

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1454

IN THE MATTER OF:

Served September 5, 1975

Application of THE COLONIAL TRANSIT )  
COMPANY, INC., for Authority to )  
Perform Charter Operations Pursuant )  
to Contract with Reston Commuter )  
Bus, Inc. )

Application No. 861

Docket No. 287

APPEARANCES:

LINWOOD C. MAJOR, JR., Attorney for The Colonial Transit Company, Inc., applicant.

HAROLD O. MILLER, Attorney for Reston Commuter Bus, Inc., intervenor in support.

JEROME M. ALPER, CHERYL C. BURKE, and JORDAN S. HIMELFARB, Attorneys for Washington Metropolitan Area Transit Authority, protestant.

MARK A. ROSEN, Attorney for Division 689, Amalgamated Transit Union, AFL-CIO, protestant.

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

By Application No. 861, dated April 11, 1975, The Colonial Transit Company, Inc. (Colonial) seeks a certificate of public convenience and necessity pursuant to Title II, Article XII, Section 4(b) of the Compact, to perform a charter operation pursuant to contract. 1/ Colonial sought authority to transport persons who are residents of Reston, Va., and

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1/ Colonial also filed Application No. 863 on May 5, 1975. That application sought a certificate of public convenience and necessity to perform a charter operation pursuant to contract with Reston Commuter Bus, Inc., to transport passengers, over irregular routes, between Reston, Va., and Washington, D. C. The requested authority contained no restriction limiting the class of persons to whom the service would be offered. By Order No. 1428, served May 21, 1975, the Commission granted Colonial's petition to withdraw and dismissed Application No. 863 without prejudice.

"The granting of this application," Judge Shar stated, "is expected to have a favorable economic and environmental impact. The cost of the service to RCB be reduced. These savings will, in turn, be passed on the riders in the form of reduced fares. A special su for the existing service provided by Fairfax County wi eliminated, thus benefiting the local taxpayers. Imprc service at lower fares is expected to attract new ride and reduce the number of commuters using private autom

Judge Shannon indicated the decision was a dif one from a public policy standpoint because the presen contract service is provided by the Metrobus division Transit Commission's sister public agency, the Washing Metropolitan Area Transit Authority. "However," Judge Shannon said, "we perceive nothing in the law which wo prevent RCB from contracting with any qualified carrie provide the service, and the record in this case clear indicates that the decision serves the public interest.

PRESS RELEASE

SEPTEMBER 5, 1975

IMMEDIATE RELEASE

Judge Preston C. Shannon, Virginia Commissioner of the Washington Metropolitan Area Transit Commission, today announced that THE COLONIAL TRANSIT COMPANY of Fredericksburg, Virginia, has been granted authority to provide charter service between RESTON, VIRGINIA, and WASHINGTON, D. C., under contract to RESTON COMMUTER BUS, INC.

Judge Shannon who also serves on the Virginia State Corporation Commission was joined in today's decision by Chairman Robert L. Sullivan, Jr., of the Maryland Public Service Commission and in a separate concurring opinion by Vice-Chairman William R. Stratton of the District of Columbia Public Service Commission.

The decision, issued today, will permit Colonial and RCB to implement a three phase program to replace service presently rendered by Metrobus. The first phase is authorized to begin October 13, 1975, with Colonial initiating service on 20 of the 50 trips per day chartered by RCB.

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members of the Reston Commuter Bus, Inc. (RCB) between Reston, Va., and Washington, D. C. On May 23, 1975, Colonial filed a request to amend Application No. 861 to substitute, in lieu of the passenger restriction initially set forth in the application, a passenger restriction limiting service to persons who are members of Reston Community Association (RCA), Reston Home Owners Association (RHOA), or Deepwood Home Owners Association (DHOA).

By Order No. 1422, served April 22, 1975, Application No. 861 was assigned for public hearing. On May 23, 1975, RCB notified the Commission that it would intervene in support of Colonial. 2/ On that same date, the Washington Metropolitan Area Transit Authority (WMATA) filed a formal protest and Division 689, Amalgamated Transit Union, AFL-CIO (Division 689) filed a formal protest. 3/ As scheduled, the public hearing commenced June 5, 1975, and continued through June 11, 1975. After the hearing initial briefs were filed by RCB, WMATA and Division 689. A reply brief was filed by WMATA.

#### COLONIAL

Colonial is a Virginia corporation with its principal office located in Fredericksburg, Va. The corporation is organized for the purpose of operating motor vehicles for the transportation of persons for hire. Colonial is a family-type company with the three principal stockholders acting in an advisory capacity and a 15-member Board of Directors which has the responsibility of proposing and formulating company policy.

Colonial does not now hold any certificate authority from this Commission. It does perform certificated operations pursuant to authority issued by the Interstate Commerce Commission (ICC) and by the Virginia State Corporation Commission (SCC). The ICC certificate authorizes the performance of both irregular route charter operations and regular route service. The SCC certificate authorizes the performance of service for special or charter parties. In addition, Colonial performs passenger transportation within the Commonwealth of Virginia which is exempt from regulation under the Virginia statutes governing employee hauling. 4/

Approximately 60-to-70 percent of Colonial's total operations involve transporting persons between their residences and places of

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2/ The Commission received approximately 125 letters from individuals supporting Colonial's application.

3/ The Commission received one letter from an individual opposing Colonial's application.

4/ See Virginia Code, Title 56, Chapter 12, Section 274(5).

employment. These operations primarily occur between Dale City, Fredericksburg, Lake of the Woods, Lake Ridge, or Manassas, Va., and either Washington, D. C., or its immediate environs within Arlington County, Va. <sup>5/</sup> These services are rendered pursuant either to Colonial's regular route authority or to a contract with a private party. Colonial operates approximately 55 scheduled trips each day. In addition, Colonial operates the school transportation system for the city of Fredericksburg, Va.

Colonial owns and operates approximately 61 intercity coaches with air conditioning, reclining seats, and compartments for transporting luggage; one 24-passenger mini-coach; 12 school buses and one 12-passenger vehicle. For purposes of the initial service under the authority sought herein, Colonial has leased 11 intercity coaches which it is in the process of refurbishing. Colonial operates maintenance facilities at Fredericksburg and Dumfries, Va.

Colonial currently employs approximately 91 operators of whom 12 are full-time motor coach operators and 11 are school bus operators. The motor coach operators not classified as full-time are individuals who are paid by the trip. They drive vehicles in commuter operations. The operators typically have full-time employment at the destination point and operate the vehicle from the origin point in the morning and from the employment area in the evening. Colonial also has a 15-member administrative staff and a 12-member maintenance staff. Colonial has a safety director who is responsible for the training of all operators. In some of the commuter operations, Colonial uses unpaid conductors who sell tickets and collect fares in exchange for free transportation. These conductors are supervised by coordinators employed by Colonial to administer some of the commuter operations.

Several financial statements portraying Colonial's position on May 31, 1975, were presented and attested to by an accountant. A balance sheet statement indicates \$344,802 total assets, including \$271,931 depreciated value of fixed assets. Total liabilities, including equipment obligations \$117,328 and loans from stockholders \$1,506, are shown as \$175,470. Colonial's net worth, including capital stock, an account for the transfer of assets pursuant to a tax-free reorganization, retained earnings, and year to date earnings, is shown as \$169,332.

