

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6398

IN THE MATTER OF:

Served October 22, 2001

Application of LAM ASSOCIATES,)
INC., for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2001-74

Applicant LAM Associates, Inc., (LAM), seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.¹

The application is founded on LAM's proposal to provide passenger shuttle service between points in the Metropolitan District under a contract with the General Services Administration (GSA) and a contract with the Federal Aviation Administration (FAA) using vans furnished by the government. LAM contends in a separate brief, however, that performing these contracts does not make LAM a "carrier" within the meaning of the Compact. This raises a threshold issue. If performing these contracts does not make LAM a carrier, then the application must be denied inasmuch as no other service is proposed.²

I. LAM'S STATUS AS A CARRIER

The Compact defines a "carrier" as "a person who engages in the transportation of passengers by motor vehicle or other form or means of conveyance for hire."³ The definition of a "person" under the Compact includes a corporation.⁴ Our decision in In re Government Contracting Resources, Inc., t/a GCR, Inc., No. AP-97-56, Order No. 5236 (Dec. 3, 1997), holds that a carrier is a person who assumes the risk and responsibility of conducting passenger transportation operations.

In the GCR case, applicant proposed commencing operations with seven 28-passenger buses and two 44-passenger buses. Applicant's proposed contract tariff contained rates for shuttle bus service between points in the Metropolitan District pursuant to a contract with the United States Environmental Protection Agency (EPA). According to the application, EPA would provide the vehicles. According to the contract, applicant would provide all management and

¹ LAM filed an application for temporary authority, as well, but later withdrew it. See Case No. AP-2001-73.

² The Compact only applies to the transportation for hire by any carrier of persons between any points in the Metropolitan District. Compact, tit. II, art. XI, § 1 (emphasis added).

³ Compact, tit. II, art. XI, § 4(a).

⁴ Compact, tit. II, art. XI, § 4(c).

supervision, coordinate and ensure effective performance of shuttle bus services, insure and maintain all vehicles, and assume full liability for the acts of its employees.

We observed that "the simple act of providing drivers to the government for the purpose of operating government-owned vehicles does not transform an entity into a passenger carrier within the meaning of the Compact." But given that the EPA contract clearly called for more than a simple provision of drivers, that it placed "the risk and responsibility for shuttle bus operations entirely on applicant," we had no trouble finding that "under the EPA contract applicant [would] be assuming the role of a passenger carrier within the meaning of the Compact and therefore must possess a certificate of authority while performing the contract."

Turning to the instant case, we examine LAM's contracts to determine whether the government or LAM bears the risk and responsibility of conducting shuttle operations.

Under paragraph C.1 of the FAA contract, LAM agrees to "provide the necessary personnel required to operate a government furnished shuttle van for shuttle services" for FAA employees between two points in the District of Columbia. Under paragraph H.1, titled "Contractor Work and Management," LAM agrees that all work under the contract "shall be performed and managed" by LAM and that "[p]hasing, scheduling, and planning of work under the contract in order to meet all requirements within the Statement of Work is the sole responsibility of [LAM]." Under Section E, the FAA reserves the right only to "randomly inspect the services being provided by" LAM. Under paragraph H.8, LAM agrees that it "shall be responsible for and shall indemnify and hold the Government harmless in connection with any loss or liability from damage to or destruction of property . . . or from injuries to or death of persons if such damage, destruction, injury or death arises out of, or is caused by performance of work under this contract," unless caused solely by the active negligence of the government's employees, agents or representatives. This contract language places the risk and responsibility of conducting shuttle operations on LAM. Accordingly, LAM would be assuming the role of a passenger carrier within the meaning of the Compact and therefore must possess a certificate of authority while performing the FAA contract.

