

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2888

IN THE MATTER OF:

Served July 25, 1986

Application to Transfer Certificate)  
No. 106 from FREDERICK LIMOUSINE, )  
INC., to GAITHERSBURG LIMOUSINE )  
SERVICE, INC. )

Case No. AP-86-25

FREDERICK LIMOUSINE, INC., )  
Suspension and Investigation of )  
Revocation of Certificate No. 106 )

Case No. MP-86-04

Application of GAITHERSBURG )  
LIMOUSINE SERVICE, INC., for )  
Temporary Authority )

Case No. AP-86-24

By application filed June 18, 1986, Frederick Limousine, Inc., ("Frederick" or "transferor") seeks to transfer its Certificate of Public Convenience and Necessity No. 106 to Gaithersburg Limousine Service, Inc. ("GLS" or "transferee"). Certificate No. 106 was issued to transferor pursuant to Order No. 2535, served March 1, 1984, and authorizes the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers and their baggage, between Washington National Airport, Gravelly Point, Va., Dulles International Airport, Herndon, Va., and Union Station, Washington, D.C., on the one hand, and, on the other, points in the District of Columbia and Montgomery County, Md.

RESTRICTED to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver).

The application includes an unexecuted purchase agreement dated June 16, 1986, whereby Frederick agrees to sell to GLS, Certificate No. 106 for \$2,000 plus attorneys fees. The \$2,000 transfer price has been paid by Gaithersburg Limousine Service, Inc., and placed in an escrow account to be paid to transferor's attorney within three days of the Commission's approval of the transfer. The agreement provides the

parties thereto options for rescinding the contract in the event that Certificate No. 106 is not transferred.

By motion filed June 26, 1986, transferor and transferee jointly request that the Commission temporarily approve the transfer pending Commission decision. In support of that request Frederick and GLS state that continuity of service under the certificate will be interrupted unless operations are instituted by transferee on a temporary basis. Applicants argue that the 1,000 plus customers that had been served by Frederick may return to other modes of transportation, including private automobiles, which are less economical, less efficient, and less safe. Applicants assert that this would result in destruction of or injury to Certificate No. 106 and would substantially interfere with the future usefulness of the certificate.

The Commission has the authority to approve temporarily a transfer pursuant to sale of a Certificate of Public Convenience and Necessity for a period of 180 days. This authority is given the Commission under Title II, Article XII, Section 12(d) of the Compact which provides in relevant part that:

Pending the determination of an application filed with the Commission for approval . . . 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.

The legislative history of the Compact shows that Section 12(d) was intended to apply to all transactions covered by Section 12. A plain reading of Section 12(d) indicates that it covers certain transactions including a transfer by sale. This reading is consistent with the result in Case No. AP-86-08, Application to Transfer Certificate No. 25 from Beltway Limousine Service, Inc., to DD Enterprises, Inc.

Failure to grant temporary approval in this case will interfere substantially with the future performance of adequate and continuous service to the public pursuant to Certificate No. 106, thereby affecting its future usefulness. There is no other comparable door-to-door service available to the former patrons of the transferor, and there is a substantial likelihood that the threat of customers finding

other, less efficient means of transportation. After carefully reviewing the record in this case, we are persuaded that the future usefulness of Certificate No. 106 will be adversely affected if temporary approval is not granted.

Before granting temporary approval we must consider the fitness of the transferee. An operator must be determined fit by the Commission even in a case where approval is made on a temporary basis. Transferee is a new corporation. GLS is jointly owned by Mark Nicholas and Nadine B. King each of whom owns 50 percent of the transferee's outstanding stock. Mr. Nicholas is the transferee's president and treasurer; Ms. King is transferee's vice-president and secretary. Transferee's statement of financial condition as of June 16, 1986, indicates total assets of \$104,300 including \$51,000 cash. Current liabilities of \$52,500 and long term liabilities of \$45,000 together with equity of \$42,800 are also listed. For the first 12 months of operations, transferee projects WMATC operating income of \$240,000, operating expenses of \$189,000, and net income, after allowance for depreciation and taxes, of \$11,840. The application indicates sufficient cash flow from its first twelve months of operation to enable transferee to meet its operating expenses.

One of transferee's owner/operators is a previous employee of Frederick who is familiar with the company's operations and customers. Such familiarity with former operations would provide for a smooth transition. GLS plans to use four 12-passenger 1986 vans and four 4-passenger 1986 sedans in its operations. The Commission is persuaded that transferee has sufficient equipment and experience to handle adequately service obligations under Certificate No. 106. Transferee also has shown that it intends to comply with the Compact and Commission rules and regulations by filing the required WMATC applications seeking operating authority. Based on the foregoing, we are able to make a preliminary finding of fitness.