A statement of operations for the 5-month period ended May 31, 1975, reflects total income \$548,713, consisting of \$533,676 in cash receipts and \$15,298 from the sale of assets; cost of operations was \$368,424,

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<sup>5/</sup> The former points are located beyond the Transit Zone within which WMATA's bus mass transit service has been confined. The latter points are located within the Transit Zone. See footnote 9, infra. As a result, Colonial does not compete with WMATA when rendering these operations. These operations are not subject to the regulatory jurisdiction of this Commission.

primarily consisting of \$194,168 payroll, \$82,374 bus parts and repairs, and fuel \$55,644; and expenses were \$149,694, primarily consisting of \$46,587 insurance, \$37,500 depreciation, \$11,037 payroll taxes, \$8,655 rent, \$6,283 interest, and \$5,987 licenses. Colonial states that it had a net profit of \$30,595 for the 5-month period. Colonial has reported a profit each year since 1966 on its federal income tax returns. For the years 1972, 1973, and 1974, the taxable income so reported was \$22,400, \$20,500, and \$24,000, respectively.

For the 5-month period ended May 31, 1975, Colonial averaged \$7,500 per month in payments on its equipment obligations. Of that amount, approximately \$1,200 per month was interest expense. As previously indicated, Colonial has leased 11 vehicles to be dedicated to the Reston service. The lease payments for these 11 vehicles will be approximately \$3,028 per month for 36 months. Thus, Colonial would be required to make total monthly payments of approximately \$10,500 in order to finance its fleet of equipment.

#### COLONIAL'S PROPOSED SERVICE

Colonial's Reston service would be performed pursuant to a contract with RCB. The anticipated operation initially would involve ten trips in the morning and ten trips in the evening. Colonial initially would store 12 vehicles near Reston and would park the equipment used during the day in the bus-parking area at the Pentagon. It would assign a full-time resident employee to work in Reston with direct responsibility to coordinate and manage the operation. Colonial plans to hire operators from the Northern Virginia area and would employ the drivers on a per-trip basis. RCB would specify the trips to be operated by Colonial, the times of arrival and departure, the routes to be followed, and the boarding and alighting points along the routes.

The rate to be paid Colonial by RCB would be a flat rate based on the seating capacity of the bus. Initially, the rate would approximate \$45 per trip. The proposed contract contains a clause which would adjust the rate to reflect changes in the cost of fuel. Both RCB and Colonial would be responsible for assuring that only members of RCA, RHOA, and DHOA use the proposed service. No other members of the public would be permitted to use the service. RCB would collect fares from the passengers and retain the entire proceeds.

Projections of revenues and expenses were submitted for an annual period for the operation of 10 trips in the morning and 10 trips in the evening. The estimated revenues would be \$235,800 and the estimated expenses would be \$146,774. The expense projection was based on a cost per mile determination of the expense items other than depreciation as reported on Colonial's federal income tax return for the calendar year 1974 escalated by 10 percent to reflect inflation during the future period.

Based upon an estimate of the mileage initially to be operated, the expense for all items except depreciation was projected. To that amount (\$108,468) was added the annual equipment lease expense for 10 vehicles (\$36,336) and the depreciation expense for 2 vehicles (\$1,970). Based on the foregoing, Colonial projected an annual profit before taxes of \$89,026. The planned expansion of the operation to 25 morning trips and 25 evening trips is expected to result in a comparable profit margin.

#### RCB

RCB is a Virginia non-profit corporation organized for the purpose of securing commuter transportation for the residents of Reston, Va., and its immediate environs, between Reston and centers of employment in the Washington metropolitan area. RCB charters commuter buses to decrease the number of private vehicles in use, promote traffic safety, reduce traffic, noise, and environmental pollution, and thereby promote the social welfare of the citizens of Reston and surrounding areas.

RCB has a president, vice-president, treasurer, operations officer, planning officer, ticket officer, mini-bus officer, secretary and an executive committee composed of 3 at-large officers. Additionally, RCB has 50 "busmeisters" each of whom is generally responsible for the daily operation of one particular scheduled trip and who ride for free. They seek to insure that drivers follow the proper pick-up route, direct drivers to follow one of several alternative routes between Reston and Washington as required to avoid traffic congestion, solicit the viewpoints of the riders, conduct surveys, advise riders of service changes, and process revenue. The "busmeisters" are all members of RCB's 70-member board of directors, where they represent the riders.

RCB first contracted for commuter service in 1968. The initial arrangement was between RCB and Washington, Virginia and Maryland Coach Company, Inc. (WV&M). In January 1973, when WV&M was acquired by WMATA, it succeeded WV&M in the provision of the service. Since that time WMATA has provided the drivers and vehicles to RCB under various arrangements. WMATA currently operates 50 scheduled trips daily Monday through Friday, except holidays, pursuant to written contract with RCB.

At the time WMATA succeeded WV&M, RCB was paying \$40 per one-way bus trip. In April 1974, the rate was increased to \$57.08 per trip. In December 1974, the rate again was increased to \$66.91 per trip.

As a result of the rate increases by WMATA, RCB has twice increased the price charged the rider. The first increase occurred in February 1974 and amounted to approximately 16 percent, from \$1.20 to \$1.40 per trip. 6/

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6/ This increase occurred prior to the April 1 effective date of the WMATA contract change. The reason for the increase was that WMATA commenced charging RCB the higher rate per trip during February and

The second increase from \$1.40 to \$1.50 per trip occurred in December 1974 and amounted to approximately 7 percent. This increase reflects the rise in WMATA's per trip charge from \$57.08 to \$66.91 offset in part by a Fairfax County, Va., subsidy. That special subsidy enabled RCB to establish a \$1.50 per trip charge rather than a \$1.70 per trip charge which would otherwise have been required to pay WMATA's contract rate. The subsidy amounted to approximately \$45,000 for the 6-month period from December 1974 to May 1975.

RCB has varied the number of daily trips required. On October 29, 1973, WMATA operated 50 daily trips. That level of service remained constant until August 17, 1974, when it was reduced to 48 daily trips. On November 18, 1974, the number was increased to 49 daily trips and then, in February 1975, it returned to 50 daily trips. The peak monthly ridership occurred in January 1974, during a period of national gasoline shortages. The passenger statistics for the 6-month period, September 1973 through February 1974, were 35,922, 40,621, 40,059, 36,034, 47,082, and 41,766 riders, respectively.

RCB contends that the service provided by WMATA has been unsuitable for the transportation of persons between Reston and the employment areas in the Washington metropolitan area. When WMATA has an equipment failure during the operation of a scheduled trip, it is difficult to secure a replacement vehicle. RCB has sought but been unable to arrange for the issuance of transfers to its riders. Further, efforts by RCB resulted in the buses being authorized to operate over the Dulles Airport access highway through special gates installed at selected points. Use of the access highway enhanced service by reducing running times. In order to use the access highway, bus operators must have a plastic card which electronically opens an access gate. The WMATA operators have frequently lost, misplaced or forgotten such cards. As a result, vehicles have been delayed. Moreover, some riders must change vehicles in Reston to reach particular destinations or connect with other buses. When the sequence of service is disrupted, the passenger oftentimes will miss the connecting route, resulting in his being without a bus to his destination.

