

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2065

IN THE MATTER OF:

Served December 5, 1979

Application of D. C. MEDICAID TRANSPORTATION, INC., for a Certificate of Public Convenience and Necessity)	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
)	

BACKGROUND

By order entered June 15, 1979, as supplemented by order of September 12, 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 with the order of June 15, 1979.

Each applicant had previously 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) by Order No. 1749, served September 16, 1977. The denials were affirmed on reconsideration by the Commission in Order No. 1769, served November 16, 1977. D. C. Medicaid Transportation, Inc. (DCMT), was 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.

The Court of Appeals remanded the record of these cases to the Commission to take additional evidence of DHR's need for service between September 1976 (the date of initial hearings in related proceedings) and September 1977 (the date of initial decision). Additionally, the Court stated that the Commission could consider evidence bearing on DHR's need for service after September 1977. The Court also held that the Commission could, but need not, reopen the record concerning the fitness of DCMT.

Order No. 2009, 1/ served July 10, 1979, scheduled Application Nos. 974, 980, and 985 for further hearing, affording applicants an opportunity to present such additional evidence on the issue of DHR's need for carrier service as they deemed necessary, from September 1976 through June 30, 1979. Protestants to the initial 1976 hearings, Ironsides Medical Transportation Corporation and Conval Port Medivan, Inc., 2/ remained protestants in the proceeding, and, to develop the record fully, the Commission directed those carriers which were granted certificates by Order No. 1749 to appear at the hearing.

As for DCMT, the Commission stated that there was no need for further hearing inasmuch as it had been found unfit previously and the decision was administratively final. In addition, the Commission found that the revocation of DCMT's corporate charter by the District of Columbia rendered DCMT unable, as a matter of law, to perform the duties of a carrier subject to the Compact. By order of September 12, 1979, the Court of Appeals supplemented its original memorandum, directing the Commission to consider the request of DCMT for a certificate of public convenience and necessity and to ". . . ascertain the identity of the real parties in interest after due notice" The Commission granted DCMT, or its successor in interest, leave to participate in the scheduled hearing. 3/

1/ Order Nos. 2010 and 2018, served July 18, 1979, and August 9, 1979, respectively, rescheduled the hearings which had been originally set to commence on August 7, 1979.

2/ Conval Port informed the Commission on October 29, 1979, that it desires to withdraw from this proceeding and to relinquish that portion of its certificate which authorizes service for DHR. Discussion of this issue is contained below. Conval Port is the successor in interest to Rehab Transportation, Inc.

3/ Order No. 2034, served September 14, 1979.

THE HEARING

Several preliminary matters arose at the hearing held on September 19 and 20, 1979. First, counsel for DCMT stated that the company is currently being run as a sole proprietorship, and that the short notice accorded the company granting leave to participate in the hearing (due to the Court of Appeals order dated September 12, 1979, and the prior scheduling of the hearing for September 19, 1979), prevented it from raising the sum assessed for the hearing. As an alternative, DCMT will, according to counsel, request a hearing at a later date.

Applicants objected to the exercise of this Commission's jurisdiction over carriers transporting DHR Medicaid patients, alleging that WMATC lacks the power to regulate an agency which administers a federal program. Objection was also made to the \$300 assessed each applicant on the grounds that the current hearings are a result of prior Commission error. Applicants also objected to the issuance of subpoenas to certificated medivan carriers, arguing that the only real issue is whether there is a need for additional carriers to serve DHR and that the necessary testimony is lodged in DHR records (and DHR supporting witnesses). In addition, applicants moved to find protestants Ironsides and Conval Port in contempt of the Commission for failing to appear at the commencement of the hearing as directed by Order No. 2009. 4/ After being contacted by the Commission's staff, both protesting carriers appeared at the afternoon session of the first day of hearing, and Ironsides also appeared at the second day of the hearing. Further discussion of the contempt motion is included below.

APPLICANTS' EVIDENCE

Applicants Battle, Gary, and Dye generally testified that they own the same vans designed to transport passengers in wheelchairs that they operated prior to the Commission's decision in Order No. 1749. Applicants stated that they ceased operations after being informed in February 1978 by DHR that they would no longer be included in that agency's assignment of carriers to transport Medicaid passengers. Although none of the applicants has received calls for service from DHR after the cutoff date, each one asserts a willingness and ability to resume operations.

