

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4638

IN THE MATTER OF:

Served July 24, 1995

Application to Transfer Certificate)  
of Authority No. 100 from SHAW BUS )  
SERVICE, INC., to NATIONAL SCHOOL )  
BUS SERVICE, INC., and for )  
Temporary Approval )

Case No. AP-95-32

By application filed June 1, 1995, Shaw Bus Service, Inc., WMATC Carrier No. 100 (Shaw or transferor), and National School Bus Service, Inc., a Delaware corporation (National or transferee), (collectively applicants), seek Commission approval of National's purchase of a substantial portion of the assets of Shaw, including Shaw's certificate of authority. National also seeks temporary approval to operate those assets pending approval of the transfer.

Notice of this application was served on June 6, 1995, in Order No. 4608, and applicants were directed to publish further notice in a newspaper and file an affidavit of publication, an amended page 5 and a statement addressing the potential injury to the property being transferred, or potential interference with its usefulness, which might arise from denial of temporary approval. 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. Also included is a copy of the asset purchase agreement.

Transferee proposes conducting operations with forty-two school buses acquired from transferor. Transferee's proposed tariff contains a single hourly charter rate for service in the Metropolitan District.

Transferee has received a satisfactory safety rating, dated May 5, 1993, from the U.S. Department of Transportation, Federal Highway Administration.

Transferee filed a balance sheet as of April 30, 1995, showing assets of \$145,628,164; liabilities of \$32,686,077; and equity of \$112,942,087. Transferee's statement of earnings for the twelve months ended April 30, 1995, shows revenue of \$123,739,283; expenses of \$111,319,053; and net earnings of \$12,420,230. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$80,000; WMATC operating expenses of \$58,300; and net income from WMATC operations of \$21,700.

Transferee certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations. Transferee further certifies that neither transferee nor any person controlling, controlled by, or under common control with transferee has any control relationship with a carrier other than transferee.

## DISCUSSION AND CONCLUSION

Pending approval of an asset transfer under Article XII, Section 3, of the Compact, the Commission may grant the transferee temporary approval to operate said assets up to a maximum of 180 consecutive days if the Commission determines that grant to be consistent with the public interest.<sup>1</sup> The public interest analysis includes an assessment of whether and to what extent a denial of temporary approval would cause a diminution in value or utility of the subject property.<sup>2</sup> Temporary approval may be granted to a non-WMATC carrier upon a finding of fitness.<sup>3</sup>

The evidence summarized above clearly establishes transferee's fitness, and as transferee asserts, it is likely that the goodwill acquired from transferor will decline in value until such time as transferee is temporarily or permanently authorized to operate transferor's property. Accordingly, we will issue a grant of temporary approval. Such approval shall be effective from the date of transferee's compliance with certain conditions, as specified below, and continue until such time as Certificate No. 100 is reissued, not to exceed 180 days.

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 Shaw to National, including Certificate of Authority No. 100, if the Commission finds said transfer to be in the public interest. The public interest analysis in a transfer of operating rights and other assets focuses on the transferee's fitness, the resulting competitive balance, the benefits to the riding public, and the interests of affected employees.<sup>4</sup>

As noted above, the evidence clearly establishes transferee's fitness. The competitive balance should not suffer since transferee is not affiliated with any other WMATC carrier and is merely stepping into the shoes of transferor. The public benefits are self-evident and were established when transferor acquired the certificate. Transferee will continue the employment of substantially all employees of transferor. We therefore find that the proposed transfer is consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That, contingent on National complying with the requirements of the next following paragraph, National is hereby granted temporary approval to operate the assets of Shaw, including Certificate of Authority No. 100, at the rates proposed in the application, and that such approval shall be effective from the date of issuance of a letter to National by the Commission's Executive Director acknowledging

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<sup>1</sup> Compact, tit. II, art. XII, § 3(d).

<sup>2</sup> In re Franklin Charter Bus, Inc., & Franklin Motorcoach, Inc., No. AP-95-02, Order No. 4508 (Mar. 1, 1995).

<sup>3</sup> Id.

<sup>4</sup> In re Franklin Charter Bus, Inc., & Franklin Motorcoach, Inc., No. AP-95-02, Order No. 4509 (Mar. 1, 1995).

National's compliance with the next following paragraph; and temporary approval shall continue until such time, if any, as Certificate No. 100 is reissued, not to exceed 180 days.

2. That National is hereby directed to file with the Commission evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203.

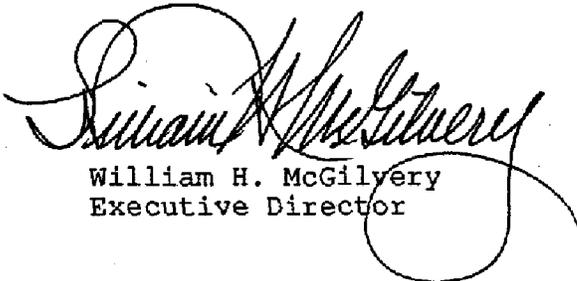
3. That the transfer of assets, including Certificate of Authority No. 100, from Shaw to National is hereby conditionally approved, contingent upon National's timely compliance with the following requirements.

4. That National 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. 100 is hereby reassigned.

5. That upon timely compliance with the requirements of the immediately preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 100 shall be reissued in the name of National School Bus Service, Inc., 6523 Baltimore National Pike, Baltimore, MD 21228.

6. That unless National 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 temporary approval and 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. McGilvrey  
Executive Director

