



Woods Hole, Martha's Vineyard and Nantucket Steamship Authority

LICENSING OF PRIVATE VESSEL TRANSPORTATION SERVICES

SUMMARY OF POLICY

In summary, the policy of the Woods Hole, Martha's Vineyard and Nantucket Steamship Authority (the "Authority") pertaining to the licensing of private vessel transportation services between the mainland and the islands of Nantucket and Martha's Vineyard is as follows:

1. The Authority shall not grant a license for any proposed vessel transportation service between the mainland and the islands unless it is demonstrated that public convenience and necessity require the proposed service.
2. All requests for licenses shall be considered by the Authority on a case-by-case basis, although the Authority herein adopts reasonable policies, principles and standards to guide the exercise of its discretion in appraising the public interest.
3. Before any request for a license is considered by the Members, the management staff shall hold public hearings thereon after due notice is given to all interested parties, and shall provide the Members with a comprehensive analysis as to whether, in the staff's opinion based upon the information received, public convenience and necessity require the proposed service.
4. Each license agreement entered into by the Authority shall specify the routes over which the licensee's vessels may operate, shall contain such terms and conditions as the Authority deems that public convenience and necessity require, shall be subject to revocation for cause, and shall be subject to revision at any time to the extent the Authority finds such action to be in the public interest.

DISCUSSION

In issuing licenses for vessel transportation services, the Authority exercises a wide range of discretion in appraising the public interest and in adopting reasonable policies, principles and standards for its guidance. When particular proposals come before it, the Authority is entitled, in deciding how the public convenience and necessity best will be served, to weigh all relevant aspects of the transportation system between the islands and the mainland and, further, to determine what weight should be given to each relevant factor. The Authority is not obliged to permit or deny any proposed service in any particular manner or by any single formula.

Nevertheless, the principles underlying the Authority's exercise of its licensing powers cannot be understood in a vacuum. To the contrary, it is essential to understand the reasons why the Legislature originally created the Authority -- both the Authority in its present form and the Authority's predecessor, the New Bedford, Woods Hole, Martha's Vineyard and Nantucket Steamship Authority -- and why the Legislature felt it necessary to provide the Authority with a limited monopoly to ensure that the islands are provided with adequate transportation of persons and necessities of life.

A. Historical Background.

The Authority is, of course, a public entity which is deemed to be a public instrumentality and considered similar to a public utility. Its essential governmental function is to provide adequate transportation of persons and necessities of life for the islands of Nantucket and Martha's Vineyard. The Authority's public undertaking is to provide year-round ferry runs and transportation of passengers, vehicles and freight between the mainland and the islands except in cases of emergency or necessity.

The Authority is not designed for profit and, by statute, its tariffs are established to insure only sufficient income to meet the cost of service. Although there is a statutory mechanism to assess the individual communities served by the Authority in the event of an operating deficit, the Authority has not had to invoke that mechanism since 1962. The inherent tension in the Authority's operations is between providing "economical" service while at the same time supporting a program of renewals and replacements of vessels and improvements to shore facilities to maintain the system in proper operating condition.

The Authority was not always the entity which provided transportation service to the islands. For many years until 1945, the New York, New Haven and Hartford Railroad operated the steamship line. However, by the end of the first half of the twentieth century, the railroad simply could not afford to operate the island steamboats anymore, and neglect was the inevitable result. By 1945, when the system was purchased by Massachusetts Steamship Lines, Inc., the operation had been reduced to just two ships, both of which were over twenty years of age. The system's physical plant had seen little upgrading since 1912 and the terminals were reported to be in generally poor condition.

From 1945 to 1948, Massachusetts Steamship Lines rendered reasonably adequate service to the islands with three vessels, but increased operating costs prevented the accumulation of sufficient surplus funds or the earnings of adequate net revenues to support a program of renewals and replacement of vessels or improvements to shore facilities. It soon became apparent that the Massachusetts Steamship Lines, like the railroad before it, could not afford to maintain the system in proper operating condition.

In December 1947, the United States Coast Guard revoked the certificate of the former Hackensack, New Jersey car ferry which the Massachusetts Steamship Lines had purchased and renamed the Islander. After negotiations and repairs, the Coast Guard agreed to restore her certificate, but only on the condition that a definite program be established to state reasonable target dates for replacing the vessel. Nevertheless, attempts to finance the steamship line from private sources of capital failed, creating an emergency which prompted the Legislature to appoint a Commission to study the situation.

In sum, the Commission found that the people on the islands relied upon the steamship line for all food and other supplies, mail and personal contact with the mainland. Indeed, the Commission stated, even though air transportation had been available for a number of years, the island residents continued to look upon water transportation as their life line.

The Commission also recognized that the ferry system which existed at that time was totally inadequate for the islands' needs, and that the system's operational problems were exacerbated by the fluctuating nature of the required service. In this regard, the Commission noted that the peak period of the four summer months generated approximately 85 percent of the total annual passenger and automobile traffic, and that during the remainder of the year a very low traffic volume was experienced.

Faced with the pressing need to assure a permanent, convenient and economical means of transportation for the islands to and from the mainland, the Commission ultimately recommended public ownership and operation of the system in the form of a public Authority. The Commission also found that it was imperative to guarantee the financial strength of the Authority and felt that a key component of the legislation was the granting to the Authority of protection against competition. Specifically, the Commission declared:

"The steamship line must operate in winter, when the revenue is relatively small, as well as in summer, when profits are made. The line, as a public utility, must therefore be protected from the diversion of its trust by casual adventurers in boat operation who would skim off the cream of the summer business and leave the taxpayers and the public to bear the loss of the winter operation, and a provision for such protection has been placed in the proposed bill."

