

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1593

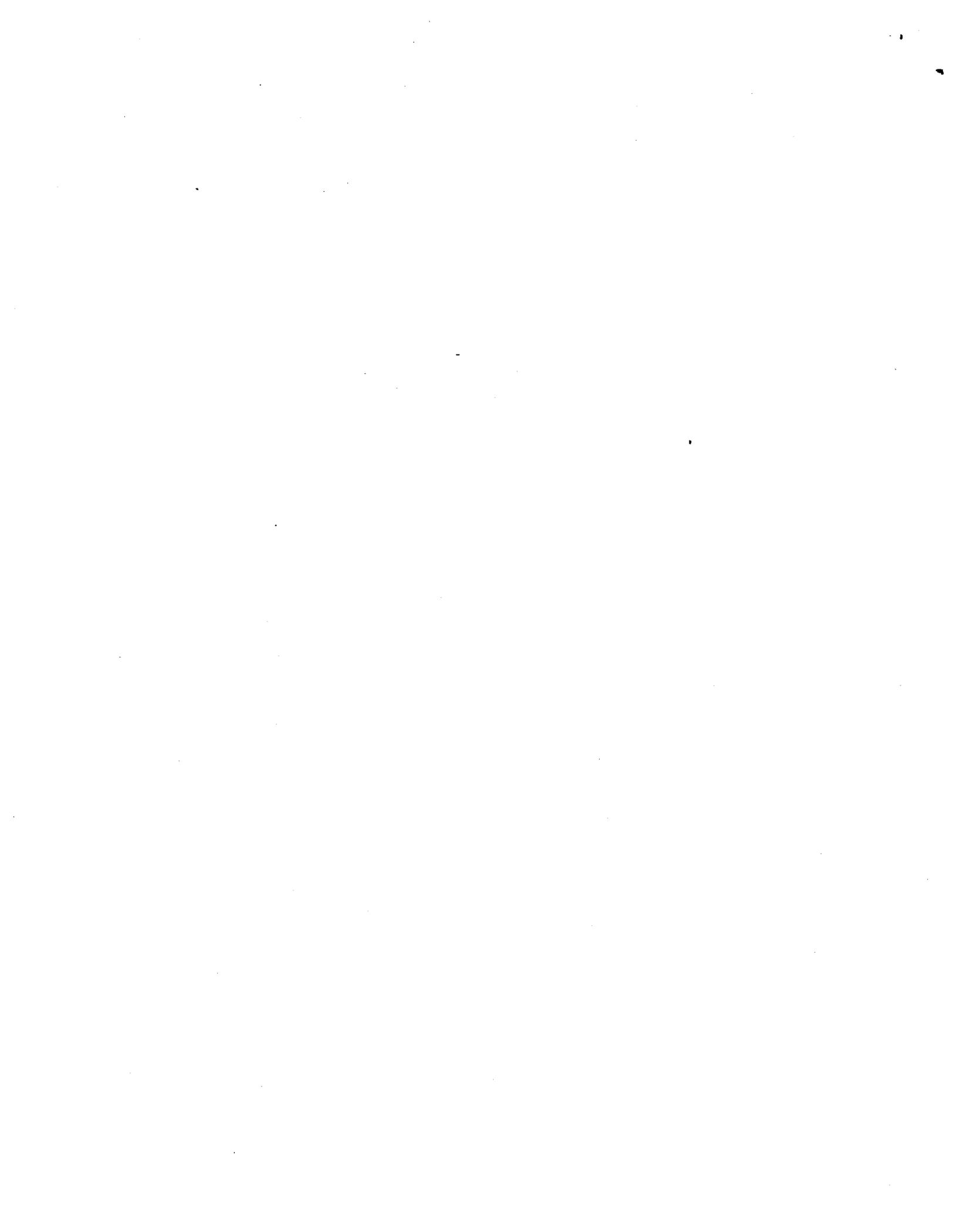
IN THE MATTER OF:

Application of McMICHAEL SCHOOL)	Served August 13, 1976
BUS SERVICE, INC., for Certificate)	
of Public Convenience and Necessity)	Application No. 923
to Perform Charter Operations)	Docket No. 318

By Application No. 923, dated February 25, 1976, 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. McMichael seeks authority to transport passengers, over irregular routes, in charter operations, between points within the Metropolitan District.

