

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4354

IN THE MATTER OF:

Served August 1, 1994

Application of EXECUTIVE SEDAN)
MANAGEMENT SERVICES, INC., Trading)
as WASHINGTON CAR & DRIVER, for a)
Certificate of Authority --)
Irregular Route Operations)

Case No. AP-94-26

By application accepted for filing June 9, 1994, Executive Sedan Management Services, Inc., trading as Washington Car & Driver (ESMS 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.¹

Notice of this application was served on June 10, 1994, in Order No. 4317, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication and an amended Exhibit F. 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's owner/president is an officer and 50 percent shareholder in Barwood, Inc., a taxicab company in Montgomery County, MD. Applicant's owner/president also is an officer of Executive Coach, Ltd., WMATC Carrier No. 177, a wholly-owned subsidiary of Barwood.

Applicant proposes commencing operations with twenty-one 6-passenger sedans. Applicant proposes to lease those vehicles from an affiliate. Applicant's proposed tariff contains fixed, per-vehicle fares for service between specified places and hourly charter rates for service elsewhere.

¹ Applicant applied for temporary and permanent WMATC operating authority in 1991. Although temporary authority was granted, it was conditional. Applicant chose to not satisfy the conditions and, further, withdrew its application for permanent authority. In re Executive Sedan Mgmt. Servs., Inc., No. AP-91-21, Order No. 3808 (Aug. 16, 1991).

Applicant filed a balance sheet as of April 30, 1994, showing current assets of \$217,884; net depreciable assets of \$34,553; other assets of \$73,516; current liabilities of \$150,075; long-term liabilities of \$18,195; and equity of \$157,683. Applicant's operating statement for the nineteen months ended April 30, 1994, shows income of \$1,674,561; expenses of \$1,564,413; and net income of \$110,148. Applicant's projected operating statement for the twelve months ending May 31, 1995, shows WMATC operating income of \$1,108,450; other operating income of \$74,278; operating expenses of \$1,095,301; and net income of \$87,427.

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.

DISCUSSION AND CONCLUSION

This case is governed by the Compact, Title II, Article XI, Section 7(a), which 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.

Because applicant is under common control with Carrier No. 177 and Barwood, this case also is governed by Title II, Article XII, Section 3,² which provides in pertinent part that a "carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to . . . acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means." The Commission may approve such a transaction if it is consistent with the public interest.³

² In re Washington-Dulles Transp., Ltd., No. AP-94-16, Order No. 4315 (June 9, 1994); In re Metro Access of Md., Inc., No. AP-94-07, Order No. 4284 (Apr. 26, 1994); In re Peter Pan Bus Lines, Inc., No. AP-93-19, Order No. 4149 (Aug. 11, 1993); In re Executive Coach, Ltd., No. AP-91-12, Order No. 3666 (Apr. 2, 1991); In re Airport Limo, Inc., No. AP-78-56, Order No. 2001 (June 6, 1979).

³ Order No. 4315; Order No. 4284; Order No. 4149; Order No. 3666; Order No. 2001.

Prior to the 1990 amendment of the Compact, effective 1991, the public interest analysis in an acquisition through ownership of stock focused on the fitness of the acquiring party, the fairness of the purchase price, the resulting competitive balance, any dormancy of operating rights, the benefits to the riding public, and the interest of affected employees.⁴ The purchase price and dormancy inquiries are no longer relevant under the amended Compact.⁵ Now, the public interest analysis focuses on fitness, competitive balance, benefits to the riding public and affected employees.⁶ We need not assign equal weight to each element of the analysis. The specific circumstances of an acquisition will dictate the prominence that each element takes on of its own accord.

The circumstances surrounding this application suggest three of the four elements require brief comment. First, a presumption of fitness obtains where the acquiring party controls another WMATC carrier previously found fit. Second, the benefit to the riding public derives from the increased competition in executive sedan service that this application portends, which is presumptively in the public interest.⁷ Third, applicant's employees presumably have an interest in seeing their employer obtain valuable new operating rights.⁸ There is nothing in the record to controvert these presumptions.

Conversely, the prospect of two WMATC carriers being operated under common control calls for heightened scrutiny with regard to the resulting competitive balance. Granting this application would result in allowing commonly controlled carriers to possess overlapping authority. In this case, Carrier No. 177 could expand its operations to include executive sedan service by filing a new tariff. We have previously held that the potential reasons for prohibiting commonly controlled carriers from holding duplicative authority are:

- (1) concern for promoting corporate simplification;
- (2) the possibility of unfair competition and unjust discrimination and preferences as to rates and practices;
- (3) the possible adverse effects on

⁴ D.C. CODE ANN. § 1-2414 (1992); In re George A. Coupe, Bernard Resnick & Executive Limo. Serv., Inc., No. AP-81-23, Order No. 2321 (Mar. 4, 1982).

⁵ 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); In re Boston Coach-Wash. Corp., No. AP-93-21, Order No. 4163 (Sept. 13, 1993).

⁶ In re Williams Bus Lines, Inc., & Laidlaw Transit (Virginia) Inc., No. AP-94-17, Order No. 4316 (June 9, 1994).

⁷ Order No. 4284; Order No. 4149.

⁸ While we cannot ignore the effect approval of this application may have on the employees of applicant's WMATC affiliate, our level of concern is minimized by the current dissimilarity of that carrier's limited shuttle bus operations to applicant's proposed executive sedan service.

competition if commonly controlled carriers are able to sell one right while retaining another to perform identical operations; and (4) the concern that grants of valuable motor carrier operating rights may be used improperly for personal gain through their sale rather than for their true purpose of providing necessary services to the travelling public.

