

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3451

IN THE MATTER OF:

Served January 10, 1990

Application of SMITH CHARTER)
SERVICE, INC., for a Certificate)
Authorizing Charter and Special)
Operations)

Case No. AP-89-33

By application filed June 6, 1989, as amended at the hearing, Smith Charter Service, Inc. (applicant or Smith), a Maryland corporation, seeks a certificate of public convenience and necessity to transport passengers, together with mail, express, and baggage in the same vehicle as passengers, in for-hire charter operations between points in the Metropolitan District. 1/

A public hearing was held on Tuesday, August 29, 1989, pursuant to Order No. 3361 served June 23, 1989, and incorporated herein by reference. Applicant presented two operational and three public witnesses. Gold Line, Inc. (Gold Line), and National Coach Works, Inc. (NCW), timely protested the application and presented evidence. The authority sought was amended at hearing to delete special operations.

SUMMARY OF EVIDENCE

Mr. Bill Gillison, Smith's vice president and general manager, testified on applicant's behalf. Applicant became incorporated in December 1988. Mr. Gillison is responsible for overseeing day to day operations, safety, and driver training. Applicant is headquartered in Annapolis, MD. It also has an office in Temple Hills, MD. Seven vehicles would be used in the proposed operations. The vehicles are primarily refurbished MCI coaches and are equipped with mobile communication devices. Applicant also plans to operate several minibuses. The vehicles would undergo a regular program of preventive maintenance. Applicant plans to construct a new garage at its Annapolis facility where repairs would be handled. Vehicles are presently garaged in Temple Hills and Annapolis.

Applicant employs three full-time drivers, eight part-time drivers, a secretary, and a bookkeeper. If the authority requested is granted, applicant plans to hire additional staff as needed. Drivers would undergo a written examination and on-the-road training. They

1/ To the extent this application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b). See Order No. 3361.

must have a good driving record and are subject to periodic checks on defensive driving skills. Drivers are rewarded for the completion of an accident-free year. Applicant proposes to charge group charter rates of \$43 an hour for transportation in a 47-passenger coach, \$38 an hour for a 41-passenger coach, \$36 an hour for a 22-passenger minibus, \$25 an hour for a 12-passenger van, and \$20 an hour for an 8-passenger minivan. The foregoing have a five-hour minimum. The charge for airport transfers to or from Washington National Airport would be \$150 and \$200 to or from Washington Dulles International Airport. A \$100 cancellation fee would be assessed if a vehicle is dispatched to the service site, then cancelled. Applicant, through its vice president, is familiar with the Compact and the rules and regulations of this Commission. Applicant is also familiar with the United States Department of Transportation safety regulations. It is important to note that applicant's president, Mr. Joseph C. Smith, operates as a sole proprietor trading as Smith's Charter Bus Service. Mr. Smith holds WMATC Certificate No. 134 and has special authorization to perform certain contract charter operations pursuant to Commission Regulation No. 70.

Mr. David Marc Cooper testified in support of the application. Mr. Cooper is the assistant administrator at the Washington Hospital Center (the Hospital Center) located in Washington, DC. Mr. Cooper's duties include negotiating contracts with transportation providers to operate a shuttle service for hospital employees. Mr. Joseph C. Smith currently provides shuttle services for the Hospital Center pursuant to contract. ^{2/} The Hospital Center also requires transportation for fund-raising events transporting persons to hotels and restaurants in Washington, DC, and to Rosecroft Raceway in Prince George's County, MD. Mr. Cooper testified that the Hospital Center used "applicant's" service to provide transportation to Rosecroft Raceway. The witness also testified that the Hospital Center made transportation arrangements with Mr. Gillison to provide vehicles for a move scheduled for September 24, 1989, from the Hospital Center to a Washington, DC, hotel, and return. On cross-examination, Mr. Cooper stated that he was unaware of what authority applicant had to perform the aforementioned operations. The witness also admitted that he was only authorized to represent the Hospital Center as to its need for the shuttle service. He was not authorized to testify regarding need for services proposed in this application.

Mr. Ronald L. Stubblefield, a certified public accountant, prepared the financial documents that were filed with the application and appeared at hearing. Mr. Stubblefield noted that the documents were based on revenues and expenses of Joseph C. Smith trading as Smith's Charter Service, the sole proprietor, inasmuch as applicant

^{2/} Counsel for applicant stated that the contract with the Hospital Center has been modified to reflect Smith's incorporation. However, the certificate to conduct this service is held by Joseph C. Smith, a sole proprietor, and the certificate does not authorize service by Smith's Charter Service, Inc.

was incorporated in December 1988. As of December 31, 1988, Mr. Joseph C. Smith listed assets of \$223,507, liabilities of \$100,432, and owner's equity of \$123,075. His income statement shows \$302,482 in revenues and \$249,323 in expenses. Smith Charter Service, Inc., applicant, projected revenues for the proposed operations of \$360,000 with \$184,800 in expenses.

Ms. Brenda D. Carroll testified in support of the application. Ms. Carroll is a travel consultant with Allen Travel Service (ATS) and was authorized to testify about its transportation needs. ATS makes transportation arrangements for the African Methodist-Episcopal Church (AME) and is located in AME's Washington, DC, headquarters. The AME is an international organization that entertains visitors to Washington, DC, and hosts numerous meetings. Its churches are located throughout the Metropolitan District, with transportation often required to and from these sites. In addition to making transportation arrangements for AME, ATS also provides service for the National Congress of Black Churches and the National Council of Negro Women. Ms. Carroll testified that additional carriers are needed to provide service in the Metropolitan District. The witness does not always receive advance notice of her clients' transportation needs, so she is forced to make last minute arrangements. As a result, existing services have not always been available to meet her needs. Transportation is needed for transfers and day-long shuttle movements between points in the Metropolitan District about 30 times a year.

