

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3122

IN THE MATTER OF:

Served February 2, 1988

Application of McLEAN)
TRANSPORTATION SERVICE, INC., for)
a Certificate of Public Convenience)
and Necessity to Conduct Charter)
Operations)

Case No. AP-87-22

By application filed August 24, 1987, and amended October 7, 1987, McLean Transportation Service, Inc. ("MTS" or "applicant"), seeks a certificate of public convenience and necessity to transport passengers in charter operations between points in the Metropolitan District restricted to transportation in school bus vehicles and further restricted against transportation of passengers solely within the Commonwealth of Virginia.

A public hearing was held on December 3, 1987, ^{1/} pursuant to Order Nos. 3080 and 3095, served October 15, and November 19, 1987, respectively, and incorporated herein by reference. Two company witnesses and seven public support witnesses testified on applicant's behalf. No protests were filed within the time set therefor.

SUMMARY OF THE EVIDENCE

Mr. Abner R. McLean is applicant's president and chief operating officer. Mr. McLean has 20 years experience in the transportation industry. MTS has been operational for approximately five years and holds a certificate issued by the Interstate Commerce Commission. MTS held WMATC temporary authority to transport passengers in charter operations between points in the Metropolitan District for the account of the Associates for Renewal in Education, Inc., during the months of June, July, and August, 1987, and for the account of the Black Catholic Congress Committee from May 21, 1987, through May 27, 1987.

MTS transports students between their homes and designated schools in the Metropolitan District. That service is currently exempt from WMATC jurisdiction by reason of Title II, Article XII, Section 1(a)(3) of the Compact. However, this exemption follows the vehicles,

^{1/} The hearing was originally scheduled for November 19, 1987, but was rescheduled at applicant's request and for good cause shown by Order No. 3095.

not the service. Applicant intends to use the same vehicles now used in school service in the non-exempt charter service covered by this application. Therefore, the school bus exemption would be lost and all operations within the Metropolitan District would be subject to certification and regulation. By this application, MTS proposes a reservation-only service to be available "at all times and on all dates." The service would be provided using thirteen school buses equipped with two-way radios. Applicant would add buses if demand dictates. Applicant's vehicles are inspected four times a year by the State of Maryland. Applicant also employs a mechanic who performs regularly scheduled maintenance checks. The mechanic is responsible for oil changes, lubrication, tune-ups, and brake replacements. Applicant's drivers check the buses daily, examining, among other things, tires, lights, and windshield wipers. Applicant's drivers receive six hours of training on the company's lot after which they ride with an experienced driver for at least 10 days.

MTS's proposed tariff lists rates for the daily school service ranging from \$115 to \$172.50 per round-trip. Charter transfer rates are proposed as follows: (a) \$75 between points located inside the Capital Beltway and (b) \$90 between points within the Metropolitan District which do not fall in (a) above. Charter rates for operations other than transfers would be \$125 for the first four hours of service and \$25 for each additional hour or fraction thereof. A four-hour minimum would apply.

Applicant submitted a balance sheet dated September 1, 1987, which lists current assets of \$52,133 and other assets of \$63,081, current and long-term liabilities of \$61,575, and equity of \$53,639. Applicant's income statement for the nine months ended September 30, 1987, lists operating revenues of \$197,842 and operating expenses of \$183,512 yielding a net profit of \$14,330. Applicant projects an additional \$33,000 in operating revenue to be generated by its first year of WMATC operations with \$23,800 in revenue deductions. Mr. McLean testified that MTS is presently complying with the Compact and the Commission's rules and regulations. He believes that there is a public need for the proposed service and stated that he turns down calls daily for transportation that applicant is unauthorized to perform.

