

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3443

IN THE MATTER OF:

Served December 21, 1989

Application of EXECUTIVE MOBILE )  
SERVICES, INC., for a Certificate )  
Authorizing Charter Operations )

Case No. AP-89-35

By application filed June 22, 1989, Executive Mobile Services, Inc. (EMS or applicant), seeks a certificate of public convenience and necessity to transport passengers in charter operations between points in the Metropolitan District, except transportation solely within Maryland and solely within the Commonwealth of Virginia, restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 persons or less, including the driver.

A public hearing was held September 14, 1989, pursuant to Order No. 3372, served July 7, 1989, and incorporated herein by reference. Applicant presented one company witness and six public witnesses. The application is uncontested.

SUMMARY OF EVIDENCE

Mr. Calvin Seville, the owner and president of EMS, testified on its behalf. Mr. Seville is a former cab driver. Applicant plans to provide luxury transportation service in a 15-passenger vehicle specially equipped with captain's chairs, a restroom, bar, television, and video cassette equipment. A second vehicle would be acquired later. Applicant would follow the manufacturer's recommended schedule of maintenance for the vehicle. Major repairs would be performed at the dealer with daily vehicle inspections done by EMS. In addition to acting as president of EMS, Mr. Seville would be the primary driver. A part-time driver and office personnel would also be hired. Drivers must have clean driving records and participate in an ongoing driver training program. Applicant has received numerous requests for service in its vehicle from limousine companies.

EMS's proposed tariff shows group charter rates of \$250 an hour with a three-hour minimum (\$750). A 50 percent deposit would be required to reserve equipment. The deposit is fully refundable if service is cancelled one week in advance. If cancellation is made 72 hours in advance of the requested trip, 50 percent of the deposit would be refunded. Mr. Seville testified that the proposed rates were "... determined by calculating the expense of the vehicle, insurance, wages, plus the market, what the market would bear." EMS is a Virginia corporation established in June 1989. Applicant's balance sheet, dated

May 31, 1989, lists no current assets, \$75,044 in fixed assets, and \$39,107.60 in organizational costs. Current liabilities are listed at \$17,312.68, with long-term liabilities of \$85,615.92, and equity of \$11,223. Mr. Seville testified that he is in a financial position to lend the corporation \$25,000 if it requires additional funds. For its initial year of operation, applicant projects \$33,750 in WMATC operating income and \$24,993.50 in operating expenses, yielding net income of \$8,756.50. EMS through its president is familiar with the Compact and the Commission's rules and regulations including its safety regulations.

Ms. Caroline P. Day testified in support of the application. Ms. Day is a travel agent with Gateway Travel located in Virginia and testified about the needs of the travel agency. Her responsibilities include making transportation arrangements for corporate accounts. Transportation in luxury vehicles is requested once or twice a month. The witness has not been able to satisfy requests for luxury transportation because, according to Ms. Day, existing service is not of the quality that corporate accounts seek. In the past Ms. Day has used limousines, but her transportation requests are typically for groups of 14, and limousines are not large enough. As a general rule the proposed rate would appeal more to Gateway's larger accounts. Ms. Day testified that clients prefer to be transported in one vehicle. Transportation is required between points in Northern Virginia and the District of Columbia.

Ms. Ann Barnette, a representative of the National Restaurant Association (NRA), testified in support of the application. Ms. Barnette is the secretary for NRA's executive vice president. The NRA is located in Washington, DC, and requires transportation between points in the District of Columbia. The proposed service would be used to transport board members and their spouses to various meetings, hotels, and entertainment spots. It would also be used to transport political action committee members. The average size of a group would be 14. It has been the experience of the witness that such smaller vehicles are better able to negotiate the streets of Washington, DC, thus facilitating downtown pick-ups and drop-offs. Transportation would be required several times a year. The proposed rate would be acceptable to NRA.

Mr. Vernon Grandgeorge supported the proposed operations. Mr. Grandgeorge manages restaurants for Mr. Joe Theismann. The restaurants are located in Vienna, Falls Church, Alexandria, and Bailey's Cross Roads, VA, with another site opening in Camp Springs, MD. The witness requires transportation monthly for employees and customers from points in Northern Virginia to various sporting events held at RFK Stadium, Washington, DC; the Capital Centre in Prince George's County, MD; and to golf tournaments located throughout the Metropolitan District. The transportation often does not require coach-sized vehicles, but the number of persons requiring transportation is greater than could be accommodated by a limousine. Transportation in a 15-passenger vehicle would meet the witness' needs. Mr. Grandgeorge testified that the proposed rates would be affordable on special occasions.

Mr. Eugene Marder, a real estate broker and sales agent for Remax Properties in Arlington, VA, would use applicant's services several times a year to show property to agents and possibly clients. Mr. Marder would also use the proposed service for promotional purposes, which would include trips to the Capital Centre and RFK Stadium. Most of the pick-ups would be in Northern Virginia. The witness is aware of the proposed rate and can "handle it."

Mr. James R. Kearny testified concerning the transportation needs of his law firm, Miller, Miller, and Kearny, located in Virginia. The firm routinely entertains clients by providing trips to RFK Stadium, the Capital Centre, and to restaurants in Washington, DC, and Northern Virginia. The witness prefers to use luxury vehicles because they promote the image that the firm likes to portray to its clients. Mr. Kearny expressed concern about offsetting the risks associated with drinking and driving. Firm members currently use personal vehicles to transport clients to various entertainment sites. Use of applicant's service would alleviate the witness' worries in this regard. Transportation would be required 15 to 20 times a year. The firm currently spends a considerable amount of money on entertainment; it considers applicant's vehicle luxurious in nature and worth the extra expense.

