

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1749

IN THE MATTER OF:

Served September 16, 1977

Application of RODWELL BUCKLEY T/A)
ELROD TRANSPORTATION SERVICE for a)
Certificate of Public Convenience and)
Necessity to Perform Special)
Operations)
-----)

Application No. 946

Docket No. 337

Application of THOMAS A. PICKENS T/A)
P.T. TRANSPORTATION for a Certificate)
of Public Convenience and Necessity)
to Perform Special Operations)
-----)

Application No. 951

Docket No. 343

Application of JOHN W. BROWN T/A J&B)
TRANSPORTATION for a Certificate of)
Public Convenience and Necessity to)
Perform Special Operations)
-----)

Application No. 952

Docket No. 338

Application of OTIS F. SMITH T/A)
SPEEDY TRANSPORTATION for a)
Certificate of Public Convenience and)
Necessity to Perform Special)
Operations)
-----)

Application No. 953

Docket No. 344

Application of DAN JENKINS T/A JENKINS)
TRANSPORTATION SERVICE for a)
Certificate of Public Convenience)
and Necessity to Perform Special)
Operations)
-----)

Application No. 954

Docket No. 339

Application of ALFRED L. GAINES T/A)
MEDICO TRANSPORTATION SERVICE for a)
Certificate of Public Convenience and)
Necessity to Perform Special)
Operations)
-----)

Application No. 955

Docket No. 340

Application of ELLIS B. HARRISON T/A)
AREA TRANSPORTATION for a Certificate)
of Public Convenience and Necessity)
to Perform Special Operations)

Application No. 956

Docket No. 341

Application of NORAL HARVEY T/A HARVEY) MEDIVAN for a Certificate of Public) Convenience and Necessity to Perform) Special Operations) -----)	Application No. 960 Docket No. 342
Application of JOHN OTIS PICKENS, JR.) T/A METRO MEDICAID for a Certificate) of Public Convenience and Necessity) to Perform Special Operations) -----)	Application No. 961 Docket No. 347
Application of EBONY MEDIVAN, INC.,) for a Certificate of Public Conve-) nience and Necessity to Perform) Special Operations) -----)	Application No. 965 Docket No. 350
Application of DAVID C. PEARSON T/A) E & H TRANSPORTATION COMPANY for a) Certificate of Public Convenience) and Necessity to Perform Special) Operations) -----)	Application No. 966 Docket No. 351
Application of D. C. MEDICAID TRANS-) PORTATION, INC., for a Certificate of) Public Convenience and Necessity to) Perform Special Operations) -----)	Application No. 968 Docket No. 354
Application of D. C. TRANSPORT, INC.,) for a Certificate of Public Conve-) nience and Necessity to Perform) Special Operations) -----)	Application No. 970 Docket No. 356
Application of MCKINLEY BATTLE for) a Certificate of Public Convenience) and Necessity to Perform Special) Operations) -----)	Application No. 974 Docket No. 360
Application of DAMON T. GARY T/A) DAMON'S TRANSPORT for a Certificate) of Public Convenience and Necessity) to Perform Special Operations) -----)	Application No. 980 Docket No. 363
Application of WILLIAM C. DYE T/A) W&D TRANSPORTATION SERVICE for a) Certificate of Public Convenience) and Necessity to Perform Special) Operations)	Application No. 985 Docket No. 365

Application of ROBERT EARL GRAHAM for)
a Certificate of Public Convenience)
and Necessity to Perform Special)
Operations)

Application No. 991

Docket No. 370

The above applicants seek certificates of public convenience and necessity, pursuant to Title II, Article XII, Section 4(b) of the Compact, generally to transport persons who are confined to wheelchairs between points within the Metropolitan District and hospitals, clinics or doctors' offices.

The Washington Metropolitan Area Transit Regulation Compact (Compact), Title II, Article XII, Section 4(b) mandates that the Commission issue a certificate of public convenience and necessity to any qualified applicant, if the Commission finds, after hearing upon reasonable notice, (1) that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission, and (2) that such transportation is or will be required by the public convenience and necessity. If both these statutory standards are not met, the application must be denied.

In view of the similar nature of the above-referenced applications and the common statutory findings required by the Compact, the Commission shall determine these applications at the same time. This order reviews each separate application, the position of the protestants, and the requirements of the District of Columbia Department of Human Resources (DHR). The order of presentation is based upon the date of filing by the applicants.

RODWELL BUCKLEY

By Application No. 946, filed June 11, 1976, and supplemented July 23, 1976, Rodwell Buckley, trading as Elrod Transportation Service (Buckley) seeks a certificate of public convenience and necessity authorizing the transportation of persons confined to wheelchairs between points within the Metropolitan District and hospitals, clinics or doctors' offices at per capita rates. 1/

Buckley has submitted as his schedule of rates, the schedule of rates published by DHR for transportation of non-ambulatory passengers in the D. C. Medicaid program, as follows:

1/ Buckley's application also sought authority to transport senior citizens, church groups, and other groups on trips and outings. Inasmuch as Buckley did not offer any evidence in support of this portion of his application, the authority requested shall be denied. Accordingly, no further discussion on this portion of the application is warranted.

Non-emergency wheelchair van transportation:

- a. One-way trip within the Capital Beltway
(Route 495) \$15.00
Cancellation Charge 7.50
- b. One-way trip outside the Capital Beltway
(Route 495) \$15.00 + \$.75 per loaded mile
- c. Round-trip within the Capital Beltway
(Route 495) \$25.00
Cancellation Charge 12.50
- d. Round-trip outside the Capital Beltway
(Route 495) \$25.00 + \$.75 per loaded mile
- e. Unusual circumstances requiring additional manpower
\$5.00 additional per trip

Protests to this application were filed by Ironsides Medical Transportation Corporation (Ironsides) and Rehab Transportation, Inc. (Rehab). A public hearing was held on this application as part of a joint public hearing on several applications on September 29, 1976.

Buckley runs his business as a sole proprietorship from an office in his home. Buckley has been approved by DHR to be a participant in a program designed to provide wheelchair transportation services within a portion of the Metropolitan District. Buckley has been in the business of providing such transportation since October, 1975.

Buckley owns two vans which are available for the proposed operation. A 1976 van would be the primary vehicle used in the service, and the other van, a 1973 model, is to be used for additional transportation services or as an alternate if the primary vehicle breaks down. Each vehicle is specially equipped for the proposed transportation services with a ramp, wheelchairs, stabilizing equipment, seat belts, flares, fire extinguishers and first-aid kits. Buckley has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Buckley has three full-time employees and maintains a roster of part-time employees. The full-time employees are a driver, a helper who always accompanies the driver, and a secretary. The business is operated primarily Monday through Friday, except holidays, between 8 a.m. and 4:30 p.m. However, Buckley may be called for service at any time. The secretary communicates with the driver or helper traveling in the van by use of a "beeper" system.

Buckley proposes to transport both private and D. C. Medicaid-sponsored passengers. The latter service is dependent upon DHR requesting the

transportation. Approximately 95 percent of Buckley's customers have been Medicaid clients. According to Buckley, he has averaged between 25 and 35 vehicle trips 2/ per week in the past.

Buckley is employed full time as a professional social worker at the Washington Hospital Center. He holds a degree in social work administration in the area of community health, and, in addition, he has taken various health courses.

Buckley's statement of financial condition as of June 30, 1976, reflects current assets of \$5,000, total assets of \$13,092, current liabilities of \$334, and long-term obligations of \$10,289. Buckley's combined financial statement with Mrs. Buckley dated June 30, 1976, reflects equity of \$2,469.

Buckley is a member of the Association of Wheelchair Carriers Service of Metropolitan Washington, Inc. (Association). 3/

THOMAS A. PICKENS

By Application No. 951, filed July 6, 1976, and supplemented August 10, 1976, Thomas A. Pickens, trading as P.T. Transportation (T. Pickens) seeks a certificate of public convenience and necessity authorizing the transportation of persons confined to wheelchairs between points within the Metropolitan District and medical facilities within the Metropolitan District.

T. Pickens has submitted as his schedule of rates, the schedule of rates published by DHR for transportation of non-ambulatory passengers in the D. C. Medicaid program as set out above. Protests to this application were filed by Ironsides and Rehab, and a public hearing was held on this application as part of a joint public hearing on September 29, 1976.

T. Pickens, who runs his business as a sole proprietorship, has an office in his secretary's home. He has been approved by DHR to be a participant in a program designed to provide wheelchair transportation services within a portion of the Metropolitan District. T. Pickens has been in the business of providing such transportation since June, 1975.

