

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2016

IN THE MATTER OF:

Served August 7, 1979

Application of MOBILE CARE, LTD.,)
for Temporary Authority to Trans-)
port Non-Emergency Wheelchair)
Passengers)

Case No. AP-79-10

By application filed July 17, 1979, Mobile Care, Ltd., seeks temporary authority to transport "[h]andicapped people confined to wheelchairs [o]n a non-emergency ambulatory basis. 1/ Trips to be scheduled by appointment." On the same date, the application was amended to except the transportation of patients participating in the medicare program administered by the District of Columbia Department of Human Resources. From time to time, personal baggage may be transported with the passengers. Mobile Care proposes to operate between all points in the Metropolitan District.

Mobile Care proposes the following schedule of rates:

ONE WAY

One Man	\$20
Two Men	25

ROUND TRIP

One Man	\$35
Two Men	42

The above rates are for trips solely within the District of Columbia. An additional \$.75 a mile is charged outside the District of Columbia. Group Rates and Special Tour Rates are said to be available upon request.2/

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- 1/ Presumably, applicant seeks to describe persons who are mobile by wheelchair rather than ambulatory.
- 2/ Failure to state such rates, however, precludes our consideration thereof as part of this application.

Transportation would be performed in one of two vans operated by Mobile Care.

Applicant has been engaged in this business "for several years," assertedly without knowledge that authority therefor is required.^{3/} This application was filed in response to notification from the Commission's staff that unauthorized transportation must be discontinued. According to applicant's counsel, Mobile Care has ceased activity pending the disposition of this application. This cessation of activity will assertedly inconvenience passengers who now rely on Mobile Care for service. In addition, the company expects to suffer financial hardship and loss of customers unless temporary authority is promptly granted.

Mobile Care asserts that a recent promotional campaign has generated a number of calls from nursing homes and patients who complain that other companies involved in the business are either unable or unwilling to handle certain trips. Applicant believes that some (unspecified) carriers will only handle short, convenient trips and ignore remotely located communities, particularly those located in northern Virginia. No documentation in support of these allegations was submitted.

Conval Port Medivan, Inc., and Ironsides Medical Transportation Corporation hold certificates of public convenience and necessity authorizing operations duplicative of those proposed herein. On July 23, 1979, Conval Port filed a protest to the application, asserting that Mobile Care has knowingly and willfully operated without authority. According to an affidavit filed with the protest, an employee of Conval Port was transported by Mobile Care from Georgetown University Hospital to George Washington University Hospital (both in the District of Columbia) on July 18, 1979, pursuant to a request for such service made that same date.^{4/} The affiant also states

that on both Thursday, July 19, 1979, and Friday, July 20, 1979, I made telephone calls to the above firm and made further inquiries regarding transportation point to point within the District of Columbia. I was assured that any request for service would be answered promptly.

^{3/} An exhibit accompanying the application indicates that 585 passengers were transported during the period January 1, 1977, through July 14, 1979.

^{4/} A receipt attached to the affidavit indicates that \$20 was received by Mobile Care for this trip. The initials on the receipt are the same as those of Mobile Care's general manager.

By a letter dated July 10, 1979, from the Commission's General Counsel to Mobile Care's general manager, that company was advised that "all unauthorized operations should be discontinued." That Mobile Care was aware of this injunction is obvious from the protestations in its counsel's letter filed July 17, 1979, that unauthorized operations had been discontinued.

In a supplemental affidavit filed July 24, 1979, Conval Port states that a decrease in business in the Metropolitan District has, effective June 22, 1979, caused it to reduce its operations by one crew and one vehicle. Conval Port has two idle vehicles, equipped with hydraulic lifts and two-way radios, which it would assign to the Metropolitan District should business warrant.

Conval Port's operating statement for the three months ending June 30, 1979, was also submitted. Operations in the Metropolitan District during that quarter generated revenues of \$22,806 and expenses of \$27,086 for a net loss of \$4,280.

