

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 1632

Served December 1, 1976

IN THE MATTER OF:

Application of SUBURBAN TRANSIT		Application No. 948
COMPANY for Certificate of Public		
Convenience and Necessity to		
Perform Charter Operations Pursuant		Docket No. 335
to Contract - Oxon Hill		

By Application No. 948, filed June 30, 1976, Suburban Transit Company (Suburban) seeks a certificate of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact, to perform charter operations pursuant to contract. Pursuant to Order No. 1579, served July 9, 1976, a public hearing was held on July 30, 1976.<sup>1/</sup> No party appeared in formal opposition.<sup>2/</sup>

Suburban holds Certificate of Public Convenience and Necessity No. 29 issued by this Commission and temporary authority granted by this Commission. A summary of that Certificate and temporary authority is set forth in Order No. 1579. Suburban essentially performs special operations, over irregular routes, from specific points within the Metropolitan District to the Capital Centre, Landover, Maryland, and return.

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<sup>1/</sup> The description of Suburban's application and proposed operation set forth on pages 1, 2, 3 and 4 of Order No. 1579 are incorporated herein by reference.

<sup>2/</sup> The Washington Metropolitan Area Transit Authority filed a formal protest on July 21, 1976, but withdrew its opposition prior to the public hearing.

Suburban proposes to provide a commuter bus service from the Oxon Hill - Fort Washington Community to the District of Columbia, Maryland, and Virginia. More particularly, Suburban proposes to operate two routes to the District of Columbia and one route to Virginia.

Although the application seeks authority to operate service to Suitland, Gaithersburg, and Rockville, Maryland, Suburban currently has no plan to provide that service. The Maryland service would require the addition of at least two more routes for which Suburban does not at this time have the equipment.

Each of the routes would be over the same streets and make the same stops within the Oxon Hill - Fort Washington area of Prince Georges County, Maryland. That route would originate on Fort Washington Road at Riverview Road and would proceed along Fort Washington Road with stops at the intersections of Beech Street, Lourdes Drive, Swan Creek Road, Emerald Hill Drive, Rexburg Avenue, Tantallon Drive, St. Andrews Drive, Asbury Drive, Glasgow Way, L'Enfant Drive, and Warburton Drive. The route then would proceed along Tantallon Drive to a stop at the intersection of Tantallon Drive and Arrow Park Drive, turning on to Arrow Park Drive to a stop at Arrow Park Drive and Hollybank Drive and continuing on Hollybank Drive to Swan Creek Road, then west on Swan Creek Road with stops at Braeburn Drive, Tantallon Yacht Club, Donnybrook Drive, and Ballina Court. From there Suburban would travel along Riverview Road to Fort Washington Road to Livingston Road to Oxon Hill Road to Fort Foote Road with stops at the intersections of River Bend Road, Rosier Road, Riverwood Drive, Potomac Valley Drive, East Fort Foote Terrace, West Fort Foote Terrace, Bluffwood Lane, Dover Street, Jessica Drive, Tuckaway Terrace, Archery Drive, Ivanhoe Road, Locksley Road, Friar Road, Longbranch Road, Wedgewood Drive, Lancelot Road, and Round Table Drive. The route then would proceed along Oxon Hill Road with stops at the intersections of Tor-Bryan Road, Notley Road, Arthur Drive, Kerby Hill Parkway, Kerby Hill Road, Claudia Drive, Carrybrook Lane, Cedar Ridge Drive, Panorama Drive, Abbington Drive, Brockton Road, and Balmoral Drive East. The route then would depart from the Oxon Hill - Fort Washington area. 3/

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3/ For the purpose of clarity, the Commission has herein corrected many of the errors in this route description contained in Suburban's application. However, some of the routing errors remain because they are so gross as to defy understanding and correction.

With respect to the routes to be operated within the District of Columbia, each route would include service along Pennsylvania Avenue and Independence Avenue as far as the intersection with Fourteenth Street, N.W. One route would proceed along Fourteenth Street to K Street, N.W., as far as the intersection with Twenty-Third Street, N.W. Suburban proposes to stop at those intersections where passengers desire to board or alight.

With respect to the route to be operated to and from Virginia, the route would involve travelling across Indian Head Highway to Route 495 and following that route to old Route 1 in Virginia. From there the route proceeds along old Route 1 through the Crystal City area in Virginia. The route then would proceed to the Pentagon and Rosslyn Circle also in Virginia. From there the route proceeds to Fort Myer.

