

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7915

IN THE MATTER OF:

Served April 6, 2004

Application of NATIONAL COACH ) Case No. AP-2003-178  
WORKS, INC. OF VIRGINIA, to )  
Acquire Certificate No. 26 from )  
NATIONAL COACH WORKS, INC., and )  
to Acquire and Consolidate Assets )  
from FRANKLIN MOTORCOACH, INC., )  
WMATC No. 6, and TOURTIME AMERICA )  
MOTORCOACH, LTD., WMATC No. 250 )

By application accepted for filing December 12, 2003, applicant, National Coach Works, Inc. of Virginia, a Virginia corporation, seeks Commission approval to acquire Certificate No. 26 from its sole shareholder, National Coach Works, Inc.<sup>1</sup> Applicant also seeks Commission approval to acquire and consolidate the assets, principally motorcoaches, of two of applicant's affiliates, Franklin Motorcoach, Inc., and Tourtime America Motorcoach, Ltd., whose Certificates of Authority Nos. 6 and 250, respectively, were revoked recently for willful failure to comply with the Commission's insurance requirements.<sup>2</sup>

All four carriers are controlled, directly or indirectly, by Frank M. Henry. The Commission has previously approved Mr. Henry's common control of these carriers and Gold Line, Inc., WMATC No. 14,<sup>3</sup>

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<sup>1</sup> Applicant also applied for temporary authority but did not attach a third-party affidavit attesting to an immediate need for service that is not available, as required by the application form. The request for temporary authority is moot in any event inasmuch as we are hereby conditionally approving the transfer of Certificate No. 26. See In re Services International, Inc., t/a S.I. Limousine and Travel, No. AP-98-48, Order No. 5486 (Dec. 15, 1998) (application for temporary authority denied as moot where permanent authority application granted); In re Megaheds, Inc., t/a Megaheds Transp., No. AP-97-24, Order No. 5113 (June 26, 1997) (same).

<sup>2</sup> In re Tourtime America Motorcoach, Ltd., No. MP-03-70, Order No. 7385 (Sept. 9, 2003); In re Franklin Motorcoach, Inc., No. MP-03-67, Order No. 7375 (Aug. 27, 2003).

<sup>3</sup> In re Cavalier Transp. Co., Inc., t/a Tourtime America, Ltd. & Tourtime America Motorcoach, Ltd., No. AP-96-21, Order No. 4926 (Sept. 12, 1996); In re Franklin Charter Bus, Inc., & Franklin Motorcoach, Inc., No. AP-95-02, Order No. 4509 (Mar. 1, 1995); In re Red

which is not a party to the transactions encompassed by this application.

Applicant proposes commencing operations with one minibus and fifty-seven motorcoaches. Applicant's proposed tariff contains transfer rates and hourly/mileage charter rates with minimum charges. The application is unopposed.

The Commission may approve the transfer of a certificate of authority and the acquisition and consolidation of carrier assets if the Commission finds the transfer and acquisition are consistent with the public interest.<sup>4</sup> The public interest analysis focuses on the acquiring party's fitness, the resulting competitive balance and the interests of affected employees.<sup>5</sup>

Competition is not at issue in this case. A transfer of assets from one member of a controlled family to another does not increase the controlling party's market share and thus causes no concern.<sup>6</sup> Further, according to the application, aside from the elimination of a few administrative positions, most employees have not been affected.

As for fitness, applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Based on the evidence in this record, the Commission finds applicant to be fit, willing, and able to perform the proposed transportation properly and to conform with applicable regulatory requirements and, therefore, that the transfer of Certificate No. 26 to applicant and the acquisition and consolidation of carrier assets are consistent with the public interest.

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Top Coach, Inc., & National Coach Works, Inc., No. AP-84-45, Order No. 2692 (Apr. 3, 1985).

<sup>4</sup> Compact, tit. II, art. XI, § 11(a), art. XII, § 3.

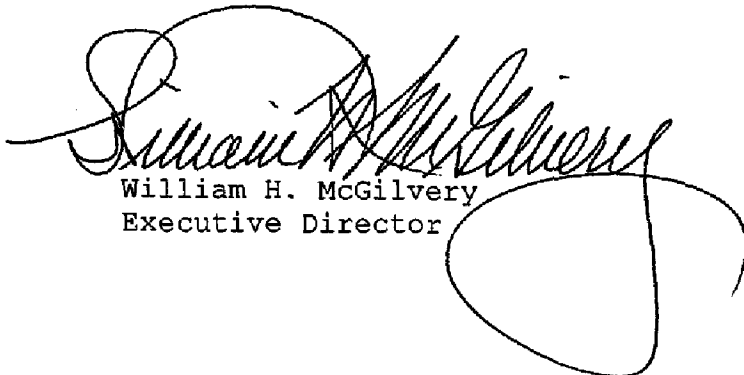
<sup>5</sup> Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at D.C. CODE ANN. § 9-1103.04 (2003)); Order No. 4926.

<sup>6</sup> In re Executive Coach, Ltd., & Executive Sedan Mgmt. Servs., Inc., t/a Washington Car & Driver, No. AP-02-75, Order No. 6797 (Sept. 3, 2002); In re Mobile Care Specialty Transportation, Inc., t/a Mobile Care, & Ironsides Transport, Inc., & Mobile Care, Ltd., No. AP-01-10, Order No. 6178 (Apr. 9, 2001).

THEREFORE, IT IS ORDERED:

1. That the application for temporary authority is denied.
2. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 26 shall be reissued to National Coach Works, Inc. of Virginia, 10411 Hall Industrial Drive, Fredericksburg, VA 22408.
3. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate of Authority No. 26 has been reissued in accordance with the preceding paragraph.
4. That applicant is hereby directed to file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (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) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, 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.
5. That the approval of transfer and consolidation herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of reissuance prescribed herein.

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

  
William H. McGilvery  
Executive Director