

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7511

IN THE MATTER OF:

Served November 5, 2003

Application of PRIME)
TRANSPORTATION SERVICES, INC.,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2002-92

This matter is before the Commission on applicant's request for reconsideration of the voiding of authority conditionally granted to applicant in Commission Order No. 6920, served December 3, 2002, and request for waiver of Commission Regulation No. 61.

I. RECONSIDERATION

Commission Regulation No. 66 provides that: "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." As of June 1, 2003, applicant had not fully complied with the condition in Order No. 6920 that applicant file certain documents. Accordingly, the conditional grant became void on June 2, 2003.

Under Article XIII, Section 4(a), a party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration. Although publication of a final decision is normally accomplished by issuing an order, the voiding of a conditional grant occurs automatically by application of Regulation No. 66. There is no tangible utterance other than the rule itself. Deeming publication to occur on the 181st day, when an applicant knows or should know that the Commission now considers the conditional grant void, is reasonable under the circumstances.¹

Respondent timely filed an application for reconsideration on June 27, 2003, but the application does not allege any error on the part of the Commission. The application therefore is denied.²

However, considering that applicant has substantially satisfied the condition of issuance prescribed in Order No. 6920 — except to the extent that three of applicant's ten vehicles have not been cleared for

¹ In re Life Stride, Inc., No. AP-02-98, Order No. 7235 (June 11, 2003); In re Boone-McNair Transp., LLC, No. AP-02-66, Order No. 7063 (Mar. 4, 2003).

² The application is deemed denied pursuant to Article XIII, Section 4(c), of the Compact, in any event, inasmuch as this order was not issued within thirty days of the application filing date.

operation in the Metropolitan District, as more fully explained below -- we will reopen this proceeding on our own initiative³ and issue Certificate of Authority No. 749.⁴

II. REGULATION NO. 61 WAIVER

Commission Regulation No. 61 requires each WMATC carrier to display its name and WMATC number on both sides of each vehicle used in WMATC operations. Applicant has requested that the Commission waive the application of Regulation No. 61 with respect to three four-passenger sedans, a twelve-passenger limousine, and two twenty-passenger "limousine lounges" on the ground that such markings would "detract from the aesthetic appeal of these vehicles."

The markings required by Regulation No. 61 help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority. Such markings facilitate the processing of customer complaints, as well. The Federal Motor Carrier Safety Administration (FMCSA) has this to say on the importance of vehicle markings.

The FMCSA believes it is important that [vehicles] be properly marked before they are placed into service on the highway. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct motor carrier. It will also ensure the public has an effective means to identify motor carriers operating in an unsafe manner.

65 Fed. Reg. 35287, 35288 (June 2, 2000).

These purposes must be balanced against other considerations, such as competitive harm. In that regard, the Commission routinely waives the application of Regulation No. 61 with respect to limousines and luxury sedans operated under WMATC authority on the ground that such markings likely would adversely affect the ability of WMATC carriers operating such vehicles to compete with their non-WMATC rivals, who operate in the Metropolitan District under an exclusion in the Compact for "other vehicles that perform a bona fide taxicab service,"⁵ as that term is defined in Commission Regulation No. 51-09.

Limousines and sedans meeting the definition in Regulation No. 51-09 operate in the Metropolitan District under passenger carrier authority issued by state and local agencies,⁶ which generally do not require such vehicles to be marked in the manner prescribed by Regulation No. 61. Potential customers for limousine and luxury sedan services understandably might find such markings unattractive and

³ Commission Rule No. 26-04.

⁴ See Order No. 7235 (proceeding reopened to issue certificate of authority); Order No. 7063 (same).

⁵ Compact, tit. II, art. XI, §§ 1(b) & 3(f).

⁶ See In re Title II, Art. XII, § 1(c) of the Compact, No. MP-83-01, Order No. 2559 (May 24, 1984) (interstate rates for travel in "other vehicles" must conform to rates specified by licensing jurisdiction).

obtrusive, putting WMATC limousine and sedan operators who comply with Regulation No. 61 at a competitive disadvantage.

The definition in Regulation No. 51-09, however, does not apply to vehicles that seat more than eight passengers in addition to the driver.⁷ The competitive harm rationale, therefore, would not justify waiving Regulation No. 61 as to the twelve-passenger limousine and the twenty-passenger "limousine lounges."

