WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4795

IN THE MATTER OF: Served March 15, 1996

Application of WASHINGTON, D. C. JITNEY ASSOCIATION, INC., for a Certificate of Authority -- Regular Route Operations) Case No. AP-95-26

By application accepted for filing April 27, 1995, Washington, D.C. Jitney Association, Inc., a District of Columbia corporation, seeks a certificate of authority for regular route operations in the District of Columbia in vehicles with a seating capacity of less than 16 persons only, including the driver.

The Washington Metropolitan Area Transit Authority (WMATA) opposes this application. The protest alleges that applicant's proposed operations will compete with Metrobus service in violation of Titles II and III of the Compact and that this competing service will confuse a riding public which has come to rely on an integrated transportation system operating under a uniform fare structure.[1]

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.

An applicant bears the burden of establishing fitness and consistency with the public interest.[2] The fitness inquiry focuses on an applicant's financial fitness, operational fitness, and regulatory

---

[1] Protestant subsequently sought to enlarge the protest to include allegations that applicant is not fit. Although we see no reason in the instant case to waive the requirement in Commission Regulation No. 54-04(a) that the protest contain all available legal argument on which protestant would rely, our disposition of the application makes a ruling unnecessary.

[2] In re Double Decker Bus Tours W.D.C., Inc., No. AP-95-21, Order No. 4642 (Aug. 9, 1995).

compliance fitness.[3] Once an applicant has made its prima facie case, the burden shifts to protestant to contravene that showing, which includes demonstrating that protestant's operations will be endangered or impaired contrary to the public interest.[4] Hence, we do not reach the issues raised in the protest until we are satisfied that applicant has made its prima facie case.

In Order No. 4665, served September 12, 1995, we found that applicant had not made a prima facie case on the issues of financial fitness, operational fitness and consistency with the public interest. Instead of dismissing the application, we allowed applicant to supplement the record by directing applicant to submit, inter alia, a revised balance sheet, a projected cash flow statement and a business plan. Applicant complied. We then directed applicant to answer some follow-up questions and file some supporting documents. After reviewing the application as supplemented by applicant's additional evidence, follow-up responses and supporting documents, we cannot say the record supports a finding that applicant is fit, willing, and able to perform the proposed transportation and that the proposed transportation is consistent with the public interest.

I. Financial Fitness

To make a prima facie case of financial fitness, an applicant must show the present ability to sustain operations during the first year under WMATC authority.[5] Applicant's financial statements do not meet this test.

Applicant's balance sheet shows $500,000 in initial capital as supported by a stock subscription agreement in that amount. The agreement is conditioned on our approval of the application.[6] The problem with the balance sheet is that it does not accurately reflect applicant's claim that the subscriber's $500,000 investment represents a 30 percent ownership interest. That would require total stockholder capitalization of $1,666,667, but the balance sheet only shows $500,000. Applicant explains that the subscriber's shares will be

---

[3] Id.

[4] Id.

[5] Id.

[6] "[T]he parties to a contract may condition the performance of either party, or the validity of the entire contract itself, on the occurrence of an event." Office of the Comptroller General of the Republic of Bolivia v. International Promotions & Ventures, Ltd., 618 F. Supp. 202, 207 (S.D.N.Y. 1985). Failure of the condition bars recovery for breach. Holland Industries, Inc. v. Adamar of New Jersey, Inc., 550 F. Supp. 646 (S.D.N.Y. 1982); see also Shear v. NRA, 606 F.2d 1251 (D.C. Cir. 1979) (condition excused when wrongfully prevented). In this case, our disapproval of the application simultaneously terminates the parties' obligations and our interest in the agreement's enforceability.

derived from a pro rata allocation of shares held by existing shareholders, but the balance sheet only reflects the value of the subscriber's shares. Applicant explains that some shares have been issued to key personnel as compensation for having performed start-up services, but those services must be declared in the balance sheet at fair market value, and it is doubtful that those services could account for the implied $1,166,667 in additional equity. This material discrepancy undermines applicant's credibility and colors all of applicant's financial statements, not just the balance sheet.