RCB has attempted to develop a working arrangement with WMATA in order to advise and correct these service inadequacies. While there has been some improvement in the procedure for reporting service failures, the inadequacies apparently have not been rectified.

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March 1974. However, RCB contested the increase by seeking a review from the Cost-of-Living Council. RCB escrowed the difference between the prior \$40 rate and the higher \$57.08 rate. The Cost-of-Living Council disallowed the rate increase. However, on April 1, 1974, the higher rate became effective because the Economic Stabilization Act expired on March 31, 1974. RCB returned the escrow funds to its riders in the form of free rides in either morning or evening service on randomly selected dates.

RCB also has had difficulty in resolving billing problems with WMATA. The pricing policy has been modified several times by WMATA. The policy unilaterally established by WMATA with respect to which trips should be charged to RCB has created several difficulties. WMATA bills RCB the contract price for any vehicle which performs some service, or for any vehicle which breaks down during the provision of service, if the passengers on the vehicle can be transferred to another vehicle operating on a different schedule. Under this billing policy RCB has paid WMATA for vehicles which did not follow prescribed routes in Reston, picked up a few people along an unplanned route, missed entire sections of employment centers, or were operated one-half hour behind schedule. Moreover, payment of the bill is directed to the treasurer's office at WMATA whereas authority to adjust the bill apparently is lodged elsewhere; administrative problems inhere in this arrangement. According to RCB the net result of inadequate service and unsuitable billing practices has been a lower quality of service and higher fares. Consequently, there has occurred a loss in ridership and a failure to attract new riders.

RCB supports the application of Colonial. 7/ RCB believes that the service to be offered by Colonial would not be plagued by the difficulties prevalent in WMATA's operation. Colonial would provide a liaison official in the Reston area, use high speed over-the-road highway vehicles, and base equipment within the Reston area.

The current service rendered by WMATA for RCB is available to any person who RCB's "busmeisters" permit to board the vehicles. The proposed service would not be offered to every member of the general public. 8/ Rather, it would be restricted to persons who are members of either RCA, RHOA, or DHOA. Membership in RHOA or DHOA is an incidence of owning a home in either Reston or Deepwood, which is surrounded by Reston. Membership in RCA is available for a fee to Reston residents who are not homeowners.

After commencement of service by Colonial, RCB proposes to reduce all passenger fares to reflect the economies of the Colonial contract. The fare for all passengers would be the same whether they rode in a Colonial vehicle or a WMATA vehicle. Currently, RCB pays WMATA approximately \$3,350 per day to operate 50 trips. If Colonial is granted the necessary authority, then Colonial initially would operate 20 trips per day. This mix of Colonial and WMATA would effect a reduction in cost of approximately \$450 per day.

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7/ A petition signed by 1,524 individuals indicating support for Colonial's application has been presented to the Commission by RCB.

8/ The record indicates that approximately 6 to 9 percent of the persons currently using the WMATA service would not be permitted to ride in the service to be offered by Colonial.

RCB intends to phase in Colonial over a period of 6 months in 3 stages. The first stage would be the reduction of 20 charter trips performed by WMATA within 30 days of certification of Colonial. The second stage would be a further reduction of 10 WMATA charter trips in the first 90 days following certification of Colonial. The third stage would be a final reduction of 20 WMATA charter trips within 180 days of Colonial's certification. Thus, Colonial would wholly replace WMATA.

#### WMATA

WMATA performs mass transportation of passengers by bus within the Metropolitan District pursuant to Public Law 92-517, 92nd Congress, approved October 21, 1972, 86 Stat. 999, and referred to as the National Capital Area Transit Act of 1972 (Transit Act of 1972). Pursuant to Section 102(c) of the Transit Act of 1972, WMATA acquired authority to operate charter service between points within the Transit Zone. <sup>9/</sup> WMATA performs charter operations between points throughout the Metropolitan District. Pursuant to Section 101(a) of the Transit Act of 1972, WMATA also operates regular-route operations within the Metropolitan District, the area in which this Commission exercises jurisdiction.

WMATA characterizes the contract service it provides to RCB as "community-type regular route transit service". Following WMATA's acquisition of WV&M in January 1973, the service previously performed by WV&M for RCB was continued without contract until June 1974. During this period, WMATA held several public hearings on a staff proposal for pricing such "community-type regular route transit service" under contract. RCB representatives appeared at these public hearings. In November 1973, the WMATA Board of Directors adopted a resolution stating WMATA policy applicable to the service being rendered. That resolution requires, inter alia, that contracts cover the costs of operations; that the WMATA staff review operating cost increases every 6 months and report its findings and recommendations to the WMATA Board and to the affected political subdivisions; and that no new contracts be finalized without securing the prior approval of the appropriate sub-regional body.

Pursuant to the directives set forth in the resolution, the WMATA staff developed a price of \$57.08 for a one-way trip performed in the

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<sup>9/</sup> 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. Cf. Title III, Article III, Section 3 of the Compact. The Transit Zone embraces a smaller area than the Metropolitan District. See Title II, Article I of the Compact. The difference being the inclusion of Dulles International Airport within the Metropolitan District.

RCB service. This price and other terms were formalized in a contract between WMATA and RCB dated June 20, 1974. That contract was not referred to the Northern Virginia Transportation Commission, the appropriate sub-regional body, for its approval.

The contract contains a provision stating that WMATA may provide passengers with transfers, with or without cost, as may from time to time be agreed upon. However, WMATA considers the RCB service to be a specialized contract service and the passengers who use this specialized service not to be entitled to free transfers. The contract further provides that a representative of RCB, known as a "busmeister", may make minor adjustments in the routing and scheduling of a particular run, the purpose being to accommodate the route and schedule to traffic and weather conditions. Operation of the bus remains the bus operator's primary responsibility, including the safety and well-being of passengers. WMATA has required RCB's operations officer to develop trip manifests which are to be followed by the bus operator. The contract also provides that no charge will be made in the event that a mechanical breakdown, accident or other cause renders a bus unable to begin or complete a run unless a replacement bus is timely requested by a duly authorized representative of RCB and provided by WMATA. However, when passengers travelling on buses which became disabled were transferred to other buses rendering service on a different schedule, then RCB has been required to pay the one-way charge for the disabled vehicles, even though they did not complete the scheduled service. The contract finally provides that any increase or decrease in the number of buses and/or trips must be cleared with WMATA at least one week prior to the date of such increase or decrease. However, RCB's request for additional buses has been referred to the appropriate political subdivision charged with the responsibility of allocating buses for the rendering of regular route service.

The June 20, 1974, RCB-WMATA contract provided that the agreement would be for a 6-month period beginning April 1, 1974, and would be renewable at 6-month intervals thereafter, with bus costs to be computed in accordance with the Board of Directors Resolution dated November 29, 1973. The price of \$57.08 was determined by accumulating the operator's cost for an 8-hour day and the mileage cost (without the operator) based on the cost per mile in the WMATA system. In December 1974, when the price was increased to \$66.91, the cost would have been \$73 under the method used in June 1974, but meanwhile the WMATA Board of Directors had modified its prior resolution of policy on cost determination.

