

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 1387

IN THE MATTER OF:

Application of TRANS-	)	Served December 11, 1974
STUDENT LINES, INC.,	)	
for Certificate of Public	)	Application No. 840
Convenience and Necessity)	)	
	)	Docket No. 269

APPEARANCES:

DAVID CARLINER and JAMES GRAHAM, Attorneys for Trans-Student Lines, Inc., applicant.

JORDAN S. HIMELFARB, Attorney for Washington Metropolitan Area Transit Authority, protestant.

DONALD J. BALSLEY, JR., Counsel for Washington Metropolitan Area Transit Commission.

BY THE COMMISSION:

By Application No. 840, dated June 5, 1974, Trans-Student Lines, Inc. (Trans-Student) seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4 (b) of the Compact, to perform charter operations pursuant to contract. Trans-Student seeks authority to transport students from Andrews Air Force Base (Andrews), Prince George's County, Md., to Washington Navy Yard Annex, Anacostia, D.C., and return, and from Andrews to Foreign Service Institute

Site, Rosslyn, Va., and return.<sup>1/</sup>

On September 25, 1974, the Washington Metropolitan Area Transit Authority (WMATA) filed a protest to Trans-Student's application. WMATA performs charter operations and regular route service within its "transit zone," which includes the Metropolitan District over which this Commission exercises jurisdiction.

In its protest, WMATA submits that it is a competitor with companies doing charter business in the Metropolitan District, that it knows 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 carriers. WMATA believes that approval of this application would adversely affect its existing services and that this impairment would eventually and inevitably be adverse to the public interest. WMATA also asserts that the operation proposed by Trans-Student is mass transit and that WMATA is the only carrier qualified to perform such an operation.

WMATA's primary contention is based on the decision of the United States District Court for the Eastern District of Virginia at Alexandria in Case No. 2023, Alexandria, Barcroft and Washington Transit Company and Washington, Virginia and

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<sup>1/</sup> The Commission's Order No. 1339, served July 1, 1974, granted Trans-Student temporary authority to transport students from Andrews to Washington Navy Yard Annex, and return, and from Andrews to Foreign Service Institute Site, and return. Such temporary authorization became effective July 1, 1974, and will be effective through December 28, 1974, unless otherwise provided by order of the Commission.

Maryland Coach Company, Inc., et al v. United States of America and Interstate Commerce Commission (AB&W case).<sup>2/</sup>

WMATA submits that a reading of that case clearly indicates that in regard to the performance of charter operations and special operations along the regular routes of a common carrier, the service should first be permitted to be performed by the common carrier to the extent that it is ready, willing, and able to perform the service.

Trans-Student filed an answer to WMATA's protest. Essentially, Trans-Student answers that the National Capital Area Transit Act of 1972 (Transit Act) merely provides that WMATA may operate charter service in addition to its other services and that the AB&W case does not represent the proposition that a common carrier has an exclusive preference to provide all charter service within the area of its regular-route operations.

We are of the opinion that WMATA may perform charter service within the area prescribed in the Transit Act. However, neither the Transit Act nor the AB&W case grants to WMATA the exclusive preference to determine which charter service shall be performed by WMATA and which charter service shall be performed by private carriers certificated by this Commission. We, of course, shall accord WMATA an opportunity to protest as being adverse to the public interest the grant of a certificate of public convenience and necessity.

Pursuant to Order No. 1349, served September 10, 1974, as modified by Order No. 1352, served September 27, 1974, a hearing was held October 22, 1974 to develop an appropriate record. The findings to be made by the Commission with respect to applications for certificates of public convenience and necessity are set forth in Title II, Article XII, Section 4 (b) of the Compact. The Commission must make two separate

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<sup>2/</sup> The case was decided July 10, 1961 and the motion for a new trial was denied January 22, 1962. See 14 Federal Carriers Cases 81,395 and 15 Federal Carriers Cases 81,428.

findings. First, the applicant must be "fit, willing and able" to perform the proposed transportation properly and to conform to the provisions of the Compact and the rules, regulations and requirements of the Commission thereunder. Second, the proposed transportation "must be or will be required" by the public convenience and necessity.