On March 26, 1976, a joint protest to McMichael's Application No. 923 was filed by Atwood's Transport Lines, Inc. (Atwood), The Gray Line, Inc. (Gray Line), and Greyhound Airport Service, Inc. (Greyhound). Atwood holds Certificate of Public Convenience and Necessity No. 14. That Certificate authorizes, as relevant herein, the transportation of passengers and their baggage, and express, mail and newspapers in the same vehicle, over irregular routes, in round-trip or one-way charter operations, from Washington, D. C., to points in the Metropolitan District and from points on its regular routes, 1/ authorized therein, and a territory within one mile thereof, to points in the Metropolitan District. Gray Line holds Certificate of Public Convenience and Necessity No. 12. That Certificate authorizes, as relevant herein, transportation of passengers and their baggage, over irregular routes, in round-trip or one-way charter operations, from points

1/ The regular routes include operations in Montgomery County and Prince George's County, Maryland.



in the Metropolitan District, not including Alexandria, Va., to points in the Metropolitan District and, in one-way charter operations, from Alexandria, Va., to the District of Columbia. Greyhound holds Certificate of Public Convenience and Necessity No. 7. That Certificate authorizes, as relevant herein, the performance of charter operations, over irregular routes, between the Washington National Airport on the one hand, and points in the Metropolitan District, except points in Virginia, on the other, restricted to passengers and aircraft crews having a prior or subsequent movement by air, and between the Dulles International Airport on the one hand, and points in the Metropolitan District, except points in Virginia, on the other, restricted to passengers and aircraft crews having a prior or subsequent movement by air.

The joint protestants state that they have no knowledge of any public need and demand for any new or additional charter service by means of conventional motor bus equipment. The joint protestants submit that the public convenience and necessity does not justify or require the issuance of a certificate authorizing unrestricted charter service. However, the joint protestants indicated that their interest would be protected and their opposition to the application withdrawn if the proposed charter service would be performed in school bus vehicles rather than in standard or conventional motor bus equipment.

On March 21, 1976, Dawson's Charter Service, Inc. (Dawson) filed a protest to McMichael's Application No. 923. Dawson holds Certificate of Public Convenience and Necessity No. 9. That Certificate authorizes, as relevant herein, the transportation of passengers and their baggage, and express, in the same vehicle with passengers, over irregular routes, in round-trip charter operations, from points in Montgomery County, Md., to points in Montgomery County, Md., Prince George's County, Md., and Washington, D. C., and return. Dawson states that a portion of its current charter operations would be duplicated by McMichael's proposed operations. Dawson submits that the present and future public convenience and necessity do not require the additional service being proposed by McMichael.

By Order No. 1516, served March 12, 1976, McMichael's Application No. 923 was assigned for public hearing. Pursuant to that order, the public hearing was held on April 5, 1976.

McMichael amended its Application No. 923 to provide for the exclusive use of school bus vehicles and the joint protestants withdrew their protest. At the hearing, McMichael requested that Dawson not be permitted to participate as a formal protestant. McMichael based its request on the requirement in Order No. 1516 that any person desiring to protest must file a protest in accordance with Commission Rule 14, in writing, on or before March 29, 1976. The protest filed by Dawson was mailed to the Commission on that date and received March 31, 1976. The Commission's Rule of Practice 8-01 prescribes that any papers required by an order of the Commission to be filed with the Commission must be received by the Executive Director at the office of the Commission within the time limit, if any, for such filing. Dawson stated that it believed the mailing of the protest to be proper filing. The presiding administrative law judge permitted Dawson to participate in the public hearing as a formal party. The Commission finds that such action was permissible under Rule of Practice 16. Dawson shall be accorded the status of an intervening party.