However, the provision for protection from competition referred to by the Commission, and subsequently enacted by the Legislature, was not absolute. The Authority's original enabling act gave the Authority a monopoly over transportation to and from the islands only by vessels of more than 100 gross tonnage and, even then, only while any bonds issued by the Authority remained unpaid. Soon there were water-borne competitors carrying passengers during the busy

summer season, all with vessels under 100 gross tonnage. And as time went on, the number of competing vessels increased and shipbuilders were increasingly able to provide more passenger space with the gross tonnage still under 100.

Although the Authority was charged with maintaining sufficient revenues through its tariff structure, it quickly proved unable to meet the cost of operations out of current revenues. Indeed, from its inception, the Authority ran almost twelve years of constant debt. As a result, the Authority's facilities continued to suffer from deferred maintenance and its fleet was only barely sufficient to meet demand.

In the late 1950s, the Legislature appointed a second Commission to again look at the Authority's situation, and the second Commission found that the problems faced by the Authority in 1959 were no different than those which brought about the downfall of the Massachusetts Steamship Line in the 1940s. For example, the Commission identified the Authority's "over-all problem" as "the recurrence of annual deficits due to increased costs of operation which are not met by adequate revenues," a problem "increased by the highly seasonal nature of the economy of the two islands." The Commission also recognized that the "responsibility of the Commonwealth for insuring adequate transportation to the islands is apparent, since the boat line is the only means of transporting freight and automobiles to the islands and therefore exists as their 'state highway' to the mainland." The Commission declared:

"It has been said that the transportation to the islands is the most expensive in this country. It has also been said that this line is the only monopoly in the world which loses money. Despite the high rates charged, the revenues do not meet the cost of operation, and any increase in rates will, except in automobile transportation, price the Authority out of competition with the airlines and small private carriers. Since virtually everything used on the islands is carried by the Authority vessels, these freight charges add immensely to the cost of living on the islands, year-round. ..."

The Commission then expanded upon its perception of the Authority's purpose:

"The fundamental purpose of the Steamship Authority is 'to provide adequate transportation of persons and necessities of life for the islands of Nantucket and Martha's Vineyard.' The line exists solely as a means of transportation and should be operated in the first instance for the benefit of the island communities which are completely dependent upon it. Since their economy is seasonal, the line should operate as much as possible on a seasonal basis, giving the necessary service in the summer and reducing it to the bare minimum in the winter. As it is clear that the line carries only necessities of life during the winter and since the needs of the islands in this regard have not changed perceptibly for ten years, there is no practical way to increase business or revenues during the eight 'winter' months of the year. The line must make its money, if at all, during the summer, and effect utmost economies during the winter season. Whether the summer revenues can offset the winter losses is problematical."

The Commission continued:

"Unless and until the Authority can operate without incurring an annual deficit, there will exist a continuing threat to the economic life of the island communities. It is not the mere fact of the additional tax rate increase, but the realization that this increase is something over which these communities have absolutely no control and are utterly powerless to prevent, which poses the greatest threat. The attempt by the Authority to reduce the deficit by means of an increase in rates and fares again falls heaviest on the islands, as they are consignees of most of the freight shipments. Either way the islands are in a precarious position. Not only are their costs of living materially increased, but their attractiveness as summer resorts is visibly impaired by the deficit operation of the Authority."

In 1960, as a result of the second Commission's report, the Legislature passed a new enabling act for the Authority which, among other things, eliminated New Bedford as one of the mainland ports from which the Authority was required to operate. The new enabling act continued to grant the Authority a limited monopoly for transportation services by vessels of more than 100 gross tonnage, and it also authorized the Authority to license vessels of that size to engage in competition with it.

In 1973, the Legislature enhanced the Authority's licensing powers over water traffic by amending its enabling act to decrease to 75 the gross tonnage amount of vessels subject to its licensing authority, and by adding an alternative standard -- passenger capacity rating in excess of 40 -- which would subject vessels to the Authority's licensing power irrespective of their gross tonnage. However, the 1973 amendment also created an exemption for the continuance of existing services by vessels (or replacements of similar capacity thereof) which were in service on a daily seasonal basis on or before May 30, 1973, or which were under contract for construction or purchase therefor executed on or before May 30, 1973.

In 1981, the Authority's enabling act was amended again to increase the Authority's powers by requiring all vessels carrying freight or vehicles between the mainland and the islands to be licensed by the Authority irrespective of gross tonnage.

B. The Current Situation.

Importantly, the fundamental economics which prompted the Legislature to create the Authority and grant it a limited monopoly with licensing powers have not substantially changed since 1949. The islands still have highly polarized population dynamics (albeit to a somewhat lesser degree than in the past), and their survival still depends upon the lifeline service which the Authority provides. In this regard, the Authority serves virtually the entire freight transportation needs of both islands, and remains the sole provider of year round marine passenger service to the mainland during the six off-season months.

Two strong indications that the fundamental economics have not changed are (a) the fact that the Authority still continues to lose money at least six months out of every year (November through April); and (b) the fact that all of the "grandfathered" carriers who provide passenger services to the islands in competition with the Authority still are content to operate their vessels only during the tourist season, when it is most profitable to do so, and not during the winter months. Indeed, during those same winter months, the Authority's vessels are only fractionally capacitated themselves, even though they operate on a greatly reduced schedule.

Because the Authority's vessels carry vehicles, trucks and freight on a year-round basis, they also continue to be much more expensive to build and operate than the vessels of the Authority's competitors. The Authority's vessels not only must be larger, provide heat and be able to withstand difficult winter seas, but they also must comply with regulations which require them, among other things, to accommodate the vessels' officers and crew, to maintain lifeboats, and to conform to myriad construction and manning requirements not applicable to the smaller vessels operated by the Authority's competitors.

