

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1856

IN THE MATTER OF:

Served June 21, 1978

Application of CENTRAL DELIVERY)
SERVICE OF WASHINGTON, INC., to)
Transfer Certificate No. 23 to)
YELLOW CAB OF MONTGOMERY COUNTY,)
INC.)

Application No. 1030

Application of YELLOW CAB OF)
MONTGOMERY COUNTY, INC., to Act)
As a Self-Insurer)

Application No. 1031

Consolidated Docket No. 403

By Application No. 1030, filed December 20, 1977, Central Delivery Service of Washington, Inc. (Central), seeks approval pursuant to Title II, Article XII, §12(b) of the Compact to transfer by sale its Certificate of Public Convenience and Necessity No. 23, issued on September 17, 1976, to Yellow Cab of Montgomery County, Inc. (Yellow Cab).

By petition filed December 20, 1977, and assigned Application No. 1031, Yellow Cab seeks authority pursuant to Regulation 62-05, for authority to act as a self-insurer, such application to be contingent upon the approval of the transfer of Central's certificate of public convenience and necessity to Yellow Cab.

The Compact provides that the Commission may approve the transfer of a certificate of public convenience and necessity if it finds that the proposed transaction is consistent with the public interest. In reaching this determination, the Commission considers, among other factors, the fitness of the carrier seeking to obtain the certificate, whether the operating rights to be transferred are active, and whether the public would benefit from a transfer of the certificate. The Commission also inquires whether the purchase price is fair and reasonable so as to assure that the transferee will be able to meet the requirements of the debt incurred and will not be including any unreasonable cost in present or future rate requests.

In support of these applications, the parties have submitted a sales agreement, financial information, corporate information and other data required by the Commission for its consideration.

Yellow Cab's application for authority to act as a self-insurer included evidence of its financial condition, the financial condition of its parent corporation, Central Courier Systems, Inc., ^{1/} the details of Yellow Cab's experience as a self-insurer pursuant to regulations promulgated by the State of Maryland, its procedures for handling claims, and the savings which will be realized by the Central Courier family from acting as a self-insurer.

As mandated by the Compact, Title II, Article XII, §12(b), a public hearing was held on March 21, 1978. The corporate secretary and general counsel of Central Courier Systems, Inc., Central Delivery Service of Washington, Inc., and Yellow Cab of Montgomery County, Inc., appeared and testified concerning these applications.

The request to transfer the Central certificate to Yellow Cab stems from the nature of these two companies. Central, certificated by the Interstate Commerce Commission to transport property, is primarily a small package carrier. Yellow Cab, on the other hand, is primarily engaged in the transportation of passengers as a taxicab operator within the Metropolitan District. The transfer of the involved certificate from Central to Yellow Cab will result in passenger operations being conducted by a company engaged primarily in passenger transportation, rather than as an adjunct to Central's freight operations.

Additionally, the parties assert that the contemplated transfer of passenger vehicles from Central to Yellow Cab would enable Yellow Cab more efficiently to utilize these vehicles as taxicabs on occasions when they are not employed in WMATC certificated operations.^{2/} Finally, the parties anticipate a significant savings in insurance costs upon approval of these applications, which savings will inure to the public benefit.

Yellow Cab's financial condition is such that it should be able to operate the certificated operations successfully. The transferee's balance sheet shows current assets of \$191,129 and current liabilities of \$41,065, and it operated at a small profit during the year ending September 30, 1977. Central has actively conducted operations under this certificate, and the sale price of \$1 scarcely constitutes a burden on the transferee or the public. Accordingly, we are of the opinion that the transfer of Central's certificate to Yellow Cab is consistent with the public interest.

1/ Central Delivery Service of Washington, Inc., is also a subsidiary of Central Courier Systems, Inc.

2/ To the extent that such vehicles may be operated as taxicabs, however, they are subject to our regulation only to the extent of interstate rates and insurance requirements. See Compact, Title II, Article XII, §4(c). Hence, registration of these vehicles as taxicabs, authority to operate them as such, and any regulations pertaining thereto, are matters for the consideration of the appropriate Montgomery County, Md., officials.

