

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7002

IN THE MATTER OF:

Served January 21, 2003

Application of ONTIME)
TRANSPORTATION INC., WMATC No. 536,) Case No. AP-2002-123
to Acquire Assets from KEN-DAN)
TRANSPORTATION INC., WMATC No. 434)

By application accepted for filing October 24, 2002, applicant, Ontime Transportation Inc., WMATC No. 536, seeks Commission approval to purchase assets from Ken-Dan Transportation Inc., WMATC No. 434.

Applicant proposes purchasing three vans from Ken-Dan's fleet of four. Applicant will use those three and the one van it already owns to conduct operations under a revised tariff. Applicant's proposed tariff contains per capita fares for transportation to and from Ronald Reagan National and Washington-Dulles International Airports and rates for transportation under the DC Medicaid program.

Notice of the application was published by the Commission in Order No. 6906 on November 18, 2002, and by applicant in a newspaper of general circulation in the Metropolitan District on November 18, 2002. The application is unopposed.

Under Article XII, Section 3(a)(ii) & (c), of the Compact, the Commission may approve the application of one WMATC carrier to purchase a substantial part of the property of another WMATC carrier if the Commission finds the transaction to be in the public interest. The public interest analysis focuses on the applicant's fitness, the resulting competitive balance and the interests of affected employees.¹

The Commission finds the proposed transaction consistent with the public interest for the following reasons.

¹ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC Code Ann. § 1-2414); 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).

First, an existing WMATC carrier is entitled to a presumption of fitness.² There is nothing in the record to rebut that presumption in this case.

Second, the primary concern when assessing the effect of a transfer on competition is whether the transfer will increase the acquiring party's market share.³ Transactions which do not increase market share give little cause for concern, and the Commission will approve even those transactions which tend to increase market share as long as there is sufficient post-transaction competition to check any adverse effects that such transactions otherwise might produce.⁴ Ontime and Ken-Dan operate in the airport shuttle and Medicaid transportation markets. Currently, the market for airport shuttle van service in the Metropolitan District is dominated by SuperShuttle, WMATC No. 369, and Maryland Shuttle and Sedan, WMATC No. 202, which in turn compete for market share against a significant number of other private and public transportation providers not required to be licensed by this Commission. The Medicaid transportation market in the Metropolitan District is comprised of well over one-hundred-fifty WMATC carriers. We find, therefore, that competition is not likely to suffer in either market as a result of our approving the transfer of three vans from Ken-Dan to Ontime.

Finally, Ontime says it will offer employment to qualified employees of Ken-Dan.

THEREFORE, IT IS ORDERED:

1. That the application of Ontime Transportation Inc., WMATC No. 536, to purchase a substantial part of the property of Ken-Dan Transportation Inc., WMATC No. 434, is approved on the condition that Ontime 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 transferee 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

² In re Executive Coach, Ltd., & Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. AP-02-75, Order No. 6797 (Sept. 3, 2002).

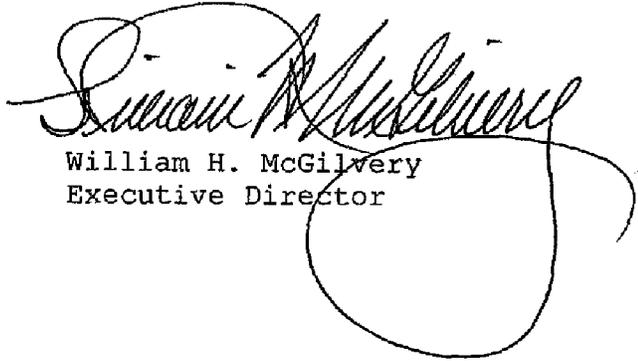
³ In re Mobile Care Specialty Transportation, Inc., t/a Mobile Care, & Ironsides Transport, Inc., & Mobile Care, Ltd., No. AP-01-10, Order No. 6178 (Apr. 9, 2001).

⁴ Id.

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.

2. That the approval herein shall be void, and the application shall stand denied, upon Ontime's failure to timely satisfy the condition prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, MILLER, AND MCDONALD:



William H. McGilvery
Executive Director