But unlike the Authority's predecessors, the Authority generally has been an example of a successful and economical governmental enterprise since its new enabling act was passed in 1960. In 1994, even the Urban Harbors Institute of the University of Massachusetts acknowledged that the Authority is the only unsubsidized ferry operation in the country that provides year-round passage for both freight and passengers, and made these following observations:

- "The islands of Martha's Vineyard and Nantucket are served by a ferry system that features outstanding reliability, a high frequency of non-peak service, an ability to handle a very wide range of both cargo and people and that is remarkably adaptive to changes in demand. The island ferry system is one of the few transportation systems on the eastern half of the United States that has kept pace with and essentially met the demand for its services."
- "The Steamship Authority fares and tariffs have not kept pace with the cost of inflation. A ferry trip costs less in 1960 dollars now, than it did in 1960. Real prices to transport passengers, freight haulers and to a lesser extent private autos, have decreased substantially over the past thirty years."
- "The Steamship Authority has not forsaken its most fundamental mission, for in truth the islanders are receiving the best ferry service they have ever had. Ferries run more frequently, are more capacious and operate on a steadier year round basis than ever before. On a constant dollar basis the ferries are cheaper than at any time since the new authority was formed in 1960. Islanders benefit even more since they are eligible for special discount fares. Although it may be somewhat harder to obtain an auto reservation in the peak season than in the past, standby service is now a far more convenient way to get back and forth to the islands. The host communities are also gaining increased secondary benefits from the operation of the ferry services. Aside from an enhancement of their own value as tourist destinations, the ferry system also extends the market for their

retail and service businesses and creates jobs through direct and indirect business stimulation. ..."

The Authority's consistent success belies the persistent difficulties it faces in providing adequate transportation to the islands. Over 75% of the Authority's total passenger traffic, which itself comprises over 1/3 of the Authority's total annual revenues, is carried during the months of May through October, and the Authority's market share of that traffic to the islands has shrunk to the point where, during the summer season, the Authority's competitors carry approximately one out of every three passengers to Martha's Vineyard and one out of every two passengers to Nantucket. Further, even this limited market share is substantially made up of more or less a "captive" audience, since a large portion of the Authority's passengers are those who accompany their automobiles and have no choice but to travel on the Authority's vessels if they want to have their cars on the islands.

If anything, maintaining the very delicate balance which currently exists among the Authority and its "grandfathered" private competitors will prove to be all the more difficult in the future. In 1994, McKinsey & Company, Inc. noted that over the previous decade the Authority's costs have increased at an average rate of 7.6% per year, compared to an average annual inflation rate of 4.4%. To some extent the cost increases were absorbed by (and attributable to) a steady growth in traffic, so the public has not had to bear the full brunt of these cost increases through corresponding increases in tariffs. However, there is every indication that the islands may soon be reaching the saturation point in traffic growth. Accordingly, McKinsey advised the Authority to begin now to identify ways to simultaneously enhance revenues and reduce costs or, McKinsey warned, the Authority's future economic health will be in jeopardy.

Subsequent events have confirmed the wisdom of McKinsey's recommendations. During the 1994 summer season, traffic to the islands continued to increase at record paces and, as a result, there has been an almost unanimous demand from island residents to drastically curb any additional future growth. In addition, island residents have requested that the Authority consider providing them with certain preferences in both rates and deck space availability during the summer season so that they can have better access to and from their homes. They also have suggested that the Authority reduce its parking rates on the mainland to encourage more people to leave their vehicles off island and that the Authority establish an off-site parking facility away from the center of Falmouth to minimize the adverse impact that the parking of such a large number of additional cars would have on that mainland community.

All of the suggestions currently being offered by the island communities for their own survival will, if adopted by the Authority, either negatively impact its revenues or increase its operational expenses, thereby making it more difficult for the Authority to compete against the other existing private carriers. In this environment, the introduction of any new service to the islands would inject an additional measure of instability to the Authority's financial health. If such new service is not required for public convenience and necessity, but instead serves only to siphon off the Authority's summer profits which are needed to offset its continuing winter losses, it would in the long term unnecessarily jeopardize the ability of the Authority to fulfill its statutory mandate of providing a permanent, convenient and economical means of transportation to and from the islands on a year-round basis.

C. Factors Which The Authority Shall Consider When Deciding Whether To Grant Or Deny A License Request.

In light of the Authority's statutory purpose and historical background, the Authority shall not grant a license for any proposed passenger vessel transportation service unless it is demonstrated that public convenience and necessity require the proposed service. Further, all requests for licenses shall be considered on a case-by-case basis, although the Authority herein adopts reasonable policies, principles and standards to guide the exercise of its discretion in appraising the public interest.

The Authority cannot overemphasize the complexity of the task it faces in evaluating and balancing the numerous considerations that collectively determine where the public interest lies in a particular situation. The Authority's statutory mandate is not a set of self-executing principles which inevitably point the way to a clear result in each case. On the contrary, those principles often overlap and may, in many instances, conflict. What follows is a summary of the policies, principles and standards the Authority shall apply when evaluating individual license requests.

1. The Authority must make certain that the islands are always provided with adequate transportation.

There should be no mistake in anyone's mind that the Authority's paramount interest is to ensure that the islands of Martha's Vineyard and Nantucket are provided with adequate transportation of persons and necessities of life on a year-round basis. The island economies are and will continue to be strongly affected by the cost of their transportation service to and from the mainland, whether it is paid for entirely through passenger, freight and automobile rates or through a combination thereof. Either inadequate service or unnecessarily expensive service will jeopardize their future. Frequency and reliability of service are still the key to their stability and well-being. Accordingly, the interest of the islands is paramount and must be the overriding consideration in evaluating the Authority's exercise of its licensing powers, present and future.

