

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1878

IN THE MATTER OF:

Served September 11, 1978

Investigation of Compliance by)
SUBURBAN TRANSIT COMPANY with)
Certificate No. 29 and the)
Compact, Rules, Regulations and)
Orders of the Commission)

Docket No. 317

Order Nos. 1515, 1757, 1798, 1806 and 1853, served March 12, 1976, October 14, 1977, and January 20, February 13 and May 30, 1978, respectively, serialize the history of this proceeding.

Suburban Transit Company holds Certificate of Public Convenience and Necessity No. 29 authorizing certain special operations to and from the Capital Centre, Largo, Md. In early 1976, Suburban notified the Commission that it planned to discontinue some of these transportation services, apparently without regard to the service obligation imposed by its certificate. Consequently, Suburban was ordered to comply with the terms of Certificate No. 29 and with the terms of the Compact and the Commission's rules, regulations and orders thereunder.

On March 30, 1976, a public hearing was held to determine Suburban's compliance. We concluded that, although Suburban did not appear to be in violation of our directive, the proceeding should remain open in light of Suburban's then-pending request for modification of its certificate to exclude service to several events at the Capital Centre and to temporarily eliminate its operations from and to points in Northern Virginia. A second hearing was held on June 28, 1978, for the purpose of re-evaluating Suburban's compliance and overall fitness and to determine if its Certificate No. 29 should be suspended or revoked. Based on the evidence of record, including that adduced at said hearing, the Commission finds (a) that Suburban has knowingly and wilfully failed to provide reasonable, continuous and adequate service to the public as required by the terms of Certificate No. 29, the Compact (specifically Title II, Article XII, Section 3), and the Commission's rules, regulations and orders, particularly Order No. 1515; (b) that Suburban is not fit, willing and able properly to perform the operations authorized by its Certificate No. 29; (c) that Suburban has deliberately engaged in unauthorized transportation of passengers between points in the Metropolitan District and

is not fit, willing and able properly to comply with the lawful regulatory mandates of the Commission; (d) that Suburban has abandoned the operations authorized by its Certificate No. 29; and (e) that said Certificate No. 29 should be revoked.

At the most recent hearing in this proceeding, the Commission's rate supervisor testified that, in the course of his regular duties, he scheduled observations of Suburban's vehicles on several occasions. On two dates, observations were scheduled and Suburban neither presented its vehicles nor notified the Commission that it would not keep the appointments. On June 13, 1978, the rate supervisor finally was able to conduct an observation of Suburban's two operable vehicles, a 1964 Flxible and a 1956 GMC.^{1/} With respect to the Flxible, he found seats with split seams and exposed padding, chipped and cracked paint, two cracked side windows and a large crack in the windshield that could constitute an impairment to the driver's view. The GMC had no readily visible safety defects.

On June 21, 1978, the rate supervisor and two representatives of the Maryland Public Service Commission conducted a more complete mechanical inspection of Suburban's GMC.^{2/} At this time the following non-cosmetic defects were found: an oil leak in the engine compartment, weakness in the steps of the passenger entrance, disintegrated exhaust pipe extensions, loose steering mechanism and several malfunctioning lights including a stop light. The rate supervisor also testified that he had made observations of vehicles belonging to Suburban on other occasions and had never found any to be in better condition than the two buses described above.

The rate supervisor also testified that he is in charge of maintaining the Commission's insurance files. In the course of his duties, he advised Suburban several times of defects in its certificates of insurance. His letters, however, were typically ignored resulting in two suspensions of Suburban's Certificate No. 29.^{3/} The supervisor opined that Suburban had exhibited a general failure to cooperate with the requirements of the Commission.

1/ Both vehicles were registered to Suburban Beltway Express Company, Inc.

2/ The Flxible bus was not presented for mechanical inspection. It appears that this bus was inoperable due to a missing wheel lug.

3/ See Order Nos. 1808, 1813 and 1854, served February 27, March 7 and July 3, 1978, respectively.

The "president" and owner of Suburban Transit Company^{4/} testified that he is also the president and sole stockholder of Suburban Beltway Express Company, Inc. However, no articles of incorporation were ever filed with the Commission and the corporation is not a named insured on any certificate of insurance in the Commission's files. Neither is there any lease of equipment between the registered owner (the corporation) and the carrier (the sole proprietorship). Its president described Suburban Beltway Express, Inc., as "just a corporate name", but it is obviously more than that by virtue of its ownership of the vehicles in which Suburban Transit Company has been providing service.

