

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1988

IN THE MATTER OF:

Served April 25, 1979

Application of HIGHVIEW BUS SERVICE,))
INC., to Transfer Certificate No. 42))
to COURTESY BUS RENTAL SYSTEM, INC.,))
and for Approval of Temporary))
Control))

Case No. AP-78-47

McMICHAEL SCHOOL BUS SERVICE, INC.))
-- Extension of Service to the))
Government Printing Office))

Case No. MP-79-6

By application filed November 2, 1978, Highview Bus Service, Inc. (Highview), seeks approval pursuant to Title II, Article XII, Section 12(b) of the Compact to transfer by sale its Certificate of Public Convenience and Necessity No. 42, issued May 6, 1977, to Courtesy Bus Rental System, Inc. (Courtesy), of Hyattsville, Md. By Order No. 1913, served November 6, 1978, and incorporated herein by reference, the Commission granted Courtesy temporary approval to operate Highview's certificate, and scheduled a public hearing on the application. 1/ The hearing on this matter was held on January 11, 1979, with no party appearing in opposition.

Certificate No. 42 authorizes the following regular-route service:

(1) Between Penn-Mar Shopping Center, District Heights, Md., and the Government Printing Office, North Capitol and H Streets, N. W., Washington, D. C., serving no intermediate points:

From Penn-Mar Shopping Center over Marlboro Pike to Benning Road, thence over Benning Road to East Capitol Street, thence over East Capitol Street to C Street, N. E., thence over C Street, N. E., to Massachusetts Avenue, N. E., thence over Massachusetts Avenue, N. E., to North Capitol Street, thence over North Capitol Street to H Street, N. W., thence over H Street, N. W., to the Government Printing Office, and return over the same route;

1/ Further proceedings on the temporary approval aspect of this application are discussed below.

(2) Between Woolco Department Store, New Carrollton, Md., and the Government Printing Office, North Capitol and H Streets, N. W., Washington, D. C., serving no intermediate points:

From New Carrollton over Maryland Highway 450 to the Baltimore-Washington Parkway, thence over the Baltimore-Washington Parkway to New York Avenue, thence over New York Avenue to North Capitol Street, thence over North Capitol Street to the Government Printing Office, and return over the same route;

(3) Between Greenbelt Shopping Center, Greenbelt, Md., and the Government Printing Office, North Capitol and H Streets, N. W., Washington, D. C., serving no intermediate points:

From Greenbelt over Greenbelt Road to Baltimore-Washington Parkway, thence over the Baltimore-Washington Parkway to New York Avenue, thence over New York Avenue to North Capitol Street, thence over North Capitol Street to the Government Printing Office, and return over the same route; and

(4) Between Capital Plaza, Lanham, Md., and the Government Printing Office, North Capitol and H Streets, N. W., Washington, D. C., serving no intermediate points:

From Capital Plaza over Maryland Highway 450 to the Baltimore-Washington Parkway, thence over the Baltimore-Washington Parkway to New York Avenue, thence over New York Avenue to North Capitol Street, thence over North Capitol Street to the Government Printing Office, and return over the same route.

Highview, performing this service in school buses capable of seating in excess of 50 passengers, had been charging the per capita rate of \$25 a month prescribed by its tariff. As a result, however, of the ill health of its president and operating manager and mounting financial difficulties including a large increase in its insurance premiums, Highview deemed it necessary to transfer its certificate or cease operations entirely. Because of these factors, Highview filed on September 22, 1978, a petition for temporary suspension of its certificate. By Order No. 1908, served October 20, 1978, Case No. MP-78-14, the Commission set the request for temporary suspension for public hearing. After receiving reports that Highview intended unilaterally to cease operations after October 31, 1978, the Commission sought and was granted a temporary restraining order from the United States District Court for the District of Columbia in Washington Metropolitan Area Transit Commission v. Highview Bus Service, Inc. (Civil Action No. 78-2057). The Court enjoined the cessation of commuter operations

without Commission authorization. Subsequently, the grant of temporary approval to Courtesy to operate Certificate No. 42 obviated the need to consider Highview's petition for temporary suspension pending further action in the transfer application. 2/

Courtesy holds no permanent authority from this Commission but does hold permanent regular-route authority from the Interstate Commerce Commission to transport passengers between the District of Columbia and Charles County, Md. Since receiving temporary approval to perform operations pursuant to Certificate No. 42, Courtesy conducted operations over the specified routes with a combined operation over routes (2) and (4) from November 6, 1978, through February 27, 1979, as explained below.

