

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1304

IN THE MATTER OF:

Application of DAWSON'S CHARTER) Served: February 21, 1974
SERVICE, INC., for an Amendment)
of its Certificate of Public Con-) Application No. 816
venience and Necessity No. 9 and)
for Authority to Increase Fares) Docket No. 252

By Application No. 816, dated August 23, 1973, Dawson's Charter Service, Inc. (Dawson), seeks to amend its Certificate of Public Convenience and Necessity No. 9. Dawson is authorized to conduct charter operations, round-trip, from points on, north and west of the Capital Beltway (Interstate Highway 495) within Montgomery County, Md., to points within the counties of Montgomery and Prince George's Md., and return. Approval of the amendment would grant Dawson authority to conduct charter operations, round-trip, from points in Montgomery County, Md., to points in Montgomery County and Prince George's County, Md., Washington, D. C., Fairfax and Arlington Counties and the cities of Alexandria and Fairfax, Va., and return. Dawson has filed, as a part of the amendment application, revisions to its Tariff No. 7.

I.

Pursuant to Order No. 1277, served October 19, 1973, a hearing was held November 27, 1973, to develop an appropriate record. The Gray Line, Inc. (Gray Line) and the Washington Metropolitan Area Transit Authority (WMATA) appeared at the hearing as protestants.^{1/} Gray Line holds Certificate of Public

^{1/} Eyre's Bus Service, Inc., filed a protest to the application and, by a supplemental pleading, indicated that it would present evidence at the hearing. However, it did not appear.

Convenience and Necessity No. 12, which authorizes, as pertinent to this proceeding, the performance of charter operations, round-trip or one-way, from points in the Metropolitan District, not including Alexandria, Va., to points in the Metropolitan District and, one-way, from Alexandria, Va., to the District of Columbia. WMATA is a common carrier, performing mass transportation of passengers by bus within the Metropolitan District pursuant to Public Law 92-517, 92nd Congress, approved October 21, 1972, and referred to as the National Capital Area Transit Act of 1972, 86 Stat. 999.

WMATA filed a protest to Dawson's application and contended that its interest in this proceeding was derived from its enabling authority. Dawson filed a response to the protest in which it was argued that Congress conferred no charter operating authority on WMATA and that WMATA should not be allowed the opportunity to protest the application. The Commission did not rule on the request by Dawson prior to the hearing. Rather, the presiding officer permitted WMATA to participate in the hearing with the understanding that WMATA would file an answer to Dawson's motion within 10 days after the hearing and that the Commission would then determine whether WMATA should be permitted to protest. WMATA's answer to the motion to dismiss contended that it had standing to participate in the hearing as a member of the public.

The compact which created WMATA specifically exempts WMATA from regulation by this Commission. See Washington Metropolitan Area Transit Authority Compact, 80 Stat. 1324, Pub. L. 89-774, Article XVI, Section 77. As a result, any charter operations performed by WMATA are not rendered pursuant to authority granted to WMATA by this Commission. WMATA is not a certificated carrier which could avail itself of the various protections provided by the Compact to certificated carriers.

Pursuant to Section 102(c) of the National Capital Area Transit Act of 1972, WMATA acquired authority to operate charter service between any point within the transit zone^{2/} and a point

^{2/} The transit zone embraces the District of Columbia, the cities of Alexandria, Falls Church and Fairfax and the counties of Arlington and Fairfax and political subdivisions of the Commonwealth of Virginia located within those counties, and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located in said counties. Article III, Section 3 of the Washington Metropolitan Area Transit Authority Compact.

within 250 miles of the Zero Mile Stone located on the Ellipse.^{3/} Moreover, WMATA purchased the charter authority of Alexandria, Barcroft and Washington Transit Company^{4/} and WMA Transit Company^{5/} and condemned the charter authority of D. C. Transit System, Inc.,^{6/} and Washington, Virginia and Maryland Coach Company, Inc.,^{7/} in connection with the acquisition of those companies which were formerly subject to this Commission's jurisdiction, and WMATA continues many of the charter operations previously conducted under the acquired authority.

Thus, WMATA is, in fact, performing charter operations, pursuant to the provisions of the National Capital Area Transit Act of 1972, between points within the Metropolitan District.^{8/} Moreover, WMATA has authority to operate, and is operating, regular

3/ The Transit Zone lies entirely within 250 miles of the Zero Mile Stone, as does every point within the Metropolitan District over which this Commission has regulatory jurisdiction.

4/ See Order No. 1257, served June 7, 1973.

5/ See Order No. 1258, served June 7, 1973.