Turning to applicant's other financial statements, we cannot determine the reasonableness of applicant's revenue projections. Note C to applicant's Projected Statements of Operation and applicant's responses to follow-up Interrogatories Nos. 3 and 11 establish that applicant is projecting $3,650,000 in first-year revenue, based on an average of $10,000 per day. There is no evidence in the record supporting a projection of $10,000 per day. Applicant states that the revenue projections "were compiled from the experience of WJA President, Mr. Hentz, WJA Consultant, Mr. Penman, and an accounting firm,"[7] but the accounting firm's report contains the following disclaimer:

> A compilation is limited to presenting in the form of a projection information that is the representation of management and does not include evaluation of the support for the assumptions underlying the projection. We have not examined the projection and, accordingly, do not express an opinion or any other form of assurance on the accompanying statements or assumptions.

Report of Bahr and Associates, P.C., November 27, 1995.

Applicant, nevertheless, attempts to create an aura of reliability by claiming that its consultant is a jitney expert and that "[e]xperience and potential ridership convinces the consultant that these are the most conservative estimates."[8] The consultant's conviction notwithstanding, we do not see how this establishes the reasonableness of applicant's revenue estimates. Our review of a sample of raw data provided by applicant reveals that applicant's ridership projections are essentially meaningless, and even applicant concedes its potential ridership projections "were not intended to be used for first year revenue projections."[9]

With an initial capitalization of $500,000, applicant will be unable to sustain operations in the first year if its revenue

---

[7] Response to Interrogatory No. 3.

[8] Response to Interrogatory No. 3, n.2.

[9] Response to Interrogatory No. 11.

projections are off by more than eight percent.[10] That is a slim margin for error. Consequently, without any means of evaluating the reasonableness of applicant's revenue projections, we are unable to find applicant financially fit.

II. Operational Fitness

During the first year, applicant plans to operate 50 vehicles. Two will be equipped with ramps to accomodate the disabled. This may not be enough to provide adequate service on three separate routes, especially if either vehicle is out of service for any length of time due to breakdown or accident. An obvious solution is to increase the number of first-year vehicles equipped with a ramp.

Applicant's operating rules seem ambiguous in certain respects, especially the rules governing when a jitney may stop to pick up a passenger and when it may or must pass another jitney. We think some clarification would be helpful if applicant resubmits its application at a later date.

III. Compliance Fitness

The Business Plan refers to group discounts for schools, tourists and others. Applicant's proposed tariff contains no such discounts. When questioned about this, applicant replied that it had not signed or negotiated any contracts. Applicant appears to be confusing general tariff discounts with customized contract rates. The former entitle specified classes of patrons to standardized service on demand at unilaterally reduced rates. The latter entitle the contracting parties to tailored service on a continuing basis at negotiated rates.

IV. Consistency with the Public Interest

Applicant predicts that implementation of jitney service will reduce the number of automobile trips and the need for parking spaces in DC. Applicant has adduced no evidence of this but asserts that "[i]t is a generally accepted premise that increased or improved mass transit service results in decreased use of single occupant vehicles."[11] Applicant relies on a similar statement by an official of the Metropolitan Transit Authority of Harris County, TX, commenting on the anticipated impact of jitney service in Houston: "National experience suggests that FasTrack will develop new markets in addition to attracting some existing bus riders, resulting in decreased use of

---

[10] We have reduced applicant's projected year-end cash balance by $220,000, consistent with applicant's confirmation that first-year revenue is projected at $3,650,000, not the $3,870,000, assumed in the cash flow statement.

[11] Response to Document Request No. 1.

single-occupant vehicles in the corridor."[12] We do not see how the predicted impact of jitneys in Houston establishes the expected impact of jitneys in DC, especially since applicant concedes that the routes in DC "will be very different."[13]

THEREFORE, IT IS ORDERED, that for the foregoing reasons, the application of Washington, D.C. Jitney Association, Inc., for a certificate of authority for regular route operations in the District of Columbia in vehicles with a seating capacity of less than 16 persons only, including the driver, is hereby dismissed without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER AND LIGON:

William H. McGilvery
Executive Director

[12] Jefferey C. Arndt, *Jitney --- On Purpose*, ITS APTS QUARTERLY, Jan., 1995 (attached to Answer to Protest).

[13] Response to Document Request No. 1.