At the public hearing Courtesy presented evidence concerning its operations, equipment and financial position. It submitted financial data based on the 1977 calendar year and included a projection of variable costs on a monthly basis. Testimony by company witnesses indicates that Courtesy owns and operates nine motor coaches and performs maintenance work primarily in its rented facilities. In emergency situations, such as when an equipment breakdown occurs, Courtesy "borrows" buses with drivers from other carriers.

A purchase price of \$1,000 for Certificate No. 42 was negotiated by arms-length bargaining between the parties according to Courtesy's witness. Further testimony shows that Courtesy hired available Highview personnel to conduct the commuter operations, and that routes (2) and (4) described above were combined in one continuous operation inasmuch as service commencing at New Carrollton traverses Maryland Highway 450, passing Capitol Plaza (origin of route (4)) and the number of passengers at both origin points totals one busload.

On January 25, 1979, the Commission received notice from Courtesy's insurance carrier that Courtesy's motor vehicle liability coverage was to be cancelled. When Courtesy failed to demonstrate that insurance would continue in force, we issued Order No. 1966, served February 27, 1979, revoking the above-referenced temporary approval simultaneously with the scheduled cancellation.

Inasmuch as there was no other carrier certificated to provide regular-route service to the riders previously served by Courtesy, the Commission also issued Order No. 1967 on February 27, 1979. As pertinent, that order found that the public convenience and necessity required an extension of service to the displaced riders, and the Commission, sua sponte,

2/ Order No. 1916, served November 9, 1978, cancelled the public hearing on Highview's petition pending further order of the Commission.

directed McMichael School Bus Service, Inc., to commence operations as described in Certificate No. 42 on February 28, 1979. 3/

On March 7, 1979, Courtesy, by counsel, filed a motion (styled petition) to vacate Order No. 1966 and reinstate Order No. 1913 in Case No. AP-78-47, and to revoke Order No. 1967 in Case No. MP-79-6. McMichael filed its reply thereto on March 16, 1979. On March 27, 1979, the Commission issued Order No. 1975 describing certain matters other than Courtesy's insurance problems that raised serious questions about the transferee's fitness as a regulated motor carrier. Fitness, of course, is always at issue in any proceeding where a carrier may be authorized to provide public service.

For example, Order No. 1913 directed, inter alia, that Courtesy (a) publish notice of the public hearing on its application no later than November 21, 1978, (b) pay a specified assessment no later than November 29, 1978, (c) file certain statements no later than November 29, 1978, and (d) produce at the public hearing "a list of its equipment, evidence of its safety and maintenance programs, and such other information necessary and relevant to a determination of [Courtesy's] operational and financial fitness". On December 4, 1978, the Commission was informed that Courtesy had not published the required notice, and new publication and hearing dates were set. See Order No. 1933, served December 5, 1978. The assessment referenced above was not paid until January 11, 1979, despite verbal assurances from Courtesy over a period of weeks that "the check is in the mail", and the statements due on November 29, 1978 were not filed. At the hearing, Courtesy failed to supply an equipment list, and its witnesses were unable to answer many questions about the carrier's financial condition. Courtesy agreed at the hearing to provide an equipment list, a copy of the company's 1977 federal income tax return and copies of its temporary and permanent operating authority from the Interstate Commerce Commission. Despite the order of the Hearing Officer that these documents be produced by January 21, 1979, no attempt at compliance was made until April 13, 1979, and, then, only as a result of the pressure imposed by Order No. 1975.

Because of our misgivings about Courtesy's operational, financial and compliance fitness, Order No. 1975 conditioned reinstatement of temporary approval upon a demonstration that the carrier is fit. Courtesy was directed to file certain data relevant and material to such a fitness determination, namely (a) an equipment list showing all vehicles owned and/or operated by Courtesy as of January 11, 1979, including make, model, serial and tag numbers, state of registration, seating capacity and name(s) of titleholder(s); (b) the carrier's 1977 and 1978 income tax returns as filed with the United States Internal Revenue Service;

3/ See Title II, Article XII, Section 4(e) of the Compact.

