

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4719

IN THE MATTER OF:

Served December 14, 1995

Application of CAPITOL BUS RENTAL, )  
INC., Trading as CAPITOL TOURS, for)  
a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-95-50

By application accepted for filing November 1, 1995, Capitol Bus Rental, Inc., a District of Columbia corporation trading as Capitol Tours, seeks a certificate of authority to transport passengers, together with mail, express and baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

Notice of this application was served on November 3, 1995, in Order No. 4692, 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 fourteen motorcoaches. Applicant's proposed tariff contains hourly group charter rates and airport transfer rates.

Applicant filed a balance sheet as of September 30, 1995, showing assets of \$1,332,379; liabilities of \$253,869; and equity of \$1,078,510. Applicant's operating statements for the twenty-one months ended September 30, 1995, shows operating income of \$1,422,435; operating expenses of \$1,207,815; and net income of \$214,620. Applicant's projected operating statement for the first twelve months of WMATC operations shows operating income of \$871,998; operating expenses of \$766,337; and net income of \$105,661.

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. 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

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.

The burden is on applicant to establish its financial fitness, operational fitness, and regulatory compliance fitness.<sup>1</sup>

#### A. Financial Fitness

To make out a prima facie case of financial fitness, an applicant must show the present ability to sustain operations during its first year under WMATC authority.<sup>2</sup> Applicant's financial statements make the required showing.

#### B. Operational Fitness

Applicant was assigned a "conditional" safety rating by the United States Department of Transportation, Federal Highway Administration (DOT), in December 1994. Our policy since 1989 has been to deny operating authority to carriers with "conditional" safety ratings.<sup>3</sup> This policy was adopted in consideration of the identical policy adopted by the Interstate Commerce Commission (ICC).<sup>4</sup> The ICC adopted its policy in 1988.<sup>5</sup> The ICC reversed itself in 1991 for the following reasons.

[T]he DOT regulations at 49 CFR Part 385 which implemented the existing safety rating index . . . are ambiguous in correlating the DOT safety rating system

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<sup>1</sup> In re Jet Tours USA, Inc., t/a City Tours, Wash., D.C., No. AP-94-50, Order No. 4649 (Aug. 22, 1995); In re Regency Limo. Serv., Inc., No. AP-94-18, Order No. 4323 (June 21, 1994); In re Reston Limo. & Travel Serv., Inc., t/a Reston Limo., No. AP-93-36, Order No. 4232 (Jan. 11, 1994); In re Mustang Tours, Inc., No. AP-93-30, Order No. 4224 (Dec. 15, 1993).

<sup>2</sup> Order No. 4649 at 8-9; In re A.C. Limo. Serv., Inc., No. AP-95-23, Order No. 4606 (May 31, 1995); In re WDC Sightseeing Tours, Inc., AP-92-33, Order No. 4036 (Jan 12, 1993).

<sup>3</sup> See In re Need for Charter Coach Serv., No. MP-88-37, Order No. 3281 (Jan. 25, 1989) (on reconsideration) (temporary authority denied on fitness grounds in part because carrier assigned "conditional" USDOT safety rating).

<sup>4</sup> See In re Pullin's Tours, Inc., No. CP-90-02, Order No. 3516 (June 8, 1990) (discussing same), rev'd, Order No. 3528 (July 19, 1990) (on reconsideration) (new evidence showed "satisfactory" rating would soon issue).

<sup>5</sup> In re Safety Fitness Evidence in Motor Carrier Licensing Proceedings, 5 I.C.C.2d 94 (1988).

with carrier fitness. . . . DOT is insistent that the Commission oversteps any reasonable interpretive bounds by ascribing a presumption of unfitness to carriers holding "Conditional" safety ratings . . . .

. . . .

DOT emphasizes that the safety rating resulting from its review of a carrier's operations is an assessment of the carrier's overall safety compliance, but is by no means the sole criterion for determining operational or safety fitness. . . . A carrier's fitness profile . . . . is a composite of various factors . . . . Only when these factors collectively result in an overall assessment that an "Unsatisfactory"-rated carrier is an imminent hazard warranting DOT enforcement intervention does that agency consider the carrier unfit. . . . . To the extent the Commission continues to ascribe unfitness to all carriers that have a less-than-"Satisfactory" safety rating, DOT advises, the safety oversight policies of the two agencies will remain incompatible, and the DOT mechanisms in place for identifying and targeting for review actual safety hazards will be undermined.

