

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4316

IN THE MATTER OF:

Served June 9, 1994

Application to Transfer Certificate)
of Authority No. 64 from WILLIAMS)
BUS LINES, INC., to LAIDLAW TRANSIT)
(VIRGINIA) INC.)

Case No. AP-94-17

By application accepted for filing April 18, 1994, Williams Bus Lines, Inc. (Williams or transferor), a Virginia corporation, and Laidlaw Transit (Virginia) Inc. (Laidlaw or transferee), a Virginia corporation, (collectively applicants) seek Commission approval of the transfer of assets, including Certificate of Authority No. 64, from Williams to Laidlaw.

Notice of this application was served on April 20, 1994, in Order No. 4278, and applicants were directed to publish further notice in a newspaper and file an affidavit of publication and an explanation of their noncompliance with Commission Regulation No. 62-08. Additionally, transferee was directed to file a supplement to Exhibit D and an amended Exhibit F. Applicants complied. The application is unopposed.

SUMMARY OF EVIDENCE

The application includes information regarding, among other things, transferee's corporate status, carrier affiliations, facilities, proposed tariff, finances, and regulatory compliance record. Also included is a copy of the transfer agreement titled, "Purchase and Sale and Leaseback Agreement," pursuant to which transferee acquired the vehicles and transportation contracts of transferor as of August 30, 1993. Transferor's operations have continued under the leaseback provision and are scheduled to terminate at such time as transferee commences operations in its own right.

Transferee proposes conducting operations with 29 vehicles, with seating capacities of 28-52 passengers. Transferee's proposed tariff contains flat rates for transfer service and hourly rates, with minimum charges, for charter service. At a minimum, transferee proposes offering the transportation services currently provided by transferor.

Transferee filed a balance sheet as of March 31, 1994, showing current assets of \$100,449; net fixed assets of \$860,456; other assets of \$324,555; current liabilities of \$17,143; and equity of \$1,268,317. Transferee's operating statement for the seven months ended March 31, 1994, shows operating income of \$524,457; operating expenses of \$525,818; and a net loss of \$1,361. Transferee's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$231,000; other operating income of \$670,892; operating expenses of \$886,395; and net income of \$15,497.

Transferee 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.

Transferee is a wholly-owned subsidiary of Laidlaw Transit, Inc. Laidlaw Transit operates passenger buses in its own name and through wholly-owned subsidiaries in twenty-two states. Transferee certifies that neither transferee nor any person holding an equity interest in transferee has ever held any equity interest in any carrier that now holds or has ever held or applied for WMATC operating authority.

DISCUSSION AND CONCLUSION

Under Article XI, Section 11(a), and Article XII, Section 3(a)(ii), of the Compact, the Commission may approve the transfer of assets, including Certificate of Authority No. 64, from Williams to Laidlaw if the Commission finds that transfer consistent with the public interest.¹ The public interest analysis focuses on the transferee's fitness, the resulting competitive balance, the benefits to the riding public and the interest of affected employees.²

Because Laidlaw is merely stepping into the shoes of Williams, is not affiliated with any WMATC carrier, and has agreed to employ substantially all of Williams's employees, there should be no adverse effect on the competitive balance in this market or on Williams's employees.³ The public benefits of the service conducted by Williams and to be conducted by Laidlaw are self-evident and were established when Williams acquired Certificate No. 64 in 1985.⁴ Furthermore, none of the parties to the transferred transportation contracts has voiced any objection here. The only issue remaining to be resolved, therefore, is Laidlaw's fitness.

At \$1.3 million net worth, Laidlaw's financial fitness is apparent. The extensive passenger carrier operations of the Laidlaw group and evidence of vehicle safety inspections leave no doubt of Laidlaw's operational fitness. We also find that Laidlaw has established prospective regulatory compliance fitness, notwithstanding its having been a party, albeit unwitting, to Williams's violations of the Commission's leasing regulations.⁵

¹ In re WestScot Ltd. Partnership & Conference Ctr. Interests, Inc., t/a Westfields Int'l Conference Ctr., No. AP-93-24, Order No. 4175 (Sept. 30, 1993).