In addition, we note that applicant holds passenger carrier authority from the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA).⁸ The FMCSA has adopted vehicle marking requirements that in the case of the twenty-passenger "limousine lounges" are the same as ours and in the case of the twelve-passenger limousine are similar to ours.⁹ Hence, applicant already is under a duty to identify these vehicles with the kind of markings contemplated in Regulation No. 61.

Indeed, the FMCSA squarely addressed this issue during the rulemaking that produced the current FMCSA marking requirements for locally operated 9-15 passenger vehicles.¹⁰ The International Taxicab and Livery Association requested that limousines and other "luxury-type passenger service" vehicles carrying 9 to 15 passengers be exempted from vehicle marking requirements on the ground that such markings "would appear to serve no useful safety purpose, but would diminish or eliminate the 'luxury' nature of the service provided by unnecessarily marking the vehicles in question."¹¹ The National Automobile Dealers Association similarly requested an exemption for 9-15 passenger limousines used by funeral homes on the ground that vehicle markings on such vehicles would be "undignified."¹² The FMCSA, however, determined that requiring 9-15 passenger limousines to display a carrier's USDOT number -- but not the carrier's name and address -- would aid in the processing of complaints against unsafe carriers "without being a visual annoyance to clients and customers."¹³

Applicant was presented with an opportunity to comment on the FMCSA vehicle marking requirements but did not respond. However, the Commission would entertain a motion in the future for partial waiver of Regulation No. 61 with respect to vehicles seating 10-15 persons

⁷ Regulation No. 51-09(e); see also Compact, tit. II, art. XI, §§ 1(b)(i) & 3(f) (exclusion confined to vehicles with seating capacity of 9 persons or less, including driver).

⁸ Applicant has been assigned USDOT No. 966253.

⁹ See 49 C.F.R. 390.21 (prescribing name and number markings for vehicles seating 16 persons or more, including driver); 49 C.F.R. 390.3(f)(6) (prescribing number markings for vehicles designed or used to transport between 9 to 15 passengers, including driver).

¹⁰ See 66 Fed. Reg. 2,755 (Jan. 11, 2001). Certain 9-15 passenger vehicles operated beyond a 75 air-mile radius, however, must meet the same requirements as those for motorcoaches effective November 10, 2003. 68 Fed. Reg. 47,860 (Aug. 12, 2003).

¹¹ 66 Fed. Reg. 2,760.

¹² Id.

¹³ Id. at 2,762.

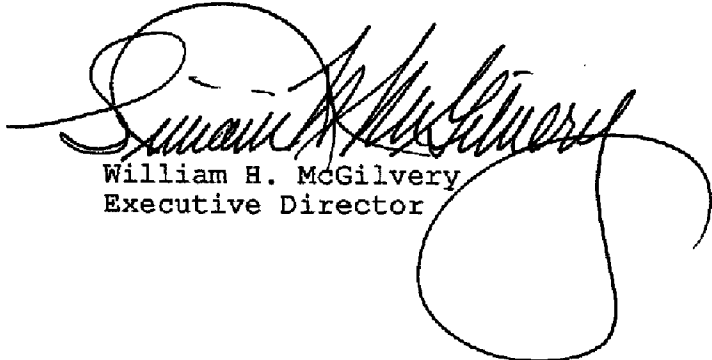
including the driver consistent with the FMCSA's number-only requirement for vehicles in that size range.

Therefore, we will waive the application of Regulation No. 61 as to the four-passenger sedans but not the twelve-passenger limousine and not the twenty-passenger "limousine lounges."

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration is denied.
2. That pursuant to Commission Rule No. 26-04 this proceeding is reopened, and Certificate of Authority No. 749 shall be issued to Prime Transportation Services, Inc., 6815 Coolridge Drive, Camp Springs, MD 20748.
3. That Regulation No. 61 is waived with respect to applicant's four-passenger sedans, as shall be duly noted in a standard waiver letter, a copy of which shall be retained by applicant in each such vehicle at all times for display upon request by the Commission or any federal, state or local government official authorized to inspect vehicles and/or verify operating authority.
4. That applicant shall operate neither the twelve-passenger limousine nor the twenty-passenger "limousine lounges" under Certificate No. 749 unless and until they pass inspection, as verified in writing by Commission staff.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER AND MCDONALD:



William H. McGilvery
Executive Director