

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,862

IN THE MATTER OF:

Served February 24, 2009

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

This matter is before the Commission on the petition of Veolia Transportation On Demand, Inc., (VTOD), for relief from Commission Regulation No. 62 governing vehicle leases.

**I. BACKGROUND**

Under Regulation No. 62-01, a WMATC carrier may not operate a vehicle that is not titled in the carrier's name except pursuant to a lease agreement approved by the Commission.

Under Regulation No. 62-02: "No carrier subject to the jurisdiction of this Commission shall operate any motor vehicle(s) as lessee thereof unless the contract of lease has been approved by the Commission. Such contract of lease shall be in the form set forth in the Appendix to these regulations, and any addenda thereto shall be submitted along with the form."

Under Regulation No. 62-08, the lease of a vehicle with a driver provided by the same lessor is prohibited, except as provided by Regulation 62-12(c)(1), which permits such leases between WMATC carriers.

Under Regulation No. 62-11, a WMATC carrier may not lease a vehicle to a non-WMATC carrier for operation in the Metropolitan District without Commission permission, which may be granted upon a showing that the transportation to be performed by the lessee does not require WMATC operating authority.

According to the petition, VTOD subsidiary Washington Shuttle conducts operations under the trade name "SuperShuttle" through franchise agreements with independent drivers. Some SuperShuttle vehicles are owned by the drivers. Some are leased to the drivers by either Washington Shuttle or its VTOD affiliate, Blue Van Leasing. None of the drivers holds WMATC operating authority.

Because the petition was not supported by copies of the leases referenced therein, VTOD was directed to file copies of all leases relating to all vehicles operated under Certificate No. 369.

VTOD subsequently produced a blank "Commercial Vehicle Lease Agreement" and a list of Washington Shuttle drivers covered by its terms. The Lease Agreement identifies Blue Van Leasing Corporation as the lessor. The drivers apparently are the lessees. Some of the leases are for sedans and SUVs not operated under the SuperShuttle trade name.

VTOD has also produced registrations for vehicles registered to drivers covered by a SuperShuttle franchise agreement but no leases from the drivers to Washington Shuttle.

## II. ANALYSIS AND DECISION

The Commission first adopted vehicle leasing regulations in 1979 for the following purposes:

- 1) promoting the maximum efficient utilization of manpower and equipment consistent with the public interest and the law;
- 2) informing persons subject to the Commission's jurisdiction what leasing practices may lawfully be conducted;
- 3) assuring clear identification of the carrier to the public and to the users of the service;
- 4) identifying the carrier whose tariff rates must apply to an operation;
- 5) clearly identifying responsibility for an operation;
- 6) preventing circumvention of the Compact through "rental" of operating rights;
- 7) preventing crossjurisdictional abuse of vehicle licensing and registration requirements;
- 8) assuring equipment availability; and
- 9) assuring continuity of service through appropriately guaranteed lease pricing.

*In re Proposed Reg. Relating to Leases of Equip.*, No. 388, Order No. 2011 at 8 (July 24, 1979). Regulation No. 62-08 in particular is designed to prevent carriers without WMATC authority from operating in the Metropolitan District through the guise of a so-called lease arrangement.<sup>1</sup> It reflects the rebuttable presumption that an entity which furnishes both a vehicle and a driver under a lease agreement is actually a passenger carrier.<sup>2</sup>

In determining the party who in reality is performing a given transportation service, the overall test of substance involving an inquiry into all pertinent factors - including control, responsibility, and assumption of financial risk - is the decisive consideration. Usually, no single factor is by itself conclusive. See *United States v. Drum*, 82 S.Ct. 408

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<sup>1</sup> *In re Orbital Shuttle, Inc.*, No. AP-99-60, Order No. 5736 (Nov. 2, 1999).

<sup>2</sup> *Id.*

(1962). In the final analysis the question is: does the purported carrier assume to a significant degree the characteristic burdens of the transportation business? Hence, a lessee in a bona fide vehicle-lease arrangement resulting in private carriage must (a) control, direct, and dominate the operations and (b) assume the responsibilities, the risks, the duties and the burdens of transportation. For instance, though a lessee may have operational control over the vehicle, and driver, the lessee is not a bona fide private carrier if the lessor rather than the lessee is actually controlling and directing the transportation service.

*Washington, Va. & Md. Coach Co. v. Scenic Coach Rental, Inc.*, No. 165, Order No. 837 at 4-5 (July 10, 1968).