6/ See Order No. 1260, served June 29, 1973.

7/ See Order No. 1261, served June 29, 1973.

8/ The Metropolitan District embraces the District of Columbia, the cities of Alexandria and Falls Church, the counties of Arlington and Fairfax, and political subdivisions of the State of Virginia located within those counties and that portion of Loudoun County, Virginia, occupied by the Dulles International Airport and the counties of Montgomery and Prince George's in the State of Maryland and political subdivisions of the State of Maryland located within said counties, and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of said counties, cities and airport. See Compact, Title I, Article I. The Metropolitan District is coextensive with the WMATA Transit Zone (see footnote 3), except it includes, in addition, the Dulles International Airport property located in Loudoun County, Virginia.

route operations within its "transit zone", which is generally coextensive with the Metropolitan District over which this Commission exercises jurisdiction. On both bases -- as an authorized regular route operator and as an authorized charter operator -- WMATA has standing to participate in any proceeding before this Commission in which its operations within the Metropolitan District may be affected. Accordingly, the Commission shall deny Dawson's motion to dismiss WMATA's protest.

In its protest, WMATA submitted that it was a competitor with companies doing charter business in the Metropolitan District, that it knew of no substantial increase in public need for charter services within the Metropolitan District, and that the public's need and demand for such services can be satisfied by the present certificated carriers. WMATA's position was that an additional carrier should not be certificated to perform a service which a common carrier is ready, willing and able to perform within the area and between points along its regular routes. WMATA contended that a common carrier should have the first opportunity to perform charter operations and special operations along its regular routes to the extent that it is ready, willing and able to perform such services.

WMATA's argument would require an initial finding by this Commission that WMATA is not ready, willing and able to perform the proposed charter service. The Commission does not believe that approval of a charter authority application must be based, in part, on a finding that WMATA is not ready, willing and able to perform the proposed charter service. Rather, WMATA should be required to show that approval of a charter authority application would not be in the public interest.

The paragraphs contained in Title II, Article XII, Section 4 of the Compact govern the issuance of certificates of public convenience and necessity. Paragraph (a) required the Commission to grant such certificate to any person who was bona fide engaged in transportation on the effective date of the Compact without requiring further proof of public convenience and necessity, if application for such certificate was made within 90 days after the effective date of the Compact. Paragraph (b) provides that all other certificates shall be issued after a hearing, if the Commission finds that the applicant is fit, willing, and able to perform the transportation, and to conform to the provisions

of the Compact and that such transportation is or will be required by the public convenience and necessity. Paragraph (g) provides that certificates shall be effective until suspended or terminated. However, any certificate may be amended or revoked, in whole or in part, either upon application by a certificated carrier to the Commission, in the discretion of this Commission, or for willful failure to comply with any order of the Commission, on the Commission's own initiative or upon complaint, after notice and hearing.

By Application No. 816 Dawson seeks to amend its present certificate of public convenience and necessity. However, approval of the proposed amendment would result in the grant of new charter authority not previously contained in Dawson's certificate. Accordingly, the Commission is of the opinion that approval of the amendment requires those findings contained in Section 4(b) of Article XII of the Compact.

The findings to be made by the Commission for the proposed tariff amendment are different than those for the proposed certificate amendment. Approval of the proposed tariff must be based on a finding that the tariff is just, reasonable, and not unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District. See Compact, Title II, Article XII, Section 6(a)(2). With these standards in mind and for reasons which follow, the discussion and conclusions which follow have been divided between the application to amend the certificate and the request for approval of a different tariff.

II.

Dawson's application to amend its certificate seeks to expand the base of operations from that portion of Montgomery County, Md., which is north and west of the Capital Beltway (Interstate Highway 495) to all of Montgomery County. From the expanded base of operations, Dawson seeks authority to perform charter operations to Montgomery and Prince George's Counties, Md., Washington, D. C., Fairfax and Arlington Counties and the cities of Alexandria and Fairfax, Va. The proposed charter operations would be conducted from the base area to the requested areas and return.

