

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1225

IN THE MATTER OF:

Served July 5, 1972

Application of Washington,)
Virginia and Maryland Coach)
Company, Inc. for Authority)
to Increase Fares.)

Application No. 775

Docket No. 247

On May 25, 1972, Washington, Virginia and Maryland Coach Company, Inc. (W. V. & M.) filed revisions to its Tariff No. 35, marked to become effective on June 26, 1972, which would raise its interstate regular route fares by ten cents. With those tariff revisions, W. V. & M. filed a motion seeking an interim order adjusting its present fares by five cents pending final determination of its proposed ten cent increase. On June 9, 1972, we entered our Order No. 1218 which suspended W. V. & M.'s proposed tariffs and set the matter for prompt hearing. In our order, we specified that two matters would receive our initial attention: (1) W. V. & M.'s application for an interim five-cent fare increase and (2) the service cuts which the company had unilaterally effected without notice to the Commission or the public.

On June 30, 1972, a public hearing was held and we received evidence from W. V. & M., our staff and several intervenors. The record makes two things abundantly clear. First, W. V. & M. has effected severe cuts in its service without authority from us or notice to the public. Second, W. V. & M.'s financial situation is such that, unless immediate additional income is generated, the company will be unable to perform the full transportation services called for by its certificate of public convenience and necessity.

After careful consideration, we have concluded that the company's application for an interim fare increase must be granted subject, however, to the precondition that full service be immediately restored and subject further to a continuing concurrent condition that such full service be maintained at all times during which the interim fare increase which we today authorize remains in effect. We turn to an analysis of the record and outline the considerations which have impelled us to this result.

I

On May 8, 1972, W. V. & M.'s president ordered certain of the company's scheduled service during morning and afternoon rush-hour periods cancelled without notice to the public. He further ordered that no drivers be called in on their days off to cover schedules assigned to other drivers who had become ill or otherwise were prevented from manning their assigned runs. Beginning on Saturday, May 13, 1972, a substantial number of Saturday and Sunday weekend schedules were also cut from operation. As a result of these service cuts, W. V. & M.'s service has been nothing short of inadequate since May 8, 1972, and the consequences to the public have been devastating.

Since May 8, 1972, the company has operated full service only once, on the Memorial Day holiday, and an average of 200 trips per week have been cut. This compares with the two trips per week which W. V. & M. missed a year ago at this time. W. V. & M.'s service cuts have resulted in cancellation of 3% of its morning rush-hour service, 4% of its evening rush-hour service, 12% of its Saturday service, and 6% of its Sunday service. In a number of instances, alternate transportation was simply not available. For example, in some instances, a rush-hour trip was cancelled and the alternate service offered by the company was another trip due to depart seven minutes before the scheduled departure time of the cancelled trip. Since no notice of the service cuts had been given the public, it is obvious that a number of patrons missed the "alternate" service and were thus left without any suitable service whatever. The situation was even worse on the weekend, for the company's president flatly admitted that many weekend passengers were left with no alternate service whatever. Since no notice of these cancellations was given, we can only conjecture on how many people waited fruitlessly at their respective bus stops for a bus that was never to come.

The company's only explanation for the decision to cut service was the testimony of its president that he had determined that W. V. & M. could not afford to operate these services and that an application to us for authority to suspend or alter scheduled services would consume too much time. These explanations

are insufficient.^{1/} We find that W. V. & M. is now, and since May 8, 1972, has been, in violation of the terms of its certificate of public convenience and necessity, and its obligations to the public under the Compact and our regulations promulgated thereunder. We view this matter with the utmost seriousness, and we take this occasion to put W. V. & M., and other carriers subject to our regulatory jurisdiction, on very clear notice that we cannot and will not condone such actions.

Before any fare increase, interim or otherwise, will be authorized, we must be satisfied that the applicant may reasonably be expected to provide the adequate transportation service to which the public is entitled.^{2/} We shall thus direct W. V. & M. to reinstate full service forthwith upon issuance of this order, and we shall establish compliance with that direction as a precondition to the interim fare increase which we authorize herein. To insure that full service is restored before the interim increase in fares becomes effective, we will further direct W. V. & M. to file an affidavit on or before July 7, 1972, which shall be included in the record of this case, verifying the restoration of full service. Moreover, to provide the public with reasonable assurance that the company will continue to provide full and adequate transportation service during the period of time or interim fare increase is in effect, we shall expressly provide that a continuing concurrent condition to the interim fare increase authorized herein is that the company operate its full schedule of service at all times. Our staff will be directed to monitor W. V. & M.'s service and to report any substantial deficiencies to us. If, at any time, we find that W. V. & M. is not operating full service, we shall issue forthwith an order directing it to show cause why this order should not be vacated and, unless compelling and convincing justification of circumstances beyond the company's control are presented, we shall vacate this order and reestablish the existing fare structure.

II

We turn now to the financial data included in the record relating to the need for interim fare relief. The scope of our present inquiry is limited to the question of immediate need

^{1/}Our regulations explicitly provide for special approval on an expedited basis of proposed schedule changes on an appropriate showing. Rule 60-05. Without such approval, our regulations require the carrier to "operate its vehicles in conformity" with its published schedules. Rule 60-01.

^{2/}See Order No. 1216, p. 14 (May 19, 1972); Order 1219, pp. 1-2, 5 (June 16, 1972).

for revenues and the justification for allowing a fare increase on an interim basis. Payne v. WMATC, 134 U.S. App. D.C. 321, 415 F.2d 901 (1968). Thus, we do not now decide issues such as ridership trends, allowable expenses and depreciation, and the other numerous issues we must examine in order to determine the ultimate level of fare which we should authorize in these proceedings. Those are matters which will require full examination at the public hearings which will be held on W. V. & M.'s application for a permanent fare increase.