On May 29, 1975, the Board of Directors of WMATA approved a new pricing method for community-type regular route transit service. The resolution provides that the price shall be determined on the basis of the number of bus miles times the mileage charge, plus the number of revenue bus hours times the hourly charge, plus the number of peak hour buses in the contract times the fixed cost per bus. The resolution does not provide

a definition of mileage charge, hourly charge or fixed cost per bus. Neither does it identify the elements of cost which are to be included in each of these items nor the method of computation. At the hearing in this proceeding, WMATA was unable to state the cost per trip under the new pricing method.

WMATA currently supplies RCB with 24 buses to perform the morning schedules and 21 buses to perform the evening schedules. The average age of the morning buses is 9.42 years and the evening buses is 10.19 years. There is no indication of the average age of WMATA's overall fleet. 10/ These buses are stored and maintained at WMATA's Arlington County Division from where they are dispatched. In addition, WMATA operates a shuttle bus within Reston. This bus travels throughout the Reston area providing people with transportation to the pickup points. RCB is charged for the time and mileage this bus operates as a shuttle prior to its performance of a scheduled service.

When WMATA succeeded WV&M in the performance of RCB's service, the responsibility for correcting service deficiencies was placed with the WMATA Transportation Department. The June 20, 1974 contract later provided for notice to be given to the Marketing Department. Eventually, on March 17, 1975, the contract sales section of the WMATA Marketing Department assumed the responsibility of administering the RCB contract and responding to service complaints.

WMATA states that the service performed pursuant to the RCB contract has been more than adequate and satisfactory. According to WMATA, during the period January 1975 through April 1975, 4,037 trips were operated and 33 trips were missed. This represents 99.2 percent of the total trips being operated. However, WMATA has defined trips operated as being those trips for which RCB paid. RCB states that it has been required to pay for trips which were operated as much as one-half hour behind schedule, or over an undefined routes, or were not completed as scheduled.

WMATA currently offers the general public regular route service between Herndon, Va., and Washington, D. C. This regular route service traverses that portion of Reston which is located north of the Dulles Airport access highway. 11/ WMATA operates 16 trips each day between approximately

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10/ The record does indicate that WMATA recently has purchased a substantial number of new buses from American Motors Corporation as part of its Phase 3 schedule for replacement of older equipment.

11/ The record indicates that WMATA also performs some regular route service south of the Dulles Airport access highway within the area surrounding Reston. However, the precise route and points of service are not indicated.

6 a.m. and 10 p.m. Each trip along this regular route requires approximately one and one-half hours. The current fare is \$0.90 one-way. 12/ Two trips in the early morning and four trips in the late afternoon are provided in the operation of this regular route service.

WMATA estimates that it would suffer a net revenue loss if it were to discontinue the RCB service. The net revenue loss is stated to be the difference between the annual revenues received for performing the current level of operations and the costs that WMATA could avoid if it were not obligated to render the contract service. WMATA estimates the annualized revenue from the RCB contract to be \$848,000. According to WMATA, it could eliminate 26 operators 13/ and save approximately \$502,226 in wages, fringe benefits, and uniform allowances. WMATA also estimates that potential savings from fuel, oil, tires, tubes, and injuries and damages would be \$92,777. Thus, WMATA estimates the net revenue loss to be \$252,997, which the local political subdivisions in the areas served by WMATA would be required to subsidize.

According to WMATA, in the event the RCB service is terminated, the buses or the operators would not be absorbed into its regular-route system because that system currently has available to it more buses and operators than required to render reasonable and adequate service to the general public. In addition, WMATA states that there would be no cost saving in the maintenance accounts or the administration accounts. According to WMATA, the expenses related to maintenance and administration and recovered from RCB would have to be met by fare receipts and subsidies.

WMATA indicates that the current cost of performing the RCB service, aside from cost of operators, is \$0.6485 per mile of which only \$0.16 per mile would be saved by discontinuing the operation. In other words, WMATA would realize only a 25 percent cost savings (not including operator cost) if it were not to perform the RCB service.

#### DIVISION 689

Division 689 is the authorized collective bargaining representative for substantially all of the operating and non-operating employees of WMATA. It presented no affirmative evidence on the record.

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12/ On September 1, 1975, this fare was raised to \$1.20 one-way during rush hours, as part of a general adjustment by WMATA of its fares.

13/ The record contains no indication of the basis for determining that this number could be eliminated. Judging by the amount ascribed to savings, this item reflects the total compensation for 26 operators, thus failing to consider that these operators are available to perform other, non-Reston operations.

## PUBLIC POLICY

The Commission has benefited from the separate statements of several public policy witnesses. 14/ These witnesses generally emphasized the need for adequate and low cost transportation services for a specialized commuter group between a densely populated area located on the fringe of the metropolitan area and centers of employment located in the core areas of the metropolitan area. These witnesses are in substantial agreement (1) that such transportation service reduces the congestion, pollution and fuel consumption inherent in the mass use of private automobiles; (2) that the transportation service should be rendered by an efficient carrier working in conjunction with a well-organized and dedicated community association; (3) that the service should be provided at the lowest fare possible to the passenger in order to assure maximum use of the service; (4) that the operation should not be subsidized by other persons residing in the political subdivision who do not directly benefit from such service; and (5) that a combination of public and private carriers working in concert is an essential requirement of any mass transportation system dedicated to serving the public interest.

## THE NATURE OF THE RESTON SERVICE

RCB presently is provided what WMATA terms community-type regular route transit service under contract. 15/ Colonial seeks authority to provide what this Commission has properly defined as a charter operation pursuant to contract. 16/ Although the terminology is different, the

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14/ Hon. Joseph L. Fisher, Congressman from Tenth District of Virginia; Hon. Jean R. Packard, Chairman of Fairfax County Board of Supervisors; Hon. Jack Herrity, member of Fairfax County Board of Supervisors; Hon. Martha V. Pennino, member of Fairfax County Board of Supervisors; Hon. Rufus Phillips, member of Fairfax County Board of Supervisors, Commissioner of the Northern Virginia Transportation Commission, and an alternate on the WMATA Board of Directors; Hon. Carrington Williams, Virginia State Delegate; Hon. Vincent F. Callahan, Virginia State Delegate; Hon. Raymond Vickery, Virginia State Delegate; Mr. Robert S. Noe, Jr., Herndon Town Manager; Ms. Eden Huber, Chairman of Columbia Community Bus Corporation; Dr. Ronald Kirby, Director of Transportation Studies at the Urban Institute; Mr. Edward Herlihy, chairman of the transportation committee for RCA; and Mr. James Morrissey, vice-president of RHOA.

15/ Notice of Metrobus Public Hearing No. 8: "Proposed Pricing Policy for Community-type Regular Route Transit Service under Contract".

