

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,343

IN THE MATTER OF:

Served April 19, 2021

Application of AM-VAN, INC., )  
Trading as AAA TRANSPORT and as ALL )  
AMERICAN AMBULANCE & TRANSPORT, to )  
Acquire Control of EAST COAST )  
WHEELCHAIR SERVICE, LLC )

Case No. AP-2021-030

By application accepted for filing February 22, 2021, applicant, Am-Van, Inc., trading as AAA Transport and as All American Ambulance & Transport, WMATC No. 575, seeks Commission approval to purchase 100% of the membership interest of East Coast Wheelchair Service, LLC, WMATC No. 1896. Am-Van is also under common control with Fowler Trio, L.L.C., trading as AAA Transport and as All American Adventures and Tours, WMATC No. 576. Both Am-Van and Fowler Trio are owned by James Fowler. The application is unopposed.

Applicant has also filed a motion for confidential treatment of a portion of the parties' written agreement.

**I. APPLICATION**

This transaction is governed by Title II of the Compact, Article XII, Section 3(a)(iii), which provides: 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.

The Commission may approve an application under Article XII, Section 3, if it finds that the proposed transaction is consistent with the public interest.<sup>1</sup> The public interest analysis focuses on the fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.<sup>2</sup>

An existing WMATC carrier is entitled to a presumption of fitness, as is an acquiring party that controls an existing WMATC carrier.<sup>3</sup> Am-Van is an existing WMATC carrier and therefore entitled to the presumption and so is its owner. We find that, for the purpose of

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<sup>1</sup> Compact, tit. II, art. XII, § 3(c).

<sup>2</sup> *In re RMA Coach, LLC*, No. AP-17-007, Order No. 17,124 (Aug. 1, 2017); Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC CODE ANN. § 9-1103.04 (2019)).

<sup>3</sup> Order No. 17,124 at 2.

determining whether the proposed transaction is in the public interest, Am-Van and its owner are fit.

The primary concern when assessing the effect on competition of a transaction under Article XII, Section 3, is whether the transaction will increase the acquiring party's market share.<sup>4</sup> Transactions which do not increase market share give little pause for concern, and the Commission will approve even those transactions which tend to increase market share as long as there is sufficient post-transaction competition to check any adverse effects that such transactions otherwise might produce.<sup>5</sup>

The Commission defines the relevant market in terms of the common transportation service(s) provided by the parties to the transaction under review and uses the total number of WMATC carriers providing the relevant service and the size of their fleets as a proxy for determining overall market size and derivatively the approximate pre- and post-transaction market shares of the parties at issue.<sup>6</sup> Our analysis takes into consideration the fleet of Am-Van's commonly-controlled affiliate, Fowler Trio.

According to their respective 2021 annual reports, Am-Van operates 3 vehicles, Fowler Trio operates 88 vehicles, and East Coast Wheelchair Service operates 8 vehicles. If this transaction is approved, the combined fleet under common control would increase from 91 to around 99 vehicles. When compared to the approximately 4,500 vehicles reported by current carriers holding authority from the Commission, we find there should be little or no adverse impact on competition in the Metropolitan District.

No employee has protested this application and there is no evidence in the record of an adverse impact on employees from any other source.<sup>7</sup>

Accordingly, on the record before us, we find that the acquisition of control of East Coast Wheelchair Service by Am-Van is consistent with the public interest.

## **II. MOTION FOR CONFIDENTIAL TREATMENT**

Am-Van requests that portions of the November 2020 agreement relating to the amount of consideration paid by Am-Van be treated as confidential and shielded from public view. Am-Van has submitted redacted and unredacted copies of the agreement and requests that the unredacted version be returned.

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 2-3.

<sup>6</sup> *Id.* at 3.

<sup>7</sup> See *In re Luxury Cars DC LLC*, No. AP-18-149, Order No. 17,831 (Sept. 26, 2018) at 2-3 (burden to raise issue of whether a particular transaction analyzed under Article XII, Section 3 of the Compact is or is not consistent with the interest of affected employees falls on employees).

Prior to amendment of the Compact in 1991, the public interest analysis [in a merger or acquisition] would have focused on the transferee's fitness, the fairness of the purchase price, the resulting competitive balance, the dormancy of operating rights, the benefits to the riding public, and the interest of affected employees. The dormancy inquiry was a means of guarding against the transfer of operating rights which had fallen into such disuse as to no longer serve a public need. The purchase price inquiry was necessary to prevent the transferee from passing exorbitant acquisition costs on to captive customers in the form of rate increases. Public necessity and ratemaking issues are no longer relevant concerns under the amended Compact.<sup>8</sup>

The redacted version of the November 2020 agreement submitted by Am-Van shields from public view only information relating to the amount of consideration paid by Am-Van for the membership interest of East Coast Wheelchair Service. Accordingly, the motion for confidential treatment is granted. The unredacted version of the agreement shall be returned to Am-Van at the end of this proceeding, as extended by any administrative reconsideration and by any judicial review.

THEREFORE, IT IS ORDERED that the application of Am-Van, Inc., trading as AAA Transport and as All American Ambulance & Transport, WMATC No. 575, to acquire control of East Coast Wheelchair Service, LLC, WMATC No. 1896, is hereby approved.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB, RICHARD, AND LOTT:



Jeffrey M. Lehmann  
Executive Director

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<sup>8</sup> *In re Boston Coach-Wash. Corp.*, No. AP-93-21, Order No. 4163 at 2-3 (Sept. 13, 1993).