

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4509

IN THE MATTER OF:

Served March 1, 1995

Application to Transfer)
Certificate No. 6 from FRANKLIN)
CHARTER BUS, INC., to FRANKLIN)
MOTORCOACH, INC., and for)
Temporary Approval)

Case No. AP-95-02

By application filed January 9, 1995, Franklin Charter Bus, Inc. (FCB or transferor), WMATC Carrier No. 6, and Franklin Motorcoach, Inc. (FMI or transferee) (collectively applicants), seek Commission approval of FMI's purchase of substantially all the assets of FCB, including FCB's certificate of authority.

Notice of this application was served on January 11, 1995, in Order No. 4474. Applicants were directed to publish further notice in a newspaper and file an affidavit of publication and a statement addressing the effect of the agreement on competition, the riding public and the interests of affected employees. 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.

FMI is under common control with Gold Line, Inc., WMATC Carrier No. 14, and National Coach Works, Inc. (NCW), WMATC Carrier No. 26. FMI also is under common control with several passenger carriers in Pennsylvania and Florida.

FMI proposes a general tariff for charter operations at the greater of mileage or hourly rates, subject to minimum charges for the first three hours. FMI intends to provide motorcoach service in the same manner as FCB. The transfer will not result in any change in service to the public.

FMI will retain all employees of FCB with the exception of top management.

Under the purchase agreement, executed December 1, 1994, and effective January 3, 1995, FCB agrees to sell, and FMI agrees to buy substantially all the assets of FCB, including Certificate of Authority No. 6. FCB and its officers agree not to compete against FMI within 100 miles of Fairfax, VA, for a period of three years.

According to the statement filed by FMI, common control of FMI, Gold Line and NCW will not adversely affect competition in the

Metropolitan District because each company is operated independently of the others. There is no regional manager. Each company has its own General Manager whose performance is measured by that company's financial results at the end of the year.

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 from FCB to FMI, including Certificate of Authority No. 6, if the Commission finds said transfer to be consistent with the public interest. The public interest analysis focuses on the transferee's fitness, the resulting competitive balance, the benefits to the riding public and the interests of affected employees.¹

We have already found FMI fit in the course of approving FMI's request for temporary approval,² and the independent nature of the three companies' day-to-day operations and existence of over 80 WMATC carriers authorized to operate coaches, many of which have filed general tariffs for charter service in such vehicles, should ensure little or no adverse impact on competition in the Metropolitan District. The transfer should be transparent to the public. FCB's employees will continue to be employed in their current positions. In sum, each factor favors approval.

Based on the evidence in this record, the Commission finds the transfer of assets, including Certificate of Authority No. 6, from FCB to FMI to be consistent with the public interest.³

THEREFORE, IT IS ORDERED:

1. That the transfer of assets, including Certificate of Authority No. 6, from FCB to FMI is hereby conditionally approved, contingent upon FMI's timely compliance with the requirements of this order.

2. That FMI 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

¹ In re Williams Bus Lines, Inc., & Laidlaw Transit (Virginia) Inc., No. AP-94-17, Order No. 4316 (June 9, 1994); see In re ATE Mgmt. & Serv. Co., Greyhound Lines, Inc., & Trailways Commuter Transit, Inc., No. AP-91-37, Order No. 3876 (Jan. 6, 1992) (transferee found fit).

² Order No. 4508.

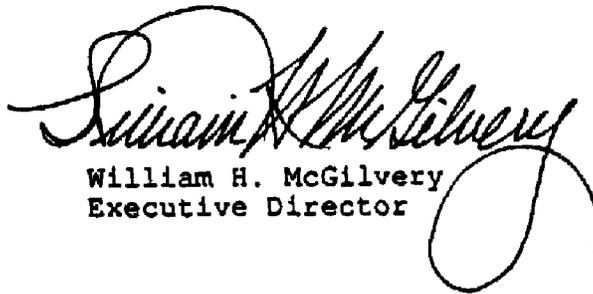
³ As noted above, the parties have entered a noncompetition agreement. We express no opinion at this time as to the validity of that agreement under the Compact.

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. 6 is hereby reassigned.

3. That upon timely compliance with the requirements of the preceding paragraphs and acceptance of the documents required by the Commission, Certificate of Authority No. 6 shall be reissued to Franklin Motorcoach, Inc., 4115 Dorforth Drive, Fairfax, VA, 22033.

4. That unless FMI 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 ALEXANDER, LIGON, AND SHANNON:



William H. McGilvery
Executive Director