² Id.

³ Id.

⁴ Id.

⁵ In addition to the violation of Regulation No. 62-08, noted in Order No. 4278, Williams has been in violation of Regulation No. 62-02, which requires Commission approval of a lease prior to a

While we do not find convincing Laidlaw's seeming implication that it had no reason to inquire into the propriety of the leaseback feature of the transfer agreement under this Commission's regulations -- as a regulated carrier, Laidlaw should know that one regulated carrier simply does not acquire substantially all the assets of another regulated carrier without first ascertaining what regulatory requirements apply and in what manner -- we do not find that the purpose of the Commission's leasing regulations has been defeated.⁶

Regarding the transferred contracts proposed by Laidlaw as tariffs, Laidlaw will be directed to file with each an appropriate assignment, novation, or consent agreement executed by the other party to the contract.

Based on the evidence in this record, the Commission finds the transfer of assets, including Certificate of Authority No. 64, from Williams to Laidlaw consistent with the public interest. For good

carrier's operation of vehicles thereunder. Moreover, Williams has been in violation of the Compact, Title II, Article XI, Sections 14 & 15, and Regulation Nos. 55 & 56, which govern the filing of contract tariffs. Williams appears to be laboring under the misconception that its contracts for transportation of school children to and from school (see attachments to Exhibit L) are exempt from these filing requirements by virtue of Article XI, Section 3(d), of the Compact. It is well established that the "school children" exemption is lost if, as has been indicated here, the vehicles used to perform transportation to and from school also are used in certificated operations. E.g., In re McLean Transp. Serv., Inc., No. AP-87-22, Order No. 3122 (Feb. 2, 1988); D.C. Transit Sys., Inc. v. WMA Transit Co., No. 96, Order No. 521 (Sept. 2, 1965). The summer camp contract (see attachment to Exhibit L) likely would not qualify for this exemption in any event since summer camps rarely offer the "systematic or formal instruction of the kind customarily associated with a 'school.'" Fox River Bus Lines, Inc., Investigation of Operations, 110 M.C.C. 423, 429 (1969); see In re Yellow Bus Lines, No. AP-81-10, Order No. 2230 (June 10, 1981) (Williams predecessor granted temporary authority to perform summer camp contract now held by Williams).

⁶ Pursuant to the Compact, Title II, Article XIII, Section 3(a), the Commission's regulations are promulgated as necessary to carry out the provisions of the Compact. Article XI, Section 11(b), of the Compact provides: "A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority." Article XII, Section 3(a)(ii) provides: "A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to . . . purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District." According to Williams's affidavit, all transportation under the lease-back provision of the transfer agreement has been conducted solely under the name and control of Williams.

cause shown, Laidlaw's request for waiver of Regulation No. 62-08, pending reissuance of Certificate No. 64 in Laidlaw's name, is hereby approved.

THEREFORE, IT IS ORDERED:

1. That the transfer of assets, including Certificate of Authority No. 64, from Williams to Laidlaw is hereby conditionally approved, contingent upon Laidlaw's timely compliance with the requirements of this order.

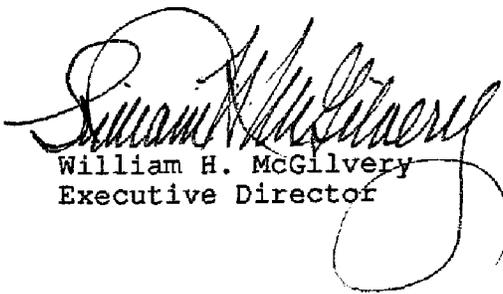
2. That Laidlaw is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55, plus an appropriate assignment, novation or consent agreement for each transferred contract; (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. 64 is hereby reassigned.

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. 64 shall be reissued to Laidlaw Transit (Virginia) Inc., 8439 Lee Highway, Fairfax, VA 22031.

4. That Laidlaw may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate of Authority No. 64 has been reissued in accordance with the preceding paragraph.

5. That unless Laidlaw complies with the 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 approval of transfer 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 DAVENPORT, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director