

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5575

IN THE MATTER OF:

Served April 7, 1999

Investigation of Unauthorized )  
Operations of CHARLES B. MAINOR, )  
Trading as MAINOR'S BUS SERVICE )

Case No. MP-98-69

Application of CHARLES BURNEY )  
MAINOR, Trading as MAINOR'S BUS )  
SERVICE, for a Certificate of )  
Authority -- Irregular Route )  
Operations )

Case No. AP-99-04

On December 1, 1998, the Commission initiated an investigation into the operations of Charles B. Mainor, trading as Mainor's Bus Service, after receiving a certificate of insurance bearing respondent's trade name and address and after a preliminary investigation by staff confirmed that respondent was holding himself out to transport passengers for hire in the Metropolitan District.

Order No. 5475 directed respondent to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission. The order also directed respondent to produce any and all documents within respondent's possession, custody or control relating to the transportation of passengers for hire between points in the Metropolitan District during the period beginning January 1, 1998, and ending December 31, 1998, the date Order No. 5475 was issued.

Respondent cooperated by timely producing the documents specified in Order No. 5475. At the same time, respondent filed an application for a certificate of authority. The two proceedings are being consolidated because the question of whether Mr. Mainor has transported passengers for hire in violation of the Compact is relevant to a determination of whether he is fit to receive a WMATC certificate of authority.

I. The Investigation

Article XI, Section 6, of the Compact provides that a person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation. Article XI, Section 1, of the Compact states that the Compact applies to transportation of passengers for hire between points in the Metropolitan District.

According to respondent's records, respondent transported passengers for hire between points in the Metropolitan District on 108 separate occasions during the period in question. Of those 108 trips, 102 involved transportation of grade-school students to and from

school ("school bus transportation"). Article XI, Section 3(d), of the Compact excludes school bus transportation from our jurisdiction when it is performed in a vehicle used solely for that purpose. The Compact does not exclude school bus transportation from our jurisdiction when it is performed in a vehicle used for other purposes on other occasions.<sup>1</sup>

It is presumed that a carrier does not partition its fleet into exempt and non-exempt operations.<sup>2</sup> This places the burden on respondent to come forward with evidence to the contrary. Respondent has produced no evidence rebutting this presumption. Accordingly, we find that respondent performed the 102 school bus trips in the same vehicle or vehicles used for the six non-school bus trips and that, inasmuch as respondent has never possessed operating authority from this Commission, respondent performed all 108 trips inside the Metropolitan District in violation of the Compact.

Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>3</sup> The term "willfully" does not mean with evil purpose or criminal intent but purposely or obstinately, with intentional disregard or plain indifference.<sup>4</sup>

Respondent has filed an affidavit under oath stating that he has held operating rights from the Interstate Commerce Commission (ICC) since 1983.<sup>5</sup> He further states that he was unaware that a WMATC certificate might be required to conduct school bus transportation in the Metropolitan District. Under ICC precedent, all school bus transportation is considered exempt -- even school bus transportation performed in a vehicle used for other purposes at other times.<sup>6</sup> Under the circumstances, we cannot say that respondent acted with

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<sup>1</sup> In re Laidlaw Transit (Virginia) Inc., & Williams Bus Lines, Inc., No. AP-96-46, Order No. 4918 (Sept. 3, 1996).

<sup>2</sup> Id.

<sup>3</sup> In re Bill Appell, t/a Personal Pace Tours/Tech Tours Wash., No. MP-95-18, Order No. 4762 (Feb. 8, 1996); In re Mustang Tours, Inc., No. MP-93-42, Order No. 4224 (Dec. 15, 1993).

<sup>4</sup> Order No. 4762; Order No. 4224.

<sup>5</sup> The ICC was abolished as of January 1, 1996, by the ICC Termination Act of 1995. Pub. L. No. 104-88, 109 Stat. 803 (1995). The Act transferred jurisdiction over motor carriers to the United States Department of Transportation (DOT). DOT's statute recognizes the continuing validity of operating rights issued by the ICC. 49 U.S.C. § 13905(a).