Obviously, when evaluating license requests, the Authority has to be sensitive to the needs of those persons who will be potentially affected by a proposed service. Therefore, the Authority shall consider whether there has been an expressed need for a proposed service by its potential patrons and the communities which would be served by it, especially when the service will be operating from a new port. For example, if an applicant contends that the new route will increase the market of ferry patrons instead of siphoning off other carriers' passengers, its prospects of obtaining a license would be enhanced if objective market research confirmed that an unsatisfied demand existed for the service, or identified how public convenience and necessity otherwise will be served by the service. In this regard, the Authority notes that it will not be bound by narrow definitions of "public convenience and necessity" and "need"; rather, it shall weigh all relevant aspects of the proposed service to the extent appropriate in each individual case when determining whether there is in fact a "need" for the service and whether "public convenience and necessity" require it.

In deciding whether existing service satisfies the public convenience and necessity, the Authority may rely on evidence indicating a demand for service which is not provided over current routes. Such evidence may be presented in a variety of ways. For example, customers of the existing routes may be called upon to identify deficiencies in the current level of service and explain why they might more conveniently be served by the proposed new service.

In any particular case, the evidence may reveal a recognizable group of potential new passengers who would patronize an interesting new service offered by a carrier, particularly if it provided a unique cultural and educational experience to the public. On the other hand, the evidence may show that the service currently afforded the traveling public by existing grandfathered and licensed carriers is adequate and satisfactory to take care of present day needs. The issue will not be whether the existing carriers' service meets some absolute standard of performance, but whether the public convenience and necessity would be served by the entry of new carriers into the marketplace.

The Authority shall also look at each island's transportation requirements as a whole when evaluating whether the islands are being provided with "adequate" transportation. The necessity and convenience of a particular neighborhood or town, although invariably important, must always be considered in light of the needs of the larger general public or each island.

In this regard, it is important to emphasize that providing a safe, efficient, economical and reliable means of transportation to and from the islands is akin to a fiduciary obligation and that there are a number of reasons why a public entity, as opposed to a private one, should be the one to undertake such a responsibility. For example, a private entity, because it is required to make a profit for the benefit of the individual entrepreneurs and investors, will generally charge higher tariffs than a well-managed public Authority, whose surpluses are considered trust funds for the public and reinvested in the enterprise. Also, by statute, the Authority's tariffs are established to insure only sufficient income to meet the cost of the service, while the pressure in private business generally is to charge as much as the market will bear. Presently, the Authority must constantly re-evaluate its ability to provide year-round transportation services to the islands at a price which residents -- not tourists -- can afford. By contrast, private businesses generally evaluate their ability to provide seasonal service at a price which tourists -- not residents -- will pay.

Also, a public transportation system generally provides much more stability than that created by private companies, who are free to abandon their routes or go out of business with little or no advance notice, and whose employees are free to strike and thereby disrupt the entire transportation network. Unlike mainland communities, which have a virtually unlimited number of alternative means to obtain their goods and services, the islands rely on only a few carriers for all of their transportation needs. The demise of any one of them would, in the short term, create a serious emergency and, in the long term, leave a void which would be difficult and expensive to fill.

This does not mean that all marine transportation to and from the islands must be provided by the Authority or that passenger service must never be allowed to originate from ports other than those already in existence. There may, in fact, be some instances where the

public interest will be served by licensing a private carrier to operate on a certain route which the Authority does not serve. Nevertheless, the emphasis must clearly remain on providing for the needs of the islands, with due consideration for the concomitant burdens thereby placed upon the mainland port communities. In no event should the emphasis be allowed to shift to that of serving the needs or desires of private entrepreneurs and investors at public expense or subsidy.

2. The Authority must make certain that additional licensed services do not adversely affect its financial situation.

Charged by statute to provide the necessities of life to the islands on a year-round basis, the Authority can only fulfill this duty if it is financially sound. In this regard, the major impediment to the Authority's financial health was identified by the first Commission appointed by the Legislature in 1947. To provide the necessities of life on a year-round basis, it is crucial for the Authority to generate substantial revenues during the summer tourist season to defray the deficits which must be incurred during the winter months of the year when it is not profitable to operate a boat line to the islands.

The obvious problem is that the period when the Authority must generate revenues to offset off-season losses is the same period in which potential traffic is most attractive to the Authority's competitors. Therefore, the Authority's interests and the interests of its competitors are almost always at odds, since they all want to appropriate for themselves as much of the profitable tourist season passenger business as possible. The difference, of course, is that private competitors "skim off" this lucrative "cream" for their own benefit, while the Authority uses the revenues to fund its unprofitable winter month operations.

As stated before, the fundamental economics of the vessel transportation business for the islands have not substantially changed since 1949. The Authority still is required to meet a large amount of fixed costs and expenditures which do not burden its commercial competitors as a result of its burden of maintaining year-round service to the islands. The Authority is also required to use larger, ferry-type vessels and employ union labor within strict Coast Guard regulations.

Although some might feel that more competition may be an effective means to bring about improved service from the Authority, the more probable result would be the opposite, because the Authority would be less likely to have the financial resources to acquire modern vessels or engage in needed capital improvements to improve its service. Further, it has been observed that no matter how good the Authority's service may be, summer tourists generally prefer the competitors' passenger-only ferries, which can be slightly faster than the Authority's vessels and are unencumbered by the confusion and delay which are inherent in the loading and unloading of trucks and automobiles. Accordingly, the Authority's continued protection against competition is both necessary and appropriate to ensure the Authority's financial health, which is essential for the public interest.

Whenever the Authority is presented with a request for a license, it shall first consider whether adequate service already is being provided and, if not, whether the additional service should be provided by the Authority instead of a private carrier. If the answers to both of these questions are in the negative, the Authority shall then ask whether the service, if provided by a private competitor, would have an adverse financial impact on the Authority.