T. Pickens proposes to provide service in a 1975 van specially equipped with a ramp, wheelchairs, tie-downs, safety belts for the wheelchairs, a CB radio, a fire extinguisher, flares, and plastic bags. T. Pickens has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident. T. Pickens employs a full-time secretary and a helper. T. Pickens is the driver. The business is operated Monday through Friday, except holidays, between 8 a.m. and 5 p.m. The

2/ Vehicle trips, as used herein, means individual passenger trips. Consolidation of passengers into a single trip may occur at times, but the record does not disclose the extent of this practice.

3/ The nature and purpose of the Association is set out in detail infra.

secretary communicates with the driver or helper traveling in the van by use of a "beeper" system.

T. Pickens would transport both private and Medicaid passengers. The latter service is dependent upon DHR requesting the transportation. Approximately 98 percent of T. Pickens' customers have been referred by DHR. According to T. Pickens, he has averaged between 20 and 25 vehicle trips per week in the past.

T. Pickens' only business at present is the transportation of non-ambulatory passengers. Prior to entering into this business, T. Pickens was a taxicab driver for about 5 years. T. Pickens' statement of financial condition as of September 1, 1976, reflects current assets of \$3,300, total assets of \$10,350, long-term obligations of \$2,600 and equity of \$7,750. T. Pickens operating statement for the period June 1, 1975, through May 31, 1976, reflects total income from transportation of wheelchair passengers of \$31,640, total operating expenses of \$27,912.02, and net profit of \$3,727.98.

T. Pickens is a member of the Association, discussed infra.

JOHN W. BROWN

By Application No. 952, filed July 7, 1976, and supplemented August 2, 1976, John W. Brown, trading as J&B Transportation (Brown), seeks a certificate of public convenience and necessity authorizing the transportation of persons confined to wheelchairs between points within the Metropolitan District and medical facilities within the Metropolitan District.

~~Brown has submitted as his schedule of rates, the schedule of rates published by DHR for transportation of non-ambulatory passengers in the D. C. Medicaid program, as set out above. Protests to this application were filed by Rehab and Ironsides, and a public hearing was held on this application as part of a joint public hearing on several applications on September 29, 1976.~~

Brown runs his business as a sole proprietorship from an office in his home. Brown has been approved by DHR to be a participant in a program designed to provide wheelchair transportation services within a portion of the Metropolitan District. He has been in the business of providing such transportation since July, 1975.

Brown owns two vans which can be used to provide the proposed transportation service. A 1975 van would be the primary vehicle used in the service. It is specially equipped with a ramp, wheelchairs, braces for the wheelchairs, seat belts, a fire extinguisher and flares. The other van, a 1976 model, 4/ has the same equipment as the primary vehicle, with the exception of the

4/ This vehicle has not been inspected by the Commission.

ramp. It would be used mainly as a back-up vehicle. Brown has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Brown's son works for him full-time as a helper. He is not paid any set sum. Brown does the driving himself. Brown also has an answering service. The business is operated primarily Monday through Friday, between 8 a.m. and 5 p.m., but Brown may be called for service at any time. The answering service communicates with the driver or helper traveling in the van by use of a "beeper" system.

Brown would transport both private and Medicaid-sponsored passengers. The latter source of customers is dependent upon DHR requesting the transportation service. According to Brown, he has averaged 20 vehicle trips per week in the past. Only one vehicle trip per week was for private passengers. Prior to entering his present business, Brown drove a cab for about 15 years.

Brown's statement of financial condition filed August 2, 1976, reflects current assets of \$3,100, total assets of \$45,643, and long-term liabilities of \$16,274. Brown testified he was receiving total revenue of approximately \$2,000 per month from his business. Brown testified that he was presently paying off the notes on his vehicles at the rate of \$285 per month on one and \$235 on the other.

Brown is a member of the Association.

OTIS F. SMITH

By Application No. 953, filed July 21, 1976, and supplemented July 23, 1976, Otis F. Smith, trading as Speedy Transportation (Smith) seeks a certificate of public convenience and necessity authorizing the transportation of persons confined to wheelchairs between points within the Metropolitan District and medical facilities within the Metropolitan District.

Smith has submitted as his schedule of rates, the schedule of rates published by DHR for transportation of non-ambulatory passengers in the D. C. Medicaid program, as set forth above. Protests were filed by Rehab and Ironsides, and a public hearing was held on this application as part of a joint public hearing on several applications on September 29, 1976.

Smith runs his business as a sole proprietorship from an office in the home of his secretary. ^{5/} Smith has been approved by DHR to be a participant in a program designed to provide wheelchair transportation service within a portion of the Metropolitan District, and he has been in the business of providing such transportation since March, 1976.

^{5/} This secretary is the same secretary employed by T. Pickens.

Smith proposes to provide service in a 1976 van specially equipped for the proposed transportation services with a ramp, wheelchairs, braces for holding the wheelchairs, a fire extinguisher, seat belts, and flares. Smith has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Smith employs a helper and a secretary full time. Smith is the driver. The business is operated Monday through Friday between 8 a.m. and 5 p.m. The secretary communicates with the driver or helper traveling in the van by use of a "beeper" system.

Smith would transport only Medicaid passengers at the request of DHR. Smith has averaged approximately 105 vehicle trips per month. Prior to entering this business, Smith drove a cab for approximately 17 years.

Smith's statement of financial condition as of September 1, 1976, reflects current assets of \$2,625, total assets of \$10,360, long-term obligations of \$6,800 and equity of \$3,560. Smith's operating statement for the period March 15, 1976, through August 31, 1976, reflects income from transportation of wheelchair passengers of \$10,370, total operating expenses of \$5,955.75 and profit of \$4,414.25.

Smith is a member of the Association.

DAN JENKINS

By Application No. 954, filed July 22, 1976, Dan Jenkins, trading as Jenkins Transportation Service (Jenkins) seeks a certificate of public convenience and necessity authorizing the transportation of persons confined to wheelchairs between points within the Metropolitan District.

Jenkins submitted, as part of his application, the following rates: 6/

Medical transportation for out-patients:

- a. One-way trip within the Capital Beltway
(Route 495) \$15.00
- b. One-way trip outside the Capital Beltway
(Route 495) \$15.00 + \$.75 per loaded mile
- c. Round-trip within the Capital Beltway
(Route 495) \$25.00

6/ The differences between Jenkins' schedule of rates and that of the D. C. Medicaid program are (1) Jenkins does not specifically restrict transportation to passengers in wheelchairs, and (2) Jenkins has deleted the \$7.50 and \$12.50 cancellation charge from items a. and c., respectively.

- d. Round-trip outside the Capital Beltway
(Route 495) \$25.00 + \$.75 per loaded mile
- e. Unusual circumstances requiring additional manpower
\$5.00 additional per trip

Protests were filed by Rehab and Ironsides, and a public hearing was held on this application on September 2, 1976.

Jenkins runs his business as a sole proprietorship from an office in his home. He has been approved by DHR to be a participant in a program designed to provide wheelchair transportation services within a portion of the Metropolitan District. Jenkins has been in the business of providing such transportation since March, 1976.

Jenkins proposes to provide service in a 1976 van specially equipped with a fire extinguisher, sick bags, a ramp, wheelchairs and seat belts. Jenkins has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Jenkins has no full-time employees. Jenkins operates the van himself with the assistance of a helper when needed. Jenkins retains an answering service to receive messages when no one is home. Services generally would be performed Monday through Saturday.

Jenkins would transport both private and Medicaid passengers. The latter source of customers is dependent upon DHR requesting the transportation service. According to Jenkins, he regularly transports 4 or 5 private passengers. Prior to entering his present business, Jenkins was employed as a cab driver for approximately 5 years. He currently drives a cab on a part-time basis.

Jenkins financial statement reflects total current assets of \$8,200, \$8,000 in equipment, \$42,500 in real estate, \$500 in prepaid expenses, and total liabilities of \$20,550. Jenkins pays \$775 per month on various outstanding personal and business notes. Jenkins testified that his business operating costs approximate \$500 per month and that he receives approximately \$700 per month from the operation of his vehicle.

ALFRED L. GAINES

By Application No. 955, filed July 23, 1976, Alfred L. Gaines, trading as Medico Transportation (Gaines) seeks a certificate of public convenience and necessity authorizing the transportation of passengers confined to wheelchairs between points inside the Capital Beltway on the one hand, and, on the other, clinics and hospitals inside the Capital Beltway.

Gaines has submitted two schedules of rates with his application. One is the schedule of rates published by DHR for non-ambulatory transportation

Gaines' statement of financial condition 7/ reflects current assets of \$2,000, total assets of \$49,100, 8/ long-term obligations of \$13,000, other liabilities of \$1,500 and net worth of \$34,600. Gaines testified that he earned between \$1,600 and \$1,800 a month from his vehicle trips, that it cost him approximately \$20 per week for fuel and that he pays \$233 per month on his note on the van.

Gaines is a member of the Association.

