

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2009

IN THE MATTER OF:

Served July 10, 1979

Application of D. C. MEDICAID TRANS- )  
PORTATION, INC., for a Certificate )  
of Public Convenience and Necessity )  
to Perform Special Operations )

Application No. 968

Docket No. 354

Application of MCKINLEY BATTLE for )  
a Certificate of Public Convenience )  
and Necessity to Perform Special )  
Operations )

Application No. 974

Docket No. 360

Application of DAMON T. GARY T/A )  
DAMON'S TRANSPORT for a Certificate )  
of Public Convenience and Necessity )  
to Perform Special Operations )

Application No. 980

Docket No. 363

Application of WILLIAM C. DYE T/A )  
W & D TRANSPORTATION SERVICE for a )  
Certificate of Public Convenience )  
and Necessity to Perform Special )  
Operations )

Application No. 985

Docket No. 365

By order entered June 15, 1979, in Nos. 78-1021 and 78-1036, the above-captioned cases were remanded to the Commission by the United States Court of Appeals for the District of Columbia Circuit for further proceedings in accordance with the memorandum of the Court filed therein.

Each applicant had been denied a certificate of public convenience and necessity to transport handicapped persons participating in the medicaid program administered by the District of Columbia Department of Human Resources (DHR). \*/ D. C. Medicaid Transportation, Inc. (DCMT), was

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\*/ Order No. 1749, served September 16, 1977, and Order No. 1769, served November 16, 1977.

found to be unfit to provide such service, and it was found that the services of the other applicants were not required by the public convenience and necessity.

Without expressing an opinion on the other issues presented for review, the Court concluded that the record of these cases should be remanded to the Commission to take additional evidence of DHR's need for service between September 1976 and September 1977. The Commission "also has latitude to accept material evidence bearing on DHR's need for service after September 1977." The Court also concluded that the Commission could, but need not, reopen the record on the fitness of DCMT. Finally, the Court noted the Commission's motion to dismiss DCMT's petition for review on the ground that DCMT, having had its corporate charter revoked, was statutorily barred from exercising the authority it had requested in its application for a certificate of public convenience and necessity. This issue has been remanded for an initial determination by the Commission.

In compliance with the Court's order and memorandum, an additional hearing shall be scheduled at which applicants McKinley Battle, Damon T. Gary and William C. Dye may present such additional evidence on the issue of DHR's public convenience and necessity as they deem pertinent, including exhibits and testimony from DHR. So that the most complete record may be made, the proceeding ordered by the Court shall consider all material evidence relating to this issue for the period September 1976 through June 30, 1979. In essence, the Commission will hold a hearing de novo within these limitations.

Battle, Gary and Dye may present evidence either individually or collectively. Protestants Ironsides Medical Transportation Corporation and Conval Port Medivan, Inc. (successor to Rehab Transportation, Inc.), retain their status and may cross examine and present material affirmative evidence. Those carriers which were granted certificates by Order No. 1749 shall also be considered parties (intervenor) to this proceeding with the right to present evidence as their interests may appear. All parties are reminded that an original and four copies of each exhibit (with one additional copy for each party) are required and all exhibits must be supported by competent testimony. Parties are further reminded that they may be represented by an attorney or other person as provided by Commission Rule No. 3 governing appearances and practice before the Commission.

Battle, Gary and Dye shall be assessed an amount preliminarily estimated to cover the expenses which Title II, Article XII, Section 19 of the Compact requires an applicant to bear.

With respect to DCMT, the Commission finds that further hearing is neither warranted nor appropriate. Pending some further action by the Court, the finding that DCMT is unfit within the meaning of Title II, Article XII, Section 4(b) remains undisturbed and administratively final. Moreover, we find that the revocation of DCMT's corporate charter by the District of Columbia, of which we hereby take official notice, renders DCMT unable as a matter of law to perform the duties of a carrier subject to the Compact.

One final matter requires discussion. Inasmuch as the protestants and intervenors herein are engaged in transporting persons requiring medical treatment, we shall schedule staggered hearing times so that the intervenors who drive their own vehicles will not all be unavailable at the same time.

THEREFORE, IT IS ORDERED:

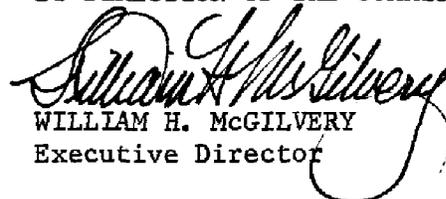
1. That further public hearings on the above-captioned applications of McKinley Battle, Damon T. Gary and William C. Dye are hereby scheduled to commence on Tuesday, August 7, 1979, at 9:30 a.m. in the Hearing Room of the Commission, Room 314, 1625 I Street, N. W., Washington, D. C. 20006, and that all applicants and protestants shall then and there enter their appearances.

2. That said hearings shall be continued on Wednesday, August 8, 1979, at 9:30 a.m. in the said Hearing Room and that intervenors Rodwell Buckley, Thomas A. Pickens, John W. Brown, Otis F. Smith and Dan Jenkins shall then and there enter their appearances.

3. That said hearings shall be further continued on Thursday, August 9, 1979, at 9:30 a.m. in the said Hearing Room, and that intervenors Alfred L. Gaines, Ellis B. Harrison, Noral Harvey, John Otis Pickens and David C. Pearson shall then and there enter their appearances.

4. That McKinley Battle, Damon T. Gary and William C. Dye are each hereby assessed \$300 pursuant to Title II, Article XII, Section 19 of the Compact and are directed to deliver said sum to the offices of the Commission, Suite 316, 1625 I Street, N. W., Washington, D. C. 20006 no later than Wednesday, August 1, 1979, at 12 noon.

BY DIRECTION OF THE COMMISSION:

  
WILLIAM H. MCGILVERY  
Executive Director