

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3288

IN THE MATTER OF:

Served February 8, 1989

Application of MERCY AMBULETTE)
SERVICES, INC., for a Certificate)
of Public Convenience and Necessity)

Case No. AP-88-38

By application filed October 24, 1988, Mercy Ambulette Services, Inc. (MASI or applicant), seeks a certificate of public convenience and necessity to transport transportation-disadvantaged 1/ persons in special operations between health care facilities in the Metropolitan District, on the one hand, and, on the other, points in Washington, DC; Montgomery and Prince George's Counties, MD; and Arlington, VA. 2/

A public hearing was held December 1, 1988, pursuant to Order No. 3246, served October 31, 1988, and incorporated herein by reference. One company witness and two public witnesses testified in support of the application. No protests were filed within the time set therefor.

SUMMARY OF THE EVIDENCE

Mr. Clifford Cunningham is MASI's president. He would be responsible for overseeing applicant's day-to-day operations, including marketing and administrative matters. Mr. Cunningham acquired experience conducting the type of transportation for which MASI seeks authority while working in New York for a company that performs similar operations. While in New York the witness observed the inner workings of the company and drove patients to health care facilities. Mr. Cunningham also has experience transporting transportation-disadvantaged relatives.

1/ "Transportation-disadvantaged persons are those individuals who by reason of age, physical or mental disabilities are unable without special facilities or special planning or design to utilize transportation facilities and services as effectively as persons who are not so affected." Order No. 2015, served August 7, 1979, at pp. 3-4.

2/ To the extent this application could be interpreted to include transportation solely within the Commonwealth of Virginia, it was dismissed pursuant to the Compact, Title II, Article XII, Section 1(b) by Order No. 3246.

Applicant plans to commence operations using two leased vehicles, one of which would be available for back-up purposes. The vans would be modified for use by non-ambulatory persons. The modifications would include specialized ramps and wheelchair securing devices. Each vehicle would also be equipped with a basic "first-aid" kit. The vehicles would have the seating-capacity to transport two non-ambulatory and three ambulatory passengers. General maintenance of the vehicles would be through MASI's arrangement with the leasing company. MASI would be responsible for additional preventive maintenance and has devised a maintenance schedule for that purpose. The applicant would require that its drivers be CPR-trained and use a beeper system for communication. In addition to Mr. Cunningham, another full-time driver and a part-time secretary would be employed by MASI.

MASI would provide the proposed service daily between 8 a.m. and 10 p.m. "Regular" hours of service would be Monday through Friday between 8 a.m. and 6 p.m. at proposed rates of \$20 one-way for the first 10 miles plus \$1 for each additional mile, and \$40 round-trip for the first 20 miles plus \$1 for each additional mile. "Premium" hours of service would be offered at a higher rate and would be in effect Monday through Friday between 6 p.m. and 10 p.m. and Saturday and Sunday between 8 a.m. and 10 p.m. The proposed fares would be \$25 one-way and \$50 round-trip for the first 10 and 20 miles, respectively, plus \$1 per additional mile. Twenty-four hours advance notice would be required to reserve "private-pay" service. The rates charged participants in the District of Columbia Medicaid Program for trips inside the Capital Beltway would be \$15 one-way and \$25 round-trip. 3/ One-way trips outside the Capital Beltway would be \$15 plus 75¢ per mile; round-trips outside the Capital Beltway would be \$25 plus 75¢ per mile.

On November 21, 1988, applicant submitted a statement of financial condition for the corporation which reflects \$1,000 in cash. In addition, Mr. Clifford Cunningham submitted his personal financial statement which reflects assets of \$111,000 (including \$110,000 in real property) and liabilities of \$14,566. 4/ Mr. Cunningham testified that he intends to inject equity of \$40,000 into the corporation consisting of \$2,000 in cash and \$38,000 in a loan secured through the Shared Home

3/ The testimony of Mr. Cunningham at hearing revealed his intention to charge currently authorized Medicaid rates. The witness, however, was under the mistaken belief that the current Medicaid rates inside the Capital Beltway are \$20 for one-way trips and \$30 for round-trips. In keeping with the intent of the witness, the Commission has corrected applicant's proposed rates to bring them into conformity with actual Medicaid rates and will direct applicant to file a revised tariff reflecting the corrections.