4/ Supplemented by Order Nos. 2010 and 2018.

The witness for DHR, subpoenaed by the Commission at the request of applicants, sponsored agency records manifesting the number of trips made for DHR by each carrier in 1977, 1978, and the first half of 1979, and the total revenue paid to each carrier during those periods. He also identified and explained a report furnished by DHR to the Commission in December 1978 setting forth monthly and quarterly payments made to each carrier, 5/ classified to distinguish one-way, two-way, and canceled trips.

According to the witness, carriers are assigned patients on a rotational basis, with separate designations made for "regular" patients and "standing" patients. The former category consists of those passengers transported one time a week or less between their homes and medical facilities, while the latter category is made up of persons requiring transportation at least twice a week. Standing patients are assigned to one particular carrier indefinitely -- unlike regular patients who are assigned, each time service is needed, to the next available carrier. Separate rotation lists of carriers are used to assign standing and regular patients to equalize the number of trips among the carriers to the extent possible. The witness stated that while, theoretically, there may be better and more efficient assignment methods, the present procedure has proved satisfactory considering the assertedly limited resources of DHR.

A normal assignment is made whether the trip is one-way or round-trip, without regard to equalizing the length of trips among the carriers. A disparity of total trips exists among the carriers because, on occasion, carriers are unable to accept regular patients due to a shortage of equipment resulting from breakdowns or scheduling problems, unwillingness to operate on weekends, or prior commitments. Protestant Ironsides, for instance, holds authority to serve non-DHR patients and has informed DHR at times that it is unable to accept regular-patients for a specified period. It continues, however, to serve its standing patients. In other cases, carriers suffer equipment breakdowns and, if they lack suitable back-up vehicles, are obliged to turn down work assignments. When these problems occur, DHR simply calls the next carrier in rotation until the work is assigned.

Although some carriers maintain backup vehicles, DHR makes no provision for the size of a particular carrier's fleet, the capacity of individual vans, or the length of each trip. DHR makes no effort to consolidate two or more passengers on any one trip.

5/ Carriers at that time were limited to those holding Commission certification -- ten carriers serving DHR and two carriers, protestants Ironsides and Conval Port, holding area-wide authority, including service for DHR.

In calendar year 1977, a total of 17,775 assignments were made and paid for (including cancellations). The number of assignments increased to 22,306 in 1978 and 12,290 for the first six months of 1979. While the volume of business is increasing each year (considering 1979 on an annualized basis of 24,580), the witness testified that it is difficult to predict future need. He declared that existence of the medivan transportation system appears to be becoming more well-known around Washington, D. C., potentially resulting in increased future demands for service.

Based on past experience, the DHR representative stated that he was always able to find a carrier to provide service on short notice, although sometimes the situation was "very tight." The need for short-notice service arises for hospital admissions and discharges, emergency-room transportation, and dialysis treatment. True emergency cases are handled by ambulances and are not within the purview of medivan service. While, on rare occasions, doctors' appointments have had to be rescheduled, and five or six carriers have had to be telephoned to find one available to provide service, transportation has always been satisfactorily arranged with one of the existing certificated carriers.

The certificated carriers serving DHR were directed 6/ (and subsequently subpoenaed) to appear at the hearing to ensure a fully developed record in keeping with the order of the Court of Appeals. 7/ Generally, the Commission sought to determine the current level of traffic transported by existing carriers, the growth of their businesses since the prior hearings, and their excess passenger capacity.

EVIDENCE OF EXISTING OPERATIONS

Rodwell Buckley, trading as Elrod Transportation Service, sustained a loss in 1977 but showed "a slight profit" in the first quarter of 1978 according to the proprietor. He stated that DHR's decision to cease using uncertificated carriers in early 1978 had a beneficial impact on his business inasmuch as both total and net income improved. He further stated that his company operates two vans, one for primary service and the other as a back-up vehicle, and that he averages about eight trips 8/ a day in a five-day week. The witness believes that his company is under-utilized by DHR.

6/ See Order Nos. 2009, 2010, and 2018.

7/ The carriers not directed (or subpoenaed) to appear, Ironsides and Conval Port, were party protestants in this proceeding.

8/ As discussed above, no differentiation is made for a trip; it may be either one-way or round-trip.

