

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2729

IN THE MATTER OF:

Served June 27, 1985

RODGERS E. JOHNSON T/A J&J BUS)
SERVICE, Investigation of)
Compliance and Order to Show Cause)

Case No. MP-85-08

Application of RODGERS E. JOHNSON)
T/A J&J BUS SERVICE to Amend)
Certificate No. 39)

Case No. AP-85-20

Application of J&J BUS SERVICE,)
INC., to Acquire Control of RODGERS)
E. JOHNSON T/A J&J BUS SERVICE)

Case No. AP-85-19

BACKGROUND

By Order No. 2700, served April 23, 1985, and incorporated herein by reference, the Commission instituted the above-captioned investigation on its own motion, setting the matter for hearing to commence May 30, 1985. The purpose of the investigation is to determine whether Rodgers E. Johnson trading as J&J Bus Service ("respondent" or "J&J") is operating in compliance with the Compact and the rules and regulations promulgated thereunder and, if not, further to determine whether the routes of such carrier should be amended and new rates prescribed or, alternatively, whether Certificate of Public Convenience and Necessity No. 39 of such carrier should be revoked and the imposition of injunctive and criminal sanctions sought.

Order No. 2700 directed Rodgers E. Johnson to produce the following materials at hearing: (a) a written description of all regular routes being operated by respondent; (b) a list of the rates being charged by the respondent for service between all points on such regular routes; (c) a current balance sheet and an income statement detailing respondent's operations for the 12 months ended December 31, 1984; (d) a written report (ridership survey) of the origin and destination of each passenger transported by the respondent over each regular route during the period May 20 to May 24, 1985, inclusive; (e) a statement describing the identification appearing on each motor vehicle operated by the respondent; and (f) with respect to "J&J Bus Service, Inc.," if such a corporation exists, the Articles of Incorporation, the minutes of the organizational meeting of the board of directors, a list of names and addresses of the officers and directors, and a list of names and addresses and holdings of the stockholders of such corporation.

On May 8, 1985, Mr. Johnson filed the required materials in the form of an application to amend Certificate No. 39 and an application of J&J Bus Service, Inc., to acquire control of Rodgers E. Johnson t/a J&J Bus Service. A ridership survey for the period April 29 to May 3, 1985, was submitted in lieu of the May 20 to May 24, 1985, period prescribed in Order No. 2700. Citing financial difficulties which preclude his ability to pay the \$1000 preliminarily estimated to cover the costs of hearing in this case, Mr. Johnson by motion (letter) also filed May 8, 1985, requested that the Commission waive hearing and accept in lieu thereof the above-described applications. On May 24, 1985, Mr. Johnson filed an affidavit certifying publication and posting as had been directed 1/ and, neither protests nor requests to be heard having been filed, the hearing was cancelled and the obligation to pay the hearing assessment was suspended pending our decision on the matter.

A review of the record in this case, including respondent's filings of May 8, 1985, indicates that the changes in J&J's operations which prompted the institution of this investigation could be disposed of based on the information contained in the applications and other materials which respondent has filed, were it not for the fact that those changes were unauthorized and constituted violations which raised the issue of applicant's compliance fitness. In Order No. 2700, we stated that

The compliance fitness of certificate-holder Rodgers E. Johnson is called into serious question in this case. At issue, inter alia, is whether rates, routes, and operating entity have all been changed without the authorization and scrutiny required by law. Rodgers E. Johnson is specially admonished that, if the indications that sparked this investigation are borne out by the evidence, his cooperation in this investigation and his compliance with the requirements of this order will weigh heavily in the outcome of this proceeding.

We find that the information that respondent has filed constitutes evidence that respondent has changed its rates, routes, and operating entity without the authorization and scrutiny required by law. However, we further find that Mr. Johnson's substantial compliance with the requirements of Order No. 2700 and his filing of the appropriate applications constitutes evidence of respondent's willingness to bring his operations within the ambit of the Compact and the Commission's rules and regulations. The issue of whether a carrier

1/ Applicant had been directed to publish and post notice of the hearing in the form prescribed by the Commission staff. The notice so prescribed indicated not only the nature of the investigation but also the potential for changes in rates and routes.

or potential carrier is fit as to compliance is a matter of whether it is ready, willing and able to abide by the Compact and the rules and regulations enacted pursuant thereto. In this case, Mr. Johnson complied fully and in a timely fashion with the Commission's order. He has properly filed applications which if granted would bring his activities in line with the Compact and the Commission's rules and regulations thereby curing future violations. By so doing, Mr. Johnson has indicated his prospective willingness and ability to comply with the requirements of the Compact and the rules and regulations of the Commission and therefore his fitness as to compliance. 2/

Mr. Johnson requests that the Commission waive hearing on this matter due to his financial difficulties. Mr. Johnson's balance sheet dated December 31, 1984, indicates total assets of \$72 and earned surplus of (\$31,273) for the 12-month period ended December 31, 1984. This amount includes a net loss for 1984 of \$22,764. It has been the Commission's experience that carriers which handle regular routes, while providing a needed service, often experience financial difficulties in providing that service. Given Mr. Johnson's current financial situation 3/ and the fact that the compliance fitness issue has been resolved, we grant respondent's motion to waive hearing and accept the applications for filing.