(c) all temporary and permanent authority issued to the carrier by the Interstate Commerce Commission and/or any other regulatory agency;

(d) a schedule showing the carrier's vehicle utilization during the period January 1 through February 27, 1979, including a detailed description of all movements operated by the carrier, specifying the vehicle and driver assigned to each movement, and further specifying whether the vehicle used for each movement was owned by or leased to the carrier. Order No. 1975 further specified that this data was to be filed no later than April 13, 1979, and provided that failure timely and fully to comply would void the reinstatement of Courtesy's temporary approval and result in the denial of Courtesy's motion of March 7, 1979.

On April 13, 1979, Courtesy submitted some of the required information. An equipment list shows nine motor coaches are owned by Courtesy. These buses range in vintage from 1955 to 1966 and in seating capacity from 38 to 46. Courtesy states that it used no leased vehicles because "[t]here have been no signed agreement or papers". Where Courtesy "borrowed" buses to conduct operations, "such borrowing was necessitated by mechanical problems with our equipment. We only borrow equipment when we are unable to use our own."

Internal Revenue Form 1120S, unsupported by additional schedules was also submitted. ^{4/} This form shows \$287,842 in total income and \$273,450 in total deductions including \$0 for compensation of officers, \$51,444 for salaries and wages not deducted elsewhere, \$33,343 for depreciation, \$22,662 for repairs and \$144,201 for "other deductions". Total assets of the company are shown on page 1 of the form as \$97,167.

Several inconsistencies appear when the first page of the form is compared to the other pages submitted. For example, Schedule E shows compensation paid to Mr. R. Hawkins, president, in the amount of \$14,500 (not \$0). Schedule G has no entries for depreciation in support of the \$33,343 claimed elsewhere and no schedule is attached as required to explain the \$144,201 in "other deductions". Schedule K shows \$14,392 in undistributed taxable income and also shows the same \$14,392 as a nondividend distribution. Schedule K shows no entry for investment interest expense although a deduction of \$2,193 for interest expense is claimed on page 1. Schedule L, the balance sheet, purports to show \$97,167 each for total assets and total liabilities plus shareholders'

^{4/} The form was printed for calendar year 1975, but had been altered to indicate that the information reflected thereon was for calendar year 1977. The form is dated April 14, 1978, and bears a signature and title of Delores Hawkins, Secretary/Treasurer. No signature is shown for an individual or firm preparing the return.

equity. 5/ Summation of assets (\$2,000 cash plus \$21,500 other current assets plus \$145,641 buildings and other fixed depreciable assets minus \$114,866 accumulated depreciation plus \$3,500 intangible assets), however, yields a net total of \$57,775. Summation of liabilities and shareholders' equity (\$7,143 indebtedness payable in less than one year plus \$21,478 indebtedness payable in one year or more plus \$4,219 capital stock plus \$57,234 paid-in or capital surplus) yields a total of \$90,074.

Summaries (as opposed to copies) of Courtesy's ICC rights were filed, as was a vehicle utilization schedule for the period January 1 through February 27, 1979. Read together, these documents indicate that four buses a day are required and utilized by Courtesy for rendition of ICC regular-route service between St. Charles City, Md., and the District of Columbia. Courtesy bus nos. 405, 406, 408 and 409 (otherwise unidentified) are normally used in this operation, although on one occasion bus no. 403 was used and on four dates a bus "borrowed" from "Keller" was used. 6/ Charter and exempt operations were conducted on only six dates during the test period and involved from one to four buses per date. All vehicles used in charter service (bus nos. 402, 405, 506 and 408) are owned by Courtesy.

With respect to the service operated pursuant to WMATC Certificate No. 42, bus nos. 402 and 404 were used on all but one date during the period January 1 through January 22, 1979. 7/ A "Damita Bus", otherwise unidentified, was used to serve the third route for the entire test period. From January 23 through February 13, 1979, a "Gordon" bus was used to serve one route, and from February 14 through February 27, 1979, the "Gordon" bus was replaced by a vehicle identified as "521-Borrowed".