ELLIS B. HARRISON

By Application No. 956, filed July 29, 1976, Ellis B. Harrison, trading as Area Transportation (Harrison) seeks a certificate of public convenience and necessity authorizing the transportation of passengers confined to wheelchairs between points within the Metropolitan District. Harrison has submitted as his rates, the schedule of rates published by DHR, as set forth above. Protests to this application were filed by Rehab and Ironsides, and a public hearing was held as part of a joint public hearing on several applications on September 29, 1976.

Harrison runs his business as a sole proprietorship from an office in his home. He has been approved by DHR to be a participant in a program designed to provide wheelchair transportation services within a portion of the Metropolitan District. Harrison has been in the business of providing such transportation since March, 1976.

Harrison proposes to provide service in a 1976 van specially equipped with a ramp, stabilizing angle irons, seat belts, a fire extinguisher and flares. Harrison has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Harrison has one full-time employee, a helper. Harrison is the driver. A relative answers the telephone for him and communicates with the driver or helper traveling in the van by use of a "beeper" system. Virtually all of Harrison's business to date has been Medicaid passengers. According to Harrison he has averaged 17 vehicle trips per week in the past. Prior to entering his present business, Harrison was employed as a taxicab driver for approximately 12 years.

7/ Gaines submitted a combined statement of financial condition for himself and his wife. The vehicles included in the statement, however, belong only to Gaines.

8/ The statement of financial condition submitted with the application reflects \$64,200 as Gaines' total assets and \$49,700 as his net worth. These inaccurate figures were corrected by applicant's counsel at the hearing.

Harrison's combined financial statement with Mrs. Harrison reflects current assets of \$13,200, total assets of \$21,800, and long-term obligations of \$6,400. Harrison also owns his home which has an estimated market value of approximately \$27,500 and an existing mortgage of approximately \$15,000. Harrison testified that his wife is working and that he supplements his income by renting his taxicab out at the rate of \$65 per week. He further testified that his monthly payment on the note on the van is approximately \$200.

Harrison is a member of the Association.

NORAL HARVEY

By Application No. 960, filed August 9, 1976, Noral Harvey, trading as Harvey Medivan (Harvey) seeks a certificate of public convenience and necessity authorizing the transportation of persons confined to wheelchairs between points within the Metropolitan District. Harvey has submitted as his schedule of rates the schedule of rates published by DHR for non-ambulatory transportation in the D. C. Medicaid program, as set forth above. Protests to this application were filed by Rehab and Ironsides, and a public hearing was held on September 29, 1976, as part of a joint public hearing on several applications.

Harvey runs his business as a sole proprietorship from an office in his home. Harvey has been approved by DHR to be a participant in a program designed to provide wheelchair transportation services within a portion of the Metropolitan District. Harvey has been in the business of providing such transportation since September, 1975.

Harvey proposes to provide service in a 1973 van specially equipped with a ramp, wheelchairs, flares, a fire-extinguisher, a first-aid kit, and seat belts bolted to the floor. ^{9/} Harvey has a basic insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total.

Harvey has two full-time employees, a helper and a secretary. Harvey is the driver. The business is operated Monday through Friday between 9 a.m. and 5 p.m. The secretary communicates with the driver or helper traveling in the van by use of a "beeper" system. Harvey is presently transporting only D. C. Medicaid passengers. This source of customers is dependent upon DHR requesting the transportation service. Prior to entering this business, Harvey was employed as a taxicab driver for approximately 7 years. According to Harvey, he has averaged between 20 and 25 vehicle trips per week. Harvey plans to expand his operations by adding another vehicle.

Harvey's statement of financial condition as of December 31, 1975, reflects assets of \$7,590, long-term obligations of \$1,546 and net surplus

^{9/} At the hearing applicant testified that the mileage on this vehicle was approximately 70,000.

of \$6,044. Harvey is paying off a note on the van at the rate of \$96 per month. He pays approximately \$89 per month for his insurance policy.

JOHN OTIS PICKENS

By Application No. 961, filed August 17, 1976, John Otis Pickens, Jr., trading as Metro Medical Transportation (J. O. Pickens) seeks a certificate of public convenience and necessity authorizing the transportation of persons confined to wheelchairs between points within the Metropolitan District. J. O. Pickens submitted as his schedule of rates, the schedule of rates published by DHR for non-ambulatory transportation, as set forth above. Protests to this application were filed by Rehab and Ironsides, and a public hearing was held on September 29, 1976, as part of a joint public hearing on several applications.

J. O. Pickens runs his business as a sole proprietorship from an office in his home. J. O. Pickens has been approved by DHR to be a participant in a program designed to provide wheelchair transportation services within a portion of the Metropolitan District, and he has been in the business of providing such transportation since March, 1976.

J. O. Pickens proposes to provide service in a 1976 van specially equipped with a ramp, wheelchairs, wheelchair tie-downs, seat belts, flares, a fire extinguisher, and plastic sick bags. J. O. Pickens has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

J. O. Pickens has one full-time employee, a helper. J. O. Pickens is the driver, and his wife is the secretary. She communicates with the driver or helper traveling in the van by use of a "beeper" system. The business is operated from 8 a.m. to 6 p.m. J. O. Pickens would transport both private and Medicaid passengers. This latter source of customers is dependent upon DHR requesting the transportation. At the time of the hearing J. O. Pickens had transported only Medicaid passengers. According to J. O. Pickens he has averaged 22 vehicle trips per week and has received approximately \$2,350 to \$2,400 per month from DHR. Prior to entering this business, J. O. Pickens was employed for approximately 5 years as a taxicab driver.

J. O. Pickens' operating statement for the period March 15, 1976, through July 31, 1976, reflects \$12,975 as the income from transportation of wheelchair passengers, \$7,226 total operating expenses, and profit before taxes of \$5,749. His statement of financial condition as of September 1, 1976, reflects current assets of \$5,450, total assets of \$12,175, total obligations of \$5,100, and equity of \$7,075.

EBONY MEDI-VAN, INC.

By Application No. 965, filed September 8, 1976, Ebony Medi-Van, Inc. (Ebony), seeks a certificate of public convenience and necessity authorizing

the transportation of handicapped, elderly, and disabled persons confined to wheelchairs, over irregular routes, between points within the Metropolitan District.

Ebony has submitted two separate schedules of rates for the proposed services. One is similar to that established by DHR and would apply to non-ambulatory passenger transportation services provided to eligible individuals participating in the D. C. Medicaid program.^{10/} The other rate schedule applies to the transportation of non-Medicaid passengers and is as follows:

1. One-way trip within Capital Beltway
(Route 495) \$20.00
2. One-way trip outside Capital Beltway
(Route 495) \$20.00 + \$.90 per loaded mile
3. Round-trip within Capital Beltway
(Route 495) \$30.00
4. Round-trip outside Capital Beltway
(Route 495) \$30.00 + \$.90 per loaded mile
5. Unusual circumstances requiring additional manpower
\$7.00 additional per trip

A protest to this application was filed by Rehab and a public hearing on this application was held on October 27, 1976.

Ebony is incorporated and has an office in the District of Columbia. It has been approved by DHR to be a participant in the program designed to provide wheelchair transportation services within a portion of the Metropolitan District. Ebony has been in the business of providing such transportation since September, 1974.

Ebony proposes to provide service in two 1974 vans specially equipped with a ramp, wheelchairs, wheelchair locks, seat belts, a fire extinguisher, a first-aid kit, and flares. Ebony has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Ebony employs a full-time driver who is paid \$4 per hour. In addition, Ebony has hired a part-time employee who works either as a helper or as a driver at the rate of \$3 per hour. One of the shareholders in Ebony performs the office administration duties. The business is operated Monday through

^{10/} The only apparent difference between Ebony's rate schedule and that of DHR, supra, is Ebony's reduced cancellation charge of \$7.50 (in lieu of \$12.50) under item 3.

Friday. Ebony communicates with the driver or helper traveling in the van by leaving messages at various locations.

Ebony would transport both private and Medicaid passengers. The latter source of customers is dependent upon DHR requesting the transportation service. Approximately 97 percent of Ebony's customers have been Medicaid passengers, and according to Ebony, the company has averaged 20 vehicle trips per week in the past.

Ebony's income statement for the period January 1, 1976, through June 30, 1976, reflects total income of \$18,455.92 and total operating expenses of \$19,767.57, with a net loss of \$1,311.65. Ebony's balance sheet for the same period reflects current assets of \$374.81, total assets of \$5,504.31, current liabilities of \$3,293.22, and stockholders' equity of \$2,211.69. Ebony pointed out at the hearing that it lost approximately \$800 during the month of September, 1976.

DAVID C. PEARSON

By Application No. 966, filed September 10, 1976, David C. Pearson, trading as E & H Transportation Company (Pearson), seeks a certificate of public convenience and necessity authorizing the transportation of non-ambulatory disabled and handicapped persons, over irregular routes, between points within the Metropolitan District.

