

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2930

IN THE MATTER OF:

Served November 10, 1986

Application of WHEELCHAIR MOBILE)
TRANSPORT, INC., for a Certificate)
of Public Convenience and Necessity)
to Conduct Special Operations)
between Points in the Metropolitan)
District -- Non-Ambulatory Persons)

Case No. AP-86-31

By application filed July 30, 1986, Wheelchair Mobile Transport, Inc. ("Wheelchair Mobile" or "applicant"), seeks a certificate of public convenience and necessity to transport non-ambulatory passengers between points in the Metropolitan District 1/ restricted against transportation of participants in the District of Columbia Medicaid Program. 2/

Pursuant to Order No. 2891, served August 5, 1986, and incorporated herein by reference, a public hearing was held on September 9, 1986, and continued, at applicant's request, on September 15, 1986. Three company witnesses and two public witnesses testified on behalf of the applicant. Dan Jenkins trading as Jenkins Transportation Service protested the application and appeared at the hearing, cross-examined applicant's witnesses, and presented evidence on his own behalf.

SUMMARY OF EVIDENCE

Lawrence A. M. Lee, applicant's president and treasurer, owns 65 percent of Wheelchair Mobile's stock. Mr. Lee has experience in sales and sales management of pharmaceuticals and hospital equipment. For seven years Mr. Lee operated his own business, the primary function of which was the sale and rental of oxygen and related equipment. Mr. Lee's experience in the transportation of handicapped individuals is limited to the transportation of his non-ambulatory mother. His

1/ To the extent that this application could be construed to seek authority to transport passengers solely within the Commonwealth of Virginia, it was dismissed by Order No. 2891, for want of jurisdiction. Compact, Title II, Article XII, Section 1(b).

2/ Wheelchair Mobile's application describes the special operations authority sought as "[n]on-emergency transportation for 'private pay' wheelchair customers"

mother's experience with private carriers was the catalyst for the creation of Wheelchair Mobile. Mr. Lee intends to use his general business expertise to make Wheelchair Mobile a viable and profitable undertaking and a carrier responsive to the public need. Applicant expects to generate most of its business from non-ambulatory individuals in need of transportation between health care facilities or physicians' offices and passengers' residences. Applicant also expects to generate substantial business from transporting passengers for social purposes, e.g., to restaurants and theaters.

Applicant would offer its proposed service seven days a week between the hours of 7 a.m. and midnight. Applicant's proposed tariff indicates a one-way charge of \$36 plus \$1 a mile for each mile or fraction thereof in excess of 10 miles. The round-trip fare for pickup and scheduled return to the same location would be \$66. One companion may accompany the wheelchair customer free of charge. Each additional companion would be charged \$15 one-way. The proposed fee for an attendant supplied by the applicant is \$15 one-way and \$25 round-trip. A group rate composed of the base one-way rate plus \$15 for each additional wheelchair customer with companion is proposed up to a maximum of three wheelchair customers. The tariff also provides for a one-way fare of \$45 between Washington Dulles International Airport and points in the Metropolitan District. A surcharge of 15 percent would apply to service provided between 6 p.m. and midnight.

Wheelchair Mobile plans to commence operations with two primary vehicles and one back-up vehicle to be used in case of emergencies. Applicant presently owns a 1984 and a 1986 van. If this application is granted, applicant will purchase an additional van. Additional vehicles will be purchased as needed. All of applicant's vans will be specially equipped with the following features: privacy windows; air-conditioning; operator-controlled door locks; locking devices for the security of wheelchairs; seat belts; mobile phones; ramps or lifts and raised roofs. Applicant plans to follow a preventive maintenance routine which includes, inter alia, oil changes every 4,000 miles, yearly radiator flush, belt and hose replacement, and daily inspection of brakes, lights, and horn. Wheelchair Mobile will require that all drivers be at least 25 years old and have a clean driving record and one year commercial driving experience. Drivers will be uniformed and CPR-trained.

A statement of financial condition dated May 23, 1986, and submitted with Wheelchair Mobile's application, reveals current assets of \$27,800 and fixed assets of \$9,200. The statement shows no current liabilities, \$36,000 in long-term liabilities consisting of loans from stockholders, plus capital stock of \$1,000. A projected operating statement for the first 12 months of WMATC operations estimates total operating revenues of \$101,400, and total operating expenses including depreciation and taxes of \$83,775. Net income after allowance for a

reserve fund equal to 25 percent of net operating income is projected at \$13,500. Applicant also submitted a letter dated June 20, 1986, which indicates an existing banking relationship and potential access to a significant line of credit.

