

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,186

IN THE MATTER OF:

Served October 8, 2009

Application of HAYMARKET) Case No. AP-2008-181
TRANSPORTATION, INC., for a)
Certificate of Authority --)
Irregular Route Operations)

Application of HAYMARKET) Case No. AP-2009-104
TRANSPORTATION, INC., to Add Trade)
Name, HAYMARKET TRANS., INC., to)
Certificate No. 277)

This matter is before the Commission on applicant's request for reconsideration of the voiding of authority conditionally granted to applicant in Commission Order No. 11,873, served March 4, 2009.

Order No. 11,873 specified that applicant would have the full 180 days available under Commission Regulation No. 66 to present its revenue vehicles for inspection by Commission staff and file certain documents as conditions precedent to the issuance of Certificate of Authority No. 277. The order further stated that the grant of authority would be void and the application would stand denied upon applicant's failure to timely satisfy the conditions of issuance. Applicant did not fully satisfy the conditions within the allotted time. The conditional grant consequently became void and the application stood denied on September 1, 2009.

Under Article XIII, Section 4(a), applicant had until October 1, 2009, to file an application for reconsideration of the voiding of authority/deemed denial.¹ Applicant timely filed an application for reconsideration on September 2, 2009, but the application does not allege any error on the part of the Commission as required by statute.² The application for reconsideration therefore is denied. We may reopen this proceeding on our own initiative,³ however, and issue Certificate No. 277, provided applicant is found to have substantially satisfied the conditions of issuance prescribed in Order

¹ See *In re Boone-McNair Transp., LLC*, No. AP-02-66, Order No. 7063 (Mar. 4, 2003) (30-day reconsideration filing period begins running on the day the conditional grant becomes void).

² Compact, tit. II, art. XIII, § 4(a).

³ Commission Rule No. 26-04.

No. 11,873.⁴ In this case, such a finding turns on the application of Regulation No. 61-01.

I. REGULATION No. 61-01

Regulation No. 61-01 states that the following information must appear on both sides of each vehicle used to transport passengers under WMATC authority:

(a) the carrier's legal name or trade name appearing on the carrier's certificate of authority, or otherwise approved by the Commission for use in the Metropolitan District, preceded by the phrase "Operated By" if some other name also appears on the vehicle; and

(b) "WMATC" followed by either the carrier's certificate of authority number or, if applicable, the carrier's temporary authority or approval number.

II. POST-GRANT RECORD

The record shows that after Order No. 11,873 was issued, applicant timely filed the requisite proof of insurance, tariff, revenue vehicle list, vehicle registrations, and proof of safety inspection⁵ as directed by Order No. 11,873. The record also shows that applicant timely presented twenty-five of its twenty-seven revenue vehicles for inspection by Commission staff. Twenty-two of the vehicles display "Haymarket Trans Inc" and "WMATC #277" on both sides at a height of 2.5 inches, the presumptive minimum height required by Regulation No. 61. Applicant's legal name is not displayed. The three other vehicles presented for inspection display no markings at all.

The three vehicles with no markings are a Lincoln stretch limousine, a Cadillac sedan, and a Cadillac Escalade. All three were found by staff to seat fewer than nine persons, including the driver. The two vehicles not presented for inspection by Commission staff are identified as a Cadillac sedan and a Cadillac Escalade and are described by applicant as seating five and seven persons, respectively. Applicant has requested a waiver of Regulation No. 61 as to these five luxury vehicles.

After applicant's 180 days had expired, applicant notified the Commission that it had "added a trade name" to its business. Applicant paid the \$75 filing fee specified in Regulation No. 67-01 for name change applications and submitted proof of registration of

⁴ See *In re Prime Transp. Servs., Inc.*, No. AP-02-92, Order No. 7511 (Nov. 5, 2003) (denying reconsideration but reopening proceeding and issuing certificate of authority where applicant substantially complied with conditions of issuance).

⁵ Applicant failed to furnish proof of safety inspection for one vehicle, a Cadillac not presented for inspection by Commission staff. Applicant will be directed not to operate that vehicle until such time as it passes inspection by staff.

the trade name "Haymarket Trans., Inc." with the Circuit Court for Loudoun County, Virginia, the county in which applicant's principal place of business is located. Applicant has filed an updated tariff and an updated WMATC Insurance Endorsement displaying both applicant's legal name and applicant's new trade name.