Title II, Article XII, Section 12(b) of the Compact requires that any person seeking to transfer by sale its certificate of public convenience and necessity must obtain approval thereof from the Commission. Under this provision of the Compact, the Commission may approve the sale if it finds that the proposed transaction is consistent with the public interest. Implicit in this public interest test is the requirement that the applicant be fit, willing, and able to perform such transportation properly and to

5/ We presume that this amount is intended to balance and that the absence of an entry on line 27 (total liabilities and shareholders' equity) and the entry on line 26 (less cost of treasury stock) of "(97,167)" is a typographical error.

6/ Presumably, this is Ernest J. Keller, Jr., of Waldorf, Md., a carrier who holds certificates of public convenience and necessity from both WMATC and ICC. See Transcript, page 25.

7/ Bus no. 403 was used on January 5, 1979.

conform to the provisions of the Compact and the rules, regulations and orders of the Commission thereunder. Moreover, the Commission considers such other factors as the benefits and costs of the transaction to the riding public, the fairness of the purchase price, the resulting competitive balance of the industry, and the interests of the carrier employees affected.

The purchase price, negotiated at \$1,000, appears fair. The service routes are viable and have a potential for profit, and the consideration to be paid is not so large as to be inherently overburdensome either to the carrier or to the fare payers as a justification for future rate adjustments. Similarly, there would be little if any adverse effect on carrier employees attributable to this transaction. As noted in Order No. 1967, Highview no longer appears to be a viable operating entity and there is no basis for believing that a grant of this application would cause the loss of any employee positions. Also, the disposition of this application, we find, will have no significant impact on the competitive balance of the motor carrier industry in the Metropolitan District.

The Commission finds, however, that applicant has not met its burden of establishing that it is fit, willing and able financially and operationally to perform the proposed service properly, and further finds that applicant has failed to demonstrate its willingness or ability to conform to the provisions of the Compact and the rules, regulations and orders of the Commission thereunder.

Turning first to Courtesy's financial fitness, it is obvious that the evidence submitted for consideration^{8/} is so contradictory, poorly prepared and unexplainable that a finding of financial fitness is impossible. The internal contradictions and errors of the Form 1120S have been discussed above. In addition, the data on Form 1120S cannot be reconciled with other information in the record. Applicant's balance sheet, for example shows assets of \$97,167 and liabilities and stockholders' equity of \$90,074 which reconciles neither internally nor with the Form 1120S. The balance sheet shows office supplies, bus servicing supplies, parts and equipment valued at \$21,500, but these are not mentioned on the Form 1120S either as capital assets or as inventory. The balance sheet also shows bus servicing equipment valued at \$39,392 with absolutely no depreciation.

The secretary-treasurer of the company who testified at the hearing did not prepare either the financial exhibits or the income tax return^{9/}

^{8/} No 1978 federal income tax return was submitted.

^{9/} Transcript, pages 18 and 30.

and was at a loss to explain the financial exhibits. The witness did prepare an exhibit entitled "expense break down" which purports to show direct costs of operations pursuant to Certificate No. 42 on a per-bus basis. Monthly direct costs projected by the witness are \$1,139.40, 10/ and, although no revenue projection was supplied, we note that at Courtesy's tariff price the maximum revenue obtainable is \$1,596 per bus. 11/ No attempt was made to allocate fixed or capital expenses, debt service, and certain direct expenses known to be involved such as road use taxes, vehicle "borrowing" charges, tags, tires, and depreciation. 12/

In summary, we find that there is not a single credible exhibit on which an assessment of Courtesy's financial fitness can be based. The documents submitted are inconsistent, fraught with error and obviously unreliable. The company's witnesses who sponsored these exhibits could not rectify these shortcomings. The Form 1120S referenced above merely adds to the confusion and, as noted, no 1978 income tax return was submitted. Accordingly, there exists no probative evidence on which a finding of financial fitness can rest.

With respect to the applicant's operational fitness, we find that Courtesy has failed to demonstrate that it can perform the service in a reliable manner as required by the Compact. Although Courtesy owns nine buses, three were not operated in revenue service during the first two months of 1979. During that same time period, Courtesy was required to "borrow" at least one bus and, more often, two buses to perform the subject service. Applicant's secretary/treasurer has repeatedly averred that such "borrowing" takes place only when Courtesy is unable to use its own equipment. When "borrowed" equipment is used, the lender's driver operates the bus. 13/ As this Commission has often stated, where the same source supplies both

10/ Costs listed are insurance (\$243), driver (\$600) maintenance (\$150) and fuel (\$146.40). The witness was aware that the cost of fuel was increasing at a painfully sharp rate.

