

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2910

IN THE MATTER OF:

Served September 17, 1986

Application of J&J BUS SERVICE,)
INC., for Temporary Authority --)
Regular Route)

Case No. AP-86-34

By application filed August 25, 1986, J&J Bus Service, Inc. ("J&J" or "applicant"), seeks temporary authority to transport passengers over two regular routes as set forth in the appendix to this order.

J&J proposes to operate four buses in the morning and four in the evening, two along each route. Applicant would have six coaches available to it for provision of service. Applicant states that the vehicles are road worthy, well maintained, and properly insured. The vehicles are unidentified except as to make, year, and owner. Two of the vehicles are owned by J&J; the remaining vehicles are owned by an entity other than applicant. No leases accompanied the application as required by Regulation No. 69, and a certificate of insurance filed by applicant September 2, 1986, and made a part of this application indicates coverage only for vehicles owned by J&J. J&J asserts that no other carrier offers this service and that an immediate and urgent need for this service has been ". . . created by Judge Hogan's injunction."

Discussion, Findings, and Conclusions

Title II, Article XII, Section 4(d)(3) of the Compact commits the granting of temporary authority to the Commission's discretion upon a finding that there is an immediate and urgent need for service to a point or points or within a territory having no carrier service capable of meeting that need. In addition, fitness of the applicant is always an issue to be considered in granting operating authority of any type. 1/ As we discussed in Application of American Coach Lines, Inc., for Declaratory Order or, in the Alternative, Temporary Authority to Conduct Charter Operations between Points in the Metropolitan District, Order No. 2738, served July 22, 1985, p.12:

1/ Application of Suburban Transit Company for Temporary Authority to Serve the Capital Centre, Order No. 2643, served January 24, 1977. See also Order Nos. 2440, 2448, 2747, and 2857 served July 8, 1983; August 10, 1983; August 9, 1985; and May 12, 1986, respectively.

Fitness is an issue in every application because a carrier which lacks operational and financial fitness will be incapable of providing the proposed service for which authority is sought. Likewise, a carrier which is deficient in the area of compliance fitness cannot be relied on to fulfill those obligations which an authorized carrier owes the public.

The important role of fitness in granting any type of operating authority is brought into sharp relief in a case such as this where the Commission has on record current evidence of applicant's lack of fitness.

As J&J states in its application, Certificate No. 39 was revoked by Order No. 2783, served November 4, 1985. That certificate was held by applicant's president Rodgers Johnson. Order No. 2783, which is incorporated herein by reference, issued after notice and hearing and recounted evidence which led us to revoke Mr. Johnson's certificate for lack of compliance and operational fitness. That order has been upheld by the Honorable Thomas F. Hogan, United States District Court, who noted in an order denying Mr. Johnson's motion to stay judgment pending appeal that the evidence before him raised a concern ". . . that a stay would permit unsafe, uninsured equipment to remain in operation -- a condition that has persisted over a year in spite of administrative and judicial efforts to resolve it." 2/ We agree with Judge Hogan that "[t]he urgency of this service does not remove it from regulatory dictates. Indeed the public is ill-served by an unsafe carrier." 3/ In addition the Interstate Commerce Commission has recently denied an application of J&J for failure to establish that it is fit, willing, and able properly to perform service and to conform to statutory and administrative requirements. 4/ The ICC is currently investigating J&J to determine whether it is conducting ICC operations in violation of statutory and administrative requirements regarding safe motor carrier operations. 5/ J&J has been placed on notice that

2/ WMATC v. Johnson, No. 85-3917 (D.C.D.C. August 5, 1986). (Memorandum Opinion and Order denying stay of permanent injunction pending appeal).

3/ Id.

4/ J&J Bus Service, Inc., Extension - Regular Route, Charter, and Special Operations, ICC No. MC 142454 (Sub-No. 3), decided August 21, 1986.

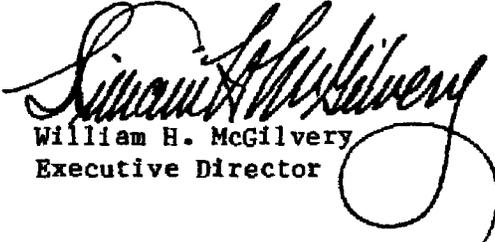
5/ J&J Bus Service, Inc. - Investigation and Revocation of Certificate, ICC No.. MC-C-30001, instituted August 21, 1986.

an affirmative finding in this regard may result in the suspension or revocation of ICC operating authority already held by J&J. 6/ Finally, we note that even the limited record in this case indicates applicant's steadfast refusal or inability to provide proof of proper insurance.

In light of these facts and because applicant has failed, except by general statements, either to rebut specific evidence contained in WMATC Case No. MP-85-08 and WMATC v. Johnson 7/ or to address satisfactorily the Commission's continuing concerns regarding safety of its operating equipment and willingness and ability to comply with the Compact and the Commission's rules and regulations, this application shall be denied.

IT IS SO ORDERED.

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


William H. McGilvery
Executive Director

6/ Id.

7/ Official notice is hereby taken of the entire records in the above-cited cases, and the evidence and rulings contained therein are incorporated herein by reference.

Appendix
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Passengers, between the Prince Georges County, Maryland - Charles County, Maryland boundary, and Washington, D.C., serving all intermediate points, as follows:

(1) From the Prince Georges County - Charles County boundary over U.S. Hwy 301 to junction Maryland Hwy 5, then over Maryland Hwy 5 to junction Maryland Hwy 223 to the Clinton Shopping Center in Clinton, Maryland, then over Maryland Hwy 223 to junction Maryland Hwy 5, then over Maryland Hwy 5 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Interstate Hwy 295, then over Interstate Hwy 295 to South Capital Street, S.W., the over South Capital Street, S.W., to M Street, S.W., then over M Street, S.W., to 7th Street, S.W., then over 7th Street, S.W., to Pennsylvania Avenue, N.W., then over Pennsylvania Avenue, N.W., to 11th Street, N.W., then over 11th Street, N.W., to K Street, N.W., then over K Street, N.W., to to 19th Street, N.W., then over 19th Street, N.W, to E Street, N.W., and return.

(2) From the Prince Georges County - Charles County boundary over U.S. Hwy 301 to Maryland Hwy 5, then over Maryland Hwy 5 to Brandywine Road, then over Brandywine Road to Old Branch Avenue, then over Old Branch Avenue to Manchester Drive, the over Manchester Drive to junction Maryland Hwy 5, then over Maryland Hwy 5 to Pennsylvania Avenue, S.E., then over Pennsylvania Avenue, S.E., to First Street, S.E., then over First Street, S.E, to Massachusetts Avenue, N.E., then over Massachusetts Avenue, N.E., to H Street, N.E., then over H Street, N.E., to 11th Street, N.W., then over 11th Street, N.W., to G Street, N.W., and return.