

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2949

IN THE MATTER OF:

Served December 12, 1986

Application of LION TRANSPORTATION)
for Temporary Authority)

Case No. AP-86-39

By application filed October 16, 1986, Lion Transportation ("Lion" or "applicant") seeks temporary authority to transport passengers, together with mail, express and baggage in the same vehicle with passengers, in special operations between The Carlyle Suites, 1731 New Hampshire Avenue, N.W.; the Dupont Plaza, 1500 New Hampshire Avenue, N.W.; the Embassy Row, 2015 Massachusetts Avenue, N.W.; and the Omni Georgetown Hotel, 2121 P Street, N.W.; all in Washington, D.C., on the one hand, and, on the other, Washington National Airport, Gravelly Point, Va. The application was filed by Ms. Anna Michael and Mr. Nigussie Kassa as "owners" of Lion Transportation, apparently a partnership. Applicant will be directed to file its partnership agreement.

Applicant plans to operate an airport shuttle service with scheduled hotel pick-ups every 90 minutes between the hours of 6 a.m. and 5:30 p.m. daily. Applicant proposes to charge \$5 a person one-way for this service. Lion plans to use a 1977 van of unspecified seating capacity and a 1982 four-passenger sedan in its operations. An operating statement projected for the first 12 months of WMATC operations estimates revenues will be \$78,000 and total expenses will be \$25,780.

The application is supported by letters from representatives of three hotels which Lion proposes to serve. Mr. John W. Holmes, general manager of the Dupont Plaza, states in his letter of support that he has received numerous requests for scheduled airport transportation from hotel guests. No carrier currently provides such service to the Dupont Plaza. Mr. Holmes states that guests of the Dupont Plaza would use Lion's proposed service if WMATC authority is granted.

The general manager of the Omni Georgetown Hotel, Mr. Richard T. Cotter, submitted a letter of support which stated that the Omni has also received numerous requests from hotel patrons for scheduled airport transportation service. Because no carrier currently provides such service to the Omni, hotel guests must be transported to other establishments that offer scheduled airport transportation. This practice proves to be a considerable inconvenience. Mr. Cotter believes that a grant of authority from the Commission to Lion would be in the best interest of hotel patrons. Guests of the Omni Georgetown would use applicant's proposed service if authority is granted.

Addison E. Johnson, general manager of The Carlyle Suites, submitted a letter which noted that the hotel has received several complaints about inconveniences faced by hotel patrons who must take a trip to another location in order to avail themselves of scheduled airport transportation service. According to Mr. Johnson, this practice often results in combined costs exceeding the taxi fare directly to the airport. No carrier provides scheduled airport service to The Carlyle Suites.

Applicant asserts that the aforementioned letters prove that there is an immediate and urgent need for the proposed service. Lion states that the only available scheduled airport transportation in the vicinity of the above-named establishments operates from two Hilton hotels: the Capitol Hilton, 16th and K Streets, N.W., Washington, D.C., and the Washington Hilton, 1919 Connecticut Avenue, N.W., Washington, D.C. Hotel patrons from the Dupont Circle area are, therefore, required to bear an additional transportation expense if they desire use of scheduled airport transportation. Applicant states that it has received calls from most of the aforementioned hotels urging speedy implementation of service. If this application is granted, Lion states that it would provide the public with an efficient, inexpensive shuttle service where none presently exists.

The application is protested by The Airport Connection, Inc. ("TAC"), 1/ a carrier currently under contract with the Federal Aviation Administration ("FAA") to provide scheduled ground transportation between points in the Metropolitan District, on the one hand, and, on the other, National Airport. Protestant asserts that any proposal for new ground transportation to Washington National Airport must be submitted to the FAA 2/ after which TAC has a right of first refusal for a period of 60 days. Protestant argues that applicant failed to follow the aforementioned procedure. In addition, protestant asserts that applicant has not shown that an immediate and urgent need for the proposed service exists. TAC claims to monitor the transportation needs of the public and to have determined that there is no need for airport transportation from the hotels listed in Lion's application. Nonetheless, TAC asserts that it has a pending proposal

1/ The Federal Aviation Administration ("FAA") filed a letter of protest on November 17, 1986, one week after the deadline for such filings. Due to the untimely nature of the filing we cannot accept it as a protest. In view of applicant's allegation of immediate and urgent need, Order No. 2923, served October 29, 1986, specifically stated that extensions of time to file protests would not be granted.