McMichael holds Certificate of Public Convenience and Necessity No. 24. That Certificate authorizes the transportation of passengers, over irregular routes, in charter operations pursuant to contract with the Parklawn Commuter Club, from the Eastover Shopping Center and Penn Mar Shopping Center in Prince George's County, Md., to the Parklawn Building, 5600 Fishers Lane, Rockville, Md., and return. See Order No. 1419, served April 8, 1975. However, McMichael's primary business activity involves the currently non-certificated transportation of school children. The school route service is operated pursuant to agreements with six separate private schools in Montgomery County and Prince George's County, Maryland. McMichael owns and operates 20 school buses, which are equipped with two-way radio communication systems. It has 13 full-time drivers who operate the school route service and the Parklawn Commuter Club service. McMichael does not use the same school bus vehicle to provide both the Parklawn Commuters Club service and the school route service. McMichael employs two maintenance men to service the vehicles.

McMichael would render the proposed service in only school bus vehicles. During the morning and afternoon school route

service, McMichael has approximately six vehicles available to operate in the proposed charter service. The school bus vehicle is not as well appointed as motor coaches. The vehicles have bench-type seats with padded cushions and backs covered with a vinyl material. School bus vehicles are not as comfortable as motor coaches. However, the vehicles are less expensive than motor coaches with respect to acquisition cost and maintenance expense. In addition, the school bus vehicle is more suitable for the provision of certain charter services than the motor coach because of the former's design and construction.

McMichael has filed as part of Application No. 923 a schedule of charter rates. McMichael proposes a \$70 minimum charge representing one hour garage time 2/ and four hours of actual use, and an additional \$16 per hour charge for each hour in excess of four hours of use. McMichael also would charge \$45 for a one-way transfer. 3/ These charter rates would be applicable to any group using the service.

McMichael has supported its Application No. 923 with the testimony of several public witnesses. These witnesses generally indicated a need for economical group transportation. The groups may be composed of elderly or young persons, school groups, auxilliary organizations, or other groups restricted by limited budgets. The primary support was offered by witnesses representing church groups, children's programs, senior citizens' programs, and non-profit theatre organizations. These groups would be willing to use McMichael's charter service in school bus vehicles to attend concerts, athletic events, and park programs.

2/ Garage time is stated to be that period of time required for the school bus vehicle to travel to the departure point from the garage and to return from the departure point to the garage.

3/ A transfer is stated to be a group movement between two points and the charge would include garage time.

The festival manager for the Kennedy Center for the Performing Arts indicated that stage companies need the proposed charter services for transportation between hotels and motels and the Kennedy Center. These stage companies range in size from 90 persons to 420 persons and remain in the Metropolitan District for one week to four weeks. The stage companies average four one-way trips per day.

The director for the Washington Youth Gardening Program stated that it needs the proposed charter services for the transportation of approximately 1200 children residing in the District of Columbia. That Gardening Program involves activities on 43 playgrounds and three major youth centers from late March through September. During the spring and fall months, the proposed charter service would be used on weekends and, during the summer months, the proposed charter service would be used on two weekdays each week.

Several financial statements portraying McMichael's position on December 31, 1975, were presented and attested to by the preparer, a certified public accountant. A balance sheet statement indicates \$133,018 total assets, including \$71,332 depreciated value of trucks, buses, and other properties. Total liabilities, including long term debts of \$32,666, are shown as \$112,742. McMichael's net worth, including capital stock, capital contributed in excess of par, and retained earnings, is shown as \$28,276. The witness stated that the working capital position of the company needs to be improved.

A statement of operations during 1975 reflects operating revenue of \$340,484 and operating expenses of \$325,864. The operating expenses consisted principally of other wages \$98,899, officer's salaries \$61,939, gas and oil \$44,747, repairs and maintenance \$24,271, depreciation \$22,548, equipment rental \$14,292, insurance \$12,420, payroll taxes \$10,563, and interest \$10,309. The operations generated net operating profit of \$14,620 and, after miscellaneous other income \$1,318, a net profit of \$15,938.

Projections of income and expenses for 12 months ending December 31, 1976, show McMichael's generating \$384,756 operating revenue from the proposed charter operations and school bus operations and total operating expenses of \$367,523. The

projected profit before taxes would be \$17,233 and the projected profit after taxes would be \$12,742. Among the larger expense items to be incurred in the total operations would be other wages \$106,898, officers salaries \$61,939, gas and oil \$49,222, repairs and maintenance \$31,552, and equipment rental \$23,892.

