

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1260

IN THE MATTER OF:

Served June 29, 1973

Amendment of Certificates)
of Public Convenience and)
Necessity of:)
D. C. Transit System, Inc.;)
W. V. & M. Coach Company;)
A. B. & W. Transit Company;)
WMA Transit Company.)
Docket No. 250

We instituted this proceeding on our own motion to determine, inter alia, what amendments, if any, should be made in Certificate of Public Convenience and Necessity No. 5 held by D. C. Transit System, Inc. (Transit) as a result of the condemnation of certain of its assets by the Washington Metropolitan Area Transit Authority (WMATA) pursuant to the National Capital Area Transit Act of 1972, P.L. 92-517. We conducted public hearings at which WMATA, the Public Service Commission of Maryland, and several interested carriers^{1/} appeared. Post-hearing memoranda have been submitted by Transit and by Greyhound Lines, Inc. (East) and Atwood's Transport Lines, Inc. We have considered these memoranda and the record before us, and the matter is now ready for decision.

Effective as of 2:00 A.M. on January 14, 1973, WMATA condemned certain of Transit's assets and property^{2/} and commenced

1/ In addition to the carriers made parties to this proceeding by our Order No. 1249, Continental Trailways, Inc., Gray Line, Inc., Atwood's Transport Lines, Inc., and Greyhound Lines, Inc. (East) appeared at the hearings.

2/ The description of the property condemned by WMATA is set forth in the appendix to the complaint filed on WMATA's behalf by the Attorney General of the United States and now pending before the United States District Court for the District of Columbia. WMATA v. Twelve Parcels of Land Etc., Civil Action No. 79-73 (D.D.C.). A copy of the complaint in the condemnation proceeding and the Court's pre-trial order of April 27, 1973, are in the record before us.

the operation of most of the transportation services which Transit had theretofore conducted pursuant to its certificate of public convenience and necessity. On April 27, 1973, District Judge Gesell ruled that WMATA had condemned the ". . . various operating rights of D. C. Transit. . . granted by federal or state agencies." Thus, with the single exception of individually ticketed sightseeing service to which we now turn, the operating authority set forth in Transit's certificate has been taken by WMATA.^{3/}

Although Judge Gesell's order does not expressly so state, no one seriously disputes Transit's claim that it retained its individually ticketed sightseeing authority following the condemnation. Our independent examination of the relevant

3/ Transit contends that we should issue a certificate of public convenience and necessity to WMATA authorizing it to operate the transportation previously performed by Transit. Transit makes this argument both broadly, and with respect to the charter authority previously held by it. We disagree. In our view, WMATA is exempt from our regulatory authority by virtue of the provisions of Section 1(a)(2) of the Compact. It is true that "charter service" was not included within the definition of "transit services" set forth in Article 1(g) of the Washington Metropolitan Area Transit Authority Compact (hereinafter "Authority Compact"), but WMATA was expressly granted charter authority by Section 102(c)(1) of the National Capital Area Transit Act of 1972, P.L. 92-517. That Act, by which Congress manifested its consent to the Authority Compact, must be read together with the Authority Compact itself. And Article 77 of the Authority Compact expressly exempts WMATA from our certificate jurisdiction. Thus, we conclude that with respect to its regular route operations as well as its charter services, WMATA does not require a certificate of public convenience and necessity from us.

legislation and the record before us has persuaded us that Transit is correct. WMATA was given the power to condemn property "necessary and useful for the transit system authorized herein" by the provisions of Article 82(a) of the Authority Compact. The "transit system" which WMATA was authorized to operate excluded "taxicab [and] sightseeing" service, but included charter service. Article 1(g) of the Authority Compact; National Capital Area Transit Act of 1972, §102(c) (1), P.L. 92-517. Thus, when WMATA filed its complaint in the condemnation proceeding, it expressly excluded from the description of the property it was condemning "individual ticket sale sightseeing operations". WMATA v. Twelve Parcels of Land Etc., supra, Complaint, Section A, -- Part IV. Judge Gesell's order must, we believe, be read in light of the complaint which was before him and against the background of the relevant legislation. So read, we conclude that Transit's individually ticketed sightseeing authority has not been condemned and that so much of Transit's certificate of public convenience and necessity which authorizes such service remains in effect.

