

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4552

IN THE MATTER OF:

Served March 31, 1995

Application of CAPITAL CITY)
LIMOUSINE, INC., for a)
Certificate of Authority --)
Irregular Route Operations)

Case No. AP-95-09

By application filed February 8, 1995, Capital City Limousine, Inc. (CCL or applicant), a District of Columbia 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. Applicant is under common control with Capital City Transportation Company, Inc. (CCT), which has filed an application for irregular-route authority unrestricted as to vehicle seating capacity.¹

Notice of this application was served on February 15, 1995, in Order No. 4496, 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 proposes commencing operations with ten vehicles seating less than 16 persons each. Applicant's proposed tariff contains hourly charter rates with minimum charges for service in sedans, limousines and vans, and hourly airport transfer rates for service in sedans and limousines.

Applicant filed a balance sheet as of December 31, 1994, showing current assets of \$135,107; fixed assets of \$441,750; current liabilities of \$47,151; long-term liabilities of \$417,935; and equity of \$111,771. Applicant's operating statement for the twelve months ended December 31, 1994, shows fees and other income of \$732,892; costs and expenses of \$714,808; and net income of \$18,084. Applicant's projected operating statement for 1995 shows fees and other income of \$675,000; costs and expenses of \$633,927; and net income of \$41,073.

¹ In re Capital City Transp., Co., No. AP-95-10, Order No. 4497 (Feb. 15, 1995).

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 CCT, 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 The public interest analysis focuses on the acquiring party's fitness, the resulting competitive balance, the net benefits to the riding public and the interests of affected employees.⁴

Three of the four elements require brief comment. First, a presumption of the acquiring party's fitness obtains from the finding of applicant's fitness.⁵ Second, the benefit to the riding public derives from the potential for increased competition in the WMATC-certified sedan and limousine service market, which is presumptively

² In re Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. AP-94-26, Order No. 4354 (Aug. 1, 1994).

³ Order No. 4354 at 2.

⁴ Order No. 4354 at 3.

⁵ See Order No. 4354 at 3 (presumption of fitness obtains from finding of existing WMATC carrier's fitness).

in the public interest.⁶ Third, applicant's employees presumably have an interest in seeing their employer obtain valuable new operating rights.⁷ 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.⁸ Granting this application and CCT's application would result in allowing commonly controlled carriers to possess overlapping authority. CCT has applied for operating authority unrestricted as to vehicle size which would permit CCT to conduct sedan and limousine operations even though CCT does not presently intend to offer such service. Indeed, offering such service would defeat the controlling shareholder's apparent plan of minimizing CCL's and CCT's combined insurance premiums by limiting CCT's operations to transportation in vehicles seating 16 persons or more. Nevertheless, upon grant of the requested authority, CCT could later expand its operations to include sedan and limousine service by filing a new tariff and waiting seven days.

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 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).

⁶ Order No. 4354 at 3.

⁷ Order No. 4354 at 3.

⁸ Order No. 4354 at 3.

⁹ See In re Metro Access of Md., Inc., No. AP-94-07, Order No. 4284 at 3 (Apr. 26, 1994) (consolidation of market power); In re Peter Pan Bus Lines, Inc., No. AP-93-19, Order No. 4149 at 3 (Aug. 11, 1993) (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).

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.¹⁰ 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.¹¹ The Commission has approved simultaneous control of two WMATC carriers on several occasions. The grounds warranting approval have included improvement of irregular-route airport shuttle service¹² and overall reduction of insurance premiums.¹³ Both grounds appear to be present here. We therefore find the proposed common control of CCL and CCT consistent with the public interest.

Each carrier is admonished to keep its assets, books and operations completely separate from the other's. 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.¹⁴

THEREFORE, IT IS ORDERED:

1. That Capital City Limousine, Inc., 30 L Street, S.W., Washington, DC 20024, 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 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) 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

¹⁰ Order No. 4354 at 4.

¹¹ Order No. 4354 at 4.

¹² Order No. 951 at 3-6.

¹³ Order No. 4354 at 5; 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).

¹⁴ Order No. 4354 at 5.

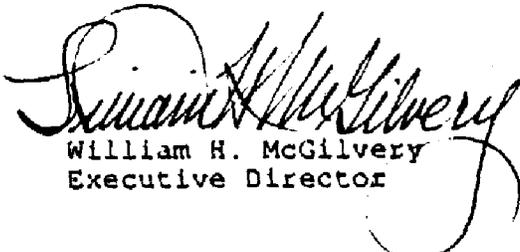
State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61, for which purpose WMATC No. 298 is hereby assigned.

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. 298 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 ALEXANDER, LIGON, AND SHANNON:


William H. McGilvery
Executive Director