

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3674

IN THE MATTER OF:

Served April 12, 1991

Application of WINTER GROWTH, INC.,)
for a Certificate Authorizing)
Charter Operations)

Case No. AP-90-37

By application filed August 28, 1990, Winter Growth, Inc. (Winter Growth or applicant), seeks a certificate to transport transportation-disadvantaged passengers in round-trip charter operations from points in Montgomery County, MD, to points in the Metropolitan District and return.

Pursuant to Order No. 3555, served September 14, 1990, and incorporated herein by reference, a public hearing on the matter was held October 23, 1990. The sole witness at hearing was applicant's representative. The matter is unopposed.

At hearing applicant, through its representative, introduced six exhibits. Applicant's representative failed to move any of the exhibits into evidence during the hearing. On November 14, 1990, applicant by letter addressed to the Commission's "hearing officer" requested that these exhibits be moved into evidence. Exhibit Nos. 1 (a pamphlet about Winter Growth's adult daycare centers), 2 (Winter Growth's organizational chart), 3 ("Responsibilities of the Director Transportation and Maintenance Services"), 4 ("Responsibilities of Drivers"), and 6 (Winter Growth FY1990 Annual Report) are hereby admitted. Exhibit No. 5, a notarized letter of public support, will be filed in the correspondence file inasmuch as the author of the letter was not available either to sponsor the exhibit or for cross-examination.

SUMMARY OF EVIDENCE

Ms. Marge Burba Babbit, applicant's Executive Director and President, testified on Winter Growth's behalf. Winter Growth is a nonprofit organization, incorporated in Maryland in 1979. Its goal is to provide such services to health-impaired older adults as are needed to allow them to remain in the community, thereby avoiding institutional placements. To this end, Winter Growth offers adult medical daycare, provides assisted housing for the elderly, conducts support groups for families caring for elderly persons in their homes, and provides overnight respite care. Winter Growth's clients are persons who might be found in intermediate-level nursing homes. In Ms. Burba Babbit's opinion such persons sometimes are forced into nursing homes due to lack of transportation to frequent medical appointments; others live marginally in their own homes also due to lack of specialized

transportation. According to its representative, Winter Growth needs but has not been able to find a transportation service for these clients that includes care-giving in the process of transportation. It is this transportation that Winter Growth here seeks authority to provide.

The proposed service would be offered in five vehicles. The vehicles include one 1988 mini-van with a manufacturer's designed seating capacity of eight passengers, one 1987 16-passenger van, and three vans especially equipped with raised roofs, hydraulic lifts, low steps, and wheelchair locks and tie-downs. The vehicles equipped to transport wheelchair-bound persons are as follows: one 1989 vehicle permanently modified to seat eight ambulatory passengers and two wheelchair-bound passengers (excluding the driver), one 1989 and one 1990 vehicle permanently modified to seat 10 ambulatory and two wheelchair-bound passengers (excluding the driver). Winter Growth plans to replace the vehicles every six years. Preventive maintenance will be handled by Winter Growth's own mechanic on a 3,000 mile schedule. Major repairs will be performed at an outside facility. Winter Growth's drivers must be at least 20 years old and demonstrate over a two-day period that they can manage both the vehicles and the passengers safely. Drivers are given an initial orientation regarding the vehicle, its specialized equipment, and their duties. Training is offered to Winter Growth's staff as a whole, and drivers participate in sessions relevant to their duties. The drivers' supervisor conducts spot checks of drivers, and families of Winter Growth's clients observe its operations closely.

With its application Winter Growth submitted a balance sheet as of March 31, 1990, showing current assets of \$143,481.29 and fixed assets of \$874,436.52. Current liabilities of \$118,298.69, long-term liabilities of \$340,000, and "resources" in lieu of equity of \$559,619.12 are listed. Winter Growth's operating statement for the period July 1, 1988, to June 30, 1989, lists revenue of \$717,624.17 and expenses of \$680,468.69. At hearing applicant's representative introduced a balance sheet as of June 30, 1990, showing current assets of \$186,501.34 and fixed assets, after allowance for depreciation, of \$889,985.86. Current liabilities of \$103,182.01, long-term liabilities of \$387,778.66, and "resources" in lieu of equity of \$585,526.53 were listed. Winter Growth's operating statement for the period July 1, 1989, through June 30, 1990, also introduced at hearing, lists revenue of \$805,943.77 and expenses of \$796,228.92. During the first 12 months of operations as proposed, applicant expects to generate \$46,320 in operating revenue and to incur \$45,343 in operating expenses.

Ms. Burba Babbit testified that she is familiar with the Commission's rules and regulations, including its safety regulations, and intends to comply with them.

Applicant's representative further testified that Winter Growth gets requests for the proposed service from physicians and hospitals that see a need for it. No public witnesses appeared in support of the application.

DISCUSSION AND CONCLUSIONS

This case was filed August 28, 1990. At the time of filing, the case was governed by the Compact, Title II, Article XII, Section 4(b) which required that an applicant for a Certificate of Public Convenience and Necessity prove at hearing held upon reasonable notice (1) that applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission thereunder and (2) that such transportation is or will be required by the public convenience and necessity. Under this standard, the Commission would have been obliged to deny Winter Growth's application due to lack of evidence on which to base a finding that the public convenience and necessity require the proposed transportation.