In this regard, it should be noted that the Authority's vessels currently have substantial excess passenger capacity -- as opposed to vehicle capacity -- at all times of the year. Therefore, each passenger lured away from using the Authority's services by a competitor represents a direct loss of revenues without any corresponding decrease in costs. For this reason, the Authority would be concerned about licensing any new passenger service (or any expansion of an existing passenger service) that was wholly dependent upon carrying passengers who otherwise would travel on the Authority's vessels. In such a situation, the existence of the licensed service would inevitably require the Authority to raise its tariffs, since the Authority's fixed costs would necessarily have to be paid for by fewer patrons.

In this context, one realizes that the proliferation of additional passenger services, without a corresponding increase in the market, leads to increased tariffs and is, as much as some may not care to admit it, inherently elitist. Simply put, any increase in passenger ferry tariffs shrinks the number of ferry users who can afford to pay those tariffs, and the users who are the most likely to be left out are those who need the ferries most -- the islands' residents. Thus, if a private carrier desires to provide a service which would do nothing more than siphon off Authority passengers, appropriate measures must be taken to guarantee that those who use the new service alone pay for it, instead of having the additional cost of the service distributed among the Authority's remaining patrons.

This does not mean that the Authority necessarily should deny all new requests for licenses, since there may be situations where the Authority's financial position can be adequately protected by requiring the carrier to pay an appropriate license fee to compensate the Authority for its lost revenues. In any such case, the Authority shall attempt to estimate its maximum potential exposure, although it is always free to assume that only a portion of the carrier's anticipated passengers would ride the Authority's vessels if the new service were not available. Obviously, the number of passengers who may be diverted will not be able to be ascertained with precision; but the consistent principle is that the Authority's financial health must be protected, and the carrier should be precluded from profiting at the Authority's expense by means of diverting its patronage.

3. The Authority also shall consider the financial health of the "grandfathered" services when evaluating license requests.

The Authority is also acutely aware of the fact that while the Legislature increased the Authority's monopoly power over a period of years, it also saw fit to exclude from the Authority's control those private carriers who had already established an ongoing business and made substantial capital improvements. The legislative scheme thus balanced the Authority's need to preserve its financial health in light of its duty to provide year-round service against the

need of existing commercial enterprises to maintain their operations outside of the Authority's control.

For better or worse, a sort of "peaceful co-existence" has developed among the Authority and these "grandfathered" competitors over the years. On the one hand, the Authority has focused on what it does best and what its vessels are designed for, namely, carrying a combination of trucks, cars and passengers on a year-round schedule geared to the long range economic needs of the island communities. On the other hand, the Authority's competitors have focused on what they do best and what their vessels are designed for, namely, the carrying of passengers on a convenient summer schedule geared to the short range needs of the passengers they serve -- primarily tourists and not island residents.

There is little doubt that the limited services provided by the grandfathered carriers are a necessary adjunct to the Authority's service during the summer months. Indeed, if any of those carriers were to go out of business, the Authority would be hard pressed to acquire the extra facilities which would be needed to carry all the additional passengers who otherwise would have been its competitor's patrons. The island economies also would suffer from the decrease in daily summer visitors. Therefore, the grandfathered carriers have become an integral part of the transportation system to the islands, and their continued existence is an important objective to ensure that the islands are provided with "adequate" transportation during the busy summer seasons.

For these reasons, the Authority also shall consider the public interest in maintaining the health and stability of the existing grandfathered carriers when evaluating license requests, so that the public will be assured of being provided with a healthy system of ferries to which they may resort to get back and forth to the islands. If the Authority believes that additional service is necessary to provide adequate transportation to the islands, but nevertheless chooses not to provide the service itself, it shall assess the willingness and ability of grandfathered carriers to do so.

In this regard, the Authority notes the argument recently made by the grandfathered carriers that, in order to provide the revenues necessary to meet their increasing costs of operation, the grandfathered carriers may need licenses from the Authority to carry additional passengers beyond their grandfathered levels of service. At the moment, the Authority does not possess sufficient information upon which to base an opinion as to the merits of that argument, but acknowledges that, in the event a grandfathered carrier were to request a license for an expansion of its service, one of the factors the Authority would consider when deciding whether or not to grant the license is whether it is necessary to maintain that carrier's health and stability. However, when making such a request for a license on that basis, the grandfathered carrier should be prepared to provide the Authority with its financial statements to demonstrate that such an expansion is necessary to maintain its financial health.

Similarly, the Authority shall protect, insofar as appropriate, the grandfathered carriers against any proposed competing service that would injuriously affect their revenues and possibly result in increased fares and inferior service to the public. In this regard, the Authority shall consider whether the route of the proposed service is similar to that of an existing route and

whether the granting of a license would place the new carrier in direct competition with a grandfathered carrier. In the maintenance of a healthy transportation network, "more is not necessarily better." Additional service which duplicates another existing route could undermine the existing carrier to the extent of possibly forcing it out of business. Then, if the new service proves unsuccessful as well, the community which was once served by two carriers could conceivably find itself without any service from either.

Nevertheless, the Authority may conclude that consumer benefits accruing from a proposed new service outweigh any adverse impact upon the grandfathered carriers. In this regard, no carrier, grandfathered or otherwise, should be entitled to protection from competition in the continuation of a service that fails to meet a public need or is not a well run operation; nor, by the same token, should the public be deprived of a new and significantly improved service because it may divert some traffic from other carriers. This would be particularly true if a new carrier were able to demonstrate that it could provide another service with greatly reduced rates than those currently charged by the grandfathered carriers.