Pearson has submitted as his schedule of rates, the schedule of rates published by DHR for non-ambulatory passenger transportation in the D. C. Medicaid program, as set forth above. A protest to this application was filed by Rehab, and a public hearing was held on this application on October 27, 1976.

Pearson runs his business as a sole proprietorship from an office in the District of Columbia. He has been approved by DHR to be a participant in a program designed to provide wheelchair transportation services within a portion of the Metropolitan District. Pearson has been in the business of providing such transportation since October, 1974.

Pearson proposes to provide service in a 1974 van specially equipped with a ramp, wheelchairs, straps to hold the wheelchairs in place, a fire extinguisher, flares, a first-aid kit and a two-way radio. Pearson has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident. Pearson also has \$50,000 property damage insurance.

Pearson has one full-time employee, a dispatcher, and a part-time helper. Pearson is the driver. The business is operated Monday through Saturday between 8 a.m. and 5 p.m. The dispatcher communicates with the driver or helper traveling in the van by use of a two-way radio. At the time of the hearing, Pearson was transporting only Medicaid passengers at the

request of DHR. According to Pearson, he has averaged 25 vehicle trips per week in the past. Prior to entering this business, Pearson drove a taxicab for approximately 3 years. Pearson is a member of the Association.

Pearson's financial statement as of August 31, 1976, reflects cash on hand of \$2,550, total assets of \$34,775, total liabilities of \$9,866.64, and net worth of \$24,908.36. Pearson's operating statement for the period January 1, 1975, through December 31, 1975, shows operating revenue of \$46,850, equipment rental income of \$6,000, operating costs of \$28,183.52 and net profit of \$20,226.51, after providing for income taxes.

D. C. MEDICAID TRANSPORTATION, INC.

By Application No. 968, filed September 20, 1976, as amended at the hearing, D. C. Medicaid Transportation, Inc. (DCMT), seeks a certificate of public convenience and necessity authorizing the transportation of non-ambulatory, disabled or handicapped persons within the Metropolitan District. DCMT has submitted its schedule of proposed rates as follows:

Transport within the District of Columbia

One-way:	\$12.50
Round-trip	\$25.00

Transport beyond the District of Columbia line but within I-495

One-way:	\$15.00
Round-trip	\$30.00

<u>Extra attendant</u>	\$5.00
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A protest to this application was filed by Rehab, and a public hearing on this application was held on November 1 and 12, 1976.

DCMT is incorporated and has an office within the District of Columbia. The company has been approved by DHR to be a participant in its wheelchair transportation program. DCMT has been in the business of providing non-ambulatory passenger transportation since July, 1975.

DCMT proposes to provide service in a 1975 van specially equipped with a ramp, seatbelts, wheelchairs, flares, a fire extinguisher, a CB radio and a first-aid kit. DCMT leases this vehicle from L. P. Stewart Leasing Company at the rate of \$189.17 per month. Under the terms of the lease agreement, however, the van cannot be used for hire or public transportation. ^{11/} DCMT has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident. In addition, DCMT has \$50,000 property damage insurance.

^{11/} See Exhibit H-4.

DCMT has three full-time employees, the company president, a driver, and a secretary. It also employs a part-time helper. The business is operated Monday through Saturday, between 7 a.m. and 6 p.m. The secretary communicates with the driver or helper traveling in the van by use of a "beeper" system. DCMT would transport both private and Medicaid passengers. The latter source of customers is dependent upon DHR requesting the transportation service. Approximately 95 percent of DCMT customers have been Medicaid passengers. According to DCMT the company has averaged between 25 and 35 vehicle trips per week in the past.

DCMT filed as Exhibit C to its application a balance sheet for the quarter ended March 31, 1976, a profit or loss statement for the months of January through March, 1976, and an expense ledger for the months January through March, 1976. At the hearing held on November 1, 1976, DCMT was unable to substantiate the representations in Exhibit C. DCMT pointed out that some of the entries were incorrect. At the continuation of the hearing on November 12, 1976, DCMT introduced into evidence its operating statement for the period January through September, 1976, reflecting total revenue of \$18,408, total operating expenses of \$18,758.86, and a net loss of \$350.86. DCMT's accountant explained the manner in which this latter exhibit was prepared. Neither the accountant nor DCMT's president testified concerning the accuracy of Exhibit C. This exhibit, accordingly, has no probative value.

D. C. TRANSPORT, INC.

By Application No. 970, filed October 4, 1976, D. C. Transport, Inc. (D. C. Transport), seeks a certificate of public convenience and necessity to engage in the transportation of persons confined to wheelchairs within the Metropolitan District for the Medical Assistance Program of the District of Columbia as administered by DHR. D. C. Transport has submitted as its schedule of rates, the schedule of rates published by DHR for non-ambulatory passenger transportation, as set forth above. Protests to this application were filed by Rehab and Ironsides. A public hearing on this application was held on December 16, 1976.

D. C. Transport is incorporated and has an office in the District of Columbia. The corporation has been tentatively approved by DHR to be a participant in its wheelchair transportation program. At the time of the hearing, D. C. Transport had not provided any transportation.

D. C. Transport proposes to provide service in a 1977 van specially equipped with a ramp, wheelchairs, wheelchair tie-downs, seat belts, a two-way radio, a fire extinguisher, a first-aid kit, flares, and plastic sick bags. D. C. Transport has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident. It intends to employ two persons on a full-time basis, the president of the corporation, who would be the driver, and a secretary. The secretary would communicate with the driver of the van by either a two-way radio or by use of a "beeper" system.

D. C. Transport would transport only Medicaid passengers at the request of DHR.

D. C. Transport's statement of financial condition reflects current assets of \$1,000, \$8,888.60 in total tangible property, and \$6,558 in long-term obligations. ^{12/} Applicant testified that monthly payments on the note on its van are \$176. It estimated its fuel would cost \$10 a day.

McKINLEY BATTLE

By Application No. 974, filed December 3, 1976, McKinley Battle (Battle) seeks a certificate of public convenience and necessity to transport non-ambulatory persons who are clients of the D. C. Medicaid program, round-trip or one-way, over irregular routes, between points within the District of Columbia; and between points within the District of Columbia, on the one hand, and points within the Metropolitan District on the other. Battle has submitted as his schedule of rates, the schedule of rates published by DHR for non-ambulatory passenger transportation in the D. C. Medicaid program, as set out above. A protest to this application was filed by Rehab, and a public hearing was held on January 11, 1977.

Battle has received the tentative approval of DHR to be a participant in the D. C. Medicaid program. Battle, a sole proprietor, proposes to provide service in a 1976 van specially equipped with a ramp, wheelchairs, seatbelts, a fire extinguisher, flares, and a first-aid kit. Battle has made a contingency arrangement with John W. Brown, a separate applicant, for the use of another van as a substitute vehicle in case of a breakdown. Battle has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Battle would have one full-time employee, a secretary, and Battle would be the driver. He would use part-time employees as helpers. The business would be operated Monday through Saturday. The secretary would communicate with the driver by use of a "beeper" system to be acquired.

Battle's statement of financial condition reflects current assets of \$800, total assets of \$36,150, and long-term obligations of \$33,935. Battle's statement of projected revenues and revenue deductions for 1977 reflects expected income of \$24,000. His anticipated expenses for the year are \$2,057 for payments on the van, \$998 for insurance premiums, \$120 for oil changes, \$2,880 for fuel and \$4,320 in salaries.

^{12/} Since the statement was drawn, applicant purchased CB radios totalling \$250.

DAMON T. GARY

By Application No. 980, filed February 15, 1977, Damon T. Gary, trading as Damon's Transport (Gary) seeks a certificate of public convenience and necessity authorizing the transportation of persons confined to wheelchairs between points within the Metropolitan District and medical facilities within the Metropolitan District.

Gary has submitted as his schedule of rates, the schedule of rates published by DHR for transportation of non-ambulatory passengers in the D. C. Medicaid program, as set forth above. Gary would transport only Medicaid passengers at the request of DHR. A protest to this application was filed by Rehab, and a public hearing was held on this application on April 12, 1977.

Gary, a sole proprietor, proposes to provide service in a 1977 van specially equipped for the proposed transportation with a ramp, a first-aid kit, a fire-extinguisher, flares, seatbelts and a metal beam to secure the wheelchairs. Gary has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Gary would employ a full-time secretary and a part-time helper, and Gary would be the driver. The business would be operated Monday through Friday. The secretary would communicate with Gary by use of a "beeper" system.

Gary's statement of financial condition reflects current assets of \$1,000, ^{13/} total assets of \$12,640, and current liabilities of \$5,700. Gary estimates the expenses for his proposed transportation services for a one-year period to be approximately \$11,644. Gary was unable to estimate his anticipated revenues from DHR.

