

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2927

IN THE MATTER OF:

Served November 10, 1986

Application of MELVIN MYLES T/A )  
H&M BUS SERVICE for Temporary )  
Authority )

Case No. AP-86-38

By application filed September 25, 1986, Melvin Myles, a sole proprietor trading as H&M Bus Service, seeks temporary authority to transport passengers for hire over regular routes as quoted below:

(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., then 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 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, then 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.

Pursuant to Order No. 2919, served October 7, 1986, and incorporated herein by reference, a public hearing on the matter was held. No protestants appeared at the hearing.

#### SUMMARY OF EVIDENCE

Melvin Myles has been engaged in commercial bus transportation of passengers for approximately 20 years. Mr. Myles holds a certificate from the Interstate Commerce Commission (ICC) authorizing certain charter and special operations, and the main thrust of his business has been interstate charter service. In addition, Mr. Myles has conducted commuter operations between points in Maryland pursuant to authority issued by the Maryland Public Service Commission.

Mr. Myles owns five 47-passenger coaches to which vehicle identification numbers 378, 402, 403, 405, and 3455 have been assigned. All vehicles have been inspected by the Department of Transportation of the Maryland Public Service Commission (PSC). Although the PSC ordered bus number 405 out of service on October 4, 1986, due to a defect in its braking system, that defect was fixed within 24 hours according to Mr. Myles, and all vehicles owned by H&M currently meet PSC minimum safety standards. 1/ Mr. Myles proposes to lease two additional buses from J&J Bus Service, Inc. (J&J). These buses were inspected by the PSC in August 1986 and found to be in compliance with its safety standards. Inspection reports covering H&M bus numbers 378, 402, and 3455 were provided the Commission. Although Mr. Myles plans to initiate service using these vehicles, the remaining two vehicles (403 and 405) would also be used as necessary. PSC inspection reports were also submitted covering J&J bus numbers 5371 and 5451.

Mr. Myles follows a program of preventive maintenance which consists of lubrication, changes of oil and oil filters, and full inspection plus any necessary repairs discovered during inspection. This program is implemented every two months. Vehicles going out on commuter runs are inspected daily using a log sheet listing approximately 30 items, e.g., line leaks, tires, brakes, signal lights, and headlights. The log sheets are returned to Mr. Myles who has any necessary repairs performed. Minor repairs are done by his son who is a certified mechanic. Major repairs are referred to outside mechanics specializing in bus repairs. Mr. Myles is familiar with DOT safety regulations, is aware that these regulations are WMATC's as well, and is willing to comply with them. He testified further that he is aware of the importance WMATC places on the mechanical condition of buses, and, if this application is granted, he will do everything in his power

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1/ The PSC inspects vehicles according to criteria established by the United States Department of Transportation (DOT) pursuant to letter of agreement with DOT. DOT's criteria have been adopted by this Commission.

to make sure that buses used in service are in compliance with those regulations.

Mr. Myles proposes to operate four scheduled inbound morning trips and four scheduled outbound afternoon trips, Monday through Friday. The proposed rates are:

<u>Between Washington, D.C., and:</u>	<u>One-Way</u>	<u>Weekly Ticket</u>
Brandywine, Md.	\$3.75	\$25.00
Clinton, Md.	\$3.00	\$21.00
Camp Springs, Md.	\$2.75	\$20.00
Marlow Heights, Md.	\$2.25	\$19.00

All vehicles owned by Mr. Myles are insured in his name in the amount of \$5,000,000 combined single limit. If this application is granted, he would purchase any additional insurance necessary in his own name to cover the vehicles he intends to lease from J&J.

Mr. Myles is not familiar with the Compact or the Commission's rules and regulations. However, he is aware that if authority is granted by this Commission he will be bound by them. Mr. Myles testified that he would immediately familiarize himself with the Compact and the Commission's rules and regulations in order that he might comply with them.

Mr. Myles does not contemplate conducting any regular route operations outside the Metropolitan District. He has no certificate authorizing such transportation, and no application to conduct such operations is pending with the ICC. However, Mr. Myles intends to join his operations with certain transportation performed by J&J outside the Metropolitan District. Inside the Metropolitan District, Mr. Myles would assume complete control of the operations. Outside the Metropolitan District, the route would be controlled by J&J.

Gertrude Cave testified in support of the application. Ms. Cave lives in Brandywine, Prince George's County, Md., and works in Washington, D.C. Formerly she commuted to work by bus. Currently she travels to work with her daughter by private car. She returns from work aboard J&J, disembarking the bus at a point in Charles County, Md., where a family member picks her up and drives her about four miles back to her home in Prince George's County. It would be much more convenient for Ms. Cave if she were picked up at and delivered to a nearby point within Prince George's County. However, she knows of no available public transportation except J&J. If this application is granted she would use H&M daily, Monday through Friday.

