

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,032

IN THE MATTER OF:

Served December 7, 2015

Application of PRIME TRANSPORTATION)
INC. for a Certificate of Authority)
-- Irregular Route Operations)

Case No. AP-2015-185

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

According to the application, Mr. Adamu Lemu is both applicant's president and applicant's vice president. According to Commission records, Mr. Lemu also is president of Ontime Transportation Inc., WMATC Carrier No. 536. This application thus falls under the Commission's licensing jurisdiction and the Commission's 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."

This provision of the Compact is implicated in that Mr. Lemu 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 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,"¹ 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's analysis focuses on the fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.² The Commission has consistently held that a finding of an applicant's fitness permits an inference of the acquiring party's fitness³ and that the primary concern when assessing the effect on competition of a transaction is whether the transaction will increase the acquiring party's market share.⁴

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 the share of the WMATC-regulated market controlled by Mr. Lemu.

As for the effect on employees, applicant's employees have an obvious interest in applicant obtaining valuable operating rights,⁵ and there is no evidence that the expansion of operations through applicant is intended to disadvantage the employees of Ontime

¹ *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)).

² *Id.* at 2 (relying in part on Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960)).

³ *Id.* at 2-3.

⁴ *Id.* at 3.

⁵ *In re Sunny's Exec. Sedan Servs. Inc.*, No. AP-02-145, Order No. 7124 (Apr. 9, 2003).

Transportation.⁶ Indeed, Mr. Lemu states that each carrier will have its own employees, insurance coverage, and vehicles, and 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 Ontime Transportation.⁷ Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority,⁸ 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. 2840 shall be issued to Prime Transportation Inc., 3351 Mt. Pleasant Street, N.W., #6, Washington, DC 20010-1876.

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 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.

⁶ See Pub. L. No. 86-794, § 4, 74 Stat. at 1050 (Commission may not approve acquisition of control to break lawful strike).

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

⁸ Order No. 11,644 at 3.

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:

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

William S. Morrow, Jr.
Executive Director