Ralph E. Kelbaugh is applicant's executive vice president and owns 25 percent of applicant's stock. He will be primarily responsible for operations management of the company. His duties will include the hiring and direct supervision of the applicant's work force.

J. Stephen Nobel is applicant's vice president and secretary and owns 10 percent of applicant's stock. Mr. Nobel is a respiratory therapist with experience in sales. He will be primarily responsible for marketing and advertising for the corporation. A secondary responsibility will be the training of company employees in CPR techniques. Mr. Nobel has previous experience as a CPR instructor and has maintained CPR status. Mr. Nobel testified that applicant's goal of responding to requests for transportation within two hours can be achieved by the use of mobile phones and a grid system which will allow applicant's dispatcher to know where each van is located at a given point in time.

Thomas E. Bratten testified in support of Wheelchair Mobile's application. Mr. Bratten, a disabled war veteran, is an advocate for the rights of the disabled. He is currently on the Board of Directors of Inwood House, an independent living situation for disabled persons located in Montgomery County, Md. He is the treasurer and a member of the Board of Directors of the Centers for the Handicapped, an advocacy group which deals with education and on-the-job training for handicapped individuals. Mr. Bratten is also a member of the Montgomery County Commission on Handicapped Individuals. Mr. Bratten appeared on his own behalf, and not as a representative of the above-named organizations.

Mr. Bratten testified that existing transportation for the non-ambulatory is inadequate. As a member of the Montgomery County Commission on Handicapped Individuals, Mr. Bratten refers persons to carriers equipped to transport the non-ambulatory. He also has provided the Commission on Handicapped Individuals with a listing of these carriers. The Commission maintains a listing of these carriers and also makes referrals upon request. Mr. Bratten will add applicant's name to the referral list if it is granted WMATC operating authority.

Joseph E. Bowker, Sr., currently serves as director of social services at Providence Hospital, Washington, D.C. Mr. Bowker is responsible for arranging transportation for patients from the hospital to their homes or health care facilities in the District of Columbia, Montgomery County, Md., or Prince George's County, Md. Mr. Bowker's staff has had difficulty in arranging transportation for private

(non-Medicaid) clients. Numerous phone calls to different carriers are often made before transportation can be arranged. The transportation must be arranged well in advance. Even with these extra efforts, there have been times when Mr. Bowker's office was unable to obtain appropriate transportation for handicapped individuals. In such situations these individuals were transported by ambulance, taxicab, or in Mr. Bowker's personal car. The witness also has received complaints regarding some existing carriers. The complaints focused on unkempt and improperly attired drivers and dirty vans. If applicant is granted WMATC operating authority, its name will be added to the list of carriers which are utilized by Providence Hospital.

Dan Jenkins trading as Jenkins Transportation Service is the sole protestant in this case. Mr. Jenkins holds WMATC Certificate No. 44 which authorizes, inter alia, transportation in special operations of transportation-disadvantaged persons together with their attendants between points in the Metropolitan District. The authority is restricted to vehicles with a manufacturer's seating capacity of 15 passengers or less, including the driver. If Wheelchair Mobile's application is granted, its certificate would authorize applicant to engage in operations which are covered by Mr. Jenkins' certificate. Mr. Jenkins appeared as a protestant in this case because he believes that existing carriers provide adequate service for non-ambulatory persons within the Metropolitan District. Mr. Jenkins suggests that his services are being underutilized and, therefore, entry into the market by applicant would be harmful to existing carriers.

Protestant's hours of service are nominally 6 a.m. to 6 p.m. Mr. Jenkins admits that he prefers not to engage in operations during evening hours ". . . because it is too much work." Protestant also admits his dislike of accepting requests for same-day service. For a period of at least six months in 1985, protestant used only one of five available vehicles in his operations because, according to Mr. Jenkins, he "was tired."

Eighty percent of Mr. Jenkins' 1985 operations were generated from transporting participants in the District of Columbia Medicaid program. Protestant's revenues for the last calendar year totaled \$67,000 with \$6,000 being generated from the transportation of private passengers.

DISCUSSION AND CONCLUSION

In determining whether to grant a certificate of public convenience and necessity, we look to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact as follows:

. . . the Commission shall issue a certificate . . . ,
if it finds, after hearing held upon reasonable
notice, that the applicant is fit, willing and able

to perform such transportation properly and to conform to the provisions of [the Compact] 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

Based on a review of the entire record in this case, we find applicant fit, willing and able to provide the proposed service and to conform to the Compact and the Commission's rules and regulations.

