

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4801

IN THE MATTER OF:

Served March 28, 1996

Application of WASHINGTON SHUTTLE )  
INC., Trading as SUPERSHUTTLE, )  
for a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-96-13

By application filed March 21, 1996, Washington Shuttle, Inc., a Virginia corporation trading as SuperShuttle, seeks a certificate of authority for irregular route operations in vehicles with a seating capacity of less than 16 persons only, including the driver. Applicant proposes commencing operations with twenty-five vans.

Applicant's proposed tariff, Exhibit D, contains one-way per capita rates, categorized by zip code, for transportation between points in Maryland and the District of Columbia, on the one hand, and, on the other, Washington National Airport and Washington-Dulles International Airport. Some of the Maryland points listed in the tariff lie outside Prince George's and Montgomery Counties and, thus, outside the Metropolitan District. Applicant will be directed to file an amended Exhibit D omitting references to service areas outside the Metropolitan District.

Applicant's proposed tariff states that some groups "may" be permitted a 10 percent discount and that applicant may file additional rates in the future. The Compact, however, requires the filing of "fixed-rates and fixed-fares."<sup>1</sup> Applicant will be directed to file an amended Exhibit D containing fixed-rates and fixed-fares, only.

Under applicant's proposed tariff, service is available to and from hotels and residences. In most cases, the residential rate exceeds the hotel rate for a given zip code area. This raises an issue of undue preference and discrimination.<sup>2</sup> If the amended proposed tariff contains these rate differentials, applicant should file a separate statement explaining why its proposed tariff should not be found "unduly discriminatory, or unduly preferential between classes of riders or between locations within the Metropolitan

---

<sup>1</sup> Compact, tit. II, art. XI, § 14(a)(i).

<sup>2</sup> See In re Central Delivery Serv., Inc., No. AP-78-32, Order No. 1892 (Sept. 29, 1978) (rate differential between DC hotels and other points in DC raises prima facie issue of preferential or discriminatory treatment).

District."<sup>3</sup> Further, if applicant proposes offering service to establishments other than hotels and residences, the amended proposed tariff should identify those establishments and specify the applicable rates.

Appended to the application as Exhibit E is a pro forma balance sheet. The balance sheet indicates that at some unspecified point in the future the shareholders intend to contribute \$800,000 in cash. To make out a prima facie case of financial fitness applicant must proffer evidence that it "has secured the financing needed to implement and sustain the proposed service."<sup>4</sup> Accordingly, applicant will be directed to file a current balance sheet, supported by legally enforceable stock subscriptions, as applicable.<sup>5</sup>

The application discloses that applicant's shareholders own other transportation related companies. Article XII, Section 3(a)(iii), of the Compact states that a carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to acquire control of a carrier that operates in the Metropolitan District, through ownership of its stock or other means. The term "control" means more than mere legal control; it encompasses every type of control in fact; all pertinent facts and circumstances are considered.<sup>6</sup> Applicant will be ordered to disclose fully and completely all affiliations of applicant and/or its shareholders with any other carrier.<sup>7</sup>

Under Article XII, Section 3(b), of the Compact, the Commission may approve the acquisition of a WMATC carrier if the Commission finds the acquisition is consistent with the public interest. The public interest analysis focuses on the fitness of the acquiring parties, the resulting competitive balance, the benefits to the riding public and the interest of affected employees.<sup>8</sup> Although applicant has the burden on these issues, the Commission's application form does not elicit the necessary information, except that a demonstration of applicant's fitness permits an inference of the acquiring parties'

---

<sup>3</sup> Compact, tit. II, art. XI, § 16(a).

<sup>4</sup> In re Washington, D.C. Jitney Ass'n, Inc., No. AP-95-26, Order No. 4665 at 2 (Sept. 12, 1995) (emphasis in original) (quoting In re Model Transit, Inc., AP-92-27, Order No. 4003 (Sept. 21, 1992)).

<sup>5</sup> See Order No. 4665 at 2 (ordering same).

<sup>6</sup> In re Peter Pan Bus Lines, Inc., No. AP-93-19, Order No. 4130 (July 12, 1993) (citations omitted).

<sup>7</sup> See Order No. 4130 at 2 (ordering same). Applicant has disclosed some of this information, but only with respect to WMATC affiliates.

<sup>8</sup> DC CODE ANN. § 1-2414 (1992); In re Yellow Bus Serv., Inc., t/a Yellow Transp., No. AP-94-44, Order No. 4434 (Nov. 9, 1994); In re Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. AP-94-26, Order No. 4354 (Aug. 1, 1994).

fitness.<sup>9</sup> Pursuant to Commission Regulation No. 54-04(c), applicant will be directed to file a statement addressing the effect approval of this application will have on competition, the riding public and the interests of affected employees.

This proceeding is hereby initiated to determine whether applicant is fit and whether the proposed transportation and acquisition of control are consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That applicant shall publish once in a newspaper of general circulation in the Metropolitan District, no later than April 8, 1996, notice in the form prescribed by the staff of the Commission.

2. That applicant shall file with the Commission, no later than April 29, 1996, an original and four copies of an affidavit that notice has been published as required in the preceding paragraph.

3. That applicant shall file with the Commission, no later than April 8, 1996, an original and four copies of the following:

a. An amended Exhibit D omitting references to service areas outside the Metropolitan District and containing fixed-rates and fixed-fares, only.

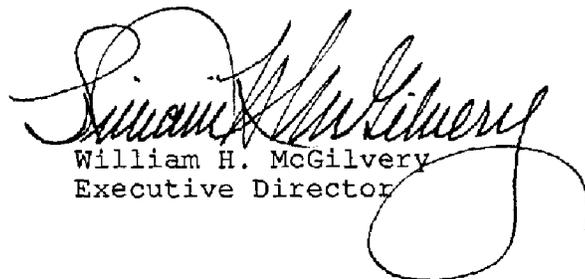
b. A current balance sheet, supported by legally enforceable stock subscriptions, as applicable.

c. A statement disclosing fully and completely all affiliations of applicant and/or its shareholders with any other carrier.

d. A statement addressing the effect approval of this application will have on competition, the riding public and the interests of affected employees.

4. That the deadline for filing protests, comments, applications for intervention, and requests for formal hearing, is April 29, 1996, and that copies must be served on applicant's attorney, Alan B. Moldawer, Esquire, Moldawer & Marshall, 30 Courthouse Square, Suite 300, Rockville, MD 20850.

FOR THE COMMISSION:



William H. McGilvery  
Executive Director

---

<sup>9</sup> Order No. 4434 at 2.