The first route to the District of Columbia would originate in Oxon Hill at 6:45 A.M., and would include service only as far as Fourteenth Street and Independence Avenue. This route would originate the return service at 4:15 P.M. The other route to the District of Columbia would originate at 7:15 A.M., in Oxon Hill and the return service would originate at 5:05 P.M. The Virginia route would originate at ~~7:00~~ 7:00 A.M., in Oxon Hill and the return service would originate at 5:00 P.M., at Fort Myer.

The proposed commuter service is based upon the results of a questionnaire circulated by Suburban early in 1976. Approximately 500 questionnaires were circulated in the Oxon Hill - Fort Washington area. Suburban received 98 returns from the questionnaires. Suburban submits that these returns evidence an initial potential ridership for three motor coaches.

Suburban proposes initially to operate the proposed routes with three motor coaches. These coaches each would have passenger seating capacity in excess of 45 passengers. The addition of motor coaches to the proposed commuter bus service would depend upon the passenger demand.

Since the public hearing on July 30, 1976, the Commission has attempted to acquire suitable evidence that Suburban owns three motor coaches and that the three motor coaches could be used in rendering the proposed commuter service. Although the Administrative Law Judge at the public hearing directed that evidence of ownership be submitted to the Commission, Suburban failed to submit such information. The Commission staff then arranged with Suburban for an inspection of the motor coaches. The inspection was scheduled for October 7, 1976, at the convenience of Suburban. However, Suburban did not appear at the scheduled time and place for inspection. The inspection thus was scheduled

again for October 20, 1976. Suburban did appear at this inspection but only produced one motor coach for inspection. As a result, a third inspection time was scheduled for October 22, 1976. Suburban did produce for inspection at that time two additional motor coaches. The three motor coaches stated to be owned by Suburban are the three motor coaches inspected by the Commission staff. Although the motor coaches owned by Suburban were temporarily licensed in the District of Columbia, none had yet passed the required City inspection. An additional motor coach belonging to a third party was also inspected. Suburban stated that the fourth motor coach would be used in rendering the proposed commuter bus service pursuant to a lease arrangement. No evidence of a lease agreement was produced.

Suburban has not made any formal arrangements to secure a maintenance area for the motor coaches. Suburban has stated that it proposes to lease these motor coaches to other carriers during weekdays and to use these motor coaches in rendering its other certificated operations. Finally, Suburban has not submitted evidence that it has insurance which would conform to Commission Regulation 65, as amended, effective October 1, 1976.

Suburban submitted a balance sheet as of June 30, 1976, and an income statement covering the six-month period ended June 30, 1976. The balance sheet reflects total assets \$21,873.52, including cash \$9,873.62 and estimated market value of bus \$10,000.00; current liabilities \$4,111.00 and long-term debt \$17,005.86. For the first six months of calendar year 1976, Suburban generated \$18,608.03 total revenues and incurred \$8,108.42 total operating expenses. The income statement contained no amounts for general expenses, such as officer salary or administrative and general expenses, and taxes.

At the public hearing, the Administrative Law Judge directed Suburban to file a balance sheet as of July 30, 1976, and an income statement for the month of July, 1976. This directive resulted from Suburban's statement that it had received a loan at the end of June, 1976, for the purpose of acquiring motor coaches to be used in the commuter bus service. These financial statements were not submitted by Suburban. In addition, Suburban stated that it would submit a letter from its bank verifying the line of credit extended to Suburban. That letter has never been received.

Suburban submitted a statement projecting revenues and revenue deductions to be derived from the Oxon Hill - Fort Washington commuter bus operation for a twelve-month period. The statement is based upon a ten motor coach operation for the entire year. Suburban stated that it would receive \$95.00 per day for each bus operated pursuant to the contract with the Oxon Hill Commuter Bus Service (Oxon Hill Commuter).

The statement projects \$228,000.00 revenues and \$213,443.12 for total expenses, including federal income taxes.

Suburban has entered into a contract with Oxon Hill Commuter. The contract provides for the payment by Oxon Hill Commuter of \$95.00 per day for each motor coach operated by Suburban in the proposed service. Oxon Hill Commuter is a one-person organization. The residents of the Oxon Hill - Fort Washington community are not members of Oxon Hill Commuter and would not have to join in order to use the proposed commuter bus service. Rather, Oxon Hill Commuter proposes to sell tickets for rides on Suburban's operation to any person. Oxon Hill Commuter has indicated that it would charge \$1.15 per passenger for a one-way trip. Apparently, Oxon Hill Commuter would offer a five percent discount to any person purchasing a monthly pass and a ten percent discount for any person purchasing an annual pass. In addition, Oxon Hill Commuter has unilaterally stated that, for any motor coach with seating capacity less than 45 passengers, it would pay Suburban only \$85.00 per day. Finally, Oxon Hill Commuter stated that it would not pay Suburban more money than the amount generated by revenue-paying passengers travelling on the motor coach.

