

Case Study of the Problems of Transit Regulation in Washington, D.C.

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The Washington metropolitan region includes the District of Columbia, parts of two states, all or part of four or five counties, and some incorporated towns. Prior to the public takeover of the transit bus operations in 1973, public mass transportation was provided by four regular-route bus operators, several charter bus operators, two national interstate operators who offered some local commuter services, and numerous taxicabs variously organized in companies or associations or unaffiliated.

The regulators were the Interstate Commerce Commission (ICC), the State Corporation Commission (SCC) in Virginia, the Public Service Commission (PSC) in Maryland, the PSC in the District of Columbia, and various local taxicab regulatory agencies at the city and county levels. Anyone who operated a transportation service across state lines was subject to regulation by at least two agencies. There was no common regulatory rationale held by the various agencies involved in the regulation, nor were there efforts to coordinate policies or regulatory actions among those agencies.

Each of the four local bus companies served its own territory or route system that had been granted by the ICC; the operator that served the District of Columbia had also been given a franchise by the Congress of the United States granting it exclusive operating rights. These companies did not run competing lines, with one relatively minor exception. Each served primarily either Virginia, Maryland, or the District, but their services extended across state lines.

Any taxicab licensed in the region could operate across jurisdictional lines, but their rights to transport passengers within a jurisdiction other than their jurisdiction of registration were limited.

A NEW REGULATORY STATUTE AND AGENCY

The first attempt to establish a comprehensive scheme for the regulation of local public transportation services within the Washington metropolitan region was made in 1962 with the enactment of the Washington Metropolitan Area Transit Regulation Compact.

The new regulatory compact covered the geographic area of the District of Columbia, the contiguous counties of Montgomery and Prince George's in Maryland and Arlington and Fairfax in Virginia, and part of Loudoun County extending to the Dulles Airport in Virginia. Most of its provisions were patterned after those of the Interstate Commerce Act.

The compact created the Washington Metropolitan Area Transit Commission (WMATC) and granted that commission the authority to regulate all for-hire transportation within the geographic limits described. However, the compact in its own terms excluded taxicab operations from WMATC regulatory responsibility.

Having thus identified a need for comprehensive regulation of transportation service in the metropolitan region and having developed the regulatory compact and a new regulatory agency to achieve that purpose, the legislators from the first excluded a significant part of the mass transportation operation from the regulatory purview of the new agency.

The new regulatory compact, like the Interstate Commerce Act, employed the licensing device known as the Certificate of Public Convenience and Necessity. No local for-hire transportation service would be permitted to operate without such a certificate from WMATC, but no particular criteria were established for the issuance of such a certificate. Of course, those transportation companies that already possessed certificates from the ICC (the four bus companies and several charter and special purpose operators) were considered already certificated by the new compact.

The existing transit operators were not only automatically awarded certificates of public convenience and necessity for the operations they had been conducting up to that time, but they were also offered certain guarantees that under the new regulatory scheme competition would not develop over routes certificated to them.

The WMATC was not given enforcement authority that it could exercise directly on the carriers. The carriers were required to obey its lawful orders but, if they chose not to, WMATC's recourse was to seek enforcement of its order in any U.S. district court.

WMATC consisted of a three-member panel, one member from each of the compact signatories: Maryland, the District of Columbia, and Virginia. Each member was appointed from among the members of the Maryland and District of Columbia PSCs and the Virginia SCC. The chairman was elected by the members themselves. The commissioners were therefore selected from among people who had been appointed to regulate utilities, including telephone, gas, electricity, insurance, and security issuances, but none was chosen for transportation expertise or background. The Maryland and Virginia members had their primary responsibilities and their primary offices in Baltimore and in Richmond, and their basic regulatory focus was statewide in their respective states. From time to time since 1962 there have been attempts, primarily by Maryland residents of the metropolitan region, to require that the Maryland member of WMATC be one who resides in the Washington metropolitan region, but that change was never accomplished.

The WMATC's staff consisted of an executive director and three main functional branches: legal, accounting, and engineering. The accountants were regulatory accountants familiar with laws, regulations, and concepts relating to rate regulation, and they were expert in such matters as utility depreciation rates and practices. They

were not, however, expert in transportation finance, nor were they particularly conversant with the use of pricing techniques to induce desired ridership levels and patterns.

The engineering staff included people who had some training and understanding of bus operations, including bus scheduling, bus maintenance requirements, wage computation, and other basic factors involved in the day-to-day operation of a bus company. There was no one among the original staff or for several years thereafter who could qualify as a transportation planner by virtue of outlook, training, or experience.

