

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3476

IN THE MATTER OF:

Served March 22, 1990

Application of LUCILLE R. MOORE )  
Trading as TRAVELINE TOURS to )  
Transfer Certificate No. 91 to )  
SAM H. JOSEPH )

Case No. AP-89-34

LUCILLE R. MOORE Trading as )  
TRAVELINE TOURS, Suspension and )  
Investigation of Revocation of )  
Certificate No. 91 )

Case No. MP-89-05

By application filed June 9, 1989, Lucille R. Moore trading as Traveline Tours (Ms. Moore or transferor) seeks approval to transfer WMATC Certificate No. 91 to Sam H. Joseph (Mr. Joseph or transferee). Both transferor and transferee are sole proprietors.

By Order No. 3359, served June 20, 1989, and incorporated herein by reference, the Commission suspended WMATC Certificate No. 91 and directed Ms. Moore to comply with Title II, Article XII, Section 9(a) of the Compact and Commission Regulation No. 62. Ms. Moore was directed to file an appropriate certificate of insurance or submit other evidence in writing and under oath to show good cause why WMATC Certificate No. 91 should not be revoked. By notarized letter dated June 26, 1989, Ms. Moore acknowledged receipt of Order No. 3359 and advised the Commission that she had entered into an agreement to sell WMATC Certificate No. 91 to Mr. Joseph; that she had sold the vehicle used for revenue operations in late April 1989; and that, as a result of her application to transfer WMATC Certificate No. 91, she did not renew her insurance when it expired.

For the reasons discussed in Order No. 3376, served July 13, 1989, and incorporated herein by reference, Case Nos. AP-89-34 and MP-89-05 were consolidated and scheduled for public hearing. Pursuant to Order No. 3376, a public hearing was held on September 5, 1989. The transfer of WMATC Certificate No. 91 was protested by V.I.P. Tours (V.I.P. or protestant), a partnership. Transferor, transferee, and protestant appeared at the hearing and presented evidence.

SUMMARY OF EVIDENCE

WMATC Certificate No. 91 authorizes the following transportation:

IRREGULAR ROUTES:

SPECIAL OPERATIONS, transporting passengers, restricted to lectured, round-trip sightseeing tours, between Mount 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. [1/]

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

Ms. Moore has been a WMATC-certificated carrier for at least eight years during which time she has conducted tour operations on the Ellipse part-time. At no time has she operated more than one vehicle. She last operated pursuant to WMATC Certificate No. 91 in July 1988. At that time she provided service four days a week, Thursday through Sunday. In June 1989, by which time she had moved from the area, Ms. Moore sold the 15-passenger van she had formerly used in revenue operations.

Ms. Moore testified that she no longer needs WMATC Certificate No. 91 because she has retired from the sightseeing business and moved to North Carolina. She was approached by Mr. Joseph regarding sale of the certificate. According to Ms. Moore, Mr. Joseph was recommended to her as a reputable person who conducts transportation for non-English speaking persons staying in Washington area hotels. Ms. Moore began discussions with Mr. Joseph regarding the sale of WMATC Certificate No. 91 in June 1989, two to three weeks before her insurance was due to expire. Ms. Moore had no other negotiations pertaining to the certificate's transfer.

Ms. Moore testified that she continued to carry insurance in 1989 in accordance with Commission Regulation No. 62 for two reasons: (1) she had contracted to maintain insurance for the entire year, and (2) she wanted to maintain insurance so that she and her husband could use her revenue vehicle personally.