<sup>6</sup> In re Vehicles Employed Solely in Transporting Schoolchildren & Teachers, 113 M.C.C. 258 (May 4, 1971). The exemption for school bus transportation survives under DOT's statute. 49 U.S.C. § 13506(a)(1).

intentional disregard or plain indifference when he conducted school bus transportation in the Metropolitan District.

There is nothing in the record, however, indicating that applicant was unaware of our jurisdiction while he was performing non-school bus transportation in the Metropolitan District. On the contrary, the record shows that Commission staff sent respondent an application form and follow up letter in March of 1993, thereby putting respondent on notice of our jurisdiction over non-school bus transportation in the Metropolitan District and placing the onus on respondent to bring his operations into compliance. We therefore find respondent acted with intentional disregard or plain indifference as to the non-school bus trips in the Metropolitan District.

We will assess a civil forfeiture against respondent in the amount of \$250 per day<sup>7</sup> for 6 days, for a total of \$1,500. We will suspend all but \$100 in recognition of respondent's cooperation with our investigation and the relatively insignificant number of non-school bus trips inside the Metropolitan District. Failure to pay the net forfeiture in a timely fashion shall result in reinstatement of the full \$1,500.

## II. The Application

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.<sup>8</sup>

Applicant proposes commencing operations with three motorcoaches. Applicant's proposed tariff contains an hourly charter rate with a minimum charge.

Applicant filed a statement of net worth as of December 4, 1998, showing assets of \$39,617; liabilities of \$22,000; and net worth of \$17,617. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC operating income of \$8,500; other operating income of \$70,800; expenses of \$71,492; and net income of \$7,808.

Although applicant certifies he has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder, when an applicant has a record of violations, the Commission considers the following factors in assessing the

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<sup>7</sup> See Order No. 4762 (penalty for operating without authority assessed at \$250 per day); Order No. 4224 (same).

<sup>8</sup> In re William J. Appell, t/a Tech Tours, No. AP-96-01, Order No. 4830 (May 8, 1996); Order No. 4224.

likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>9</sup>

Operating without authority is a serious violation, and we find no mitigating circumstances as to the six non-school bus trips inside the Metropolitan District. On the other hand, given our finding that the overwhelming majority of applicant's violations were not willful, we cannot characterize applicant's conduct as flagrant and persistent. Payment of the forfeiture assessed herein will serve to correct applicant's past mistakes.<sup>10</sup>

On balance, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission, subject to applicant paying the civil forfeiture assessed herein in a timely fashion.

THEREFORE, IT IS ORDERED:

1. That Case Nos. MP-98-69 and AP-99-04 are hereby consolidated.

2. That Certificate of Authority No. 463 shall be issued to Charles Burney Mainor, trading as Mainor's Bus Service, 3226 Georgia Avenue, N.W., Washington, DC 20010, upon applicant's timely compliance with the following conditions:

a. Applicant shall pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of one hundred dollars (\$100), for knowing and willful violations of the Compact.

b. Applicant shall file with the Commission within thirty days of the date of this order: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

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<sup>9</sup> Order No. 4830; Order No. 4224.

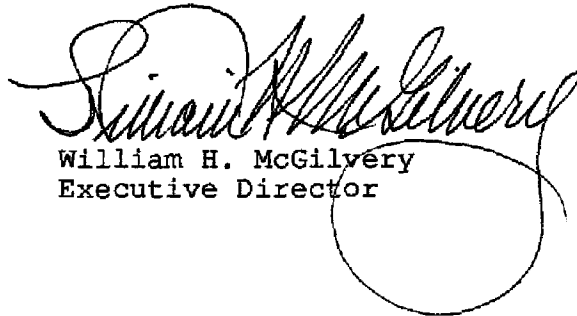
<sup>10</sup> Order No. 4830; Order No. 4224.

3. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

4. That the full civil forfeiture of \$1,500 shall stand reinstated and become immediately due and payable upon applicant's failure to timely pay the net forfeiture of \$100.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

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



William H. McGilvery  
Executive Director