Trans-Student presented the testimony of three witnesses. Alton P. Yearwood, president of Trans-Student, testified about the fitness, willingness and ability of the applicant to perform the proposed transportation properly and to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission thereunder. Joseph B. Lavender, Washington manager of operations, testified to the actual manner in which the proposed service has been provided under temporary authority. Air Force Captain Lawrence J. Zimmerman, administrative supervisor of the students who would use the proposed service, testified concerning the need for the proposed service.

Mr. Yearwood indicated that the principal activity of Trans-Student is the provision of transportation of school children and operation of shuttle buses at various military bases. Trans-Student has contracts to perform these services at seven different military installations. In addition, it performs similar services for a private school. These activities generated \$701,665.36 in gross revenues during the twelve-month period ended June 30, 1974. During the same period, Trans-Student incurred expenses of \$685,434.20, with the resulting net income before taxes being \$16, 231.16. Mr. Yearwood stated that this marginal return was the result of the rapid increase in the price of gasoline during the period and a contract upon which Trans-Student suffered a financial loss.

As part of its application, Trans-Student submitted a statement projecting revenues and expenses from the proposed service for a twelve-month period ending June 30, 1975. This twelve-month period coincides with the term of an agreement that Trans-Student has entered with the Department of Defense. According to the projections, Trans-Student would generate

revenues of \$42,591.19 and revenue deductions, excluding taxes, of \$22,922.39. Mr. Yearwood indicated that the net income before taxes would be \$19,668.80.

Mr. Lavender stated that Trans-Student has been performing the proposed service under temporary authority from this Commission since July 1, 1974. The operation requires the use of two buses which transport students from Andrews to the Washington Navy Yard Annex, and return, and from Andrews to the Foreign Service Institute Site, and return. The vehicles are licensed locally and are stored and serviced at a garage within the Metropolitan District.

Captain Zimmerman indicated that the service by Trans-Student under temporary authority has been entirely satisfactory and that there have been no complaints and no problems regarding the operation. Captain Zimmerman also stated that there is a need for transportation of the students between Andrews and the Washington Navy Yard Annex, and return, and between Andrews and the Foreign Service Institute Site, and return.

The record indicates that on Monday through Friday, excluding holidays, one of the passenger buses departs Andrews at 7:00a.m. and returns from the Washington Navy Yard Annex at 3:00p.m., and that the other passenger bus departs Andrews at 7:45a.m. and returns from the Foreign Service Institute Site at 4:00p.m. The average daily load is approximately 53 passengers. During the period July 1, 1974 through September 30, 1974, these operations generated revenues of \$7,466.18 and expenses of \$5,837.82. The net income before taxes for this period was \$1,628.36.

The contract between Trans-Student and the Department of Defense is dated May 13, 1974 and provides, inter alia, that Trans-Student would perform the proposed service for a one-year period commencing July 1, 1974 and terminating June 30, 1975. Students travelling in the vehicles would not be individually charged for the transportation service. Rather, Trans-Student would be paid at the rate of \$94.27 per day for each vehicle.

WMATA presented the testimony of Charles A. Mills, Jr., contract sales specialist in the office of marketing. His testimony indicates that prior to July 1, 1974, WMATA performed the transportation service for which Trans-Student seeks authority. According to Mr. Mills, there were two occasions when the WMATA bus operator performed his duties in a reckless manner. In addition, the record indicates that there were nine late arrivals or departures during the period July 25, 1973 to November 14, 1973, inclusive. Mr. Mills testified that his information and knowledge was limited to the sales aspects of the contract and that the transportation and operators' habits would be in the Transportation Director's office. WMATA did not submit any other testimony.

Certainly this record does not support the contention that any party desiring to enter into an agreement with a carrier for passenger transportation service must contract for such service with WMATA. This would render non-negotiable and non-competitive such considerations as price, dependability of service, and quality of equipment. Under the theory proffered here by WMATA, a contractor would have to take whatever is offered by WMATA or go without.