In re Red Top Coach, Inc., & National Coach Works, Inc., No. AP-84-45, Order No. 2692 at 5 (Apr. 3, 1985).⁹

With the advent of changes in the Compact promoting award of identical operating rights to multiple carriers the vitality of the Red Top factors has been greatly diminished -- if not extinguished. Moreover, these considerations never engendered any broad Commission policy disfavoring common control of duplicate operating rights; instead, they were applied on a case-by-case basis. In this case, only the second factor gives pause for concern. That concern arises, however, not with regard to potential unfair competition and rate preferences as between the two WMATC carriers¹⁰ but as between applicant and its taxicab affiliate.¹¹ On the other hand, the absence of any protest or comment by the entity charged with regulating directly the taxicab market in which applicant's taxicab affiliate operates -- Montgomery County, MD -- convinces us that this issue is best left for resolution as a matter of tariff administration in the context of a particular controversy.¹²

The Commission has approved simultaneous control of two WMATC carriers on several occasions. The grounds warranting approval have varied from improvement in coordination of regular route service,¹³ to

⁹ See Order No. 4284 at 3 (consolidation of market power); Order No. 4149 at 3 (same); In re The Airport Connection, Inc., of Md., No. AP-84-46, Order No. 2661 at 4 (Feb. 6, 1985) (price discrimination); In re Greyhound Corp. & Airport Transport, Inc., No. 195, Order No. 951 at 6-8 (June 4, 1969) (monopolization and unfair competition).

¹⁰ Our practice of encouraging competition and the recent increase in the number of WMATC carriers offering executive sedan service erases any concerns we might have regarding any potential injury to patrons within the market we regulate directly.

¹¹ Cf., Order No. 2321 (possibility of price discrimination greater where one commonly controlled carrier not regulated).

¹² "The Commission may hold a hearing upon complaint or upon the Commission's own initiative after reasonable notice to determine whether a rate, fare, regulation, or practice relating to a tariff is unjust, unreasonable, unduly discriminatory, or unduly preferential between classes of riders or between locations within the Metropolitan District." Compact, tit. II, art. XI, § 16(a).

¹³ In re D.C. Transit Sys., Inc., No. 46, Order No. 316 (Oct. 9, 1963).

improvement of irregular-route airport shuttle service,¹⁴ to overall reduction of insurance premiums.¹⁵ The prospect of insurance premium savings warrants a finding that the common control proposed here is consistent with the public interest. Certificate No. 177 is unrestricted as to vehicle size, which constrains that carrier to maintain \$5 million in liability coverage for all vehicles. If applicant consolidated its operations with those of Carrier No. 177, the combined entity would need \$5 million insurance coverage on twenty-one sedans. Applicant, however, is seeking a certificate that is restricted as to vehicle size. Applicant, therefore, need only insure its twenty-one sedans for \$1.5 million. The potential insurance premium savings are apparent.

Each carrier is admonished to keep its assets, books and operations completely separate from the other's.¹⁶ Sharing of office space and parking facilities will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.¹⁷

In consideration of applicant's intention to lease vehicles from an affiliate, applicant's attention is directed to Commission Regulation No. 62-02, which mandates that vehicles operated by a carrier as lessee "shall be operated by, and under the complete control of, the lessee, and no other, for the entire period of the lease," and that during said period "neither the lessor nor the lessee shall enter into any other . . . lease or sublease of the same vehicle(s) without the approval of the Commission."

Applicant is reminded that it may not conduct certificated operations in taxicabs, even on a temporary basis.¹⁸

THEREFORE, IT IS ORDERED:

1. That Executive Sedan Management Services, Inc., trading as Washington Car & Driver, 4925 Nicholson Court, Kensington, MD 20895, 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

¹⁴ Order No. 951 at 3-6.

¹⁵ In re J's Charter Serv., Inc., No. AP-94-14, Order No. 4313 (June 9, 1994); In re D. Jenkins Bus Serv., Inc., No. AP-93-11, Order No. 4098 (May 10, 1993); In re RDM Enters., Inc., & Murray's Transp. Serv., Inc., No. AP-91-19, Order No. 3801 (Aug. 6, 1991).

¹⁶ Order No. 4313 at 2; Order No. 4098 at 2; Order No. 3801 at 3; Order No. 2661 at 4; Order No. 2321 at 3; Order No. 2001 at 8.

¹⁷ Order No. 4313 at 2; Order No. 4098 at 2; Order No. 3801 at 3.

¹⁸ Order No. 4315 at 3; In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, No. AP-91-44, Order No. 3884 (Feb. 11, 1992); Order No. 2001 at 6.

District, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

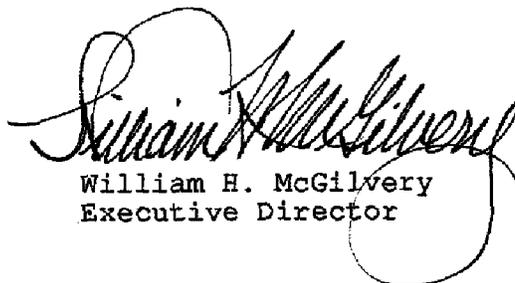
2. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, 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. 265 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. 265 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 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.

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



William H. McGilvery
Executive Director