

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3316

IN THE MATTER OF:

Served April 18, 1989

Application of DAN JENKINS Trading )  
as JENKINS TRANSPORTATION SERVICE )  
to Amend Certificate No. 44 )

Case No. AP-88-58

Application of DAN JENKINS Trading )  
as JENKINS TRANSPORTATION SERVICE )  
to Transfer Certificate No. 44 to )  
JENKINS TRANSPORTATION SERVICE, )  
INC. )

Case No. AP-88-59

By application filed December 2, 1988, in Case No. AP-88-58 Dan Jenkins trading as Jenkins Transportation Service (Mr. Jenkins or applicant) seeks to amend Certificate No. 44 by removing the word "van-type" from Part A of the certificate \*/ and by removing the vehicle-size restriction contained in Part B of the certificate. By separate application filed on the same date in Case No. AP-88-59, Dan Jenkins trading as Jenkins Transportation Service (transferor) seeks approval to transfer his Certificate No. 44 to Jenkins Transportation Service, Inc. (transferee). The two applications have been consolidated.

A public hearing was held on February 14, 1989, pursuant to Order No. 3271, served January 11, 1989, and incorporated herein by reference. In Case No. AP-88-58, Mr. Jenkins testified on his own behalf and presented three public witnesses. Mr. Jenkins also testified on behalf of Jenkins Transportation Service, Inc., in Case No. AP-88-59. No protests were filed to either application.

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\*/ In his application to amend, Mr. Jenkins specifically requested that the following language be removed from Part A of Certificate No. 44 ". . . and is further restricted to transportation in van-type vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit . . . ." At hearing Mr. Jenkins amended his application as to Part A by limiting the restrictive language sought to be removed to "van-type."

Because Part A of Certificate No. 44 authorizes the transportation of persons confined to wheelchairs, a grant of applicant's initial request would have allowed him to transport non-ambulatory persons in vehicles that were not equipped with adequate safety features. It is Mr. Jenkins' intention, as expressed at hearing, to continue operations under Part A of the certificate in vehicles that are equipped with ramps and mechanical devices for securing wheelchairs. However, he seeks to perform such services without restrictions placed on vehicle size.

Certificate No. 44 authorizes the following transportation:

IRREGULAR ROUTES:

PART A

SPECIAL OPERATIONS, round-trip or one-way,  
transporting persons confined to wheelchairs:

Between medical treatment facilities located in the  
Metropolitan District, on the one hand, and, on the  
other, points in the Metropolitan District.

RESTRICTIONS: The service authorized herein is  
restricted to the transportation of non-ambulatory  
participants in the Medicaid program of the  
District of Columbia, and is further restricted to  
transportation in van-type vehicles specially  
equipped with ramps and mechanical devices for  
securing wheelchairs in transit.

PART B

SPECIAL OPERATIONS, transporting transportation-  
disadvantaged persons, together with their baggage  
and attendants in the same vehicle, between points  
in the Metropolitan District.

RESTRICTED against transportation originating  
within the Commonwealth of Virginia and  
transportation between points located solely within  
the Commonwealth of Virginia.

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

Mr. Jenkins has held operating authority from the Commission  
as a sole proprietor since 1977. He currently operates four  
eight-passenger vans and three 14-passenger vans. Three of the  
eight-passenger vehicles are specially equipped with lifts and  
wheelchair tie-downs. Mr. Jenkins testified that having the authority  
to add coach-size vehicles to his fleet would enable him to transport  
more people during one trip and thereby run a more efficient operation.  
Mr. Jenkins' decision to provide service using a larger vehicle was  
influenced by numerous requests for such transportation for the  
transportation-disadvantaged.

Applicant plans to offer the proposed service between the hours  
of 8 a.m. and 6 p.m. and would commence operations using one new  
42-passenger school bus. The bus would be used solely for  
transportation-disadvantaged persons who are ambulatory. Mr. Jenkins  
would equip all seats with safety belts. Transportation of  
non-ambulatory participants in the District of Columbia Medicaid  
program would continue to be performed by applicant in vans.

However, if the need arose, applicant would obtain a 21-passenger minibus that would be specially equipped to transport non-ambulatory persons. Mr. Jenkins expects that the minibus would be modified to accommodate eight ambulatory and five non-ambulatory passengers. An attendant would be provided to assist the passengers in the larger vehicle(s) at no additional cost. The 42-passenger school bus would be covered by the manufacturer's warranty for major repairs. The daily maintenance routine for the bus would include a check of the vehicle's lights, oil, brakes, windshield wipers, and air-conditioning system. Tune-ups would be handled by the dealership.