Dan Jenkins, trading as Jenkins Transportation Service, operates two vans, one as a primary vehicle and one predominantly as a back-up unit. He stated that he cannot handle any additional traffic, although he very seldom has to pass up a service call and is usually able to accept same-day rush calls. He averages about 8.7 trips a day and operates at a profit.

Thomas A. Pickens, trading as P & T Transportation, currently operates two vans, although he owned only one vehicle at the time of the 1976 hearings. He uses two drivers (including himself) and works a five- or six-day week depending on the needs of DHR. He claimed that he can handle all the work that DHR tenders him, especially on his slack days (those days that he does not transport standing dialysis patients). He admitted to turning down a couple of service calls in the last six months because of short notice but has refused no other work. The witness testified that he is making between 40 and 44 trips in an average week and is operating the two vans profitably. The second van was purchased when he found out that he was going to receive a certificate of public convenience and necessity from the Commission.

John W. Brown, trading as J & B Transportation, owned two vans at the time of the 1976 hearings and still does, using two full-time drivers. He asserted that he is not operating at full capacity and could transport 15-20 more DHR patients a month. Brown stated that he was operating profitably in 1977 and currently requires about four trips per van each day to break even. He initially contended that he needs 7-8 trips a day to operate one van profitably. In light of DHR's records indicating that he is now performing about 7.7 trips a day in total in a six-day week, Mr. Brown conceded that that volume of traffic currently allows him to operate at a profit. Seven trips per van each day, the witness clarified, would be full capacity rather than a break-even point.

Otis F. Smith, trading as Speedy Transportation, now operates two vans. He owned one van at the time of the 1976 hearings and purchased a second vehicle in February 1977. He is operating close to capacity on some days but could transport additional DHR patients on those days when he does not carry dialysis patients. Mr. Smith has been transporting 5 or 6 passengers in total in his two vans on these slack days. Mr. Smith indicated that he was not operating at a profit in 1977 but has earned a small profit since 1978.

Noral Harvey, trading as Harvey's Medivan Service, owns two vehicles, including one purchased at the beginning of 1979, and employs two full-time drivers, including himself. He stated that he could handle additional traffic every day of the week and estimated that he

needs about 10 trips a day to show a profit for his two-van business. He was unable to pinpoint the number of additional trips he could accept inasmuch as the length and timing of each trip is a variable factor.

Alfred L. Gaines, trading as Medico Transportation Service, owned one van at the time of the 1976 hearings and purchased a second vehicle in June 1978. He employs one full-time driver and operates the second van as a backup vehicle approximately five hours a week. He asserted that he could transport between 30 and 40 more passengers a week than he is presently carrying. Gaines stated that business improved after the certification process limited the competition in February 1978 and that at that time he hired a full-time driver and continued driving only as necessary. The proprietor testified that the entry of new carriers would have an adverse impact on his operations.

David C. Pearson, trading as E & H Transportation Company, owned three vans in 1976 and still owns three. Unlike the other nine carriers limited to serving DHR, Pearson has obtained WMATC authority to provide additional service pursuant to a contract with Southeast Neighborhood House. Prior to the 1976 hearings, Pearson used one of his vans to provide service for DHR and leased the other two to carriers who then served DHR but have since gone out of business. Subsequent to the 1976 hearings, Pearson regained possession of all three vans for his own use. Currently, he uses one vehicle full time and uses the other two as back-up equipment. One is usually idle. Based on a six-day work week, Mr. Pearson states that he could accept 150 trips a month over and above what he now receives. Mr. Pearson testified that he noticed a small increase in traffic volume after February 1978. Pearson experienced a daily average of 4.9 trips a day in 1977, 6.7 trips a day in 1978, and 6.9 trips a day in 1979. As in past years, he is currently operating at a small profit.

John Otis Pickens, Jr., trading as Metro Medicab Transportation, owned one vehicle in September of 1976, but now owns two, having purchased the second in November 1977. He acquired the second vehicle because of a slight volume increase and the desire to avoid a complete work stoppage if his primary vehicle should break down. On an average day, he transports about 10 passengers in his two vans and could handle additional traffic. If necessary, Mr. Pickens would consider buying a third van. With his present equipment and two full-time drivers, he asserted that he could carry 15 more passengers a week. According to DHR records, Pickens' business has almost doubled since 1977. He stated that 1977 and 1978 were profitable years, but expressed the belief that if he paid himself (as a full-time driver)

the same wage he pays an employed driver, he would show a marginal profit at best.

