

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3956

IN THE MATTER OF:

Served June 15, 1992

Joint Application of AIR COURIERS)
INTERNATIONAL GROUND TRANSPORTATION)
SERVICES, INC., Trading as PASSENGER)
EXPRESS, and UNITED MANAGEMENT)
CORPORATION Trading as PASSENGER)
EXPRESS, for Approval of Merger)

Case No. AP-92-12

By joint application filed April 10, 1992, Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express (Air Couriers), and United Management Corporation, trading as Passenger Express (UMC) (collectively Applicants), two Virginia corporations, seek Commission approval of their proposed merger.

Air Couriers holds Certificate of Authority No. 55, and UMC holds Certificate of Authority No. 172. Air Couriers is a wholly-owned subsidiary of UMC. According to the Plan of Merger, Air Couriers will merge into UMC, UMC will continue as the surviving corporation, and Air Couriers will cease to exist as a separate entity.

Madison Limousine Service, Inc. (Madison), filed a protest on May 19, 1992. Madison contends that the merger is not in the public interest because of Applicants' alleged lack of regulatory compliance fitness.¹

I. SUMMARY OF EVIDENCE

The application is supported by a copy of the Plan of Merger, a statement of consistency with the public interest, a statement of control relationships, UMC's charter and certificate of good standing, Applicants' balance sheets, UMC's projected operating statement, UMC's proposed post-merger tariff, and a statement of disposition of Air Couriers' contract operations.

Applicants' statement of consistency with the public interest points out that approval of the merger would facilitate Applicants' regulatory compliance by permitting the filing of a single tariff and single certificate of insurance. Applicants believe their merger would remove any confusion the public may experience concerning the identity of which "Passenger Express" entity is providing service at any given time. Applicants have found that consolidation of their revenue vehicles into a single fleet has produced certain operating efficiencies.

¹An investigation of Applicants' compliance with the Compact and regulations thereunder was pending at the time Madison filed its protest. The matter since has been resolved. See infra, n.6 & accompanying text.

UMC's balance sheet as of February 28, 1992, shows current assets of \$354,049, net fixed assets of \$89,499; other assets of \$377,500; liabilities of \$168,343, and equity of \$652,705. UMC's operating statement for the fiscal year to date as of February 28, 1992, shows net service revenue of \$640,882; nonadministrative expenses of \$439,975; administrative expenses of \$152,456; other income of \$19,105, and net income of \$29,346. UMC's projected operating statement for the first 12 months of merged operations shows WMATC income of \$1,231,000; other operating income of \$308,000; operating expenses of \$1,446,780; other income of \$2,400, and net income of \$94,620.

Air Couriers' balance sheet as of February 29, 1992, shows current assets of \$100 and equity of \$100.

II. DISCUSSION AND FINDINGS

This application is governed by the Compact, Title II, Article XII, Section 3, which provides in pertinent part:

(a) A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to --

(i) consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District

* * *

(c) If the Commission finds, after notice and hearing, that the proposed transaction is consistent with the public interest, the Commission shall pass an order authorizing the transaction.

Consideration of consistency with the public interest entails, among other things, an inquiry into the fitness of the surviving corporation and the need for termination of the expiring corporation's certificate of authority.²

There has been a de facto merger of Applicants since October 1991. Applicants' president has verified that "[s]uch joint operation achieves operating and fuel economies, minimizes air pollution and deadhead mileage, and enables the [Applicants] to provide a more flexible service to their customers."³ Continuation of the public benefits and reduction in carrier costs arising from a preexisting unification of operations is consistent with the public interest.⁴

²See In re Application of ATE Mgmt. & Serv. Co., No. AP-91-37, Order No. 3876 (Jan. 6, 1992).

³Applicants' Reply to Staff Report in Case No. MP-92-05, at 8 (filed May 1, 1992).

⁴Missouri Pacific R.R. v. United States, 4 F. Supp. 449 (E.D. Ky. 1933), aff'd per curiam, 293 U.S. 524 (1934).