16/ Order No. 1361, served October 16, 1974, Investigation of Authority to Perform CONTRACT OPERATIONS.

services would be essentially the same. A contractual relationship between RCB and the carrier governs the service offered. RCB pays the carrier a fixed rate for a bus and driver to operate each trip. RCB sets, collects, and retains the fares from individual passengers. RCB controls the transportation and access to it. The service is provided between fixed termini and on fixed schedules. RCB establishes the level of service, the schedule and the route, and provides certain planning and management services with its own personnel. The significant difference in the nature of the two services is that RCB presently permits anyone to ride the WMATA service, whereas it proposes to restrict passenger access to the Colonial service to members of RCA, RHOA, and DHOA. Some type of membership-passenger restriction is characteristic of a charter operation provided by the passenger transportation industry.

WMATA characterizes the service it performs for RCB as regular route. The preponderance of service provided by WMATA throughout the Transit Zone is regular route. However, there are significant differences between that general regular route service and the Reston service provided by WMATA. The Reston service is provided over irregular routes, i.e., RCB, through its "busmeisters", has the authority to direct the route each bus travels and may change it on a day-to-day basis. WMATA's regular route service is provided over fixed routes. WMATA provides no transfer privileges to passengers on its Reston service, whereas passengers on its regular routes are entitled to free transfers. Regular route service of WMATA is openly available to the general public, whereas RCB controls access to the Reston service provided by WMATA. The financial risk of the Reston service is borne by RCB which pays a fixed price per trip, whereas on its regular route service WMATA receives its revenues directly from the fares of the individual passengers it is able to attract, and indirectly from operating subsidies. WMATA has adopted the policy that the Reston service must pay its full cost of operation as distinguished from its regular route service which is heavily subsidized. RCB determines the level of service, the fares, the schedules, and the routes. It plans, promotes, and manages the service with its own paid and volunteer personnel. The services provided for the Reston service by RCB must be provided by WMATA on its regular route service.

WMATA provides regular route service to RCB by appellation only. WMATA's Reston service is distinguishable from its regular route service on the bases of route regularity, financial risk, transfer privileges, control of access, subsidization, and management services.

## JURISDICTION

The initial issue presented for determination by WMATA's request to dismiss Colonial's application is whether this Commission is empowered to authorize the proposed service. WMATA contends that the service proposed to be rendered by Colonial is essentially and substantially "mass transit" service <sup>17/</sup> which WMATA has the duty, obligation and exclusive right to render. WMATA's argument that it alone has the right to render the proposed service is based upon its interpretation of the events leading to enactment of Title III of the Compact in 1966 and the Transit Act of 1972. WMATA argues that its enabling legislation created WMATA as the exclusive entity to provide both the rail and the bus segments of the mass transit system within the Transit Zone. Division 689 also contends that WMATA has the exclusive right to render the proposed service. RCB responds that the amending legislation preserved the jurisdiction of this Commission over transportation for hire.

The enactment of Title III of the Compact in 1966 formalized the public ownership of planned rail transportation and public control of the operations which would serve the Metropolitan District. The rail transportation would be provided on radial routes connecting the metropolitan suburbs and urban centers of employment. The bus transportation would continue to be provided by private carriers certificated by the Commission. Indeed, WMATA was prohibited from providing transit service by bus.

The unified operation of the existing bus systems and the proposed rail system was to be coordinated without unnecessary duplicating service.

"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." See Title III, Article XII, Section 55 of the Compact.

The Commission was charged with the responsibility of coordinating the operations of private carriers with the operation of the public rail system. Indeed, the Commission was directed (1) to coordinate the private carriers

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<sup>17/</sup> WMATA did not define the forms of transportation services to be included under the phrase "mass transit" service. As used in this order, the phrase will be considered to include services in addition to regular route service. Also, the phrase "mass transportation" service will be considered to be a synonym for "mass transit" service.

schedules for services with the schedules for services to be operated by the public rail system; (2) to improve or extend any existing private carrier services or provide additional private carrier service over additional routes; and (3) to authorize the private carrier's establishment and maintenance of through routes and joint fares for transportation rendered or controlled by the public rail system. See Title III, Article XII, Section 56(b) of the Compact.

Economic circumstances and other events, including civil disorders, in the years following 1966 led to declining bus patronage, increased costs of bus operation, and rising bus fares. The social, economic, and political pressures of rising fares led to proposals for fare stabilization legislation. But such legislation never materialized because fare stabilization meant subsidization, and there was a general reluctance to subsidize private carriers out of public funds. Since it was obvious that only the use of public funds would avert higher fares, public ownership of the four private bus lines was seriously considered. There also were sound operational reasons for public ownership of the four private bus lines, and these were articulated in the Senate Report on the amending legislation which resulted in the Transit Act of 1972.

"One of the most pressing needs of public transportation in the Metropolitan Washington area is effective coordination of the various means of transportation which are available. The four private bus lines are, in some respects, competitive rather than complimentary in their routes and services, and there are few points of connection between bus routes and available commuter railroad service.

"Acquisition of the four bus lines by the Washington Metropolitan Area Transit Authority will, hopefully, lead to the development of a consolidated route and transfer system with greater efficiency and convenience for the riding public." See S.Rep. No. 92-1270, 92nd Cong., 2d Sess. at 244 (October 4, 1972).

The amending legislation was enacted and authorized WMATA, inter alia, to acquire the transit facilities of four certificated private transit companies, which then provided virtually all the regular-route service available in the Metropolitan District.

WMATA submits that the enactment of the amending legislation terminated the Commission's jurisdiction over "mass transit" bus service. WMATA argues that the termination of Commission power to regulate "mass transit" bus service rendered the provisions of Sections 55 and 56 non-operative and that the Commission no longer had any function to perform with respect to the coordination of private carriers and public transit.

Significantly, while the amending legislation granted authority to WMATA to operate bus transit service, it did not modify the functions and duties of the Commission specified in Title III of the Compact. The Commission believes that its coordinating responsibility was not affected by the amending legislation.

All transportation for hire performed by WMATA between points in the Metropolitan District is beyond the Commission's jurisdiction. Title II, Article XII, Section 1(a) of the Compact bestows upon the Commission jurisdiction of "transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in rendering or performing such transportation service". The Compact defines certain exceptions to this broad grant of jurisdiction. With particular reference to the operations currently rendered by WMATA, Section 1(a)(2) of Article XII, Title II, excepts transportation by "the signatories" to the Compact and "any political subdivision" of the signatories. Certainly WMATA is "an instrumentality and agency of each of the signatory parties". See Compact, Title III, Article III, Section 4.

The Commission's absence of power with respect to WMATA is clearly set forth in Title III, Article XIII, Section 60 of the Compact. That Section bestows upon WMATA exclusive jurisdiction over the service that it performs.

"Service performed by transit facilities owned or controlled by the Authority, and the rates and fares to be charged for such service, shall be subject to the sole and exclusive jurisdiction of the Board and, notwithstanding any other provision in this Compact contained, WMATC shall have no authority with respect thereto, or with respect to any contractor in connection with the operation by it of transit facilities owned or controlled by the Authority." See Title III, Article XIII, Section 60 of the Compact.

The Section clearly provides that WMATA shall have sole and exclusive jurisdiction over the service, rates and fares of the public facilities and negates any jurisdiction by this Commission with respect thereto.

The province of the Commission is further delineated in Title III, Article XIII, Section 59 of the Compact.

"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." See Title III, Article XIII, Section 59 of the Compact.

