WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1274

IN THE MATTER OF:

Served August 21, 1973

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| Investigation of Individually Ticketed Sightseeing Service of D.C. Transit System, Inc. and W.V.& M. Coach Company, Inc. | Consolidated Docket Nos. 175-R and 251 |
| Application of Washington, Virginia and Maryland Coach Company, Inc. to Amend Its Certificate of Public Convenience and Necessity No. 4-A | Application No. 808 |

On June 29, 1973, we issued amended certificates of public convenience and necessity to D. C. Transit System, Inc. (Transit) and the Washington, Virginia and Maryland Coach Company, Inc. (WV&M). Simultaneously, we initiated, on our own motion, an investigation into the individually ticketed sightseeing service of these carriers, identifying several matters which we believed deserved our attention. See Orders Nos. 1260, 1261 and 1266 (June 29, 1973). These were: (1) whether Transit was providing reasonable, continuous and adequate individually ticketed sightseeing service to certain Maryland points specified in paragraph (b) of its certificate of public convenience and necessity; (2) whether Transit was providing reasonable, continuous and adequate individually ticketed sightseeing service from certain Virginia points specified in paragraph (c) of its certificate of public convenience and necessity to certain Maryland points set forth therein; (3) whether an operation involving both Transit and WV&M coaches constituted a true through-route sightseeing service, an issue which had been remanded to us by the

United States Court of Appeals in D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission, 429 F.2d 197 (D.C. Cir. 1970); and (4) whether WV&M's certificate of public convenience and necessity should be amended to enable the carrier to provide a more efficient and economical individually ticketed sightseeing service. Subsequent developments have convinced us that, with the exception of the latter issue, the matters which we had identified for investigation are now moot.

First, when we issued our order of investigation, we noted that Transit was apparently not providing any sightseeing service to the Maryland points specified in paragraph (b) of its certificate of public convenience and necessity. Since that time, however, Transit has filed its WMATC Tariff No. 46 which provides that passengers desiring one or more of Transit's sightseeing tours will be picked up from hotels and motels in the Maryland suburbs upon advance request. This tariff provision, which created a service obligation on the part of the carrier and to which Transit is required to comply by virtue of the provisions of the Compact and our implementing regulations, shows that the deficiency which we noted has been corrected. In the circumstances of this case we conclude that Transit's advance reservation service from the Maryland points at issue constitutes reasonable, continuous and adequate individually ticketed sightseeing service and that there is accordingly no reason now to pursue an investigation into this facet of Transit's operation.

Second, when we issued our order of investigation, we directed that inquiry be made into the adequacy of Transit's individually ticketed sightseeing service over the irregular route set forth in sub-paragraph (c) of its certificate of public convenience and necessity authorizing such transportation between specified Virginia and Maryland points. We then noted that Transit was providing no sightseeing service over this irregular route, and we directed the company to do so. Thereafter, Transit applied for permission to suspend for an indefinite period individually ticketed sightseeing service between those points and by Order No. 1272, issued August 9, 1973, we denied that request and revoked Transit's operating authority between those points. Thus, this issue is now moot.

Third, we noted in our order of investigation that Transit and WV&M had entered into an agreement whereby WV&M acquired use of a Transit coach by lease and instituted what both carriers contended was a "through route sightseeing operation jointly with D. C. Transit System, Inc." This operation, we noted, raised the issues then pending in our Docket 175-R pursuant to remand by the United States Court of Appeals and we directed forthwith disposition of that matter. Since that time, however, the companies have advised us that corporate study is being given to the integration of the sightseeing services offered by both carriers and, pending the formulation of such plans, Transit has applied for, and been granted, temporary authority to operate the individually ticketed sightseeing service authorized by WV&M's certificate while WV&M has applied for, and been granted, permission to suspend temporarily individually ticketed sightseeing service pursuant to its certificate of public convenience and necessity. See Order No. 1273 issued August 16, 1973. Thus, the issues pending in our Docket 175-R have become moot. No allegedly joint or through sightseeing service is now being operated by Transit and WV&M. As far as we are advised, the carriers have no plans to resume such service after January 31, 1974, the date on which Transit's temporary operating authority and WV&M's authority to suspend service terminates. Even if the carriers determine to institute some sort of joint or through service after that date, we believe it best to handle the issues which would arise from such a decision by considering a new tariff filing, accompanied by full disclosure of the pertinent facts, rather than resurrecting a 1968 tariff filing which was based on a wholly different set of facts which arose when both carriers were heavily engaged in regular route operations. Thus, we believe that the issues involved in Docket 175-R have now become moot, and we will accordingly terminate that docket by appropriate order.

Finally, we turn to the issue of WV&M's certificate authority. When we served our Order No. 1266, we took official notice that many of the points on WV&M's former regular routes from which it is now authorized to provide individually ticketed sightseeing service may be entirely inappropriate for such authority, many such points being in residential neighborhoods and others in uninhabited areas. On the other hand, we noted that WV&M's former regular routes provided transportation services over public streets which are near major hotels and motels, but WV&M was not

authorized to provide service directly to such hotels and motels which are the most likely and convenient pick-up points for sightseeing passengers.

Responding to these observations, WV&M has filed an application to amend its certificate of public convenience and necessity so as to authorize not only service to the points served on its former regular routes, but also to "hotels and motels in the territory served by such former regular routes." Arguing that its application requires only a "clarification" of its certificate, not a formal amendment, WV&M relies on what it calls an "implied right to deviate from its street routes to the entrances of hotels and motels (in certain cases, only a few yards away)."

We do not agree with WV&M's view of an "implied right to deviate," particularly when the language it seeks to add to its certificate authority speaks of "hotels and motels in the territory served by such former regular routes" whereas its certificate speaks of points "on the holder's former regular routes." (Emphasis added). But we do agree, as we indicated in Order No. 1266, that the matter requires attention. We will assign this issue to the Hearing Examiner with instructions that a public hearing be scheduled in order to determine what amendments, if any, should be made in WV&M's certificate of public convenience and necessity to enable the carrier, if otherwise fit, to provide an efficient and economical individually ticketed sightseeing service. Since this is the sole remaining issue for disposition, we believe it appropriate to direct the Hearing Examiner to proceed directly to hearing without calling the pre-hearing conference we initially thought would be required when we issued Order No. 1266.

THEREFORE, IT IS ORDERED:

1. That the proceedings pending in Docket No. 175-R be, and they hereby are, dismissed as moot.

2. That the matter of the application of Washington, Virginia and Maryland Coach Company for an amendment to its certificate of public convenience and necessity be, and it hereby is, scheduled for public hearing before a Hearing Examiner in the Hearing Room of the Commission, 1625 I Street, N.W., Room 314, Washington, D. C. 20006, at 10:00 A.M., Tuesday, September 25, 1973.

3. That Washington, Virginia and Maryland Coach Company, Inc., be, and it hereby is, directed to publish notice of its application and of the hearing thereon in a newspaper of general circulation in the Metropolitan District on or before Friday, August 31, 1973.

4. That any person desiring to be heard on this matter shall notify the Commission, in writing, on or before Friday, September 14, 1973, and serve a copy of such notification on the applicant's counsel of record, William D. Hurley, Esq., Washington, Virginia and Maryland Coach Company, 3600 M. Street, N. W. Washington, D. C. 20036;

5. That, except to the extent forth above, the proceedings pending in Docket No. 251 be, and they hereby are, dismissed as moot.

BY THE DIRECTION OF THE COMMISSION:

Hyman J. Blond

HYMAN J. BLOND
Executive Director