The record supports a finding that UMC is financially and operationally fit. Madison, however, questions UMC's compliance fitness. While UMC's regulatory compliance has recently been found lacking, UMC has taken substantial steps to correct its errors.⁵ Upon payment of the civil forfeiture assessed in Order No. 3955, that correction will be complete. Approval of the merger will be subject to the condition that Applicants comply with Order No. 3955.

The Commission's approval of the merger also is conditioned on the immediate, indefinite suspension of Certificate of Authority No. 55. The record shows that Air Couriers presently has no revenue vehicles or other tangible assets and virtually no capital. The Commission finds this situation inconsistent with the public interest. Certificate No. 55, therefore, is suspended indefinitely. Upon issuance of the certificate of merger by the State Corporation Commission of Virginia to UMC, the operating authority under Certificate No. 55 will merge into the operating authority under Certificate No. 172, and Certificate No. 55 will stand revoked.⁶

Air Couriers has four contract tariffs on file which must be refiled under UMC's name and certificate number if UMC intends to perform the underlying contracts. All parties to the contracts have been notified of this proceeding, and none has protested. The N.I.H. contract may be refiled immediately since it is in the name of "Passenger Express." Absent novation, the three airline contracts may be refiled once Certificate of Authority No. 172 has been reissued. At that time, the application shall stand approved and the rights to Air Couriers' contracts already shall have vested in UMC.⁷

III. CONCLUSION

With the immediate, indefinite suspension of Certificate No. 55 and Applicants' timely compliance with this order and Order No. 3955, the Commission finds the merger of Air Couriers into UMC consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That the application of Air Couriers International Ground Transportation Services, Inc., trading as Passenger Express, and United Management Corporation, trading as Passenger Express, for approval of merger is hereby conditionally granted, contingent upon Applicants' timely compliance with the requirements of this order and Order No. 3955.

⁵In re Investigation of Compliance with the Compact by Air Couriers Int'l Ground Trans. Servs., No. MP-92-05, Order No. 3955 (June 15, 1992).

⁶See Order No. 3876; In re Application of Eugene H. George, No. AP-89-23, Order No. 3393 (Aug. 17, 1989); In re Application of Atwood's Transport Lines, Inc., No. AP-78-30, Order No. 1912 (Nov. 6, 1978). Accord, In re Control or Consolidation of Motor Carriers, 109 M.C.C. 448, 449 (May 4, 1970).

⁷Va. Code Ann. § 13.1-721(A)(2) (Michie 1989); Ruberoid Co. v. Glassman Constr. Co., 248 Md. 97, 234 A.2d 875 (1967).

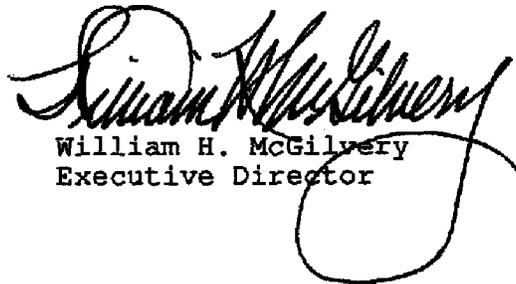
2. That United Management Corporation, trading as Passenger Express, is hereby directed to file with the Commission a copy of the certificate of merger issued to it by the State Corporation Commission of Virginia, within five (5) business days of the date of issuance, or such additional time as this Commission may direct or allow.

3. That Certificate of Authority No. 55 is hereby suspended and shall stand revoked upon issuance of the certificate of merger to United Management Corporation.

4. That upon Applicants' timely compliance with the requirements of this order and Order No. 3955, and the Commission's acceptance of the civil forfeiture payment and filing of duplicate certificate of merger as ordered therein, Certificate of Authority No. 172 shall be reissued to United Management Corporation, trading as Passenger Express, consistent with the terms of this order.

5. That unless Applicants comply with the requirements of this order and Order No. 3955 within the time permitted, or such additional time as the Commission may direct or allow, the application for approval of merger shall stand denied in its entirety.

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



William H. McGilvery
Executive Director