The last witness to testify in support of the application was Ms. Page S. Ward. Ms. Ward is the business development manager at the Washington Vista Hilton International in Washington, DC. Hotel guests and corporations, through meeting planners, regularly ask the witness to recommend transportation service. Meeting planners in particular request high quality vehicles so they can provide corporate clients with impressive luxury transportation. The witness receives requests for luxury vehicles once or twice a month and stated that the need for such transportation will increase. Ms. Ward serves clients who have large budgets and would be able to pay the proposed rates. Transportation would be required between points in Washington, DC, and from points in Washington, DC, to Virginia. The witness further testified that there is a possibility that service may be required to points in Prince George's and Montgomery Counties, MD.

#### DISCUSSION AND CONCLUSIONS

In determining whether to grant a certificate of public convenience and necessity, the Commission looks to the standards enunciated at Title II, Article XII, Section 4(b) of the Compact as follows:

. . . the Commission shall issue a certificate . . . if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity . . . .

Based on a review of the record in this case, the Commission finds applicant to be capable of providing the proposed service and willing to conform to applicable rules and regulations.

Applicant is a newly formed corporation established for the purpose of providing specialized charter transportation. Its president is an experienced businessman and has "hands-on" experience in the transportation industry. Although EMS has no current assets, the record shows that adequate financing from the owner, in combination with the fact that applicant has already secured the vehicle, evidences resources sufficient to implement operations. Applicant will begin operations with one vehicle and plans to acquire a second vehicle that will be used, in part, for back-up purposes. Applicant will maintain the vehicles according to the manufacturer's suggested maintenance schedule and will also conduct daily safety checks. Applicant, through its president, expressed a willingness to comply with the Compact and the Commission's rules and regulations.

EMS projects \$33,750 in WMATC income with concomitant expenses of \$24,993.50. Applicant's proposed rates are much higher than the usual rates for charter service even in luxury vehicles. It is obvious that EMS intends to market a premium service, the rates for which may not appeal to the general charter consumer. Our concern about the potential market for such high-end service must be somewhat offset by the testimony of the witnesses that the proposed rates would pose no impediment to their willingness to use the proposed service. Based on the witnesses' testimony, it does appear that there is a market for such highly-priced, specialized charter service. As might be anticipated from an effort to provide a specialized luxury service, the projected expenses are high, commensurate with revenues produced by the high rates.

We now turn to the matter of whether applicant has satisfied its burden of proving that the public convenience and necessity require the proposed service. In determining whether an applicant has met its burden, the Commission relies on the test enunciated in Pan-American Bus Lines Operations (1 MCC 190, 203 [1936]). The Pan-American test consists of three parts:

- (1) whether the new operation or service will serve a useful public purpose responsive to a public demand or need;
- (2) whether this purpose can and will be served as well by existing lines or carriers; and
- (3) 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.

Applicant produced six public witnesses. Based on their testimony we find that EMS has met its burden of proof on this matter. Their testimony show that EMS's proposed charter operations are responsive to a public need and would serve a useful purpose. All of the witnesses expressed a desire for transportation in a luxury vehicle. Most of the witnesses require transportation for groups of about 14, and all have a clientele that they wish to impress with the features that a luxury vehicle offers. The groups are too large for limousines, so a luxury 15-passenger vehicle is preferred. While most of the witnesses require transportation between points in the Metropolitan District once or twice monthly. It appears, as evidenced by the lack of protests, that existing services are not able to meet the transportation requirements of the supporting witnesses.

After reviewing the testimony of the witnesses, the application filed by EMS, and the documentary evidence submitted in this matter, we conclude that applicant has met the criteria set forth in Pan-American Bus Lines Operations and has satisfied its burden of proving that the public convenience and necessity require the proposed operations. No protests having been filed, we further conclude that the proposed service will not endanger or impair the operations of existing carriers.

THEREFORE, IT IS ORDERED:

1. That Executive Mobile Services, Inc., is hereby conditionally granted, contingent upon timely compliance with the terms of this order, authority to transport passengers in charter operations between points in the Metropolitan District, restricted against transportation solely within the Commonwealth of Virginia and solely within the State of Maryland, and further restricted to transportation in vehicles with a manufacturer's designed seating capacity of 15 persons or less, including the driver.

2. That Executive Mobile Services, Inc., is hereby directed to file with the Commission within 30 days of the service date of this order the following: (a) two copies of its WMATC Tariff No. 1; (b) an equipment list specifying make, model, year, serial number, vehicle number, seating capacity, and license plate number with jurisdiction for each vehicle to be used in revenue operations; (c) evidence of ownership or lease in conformance with Regulation No. 69, as appropriate, for each vehicle to be used in revenue operations; (d) a certificate of insurance in accordance with Regulation No. 62 covering all vehicles listed; and (e) an affidavit of identification of vehicles pursuant to Regulation No. 67 for which purpose WMATC No. 161 is hereby assigned.

3. That unless Executive Mobile Services, Inc., complies with the requirements of the preceding paragraph within 30 days of the service date of this order, or such additional time as the Commission may direct or allow, the grant of authority contained 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 the preceding paragraphs, a certificate of public convenience and necessity will be issued to Executive Mobile Services, Inc., in the form and as worded in the Appendix to this order.

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

  
William H. McGilvery  
Executive Director

NO. 161

EXECUTIVE MOBILE SERVICES, INC.

By Order No. 3443 of the Washington Metropolitan Area Transit Commission issued December 21, 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. 3443;

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

CHARTER OPERATIONS, transporting passengers between points in the Metropolitan District;

RESTRICTED against transportation solely within the Commonwealth of Virginia and solely within the State of Maryland;

AND FURTHER RESTRICTED to transportation in vehicles with a manufacturer's designed seating capacity of 15 persons or less, including the driver.

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.