to state in detail how the timing of the Order came about and why it was made effective when it was.

The hearings in this proceeding were completed on May 25, 1970. The Commission thereupon embarked upon four weeks of intensive work, reviewing the record, identifying issues raised, conferring upon and deciding those issues and writing an order. The task of producing the first draft of that order was assumed by the Commission Chairman. After some weeks of work on this task, a completed first draft was ready late in the day on Friday, June 19, 1970. This draft was then circulated to the other members of the Commission. On the afternoon of Tuesday, June 23, 1970, a conference of the Commission members was held in the offices of the Commission to discuss this draft. The conference was attended by the Chairman and Vice Chairman, representing the District of Columbia and Maryland, the two jurisdictions directly affected by the D. C. Transit rate order. While there was complete agreement between the Commissioners on the substantive issues in the case, it was naturally necessary to make some changes in the draft so that the language was acceptable to both members present. In addition, the Vice Chairman determined that he wished to write a separate concurring opinion stating his own personal views on some of the problems presented by the case. The editorial changes in the first draft were made known to the Virginia Commissioner by telephone and he concurred in them. On Wednesday and Thursday the final editing, typing, proofing and printing of the Order was taking place and by the afternoon of Thursday, June 25, the Order was finally prepared and ready for issuance. It was simply the conduct of these tasks, and nothing more, which brought about the fact that the Order was to be issued on Friday, June 26.

There remained only the question of determining the effective date of the fare increase authorized. That date was set as 12:01 A.M. on Sunday, June 28. First, we have consistently made rate changes effective early on a weekend day. This is the time of lowest ridership on the system and it eases the problems of making the transition to a new fare structure to make the change at such a time. The question, then, was which day to use. We chose the 28th for two very substantial reasons. First, a difficult practical problem is presented by a lengthy period between the issuance of an order raising the fares and the effectiveness of that change. The fare may be paid either by cash or by token. Tokens are sold at a substantial number of outlets

throughout the City. If it is known that the fare is to rise it is possible that a substantial speculation in the sale of tokens can come about. Persons can buy substantial numbers of tokens at the lowest price for resale at a price which is higher than the purchase price but lower than the authorized fare. This is not a speculative or imaginary worry. It is happening today as this Order is being written. Since issuance of the stay of our Order on Saturday, June 27, the company reports that its token outlets are receiving requests for token sales in very high amounts. This experience is confirmed by our own Commission office which acts as a token outlet. We do not think allowing such speculation is in the public interest. Persons should pay substantially the same fare for transit service and a black market in reduced cost of ridership should not be condoned by this Commission.

Being aware of all these problems when considering the effective date of the Order, we determined upon the first Sunday following issuance, i.e., June 28, 1970.

There was a second even more important reason for using this date. The evidence of record as spelled out in our Order No. 1052 demonstrated that the company would incur very substantial losses in the future annual period at the existing fare levels. The total loss would amount to almost \$4 million. We were also aware of the current financial position of the company, which was and is very precarious. In light of this condition, the company had sought interim rate relief. We determined not to take that action, both because we thought the public was entitled to full hearings before any change in fares was made, and because we felt that the most direct and expeditious way to handle the matter was to take up the broad issues involved in the rate increase request without first diverting our attention to the need for interim relief. Nonetheless, we had the evidence of record indicating the company's very serious financial condition. In addition, in our continuing responsibility for the audit and review of the company's operation, we are privy to very current information about the company's finances and the information coming to us, indicating considerable difficulty even in meeting the weekly payroll, caused us to feel that prompt action was necessary. We have discussed in Order No. 1052 our responsibility to ensure that the community continues to have transit service available to it. In our view, this is an overriding and substantial concern.

It was for these reasons, and these reasons alone, that the date of issuance and effective date of Order No. 1052 were determined.

On Saturday, June 27, the Commission Chairman received telephone calls at his home from attorneys for the Government of the District of Columbia and the Democratic Central Committee of the District of Columbia, and from Mrs. Jean Camper Cahn, a local attorney. Each of the attorneys informed the Chairman that a petition for reconsideration had been placed under the door of the Commission offices that

afternoon. The Chairman then in turn informed each attorney of the provisions of the Commission's rules requiring that filing be made at the Commission offices during normal business hours (Rule 8-01) and defining those hours as 8:15 A.M. to 4:45 P.M. Monday thru Friday (Rule 1-02). In addition, the Chairman informed them that his own personal and family obligations on that particular day made it impossible for him to go to the Commission offices to look at the documents in question.<sup>6/</sup> The petitioners thereupon went to the court of appeals, who on the evening of Saturday, June 27, heard arguments that the action of placing the document under the Commission door and informing the Chairman that it was there constituted a "filing" of the petition which under the terms of the Compact governing this Commission, automatically stayed the effectiveness of Order No. 1052. Having heard these contentions, the court issued an order staying the rate increase until we had acted upon the petitions for reconsideration.

We wish to take a moment to discuss this action of the court. We will, of course, scrupulously abide by its terms and respect both the authority and ability of the panel which issued it. Since no opinion has yet been issued, we do not know the scope of the court's ruling but the possibility that it is based on an acceptance of the principles argued to it disturbs us. We wish to state our views in order that those parties dealing with the Commission will be informed of Commission policy.

We believe that it would be extremely difficult, if not impossible, for us to discharge our responsibilities adequately under a general rule which provided that any document, and particularly a petition for reconsideration, can be "filed" with the Commission by placing it under the Commission door during non-business hours and informing a member of the Commission or its staff that the document is there. In the case of a petition for reconsideration, as discussed above, an effective filing automatically stays the order in question. We believe, in fact we are convinced, that it would be impossible to give adequate consideration to a petition for reconsideration under such circumstances. The Commissioners are themselves located in three different cities -- Baltimore, Washington and Richmond. The staff may not be readily available for consultation. The physical task of obtaining a copy of the document in question can prove personally very difficult as the Chairman's experience on June 27 indicated. It was suggested at the court hearing that all these problems need not be of concern since the only question was whether the actions involved, i.e., placing the document under the door and calling a Commissioner, constituted a filing and thus stayed the order. However, we do not feel that we can discharge our own responsibilities

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<sup>6/</sup> The Chairman was moving to a new residence on Sunday, June 28 and had certain preparatory tasks which simply could not be postponed.

by letting the matter rest there. If a "filing" is effected and a stay is thereby imposed, we feel we have a responsibility, if not an absolute obligation, to consider whether we should allow that stay to remain in effect until such time as we can obtain the document in normal business hours, review it and act upon it. There may be circumstances where our responsibilities in the public interest require us to act upon the petition and thereby lift the stay as soon as we possibly can. This case presents one situation of that type. The token sale problem and the company's financial condition, in our judgment, make it urgent that we act as soon as we can consistent with the proper and adequate consideration of the points raised in the petitions. Other examples are possible. For instance, we grant certificates of authority and route authorizations on the basis of which transit companies undertake to place certain service on the streets. If we entered such an order and the company publicized the fact that service would be available starting on a given date and a "filing" of the type discussed above were made in the middle of the night preceding the inaugural date of the service, great inconvenience to riders could result by our failure to act promptly on the petition for reconsideration. This is not a purely imaginary situation. A very similar one arose recently in connection with new service proposed by the WMA Transit Company to the City of Laurel, Maryland.

In short, we do not feel that we would have open to us the option of simply letting it sit there unread and unacted upon until business hours resume, thus staying the order in question when we are notified that a petition for reconsideration has been placed in our offices. We would feel that we must consider such a pleading immediately if it is in fact "filed" and a stay thereby effected. In view of the almost insurmountable obstacles to adequate consideration in the middle of the night or on weekends, we would be greatly disturbed if this were the purport of the Court action. However, we believe that there is an answer to this problem which is consistent with the adequate discharge of our own responsibilities and in the public interest. We think that the underlying rationale of the Court's action may be found in the particular facts involved here. The Order in question was one of great importance to the community and the timing of the filing and the effective date were such that there was little opportunity for the filing of petitions for reconsideration during normal business hours prior to the time the Order became effective.<sup>7/</sup> We see now that this can be a cause for serious

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<sup>7/</sup> It should be clearly understood that the fact that the Order does become effective does not preclude the filing of petitions for reconsideration. Such petitions can be filed for 30 days after the date of issuance of the order. The only question involved here was whether the Order should have been stayed prior to its becoming effective.

concern and we frankly acknowledge that we were remiss in overlooking that fact in our efforts to dispose of this case properly and expeditiously. We will in the future avoid, unless circumstances make it absolutely impossible, issuing an order of this importance without at least providing a full day of normal business hours, if not more, before it becomes effective.