. . . .

. . . . DOT emphasizes that the "Conditional" Rating is ". . . not, by itself, a negative safety rating." (DOT comments, at 5 n. 4.) . . . .

Safety Fitness Policy, 1991 WL 102878, at \*10-12 (I.C.C. May 15, 1991) (emphasis added). Today, only carriers with "unsatisfactory" ratings are automatically precluded from obtaining operating authority from the ICC.<sup>6</sup>

For the same reasons we hereby amend our policy to permit grants of operating authority to applicants with "conditional" safety ratings from DOT. Applicants with "unsatisfactory" ratings will have their applications rejected. Adverse ratings of commonly-controlled affiliates will be attributed to the applicants themselves. This accords with the ICC's current practice.<sup>7</sup>

Applying the new policy here, we find applicant operationally fit. Applicant will be required to file proof that its vehicles have passed a current safety inspection, which is a prerequisite to the issuance of any certificate of authority.

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<sup>6</sup> 49 C.F.R. § 1160.5(3).

<sup>7</sup> See Safety Fitness Policy, 8 I.C.C.2d 123, 1991 WL 188243, at \*14 (Sept. 5, 1991) (affiliate's adverse safety rating generally attributed to applicant).

### 3. Compliance Fitness

Applicant was the subject of an investigation earlier this year in which it was assessed a \$4,000 civil forfeiture for knowingly and willfully violating the Compact by transporting passengers for hire between points in the Metropolitan District without a certificate of authority in October and November 1994. The Commission obtained a preliminary injunction against applicant in September 1995 based in part on additional violations in July 1995. Applicant subsequently paid the \$4,000.

An evaluation of compliance fitness is prospective in nature.<sup>8</sup> When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>9</sup>

Applicant committed 8 violations in October and November 1994, and four in July 1995. Although relatively few in number, these violations are serious, and we find no mitigating circumstances. The violations in July were flagrant and persistent and led to the Commission seeking an injunction, which was granted by the Court on September 25, 1995.

On the other hand, applicant has corrected its past mistakes by paying the \$4,000 civil forfeiture and has begun demonstrating a willingness to comply with the Compact in the future. Applicant has replaced the employee responsible for ensuring regulatory compliance. Applicant avers that it "has notified all of its customers, past and present, that it cannot provide transportation for hire within points of the Metropolitan area." Applicant states that it has ceased "all operations for hire within WMATC boundaries." We are satisfied that these steps evidence applicant's intent to abide by the Compact in the future. The record, therefore, supports a finding of prospective compliance fitness.

### CONCLUSION

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.

Pursuant to Article XI, Section 7(d), we will condition issuance of the certificate of authority on applicant's payment of the Commission's court costs in the amount of \$58.80.

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<sup>8</sup> Order No. 4649 at 9; Order No. 4323 at 6; Order No. 4224 at 3.

<sup>9</sup> Order No. 4649 at 9; Order No. 4323 at 6; Order No. 4232 at 2; Order No. 4224 at 3.

THEREFORE, IT IS ORDERED:

1. That Capitol Bus Rental, Inc., trading as Capitol Tours, 6129 Kansas Avenue, NE, Washington, DC 20011, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with mail, express and baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

2. That applicant is hereby directed to pay to the Commission by money order, certified check, or cashiers check, the sum of fifty-eight dollars and eighty cents (\$58.80).

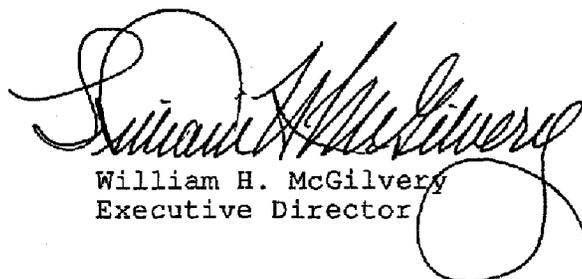
3. That applicant is hereby directed to file the following documents with the Commission: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list 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. 125 is hereby assigned.

4. That upon timely compliance with the requirements of the preceding paragraphs and acceptance of the documents required by the Commission, Certificate of Authority No. 125 shall be issued to applicant.

5. 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.

6. 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