That Section expressly provides that the Commission shall retain jurisdiction over private transit companies.

WMATA does not have the exclusive right to perform "mass transit" service within the Metropolitan District. Nothing contained in the Transit Act of 1972 or its legislative history indicates that the Commission's jurisdiction or coordinating authority have been modified. Hence, the Commission is empowered to authorize the proposed service and to direct that it be coordinated with the public transit system.

Division 689 and WMATA further contend that Colonial is attempting through its charter-pursuant-to-contract application to provide regular route commuter service, which only WMATA has the right to operate. This contention is not valid. WMATA is not the only carrier which can or does perform mass transportation service within the Metropolitan District. 18/ Moreover, the proposed service is not in the nature of regular route service.

#### REGULATORY FRAMEWORK

WMATA contends that examination of the service proposed by Colonial, the existing service by WMATA, and the statutory and case law definitions developed by regulatory commissions in the field of transportation reveal that the proposed operation constitutes a type of service which this Commission has no jurisdiction to authorize. WMATA indicates that a common carrier rendering charter service incidental to regular route authority granted in a certificate issued by the ICC is prohibited from performing that service so frequently as to constitute a regular scheduled or non-scheduled service. WMATA further argues that the ICC has stated its opinion that a carrier with a certificate authorizing charter service may not conduct a regular schedule so as to become a regular route operator.

By petition filed February 15, 1974, WMATA requested the Commission to determine whether service performed pursuant to a contract on a regular basis for an extended period of time, over irregular routes, could be rendered pursuant to charter authority. The WMATA request was consolidated with a prior general investigatory proceeding then pending. This proceeding resulted in Order No. 1361, served October 16, 1974. In that order the

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18/ Atwood's Transport Lines, Inc., holds Certificate of Public Convenience and Necessity No. 14 authorizing regular route service between Washington, D. C., and Prince Georges-Charles County Line, Md. Blue Lines, Inc., holds Certificate of Public Convenience and Necessity No. 10 authorizing regular route service between points in Washington, D. C., and Montgomery County, Md.

Commission amended its Regulation 51-06 to define "charter operation pursuant to contract" and held that the Compact permitted such form of transportation within the Metropolitan District.

WMATA herein challenges Regulation 51-06, as amended, contending that the Commission's regulatory definition of charter operation pursuant to contract is impermissible because it does not require such an operation to include all the elements of a charter operation and all the elements of a contract operation. With particular reference to charter operations, WMATA submits that the amended regulation does not require a showing of a community of interest among the passengers for the particular trip, the participation by the passengers in some recognizable, previously arranged and agreed-upon group activity, and the passengers travelling together for the entire duration of the particular trip. With particular reference to contract operations, WMATA submits that the amended regulation does not require a showing of the service being offered only to one person or a limited number of persons rather than a holding out of the service to the general public. Accordingly, WMATA concludes that the Commission cannot authorize the performance of charter operations pursuant to contract as defined.

The Commission has acted within its jurisdiction in defining, for purposes of regulation, certain transportation for hire within the Metropolitan District as charter operation pursuant to contract. Title II, Article XII, Section 15 of the Compact empowers the Commission to prescribe such regulations as it may find necessary or appropriate to carry out the provisions of the Compact. The Commission is not constrained by the Compact or its Rules and Regulations to certificate only those forms of transportation for hire which satisfy pre-existing regulatory definitions or definitions of other regulatory bodies. Rather, the Commission as an incidence of its jurisdiction over transportation for hire has the power to amend and revise its regulations so as to embrace the ever-evolving new forms of transportation service designed to satisfy the unique needs of the public.

Within the Compact's regulatory framework, the Commission determined that service performed pursuant to a contract on a regular basis for an extended period of time, over irregular routes, could be rendered pursuant to a certificate of public convenience and necessity authorizing charter operation pursuant to contract. Cf. Order No. 1361, served October 16, 1974. Although WMATA was the initiating party with respect to the amending of Regulation 51-06, it never filed a formal statement in that proceeding; never sought reconsideration of the Commission's Order No. 1361; and failed to file a timely challenge to the power of the Commission to prescribe such a regulation.

The Commission's prescription of a new regulation applicable to an unique transportation for hire service is not invalid because the definition

of that transportation service is neither charter nor contract. The critical test is whether the proposed service is transportation for hire subject to the Commission's jurisdiction. Clearly, Regulation 51-06, as amended, covers a type of service constituting transportation for hire within the Metropolitan District over which the Commission has jurisdiction.

#### NATURE OF PROPOSED SERVICE

The next issue presented for the Commission's determination is whether the service proposed by Colonial would constitute charter operation pursuant to contract. The Commission is of the opinion that Colonial's proposed service would be charter operation pursuant to contract.

"The term 'Charter Operation Pursuant to Contract' means the transportation of persons under a single written contract which provides for the exclusive and periodically recurrent use of a vehicle or vehicles to meet the distinct need of the passengers."  
See Regulation 51-06(b).

Colonial has indicated that it would enter a "continuing written contract" with RCB. Colonial would be required to provide vehicles for the purpose of transporting only the members of RCA, RHOA, and DHOA between Reston and employment centers in Washington, D. C., and its immediate environs. The service would be provided Monday through Friday, except legal holidays, for an initial period of 3 years. The proposed service would be a charter operation pursuant to contract.

As part of any decision with respect to an application for authority to perform a service which also is the subject matter of a contract, the Commission necessarily has to resolve the question of which party to the contract is the carrier. The Compact, Title II, Article XII, Section 2(a) defines a carrier as any person who engages in the transportation of passengers for hire by motor vehicle. The determination is based upon a finding of the party to the contract which actually operates the transportation service. Colonial would be responsible for providing the vehicles and operators and performing the irregular route operations. RCB would be responsible for paying Colonial. The duty to perform the service belongs to Colonial. The Commission is of the opinion that Colonial would be a contract charter carrier.

#### COMPACT PROTECTIONS

WMATA contends that it should be accorded the protections of Title II, Article XII, Section 4(g) of the Compact. That provision requires, inter alia, an applicant for a certificate authorizing operations over the routes of a certificated carrier to prove that the current service is inadequate to the public convenience and necessity. The Commission then

must accord the certificated carrier a reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate over such routes.

Prior to making the findings required by Section 4(g), the Commission initially must make the findings set forth in Title II, Article XII, Section 4(b). Those findings relate to the fitness of the applicant and the public convenience and necessity. Having made those findings, the Commission is charged by the Compact with the duty of preserving the integrity of the operations provided by certificated carriers. This duty is essential to the financial viability of the certificated carrier. However, the Commission's primary responsibility is to the public. If the public convenience and necessity warrant the proposed service and if the certificated carrier does not remedy inadequacies in the current level of service, then the Commission may issue the applicant a certificate.

