

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,644

IN THE MATTER OF:

Served October 24, 2008

Application of UPSCALE LIMOUSINE)
SERVICE LLC for a Certificate of) Case No. AP-2008-142
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. The application is unopposed.

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 sedan. Applicant proposes operating under a tariff containing individual and/or group sightseeing rates, rates for mileage and/or hourly priced transportation, and airport shuttle rates.

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.

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

The record indicates that applicant's president, Melissa Wills, also serves as secretary of Bliss Transportation LLC, which has

applied for a WMATC certificate of authority in Case No. AP-2008-141. The record also indicates that neither applicant nor Bliss Transportation LLC has a control relationship with an existing WMATC carrier.

Article XII, Section 3(a)(iii), provides 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."

This Commission has held on numerous occasions that when commonly-controlled applicants simultaneously apply for WMATC operating authority, Commission approval is required under Article XII, Section 3(a)(iii), notwithstanding the absence of any control relationship with an existing WMATC carrier.¹ Those decisions do not offer any explanation of why that should be so and in fact are at odds with prior precedent holding that in an acquisition of control by ownership of stock or other means, the relevant time for determining whether a carrier "operates in the Metropolitan District" shall be determined as of the date the application in question was filed.²

This interpretation more closely accords with the purpose of Article XII, Section 3(a)(iii). In determining whether a transaction is consistent with the public interest under this provision of the Compact, the Commission's analysis focuses on the fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.³ The Commission has consistently held that a finding of an applicant's fitness permits an inference of the acquiring party's fitness.⁴ The primary concern when assessing the effect on competition of a transaction under Article XII, Section 3, is whether the transaction will increase the acquiring party's market

¹ See *In re Sunny's Executive Sedan Service Incorporated*, No. AP-02-145, Order No. 7124 (Apr. 9, 2003); *In re Sunny's Coach Services, Inc.*, No. AP-02-144, Order No. 7123 (Apr. 9, 2003); *Metro Day Treatment Center, Inc.*, No. AP-01-65, Order No. 6342 (Aug. 30, 2001); *Metro Homes, Inc.*, No. AP-01-64, Order No. 6341 (Aug. 30, 2001); *J & J Transportation, L.L.C., t/a AAA Transport and All American Transit*, No. AP-00-72, Order No. 6014 (Oct. 4, 2000); *Fowler Trio, L.L.C., t/a All American Adventures and Tours*, No. AP-00-71, Order No. 6013 (Oct. 4, 2000); *Am-Van, Inc., t/a AAA Transport and All American Ambulance & Transport*, No. AP-00-70; *Capital City Transportation Company, Inc.*, No. AP-95-10, Order No. 4553 (Mar. 31, 1995); *In re Capital City Limousine, Inc.*, No. AP-95-09, Order No. 4552 (Mar. 31, 1995).

² See *In re VIP Coach Servs., Inc., & White House Sightseeing Corp.*, No. AP-84-06, Order No. 2550 at 4-5 (May 1, 1984) (dismissing application because applicant had ceased operating between points in the Metropolitan District at the time its "stock control" application was filed).

³ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC CODE ANN. § 9-1103.04 (2007)); *In re Veolia Transp. On Demand, Inc.*, No. AP-07-006, Order No. 11,580 at 2 (Sept. 18, 2008).

⁴ See Order No. 7124; Order No. 7123; Order No. 6342; Order No. 6341; Order No. 6014; Order No. 6013; Order No. 6012; Order No. 4553; Order No. 4552.

share.⁵ Applicants such as these have no WMATC market share to increase. Finally, in applications of this type, there are no existing employees under WMATC jurisdiction, and the Commission has repeatedly held that the employees of carriers without WMATC authority presumably have an interest in their employers acquiring valuable new operating rights.⁶ Thus, subjecting applications in this posture to analysis under Article XII, Section 3(a)(iii), would serve no regulatory purpose.

Accordingly, we hold that Article XII, Section 3(a)(iii), does not apply to simultaneous applications for operating authority filed by commonly-controlled applicants not operating in the Metropolitan District, and lacking any control relationship with any existing WMATC carrier, as of the time the applications are filed. To the extent this holding conflicts with earlier cases, those cases are overruled.

Applicant is admonished to keep its assets, books, finances and operations completely separate from those of Bliss Transportation LLC. Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.⁷

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1571 shall be issued to Upscale Limousine Service LLC, 6201 Gold Yarrow Lane, Upper Marlboro, MD 20772-4015.

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; (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

⁵ Order No. 11,580 at 2.

⁶ See Order No. 7124; Order No. 7123; Order No. 6342; Order No. 6341; Order No. 4553; Order No. 4552.

⁷ *In re Simon & Miriam Corporation*, No. AP-06-141, Order No. 10,109 (Nov. 30, 2006).

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:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.
Executive Director