

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1736

IN THE MATTER OF:

Served August 12, 1977

BELTWAY LIMOUSINE SERVICE, INC. -)
Contract Approval and Application)
for Approval to Operate Certain)
Property of JAMES M. SMITH, INC.)

Application No. 1010
Docket No. 391

On August 8, 1977, Beltway Limousine Service, Inc. (Beltway), filed a contract for approval pursuant to Commission Regulation 56-03. Inasmuch as the contract, in part, contemplates the operation by Beltway of two vehicles owned by another carrier, James M. Smith, Inc. (Smith), formal disposition of this matter is required by the provisions of Title II, Article XII, Sections 12(a)(2)(i) and 12(b). Moreover, because the Commission has not prescribed a precise form on which such applications are to be filed, we will construe Beltway's filing as an application for approval under said Section 12(b). See Commission Regulation 57.

This proceeding apparently has its genesis in a contract award by the United States Department of Health, Education and Welfare (HEW) to Smith to provide transportation service between designated facilities of HEW in Rockville, Md., and Washington, D. C. Smith holds Certificate of Public Convenience and Necessity No. 35, but is not authorized to perform the service required by HEW. ^{1/} Beltway, on the other hand, holds Certificate of Public Convenience and Necessity No. 25, which does authorize Beltway to perform the HEW service.

In essence, the operation proposed by the subject contract between Smith and Beltway provides for the former to subcontract the HEW service to the latter. Beltway would perform the transportation requirements of the HEW contract, operate the vehicles with drivers on its regular payroll, control the transportation and routing, and provide all gas, oil, repairs and maintenance in connection therewith. In return, Beltway would be compensated by Smith at a rate estimated to result in a 9.3 percent pre-income-tax rate of return for Beltway. To this extent, Smith would appear to be merely a broker who has sold transportation to HEW and then arranged for an appropriately certificated carrier to provide such transportation at a compensatory rate.

^{1/} Smith filed Application No. 1008 for the required authority, but said application has been dismissed at Smith's request. See Order Nos. 1728 and 1733, served July 29 and August 5, 1977.

Smith's involvement does not end here, however, because the contract further provides that Smith is to provide insurance 2/ and two 15-passenger vans for use by Beltway at no cost. Inasmuch as this would result in one certificated carrier (Beltway) contracting to operate the properties of another certificated carrier (Smith) it is subject to regulation pursuant to Title II, Article XII, Section 12 of the Compact.

Subsection (b) thereof provides, in pertinent part:

If, after hearing held upon reasonable notice, the Commission finds that, subject to such terms, conditions, and modifications as it shall find to be necessary, the proposed [contract] is consistent with the public interest, it shall enter an appropriate order approving and authorizing such transaction as so conditioned.

Consequently, approval of this part of the Smith-Beltway contract can be granted only after a public hearing, as scheduled below. 3/ Both parties to the contract shall be considered co-applicants, and each will be assessed one-half the amount preliminarily estimated to cover the expenses which applicants are required to bear pursuant to Title II, Article XII, Section 19.

THEREFORE, IT IS ORDERED:

1. That said contract be, and it is hereby, accepted for filing as an application pursuant to Title II, Article XII, Section 12(b) of the Compact.

2. That the application and exhibits thereto filed in Application No. 1008, Docket 387, be, and they are hereby, made a part of the record herein.

3. That a public hearing on the matters required to be considered pursuant to the Compact, Title XII, Section 12, be, and it is hereby, scheduled to commence at 9:30 a.m., Wednesday, September 28, 1977, in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006.

2/ An appropriate certificate of insurance showing Beltway and Smith as the named insureds has been filed.

3/ Although Title II, Article XII, Section 12(d) of the Compact provides for temporary approval pending the determination of a Section 12(b) application, the record does not warrant such action at this time.

4. That Beltway Limousine Service, Inc., and James M. Smith, Inc., be, and they are hereby, made parties to this proceeding as co-applicants.

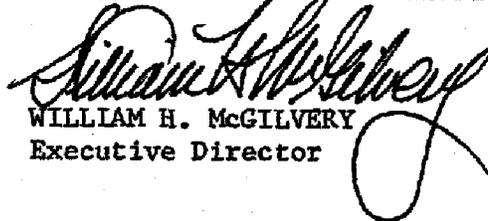
5. That each co-applicant be, and it is hereby, assessed \$150 pursuant to the provisions of the Compact, Title II, Article XII, Section 19, and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C. 20006, no later than Friday, September 23, 1977.

6. That co-applicants be, and they are hereby, directed to publish once, in a newspaper of general circulation within the Metropolitan District, notice of said application and hearing in the form prescribed by the staff of the Commission no later than Friday, August 19, 1977.

7. That each co-applicant be, and it is hereby, directed to post continually in their vehicles notice of said application and hearing in the form prescribed by the staff of the Commission no later than Friday, August 19, 1977, said notice to remain so posted through the date of the hearing scheduled hereinabove.

8. That any person desiring to protest shall file a protest in accordance with Commission Rule 14, or any person desiring to be heard shall notify the Commission, in writing, by delivering a copy of said protest or notice to the above-referenced office of the Commission and shall mail a copy of said protest or notice to co-applicants' representatives, John D. Robertson, President, Beltway Limousine Service, Inc., 8727 Colesville Road, Silver Spring, Md. 20910; and Mary Elizabeth Weglarz, 12126 Captiva Court, Reston, Va. 22091, no later than Friday, September 16, 1977.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director