Items pertaining to the projected results of operation were determined by several methods. The actual amounts incurred in 1975 were projected as increasing by 10 percent with respect to drivers wages, operating supplies, utilities, gas and oil, telephone, and payroll taxes. The actual amount of increase in repairs and maintenance expense from 1974 to 1975 was 30 percent and the same percentage increase was projected for 1976. With respect to advertising, promotion and entertainment, McMichael used its best judgment and, with respect to insurance and leasing of a vehicle, the actual amounts to be paid were used.

Dawson has opposed McMichael's Application No. 923 to the extent that authority is being sought which would permit the originating of charter services in Montgomery County. Dawson's primary charter business results from services rendered to school groups. According to Dawson, any competition in the school charter business would be detrimental. However, Dawson made no estimate of the amount of money that it would lose if McMichael's were granted authority.

Dawson operates seven school buses and five motor coaches. Five school buses are used to render school route service. All the vehicles are used to render charter operations.

Dawson performed charter operations from Montgomery County, Md., to the District of Columbia, and the counties of Montgomery and Prince George's Md., and return, during 1975. These operations involved the transportation of school children and senior citizens as well as other groups. The charter operations primarily were rendered in motor coaches. However, school bus vehicles were used upon occasions. The charges for the charter operations were consistent with Dawson's WMATC Tariff No. 2, which specifies a five hour minimum charge of \$55. Dawson also imposed a \$10 garage time charge.

DISCUSSION AND CONCLUSIONS

McMichael's application presents to this Commission a proposed operation to be rendered in motor vehicles which currently are employed solely for the purpose of transporting school children and teachers to or from public or private schools. The Compact, Title II, Article XII, Section 1(a)(3) sets forth the following exception.

"This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to the persons engaged in such transportation service, except transportation solely in transporting school children and teachers to or from public or private schools."

Obviously, this provision merely excepts from the applicable provisions of the Compact a fractional portion of the persons rendering transportation services in the Metropolitan District. The Compact provision clearly excepts only those persons employing motor vehicles solely for the purpose of transporting school children and teachers to or from public or private schools. McMichael's school route service currently is excepted under this provision. However, the Commission must determine whether this exception would be applicable to McMichael's school route service if McMichael is granted certificate authority to render charter operations, over irregular routes, in school bus vehicles.

The Commission previously has considered the question whether a motor vehicle is "employed solely" in transporting school children and teachers to or from school, when the vehicle is, for a period of time, devoted and used only on such school runs, and then utilized in a carrier's mass transit operations during other periods. In Order No. 521, served September 2, 1965, D. C. TRANSIT SYSTEM, INC., Complainant v. WMA TRANSIT COMPANY, Respondent, the Commission determined that a motor vehicle used in certificated operations and school operations is subject to the certification requirements of the Compact when performing both operations. The Commission clearly and succinctly stated its rationale.

"Quite simply, these vehicles are not employed solely in school transportation, but to the contrary, the majority of their use lies in rendering mass transit operations. If the legislatures intended the exemption to apply only while the vehicle was operating exclusively in school transportation, they would have so stated."

That rationale is equally applicable to this proceeding. When motor vehicles employed in excepted school operations are used to render certificated operations, both operations are subject to the certificating requirements of the Compact.

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.

The Commission finds that McMichael is fit, willing and able to perform the proposed charter operations. Although McMichael's financial condition is marginal, the record evidences a financial ability to institute the proposed charter operations. Significantly, McMichael would not need to acquire additional equipment prior to commencement of the proposed charter operations. The Commission also finds that McMichael would conform to the rules, regulations and requirements thereunder.

With respect to the public convenience and necessity, the testimony of the witnesses supporting McMichael's application is a sufficient basis for a finding that members of the public need and the public interest would be served by the operation of charter service, one-way or round-trip, from points within the District of Columbia, Montgomery County, Md., and Prince George's County, Md., to points within the Metropolitan District,

and return. The record does not support Dawson's contention that it will suffer a detrimental decline in revenue from McMichael's operation of similar charter services in only school bus vehicles. The Commission has determined that the record does not support a finding that members of the public need and the public interest would be served by the operation of charter services, one-way or round-trip, from points within the counties of Arlington and Fairfax and the cities of Alexandria, Falls Church and Fairfax, Va., to points within the District of Columbia, Montgomery County, Md., and Prince George's County, Md., and return. McMichael's did not support this portion of its application with any affirmative evidence. Accordingly, the Commission shall grant in part and deny in part McMichael's Application No. 923 for authority to perform charter operations, over irregular routes, between points within the Metropolitan District.