Mr. Jenkins submitted as a late-filed exhibit a balance sheet for the sole proprietorship (WMATC Carrier No. 44) which shows that, as of December 31, 1988, applicant's assets totalled \$194,860, including \$7,500 in cash; \$170,360 in fixed assets (after depreciation); and \$17,000 in accounts receivable. Applicant's liabilities totalled \$24,200, with \$170,660 in proprietor's equity. Also submitted as a late-filed exhibit was an updated operating statement which shows that the sole proprietorship generated \$240,000 in operating income and incurred \$145,600 in expenses in a 9-month period ended September 30, 1988. As a direct result of the expanded operations proposed herein, applicant projects \$80,000 in revenues and \$50,600 in expenses during the first year of service.

The proposed one-way rate for vehicles with a manufacturer's designed seating capacity in excess of 15 passengers would be \$6 for trips inside the Capital Beltway. For trips from points inside the Capital Beltway to points outside the Capital Beltway a fare of \$6 plus \$1 for each additional mile beyond the Capital Beltway would be charged. Round-trip fares inside the Capital Beltway would be \$12. Round-trip fares where one or both points are located outside of the Capital Beltway would be \$12 plus \$1 for each additional mile. If the application to amend is granted, applicant intends to maintain its existing tariff for service performed under the Medicaid program of the District of Columbia; rates would also be maintained for transport of transportation-disadvantaged passengers in vehicles that seat 15 passengers or less.

Jenkins Transportation Service, Inc., is a newly-formed corporation with Mr. Jenkins as sole shareholder and president. Mr. Jenkins testified that transferee would continue to operate the service in the same manner as it is presently operated. The witness also stated that transferee intends to comply with the Compact and the Commission's rules and regulations. The balance sheet for Jenkins Transportation Service, Inc., as of September 15, 1988, shows that the corporation's only asset is \$1,000 cash balanced by capital stock in the same amount. The assets and liabilities of Dan Jenkins trading as Jenkins Transportation Service would be transferred to the corporation if the transfer application is approved.

Ms. Phyllis Blair testified on applicant's behalf in support of the amendments to Parts A and B of Certificate No. 44. Ms. Blair is a contract specialist with the Department of Human Services of the District of Columbia (DHS). She oversees a contract between DHS and

Mr. Jenkins for the transportation of mentally ill patients from St. Elizabeth's Hospital, located in Washington, DC, to community activities in the District of Columbia and Prince George's County, MD, and return. Ms. Blair testified that, while under the contract there is no current need for transportation to points in Montgomery County, MD, the possibility exists that such transportation may be needed in the future. Applicant currently transports approximately 30 passengers for St. Elizabeth's five days a week. Ms. Blair stated that the number of passengers may increase to 40 a day by spring. Applicant currently uses two 14-passenger vehicles to perform service for St. Elizabeth's; the witness, however, believes that it would save time if all passengers could be transported in the same vehicle. Although the bulk of Ms. Blair's testimony dealt with the need for transportation in a larger vehicle for ambulatory persons who are transportation-disadvantaged (Part B of Certificate No. 44), she also testified that there may be a need in the future for transportation for non-ambulatory persons. In this respect the witness supports the amendment to Part A of the certificate based on expected future needs. Ms. Blair has been satisfied with the services rendered by Mr. Jenkins.

Mr. Michael Quinlan also testified in support of the amendments to Parts A & B of Certificate No. 44. Mr. Quinlan is a clinical director for English & Condray, Ltd., of Washington, DC. English & Condray oversees the operations of "intermediate care facilities" (ICF's). An ICF is a group home that provides an intermediate level of care for persons who were formerly hospitalized but no longer need a total care system. The homes are staffed with physicians, nurses, and psychiatrists; medications are also administered. The residents of the ICF's managed by the witness are former patients of Forest Haven, Laurel, MD, and St. Elizabeth's Hospital that have been "out-placed" in the community. Mr. Quinlan's company is responsible for four group homes, all located in the District of Columbia and having a combined total of 32 residents, six of whom are non-ambulatory. Mr. Quinlan testified that three more ICF's are expected to be in operation within 90 days. The group homes are treated as medical treatment facilities under Medicaid regulations and are funded by Medicaid. Residents require transportation from the ICF's to various daytime programs located throughout the Metropolitan District, as well as to other medical treatment facilities. English & Condray presently uses two vans and several cars to provide group-home residents with transportation. However, due to rising insurance rates and other costs, the witness is considering using a private carrier to transport the 32 residents of the ICF's and the 15 counselors who would accompany them on trips between points in the Metropolitan District. Mr. Quinlan expects to use a bus for outings to the Capital Centre, Prince George's County, MD, and Wolf Trap, Fairfax County, VA, and for transportation twice a day from the ICF's to specialized day programs.