Thus, until we receive the Court's opinion and are thus informed of the basis for its action, we will leave our present rules regarding filing in effect and undisturbed.<sup>8/</sup> Thus, those dealing with the Commission should understand that so far as the Commission is concerned it will not, in any and all circumstances, consider a document "filed" when it is placed under the door of the Commission during non-business hours and a member of the Commission or its staff is informed of its presence.

## VI

### THE EFFECTIVE DATE OF THIS ORDER

There is one remaining problem of serious proportions. We have pondered long and hard over the timing we should set for this denial of the petitions. It presents us with a serious dilemma. On the one hand, we cannot overemphasize the seriousness of our concern with the financial difficulties which this company is facing and the threat those problems pose to the continuity of service. We were convinced when we issued Order No. 1052, and we remain convinced, that prompt and effective rate relief is a matter of urgent necessity.<sup>9/</sup> On the other hand, it is perfectly apparent that this matter will be before the court of appeals again in very short order. We are aware, first, that the court is troubled by the problems which a prompt effective date raises for those who wish to challenge the order in court before it becomes effective. Second, we are aware that

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<sup>8/</sup> It is difficult, in any event, to believe that the court has ruled that a "filing", with all its many attendant consequences, takes place when a document is placed in the offices of an administrative agency at any time of night or weekend and a Commission member is informed of its presence. The chaos which such a standard would present is apparent.

<sup>9/</sup> We are also concerned about the confusion and undesirable possibilities of rate discrimination posed by sale of tokens at the lower rate when the new rate has been announced. In an action which must be regarded as unsatisfactory to the riding public because of the inconvenience involved, but necessary to preserve fair treatment for all, we have alleviated that problem by temporarily suspending the sale of tokens and tickets. See Order No. 1055.

the coming weekend is a holiday weekend and,--should the court be required to consider the matter at that time, it could cause considerable inconvenience to the judicial process. We are very concerned that the consideration which is to be given this matter be confined to its merits and not be colored by allegations that we are attempting to obstruct judicial consideration. We are further anxious that the merits be considered in a measured and ordered atmosphere.

Hence, we have determined to take the risks, which we believe are very considerable, involved in delaying rate relief for a further period of time. Rather than making our denial of the petitions effective this coming Sunday, July 5, we have decided to make the effective date the following Saturday, July 11, 1970, 12:01 A. M. This should permit the court time to give the merits of any action by it adequate consideration without having the question clouded by extraneous problems created by the need for urgent consideration.

THEREFORE, IT IS ORDERED:

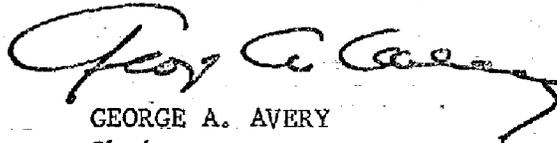
1. That the petitions for reconsideration filed by the Democratic Central Committee of the District of Columbia, the Government of the District of Columbia, and the petition signed by Edgar D. Cahn and Jean Camper Cahn as Attorneys for Petitioners be, and they are hereby, denied.

2. That paragraph 2 of Order No. 1052 of this Commission be, and it is hereby amended to read as follows:

2. That D. C. Transit System, Inc. be, and it is hereby, authorized to file appropriate revisions to Tariffs No. 41 and No. 45 on or before July 10, 1970, to become effective at, or after, 12:01 A. M., July 11, 1970, setting forth fares shown in the Appendix attached hereto, and made a part hereof.

3. That paragraphs 11 and 12 of Order No. 1052 of this Commission be, and they are hereby, suspended until further order of this Commission.

BY DIRECTION OF THE COMMISSION:

  
GEORGE A. AVERY  
Chairman

## CONCURRING OPINION OF VICE CHAIRMAN DOUB

DOUB, Vice Chairman, CONCURRING: Applications by D. C. Transit System, Inc., for fare increases have been before the Washington Metropolitan Area Transit Commission on three occasions since I became a member of the Commission in September, 1968. Prior to that date on behalf of the State of Maryland, I participated as People's Counsel, representing Maryland riders, in still another proceeding involving the fares of this company. In each of these proceedings the Commission, in the exercise of its judgment, based upon the individual case records, has found it necessary to grant this carrier fare increases.

Again, in this case, the Commission has authorized a fare increase. The constant pattern of decreasing riders and increasing expenses as evidenced in cases before the Commission presents a problem of grave concern to me (as I am sure it does to my colleagues on the Commission). Even a most casual review of the prior opinions of this Commission indicates that the Commission is faced with what appears to be an unsolvable dilemma.

The primary statutory responsibility of this Commission is to regulate the carriers in the public interest so as to insure adequate service at reasonable fares, while permitting the carrier to earn a fair return on its investment. In carrying out this mandate, the Commission has decided the various fare increase applications of this carrier within the limitations imposed upon the Commission by the Compact between the three jurisdictions entered into in 1961.

Again, in this case the Commission, in my judgment, has met its responsibility, albeit the public must now assume an even greater burden in insuring the financial stability of the carrier through increased fares and in turn its ability to render adequate public service.

In considering the evidence in this case, I gave great attention to the testimony of several protestants (notably the Deputy Mayor of Washington) who urged that this fare application be denied in its entirety. In substance, the protestants argued that the level of fares has already reached a point which imposes an intolerable burden upon the riding public. When faced with the choice between another round of fare increases or the prospect of an eventual insolvency proceeding, the argument was made by the intervenors, which I cannot discount lightly, that the long-range public interest may be better served by a denial of this application. If such a denial were possible under the law and would have the effect of providing an impetus to Congress to enact legislation for a prompt public takeover, it could well be a desirable action. This Commission has testified in favor of such legislation before the House and Senate District Committees on several occasions.

Unfortunately, under the terms of the Compact, the Commission has no choice but to award another fare increase. Any other action would be an evasion of my responsibilities under the law. However, I do express again the need for legislation that will either permit lower fares through permanent public subsidy or public ownership. This would be the only real insurance against the prospect of any further increases by a continuation of "regulation by crisis."

I find little comfort in passing the Commission's order in this case. If there is any solace to be gained whatsoever, it is perhaps our direction to the company to propose a schedule of reduced fares applicable to service for the elderly residents riding within the service area of the carrier. However, this action may be termed by some, and perhaps the Commission itself, as nothing more than making the best of a "bad" situation.

The Compact delineates clearly the latitude within which this Commission must decide such fare application proceedings. Our order meets fully this responsibility under the law. These comments express nothing more or less than my personal concern that because of a legal requirement we have provided at best another short-term period of relief at the expense of the riding public, many of whom should not be taxed as riders for the maintenance of an essential public service. Permanent relief must come from sources other than the fare box.

## EXCERPT FROM ORDER NO. 880

## 3

Four sessions of formal hearing were held, concluding on September 13, 1968. The record comprises 32 exhibits and a transcript of testimony and argument of 1,025 pages.

Transit proffered the testimony of its Senior Vice President, J. Godfrey Butler; its Vice President and Comptroller, Samuel O. Hatfield; Mr. John F. Curtin of Simpson and Curtin, independent consultants; and Mr. Robert R. Nathan, of Robert R. Nathan Associates, consulting economists.

The Commission's Staff presented the testimony of Mr. Charles W. Overhouse, Chief Engineer; Mr. Richard Kirtley, Senior Accountant; and Mr. David A. Kosh of Kosh-Glassman Associates, an independent rate of return consultant.

Protestants D. C. Democratic Central Committee and the City-Wide Consumer Council, *et al.*, coalition jointly presented the testimony of Mrs. Rochelle Huckaby, corresponding secretary of the Council, and Mr. Phillip D. Patterson, Jr., research associate with the Washington Center for Metropolitan Studies.

On September 30, 1968, Order No. 876 was issued further suspending the tariffs until October 14, 1968.