On February 1, 1991, certain amendments to the Compact became effective. Where irregular route service such as charter or special operations are at issue, certificates are required to be coextensive with the Metropolitan District. In order to obtain a new Certificate of Authority, an applicant is required to prove (1) that it is fit, willing, and able to perform transportation properly and conform to the provisions of the Compact and the rules, regulations, and requirements of the Commission thereunder and (2) that the proposed transportation is consistent with the public interest. See Compact, Title II, Article XI, Section 7.

These current standards are somewhat different from those in effect at the time this application was filed, the hearing conducted, and the record closed. While the provisions of the amended Compact are not retroactive, we see no absolute necessity in this situation to apply and adhere to the stricter standards previously imposed. For example, if the Commission were to deny this application under the public convenience and necessity standard, applicant would be entitled to file another application and have it considered under the new standard of consistency with the public interest. Such a process would be wasteful of the time and resources of both the applicant and the Commission. The Commission does not interpret the amendment of the Compact to require such a needless act. The amended Compact, Title II, Article XIV, Section 4 provides that:

A suit, action, or other judicial proceeding commenced prior to the effective date of this Act by or against the Commission is not affected by the enactment of this Act and shall be prosecuted and determined under the law applicable at the time the proceeding was commenced. [Emphasis added.]

This provision applies to judicial proceedings, and the amended Compact contains no parallel provision applying to administrative proceedings. Therefore, the Commission will consider the record in this case in the light of the amended Compact.

After thoroughly reviewing the record in this case, the Commission finds applicant fit operationally, financially, and as to compliance. Winter Growth will operate five relatively new vehicles, three of which are specially equipped to transport nonambulatory persons. The vehicles will be regularly inspected and maintained. Arrangements have been made for repairs, back-up service, and vehicle replacement. Drivers appear to meet certain minimum requirements and are closely supervised. Winter Growth has a well-developed business plan that would allow it to provide service to its daycare programs and use vehicles for the additional charter transportation that it proposes. Although a small nonprofit entity, Winter Growth appears to be a financially healthy organization capable of instituting service in compliance with the Commission's rules and regulations including its insurance regulations. Winter Growth's representative is familiar with the Commission's rules and regulations and willing to assure Winter Growth's compliance with them.

The Commission further finds that the transportation proposed by this application is consistent with the public interest. The record indicates that ready availability of such transportation for the elderly might not only enrich the lives of Winter Growth's client population but also would enable some clients to continue to live in the community rather than in a nursing home.

THEREFORE, IT IS ORDERED:

1. That the application of Winter Growth, Inc., for a Certificate of Public Convenience and Necessity is hereby denied in its entirety as moot.
2. That Winter Growth, Inc., is hereby conditionally granted, contingent upon timely compliance with the requirements of this order, a Certificate of Authority pursuant to the Compact, Title II, Article XI, Section 7 to transport passengers in irregular route operations between points in the Metropolitan District.
3. That Winter Growth, Inc., is hereby directed, within 30 days of the date of this order or such additional time as the Commission may direct or allow, to (a) acquire and file evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 3623; (b) file five copies of its tariff(s) in accordance with Commission Regulation No. 55; (c) file an equipment list stating the make, model, serial number, vehicle number, license plate number (with jurisdiction), and seating capacity of each vehicle to be used in revenue operations in the Metropolitan District; (d) file, for each vehicle to be used in revenue operations in the Metropolitan District, evidence of ownership or lease as required by Commission Regulation No. 62; and (e) file its official business address as discussed in Commission Regulation No. 68; and (f) file an affidavit of identification of vehicles pursuant to Commission Regulation No. 61 for which purpose WMATC No. 178 is hereby assigned.

4. That, upon compliance with the requirements of the preceding paragraph, Certificate of Authority No. 178 will be issued to Winter Growth, 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

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

CERTIFICATE OF AUTHORITY

NO. 178

Winter Growth, Inc.
Post Office Box 186
Sandy Spring, Maryland 20860

By Order No. 3674 of the Washington Metropolitan Area Transit Commission issued April 12, 1991;

WHEREAS, the above-named carrier is entitled to receive authority to transport passengers within the Washington Metropolitan Area Transit District;

THIS CERTIFICATE OF AUTHORITY is hereby issued to the said carrier as evidence of the authority to engage in the for-hire transportation of passengers 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 granted to the said carrier:

IRREGULAR ROUTES, transporting passengers between points in the Washington Metropolitan Area Transit District;

RESTRICTED TO operations conducted according to the said carrier's applicable tariff on file with the Commission; and

RESTRICTED AGAINST (1) transportation solely within the Commonwealth of Virginia and (2) any passenger transportation for hire on an individual fare paying basis in competition with any existing, scheduled, regular-route, passenger transportation service performed by, or under a contract with, the Federal Government, a signatory to the Compact, a political subdivision of a signatory, or the Washington Metropolitan Area Transit Authority.

THIS CERTIFICATE OF AUTHORITY DOES NOT AUTHORIZE ANY TRANSPORTATION BY ANY PERSON OTHER THAN THE CARRIER NAMED HEREON.

THIS CERTIFICATE OF AUTHORITY IS NOT VALID UNLESS THE CARRIER NAMED HEREON IS IN COMPLIANCE WITH THE INSURANCE REQUIREMENTS OF THE COMMISSION.

CERTIFICATE OF AUTHORITY NO. 178
Winter Growth, Inc.
Page two

IT IS A FURTHER CONDITION of this certificate of authority that the carrier named hereon shall (a) provide safe and adequate transportation service, equipment, and facilities and (b) observe and enforce Commission regulations.