Ms. Brenda Jones also testified in support of the proposed service. Ms. Jones is branch chief of administrative support service for the pre-school daycare division of the United Planning Organization (UPO). UPO requires transportation between points in the Metropolitan District for three programs that it administers: (1) teen pregnancy, (2) headstart, and (3) day-care. Due to the nature of the organization's funding, monies are received on short notice, forcing the witness to make transportation arrangements without advance notice, and she has encountered difficulty finding adequate transportation from existing sources. The witness requires transportation approximately 20 times a month.

The application is protested by Gold Line, Inc., and its affiliate, National Coach Works, Inc. Gold Line holds WMATC Certificate No. 14 which authorizes, inter alia, the transportation of passengers in charter operations between points in the Metropolitan District. NCW holds WMATC Certificate No. 26 which authorizes the transportation of passengers in charter operations between points in the Metropolitan District. Mr. Charles L. Cummings, vice president and general manager, represented Gold Line in opposition to the application. Mr. Cummings has also worked as a consultant for NCW on various matters and is familiar with the operations of that company. He was authorized by NCW's management to represent NCW at the hearing. Gold Line currently operates 62 vehicles; NCW operates 15. Mr. Cummings testified that protestants are willing to provide the services requested by the witnesses. In an effort to accommodate government agencies who have a difficult time prepaying for

transportation, the protestants are willing to bill after a move is accomplished. This courtesy would be available to agencies with whom the carriers are familiar.

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 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 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.

Smith Charter Service, Inc., the applicant in this case, became a corporate entity in December 1988. It is a newly-created transportation carrier with no established track record. Applicant holds no operating authority from the Interstate Commerce Commission (ICC), nor does it hold any authority to perform WMATC operations. Joseph C. Smith, a sole proprietor who is also a principal in Smith Charter Service, Inc., holds ICC authority. Mr. Smith, a sole proprietor, also holds certain authorization to operate pursuant to Commission Regulation No. 70. However, Mr. Smith, sole proprietor, is not the applicant in this case, the corporation is. Nor has Joseph C. Smith, sole proprietor, requested transfer of his WMATC operating authority to Smith Charter Service, Inc. The pleadings indicate that applicant is insufficiently cognizant of the fact that, therefore, Joseph C. Smith's operations, assets, and experience cannot be considered in evaluating the evidence submitted on behalf of the application of Smith Charter Service, Inc.

The Compact provides that, in determining whether a grant of authority should issue, the fitness of the applicant must be examined. A fitness finding is made after considering financial, operational, and compliance abilities of the applicant. In examining applicant's financial fitness, the Commission looks to applicant's economic status to determine whether it is financially able to implement and perform the proposed operations. Operational fitness pertains to the feasibility of applicant's proposal and its ability to perform the proposed transportation. Compliance fitness refers to the carrier's ability and willingness to comply with the Compact and the Commission's rules and regulations.

Applicant put forth a financial witness who testified that data submitted with the application represents the financial status of the sole proprietor. No information regarding the corporation's assets or liabilities are reflected in the record. The Commission can not assume that the assets of Mr. Smith are identical to applicant's; nor can it assume that the liabilities of Mr. Smith are similar to the liabilities of applicant. In fact, testimony in the record reveals that applicant has newly-acquired vehicles. Ownership, along with the debt that attaches, could belong to either business entity. Without a basic financial framework from which to work, the Commission is unable to determine if applicant is in an economic position to implement and sustain the proposed operations.

Operationally, applicant has the employees necessary to perform the proposed operations; it has a maintenance plan and garaging facilities. Based on the testimony of record, it also has vehicles to implement operations. Ownership of the vehicles, however, is questionable. Taking official notice of Commission files, we note that nine of the twelve vehicles shown on applicant's list of equipment appear on the insurance certificate of Joseph C. Smith. There is no evidence regarding whether applicant plans to purchase or lease these vehicles from Mr. Smith. If the vehicles are leased, an approved contract of lease must be on file with the Commission pursuant to Rule No. 69. That rule further provides that evidence of insurance must be filed by lessee.

The last component in our analysis of overall fitness is compliance fitness. Here too, the Commission has concerns. Testimony of Mr. Cooper, assistant administrator at the Hospital Center, reveals that transportation to Rosecroft Raceway located in Prince George's County, MD, was arranged and secured through Mr. Gillison. The witness interchanged references to Joseph C. Smith trading as Smith's Charter Bus Service and applicant throughout his testimony, and on cross examination by protestant's counsel was not sure under what authority the transportation was performed. Applicant is before us now requesting authority, so it is evident that the corporation was without proper authority to perform the questioned transportation. The sole proprietor is restricted in its operations to shuttle transportation of employees of the Hospital Center between prescribed points. Temporary authority 3/ held by the sole proprietor did not provide the authority to perform the charter movement. Uncertainties regarding applicant's finances, vehicle ownership and availability, and its willingness or ability to comply with the Compact and the rules and regulations of this Commission require us to find applicant unfit to perform the proposed operations. Consequently, we need not reach the issue of public convenience and necessity.

3/ Temporary authority was issued to Joseph C. Smith trading as Smith's Charter Bus Service on January 5, 1989, pursuant to Order No. 3269.

Although this is a decision on the application of Smith Charter Service, Inc., we admonish Joseph C. Smith, sole proprietor and WMATC Carrier No. 134, to assure that his operations are in strict compliance with Commission requirements. There should be no blurring of the very real distinction between the sole proprietor and the corporation.

THEREFORE, IT IS ORDERED that the application of Smith Charter Service, Inc., in Case No. AP-89-33 is hereby denied in its entirety.

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


William H. McGilvery
Executive Director 