We next turn to Application No. 1031, which deals with the request by Yellow Cab for authority to act as a self-insurer. The parties assert that they intend to consummate the proposed transfer only upon the approval of Yellow Cab's petition for authority to self-insure because of the significant financial savings which will result.

This Commission's administration of insurance requirements is conducted for the purpose of assuring security for the protection of the public. As the Interstate Commerce Commission stated in its earliest decision treating self-insurance, "[i]t is generally conceded that self-insurance requirements should be stringent and that carriers availing themselves of this privilege should maintain adequate reserves to meet claims." Motor Carrier Insurance for Protection of the Public, 1 M.C.C. 45, 58 (1936). "To qualify as a self-insurer, a motor carrier, . . . , must be able to show ability to satisfy obligations for the liability in question without affecting the stability or permanency of its business. The obligations are those which it is reasonably conceivable may arise and applicant must show ability to satisfy them without imperiling its financial condition." Union Street Railway Company Self-Insurance, 2 M.C.C. 692,694 (1937).

In a later case, the ICC approved a self-insurance proposal in which the applicant would continue to maintain "excess" coverage but would self-insure for amounts up to \$50,000. The applicant would realize a significant annual savings upon approval of the self-insurance application. Moreover, a related corporation had already been successfully operating under a self-insurance plan. Richmond-Greyhound Lines, Inc., Self-Insurance, 53 M.C.C. 624 (1951). More recently, the Interstate Commerce Commission approved a new self-insurance proposal subject to the conditions that the applicant continue to maintain an excess insurance policy with the insurance company required to notify the Commission upon any change in the excess coverage. Transcontinental Bus System, Inc., Self-Insurance, 72 M.C.C. 397 (1957).

Evaluating the Yellow Cab proposal in light of the requirements of (1) assuring responsibility to the public and (2) promoting the continued viability of Yellow Cab as a carrier, we have noted that Yellow Cab is a wholly-owned subsidiary of Central Courier Systems, Inc. That parent company, which operated at a profit in excess of \$300,000 for the year ending September 30, 1977, has a strong financial posture, with current assets exceeding current liabilities by nearly \$500,000. Its retained and current earnings accounts total \$502,127. Moreover, Yellow Cab is itself a fiscally strong carrier, with current assets exceeding current liabilities by more than \$150,000.

Yellow Cab holds Certificate of Self-Insurance No. 47, issued by the Maryland Department of Transportation. Yellow Cab has held that certificate for more than one year, and it appears to have satisfactorily maintained its self-insurance status under the administration of the Maryland DOT. Under its self-insurance program administered by Maryland DOT, Yellow Cab is self-insured for \$25,000 for bodily injury and property

damage. It seeks authority for the same self-insurance here. Appropriate excess liability coverage is maintained by the company up to \$2,500,000 in the aggregate.

Since the inception of Yellow Cab's operation as a self-insurer under Maryland DOT, the company has established a procedure for in-house review of any accident and has entered into an agreement with a professional claims adjusting company for assistance in the treatment of claims exceeding \$500. Through the use of this claims adjusting company, Yellow Cab seeks to assure prompt, responsive action with respect to any claim.

Yellow Cab maintains a special account for settlement of individual claims, the balance of which is adjusted periodically upon evaluation of current claims. The balance in its special claims checking account as of December 1, 1977, was in excess of \$32,000. The account has proven sufficient to satisfy all claims.

As a condition of the above-referenced grant of authority from Maryland to act as a self-insurer, Yellow Cab instituted a separate reserve fund in the amount of \$25,000 (increased by \$500 monthly) for the settlement of any claims. Money in that account may be withdrawn only with the approval of the Maryland DOT. As of the time of the hearing no money had been withdrawn from that account to meet any claims against the company. The State of Maryland recognizes Yellow Cab as a self-insurer for all authorized transportation activities, including those under the jurisdiction of this Commission, and the reserve fund would be available for the settlement of claims arising from operations under a WMATC certificate. By letter received May 3, 1978, the Commission was advised by the Maryland DOT that ". . . the certificate of self-insurance would cover any operations of Yellow Cab in any jurisdiction."