On this record, we may find that applicant has substantially satisfied the conditions of issuance if we include the trade name "Haymarket Trans., Inc." on Certificate No. 277 so that the display of that name on applicant's vehicles complies with the requirement in Regulation No. 61 that a carrier's vehicles display either the carrier's legal name or the carrier's WMATC-approved trade name. Applicant does not expressly request inclusion of the trade name on Certificate No. 277 or other expression of Commission approval, but applicant's payment of the fee for changing the name on a certificate of authority and filing of required documents updated to reflect the new trade name clearly signal applicant's intent to include the trade name in Certificate No. 277. We must also decide whether to grant applicant's request to waive Regulation No. 61 with respect to applicant's luxury vehicles.

III. FINDINGS AND CONCLUSION

The Commission has approved the issuance of a certificate of authority on reconsideration in the past notwithstanding the display of a non-WMATC approved trade name on applicant's revenue vehicle.⁶ In that case: (1) applicant had failed to satisfy the conditions of the grant within the 180 days permitted under Regulation No. 66; (2) applicant applied for reconsideration but did not specify any error on the part of the Commission; and (3) the Commission denied reconsideration but reopened the proceeding under Rule No. 26-04.⁷ After noting that the vehicle displayed applicant's legal name and a non-WMATC approved trade name, the Commission directed applicant to "obtain WMATC approval for the trade name, remove the trade name or precede applicant's legal name with the phrase 'Operated By.'"⁸ The Commission then declared that a certificate of authority would be issued "upon applicant's compliance with Regulation No. 61."⁹ Including the instant applicant's trade name on Certificate No. 277 and finding that the instant applicant has substantially satisfied the conditions of issuance prescribed by Order No. 11,873 would be consistent with this precedent.

As for waiving Regulation No. 61 as to applicant's five luxury vehicles: "The Commission routinely waives Regulation No. 61 with respect to limousines and luxury sedans seating nine persons or less,

⁶ *In re Total Care Servs., Inc.*, No. AP-05-38, Order No. 9472 (April 13, 2006).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

including the driver.”¹⁰ The three luxury vehicles presented for inspection by Commission staff and found to seat fewer than nine persons qualify for the waiver. The two vehicles alleged to seat fewer than nine do not qualify because applicant has not demonstrated their seating capacity by presenting them for inspection by Commission staff. The Commission has found applicants to have substantially satisfied the conditions of issuance of a certificate of authority after waiving Regulation No. 61 as to vehicles shown to qualify for waiver and excluding from service those not shown to qualify.¹¹

Consistent with Commission precedent and the record in these proceedings, we shall approve the inclusion of applicant’s trade name in Certificate No. 277, approve the waiver of Regulation No. 61 as to the three luxury vehicles presented for inspection, exclude from service the two vehicles not presented for inspection, and find that applicant has substantially satisfied the conditions of issuance prescribed in Order No. 11,873.

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration is denied.
2. That Case No. AP-2008-181 is reopened pursuant to Commission Rule No. 26-04 and consolidated with Case No. AP-2009-104 pursuant to Commission Rule No. 20-02.
3. That applicant having substantially satisfied the conditions of Order No. 11,873, Certificate of Authority No. 277 shall be reissued to Haymarket Transportation, Inc., trading as Haymarket Trans., Inc., 45580 Shepard Drive, #13, Sterling, VA, 20164-4466.
4. That Regulation No. 61 is waived with respect to the three luxury vehicles presented for inspection, as shall be duly noted in a standard waiver letter, a copy of which shall be retained by applicant in each of the three vehicles at all times for display upon request by the Commission or any federal, state or local government official authorized to inspect vehicles and/or verify operating authority.
5. That applicant shall not operate the two Cadillacs with Vehicle Identification Nos. ending 197648 and 390247 unless and until they pass inspection, as verified in writing by the Commission’s Executive Director.

¹⁰ *In re Steve McCoy Boykins, t/a Marcel’s Limo. Serv.*, No. AP-06-197, Order No. 10,655 (July 25, 2007); *In re Atlas Elite Limos, LLC*, No. AP-06-062, Order No. 10,627 (July 11, 2007); *In re McCloud’s Professional Limo. Serv., Inc.*, No. AP-05-117, Order No. 9754 (July 19, 2006).

¹¹ *See In re Platinum Limo. Serv., Inc.*, No. AP-08-085, Order No. 11,797 (Jan. 15, 2009) (finding some vehicles eligible for waiver, ordering others out of service, finding substantial satisfaction, issuing certificate); Order No. 7511 (same); *see also* Order No. 10,655 (waiving Reg. No. 61 and issuing certificate); Order No. 10,627 (same); Order No. 9754 (same).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:

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

William S. Morrow, Jr.
Executive Director