



STATE OF ALABAMA
PUBLIC SERVICE COMMISSION
P.O. BOX 304260
MONTGOMERY, ALABAMA 36130

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SERVED: May 3, 2017

Nathan Thomas

Exceptions, if any, must be filed with the Secretary, Alabama Public Service Commission, P. O. Box 304260, Montgomery, Alabama 36130, and served on all other parties of interest within 20 days from the date of service shown above, or within such further period as may be authorized for the filing of Exceptions. Replies to Exceptions may be filed within 20 days from the date of service of the Exceptions. At the expiration of the period for filing of Exceptions, the within Report and Recommended Order will become the Report and Order of the Commission unless Exceptions are filed seasonably or the time for filing Exceptions is extended by the Commission, or the Commission, within such period stays or postpones the Order. An **original and four copies** of any Exceptions and Replies should be filed.

BBM MOBILITY TRANSPORT, LLC,

DOCKET 32626

Applicant

REPORT AND RECOMMENDED ORDER

I. INTRODUCTION AND BACKGROUND

By application filed on or about February 10, 2017, BBM Mobility Transport, LLC ("BBM Mobility" or "Applicant"), 864 County Road 152, Jemison, Alabama 35085 (178 Carronbridge Way, Franklin, Tennessee 37067), sought to institute a new operation as a common carrier by motor vehicle in intrastate commerce over irregular routes in the transportation of passengers in non-emergency transportation service between all points in Chilton, Shelby, and Jefferson Counties.

Pursuant to notice dated March 7, 2017, the application of BBM Mobility was set for hearing and heard on March 30, 2017. The Commission received a notice of protest to the application of BBM Mobility from Medical Transport of Alabama LLC ("MTA"). MTA appeared at the hearing on March 7, 2017 to

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further its protest; however, MTA withdrew its protest because it did not have a witness available to testify at the hearing.

II. SUMMARY OF THE RECORD

Mr. Ron Erickson, the representative for BBM Mobility, proceeding pro se, offered a presentation in support of his application. He indicated that BBM Mobility has been in operation for three years, admitting that his company had been operating without authority from the Commission during that time. Mr. Erickson explained that BBM Mobility partnered with Lifeguard, an ambulance company, to provide wheelchair van service when ambulance service was not appropriate. He stated that a representative from Lifeguard had informed him that BBM Mobility would not need to seek approval from any government agency to provide this service. Mr. Erickson testified that BBM Mobility owns two wheelchair vans, employs four drivers (one full-time and three part-time), and provides service to 14 facilities in Chilton, Shelby, and Jefferson Counties. He represented that his company maintains insurance.

In response to the hearing officer, Mr. Erickson stated that prior to filing this application for authority, he had not asked any state government agency about the regulatory requirements to operate this type of transportation business. He indicated that he was "here today to self-report" regarding his noncompliance with Alabama law and Commission regulations. Mr. Erickson testified that in early February 2017, he discovered that BBM Mobility could not operate legally without receiving authority from the Commission. He represented that he does not want to be noncompliant with any laws of the State of Alabama and submitted an application when he learned that he needed to obtain this authority. Mr. Erickson admitted that there was no excuse for his mistake and took full responsibility for this error. He testified that, in the future, he would abide by the Alabama Motor Carrier Act and the regulations of the Commission.

In response to the hearing officer, Mr. Erickson testified that BBM Mobility conducts an average of eight to ten trips per day, five days per week except for the occasional dialysis patient that requires transportation on the weekend. He indicated that for some transports the facility pays for the transportation services and for others the passengers pay with cash or credit card for the service. Mr. Erickson stated that BBM Mobility charges \$55 for a one-way trip up to ten miles and \$2 per mile for each mile over ten miles. He asserted that his company has been profitable since its inception. Mr. Erickson

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claimed that BBM Mobility stands out from other similar providers because of its professional on-time record and the level of service provided. He stated that his company provides passengers with a specific time for pick-up rather than a four-hour window of time.

In response to the hearing officer, Mr. Erickson explained that he is responsible for executive decisions of the company, such as the business development of the company, but also for compliance and human resources. He represented that BBM Mobility conducts background checks of its drivers and trains the drivers by having them shadow existing drivers for a week. Mr. Erickson stated that he does not have any plans to expand into other Alabama counties in the near future.