Greyhound Lines, Inc. (East) and Atwood's Transport Lines, Inc., argue that Transit has permitted its individually ticketed sightseeing authority to become dormant and they urge that we now issue an order directing Transit to remedy this deficiency within thirty (30) days. The record before us, while not wholly satisfactory, demonstrates to our satisfaction that Transit has not abandoned the individually ticketed sightseeing service authorized by sub-paragraph (a) of its certificate over the irregular route from points within the District of Columbia to points within the Metropolitan District. It is true that such service was discontinued for a period of time following the condemnation of Transit's operating equipment by WMATA, but it would be altogether unreasonable for us to hold that the involuntary hiatus in Transit's sightseeing service which accompanied the public take-over constituted an abandonment of the company's individually ticketed sightseeing certificate authority. More recently, Transit has acquired five new "Silver Eagle" buses suitable for its sightseeing operation, as well as two smaller pieces of equipment. Transit maintains a sightseeing terminal in the District of Columbia and Mr.

Hatfield, the company's Executive Vice President, testified that regular sightseeing service is now being operated.^{4/} For these reasons, we believe that no further action is required at this time with respect to Transit's individually ticketed sightseeing service pursuant to the authority conferred upon it by sub-paragraph (a) of its certificate.

We reach a different conclusion, however, with respect to Transit's individually ticketed sightseeing service over the irregular routes specified in sub-paragraphs (b) and (c) in its certificate. Sub-paragraph (b) of Transit's certificate authorizes an individually ticketed sightseeing service from points in Montgomery County, Maryland, and that portion of Prince Georges County, Maryland, north of the John Hanson Highway to points in the Metropolitan District. Although Transit's currently effective Tariff No. 45, which we officially note, sets forth the rates and charges for a number of individually ticketed sightseeing tours over this irregular route, the record before us shows that such tours are infrequently operated and then, apparently, only on a demand deemed sufficient by Transit. Transit's certificate requires that "reasonable, continuous and adequate service to the public" be provided "in pursuance of the authority granted," and its tariff does not provide for an "on demand" service. On the basis of the record now before us, we cannot ascertain whether Transit is, in fact, providing reasonable, continuous and adequate individually ticketed sightseeing service over the irregular route specified in sub-paragraph (b) of its certificate in accordance with its currently effective tariff. Accordingly, we believe it appropriate to institute a separate proceeding to investigate this matter which we have done by Order No. 1266, issued today. We are mindful of the fact that condemnation severely interrupted Transit's operations, and that reasonable latitude must accordingly be afforded the company during the time it is reorganizing its individually ticketed sightseeing operation. Nevertheless, it is incumbent upon Transit to provide reasonable, continuous and adequate individually ticketed sightseeing service over all of the irregular routes authorized by its certificate, and the investigation which we institute today will explore this issue.

^{4/} In Order No. 1262, issued today, we have granted Transit permission to put into effect on less than thirty days notice a tariff revision establishing a new individually ticketed sightseeing service originating in the District of Columbia.

Sub-paragraph (c) of Transit's certificate authorizes an individually ticketed sightseeing service from points in Arlington and Fairfax Counties and the cities of Falls Church and Fairfax, Virginia, to points in Montgomery and Prince Georges Counties, Maryland. Transit's currently effective tariff contains no individually ticketed sightseeing service over this irregular route. Thus, unlike the situation with respect to the irregular route specified in sub-paragraph (b) of Transit's certificate, it is undisputed that Transit is furnishing no individually ticketed sightseeing service over the irregular route specified in sub-paragraph (c) of its certificate. The record does not indicate that the company has ever conducted such operations, nor are we apprised of any plans to do so. Thus, the investigation which we are today instituting will also consider the question as to whether Transit's individually ticketed sightseeing authority over the irregular route authorized by sub-paragraph (c) of its certificate should not be revoked for the company's failure to provide reasonable, continuous and adequate service over this irregular route. Because it is undisputed that Transit has no currently effective individually ticketed sightseeing tariff in effect over this route, we believe that it is appropriate to enter an order in accordance with Section 4(g) of the Compact directing the institution of such service within forty (40) days.

