

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,913

IN THE MATTER OF:

Served October 20, 2015

Application of ARLINGTON NATIONAL ) Case No. AP-2015-160  
CEMETERY TOURS, INC, for a )  
Certificate of Authority -- )  
Irregular Route Operations )

Applicant, a wholly owned subsidiary of Old Town Trolley Tours of Washington, Inc., WMATC Carrier No. 124, seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

Applicant currently operates a tour service wholly within the confines of Arlington National Cemetery, which is located in the Virginia portion of the Metropolitan District. Although such service is excluded from WMATC jurisdiction under Article XI, Section 3(g), of the Compact as "transportation solely within the Commonwealth of Virginia," applicant intends to extend operations outside the cemetery grounds. According to applicant: "We are planning to operate a shuttle service from Arlington National Cemetery into the District of Columbia, and conduct chartered tours. These chartered tours could originate in Washington, DC, Maryland, or Virginia, and include tourist attractions/destinations in all three jurisdictions." Applicant's expansion plans thus bring it under the Commission's licensing jurisdiction and common control relationship jurisdiction.

**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 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. CONTROL RELATIONSHIP APPROVAL

Under Article XII, Section 3(a)(iii), of the Compact, "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."

Applicant's status as a wholly owned subsidiary of Old Town Trolley implicates this provision of the Compact in that Old Town Trolley will acquire control of another carrier that operates in the Metropolitan District upon the issuance of a WMATC certificate of authority to applicant.

Although the Commission said in *Upscale Limo. Serv. LLC* that the "the relevant time for determining whether a carrier 'operates in the Metropolitan District' shall be determined as of the date the application in question is filed,"<sup>1</sup> on the facts before us, it makes more sense to assess the control relationship as of the date applicant's WMATC certificate of authority is issued because that is when the control transaction at issue will occur and because consideration of the effect-on-employees approval criterion, discussed below, otherwise would be cut short.

Under Article XII, Section 3(c), of the Compact, if the Commission finds that the proposed transaction is consistent with the public interest, the Commission shall issue an order authorizing the transaction. The Commission employs three criteria in determining whether a transaction is consistent with the public interest under Article XII, Section 3(a)(iii), 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.<sup>2</sup> The Commission has consistently held that a finding of an applicant's fitness permits an inference of the acquiring party's fitness,<sup>3</sup> and the primary concern when assessing the effect on competition of a transaction is whether the transaction will increase the acquiring party's market share.<sup>4</sup>

The Commission has found the instant applicant fit, and competition is not an issue here because issuance of WMATC operating authority to applicant will not in and of itself increase Old Town

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<sup>1</sup> *In re Upscale Limo. Serv. LLC*, No. AP-08-142, Order No. 11,644 (Oct. 24, 2008) (citing *In re VIP Coach Servs., Inc., & White House Sightseeing Corp.*, No. AP-84-06, Order No. 2550 at 4-5 (May 1, 1984)).

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

<sup>3</sup> *Id.* at 2-3.

<sup>4</sup> *Id.* at 3.

Trolley's share of the WMATC-regulated market. The issue of affected employees, however, cannot be summarily dismissed.

When Congress first approved the Compact in 1960, it attached several conditions, including the condition that when the Commission assesses whether a merger, consolidation, or acquisition of control is consistent with the public interest, "the term . . . 'public interest' shall be deemed to include, among other things, the interest of the carrier employees affected."<sup>5</sup> A further congressional condition is that the Commission may not use its power to approve mergers, consolidations, and acquisitions of control "to break a lawful strike by the employees of any carrier authorized to provide service pursuant to such compact."<sup>6</sup> The decision in *Upscale Limo. Serv. LLC* did not take these conditions into consideration because the Commission did not need to, because neither of the carriers involved in the proposed transaction was an existing WMATC carrier.

According to a statement submitted by applicant's General Manager, Eric Holmes, five to 10 employees will be transferred from Old Town Trolley to applicant and applicant will hire additional employees to meet staffing needs. There is no evidence of any employee strike pending or threatened. Indeed, as noted above, the application is unopposed.

The Commission therefore finds that the issuance of WMATC authority to applicant is consistent with the public interest within the meaning of Article XII, Section 3(c), of the Compact.

### III. CONCLUSION

In closing, applicant is admonished to keep its WMATC assets, books, finances and operations completely separate from those of Old Town Trolley.<sup>7</sup> Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority,<sup>8</sup> except as permitted by Article XI, Section 17, of the Compact and WMATC Regulation No. 62.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 2813 shall be issued to Arlington National Cemetery Tours, Inc, 2640 Reed Street N.E., Washington, DC 20018-1704.

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

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<sup>5</sup> Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960).

<sup>6</sup> Id. § 4, 74 Stat. at 1050.

<sup>7</sup> See Order No. 11,644 at 3 (requiring commonly-controlled carriers to keep assets, books, finances, and operations separate).

<sup>8</sup> Order No. 11,644 at 3.

unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection 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 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 BRENNER, HOLCOMB, AND DORMSJO:



William S. Morrow, Jr.  
Executive Director