

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2834

IN THE MATTER OF:

Served March 7, 1986

Application to Transfer )  
Certificate No. 25 from BELTWAY ) Case No. AP-86-08  
LIMOUSINE SERVICE, INC., to DD )  
ENTERPRISES, INC. )

By application filed March 3, 1986, Beltway Limousine Service, Inc. ("Beltway"), and DD Enterprises, Inc. ("DD Enterprises"), seek Commission approval pursuant to the Compact, Title II, Article XII, Section 4(h) to transfer Beltway's Certificate of Public Convenience and Necessity No. 25 to DD Enterprises.

The purpose of this order is to deal with the "Motion for Temporary Approval of Transfer Pending Determination of Application" which was submitted along with the application. As a result of an agreement of sale and purchase executed January 31, 1986, Beltway's insurance has been cancelled effective March 11, 1986. As a result, Beltway will be unable thereafter to operate service pursuant to Certificate No. 25, including its common carrier service obligations as well as various contracts.

In its motion Beltway addresses two sets of criteria -- (1) those applicable to approval of a transfer, and (2) those applicable to a temporary approval of a consolidation, merger, or acquisition of control pursuant to the Compact, Title II, Article XII, Section 12(d).

While the motion addresses the criteria applicable to the transfer, it seeks temporary approval pending the Commission's determination of the transfer application. If we grant temporary approval as requested, it is not necessary at this time to make a final determination on the transfer criteria. We prefer to address those matters with more deliberation than the short time before insurance cancellation permits. Accordingly, we shall focus on the temporary approval aspect.

Although DD Enterprises is a new Maryland corporation formed in 1986 apparently for the express purpose of entering into the aforementioned agreement of sale and purchase with Beltway, the motion addresses the more stringent criteria that would apply to acquisition of a WMATC carrier by another carrier. Section 12(d) provides as follows:

(d) Pending the determination of an application filed with the Commission for approval of a consolidation or merger of the properties of two or more carriers, or of a purchase, lease, or contract to operate the properties of one or more carriers, the Commission may, in its discretion, and without hearings or other proceedings, grant temporary approval, for a period not exceeding 180 days of the operation of the carrier properties sought to be acquired by the person proposing in such pending application to acquire such properties, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

There is no similar expression in the Compact of criteria for temporary approval pending determination of a transfer application, so Beltway has apparently filed, as permitted by Commission Rule 15-01, a motion "for any relief or action of the Commission for which no other pleading is available." The motion asserts that due to the cancellation of Beltway's insurance, neither Beltway nor DD Enterprises will be able to meet the service obligations imposed by Certificate No. 25 unless the Commission grants temporary approval pending determination of the transfer application. In so doing, it asserts satisfaction of criteria covering a situation more demanding than a transfer. We are persuaded that it is not inappropriate to approach the matter on that basis. We are further persuaded that it appears that failure to grant temporary approval may interfere substantially with the future performance of adequate and continuous service to the public.

We must also be concerned with the fitness of transferee DD Enterprises to operate on even a temporary basis while we consider whether the proposed transfer is consistent with the public interest. Transferee, as we have said, is a new corporation with no track record concerning fitness. A preliminary review of the financial data accompanying the application indicates sufficient cash flow from its first twelve months of operation to enable transferee to meet its operating expenses and its obligations resulting from the purchase agreement, and still have positive operating and net income ratios. With regard to operational fitness, pending transfer Beltway and its principals have agreed to continue in the management and conduct of the business as well as providing certain training and employing their best efforts to keep their business organization intact. This continued participation and transition of management should also help assure compliance fitness. Based on the foregoing, we are able to make a preliminary finding of fitness.

However, an important element is missing. We have not been presented with a certificate of insurance covering transferee DD Enterprises. Therefore, we shall grant temporary approval conditioned upon the filing and approval of an appropriate certificate of insurance covering transferee.

THEREFORE, IT IS ORDERED:

1. That temporary approval is hereby conditionally granted to DD Enterprises, Inc., to conduct operations pursuant to Certificate of Public Convenience and Necessity No. 25 of Beltway Limousine Service, Inc., pending determination of Case No. AP-86-08.

2. That the above temporary approval shall become effective upon the filing of a certificate of insurance naming DD Enterprises, Inc., conforming to the requirements of Commission Regulation No. 62, and approval of such certificate by the Commission's Executive Director or his designee.

3. That such temporary approval shall remain in force for a period of 180 days, unless otherwise ordered by the Commission.

4. That unless such certificate of insurance is filed and approved as described above no later than close of business Monday, March 10, 1986, the temporary approval granted herein shall be void.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
WILLIAM H. MCGILVERY  
Executive Director 