The Compact bestows upon the Commission "the power to attach to the issuance of a certificate and to the exercise of rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require". See Compact, Title II, Article XII, Section 4(b). As previously indicated, McMichael amended its Application No. 923 to the extent that the proposed charter service would be rendered in school bus vehicles. The Commission finds that the public convenience and necessity require the attachment of a condition restricting the operations rendered to services in school bus vehicles.

The certificate of public convenience and necessity to be issued to McMichael will authorize the performance of charter operations, round-trip or one-way, over irregular routes, from points within the District of Columbia and the counties of Montgomery and Prince George's, Md., to points within the Metropolitan District, and return, restricted to the performance of such transportation in school bus vehicles only. It should be understood that such authority would permit McMichael to render contract operations in school bus vehicles within these areas. See Order No. 1361, served October 16, 1974. As a result, McMichael need only file with the Commission copies of its contracts to render school route service in order

to be entitled to render such operations. See Commission Regulation No. 56-03. In addition, McMichael's Certificate of Public Convenience and Necessity currently authorizes charter operations pursuant to contract with the Parklawn Commuters Club. The certificate authority granted herein would also permit that operation. Accordingly, Certificate of Public Convenience and Necessity No. 24 shall be re-issued without reference to that operation but it should be understood that the deletion of the current reference to charter operations pursuant to contract has resulted from the grant of broader authority.

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). McMichael filed as part of its application a schedule of rates. The Commission shall approve the \$70 minimum charge representing one hour garage time and four hours of actual use, an additional \$16 per hour charge for each hour in excess of four hours use, and a \$45 one-way transfer charge.

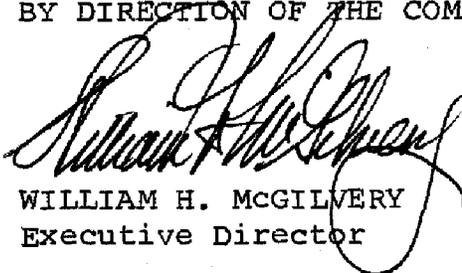
The Commission has considered the other matters presented by the record but finds they do not warrant action contrary to that which now is directed.

THEREFORE, IT IS ORDERED:

1. That Application No. 923 of McMichael School Bus Service, Inc., be, and it is hereby, granted in part and denied in part as specified herein.
2. That Certificate of Public Convenience and Necessity No. 24 issued to McMichael School Bus Service, Inc., be, and it is hereby, amended as attached hereto and made a part hereof.
3. That McMichael School Bus Service, Inc., be, and it is hereby, directed to file two copies of Supplement No. 1 to

its WMATC Tariff No. 1 in accordance with the authority hereinbefore set forth, such supplement to be effective upon acceptance by the Executive Director.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
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. 1593 of the Washington Metropolitan Area Transit Commission issued August 13, 1976.

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, served April 8, 1975, and Order No. 1593, served August 13, 1976.

THEREFORE, IT IS ORDERED, that the said carrier be, and it is hereby, granted this certificate of public convenience and necessity as evidence of the authority of the holder to engage in transportation as a carrier by motor vehicle; subject, however, to such terms conditions and limitations as are now, or may hereafter be attached to the exercise of the privilege herein granted to the said carrier.

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

IRREGULAR ROUTES:

CHARTER OPERATIONS, round-trip or one-way

From points within the District of Columbia and the counties of Montgomery and Prince George's, Maryland, to points within the Metropolitan District, and return.

RESTRICTED to the performance of such transportation
in school bus vehicles only.

AND IT IS FURTHER ORDERED and made a condition of this
certificate that the holder thereof shall render reasonable,
continuous and adequate service to the public in pursuance
of the authority granted herein, and that failure so to do
shall constitute sufficient grounds for suspension, change
or revocation of the certificate.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERE
Executive Director