Mr. Joseph testified on his own behalf. Transferee currently operates three vehicles having a manufacturer's designed seating capacity of seven passengers or less. He uses the vehicles personally and to transport passengers for hire between points in the Metropolitan District on a call and demand basis. Mr. Joseph charges an hourly

---

1/ This part of the District of Columbia will be referred to as the "Ellipse."

rate for this "limousine service" and specializes in transporting groups of Japanese-speaking tourists that travel with their own guides. He originates no limousine service on the Mall. If this application is granted, Mr. Joseph intends to offer round-trip sightseeing tours between Mount Vernon, VA; Arlington National Cemetery, VA; and the Ellipse. Tours would originate either at airports or at hotels located in the Metropolitan District but, according to transferee, would never originate on the Ellipse. Mr. Joseph is not a licensed tour guide and does not know what he would charge for these tours. The tours would be conducted using one 1985 15-passenger van that Mr. Joseph intends to purchase for cash. Any driver employed by Mr. Joseph would be required to hold a "31-C" license from the District of Columbia. 2/ Mr. Joseph would hold out service to the general public but expects most of his business to be referrals from the same companies that now make referrals to him for limousine service. Mr. Joseph also testified that he would perform only such transportation as WMATC Certificate No. 91 enables him to do.

Mr. Joseph is not familiar with the Compact or the Commission's rules and regulations but testified that he is willing to become familiar with them and will comply with them if this application is granted.

With the application to transfer, Mr. Joseph submitted a statement of net worth showing current assets of \$31,000 including \$18,000 in cash, fixed assets after allowance for depreciation of \$27,000, and other assets of \$1,000. The statement of net worth reflects no liabilities, "capital stock" 3/ of \$10,000, and earned surplus of \$49,000. 4/ Mr. Joseph also submitted an operating statement for the five months ended May 31, 1989. The operating statement showed income from limousine operations of \$33,000 and operating expenses including depreciation and taxes of \$29,000, resulting in net operating income of \$4,000 or an operating ratio of 87.9.

Mr. Jimmy L. Davenport, a general partner of V.I.P., testified on its behalf in opposition to the application. V.I.P. holds WMATC Certificate No. 85 which authorizes, as here relevant, the following transportation:

---

2/ A "31-C" license is the District of Columbia equivalent of a chauffeur's license.

3/ Capital stock is not an item appropriate to a sole proprietorship.

4/ The statement of net worth shows that Mr. Joseph's three vehicles had an original cost of \$90,000. The vehicles are not fully depreciated; however, no money is owed for their purchase. In response to questions from the Administrative Law Judge, Mr. Joseph testified that the original cost of the three vehicles was approximately \$76,000.

IRREGULAR ROUTES:

SPECIAL OPERATIONS:

. . .

- (b) transporting passengers, restricted to lectured, round-trip sightseeing tours, between Mr. 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.;

. . .

Pursuant to WMATC Certificate No. 85, V.I.P. provides tour service originating on the Ellipse, among other places. V.I.P. provides this service year-round, six days a week, using two 15-passenger vans and one 29-passenger minibus. According to Mr. Davenport, on any given day between twenty and thirty 15-passenger vans are available to tourists in the area of the Ellipse. Mr. Davenport testified that V.I.P.'s business and tourism in Washington in general were down in 1989 compared with the previous year. In Mr. Davenport's opinion there have been adequate vehicles available on the Ellipse to serve those tourists needing transportation. If the number of tourists on the Ellipse increases, V.I.P. would add equipment to meet demand.

DISCUSSION AND CONCLUSIONS

Case No. AP-89-34 is governed by the Compact, Title II, Article XII, Sections 4(h) and 12(a)(2). The standard for approval in both sections is consistency with the public interest. In determining whether a transfer is consistent with the public interest, the Commission examines a number of issues including dormancy of the certificate, fitness of the transferee, and effect on the existing competitive balance.

A certificate may become dormant when operations authorized by the certificate cease. Dormancy does not preclude the transfer of operating rights in the absence of evidence that there is no continuing need for the service. In re Boyd v. Richner, Inc. - Purchase - Rust, 87 M.C.C. 205, 210 (1961); Cavalier Corp. v. Diamond Transfer, 220 Va.

