

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1419

IN THE MATTER OF:

Application of McMICHAEL SCHOOL)	Served April 8, 1975
BUS SERVICE, INC., for Certificate)	Application No. 850
of Public Convenience and Necessity)	Docket No. 277

APPEARANCES:

J. STEVEN LEMPEL, Attorney for McMichael School Bus Service, Inc., applicant.

JORDAN S. HIMELFARB and W. LOUIS DORSEY, Attorneys for Washington Metropolitan Area Transit Authority, protestant.

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

By Application No. 850, filed November 26, 1974, McMichael School Bus Service, Inc. (McMichael) 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. McMichael seeks authority to transport members of the Parklawn Commuters Club (Commuters Club) from the Eastover Shopping Center and Penn Mar Shopping Center in Prince George's County, Maryland, to the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, and return.

On December 20, 1974, the Washington Metropolitan Area Transit Authority (WMATA) filed a protest to McMichael'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 ready, willing and able to perform the proposed service and that the service proposed by McMichael is not required by the public convenience and necessity. Moreover, WMATA previously has performed the proposed service for the Commuters Club.

By Order No. 1385, served December 2, 1974, the application was assigned for public hearing. 1/ As scheduled, the hearing commenced January 16, 1975, and was continued to February 11, 1975, pursuant to Order No. 1400, served January 24, 1975. Consonant with its formal protest, WMATA participated in opposition to the application.

McMichael is a Maryland corporation owned entirely by the McMichael family, whose members constitute the company's officers and directors. It was incorporated in 1971 and succeeded a prior firm personally owned and operated by Warren D. McMichael. The applicant is a school-bus operator transporting parochial and public school pupils to and from schools in Prince George's County. It also performs charter service for schools and groups of students in Prince George's and Montgomery Counties. It has rendered these services for approximately nine years. McMichael owns and regularly operates 17 school buses. The buses have seats for 44 or 48 adult passengers. McMichael employs 15 drivers full time and a master mechanic who maintains the equipment. The buses are garaged and serviced at McMichael's headquarters in Oxon Hill, Maryland. In the event of emergency, additional operating equipment can be borrowed, generally on a reciprocating basis, from other school bus operators.

Representatives for McMichael and the Commuters Club executed a contract on November 25, 1974, for a one-year period commencing December 2, 1974. Either party may cancel the agreement upon 30 days written notice. The contract provides that McMichael would receive \$90 per day for operations performed Monday through Friday, except legal holidays. McMichael is required to operate a bus departing Eastover Shopping Center at 7:00 A. M., and Penn Mar Shopping Center at 7:25 A. M. The return trip would depart the Parklawn Building at 5:00 P. M.

McMichael states that it would use school bus number 100 to perform the service and that school bus number 52 would be available for service. That equipment would be used primarily for the proposed service. The transportation operation would be for the benefit of only members of the Commuter Club. These members would pay \$20 every two weeks to the Commuters Club and thus payment to McMichael would be effected. The proposed service entails operation of approximately 42 miles in each direction and generally consumes one hour and fifteen minutes.

The chairperson of the Commuters Club supported the application by McMichael and recounted the history of the service. In February 1970,

1/ The Commission's Order No. 1385 also granted McMichael temporary authority to perform the proposed service. Such temporary authorization became effective December 2, 1974, and will remain in effect through May 30, 1975, unless otherwise provided by order of the Commission.

WMA Transit Company initially operated the service at a rate of \$30 per trip. Then, the rate was increased to \$35 per trip. In February 1973, WMATA purchased WMA Transit Company and continued to provide the service at the rate of \$35 per trip. On November 5, 1974, the Commuters Club was advised by WMATA that the rate would be \$67.22 per trip commencing on December 4, 1974. Whereupon, the Commuters Club notified WMATA that it was terminating the service contract after November 29, 1974.

