

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4960

IN THE MATTER OF:

Served October 25, 1996

Application of WINTER GROWTH, )  
INC., for a Certificate of )  
Authority -- Irregular Route )  
Operations )

Case No. AP-96-51

By application accepted for filing, September 3, 1996, Winter Growth, Inc., a Maryland nonprofit corporation, seeks a certificate of authority to transport passengers, together with baggage in the same vehicles as 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 September 9, 1996, in Order No. 4924, and applicant was directed to publish further notice in a newspaper and file an affidavit of publication, an amended vehicle list and examples of brochures, contracts and similar documents describing the services applicant provides in connection with its day care program. 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 transporting elderly passengers between their homes, on the one hand, and Montgomery General Hospital in Olney, MD, on the other. Applicant presently provides transportation service to patrons of its day care program.

Applicant's proposed tariff contains an hourly rate. Applicant's fleet contains nine vans.

Applicant filed a balance sheet as of June 30, 1996, showing assets of \$2,628,761; liabilities of \$982,651, and equity of \$1,646,110. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$27,000; other operating income of \$1,527,386; expenses of \$1,514,297; and net income of \$40,089.

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

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.

Applicant will be required to file a general tariff for its current and proposed service. Applicant currently provides a bundle of day-care services for the elderly, and according to applicant's customer brochure, the fee covers "assisted transportation to & from home." We recently held that where the parties to a contract for a bundle of services have reached an understanding or "meeting of the minds" that payment of the fee or "package price" includes the right to receive ancillary transportation service, that understanding transforms the agreement into transportation for hire.<sup>1</sup>

THEREFORE, IT IS ORDERED:

1. That Winter Growth, Inc., 18110 Prince Philip Drive, Olney, MD 20832, is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, authority to transport passengers, together with baggage in the same vehicles as 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

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<sup>1</sup> In re VOCA Corp. of Wash., D.C., No. AP-96-14, Order No. 4851 (May 21, 1996).

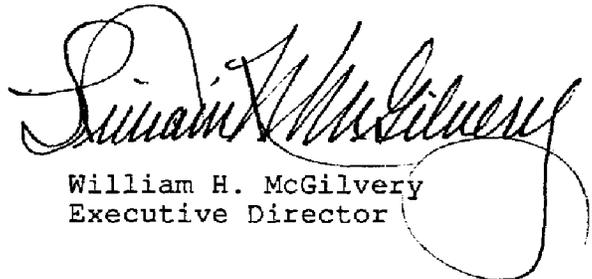
jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United 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. 178 is hereby assigned.

3. That upon timely compliance with the requirements of the preceding paragraph and acceptance of the documents required by the Commission, Certificate of Authority No. 178 shall be issued to applicant.

4. 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.

5. 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, LIGON, AND MILLER:



William H. McGilvery  
Executive Director