Further, in the case of competitively negotiated contracts, we believe that a measure of deference and latitude should be accorded the financial and operational decisions of the party contracting for service. In addition, we believe that his ability to consider contractors in the light of performance is an element in his deliberation which is best preserved.

Beyond these considerations, we also note that WMATA has not shown that approval of this application would substantially impair its services or would be adverse to the public interest.<sup>3/</sup>

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<sup>3/</sup> See Order No. 1304, served February 21, 1974, granting application No. 816 of Dawson's Charter Service, Inc., and Order No. 1361, served October 16, 1974 involving an investigation of the authority necessary to perform contract operations.

The Commission believes that the record supports a finding that the public convenience and necessity requires the transportation of students from Andrews to the Washington Navy Yard Annex, and return, and from Andrews to the Foreign Service Institute Site, and return. The Commission further finds that approval of Trans-Student's application is required by the public convenience and necessity. The authority to be granted shall be limited to charter operations pursuant to this specific contract with the Department of Defense.

The Compact requires each carrier to "file with the Commission, and keep open to public inspection, tariffs showing (1) all fares it charges for transportation subject to this Act, ..., and (2) to the extent required by regulations of the Commission, the regulations and practices of such carrier affecting such fares." See Title II, Article XII, Section 5(a) of the Compact. The Commission shall direct Trans-Student to file such a tariff.

As previously indicated, the rate for the service would be \$94.27 per vehicle per day. Although that rate has been agreed to by the person rendering the service and the person using the service, the Commission "may suspend any fare, regulation, or practice shown in a tariff...at any time before such fare, regulation, or practice would otherwise take effect." See Compact, Title II, Article XII, Section 6(a)(1). The Commission has given consideration to, among other things, the financial condition of Trans-Student, its revenue requirements, and whether Trans-Student is being operated economically and efficiently. The Commission concludes that the rate set forth in the record 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 they do not warrant action contrary to that which is now directed.

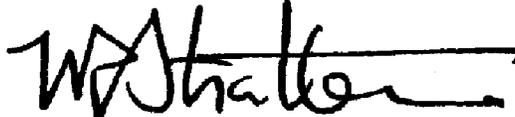
THEREFORE, IT IS ORDERED:

1. That Trans-Student Lines, Inc., be, and it is hereby,

issued Certificate of Public Convenience and Necessity No. 20 as attached hereto and made a part hereof.

2. That Trans-Student Lines, Inc., be, and it is hereby, directed to file WMATC Tariff No. 1 in accordance with the authority granted herein, such tariff to be effective upon acceptance by the Executive Director.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "W. Stratton", with a horizontal line drawn across the middle of the signature.

WILLIAM R. STRATTON  
Vice-Chairman

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. 20

TRANS-STUDENT LINES, INC.

By Order No. 1387 of the Washington Metropolitan Area Transit Commission issued December 11, 1974

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. 1387

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 authorized by this certificate of public convenience and necessity shall be limited to the performance of service pursuant to agreement between Trans-Student Lines, Inc., and the Department of Defense, provided, however, that written notice must be filed by the carrier with the Commission within five (5) days of any cancellation or termination of the aforementioned agreement, and further provided that any change in or amendment to the aforementioned agreement shall be filed with the Commission for approval at least fifteen (15) days prior to the proposed effective date of such change or amendment, and further

provided that any change or amendment to the aforementioned agreement which would involve new authority shall be subject to the provisions of the Washington Metropolitan Area Transit Regulation Compact and the Rules and Regulations of the Commission.

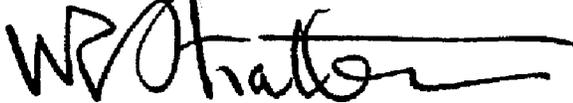
IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

CHARTER OPERATIONS PURSUANT TO CONTRACT, limited to the transportation of students (A) from Andrews Air Force Base, Prince George's County, Md., to Washington Navy Yard Annex, Anacostia, D.C., and return, and (B) from Andrews Air Force Base, Prince George's County, Md., to Foreign Service Institute Site, Rosslyn, Va., and return.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous and adequate service 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.

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  
Vice-Chairman