

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,733

IN THE MATTER OF:

Served September 5, 2007

Application of APPLIED BUSINESS) Case No. AP-2007-112
MANAGEMENT SOLUTIONS, INC (ABMSI))
LLC for Temporary Authority --)
Irregular Route Operations)

Application of APPLIED BUSINESS) Case No. AP-2007-111
MANAGEMENT SOLUTIONS, INC (ABMSI))
LLC for a Certificate of Authority)
-- Irregular Route Operations)

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. Applicant also seeks temporary authority to transport passengers under a contract with the United States Department of Defense (DOD).

Applicant applied for permanent and temporary operating authority last year, but the applications were dismissed without prejudice for want of prosecution.¹

The instant applications are opposed by Executive Technology Solutions, L.L.C., WMATC No. 985, which also protested the earlier dismissed applications.

I. CERTIFICATE OF AUTHORITY

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

An application for a certificate of authority must be in writing, verified, and in the form and with the information that Commission regulations require.² Commission Regulation No. 54 requires applicants to complete and file the Commission's application form. The form itself requires supporting exhibits. The evidence thus

¹ *In re Applied Business Management Solutions, Inc (ABMSI) LLC*, No. AP-06-224, Order No. 10,363 (Mar. 28, 2007).

² Compact, tit. II, art. XI, § 8.

submitted must establish a prima facie case of fitness and consistency with the public interest.³

Once applicant has made its prima facie case, the burden shifts to protestant to contravene applicant's showing.⁴ If the protestant is an existing carrier, the burden is on protestant to show that competition from the applicant would adversely affect protestant to such a degree or in such a manner as to be contrary to the public interest.⁵ The protest must be accompanied by all available evidence on which the protestant would rely.⁶

A. Application

Applicant proposes commencing operations with eight minibuses. Applicant proposes performing passenger transportation service under contracts with government agencies. The record shows that applicant has been awarded three contracts to provide such service for the federal government.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

We find that applicant has complied with Regulation No. 54 and has established thereby a prima facie case of fitness and consistency with the public interest.

B. Protest

The gravamen of the protest is that applicant has engaged in unfair competition by performing passenger transportation in the Metropolitan District under contracts with federal agencies without authority from this Commission.⁷ Applicant admits holding three such contracts but has submitted an addendum to a subcontract with Precis Corporation, WMATC No. 833, dated October 1, 2006, that requires

³ *In re City Sightseeing Buses LLC*, No. AP-06-013, Order No. 9651 (June 15, 2006).

⁴ *Id.*

⁵ *Id.*

⁶ Commission Regulation No. 54-04(a).

⁷ Protestant also alleges that applicant has failed to secure other licenses and permits but has not made any showing to establish that other licenses and permits are required.

Precis to perform the contracts on applicant's behalf by furnishing "all necessary personnel, vehicles, facilities and equipment".⁸

Under Commission precedent, the entity providing the vehicles and drivers is presumed to be the carrier.⁹ Protestant has acknowledged the existence of the Precis subcontract in a protest to applicant's earlier dismissed applications.¹⁰ Protestant does not challenge the validity of the subcontract or the validity of the addendum. Indeed, protestant admits in the protest filed in the instant proceeding that protestant has no evidence that applicant "owns the equipment" or "has the drivers" to perform the contracts.¹¹ We thus find that protestant has failed to rebut the presumption that Precis is the carrier and not applicant.

C. Conclusion

Therefore, based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

II. TEMPORARY AUTHORITY

Under Title II of the Compact, Article XI, Section 13(a), the Commission may grant temporary authority if there is an immediate need for service that is not available. Under Regulation No. 54-06(a)(iii), an applicant for temporary authority must demonstrate that it is fit to provide the proposed temporary service.

Inasmuch as we have approved the application for a certificate of authority, we will deny the application for temporary authority as moot.¹²

III. COMMON CONTROL

One of applicant's vice presidents, Tarshia McGlockton, also holds the position of vice president with Precis Corporation, WMATC No. 833.

Article XII, Section 3(a)(iii), of the Compact states that a carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to acquire control of another carrier that operates in the Metropolitan District

⁸ Presumably, applicant will terminate the subcontract and begin performing the underlying contracts itself at such time as applicant is issued operating authority by this Commission.

⁹ *In re Carey Limo. D.C., Inc., & ADV Int'l Corp., t/a Moran Limo. Serv.*, No. AP-94-53, Order No. 4499 at 5 (Feb. 16, 1995).

¹⁰ See Case No. AP-2006-224, Protest at 7.

¹¹ See Case No. AP-2007-112, Protest at 6-7.

¹² See *In re Roberson Int'l, Inc.*, No. AP-07-026, Order No. 10,394 (Apr. 6, 2007) (denying temporary authority application as moot).

through ownership of its stock or other means. Approval may be granted if the Commission finds the acquisition is consistent with the public interest.¹³ The public interest analysis focuses on the fitness of the party acquiring control, the interest of affected employees, and the effect on competition.¹⁴

Analysis of the relevant factors supports a finding of consistency with the public interest. First, a presumption of the acquiring party's fitness obtains where that party, in this case Ms. McGlockton, controls an existing WMATC carrier.¹⁵ Second, the interests of affected employees is not an issue where an applicant has no prior operations.¹⁶ Third, the primary concern when assessing the effect of a control acquisition on competition is whether approval will appreciably increase the acquiring party's market share.¹⁷ In this case, it appears that one of the contracts held by applicant was at one time held by Precis, but Precis does not have any contract tariffs on file today. Thus, it does not appear that approving this application will appreciably increase the share of the contract-tariff market Ms. McGlockton controls. The Commission will approve transactions that increase market share, in any event, if there is sufficient competition to check any adverse effects that approval might otherwise produce.¹⁸ Commission records show that sufficient competition is in place in the form of twenty other WMATC carriers that currently have contract tariffs on file with the Commission.

Each carrier is admonished to keep its assets, books, finances and operations completely separate from the other's. Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.¹⁹

THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-2007-111 and AP-2007-112 are hereby consolidated pursuant to Commission Rule No. 20-02.

¹³ Compact, tit. II, art. XII, § 3(c).

¹⁴ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC CODE § 9-1103.04); *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).

¹⁵ *In re Dipson Joel Oluwalogbon & Samfre Transp. Servs., Inc.*, No. AP-06-156, Order No. 10,076 (Nov. 16, 2006); *In re Ameripark, Inc.*, No. AP-04-026, Order No. 7984 (Apr. 29, 2004).

¹⁶ Order No. 7984.

¹⁷ Order No. 10,076; *In re Transp. Centers, Inc. & Fairfax Coach Lines, Inc.*, No. AP-05-116, Order No. 9308 (Feb. 8, 2006); *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).

¹⁸ Order No. 9308; Order No. 6178.

¹⁹ Order No. 10,076; Order No. 7984.

2. That the application for temporary authority is denied as moot.

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1431 be issued to Applied Business Management Solutions, Inc (ABMSI) LLC, 201 Stonebridge Drive, Longwood, FL 32779.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

5. 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; and (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.

6. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director