

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4502

IN THE MATTER OF:

Served February 23, 1995

Application of SAMUEL J. HOWELL,)
Trading as SILVER STAR TOURS, to)
Amend Certificate of Authority)
No. 89)

Case No. AP-94-59

By application filed November 28, 1994, Samuel J. Howell, trading as Silver Star Tours (Silver Star or applicant), requests removal of the 15-passenger restriction in Certificate of Authority No. 89.

Notice of this application was served on December 14, 1994, in Order No. 4458. Applicant was directed to publish further notice in a newspaper no later than December 30, 1994.

On January 9, 1995, applicant filed a request for extension of time. The extension was granted in Order No. 4472, served January 9, 1995, and applicant was directed to publish notice no later than January 20, 1995. Applicant complied. The application is unopposed.

SUMMARY OF EVIDENCE

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

Applicant proposes adding a 25-passenger minibus for use in his current sightseeing operations at current rates. Applicant will continue operating a 15-passenger van at those same rates.

Applicant certifies he 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 further certifies that neither applicant nor any person controlling, controlled by, or under common control with applicant has any control relationship with a carrier other than applicant.

DISCUSSION AND CONCLUSION

Under Article XI, Section 10(b), of the Compact, the Commission may amend a certificate of authority upon application by the holder. A carrier seeking expanded operating authority must make the showing

required of an applicant for a new certificate.¹ This requires a determination of whether the applicant is fit and whether the proposed transportation is consistent with the public interest.² The Commission may rely on a prior finding of fitness unless sufficient evidence is presented that the prior finding is no longer valid.³ Consistent with the foregoing and because a term, condition, or limitation imposed by the Commission may not restrict the right of a carrier to add equipment,⁴ we hold that an applicant requesting removal of a seating capacity restriction from an irregular route certificate need not submit evidence of financial fitness in support of its prima facie case.⁵

Such an applicant still will be required to offer evidence of operational fitness and compliance fitness. This burden is minimal and may elicit information favorable to the applicant while serving as a reminder that applicant must comply with federal motor carrier safety regulations as adopted by the Commission in Regulation No. 64. Further, approval of such an application will continue to be conditioned on applicant filing, among other things, a certificate of insurance for \$5 million, proof of current safety inspection of the new vehicle(s), and an affidavit of vehicle identification in accordance with Commission Regulation No. 61.

Silver Star was found fit to conduct irregular route operations in Order No. 2447⁶ and fit to conduct expanded irregular route operations in Order No. 3393.⁷ There is no evidence in this record to support a contrary finding. Based on the prior findings of fitness and the record evidence summarized above, and subject to applicant's compliance with the requirements of this order, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory

¹ See In re Jones Transp. Servs., Inc., No. AP-90-23, Order No. 3565 (Sept. 26, 1990) (determination to expand certificate turns on showing of fitness and public necessity); In re Bill Appell, t/a Personal Pace Tours, No. AP-89-17, Order No. 3404 (Sept. 13, 1989) (same).

² Compact, tit. II, art. XI, § 7(a).

³ See In re Carey Limo. D.C., Inc., & ADV Int'l Corp., t/a Moran Limo. Serv., No. AP-94-53, Order No. 4499 (Feb. 16, 1995) (carrier authorized to operate vehicles seating 16 persons or more presumptively fit to acquire such vehicles from another carrier).

⁴ Compact, tit. II, art. XI, § 7(e).

⁵ See Order No. 4499, (existing WMATC carrier found fit despite omission of projected operating statement).

⁶ In re Samuel Howell, t/a Howell Sightseeing Tours, No. AP-83-22, Order No. 2447 (Aug. 9, 1983).

⁷ In re Eugene H. George, t/a Silver Star Sightseeing Tours, & Samuel J. Howell, No. AP-89-23, Order No. 3393 (Aug. 17, 1989).

requirements.⁸ The Commission further finds that the proposed transportation is consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That the application of Samuel J. Howell, trading as Silver Star Tours, to amend Certificate of Authority No. 89, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order.

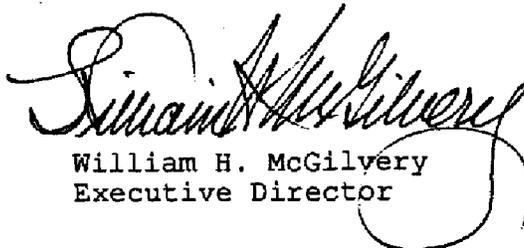
2. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list 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. 89 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. 89 shall be reissued to Samuel J. Howell, trading as Silver Star Tours, 4645 H Street, S.E., Washington, DC 20019.

4. That applicant may not transport passengers for hire between points in the Metropolitan District in vehicles seating more than 15 persons, including the driver, unless and until Certificate of Authority No. 89 has been reissued 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 approval of amendment 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 ALEXANDER, LIGON, AND SHANNON:


William H. McGilvery
Executive Director

⁸ The record contains financial fitness evidence applicant sought to omit by waiver of Commission Regulation No. 54-02. We denied that request in Order No. 4458. Although granting such a waiver would have produced the same end result in this proceeding, it would not have yielded a rule of future applicability.

