

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3520

IN THE MATTER OF:

Served June 22, 1990

Application of DIAMOND )  
TRANSPORTATION SERVICES, INC., for )  
a Certificate of Public Convenience )  
and Necessity -- Special Operations)

Case No. AP-90-07

By application filed February 15, 1990, Diamond Transportation Services, Inc. (DTS or applicant), seeks a certificate of public convenience and necessity to transport passengers, together with baggage in the same vehicles as passengers, in special operations between points in that part of the Commonwealth of Virginia located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District, restricted to transportation of transportation-disadvantaged persons and their attendants and further restricted to transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 persons or less (including the driver) and modified to accommodate one or more wheelchairs. 1/2/

A public hearing on the matter was held April 19, 1990, pursuant to Order No. 3468, served March 13, 1990, and incorporated herein by reference. One witness testified regarding applicant's operations, and four additional witnesses were presented. Petitions in the nature of protests were filed March 19, 1990, by J&B Transportation Company, Inc. (WMATC No. 45); Metro Medicab, Inc. (WMATC No. 46); P&T Transportation Co., Inc. (WMATC No. 47); Otis F. Smith trading as Speedy Transportation (WMATC No. 48); Ellis B. Harrison, Sr., trading as Area Transportation Company (WMATC No. 49); Henry L. Epps, Jr. (WMATC No. 51); Damon's Transportation Company, Inc. (WMATC No. 60); William C. Dye trading as W&D Transportation (WMATC No. 61); Battle's Transportation, Inc. (WMATC No. 62); and Ikard Transportation Service,

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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) by Order No. 3468.

2/ "Transportation-disadvantaged persons are those individuals who by reason of age, physical or mental disabilities are unable without special facilities or special planning or design to utilize transportation facilities and services as effectively as persons who are not so affected." Order No. 2015, served August 7, 1979, at pp. 3 and 4.

Inc. (WMATC No. 164) (protestants). However, protestants neither appeared at the hearing to cross-examine witnesses nor presented evidence in support of their protests. Nor did they file briefs in opposition to the application.

#### SUMMARY OF EVIDENCE

The president of DTS, Mr. Robert Werth, is responsible for overseeing its day-to-day activities. Since incorporation in 1984, DTS has conducted intra-Virginia transportation closely resembling the proposed service. Applicant has received recognition for the quality of its service from the National Organization on Disabilities and the Arlington County Commission on Disabled. DTS provides door-to-door service for nonambulatory persons under contract with the City of Alexandria, the County of Arlington, and Virginia government agencies pursuant to Virginia State Corporation Commission authority. Applicant's decision to expand its operations is based on requests from customers for service from Northern Virginia to points in the District of Columbia and Montgomery and Prince George's Counties, MD, and return. Mr. Werth testified that it is not applicant's intent to transport all persons viewed as transportation-disadvantaged. DTS intends to transport the nonambulatory and their companions only.

DTS would conduct the proposed service using six vehicles: a bus modified to seat three wheelchairs and twelve ambulatory passengers, 3/4/ three 15-passenger vans each modified to carry three wheelchairs and three ambulatory passengers (plus additional luggage), and two smaller vans each modified to carry one wheelchair and three ambulatory passengers (plus luggage). Each vehicle is equipped with tie-downs, seat belts, lift, and two-way communication system. All modifications are permanent and performed by the manufacturer. Additional vehicles would be purchased or leased as necessary. The vehicles would be, as they are now, subjected to daily maintenance checks with routine scheduled maintenance and repairs performed by a certified mechanic. Vehicles are parked in a lot adjacent to applicant's office.

Applicant employs eight full-time drivers who would be given the expanded responsibility of performing WMATC operations. DTS hires experienced drivers who must be cleared by its insurance company. Each driver is also subject to an independent background check. Drivers receive several days of supervised on-the-road training

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3/ The application of DTS describes this vehicle as one "modified to provide for three wheelchairs and up to thirteen additional passengers (or equivalent luggage). A floor plan of the vehicle submitted with the application shows seating arrangements for three wheelchairs, 13 additional passengers, and a driver. Transportation in such a vehicle is beyond the scope of the authority sought by the applicant.

4/ This description does not appear to include the driver. Transportation in a vehicle seating 16 persons or more (including the driver) is outside the scope of this application.

They are also trained in CPR, first aid, and passenger assistance techniques. Applicant's drivers receive instruction on the transport of a variety of different wheelchairs and participate in a "sensitivity awareness program." The program examines different disabilities that may be encountered and how best to respond to passenger needs in light of such disabilities.

