

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4935

IN THE MATTER OF:

Served September 17, 1996

Application of PRIORITY ONE)
SERVICES, INC., to Amend)
Certificate of Authority No. 135)

Case No. AP-96-41

By application filed July 15, 1996, Priority One Services, Inc., requests removal of the 15-passenger restriction in its Certificate of Authority No. 135.

Notice of this application was served on July 17, 1996, in Order No. 4900, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication. Applicant complied.

The application is opposed by Diplomat Limousine and Livery Service, Inc., Carrier No. 176. Further, Diplomat requests an oral hearing.

SUMMARY OF APPLICANT'S EVIDENCE

The application includes information regarding, among other things, applicant's corporate status, carrier affiliations, facilities, proposed tariff, finances and regulatory compliance record.

Applicant proposes adding minibuses to its fleet and filing a new contract tariff pursuant to an agreement with the National Institutes of Health (NIH), United States Department of Health and Human Services, in Bethesda, MD.

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 AND CONCLUSION

A. Protestant's Request for Oral Hearing

A request for oral hearing must contain reasonable grounds showing good cause, including a description of the evidence to be adduced and an explanation of why it cannot be adduced without a

hearing.¹ Protestant fails to state what evidence might be developed at a hearing and why a hearing might be necessary. Moreover, where, such as here, the pertinent facts are not in dispute, there is no need for a hearing.² Consequently, we must deny protestant's request for oral hearing.

B. Applicant's Request for Expanded Authority

Under Article XI, Section 10(b), of the Compact, the Commission may amend a certificate of authority upon application by the holder. A carrier seeking expanded operating authority must show that it is fit and that the proposed transportation is consistent with the public interest.³ The Commission may rely on a prior finding of financial fitness unless sufficient evidence is presented that the prior finding is no longer valid.⁴ An applicant for expanded authority, however, must offer current evidence of operational fitness and compliance fitness.⁵

Diplomat protests the application on compliance fitness grounds. A determination of compliance fitness is prospective in nature.⁶ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁷ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁸

Diplomat alleges that Priority One has been operating 20-passenger vehicles, including four government-owned buses, under contract with NIH since July 1, 1996, in violation of the 15-passenger restriction in Priority One's certificate of authority, which Priority One seeks to remove in this proceeding.

Priority One admits operating 20-passenger vehicles within the confines of the NIH grounds but argues that operations within a federal "reservation" do not fall under this Commission's

¹ Commission Regulation No. 54-04(b).

² In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992).

³ In re Hubert Rawls Nicholson, t/a Holiday Tours, No. AP-95-44, Order No. 4700 (Nov. 16, 1995).

⁴ Id.

⁵ Id.

⁶ In re Madison Limo. Serv., Inc., t/a Madison Limo, No. AP-96-18, Order No. 4857 (May 22, 1996).

⁷ Id.

⁸ Id.

jurisdiction. Priority One also admits providing drivers for "off-campus" operations in four 20-passenger vehicles belonging to NIH. Thus, according to Priority One, off-campus operations in 20-passenger vehicles are conducted solely in the four NIH vehicles. Diplomat does not dispute this. On this record, we are unable to find Priority One unfit for expanded operating authority.

We assume for the purpose of our decision that the operations admitted by Priority One violate the Compact. 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.⁹

Operating without sufficient authority is a serious offense, but we are constrained to consider whether any such violation on Priority One's part is knowing and willful.

NIH is considered a "federal enclave" or akin to a federal enclave,¹⁰ and the Commission takes official notice¹¹ that the roads connecting the various NIH buildings in Bethesda are not county roads within the official domain of Montgomery County, the jurisdiction in which NIH lies; rather, they are apparently under the jurisdiction of the Secretary of Health and Human Services. In a somewhat similar situation, the Supreme Court held in Universal Interpretive Shuttle Corp. v. WMATC, 393 U.S. 186, 89 S. Ct. 354 (1968), that this Commission's jurisdiction does not extend to operations conducted solely on roads under the jurisdiction of the Secretary of the Interior. We need not decide whether the Court's holding applies here, inasmuch as it would have been reasonable for Priority One to view the Court's holding as a declaration that this Commission does not have jurisdiction over transportation conducted exclusively within a federal enclave. Therefore, Priority One's operation of 20-passenger vehicles on NIH's grounds cannot be considered a knowing and willful violation of the Compact.

With regard to Priority One's operation of NIH's 20-passenger vehicles outside NIH grounds, this Commission held in In re O&R Mgmt. Corp., No. CP-88-01, Order No. 3126 (Feb. 26, 1988), on the facts in that case, that a carrier's operation of government vehicles did not

⁹ Id.

¹⁰ See International Primate Protection League v. Institute for Behavioral Research, Inc., 799 F.2d 934 (4th Cir. 1986) (applying federal enclave law), cert. denied, 481 U.S. 1004 (1987).

¹¹ See Commission Rule No. 22-07 (Commission may take notice of matters subject to judicial notice).

violate the Compact. In the light of our holding in Order No. 3126, Priority One's operation of NIH's vehicles cannot be considered a knowing and willful violation of the Compact.

Under the circumstances, and considering Priority One's spotless record from 1987 to at least July 1996, we find that Diplomat's allegations do not support a finding that Priority One's conduct demonstrates an unwillingness to operate in accordance with regulatory requirements. Consequently, we find Priority One fit as to regulatory compliance.

We also find applicant financially fit. Applicant was found financially fit to conduct irregular route operations in Orders Nos. 3227 and 3140.¹² There is no evidence in this record to support a contrary finding.

Finally, we find applicant operationally fit, subject to applicant's compliance with the requirements of this order.

Accordingly, 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.

THEREFORE, IT IS ORDERED:

1. That Diplomat's request for oral hearing is denied.
2. That the application to amend Certificate of Authority No. 135, by deleting the 15-passenger restriction, is hereby conditionally granted, contingent upon applicant's timely compliance with the requirements of this order.
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. 135 is hereby reassigned.

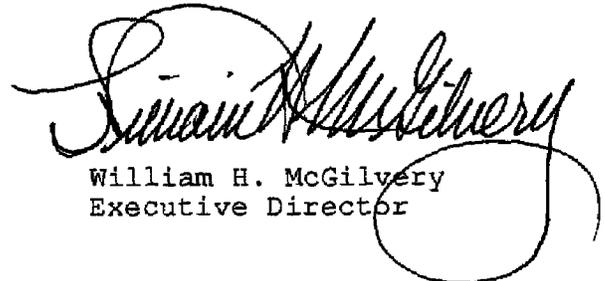
¹² In re Priority One Services, Inc., CP-88-08, Order No. 3227 (Sept. 12, 1988); In re Priority One Services, Inc., CP-88-03, Order No. 3140 (Mar. 30, 1988). In Order No. 3140 we held that applicant was fit to conduct charter operations pursuant to a contract with NIH.

4. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 135 shall be reissued to Priority One Services, Inc., 6600 Fleet Drive, Alexandria, VA 22310.

5. That applicant may not transport passengers for hire between points in the Metropolitan District in vehicles seating more than 15 persons, including the driver, unless and until Certificate of Authority No. 135 has been reissued 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 approval of amendment 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 MILLER:



William H. McGilvery
Executive Director