Several members and organizations of the Oxon Hill - Fort Washington area supported the proposed commuter bus service. These persons indicated that there is currently only minimal commuter bus service between the Oxon Hill - Fort Washington area and the District of Columbia or Virginia. The current bus service operates from and to fringe parking lots near the Oxon Hill - Fort Washington area. These lots are located three or four miles from the center of the Oxon Hill - Fort Washington area proposed to be served by Suburban. As a result, the persons using bus service must find a means of transportation between their homes and the fringe parking lots. In addition, the current bus service does not provide sufficient capacity to meet the needs of the approximately 1,200 families living in the Oxon Hill - Fort Washington area.

#### FINDINGS AND CONCLUSIONS

The findings to be made by the Commission, after hearing, 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. Essentially, 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. In

addition, approval by the Commission of the proposed tariff must be based on a finding that the tariff is just, reasonable, and not unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District. See Compact, Title II, Article XII, Section 6(a) (2).

The Commission initially finds that there is a need for transportation for hire service between the Oxon Hill - Fort Washington area and the District of Columbia or Virginia. Accordingly, there is a need for the provision of reasonable, continuous and adequate commuter service as proposed by Suburban. To this extent, the record would support a grant of Suburban's application.

Although the Commission has determined that there is a need for the proposed commuter bus service for persons living in the Oxon Hill - Fort Washington area, it has decided to deny the application of Suburban. The basis for such denial is that Suburban has not presented probative evidence establishing that it is fit, willing and able to perform the proposed service, and it has further failed to evidence an ability to conform to the directives of the Commission.

With respect to fitness, the Commission finds that Suburban is financially unfit and its equipment is unfit. Suburban's balance sheet reflects assets of \$19,873.62 in cash and revenue vehicles. However, Suburban also owes \$21,116.86 as a result of its debt-financing. To service the debt, Suburban has produced an operating income of \$10,499.61 for the first six-months of 1976. However, that operating income also must be used to pay taxes, a reasonable salary, and acquire additional supplies. Furthermore, the operating income was generated without any expenses for drivers of the buses.

The equipment to be used by Suburban in the proposed commuter bus service is not fit for such operations. The defects in the buses owned by Suburban include one badly smoking engine, broken windshield wiper, broken speedometer, lack of bell cord or buzzer, excessive rust, loose seats, worn floor covering, holes in the ceiling, and other similar defects. The other motor coach to be used in the proposed operations was owned by a person unrelated to Suburban and no formal agreement for the use of that motor coach has been shown to exist. Defects were also found in that vehicle.

Suburban has not established a willingness to perform the proposed commuter bus service as its own operation. Rather, it has entered a questionable agreement with Oxon Hill Commuter. That "organization" is, in fact, only one person. The Oxon Hill Commuter merely would sell tickets and collect money for the proposed commuter bus operation. The Oxon Hill Commuter has no membership, and thus

could not be considered a bona fide charter party. It is noted that the contract does not even obligate Suburban to provide service. Moreover, Suburban's proposed operation more closely resembles a regular route operation. Oxon Hill Commuter is merely an intermediary between the persons using the service and Suburban, and the Commission will not accept such an obscured representation of the actual operation. The proposed service would be rendered by Suburban and Suburban would be subject to the business risk involved in the proposed service. The interpositioning of Oxon Hill Commuter tends to indicate a desire by Suburban to shield itself from the responsibilities and obligations resulting from the performance of the proposed commuter bus service.

Suburban does not have the ability to render the proposed commuter bus service. The record is devoid of any evidence indicative of the management expertise necessary to assure that the proposed commuter bus service would be reasonable, continuous and adequate. Suburban apparently has entered the proposed service without any plan of operation. Suburban has no maintenance facility for the motor coaches and its asserted arrangements for suitable standby equipment lacks the substance of a formal agreement. Moreover, Suburban has stated that it would lease the motor coaches to other carriers during the day. Such a leasing arrangement could readily result in the lessee not returning the motor coach to Suburban in time for the performance of the evening service in a clean and serviceable motor coach, or a breakdown of the leased equipment without adequate opportunity for repairs.