Mr. Lyndon E. Murray is the director of the social services program for families and youth at Barney Neighborhood House, 3118 11th Street, N.W., Washington, D.C. Mr. Murray's responsibilities include making transportation arrangements for various Barney House activities. Barney House operates a summer day camp. Campers take trips to Metropolitan District recreational and educational facilities located in Washington, D.C.; Arlington, Va., and Prince George's County, Md. Barney House also runs a program for the elderly that uses school bus transportation several times a month. Barney House's psychiatric day care program needs school buses on occasion, and the witness projects

an increased need in this area. Mr. Murray employs school buses for the Center's transportation needs because it is a non-profit agency that must be concerned about obtaining economical means of transportation.

Ms. Joanne Faherty testified in support of the application. Ms. Faherty is the owner of Adventurously Yours, an organization which plans and arranges activities for large corporations, hosts summer camps, and plans to develop programs geared toward the interests of senior citizens. Ms. Faherty has used applicant's services to provide transportation outside of the Metropolitan District. The witness estimates that she would need transportation between points in the Metropolitan District three days a week throughout the summer months and at least once a month during the rest of the year.

Ms. Bernice Bernstein, president of Heritage Tours, Ltd., testified on behalf of that organization in support of the application. Heritage Tours is a convention/meeting planning service. Ms. Bernstein needs school buses to transport youth groups between points throughout the Metropolitan District. One of Ms. Bernstein's major clients, CNA Insurance Company of Chicago, hosts a National Math Contest in Washington, D.C. The program lasts three to four days and includes a tour of the city. Five hundred people are transported in about 15 school buses. Ms. Bernstein also will need as many as 13 school buses for transportation between the airports, on the one hand, and, on the other, points in Washington, D.C. for at least two upcoming conventions.

Sister Margaret Lorenzo testified on behalf of the applicant. Sister Lorenzo is an administrative assistant at the Campus Ministry located at Catholic University. She is responsible for making transportation arrangements for the Campus Ministry Office. The office primarily needs transportation to retreats held outside the Metropolitan District, and Sister Lorenzo has used applicant's services for these moves. The witness stated, however, that the Graduate Student Association and the Student Activity Office use school bus transportation for trips to RFK Stadium, Washington, D.C.; Capital Centre, Prince George's County, Md.; and for tours of the Washington, D.C. area with trips to Arlington, Va. The witness believes that there is a need for more school bus operators to do charter work because they are less expensive. The witness estimated that the University would need school bus transportation 40 or 50 times a year with nine or ten vehicles needed each time.

Mr. William Ellis, director of program operations for the Associates for Renewal in Education ("ARE"), also testified in support of the application. ARE is a non-profit organization that provides educational and training programs for District of Columbia youth. ARE's primary need for transportation falls during the summer months when the organization hosts tutorial services and on-the-job training

for up to 7,000 students. Transportation is needed to and from the educational site and the job site and for recreational outings. These trips include visits to Arlington National Cemetery, Va., the Air and Space Museum, Washington, D.C.; Fairfax Park, Fairfax County, Va.; and Greenbelt, Prince George's County, Md. Transportation is needed daily during the summer months, with several trips being made during the course of a day. Applicant provided transportation for the program last summer under a grant of temporary authority issued by the Commission. ARE also provides day care services and transportation for the participants. The Department of Human Services ("DHS") is the primary source of transportation for the day-care activities; however, the witness would keep applicant's service on stand-by when DHS fails to provide the necessary equipment. Participants in the day-care program need transportation to a variety of places in the District of Columbia including museums, the Government Printing Office, and the Post Office.

Applicant presented several witnesses who represented educational institutions that have contracted with applicant for school bus transportation to and from their respective facilities. Witnesses representing the Saint Mark's School, Hyattsville, Md., and the Charles E. Smith Jewish Day School, Rockville, Md., testified on behalf of the applicant at the hearing. A contract between applicant and the French International School, located in Montgomery County, Md., was introduced into evidence as an exhibit. Mr. McLean testified as to the terms of the contract. The testimony provided by the witnesses indicated contract price, duration, schedules, routes, and reliability of the carrier.

