

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3238

IN THE MATTER OF:

Served October 7, 1988

Application of MERCY AMBULETTE)
SERVICES, INC., for a Certificate)
of Public Convenience and Necessity)

Case No. AP-88-12

By application filed April 18, 1988, and amended April 28, 1988, Mercy Ambulette Services, Inc. (MASI or applicant), seeks a certificate of public convenience and necessity to transport transportation-disadvantaged persons in special operations between health care facilities in the Metropolitan District, on the one hand, and, on the other, points in Washington, DC; Montgomery and Prince George's Counties, MD; and Arlington, VA. 1/

A public hearing was held on June 9, 1988, pursuant to Order No. 3162, served May 3, 1988. Applicant presented two witnesses on behalf of the company and one public witness. No protests were filed within the time set therefor.

On June 7, 1988, two days before the commencement of the hearing, applicant filed a motion requesting issuance of a subpoena directing Ms. Janice Anderson, Chief of Program Operations and Research, Office of Health Care Financing, Department of Human Services of the District of Columbia, to appear and testify at hearing. The request for subpoena was addressed at hearing by the Administrative Law Judge who informed applicant that a continuance of the hearing would be granted to allow for issuance of the subpoena. At the close of the hearing, however, applicant withdrew its request for a subpoena and rested its case.

SUMMARY OF EVIDENCE

Mr. Clifford Cunningham is MASI's president. He would be responsible for applicant's day-to-day operations. His duties also would include marketing MASI's services and driving part-time. Mr. Cunningham's experience in the transportation industry is based upon observation and "hands-on" training with a transportation company in New York specializing in ambulance and "ambulette" transportation. He also has had experience transporting transportation-disadvantaged relatives. Applicant intends to commence operations with two leased

1/ To the extent this application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed by Order No. 3162 pursuant to the Compact, Title II, Article XII, Section 1(b).

vehicles modified for non-ambulatory use with specialized ramps and wheelchair securing devices. The vehicles would have the capacity to transport two non-ambulatory and three ambulatory passengers. Mr. Cunningham plans to garage the vehicles, but at the time of the hearing had not decided on an exact location. Maintenance of the vehicles would be covered through MASI's arrangement with the leasing company. Additionally, the vehicles would be inspected daily to assure maintenance of proper fluid levels, tire pressure, and vehicle cleanliness. Applicant intends to hire a second driver. A good driving record and CPR training would be required. The drivers would use a "beeper" system as a means of communication.

Applicant's "regular" hours of service would be Monday through Friday between 8 a.m. and 6 p.m. at proposed rates of \$20 one-way for the first 10 miles plus \$1 for each additional mile and \$40 round-trip for the first 20 miles plus \$1 for each additional mile. "Premium" service would be offered Monday through Friday between 6 p.m. and 10 p.m. and Saturday and Sunday between 8 a.m. and 10 p.m. at proposed fares of \$25 one-way and \$50 round-trip; additional service in excess of one hour would be billed at \$1 per mile. Twenty-four hours notice would be required to book a reservation for the proposed service; however, immediate service would be offered if vehicle availability permitted. The rates charged participants in the District of Columbia Medicaid program for trips inside the Capital Beltway would be \$20 one-way and \$30 round-trip. One-way trips outside the Capital Beltway would be \$15 plus 75¢ per mile; round-trips outside the Capital Beltway would be \$25 plus 75¢ per mile. 2/

On June 29, 1988, applicant submitted, as a late-filed exhibit, amended financial data for the corporation, reflecting \$2,000 in cash and \$38,000 as a loan from the owner. Applicant projects \$73,473 in revenues generated from its first year of WMATC operations with \$78,993 in total expenses. The witness testified that MASI is familiar with the Compact and the Commission's rules and regulations and intends to comply with them.