Having accepted the applications for filing, we shall treat respondent's letter as a request to proceed under Rule 22, i.e., to waive hearing and receive a decision based on the record. In consideration of the absence of protests as well as the fact that neither members of the traveling public at large nor other carriers are likely to be affected by relatively minor changes to the route of an existing carrier or by a change in the form of the ownership of the certificate held by such a carrier, we find disposition of this matter under Rule 22 to be appropriate, and we shall make a determination regarding both applications based on the extant record. We turn now to the merits of the subject applications.

2/ Mr. Johnson is warned, however, that in light of J&J's compliance history, any future transgressions may be considered prima facie evidence of lack of compliance fitness, thereby endangering his operating authority.

3/ While respondent's financial situation appears to be tenuous, we shall make no finding of lack of financial fitness at this time inasmuch as J&J's financial situation may improve should this application be granted and also because the Commission is aware that the regular route market in the area in which respondent operates is currently in flux.

APPLICATION OF J&J TO AMEND CERTIFICATE NO. 39

By application filed May 8, 1985, J&J seeks to modify the route authorized by its Certificate No. 39. That modification would necessitate an altered schedule. The application also involves a new tariff. Certificate No. 39 currently authorizes transportation as follows:

REGULAR ROUTE:

PASSENGERS AND THEIR BAGGAGE,

(a) From the intersection of Horsehead Road and Maryland Highway 381, Prince George's County, Md., to the Naval Research Laboratory, 4555 Overlook Avenue, S.W., Washington, D.C., over route (1) below and return; and

(b) From the intersection of Horsehead Road and Maryland Highway 381, Prince George's County, Md., to Farragut Square, Washington, D.C., over routes (1) and (2) below which shall be joined for the purpose of providing through service, and return.

(1) From the intersection of Horsehead Road and Maryland Highway 381, over Maryland Highway 381 to Cedarville Road, then over Cedarville Road to U.S. Highway 301, then over U.S. Highway 301 to Maryland Highway 5, then over Maryland Highway 5 to Interstate Highway 95, then over Interstate Highway 95 to Interstate Highway 295, then over Interstate Highway 295 to the Naval Research Laboratory, serving those intermediate points on Maryland Highway 381, Cedarville Road, U.S. Highway 301, and Maryland Highway 5, and the off-route points of Duley's Restaurant located near the junction of Maryland Highways 5, 373 and 381 and Clinton Shopping Center located near the junction of Maryland Highways 5 and 223, and return over the same route.

(2) From the Naval Research Laboratory, over Interstate Highway 295 to Interstate Highway 395, then over Interstate Highway 395 to 1st Street, S.W., then over 1st Street, S.W., to Independence Avenue, then over Independence Avenue to 12th Street, S.W., then over 12th Street, S.W., to Constitution Avenue, then over Constitution Avenue to Virginia Avenue, then over Virginia Avenue to 23rd Street, N.W., then over 23rd Street, N.W., to

K Street, N.W., then over K Street, N.W., to Farragut Square, serving all intermediate points (except those on N Street, S.E., and Interstate Highways 295 and 395) and serving the Washington Navy Yard as an off-route point, and return over the same route.

RESTRICTED to the transportation of passengers traveling between points in Prince George's County, Md., on the one hand, and, on the other, points in the District of Columbia.

By his application, Mr. Johnson seeks authority to operate a single route as follows:

REGULAR ROUTE

Passengers and their baggage, between Prince George's County, Md., and Washington, D.C., serving all intermediate points:

From Waldorf over Maryland Highway 301 to junction Maryland Highway 5, thence over Maryland Highway 5 to junction Maryland Highway 223, thence over Maryland Highway 223 to the Clinton Shopping Center in Clinton, Md., thence return over Maryland Highway 223 to junction Maryland Highway 5, thence over Maryland Highway 5 to junction Interstate Highway 495, thence over Interstate Highway 495 to junction Interstate Highway 295, thence over Interstate Highway 295 to South Capitol Street, thence over South Capitol Street to M Street, S.W., thence over M Street, S.W., to 7th Street, S.W., thence over 7th Street, S.W. and N.W., to Pennsylvania Avenue, N.W., thence over Pennsylvania Avenue, N.W., to 11th Street, N.W., thence over 11th Street, N.W., to K Street, N.W., thence over K Street, N.W., to 19th Street, N.W., thence over 19th Street, N.W., to E Street, N.W., serving all intermediate points, and return over the same route.