In its application for interim relief, W. V. & M. asks for an increase of five cents which, as we understand the arguments of its counsel, is principally designed to enable the company to operate full service while negotiations continue with the Northern Virginia Transportation Commission (NVTC) for the purchase of the company, or until NVTC institutes condemnation proceedings. Both W. V. & M. and the staff submitted data which demonstrates the financial difficulties W. V. & M. currently faces. It has operated at a loss in each of the months since July 1971, with a total deficit of over \$300,000 in the twelve months ended March 1972. By any measure, W. V. & M.'s revenues are falling substantially below its operating expenses, and even with the five-cent interim increase which it seeks, the company's revenues may be expected to continue to fall below operating expenses. Nevertheless, W. V. & M.'s president testified that the company would operate full services if we granted its request for a five-cent interim increase with the reservation that, even with the interim relief which it seeks, it might only be able to operate these services into September.

In these circumstances, we find that the present fares are unjust and unreasonable, and we shall authorize an interim increase of five cents as the lawful fare to be charged during the pendency of this proceeding. In doing so, we are requiring that W. V. & M. first restore full scheduled service, and we are further requiring that this full service be operated until we otherwise order. We should make it very clear that our action is designed only to provide the means by which W. V. & M. can continue to operate its service for the interim period necessary to accomplish the contemplated take-over of its operation by NVTC. Our goal is thus an extremely short-term and limited one: the restoration of full bus service in Northern Virginia, and the operation of that service during what appears to be a matter of weeks.

During the hearing on W. V. & M.'s application for an interim fare increase, both its president and counsel referred to the hoped-for purchase of the company by NVTC which had adopted resolutions authorizing the purchase of W. V. & M. or, alternatively, the initiation of condemnation proceedings in a court of competent jurisdiction. Both W. V. & M. and NVTC have kept us apprised of developments in this direction, and we understand that negotiations are continuing which may shortly result in W. V. & M.'s operation being assumed by NVTC. At our request, NVTC's executive director has submitted a letter dated June 26, 1972, which was received into evidence at the hearing, wherein he expresses the hope that NVTC will be "prepared to acquire W. V. & M. by early August." Were we certain that the August date was firm, we might well reach a different conclusion on W. V. & M.'s application for interim fare relief, but NVTC's executive director made it clear that the August date was contingent upon "Union cooperation"^{3/} and "the expediting of an agreed-upon price or condemnation proceedings permitting early entry to operate the Company." In these circumstances, we cannot responsibly withhold the interim relief which we have found required to generate the needed revenue pending completion of the negotiations and/or condemnation proceedings. We note, however, that the executive secretary has attached to his submission a letter from NVTC's general counsel which states: "My commission is trying to do everything within its power to serve the public interest in preserving the public transportation being provided by W. V. & M. on an improved basis and without further fare increases." It may be, therefore, that NVTC, which is in a better position than we to gauge the date on which it will implement its resolution calling for purchase or condemnation of W. V. & M.'s assets, will determine to provide interim assistance sufficient to cover the need for the additional revenue which we expect the interim increase authorized herein to generate.

^{3/}While, of course, we do not interfere with labor-management relations, we think it not inappropriate to point out to the responsible officials of the union that W. V. & M. is in serious financial straits, and that pending completion of the negotiations with NVTC or the institution of condemnation proceedings, the company's very existence may be threatened if unforeseen expenditures are encountered. In this regard, we note the testimony of W. V. & M.'s president that driver vacations scheduled during July and August, and other employee benefits, adds heavily to the financial deficit. Perhaps the union would consider it in the long-run interest of its members to cooperate with management in effecting fiscal economies during this difficult period.

Were NVTC to provide such assistance, we would, of course, vacate so much of our order as authorizes an interim fare increase since W. V. & M. would thus have the needed revenue to provide full service during the interim period from a source other than the farebox.

THEREFORE, IT IS ORDERED:

1. That forthwith upon service of this order, W. V. & M. reinstitute full service in accordance with the schedules on file with the Commission and that an affidavit executed by a responsible official of the company be submitted to the Commission by July 7, 1972, for inclusion in the record of this case, reflecting full compliance with this direction.

2. That, subject to compliance with the precondition set forth in Paragraph 1 above, W. V. & M. be, and it hereby is, authorized to place into effect the interim fare increases reflected in its proposed revisions to its Tariff No. 35 which are annexed to its motion for an interim fare increase, such increase to become effective not before 4:00 a.m. on Monday, July 17, 1972.

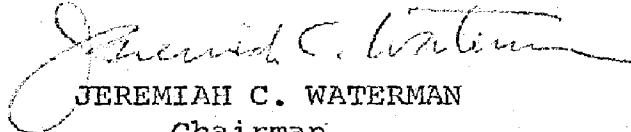
3. That, at all times W. V. & M. is collecting the increased fares authorized by this order, it shall provide full service in accordance with the schedules filed with the Commission.

4. That the staff is directed to monitor W. V. & M.'s performance of its service obligations under this order, and to advise the Commission forthwith in the event the company fails to operate full service in order that the Commission may enter an appropriate order.

5. That the Commission retains jurisdiction to rescind the fare increase authorized herein in the event that the precondition specified in Paragraph 1 is not satisfied, or in the event that the company defaults in its service obligation imposed by this order after the fare increase has become effective, or in the event that NVTC provides a subsidy the Commission finds sufficient to justify such action.

6. That hearings on Application No. 775 shall resume on Wednesday, July 19, 1972, at 10:00 a.m., in the hearing room of the Commission, Room 314, 1625 Eye Street, N. W., Washington, D. C., for the purpose of receiving the applicant's direct case.

BY DIRECTION OF THE COMMISSION:


JEREMIAH C. WATERMAN
Chairman