Considering the evidence submitted by Yellow Cab, including its internal claims adjusting program and the establishment of settlement and reserve accounts, its satisfactory experience to date as a self insurer with Maryland, and the availability of the Maryland-supervised reserve fund to satisfy any claims against Yellow Cab, we are of the opinion that Application No. 1031 should be granted. We shall, however, exercise continuing jurisdiction over this matter, and the Commission expressly reserves the right to terminate Yellow Cab's self-insurance privilege should it appear in the future that such action would be in the public interest. The grant of the privilege to self insure shall be specifically conditioned upon the maintenance of Yellow Cab's Maryland privilege to self insure and upon the maintenance of adequate excess insurance coverage. Additionally, we shall require Yellow Cab to submit monthly reports on its status as a self-insurer under the rules and regulations of the Maryland DOT and continuously to maintain on file with the Commission copies of its current excess insurance policies and any replacement policies.

Finally, with respect to Application No. 1030, we are cognizant that by Order No. 1854, served May 31, 1978, an investigation proceeding was

instituted with a view toward partial revocation of Certificate No. 23. Our approval of this transfer application shall not be construed to prejudice that proceeding in any respect. Should Yellow Cab and Central consummate the transfer approved herein, it is with the express understanding that partial revocation of the certificate to be transferred may be effected in the not-too-distant future.

THEREFORE, IT IS ORDERED:

1. That Application No. 1030 of Central Delivery Service of Washington, Inc., is hereby granted, subject to the conditions set forth herein.

2. That Yellow Cab of Montgomery County, Inc., is hereby directed to file with the Commission within 25 days from the date of service hereof (a) two copies of its WMATC Tariff No. 1, including copies of its effective contracts as required by Commission Regulations 55 and 56-03, (b) a certificate of excess insurance in accordance with the limited self-insurance approval granted herein and the provisions of Commission Regulation 62, (c) copies of its excess insurance policies and (d) a notarized statement of compliance with Commission Regulation 68 governing identification of motor vehicles.

3. That Application No. 1031 of Yellow Cab of Montgomery County, Inc., is hereby granted, provided, however, that beginning July 1, 1978, and on the first day of each month thereafter, Yellow Cab of Montgomery County, Inc., must submit a verified report to this Commission indicating that it maintains its status as a self-insurer under the rules and regulations of the Maryland Department of Transportation, which report shall include the current balance in its account maintained as required by the Maryland Department of Transportation and a fully detailed explanation of any withdrawals therefrom, and further provided that adequate excess insurance coverage is continuously evidenced by the filing of appropriate certificates of insurance and copies of excess insurance policies.

4. That upon compliance with the conditions set forth in the two preceding paragraphs, and upon acceptance of the required tariff by the Executive Director, Certificate of Public Convenience and Necessity No. 23 shall be reissued to Yellow Cab of Montgomery County, Inc.

5. That upon the reissuance of said certificate, Certificate of Public Convenience and Necessity No. 23 as issued to Central Delivery Service of Washington, Inc., shall be cancelled.

6. That unless compliance is so made within 25 days from the date of service hereof, or such additional time as may be authorized by the Commission, the grants of approval made herein shall be considered null and void and Application Nos. 1030 and 1031 shall stand denied in their entirety effective upon the expiration of the said compliance time.

7. That the Commission shall continue to exercise jurisdiction over the self-insurance approval granted herein and expressly reserves the right to cancel or suspend said approval, in addition to such other action as may be warranted, in the event Yellow Cab of Montgomery County, Inc., should fail to file the above-referenced monthly reports or in the event such action would appear to be in the public interest.

BY DIRECTION OF THE COMMISSION:



WILLIAM H. MCGILVERY
Executive Director

SHANNON, Commissioner, dissenting in part: Although I am in basic agreement with the majority opinion, I must respectfully dissent from the Commission's approval of Application No. 1031. Approval of self insurance is not often granted by regulatory agencies, particularly to companies lacking substantial non-transferable capital assets. Absent a requirement that the Commission have direct control over the self-insurance reserve account by becoming a co-signator with the State of Maryland and Yellow Cab of Montgomery County, Inc., I am of the view that Application No. 1031 should be denied.