

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3548

IN THE MATTER OF:

Served September 6, 1990

Application of WILLIAM C. DYE) Case No. AP-90-20
Trading as W&D TRANSPORTATION for)
an Amended Certificate of Public)
Convenience and Necessity --)
Special Operations)

By application filed April 30, 1990, William C. Dye trading as W&D Transportation (Mr. Dye or applicant) seeks an amended certificate of public convenience and necessity to transport transportation-disadvantaged 1/ passengers in special operations between points in the Metropolitan District, restricted to transportation in vehicles having a manufacturer's designed seating capacity of 15 passengers or less (including the driver). 2/3/

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- 1/ "Transportation-disadvantaged" passengers 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, pp. 3 and 4.
 - 2/ To the extent the application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed by Order No. 3500 pursuant to the Compact, Title II, Article XII, Section 1(b).
 - 3/ Pursuant to Order No. 3517, served June 11, 1990, Mr. Dye received conditional temporary authority to transport passengers in charter operations for the account of D.C. Chartered Health Plan, Inc. (Chartered), contingent upon compliance with the terms of that order. Notice was given by Order No. 3500 that Mr. Dye might amend this application to include charter service pursuant to contract for Chartered's account inasmuch as his then-pending temporary authority application could not, if granted, suffice as authorization for the service Mr. Dye sought to provide Chartered. By Order No. 3500 Mr. Dye was advised that this application would stand as filed unless amended formally. The application was not amended; nor was any supporting evidence offered on the issue of public convenience and necessity as it relates to Chartered's needs. Since Mr. Dye did not comply with the requirements of Order No. 3517, he holds no authority to serve Chartered.

Pursuant to Order No. 3500, served May 9, 1990, a public hearing was held June 26, 1990. Mr. Dye testified for applicant; two public witnesses testified in support of the application. No protests were filed.

SUMMARY OF EVIDENCE

Mr. Dye, a sole proprietor, holds WMATC Certificate No. 61 which authorizes the transportation, in special operations, of non-ambulatory participants in the District of Columbia's Medicaid program (administered by its Department of Human Services) between medical treatment facilities in the Metropolitan District, on the one hand, and, on the other, points in the Metropolitan District, restricted to transportation of passengers in vehicles specially equipped with devices for the safe transport of wheelchair-bound passengers. Mr. Dye testified that he wants to expand this authority to include (1) transportation throughout the Metropolitan District of transportation-disadvantaged persons not eligible for Medicaid, (2) transportation throughout the Metropolitan District of Medicaid recipients who are ambulatory, and (3) transportation throughout the Metropolitan District of non-ambulatory persons participating in the Medicaid program when needing transportation for non-medical purposes. ^{4/} Mr. Dye proposes to offer the proposed service in addition to service authorized by WMATC Certificate No. 61.

Applicant testified that he operates five revenue vehicles. According to Mr. Dye, all vehicles are fully depreciated. Two vehicles are equipped with manual ramps, wheelchair locks, and wheelchair tie-downs. These vehicles each seat two non-ambulatory persons and are used to provide service under WMATC Certificate No. 61. The remaining three vehicles seat seven passengers (one vehicle) and 12 passengers (two vehicles). According to Mr. Dye, two of these vehicles could be reconfigured to transport wheelchair passengers. Mr. Dye's preventive maintenance program consists of a daily check by drivers of "oil, water, lubrication, lights, signals" and cleanliness and a weekly brake check (brakes are replaced every two and one-half to three months). Repairs are made as needed. Mr. Dye employs five drivers; he also drives. Drivers are responsible for daily maintenance and passenger transportation. Mr. Dye employs one additional person to answer the phone and relay messages to "people in the field."

^{4/} The Medicaid program hires private carriers such as Mr. Dye to transport non-ambulatory persons between their residences, on the one hand, and, on the other, medical facilities. The Medicaid program pays for ambulatory participants to be transported by bus, subway, or taxi, as deemed appropriate, when transportation is required for medical purposes. The program does not pay for transportation for non-medical purposes.