WILLIAM C. DYE

By Application No. 985, filed March 7, 1977, William C. Dye, trading as W&D Transportation Service (Dye) seeks a certificate of public convenience and necessity authorizing the transportation of disabled and handicapped persons between points within the Metropolitan District and medical facilities within the Metropolitan District. Dye has submitted as his schedule of rates, the schedule of rates published by DHR for transportation of non-ambulatory passengers in the D. C. Medicaid program, as set forth above. A protest to this application was filed by Rehab, and a public hearing was held on this application on April 26, 1977.

Dye, a sole proprietor, proposes to provide service in a 1977 van specially equipped with a ramp, wheelchairs, seatbelts, mechanical clamps

^{13/} Gary testified that, at the time of the hearing, this sum was reduced to \$600.

in the floor, and a fire-extinguisher. Dye has an insurance policy providing \$100,000 coverage per individual per incident and \$300,000 coverage in total per incident.

Dye employs a part-time helper. He also has an answering service which takes telephone messages for him. The business is operated Monday through Friday between 8:15 a.m. and 4:45 p.m. Dye has averaged approximately 15 vehicle trips per week in the past.

Dye testified that he and his wife have \$340 cash on hand, ^{14/} that he owes \$6,219 on the van, and that he and his wife owe approximately \$17,000. Dye pointed out that his wife was earning approximately \$16,500 per year on her job and that he could count on her to help him defray the costs of his operations. Dye testified that his family's monthly bills totaled approximately 70-75 percent of its monthly income. Dye's estimated income statement reflects anticipated earnings for a 36-week period of \$16,200, total anticipated expenses of \$13,300, and net before-tax income of \$2,900. Dye conceded that finances would be a problem for him.

ROBERT EARL GRAHAM

By Application No. 991, filed April 11, 1977, Robert Earl Graham (Graham) seeks a certificate of public convenience and necessity authorizing the transportation of D. C. Medicaid-sponsored handicapped persons to and from medical facilities in the Metropolitan District. Graham has submitted as his schedule of rates, the schedule of rates published by DHR for non-ambulatory passenger transportation in the D. C. Medicaid program.

Graham would run his business as a sole proprietorship from an office in his thrift-shop store. He proposes to provide service in a 1977 van specially equipped with a ramp, wheelchairs, a fire extinguisher, flares and seatbelts. Graham has an insurance policy providing \$100,000 coverage per individual per incident and \$500,000 coverage in total.

Graham has not commenced operations. He anticipates hiring a helper and having an answering service take his phone messages. The answering service would communicate with Graham, who would drive the van, by use of a "beeper" system. The business would be operated Monday through Friday from 8 a.m. to 5 p.m.

Graham's statement of financial condition reflects \$2,500 cash, \$66,726 total assets, and total obligations of \$33,726. Graham projected his revenues from DHR for a one-year period to be between \$20,800 and \$31,800. He projected his expenses, excluding the cost of insurance, to be \$574 per month.

^{14/} Dye's statement of financial condition filed with his application only has the entry \$6,535 on it. Dye testified that this was his income for 1976.

ASSOCIATION OF WHEELCHAIR CARRIERS SERVICE
OF METROPOLITAN WASHINGTON, INC.

The Association of Wheelchair Carriers Service of Metropolitan Washington, Inc. (Association), presented the testimony of its president. The Association was incorporated within the District of Columbia in September, 1976. The membership in the Association is open to anyone who participates in the Medicaid program to transport wheelchair passengers within the District of Columbia and surrounding jurisdictions. The Association proposes to develop ways to provide better services for Medicaid passengers. Participating companies intend to support each other by providing replacement service in the event that one company is unable to complete a trip at any particular time.^{15/} The Association would also provide training to the individual operators, bookkeeping services, and first-aid training. However, the members would remain separate entities within the Association with no financial ties between the companies.

DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN RESOURCES

On September 29, 1976, the chief of the Payments Division of the Department of Human Resources of the District of Columbia testified that DHR, at the request of social workers, doctors, and hospitals, arranges for the transportation of persons confined to wheelchairs to and from medical facilities in the metropolitan area. In order to effect such transportation, DHR contracts with various taxicab and so-called medivan operators.

The DHR representative indicated that as of September 29, 1976, there were 17 carriers participating in the program. He testified that each carrier was making an average of 105-115 vehicle trips per month for DHR. He estimated that a total of approximately 1,800 vehicle trips per month was being authorized by DHR in this program.

According to its representative, DHR has imposed the following criteria on each carrier: (1) that the driver have a hacker's license, (2) that the van used is safe, (3) that it can transport the client in an efficient and safe manner, (4) that it has a good record, (5) that it has sufficient insurance, and (6) that it has authority from the Commission.

DHR is in favor of having a large roster of carriers authorized to provide the proposed transportation services. DHR believes that the more

^{15/} When a person who is a member of the Association has a mechanical breakdown and is required to call upon the Association to provide alternative transportation services, the company calling upon the Association would not be required to pay the Association or the substitute carrier for the provision of the alternative service. Rather, the company would continue to receive the revenues from DHR for the provision of the services.

carriers are available, the more reliable transportation service will be. DHR contends that if the roster of carriers were reduced substantially, its transportation program would suffer a reduction in efficiency, economy, and reliability, which in turn would affect the services rendered to citizens of the District of Columbia.

The DHR program involving the transportation of wheelchair patients is divided broadly into two service categories: (1) those individuals who are transported pursuant to a "standing order", and (2) those who are on a "regular order" basis. A standing order covers the periodically recurring transportation of a particular person to and from a medical facility. A regular order, on the other hand, covers an individual request from a medical facility or social worker for transportation of a particular person.

DHR attempts to equalize among the carriers the number of standing orders. With respect to regular orders, DHR utilizes a rotation system for distributing the trips. The number of vans owned or operated by a carrier does not affect the rotation system. Each carrier receives a single request, in turn, regardless of the number of vehicles it has available for service.

IRONSIDES MEDICAL TRANSPORTATION CORPORATION

The interest of Ironsides Medical Transportation Corporation (Ironsides) as a protestant to several of the applications is based upon its WMATC Certificate of Public Convenience and Necessity No. 31, issued March 31, 1976. This certificate authorizes Ironsides to provide service as follows:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, limited to handicapped or disabled persons together with their baggage and attendants, not including sightseeing or pleasure tours, between points within the Metropolitan District.

RESTRICTED to the performance of such operations in vehicles with a seating capacity of fifteen passengers excluding the driver.

Ironsides contends that the quality of the equipment and the service proposed by the applicants may not comport with the minimum standards necessary to ensure the safety and welfare of that segment of the public to which the proposed services would be directed. It also contends that several of the applicants may lack sufficient capitalization and equipment to ensure consistent, stable service. Ironsides questions the technical training and skills of the personnel who operate the equipment in the course of the proposed operations and their ability to cope with emergency situations, should any develop during the course of the operations.

Ironsides argues that the granting of certificates of public convenience and necessity to the numerous applicants herein would result in the dilution of the market for such service to the financial detriment of existing WMATC certificated carriers without any benefit to the public. In this regard, Ironsides introduced a traffic study showing that the number of D. C. Medicaid trips it was making was declining and that the number of trips had dropped to an all-time low of 54 for the month of September, 1976. This exhibit shows that for the months of January - October, 1975, Ironsides' D. C. Medicaid vehicle trips exceeded 150 per month.

The proliferation of low-overhead companies assertedly would produce a loss of overall quality of service to the public by driving out WMATC certificated carriers who might be unable to provide the present level and quality of service at the cut-rate prices allegedly made possible by minimum capitalization. Ironsides further argues that currently-certificated companies are capable of adequately meeting the present needs of the community and that there is no showing of public need which would warrant the granting of a certificate to any of the applicants.

Ironsides is a District of Columbia corporation. It has been approved by DHR to be a participant in the Medicaid program to provide transportation for non-ambulatory persons within a portion of the Metropolitan District, and has been in the business of providing such transportation since 1973.

Ironsides uses 5 vans and 5 full-time drivers, employs an office manager, and maintains a roster of individuals who are available to serve as assistants. The office manager communicates with the drivers in the vans by use of a radio "pager" system. Ironsides offers its services 7 days a week, 24 hours per day.

REHAB TRANSPORTATION, INC.

Rehab Transportation, Inc. (Rehab), filed protests to each of the applications set forth herein, except that of Graham. Rehab's interest is based upon its WMATC Certificate of Public Convenience and Necessity No. 30. 16/ This certificate authorizes the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, limited to handicapped or disabled persons together with their baggage and attendants and

16/ Rehab and Conval Port Medivan, Inc. (Conval), have entered into a bilateral contract wherein Conval will purchase Rehab's certificate. By Application No. 1005, filed June 16, 1977, Rehab seeks approval of the transfer of its certificate of public convenience and necessity to Conval. Pursuant to Order No. 1717, served June 23, 1977, a public hearing on Rehab's application was set for August 22, 1977. Order No. 1717 also granted Conval temporary authority to operate Rehab's certificate.

not including sightseeing or pleasure tours, between points within the Metropolitan District.