## II

## BROAD ISSUES RAISED IN THIS PROCEEDING

Before discussing the specific factual issues before us in this proceeding, we wish to address ourselves to certain broad and vexing questions which are of concern to us and to all of those in the community who are involved in any way with the mass transit system and its problems.

The Commission, by this Order, authorizes increases in D.C. Transit's fares. As will be discussed in detail, both the facts and the law fully justify this action. Indeed, for the first time in our experience, the formal parties (*i.e.*, the company, the Commission Staff and the three protestants) are all in substantial agreement on the revenue and expense projections. These projections show beyond ques-

tion that under the present fare structure, the company will not receive sufficient revenues during the year ending July 31, 1969, to pay the operating expenses and interest charges which it will incur. These facts, and the legal standards which we must apply to them, provide an ample basis for our action.

We begin with these introductory remarks, however, because we are deeply concerned with the broader economic and social implications of the action we take. We are greatly concerned about the impact of this fare increase upon already acute social problems in this community. First, we are concerned about its counter-productive impact upon the entire urban transportation problem. It is axiomatic by now that the burden imposed upon our cities by the automotive age cannot be dealt with effectively unless we maximize the usage of mass transit facilities. However, the undoubted impact of increasing fares is to reduce the number of persons riding buses, driving them to other means of transportation—in most cases, to the automobile. Second, it is beyond question that those most dependent upon public transportation are the low income groups. Increasing bus fares thus poses an additional burden on an already overburdened economic strata.

We fully recognize those consequences of our present action, and we deplore those consequences. We take this opportunity to discuss the reasons which bring them about and the actions which should be taken to dispel them. Finally, while recognizing the undesirable aspects of our present action, we shall address ourselves to certain misconceptions which have been aired on the subject before us in the hope that, by identifying the real problems, effective action can be taken to deal with them.

We point out here, as we did in Order No. 773, that the basic reason for this present rise in the fares is the increase in the cost of operating the bus system. In Order No. 773, we found that D.C. Transit's labor costs would rise by \$1,571,657 in the year following issuance of our order.

That finding was based upon the facts as known to us when we entered our order. Increases in the cost of living index call for certain wage increases under the company's union contract. The size of cost of living index increases after our order was entered actually caused labor expenses to increase by 4¢ per hour on 4/28/68; another 6¢ per hour on 6/30/68; and 6½¢ per hour on 9/29/68 for the period projected by Order No. 773, ending 10/31/68. This occasioned an increase in wages of \$268,521 more than we had allowed in Order No. 773. Now, projecting ahead for the twelve months ending July 31, 1969, we find that there will be an increase in labor expense of \$2,376,919 over the historical year, before giving effect to an increase of 6½¢ per hour on 9/27/68. In addition, our revenue projections in Order No. 773 were based in part upon an assumption of an increasing trend in ridership—a trend which has not in fact developed.

These facts reveal the nature of the problem we face. The company's cost of operation is steadily pressing upward, principally due to increases in labor expense. These increased expenses must be met, and essentially the only source of revenue to meet them is the farebox. These facts are pushing fares to levels which produce socially undesirable consequences and impose social costs upon the entire community.

A more rational means of dealing with this problem of increasing costs must be found. One means is readily apparent and we will do our utmost to achieve its accomplishment. Simply, it must be recognized that it is unwise public policy to impose the entire cost burden of the mass transportation system upon the users of the system. Rather, some portion of that cost should be borne by the community at large which unquestionably benefits from the existence of the system whether any given individual uses it or not. The network provided by the public transportation system is so inherently essential to the economic and social life of the entire community that all should share in its cost. Particularly, the system benefits the automobile

user, who would find traffic conditions intolerable without the load assumed by public transportation. It is perhaps wise policy to impose the cost of the public transportation system entirely upon its users when that can be done at fare levels consistent with maximum utilization of the system. But when the cost becomes so high that fare increases drive substantial numbers of riders from the system and adversely affect its maximum utilization, then the wise course of policy is to shift at least a portion of the cost burden to those others who benefit from the existence of the system but contribute nothing to its cost.

We feel strongly that this point has come with D.C. Transit, and we call upon the community and its leaders to seek the necessary legislative changes to relieve the transit rider of a portion of the cost burden. Specifically, we suggest legislation which will peg the transit fare at a socially desirable level and provide the remaining revenue necessary to support the system out of public funds. This revenue could be provided from general tax sources or a special levy could be created. For instance, a tax on parking fees would raise the needed revenues from motorists who benefit from the transit system whether they use it or not. In an effort to obtain the necessary action, we are writing to appropriate officials of the District of Columbia Government, and of the Congress, asking that the requisite legislation be enacted.

Many erroneous allegations and misconceptions have been aired in our hearings and in public discussions of this application and it would be well to discuss some of them so that the record is clear. First, it cannot be emphasized strongly enough that our present action is based upon a showing—an essentially undisputed showing—that the company's operating expenses, principally labor, will increase substantially in the coming year. The amount of profit we project is essentially the same as that we have allowed in the previous two rate cases. It is worth noting, in passing, that through circumstances beyond the control of this Commission or the company, in the calendar year 1967,

and in 1968 to date, the company has not earned any profit, much less the amount we have allowed for in our rate case projections. We do not point this out with pride, but simply to emphasize that this fare increase, like past fare increases, is not granted so that the company owners will obtain more profit than in the past. Rather, it is granted to cover increased operating expenses.

Nor is this fare increase granted to make up the losses incurred by the company this year due to the civil disturbance, the Poor People's Campaign, the work stoppage over driver robberies, and other adverse factors which have occurred in the past. There is no doubt that these losses have occurred and have been substantial. The unaudited monthly reports indicate an operating loss in the first seven months of this year of \$129,211.03. In addition, interest payments totalling \$753,440.55 in the same period were not recovered from revenues, making a total loss of \$882,651.58. However, those losses are behind us and, under the "water over the dam" theory, they cannot be made up. A brief explanation of the rate-making equation should make it clear they play no part in the present increase. The company's revenue requirements are computed by starting with actual figures for a historical year-- in this case, the twelve months ending April 30, 1968. However, the actual figures for April, 1968 have been adjusted to eliminate the impact thereon of the civil disturbance. The revenue and expense figures for April, 1967, an essentially normal month, were substituted for those of April, 1968. Thus, the basic revenue and expense figures from which we start reflect nothing of the adverse events which begin in April, 1968.

These historical year figures were then adjusted to create projected revenue and expense figures for the twelve months ending July 31, 1969. The revenue projections were based on the assumption that the trend of ridership experienced in the adjusted historical year would remain level, the only adverse factor being a resistance factor for the *proposed* increase. Thus, the actual loss in ridership

during the past spring and summer plays no part in the projected revenue results. Similarly, the increases in expenses projected for the future annual period are only those normally expected in due course and are not affected by the adverse events recently experienced by the company. It is these figures which demonstrate that present fares will not produce adequate revenues during the future annual period and this conclusion is in no way based on the company's losses during the months since April, 1968.

We have seen, therefore, that the present increase is granted, not to allow more profit than we have permitted in the past, nor to make up for losses already suffered, but to cover substantial increases in expenses which will occur in the future.

It would perhaps be well to face directly at this point the image which was expressed by some of those most vehemently opposed to a fare increase. That image briefly was this: the present fare increase is simply a continuation of the company's effort to exploit its customers; it was approved by the Commission from the very outset of the proceeding because we are not diligent in our protection of the public. It need hardly be said that this view of our action is not one with which we can agree. We should, however, address the issues it raises directly.

The contention that D. C. Transit riders have been, and are being, "exploited" must be taken to mean that they are paying fares significantly higher than would otherwise be necessary, simply to pay exorbitant profits to the company's owners. The facts simply do not bear out this point of view. Taking, first, the profit element we would allow in this Order, except for certain developments we discuss, it would provide approximately \$746,682 for the company's owners. (The total return allowed is \$2,092,682, of which \$1,346,000 will be paid out in interest on debt, principally debt incurred for new bus purchases.) The total annual revenues which would be necessary to cover operating expenses, debt service and return on equity would be

\$40,079,851. Thus, the \$746,682 return to the company's owners would be only 1.9% of total revenues. Putting this another way, if all profit were eliminated and the company operated on a straight break-even basis, the amount of revenues needed by the company would be reduced by only 1.9%. Applying this percentage to the typical fare of 25¢, we see that the amount included in that fare to cover the profit element is less than one cent.