The Commission's lease form places all control and insurance risk on the carrier lessee as follows:

The lessor and lessee agree by the filing of this contract of lease with the WMATC that the motor vehicle(s) named in this lease shall be operated by and under the complete control of the lessee, and no other, for the period of the lease; and for all regulatory purposes including, but not limited to, insurance, rates and charges, vehicle identification, and motor vehicle fuel and road taxes, such motor vehicle(s) shall be considered as the vehicle(s) of the lessee.

The SuperShuttle franchise circular - as amplified by a SuperShuttle Unit Franchise Operations Manual furnished by VTOD - and the sample lease agreement submitted by VTOD fall short on both accounts.

The Operations Manual does contain some desirable provisions. The Manual requires franchisees to "observe and conform to all the rules, regulations and rates" published in Washington Shuttle's tariff.<sup>3</sup> A franchisee "may not alter or charge fares contrary to the . . . tariff."<sup>4</sup> Vehicles must display the SuperShuttle color scheme and logo.<sup>5</sup> Franchisees must submit a weekly trip list to Washington Shuttle and account for all fares.<sup>6</sup> Hours and area of operation are stipulated in each franchise agreement to ensure that Washington Shuttle is able to "maintain adequate vehicle coverage during its operating hours."<sup>7</sup>

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<sup>3</sup> Manual at 4.4.

<sup>4</sup> Manual at 4.4.

<sup>5</sup> Manual at 3.1-3.4.

<sup>6</sup> Manual at 4.5.

<sup>7</sup> Manual at 4.6.

On the other hand, the Manual places the responsibility on franchisees to maintain and repair their vehicles<sup>8</sup> and obtain motor vehicle liability insurance.<sup>9</sup> And Washington Shuttle must give franchisees 12 hours notice prior to any vehicle inspection.<sup>10</sup> Finally, there is no requirement that vehicles display the markings required by Regulation No. 61 and no requirement that franchisees remove WMATC markings from their vehicles upon termination of the franchise agreement.<sup>11</sup>

The sample lease is worse. The lessee agrees only that the vehicle will be used "primarily" for commercial purposes.<sup>12</sup> The responsibility for obtaining motor vehicle liability insurance is on the lessee, and the lessee agrees to hold the lessor and "affiliates" harmless from any property or injury claims arising out of the lessee's use of the vehicle.

To Washington Shuttle's credit, it appears from a vehicle list obtained from Washington Shuttle's WMATC insurance company of record that all vehicles operated under the SuperShuttle franchise agreement and all vehicles operated under the Blue Van lease agreement have been reported by Washington Shuttle to said insurer.

Under the circumstances, we do not believe it would be consistent with the public interest for the vehicles operated under the SuperShuttle franchise agreement and vehicles operated under the Blue Van lease agreement to be operated under WMATC No. 369 without copies of the Commission's lease form on file with the Commission naming Washington Shuttle as lessee and naming the SuperShuttle franchisees and Blue Van lessees as lessors. The parties may specify some nominal periodic lease fee so as not to unduly intrude upon the financial terms to which the parties have already agreed.

The only remaining issue is the prohibition under Regulation No. 62-08 barring the lease of a vehicle and driver from the same source. We believe that once the parties have executed and filed the Commission's lease form, the presumption under Regulation No. 62-08 that the drivers/franchisees are the carriers will stand rebutted, given that the vehicles in question are in actuality furnished by Washington Shuttle affiliate Blue Van or are subject to the control provisions in the franchise agreement, or both.

Washington Shuttle is admonished to ensure that all vehicles operated under WMATC No. 369 are properly marked in accordance with Regulation No. 61 and to ensure that such markings are removed from said vehicles when those vehicles are permanently withdrawn from service.

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<sup>8</sup> Manual at 3.4-3.5.

<sup>9</sup> Manual at 4.3-4.4.

<sup>10</sup> Manual at 5.3.

<sup>11</sup> Manual at 7.2.

<sup>12</sup> Lease Agreement at 3.

THEREFORE, IT IS ORDERED:

1. That within the time permitted under Order No. 11,580, served September 18, 2008, Washington Shuttle shall file executed copies of the Commission's lease form for all vehicles operated under WMATC No. 369 and not registered in Washington Shuttle's name.

2. That Regulation No. 62-08 is waived as to leases filed by Washington Shuttle for vehicles operated under the Blue Van lease agreement and for vehicles operated under the SuperShuttle franchise agreement.

3. That the petition of Veolia Transportation On Demand, Inc., for Leave to Lease Vehicles and Also to Contract with Non-carrier Franchisees is otherwise denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.  
Executive Director