The Commission does not believe that WMATA, by virtue of having acquired four carriers certificated by the Commission, succeeded to their entitlement to the protections set forth in the Compact for certificated carriers. 19/ Further, WMATA's operations are not performed pursuant to authority granted by this Commission. Hence, WMATA is not entitled to claim the various protections provided by the Compact to certificated carriers. Cf. Application of DAWSON'S CHARTER SERVICE, INC., for an Amendment of its Certificate of Public Convenience and Necessity No. 9 and for Authority to Increase Fares, Order No. 1304, served February 21, 1974. Moreover, the Commission has no jurisdiction over WMATA's operations and could not direct WMATA to remedy inadequacies in the provision of service required by the public convenience and necessity. The Commission believes that the protections of Title II, Article XII, Section 4(g) of the Compact are available only to those who are subject to the sanctions therein set forth. Although WMATA is not entitled to the protections set forth in Title II, the Commission does have a duty to consider the financial integrity of WMATA. 20/

#### COMPACT REQUIREMENTS

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

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19/ This conclusion does not state that the acquired certificated carriers would have been entitled to the safeguard provisions of Title II, Article XII, Section 4(g). No such finding need be made herein.

20/ This duty is considered under the heading "Coordination of Private and Public Transit".

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. The Compact accordingly requires for this particular application, consideration of Colonial's fitness, the service to be provided, the points between which the service would be rendered, the present transportation services, the deficiencies in the existing services, and the effect of a grant or a denial on the public and on the parties.

The Commission's duties with respect to transportation for hire between points in the Metropolitan District were expanded in Title III of the Compact. Section 55 of Article XII declares that the public and private segments of the regional transit system shall be operated, to the fullest extent possible, as a coordinated system without unnecessary duplicating service. Cf. Application of KNOWLES BUS LEASING SERVICE, INC., for Certificate of Public Convenience and Necessity, Order No. 1404 served February 10, 1974, and Application of McMICHAEL SCHOOL BUS SERVICE, INC., for Certificate of Public Convenience and Necessity, Order No. 1419, served April 8, 1975. The Commission must consider the current operations rendered by WMATA when considering whether a private carrier should be granted a certificate of public convenience and necessity to perform a proposed service. This consideration includes the financial impact on WMATA of any certification by the Commission of a private carrier.

#### FITNESS

With respect to Colonial's fitness, WMATA contends that there is insufficient evidence in the record to show that Colonial has the financial capability, performance record, and experience necessary to render the service required by Reston. WMATA argues that Colonial's action in leasing rather than purchasing equipment suggests that it has difficulties in obtaining financing. Finally, WMATA submits that the proposed phasing over a period of 6 months indicates that Colonial has an inadequate financial base to justify the proposed service. RCB contends that Colonial's historical earning record, current financial position, and projected revenue flow show that Colonial is a strong and profitable company.

The Commission believes that the record supports a finding that Colonial 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. Colonial's projections of revenue and revenue deductions with respect to the proposed service appear to be reasonable. Based upon these projections, Colonial should generate a sufficient flow of funds adequate to meet the expenses resulting, directly and indirectly, from the provision of the service. Colonial has extensive experience as a motor carrier performing service for the general public between residential areas and centers of employment. That experience indicates that Colonial is a qualified carrier which could perform the proposed service.

PUBLIC CONVENIENCE AND NECESSITY

WMATA's primary argument that approval of the Colonial application would not be in the public interest is based upon financial integrity. WMATA asserts there is no foreseeable use for the buses currently allocated to the Reston contract and that the realizable cost savings from not rendering the service would only offset approximately two-thirds of the revenue loss. It contends that the net revenue loss would adversely affect the entire system. WMATA further contends that the proposed service would be competitive. Division 689's primary arguments against approval of Colonial's application are that such action would be contrary to the public interest because WMATA would terminate 26 bus operators in a period of high unemployment and that the Commission would be indirectly regulating WMATA's operations.

The Commission believes that the public convenience and necessity supports approval of the Colonial application. Notwithstanding requests by the Commission, WMATA did not supply as part of the record evidence indicating the number of daily schedules currently operated by WMATA, the number of buses available to render the scheduled service, the number of operators necessary to provide daily scheduled service and the current requests for additional scheduled service. The record contains no evidence supporting WMATA's statement that there is no foreseeable use for the buses currently used in the Reston service and that the operators of those buses would be terminated.

With respect to the service proposed by Colonial, WMATA contends that it has been rendering adequate service 21/ to the Reston community and that Colonial has not met the statutory requirements for the issuance of the requested certificate. Persons who have utilized the bus services provided by WMATA for RCB have been inconvenienced by frequent breakdowns of equipment, late service, missed runs and continually rising prices. WMATA's charges to RCB have increased since 1973 from \$40 per one-way trip to \$66.91 per one-way trip. Moreover, the inadequate service and price increases have imperiled RCB's existence. Without further subsidization from Fairfax County, RCB believes that continued use of WMATA's service would result in declining ridership. This result would be realized because the fare charged the passenger for the service would have to be increased. Such increases in the fare would cause potential passengers to select other modes of transportation. Thus, the RCB-WMATA service would be confronted with declining revenues and increasing costs, which would seriously affect its viability.

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21/ As previously indicated, the adequacy of the current operations would be an issue to be resolved if the applicant sought a certificate to render service over the routes of a certificated carrier.

The Commission has serious concern with the possibility that the service of Colonial would be used by 6 to 9 percent fewer passengers because of the charter restriction to members of RCA, RHOA, and DHOA. The existing Reston service by WMATA is available to any member of the general public whom the "busmeister" permits to board the bus. The parties to the proposed agreement have chosen to enter into a contract for charter service, which necessarily involves passenger restrictions. Enforcement of these restrictions would limit the class of persons to whom the service would be available. However, the Commission cannot ignore the record which establishes that the proposal offers improved service, lower cost to the rider, and better working relationships between the contracting parties.

The Commission believes that the proposed service is in the public interest. The WMATA vehicles and operators would be available to augment its currently scheduled regular-route service. The Fairfax County subsidy would no longer be required. The members of RCA, RHOA, and DHOA would have available a necessary transportation service. Approval of Colonial's application would result in a lower cost to the users of the service. This cost reduction should increase the ridership. By encouraging persons to use the proposed service, favorable economic and environmental impacts would be realizable.

#### COORDINATION OF PRIVATE AND PUBLIC TRANSIT

This Commission has the duty and responsibility of determining whether a service proposed by a private carrier to meet the distinct needs of a segment of the general public should be authorized. In making this determination, the Commission's decision-making process, in this particular proceeding, culminates with consideration of the financial impact upon the citizens of the Metropolitan District.

WMATA has stated that it would realize a \$252,997 net revenue loss if Colonial's application were to be approved. This amount presumably would be added to WMATA's bus operation deficit, which is projected to approximate \$51,945,410 in fiscal year 1976. This burden falls upon the members of the general public because they fund WMATA's deficit through tax payments. Hence, approval of Colonial's application may result in the taxpayers of the Metropolitan District being obligated to pay an even higher bus operating deficit than currently projected.

The Commission's primary consideration with respect to the coordination of private carriers and the public transit system is to achieve an efficient and economical transit service for the public. See Compact, Title III, Article XII, Section 55. The transit service should be that

combination of private and public operations which achieves the highest level of service at the lowest cost. 22/

The net revenue loss which WMATA asserts it will suffer if the Colonial application is granted weighs in the Commission's decision as a detriment to the public interest of the taxpayers who must bear this loss through the operating subsidies it pays to WMATA. However, in deciding how heavily to weigh this factor, the Commission is cognizant that the Reston service is priced by WMATA on a basis quite different from regular route service. Regular route service is priced substantially below its cost of operation. Presumably, the loss of a service which is not meeting its cost of operation would generate some savings for the system. Therefore, the adverse financial impact on WMATA of not rendering the Reston service is a result of its practice of pricing that service higher than regular route service.

