

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9308

IN THE MATTER OF:

Served February 8, 2006

Application of TRANSPORTATION)
CENTERS, INC., WMATC No. 255,)
to Acquire Assets from FAIRFAX)
COACH LINES, INC., Trading as)
FAIRFAX COACH, WMATC No. 452)

Case No. AP-2005-116

FAIRFAX COACH LINES, INC., Trading)
as FAIRFAX COACH, Suspension and)
Investigation of Revocation of)
Certificate No. 452)

Case No. MP-2005-35

By application accepted for filing July 28, 2005, Transportation Centers, Inc. (TCI), WMATC Carrier No. 255, seeks Commission approval to acquire a substantial part of the property of Fairfax Coach Lines, Inc., trading as Fairfax Coach (Fairfax), WMATC Carrier No. 452.

Certificate No. 452 has been suspended since March 27, 2005, due to Fairfax's noncompliance with the Commission's insurance requirements.

Notice of the application was published by the Commission in Order No. 8935 on September 2, 2005, and by applicant in a newspaper of general circulation in the Metropolitan District on September 9, 2005. The application is unopposed.

I. APPROVAL OF ACQUISITION

Under Article XII, Section 3(a)(ii) & (c), of the Compact, the Commission may approve the application of one WMATC carrier to purchase a substantial part of the property of another WMATC carrier if the Commission finds the transaction to be in the public interest. The public interest analysis focuses on the applicant's fitness, the resulting competitive balance and the interests of affected employees.¹

The application indicates Fairfax discontinued operations last year because of financial difficulties and subsequently agreed to sell all of its assets, including two minibuses, to TCI. TCI proposes operating the two minibuses, along with the nine vehicles it already possesses, under a proposed charter tariff.

¹ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at D.C. CODE § 9-1103.04 (2005)); *In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd. & Tourtime America Motorcoach, Ltd.*, No. AP-96-21, Order No. 4926 (Sept. 12, 1996).

The Commission finds the proposed acquisition consistent with the public interest for the following reasons.

First, an existing WMATC carrier is entitled to a presumption of fitness.² There is nothing in the record to rebut that presumption in this case.

Second, the primary concern when assessing the effect of a transfer on competition is whether the transfer will increase the acquiring party's market share.³ Transactions which do not increase market share give little pause for concern, and the Commission will approve even those transactions which tend to increase market share as long as there is sufficient post-transaction competition to check any adverse effects that such transactions otherwise might produce.⁴ The charter market in the Metropolitan District is comprised of well over one hundred WMATC carriers that collectively operate approximately 2000 vehicles. Adding Fairfax's two minibuses to TCI's existing fleet of nine vehicles will not appreciably increase TCI's market share.

Third, applicant avers under oath that at the time the agreement was struck, Fairfax had no employees other than its president/owner.

II. REVOCATION OF CERTIFICATE NO. 452

Fairfax's agreement to sell all of its assets to TCI perforce includes Certificate No. 452, which was automatically suspended on March 27, 2005, pursuant to Regulation No. 58-02, for Fairfax's willful failure to maintain on file with the Commission proof of \$5 million in combined-single-limit, motor vehicle liability insurance as required by Commission Regulation No. 58. Order No. 8615, served March 29, 2005, noted that Certificate No. 452 would be subject to revocation if respondent failed to file the necessary WMATC Insurance Endorsement(s) within thirty days. Fairfax has yet to comply.

Upon satisfaction of the conditions of approval stated below, Certificate No. 452 shall stand revoked.⁵ The Commission has approved a transfer of suspended authority in the past under similar circumstances.⁶

² *In re Executive Coach, Ltd., & Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver*, No. AP-02-75, Order No. 6797 (Sept. 3, 2002).

³ *In re Mobile Care Specialty Transportation, Inc., t/a Mobile Care, & Ironsides Transport, Inc., & Mobile Care, Ltd.*, No. AP-01-10, Order No. 6178 (Apr. 9, 2001).

⁴ *Id.*

⁵ See *In re Tri State Casino Tours, Inc., & D.A.Y. Enters., Inc., & New World Tours, Inc.*, No. AP-95-36, Order No. 4670 (Sept. 29, 1995) (revoking merged certificate); *In re Carey Limo. D.C., Inc., & ADV Int'l Corp., t/a Moran Limo. Serv.*, No. AP-94-53, Order No. 4499 (Feb. 16, 1995) (same).

⁶ *E.g., In re Laidlaw Transit (Virginia) Inc., & Williams Bus Lines, Inc.*, No. AP-96-46, Order No. 4957 (Oct. 24, 1996) (suspended certificate transferred on condition transferee comply with insurance requirements).

THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-2005-116 and MP-2005-35 are hereby consolidated pursuant to Commission Rule No. 20-02.

2. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 255 shall be reissued to Transportation Centers, Inc., 2800 Gallows Road, Vienna, VA, 22180, and Certificate No. 452 shall stand revoked.

3. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 255 has been reissued in accordance with the preceding paragraph.

4. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) Certificate No. 452.

5. That the approval herein shall be void, and the application shall stand denied, upon applicant's failure to timely satisfy the conditions herein prescribed.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER, AND SMITH:



William S. Morrow, Jr.
Executive Director