DISCUSSIONS AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, we look to Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove it is fit, willing and able to perform properly the proposed transportation and to conform to the provisions of the Compact and the Commission's rules and regulations, and requirements thereunder. Section 4(b) further requires that the applicant prove the proposed service is required by the public convenience and necessity. Based on a review of the entire record in this case, we find that applicant has sustained its burden of proof.

Fitness involves finances, operations, and compliance with the Compact. Applicant proposes to transport persons in charter operations in the Metropolitan District solely in school bus vehicles. Applicant presently owns thirteen school buses, which are all in good condition. Each bus undergoes regular maintenance procedures, daily by the driver of that bus and periodically by a qualified mechanic who is employed full time by applicant. All drivers must undergo training before driving for the applicant. The testimony of Abner McLean and a

review of the financial information submitted by applicant indicate a financially healthy corporation capable of implementing the proposed service. For these reasons, we find the applicant financially and operationally fit. The record also shows that Mr. McLean, applicant's president, is familiar with the Compact and the Commission's rules and regulations and is willing to comply with them. Therefore, we find applicant fit as to compliance.

The Commission has relied on the criteria set forth in Pan-American Bus Lines Operations, 1 MCC 190, 203 (1936), to determine whether an applicant has satisfied its burden of proof that the public convenience and necessity require the proposed service. The test set forth in the Pan-American case consists of three parts:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Based upon a review of the evidence in the record, we find that the applicant has met the tests set forth in the Pan-American case and has proved that the public convenience and necessity require the proposed service. Seven public witnesses testified on behalf of the application. No protests were filed and no witnesses testified at the hearing against the application. Each of the witnesses reflected a need for transportation in school buses between points in the Metropolitan District. Together these witnesses require charter transportation of the type MTS proposes for thousands of persons each year. In general these are persons who require low cost transportation. In addition, applicant presently operates charter school bus service for four schools: Charles E. Smith Jewish Day School, Saint Mark's School, Lycee Rochambeau Washington French International School, and St. Francis Church School. Marshall Green appeared on behalf of CESJDS and Sally Liska appeared on behalf of Saint Mark's School. Although no witnesses appeared on behalf of the other two schools, contracts for all four schools reflecting the existing and proposed service have been filed with the Commission in this case.

Based upon the testimony of the witnesses, the application, and the documentary evidence, we find that applicant has met its burden of proof that the proposed service will support a useful public purpose for which there is a demonstrated need. Inasmuch as no protests were filed, there is no showing that any existing carriers can meet this need effectively, and we find that the proposed service will not endanger or impair the operations of existing carriers.

THEREFORE, IT IS ORDERED:

1. That McLean Transportation Service, Inc., is hereby conditionally granted authority, contingent upon compliance with the requirements of this order, to transport passengers as follows:

IRREGULAR ROUTES:

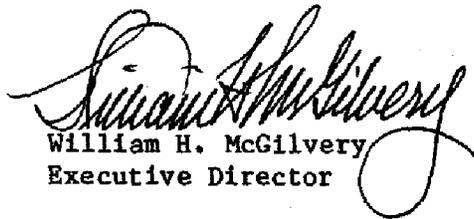
CHARTER OPERATIONS, transporting passengers between points in the Metropolitan District,

RESTRICTED to transportation in school bus vehicles and further restricted against transportation of passengers solely within the Commonwealth of Virginia.

2. That McLean Transportation Service, Inc., is hereby directed to file with the Commission the following: (a) two copies of its WMATC Tariff No. 1 as proposed, (b) an equipment list specifying make, year, model, serial number, seating capacity, and license plate number and jurisdiction for each vehicle, (c) a certificate of insurance in accordance with Regulation No. 62, (d) an affidavit of identification of vehicles pursuant to Regulation No. 67 for which purpose WMATC No. 138 is hereby assigned, and (e) evidence that the vehicles have passed inspection by the jurisdiction in which they are licensed.

3. That unless McLean Transportation Service, Inc., complies with the requirements of the preceding paragraph within 30 days from the service date of this Order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

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


William H. McGilvery
Executive Director