

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7063

IN THE MATTER OF:

Served March 4, 2003

Application of BOONE-MCNAIR) Case No. AP-2002-66
TRANSPORTATION, LLC, for a)
Certificate of Authority --)
Irregular Route Operations)

This matter is before the Commission on applicant's motion for waiver of Commission Regulation No. 66, which provides that: "The time for compliance with the requirements for a conditional grant of authority will not be extended beyond a maximum of 180 days from the date the conditional grant of authority is issued. Such conditional grant of authority shall be considered void effective on the 181st day."

The Commission issued a grant of authority to applicant on July 22, 2002, in Order No. 6743, subject to the condition that applicant file the following documents within thirty days: evidence of insurance, a tariff, a vehicle list, vehicle registration cards, proof of vehicle safety inspection, and an affidavit of vehicle identification. The order stated that the grant of authority would be void and the application would stand denied upon applicant's failure to satisfy the condition in a timely fashion.

Applicant requested an extension of the filing deadline on August 16, 2002, and by December 4, 2002, had submitted all required documents except the evidence of insurance.¹ On December 19, 2002, with the evidence of insurance still lacking, staff sent a letter to applicant warning that under Regulation No. 66 the ultimate deadline for submitting such evidence was January 18, 2003. On January 21, 2003 -- 183 days after the conditional grant was issued -- applicant filed its motion to waive Regulation No. 66. The application is supported by the required evidence of insurance.

¹ Under Commission Rule No. 7-05, the Executive Director may extend the deadline for complying with a conditional grant of authority in response to a motion showing good cause, but not beyond the 180 days provided in Regulation No. 66. It appears from the record that the full extension available under Regulation No. 66 was granted by the Executive Director *sub silentio*.

Regulation No. 66 may be waived for good cause shown.² The Commission has said in the past that the two purposes of Regulation No. 66 are: (1) preventing the issuance of operating authority at a time when the fitness finding has become stale; and (2) ensuring closure.³

The finding of financial fitness announced in Order No. 6743 on July 22, 2002, which was based on an analysis of applicant's supporting balance sheet and projected income statement, has indeed become stale. Although we could require applicant to update those statements,⁴ the fact is they are no longer considered relevant to an application for operating authority. Experience has shown that the value of the subjective information in self-prepared financial statements as an objective indicator of an applicant's financial fitness has diminished substantially since 1998 when the application form submitted in this proceeding was adopted.⁵ Today, financial fitness is measured first by an applicant's averment that it possesses, or has the means to acquire, one or more acceptable vehicles and the minimum required insurance, and second by applicant's proof of ownership or lease of such vehicle(s) and proof of the minimum required insurance.⁶ In this case, applicant has submitted the necessary proof.

As for closure, as noted above, the Executive Director may not extend the time for complying with a conditional grant beyond the 180-day maximum prescribed by Regulation No. 66.⁷ Hence, the voiding of a conditional grant of authority pursuant to Regulation No. 66 represents the final decision of the Commission.⁸ A party may not petition the Commission to reopen a proceeding and receive additional evidence after a final decision has been entered.⁹ The only channel

² In re Westview Medical & Rehabilitation Services, P.C. Inc., No. AP-01-50, Order No. 6557 (Mar. 4, 2002); In re Old Town Trolley Tours of Wash., Inc., & D.C. Ducks, Inc., No. AP-96-44, Order No. 5053 (Apr. 2, 1997).

³ Order No. 6557; Order No. 5053.

⁴ See In re Westview Medical & Rehabilitation Services, P.C. Inc., No. AP-01-50, Order No. 6636 (May 2, 2002) (directing applicant to file updated balance sheet and projected operating statement).

⁵ In re Revised Application Form, No. MP-02-96, Order No. 6805 (Sept. 19, 2002).

⁶ Id.

⁷ Commission Rule No. 7-05.

⁸ See Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory Comm'n, 680 F.2d 810, 815 (D.C. Cir. 1982) (final order in a licensing proceeding would be an order granting or denying a license).

⁹ Commission Rule No. 26-01.

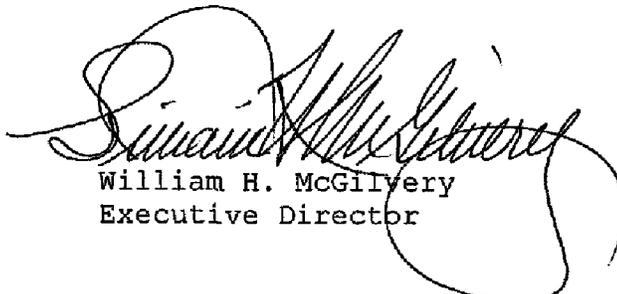
for challenging a final decision of the Commission is filing an application for reconsideration under Article XIII, Section 4, of the Compact.¹⁰

Under Article XIII, Section 4(a), a party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration. Although publication of a final decision is normally accomplished by issuing an order, the voiding of a conditional grant occurs automatically by application of Regulation No. 66. There is no tangible utterance other than the rule itself. Deeming publication to occur on the 181st day, when an applicant knows or should know that the Commission now considers the conditional grant void, is reasonable under the circumstances.

Although applicant did not file an application for reconsideration, the waiver motion was timely filed within the statutory period for filing such applications and thus preserves our jurisdiction in this proceeding.¹¹ Considering that respondent has fully satisfied the condition of issuance prescribed in Order No. 6743, we will reopen this proceeding on our own initiative¹² and issue Certificate of Authority No. 726.¹³

THEREFORE, IT IS ORDERED that Certificate of Authority No. 726 shall be issued to Boone-McNair Transportation, LLC, 9901 Sudan Place, Upper Marlboro, MD 20772.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND MCDONALD:



William H. McGilvery
Executive Director

¹⁰ See In re Atwood's Transport Lines, Inc., No. 389, Order No. 1730 (Aug. 5, 1977) (denying request to reopen where reconsideration period had run).

¹¹ See In re Capitol Bus Rental, Inc., t/a Capitol Tours, No. MP-95-04, Order No. 4694 (Nov. 9, 1995) (30-day reconsideration period jurisdictional); see also In re D.C. Transit Sys., Inc., No. 131, Order No. 705 (Apr. 27, 1967) (motion to stay may be treated as application for reconsideration), appeal dismissed per curiam, sub nom., Powell v. WMATC, No. 20,939, order (D.C. Cir. June 1, 1967).

¹² Commission Rule No. 26-04.

¹³ See Order No. 6636 (proceeding reopened to receive evidence of financial fitness).