

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4819

IN THE MATTER OF:

Served April 19, 1996

Application of ACTION AIRPORT)
SHUTTLE INC., for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-96-05

By application accepted for filing February 5, 1996, Action Airport Shuttle, Inc., a Maryland corporation, seeks a certificate of authority to transport 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.

Notice of this application was served on February 7, 1996, in Order No. 4758, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication and an amended Exhibit D. 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 one van. According to the application, applicant owns the van and intends to lease it to independent contract drivers.

Applicant's proposed tariff, Exhibit D, contains per capita rates for transportation between points in Montgomery County, Maryland, on the one hand, and, on the other, Washington National Airport and Washington-Dulles International Airport.

Applicant filed a balance sheet as of January 1, 1996, showing assets of \$10,600; liabilities of \$10,500;¹ and equity of \$100. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$72,800; expenses of \$62,643; and net profit of \$10,157.

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

¹ All of the debt is attributable to a loan from applicant's president and sole shareholder. We have found other highly leveraged applicants financially fit where shareholders were the principal source of debt. See e.g., In re The Airport Shuttle, No. AP-94-22, Order No. 4331 (July 6, 1994).

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 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, provided that applicant observes the following.

Under the Compact, a person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.² The Commission's Regulations provide that:

no carrier subject to the jurisdiction of the Commission shall, without prior written consent of the Commission, lease any motor vehicle to any person for the transportation for hire of passengers between points in the Metropolitan District, unless such person holds a certificate of authority, temporary authority, or temporary approval issued by the Commission.

Commission Regulation No. 62-11. If applicant truly intends to lease its vehicle to independent contract drivers, applicant must first comply with this regulation.

Inasmuch as applicant's sole shareholder is related to the owner of Action Taxi, a taxicab company licensed in Montgomery County, MD, and leases a taxi from Action Taxi and has arranged for temporary storage of applicant's vehicle on Action Taxi's premises, applicant is admonished to keep its operations separate from those of Action Taxi and is reminded that a WMATC carrier may not conduct certificated operations in a vehicle with taxicab markings³ and must seek Commission approval in the event common control becomes an issue under Article XII, Section 3, of the Compact.

² Compact, tit. II, art. XI, § 11(b).

³ In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, No. AP-91-44, Order No. 3884 (Feb. 11, 1992).

THEREFORE, IT IS ORDERED:

1. That Action Airport Shuttle, Inc., 202 Russell Avenue, Gaithersburg, MD 20877, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport 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; and (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.

3. That applicant shall identify its vehicle(s) in accordance with Commission Regulation No. 61, for which purpose WMATC No. 338 is hereby assigned, and present said vehicle(s) for inspection by Commission staff.

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. 338 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 AND LIGON:



William H. McGilverey
Executive Director

