

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,445

IN THE MATTER OF:

Served May 3, 2007

Application of VEOLIA TRANSPORTATION)  
SERVICES, INC., to Merge with )  
YELLOW BUS SERVICE, INC., Trading )  
as YELLOW TRANSPORTATION, WMATC )  
No. 280 )

Case No. AP-2007-001

Application of VEOLIA TRANSPORTATION)  
ON DEMAND, INC., to Acquire Control )  
of WASHINGTON SHUTTLE, INC., )  
Trading as SUPERSHUTTLE, WMATC )  
No. 369 )

Case No. AP-2007-006

Veolia Transportation Services, Inc., (VTS), has applied in Case No. AP-2007-001 for Commission approval under Article XII, Section 3(a)(i), of the Compact, to merge with Yellow Bus Service, Inc., trading as Yellow Transportation, WMATC Carrier No. 280. If the application is approved, VTS proposes conducting operations under WMATC Certificate of Authority No. 280.

Veolia Transportation On Demand, Inc., (VTOD), has applied in Case No. AP-2007-006 for Commission approval under Article XII, Section 3(a)(iii), of the Compact, to acquire control of Washington Shuttle, Inc., t/a SuperShuttle, WMATC Carrier No. 369.

**I. SCOPE OF ARTICLE XII, SECTION 3**

Under Title II of the Compact, Article XII, § 3(a): A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to

- (i) consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District;
- (ii) purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or
- (iii) acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

Section 3(a)(i) applies to the application filed in Case No. AP-2007-001 in that VTS is seeking approval to statutorily "merge" the ownership, management, and operation of its property with Yellow

Transportation, "a carrier that operates in the Metropolitan District."<sup>1</sup>

Section 3(a)(iii) applies to the application filed in Case No. AP-2007-006 in that VTS and VTOD are both subsidiaries of Veolia Transportation Inc., and approval of both applications would result in Veolia Transportation Inc., controlling, through ownership of stock, two WMATC carriers, VTS directly and Washington Shuttle, Inc., t/a SuperShuttle, indirectly through VTOD.<sup>2</sup>

The Commission may approve an application under Article XII, Section 3, if it finds that the proposed transaction is consistent with the public interest.<sup>3</sup> The public interest analysis focuses on the fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.<sup>4</sup>

## II. CONSOLIDATION

Under Commission Rule No. 20-02, the Commission, upon its own motion or upon motion by a party or staff counsel, may order proceedings involving a common question of law or fact to be consolidated for hearing or for determination of any or all the matters at issue in such proceedings.

As noted above, the Commission must determine whether approving these applications is in the public interest, and the public interest test is the same for both applications. We shall therefore consolidate these two applications to determine this mixed question of law and fact common to both.

## III. ADDITIONAL INFORMATION

As the record stands now, we are unable to make a determination whether approving these applications is in the public interest.

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<sup>1</sup> See *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) (merger of commonly controlled WMATC carriers); *In re Laidlaw Transit, Inc., & National School Bus Serv., Inc.*, No. AP-97-08, Order No. 5050 (Mar. 26, 1997) (purchase of WMATC carrier stock by unrelated parent of other WMATC carrier followed by merger of newly acquired WMATC carrier into parent); *Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express*, No. AP-92-12, Order No. 3956 (June 15, 1992) (merger of commonly controlled WMATC carriers); *In re American Coach Lines, Inc.*, No. AP-87-20, Order No. 3094 (Nov. 18, 1987) (merger of non-WMATC carrier into commonly controlled WMATC carrier).

<sup>2</sup> See *In re Laidlaw, Inc., & Greyhound Lines, Inc.*, No. AP-98-53, Order No. 5504 (Jan. 22, 1999) (purchase of WMATC carrier stock by unrelated parent of other WMATC carrier); *In re Greyhound Corp. & Airport Transport, Inc.*, No. 195, Order No. 951 (June 4, 1969) (same); see also *In re VIP Coach Servs., Inc., & White House Sightseeing Corp.*, No. AP-84-06, Order No. 2550 (May 1, 1984) ("operates in the Metropolitan District" means operates in Metropolitan District under WMATC jurisdiction).

