

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4284

IN THE MATTER OF:

Served April 26, 1994

Application of METRO ACCESS OF)
MARYLAND, INC., for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-94-07

By application filed March 10, 1994, Metro Access of Maryland, Inc. (Metro Access or applicant), a Maryland corporation, seeks a certificate of authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

Notice of this application was served on March 11, 1994, in Order No. 4253, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication. Applicant complied. The application is unopposed.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, applicant's corporate status, facilities, proposed tariff, finances, and regulatory compliance record.

Applicant proposes commencing operations with ten specially-modified minibuses with a seating capacity of eight persons each, including the driver. Applicant's proposed tariff contains a fixed monthly rate and fixed hourly rate for paratransit service, to be provided to the public under contract with the Washington Metropolitan Area Transit Authority (WMATA), over intra-county routes in Prince George's County, MD, and over inter-county and interstate routes within WMATA's service area.

Applicant filed a balance sheet as of March 4, 1994, showing current assets of \$105,792; and equity of \$105,792. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating revenue of \$934,102; expenses of \$852,163; and net income of \$81,939.

Applicant certifies it has access to, is familiar with, and will comply with the Compact, the Commission's rules and regulations, and United States Department of Transportation regulations relating to transportation of passengers for hire.

Applicant is under common control with American Contract Management of Jacksonville, Florida, Inc. (ACMI-FL), and Rocky Mount Transit Management, Inc. (RMTM). These affiliates provide transit services in Jacksonville, FL, and Rocky Mount, NC, respectively. Applicant avers that neither operates in the DC metropolitan area.

The application indicates that applicant intends to lease from Peter Pan Bus Lines, Inc. (Peter Pan), WMATC Carrier No. 232, office space and vehicle storage space, which according to Commission records is currently occupied by Peter Pan. Additionally, a note to the balance sheet references an attached letter dated February 22, 1994, from Eastern Leasing Co. to American Contract Management, Inc. (ACMI), expressing Eastern's willingness to provide ACMI with a line of credit.¹ The letter is signed by Peter Picknelly, Sr., a controlling shareholder in Peter Pan,² and is addressed to Mr. James J. McLary, the sole shareholder of applicant.

DISCUSSION AND CONCLUSION

The Compact, Title II, Article XI, Section 7(a), provides in relevant part that:

. . . the Commission shall issue a certificate to any qualified applicant . . . if it finds that --
(i) the applicant is fit, willing, and able to perform [the] transportation properly, conform to the provisions of this Act, and conform to the rules, regulations, and requirements of the Commission; and
(ii) that the transportation is consistent with the public interest.

Based on the evidence in this record, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements. The Commission further finds that the proposed transportation is consistent with the public interest.

Article XII, Section 3, of the Compact 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;
. . .
(iii) acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.
. . .

¹ The amount of available credit is not clear. The letter acknowledges a request for \$100,000, but states the maximum need as \$81,000.

² In re Peter Pan Bus Lines, Inc., No. AP-93-19, Order No. 4130 (July 12, 1993).

(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.

Because Metro Access is under common control with ACMI-FL and RMTM, granting a certificate to Metro Access would result in the acquisition of control of a WMATC carrier by a person controlling another carrier within the meaning of Article XII, Section 3.³ The Commission may approve such a transaction if it is consistent with the public interest. The evidence here indicates that Metro Access is not currently affiliated with any WMATC carrier. Certification of Metro Access, therefore, should not result in any consolidation of market power in the Metropolitan District but, rather, should increase competition, which is presumptively in the public interest.⁴ Accordingly, we approve the proposed control transaction.

Applicant is admonished that while it may share facilities with Peter Pan it may not share revenue vehicles and must keep its operations and finances separate from those of Peter Pan.⁵ Further, applicant will be directed to file with the Commission a copy of any letter of credit issued to ACMI or applicant, or person affiliated therewith, within 30 days of said issuance.

Finally, although the application indicates that Metro Access is presently negotiating the final terms of a contract with WMATA, staff informs us that statements made by a WMATA representative and confirmed by applicant's representative in this proceeding establish that the contract was in fact awarded to ACMI. Applicant will be directed to file a written assignment of the WMATA/ACMI contract, plus written consent thereto from WMATA, when it files its contract tariff.

THEREFORE, IT IS ORDERED:

1. That Metro Access of Maryland, Inc., 5904 Richmond Highway, Suite 403, Alexandria, VA 22303, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

2. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) four copies of a

³ In re Peter Pan Bus Lines, Inc., No. AP-93-19, Order No. 4149 (Aug. 11, 1993).

⁴ Id.

⁵ In re Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express, No. MP-92-05, Order No. 3904 (Mar. 17), aff'd, Order No. 3955 (June 15, 1992).

tariff or tariffs in accordance with Commission Regulation No. 55, together with a written assignment of the WMATA/ACMI contract, plus written consent thereto from WMATA; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 251 is hereby assigned.

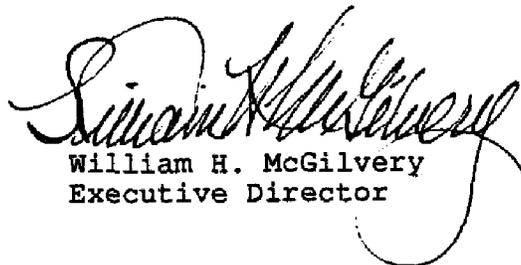
3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 251 shall be issued to applicant.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

5. That unless applicant complies with the foregoing requirements of this order within 30 days from the date of its issuance, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void and the application shall stand denied in its entirety effective upon the expiration of said compliance time.

6. That applicant shall file an original and four copies of any letter of credit issued to ACMI or applicant, or person affiliated therewith, within 30 days of issuance of such letter of credit.

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


William H. McGilvery
Executive Director