The chairperson further testified that during the period WMATA conducted the proposed service, numerous oral and written complaints were made about the inadequacy of the equipment furnished and the unreliability of the service. Specifically, the witness recalled that the morning pickups were frequently late causing the arrivals at the Parklawn Building after work hours had begun. This unreliability in service, it was said, became very pronounced during the three weeks preceding the termination of the service. The witness stated that on one occasion a breakdown occurred due to the bus being operated without oil. Testimony indicated the buses were usually aged and often had cracked or broken windows and other defects. It was asserted that one such vehicle, regularly utilized in the service, had a back door that failed to close properly and caused blasts of cold air throughout the bus. The witness testified that, generally, WMATA manifested interest upon receipt of the complaints, but repeated promises to provide corrective measures seldom materialized.

Several financial statements portraying McMichael's position on December 31, 1974, were presented and attested to by the preparer, a certified public accountant. A balance sheet statement indicates \$137,782 total assets, including \$86,075 depreciated value of trucks, buses, and other properties. Total liabilities, including long term debts of \$50,102, are shown as \$128,240. The company's net worth, including capital stock, capital contributed in excess of par, and retained earnings, is shown as \$9,543. The witness stated that the working capital position of the company is marginal.

A statement of operations during 1974 ^{2/} reflects revenue income of \$288,806, consisting of \$218,203 charter operations and \$70,604 student school transportation; and operating expenses of \$285,546, consisting principally of \$39,335 officers' salaries, other wages \$97,986, repairs and maintenance \$16,970, gas and oil \$38,942, interest \$10,485, and depreciation \$22,392. Thus, the operations generated net operating profit of \$3,261. In addition, the sale of buses produced other income of \$2,462, resulting in net profit of \$5,722.

^{2/} Including operations under the temporary authority during December 1974. See footnote 1.

Projections of income and expenses for 12 months ending December 31, 1975, based upon the 1974 experience, show McMichael's school bus operations as generating \$311,105 revenue, with total expenses of \$304,625, making net profit before taxes \$6,480. In addition, the proposed operations are anticipated to produce \$22,590 in revenue, with expenses of \$21,018, resulting in net profit before taxes of \$1,572. Among the larger expense items charged to this operation are officers' salaries \$2,951, other wages \$5,020, repairs and maintenance \$1,232, gas and oil \$4,410, and depreciation \$1,626.

Items pertaining to the expected results of operation under the proposed service were determined by several methods. For instance, overhead costs, such as officers' salaries, utilities, licenses, office supplies, and others represent approximately 7 percent of the company's gross operating revenues. Direct costs, such as other wages, gas and oil, operating supplies and maintenance and repairs are estimated upon McMichael's general experience on a per-mile basis. In view of the projections, McMichael is convinced that operation of the proposed service would produce net profit before taxes equivalent to 7 percent compared to 2.1 percent for its other operations, and that after taxes, the profits would be 5 percent and 1.5 percent, respectively.

In support of its opposition, WMATA presented testimony by the director of its Contract Sales Section which manages WMATA's operations of contract sales and charters. The same individual previously performed similar functions on behalf of WMA Transit Company. He has been involved in the formulation of contracts with the Commuters Club since its inception in 1970, and is aware of its needs and problems.

The witness prepared the renewal contract which WMATA offered the Commuters Club. The terms of the renewal contract were based on WMATA's policy directives and the witness stated that the terms of the proposed renewal contract were not negotiable. The witness further stated that the rate of \$67.22 per trip was based on WMATA's actual costs. According to the witness, WMATA was able to perform this service at this rate rather than a greater amount as a result of combining this service with a regular route operation. In that connection, WMATA calculated the renewal contract on the basis of each one-way trip requiring operating 60 miles.

The witness for WMATA stated that there is a need for the proposed service between the Penn Mar Shopping Center and the Parklawn Building. WMATA does not currently offer direct regular-route service between the Penn Mar Shopping Center and the Parklawn Building. Rather, a person desiring such transportation would have to transfer. According to the witness, the public is inconvenienced by the current route structure and the necessity of transferring from one bus to another.

