

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1642

IN THE MATTER OF:

Application of RODGERS E. JOHNSON )	Served January 11, 1977
Trading As J & J Bus Service for )	
Certificate of Public Convenience )	Application No. 962
and Necessity to Perform Regular )	
Route Service )	Docket No. 352

By Application No. 962, filed August 19, 1976, as amended by petition filed November 12, 1976, Rodgers E. Johnson trading as J & J Bus Service (J&J) seeks a certificate of public convenience and necessity to transport passengers, over a described regular route, from specified points in Prince George's County, Md., to the Naval Research Laboratory, Washington, D. C., and return. Pursuant to Order No. 1607, a public hearing on the original application was held on October 29, 1976, and Bill's Bus Service, Inc. (Bill's), appeared in opposition to the application. A public hearing on the amendment to the application was held on December 13, 1976, pursuant to Order No. 1630, 1/ and no parties appeared in opposition thereto. 2/

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1/ Order Nos. 1607 and 1630 are incorporated by reference herein.

2/ Bill's did file on November 22, 1976, a statement in opposition to the amendment. However, its failure to support the statement by competent testimony at the hearing detracts from the weight which Bill's opposition might otherwise be accorded.

Applicant has been providing service under temporary authority in a 1954 coach-type bus with a seating capacity for 41 passengers. This vehicle was inspected by the Commission's staff on October 22, 1976, and found to be in satisfactory condition. Applicant has made suitable arrangements for maintenance of this vehicle and for replacement thereof when necessitated by an emergency.

J&J filed an amended financial statement showing current assets of \$12,100, no current liabilities, and personal net worth of \$119,600. Evidence adduced at the hearing indicates that applicant's operating expenses approximate \$1,000 a month. Accordingly, J&J must transport a daily minimum of 10 to 12 passengers to offset its costs. Operations conducted under temporary authority have not resulted in any significant net operating loss.

At the original hearing five public witnesses testified about the need for J&J's service. In addition, nine other persons appeared for the record and indicated that their testimony would be cumulative of that offered by the five sworn witnesses. Generally, the supporting testimony shows significant support for the proposed operation. No alternative public transportation is available to J&J's riders who would have to commute by private automobile should this application be denied. The witnesses described applicant's service as reliable and satisfactory and expressed a continuing desire for its availability.

Protestant Bill's holds regular-route authority from this Commission which does not conflict with that sought by applicant. 3/ It also has acquired emergency temporary authority from the Interstate Commerce Commission in proceeding No. MC-141669 R-1, effective October 20, 1976, for a period of 90 days unless otherwise ordered. 4/ Bill's ICC

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3/ Bill's filed an application for operating rights generally coextensive with those now under consideration, but said application was dismissed at applicant's request. See Order No. 1634, served December 10, 1976.

4/ Section 210(a) of the Interstate Commerce Act [49 U.S.C. 310a(a)] provides, as pertinent, that a grant of temporary authority "... shall create no presumption that corresponding temporary authority will be granted thereafter".

authority permits transportation of passengers and their baggage, over a described regular route, between Hughesville, Charles County, Md., and the Naval Research Laboratory.

Bill's witness testified that he had personally observed persons board J&J's bus at the Naval Research Lab and that some of these persons did not leave the bus at any point within the scope of J&J's temporary authority. The witness also indicated a desire to operate over the proposed route in the event this application is denied.

On rebuttal, applicant admitted transporting one person, on one occasion, into Charles County, Md. In addition, applicant regularly crossed the Prince George's - Charles County line to drop off passengers at Spring Lake Restaurant, a point approximately .15 miles beyond the scope of its temporary authority. J&J defended this transgression by stating that it was the safest point of departure within reasonable proximity to the county line. An alternative stop exists approximately .5 miles from the line in Prince George's County, but applicant had not secured permission to use that site. 5/

On further hearing, applicant stated that all operations in Charles County had ceased. Its amended route lies completely within Prince George's County and the District of Columbia. In addition, six users of J&J's service testified that the amended route was convenient for them and satisfied their transportation requirements.

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5/ In addition, some testimony referred to certain operations involving Mr. Johnson as a driver for Ernest Keller, Jr., at an unspecified point in time before the creation of J&J. That testimony, however, lacks sufficient probative value to warrant further discussion herein.