Ms. Orletta Harley testified in support of the application. Ms. Harley lives in Brandywine, Prince George's County, Md., and works in Washington, D.C. When J&J operated in Prince George's County,

Ms. Harley used that service to travel to and from work. Now she either drives or travels with friends. She knows of no existing public transportation available to meet her commutation needs. However, if this application is granted, she would use H&M each weekday to travel between T.B. Junction, Prince George's County, Md., and the Capitol Building, Washington, D.C.

Ophelia Reyes testified in support of the application. Ms. Reyes lives in Clinton, Prince George's County, Md., and works in Washington, D.C. When J&J operated in Prince George's County, Md., Ms. Reyes used that service to travel to and from work. The service was very convenient inasmuch as it stopped on her street and allowed her to disembark at the intersection of M and 21st Streets, N.W., Washington, D.C. Currently Ms. Reyes drives four miles to a Metrobus stop. If this application is granted Ms. Reyes would use H&M each weekday to travel between Clinton, Md., and the intersection of M and 21st Streets, N.W., Washington, D.C.

Howard R. Goodrich is supervisor for the Transportation Department, Maryland Public Service Commission. In that position Mr. Goodrich is responsible, inter alia, for the inspection of all passenger vehicles operated in the State of Maryland. On October 3, 1986, four vehicles belonging to H&M were inspected. Two vehicles, bus numbers 407 and 3455, were found to be in compliance with DOT safety regulations and certified as roadworthy. Bus number 402 was found to have mechanical problems sufficient to preclude the PSC from certifying the bus as roadworthy. Bus number 405 was also found to have mechanical problems, one of which was so severe as to cause the PSC to order it out of service. The left rear drive axle air hoses to the diaphragm were worn through the outer cover and there was an audible leak at the leveling valve. These are out-of-service defects according to DOT safety regulations. Bus number 405 was never allowed back in service because the PSC never received any indication that the necessary repairs had been made. On average, when a vehicle is ordered out of service, there is a time lag of five to ten days from the date the vehicle is ordered out of service to the date the PSC receives notification that repairs have been made. On September 19, 1986, the PSC inspected three H&M vehicles. Bus number 378 was inspected and certified as roadworthy. Bus numbers 407 and 3455 were ordered out of service due to serious defects relating to the steering systems in each vehicle and the braking system in bus number 407. No indication was ever received by the PSC that either vehicle had been repaired; however, the October 3 inspection indicated that was the case. J&J bus numbers 5371 and 5451 were most recently inspected on August 7, 1986. No mechanical or safety defects were found, and the vehicles were certified as roadworthy.

Mr. Goodrich has been inspecting H&M equipment for at least five years. It is Mr. Goodrich's opinion that Mr. Myles has a problem with regular maintenance of vehicles. However, Mr. Goodrich has seen

improvement recently, and he believes this is a problem Mr. Myles is willing to correct.

#### DISCUSSION AND CONCLUSIONS

The standards for temporary authority are (1) an immediate and urgent need for the service, (2) no other carrier capable of meeting such need, and (3) fitness of the applicant. 2/

The testimony of applicant's public witnesses indicates that Mr. Myles proposes to offer a regular route service identical to one on which those persons and others had relied for transportation between points in Prince George's County, Md., and Washington, D.C. That transportation appears no longer to be available. When the transportation was offered, the witnesses used it daily to commute to and from work. If this application is granted these same persons would use the proposed service twice a day each weekday. Taking official notice of our records we note that no carrier is certificated to offer the service which applicant proposes. No carrier protested the application. Moreover, the testimony of the public witnesses indicates that there is no existing similar service. Witnesses currently must travel by private car several miles in order to obtain public transportation. For these reasons we find that there is an immediate and urgent need for applicant's proposed service and no other carrier capable of providing that service. We turn now to the matter of Mr. Myles' fitness.

Mr. Myles proposes to offer this service in combination with J&J Bus Service, Inc. 3/ Under the plan proposed, J&J would conduct

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2/ See Compact, Title II, Article XII, Section 4(d)(3); Order No. 2864, served May 23, 1986; Order No. 2738, served July 22, 1985; and Order No. 1643, served January 24, 1977.