11/ Assuming continued use of 38-passenger buses at the rate approved in Order No. 1920, served November 11, 1978.

12/ Monthly expense projections made by apportioning certain expenses on applicant's 1977 operating statement on a per-bus basis show: insurance (\$162), maintenance (\$210), tires (\$87), depreciation (\$310), tags (\$17), interest (\$20), which, when added to driver and fuel costs estimated by Courtesy, yield direct monthly expenses of \$1,552.40 before any allowance for equipment rental, allocation of fixed expenses or cost increases due to inflation.

13/ Transcript, page 26.

major incidents of transportation -- the vehicle and the driver -- a presumption arises that said source is the carrier. A lessee (or "borrower") must show that it exercises complete control over the operation to rebut such a presumption. Where, as here, the testimony shows that the lender dispatches the vehicle and driver, that Courtesy may not even see the bus, perform any safety inspection, obtain a copy of the driver's log or medical certificates or exercise any other form of control, the presumption is corroborated rather than rebutted. ^{14/} Moreover, in the case of carriers who are not certificated by this Commission (such as Damita Bus, Gordon and 521 - Borrowed), there is no independent way to ascertain that basic safety requirements, including insurance for the protection of the public, are satisfied. Under such circumstances, it must be concluded that Courtesy is either unable or unwilling to meet the most rudimentary obligations imposed on a common carrier.

Finally, as indicated in Order No. 1975, the Commission is less-than-favorably impressed with Courtesy's efforts to comply with pertinent regulatory requirements. Even when put on direct notice that its compliance fitness was considered to be less than optional, Courtesy failed fully and timely to provide information deemed material and relevant to this proceeding. The Commission is not impressed with the excuse that compliance with other requirements of Order No. 1975 prevented Courtesy's secretary/treasurer from completing applicant's 1978 income tax return, ^{15/} especially inasmuch as corporate income tax returns for calendar-year taxpayers were due on March 15, 1979. ^{16/} The applicant's compliance record in this proceeding is one of tardiness, shoddiness and outright noncooperation.

Viewing this compliance record together with Courtesy's abrogation of its common carrier responsibilities, we find the public benefit which a grant of this application might otherwise engender to be ephemeral and illusory. The application will be denied.

Two other matters require comment. First, inasmuch as Courtesy failed fully and timely to comply with the filing requirements of Order No. 1975 and sought no extension of time in which to comply, its motion for reinstatement of temporary approval and for revocation of Order No. 1967 stands denied as of April 13, 1979. Finally, to permit the continued availability of mass transit to the riders involved, the terms of said

^{14/} Transcript, pages 26 and 27.

^{15/} According to the secretary/treasurer, however, she has no personal participation in the preparation of Courtesy's income tax return. Transcript, page 30.

^{16/} 26 U.S.C. § 6072(b).

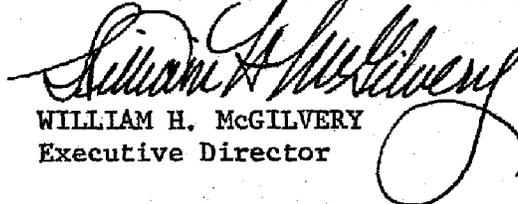
Order No. 1967 shall be extended for an additional period. All persons are put on notice that an additional extension of Order No. 1967 is not contemplated and that any application for temporary authority or temporary approval to perform service authorized by Certificate No. 42 should be filed as soon as possible to assure the timely processing thereof.

THEREFORE, IT IS ORDERED:

1. That the application of Highview Bus Service, Inc., to transfer Certificate of Public Convenience and Necessity No. 42 to Courtesy Bus Rental System, Inc., in Case No. AP-78-47 is hereby denied.

2. That McMichael School Bus Service, Inc., is hereby directed pursuant to Title II, Article XII, Section 4(e) of the Compact to extend the service mandated by Order No. 1967, served February 27, 1979, for the period May 1 through May 31, 1979, inclusive.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director