A similar analysis can be made of the historical record of the company. From August 15, 1956, when the present owners took control, until April 30, 1968, the bus riding public has provided the company with a total of \$353,506,280 in gross operating revenues. From those revenues, a total of \$341,110,432 has been incurred in operating revenue deductions. Thus, the amount which has flowed through to the company's owners totals \$12,395,848. From this amount, however, \$7,738,174 has been paid out in interest on debt, principally debt incurred in the purchase of new buses. The owners have actually received, therefore, a total of \$4,657,674. This amounts to 1.32% of the total operating revenues paid in by riders. Thus, if all profit had been eliminated in the company's entire history under its present ownership, the amount of revenue required by the company would have been reduced by only 1.32%. Again, applying this percentage to a typical fare, the amount of such fare required to provide a profit to the owners has been less than one cent.

In light of these facts it simply cannot be fairly said that the company has been permitted to "exploit" its riders by charging inflated fares in order to provide its owners with profits. Nor can it be said that we permit such "exploitation" in the present Order.

We might note, at this point, that our decision in this case is based entirely on the facts of record as developed at the hearing. The charge was made that we had made up our minds on the issues prior to the hearings. It would be well to set the record straight on that point. Under the

Compact, the company initiates a rate case by filing a proposed tariff with the Commission. The tariff automatically goes into effect thirty days after filing unless the Commission takes action to suspend it. Thus, the law itself requires us to make a preliminary assessment of the financial situation facing the company. In the present case, we reviewed the material supplied by the company with its application, as well as other financial data available to us, and concluded that we should indeed suspend the proposed tariff and hold a hearing. However, our preliminary review of the data presented to us also indicated that, if the facts as initially presented were eventually borne out, the company faced a serious financial situation. For this reason, we determined to schedule the hearings on a more expedited basis than had been our practice in the past. In so doing, we made it clear that our final determination would be based upon the facts elicited on the record at the hearings. It was our announcement of the expedited hearing and the reason therefor which formed the basis for the charge that we have already determined the issues in the case. In fact, we had simply made the preliminary analysis we are required by the Compact to make and announced the results of that analysis. We then considered the evidence presented at the hearing without pre-formed judgments on the facts.

While discussing allegations about D. C. Transit's fares, it might be useful to examine two other propositions often urged. First, it has been stated that fares have climbed at a rapid rate out of proportion to need. Let us look at this claim. Today, the basic fare is 25¢, if tokens are purchased in multiples of four. This is the fare paid by about two-thirds of D. C. Transit's riders.<sup>1</sup> The 25¢ fare has been a basic element of D. C. Transit's fare structure since 1960,

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<sup>1</sup>With the advent of the Exact Fare Requirement on a 24-hour basis effective August 4, 1968, more passengers shifted to the cash fares. The week ended September 14, 1968, the latest data available, showed 50.8% of D. C. local riders paid cash fares rather than token.

*i.e.*, for about 8½ years. For most of that time, this was the fare paid by at least about ⅓ of D.C. Transit's riders. Thus, a substantial proportion of the fares collected by D.C. Transit has been unchanged for over 8½ years. For those who have consistently chosen to pay the lowest fare available, there has been a 5¢ increase in fares in the past 8½ years. There are 21 cities<sup>2</sup> in the United States, including Washington, D.C., with a population of 500,000 or more (1960 Census). In 13 of these 21 cities, the lowest basic fare available has increased by at least 5¢ since 1960.<sup>3</sup> In all but one<sup>4</sup> of the remaining eight cities, there have been increases in fares, ranging from a 2¢ increase<sup>5</sup> to an increase of 3.75¢ in the fare *plus* the imposition of a 5¢ charge for transfers.<sup>6</sup> The cost of living index has increased by 23.1% since 1960.

We regret the fact that there has been any need for an increase in bus fares since 1960, but the size of the increase, when considered in the light of experience in other cities, and in light of the inflationary trend of the last eight years, cannot be considered disproportionate.

It has also been alleged that fares here are already higher than in most similar cities. The facts once again do not bear out this contention. There are presently 15 remaining privately owned companies, other than D.C. Transit, serving Metropolitan areas with population of 500,000 or more.

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<sup>2</sup>New York, Chicago, Los Angeles, Philadelphia, Detroit, Baltimore, Houston, Cleveland, Washington, St. Louis, Milwaukee, San Francisco, Boston, Dallas, New Orleans, Pittsburgh, San Antonio, San Diego, Seattle, Buffalo, Cincinnati.

<sup>3</sup>New York, Chicago, Los Angeles, Philadelphia, Detroit, Cleveland, Washington, St. Louis, Milwaukee, San Diego, Seattle, Buffalo, Cincinnati.

<sup>4</sup>San Francisco

<sup>5</sup>Boston and San Antonio

<sup>6</sup>Pittsburgh

Seven of them have cash fares of 30¢ or 35¢.<sup>7</sup> Five of them have a cash fare of 25¢;<sup>8</sup> but of these five companies, four charge 5¢ for a transfer.<sup>9</sup> There is a total of seven of these cities in which a ride can be obtained for 25¢, whether due to a straight fare of this amount or the availability of tokens.<sup>10</sup> Four out of these seven cities charge 5¢ for a transfer.<sup>11</sup> The maximum fare within the District of Columbia is presently 27¢, with free transfers. In eleven of the fifteen other companies, the maximum fare within the city exceeds 27¢,<sup>12</sup> and in six out of those eleven, there is also a charge for a transfer.<sup>13</sup> The fare in New Orleans is 10¢, but this operation is conducted by the New Orleans Public Service, Inc., and the losses of the bus operations are subsidized by other services of the company. Only two other companies, both in the New York City area, have a fare lower than 25¢ (i.e., 20¢). Both have zones within their service areas and fares can be as high as 40¢. In light of these facts, it would have to be recognized that the fares which D. C. Transit riders have been paying compare very favorably with fares of other private companies in cities of similar size.

Even a 30¢ cash fare, if that should become necessary at any time, would be the same as, or lower than, the cash fare of seven<sup>14</sup> of the fifteen similarly situated companies.

<sup>7</sup>Cincinnati, Milwaukee, Houston, Kansas City, Indianapolis, Columbus, Denver.

<sup>8</sup>Baltimore, Buffalo, Philadelphia, Twin Cities, Atlanta.

<sup>9</sup>Baltimore, Buffalo, Philadelphia, Atlanta.

<sup>10</sup>Baltimore, Buffalo, Philadelphia, Milwaukee, Houston, Twin Cities, Atlanta.

<sup>11</sup>Baltimore, Buffalo, Philadelphia, Atlanta.

<sup>12</sup>Cincinnati, Philadelphia, Milwaukee, Houston, New York (2 companies), Kansas City, Indianapolis, Columbus, Denver, Atlanta.

<sup>13</sup>Cincinnati, Philadelphia, Kansas City, Indianapolis, Denver, Atlanta.

<sup>14</sup>Cincinnati, Milwaukee, Houston, Kansas City, Indianapolis, Columbus, Denver.

The maximum basic fare within eleven<sup>15</sup> of the fifteen cities discussed above is 30¢ or more. There are eleven similarly situated companies which have available basic fares lower than 30¢<sup>16</sup>, but four of these 11 charge 5¢ for transfers.<sup>17</sup>

Even a comparison with a larger universe indicates that present fares are not disproportionate. D.C. Transit Exhibit 13 sets out the fares in the forty-six largest cities in the United States and Canada. This includes systems both publicly and privately owned. The list includes a total of forty-nine operators since some cities have more than one system. Twenty-three of these forty-nine operators have already found it necessary to raise their basic cash fare to 30¢ or higher.<sup>18</sup> There are nine of these twenty-three which offer token fares under 30¢,<sup>19</sup> but four of these nine also charge for transfers.<sup>20</sup> In forty-two out of the forty-six cities, the maximum fare including transfers is 30¢ or higher. In twenty-five out of forty-nine operations listed, the *minimum* fare, including the right to transfer, is 30¢ or more.<sup>21</sup> In fourteen out of the forty-nine instances listed,

<sup>15</sup>Cincinnati, Philadelphia, Milwaukee, Houston, New York (2 companies), Kansas City, Indianapolis, Columbus, Denver, Atlanta.