4. Traffic growth is a concern that the Authority shall consider when evaluating license requests.

Over the past several years, the call has become increasingly louder from both islands for the Authority to limit what has heretofore been a persistent growth of vehicular traffic during the busy summer seasons, and a consensus has begun to emerge that such growth, if unchecked, will negatively impact the quality of life for both permanent and seasonal island residents. Although some persons may desire a more extended discussion of this subject, suffice it to say that the Authority shall not, for the foreseeable future, license any private carriers to transport any vehicles to the islands. To the extent it is warranted and possible, all such vehicle service shall continue to be provided by the Authority alone.

The same concerns apply, albeit to a more limited extent, to the concurrent growth in passenger traffic that the islands have experienced over the past years. Although this growth shall not by itself bar attempts by private carriers to provide additional passenger service if it is demonstrated that public convenience and necessity require it, there is little question that a further influx of daily visitors would result in the diminution of the enjoyment of the islands by the many thousands of year-round and summer residents who constitute the mainstay of the islands' business communities. Further, passengers who travel without their automobiles still may significantly contribute to the traffic congestion on the islands, since many rent vehicles or mopeds once they arrive there. Accordingly, the Authority rejects the notion that private carriers should be able to carry as many tourists to the islands "as the market will bear." Nor should they be free to operate whenever, wherever and how often they please, even if they are willing to pay substantial license fees to do so.

5. The Authority shall not grant any license request unless the carrier demonstrates that it is able to provide the proposed service.

The Authority also shall not grant any license request unless the carrier who desires to provide the proposed service demonstrates that it is fit, willing and able to do so. In this regard, the Authority shall evaluate the carrier's existing facilities and vessels, its financial condition (including its capitalization and credit rating), its management and training practices, its compliance with previous license agreements entered into with the Authority (or, if no agreements previously have been entered into, its previous compliance with the Authority's licensing powers), its personnel policies, past history of reliability and safety record to determine whether the carrier is able and should be entrusted to undertake a long-term, successful operation. The Authority also shall analyze the economics of the proposed service, including but not limited to the length, frequency and timing of trips, the projected cost of the service and proposed tariffs, market forecasts, the vessels' capacities and manning levels, and all the other elements necessary to develop a pro forma income and loss statement pertaining to the proposed service.

Perhaps the most criticized aspect of the Authority's previous licensing policy was the Authority's requirement that a proposed route be the subject of competitive proposals after the original proponent of the service has invariably expended considerable time and energy developing support for it. The Authority agrees that there were problems with this approach in certain situations and that it discouraged investment in new private ferry routes which public convenience and necessity may warrant. Therefore, the Authority shall hereafter issue requests for competitive proposals only for already existing ferry routes which, for one reason or another, are abandoned by their carriers. By contrast, if an applicant develops a proposal for a new service and demonstrates to the Authority both that the public convenience and necessity require the service and that the applicant is fit, willing and able to provide it, that route shall not then be put out for competitive proposals. The evaluation process used by the Authority to assess the license request should be more than sufficient scrutiny.

6. The Authority shall consider the localized physical impacts of any proposed new service.

When evaluating license requests, the Authority always shall consider what local impacts the proposed service would have on all the affected communities. Issues such as traffic congestion, pedestrian safety, parking, harbor use, potential neighborhood conflicts and environmental impacts shall be addressed and answered before -- not after -- the Authority approves a new service.

Importantly, these local impacts will not be confined to the immediate area which will be served by a proposed new route. For example, a new route operating out of a town or village which previously did not have any ferry service may divert passengers from an already existing port, thereby reducing traffic congestion and parking problems there. In such a situation, the local impacts on both areas shall be evaluated to determine whether the proposed new service is required by the public interest.

D. All License Agreements Entered Into By The Authority Shall Contain Adequate Provisions To Protect The Public Interest.

When the Authority decides in any particular case that the granting of a license is required by public convenience and necessity, the license agreement entered into with the carrier shall contain such provisions as are necessary to protect the public interest. In some situations a carrier may demonstrate to the Authority's satisfaction that good cause exists for not including certain provisions in its license agreement which the Authority otherwise may feel are necessary to protect the public interest. Nevertheless, in the absence of such good cause, such provisions generally should include, as they have in the past, the following:

1. A description of the licensed route and an agreement by the carrier not to otherwise operate its vessels between the mainland and the islands unless licensed by the Authority to do so.
2. A specification of the vessels which will be used by the carrier to provide the service.
3. A specification of the capacity of each vessel with respect to both passengers and bicycles.
4. A description of the period of time when the vessels are permitted to operate.
5. A specification of the vessels' schedule of arrivals and departures, with any change thereto subject to the Authority's approval, and an agreement by the carrier that the Authority may require the carrier to change its schedule so as not to conflict with the Authority's schedule.
6. A prohibition against the carriage of vehicles or freight by the carrier.
7. An acknowledgment by the carrier that the license agreement does not authorize it, either directly or indirectly, to use any of the Authority's facilities in any way.
8. A provision requiring the payment of license fees to the Authority, with one or more initial lump sum payments.
9. A requirement that the carrier provide the Authority with periodic reports as to the number of passengers carried on a trip-by-trip basis, as well as periodic gross revenues and ticket sales reports.
10. A specification of the fares which will be charged by the carrier.
11. An acknowledgment by the carrier that the Authority may terminate the license if the service adversely affects its ability to fulfill its statutory responsibilities.

12. A warranty by the carrier that the vessels will be operated with all necessary permits, licenses and approvals of federal, state and local authorities.
13. A warranty by the carrier that the vessels shall be accessible to, functional for, and safe for use by physically handicapped persons.
14. A provision allowing the Authority to terminate the license at any time for cause and an agreement by the carrier to cease providing its service promptly thereafter.
15. A requirement that no person shall be permitted to smoke in or upon the vessels, in compliance with applicable law.
16. An agreement that the license may not be assigned.
17. An agreement by the carrier to reimburse the Authority for any expenses incurred by the Authority that are directly related to the carrier's provision of the service.
18. An agreement by the carrier not to hold itself out as an agent or partner of the Authority in providing the service.
19. A requirement that the carrier comply with all laws of The Commonwealth of Massachusetts relating to taxes.