WMATC's REGULATORY PERFORMANCE

WMATC functioned as the major governmental force in transportation regulation and promotion from 1962 until 1973, when the four bus operations were taken over by the Washington Metropolitan Area Transit Authority (WMATA), the regional transportation agency, which operates the buses as a public enterprise.

During those 11 years, WMATC followed a pattern that it had developed quickly at its beginning. In an early action, WMATC exempted all of the limousine sightseeing operators in the region from its regulation, asserting that they were essentially taxicab operators and thus exempt from WMATC regulation. This appears to have been motivated not so much by a strong belief that these sightseeing operators were truly taxicab operators as by expediency, since the job of regulating more than 100 such operators with the resources available to WMATC was probably out of reach. I do not suggest that the decision to exempt the limousine sightseeing operators was necessarily a bad one. It is questionable whether their main function is transportation, and it is further questionable whether any regulatory scheme could have made any difference in the way they operated. But the action showed a certain conservatism and reluctance on the part of WMATC to move into its new regulatory role with respect to at least one area of for-hire transportation in which it could easily have asserted jurisdiction.

WMATC's immediate concerns, and those that indeed preoccupied it almost totally during its existence, related to rate proceedings. The staff I described reflected that orientation; in fact, the staff was capable to do little more than deal with rate issues. Perhaps the major reason for concentration on rate issues was that whenever a rate request was submitted to WMATC it was required to respond to that request, accepting, rejecting, or modifying it, within a 5-month period, a deadline that created a great deal of pressure on the staff, who could work on little else but the rate case while it was pending.

The regulated companies were, of course, primarily interested in rates and would pay only lip service to transportation improvement issues. WMATC never conducted any overall route investigation or any other major investigation of the adequacy of service. Rate matters became even more prominent as time passed because upward rate adjustments were being sought far more frequently than in the early years and because almost every rate order issued by WMATC (at least those relating to the District of Columbia transit system) were appealed to the courts, and those appeals required many hours of staff time and constituted a major activity of the staff.

Partly because of those appeals and the court's admonition to WMATC to pay more attention to the service implications of its regulatory function and partly because of a certain frustration within WMATC and its staff with the failure of the transit companies themselves to develop any meaningful service improvement patterns or

practices, WMATC began to turn more of its attention to the issue of service improvement. An urban transportation planner was added to the staff to provide a conceptual perspective that WMATC had theretofore lacked. Some work was let to consultants, again in order to provide the expertise that was not present within the staff.

But the business of achieving service change and improvement was hard going. The companies themselves were of little help because of their limited perspectives and interests. If WMATC perceived a need for an improvement in service and ordered it, the companies would often simply not respond, and the enforcement of an order through the court process was time consuming and cumbersome. Often the companies were not interested in service change not only because they were not convinced that it would produce additional income or additional meaningful service, but also because they were concerned that they were being required to bear the expense of experimentation doomed to failure—a waste of limited financial resources. WMATC had to be sympathetic with that point of view to a certain extent because it was aware that, to the extent it required expenditures on the companies' part for service improvement that might not produce additional revenue, it might be contributing to forcing fares upward, and WMATC was extremely sensitive to that problem. So while WMATC was philosophically quite interested in improving the service environment and in seeing the application in the local region of some of the newly emerging transportation strategies that were being discussed and employed in other parts of the country, it was unable to find a direct method in its own regulatory authority for causing those changes to occur.

However, WMATC had one powerful indirect tool with respect to forcing the behavior of the bus operators—its ability to grant or withhold rate increases. It began to use that tool as a lever more and more in the frequent rate matters that were presented to it. WMATC would include in its rate orders that certain requirements with respect to service improvement be made effective as new revenues were received under the new rate structure. In one such order, WMATC established a schedule for the acquisition of buses by the company involved so that the bus fleet would be maintained at what WMATC considered to be an appropriate age. That schedule, in fact, was never maintained, and the company fell behind and finally ceased any regular purchase of buses altogether; in each rate proceeding WMATC complained and imposed new conditions with respect to the bus purchase, but it never happened the way WMATC had envisioned and ordered it.

One of the serious deficiencies in the private bus operations was the lack of meaningful marketing. Information was not readily available concerning the routes and schedules of the bus operations. The companies apparently saw no reason to provide it. WMATC, on the other hand, was convinced that the lack of available information and appropriate marketing techniques was one of the reasons the bus systems were not patronized at a desirable level and were not providing a level of service that should be expected of them; it therefore attempted to encourage marketing activities. At one point, WMATC even ordered that a special fund of \$150,000 be set up by one of the companies to be spent only for marketing and only to be spent in a marketing program that was specifically approved by the WMATC staff. But that money, in fact, was never spent for that purpose. There was never any meeting of the minds among the staffs of the private companies and the staff of WMATC as to what was appropriate marketing.