The proposed service would be available seven days a week, 24-hours a day. Twenty-four hour advance notice for service would be required. Applicant proposes one-way rates based on a zone system, ranging from \$27.50 to \$55 a person. An additional \$5 fee would be charged for trips originating at Washington National Airport, Arlington, VA. A \$10 fee would be charged for use of a DTS wheelchair. No fee would be charged for companions. Applicant's proposed tariff lists rates for transportation between two points in Virginia. DTS will be directed to file a revised tariff deleting intra-Virginia rates.

Applicant's balance sheet as of December 31, 1989, shows current assets of \$113,993.70 with fixed assets after allowance for depreciation of \$38,712.79, and other assets of \$2,009. Current liabilities are listed at \$67,799.92 with long-term liabilities of \$41,141.20. Equity is reflected as \$200 in capital stock and \$45,574.37 in earned surplus. Applicant's operating statement for the 12 months ended December 31, 1989, shows operating income of \$564,229.70 with operating expenses, including depreciation and taxes, of \$558,163.44. For the first 12 months of operations, DTS projects \$56,400 in WMATC income plus other operating income of \$564,000. Operating expenses, including depreciation and taxes, for the same period are projected at \$606,900, ten percent of which would be allocable to WMATC operations, resulting in an overall net operating income of \$13,500 and a corresponding operating ratio of 98.

DTS, through Mr. Werth, is familiar with the Compact and the Commission's rules and regulations, including its safety regulations, and intends to comply with them.

Ms. Maryann Ormes, director of Senior Citizens Employment and Services of Alexandria (SES), testified on its behalf in support of the application. SES is a nonprofit organization that provides employment and emergency services for seniors (persons 60 and older). SES also sponsors a senior taxi program and contracts with the City of Alexandria for van transportation of the "mobility disabled" solely within Virginia. DTS currently provides transportation pursuant to the contract. Ms. Ormes is very satisfied with the quality of service rendered by DTS. However, Ms. Ormes receives occasional complaints about the geographic limitations of the service arranged by SES. Ms. Ormes testified that the expansion of applicant's service into the Metropolitan District would be beneficial to program participants needing additional transportation. Ms. Ormes would inform individuals of applicant's service. However, reservations would have to be made by the individual using the proposed service. The witness receives requests for transportation from Virginia to points in Washington, DC, approximately twice a month.

Mr. Michael Lewallen testified in support of the application on behalf of Goodwin House West where he serves as recreation coordinator. Goodwin House West is a life care retirement community and licensed nursing home in Falls Church, VA. Mr. Lewallen arranges transportation for community residents in both charter and special operations. Between forty and fifty nonambulatory individuals reside at Goodwin House West. The witness currently uses applicant's service for intra-Virginia transportation and testified that the proposed service would enable him to arrange trips to museums, the Kennedy Center, the Cherry Blossom Festival and other events, all located in Washington, DC. Transportation may also be required to various sporting events held at the Capital Centre, Prince George's County, MD. Transportation would be required for up to 13 individuals once a month.

Mr. Larry G. Binger testified in support of the application as a nonambulatory individual in need of reliable transportation. Mr. Binger uses applicant's service for transportation between his home in Alexandria, VA, and Alexandria Hospital. The witness prefers to receive regularly-required medical treatment at the Veterans' Administration Hospital in the District of Columbia, but available public transportation has proved less than satisfactory. A typical trip from Mr. Binger's home to the Veterans' Administration Hospital requires a 7 a.m. departure for an 11 a.m. appointment. The witness takes a taxicab to a metro stop. If upon arrival at the metro station Mr. Binger finds elevators inoperable, he must be "ferried" to another metro stop. To complete his trip the witness must board a lift-equipped Metrobus. Twenty-four hour advance notice is required for such service. The witness feels that commuting time to and from medical appointments would be considerably shortened if he could use applicant's proposed service. In addition to making trips to the Veterans' Administration Hospital, Mr. Binger participates in numerous sporting competitions. He is a champion wheelchair athlete and requires transportation to sporting events held throughout the Metropolitan District. The witness would also use the proposed service for transportation to recreational and cultural events within the Metropolitan District. Mr. Binger expects to use applicant's proposed service four to five times a week for trips to Washington, DC, and on weekends to points in Prince George's and Montgomery Counties, MD.