Ellis B. Harrison, trading as Area Transportation, owned one van in September 1976 and purchased a second vehicle in June 1978 because of a larger volume of traffic and a need to perform maintenance on the initial vehicle. Mr. Harrison stated that, as in the past, he is operating profitably and could maintain a slight profit if there were a cutback in volume due to the issuance of additional certificates. He has noticed an increase in traffic in recent months and believes that he could make an additional 18 trips a week "with ease." Although he operates his second vehicle only about 25 hours a week, he stated that his operation is more efficient with two vans inasmuch as he can construct his schedule more efficiently.

POST-HEARING DEVELOPMENTS

By application (letter) filed October 29, 1979, Conval Port sought permission to abandon service for DHR, stating that during the six months ended September 30, 1979, it sustained appreciable losses attributable to DHR operations. ^{9/} It also expressed a desire to withdraw from the proceedings in Application Nos. 968, 974, 980, and 985. The request to cancel its certificate to the extent it authorizes service to DHR will be considered in Case No. AP-79-17. With regard to Conval Port's request to withdraw from this proceeding, the Commission will consider the evidence already of record, especially the statistical information concerning Conval Port and the potential loss of service to DHR, in determining the possible need for additional service.

In 1977 Rehab Transportation, Conval Port's predecessor in interest, transported 390 passengers for DHR. In 1978 Conval Port transported 1,204 passengers, and during the first six months of 1979 Conval Port has transported 929 passengers (annualized to 1858 passengers). The Commission will not remove Conval Port as a party protestant from these proceedings at this late date but will consider its interests in light of its application to abandon DHR service. All parties to these proceedings have been informed of Conval Port's application, and in a notice to all parties, served October 26, 1979, the date established for the filing of post-hearing briefs in this

^{9/} See Order No. 2055, served October 31, 1979, in Case No. AP-79-17, which gives any interested person an opportunity to comment on Conval Port's proposed cessation of service to DHR. No comments were filed.

proceeding was extended by stipulation of counsel for applicants, protestants and the staff of the Commission so that all parties could comment upon the effect of that withdrawal in their briefs.

DISCUSSION

With respect to objections raised on behalf of DCMT at the outset of the hearings, the Commission reiterates its position that the prior denial of DCMT's application is administratively final. In accordance with the order of the Court of Appeals, filed September 12, 1979, the Commission gave DCMT, or its successor(s) in interest, an opportunity to participate in the hearing scheduled to commence September 19, 1979. 10/ At the hearing, counsel for Gregory Perkins stated that his client owns the company, which was formerly known as DCMT, as a sole proprietor. Counsel further stated that his client was unable to raise the assessment within the period provided, but that he intended to request a hearing at a later date. The Commission, therefore, believes that the denial of DCMT's application should stand albeit without prejudice to Mr. Perkins, or any other successor in interest to DCMT, to file an application for similar authority ab initio.

Other preliminary matters include objections to the Commission's jurisdiction, the imposition of a \$300 assessment for the hearing, and the issuance of subpoenas to certificated medivan carriers. Applicants also moved to find protestants in contempt of the Commission for failing to appear at the commencement of the hearing. The jurisdictional issue has been argued in the Court of Appeals which remanded the proceeding for the purpose of taking additional evidence without commenting on the Commission's jurisdiction. It must be noted, however, that the Court's remand would be a wasteful act absent implied affirmation of the Commission's jurisdiction in this matter. While the Compact excepts regulation of transportation performed by the federal government or a Compact signatory, 11/ there is no exception for transportation performed by a private carrier for the federal government or a Compact signatory.

As for the \$300 assessment necessary for the hearing, the Compact, 12/ provides that an applicant is to bear the burden of all

10/ Order No. 2034, served September 14, 1979.

11/ Compact, Title II, Article XII, Section 1(a)(2).

12/ Compact, Title II, Article XII, Section 19(a) and (c).

reasonable expenses. Applicants contend that the sole reason for additional hearings is Commission error and, therefore, they need not bear the cost of these proceedings. Initially we note that the Court has not reversed any action taken by the Commission. Nor has it suggested the Commission erred in its consideration of previously received evidence. Of pre-emptive importance, however, is the fact that the above-cited section of the Compact states, as here pertinent:

All reasonable expenses of any investigation, or other proceeding of any nature, conducted by the Commission, of or concerning any carrier, and all expenses of any litigation, including appeals, arising from any such investigation or other proceeding, shall be borne by such carrier.

and that:

The provisions of this section shall apply to . . . any person who makes application . . . for a certificate of public convenience and necessity.