The last witness to testify in support of the application was Ms. Lynn Gelzer. Ms. Gelzer is employed by St. John's Child Development Center (Center), located in Washington, DC, as program director for an early intervention program. The early intervention program is a day treatment, medically supervised program for children ranging in age from birth to four years. The children have mild to

severe mental and physical disabilities. Ambulatory as well as non-ambulatory persons are program participants. The program is totally funded by D.C. Medicaid. As part of her duties Ms. Gelzer is responsible for making transportation arrangements. Transportation is needed to points of interest in Northern Virginia; Prince George's County, MD; and the District of Columbia. The witness stated that the possibility of making trips to Montgomery County, MD, has not been fully explored due in large part to the fact that the Center has not been able to provide appropriate transportation for the children. Ms. Gelzer testified that she would like to take at least 20 children, all of whom require the use of car seats, on trips. One adult for every two to three children would be present on all trips. Ms. Gelzer opined that the availability of a bus would increase the Center's ability to take the children to a variety of sites and activities, thus eliminating the current practice of limiting the number of children allowed to go on outings. Bus transportation would be needed at least once a month. The non-ambulatory children would require transportation in vehicles that are specially equipped for wheelchair use. The witness currently uses Mr. Jenkins' transportation and is satisfied with the service rendered.

#### DISCUSSION AND CONCLUSIONS

In determining whether to grant or expand a certificate of public convenience and necessity we look to Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove he is fit, willing, and able to perform properly the proposed transportation and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further requires that the applicant prove the proposed service is, or will be, required by the public convenience and necessity.

Based on a review of the record in Case No. AP-88-58, we find Dan Jenkins trading as Jenkins Transportation Service capable of providing the proposed service. Mr. Jenkins has experience in transporting transportation-disadvantaged persons and provides satisfactory service based on the testimony of the witnesses at hearing who have used his van service. The proposed operations would be conducted in essentially the same manner as present operations. One 42-passenger school bus would be used with all seats fitted with seat belts. A 21-passenger minibus would also be acquired, if demand dictates, that would be equipped with mechanical devices and wheelchair tie-downs for the transportation of non-ambulatory persons, including those participating in the District of Columbia Medicaid program. Until the need for a wheelchair-modified minibus arises, Mr. Jenkins would continue to transport non-ambulatory persons in vans. A review of the financial data indicate adequate financing to sustain the proposed operations.

We turn now to the matter of whether applicant has satisfied his burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operation (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and 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.

Three public witnesses testified in support of the application. The testimony of all of the witnesses involved the need for transporting transportation-disadvantaged persons, including non-ambulatory participants in the District of Columbia Medicaid program, in a large vehicle between points in the Metropolitan District. Based upon their testimony we find that Dan Jenkins trading as Jenkins Transportation Service has met his burden of proving that the proposed operation will serve a useful purpose for which there is a demonstrated need. The evidence supports the conclusion that the public purpose found to exist has not been and will not be served as well by existing authorized carriers. No protests having been entered, we conclude that applicant's proposed service will not materially affect the operations of existing carriers. The request to amend Parts A and B of Certificate No. 44 will, therefore, be granted.

We turn now to the issues presented by the transfer application, Case No. AP-88-59. This matter is governed by Title II, Article XII, Section 4(h) of the Compact which provides:

No certificate under this section may be transferred unless such transfer is approved by the Commission as being consistent with the public interest.

Dan Jenkins trading as Jenkins Transportation Service currently operates as a sole proprietor. Mr. Jenkins is the sole shareholder and president of Jenkins Transportation Service, Inc. If this application to transfer is granted, service under Certificate No. 44 would be unchanged. After reviewing the record, we find that, contingent upon Dan Jenkins' transfer of assets, the corporation's financial position is sound and transferee is fit operationally, financially, and as to compliance. Transferor has continued operations pending the Commission's determination of the transfer application. Therefore, dormancy of the certificate is not an issue in this case. No discernible change in the market is expected as a result of the transfer. Based on these considerations, we find the transfer to be in the public interest.