Mr. Dye proposes the following tariff:

MEDICAID

Round trip	\$35.00
One way	\$25.00
cancellation	7.50
each additional man	5.00 each way
\$.75 per loaded mile beyond the Capital Beltway	
Waiting time - \$5.00 per 15 minute period	

NON-MEDICAID

Round trip	\$50.00
One way	30.00
cancellation	7.50
each additional man	10.00 each
each caretaker for passenger - one-fourth of charge for passenger	
\$1.50 per loaded mile beyond the Capital Beltway	
Waiting time - \$5.00 per 15 minute period	

The portion of the tariff headed "Medicaid" is intended to apply to service authorized by WMATC Certificate No. 61. It is similar in substance to Mr. Dye's current tariff (WMATC Tariff No. 2) with some exceptions. This is an application for operating authority, not an application for increased rates for existing operations. Accordingly, no changes to the Medicaid rates in Mr. Dye's WMATC Tariff No. 2 will be considered in the context of this proceeding.

As to the "Non-Medicaid" portion of the tariff, "Additional man" represents an employee of Mr. Dye supplied to handle wheelchair-bound passengers. "Caretaker" is a person accompanying a passenger for the passenger's aid and convenience supplied by the passenger.

Mr. Dye testified that he is familiar with the Compact and the Commission's rules and regulations, including its safety regulations, and is in compliance with them.

With his application, Mr. Dye submitted a balance sheet as of January 31, 1990, showing current assets of \$17,000 and no fixed or other assets. Mr. Dye testified that, despite the fact that he owes \$8,000 on one of his five revenue vehicles, all vehicles are fully depreciated, and he has no additional fixed assets. The balance sheet lists current liabilities of \$15,852 and proprietor's equity of \$1,148. With the application, Mr. Dye also submitted an operating statement for the 12 months ended December 31, 1989, showing \$134,000 in WMATC income, with concomitant expenses of \$122,238. If this application is granted, Mr. Dye projects revenue from the proposed service of \$75,000 during 1990, with expenses during the same period attributable to the

proposed service of \$40,600. Mr. Dye's annual report for calendar year 1989 shows WMATC operating income of \$124,087 with concomitant expenses of \$121,576. Expenses include driver's wages of \$33,117, gasoline and oil expense of \$15,359, repairs of \$14,628, insurance expense of \$17,289, advertising expense of \$436, garage/office expense of \$3,595, and other enumerated expenses of \$16,620. Depreciation expense of \$6,247 is also included. Mr. Dye testified that the Commission should look to his notarized annual report for recent (calendar year 1989) operating history not to his notarized application. Mr. Dye testified that all financial data was approximately the same on the date of public hearing as when it was submitted. Mr. Dye further testified that some long-term debt was included in his statement of financial condition under "current liabilities." The liability consists of some portion of \$8,000 (principal) still owing on a vehicle purchased over five years ago. With his operating statement Mr. Dye submitted the following projection for the proposed special operations:

	SPECIAL OP.
Revenues	\$75,000
Drivers wages	\$17,000
Clerical wages
Gas & oil	9,500
Repairs	6,000
Insurance
Uninsured damages	1,500
Taxes (other than income)	2,300
Income taxes	<u>4,300</u>
Expense	40,600
Profit	\$34,400

Mr. Dye believes insurance expense would be at least \$17,000 for all five vehicles. Mr. Dye testified that a grant of this application would have a positive impact on his overall financial position in the long-term.

A representative of Biomedical Applications (BA) testified on its behalf in support of the application. BA operates approximately 24 dialysis centers in the tri-state area; its regional office is in Landover, MD. BA's representative testified specifically regarding four of those clinics: one in Takoma Park (Montgomery County, MD), two in Southeast Washington, DC (one on Southern Avenue, and one on Martin Luther King Jr. Avenue), and one in the Washington Hospital Center (Northwest Washington). The clinics' patients include Medicaid recipients and those who pay for medical service and transportation to that service by other means. Patients include those who are ambulatory and those who are non-ambulatory. Some ambulatory persons become wheelchair-bound after dialysis. Persons obtaining service at those four centers reside in Montgomery and Prince George's Counties, MD, and Washington, DC. Three hundred twenty-five patients are treated at the

