

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,419

IN THE MATTER OF:

Served June 20, 2008

Application of REGINALD TILLMAN,) Case No. AP-2007-218
Trading as R T TRANSPORTATION, 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, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. Applicant is the fleet manager for Atlantic Services Group, Inc., t/a Atlantic Services Group, (ASG), WMATC Carrier No. 1283. The application is unopposed.

Applications for certificates of authority are governed by Title II of the Compact, Article XI, Section 7. Applications for approval of common control are governed by Article XII, Section 3.

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.

Applicant proposes commencing operations with one SUV. Applicant proposes operating under a tariff containing airport shuttle rates and rates for mileage and/or hourly priced transportation.

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.

Applicant proposes conducting business under the trade name "R T Transportation", but applicant failed to provide proof of trade name registration as required by the application form. Applicant's use of a trade name, therefore, will not be approved as part of this

application.¹ Applicant may, however, apply at a later date to amend its certificate of authority to include a trade name, provided the filing fee is paid and provided the application is supported by proof of trade name registration.

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. COMMON CONTROL

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 through ownership of its stock or other means. Approval may be granted if the Commission finds the acquisition is consistent with the public interest.² The public interest analysis focuses on the fitness of the party acquiring control, the interest of affected employees, and the effect on competition.³

Control means more than mere legal control; it encompasses every type of control in fact.⁴ As noted above, applicant is the fleet manager for ASG, WMATC Carrier No. 1283. Applicant's control over ASG is limited by his status as a midlevel manager. ASG's control over applicant is limited by the terms of the employment contract. We assume for the purposes of this analysis, however, that a control relationship exists within the meaning of Article XII, Section 3.

Analysis of the relevant public interest factors supports approval. First, a presumption of the acquiring party's fitness obtains where, as here, that party is or controls an existing WMATC carrier.⁵ Second, the interests of ASG employees are not implicated in this transaction inasmuch as applicant proposes serving the public and ASG's sole tariff calls for employee shuttle service under contract with a single employer. 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.⁶ Applicant has no market share to acquire. The act of approving this application, therefore, will increase neither applicant's nor ASG's

¹ See, *In re Caring Transport Services, LLC, t/a Caring Transport Services, LLC (CTS)*, No. AP-07-147, Order No. 10,943 (Nov. 29, 2007) (same).

² Compact, tit. II, art. XII, § 3(c).

³ 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).

⁴ *In re Peter Pan Bus Lines, Inc.*, No. AP-93-19, Order No. 4130 (July 12, 1993).

⁵ *In re Applied Business Management Solutions, Inc (ABMSI) LLC*, No. AP-07-111, Order No. 10,733 (Sept. 5, 2007); *In re Crown Charters & Tours, LLC, & Southern Comfort Lines, Inc.*, No. AP-05-205, Order No. 9471 (April 13, 2006).

⁶ Order No. 10,733; Order No. 9471.

share of the relevant market. 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.⁷ As noted, applicant will not be serving the same market as ASG, and Commission records show that sufficient competition is in place in the form of approximately 150 other WMATC carriers that currently have hourly-rate and/or airport-shuttle-rate tariffs on file with the Commission.

Each carrier is admonished to keep its assets, books, finances and operations completely separate from the other's. Approval of common control should not be construed as permission to share revenue vehicles or operating authority.⁸

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1539 shall be issued to Reginald Tillman, 1931 Fieldstone Way, Frederick, MD 21702.

2. 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.

3. 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.

4. 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

⁷ Order No. 10,733; Order No. 9471.

⁸ Order No. 10,733.