3/ The president of J&J Bus Service, Inc., is Rodgers E. Johnson. Mr. Johnson formerly held WMATC Certificate No. 39 authorizing transportation similar to the service proposed by Mr. Myles. Mr. Johnson's authority was revoked for lack of fitness by Order No. 2783, served November 4, 1985, and incorporated herein by reference. Briefly, the Commission's investigation proved that Mr. Johnson repeatedly and flagrantly refused to comply with the Compact and Commission rules, regulations, and orders. Principal among Mr. Johnson's acts of non-compliance was his consistent operation of mechanically defective equipment, including equipment with safety defects so severe according to DOT safety regulations as to result in its being ordered out of service. On June 30, 1986, Mr. Johnson and J&J Bus Service, Inc., were enjoined by order of the U.S. District Court from operating between points in the Metropolitan District. Nonetheless, J&J continued to operate until

certain transportation outside the Metropolitan District, and Mr. Myles would conduct the proposed service which is entirely within the Metropolitan District. Mr. Myles would have exclusive control of and responsibility for all vehicles for purposes of Metropolitan District operations, and it would appear that J&J would have exclusive control of and responsibility for all vehicles for purposes of ICC operations.

Mr. Myles has never held WMATC authority and is unfamiliar with the Compact and the Commission's rules and regulations. However, he has agreed to familiarize himself with those documents immediately in order to be able to comply with them. To date Mr. Myles has substantially complied with this Commission's orders directed to him. The equipment with which Mr. Myles proposes to initiate the proposed service has been inspected according to WMATC safety requirements and been found acceptable for use in transporting passengers. Mr. Myles has in place a preventive maintenance program. Equipment is inspected daily and necessary repairs are made by a certified mechanic. The regular drivers of the vehicles are experienced in the operation of commercial motor coaches. Mr. Myles has sufficient assets to commence operations, and it appears that cash flow from the operations will cover expenses. Based on this record we do not find Mr. Myles unfit. Although we would have preferred a more zealous approach to familiarization with the regulatory safeguards by which Mr. Myles will be bound, we will extend a certain leeway to him based on four factors: (1) Mr. Myles is a new carrier with no history of lack of fitness; (2) this application is one for temporary authority and thus carries no presumption that Mr. Myles will become entitled to a certificate to operate in the Metropolitan District; (3) Mr. Goodrich testified that Mr. Myles has shown improvement with regard to equipment maintenance and a willingness to correct problems which might exist; and (4) the proposed service is a regular route used by commuters with no alternative public transportation.

This brings us to the final question: whether Mr. Myles' connection with J&J poses a bar to a grant of this application. J&J and its president Rodgers E. Johnson are enjoined from transporting passengers for hire between points in the Metropolitan District. Mr. Johnson has proven himself unwilling and unable to comply with the Compact and the Commission's rules, regulations, and orders. Taking

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3/ continued

Mr. Johnson was found in contempt of court on September 27, 1986. The record in this case indicates that as a result of the Commission's legal action J&J's offending equipment has been replaced. However, Mr. Johnson and J&J Bus Service, Inc., continue to be unfit in the eyes of this Commission, and continue to be enjoined by the U.S. District Court from transporting passengers between points in the Metropolitan District.

official notice of our records we find that Mr. Johnson has some regular route operating authority from the ICC which includes the point of origin of the service proposed herein. Mr. Myles has no such authority and no ICC application pending. It would appear that Mr. Myles is essentially proposing to operate a through route with J&J. J&J would be responsible for all ICC-authorized transportation, and Mr. Myles would be responsible for all transportation in the Metropolitan District.

Title II, Article XII, Section 7 of the Compact provides in relevant part that

In order to encourage and provide adequate transit service on a Metropolitan District-wide basis, any carrier may establish through routes . . . with any other carrier subject to . . . the jurisdiction of the Interstate Commerce Commission . . . .

The Compact authorizes the Commission to set the terms and conditions under which such through routes should be operated. Compact, Title II, Article XII, Section 7. See, e.g., Order No. 437, served January 28, 1965.

By means of a through route two or more independently managed carriers become in effect one system. Atlantic C.L.R. Co. v. Riverside Mills, 219 U.S. 186, 198 (1911). In establishing a through route the guide is the public interest. Dixie Carriers, Inc. v. United States, 351 U.S. 56, 61 (1956). The provision of the service proposed in this application is clearly in the public interest provided the service can be performed by a fit carrier. Members of the traveling public need transportation in order to get to work, and no comparable service is currently offered. Mr. Myles will be responsible for the service within the Metropolitan District including operation of vehicles, collection and retention of all fares, and compliance with the Compact and the Commission's rules, regulations, and orders.

In establishing this through route we do not intend nor do we authorize either Rodgers E. Johnson or J&J Bus Service, Inc., to operate directly or indirectly between points in the Metropolitan District. That authority is granted to Mr. Myles, a sole proprietor. Conversely, we do not and, of course, we could not authorize Mr. Myles to operate outside the Metropolitan District. Moreover, the establishment of a through route excuses neither carrier from regulation; nor can either carrier evade its responsibilities and liabilities by participating in a through route. Faulkner Bus Corp. v. United States, 41 F.Supp. 712 (DC NY 1941). Thus, both Mr. Myles and J&J will remain bound to their respective operating authorities, and revocation of J&J's ICC certificate would extinguish the through route.

