

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 2953

IN THE MATTER OF:

Served December 22, 1986

Application to Transfer Certificate)
No. 86 from NATION'S CAPITAL SIGHT-
SEEING TOURS, a Partnership, to)
ERNEST HARRELSON, a Sole Proprietor)

Case No. AP-86-40

By application filed October 17, 1986, Nation's Capital Sightseeing Tours, previously a partnership of Mr. Irving Brodsky (now deceased) and Mr. Ernest Harrelson ("applicant"), seeks to transfer its WMATC Certificate of Public Convenience and Necessity No. 86 to Mr. Harrelson, the surviving partner. Certificate No. 86 currently authorizes the following operations:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers, restricted to lectured, round-trip sightseeing tours, between Mt. Vernon and Arlington National Cemetery, Va., and points in that part of the District of Columbia south of a line beginning at the junction of Constitution Avenue, N.W., and Rock Creek Parkway, N.W., thence along Constitution Avenue, N.W., to 17th Street, N.W., thence along 17th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to 10th Street, N.W., thence along 10th Street, N.W., to F Street, N.W., thence along F Street, N.W., to 9th Street, N.W., thence along 9th Street, N.W., to Pennsylvania Avenue, N.W., thence along Pennsylvania Avenue, N.W., to Constitution Avenue, N.W., thence along Constitution Avenue to its junction with 2nd Street, N.E.

RESTRICTED to the transportation of passengers in vehicles with a manufacturer's designed seating capacity of 15 passengers or less (including the driver).

By Order No. 2924, served November 4, 1986, and incorporated herein by reference, the Commission granted Mr. Harrelson temporary approval to continue operating Certificate No. 86 pending a decision on the transfer application. Order No. 2924 also set the matter for public hearing.

By motion filed November 26, 1986, applicant requests that the Commission waive public hearing and decide the above-captioned matter on the pleadings. A review of the record in this case indicates that Mr. Harrelson duly notified the public of its pending application by publishing a notice in the Washington Times on November 10, 1986, and by posting notice in the vehicle used in his operations between November 10 and November 21, 1986. No formal protests or requests to be heard regarding the application have been filed. In consideration of the absence of protests and the nature of this application, we shall grant applicant's motion to waive public hearing and shall base our decision on the pleadings of record. We now turn to a consideration of the merits of the proposed transfer.

This matter is governed by Title II, Article XII, Section 4(h) of the Compact which provides that no certificate may be transferred unless the proposed transfer is approved by the Commission as being consistent with the public interest. In determining whether this transfer is consistent with the public interest, the Commission considers, among other factors, the fitness of the carrier seeking to obtain the certificate, the fairness of the purchase price, the resulting competitive balance of the industry, whether the operating rights sought to be transferred are dormant, and the manner in which the traveling public would be affected by the transfer.

The application contains a copy of the partnership agreement which specifies that in the event of the death of one of the partners the surviving partner has the option of purchasing the interest of the decedent or liquidating the partnership. The partnership agreement further provides that if the surviving partner elects to purchase the decedent's interest, written notice of his intent must be served upon the personal representative of the decedent or, if none has been appointed, upon one of the legal heirs. The partnership agreement sets forth a formula by which purchase price is to be established, and the evidence of record indicates that due to the partners' method of handling revenues and expenses, the amount of the purchase price pursuant to that formula is zero. Applicant submitted a copy of a letter sent to Mr. Brodsky's widow setting forth these facts and giving notice of Mr. Harrelson's intention to continue providing service under the terms of Certificate No. 86, as a sole proprietor. 1/ The partnership agreement specifically provides a method for determining the purchase price, and we find this provision to be reasonable and without effect on the rates.

1/ A copy of Order No. 2924, served November 4, 1986, describing this application was served on and received by Mrs. Brodsky. The Commission received no response from Mrs. Brodsky regarding this matter.

Under the grant of temporary approval issued by the Commission, applicant has continued operations under Certificate No. 86. Thus, the operating rights to be transferred have not become dormant. The financial position of the transferee, as indicated by his operating statement and certificate of insurance on file with the Commission, is sufficiently stable to enable him to carry on the business formerly performed by the partnership. Mr. Harrelson has proven himself to be fit operationally and as to compliance while a principal in the partnership Nation's Capital Sightseeing Tours. Moreover, no discernible change in the competitive balance is likely to occur.

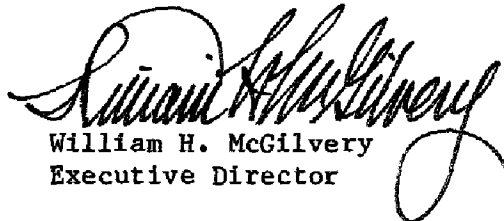
Accordingly, we find that the requested transfer of Certificate of Public Convenience and Necessity No. 86 is consistent with the public interest and, based upon the evidence of record, the application will be granted.

Finally, by motion filed December 11, 1986, applicant requests that the trade name Nation's Capital Sightseeing Tours transfer to applicant simultaneously with Certificate of Public Convenience and Necessity No. 86. We find that this is a reasonable request since the former patrons of Nation's Capital Sightseeing Tours are familiar with the trade name, and service under the certificate will remain substantially the same as services rendered by the partnership. Transfer of the name would therefore allow continuity of a going concern familiar to the public without causing harm to any other carrier.

THEREFORE, IT IS ORDERED:

1. That applicant's Motion to Proceed on Pleadings is hereby granted.
2. That the application of Nation's Captital Sightseeing Tours to transfer Certificate of Public Convenience and Necessity No. 86 to Ernest Harrelson trading as Nation's Capital Sightseeing Tours is hereby granted.

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


William H. McGilvery
Executive Director