

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7512

IN THE MATTER OF:

Served November 5, 2003

Application of ESCORT LIMOUSINE )  
SERVICE, INC., for a Certificate )  
of Authority -- Irregular Route )  
Operations )

Case No. AP-2003-48

This matter is before the Commission on applicant's request for waiver of Commission Regulation No. 61.

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 the three vehicles it proposes operating under Certificate No. 815 -- a Mercedes Benz with a seating capacity of 12 and two Lincolns with a seating capacity of 14 each -- on the ground that marking the vehicles as required would detract from their appearance.

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,"<sup>1</sup> as that term is defined in Commission Regulation No. 51-09.

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<sup>1</sup> Compact, tit. II, art. XI, §§ 1(b) & 3(f).

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,<sup>2</sup> 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 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.<sup>3</sup> The competitive harm rationale, therefore, would not justify waiving Regulation No. 61 as to the three vehicles applicant proposes operating under Certificate No. 815.

In addition, we note that applicant advertises service to New York and Atlantic City. Federal law requires that carriers operating vehicles designed or used to transport 9 to 15 passengers in interstate commerce obtain a USDOT number and display that number on both sides of each such vehicle.<sup>4</sup> Effective November 10, 2003, 9-15 passenger vehicles operated beyond a 75 air-mile radius for direct compensation must meet the same requirements as those prescribed for motorcoaches,<sup>5</sup> which at a minimum mandate display of the carrier's name, as well as its number.<sup>6</sup> Hence, applicant already is under a duty to identify its 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.<sup>7</sup> 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."<sup>8</sup> 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."<sup>9</sup> The FMCSA,

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<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 49 C.F.R. 390.3(f)(6).

<sup>5</sup> 68 Fed. Reg. 47,860 (Aug. 12, 2003). To comply, applicant would at a minimum need to display its name, as well as its number. See 49 C.F.R. § 390.21.

<sup>6</sup> See 49 C.F.R. § 390.21.

<sup>7</sup> See 66 Fed. Reg. 2,755 (Jan. 11, 2001).

<sup>8</sup> 66 Fed. Reg. 2,760.

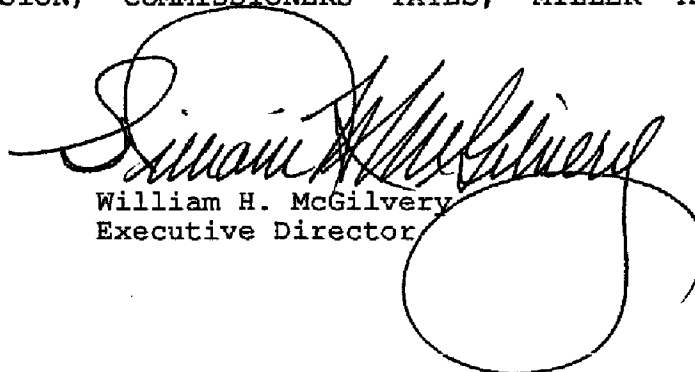
<sup>9</sup> Id.

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."<sup>10</sup>

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

THEREFORE, IT IS ORDERED, that the request for waiver of Regulation No. 61 is denied.

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



William H. McGilvery  
Executive Director

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<sup>10</sup> Id. at 2,762.