In the absence of good cause shown by a carrier, certain additional provisions shall also be included in every license agreement to address other issues which have arisen since the Authority's standard form of license agreement was drafted in the 1980s. These additional provisions are as follows:

1. A provision requiring the carrier to conform to such instructions given by the harbor master of each port served by the service with respect to the speed and operation of its vessels, having due regard to the safety of the public and the use of the water by others.
2. A provision requiring the installation of appropriate marine sanitation devices on the carriers' vessels to prevent the pollution of harbors due to the discharge of waste into the water.
3. A provision requiring the carrier to carry an appropriate amount of lifesaving and firefighting equipment on its vessels.
4. A provision requiring the carrier to carry a minimum amount of liability insurance to protect the public in the event of accident or injury.
5. A provision requiring the carrier to report to the Authority all accidents in which it is involved resulting in loss of life or serious personal injury or considerable property damage.

Finally, in considering how long the initial term of the license should be, the Authority shall consider the amount of instability which the new service will inject into the delicate balance that has proven successful in providing adequate transportation to the islands to date. However, that concern must be balanced against the carrier's need for a term which is long enough to justify its initial capital expenditures and financial commitments and which allows it to obtain necessary financing for the service. In this regard, the Authority notes that any concern it may have regarding the new service's impact on the Authority's financial situation may be alleviated by making all licenses subject to revision by the Authority at any time to the extent the Authority finds such action to be in the public interest.

E. The Authority Shall Follow Certain Procedures In Order To Ensure That All License Requests Are Fairly Considered.

As stated at the beginning of this policy document, the Authority shall consider on an individual basis each and every request by a private carrier for a license to provide a vessel transportation service. However, the procedure for evaluating each of those requests shall follow a similar format, so that every person who has a legitimate interest in each matter has an opportunity to be heard and the Authority is ensured of having sufficient information before it upon which to base a fair and informed decision.

1. Procedures for evaluating a request for a license to provide a passenger Vessel Transportation service.

The procedures for considering a request for a license for any **passenger** vessel transportation service shall be as follows:

1. A private carrier interested in providing a new passenger vessel transportation service (or an expansion of an existing service) between the mainland and the islands shall initiate the proceedings by submitting a written application to the Authority's General Manager for a license to do so. Except for good cause shown, the carrier should include with that application at least the following information:

- (a) A description of the proposed service, including the ports that will be served and the carrier's anticipated schedule and tariffs;
- (b) Identification of the vessel(s) by which the carrier intends to provide the service, together with copies of the United States Coast Guard certificates of such vessels;
- (c) Identification of the shore facilities which will be used by the carrier to provide the service;
- (d) Identification of the individuals who have an ownership interest in the carrier and, if applicable, a copy of the carrier's articles of organization;

- (e) Copies of the carrier's financial statements for the three most recent fiscal years and a pro forma profit and loss statement for the service;
- (f) A description of the carrier's past business record and any further information which the carrier would like the Authority to consider when evaluating whether the carrier is fit, willing and able to provide the service;
- (g) The results of any market research engaged in by the carrier pertaining to the service; and
- (h) Any information which the carrier would like the Authority to consider when evaluating whether public convenience and necessity require the proposed service, including but not limited to statements of support by public officials and community organizations.

2. After receiving the above information, the General Manager shall promptly schedule a meeting between the carrier and the staff so that the parties can have a preliminary discussion about the merits of the application and can identify any further information which the staff would like to receive from the carrier pertaining to the request. The staff shall also conduct such preliminary investigation regarding the application (including but not limited to examining the books, records and accounts of the carrier and conducting site visits of the carrier's facilities and vessels) as the staff deems necessary and appropriate to verify the information submitted and ultimately confirm whether the carrier is in fact fit, willing and able to provide the service.

3. Promptly after the staff concludes its preliminary investigation, the General Manager shall schedule a public hearing on the application in each of the ports served by the proposed service. Notice of such hearings shall be published, at the carrier's expense, in at least one newspaper published in each of the towns of Falmouth and Nantucket and the county of Dukes County once a week for at least two consecutive weeks, the last publication to be at least one week before the time specified for the hearings. (If the proposed service is to operate from a mainland port other than Falmouth, the notice must be published in a newspaper which is published in that other community as well.) Copies of the notice also must be mailed directly to each carrier then providing seasonal service to the islands, to local public officials (including the local planning agencies) of the ports served by the proposed service, and to such other interested persons selected by the General Manager. In addition to describing the reason for the hearings and stating the time, date and place thereof, the notice shall inform the public of the availability of all documents submitted by the carrier in support of its application for inspection at the Authority's General Offices during regular business hours.

4. At the hearings, the staff shall allow anyone to be heard if he or she can show that he or she may be substantially and specifically affected by the proposed service, and shall allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose. The staff may request the carrier to provide any further information it feels to be appropriate as a result of issues raised at the hearings and may also, if the staff considers it necessary, schedule an additional hearing date.

5. After the hearings, the staff shall provide the Members with a comprehensive analysis as to whether, in the staff's opinion based upon the information received, the carrier has sustained its burden of demonstrating that (a) the service is required by public convenience and necessity, and (b) the carrier has the fitness and ability to provide the proposed service. In making its recommendation to the Members, the staff shall be free to consider a broad range of factors and should recommend such terms and conditions to be included in any proposed license agreement as in its judgment public convenience and necessity require. The staff shall also forward copies of its analysis to all of the other carriers at the same time it is forwarded to the Members.