4/ Testimony at hearing revealed that Mr. Cunningham's personal financial statement provided an erroneous reflection of total liabilities. Mr. Cunningham testified that total liabilities should be represented as approximately \$10,000.

Loan Bank. The witness is in the process of securing the loan and anticipates the loan will be finalized shortly. Applicant was directed by the Administrative Law Judge to advise the Commission when the loan has been secured. Applicant projects \$73,473 in revenues generated from its first year of WMATC operations with \$83,098 in expenses for the same period. The witness stated that MASI is familiar with the Compact and Commission rules and regulations and intends to comply with them.

Mr. Calvin Kearney, Senior Program Analyst with the Office of Health Care Financing for the District of Columbia Department of Human Services (DHS) testified on its behalf in support of the application. Mr. Kearney is Administrator/Coordinator for DHS's Medicaid Transportation Program and, as such, is familiar with the transportation needs of the participants of the District of Columbia Medicaid Program. The witness stated that 12 carriers currently provide transportation for participants of the program. The transportation providers operate under a rotation system. Mr. Kearney believes Medicaid transportation needs an additional provider and would use applicant's services if WMATC authority is granted.

Ms. Torea Powell also testified in support of the application. Ms. Powell is director of social services at the Rock Creek Manor Nursing Home, Washington, DC. She is responsible, inter alia, for making transportation arrangements for residents of the home. Some residents are participants in the District of Columbia Medicaid Program; others are not. All residents require transportation to health care facilities in the Metropolitan District. Ms. Powell testified that there is a "desperate" need for an additional qualified and efficient carrier for transportation-disadvantaged persons. The witness stated that carriers are often late in arriving and sometimes fail to appear as scheduled. As a result, Ms. Powell is often forced to reschedule very important medical appointments. The witness requires transportation to and from health care facilities in Montgomery and Prince George's Counties, MD; Northern Virginia; and Washington, DC, twice daily. In some instances, the need may increase to three times per day.

DISCUSSION AND CONCLUSIONS

In determining whether to grant a Certificate of Public Convenience and Necessity, we look to Title II, Article XII, Section 4(b) of the Compact which requires that an applicant prove it is fit, willing, and able to perform the proposed transportation properly and to conform to the provisions of the Compact and the Commission's rules, regulations, and requirements thereunder. Section 4(b) further requires that the applicant prove the proposed service is required by the public convenience and necessity. Based on a review of the record in this case, we find that Mercy Ambulette Services, Inc., is fit operationally, financially, and as to compliance. The owner of the corporation has experience in transporting transportation-disadvantaged persons and has received "hands on" training at a facility that engages in the same type of operations as proposed by the applicant. The proposed operations would be conducted in two specially-equipped

vehicles. With MASI's owner securing a loan to help capitalize the operation, applicant's financial data indicate adequate financing to commence operations. MASI will, however, be directed to provide proof of loan acquisition. Applicant's president indicated knowledge of and willingness to comply with the Compact and Commission's rules and regulations.

We turn now to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. The Commission has relied on the test enunciated in Pan-American Bus Lines Operation (1 MCC 190, 203 [1936]) when interpreting this provision of the Compact. The Pan-American test consists of three parts as follows:

. . . whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines or carriers; and whether it can be served by applicant with the new operations or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest.

A representative of the District of Columbia Medicaid Program (DCMP) expressed a willingness to use MASI's service if proper authority is awarded. In this connection, DCMP is shown to require an additional carrier to supplement existing service. Applicant's second witness evinced a need for service for the transportation-disadvantaged between a nursing home in Washington, DC, on the one hand, and, on the other, health care facilities in the District of Columbia, Montgomery and Prince George's Counties, MD, and northern Virginia. Existing service from and to the nursing home has been unreliable and generally unsatisfactory. Accordingly, based upon all evidence of record, it is concluded that a public need has been established for applicant's proposed service between points in the District of Columbia, on the one hand, and, on the other, health care facilities in the District of Columbia, Montgomery and Prince George's Counties, MD, and Arlington, VA, subject to certain restrictions. Inasmuch as the application is unopposed, it is further concluded that such service by applicant will not impair the operations of existing carriers contrary to the public interest. Thus, the application will be granted to the extent noted above and will be denied in all other respects.