III. DISCUSSION AND CONCLUSIONS

An applicant seeking a certificate to operate as a common carrier must establish through evidence presented at the hearing that it is fit, willing and able to properly perform the service proposed in conformity with the provisions of the Alabama Motor Carrier Act and the Commission's Motor Carrier Rules, and that the proposed service is required by the public convenience and necessity. The adequacy of existing service in meeting the public need, the applicant's financial ability to furnish adequate, continuous, and uninterrupted service and the advantages to the public of the proposed service are, among other things, factors which must be considered. Proof of public convenience and necessity requires an affirmative showing that the proposed service will be superior to the service of presently authorized carriers, or that the proposed operations will serve a useful purpose which cannot or will not be met by existing carriers.

In accordance with the foregoing, the first issue to be addressed in the case at bar is whether the Applicant is fit, willing and able to provide the common carrier service proposed. It appears from a review of the record compiled herein that the Applicant appears to have the necessary experience, equipment and resources to provide the proposed transportation services. However, there does appear to be a question regarding the Applicant's willingness to conduct operations in accordance with the Commission's rules and regulations. Mr. Erickson admitted that BBM Mobility has operated for three years without the necessary authority from the Commission. He represented that he is now familiar with the Commission's rules and is now trying to conduct his business in concert with the rules. Based on these concerns, any authority granted to BBM Mobility should be for a limited term of twelve months, allowing time to observe

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the Applicant's willingness and ability to comply with the rules, regulations and guidelines of the Commission.

The next issue to be addressed is whether the public convenience and necessity requires the services as proposed by the Applicant. It is incumbent upon the Commission, when considering the question of public need, to consider whether the territory for which authority is sought is served by other carriers and the adequacy of such service to meet the public need. *Alabama Public Service Commission v. Higginbotham*, 256 Ala. 621, 56 So.2d 401 (1951), *Alabama Public Service Commission v. Crowe*, 247 Ala. 120, 22 So. 2d 721 (1945). The maintenance of sound economic conditions in the transportation industry would be jeopardized by allowing a new operator to compete with existing carriers who are providing reasonably adequate service. Motor carriers serving an area should be afforded an opportunity to transport all the traffic they can adequately, efficiently and economically handle without additional competition from a new operation.

Proof of public convenience and necessity requires an affirmative showing that the proposed operations are superior to those of presently authorized carriers, or that the proposed operations will serve a useful purpose which cannot or will not be met by existing carriers. There must be an affirmative demonstration not only that a common carrier service is required in the convenience of the public proposed to be served, but also that it is a necessity on the part of such public.

A proposed service does not, however, have to be absolutely indispensable in order to serve the public convenience and necessity. A demonstration that the proposed service is reasonably necessary for the public good satisfies the required showing of public convenience and necessity. *Alabama Public Service Commission v. Wells Fargo Armored Services*, 495 So.2d 42 (Ala. 1986); *Van Express, Inc., v. Bee Line Express, Inc.*, 347 So.2d 1353 (Ala. 1977); *Southern Haulers v. Alabama Public Service Commission*, 331 So.2d 660 (Ala. 1976).

In the case at bar, it appears that BBM Mobility differs from other similar providers by giving passengers a specific time for pick-up rather than a window of time. The working relationship between Lifeguard, the facilities, the passengers, and BBM Mobility indicates that the proposed operations are needed and will serve a useful purpose.

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V. RECOMMENDATION

Based on the foregoing, it is therefore respectfully recommended that the application of BBM Mobility be provisionally granted. I recommend that, for a period of 12 months, BBM Mobility Transport, LLC be granted authority to operate as a common carrier by motor vehicle in intrastate commerce over irregular routes in the transportation of passengers in non-emergency transportation service between all points in Chilton, Shelby, and Jefferson Counties. I further recommend that, at the end of the provisional 12-month period, to obtain permanent authority to provide non-emergency transportation service in the above-listed counties, BBM Mobility shall file a request for permanent authority with the Commission. In that request, BBM Mobility shall include a sworn statement that, during the provisional period, it has operated in compliance with the Alabama Motor Carrier Act and the applicable Commission rules. Based on BBM Mobility's adherence to the rules during the provisional period, the Commission will then decide whether to issue an order granting permanent status or to allow the temporary grant of authority to expire.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Luke Bentley', is written over a horizontal line.

Luke Bentley
Hearing Officer