To assure that Mr. Myles has control of the operation for regulatory purposes within the Metropolitan District, certain conditions are necessary. Insurance in Mr. Myles' name must be in effect for all vehicles used in the operations. All vehicles used in the service must be identified as operated by Mr. Myles pursuant to Commission Regulation Nos. 68 and 69. 4/ Because there is a past history of safety problems affecting some of the equipment to be used in the proposed service, Mr. Myles shall be directed regularly to inspect each vehicle owned or leased by him and submit a notarized report of the inspection.

Finally, we note that the temporary authority conditionally granted herein is limited by statute to a maximum of 180 days. To minimize the potential for any lapse in service, Mr. Myles is strongly urged to file an application for a certificate within 30 days of the service date of this order, if he contemplates continuation of the service beyond the temporary authority period.

THEREFORE, IT IS ORDERED:

1. That Melvin A. Myles trading as H&M Bus Service is hereby granted temporary authority to transport passengers over regular routes as follows:

(1) From the Prince George's County/Charles County boundary, over U.S. Route 301 to Maryland Route 5, then over Maryland Route 5 to Maryland Route 223 to the Clinton Shopping Center in Clinton, Md., then over Maryland Route 223 to Maryland Route 5, then over Maryland Route 5 to Interstate Route 95, then over Interstate Route 95 to Interstate Route 295, then over Interstate Route 295 to South Capitol Street, S.W., 5/ then over South Capitol Street to M Street, then over M Street to Maine Avenue, then over Maine Avenue to 7th Street, then over 7th Street, S.W. and N.W., to Pennsylvania Avenue, then over Pennsylvania Avenue to 11th Street, then over 11th Street to K Street, then over K Street to 19th

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4/ Of course, the requirement for exclusive control of the equipment by the lessee as set forth in Regulation No. 69 must be modified to the extent necessary to accommodate the concept of a through route.

5/ Due to structural problems, South Capitol Street (Douglass) Bridge is closed to all heavy vehicles, including buses, until further notice. Therefore, the use of 11th Street Bridge is authorized until operations over South Capitol Street Bridge are again permitted.

Street, then over 19th Street to E Street, N.W., and return; serving all intermediate points.

(2) From the Prince George's County/Charles County boundary over U.S. Route 301 to Maryland Route 5, then over Maryland Route 5 to Brandywine Road, then over Brandywine Road to Old Branch Avenue, then over Old Branch Avenue to Manchester Drive, then over Manchester Drive to Maryland Route 5, then over Maryland Route 5 and Branch Avenue, S.E., to Pennsylvania Avenue, S.E., then over Pennsylvania Avenue to Independence Avenue, then over Independence Avenue to First Street, then over First Street, S.E. and N.E., to Massachusetts Avenue, N.E., then over Massachusetts Avenue to H Street, N.W., then over H Street to 11th Street, then over 11th Street to G Street, N.W., and return; serving all intermediate points.

2. That after compliance with the following paragraph the temporary authority shall become effective upon written notice from the Commission's Executive Director and remain in effect for 180 days thereafter unless otherwise ordered by the Commission.

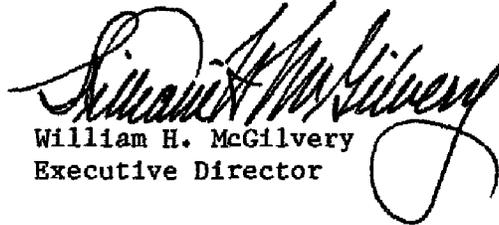
3. That Melvin Myles trading as H&M Bus Service is hereby directed to file with the Commission the following: (1) a certificate of insurance in conformance with Regulation No. 62 and complete, certified true copies of all insurance policies represented therein; (2) two copies of his WMATC tariff as described in his application in conformance with Regulation No. 55; (3) an equipment list specifying make, model, serial number, vehicle identification number, and license plate number for each vehicle to be used in WMATC operations; (4) proof that all vehicles to be used in WMATC operations are registered with and have passed inspection by a signatory jurisdiction to the Compact; and (5) an affidavit of vehicle identification in conformance with Regulation No. 68.

4. That unless Melvin Myles trading as H&M Bus Service complies with the requirements of the preceding paragraph within 30 days of the date of issuance of this order or such additional time as the Commission may direct or allow, the grant of authority contained herein shall be void, and the application shall stand denied in its entirety upon expiration of the said compliance time.

5. That Melvin Myles trading as H&M Bus Service is hereby directed to file with the Commission on the first of each month a notarized copy of the results of inspections of all vehicles owned or leased by Melvin Myles in a form to be prescribed by the Commission staff.

6. That the application, except to the extent granted herein, is denied.

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

  
William H. McGilvery  
Executive Director