THEREFORE, IT IS ORDERED:

1. That Mercy Ambulette Services, Inc., is hereby conditionally granted authority, contingent upon timely compliance with the terms of this order, to transport transportation-disadvantaged persons in special operations between points in the District of Columbia, on the one hand, and, on the other, health care facilities in the District of Columbia, Montgomery and Prince George's Counties, MD, and Arlington, VA, restricted to transportation in vehicles with a manufacturer's designed seating-capacity of 15 persons or less,

including the driver, restricted to transportation in vehicles specially equipped with lifts or ramps and mechanical devices for securing wheelchairs in transit, and further restricted against transportation solely within the Commonwealth of Virginia.

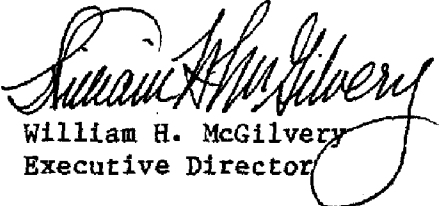
2. That Mercy Ambulette Services, Inc., is hereby directed to file with the Commission the following: (a) two copies of its WMATC Tariff No. 1 as revised with corrected Medicaid Rates; (b) an equipment list specifying make, year, model, serial number, description of modifications, seating capacity, license plate number, and jurisdiction for each vehicle to be used in WMATC operations; (c) a certificate of insurance in accordance with Regulation No. 62; (d) notarized confirmation that Mercy Ambulette Services, Inc., has secured a loan in the amount equal to or greater than \$38,000; (e) equipment leases in accordance with Commission Regulation No. 69 covering all vehicles not owned by applicant to be used in WMATC operations; and (f) an affidavit of identification of vehicles pursuant to Regulation No. 67 for which purpose WMATC No. 149 is hereby assigned.

3. That unless Mercy Ambulette Services, Inc., complies with the requirements of the preceding paragraph within 45 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority herein shall be void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

4. That upon compliance with the conditions set forth in this order, a certificate of public convenience and necessity will be issued to Mercy Ambulette Services, Inc., in the form and as worded in the Appendix to this order.

5. That the application, except to the extent granted herein, is denied.

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


William H. McGilvery
Executive Director

NO. 149

MERCY AMBULETTE SERVICES, INC.

WASHINGTON, DC

By Order No. 3288 of the Washington Metropolitan Area Transit Commission issued February 8, 1989;

AFTER DUE INVESTIGATION, it appearing that the above-named carrier is entitled to receive authority from this Commission to engage in the transportation of passengers within the Washington Metropolitan Area Transit District as a carrier, for the reasons and subject to the limitations set forth in Order No. 3288;

THEREFORE, IT IS ORDERED that the said carrier is hereby granted this certificate of public convenience and necessity as evidence of the authority of the holder thereof to engage in transportation as a carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privilege herein granted to the said carrier.

IT IS FURTHER ORDERED that the transportation service to be performed by the said carrier shall be as specified below:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, round-trip or one-way, limited to transportation-disadvantaged persons between points in the District of Columbia, on the one hand, and, on the other, health care facilities in the District of Columbia, Montgomery and Prince George's Counties, MD, and Arlington, VA.

RESTRICTED (1) to transportation in vehicles having a manufacturer's designed seating capacity of 15 persons or less, including the driver, (2) to transportation in vehicles specially equipped with lifts or ramps and mechanical devices for securing wheelchairs in transit, and (3) against transportation solely within the Commonwealth of Virginia.

AND IT IS FURTHER ORDERED and made a condition of this certificate that the holder thereof shall render reasonable, continuous, and adequate service to the public in pursuance of the authority granted herein, and that failure to do so shall constitute sufficient grounds for suspension, change, or revocation of the certificate.