The modified route is similar to the currently authorized routes except that operation over Maryland Highway 381 to the intersection of Horsehead Road is eliminated. The proposed route eliminates stops on Horsehead and Cedarville Roads. The remaining stops within Prince George's County remain essentially unchanged. Applicant states that the altered route allows him to realize a time savings and is more in conformity with the current demands of commuters.

Fares to be charged for this service are as follows:

<u>BETWEEN WASHINGTON, D.C., AND</u>	<u>ONE-WAY</u>	<u>WEEKLY SPECIAL COMMUTATION</u>
Brandywine, Md. (T.B. Junction)	\$3.50	\$20.00
Clinton, Md. (Park & Ride)	2.50	17.00
Camp Springs, Md. (Allentown Road)	2.50	17.00

J&J also filed a proposed schedule showing the times at which the buses depart from and arrive at the points on the modified route as follows:

<u>SERVICE POINTS (MORNING)</u>	<u>BUS #1</u>	<u>BUS #2</u>	<u>BUS #3</u>
T.B. Junction	5:50 am	6:30 am	7:15 am
Clinton Park & Ride	6:00 am	6:40 am	7:25 am
Allentown Rd.	6:10 am	6:50 am	7:30 am
Naval Research Lab	6:25 am	7:05 am	7:45 am
Waterside Mall (M Street, S.W.)	6:30 am	7:10 am	7:55 am
7th & D Streets, S.W.	6:35 am	7:15 am	8:00 am
7th & Maryland Ave., S.W.	6:38 am	7:20 am	8:05 am
10th & Pennsylvania Ave., N.W.	6:40 am	7:25 am	8:10 am
11th & G Streets, N.W. (Metro Center)	6:45 am	7:30 am	8:15 am
14th & K Streets, N.W.	6:50 am	7:35 am	8:20 am
20th & K Streets, N.W.	6:55 am	7:40 am	8:25 am
20th & M Streets, N.W.	7:00 am	7:45 am	8:30 am
19th & Pennsylvania Ave., N.W.	7:05 am	7:50 am	8:35 am
19th & E Streets, N.W.	7:10 am	7:55 am	8:40 am
<u>SERVICE POINTS (EVENING)</u>	<u>BUS #1</u>	<u>BUS #2</u>	<u>BUS #3</u>
20th & E Streets, N.W.	3:50 pm	4:30 pm	5:20 pm
20th & K Streets, N.W.	3:55 pm	4:35 pm	5:25 pm
14th & K Streets, N.W.	4:00 pm	4:40 pm	5:30 pm
11th & G Streets, N.W. (Metro Center)	4:05 pm	4:45 pm	5:35 pm
10th & Pennsylvania Ave., N.W.	4:10 pm	4:50 pm	5:40 pm
7th & Maryland Ave., S.W.	4:15 pm	4:55 pm	5:45 pm
7th & D Streets, S.W.	4:17 pm	5:00 pm	5:55 pm
Waterside Mall (M Street, S.W.)	4:20 pm	5:05 pm	6:05 pm
Naval Research Lab	4:30 pm	5:15 pm	6:20 pm
Allentown Rd.	4:45 pm	5:30 pm	6:35 pm
Clinton Park & Ride	5:00 pm	5:45 pm	6:45 pm
T.B. Junction	5:10 pm	5:55 pm	6:55 pm

The new schedule indicates increased service due to additional equipment which J&J has placed in service. The new schedule indicates a time savings of approximately 25 minutes over respondent's former schedule.

Respondent's ridership survey for the period April 29 through May 3, 1985, indicates 452 inbound passenger trips for the week or an average of about 30 passengers a bus, indicating a consistent daily need for the transportation Mr. Johnson offers.

The route change reduces the running time and establishes pick-up points that are more readily accessible. Changes in respondent's schedule flow from the change in route. No protests were received to indicate that any person would be affected by the elimination of certain stops. Moreover, J&J's passenger survey indicates abundant public need for service along the revised route.

A review of the financial information filed with the application, as well as J&J's annual report for calendar year 1984 during which respondent charged the tariff rates as newly filed, indicates that those rates are not overly compensatory. Indeed, as we have indicated, respondent suffered a net loss approaching \$23,000 last year. However, J&J has recently added equipment and schedules and has effected an increase in ridership. There are indications that further ridership increases may be possible. Approval of the rates as filed, together with diligent operation, will provide an opportunity to put this operation on a sound financial basis.