The Compact clearly sets forth the duty of an applicant to bear the costs of any proceeding before the Commission without distinguishing the cause or background of that proceeding.

Subpoenas were issued by the Commission to existing certificated medivan carriers to ensure compliance with the relevant orders directing their attendance at the hearing. Furthermore, the Commission was obligated to develop a complete record as ordered by the Court of Appeals and believes that the appearance of these witnesses was essential. Applicants' contention that the Commission's obligation was to subpoena a DHR witness to guarantee evidence of possible need for service is specious inasmuch as it is the burden of applicants to prove a need for service. That is a prime purpose of, and the burden inherent in, the application procedure. At the request of applicants, the Commission willingly subpoenaed a DHR witness but was certainly under no obligation to take that action unilaterally, and certainly not at its own expense.

The motion to find protestants Ironsides and Conval Port in contempt will be denied. First of all, upon notification by the Commission after the commencement of the hearing that a contempt motion was pending, each carrier entered its appearance, although Conval Port did not return for the second day of the hearing. Secondly, and more importantly, a protestant is concerned with representing and protecting its own interests. Failure to appear at a hearing is a strong indication of disinterest, and aside from its inability to

cross-examine applicants' witnesses or present its own evidence, the Commission gives little, if any, weight to the protest of a carrier failing to appear at a hearing. Unlike the situation where a party is subpoenaed, as were certain certificated carriers, or where a party is necessary to support an applicant's case -- in this instance DHR (although subpoenaed at applicants' request) -- a party protestant is under no obligation to appear at a hearing. Accordingly, the motion for contempt will be denied. 13/

PUBLIC CONVENIENCE AND NECESSITY

The Compact, Title II, Article XII, Section 4(b) provides that a certificate of public convenience and necessity shall be issued by the Commission if it finds

that the applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise, such application shall be denied.

Based on the evidence elicited at the hearing regarding DHR transportation needs for the period from September 1976 through June 1979, testimony of existing carriers and Conval Port's desire to withdraw from serving DHR's clients, the Commission will issue certificates of public convenience and necessity to McKinley Battle, Damon T. Gary, and William C. Dye. 14/

The Commission believes that the ridership estimates adduced at the September 1976 hearing and used to determine the need for service as set forth in Order No. 1749 were substantially accurate and have served the purpose of establishing a healthy industry within the regulatory framework. Existing carriers have stabilized their operations, adding equipment and employees as necessary to serve DHR and achieve profitable income levels. Order No. 1749, initially authorizing service, calculated a total need for approximately 1,800 vehicle trips a month, with about 600 trips a month capable of being

13/ Although the Administrative Law Judge declined to rule on the motion at the hearing, the Commission believes that his power to do so is inherent in Commission Rule No. 20-04.

14/ Applicants were found to be fit to operate within the meaning of Title II, Article XII, Section 4(b) in Order No. 1749.

handled by protestants Ironsides and Rehab (Conval Port's predecessor). The evidence showed a reasonable per-van capability of 120-130 vehicle trips a month resulting in the decision to certificate 10 additional carriers to handle the 1,200 additional service calls a month. The higher average figures for protestants were derived from evidence indicating the number of vans in service and the existing traffic pattern. In fact, evidence presented at the recent hearing indicates that both Conval Port and Ironsides transported, on the average, somewhat fewer passengers than any of the other carriers participating in the program.

The data show that there was a 25 percent increase in passenger trips from 1977 to 1978, and a 10 percent increase from 1978 to 1979 (annualized) or a 38 percent increase from 1977 to 1979. The 1977 and 1978 period provided an opportunity for existing carriers to solidify their operations and attain profitability, especially after DHR ceased using uncertificated carriers in early 1978. Testimony indicates that a number of authorized carriers hired employees and purchased new equipment during the period between the Commission's issuance of Order No. 1749 and DHR's practice of calling only certificated carriers. The statistical evidence indicates a continued growth in 1979 yielding an average overall increase of almost 200 trips a month. Using the average figure of 120-130 vehicle trips per van each month, the evidence reflects a need for two additional carriers to meet this traffic increase as well as to ease the problem of arranging transportation on short notice and to help absorb expected future growth anticipated by DHR as a result of increased public awareness of the medivan transportation system. And, of course, the withdrawal of Conval Port from this transportation field supports the reasonableness of its replacement by a carrier able to provide service to DHR.

