

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1870

IN THE MATTER OF:

Served August 8, 1978

Application of THE BALTIMORE AND )  
ANNAPOLIS RAILROAD COMPANY for )  
Certificate of Public Convenience )  
and Necessity )

Application No. 87

Application of THE BALTIMORE AND )  
ANNAPOLIS RAILROAD COMPANY for )  
Certificate of Public Convenience )  
and Necessity to Perform Charter )  
Operations )

Application No. 947

Docket No. 334

Order to Show Cause Directed to )  
THE BALTIMORE AND ANNAPOLIS )  
RAILROAD COMPANY )

Docket No. 334

By Application No. 87, filed June 21, 1961, The Baltimore and Annapolis Railroad Company (B & A) sought authority to perform specified operations from, to or between points in the Metropolitan District including service over regular routes, and sightseeing, charter and contract operations. At that time applicant held (and still holds) authority from the Interstate Commerce Commission (ICC) in Certificate No. MC-102299 (Sub-No. 7) to perform regular-route service identical to that requested as part of Application No. 87. That application was timely filed pursuant to the provisions of the Washington Metropolitan Area Transit Regulation Compact (Compact) Title II, Article XII, §4(a) which provides, as pertinent:

If any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue [a] certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act.

This so-called "grandfather" clause gave existing carriers an opportunity to apply for certification of operations within the jurisdiction of the Commission, without having to prove through public witnesses that the public convenience and necessity requires the service.

In Order No. 366 served June 17, 1964, (embracing similar applications by the Greyhound Corporation, Safeway Trails, Inc., and Virginia Stage Lines, Inc.), the Commission dismissed B & A's application (as well as the others) and concluded that ". . . the transportation for which authority is sought is exempt from the jurisdiction of the Commission pursuant to Title II, Article XII, §1(a)(4) of the Compact," which exempts certain regular-route service between a point inside the Metropolitan District and a point outside the Metropolitan District. The Commission further stated that its action did not affect the authority of B & A to transport "incidental" special and charter parties as permitted by §208(c) of the Interstate Commerce Act [49 USC 308(c)]. The applications were dismissed without prejudice to the right of the affected carriers to prosecute said applications in the event a subsequent determination was made that the transportation for which authority was sought comes within the jurisdiction of the Commission.

Following an exchange of letters between the Commission and B & A regarding operations in the Metropolitan District, B & A filed Application No. 947 on June 29, 1976, seeking authority to perform charter sightseeing and transfer service between points in the District of Columbia and its commercial zone. B & A later amended the application to indicate that it was filed under protest, asserting that B & A's local charter service was authorized by §208(c) of the Interstate Commerce Act as operations incidental to its regular-route service offered pursuant to ICC authority. It argued that Title II, Article XII, §20(a)(2) of the Compact, which states that

Upon the date this Act becomes effective, Certificates of Public Convenience and Necessity or Permits issued by the [ICC] to any carrier subject to the jurisdiction of this Commission shall be suspended only during the existence of this Compact, provided such suspension shall not affect the authority of such certificate or permit holder to transport special and chartered parties as now authorized by the Interstate Commerce Act. . .

exempts the involved services from the Commission's jurisdiction.

The Commission held in Order No. 1582, served July 30, 1976, that the suspension provision of §20(a)(2) is not applicable to B & A's regular-route operations inasmuch as they extend outside the Metropolitan District and are not subject to the Commission's jurisdiction. However, the Commission also found that B & A's charter operations performed wholly

within the Metropolitan District are within the jurisdiction of the Commission and, because incidental ICC rights therefor are subject to suspension by §20(a)(2) of the Compact, WMATC authority is required. As a result of these findings, the Commission ordered B & A to cease and desist from rendering passenger transportation for hire between points solely within the Metropolitan District.

The United States District Court for the District of Columbia declined to enforce Order No. 1582, Washington Metropolitan Area Transit Commission v. The Baltimore and Annapolis Railroad Company, (C.A. No. 76-1690, not printed) and remanded the proceeding to the Commission (a) to further develop a record and (b) to reconsider Order No. 366 and compare B & A's charter operations as of the "grandfather" date, March 22, 1961, with the operations presently being conducted. Subsequently, B & A was directed to show cause why it should not be directed to cease and desist from continuing to conduct operations subject to the Commission's jurisdiction, and hearings were held to afford B & A an opportunity to introduce evidence pertaining to those charter operations which were within the ambit of Order No. 366 as well as its present charter service.

At the initial hearing, B & A contended that none of its operations are subject to the Commission's jurisdiction and that it is presently rendering the same service it was providing when it applied for authority in Application No. 87. B & A presented evidence concerning service in 1961 and operations up to and including the present.

