

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7139

IN THE MATTER OF:

Served April 18, 2003

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

Case No. AP-2002-113

This matter is before the Commission on respondent's application for reconsideration of Commission Order No. 7047, served February 25, 2003. That order found applicant fit for a certificate of authority. However, to prevent confusion, and thereby protect the public interest, the order directed applicant to propose a name for use in the Metropolitan District, either an amended legal name or a properly registered trade name, substantially dissimilar from the legal name of protestant, D.C. Tours, Inc., WMATC Carrier No. 643. The application for reconsideration is unopposed.

**I. STATUTORY STANDARD**

A party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.<sup>1</sup> If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.<sup>2</sup>

**II. DISCUSSION**

Applicant timely filed its application for reconsideration on March 25, 2003, and in it requests that the Commission issue a new order directing the issuance of a certificate of authority without the precondition of applicant proposing a new name for use in the Metropolitan District.

Applicant argues that the Commission erred by not considering the effect of 49 U.S.C. § 14501(a), which preempts State and local economic regulation of charter bus transportation, including such regulation conducted by any "interstate agency or other political agency of 2 or more States." The statute cited by applicant does not apply within the Washington Metropolitan Area Transit District. Congress has so decreed.

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<sup>1</sup> Compact, tit. II, art. XIII, § 4(a).

<sup>2</sup> Compact, tit. II, art. XIII, § 4(d).

When Congress first approved the Compact in 1960, it suspended the laws of the United States relating to or affecting transportation under the Compact, to the extent that such laws are inconsistent with or in duplication of the provisions of the Compact, for as long as the Compact remains effective.<sup>3</sup> The legislative history of the Compact identifies Title 49 as one of the suspended laws.<sup>4</sup> Congress's approval of the amended Compact in 1990 reaffirmed the suspension of federal law in the Metropolitan District to the extent such law conflicts with the Compact.<sup>5</sup>

The case cited by applicant, City of Columbus v. Ours Garage and Wrecker Service, 122 S. Ct. 2226 (2002), does not address Congress's suspension of Title 49 in the Metropolitan District.

Applicant also concedes that Congress in preempting State economic regulation of motor carriers has not preempted the States' ordinary police powers relating to public safety. In that regard, although Order No. 7047 does not rest on such reasoning, there is a safety dimension to a carrier's name that even the federal government recognizes.

The Federal Motor Carrier Safety Regulations (FMCSRs) in Title 49 of the Code of Federal Regulations include vehicle marking requirements at 49 C.F.R. § 390.21. That section requires that each commercial motor vehicle display the legal name or single trade name of the carrier operating the vehicle, the carrier's USDOT number, and the words "operated by" in front of the carrier's name if another name also appears on the vehicle.

The Federal Motor Carrier Safety Administration (FMCSA) has this to say on the importance of vehicle markings.

The FMCSA believes it is important that [vehicles] be properly marked before they are placed into service on the highway. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct motor carrier. It will also ensure the public has an effective means to identify motor carriers operating in an unsafe manner.

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<sup>3</sup> Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960).

<sup>4</sup> WASH. METRO. AREA TRANSIT REG. COMPACT, H.R. REP. NO. 1621, 86th Cong., 2d Sess. 29 (1960); WASH. METRO. AREA TRANSIT REG. COMPACT, S. REP. NO. 1906, 86th Cong., 2d Sess. 55-56 (1960).

<sup>5</sup> See Washington Metropolitan Area Transit Regulation Compact, Pub. L. No. 101-505, § 1, tit. II, art. XIV, § 2(c), 104 Stat. 1300, 1313 (1990) (suspending jurisdiction of Interstate Commerce Commission); see also art. VIII, 104 Stat. 1303 (providing for reactivation of suspended federal law upon termination of Compact).

Applicant, however, raises a very important point. Applicant has lawfully operated in the Metropolitan District in the past under federal and state authority,<sup>6</sup> but protestant has offered no evidence that this has caused any public confusion. Applicant correctly notes that in the case cited by the Commission in Order No. 7047, American Airlines, Inc. v. North American Airlines, Inc., 351 U.S. 79, 76 S. Ct. 600 (1956), evidence of confusion had been adduced. The only issue was whether the regulatory agency had jurisdiction to act on that evidence.

We see that protestant operates a 25-passenger minibus and charges individual sightseeing fares and individual airport fares. Private group tours are available at an hourly rate. Applicant, on the other hand, operates two 55-passenger motorcoaches and charges group charter rates and group airport rates. Given the disparity of operations between these two potential competitors, it is not surprising that the record lacks any evidence of actual confusion.

### III. CONCLUSION

In consideration of the lack of evidence of public confusion notwithstanding applicant's prior operations in the Metropolitan District, we will rescind that part of Order No. 7047 directing applicant to propose a new name for use in the Metropolitan District and modify Order No. 7047 to provide for the issuance of a certificate of authority. Protestant may file a complaint if evidence of confusion develops.<sup>7</sup>

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration is granted.

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<sup>6</sup> Applicant explains that it operates between points in the Virginia portion of the Metropolitan District under authority issued by that State. The Compact excludes from the Commission's jurisdiction transportation solely within the Commonwealth of Virginia. Applicant further explains that it operates between points in the Metropolitan District, on the one hand, and points outside the Metropolitan District, on the other. The Commission's jurisdiction does not reach such operations. D.C. Transit Sys., Inc. v. Public Serv. Coordinated Trans., FC-17, Order No. 897 (Dec. 18, 1968), aff'd sub nom., D.C. Transit Sys. v. WMATC, 420 F.2d 226 (D.C. Cir. 1969).

<sup>7</sup> See In re William E. Gillison, t/a Quiana Tours, & Quiana Tours, Inc., No. MP-98-16, Order No. 5359 (June 25, 1998) (sole proprietor ordered to cease using confusing 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 remove confusing trade name from vehicles).

2. That the part of Order No. 7047 directing applicant to propose a new name for use in the Metropolitan District is rescinded.

3. That Order No. 7047 is modified to include the following finding and conditions:

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

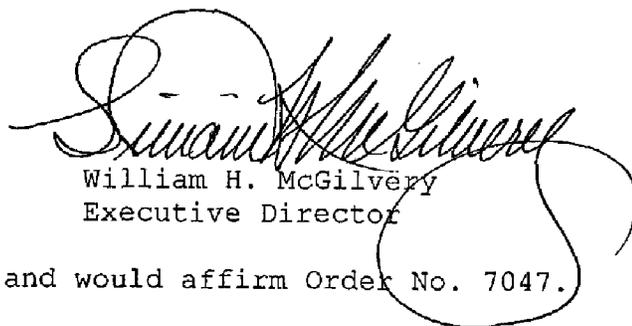
b. Upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 789 shall be issued to D C Tours Inc, 15388 Gatehouse Terrace, Woodbridge, VA 22191.

c. 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.

d. Within thirty days, applicant shall present its revenue vehicle(s) for inspection and file the following documents: (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 for-hire 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; and (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.

e. 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 AND MILLER:

  
William H. McGilvery  
Executive Director

COMMISSIONER MCDONALD dissents and would affirm Order No. 7047.