## DISCUSSION AND CONCLUSIONS

The Compact, Title II, Article XII, Section 4(b), provides that a certificate of public convenience and necessity shall be issued by the Commission if it finds "... that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise, such application shall be denied." The Commission finds that the evidence of record amply warrants a grant of the amended application. The applicant has met its statutory burden of proof by establishing a need for its service and further showing that no other certificated carrier is now meeting said need. 6/

Moreover, we find that applicant is fit, financially and otherwise, properly to perform the operation authorized herein. Although J&J admittedly has engaged in some unlawful operations, it abstained from such conduct when advised so to do by the Commission's staff. Applicant has made a diligent effort fully to conform its operations to applicable regulatory requirements and, we believe, evinced its willingness to conduct its future operations in complete compliance with the lawful orders of this Commission.

Accordingly, an appropriate certificate shall be issued.

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6/ In this connection, we note that the Interstate Commerce Commission may grant conflicting authority to protestant only as provided in Title II, Article XII, Section 1(a)(4) of the Compact. In any event, possible issuance of a conflicting certificate by ICC is a matter too speculative to be accorded any weight in this proceeding.

THEREFORE, IT IS ORDERED:

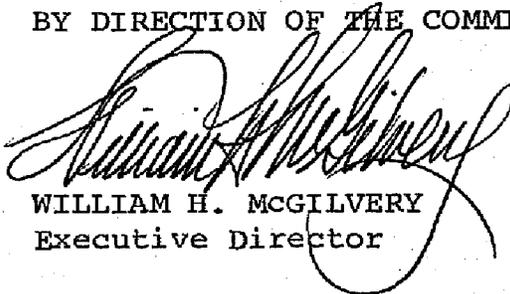
1. That Application No. 962 of Rodgers E. Johnson trading as J & J Bus Service be, and it is hereby, granted, effective 30 days from the service date of this order.

2. That Certificate of Public Convenience and Necessity No. 39, as attached hereto and made a part hereof, be, and it is hereby, issued to Rodgers E. Johnson trading as J & J Bus Service.

3. That Rodgers E. Johnson trading as J & J Bus Service be, and is hereby, directed to file, within 15 days of the service date of this order, two copies of WMATC Tariff No. 1 in accordance with the authority granted herein, said tariff to be effective upon acceptance by the Executive Director.

4. That the temporary authority granted in Order No. 1630 be, and it is hereby, revoked, effective 30 days from the service date of this order.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY  
Executive Director

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 39

RODGERS E. JOHNSON  
TRADING AS J & J BUS SERVICE  
(BRANDYWINE, MARYLAND)

By Order No. 1642 of the Washington Metropolitan Area  
Transit Commission issued January 11, 1977;

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.

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  
thereof 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 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:

REGULAR ROUTE:

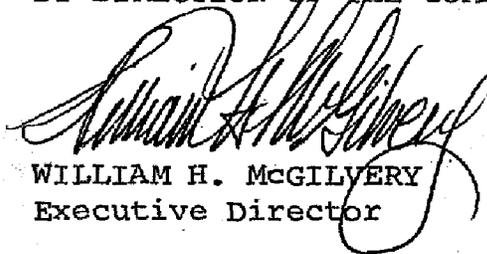
PASSENGERS AND THEIR BAGGAGE,

From the Intersection of Horsehead Road and Maryland  
Highway 381, over Maryland Highway 381 to junction  
Cedarville Road, thence over Cedarville Road to  
junction U. S. Highway 301, thence over U. S. Highway

301 to junction Maryland Highway 5, thence over Maryland Highway 5 to junction Interstate Highway 495, thence over Interstate Highway 495 to junction Interstate Highway 295, thence over Interstate Highway 295 to the Naval Research Laboratory, 4555 Overlook Avenue, S. W., Washington, D. C. serving intermediate points on Maryland Highway 381, Cedarville Road, U. S. Highway 301, and Maryland Highway 5 and Duley's Restaurant located near the junction of Maryland Highways 5, 373, and 381, and Clinton Shopping Center located near the junction of Maryland Highways 5 and 223, as off-route points, and return over the same route.

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. MCGILVERY  
Executive Director