While the Commission intends to maintain a stable industry, it does not propose to limit competition to existing carriers where competent evidence supports the entry of new carriers without a material, adverse impact upon current certificate holders. There has been no definite showing that the introduction of two carriers (and the replacement of an existing carrier by a third new carrier) will so dilute ridership averages of existing carriers as to cause undue harm. Although several existing carriers testified that they could handle additional passengers, they generally admitted that certain days each week were already booked up and that they were conducting profitable operations. The Commission does not intend that the medivan industry be a "closed shop," nor does it desire to deny the gains that may accrue to the public as a result of added competition. We believe that the continued growth of DHR's transportation needs, the existing stability of the industry, the need for short-notice service, the

growth in public awareness of the program, and the withdrawal of Conval Port from the "market" justifies the addition of three new carriers to the industry.

We appreciate that our decision is likely to cause a short-term decrease in the revenues and profit levels of presently certificated carriers inasmuch as expansion of the industry to 14 carriers may not be fully offset by an already-realized demand increase. Future demand, while somewhat speculative, appears likely to increase but not at the same rate of growth that has been achieved in the recent past. This, of course, is consistent with the testimony of DHR's witness in the 1976 hearings. Accordingly, we find that our decision herein will result in a somewhat generous service level which will be fully consistent with the reasonably foreseeable public convenience and necessity.

CORPORATE STATUS

One further topic requires discussion. At the close of the hearing, applicants presented evidence in the form of certificates 15/ from the Recorder of Deeds, D. C., Corporation Division, dated August 20, 1979, attesting that neither Ironsides nor Conval Port are of record as either a domestic corporation organized in the District of Columbia or a foreign corporation authorized to transact business by reason of a certificate of authority. Applicants contend that the situation is analogous to that of DCMT wherein the Commission noted DCMT's loss of corporate status and, thus, its dissolution without further legal proceedings pursuant to D. C. Code (1973 edition) Section 29-938(c). 16/ Applicants further argue that, to be consistent and as a matter of law, the Commission must direct Ironsides and Conval Port to cease operations immediately. As an alternative, applicants suggested that they be granted temporary authority to alleviate the shortage of equipment that assertedly would result from the loss of the services of two DHR carriers.

According to Commission records, both Ironsides and Conval Port are Maryland corporations and are under an obligation to procure a

15/ D. C. Code (1973 edition) Section 29-949 states that such certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated.

16/ Order No. 2029, p. 2.

certificate of authority from the Recorder of Deeds' office before transacting business in the District of Columbia. 17/ Failure to do so, however, does not result in dissolution of the corporation, nor does it bar the entity from performing operations in the District of Columbia. 18/ Rather, the lack of appropriate certification prevents a corporation from maintaining an action at law or in equity in any court of the District of Columbia until proper certification is obtained. 19/ Of course, failure to comply with the requirements subjects a corporation to specified penalties under District of Columbia law, 20/ but has no effect upon the company's status with the Commission inasmuch as it is not disabled from operating.

In any event, Ironsides and Conval Port have each submitted certified copies of a certificate of authority and a certificate of good standing, 21/ which will be accepted, thereby removing any cloud over Ironsides' and Conval Port's ability to operate in the District of Columbia.

Finally, a petition to reopen the record was also filed by applicants pursuant to Commission Rule 27-01 for the purpose of submitting a certificate from the Recorder of Deeds, D. C., Corporation Division, indicating that Elrod Medical Transportation Service, Inc., is not of record as either a domestic corporation organized in the District of Columbia or a foreign corporation authorized to transact business. Elrod purportedly is the incorporated name of Rodwell Buckley trading as Elrod Transportation Service, a sole proprietorship, and one of the carriers subpoenaed by the Commission to testify at the hearing. While Buckley testified that he had incorporated his business and did, in fact, file quarterly financial statements with the Commission in the name of the corporation, Commission records show the carrier as a sole proprietorship on its certificate of public convenience and necessity, its tariff, and its certificate of insurance.

