

METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7047

IN THE MATTER OF:

Served February 25, 2003

Application of D C TOURS INC for)
a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2002-113

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is opposed by D.C. Tours, Inc., WMATC Carrier No. 643.

The Compact provides that the Commission shall issue a certificate of authority to any qualified applicant, authorizing all or any part of the transportation covered by the application, if the Commission 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.¹

The Commission may attach to the issuance of a certificate and to the exercise of the rights granted under it any term, condition, or limitation that is consistent with the public interest.²

An application for a certificate of authority must be in writing, verified, and in the form and with the information that Commission regulations require.³ Commission Regulation No. 54 requires applicants to complete and file the Commission's application form. The form itself requires supporting exhibits. The evidence thus submitted must establish a prima facie case of fitness and consistency with the public interest.⁴

Once applicant has made its prima facie case, the burden shifts to protestant to contravene applicant's showing.⁵ In the case of an existing carrier, the burden is on protestant to show that competition from the applicant would adversely affect protestant to such a degree

¹ Compact, tit. II, art. XI, § 7(a).

² Compact, tit. II, art. XI, § 7(d).

³ Compact, tit. II, art. XI, § 8.

⁴ In re Thomas B. Howell, t/a Presidential Ducks, No. AP-00-07, Order No. 5955 (Aug. 10, 2000).

⁵ Id.

or in such a manner as to be contrary to the public interest.⁶ The protest must be accompanied by all available evidence on which the protestant would rely.⁷

I. THE APPLICATION

Applicant proposes commencing operations with two motorcoaches. Applicant's proposed tariff contains hourly charter rates, with minimum charges, and airport transfer rates.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

We find that applicant has complied with Regulation No. 54 and has established thereby a prima facie case of fitness and consistency with the public interest.

II. THE PROTEST

Except for some minor differences in punctuation, protestant and applicant have the same legal name. Protestant is a Maryland corporation, applicant a Virginia corporation. Protestant opposes the application on the ground that allowing two carriers to operate under the same name in the Metropolitan District will cause confusion. Protestant therefore proposes that the application be denied.

Applicant replies that "this is not a dispute for WMATC to referee" and that protestant "has failed to advance a legally sufficient basis for opposing the application." We disagree but decline the request to dismiss.

The Commission's mandate includes protecting the public from unfair competition.⁸ The use of a "name that is similar to that of a competitor, which has the capacity to confuse or deceive the public, may be prohibited by the Commission" as a method of unfair competition.⁹ Thus, while denying an application is not the appropriate remedy for potential name confusion, it is grounds for

⁶ Id.

⁷ Commission Regulation No. 54-04(a).

⁸ See Old Town Trolley Tours of Washington, Inc. v. Double Decker Bus Tours W.D.C., Inc., 129 F.3d 201 (D.C. Cir. 1997) (existing carrier has standing to challenge unfair competition).

⁹ American Airlines, Inc. v. North American Airlines, Inc., 351 U.S. 79, 86, 76 S. Ct. 600, 605 (1956).

ordering an applicant to propose a different name for use in the Metropolitan District as a condition of approval.¹⁰

Accordingly, we shall direct applicant to propose a different name for use in the Metropolitan District, either an amended legal name or a properly registered trade name. Once applicant has submitted its proposed new name, the Commission will notify all existing WMATC carriers of applicant's proposal and prescribe a ten-day period for receiving comments and protests. We will render a decision on the application after the comment/protest period has closed.

III. CONCLUSION

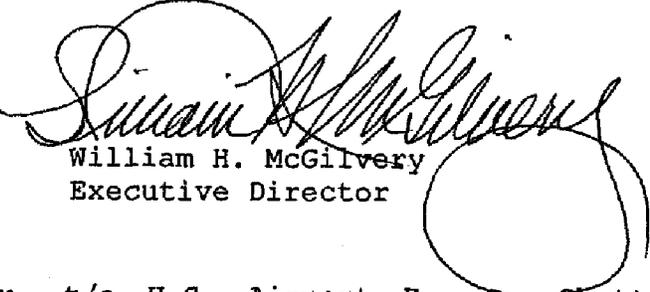
Based on the evidence in this record, the Commission finds that applicant has made a prima facie case of fitness and consistency with the public interest and that protestant has shown good cause for requiring applicant to operate in the Metropolitan District under a different name.

THEREFORE, IT IS ORDERED:

1. That, within 30 days from the date of this order, applicant shall propose an amended legal name, or a properly registered trade name, substantially dissimilar from protestant's legal name for use in the Metropolitan District.

2. That upon applicant's compliance with this order, the Commission shall notify all existing WMATC carriers of applicant's proposed new name and prescribe a ten-day period for receiving comments and protests.

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


William H. McGilvery
Executive Director

¹⁰ In re Tesfaye A. Wondimu, t/a U.S. Airport Express Shuttle, No. AP-96-48, Order No. 4955 (Oct. 24, 1996); see also In re Coach One, Inc. t/a Executive Coach, No. AP-98-06, Order No. 5268 (Feb. 5, 1998) (applicant directed to file statement explaining why Commission should not disallow applicant's use of affiliate's legal name as applicant's trade name); In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc., No. MP-96-54, Order No. 5007 (Jan. 23, 1997) (carrier ordered to discontinue using trade name that was confusingly similar to legal name of ex-WMATC affiliate); but see In re United Mgmt. Corp., t/a Passenger Express, No. CP-90-03, Order No. 3563 (Sept. 25, 1990) (applicant permitted to adopt trade name used by WMATC affiliate).