Suburban's owner testified concerning an exhibit prepared by him to reflect the carrier's operations during the six-month period November 1, 1977, through April 30, 1978. During this time, Suburban operated to and from the Capital Centre over two regular routes beginning in Rockville, Md., and Fairfax County, Va., respectively. Passengers wishing to use Suburban's service are expected either to wait at a Metro bus stop or to "try to flag the bus down" at some point along the route. Essentially, Suburban's operations have been confined to this regular-route service.^{5/}

Suburban's owner stated that he was familiar with the terms of Certificate No. 29; that no service in the last six months had been provided to or from the authorized points of Gaithersburg, Md., Reston, Tyson's Corner and Springfield, Va., and certain points in the District of Columbia; and that Suburban had served numerous unauthorized points in Virginia, Maryland and the District of Columbia. Suburban's owner admitted that he was aware of the requirement to provide reasonable adequate and continuous service to and from points authorized,^{6/} the requirement that a certificate be in force covering the operations to be performed,^{7/} and the terms of Order No. 1515 directing compliance with Certificate No. 29.

The above-described situation, we note, is typical of Suburban's dealings with the Commission. The carrier's fitness has been suspect for quite some time, and several of Suburban's applications have either been denied or dismissed because of equipment problems and compliance failures. Application No. 988 requested authority to operate over the same routes which Suburban has been serving unlawfully. That application was dismissed

^{4/} Suburban Transit Company is a trade name for Posie James Preston, Jr., an individual.

^{5/} See Transcript, pp. 42-43, 45-46, and Exhibit No. H-4.

^{6/} Compact, Title II, Article XII, Section 3.

^{7/} Compact, Title II, Article XII, Section 4(a).

for want of proper prosecution.^{8/} Application No. 1011 of Suburban was also for regular-route authority. Although initially granted, said application was eventually denied when Suburban failed to meet certain conditions including a successful vehicle inspection.^{9/} Case Nos. AP-78-12 and AP-78-13, which sought regular-route authority to and from the Capital Centre as described above, were also denied for failure to present vehicles for inspection, for failure to file a notarized statement of compliance with Commission Regulation No. 68 governing identification of motor vehicles, and for failure to publish notice of the public hearing scheduled in Case No. AP-78-13.^{10/}

It is obvious to us that Suburban's problems stem in large part from a lack of capital and from fiscal inexperience. We are also aware that Suburban's president has been seeking additional financing including a loan from the United States Small Business Administration. The Commission is neither unsympathetic toward the fiscal problems of this struggling proprietorship, nor is it unmindful of the fact that Suburban has been the only carrier willing to provide service to and from the Capital Centre.^{11/} These mitigating factors, however, are insufficient cause for permitting Suburban to continue operation in its present status.

Suburban's equipment, even when operational, can charitably be described as less than first-class. The carrier has largely ignored the service areas where it successfully applied for authority and was authorized and required to provide transportation. It has unilaterally substituted a completely different operation. The Commission has afforded Suburban every conceivable opportunity to legitimize this transformation, but Suburban has been unwilling or unable to meet such basic requirements as maintaining its vehicles and meeting filing obligations. Even if we were to permit Suburban to retain Certificate No. 29 in its present form, Suburban would not be able to operate the regular-route service it desires to perpetuate. Accordingly, Certificate No. 29 shall be revoked and Suburban and related persons shall be directed to cease and desist all unauthorized operations. Violations of the cease and desist directive will be viewed with the utmost gravity by the Commission. Moreover, any future applications by Suburban for operating rights must include an affirmative showing that the applicant is in a position to prevent recurrence of the violations described herein.

^{8/} See Order Nos. 1669, 1675 and 1705, served April 6 and 22, and June 8, 1977, respectively.

^{9/} See Order Nos. 1745 and 1752, served September 8 and 26, 1977, respectively.

^{10/} See Order No. 1851, served May 23, 1978.

^{11/} On August 25, 1978, Suburban submitted additional data about its operations and future plans. However, there is no showing that Suburban is able to implement its proposal for upgraded service.

THEREFORE, IT IS ORDERED:

1. That Certificate of Public Convenience and Necessity No. 29 issued to Suburban Transit Company is hereby revoked effective at 12 noon on the thirtieth day after the date of service hereof.

2. That Suburban Transit Company, Posie James Preston, Jr., and Suburban Beltway Express Company, Inc., are hereby directed immediately to cease and desist from engaging in transportation subject to the Washington Metropolitan Area Transit Regulation Compact unless there is in force either a certificate of public convenience and necessity or temporary authority authorizing such person or persons to engage in such transportation.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
Executive Director