2/ FAA's letter corroborates TAC's claim that it has submitted to FAA a proposal for new service to Washington National Airport.

before the FAA to extend scheduled service to the areas listed in Lion's application.

Applications for temporary authority are governed by Title II, Article XII, Section 4(d)(3) of the Compact. Under this section the applicant is required to show that there is an immediate and urgent need for the service and that there is no carrier capable of meeting such need. The applicant is also required to show that it is fit to conduct the proposed service.

After reviewing the evidence submitted in this case we find that the applicant has met the burden of proof required to obtain a grant of temporary authority. Letters of support from hotels whose guests will benefit directly from the proposed service indicate that there is an immediate and urgent need for scheduled airport transportation and that guests at The Carlyle Suites, the Dupont Plaza and the Omni Georgetown hotels will use applicant's service if authority is granted. No carrier presently offers scheduled airport transportation to the targeted hotels.

The protestant's assertions are unsupported by evidence contained in the record. Applicant submitted un rebutted evidence which supports its claim that there is a demand for the proposed service. The evidence also indicates that the need for the service is immediate and urgent. Protestant's claim of insufficient demand appears to be contradicted by its statement that it has a pending proposal before the FAA to extend scheduled service to the area listed in Lion's application.

Turning to the fitness of the applicant, we note that although we believe Lion's projections to be overly optimistic, its financial evidence indicates sufficient funds to conduct operations for the 180-day period during which temporary authority can be in effect. The filing and prosecution of this application evidences applicant's willingness and ability to comply with the Compact and Commission rules and regulations. Thus the evidence in this record allows us to make at least a preliminary finding of fitness.

Finally, we turn to the issue of Lion's alleged failure to enter into a contract with FAA. The Commission is aware of the FAA's authority to enter into contracts with certificated carriers who wish to serve airports located within the Metropolitan District. This practice, however, does not affect the Commission's authority and duty to certificate carriers who operate to and from National Airport. 3/ The applicant is, therefore, not required to seek a contractual

3/ Executive Limousine Service, Inc. v. Goldschmidt, 628 F.2d 115 (D.C. Cir. 1980).

agreement with the FAA before it applies for WMATC authority. It must be noted that once a carrier is certificated the FAA is under an affirmative duty to offer contracts on a nondiscriminating basis. 4/ Lion Transportation is hereby directed to contact FAA regarding what, if any, obligations it must fulfill before it commences operations.

Should Lion Transportation desire to continue beyond 180 days the service for which temporary authority is herein conditionally granted, an application for a certificate of public convenience and necessity should be filed within 30 days of the service date of this order to permit adequate time for orderly processing. This grant carries no presumption with regard to any application for permanent authority. Compact, Title II, Article XII, Section 4(d)(3).

THEREFORE, IT IS ORDERED:

1. That Lion Transportation is hereby conditionally granted temporary authority to transport passengers, together with mail, express and baggage in the same vehicles with passengers, in special operations between The Carlyle Suites, 1731 New Hampshire Avenue, N.W., Washington, D.C.; the Dupont Plaza, 1500 New Hampshire Avenue, N.W., Washington, D.C.; and the Omni Georgetown Hotel, 2121 P Street, N.W., Washington, D.C., on the one hand, and, on the other, Washington National Airport, Gravelly Point, Va.; restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 persons or less, including the driver.

2. That Lion Transportation is hereby directed to file with the Commission within 15 days of the date of service of this order the following: (a) two copies of its tariff in the form prescribed by Regulation No. 55; (b) a certificate of insurance evidencing security for the protection of the public in the amounts required by Regulation No. 62; (c) an equipment list stating the make, model, serial number, license plate number, and vehicle identification number of each vehicle to be used in WMATC operations; (d) an affidavit certifying compliance with Commission Regulation No. 68 governing identification of vehicles; and (e) the partnership agreement of Lion Transportation.

3. That upon compliance with the requirements of the preceding paragraph within the time set therefor or such additional time as the Commission may direct or allow, the Executive Director shall notify applicant in writing that it may commence operations pursuant to temporary authority, whereupon the grant of temporary authority herein contained shall become effective.

4/ Id. at 2.

4. That upon becoming effective in accordance with the preceding paragraph, such temporary authority shall remain in effect for 180 days unless otherwise ordered by the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director