In the later stages of its regulatory control over the private bus operators, WMATC attempted to earmark nearly every new revenue dollar expected from every new rate increase for special service-improvement purposes,

but this technique did not produce any significant change in declining service patterns. The companies at this point were interested only in survival and in applying every dollar to avoiding collapse.

Finally, again in a rate order, WMATC refused to raise the bus fare, contending that the condition of the company involved had deteriorated to the point that only some major financial restructuring and infusion of equity dollars, not just fare-box dollars, would permit the company to provide the level of service expected of it if the fare was to be increased. This approach did not lead to service improvement by the company; it triggered a rapid conversion to public ownership and the demise of privately operated regular-route bus transportation in the region.

In the meantime, charter bus operations had been conducted not only by the regular-route operators but also by operators who provided only that limited kind of service. Almost no real control was exercised over the charter operators. Their rates were approved almost automatically on submission of a tariff to WMATC. It was believed that the charter rates would reach their own reasonable level because of the highly competitive nature of the charter business in the region, and no fare proceedings were ever carried on with respect to charter rates.

The one issue that WMATC attempted to address with respect to charter service was the difficulty created by the practice of the regular-route operators of diverting buses to the profitable charter side of their operation and away from the regular-route operation. This caused a great deal of complaining from regular-route patrons who resented the cavalier treatment by the bus operators. This was another problem WMATC was never able to control, even though on numerous occasions it issued warnings and orders and conducted investigations into the charter practices of the regular-route operators. The inducement for the regular operators to go after the easier and more plentiful dollars in the charter market was too much for them to resist, even in the face of WMATC displeasure; they took their chances on WMATC's ability to bring any sanction against their violation of its policies and orders.

Taxicab operations had remained, for the most part, under the control of the fragmented regulatory scheme that had existed before the enactment of the compact. WMATC had been given certain limited responsibility with respect to regional taxicab transportation. It was responsible for setting the interstate taxicab rate but not the rates that would apply solely within one or the other of the jurisdictions and for establishing the insurance requirements for taxicabs that would operate across state lines. However, WMATC took no very active interest in the interstate taxicab rates; it simply took the basic rates established by the local regulatory agency for travel within the given jurisdiction and adjusted that basic rate for interstate travel. WMATC thus assumed the role of follower rather than leader and depended on

the local jurisdictions to establish the major part of its own interstate rate. The regulation of taxicabs in the District of Columbia is further fragmented. There are several agencies that have regulatory authority with respect to taxicabs, including the PSC, which establishes rates and issues rules for providing service; the Police Department, which contains a Hacker's Bureau (the on-street enforcement capability for the city); and the Department of Transportation, which issues hackers' licenses and has the responsibility for disciplining hackers and may suspend or revoke licenses for infringement of PSC rules.

There is little, if any, coordination within the region among the various taxicab regulators with respect to policy or rate philosophy. There has never been any attempt among the regulatory agencies responsible for buses and those for taxicabs to coordinate the two transportation modes and to exploit whatever potential there might be for their integration. The relationship of the bus rate to the taxicab rate has never been considered in any of WMATC's rate proceedings concerning bus fares or in any of the rate proceedings before the PSC concerning taxicab fares. There is almost no interchange between the staffs of those two agencies. The PSC does not have on its staff any substantial transportation expertise, and it has never indulged to any great degree in issues of taxicab improvement or change outside its function as a rate setter. Not only are there several agencies involved in taxicab regulation within the city government, but also the Congress itself has been a detailed regulator of the taxicab industry; it is the Congress that has insisted that the District of Columbia taxicabs not be operated under a meter system.

SUMMARY AND CONCLUSIONS

Those who conceived the regulatory scheme to bring about a comprehensive, regional, coordinated mass transit system in the Washington area excluded essential transportation elements from the scheme, built inappropriate protections into the scheme for existing operators, and provided only limited enforcement capability to the responsible regulatory agency.

The regulatory agency created to implement the regulatory scheme was limited in its outlook and in the capabilities of its staff. Its activities were further narrowed by events to a concentration on rate matters to the exclusion of the pursuit of service improvements. Even when its attention was drawn to issues of adequacy of service, it was quite powerless, without the cooperation of the regulated companies, to bring about service improvements.

Those segments of the for-hire transportation operations that came under the most active (though still limited) regulation, i.e., regular-route bus operators, collapsed within a decade. Those that did not, i.e., taxicabs, charter bus operators, and sightseeing companies, survived as private operators.