Respondent has been found fit to operate the service it is currently providing. We further find that a revision of respondent's route as requested is required by the public convenience and necessity. The revised route offers substantial time savings and increased convenience for persons using J&J's service while leaving the essence of that service unchanged. Based on these findings, an appropriately revised certificate of public convenience and necessity shall issue and applicant's amended schedule and tariff shall be accepted for filing.

APPLICATION OF J&J BUS SERVICE, INC.,
TO ACQUIRE CONTROL OF RODGERS E. JOHNSON T/A J&J BUS SERVICE

By application filed May 8, 1985, J&J Bus Service, Inc., seeks to acquire control of Rodgers E. Johnson t/a J&J Bus Service and holding Certificate No. 39. Due to the inherent difficulties in the acquisition of a sole proprietorship by a corporation, and the fact that an application of a carrier to transfer a certificate requires the filing of information identical with that filed with an application to acquire control, we shall treat J&J's application as an application of Rodgers E. Johnson t/a J&J Bus Service to transfer Certificate No. 39 to J&J Bus Service, Inc. Disposition of such applications is governed by Title II, Article XII, Section 4(h) of the Compact which provides that

No certificate under this section may be transferred unless such transfer is approved by the Commission as being consistent with the public interest.

The record indicates that the transferor, Mr. Johnson, is a sole proprietor, and the transferee is a corporation, wholly owned and controlled by Mr. Johnson and his family. There is no indication that, should this application be granted, Mr. Johnson's corporation would not continue service as authorized by the revised certificate to be issued simultaneously with this order which service has been found to be required by the public convenience and necessity. Evidence of the transferee's financial responsibility is on file with the Commission in the form of a certificate of insurance sufficient to satisfy the Commission's requirements. Accordingly, we find that the requested transfer of Certificate of Public Convenience and Necessity No. 39 is consistent with the public interest, and, based upon the evidence of record, the application will be granted.

THEREFORE, IT IS ORDERED:

1. That the motion of Rodgers E. Johnson t/a J&J Bus Service that the Commission waive hearing and accept for filing the above-captioned applications is hereby granted.
2. That the investigation of compliance of Rodgers E. Johnson t/a J&J Bus Service shall be terminated upon compliance with the terms of ordering paragraph No. 6 hereinafter.
3. That the application of Rodgers E. Johnson t/a J&J Bus Service to transfer Certificate of Public Convenience and Necessity No. 39 to J&J Bus Service, Inc., is hereby granted.
4. That upon compliance with the conditions set forth herein, an amended Certificate of Public Convenience and Necessity No. 39 shall be issued to J&J Bus Service, Inc., authorizing transportation as follows:

REGULAR ROUTE:

PASSENGERS AND THEIR BAGGAGE,

From Maryland Highway 301 at the Prince George's County Line, Md., to junction Maryland Highway 5, thence over Maryland Highway 5 to junction Maryland Highway 223, thence over Maryland Highway 223 to the Clinton Shopping Center in Clinton, Md., thence return over Maryland Highway 223 to junction Maryland Highway 5, thence over Maryland Highway 5 to junction Interstate Highway 495, thence over Interstate Highway 495 to junction Interstate Highway 295, thence over Interstate Highway 295 to South Capitol Street, thence over South Capitol Street to M Street, S.W., thence over M Street, S.W., to 7th Street, S.W., thence over 7th Street, S.W. and N.W., to Pennsylvania Avenue, N.W., thence over

Pennsylvania Avenue, N.W., to 11th Street, N.W., thence over 11th Street, N.W., to K Street, N.W., thence over K Street, N.W., to 19th Street, N.W., thence over 19th Street, N.W., to E Street, N.W., serving all intermediate points, and return over the same route.

RESTRICTED to the transportation of passengers traveling between points in Prince George's County, Md., on the one hand, and, on the other, points in the District of Columbia.

5. That J&J Bus Service, Inc., is hereby directed to file within 30 days from the date of service of this order an updated equipment list and two copies of WMATC Tariff No. 3 cancelling and superceding WMATC Tariff No. 2.

6. That unless J&J Bus Service, Inc., complies with the requirements of the preceding paragraph within 30 days, or such additional time as the Commission may direct, the grant of authority herein shall be void, and the application to amend certificate of Public Convenience and Necessity No. 39 shall stand denied in its entirety upon the expiration of the said compliance time.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:



ANNETTE B. GAROFALO
Acting Executive Director