The witness for WMATA believes the complaints as to reliability of its operations for the Commuters Club to have been caused primarily by employee work rules. WMATA did not schedule a driver for this service as it does with regular-route line service. Rather, the drivers were randomly selected from junior bus drivers used as relief operators. This method of assigning drivers presumably created delays in the arrival of the bus for the morning trip.

In defense of its position, WMATA points to its overall operating deficits relating to its regular-route transit service and its various special-type bus operations. The company considers the service provided for the Commuters Club to be in the nature of regular-route operations, rather than charter service pursuant to contract. It considers the proposed substitution of McMichael to be an infringement upon WMATA's statutory right to provide regular-route bus service.

DISCUSSION AND CONCLUSIONS

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 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.

With respect to WMATA's contention that the proposed service would be regular route operation, the Commission is of the opinion that McMichael would be a contract charter carrier.

"[A] contract charter carrier is any person which engages in transportation of passengers for hire under a continuing written contract for the furnishing of transportation services through the provision of a vehicle or vehicles to meet the distinct need and for the exclusive and periodically recurrent use of the contracting party." Investigation of Authority to Perform CONTRACT OPERATIONS, Order No. 1361, served October 16, 1974, at page 5.

McMichael has entered a "continuing written contract" with the Commuters Club. McMichael is required to provide a vehicle for the purpose of

transporting only the members of the Commuters Club from the Eastover Shopping Center and Penn Mar Shopping Center to the Parklawn Building and return. The service would be provided Monday through Friday, except legal holidays, for a one-year period. The proposed service would be a charter operation pursuant to contract.

With respect to WMATA's contention that a grant of the application would be an infringement upon WMATA's regular-route operations, the Commission believes that McMichael's authority would not duplicate any operation currently performed by WMATA. The Compact, Title III, Article XII, Section 55, 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. Cf. Application of KNOWLES BUS LEASING SERVICE, INC., for Certificate of Public Convenience and Necessity, Order No. 1404, served February 10, 1975. By granting McMichael authority to perform a charter service pursuant to contract with the Commuters Club, the Commission would not be creating an unnecessary duplicating service. The record does not disclose that WMATA performs a service which duplicates any authority to be granted to McMichael.

The Commission believes that the record supports a finding that McMichael 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 of the Commission thereunder. The Commission further believes that the record supports a finding that the public convenience and necessity requires the transportation of members of the Commuters Club from the Eastover Shopping Center and Penn Mar Shopping Center to the Parklawn Building and return. The Commission finds that approval of McMichael'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 between McMichael and the Commuters Club.

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 Compact, Title II, Article XII, Section 5(a). The Commission shall direct McMichael to file such a tariff.

As previously indicated, the rate for the service would be \$90 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 McMichael, its revenue requirements, and whether McMichael 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 Application No. 850 of McMichael School Bus Service, Inc., be, and it is hereby, granted.
2. That McMichael School Bus Service, Inc., be, and it is hereby, issued Certificate of Public Convenience and Necessity No. 24, as attached hereto and made a part hereof.
3. That McMichael School Bus Service, 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:



HYMAN J. BLOND
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 24

McMICHAEL SCHOOL BUS SERVICE, INC.

OXON HILL, MARYLAND

By Order No. 1419 of the Washington Metropolitan Area Transit Commission issued April 8, 1975,

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. 1419,

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 McMichael School Bus Service, Inc., and Parklawn Commuters Club 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 ROUTE:

CHARTER OPERATIONS PURSUANT TO CONTRACT to perform transportation of members of the Parklawn Commuters Club from the Eastover Shopping Center and Penn Mar Shopping Center in Prince George's County, Maryland, to the Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, 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:



HYMAN J. BLOND
Executive Director