The last witness to testify was Ms. Patricia U. Judge. Ms. Judge is married to a ventilator-dependent quadriplegic and uses applicant's service for her husband's transportation. Ms. Judge is pleased with the service rendered by applicant and believes that DTS, by its work and concern for its patrons, has substantially improved the quality of her husband's life. The witness' husband always requires pick-ups at his home in Dale City, VA, which is outside of the scope of authority sought in these proceedings. The testimony of the witness was proffered to highlight the quality of service applicant currently renders.

## DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, the Commission is governed by the standards enunciated at Title II, Article XII, Section 4(b) of the Compact which provides:

. . . 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 . . . .

Based on a review of the record in this case, the Commission finds applicant capable of providing the service, as proposed, if restricted to transportation of nonambulatory passengers and their companions. Applicant is experienced in the field of nonambulatory transportation and, based on the testimony of its witnesses, offers service of high quality, in a manner sensitive to the special needs of its clients. Transportation would be performed on a 24-hour basis in vehicles equipped for use by nonambulatory passengers. An extensive driver training program, highlighting the special care that nonambulatory passengers require, evidences a commitment on the part of DTS to meet the needs of its ridership. Applicant has a system of vehicle maintenance in place and adequate finances to institute the proposed operations. DTS, through its president, is familiar with the Compact and the Commission's rules and regulations, including those pertaining to safety, and the Commission finds that applicant is willing and able to comply with them.

Based upon the testimony of DTS's witnesses, the application filed by DTS, and the documentary evidence submitted in this matter, and in light of the entire circumstances of this particular case, the Commission further finds that applicant has proved that the proposed service, restricted (in line with the evidence of record) to the transportation of nonambulatory passengers and their companions, will serve a useful public purpose for which there is a demonstrated need. The protestants failed to present or rebut evidence presented by applicant that would support a claim that existing carriers are capable of adequately meeting the transportation needs of the public witnesses. Thus, based on the record in this case, the Commission finds that the public need for the proposed service will not be as well served by existing carriers as by applicant, and the operations by existing carriers will not be impaired in a manner contrary to the public interest.

THEREFORE, IT IS ORDERED:

1. That Diamond Transportation Services, Inc., is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers, together with their baggage, in special operations between points in that part of the

Commonwealth of Virginia located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District, restricted (1) to transportation of nonambulatory passengers and their companions, (2) to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver) and equipped with lifts and with mechanical devices for securing one or more wheelchairs in transit, and (3) against transportation solely within the Commonwealth of Virginia.

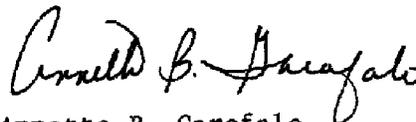
2. That in all other respects the application of Diamond Transportation Services, Inc., is hereby denied.

3. That Diamond Transportation Services, Inc., is hereby directed to file with the Commission within 30 days of the service date of this order the following: (a) three copies of its WMATC Tariff No. 1 with all references to intra-Virginia movements deleted; (b) an equipment list specifying make, model, year, serial number, vehicle number, seating capacity (specifying ambulatory seating and nonambulatory seating and including driver), modifications for the safe transport of nonambulatory persons, and license plate number (with jurisdiction) for each vehicle to be used in revenue operations; (c) evidence of ownership or a lease in conformance with Commission Regulation No. 69, as appropriate, for each vehicle to be used in revenue operations; and (d) an affidavit of identification of vehicles pursuant to Commission Regulation No. 67, for which purpose WMATC No. 122 has been previously assigned.

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

5. That upon compliance with the conditions set forth in the preceding paragraphs, a certificate of public convenience and necessity will be issued to Diamond Transportation Services, Inc., in the form and as worded in the Appendix to this order.

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



Annette B. Garofalo  
Acting Executive Director

NO. 122

DIAMOND TRANSPORTATION SERVICES, INC.

By Order No. 3520 of the Washington Metropolitan Area Transit Commission issued June 22, 1990;

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 No. 3520;

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 herein 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

SPECIAL OPERATIONS, transporting passengers, together with their baggage, between points in that part of the Commonwealth of Virginia located in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District,

RESTRICTED (1) to transportation of nonambulatory passengers and their companions, (2) to transportation in vehicles having a manufacturer's designed seating capacity of 15 passengers or less (including the driver) and equipped with lifts and with mechanical devices for securing one or more wheelchairs in transit, and (3) against transportation solely within the Commonwealth of Virginia.

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.