

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,714

IN THE MATTER OF:

Served July 3, 2018

Application of R&L LOGISTICS)
MANAGEMENT, LLC, for a Certificate)
of Authority -- Irregular Route)
Operations)

Case No. AP-2018-050

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

Applicant is a joint venture of Advanced Technology Logistics, Inc., (ATLI), and W & T Travel Services LLC, trading as WTTS, (W & T) which holds WMATC Certificate of Authority No. 1372 under the Washington Metropolitan Area Transit Regulation Compact.¹

ATLI was granted operating authority in 2016, but the issuance of a certificate of authority was expressly made contingent on ATLI filing additional documents and passing a vehicle inspection conducted by Commission staff.² ATLI failed to satisfy the conditions for issuance of operating authority within the time allotted, thereby voiding the Commission's approval.³

The application shall be determined according to the provisions of Article XI, Section 7(a), and Article XII, Section 3(a), of the Compact.

I. CERTIFICATE OF AUTHORITY

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it 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 Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

² See *In re Advanced Tech. Logistics, Inc.*, No. AP-16-106, Order No. 16,480 (July 21, 2016) (conditionally granting Certificate No. 2928).

³ See *id.* (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66-01 (failure to comply with conditions of grant within 180 days voids approval).

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 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.

II. COMMON CONTROL RELATIONSHIP

Under Article XII, Section 3(a)(iii), of the Compact, "a carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means." This provision is implicated because W & T, a carrier, will acquire control of another carrier that operates in the Metropolitan District upon the issuance of a WMATC certificate of authority to applicant.⁴

Under Article XII, Section 3(c), of the Compact, if the Commission finds that the proposed transaction is consistent with the public interest, the Commission shall issue an order authorizing the transaction. The Commission employs three criteria in determining whether a common-control transaction is consistent with the public interest: (1) the fitness of the acquiring party, (2) the resulting competitive balance, and (3) the interest of affected employees.⁵

An existing WMATC carrier is entitled to a presumption of fitness.⁶ As an existing carrier, W & T is entitled to this presumption, and there is no evidence in the record to the contrary.

The primary concern when assessing competitive balance is whether the transaction will increase the acquiring party's market share.⁷ Issuance of WMATC operating authority to applicant will not in and of itself increase the share of the WMATC-regulated market controlled by W & T.

⁴ See *in re Arlington National Cemetery Tours, Inc*, No. AP-15-160, Order No. 15,913 (Oct. 20, 2015) (analyzing control as of issuance date of new certificate).

⁵ *Id.* at 2.

⁶ *Id.* at 2.

⁷ *Id.* at 2.

As for the issue of affected employees, the record shows that applicant was created for the purpose of bidding on a shuttle contract with the National Institutes of Health, (NIH), a contract currently performed by W & T employees. W & T CEO Darnell Lee states that those employees will become applicant's employees if applicant wins the contract. W & T's other employees will remain with W & T. Federal agency contracts such as the NIH contract are subject to federal acquisition regulations governing federal contractor wages and working conditions.⁸

The foregoing analysis leads us to conclude that issuance of WMATC authority to applicant would be consistent with the public interest within the meaning of Article XII, Section 3(c), of the Compact.

III. CONCLUSION

In closing, applicant is admonished to keep its WMATC assets, books, finances and operations completely separate from those of W & T.⁹ Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.¹⁰

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 3194 shall be issued to R&L Logistics Management, LLC, 7335 Old Pohick Way, Lorton, VA 22079-1565.

2. That 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.

3. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (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

⁸ See 48 C.F.R., Ch. 1, Subch. D, Part 22.

⁹ See Order No. 15,913 at 3 (requiring commonly-controlled carriers to keep assets, books, finances, and operations separate).

¹⁰ *Id.* at 3.

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.

4. That 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 RICHARD, MAROOTIAN, AND HOLCOMB:

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', written in a cursive style.

William S. Morrow, Jr.
Executive Director