

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 1404

IN THE MATTER OF:

Application of KNOWLES BUS)	Served February 10, 1975
LEASING SERVICE, INC., for)	Application No. 846
Certificate of Public )	Docket No. 275
Convenience and Necessity )	

By Order No. 1388, served December 20, 1974, the Commission granted Application No. 846 of Knowles Bus Leasing Service, Inc. (Knowles). The Commission issued to Knowles Certificate of Public Convenience and Necessity No. 21 authorizing Charter Operations Pursuant to Contract, serving specified points located within the Metropolitan District. The grant of the application and the concomitant issuance of Certificate No. 21 were based on two separate findings mandated by the Compact. The Commission found that Knowles is 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 thereunder, and that the public convenience and necessity require the transportation services authorized to be performed by Knowles in Certificate No. 21.

On January 20, 1975, the Washington Metropolitan Area Transit Authority (WMATA) filed an application for reconsideration of Order No. 1388. Knowles filed a reply to that application. The Commission has considered these pleadings and believes that there has been presented no basis for reconsidering the findings set forth in Order No. 1388.

In response to that portion of Order No. 1388 which states that "WMATA did not produce any evidence or testimony which would support its assertions or provide any basis for withholding authority from Knowles", WMATA, in its application, takes the position that such testimony would be superfluous.

WMATA submits that this Commission is on judicial notice of the National Capital Area Transit Act of 1972, 86 Stat. 999, and that any testimony would merely duplicate the matters set forth in that statute. The Commission is, and was at the time of its decision in this matter, aware of this statute. Cf. Application of DAWSON'S CHARTER SERVICE, INC., Order No. 1304, served February 21, 1974; Application of COLUMBIA TRANSPO COMPANY, INC., Order No. 1346, served August 22, 1974; Investigation - CONTRACT OPERATIONS, Order No. 1361, served October 16, 1974' and Application of TRANS-STUDENT LINES, INC., Order No. 1387, served December 11, 1974. The Commission perceives its decision in this matter to be in harmony with the provisions of the National Capital Area Transit Act of 1972 and Title III of the Compact, 80 Stat. 1324, Publ. L. 89-774.

WMATA has requested the Commission to take administrative notice of memoranda. The first memorandum, under date of November 15, 1972, from the then Executive Director of the Commission, Douglas N. Schneider, Jr., is addressed to John R. Kennedy, General Counsel, and Jerome M. Alper, Special Counsel, of WMATA. The second memorandum, under date of March 15, 1973, was from Mr. Kennedy.

The Commission Rule of Practice 23-05 provides as follows:

If any matter contained in a report or other document filed with the Commission, or any portion of the record before the Commission in any proceeding other than the one being heard, is offered in evidence, such report or other document or record in the other proceeding need not be produced or marked for identification, but may be identified by specifying the report or other document or the portions of the record in such other proceeding in such manner that the same may be readily located and identified.  
(Emphasis added.)

This rule clearly defines the material to be accorded administrative notice by the Commission. The memoranda referred to by WMATA are not reports or other documents filed with the

Commission. Rather, they are informal correspondence between staff members of two agencies. As such, they are neither portions of the record in any proceeding before the Commission nor reports or other documents formally filed in a proceeding before the Commission. Accordingly, the memoranda are not accepted as late-filed exhibits or evidence in this proceeding.

WMATA argues that Knowles is not fit to perform the services authorized. WMATA submits that the testimony developed at the time of the hearing showed that Knowles was not financially able to perform the service. The basis for this assertion allegedly is supported by Knowles failure to include inflation factors when projecting revenues and expenses. The Commission carefully considered the financial condition of Knowles in Order No. 1388. The assertion by WMATA does not justify re-consideration of this prior finding.

WMATA further argues that the grant of a certificate of public convenience and necessity to Knowles is contrary to the "Declaration of Policy" as promulgated in Title III, Article XII, Section 55 of the Compact. WMATA asserts that its financial well being is affected. WMATA further asserts that "by the granting of this certificate, the regional transit system would not be operated, to the fullest extent possible, as a coordinated system without unnecessary duplicating service."

The Compact, Title III, Article XII, Section 55, provides as follows:

It is hereby declared that the interest of the public in efficient and economical transit service and in the financial well-being of the Authority and of the private transit companies requires that the public and private segments of the regional transit system be operated, to the fullest extent possible, as a coordinated system without unnecessary duplicating service.

This provision expresses definitively the policy of maintaining public and private segments of the regional transit system. It emphasizes the policy of avoiding unnecessary

duplicating service by coordinating the public and private segments. The Commission has not created an unnecessary duplicating service by granting Knowles authority to perform a charter service pursuant to contract with the Department of Defense. The record does not disclose that WMATA performs a service which duplicates the authority granted to Knowles.

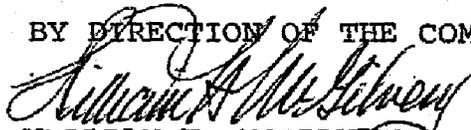
The Commission's action clearly has been within its jurisdiction. The Compact, Title III, Article XIII, Section 59, provides as follows:

Except as provided herein, this Title shall not affect the functions and jurisdiction of WMATC, as granted by Titles I and II of this Compact, over the transportation therein specified and the persons engaged therein and the Authority shall have no jurisdiction with respect thereto.

This provision preserved the functions of the Commission. The Commission's jurisdiction over the service to be provided by Knowles has not been altered or modified by the provisions of Title III of the Compact.

THEREFORE, IT IS ORDERED that the application for reconsideration of Order No. 1388 filed by the Washington Metropolitan Area Transit Authority be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY  
Acting Executive Director