THEREFORE, IT IS ORDERED:

1. That Dan Jenkins trading as Jenkins Transportation Service is hereby conditionally granted authority, contingent upon compliance with the terms of this order, to transport (a) persons confined to wheelchairs in special operations between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District, restricted to the transportation of non-ambulatory participants in the Medicaid program of the District of Columbia and further restricted to transportation in vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit and (b) transportation-disadvantaged persons, together with their baggage and attendants in the same vehicle as passengers, in special operations between points in the Metropolitan District, restricted against transportation originating in Virginia and further restricted when transporting passengers in vehicles that seat 16 passengers or more to transportation in vehicles that have all seats fitted with seat belts.

2. That in all other respects, the application of Dan Jenkins trading as Jenkins Transportation Service to amend Certificate No. 44 is hereby denied.

3. That Dan Jenkins trading as Jenkins Transportation Service is hereby directed to transfer his business assets to Jenkins Transportation Service, Inc., and to provide the Commission with an affidavit of transfer and a revised balance sheet reflecting the transfer within 30 days from the date of this order.

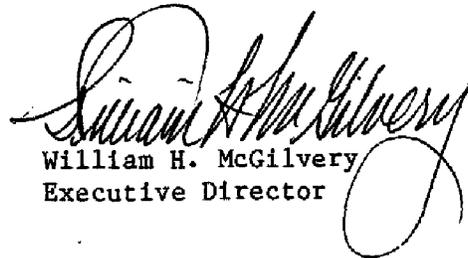
4. That the application of Dan Jenkins trading as Jenkins Transportation Service to transfer Certificate No. 44 to Jenkins Transportation Service, Inc., is hereby conditionally granted contingent upon compliance with the terms of this order.

5. That Jenkins Transportation Service, Inc., is hereby directed to file with the Commission (a) three copies of its WMATC Tariff No. 1 reflecting all rates and regulations to be charged; (b) a certificate of insurance in accordance with WMATC Regulation No. 62; (c) an equipment list specifying make, model, serial number, and license plate number with jurisdiction for each vehicle to be used in WMATC operations; (d) an affidavit of identification of vehicles pursuant Commission Regulation No. 67; and (e) an affidavit affirming that the vehicle(s) seating 16 passengers or more have been equipped with seat belts for all seats.

6. That unless Jenkins Transportation Service, Inc., complies with the preceding requirements within 30 days from the service date of this order, or such additional time as the Commission may direct or allow, these applications shall stand denied in their entirety, effective upon the expiration of such time for compliance.

7. That upon compliance with the conditions set forth in the preceding paragraphs, Certificate of Public Convenience and Necessity No. 44 will be reissued to Jenkins Transportation Service, Inc., in the form contained in the Appendix of this order.

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



William H. McGilvery  
Executive Director

NO. 44

JENKINS TRANSPORTATION SERVICE, INC.

WASHINGTON, DC

By Order Nos. 1749, 2628, and 3316 of the Washington Metropolitan Area Transit Commission issued September 16, 1977; November 14, 1984; and April 18, 1989;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order Nos. 1749, 2628, and 3316;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

PART A

SPECIAL OPERATIONS, round-trip or one-way, transporting persons confined to wheelchairs between medical treatment facilities located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District.

RESTRICTIONS: The service authorized herein is restricted to the transportation of non-ambulatory participants in the Medicaid program of the District of Columbia, and is further restricted to transportation in vehicles specially equipped with ramps and mechanical devices for securing wheelchairs in transit.

PART B

SPECIAL OPERATIONS, transporting transportation-disadvantaged persons, together with their baggage and attendants in the same vehicle, between points in the Metropolitan District.

RESTRICTED against transportation originating within the Commonwealth of Virginia and transportation between points located solely within the Commonwealth of Virginia.

RESTRICTED when transporting passengers in vehicles that have a manufacturer's designed seating capacity of 16 passengers or more (including the driver), to vehicles that have all seats fitted with seat belts.

IT IS FURTHER ORDERED that, to the extent the authority granted herein may be duplicative, it shall be construed as conferring only a single operating right.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.