The Commission must consider if, or to what extent, a grant of Colonial's application would impair the unified transit system, the consolidated route and transfer system with greater efficiency and convenience for the riding public contemplated by Congress. The Commission has concluded that the service offered by Colonial would be more efficient, economical and convenient to the users. Since the Reston service is priced and operated on a different basis than WMATA's regular route system, and since it is isolated from and independent of WMATA's regular route system by virtue of the fact that no transfers are permitted to or from the regular route system, it must be concluded that the Reston service either is not a part of WMATA's unified transit system or, at least, that WMATA's unified transit system would not be operationally impaired by a grant of Colonial's application.

Approval of Colonial's application would not result in diseconomies of scale in the provision of transit service by WMATA. The replacement of WMATA in the Reston service would not materially reduce the public transit system. The quality of service currently rendered by WMATA throughout the public transit system would not be adversely affected. The fare charged to the individual passenger using the public transit system would not be increased. Hence, the absorption of the projected net revenue loss by the transit system would not be detrimental to the provision of transit service by WMATA.

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22/ WMATA has estimated the annual revenue from rendering the Reston service to be \$848,000. Colonial's projections indicate that its annual revenues from replacing WMATA would approximate \$589,500. The difference between these revenue amounts would be \$258,500 as compared to the \$252,997 projected net revenue loss.

### VIRGINIA OPERATIONS

Although the service primarily would be to the District of Columbia, the proposed schedule indicates that service would be performed between Reston and Crystal City, Langley, Rosslyn, Washington National Airport, Pentagon and Navy Annex. These points are each within the Commonwealth of Virginia. The Compact expressly provides that the Commission's jurisdiction does not apply to transportation rendered solely within the Commonwealth of Virginia. See Compact, Title II, Article XII, Section 1(b). Thus, the findings set forth herein and the authority granted hereby do not relate to Colonial's proposed operation to the extent that service might involve the transportation of passengers between places located solely within the Commonwealth of Virginia.

### COLONIAL'S TARIFF

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 Colonial to file such a tariff.

The rate for the service would be \$1.01 per seat per one-way trip performed by Colonial. 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 heretofore has given consideration to, among other things, the financial condition of Colonial, its revenue requirements, and whether Colonial would be 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. Furthermore, the Commission herein approves the practice of using a fuel adjustment clause with respect to the contract rate to be paid to Colonial by RCB.

### EFFECTIVE DATE

The Commission's orders are effective as of the dates of service, unless otherwise specifically provided in the orders. See Rule 7-03. However, any person affected by any final order of the Commission may, within thirty (30) days after the publication thereof, file with the Commission an application in writing requesting reconsideration of the matters involved. The filing of such an application usually acts as a

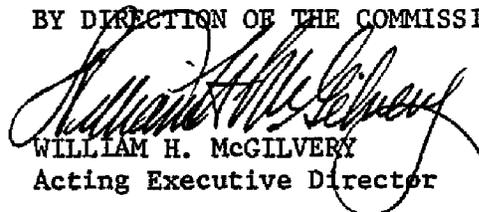
stay upon the execution of the order until the final action of the Commission. See Compact, Title II, Article XII, Section 16. The Commission believes it is appropriate to make this grant of authority effective as of Monday, October 13, 1975. This date provides a suitable period of time for Colonial to establish an operating base in the Reston area. It also establishes a date for the commencement of service subsequent to the period in which reconsideration of this order may be sought. The delay in the effective date will not be adverse to the public interest and, with respect to the phased change from WMATA to Colonial, the establishment of a fixed date provides a guide for RCB in satisfying the contractual provisions set forth in the current agreement with WMATA and the proposed agreement with Colonial.

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. 861 of The Colonial Transit Company, Inc., be, and it is hereby, granted.
2. That The Colonial Transit Company, Inc., be, and it is hereby, issued Certificate of Public Convenience and Necessity No. 27, as attached hereto and made a part hereof, effective October 13, 1975.
3. That The Colonial Transit Company, Inc., be, and it is hereby, directed to file forthwith WMATC Tariff No. 1 in accordance with the authority granted herein, such tariff to be effective October 13, 1975.
4. That The Colonial Transit Company, Inc., be, and it is hereby, directed to file with the Commission, within 5 days of its formal execution, a copy of the contract between The Colonial Transit Company, Inc., and Reston Commuter Bus, Inc.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY  
Acting Executive Director

STRATTON, Vice-Chairman, concurs.

Sections 55 and 56 of the Transit Authority Compact establish the policies under which coordination of the public and private elements of the regional transportation system is to be carried out. They continue this Commission as the regulatory authority over private carriers. The terms upon which our authority is to be exercised are spelled out in Section 56(b). The Commission is mandated by Section 56(b) to accommodate the services and schedules of private carriers to WMATA's service and schedules. Accommodation of private carrier schedules to WMATA schedules is entirely appropriate so long as WMATA is providing service only on fixed rail routes and bus service is being provided by private carriers as was contemplated when section 56(b) was enacted. The flexible bus system must be adjusted and readjusted to complement the rail system, with its obvious physical limitations. Moreover, the financial soundness of the massive investment -- much of it financed by bonded debt -- in the rail system is worthy of special consideration.

A question posed by this case is whether this Commission is required in exercising its regulatory authority to subordinate the services of private bus carriers to WMATA bus service as it is to WMATA rail service. No guidance on this point is offered by the National Capital Transportation Act of 1972 or its legislative history. I have concluded that the answer to the above question is in the negative. The only basis for a yes answer would be a legislative mandate to elevate WMATA's financial interest over all other considerations. That, in my view, is too narrow a view of the public interest, which requires that we consider economy, efficiency, reliability and other factors traditionally evaluated in reaching a decision on public convenience and necessity. On that basis, this proceeding may be viewed as a contest between two erstwhile contract carriers in which the carrier which promised better service at a lower cost prevailed.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 27

THE COLONIAL TRANSIT COMPANY, INC  
FREDERICKSBURG, VIRGINIA

By Order No. 1454 of the Washington Metropolitan Area Transit Commission issued September 5, 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. 1454;

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 The Colonial Transit Company, Inc., and Reston Commuter Bus, Inc., 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.

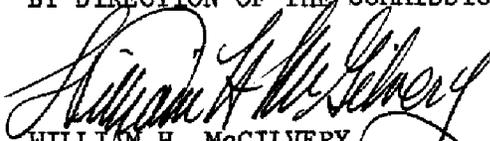
IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below, except that this certificate does not authorize any intrastate transportation in Virginia:

IRREGULAR ROUTE:

CHARTER OPERATIONS PURSUANT TO CONTRACT to perform transportation of members of Reston Community Association, Reston Home Owners Association, or Deepwood Home Owners Association between Reston, Virginia, and Washington, D. C.

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:

  
WILLIAM H. MCGILVERY  
Acting Executive Director