

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2903

IN THE MATTER OF:

Served September 5, 1986

Application to Transfer Certificate)  
No. 25 from BELTWAY LIMOUSINE )  
SERVICE, INC., to DD ENTERPRISES, )  
INC. )

Case No. AP-86-08

By Order No. 2889, served July 29, 1986, the Commission approved the above-captioned transfer application, conditioned upon transferee DD Enterprises, Inc., filing within 30 days of the date of that order two copies of its WMATC Tariff No. 1 and tariffs governing contract service as required by Commission Regulation No. 55. The tariffs were timely filed on August 27, 1986.

Also on August 27, 1986, transferor Beltway Limousine Service, Inc., timely filed a Petition for Reconsideration of Commission's Order or in the Alternative Motion for Relief from Order of Commission. The timely filing of an application for reconsideration acts as a ". . . stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application [for reconsideration]." 1/

The Commission must act upon the application for reconsideration within 30 days of its filing. However, in this case we face a stricter time constraint. With our approval of the transfer stayed, DD Enterprises, Inc., must rely upon the 180-day temporary approval granted by Order No. 2834, served March 7, 1986. That temporary approval expires Saturday, September 6, 1986, and may not be extended beyond that date according to statutory limitation. 2/ Therefore, we are called upon to resolve this situation somehow within a matter of a few days.

We find possible merit in Beltway's application for reconsideration to the extent that it alleges factual error. In order to determine whether such error exists, we will grant reconsideration to the extent that we will reopen this proceeding. However, we cannot conduct the necessary proceedings and bring the matter to a conclusion

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1/ See Compact, Title II, Article XII, Section 16.

2/ See Compact, Title II, Article XII, Section 12(d).

and decision prior to the expiration of temporary approval. We are concerned for those persons who have reason to expect one of these carriers now apparently competing for the operating rights to provide service after September 6, 1986.

The 180-day provision of Section 12(d) is exhausted. DD Enterprises holds the facilities to provide the service, including insurance, vehicles, drivers, and a current knowledge of what its service obligations are. Beltway wants its operating authority back, but it does not assert, nor do we have any reason to believe, that it currently has or can acquire by the expiration of Section 12(d) temporary approval, the facilities that would be necessary to conduct operations. At a minimum, this would involve service pursuant to 13 separate contracts requiring a total of 25 vehicles and sufficient trained and qualified drivers to operate them. 3/

We are also concerned, at least at this stage, with not upsetting the status quo of an agreement between these parties which has now twice been judicially determined to be valid and binding. In order to preserve the existing situation while we conduct further proceedings and, at the same time, assure the continued provision of needed service, we find ourselves with little choice but to invoke Title II, Article XII, Section 4(d)(3) of the Compact. Under this section we may, in our discretion and without hearings or other proceedings, grant temporary authority to enable the provision of service for which there is an immediate and urgent need and where there is no carrier service capable of meeting such need. We find that these conditions are met in this situation, and we note that Section 4(d)(3) does not limit us to acting upon application.

Beltway's application for reconsideration calls into question, inter alia, whether the Commission made an error of fact in failing to find DD Enterprises unfit. With regard to financial fitness alone, we note that we were aware by our own CPA report that DD Enterprises was not in complete compliance with the terms of its agreement with Beltway as it pertained to scheduled payments. We were also aware by testimony of Beltway's president in the context of another proceeding 4/ that the agreement was in dispute and was being litigated. We made our decision of July 29, 1986, with little more of the 180-days temporary approval left than was necessary to accommodate the 30-day reconsideration period, and knowing that the matter was still in litigation. Beltway points out in its application for reconsideration that now a second

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3/ The source of these data are the tariffs filed by DD Enterprises on August 27, 1986.

4/ WMATC Case No. MP-86-08, an investigation of Beltway for failure to file a 1985 annual report.

court judgment has held that the agreement is valid and binding 5/ and that practically three weeks after that second judgment and up to the deadline for seeking reconsideration, DD Enterprises continues not to make payments due Beltway.

Under these circumstances, we are persuaded to reconsider the fitness of DD Enterprises. We will grant reconsideration to the extent of reopening this proceeding pursuant to Rule 27-02. Otherwise, Beltway's application for reconsideration and alternative motion will be denied. The matter will be scheduled for public hearing. We will grant temporary authority to DD Enterprises pending our further determination.

THEREFORE, IT IS ORDERED:

1. That the Petition for Reconsideration and Alternative Motion filed August 27, 1986, by Beltway Limousine Service, Inc., is hereby granted to the limited extent set forth hereinbefore.
2. That Case No. AP-86-08 is hereby reopened pursuant to Commission Rule No. 27-02.
3. That Case No. AP-86-08 is hereby scheduled for public hearing to commence 9:30 a.m., Thursday, October 30, 1986, in the Hearing Room of the Commission, 1625 I Street, N.W., Room 314, Washington, D.C. 20006.
4. That DD Enterprises, Inc., is hereby granted temporary authority to operate service as described in Certificate of Public Convenience and Necessity No. 25 and in accordance with tariffs filed August 27, 1986, such temporary authority to begin Sunday, September 7, 1986, and to remain in effect for 180 days through Thursday, March 5, 1987, unless otherwise ordered by the Commission.
5. That Beltway Limousine Service, Inc., and DD Enterprises, Inc., are hereby assessed \$250 each pursuant to the Compact, Title II, Article XII, Section 19, and each is hereby directed to deliver said assessment to the office of the Commission no later than Friday, October 7, 1986.

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

SHANNON, Commissioner, dissenting:

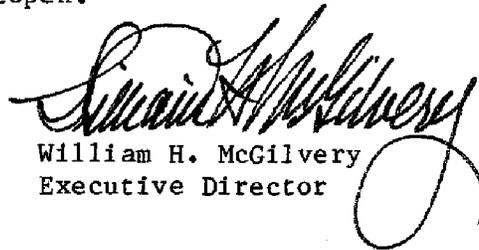
I would deny reconsideration and issue the certificate to DD Enterprises. Beltway, a co-applicant in this case, was a proponent of

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5/ Circuit Court of Montgomery County, Maryland, Case No. CJ32547, decision of August 7, 1986.

the transfer and expressed no opposition to it until 29 days after our decision granting it. As did we, Beltway expected that DD Enterprises would make good on its agreement. This expectation was a reasonable one at the time we made our decision and, therefore, that decision was not flawed by error. Error is the only ground upon which reconsideration can be granted under the law.

The Commission is not without equitable powers, and perhaps that is the intention of the majority. However, I would not employ the Commission's discretion to reopen this case. Either the parties will honor their agreement or they will not. If they do, further proceedings are unnecessary. If they do not, the matter will certainly be settled in the courts whether we hold further proceedings or not. Either way, I see no reason to reopen.

  
William H. McGilvery  
Executive Director