<sup>16</sup>Baltimore, Buffalo, Philadelphia, Milwaukee, Houston, New York (2 companies), Twin Cities, Atlanta, Columbus.

<sup>17</sup>Baltimore, Buffalo, Philadelphia, Atlanta.

<sup>18</sup>Akron, Toledo, Kansas City, Cincinnati, Portland, Los Angeles, Houston, Oklahoma City, Long Beach, Fort Worth, Chicago, Detroit, Cleveland, St. Louis, Pittsburgh, Denver, Indianapolis, Omaha, San Diego, Montreal, Milwaukee, Columbus, Louisville.

<sup>19</sup>Houston, Fort Worth, Detroit, Cleveland, San Diego, Montreal, Milwaukee, Columbus, Louisville.

<sup>20</sup>Fort Worth, Detroit, Cleveland, Louisville.

<sup>21</sup>Akron, Toledo, Kansas City, Cincinnati, Portland, Los Angeles, Oklahoma City, Long Beach, Chicago, Detroit, Cleveland, St. Louis, Pittsburgh, Denver, Indianapolis, Omaha, Louisville, Philadelphia, Atlanta, Phoenix, Memphis, Birmingham, Baltimore, Buffalo, Newark.

*i.e.*, about  $\frac{1}{3}$  of the total, the bare minimum fare available is 30¢ or more.<sup>22</sup> It is clear, therefore, that there is a well-established upward trend in fares which has already led a substantial number of the larger cities in the United States to establish higher fares than now exist in the District of Columbia.

Before leaving this subject, we should emphasize once again that in making these comparisons we are not condoning the necessity of raising fares. We are convinced that doing so is counter-productive to sound transportation planning and imposes social costs which are intensely undesirable. We reaffirm our intention to seek those changes in the law which will open the way to avoiding these undesirable results by bringing fares back to lower levels.

Returning to our central theme, our ruling on the need for additional revenues is based upon the increase in operating expenses which will occur in the future annual period. Without additional revenues, the company will suffer further substantial losses. Two further propositions urged in opposition to our action should be discussed. First, it is claimed that the supposed losses are illusory and are the product of manipulation of the company's accounts. This simply is not the fact. We are not naive in our approach to review of the company's books. Our instructions to the staff are to give them a thorough, searching, and continuous review. A significant amount of staff effort is devoted to the task. It absorbs all the time of one accountant, and the great majority of the time of the Commission's three other accountants, including the Chief Accountant. It was testified at this hearing that every expense which is reflected on the company's books is examined by these auditors to ensure that the bus rider is asked to pay nothing other than the costs properly attributable to the operation of buses.

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<sup>22</sup>Akron, Toledo, Kansas City, Cincinnati, Portland, Los Angeles, Oklahoma City, Long Beach, Chicago, St. Louis, Pittsburgh, Denver, Indianapolis, Omaha.

These efforts bear fruit since there are expenses of significant amounts which, on the staff's recommendation, are not imposed on the fare paying public. In light of these facts, we cannot accept unsupported general allegations that accounts have been manipulated to produce an illusory loss.

The second proposition contends that the additional revenues required by the company can be produced simply by lowering the fares. This will, it is said, produce sufficient additional riders to raise revenues up to the required levels. We fervently wish that the solution were this simple. If we thought it were, we would adopt it without hesitation. Unfortunately, however, there is not a shred of evidence or theoretical support for the conclusion that this solution would work.

Indeed, when the factual implications of adopting this approach are considered, some startling conclusions are reached. Our analysis of the financial data in this case indicates that at its present level of operations, the company requires a total of \$40,000,000 in revenues. With a 30¢ fare in the District of Columbia, the company could expect 99,551,000 D.C. riders annually, producing \$29,865,000 of the total revenue required. To obtain that same \$29,865,000 with a 20¢ fare, it would be necessary to have 149,325,000 D.C. riders. This is 50% more riders than would be needed at a 30¢ fare and would be an increase of 44% over existing D.C. ridership. This would be an enormous increase, of course, but it is not the end of the story. It would be unrealistic in the extreme to assume that ridership could increase 44% without some increase in cost. On the conservative assumption that a 44% increase in ridership would increase costs by only 22%,<sup>23</sup> an additional \$8,357,177 in expenses would be incurred. To meet these expenses, an additional 41,785,885 riders at 20¢ each

<sup>23</sup>This is truly a conservative estimate since a substantial portion of any overall increase of this magnitude would inevitably occur during the period of peak demand, when the incremental cost of adding new riders is very high.

would be required. This is an additional 28% increase in ridership that would be necessary. An increase of this magnitude would also lead to increased expenses and the cycle would have to be repeated again. According to our computations, the company would not meet its expenses and earn a fair return at a 20¢ fare unless it had a total of 191,110,885 D.C. riders paying that fare. *This would require an increase of 85% over existing ridership levels!* There is not the slightest shred of support for thinking that such price elasticity exists.

Indeed, studies of the problem indicate just how unrealistic it would be to expect any such results. A study was done in Chicago in an effort to determine just what kinds of fare reductions would be necessary to induce automobile users to switch to public transit. The conclusion reached was that, even to achieve an increase in transit ridership as little as 33%, the amount of "price" differential which would be required to induce auto users to make this switch would exceed current transit fare levels. In other words, this study found that to achieve a 30% increase in ridership through diversions from auto use it would actually be necessary to pay automobile users to make the switch. See Moses, "Economics of Consumer Choice in Urban Transportation", *Proceedings—The Dynamics of Urban Transportation* (Automobile Manufacturers Association, 1962). While we need not give full acceptance to that startling conclusion to support our point, it certainly casts a considerable cloud over the proposition that a 5¢ decrease in fares would increase ridership 100%.

We do know the degree of price elasticity which prevails in the case of fare *increases*. There is a loss of .25% of riders for each 1% increase in fares. This is a relatively inelastic demand. If this same elasticity factor applies to rate decreases, the dimensions of the problem are apparent. Assume the company requires revenues of \$30,000,000 from D.C. riders. It presently has 100,000,000 such riders. At a 25¢ fare, they would produce a total of \$25,000,000.

A reduction in fare to 20¢ would be a 20% reduction. Apply the .25% factor for each 1% decrease in fare, a 5% increase in ridership would result. Thus, we would have 105,000,000 D. C. riders at 20¢ each, producing total revenue of \$21,000,000, \$4,000,000 less revenue than at the 25¢ fare. Thus, if the same elasticity of demand applies to decreases as undeniably exists for increases, a fare reduction simply cannot solve the problem. To justify the fare reduction approach to the revenue problem, we would have to be able to say that in the case of fare *decreases* there would be an increase in riders of almost 5% for each 1% decrease in fares. A disparity of this magnitude between elasticity in response to price decreases and elasticity to price increases cannot reasonably be expected.

In any event, competition between mass transit and other forms of urban transportation (principally the automobile) does not appear to be based on price considerations. It is already more expensive in most cases to use one's car than to take public transportation. The motivating factors appear to be comfort, convenience, and time consumed. See, e.g., Garfield & Lovejoy, *Public Utility Economics*. 241-42 (1st Ed. 1964). There is little ground for hope that increasing the price differential would have a significant impact.

We have diligently searched the literature of urban transportation economics and we have never found the suggestion that the problem of increasing costs could be solved by the simple means of reducing fares. When this solution was suggested by counsel for a protestant, we asked if he could cite to us any study which supported this theory. He was unable to do so even after we had given him additional time to research the question.

To our great regret, we are unable to conclude that the vexing and difficult problems of spiralling costs of urban transportation can be dealt with by the happy solution of reducing fares. Our task would be much easier and more pleasant if we could only so decide. We must face up to

the problems in the cold light of reality, however, and recognize that the additional revenues needed can come only through increases in fares or through shifting a portion of the cost burden off the transit rider and onto the community at large.