<sup>3</sup> Compact, tit. II, art. XII, § 3(c).

<sup>4</sup> Order No. 6797; Order No. 5504.

Applicants are requesting Commission approval to merge WMATC Carrier No. 280 (Yellow) into VTS and bring WMATC Carrier No. 369 (Washington Shuttle, Inc., t/a SuperShuttle) under common control with new Carrier No. 280 (VTS). A third carrier, identified by VTS as "ATC", is implicated, as well, however.

According to VTS: "Previously, Connex North America, Inc. merged with ATC, and as a result of this merger, Veolia Transportation, Inc. was formed. As such, the local transportation contracts held by ATC have been assigned to Veolia Transportation Services, Inc."

Inasmuch as VTS's application is for approval to merge ATC into VTS, it would appear the earlier ATC/Connex "merger" was a merger of subsidiaries leaving ATC intact. In any event, as described by the Veolia Transportation, Inc., website, the ATC/Connex merger took place in 2005 at a time when Connex controlled Yellow. According to the website, "Connex entered the US transportation market in 2001 through acquisitions such as Yellow Transportation in Baltimore, MD." The website further states: "ATC was acquired by Connex North America from National Express in September 2005."

VTS also states with regard to a contract for transportation service in the Metropolitan District known as the King Farm Shuttle: "The King Farm Shuttle was originally awarded to ATC, and upon its merger with Connex North America, the contract was informally assigned to Yellow Bus Service, Inc. which has been operating the contract for approximately two years."

Further, VTS acknowledges that three other contracts, "all originally won by ATC, may be under WMATC jurisdiction."

Obviously, assigning ATC's contracts to Yellow/VTS has an effect on competition and employees in the Metropolitan District. And the failure to timely seek Commission approval of the ATC/Connex merger is germane to our fitness inquiry. Therefore, we will require applicants to furnish additional information about ATC, the ATC/Connex merger and ATC's contracts.

We will also require applicants to furnish a complete copy of the VTOD/SuperShuttle merger agreement and to clarify an apparent discrepancy in the record, as described below.

**THEREFORE, IT IS ORDERED:**

1. That Case Nos. AP-07-001 and AP-07-006 are hereby consolidated pursuant to Commission Rule No. 20-02.

2. That applicants shall produce the following documents within thirty days of the date of this order:

- a. A complete copy of the July 19, 2006, VTOD/SuperShuttle merger agreement filed by VTOD in Case No. AP-2007-006;

- b. A complete copy of the 2005 ATC/Connex merger agreement;
- c. A statement indicating whether Connex North America controlled, or was controlled by or under common control with, National Express at the time of the ATC/Connex merger, and if so, describing the control relationship;
- d. A statement indicating whether and to what extent ATC employees were dismissed upon the merger of ATC with Connex or thereafter in connection with the subsequent assignment of ATC contracts;
- e. To the extent not already on file with the Commission, a copy of each contract for transportation in the Metropolitan District held by either applicant and each such contract held by any carrier or person controlling, controlled by, or under common control with either applicant, including, but not limited to, the contracts identified in VTS's correspondence of March 16, 2007, and transportation contracts held by Washington Shuttle, Inc., t/a SuperShuttle; provided that, applicants may redact all portions of said contracts except route descriptions, operations management provisions, insurance and indemnification terms, and vehicle information;
- f. A statement identifying on a contract-by-contract basis the number of vehicles operated under each transportation contract required to be produced pursuant to this order; and
- g. A statement clarifying the July 2003 assertion of ATC's then General Manager, Anne Carey, in the document submitted on March 27, 2007, as VTS's Contract Tariff No. CT-5, that she was responsible for "the daily operations of 'The Bus'" on behalf of "ATC - Prince George's County, MD" in 2002 and 2003; provided that such statement at a minimum shall identify Ms. Carey's employer during her tenure as The Bus's operations manager in 2002-2003 and be supported by payroll, personnel or other pertinent management records during that time period.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director