

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8033

IN THE MATTER OF:

Served May 27, 2004

Application of QUALITY MEDICAL)
SUPPLIES LLC, Trading as F & J) Case No. AP-2004-25
HEALTHCARE SERVICES, to Acquire)
Certificate No. 512 from TINGEM)
HEALTH CARE SERVICES INC.)

By application accepted for filing February 3, 2004, applicant, Quality Medical Supplies LLC, a Maryland limited liability company trading as F & J Healthcare Services, seeks Commission approval to acquire Certificate No. 512 from Tingem Health Care Services Inc. The application is unopposed.

I. PUBLIC INTEREST STANDARD

Under Article XI, Section 11(a), of the Compact, a person may not transfer a certificate of authority unless the Commission approves the transfer as consistent with the public interest. The term "public interest" appears in several sections in the Compact but is nowhere defined in the statute. Over the years, however, the Commission has developed certain criteria for deciding which transfers of authority are consistent with the public interest and which are not.

With respect to transfers of authority that are also subject to Article XII, Section 3, governing mergers and consolidations with WMATC carriers and similar transactions between existing WMATC carriers, the Commission currently examines the transferee's fitness, the resulting competitive balance and the interests of affected employees.¹ As for transfers of authority not deemed subject to Article XII, Section 3, the criteria have varied depending on the presence or absence of continuity of control.

For example, the Commission has repeatedly said that the transfer of a certificate of authority in exchange for a controlling

¹ E.g., In re National Coach Works, Inc. of Va., et. al., No. AP-03-178, Order No. 7915 (Apr. 6, 2004); 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); In re Mobile Care Specialty Transp., Inc., t/a Mobile Care, & Ironsides Transport, Inc., & Mobile Care, Ltd., No. AP-01-10, Order No. 6178 (Apr. 9, 2001).

interest in a new carrier raises fitness issues only.² In other words, for simple one-to-one reorganizations, whether sole proprietor into corporation,³ sole proprietor into limited liability company,⁴ corporation into corporation,⁵ partnership into corporation,⁶ or partnership into limited liability company,⁷ with rare exception⁸ the only issue has been the fitness of the transferee.⁹

But a transfer of authority to a new carrier with no ties to the transferor or any other WMATC carrier, at present requires an examination of the transferee's fitness, the resulting competitive balance and the interests of affected employees¹⁰ -- even though Article XII, Section 3, is not implicated and even though these cases are far more removed from Article XII, Section 3, than the cases where there is a control relationship between the transferor and transferee. Because competition ultimately is not an issue even in transfers

² E.g., In re Express Transp. Servs., Inc. & Atemnkeng Benedict Foretia, t/a Express Transp. Serv., No. AP-03-149, Order No. 7710 (Jan. 29, 2004); In re Sydney Shuttle, LLC & Sidney Miles Purnell, t/a Sydney Shuttle, No. AP-03-95, Order No. 7454 (Oct. 7, 2003); In re Quiana Tours, Inc. & William E. Gillison, t/a Quiana Tours, No. AP-02-140, Order No. 7316 (July 17, 2003).

³ Order No. 7710.

⁴ In re Jihad Properties Transp. Svc LLC, t/a 4 All Occasions Transp. Serv., & Vincent C. Goins, t/a Jihad Properties, No. AP-02-137, Order No. 7122 (Apr. 9, 2003).

⁵ In re Ultimate Transp. Inc. & Ultimate Health Care Services, Inc., No. AP-03-93, Order No. 7645 (Jan. 5, 2004).

⁶ In re New Era Medical Transport Servs., Inc. & New Era Medical Transport Servs., No. AP-03-101, Order No. 7506 (Nov. 3, 2003).

⁷ In re Fleet Transp., L.L.C. & Fleet Transp., No. AP-03-38, Order No. 7262 (June 26, 2003).

⁸ See In re V.I.P. Tours & V.I.P. Tours, Inc., No. AP-94-35, Order No. 4392 (Sept. 28, 1994) (partnership into corporation raised issues of fitness, competition, public benefit); In re Jones & Wash., Ass'n, & Jones & Wash. Assocs., Inc., No. AP-86-44, Order No. 2994 (Apr. 2, 1987) (partnership into corporation raises issues of fitness, dormancy, competitive balance); In re Nation's Capital Sightseeing Tours & Ernest Harrelson, No. AP-86-40, Order No. 2953 (Dec. 22, 1986) (partnership into sole proprietor raises issues of fitness, purchase price fairness, competitive balance, dormancy, public benefits).

⁹ See also In re MCT Charter Tours Inc., & Thomas Tours, Inc., No. AP-02-72, Order No. 6776 (Aug. 14, 2002) (fitness only issue in transfer to non-WMATC affiliate with federal authority);

¹⁰ E.g., In re AT Trans Servs., Inc., & Premier Care Medical Transport, Inc., No. AP-02-116, Order No. 6999 (Jan. 21, 2003); In re Dr. Peterson Health Services, Inc., t/a Concerned Medical Transport, & Concerned Medical Transport, Inc., No. AP-01-11, Order No. 6213 (May 11, 2001).

lacking continuity of control,¹¹ the split in precedent narrows to assessing the effect on employees when there is no continuity of control and ignoring the effect on employees when there is.