Testimony concerning recent operations included information that no individually-ticketed service has been run, that the regular route between Washington and Ft. Meade, Md. (a point outside the Metropolitan District), is run round-trip one day a week with no showing that paying passengers are being transported, and that extensive charter operations are being performed between points solely in the Metropolitan District in addition to transportation between local points and those outside the Metropolitan District. As for operations in 1960 and 1961, the testimony of B & A's local agent at that time confirmed that the service being offered then was essentially similar to current operations, namely charter transfer and group charter sightseeing business throughout the Metropolitan District plus transportation to points outside the Commission's jurisdiction. Also, the regular-route service in 1960-1961 between Washington, D. C. and Ft. Meade was a daily commuter run according to the witness. The evidence of record tends to indicate that the charter service presently offered by B & A in the Metropolitan District is similar to that being conducted at the time the Compact became effective. B & A contends that it has been operating in good-faith reliance upon the decision that its local operations were exempt from Commission jurisdiction.

Title II, Article XII, §20(a)(2) of the Compact, relied on by B & A for its assertion of exempt status, clearly provides for continuance of incidental special and charter rights authorized by the Interstate Commerce Act where a certificate or permit issued by the ICC is suspended because of the effect of the Compact, but B & A's involved ICC rights were never suspended. The import of §20(a)(2) is to guarantee carriers whose ICC authority is suspended that issuance of Commission authority includes the existing special and charter rights. The ICC no longer has jurisdiction over operations performed wholly within the Metropolitan District. Although Title II, Article XII, §1(a)(4) of the Compact, excepts from this Commission's jurisdiction operations over regular routes between a point in the Metropolitan District and a point outside the Metropolitan District, there is no such exception for service performed solely between points in the Metropolitan District, whether they are incidental to ICC authority or not.

Based upon the provisions of the Compact and the record in these proceedings, the Commission affirms its previous finding that the operations being performed solely between points in the Metropolitan District are within its jurisdiction, thus requiring B & A to have a WMATC certificate of public convenience and necessity authorizing such service. Because Order No. 366 provided that B & A would be afforded an opportunity to prosecute its grandfather application should such a finding be made, it appears that the Commission has no equitable alternative to reopening Application No. 87, dismissing Application No. 947, and staying the effectiveness of our cease and desist order.

We reopen Application No. 87 because Order No. 366 specifically provides that the carriers named therein could prosecute their applications in the event a subsequent determination was made that their transportation operations come within the jurisdiction of the Commission. B & A must show only that on the effective date of the Compact, it was bona fide engaged in the type of transportation service it seeks to provide, and there is no need to offer further proof that the public convenience and necessity will be served by such operation.

The existing record in Application No. 87 does not clearly set forth the service that was being performed locally in 1961 (although some relevant testimony was introduced in Docket No. 334). A review of B & A's Annual Reports for 1959, 1960, and 1961, filed with the Interstate Commerce Commission shows increasing motor carrier revenue and passenger mileage but fails to break down these figures according to the type of service offered.

While the Commission is well aware of the lapse of time since Application No. 87 was initially filed and the resultant difficulties in producing evidence bearing on operations conducted in 1960 and 1961,

it must be emphasized that B & A's operations being performed solely between points in the Metropolitan District come within the Commission's jurisdiction and are subject to the certification requirements of the Compact. The Commission, based upon the record in Application Nos. 87 and 947, and the hearings held pursuant to the Order No. 1664, will direct B & A to cease and desist from rendering any passenger transportation for hire between points solely within the Metropolitan District. In view of the past circumstances and the length of time involved, the Commission will give B & A 60 days from the date of service of this order to renew Application No. 87 under the "Grandfather" provision of §4(a), Title II, Article XII, of the Compact, and shall stay the effectiveness of the cease and desist order for that period. In the event that B & A fails to notify us of its intention to pursue the reopened Application No. 87, the cease and desist order will take effect without further action after the 60 day period has expired.

**THEREFORE, IT IS ORDERED:**

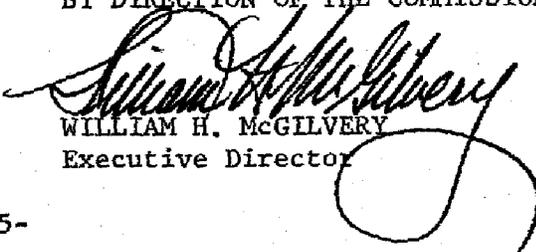
1. That Application No. 87, is hereby reopened and The Baltimore and Annapolis Railroad Company is granted 60 days from the date of service hereof in which it may notify the Commission of its intent to prosecute said application for a certificate of public convenience and necessity authorizing service between points solely in the Metropolitan District as conducted prior to March 22, 1961.

2. That Application No. 947, is hereby dismissed and the record of that proceeding and the record in Docket No. 344, are hereby incorporated into the record on Application No. 87.

3. That The Baltimore and Annapolis Railroad Company is hereby directed to cease and desist from rendering any passenger transportation for hire between points solely within the Metropolitan District, provided, however, that the effectiveness of the cease and desist order is hereby stayed for a period of 60 days from the date of service of this order or for such additional time as the Commission may direct to enable The Baltimore and Annapolis Railroad Company to renew and prosecute Application No. 87.

4. That upon the failure of The Baltimore and Annapolis Railroad Company timely to renew and prosecute said Application No. 87, the said cease and desist directive shall become effective without further action of the Commission upon expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director