

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4356

IN THE MATTER OF:

Served August 2, 1994

Application of McLEAN SCHOOL BUS)
SERVICE, INC., for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-94-28

By application accepted for filing June 9, 1994, McLean School Bus Service, Inc. (McLean or applicant), a Maryland corporation, seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District.

Notice of this application was served on June 14, 1994, in Order No. 4319, 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's owner/president is the sole owner of McLean Transportation Service, Inc. (MTS), which held Certificate No. 138 until 1990, when it was revoked for noncompliance with the Commission's insurance requirements.¹

Applicant proposes commencing operations with two 47-passenger coaches and one 43-passenger school bus. Applicant's proposed tariff contains an hourly charter rate with a minimum charge.

Applicant filed a balance sheet as of December 31, 1993, showing current assets of \$37,284; net fixed assets of \$30,000; liabilities of \$60,000; and equity of \$7,284. Applicant's operating statement for the twelve months ended December 31, 1993, shows operating income of \$98,000; operating expenses of \$91,716; and net income of \$6,284. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$84,000; other operating income of \$100,000; operating expenses of \$175,000; and net income of \$11,000.

¹ In re McLean Transp. Serv., Inc., No. MP-90-14, Order No. 3564 (Sept. 26, 1990).

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 MTS, 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

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

² In re Washington-Dulles Transp., Ltd., No. AP-94-16, Order No. 4315 (June 9, 1994); 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. 3666; Order No. 2001.

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

Analysis of the four surviving factors supports a finding here of consistency with the public interest. First, the acquiring party in this case is the owner/president of applicant and applicant's ex-WMATC affiliate, MTS. Our current finding of applicant's fitness and previous finding of MTS's fitness permit an inference of the acquiring party's fitness.⁶ Second, the benefit to the riding public derives from the increased competition in motor coach 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

With respect to the resulting competitive balance, only one of these two commonly-owned carriers will operate in the market we regulate. According to applicant, MTS's operations are confined to transportation of school children, grades 1-12, to and from school. Under the Compact, Title II, Article XI, Section 3(d), such service is excluded from our jurisdiction.⁹ This Commission has approved the provision of exempt and non-exempt service by the same carrier,

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 This is so notwithstanding the revocation of MTS's WMATC certificate for failure to maintain proper insurance. It appears MTS's lapse in insurance was tied to the decision to discontinue certificated operations. That lapse would not in and of itself prevent MTS from reinstating its certificate of authority in the future. See In re Madhu Sudan, t/a Capital City Sights, No. AP-93-35, Order No. 4233 (Jan. 12, 1994) (certificate revoked for lapse of insurance reissued 3 years later). Hence, the inference of fitness is not disturbed.

⁷ 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).

⁸ To the extent we are charged with safeguarding the interests of employees of MTS -- a non-WMATC carrier -- our concerns are allayed by the obvious intent of applicant's owner to offer exempt services through one corporation and non-exempt services through the other. See infra, (discussing exclusion for school bus service under the Compact).

⁹ In re McLean Transp. Serv., Inc., No. AP-87-22, Order No. 3122 (Feb. 2, 1988).

subject to segregation of exempt vehicles from the remainder of the fleet.¹⁰ We see no inherent reason why the segregation of exempt vehicles may not be taken a step further such that they are operated by a separate but commonly-controlled corporation. Moreover, there is nothing in the record suggesting that MTS's operations, which are beyond our control, can be used by applicant to disadvantage applicant's potential competitors, which are within our control. In any event, none of applicant's potential competitors has entered a protest.

We find that the proposed common control of applicant and MTS is consistent with the public interest. Each carrier is admonished to keep its assets, books and operations completely separate from the other's.¹¹ 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.¹²

THEREFORE, IT IS ORDERED:

1. That McLean School Bus Service, Inc., 3836 West Street, Landover, MD 20785, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers in irregular route operations between points in the Metropolitan District.

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. 266 is hereby assigned.

¹⁰ In re Mobile Care, Ltd., No. AP-79-19, Order No. 2089 (Mar. 4, 1980); In re Omnibus Corp., No. 380, Order No. 1716 (June 23, 1977).

¹¹ 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); Order No. 2001.

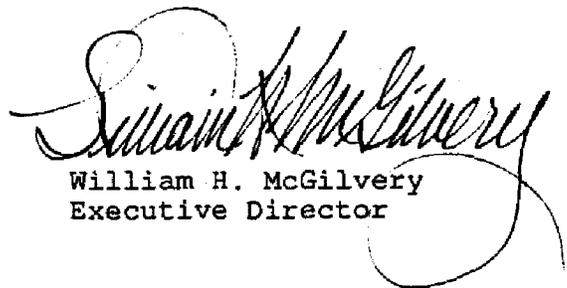
¹² Order No. 4313; Order No. 4098; Order No. 3801.

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. 266 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