This brings up one final point with which we will conclude this introductory discussion—one other solution to the problem which has been heard in this proceeding, and on other occasions. Again it is a simple one. We should simply refuse to grant an increase and let the company operate at a loss. This is a course we cannot and will not pursue. We cannot pursue it because it would be legally impossible for us to do so. We operate under a specific statutory directive to establish a fare structure which will produce revenues sufficient to cover the company's expenses and provide it with a fair return. Compact, Article XII, § 6(a)(4). Moreover, to force the company to operate at a loss would be to deprive it of its property without due process, a Constitutional violation.<sup>24</sup> It would, in any event, be shortsighted policy. The company's ability to provide an acceptable standard of service, to improve its fleet, and to extend its routes and operations would quickly be destroyed. The story is familiar to anyone acquainted with the history of such commuter services as those provided by the New Haven Railroad. We would not be a party to such a deterioration of quality in this essential community service.

With this, we will conclude the general discussion of some of the issues raised by those who expressed general opposition to a rate increase. Additional discussion of issues raised will be found in the following sections of this Order. We hope that this review of the issues brought up at the hearings will help the community to identify the real nature of the urban transportation problem and take effective action to deal with it.

<sup>24</sup>*Bluefield Water Works & Improvement Co. v. West Virginia Public Service Commission*, 262 U.S. 679, 690 (1923).

## III

## EFFECT OF PENDING LEGISLATION

To review our conclusions briefly, the company sustained an operating loss of \$25,950 and a loss including interest payments of \$1,312,937 in the twelve months ending February 28, 1969. If fares are maintained at their present levels, the company will sustain an operating loss of \$176,197 in the twelve months ending June 30, 1970. They will, in addition, have to pay interest expense of \$1,196,926 in the same period, making a total loss of \$1,373,123.

In the ordinary case, there would be nothing further to discuss on the subject of a need for action with regard to fares. The existence of the need would be obvious and the only further inquiry would concern the precise nature of the action to be taken. However, in this proceeding further questions as to the need for action have been raised and these questions merit our careful consideration.

The issue was most squarely presented to us by the testimony of the Honorable Walter E. Washington, Mayor-Commissioner of the District of Columbia. The District Government had entered the proceedings as a formal protestant and their direct case consisted of Mayor Washington's testimony.

The Mayor stated his concern -- a concern which closely parallels our own views expressed a year ago at pp. 3-18 of our Order No. 880 -- with the adverse impact upon social costs and sound transportation planning of further increases in transit fares. He pointed out that there is legislation pending in Congress which is addressed to this problem, specifically a bill authorizing public ownership of the transit system and providing for financial assistance to the company from public funds during the interim period while transfer to public ownership is being arranged. Because of the problems which fare increases cause, and because this legislation is pending in Congress, the Mayor urged us to deny the pending application for a fare increase.

We must, of course, evaluate the position the Mayor urges within the framework of the obligations imposed upon us by law and in the light of the responsibilities we bear for the health of the mass transit system which serves this community. Having thus considered the suggested course of action, we have reluctantly concluded that it is not a path down which we can go.

First, we do not think it is legally possible for us to do so. We have no control over the timing of an application for a rate increase. Transit may file such an application at any time that management desires. Once an application is filed, we have no power to delay our decision beyond 150 days from the date on which the application was filed. We have a statutory obligation to act within

that time period. Otherwise, the fares proposed by the applicant automatically go into effect. When we do make our decision, we do not have unbridled power to make any disposition of the application which we see fit. Our decision must be based on a consideration of the facts of record and on an application to those facts of the standards set out in the Compact and in the applicable case law. Hence, in the present proceeding, we must issue a decision by October 26, 1969. We must grant or deny that application on the basis of the facts presented to us and the provisions of the Compact and the applicable cases.

We know of nothing in either the Compact or the cases which would empower us to deny a rate increase when it has been shown as it has in this record, that the present fares will not even cover the company's operating expenses during the future annual period. The Compact explicitly requires not only that the company receive revenues sufficient to cover expenses but that it "be afforded the opportunity of earning such return as to make the carriers attractive investments to private investors." Compact, Article XII, Section 6(a)(4). Apart from this statutory provision, it is a basic principle of regulatory law that a utility may not be required to operate at a loss. To do so is to confiscate its property without due process of law. Bluefield Water Works and Improvements Co. v. West Virginia Public Service Commission, 262 U.S. 679, 690 (1923). These provisions of law are binding upon us and we have no right to ignore them.

It is suggested, both in the Mayor's testimony and in the arguments of other protestants (most clearly and ably by Mrs. Wald of Neighborhood Legal Services, representing the Citywide Welfare Rights Organization) that we can somehow avoid the requirements of Section 6(a)(4) of the Compact because of the provisions of Section 6(a)(3). That section reads as follows:

"In the exercise of its power to prescribe just and reasonable fares and regulations and practices relating thereto, the Commission shall give due consideration, among other factors, to the inherent advantages of transportation by such carriers; to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service; and to the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service."

We have considered this language carefully in this proceeding just as we have considered it in every past rate case. First, we think that this language must be read with Section 6(a)(4) to form a harmonious

whole. Section 6(a)(4) imposes a flat, unequivocal obligation to cover expenses plus a fair return. There is nothing in Section 6(a)(3) which relieves us of that obligation on the basis of this record. Rather, it states that, in setting just and reasonable fares, we must give "due consideration" to certain factors.

Two of these factors themselves explicitly recognize the obligation to provide adequate revenues. Thus, we are to consider "the need, in the public interest, of adequate and efficient transportation service by such carriers at the lowest cost consistent with the furnishing of such service." Compact, Article XII, Section 6(a)(3). Our attention is thus specifically directed to the concept that we must provide revenues sufficient to enable the carrier to provide service. Operations at a loss will certainly not meet that standard.

It is suggested that this language somehow enables us to control the timing of an increase even though the evidence shows that loss operations will result. We see no merit in such a claim. For one thing, it must be borne in mind that if we deny this application, and the company wishes to seek another increase, it would have to file a new application in order to obtain an increase. All interested parties have full rights to participate in the new proceeding which would thus be started. These proceedings involve complex issues. Hence, a further period of 150 days, or five months, could well ensue before further action on fares was possible. Hence, losses could occur for a very substantial period if we accepted this theory. Such a result would not be consistent with the furnishing of service.

Moreover, even if we could control the timing of an increase on the basis of this language, it is a dubious proposition that we should delay at this time. The company operated at a substantial loss in 1967 and at an even greater loss in 1968. In 1969 to date, by our explicit order, its fare box revenues were sufficient only to permit it to operate at a break-even level. Faced now with the fact that further losses would result if fares are not increased, it is difficult to accept the proposition that this is an appropriate time for delay, if that were within our power.

The next clause of Section 6(a)(3) directs our attention to "the need of revenues sufficient to enable such carriers, under honest, economical, and efficient management, to provide such service." Here is a direct admonition to provide revenues sufficient to cover expenses. No management can provide satisfactory service for long if it is losing money on its operations.

Recognizing this, the thrust of the argument made under this language is that Transit's management is not honest, economical, and efficient and that if it were, the revenues under present fares would be sufficient. However, there are no facts of record to support these contentions. We have discussed certain management deficiencies in this

opinion and we will direct that certain changes be made. But these problems relate only to improving the company's performance with respect to vehicle maintenance and scheduled service and neither our staff nor the protestants have presented facts indicating that the company's basic problems lie in inadequate management.

Indeed, it is crystal clear on this record that the financial problem of the company is due to a declining ridership trend and increasing labor costs. Much of the decline in ridership, it has been indicated, is due to conditions over which the company has no control whatever, namely, unrest in the city and the necessity for instituting a scrip system due to an enormous increase in bus robberies. The increasing labor costs stem from a cost-of-living clause in the labor contract which has had a heavy impact due to the steep inflation of recent years. We can find no basis in this record for saying that the need for additional revenues could be taken care of by a more honest, economical, and efficient management.