RESTRICTED to the performance of such operations in vehicles with a seating capacity of fifteen passengers excluding the driver.

Rehab takes the position that the public convenience and necessity does not justify or require the granting of the numerous applications under consideration herein. Rehab argues that its existing special operations service within the Metropolitan District, together with the service of Ironsides, is sufficient to meet the public need for non-ambulatory passenger transportation within the Metropolitan District. Rehab also argues that grants of authority to the applicants would enable them to conduct operations directly competitive with and detrimental to those currently being provided by Rehab.

Rehab has been involved in the transportation of handicapped or disabled persons for the past 6 years. Rehab, at the time of the hearing, operated three 1975 vans. Each van is specially equipped with a fold-out metal ramp, metal wheelchair lock-down devices, first-aid kits, a fire extinguisher, and a two-way radio. The two-way radios permit Rehab to arrange to pick up customers on short notice, and achieve greater operational flexibility in providing handicapped or disabled persons with a responsive service. Rehab regularly offers service 5 days a week and also on an as-needed basis on weekends. It employs three full-time and one part-time driver.

Rehab has participated in the transportation of handicapped and disabled persons under the DHR program for over three years. Each month, from January, 1974, through August, 1975, Rehab transported 130 or more D. C. Medicaid clients. 17/ Commencing with September, 1975, however, Rehab experienced a sharp drop in the transportation of Medicaid clients. This decline, according to Rehab's president, was the result of excessive competition from a number of individuals offering service limited generally to the Medicaid program.

Medicaid patronage formerly represented approximately 40 percent of the customers who were being transported by Rehab. However, at the time of the hearing, Medicaid patronage had fallen to a low of approximately 25 percent of the company's operations. 18/ This diminution of patronage has reduced by

17/ During this period the number of D. C. Medicaid clients transported by Rehab reached a high of 227 in April, 1974, and a low of 130 in November, 1974.

18/ In addition to the Medicaid patrons, Rehab also transports other handicapped and disabled persons throughout the Washington Metropolitan District to and from hospitals, nursing homes, schools and other medical facilities.

approximately one third the revenues which protestant Rehab had been deriving from the transportation of Medicaid clients. The substantial loss in patronage has assertedly affected the company's operations, and forced Rehab to liquidate two of the 5 vans it operated prior to September, 1976. Moreover, Rehab was operating at only about 60 percent of capacity at the time of the hearings in the foregoing applications.

FINDINGS AND CONCLUSIONS

The preliminary finding the Commission must make is whether the proposed transportation services are within the jurisdiction of this Commission. Title II, Article XII, Section 1(a) of the Compact provides that "under this Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District and to persons engaged in rendering or performing such transportation service . . ." with certain exceptions not here pertinent. Correspondingly, Section 2(a) of the same article defines the term "carrier" as "any person who engages in the transportation of passengers for hire by motor vehicle".

The Commission initially finds that the proposed operations are subject to the jurisdiction conferred by the Compact. Each of the applicants under consideration herein proposes to provide transportation services within the Metropolitan District in vans. Each applicant proposes to provide service at per capita rates. Insofar as Medicaid passengers are concerned, compensation for such transportation services will be forthcoming from the agency requesting these services. Although the Medicaid passengers will not be paying directly for the transportation services, the concept of transportation for hire encompasses those situations where a third party pays for the benefits being bestowed upon the individual passengers.

Moreover, the prime business purpose of each applicant is the derivation of revenue from transportation. Unlike ambulance service where the movement of passengers is a mere adjunct to the emergency medical diagnosis and/or treatment administered, here the pure purpose of the service proposed is the movement of passengers between points in the Metropolitan District. Accordingly, the Commission finds that the proposed transportation of non-ambulatory passengers is transportation for hire within the meaning of the above sections of the Compact.

Having made this finding, a corollary question must be considered. In Application No. 968, Docket No. 354, DCMT moved to dismiss its application for lack of jurisdiction, contending that the subject transportation falls within the taxicab exception to our jurisdiction under the Compact, Title II, Article XII, Section 1(c). The language of this subsection is as follows:

Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles used in performing bona fide taxicab service having a seating capacity of eight passengers or less

in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.

DCMT argues that its operations constitute a bona fide taxicab service and that under the above subsection it is exempt from the jurisdiction of the Commission, with the exception of interstate rates and insurance requirements.

Certainly, vehicles which have a seating capacity of 8 passengers or less in addition to the driver thereof and which are engaged in bona fide taxicab service are exempt from the Commission's jurisdiction except for interstate rates and insurance requirements. See Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission, 325 F.2d 230 (D.C. Cir. 1963). However, an inquiry into whether the service proposed by DCMT, or indeed that of all the applicants herein, falls within the taxicab exception to our jurisdiction must necessarily begin with a definition of "taxicab". Title II, Article XII, Section 2(d) of the Compact defines "taxicab" as:

. . . any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct.

It is readily apparent from the above definition that neither DCMT nor any of the above applicants are involved in taxicab operations. Although applicants' vehicles have been redesigned to have a seating capacity of less than 8 passengers, none of the vehicles are utilized for the purpose of accepting or soliciting Medicaid clients "along the public streets and highways, as the passengers may direct". DCMT's president specifically testified that her company had no intention of operating in such a manner.

Moreover, applicants are not engaged in a "bona fide taxicab service". The subject vehicles are not licensed as taxicabs. Applicants' services are not held out to the general public on a non-discriminatory basis. Rather, the services are held out only to persons who are disabled, handicapped or otherwise confined to wheelchairs. Applicants, furthermore, have rate schedules that bear no resemblance to the rate schedules in effect for taxicabs within the Metropolitan District.

Accordingly, DCMT's motion to dismiss for lack of jurisdiction shall be denied.

The specific 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, supra.

A finding of fitness is a prerequisite under the Compact to a grant of authority, and each applicant has the burden of establishing its fitness properly to perform the proposed service in keeping with the terms and conditions of the applicable statutory and Commission requirements.

Insofar as compliance fitness is concerned, the Commission does not believe that the prior operations rendered by any of the applicants, in light of the circumstances involved herein, warrant the conclusion that applicants will not, in the future, comply with pertinent regulatory requirements. There is some question as to the accuracy of advice which may have been given these applicants at the source of the business they sought. The majority approached the Commission for authority with uniformly inaccurate documentation and advice, seemingly from the same source. It is equally obvious that the applicants relied upon the information they had been provided because of the apparently authoritative source. While there is also some question as to how far each carrier should reasonably have trusted such advice to the exclusion of independent inquiry and investigation, the Commission, in its discretion, will confer the benefit of the doubt on the carriers. Additionally, the fact that the carriers filed appropriate applications expeditiously after being informed of the necessity therefor supports the conclusion that applicants do not intend to disregard the provisions of the Compact and our rules, regulations and orders thereunder. Applicants are advised of the necessity to familiarize themselves with the requirements of the law relating to the transportation for hire of passengers and to avoid violations which, in the future, will be considered more harshly.

The Commission initially finds that the following applicants are 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: Buckley, T. Pickens, Brown, Smith Jenkins, Gaines, Harrison, Harvey, J. O. Pickens, Pearson, D. C. Transport, Battle, Gary and Graham. The evidence shows that these applicants are financially able to provide the proposed transportation. Each of the above applicants has demonstrated the ability to provide the proposed transportation in a reasonably efficient, expeditious and safe manner. From the balance sheets and other financial data submitted by these applicants, it appears that their proposed operations are financially viable; applicants' vehicles, furthermore, are safe and well-equipped for the proposed transportation.

Insofar as the remaining applicants are concerned, the Commission finds them unfit to provide the proposed transportation services. Ebony's current liabilities of \$3,292.22 are far in excess of its current assets of \$374.81, and even combining Ebony's equity with its assets results in a total insufficient

to meet current obligations. Moreover, Ebony's income statement shows that for the six-month period ended June 30, 1976, the company suffered a net loss of \$1,311.65, thereby indicating that a reversal of Ebony's bleak financial picture is unlikely. The Commission finds that Ebony has not demonstrated its financial ability to provide the proposed transportation economically and efficiently. Accordingly, Ebony's application shall be denied.

DCMT has also failed to demonstrate the ability to provide the proposed transportation. Its profit and loss statement for the period January through September, 1976, shows a net operating loss of \$350.86, and the lack of evidence concerning DCMT's overall financial viability precludes a finding that DCMT has the necessary financial ability to sustain the proposed transportation. As noted above, DCMT's Exhibit C lacks probative value because of its admitted inaccuracies and the failure of DCMT to substantiate by competent testimony the figures therein. The Commission finds, therefore, that DCMT has not demonstrated its financial ability to provide the proposed transportation.