Consideration of a transfer's effect on employees traces to a congressional proviso to the original Compact stipulating that "the term 'public interest' as used in section 12(b) of article XII, title 11 of the Compact shall be deemed to include, among other things, the interest of the carrier employees affected."¹² Article XII, Section 12(b), of the original Compact is the predecessor of Article XII, Section 3(c), of the current Compact. In cases where Article XII, Section 3, does not also apply, therefore, there is no statutory requirement to examine the effect on employees of a transfer of operating authority under Article XI, Section 11(a).

At the same time, there is no discerning principle to be gleaned from Commission precedent that supports hinging the examination of employee impact on the presence or absence of continuity of control. On the contrary, as is apparent from Commission decisions in the early 1980s where continuity was present, the only rationale for not examining the impact on employees was that Article XII, Section 12, did not apply.¹³ The Commission has been less than consistent since then as to when Article XII, Section 12, and its successor, Article XII, Section 3, apply.¹⁴ But looking forward, we

¹¹ Order No. 6999; Order No. 6213.

¹² Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at D.C. CODE ANN. § 9-1103.04 (2004)).

¹³ See In re McKinley Battle & Battle's Transp., Inc., No. AP-83-56, Order No. 2494 (Nov. 10, 1983) (finding Article XII, Section 12, inapplicable and omitting employee impact analysis); In re Rodwell Buckley & Elrod Transp. Serv., Inc., No. AP-80-08, Order No. 2118 (June 11, 1980) (same).

¹⁴ Compare In re VIP Coach Servs., Inc., & White House Sightseeing Corp., No. AP-84-06, Order No. 2550 (May 1, 1984) (art. XII, § 12(a)(2), of original Compact inapplicable where one carrier subject to WMATC regulation but other not), overruling In re Whitehouse Sightseeing Corp., No. MP-79-07, Order No. 2156 (Oct. 24, 1980); In re Frank Martz Coach Co. & Atwood's Transport Lines, Inc., No. 283, Order No. 1424 (May 2, 1975), with In re MDR Transporting Serv., Inc., & Roop Transp. Servs., Inc., No. AP-00-09, Order No. 5840 (Mar. 14, 2000) (transfer of WMATC certificate to non-WMATC carrier governed by art. XII, § 3(a)(ii), of amended Compact); In re Royal Airport Shuttle & Royal Airport Shuttle, Inc., No. AP-98-21, Order No. 5361 (June 25, 1998) (same); In re Rainbow Luxury Lines, Inc., & Rainbow Bus Co., No. AP-97-21, Order No. 5091 (June 2, 1997) (same); In re Vernoy Franklin & Franklin Charter Bus, Inc., No. AP-91-15, Order No. 3799 (Aug. 6, 1991) (same); In re Beltway Limo. Serv., Inc., & DD Enters., Inc., No. AP-86-08, Order No. 2889 (July 29, 1986) (transfer of WMATC certificate to non-WMATC carrier subject to art. XII, § 12(d), of original Compact). See also In re Tara Lines, Inc.,

can at least establish some consistency under Article XI, Section 11(a), in those cases where a decision has been made that Article XII, Section 3, is not implicated.

Henceforth, the Commission shall confine its public interest analysis to the transferee's fitness when considering applications subject to Article XI, Section 11(a), but not Article XII, Section 3, regardless of the presence or absence of continuity of control. This clearly makes sense as a matter of statutory construction, and it makes sense from a practical perspective, as well. Unlike certificate of authority transfers subject to Article XII, Section 3, certificate of authority transfers subject to Article XI, Section 11(a), alone are unlikely to generate significant economies of scale or scope inasmuch as the transferees by definition do not have any preexisting WMATC operations. Such transfers thus are unlikely to yield any significant net contractions in the workforce subject to our jurisdiction. This is true regardless of the presence or absence of continuity of control. Our decision to treat alike all cases arising under Article XI, Section 11(a), however, should not be interpreted to preclude examination of employee impact in any specific case upon a preliminary showing of significant harm.

II. APPLICATION

In this case, applicant proposes commencing operations with one van. Applicant's proposed tariff contains rates for transportation under the DC Medicaid program and several contracts acquired from Tingem.

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.

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 and, therefore, that the transfer of Certificate No. 505 to applicant is consistent with the public interest.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 512 shall be reissued to

No. AP-86-05, Order No. 2822 (Feb. 7, 1986) (transfer of WMATC certificate to WMATC carrier governed only by art. XII, § 4(h), of original Compact).

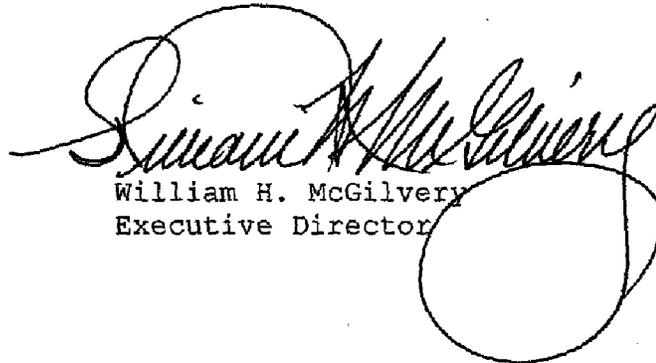
Quality Medical Supplies LLC, trading as F & J Healthcare Services, 6495 New Hampshire Avenue, #111, Hyattsville, MD 20783.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate of Authority No. 512 has been reissued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (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; (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 approval of transfer herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of reissuance prescribed herein.

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



William H. McGilvery
Executive Director