Applicant is a newly-formed corporation established for the purpose of providing transportation for persons confined to wheelchairs. Its president is an experienced businessman who has assembled a cohesive management team to perform designated duties. Although Wheelchair Mobile is thinly capitalized, the record shows financing from shareholders' loans in combination with available lines of credit adequate to begin operations. These loans in combination with projected cash flow from the business should support the first year of WMATC operations. Applicant will begin operating with two new vehicles specially equipped for use by non-ambulatory persons, as well as a back-up vehicle for emergencies. The vehicles will be subject to a strict preventive maintenance program including daily safety checks. Drivers will be experienced, with clean driving records and CPR training.

We now turn to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. In determining whether an applicant has met its burden, the Commission relies on the test enunciated in Pan-American Bus Lines Operations (1 MCC 190, 203 [1936]). The Pan-American test consists of three parts:

- (1) whether the new operation or service will serve a useful public purpose responsive to a public demand or need;
- (2) whether this purpose can and will be served as well by existing lines or carriers; and
- (3) whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Applicant produced two public witnesses who testified on its behalf. Based on their testimony we find that Wheelchair Mobile has met its burden of proof on this matter, except to the extent that there is no evidence of record establishing any need for the proposed service to and from points in the Virginia portion of the Metropolitan District.

Thomas Bratten's positions with various organizations focused on the problems of the handicapped have given him personal knowledge of existing transportation for non-ambulatory individuals. He is in constant contact with non-ambulatory individuals who often request transportation referrals. Mr. Bratten is dissatisfied with the service offered by existing carriers and is of the opinion that a new service responsive to the special needs of the handicapped is greatly needed. If this application is granted, Mr. Bratten personally and the Montgomery County Commission on Handicapped Individuals will refer handicapped persons needing transportation to Wheelchair Mobile.

Mr. Bowker arranges transportation for non-ambulatory persons on a regular basis between points in the District of Columbia and Montgomery and Prince George's Counties, Md. Currently such transportation must be arranged well in advance and often requires calls to several carriers. It is not unusual for Mr. Bowker's staff to be unable to obtain transportation in a vehicle specially equipped to handle wheelchair-confined passengers. If this application is granted Mr. Bowker would regularly arrange transportation through Wheelchair Mobile.

The sole protestant to this application, Dan Jenkins, claims that Wheelchair Mobile's entry into the market would harm his operations and the operations of other carriers similarly situated. Testimony proffered at the hearing revealed, however, that any alleged under-utilization of protestant's services has been self-imposed. In addition, only a small percentage of protestant's operations involves the transportation of private-pay passengers. There is no evidence of record showing that this percentage is the direct result of a lack of demand.

The evidence shows that existing services are not adequate to meet fully the special needs of private-pay, non-ambulatory persons between points in the District of Columbia, Montgomery County, Md., and Prince George's County, Md. No evidence has been submitted which supports a claim that the operations of existing WMATC carriers will be negatively affected by a newly certificated carrier. The evidence supports our conclusions that benefits will accrue to the public from the authorization of the proposed service between points in the Metropolitan District (except those in Virginia) and that such service is required by the public convenience and necessity. As previously noted, there is no evidence of any need for service to or from points in Virginia and the application, to that extent, must be denied.

THEREFORE, IT IS ORDERED:

1. That Wheelchair Mobile Transport, Inc., is hereby granted authority to transport persons confined to wheelchairs between points in the District of Columbia, Montgomery County, Md., and Prince George's County, Md., restricted against transportation of participants

in the District of Columbia Medicaid Program and further restricted to vehicles with a manufacturer's designed seating capacity of 15 passengers or less including the driver.

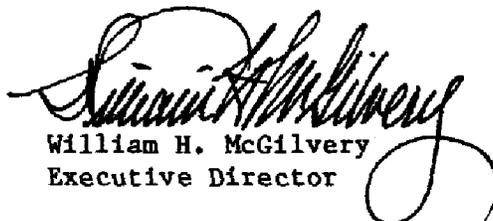
2. That the application, except to the extent granted above, is hereby denied.

3. That Wheelchair Mobile Transport, Inc., is hereby directed to file the following: (1) two copies of its WMATC Tariff No. 1 as proposed in its application; (2) an equipment list specifying make, model, serial number, vehicle identification number, and license plate number for each vehicle to be used in WMATC operations; (3) a certificate of insurance in accordance with Regulation No. 62; and (4) an affidavit of identification of vehicles pursuant to Regulation No. 68 for which purpose WMATC No. 127 is hereby assigned.

4. That unless Wheelchair Mobile Transport, Inc., complies with the requirements of the preceding paragraph within 30 days from the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

5. That Wheelchair Mobile Transport, Inc., is hereby assessed \$125 pursuant to General Order No. 21.

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


William H. McGilvery
Executive Director