The third standard which Section 6(a)(3) requires us to consider is "the effect of rates upon the movement of traffic by the carrier. . . for which the rates are prescribed." It is pointed out that a fare increase causes a decrease in ridership, thus adversely affecting the "movement of traffic by the carrier." Hence, it is argued, application of this standard requires us to deny an increase. However, if this reasoning were valid, no increase in fares could ever be justified since they always cause some persons to stop riding the bus. We believe, rather, that this standard is addressed to the proper design of a rate structure and that it inherently recognizes the need for revenues sufficient to cover expenses.<sup>11/</sup> In this connection, the Citywide Welfare Rights Organization suggests that, under this standard, the company has been deficient in failing to give a discounted rate in the off-peak hours, thus increasing ridership. However, this contention overlooks the fact that this Commission has, in the recent past, considered the subject of discount fares, both as a general measure to increase ridership and as a desirable alternative for off-peak hours. See Orders Nos. 880 and 882.

For reasons fully discussed at pp. 15-18 of Order No. 880, issued October 18, 1968, we do not believe that a straight reduction in fares at all times, in the hope of increasing ridership, is a practicable solution to Transit's problems. There is no reasonable basis on which to expect an increase in ridership of sufficient magnitude that overall revenues would be increased.

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<sup>11/</sup> Without such rates, there would eventually be no "movement of traffic" at all.

As for fare reductions in off-peak hours, we considered that possibility in Order No. 882. It is an approach with some merit and we may yet take an opportunity to test it. However, our analysis of the conditions existing on this transit system at the time we considered the idea indicated that if such discounts were instituted, the peak-hour fare would have to be higher than it would with a straight fare applicable at all times. It further appeared that more people would be paying the peak-hour fare than the lower fare. In those circumstances, we judged that use of such a fare was not desirable. This is not to say that the matter should not be further considered as conditions change. If we were to have a basis for concluding that such a rate structure would be beneficial, we would try it out.<sup>12/</sup> However, there is no basis in this record for concluding that such a structure would be desirable. In any event, it certainly cannot be said that the company's failure to institute such a system justified a denial of a fare increase at this time.

Under §6(a)(3) we must give due consideration, finally, "to the inherent advantages of transportation by such carriers" as Transit. Again, we find nothing in this standard which would justify this Commission in refusing to give Transit a rate structure which produces revenues sufficient to cover expenses. The inherent advantages of mass transit cannot be enjoyed long by anyone if the system is not allowed to be economically viable.

To sum up on the impact of §6(a)(3) of the Compact upon our consideration of the issues before us, we have pointed out the obligation imposed directly upon us by the unequivocal language of §6(a)(4) to provide revenues sufficient to cover expenses and provide a fair return. We then referred to the general principle of statutory construction that the various sections of a statute must be read and interpreted to form a harmonious whole. We then examined in detail each of the standards set out in Section 6(a)(3) and we find nothing in any of them which would justify us in overlooking the requirements of §6(a)(4) and making the company operate at a loss. We conclude, therefore, that in view of the facts of record here, we have no basis in the applicable law for adopting the Mayor's suggestion that we refuse an increase because of the pendency before Congress of legislation providing for public ownership and interim subsidy.

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<sup>12/</sup> We know that it has been tried in other cities and has not been considered a success.

The argument to the contrary comes down to this: Pointing to the standards of §6(a)(3) and to the recognized fact that rate increases lead to decreased ridership, it is argued that such increases should only be granted if there is no other reasonable alternative. This is a proposition with which we fully agree. In this case, as in all others, we would not grant an increase if there were a reasonable alternative course of action open to us.

Our attention is directed in this connection to the alternatives of public ownership and interim subsidy in legislation presently pending before Congress. This, it is said, is an alternative and "due consideration" of it requires that we deny any increase at this time. We should turn, therefore, to a direct consideration of this alternative.

One flaw in this reasoning is the fact that the legislation is not an alternative at the moment. Rather, it is a possibility that may or may not come to pass. From a legal standpoint, it would be a questionable course of action to rely on this possibility. We must act now -- the statute requires us to. If the facts of record justify an increase now we may not deny that result simply because something might occur in the future which would avoid the existing need.

Of course, the more certain it is that circumstances will change, the stronger becomes the argument that we should take the possibility into account. In our judgment, however, the pending legislation can only be regarded as a possibility with no degree of certainty at this juncture. While bills have been introduced in both Houses of Congress, they have not reached the floor in either House. In the Senate, the public ownership with interim subsidy bill has been approved in Committee but it has not yet been reported to the floor. In the House, there have not even been hearings on the ownership proposal. We have no information, nor did the District Government in its testimony before us, as to the ultimate prospects for this legislation in either House. We certainly have no basis whatever for basing any action on the assumption that the proposals will be enacted into law.

Finally, in considering the suggestion that we simply withhold action at this time on the basis of pending legislation, we feel that we must take into account the company's present ability to continue operations in the face of operating losses. We have many obligations which the public interest requires us to protect. There is none more important, however, than our obligation to ensure that this community has available to it the mass transit service on which it depends so

heavily. The problems stemming from service deficiencies, and the problems stemming from higher fares, are as nothing compared to the problems with which we would have to deal if the buses simply stopped running.

Nor is this a remote and imaginative possibility. The rate of return witnesses engaged by our staff in this proceeding can hardly be considered as unduly favorably disposed toward the financial interests of the company's owners. They recommended a severe new approach toward rate of return determination. Yet each was asked about the possibility of simply requiring the company to operate at a loss and each rejected that possibility as highly unrealistic and potentially dangerous. Each referred to the recent experience of the city of Akron, Ohio. There, as we understand it, an operator was denied an increase and required to operate at a loss. The company's buses were seized by creditors and the operation was shut down. The city was deprived of transit service for more than four months. We cannot countenance any such similar experience here in the Washington area.

Of course, a company could be in a state of financial health which permitted it to sustain loss operations for some period of time. However, the facts here demonstrate that we have no such situation. This company has already sustained substantial losses in 1967 and 1968. It is operating only at a break-even level in 1969. Its current liabilities are 5.9 times in excess of its current assets. A company witness presented an analysis of cash flow. On the basis, thereof, the company witness made dire predictions that operations would simply have to cease very shortly without financial relief. We need not accept his conclusions and, indeed, we do not, as to the timing of the impact on the company for further loss operations. Nonetheless, we think that the information on cash flow makes it clear that requiring the company to sustain further losses involves an unacceptable degree of risk to continuity of service.

We also accept the validity of the contention that further losses would make it difficult, if not impossible, for the company to rely on outside financing sources in order to weather a period of financial losses.

In short, we have considered the Mayor's suggestion that we refuse any further fare increases despite a showing of financial need. We reject, as did the Mayor, the alternatives of reductions in wage rates or cut-backs in service levels. We must also reject, albeit

reluctantly, his suggestion that we simply withhold action on the basis of the public ownership legislation pending in Congress. We do not think that such a course of action is legally open to us. Even if it were, we do not think that eventual enactment of that legislation is sufficiently certain to justify our reliance on that result. Finally, we think that to withhold action in the face of the financial realities we have here found to exist involves an unacceptable degree of risk to the assured continuity of transit service.

This is not to say, however, that our actions in this proceeding have not been influenced by the Mayor's testimony and by the issues he raised. In response to a very legitimate concern with the social impact of rising fares, we have taken whatever steps we can to keep those increases to a minimum level. Most importantly, we have, for the time being, eased the requirement that the company remain on a rigid annual bus purchase program, thus reducing required annual revenues by \$ 769,170. See pp.43-44, infra.

Moreover, in the exercise of our judgment in those areas where such exercise is proper, we have opted for those actions which will minimize the amount of increase. For instance, we feel that a thoroughly defensible case could have been made for giving Transit a fare increase much closer to the level it sought, i.e., a 35¢ cash fare and a 32¢ token fare. This company has just come through a period of severe financial adversity. In two consecutive years, it has lost substantial sums; it is currently just breaking even. It faces problems with its creditors and has even at times had difficulty meeting its payroll. For a time, there was a threat of a work stoppage because of a dispute about arrearage in its payments to the union pension and health funds. If the special circumstances with which the Mayor's testimony dealt were not present, it would be a sound exercise of judgment to be a bit generous both in resolving disputes on projected expenses and in determining the proper return. An easing of stringency in these areas would enable the company to recover its financial health fully in a timely manner. However, we have not taken that course. We have applied a strict though fair standard to the resolution of disputes and we have restricted the return to the minimum defensible level. This approach has been taken in direct response to the problems with which both this Commission and the Mayor are concerned.