17/ D. C. Code (1973 edition) Section 29-933.

18/ D. C. Code (1973 edition) Section 29-934f(b).

19/ D. C. Code (1973 edition) Section 29-934f(a).

20/ D. C. Code (1973 edition) Sections 29-933(e)(4) and 29-934f(c).

21/ These certificates were issued to Ironsides on September 21, 1979, and to Conval Port on September 25, 1979.

In response, Buckley states that he had filed Articles of Incorporation with the Recorder of Deeds in 1977 and filed appropriate annual reports. These documents were apparently lost in the Recorder of Deed's office, and Buckley recently submitted new Articles of Incorporation that have been accepted. He filed a certificate of incorporation with the Commission dated October 16, 1979.

Despite its questionable relevancy, the Commission will grant applicants' motion to reopen the record but will not direct Buckley to cease operations, as requested by applicants. Buckley will be directed to apply for authority to transfer his certificate should he desire actually to do business as a corporation rather than a sole proprietor.

THEREFORE, IT IS ORDERED:

1. That the motion of applicants to find protestants Ironsides Medical Transportation Corporation and Conval Port Medivan, Inc., in contempt of the Commission is hereby denied.

2. That the motions of Ironsides Medical Transportation Corporation and Conval Port Medivan, Inc., to reopen the record to receive certificates of authority and good standing from the Recorder of Deeds, D. C., Corporation Division, are hereby granted.

3. That the petition of McKinley Battle and of Damon T. Gary trading as Damon's Transport to reopen the record to receive a certificate of lack of registration concerning the corporate status of a carrier from the Recorder of Deeds, D. C., Corporation Division, is hereby granted.

4. That Application Nos. 974 of McKinley Battle, 980 of Damon T. Gary, trading as Damon's Transport, and 985 of William C. Dye, trading as W & D Transportation Service, are hereby granted to the following extent:

IRREGULAR ROUTES

Special Operations: Transporting persons confined to wheelchairs, between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District.

Restrictions: The service authorized herein is restricted to the transportation of non-ambulatory participants in the Medicaid program of the District

of Columbia, and is further restricted to transportation in van-type vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit.

5. That Application Nos. 974, 980, and 985, except to the extent granted herein, are hereby denied.

6. That each applicant granted authority herein is directed to file with the Commission, within 30 days from the date of service of this order, (a) a certificate of insurance as required by Commission Regulation 62, (b) two copies of its WMATC Tariff No. 1 as required by Commission Regulation 55 in accordance with prevailing rates prescribed by the D. C. Department of Human Resources, and (c) a notarized statement of compliance with Commission Regulation 68 governing identification of motor vehicles.

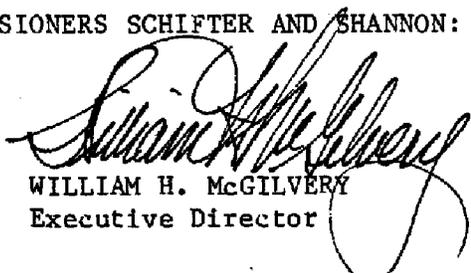
7. That each applicant granted authority above is hereby directed to file with the Commission within 30 days from the date of service of this order notice that its equipment is properly outfitted with a ramp, wheelchair tie-downs and safety equipment and is available for inspection.

8. That upon compliance by an applicant with the directives set forth in paragraphs (6) and (7) above, successful inspection of his equipment, and acceptance of an appropriate tariff by the Executive Director, a certificate of public convenience and necessity shall be issued to such complying applicant.

9. That in the event an applicant fails to comply with the directives set forth above within 30 days from the date of service of this order, or within such additional time as may be authorized by the Commission, the grant of authority made herein to that applicant will be considered void and the application will stand denied in its entirety effective upon expiration of the said compliance time.

10. That the previous decision in Order Nos. 1749 and 1769, finding D. C. Medicaid Transportation, Inc., unfit to operate, remains in effect without prejudice to Gregory Perkins or any other successor in interest to D. C. Medicaid Transportation, Inc., to file a new application for authority to serve the District of Columbia Department of Human Resources Medicaid program.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS SCHIFTER AND SHANNON:


WILLIAM H. MCGILVEREY
Executive Director