The Commission also notes that DCMT's vehicle lease agreement with L. P. Steuart Leasing Company provides that the van cannot be used for hire or public transportation. It is readily apparent, therefore, that DCMT does not have available a vehicle in which it may provide the proposed transportation. For these reasons, DCMT's application shall be denied.

PUBLIC CONVENIENCE AND NECESSITY

The Commission must next consider whether the transportation proposed by the remaining applicants is required by the public convenience and necessity. In determining the public convenience and necessity, the operative questions to be resolved are:

. . . whether the new operation or service will serve a useful public purpose responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. Pan-American Bus Lines Operation, 1 M.C.C. 190, 203 (1936).

Evaluating the evidence in light of the Pan-American criteria, it is readily apparent that insofar as the transportation of private non-ambulatory passengers is concerned, absolutely no evidence was offered by the applicants of any public need for this proposed service. Moreover, there is no contention that protestants are not adequately providing such service as may be required. Accordingly, all applications, to the extent they seek authority to transport other-than-D.C. Medicaid passengers, shall be denied.

The public demand for the transportation of non-ambulatory D. C. Medicaid clients, however, is a different story. DHR's witness testified at length as to the need for this proposed transportation, and estimated the need to be approximately 1,800 vehicle trips per month. The currently certificated carriers clearly are unable to satisfy the need for 1,800 vehicle trips per month and did not claim a desire or an ability to expand to meet the entire need.

Authorization of additional carriers is warranted by the public convenience and necessity, but a grant of authority to all the applicants herein would perpetuate what has become a supersaturated supply of carriers to the detriment of all concerned. This is easily seen from the severe drop in Medicaid business experienced by the protestants as the number of carriers transporting Medicaid passengers increased and the constant volume of traffic was divided among more and more carriers by DHR. Authorizing too many carriers would merely exacerbate this situation without any concomitant benefit to the traveling public.

As pointed out above, DHR's testimony, which is corroborated by the testimony of the applicants and the exhibits of protestants Ironsides and Rehab, demonstrates a total need for approximately 1,800 vehicle trips a month. Rehab's testimony shows that, in recent months when Medicaid passengers accounted for 25 percent of Rehab's clientele, that carrier was able to handle an average of 54 Medicaid passengers per month with three vans operating at approximately 60 percent capacity. Extrapolating these data results in a monthly per-van capability of approximately 120 passengers at 100 percent capacity. Similarly, Ironsides was transporting approximately 75 Medicaid passengers a month, some 24 percent of Ironsides' total business in mid-1976. A review of Ironsides' traffic study for 1975 indicates that that carrier has handled as many as 140 calls per van each month.

Based on the above-summarized evidence, it is the Commission's conclusion that a reasonable per-van capability is 120 to 130 vehicle trips a month. Existing certificated carriers Rehab and Ironsides have a combined monthly capacity to perform approximately 1,000 vehicle trips, but it appears from their traffic studies and testimony that the transportation of non-Medicaid passengers would reduce that capacity by approximately 400 vehicle trips a month. Accordingly, the Commission concludes that there is a demonstrated need for 1,800 vehicle trips per month and that protestants, at their demonstrated capacities, can handle only approximately 600 of these vehicle trips. The Commission further concludes that to handle the additional 1,200 service calls a month, it is necessary to certificate 10 carriers. 19/

We must next consider which of the applicants to certificate. As described above, there is little difference among the operations proposed

19/ The carriers certificated each have one van, except for two that have one back-up vehicle each.

by the several applicants. The Commission has considered two alternative selection systems. One system affords priority to those 10 fit applicants who first commenced service and entered the market before the supply of carriers was over-expanded. The other system affords priority to those 10 fit applicants who were the first to file their applications for certificates of public convenience and necessity with the Commission.

The first 10 fit applicants to commence operations are: (1) Pearson, October, 1974; (2) T. Pickens, June, 1975; (3) Brown, July, 1975; (4) Harvey, September, 1975; (5) Buckley, October, 1975; (6) Jenkins, March, 1976; (7) Gaines, March, 1976; (8) Harrison, March, 1976; (9) J. O. Pickens, March, 1976; and (10) Smith, March, 1976. The first 10 fit applicants to file their applications for certificates of public convenience and necessity with the Commission are: (1) Buckley, June 11, 1976; (2) T. Pickens, July 6, 1976; (3) Brown, July 7, 1976; (4) Smith, July 21, 1976; (5) Jenkins, July 22, 1976; (6) Gaines, July 23, 1976; (7) Harrison, July 29, 1976; (8) Harvey, August 9, 1976; (9) J. O. Pickens, August 17, 1976; and (10) Pearson, September 10, 1976.

The Commission believes that the application of either priority system under the circumstances here present would be appropriate. Coincidentally, the 10 applicants to be certificated under either system are the same. Accordingly, the Commission finds it unnecessary to give one system a priority over the other. The Commission, therefore, shall grant appropriate certificates of public convenience and necessity to Buckley, T. Pickens, Brown, Smith, Jenkins, Gaines, Harrison, Harvey, J. O. Pickens, and Pearson. The authority granted shall be rephrased, where necessary, to achieve uniformity and to conform to the evidence and current Commission practice.

One final matter requires discussion. Pursuant to Title II, Article XII, Section 6 of the Compact, the Commission is charged to examine proposed fares, regulations and practices and to suspend tariffs containing provisions which are unjust, unreasonable or unduly preferential or discriminatory either between riders or sections of the Metropolitan District. Each of the carriers authorized to provide service herein has proposed the schedule of rates promulgated by DHR, with minor deviations, if any.

In considering the appropriateness of the proposed rates we are mindful of the nature of the Medicaid market. The demand for services appears to be inelastic, in the sense that it will not respond to pricing or supply changes. Since DHR, rather than the user pays for these services, raising or lowering the price to DHR will not affect the use of the service except as DHR's upper budgetary constraint is exceeded. Accordingly, one element of our undertaking herein has been to fit the supply to the demand on the basis of the evidence of record.

The DHR schedule of rates does not appear to be unjust, unreasonable, or unduly preferential or unduly discriminatory either between riders or sections of the Metropolitan District. However, in considering rates, the

Commission must also give consideration to the financial condition of the carrier, its revenue requirements, and whether the carrier is being operated economically and efficiently. In this regard the Commission is mindful that it is, by this order, changing the nature of the supply side of the market. Such a change is likely to affect the predictability of business, the revenues and expenses, and hence, the financial condition of the carriers supply service. While the rates meet the necessary criteria as we now approve them, there is some prospect of change in the carriers' economics. Accordingly, the Commission shall tentatively prescribe the present DHR rates, but we will specifically retain jurisdiction over this aspect of these proceedings.

Each carrier granted authority below shall be required to file quarterly financial reports with the Commission including a balance sheet and a statement of revenue and revenue deductions showing all income and expenses in connection with the operations certificated herein. The Commission specifically reserves the right to suspend or modify the rates tentatively approved and to reopen these proceedings for that purpose.

THEREFORE, IT IS ORDERED:

1. That the above-referenced motion to dismiss for lack of jurisdiction of D. C. Medicaid Transportation, Inc., be, and it is hereby, denied.

2. That Application Nos. 946 of Rodwell Buckley, trading as Elrod Transportation Service; 951 of Thomas A. Pickens, trading as P.T. Transportation; 952 of John W. Brown, trading as J&B Transportation; 953 of Otis F. Smith, trading as Speedy Transportation; 954 of Dan Jenkins, trading as Jenkins Transportation Service; 955 of Alfred L. Gaines, trading as Medico Transportation; 20/ 956 of Ellis B. Harrison, trading as Area Transportation; 960 of Noral Harvey, trading as Harvey Medivan; 961 of John Otis Pickens, trading as Metro Medicaid; and 966 of David C. Pearson, trading as E & H Transportation; be, and they are hereby, granted to the following extent:

IRREGULAR ROUTES:

Special operations, transporting persons confined to wheelchairs, between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District.

20/ In accordance with his more limited application, the territorial scope of authority granted to Alfred L. Gaines is between medical treatment facilities located at points inside the Capital Beltway, on the one hand, and, on the other, points in that part of the Metropolitan District located inside the Capital Beltway.

RESTRICTIONS: The service authorized herein is restricted to the transportation of non-ambulatory participants in the Medicaid program of the District of Columbia, and is further restricted to transportation in van-type vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit.

3. That the applications enumerated in 2. above, except to the extent granted herein, be, and they are hereby, denied.

4. That Application Nos. 965 of Ebony Medivan, Inc.; 968 of D. C. Medicaid Transportation, Inc.; 970 of D. C. Transport, Inc.; 974 of McKinley Battle; 980 of Damon T. Gary, trading as Damon's Transport; 985 of William C. Dye, trading as W & D Transportation Service; and 941 of Robert Earl Graham; be, and they are hereby, denied.