We do not believe that the pendency of that investigation should delay disposition of this proceeding which was instituted solely for the purpose of appropriately amending Transit's certificate of public convenience and necessity in light of the WMATA condemnation. Thus, we have decided that the appropriate course is to re-issue Transit's certificate of public convenience and necessity, deleting therefrom all operating authority except individually ticketed sightseeing service, close this docket, and leave the adequacy of Transit's individually ticketed sightseeing service over the irregular routes authorized by sub-paragraphs (b) and (c) of its certificate as well as any further certificate action, to await the outcome of the separate investigation instituted today. Instead of the numerous amendments to Transit's Certificate of

Public Convenience and Necessity No. 5 which would be necessary, we have concluded, purely for administrative convenience, to cancel that certificate in its entirety and simultaneously to issue to Transit a new certificate authorizing all the individually ticketed sightseeing authority which it held prior to condemnation.

We emphasize that our action with respect to Transit's certificate is a purely ministerial one designed only to reflect the status of the operating authority which Transit holds from this Commission at this time. In so doing, we make no finding that the operating authority which Judge Gesell has found that WMATA condemned had independent value. That matter is solely within the jurisdiction of the United States District Court and our action today is in no way intended to impinge upon that jurisdiction in any degree whatsoever.

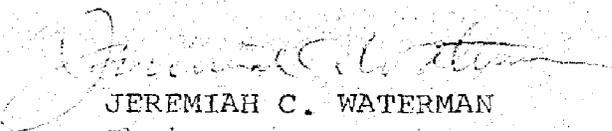
THEREFORE, IT IS ORDERED:

1. That Certificate of Public Convenience and Necessity No. 5 issued to D. C. Transit System, Inc. on August 12, 1963, as amended, be, and it is hereby, cancelled in its entirety.

2. That Certificate of Public Convenience and Necessity No. 5-A, in the form attached hereto and made a part hereof, be, and it is hereby, issued to D. C. Transit System, Inc.

3. That D. C. Transit System, Inc., be, and it is hereby, directed to file a new tariff with the Commission on or before Monday, July 9, 1973, for the sole purpose of deleting reference to any charges or operations not authorized by its Certificate of Public Convenience and Necessity No. 5-A. The tariff filed pursuant to this paragraph may be marked to become effective on five day's notice without further order of the Commission.

BY DIRECTION OF THE COMMISSION:


JEREMIAH C. WATERMAN
Chairman

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 5-A

D. C. TRANSIT SYSTEM, INC.
WASHINGTON, D. C.

At a session of the Washington Metropolitan Area Transit Commission held on the 29th day of June, 1973;

AFTER DUE INVESTIGATION, it appearing that the above named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District, as a carrier, for the reasons and subject to the limitations set forth in Order No. 1260;

THEREFORE, IT IS ORDERED, that the said carrier be, and it is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions and limitations as are now, or may hereafter, be attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below, except that this certificate does not authorize any intrastate transportation in Virginia:

IRREGULAR ROUTES:

Passengers and their baggage:

SPECIAL OPERATIONS limited to individually ticketed sightseeing service:

- (a) From points in the District of Columbia to points in the Metropolitan District.

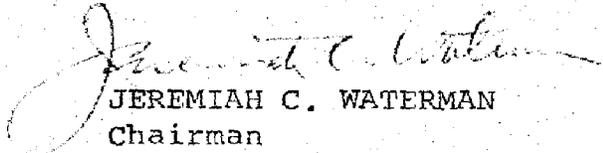
(b) From points in Montgomery County, Maryland, and that portion of Prince Georges County, Maryland, north of the John Hanson Highway to points in the Metropolitan District.

(c) From points in Arlington and Fairfax Counties and the Cities of Falls Church and Fairfax, Virginia to points in Montgomery and Prince Georges Counties, Maryland.

AND IT IS FURTHER ORDERED and is made a condition of this certificate that the holder thereof shall render reasonable, continuous and adequate service to the public in pursuance of the authority granted herein, and that failure so to do shall constitute sufficient grounds for suspension, change or revocation of this certificate.

The operating authority granted by this Certificate is granted pursuant to Order No. 1260, and supersedes any and all operating rights previously set forth in Certificate of Public Convenience and Necessity No. 5, or in any other order or authority issued by the Commission.

BY DIRECTION OF THE COMMISSION:


JEREMIAH C. WATERMAN
Chairman