651 (1970). In effect there is a presumption in transfer cases that, the issue of public convenience and necessity having been decided prior to issuance of a certificate, the public interest requires that the service authorized by the certificate continue until it is shown that the service is not so required. See Cavalier Corp. v. Diamond Transfer, Supra. It should be noted that the term "public interest" embraces the interests of competing carriers. Ratner v. United States, 162 F. Supp. 518 (S.D. Ill. 1957), aff'd 356 U.S. 368 (1958). See also McClellan Trucking Co. v. United States, 48 F. Supp. 933 (S.D.N.Y. 1942), 321 U.S. 67 (1944); Baltimore Transfer Co. v. Interstate Commerce Commission, 114 F. Supp. 558 (D. Md. 1953), aff'd 346 U.S. 890 (1953). The burden of proving that the authorized service is no longer needed is on protestants. Park Bros. v. S&M Systems Corp., 216 Va. 322 (1975) See also In re Boyd v. Richner, Inc. - Purchase - Rust, Supra and cases cited therein. In the absence of such proof, the logical assumption is that the application for transfer should be approved in order that the extant need might be met, provided that transferee is capable of performing the service authorized by the certificate at issue. Cavalier Corp. v. Diamond Transfer, Supra at 653.

In Case No. AP-89-34 the evidence shows that, despite the service obligation inherent in every certificate of public convenience and necessity, Ms. Moore has refrained from conducting operations pursuant to WMATC Certificate No. 91 since July 1988. Having sold her revenue vehicle, let her insurance lapse, and moved from the area, Ms. Moore is no longer capable of conducting operations under the certificate. Moreover, Ms. Moore testified that she does not intend to conduct any operations under the certificate in the future. Under these circumstances the Commission finds that WMATC Certificate No. 91 is dormant. Thus, it becomes necessary for the Commission to examine protestant's evidence for the purpose of deciding whether protestant has met its burden of rebutting the presumption of continuance.

The Supreme Court agrees that "[a]ny substantial interruption of one carrier's service tends to result in expansion of other facilities to meet the continuing needs of shippers and thus to cause overcrowding if the suspended service is resumed." Greg Cartage and Storage Co. v. United States, 42 F. Supp. 266 (N.D. Ohio 1941), aff'd 316 U.S. 74 (1942). Protestant testified that sufficient service of the limited scope encompassed by WMATC Certificate No. 91 exists and that, in the most recent tourist season, fewer members of the traveling public required that service than previously. This testimony stands un rebutted. In light of this evidence, the Commission is unable to find that the transfer of WMATC Certificate No. 91 is justified as being consistent with the public interest. The application to transfer will be denied.

It is noted that the evidence presented in Case No. AP-89-34 strongly suggests that the authority contained in WMATC Certificate No. 91 is not well matched with the operations Mr. Joseph wants to conduct. Further, although we do not reach the issue of transferee's operational fitness, a preliminary review of the evidence adduced by transferee indicates that the Commission might not have found the record sufficient to support a finding that transferee was fit,

capable, and willing to provide adequate and proper service under the transferred certificate. Denial of this transfer application in no way prejudices Mr. Joseph's right to file an application for a certificate.

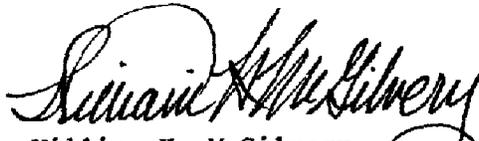
This brings us to the issues raised by Case No. MP-89-05 regarding revocation of WMATC Certificate No. 91. Based on a thorough review of the evidence in these consolidated cases, the Commission finds that WMATC Certificate No. 91 should be revoked. Ms. Moore has not maintained insurance as required by the Compact and lawful Commission regulations since June 18, 1989. Moreover, Ms. Moore, by her own testimony, has made clear that she does not intend to renew that insurance. Thus, pursuant to the authority of the Compact, Title II, Article XII, Section 4(g), Certificate of Public Convenience and Necessity No. 91 will be revoked for failure to maintain adequate security for the protection of the public as required by the Compact, Title II, Article XII, Section 9(a) and Commission Regulation No. 62.

THEREFORE, IT IS ORDERED:

1. That the application of Lucille R. Moore trading as Traveline Tours to transfer WMATC Certificate No. 91 to Sam H. Joseph is hereby denied in its entirety.

2. That WMATC Certificate No. 91 is hereby revoked.

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

  
William H. McGilvery  
Executive Director