

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1820

IN THE MATTER OF:

Served March 22, 1978

Application of OMNIBUS CORPORATION)
for a Certificate of Public)
Convenience and Necessity to)
Perform Charter Operations)
Pursuant to Contract - Marymount)
College)

Case No. AP-78-7

Application of OMNIBUS CORPORATION)
for Temporary Authority to Perform)
Charter Operations Pursuant to)
Contract - Marymount College)

Case No. AP-78-8

Application of OMNIBUS CORPORATION)
for a Certificate of Public)
Convenience and Necessity to)
Perform Charter Operations Pursuant)
to Contract - Strayer College)

Case No. AP-78-9

Application of OMNIBUS CORPORATION)
for Temporary Authority to Perform)
Charter Operations Pursuant to)
Contract - Strayer College)

Case No. AP-78-10

By Case Nos. AP-78-7 and AP-78-8, Omnibus Corporation (Omnibus) seeks a certificate of public convenience and necessity and temporary authority pursuant to Title II, Article XII, Sections 4(b) and 4(d)(3) of the Compact, respectively, to transport passengers, in charter operations pursuant to contract, between Marymount College, 2807 North Glebe Road, Arlington, Va., and Greater Southeast Community Hospital, 1310 Southern Avenue, S. E., Washington, D. C. Omnibus proposes to provide round-trip transportation service for nursing students attending Marymount College "several times a week." Omnibus would provide the service in a 14-passenger school bus or a 15-to 44-passenger school bus.

Omnibus asserts that it had been providing such transportation until January 12, 1978, when the United States District Court for the District of Columbia entered a temporary restraining order in Washington Metropolitan Area Transit Commission v. Omnibus Corporation, Civil Action

No. 78-0048. Said temporary restraining order enjoined Omnibus from operating transportation services between points in the Metropolitan District absent proper authority therefor granted by this Commission.*/ Omnibus asserts that it provided the proposed service to Marymount College under the impression that the service was excepted from the jurisdiction of the Commission under the "school children" exception to the Compact. See Compact, Title II, Article XII, Section 1(a)(3). Omnibus further asserts that there is an immediate and urgent need for the proposed service inasmuch as taxicabs are now being used at a substantial increase in cost.

McMichael School Bus Service, Inc. (McMichael), has filed a protest to Case No. AP-78-8. As pertinent, McMichael's Certificate No. 24 authorizes the transportation of students (as opposed to school children) from schools in Arlington County, Va., to points in the District of Columbia and return. McMichael states that it is now, and has been since February 16, 1978, providing the service required by Marymount College.

By Case Nos. AP-78-9 and AP-78-10, Omnibus seeks a certificate of public convenience and necessity and temporary authority pursuant to Title II, Article XII, Section 4(b) and 4(d)(3) of the Compact, respectively, to transport passengers, in charter operations, pursuant to contract, from the intersections of Mt. Vernon Avenue, Executive Avenue and Milan Drive, with West Glebe Road, Alexandria, Va., to Strayer College, 601-13th Street, N. W., Washington, D. C. Omnibus proposes to provide service Monday through Thursday in a 44-passenger school bus.

Omnibus asserts that it provided the proposed service to Strayer College under the impression that the service was excepted from the jurisdiction of the Commission under the above-referenced "school children" exception to the Compact. Omnibus asserts that it ceased service for Strayer College upon the District Court's issuance of the temporary restraining order in Washington Metropolitan Area Transit Commission v. Omnibus, supra, on January 12, 1978.

The Compact, Title II, Article XII, Section 4(b) provides that an application for a certificate of public convenience and necessity may be granted " . . . after hearing held upon reasonable notice. . . ." Accordingly, a public hearing will be scheduled on the above-referenced applications for certificates of public convenience and necessity, and Omnibus shall be assessed an amount preliminarily estimated to cover the expenses which Title II, Article XII, Section 19 of the Compact require an applicant to bear.

*/ The United States District Court for the District of Columbia preliminarily enjoined Omnibus from providing transportation service within the Metropolitan District absent proper authority from this Commission on January 31, 1978.

Title II, Article XII, Section 4(d)(3) of the Compact authorizes the Commission to grant temporary authority, in its discretion and without hearing or other proceedings, to enable the provision of service for which there is an immediate and urgent need where there is no carrier service capable of meeting such need.

Insofar as the proposed service to Marymount College is concerned, the Commission finds that the criteria of said Section 4(d)(3) are not met inasmuch as McMichael is now providing the service. Accordingly, Omnibus' application for temporary authority to provide service to Marymount College shall be denied.

The Commission next finds that the evidence of record is insufficient to establish that there is an immediate and urgent need for the proposed service to Strayer College. Omnibus asserts that "a competing carrier" has been providing the service, but at a higher price than would be charged by Omnibus. It is well-settled that price, in and of itself is not a substitute criterion for those set forth in the Compact. Moreover, there appears to exist at least one carrier service capable of meeting such need as may exist. Carriers holding appropriate authority include Vernoy Franklin, Atwood's Transport Lines, Inc., and The Gray Line, Inc. Accordingly, this application will also be denied.

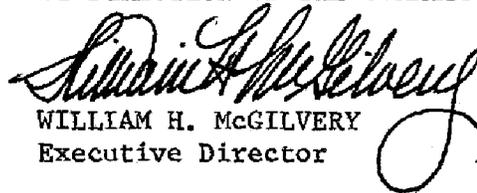
THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-78-8 and AP-78-10 of Omnibus Corporation for temporary authority be, and they are hereby, denied.
2. That Case Nos. AP-78-7 and AP-78-9 of Omnibus Corporation be, and they are hereby, scheduled for public hearing to commence Thursday, May 25, 1978, at 9:30 a.m., in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.
3. That Omnibus Corporation publish once in a newspaper of general circulation in the Metropolitan District notice of said applications and hearing thereon, in the form prescribed by the staff of the Commission, no later than Friday, April 28, 1978, and present at the hearing a certificate of said publication.
4. That Omnibus Corporation post in its vehicles, continuously through the date of the public hearing, notice of said applications and hearing thereon, in the form prescribed by the staff of the Commission, no later than Friday, April 28, 1978, and present at the hearing a certificate of said posting.
5. That any person desiring to protest either or both application(s) shall file a protest in accordance with Commission Rule 14, or any person desiring to be heard on these matters shall notify the Commission in writing no later than Friday, May 12, 1978, and shall mail a copy of such protest or notice to counsel for Omnibus, Robert D. Roadman, Esquire, 11250 Roger Bacon Drive, Reston, Virginia 22090.

6. That Omnibus Corporation be, and it is hereby, assessed \$350 pursuant to the provisions of the Compact, Title II, Article XII, Section 19, and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C., on or before 12 noon, Friday, May 19, 1978.

7. That Omnibus Corporation, be, and it is hereby, directed to deliver to the Commission, no later than Friday, May 12, 1978, six copies of a statement of projected revenues and revenue deductions for a one year period for each proposed operation, the original to be produced at the hearing scheduled herein, and is further directed to mail a copy of the aforementioned document(s) not later than Friday, May 19, 1978, to each party of record as of Friday, May 12, 1978.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director