The testimony of three witnesses, letters from members of the general public, and a population report compiled by the

Montgomery County Office of Economic Research and Planning were presented at the hearing by Dawson to support the contention that the proposed charter service is or will be required by the public convenience and necessity. The testimony of the witnesses in support of Dawson's application consisted primarily of statements indicating that there is a public need for more charter service from all of Montgomery County, Md., to various specified points within Washington, D. C. The presiding officer at the hearing, upon objection, excluded the letters offered by Dawson and identified as exhibit 5. The letters were addressed to either Dawson or to the Commission. The Commission is of the opinion that the letters should be accepted, but that the weight to be afforded them should be restricted. See Rules of Practice 23-01 and 23-02. This exhibit merely indicates that letters were received from persons and groups in Montgomery County in response to a solicitation by Dawson for support of its application. The population report submitted by Dawson establishes the non-controverted fact that the population in Montgomery County has been increasing. The evidence of record supports the conclusion that there is a public need for more charter service from all of Montgomery County, Md., to Montgomery and Prince George's Counties, Md., and Washington, D. C., and return.

The primary contentions of protestant Gray Line are that it is in a position to meet all reasonable requirements for charter services from points and places in Montgomery County to points and places in the District, that there is no present or future need for the new charter services to be rendered by Dawson, and that granting the application would unreasonably and unduly dilute the available traffic to Gray Line and other carriers authorized to perform charter service. In support of its contentions Gray Line presented primarily the testimony of one witness. According to the witness, Gray Line presently operates forty vehicles in both charter and special operations and, if there would be a need for more, it would purchase additional equipment. It advertises widely by use of a brochure and the yellow pages of local telephone directories. As an indication of the scope of the operations performed by Gray Line, the witness stated that for the 9 months ending September 30, 1973, Gray Line's total revenues were \$2,205,724, of which \$185,980 or 8.4 percent were a result of charter operations. For a similar period in 1972, Gray Line's total revenues were \$1,705,550, of which \$149,643 or 8.8 percent were a result of

charter operations. A comparison of these revenues indicates that Gray Line's total revenues increased by 29.3 percent but that charter revenues increased by only 24.3 percent. In addition, charter revenues represent a relatively small portion of Gray Line's total operation. Moreover, the witness had no knowledge of any charter trips which originated in Montgomery County or of the amount of charter revenues generated by operations originating in Montgomery County. The record contains no evidence of the available traffic, if any, which would be diverted if the application were approved.

Protestant WMATA contends that approval of Dawson's application would adversely affect WMATA's existing services; impair its continued ability to render reasonable and satisfactory services, and that this impairment would eventually and inevitably be adverse to the public interest. WMATA did not submit any direct testimony to establish that there would eventually and inevitably be an adverse effect on the public as a result of the Commission's approval of this application. The record contains no evidence upon which it could be found that approval of the application would seriously impair WMATA's operations.

The Commission is of the opinion that approval of Dawson's application to conduct charter operations from all of Montgomery County, Md., to Montgomery and Prince George's Counties, Md., and to Washington, D. C., and return, would not result in harmful or destructive competition. Furthermore, the Commission finds that approval of this portion of Dawson's application is required by the public convenience and necessity. However, the evidence of record does not support a finding of a public need for that portion of the Dawson application relating, to Fairfax and Arlington Counties and the cities of Alexandria and Fairfax, Va., and return. The Commission shall deny this portion of the application.

Dawson submitted an income statement and balance sheet, testimony of its accountant, and a letter of credit reference to support the contention that it is fit, willing and able to perform the proposed charter service properly and to conform to the provisions of the Compact. The record supports the conclusion that Dawson would be financially able to increase the existing operation and adequately serve the public. The Commission is of the opinion

that Dawson is fit, willing and able to perform the proposed charter service.

The Commission finds that the evidence of record supports the conclusion that the charter service proposed by Dawson to be performed from points in Montgomery County, Md., to points in Montgomery County and Prince George's County, Md., and Washington, D. C., and return is or will be required by the public convenience and necessity, and that Dawson is fit, willing and able to perform such transportation properly and to conform to the provisions of the Compact and the Commission's rules and regulations.

III.

The proposed tariff filed with the application states charges, rules and regulations for round-trip charter movements from points in Montgomery County, Md., to Montgomery and Prince George's Counties, Md., Washington, D. C., Fairfax and Arlington Counties, and cities of Alexandria and Fairfax, Va., and return. In view of the Commission's decision to approve only a portion of the application, the following discussion of the proposed tariff will be limited to the charter operations approved herein. Of course, that portion of the tariff which does not apply to charter operations from points in Montgomery County, Md., to points in Montgomery County and Prince George's County, Md., and Washington, D. C., and return shall be denied.

Dawson's proposed tariff is based on an hourly charge. The tariff provides for a 5 hour minimum charge of \$55 with an additional charge of \$10 per hour for each hour over 5 on charter trips from points in Montgomery County, Md., to points in Washington, D. C. For charter trips from points in Montgomery County, Md., to points in Prince George's County, Md., the proposed tariff provides for a 5 hour minimum charge of \$65 with an additional charge of \$12 per hour for each hour over 5.