Before a grant of temporary approval can be awarded in this case the important matter of insurance must be addressed. We have not been presented with a certificate of insurance covering the vehicles that GLS plans to use in its operations. Therefore, we shall condition the grant of temporary approval upon the filing and approval of an appropriate certificate of insurance covering transferee.

The issue of insurance is central to Case No. MP-86-04, an investigation currently pending against Frederick. By Order No. 2865, served May 27, 1986, and incorporated herein by reference, the Commission suspended Certificate of Public Convenience and Necessity No. 106 and directed Frederick to comply with Title II, Article XII Section 9(a) of the Compact and Commission Regulation No. 62 which deal with security for the protection of the public. Frederick was also directed to file an appropriate certificate of insurance or submit other evidence in writing and under oath to show good cause why

Certificate No. 106 should not be revoked. In applicant's motion filed June 26, 1986, Frederick requested that the pending insurance case be consolidated and set for hearing with its application to transfer Certificate No. 106 to GLS. The Commission recognizes that common questions of law and fact exist in the two actions and hereby consolidates Case Nos. MP-86-04 and AP-86-25 for hearing and decision pursuant to Commission Rule No. 20-02.

Finally, we come to the matter of the application of GLS for temporary authority. GLS having been granted temporary approval to operate Certificate No. 106 for a period of 180 days, the same amount of time for which temporary authority can be granted, that application is now moot and shall be dismissed without prejudice.

THEREFORE, IT IS ORDERED:

1. That Gaithersburg Limousine Service, Inc., is hereby made a co-applicant and a party to these proceedings.

2. That Gaithersburg Limousine Service, Inc., is hereby granted temporary approval to operate Certificate of Public Convenience and Necessity No. 106 of Frederick Limousine, Inc.

3. That Gaithersburg Limousine Service, Inc., is hereby directed to file within 15 days of the date of service of this order the following: (a) two copies of its WMATC tariff as proposed in its application, (b) an affidavit of compliance with Regulation No. 68 governing identification of motor vehicles, (c) a certificate of insurance in conformance with Regulation No. 62, (d) a list of equipment to be used in the Metropolitan District stating make, model, serial number, and seating capacity, (e) a certificate of incorporation, and (f) its articles of incorporation.

4. That upon compliance with the requirements of the preceding paragraph within the time set therefor or such additional time as may be authorized by order, the Executive Director shall notify Gaithersburg Limousine Service, Inc., in writing, that it may thereupon commence operations pursuant to Certificate of Public Convenience and Necessity No. 106.

5. That upon written notice provided in accordance with the preceding paragraph, the suspension of Certificate No. 106, effected by Order No. 2865, served May 27, 1986, shall be lifted, and such temporary approval shall remain in force for a period of 180 days, unless otherwise ordered by the Commission.

6. That the application of Gaithersburg Limousine Service Inc., in Case No. AP-86-24 for temporary authority is hereby dismissed without prejudice.

7. That Case Nos. MP-86-04 and AP-86-25 are hereby consolidated for hearing and decision.

8. That Case Nos. MP-86-04 and AP-86-25 are hereby scheduled for public hearing to commence Tuesday, September 9, 1986, at 9:30 a.m. in the Hearing Room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006.

9. That Frederick Limousine, Inc., is hereby directed to submit an executed copy of the purchase agreement to the Commission no later than Friday, August 29, 1986.

10. That Frederick Limousine, Inc., is hereby directed to publish once in a newspaper of general circulation in the Metropolitan District, notice of this application and hearing in the form prescribed by the Commission Staff, no later than Friday, August 8, 1986, and to produce at the hearing an affidavit of such publication from the selected newspaper.

11. That Gaithersburg Limousine Service, Inc., is hereby directed to post conspicuously and continuously in each of its vehicles notice of this application and hearing thereon in the form prescribed by the staff of the Commission, from the date it commences operations through the date of public hearing.

12. That any person desiring to protest shall file a protest in accordance with Commission Rule No. 14 or any person desiring to be heard in this matter shall so notify the Commission in writing, no later than Friday, August 29, 1986, and shall simultaneously serve a copy of said protest or notice on Steven L. Weiman, Esquire, 444 North Frederick Avenue, Suite 200, Gaithersburg, Md. 20877.

13. That Gaithersburg Limousine Service, Inc., is hereby assessed \$400 pursuant to Title II, Article XII, Section 19 of the Compact and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N.W., Washington, D.C. 20006, no later than Friday, August 29, 1986.

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

  
WILLIAM H. MCGILVERY  
Executive Director