

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8456

IN THE MATTER OF:

Served December 6, 2004

Application of CITY SIGHTSEEING)
USA INC. for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2004-39

This matter is before the Commission on the motion of applicant to waive Commission Regulation No. 66, which states that: "The time for complying with the conditions of a grant of authority shall not be extended beyond 180 days from the date of the grant."

This application was approved in Order No. 8042, served June 1, 2004, over the protest of Old Town Trolley Tours of Washington, Inc., (Old Town), WMATC Carrier No. 124. The issuance of a certificate of authority was expressly made contingent on applicant presenting its vehicles for inspection and filing certain additional documents within the 180 days permitted by Regulation No. 66. So far, applicant has only filed a one-page statement regarding ownership, management, and source of vehicles. Outstanding are applicant's: WMATC Insurance Endorsement; tariff; vehicle list, registrations and safety inspection certificates; and initial driver information. The motion, filed October 29, 2004, requests that the vehicle-inspection/document-filing deadline, November 29, 2004, be extended through April 1, 2005.

Regulation No. 66 may be waived for good cause shown after taking into consideration the purposes of the regulation. The purposes underlying Regulation No. 66 are two-fold. First, it prevents the issuance of operating authority at a time when the fitness finding has become stale. Second, it ensures closure.

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[G]ood cause does not include rewarding an applicant for its own lack of diligence.¹

Applicant's counsel explains in support of the motion that when it became apparent that this application would not be granted until mid-summer at the earliest, applicant's parent established a new

¹ In re Westview Med. & Rehab. Servs., P.C. Inc., No. AP-01-50, Order No. 6557 (Mar. 4, 2002).

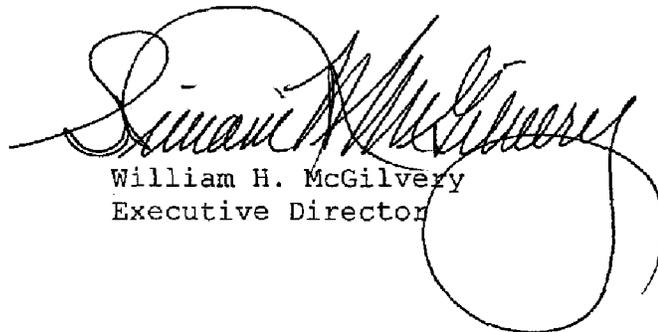
subsidiary to commence sightseeing operations in St. Louis, Missouri, in early July 2004. Counsel further explains that applicant intends to begin operations in the Metropolitan District next spring at the start of the sightseeing season and that having to comply with the current filing deadline during the off-season "while technically feasible, could be done only at considerable expense but with no ability on the part of Applicant to generate revenues until its projected start up."

The record shows, however, that applicant's counsel pledged on March 31, 2004, that as soon as the five buses identified in the application were refurbished and applicant had taken possession, a process expected to take 30 to 60 days, copies of the vehicle registrations would be "filed promptly with the Commission." This did not happen. Instead, five buses were titled in applicant's name in July 2004 and promptly shipped to applicant's affiliate in St. Louis. Applicant's counsel acknowledges that these buses are "the types of buses intended for use in the Metropolitan District," but no explanation is offered as to why it was economically feasible to press them into service in St. Louis in mid-summer but not Washington, DC.

We cannot say on this record that applicant has been diligent in pursuing this application, and the prospects for closure are no better now than they were six months ago. Indeed, the prospects are arguably worse now that the only buses established in the record as owned by applicant have been diverted to St. Louis by applicant's parent. For these reasons, the motion shall be denied.

IT IS SO ORDERED.

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



William H. McGilvery
Executive Director