

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8043

IN THE MATTER OF:

Served June 1, 2004

Application of JOYRIDE, LLC, for)
a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2004-43

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. Old Town Trolley Tours of Washington, Inc., (Old Town), WMATC Carrier No. 124, has filed a protest in opposition. The protest includes a request for oral hearing in the event we do not require applicant to produce additional evidence of financial fitness. Applicant has filed a reply.

The Compact, Title II, Article XI, Section 7(a), provides that the Commission shall issue a certificate to any qualified applicant, authorizing all or any part of the transportation covered by the application, 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 application for a certificate of authority must be in writing, verified, and in the form and with the information that Commission regulations require.¹ Commission Regulation No. 54 requires applicants to complete and file the Commission's application form. The form itself requires supporting exhibits. The evidence thus submitted must establish a prima facie case of fitness and consistency with the public interest.²

Once applicant has made its prima facie case, the burden shifts to protestant to contravene applicant's showing.³ If the protestant is an existing carrier, the burden is on protestant to show that

¹ Compact, tit. II, art. XI, § 8.

² In re Thomas B. Howell, t/a Presidential Ducks, No. AP-00-07, Order No. 5955 (Aug. 10, 2000); In re Washington Shuttle, Inc., t/a Supershuttle, No. AP-96-13, Order No. 4966 (Nov. 8, 1996); In re Double Decker Bus Tours, W.D.C., Inc., No. AP-95-21, Order No. 4642 (Aug. 9, 1995).

³ Order No. 5955 at 2; Order No. 4966 at 2; Order No. 4642 at 3.

competition from the applicant would adversely affect protestant to such a degree or in such a manner as to be contrary to the public interest.⁴ The protest must be accompanied by all available evidence on which the protestant would rely.⁵

I. APPLICATION

Applicant proposes commencing operations with five buses, including double-decker buses. Applicant's proposed tariff contains individual sightseeing rates.

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.

We find that applicant has complied with Regulation No. 54 and has established thereby a prima facie case of fitness and consistency with the public interest.

II. PROTEST AND REQUEST FOR ORAL HEARING

Old Town opposes the application on both fitness and public interest grounds and requests "an oral hearing . . . with opportunity for discovery and cross-examination of relevant witnesses" in the event we do not order applicant to furnish financial data.

Old Town has filed an identical protest and request for discovery and hearing in the application of City Sightseeing USA Inc. We deny the protest and request for discovery and hearing in this proceeding for the reasons expressed in the order approving City Sightseeing's application.⁶

And for the reasons stated in the City Sightseeing order, we will require additional fitness evidence from applicant as a precondition to the issuance of a certificate of authority, as we do in all applications. That evidence shall consist of proof of

⁴ Order No. 5955 at 2; Order No. 4966 at 2; Order No. 4642 at 3; In re Battle's Transp., Inc., No. AP-85-12, Order No. 2722 (June 20, 1985); see Old Town Trolley Tours of Washington, Inc., v. WMATC, 129 F.3d 201 (D.C. Cir. 1997) (existing carrier has standing to protest unfair competition).

⁵ Commission Regulation No. 54-04(a).

⁶ In re City Sightseeing USA Inc., No. AP-04-39, Order No. 8042 (June 1, 2004).

financial responsibility in the form of a \$5 million WMATC Certificate of Insurance and Policy Endorsement, vehicle safety inspection certificates, copies of the for-hire vehicle registrations and production of vehicles for inspection by Commission staff. We will also require applicant to furnish proof that its initial vehicle operators are properly trained and possess the proper commercial driver's licenses.

Likewise, we will require applicant to file a list of applicant's members with their respective ownership interests and respective interests in the profits of the company, a list of applicant's managers or managing members, and a statement regarding any relationship applicant may have with Double Decker Bus Tours, W.D.C., Inc., and its New York affiliate New York Apple Tours, Inc., including whether either of these companies is the source of applicant's buses. Although Old Town does not accuse applicant of harboring an undisclosed relationship, and while applicant's reply denies any link, still, it would not hurt to have this minimally intrusive disclosure on the record. If there is an undisclosed relationship, this proceeding will still be open for the purpose of taking any action that may be necessary.

III. CONCLUSION

For the foregoing reasons, we deny Old Town's Protest and Request for Hearing and approve the application subject to the conditions specified below.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 932 shall be issued to Joyride, LLC, 5 Stonewall Lane, Mamaroneck, NY 10543.

2. 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.

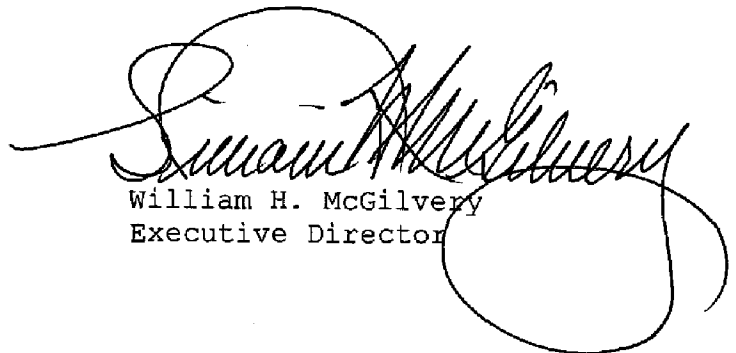
3. That applicant is hereby directed to file the following documents within thirty days: (a) a list of applicant's members with their respective ownership interests and respective interests in the profits of the company; (b) a list of applicant's managers or managing members; and (c) a statement identifying the source of applicant's vehicles and describing applicant's relationship, if any, with Double Decker Bus Tours, W.D.C., Inc., and New York Apple Tours, Inc.

4. That applicant is hereby directed to present its revenue vehicles and 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) for each initial driver, a copy of the driver's Commercial Driver's License and a copy of a Certification of Road Test prepared in accordance with 49 CFR § 391.31, showing administration of the test by applicant in applicant's double-decker vehicles.

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 YATES, MILLER AND MCDONALD:



William H. McGilvery
Executive Director