four local BA centers. The Washington Hospital Center administers 1500 treatments a month. The Greater Southeast Dialysis Unit administers 900 treatments a month. The Takoma Park Dialysis Unit administers 450 treatments a month. The Martin Luther King Dialysis Unit administers 490 treatments a month. Between 40 and 60 percent of the clients at each facility qualify for Medicaid. Persons not qualifying for Medicaid also use transportation such as Mr. Dye proposes because family situations and client conditions change, leaving the families unable to provide appropriate transportation. If this application is granted, all four clinics would use applicant's service for transportation of Medicaid recipients as well as persons paying for the transportation through other means.

Ms. Roberta Dodd testified in support of the application. Ms. Dodd has used Mr. Dye's service pursuant to WMATC Certificate No. 61, is pleased with it, and has always felt safe when using it, even when very ill.

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 the applicant capable of providing the proposed service and willing to conform to the Compact and the rules, regulations, and requirements of the Commission thereunder.

A review of applicant's finances shows that Mr. Dye's annual report, on which he asks us to rely, shows a profit that is 52 percent less than the profit shown on the operating statement submitted with his application. The Commission notes also that Mr. Dye's annual report has been selectively completed (five out of seven pages were submitted; the remaining pages, one of which would have contained an equipment list, was deleted from the report). Mr. Dye testified that he will employ an accountant to prepare future financial statements, and the Commission agrees this is necessary to avoid the filing of inaccurate financial reports.

The Commission has considered the possibility that applicant's existing equipment would be available for the proposed service. Taking official notice of applicant's insurance certificate and his application in this case, it would appear that only four vehicles are available, two of which are equipped to transport wheelchair-bound passengers. This amount of equipment could be sufficient to justify a grant of Mr. Dye's application.

It appears that applicant has indicated a willingness to comply with the Compact and the Commission's rules and regulations.

In determining whether applicant has satisfied its 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]) and its progeny. 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 operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

The applicant produced two public witnesses, and a need was expressed for an additional carrier of transportation-disadvantaged passengers throughout the Metropolitan District. No protests were entered, and the Commission finds that the service need is not being met by existing carriers. Nor will the operations proposed by applicant endanger or impair the operations of existing carriers.

THEREFORE, IT IS ORDERED:

1. That William C. Dye trading as W&D Transportation is hereby conditionally granted authority, contingent upon timely compliance with the requirements of this order, to transport transportation-disadvantaged passengers in special operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 passengers or less, including the driver; further restricted when transporting non-ambulatory passengers to use of van-type vehicles specially equipped with ramps or lifts, and mechanical devices for securing wheelchair passengers in transit; and further restricted against transportation solely within the Commonwealth of Virginia.

2. That William C. Dye trading as W&D Transportation is hereby directed to file with the Commission (a) three copies of his WMATC Tariff No. 3 as discussed in the body of this order, and (b) a complete and notarized WMATC Annual Report for 1989.

3. That, upon timely compliance with the preceding paragraph, a revised Certificate of Public Convenience and Necessity No. 61 will be issued to William C. Dye trading as W&D Transportation, in the form and as worded in the Appendix to this order.

4. That unless William C. Dye trading as W&D Transportation timely 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 contained herein shall be void, and the application shall stand denied in its entirety, effective upon the expiration of said compliance time.

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


William H. McGilvery
Executive Director

NO. 61

WILLIAM C. DYE

Trading as W&D TRANSPORTATION

By Order Nos. 2065 and 3548 of the Washington Metropolitan Area Transit Commission issued December 5, 1979, and September 6, 1990, respectively;

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. 2065 and 3548;

THEREFORE, IT IS ORDERED that the said carrier be, and 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 transportation-disadvantaged passengers between points in the Metropolitan District,

RESTRICTED to transportation in vehicles having a manufacturer's designed seating capacity of 15 persons or less, including the driver; further restricted when transporting non-ambulatory passengers to use of van-type vehicles specially equipped with ramps or lifts, and mechanical devices for securing wheelchairs in transit; and further restricted 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 so to do shall constitute sufficient grounds for suspension, change, or revocation of the certificate.