Under the GSA contract for passenger shuttle operations between Arlington, Virginia, (Crystal City), and the District of Columbia, the agency agrees to provide the vehicle, vehicle maintenance, and office space. LAM agrees to furnish drivers and liability insurance covering both drivers and vehicles. LAM also agrees to provide "the supervisory, management, and administrative services necessary to successfully meet the Government's requirements," including "a dedicated program manager to perform: (1) Day-to-day activities; (2) Supervision and coordination; and, (3) Service support." This contract language places the risk and responsibility of conducting shuttle operations on LAM. Accordingly, LAM would be assuming the role of a passenger carrier within the meaning of the Compact and therefore must possess a certificate of authority while performing the GSA Crystal City contract.

Three of the four cases cited by LAM fully support our determination in this case. In Motor Truck Supply Co. v. United

States, 238 F. Supp. 645 (Feb. 11, 1965), and In re Beltway Limo. Serv., Inc., No. CP-81-01, WMATC Order No. 2188 (Jan. 27, 1981) (incorporating by reference WMATC Order No. 2184 (Jan. 13, 1981)), the party that furnished the drivers and managed the operation was found to be a carrier for hire even though the party demanding service furnished the vehicles and set the operating schedule. In In re Priority One Servs., Inc., No. AP-96-41, WMATC Order No. 4935 (Sept. 17, 1996), such an arrangement was assumed to violate the Compact absent a WMATC certificate of authority in the hands of the party furnishing the drivers. The one decision cited by LAM that apparently reaches an opposite conclusion is the Commission's decision in In re O&R Mgmt. Corp., No. CP-88-01, WMATC Order No. 3126 (Feb. 26, 1988), but the decision in that case contains no analysis of the risk and responsibility factors announced in our later decision in GCR. Accordingly, the O&R decision has little or no value as precedent in this case.

II. LAM's FITNESS FOR WMATC OPERATING AUTHORITY

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

As discussed above, applicant proposes performing passenger shuttle service between points in the Metropolitan District under government contracts using government provided vans.

Applicant filed a balance sheet as of June 30, 2001, showing assets of \$1,100,298; liabilities of \$430,350; and equity of \$669,948. Applicant's projected operating statement for the first twelve months of WMATC operations shows revenue of \$4,081,368; expenses of \$3,341,167; other losses of \$756,783; and a net loss of \$16,582.

Although applicant's projected net loss raises the issue of applicant's financial fitness, the record supports a finding in applicant's favor. An applicant must demonstrate financial fitness by showing the present ability to sustain operations during its first year under WMATC authority.⁵ Applicant is a going concern projecting a net positive cash flow during the first twelve months of WMATC operations. We have found other carriers financially fit under similar circumstances.⁶

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder.

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed

⁵ In re Associated Community Servs., Inc., No. AP-01-51, Order No. 6320 (Aug. 21, 2001); In re UNICCO Serv. Co., No. AP-98-36, Order No. 5435 (Oct. 19, 1998).

⁶ E.g., Order No. 6320 (same); Order No. 5435 (same).

transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

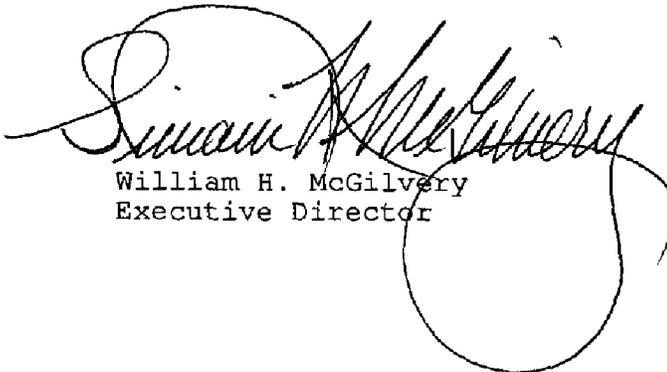
1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 650 shall be issued to LAM Associates, Inc., 8245 Boone Blvd., #200, Vienna, VA 22182.

2. 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.

3. That applicant is hereby directed to file the following documents within thirty days: (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) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, 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.

4. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, LIGON, AND MILLER:



William H. McGilvery
Executive Director