5. That the rates now prescribed by the D. C. Department of Human Resources be, and they are hereby, tentatively approved, subject to the right of the Commission, which is hereby expressly reserved, to retain jurisdiction over these proceedings for the purpose of effecting such rate modifications as may be warranted in the future.

6. That each carrier granted authority hereinabove be, and it is hereby, directed to file with the Commission within 20 days from the date of service hereof (a) a certificate of insurance as required by Commission Regulation 62, (b) two copies of its WMATC Tariff No. 1 as required by Commission Regulation 55, and (c) a notarized statement of compliance with Commission Regulation 68 governing identification on motor vehicles.

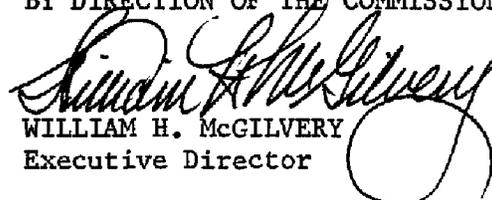
7. That upon compliance with the conditions set forth in the next preceding paragraph, an appropriate certificate of public convenience and necessity shall be issued to the carrier so complying.

8. That unless compliance is so made by each applicant within 20 days from the date of service hereof, or such further time as may be authorized by the Commission, the grant of authority to each carrier not complying shall be considered as null and void and the application of each non-complying carrier shall stand denied in its entirety effective upon the expiration of the said compliance time.

9. That each carrier granted a certificate of public convenience and necessity hereinabove is hereby directed to file quarterly financial reports

with the Commission including a balance sheet and a statement of revenue and revenue deductions showing all income and expenses in connection with the operations certificated herein, the first such filing for the period October 1, 1977, through December 31, 1977, to be due January 31, 1978, and subsequent filings to be due 30 days following the end of each succeeding calendar quarter.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director

STRATTON, Chairman, concurring:

Our task in this case has been to protect the regulated industry from exploitation by its customer. This is a novelty for a regulator. As such it was a welcome diversion in an otherwise humdrum life. But the case is regulatory leaf-raking -- work done because it is there to be done, not because it increases the sum total of rational endeavor or solves a problem.

We deal here with a subspecies of one of the minor genera of a phylum of the transportation industry: to wit, the nonemergency transportation for hire of wheelchair-bound, indigent medical patients en route to and from medical facilities when the cost of their transportation is paid by the government.

The District of Columbia Department of Human Resources (DHR, henceforth) administers the Medicaid program, which underwrites the cost of medical care of indigent citizens. Included in the services provided at government expense is transportation of persons confined to wheelchairs to and from medical appointments. For reasons not known to us, DHR determined that this specialized transportation should be obtained from private carriers rather than provided directly by the government. Accordingly, DHR announced it was willing to pay for this transportation service, and promulgated a schedule of fees it was willing to pay. This new business opportunity stimulated the entrepreneurship of several individuals who came forward to provide the service in specially equipped vans. Unfortunately for the integrity of this Commission's jurisdiction neither DHR nor the members of the fledgling industry were aware that this specialized transportation was subject to our jurisdiction, and so our oversight was not invoked by those involved. A mote in our own eye obscured the development of the industry in its early stages, and our involvement did not come about until after the pattern of the industry's operations was established.

DHR believed its interests would be best served by having the largest possible number of carriers in the marketplace regardless of the financial health of any individual carrier or all the carriers collectively, and,

apparently, heedless of cost-minimization to the government, since the price DHR offered to pay was (at least on this record) unrelated to costs or considerations of economic efficiency in the industry. The cognizant bureaucrat at DHR apportioned whatever business was available in strict rotation among the carriers available to serve it, regardless of the size of their fleets, the quality of their vehicles, the quality of their services, and regardless of whether this Commission had authorized their operations.

The price had been fixed by DHR and remained unchanged. The number of trips per month (apparently a function of a fairly constant, balanced case-load) did not vary greatly. Under the DHR's non-selective, strict rotation of the business, gross revenues would be divided equally among all the available carriers. 21/

In the early days the Medicaid business was apparently shared by few carriers, but more and more entered the field as word spread. Perhaps there were so many as to render margins too close for sustained profitability -- for the less efficient or more-poorly managed at any rate; rumor has it that some fell by the wayside. This dynamic is illustrated by the fortunes of Rehab Transportation, Inc. Rehab was an early entrant in the field. It obtained a good deal of business when there were few carriers to divide the market, but saw its market share drop and business fall off as more and more carriers offered their services. Rehab finally had to rid itself of part of its fleet.

What brought our attention to the Medicaid transportation "industry" were filings in late 1975 and early 1976 by Rehab and Ironsides Transportation, Inc., for general authority to transport disabled persons in specially-equipped vans. These filings revealed the existence of the Medicaid sub-market. Follow-up calls to DHR prompted the filing of the applications dealt with in this order (and others still pending) beginning in mid-1976.

In these cases the Commission is confronted with an existing industry consisting of the certificated carriers, Ironsides and Rehab, each with several vehicles and who serve the entire spectrum of the disabled passenger market, and a good many other non-certificated operators who generally confine their operations to the Medicaid market. These operators are almost all

21/ If the rotation system worked as intended and there were 18 carriers, each would do 100 trips at \$15 per trip and gross \$1,500 per month. If there were 36 carriers, each would get 50 trips and gross \$750 per month. Two consequences flow from this: First the economical unit becomes a one-van company; business is rotated among carriers, each carrier gets the same number of calls no matter how much equipment it has. Second, new entrants will continue to appear so long as profitability can be sustained by dividing the revenues among the number of carriers including the new entrant regardless of whether a carrier's equipment is being used to capacity.

one-man/one-van operations, although some have a back-up vehicle. It is DHR, the monopolist on the demand side of this specialized traffic, who has shaped the Medicaid transportation industry. And it is the industry as it has thus been shaped with which we deal.

Our decision has been to limit the number of authorized carriers in an attempt to match the industry's carrying capacity with demand. Through this, we hope to buttress the financial viability of the industry and the stability of its member companies. Otherwise, given DHR's business allocation practices, an ongoing parade of new entrants will continuously dilute the market to the detriment of earlier arrivals and the possible collapse of the whole industry.

We have not been able to apply our expertise to a record which would permit us to make determinations about the economic efficiency of the industry or its members. Intuitively, one feels that efficiency, fuel conservation, and governmental economy would be served by an industry composed of fewer carriers, each with several radio-dispatched vans which could be operated with the flexibility that this market could accept -- a flexibility that is clearly absent under the present system. But we must work within the reality of the DHR's monopoly power and its method of operation, over which we have no control.

Although this decision is as rational as it can be under the circumstances, there is no rationality to the circumstances nor assurance that the circumstances will remain the same. Tomorrow, DHR may change its criteria for allocating business. It is under no obligation to continue its present practice. It may become selective among the certificated carriers, as any user of transportation service is free to do. In that case some of the carriers we certificate by this order in the expectation that they will be self-sufficient economic units may fall by the wayside and others may expand their fleets (as they are free to do) -- their future depends on the caprice of DHR.

Our regulation of the industry must be reactive to DHR's policies. In these circumstances are we really regulating?

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 50

RODWELL BUCKLEY

Trading As

ELROD TRANSPORTATION SERVICE

WASHINGTON, D. C.

By Order No. 1749 of the Washington Metropolitan Area Transit Commission issued September 16, 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. 1749;

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:

IRREGULAR ROUTES:

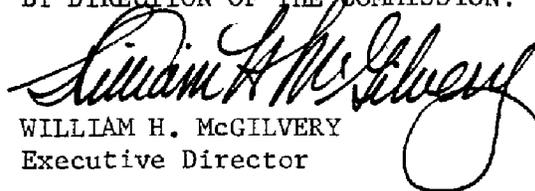
SPECIAL OPERATIONS, round-trip or one-way, transporting persons confined to wheelchairs:

Between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District.

RESTRICTIONS: The service authorized herein is restricted to the transportation of non-ambulatory participants in the Medicaid program of the District of Columbia, and is further restricted to transportation in van-type vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit.

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

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

NO. 53

DAVID C. PEARSON

Trading As

E & H TRANSPORTATION COMPANY

WASHINGTON, D. C.

By Order No. 1749 of the Washington Metropolitan Area Transit Commission issued September 16, 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. 1749;

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.

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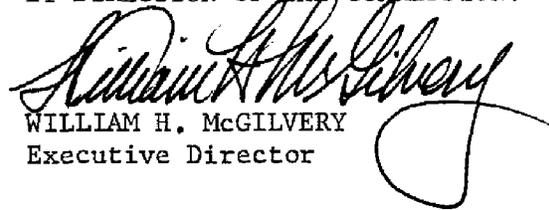
SPECIAL OPERATIONS, round-trip or one-way, transporting persons confined to wheelchairs:

Between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District.

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BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
Executive Director