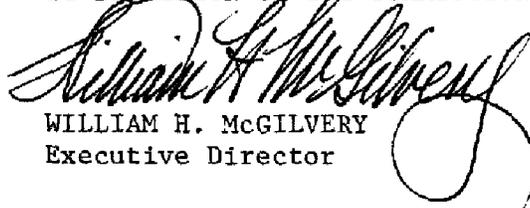
Suburban has been either directed or formally requested at various times during this proceeding to submit various documents. Most of these directives or requests remain unanswered. Consequently, the Commission must accept what has been produced and determine the application on the evidence of record. Moreover, as a result of Suburban's failure to heed the directives and requests of the Commission, the Commission has formed the opinion that Suburban is unable or unwilling to conform to the Commission's directives. The Commission believes such inability or unwillingness properly to respond would continue if the application were granted.

The Commission is of the opinion that a grant of this application would result in the commuters needing service from the Oxon Hill - Fort Washington area having a carrier serving them who would not be able to conform to the requirement of the Compact that it render reasonable, continuous and adequate service.

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

THEREFORE, IT IS ORDERED that Application No. 948 of Suburban Transit Company for a certificate of public convenience and necessity to perform charter operations pursuant to contract be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director

STRATTON, Chairman, concurs.

This decision, in which I concur, cannot but be unpopular, denying, as it does, a commuter bus service offering to a community now ill-served by public mass transit.

The decision turns on the applicant's fitness and ability to operate the service. The order chronicles the Commission's misgivings on this point: the application was incoherent (see note 3, p. 2); applicant failed to demonstrate ownership of rolling stock with which to operate the service; failed to present buses for a scheduled inspection on two occasions; failed to satisfy safety and inspection requirements; failed to adduce evidence of a claimed lease for an additional bus; never demonstrated any arrangements for maintenance of the venerable equipment to be dedicated to this service; never tendered satisfactory evidence of insurance; and failed to produce credible current evidence of financial condition. These deficiencies persist despite requests or directions from the Staff or the Administrative Law Judge that, in applicant's own interest, they be remedied.

The Oxon Hill Commuter Bus Service, (OHCB) a sole proprietorship, supports the application. OHCB would be the contracting party for which the applicant would perform this "charter pursuant to contract" service were this application to be approved.

On its face this alignment between a carrier and a locally-based commuter organization bears some resemblance to the Reston Commuter Bus/Colonial Transit Company alignment that operates the successful Reston, Virginia, commuter bus service under authority of this Commission (See Order No. 1454). There are important differences, though. RCB is a broadly-based membership organization with significant transportation

expertise of its own. More importantly, RCB has the financial resources necessary to underwrite a fixed-price contractual arrangement with the carrier and itself bear the risk that sales will not meet the contractual costs from time to time.

Not so with OHCB. Indeed the record makes it clear that OHCB does not intend (even if it could) to commit itself to pay the applicant any more than it collects from the ridership. As a matter of fact, the record suggests that OHCB and applicant have not reached a meeting of the minds on their "contract". Thus, the financial risk lies entirely with the applicant, whose financial condition appears precarious. The element of assured revenues or the financial capacity to bear the risks associated with start-up of a major new service are conspicuously absent here. There is also the problem that OHCB, having no membership, does not qualify as a charter party under our rules.

Permitting operations to commence under these conditions, with the almost certain prospect of service deficiencies and disaffection of the riding public, could hardly be described as responsible regulation of transit, at least as that function is traditionally perceived.

Yet, on the other hand, we are here "protecting" the 1,200 families in the Oxon Hill-Fort Washington area from the travail associated with a bus service provided in inferior equipment by a financially marginal operator, when the alternative seems to be no bus service at all. In these circumstances the public interest may be better served by permitting this young, struggling and thinly capitalized transit company to enter the field rather than denying service because of the supposition of failure to come. But, as much as I would incline toward granting the authority sought, it cannot be done on a record with as miserable a showing of fitness as this one.

However, with our awareness of the lively and responsive service that a community-rooted enterprise can provide I would be willing to reconsider this decision upon a reasonable showing of a broad-based community readiness to accept this applicant "warts and all". Upon such a showing the applicant should be offered a final opportunity to conform to our standards of safety and insurance requirements. Unless a real membership group comes into existence it may also be necessary to consider this application as one for regular route authority. If the riding public will accept the experiment, well and good; and if it succeeds, better yet.