On July 26, 1979, Ironsides filed a protest to the application. In addition to stating that claimed ignorance of the law does not justify unauthorized operations, Ironsides contends that there is no emergency situation warranting a grant of temporary authority. Noting that there is no evidence to support the contention that some companies avoid longer trips or operations in Virginia, ^{5/} Ironsides states that it is ready, willing, and able to provide service to the persons who have been served by Mobile Care.

On July 30, 1979, Mobile Care filed a reply admitting continued unauthorized operations but contending that the public convenience and necessity requires Mobile Care's service, even though public convenience and necessity is not an issue in temporary authority applications. An affidavit from applicant's vice president (general manager) consisting of hearsay statements regarding service refusals by Ironsides was also submitted.

Title II, Article XII, Section 4(d)(3) of the Compact provides that the Commission, in its discretion and without hearings or other proceedings, may grant temporary authority to "enable the provision of a service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need. . . ." Weighing the evidence of this case in light of these criteria, the Commission finds that applicant has failed to establish that such need for service as may exist is immediate and urgent in nature. We further find that the existing carrier service is capable of meeting such need as has been demonstrated.

^{5/} Transportation between points solely in Virginia is subject to regulation by the Virginia State Corporation Commission and is excluded from the jurisdiction of this Commission. See Title II, Article XII, Section 1(b) of the Compact.

Applicant has been transporting approximately 19 persons a month, a very small volume of business. No information is provided about the destinations to which these persons travel, although it may be inferred that some trips are to and from medical treatment facilities. For all that this record shows, however, the transportation could be for sight-seeing or some other recreational purpose. Mobile Care has the burden of showing that the subject transportation is immediate and urgent, and it has not met that burden.

Conval Port has shown that it is capable of handling the volume of traffic which Mobile Care has heretofore enjoyed. Conval Port has two idle vehicles and crews which are available to meet the needs of handicapped persons in the Metropolitan District. Moreover, Conval Port avers that its vehicles are equipped with hydraulic lifts and two-way radios, while the suitability of applicant's vehicles is a matter of conjecture. Conval Port has further demonstrated a need for additional revenue to support its operations in the Metropolitan District. Ironsides also asserts that it is ready, willing and able to provide the proposed service. Under such circumstances, Mobile Care's vague allegation that "other providers are now unable or unwilling to handle certain patients," supported only by hearsay statements, fails to persuade us that Conval Port and Ironsides are ignoring their duty to furnish transportation as authorized by their certificate. See Compact, Title II, Article XII, Section 3. Accordingly, the application shall be denied.

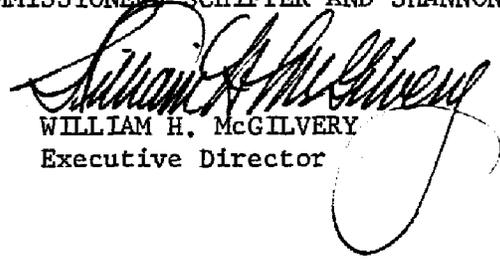
As described above, Mobile Care has continued to provide transportation subject to regulation under the Compact after being advised that such operations, conducted without authority from this Commission, are unlawful. We therefore find that applicant should be directed to cease and desist from further violations, and admonish Mobile Care, Ltd., that future violations may result in criminal prosecution and the imposition of fines pursuant to Title II, Article XII, Section 18(d) of the Compact.

THEREFORE, IT IS ORDERED:

1. That the above-described application of Mobile Care, Ltd., is hereby denied.
2. That Mobile Care, Ltd., and its officers, agents, servants, and employees, are hereby directed to cease and desist from engaging in transportation subject to the Washington Metropolitan Area Transit Regulation Compact unless and until there is in force a certificate of public convenience and necessity or temporary authority, issued by the Commission, authorizing Mobile Care, Ltd., to engage in such transportation.
3. That Mobile Care, Ltd., is directed to provide a copy of this order to each of its employees within two days from the date of receipt thereof, and is further directed to post conspicuously in its office and

in each van owned or operated by Mobile Care, Ltd., a copy of this order within two days from the date of receipt thereof.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS SCHIFTER AND SHANNON.



WILLIAM H. MCGILVERY
Executive Director