

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5053

IN THE MATTER OF:

Served April 2, 1997

Application of OLD TOWN TROLLEY )  
TOURS OF WASHINGTON, INC., and )  
D.C. DUCKS, INC., for Approval )  
and Temporary Approval Pursuant )  
to the Compact, Article XIII, )  
Section 3 )

Case No. AP-96-44

Old Town's application for Commission approval to operate the property of D.C. Ducks was conditionally granted on September 25, 1996, in Order No. 4941, which followed a conditional grant of temporary approval on September 17, 1996, in Order No. 4932. Each order prescribed a thirty-day deadline for complying with the stated conditions, which in the case of Order No. 4941 included the filing of a tariff, an equipment list, evidence of ownership or lease, proof of safety inspection and an affidavit of compliance with Commission Regulation No. 61. By motion filed March 21, 1997, Old Town requests an extension of the compliance deadline in Order No. 4941 until April 23, 1997, but is constrained by Commission Regulation No. 66, which provides:

The time for compliance with the requirements for a conditional grant of authority will not be extended beyond a maximum of 180 days from the date the conditional grant of authority is issued. Such conditional grant of authority shall be considered void effective on the 181st day.

Under Regulation No. 66, Old Town's time for complying with Order No. 4941 ran out on March 24, 1997. Old Town moves for waiver of Regulation No. 66.

In support of its motion, and in partial compliance with Order No. 4941, Old Town has submitted a tariff, a two-vehicle equipment list and evidence of ownership of the two vehicles. According to Old Town, the additional time requested for complying with Order No. 4941 is necessary for completing the safety inspection of these vehicles, which has been delayed due to ongoing renovations commenced during the off-season. Old Town expects these vehicles will pass inspection and be marked in accordance with Regulation No. 61 by April 23.

The Commission may waive a regulation for good cause shown.<sup>1</sup> We find that Old Town has shown good cause for extending the filing

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<sup>1</sup> In re Diplomat Limo. & Livery Serv., Inc., No. MP-95-72, Order No. 4635 (July 18, 1995); see In re DD Enters., Inc., t/a Beltway Transp. Serv., No. MP-94-05, Order No. 4262 (Mar. 25, 1994) (waiving tariff regulation for good cause shown).

deadline under Order No. 4941 until April 23. The purposes underlying Regulation No. 66 are two-fold. First, it prevents the issuance of operating authority at a time when the fitness finding has become stale. Second, it ensures closure. Those purposes will not be defeated by granting a waiver in the instant case. As an existing carrier conducting extensive day-to-day operations in the Metropolitan District, Old Town is presumptively fit.<sup>2</sup> Given Old Town's partial compliance, closure appears imminent.

For the reasons discussed below, the grant of waiver is subject to two conditions: payment of a \$500 civil forfeiture and the filing of additional documents.

During the course of explaining why it has taken longer than six months to comply with Order No. 4941, Old Town disclosed that it operated one or two of the vehicles in question "for a short period of time after being granted temporary authority to operate the property [equipment] of D.C. Ducks by Order No. 4932, served September 17, 1996." Order No. 4932 expressly stated that temporary approval would not be effective until Old Town filed a tariff and an affidavit of compliance with Regulation No. 61 -- simple requirements that Old Town should have easily met, but did not even attempt, prior to operating the vehicles under D.C. Ducks' name.<sup>3</sup> We will, therefore, assess a civil forfeiture of \$500 under Article XIII, Section 6, of the Compact for Old Town's knowing and willful operation of D.C. Ducks' vehicles without Commission approval.<sup>4</sup>

Old Town says it has purchased two vehicles. According to the lease agreement with D.C. Ducks' affiliate, U.S. Ducks, Old Town had the option to purchase "not less than all" of the vehicles covered by the lease.<sup>5</sup> The lease agreement lists seventeen vehicles. Four of the vehicles are described in the lease as "junkers." Nine are described as being in various states of disrepair. Three are described as "operational," and one is described as "parade ready." Old Town will be directed to file an equipment list containing all seventeen vehicles. In addition to the information required by Order No. 4941, the list shall indicate each vehicle's operational status and which

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<sup>2</sup> In re Regency Servs., Inc., & Carey Limo. D.C., Inc., No. AP-95-39, Order No. 4689 (Nov. 2, 1995).

<sup>3</sup> The time for compliance with Order No. 4932 expired March 16, 1997. See In re Beltway Limo. Serv., Inc., & DD Enters., Inc., No. AP-86-08, Order No. 2903 (Sept. 5, 1986) (Commission may not grant request for temporary approval in excess of statutory 180-day period).

<sup>4</sup> See In re Carey Limo. D.C., Inc., & ADV Int'l Corp., t/a Moran Limo. Serv., No. AP-94-53, Order No. 4499 (Feb. 16, 1995) (WMATC carrier assessed \$500 civil forfeiture for operating property of other WMATC carrier without Commission approval).

<sup>5</sup> The lease agreement between Old Town and U.S. Ducks is an integral part of the license agreement between Old Town and D.C. Ducks. Exercise of the purchase option under the license agreement is dependent on exercise of the purchase option under the lease agreement.

vehicles Old Town intends to operate in the Metropolitan District. With respect to nonoperational vehicles, Old Town need not produce proof of ownership, safety inspection or compliance with Regulation No. 61, at this time. Old Town shall file such information, however, with respect to any nonoperational vehicle which becomes operational at a later date, prior to operating it in the Metropolitan District.

THEREFORE, IT IS ORDERED:

1. That Old Town shall comply with Order No. 4941 on or before April 23, 1997.

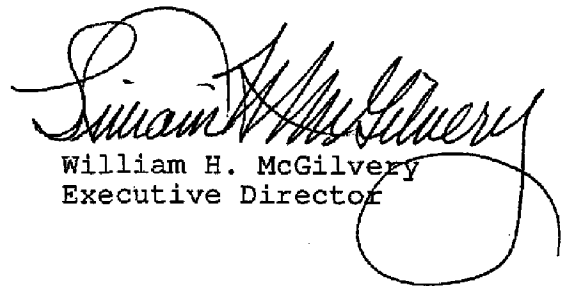
2. That the equipment list required by Order No. 4941 shall be notarized, shall cover all vehicles acquired from U.S. Ducks, and, in addition to the information required by Order No. 4941, shall indicate each vehicle's operational status and which vehicles Old Town intends to operate in the Metropolitan District.

3. That the Commission hereby assesses a civil forfeiture against Old Town in the amount of \$500, for knowing and willful violation of the Compact, and that Old Town is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of five hundred dollars (\$500).

4. That Old Town may not conduct operations pursuant to Order No. 4941 unless and until it has complied with the requirements of this order.

5. That if Old Town fails to timely comply with the requirements of this order, the approval granted in Order No. 4941 shall be void and the application shall stand denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:

  
William H. McGilvery  
Executive Director