6. Upon receipt of the staff's analysis and recommendation, the Members shall consider the carrier's license request at a duly constituted public meeting. The Members shall not be bound by the staff's recommendation or analysis, shall be free to approve or deny the request for reasons which they believe to be in the public interest, and shall be able to approve any request upon such terms and conditions which they feel are necessary and appropriate to protect the public interest.

2. Procedures for evaluating a request for a license to provide a freight vessel transportation service.

A private carrier interested in providing a new **freight** vessel transportation service (or an expansion of an existing service) between the mainland and the islands shall also follow the procedures set forth above pertaining to requests for licenses to provide passenger vessel transportation services. However, if the General Manager receives an application for a license from a private carrier to transport handheld or incidental freight and, if such a license were granted, the carrier would still derive no more than \$50,000 per year in gross revenues from transporting freight to and from the islands, the General Manager may give permission to the carrier in writing so to transport such freight without requiring the carrier to go through steps 3 through 6 of the above procedures, provided that:

1. The General Manager states in writing the reasons why, in his or her opinion, public convenience and necessity require the proposed service;
2. The General Manager states in writing the reasons why, in his or her opinion, the proposed service will not have any anticipated adverse effect on the Authority's operations and financial condition;
3. The permission shall be granted subject to such terms and conditions as the General Manager deems that public convenience and necessity require;
4. The permission granted shall not be for a period exceeding one year; and
5. The Members are provided with a draft of the document which is to contain the General Manager's permission at least ten (10) business days before it is given to the applicant and, at the expiration of the aforesaid ten (10) business days, the

General Manager has not received any objections from any of the Members to the provisions of the draft document.

F. The Authority Shall Follow Certain Procedures When Considering The Renewal Of License Agreements.

1. **Definitions.**

(a) **Request for Renewal of License Agreement.**

For the purposes of this policy, a carrier shall be considered as requesting a renewal of its license agreement with the Authority if its request does not present a material change in any of the following aspects of its previously licensed service:

- (i) the ports served by the carrier;
- (ii) the carrier's schedule;
- (iii) the carrier's tariffs (adjusted for inflation);
- (iv) the vessel(s) used by the carrier to provide the service;
- (v) the shore facilities used by the carrier to provide the service; and
- (vi) the individuals who have an ownership interest in the carrier.

Any request which presents a proposed material change in any one or more of the above aspects of a previously licensed service shall not be considered a request for renewal of such service. Instead, it shall be considered a request for a new license and shall be considered by the Authority under the provisions of Part E of this Policy.

(b) **General Manager.**

Whenever this Policy requires any actions, analyses or recommendations to be taken, conducted or made by the General Manager, the General Manager may, but is not required to, delegate the responsibility therefor to any one or more other employees of the Authority.

2. **Procedures.**

The Authority shall consider on an individual basis each and every request by a private carrier for a renewal of a license previously granted by the Authority to provide a vessel transportation service. The procedures for considering a request for a renewal of such a license shall be as follows:

- (a) A private carrier interested in renewing its license to provide a vessel transportation service between the mainland and the islands shall initiate the proceedings by submitting a written application to the Authority's General Manager for such a renewal.
- (b) After receiving the above application, the General Manager shall promptly schedule a meeting with the carrier so that the parties can have a preliminary discussion about the merits of the application and can identify any information which the General Manager would like to receive from the carrier pertaining to the request. The General Manager shall also conduct such preliminary investigation regarding the application (including but not limited to examining the books, records and accounts of the carrier and conducting site visits of the carrier's facilities and vessels) as he deems necessary and appropriate to verify the information submitted and ultimately confirm whether the carrier is in fact still fit, willing and able to provide the service.
- (c) Promptly after the General Manager concludes his preliminary investigation, the General Manager shall publish notices of the carrier's request, at the carrier's expense, in at least one newspaper published in each of the towns of Falmouth and Nantucket and the county of Dukes County once a week for at least two consecutive weeks. (If the service operates from a mainland port other than Falmouth, the notice must be published in a newspaper which is published in that other community as well.) Copies of the notice also must be mailed directly to each carrier then providing seasonal service to the islands, to local public officials (including the local planning agencies) of the ports served by the proposed service, and to such other interested persons selected by the General Manager.
- (d) The above-published notice shall describe the reason for the notice, shall request comments from the public regarding the carrier's application, shall state the deadline by which such comments must be received by the Authority (which may not be sooner than fourteen (14) days after the date of the first publication of the notice in each of the newspapers), and shall inform the public that the carrier's current license agreement, as well as all documents submitted by the carrier in connection therewith and in support of its application, are available for inspection at the Authority's General Offices during regular business hours.

- (e) After expiration of the deadline for receiving comments from the public, the General Manager may request the carrier to provide any further information he feels to be appropriate and may also, if the General Manager considers it necessary, schedule one or more public hearings on the application with such notice as he deems appropriate.
- (f) The General Manager shall then provide the Members with an analysis as to whether, in his opinion based upon the information received, the carrier has sustained its burden of demonstrating that (i) the service is still required by public convenience and necessity, and (ii) the carrier still has the fitness and ability to provide the service. In making his recommendation to the Members, the General Manager shall be free to consider a broad range of factors and should recommend such terms and conditions to be included in any renewal of the carrier's license agreement as in his judgment public convenience and necessity require. The General Manager shall also forward copies of his analysis to all of the other carriers at the same time it is forwarded to the Members.
- (g) Upon receipt of the General Manager's analysis and recommendation, the Members shall consider the carrier's request for a renewal of its license at a duly constituted public meeting. The Members shall not be bound by the General Manager's recommendation or analysis, shall be free to approve or deny the request for reasons which they believe to be in the public interest, and shall be able to approve any request upon such terms and conditions which they feel are necessary and appropriate to protect the public interest.