Finally, we wish to make it crystal clear in this opinion that we stand ready to respond as quickly and as expeditiously as can be done to any final enactment of legislation dealing with the problem of rising fares. If the Congress enacts legislation which permits a fare reduction, and if the President approves it, we will move with the utmost dispatch to reduce fares to whatever level is possible.

In summary, therefore, we have considered the Mayor's testimony fully and carefully. We share his concern with the problems caused by increasing fares and we applaud his efforts to deal with them. However, there are insurmountable obstacles, both legal and practical, to adopting his suggestion that we deny a rate increase completely. Rather, we have kept that increase to the minimum level necessary to preserve the company's financial health. We stand ready to act as quickly as possible to reduce fares as soon as legislation making that feasible becomes effective.

#### IV

#### THE APPROPRIATE RATE STRUCTURE

It is clear, therefore, that the pending legislation on ownership and subsidy of Transit does not obviate the need to consider the question of appropriate changes in the rate structure in order to produce the revenues here found to be necessary. We begin our consideration with one more basic question: The impact on our deliberations of the court decision in Payne v. WMATC (D. C. Cir. 20,714, decided October 8, 1968) and our proceedings on remand of that decision.

Pursuant to that remand, we have engaged the services of independent consultants and they have undertaken a thorough investigation of the factors involved in obtaining a "fare structure that is rational, fair, and neither 'unduly preferential [n]or unduly discriminatory,'" Payne, slip opinion, p-37.

The Payne case was remanded to the Commission in December 1968. On December 17, 1968, qualified independent consultants were requested to submit proposals on the fare discrimination study. Fifteen responses were received and analyzed by the staff, in the course of which there was consultation with consultants interested in performing the study. On April 8, 1969, Alan M. Voorhees and Associates, Inc., was retained. Their contract provided that they would complete the study and submit a report within five months. The final report is not yet available, but the Commission staff has received a draft. It is expected that a final report will be submitted to the Commission in the near future. We anticipate holding public hearings within 30 or 40 days after that on the findings of the report as a means of assisting us in reaching the conclusions called for by the Payne remand.

Statement of George A. Avery, Chairman,  
Washington Metropolitan Area Transit Commission  
At Press Conference Upon Issuance of D. C. Transit Rate Order  
June 26, 1970

We are today raising the basic fare of D. C. Transit in the District of Columbia to 40 cents. Equivalent increases are authorized for suburban fares. Thus, Washington joins a number of cities throughout the country in having a basic transit fare of forty cents or more. This includes Chicago, Kansas City, St. Louis, and Akron.

This result is one which we had hoped to avoid and which we have been warning against for at least the last two years. We have held the line on fares as firmly as we could while urging action by the local governments and the Congress to relieve the upward pressure on fares created by the ever-increasing cost of providing service. Despite our warnings and pleas, there is no present prospect for final legislative action and we were forced to face, realistically and on our own, the demands of financial reality with which the company and community must live.

When the case was filed, it was our hope that, if action on fares did become necessary, we could hold any increase to 35 cents. However, when we examined the results of that action, we found it was simply impossible. At that fare level, the company would lose about \$1,250,000 in the next twelve months. It would incur these losses

even without buying any new buses, adding any improvements in maintenance, or making any effort to improve the marketing of its service.

In light of the losses which D. C. Transit has sustained in the last three years, it could not incur the further losses which a 35 cent fare would produce and still survive as a viable entity. We had to conclude, albeit reluctantly, that it was completely impossible to hold fares to that level.

We also looked very hard at the possibility of holding the increase to a nickel, thus producing a 37 cent fare in the district. Again, we concluded that this was just not enough and we had to reject it. Under that fare, the company would still have suffered a loss, although not as substantial as with a 35 cent fare. However, D. C. Transit is not in a position to sustain further losses and still be able to serve the community.

After examining all the other possibilities, we were forced to the conclusion that a forty cent fare was the only reasonable result.

The riding public will at least be able to reap some benefits from this fare. It has enabled us to require the company to resume the purchase of new buses; we have also required them to improve substantially their maintenance program, thus making more buses available and putting all of them in better condition; we are requiring the company, for the first time, to embark upon a substantial and real program of informing the public about the service available to them. We hope that

this will, at the very least, halt the downward trend of ridership and avoid the need for further increases for a longer period of time. To ensure that these programs are undertaken, we have taken the extraordinary step of requiring a substantial part of the additional revenues produced by the increase to be placed in special earmarked funds usable only for these specific purposes.

We are acutely aware of the very real hardship which a transit fare at this level will work upon the low income groups in this city. Since the necessity for this fare increase is forced upon us by the inability to achieve public ownership and general subsidy of transit fares, we have suggested a new legislative approach which will at least ease the burden on those who can least afford the increase. This is the transit stamp program which I suggested in the hearings and in a letter to Mayor Washington a few weeks ago. I hope we will get a prompt and favorable response to this suggestion and can move forward, first on the District level, and then in Congress to enact such a program. In addition, we have on our own, required D. C. Transit, like the other companies we regulate, to initiate steps looking toward a reduced senior citizen fare in off-peak hours.

As must be obvious, we find the action we take today regrettable, even distasteful. However, so long as mass transit here is left to make it on its own, in a time of serious inflation, we have no choice but to make it economically viable. Our action today was necessary to achieve that goal.

December 31, 1969

Honorable Walter E. Washington  
Mayor, District of Columbia  
District Building  
14th and E Streets, N. W.  
Washington, D. C. 20004

Dear Mayor Washington:

I am taking this occasion at year-end to write you once again concerning the problem of transit fares in the District of Columbia. As you know, I have not communicated with you on this subject for some time due to the District Government's status as a formal party in the most recent D. C. Transit rate case. On November 24, 1969, we completed our last action in that case, when we issued our Order No. 993 denying reconsideration of our earlier order raising fares to 32 cents. I am thus free once again to discuss the problem with you on a direct basis.

To review the situation briefly, the intra-District fare presently stands at 32 cents. While no further applications for increases are presently pending, we know that the company and the union are presently engaged in an arbitration proceeding to determine the level of wages which should prevail following the expiration of the labor contract last October 31. I have no idea how that arbitration will come out, but if it results in wage increases of any significant magnitude, we can expect the company to be applying for further fare increases.

Meanwhile, there is the public ownership-subsidy legislation pending in Congress. The Senate District Committee has approved a bill permitting public ownership but does not plan to send it to the floor immediately. Little or no action has been taken in the House.

*W. E. Washington*

This, then, is the situation that we presently face. There is at least the possibility that further fare increases will be sought and we cannot expect with certainty any final action on the legislation presently pending before Congress. With matters in this posture, I think that the possibility of additional constructive action exists.

Specifically, I would like to urge that we jointly pursue an approach you suggested in your testimony before the Commission in the recent rate case. I refer to your suggestion that, instead of a general operating subsidy such as was embodied in S. 1813, the bill we prepared for submission to Congress last Spring, we consider subsidizing the fares of certain categories of persons who can least afford higher fares. In addition, we should consider subsidizing the cost of certain types of service (e.g., night service, low density routes serving important public facilities) which are vitally important to those dependent on public transit but which are a financial drain on the transit operation as a whole. It would be my suggestion that at the same time, new sources of revenue for the required funds be explored. This would include such possibilities as a parking tax or a commuter tax.

I believe that workable legislation along these lines can be drafted and submitted to Congress. It seems to me absolutely vital that any such submission have the endorsement of the District Government and, most desirably, it should be a joint effort of the Transit Commission and your Government.

To move the project along, I should like to request (1) that you give the concept your personal endorsement (not necessarily publicly at this juncture, but within the Government); (2) that you direct the Corporation Council to assign an appropriate person to work with the Transit Commission General Counsel on the preparation of a bill; and (3) that at the appropriate time, you submit the legislation for consideration by the Congress.

I know of your intense interest in the problem of increasing transit fares and your concern that action be taken to do something about them. This is a time in which new and constructive approaches should be explored. I think that the kind of approach suggested in your testimony before us was very forward-looking and constructive. I would like to see it made a reality and am prepared to work with you to achieve that result.

With best regards,

Sincerely yours,

George A. Avery  
Chairman