

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4941

IN THE MATTER OF:

Served September 25, 1996

Application of OLD TOWN TROLLEY)
TOURS OF WASHINGTON, INC., and)
D.C. DUCKS, INC., for Approval)
and Temporary Approval Pursuant)
to the Compact, Article XII,)
Section 3)

Case No. AP-96-44

By application filed July 24, 1996, Old Town Trolley Tours of Washington, Inc., WMATC Carrier No. 124, and D.C. Ducks, Inc., WMATC Carrier No. 267, seek Commission approval of a license agreement pursuant to Article XII, Section 3, of the Compact.

The license agreement grants Old Town the exclusive right to use the assets of D.C. Ducks from March 18, 1996, to November 15, 1997, with an option to purchase.

Notice of this application was served on July 31, 1996, in Order No. 4904. Applicants were directed to publish further notice in a newspaper and file an affidavit of publication and a statement addressing the effect of the agreement on competition, the riding public and the interests of affected employees. Applicants complied. The application is unopposed.

Applicants were granted temporary approval under Section 3(d) in Order No. 4932, served September 17, 1996.

DISCUSSION AND CONCLUSION

Old Town characterizes the application as a request for approval to operate D.C. Ducks's certificate. We cannot grant such a request. The Compact states that 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.¹

On the other hand, under Article XII, Section 3, Subsections (a) (ii) and (c), the Commission may approve the contract of one carrier to operate a substantial part of the property or franchise of another carrier if the contract is consistent with the public interest. The public interest analysis focuses on the transferee's

¹ Compact, tit. II, art. XI, § 11(b).

fitness, the resulting competitive balance, and the interests of affected employees.² As an existing WMATC carrier, Old Town is entitled to a presumption of fitness.³

Old Town states that it has not realized any significant increase in sightseeing market share as a result of entering into the license agreement with D.C. Ducks. Old Town also states that it attempted to contact all former employees of D.C. Ducks, hiring several in the process. The others either declined Old Town's offer of employment or could not be reached.

The Commission agrees that, considering the number of sightseeing carriers in the DC area and the modest scope of the amphibious sightseeing service, it is unlikely that competition will be injured as a result of Old Town operating D.C. Duck's assets. In fact, it seems more likely that competition would be harmed if this unique sightseeing service were permitted to disappear. The efforts of Old Town to retain D.C. Ducks's employees appear reasonable.

Accordingly, based on the evidence in this record, the Commission finds the license agreement consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That the license agreement between Old Town and D.C. Ducks is hereby conditionally approved, contingent upon Old Town's timely compliance with the requirements of this order.

2. That Old Town is hereby directed to file the following documents with the Commission: (a) four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (b) 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 amphibious sightseeing operations; (c) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in amphibious sightseeing operations; (d) 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 (e) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

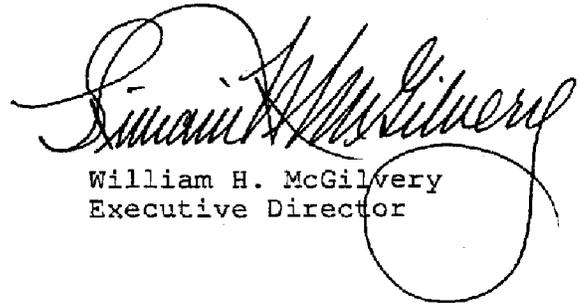
² In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd., & Tourtime America Motorcoach, Ltd., No AP-96-21, Order No. 4926 (Sept. 12, 1996). The "public benefit" inquiry was eliminated by Order No. 4926 as an element of the public interest analysis after this application was filed. We apply current law to pending applications. In re Capital City Limo., Inc., & Capital City Transp., Inc., No. AP-96-28, Order No. 4927 (Sept. 12, 1996).

³ In re Regency Servs., Inc., & Carey Limo. D.C., Inc., No. AP-95-39, Order No. 4689 (Nov. 2, 1995).

3. That upon timely compliance with the requirements of the preceding paragraphs and the Executive Director's written notice of acceptance of the documents required by the Commission, the approval granted herein shall be activated and the temporary approval granted in Order No. 4932, shall stand terminated.

4. That unless Old Town 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 granted 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