The second witness to testify was Mr. Christopher Cunningham. Mr. Cunningham is the owner of Mercy Ambulance and Ambulette Service, Inc., a transportation provider based on Long Island, NY. The witness provides consulting services to the applicant. The witness has 10 years' experience in the field and is willing to devote his vacation times for consulting purposes. He would also be available to the company via telephone whenever assistance is needed. Mr. Christopher Cunningham would be responsible for overseeing operations, answering questions, lending technical assistance, and advising applicant concerning safety regulations.

2/ The references made to the tariff on brief reflect clarifications made by Mr. Clifford Cunningham on the stand regarding tariff inconsistencies and the subsequent filing on June 29, 1988, of an amended tariff and time schedule.

Mr. Wayne Pounds testified in support of the application. Mr. Pounds is a transportation coordinator/driver for the Grant Park Care Center, a 296-bed nursing home for senior citizens located in Washington, DC. Mr. Pounds is responsible for scheduling clinical appointments and field trips as well as pick-up and delivery of residents. The witness, however, was not testifying as an authorized representative of the Center. Indeed, Mr. Pounds testified that the Center was not even aware of the fact that he was appearing as a witness in this proceeding. The Grant Park Care Center requires transportation for its residents on a daily basis. The residents travel to and from medical treatment facilities located throughout the Metropolitan District. The facility has one vehicle that it uses for its transportation needs and receives service through the Medicaid program from private carriers. The witness believes that there is a need for additional carriers to serve the transportation-disadvantaged. Mr. Pounds testified that residents have missed medical appointments because carriers were late or failed to make scheduled pick-ups. Center residents have also been forced to wait several hours for a return pick-up when the actual time needed at the medical treatment facility was 15 minutes.

DISCUSSION AND CONCLUSIONS

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 which provides that,

. . . the Commission shall grant 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 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 (Emphasis supplied.)

Based on a review of the entire record in this case, we find that applicant has failed to sustain the burden of proof imposed by the Compact.

In determining whether an applicant has met its burden of proving that the public convenience and necessity require the proposed transportation, the Commission relies on the test enunciated in Pan-American Bus Line 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;

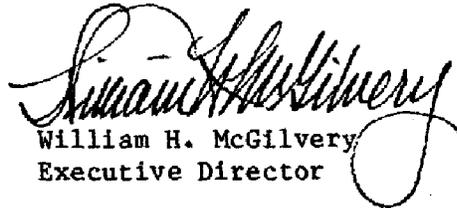
- (2) whether this purpose can and will be served as well by existing lines or carriers; and
- (3) whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

Although applicant produced two supporting witnesses, only the testimony of Mr. Wayne Pounds, an employee of the Grant Park Care Center, even purported to address the question of whether a need exists for additional service for the transportation-disadvantage. Mr. Pounds does not personally need the type of service proposed by applicant, and he does not arrange for use of such service by others. His testimony dealt exclusively with existing transportation of participants in the District of Columbia Medicaid program who are residents of the Grant Park Care Center. When the witness was questioned about the need for "private-pay" transportation services at the Grant Park Care Center, Mr. Pounds answered "Private pay, no." Service for District of Columbia residents under the Medicaid program is controlled exclusively by the District of Columbia Department of Human Services (DHS). It is DHS that receives and processes requests for such services and assigns and dispatches carriers to provide such service. There is no showing on this record that DHS needs the services of additional carriers in general or that DHS requires or would use the services of applicant. Even if DHS added applicant to its list of authorized carriers, there is no evidence that applicant would be used to serve Grant Park Care Center. Mr. Pounds speaks neither for DHS nor Grant Park Center. Accordingly, there is no evidence on this record of any need for the service proposed by applicant.

Based on the evidence contained in the record and on the testimony put forth by applicant's witness, we find that Mercy Ambulette Services, Inc., has not met the requirements of proving that the proposed operation would serve a useful public purpose responsive to a public demand or need as set forth in the first part of the Pan American test. Having so found, we do not reach the issue of fitness.

THEREFORE, IT IS ORDERED that the application of Mercy Ambulette Services, Inc., for a certificate of public convenience and necessity is hereby denied in its entirety without prejudice.

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


William H. McGilvery
Executive Director