Dawson submits that the charter service to be provided to the public pursuant to the proposed tariff would be rendered at a reasonable rate. Dawson contended that the provision setting a minimum of 5 hours for a charter trip was reasonable and justifiable because of the distance to be travelled in rendering most of the anticipated charter services. The record discloses that

a cost of approximately \$10 per hour for bus and driver would be incurred in performing the charter operations. Moreover, Dawson projected an increase of \$20,000 or 11.6 percent in revenues if the application to amend were to be granted in its entirety. Under the unrealistic assumption that the cost of operations and other expenses integral to the charter operation remained the same, the operating ratio would be 93.3 percent.

The Commission is of the opinion that the evidence of record supports and justifies the proposed 5 hour minimum charge of \$55 with an additional charge of \$10 per hour for each hour over 5 for charter trips from points in Montgomery County, Md., to points in Washington, D. C. However, no evidence has been submitted to support the proposed 5 hour minimum charge of \$65 with an additional charge of \$12 per hour for each hour over 5 for charter trips from points in Montgomery County, Md., to points in Prince George's County, Md. There being no basis in the record for determining otherwise, the Commission is of the opinion that the proposed 5 hour minimum charge of \$65 with an additional charge of \$12 per hour for each hour over 5 is not just or reasonable and may be unduly discriminatory between sections of the Metropolitan District. Accordingly, the Commission concludes that the proposed 5 hour minimum charge of \$55 with an additional charge of \$10 per hour for each hour over 5 on charter trips from points in Montgomery County, Md., to points in Montgomery County and Prince George's County, Md., and Washington, D. C., and return is just, reasonable and not unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District.

The Commission has considered the other matters pressed by the parties but finds that they do not warrant action contrary to that now ordered.

THEREFORE, IT IS ORDERED:

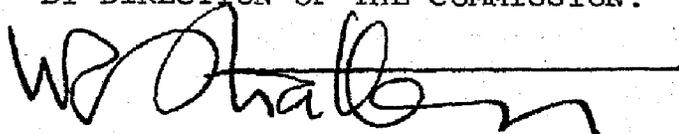
1. That the motion of Dawson's Charter Service, Inc., to dismiss the protest of the Washington Metropolitan Area Transit Authority be, and it is hereby, denied.
2. That Certificate of Public Convenience and Necessity No. 9 of Dawson's Charter Service, Inc., be, and it is hereby, amended as attached hereto and made a part hereof.

3. That the Tariff filed as part of Application No. 816 of Dawson's Charter Service, Inc., be, and it is hereby, approved as to a 5 hour minimum charge of \$55 with an additional charge of \$10 per hour for each hour over 5 and as to other rules and regulations governing charter trips from points in Montgomery County, Md., to points in Montgomery and Prince George's Counties, Md., and Washington, D. C., and return.

4. That the Tariff filed as part of Application No. 816 of Dawson's Charter Service, Inc., be, and it is hereby, denied as to charges, rules and regulations governing charter operations from points in Montgomery County, Md., to points in Fairfax and Arlington Counties and cities of Alexandria and Fairfax, Va., and return.

5. That Dawson's Charter Service, Inc., be, and it is hereby, directed to file a new tariff in accordance with the authority granted herein, such tariff to be effective on three (3) days notice without further order of the Commission.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "W. R. Stratton", is written over a horizontal line.

WILLIAM R. STRATTON
Commissioner

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 9

DAWSON'S CHARTER SERVICE, INC.
SANDY SPRINGS, MARYLAND

By order of the Washington Metropolitan Area Transit Commission issued on the 21st day of February, 1974.

AFTER DUE INVESTIGATION, it appearing that the above named carrier is entitled to received 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.

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:

IRREGULAR ROUTES:

Passengers and their baggage, and express, in the same vehicle with passengers:

(a) CHARTER OPERATIONS:

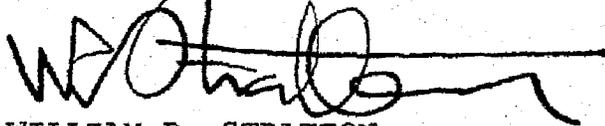
Round-trip;

From points in Montgomery County, Maryland, to points in Montgomery County, Maryland, Prince George's County, Maryland, and Washington, D. C., and return.

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 embraces and supersedes operating rights previously granted.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, appearing to read 'W. R. Stratton', written over a horizontal line.

WILLIAM R. STRATTON
Commissioner