

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,104

IN THE MATTER OF:

Served July 27, 2009

Application of A & J LIMO SERVICES,) Case No. AP-2009-048
INC., 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. The application is opposed by C & C Coaches, Inc., WMATC Carrier No. 1276.

I. APPLICATION

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.¹ Commission Regulation No. 54 requires applicants to complete and file the Commission's application form. The form itself requires supporting exhibits. The evidence thus submitted must establish a prima facie case of fitness and consistency with the public interest.²

Applicant proposes commencing operations with six five-passenger sedans. Applicant proposes operating under a tariff containing 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

¹ Compact, tit. II, art. XI, § 8.

² *In re City Sightseeing USA Inc.*, No. AP-04-39, Order No. 8042 (June 1, 2004).

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.

II. PROTEST

Once applicant has made its prima facie case, the burden shifts to protestant to contravene applicant's showing.³ 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.⁴ The protest must be accompanied by all available evidence on which the protestant would rely.⁵

Protestant alleges that on May 20, 2009, applicant "dispatched a 2006 Lincoln Town Car, MD tag number 43879B" to transport a passenger from Union Station in Washington, DC, to "Hughes Network Systems, Bldg A" and that this was done knowingly without proper authority. Applicant admits transporting "a passenger" from Union Station in Washington, DC, to "Hughes in Germantown"⁶ on May 20, 2009. Applicant contends that this was lawful under WMATC Regulation No. 51-09.

Regulation No. 51-09 is a definitional provision promulgated under Article XI, Section 3(f), of the Compact. That section excludes from WMATC jurisdiction "matters other than rates, charges, regulations, and minimum insurance requirements relating to" vehicles described in Article XI, Section 1(b), as "taxicabs and other vehicles that perform a bona fide taxicab service". The phrase "other vehicles that perform a bona fide taxicab service" is defined in Regulation No 51-09 as follows:

Other vehicles that perform a bona fide taxicab service means vehicles other than taxicabs used to perform a service that is:

(a) transportation intended in good faith to be provided only between points selected at will by the

³ *Id.*

⁴ *Id.* Demonstrating unfair competition meets the test. *Old Town Trolley Tours v. Wash. Metro. Area Transit Comm'n*, 129 F.3d 201, 202-03 (D.C. Cir. 1997).

⁵ Commission Regulation No. 54-04(c).

⁶ We assume for the purpose of entertaining the protest that the parties are referring to Hughes Network Systems, LLC, at 11717 Exploration Lane, Germantown, MD 20876.

person or persons hiring the vehicle in which such transportation is provided;

(b) conducted in a vehicle subject to the exclusive use of the passenger or single party of passengers hiring the vehicle for the entire time such vehicle is under hire;

(c) priced at rates based on the duration and/or distance of the transportation rendered;

(d) conducted in a vehicle engaged solely in rendering or performing transportation as described in subparagraphs (a), (b), and (c) above; and

(e) conducted in a vehicle having a seating capacity of eight passengers or less in addition to the driver.

Service meeting this description is excluded from the certification requirements of the Compact⁷ but not the Commission's interstate rate and insurance jurisdiction.⁸

Protestant does not allege that applicant picked the points of origin and destination instead of the passenger. Protestant does not allege that the passenger did not have exclusive use of the vehicle.⁹ Protestant does not allege that applicant uses its vehicles to provide service other than the service described in the protest. Protestant does not allege that the vehicle seats more than nine persons, including the driver.¹⁰ The protest thus appears to hinge on applicant's rates.

Attached to the protest is a schedule of rates printed on June 3, 2009, from applicant's website: <http://www.anjlimo.com/>. On its face, the schedule appears to be a compilation of flat fares -- fares that vary according to the selected destination but not according to the selected route or according to the amount of time required to traverse the selected route. The Commission has held that such fares "do not meet the duration and/or distance test of Regulation No. 51-09."¹¹ Applicant does not deny the authenticity of the June 3 rate schedule but notes that below the list of fares is a disclaimer that reads: "The Above Rates are based on \$2.00 Per mile . drivers will take a mileage reading". Applicant states through its attorney that the fare charged for the trip in question "was based on mileage and then rounded off to the nearest five dollars." Applicant has since amended its website rate schedule to state that the listed fares are only estimates.

⁷ *In re Transcom, Inc.*, No. AP-05-113, Order No. 9907 (Sept. 13, 2006).

⁸ See *In re O. Oluokun, Inc., t/a Montgomery County Limo*, No. MP-93-43, Order No. 4225 at 2-3 (Dec. 16, 1993) (assessing forfeiture for interstate tariff violation while performing bona fide taxicab service).

⁹ Applicant's attorney states that "a passenger" was picked up.

¹⁰ Applicant states that the vehicle in question seats five.

¹¹ Order No. 9907 at 3.

We are not persuaded that protestant has established applicant likely will not conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. Licensing proceedings such as this involve predictive judgments.¹² We find the predictive value of protestant's evidence weak. On the one hand, the June 3 rate schedule displays flat fares and uses the term "pick up zone". On the other hand, the rate schedule states that drivers will take a mileage reading. There would be no reason to take a mileage reading if applicant simply charged flat fares.

Protestant has produced no evidence that applicant charged a flat fare on May 20 instead of a fare based on mileage readings. At best, the record supports a finding of possible tariff violations. The June 3 rate schedule displays fares that do not all correlate with a \$2.00 per mile rate. Furthermore, the June 3 rate schedule indicates that \$10 will be added to the base fare for trips to Union Station. It makes no mention of rounding up to the nearest five dollars. That applicant has amended its tariff to address these issues is evidence of applicant's willingness to comply with Commission requirements if granted operating authority.¹³

III. CONCLUSION

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.

We will however place applicant on probation for a period of one year in light of the possible tariff violations in the record.¹⁴

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1627 shall be issued to A & J Limo Services, Inc., 1633 E. Gude Drive, Rockville, MD 20850-1348.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order

¹² *Old Town Trolley Tours*, 129 F.3d at 205.

¹³ See *In re Malek Investment, Inc., t/a Montgomery Airport Shuttle*, No. AP-91-44, Order No. 3884 (Feb. 11) (prompt cessation of unauthorized operations following cease and desist order demonstrates sincere effort to correct past mistakes and willingness to comply with Commission regulations and orders in future), *aff'd in connected case*, No. AP-91-45, Order No. 3915 (Mar. 25, 1992)

¹⁴ See *In re BLS Limo Group, Inc.*, No. AP-09-013, Order No. 11,941 (Apr. 14, 2009) (placing applicant with history of violations on probation for one year).

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 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 applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 1627 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

5. 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 CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director