

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,114

IN THE MATTER OF:

Served November 30, 2006

Application of TRANSCOM, INC.,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-05-113

Application of TRANSCOM, INC.,)
for Temporary Authority --)
Irregular Route Operations)

Case No. AP-05-114

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. Applicant also seeks temporary authority.

Applicant was granted operating authority in 2000, but the issuance of a certificate of authority was expressly made contingent on applicant filing additional documents.¹ Applicant failed to file the necessary documents in a timely manner, thereby voiding the Commission's approval.²

The applications are opposed by WMATC Carrier No. 985, Executive Technology Solutions, L.L.C.

I. CERTIFICATE OF AUTHORITY

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority 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.

Applicant proposes providing service under a contract with the United States Bureau of Immigration and Customs Enforcement (ICE) using sedans and minivans with a seating capacity of less than 10 persons each, including the driver.³

¹ See *In re Transcom, Inc.*, No. AP-00-81, Order No. 6053 (Dec. 4, 2000) (conditionally granting Certificate No. 582).

² See *id.* (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66 (failure to comply with conditions of grant within 180 days voids approval).

³ The contract also calls for service in 15-passenger vans and 25 to 30-passenger minibuses, but applicant has subcontracted that service to an existing WMATC carrier.

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.

Normally, such evidence would establish an applicant's fitness,⁴ but in this case applicant has a history of regulatory violations.

In Order No. 9907, served in this proceeding on September 13, 2006, the Commission determined that applicant had violated the Compact in the past by conducting operations under the ICE contract, and a similar contract with ICE's predecessor the Immigration and Naturalization Service (INS), without WMATC authority. The Commission further determined that applicant was "on notice" as to the illegality of a portion of those operations - those performed at a "per trip" charge. Although the record did not initially reflect the full extent of applicant's operations at the per-trip rate, applicant has since produced copies of the pertinent invoices.

As supplemented, the record indicates that applicant transported passengers at the per-trip rate on approximately 150 days over the course of the past seven years and that those operations generated just under two percent of all revenue received by applicant under the ICE/INS contracts.

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁵

Operating without authority is a serious violation, but as previously determined in Order No. 9907, applicant was "on notice" that its conduct was unlawful only as to its operations at the per-trip charge, which the record now shows comprised but a small fraction of the total business applicant conducted under the ICE/INS contracts. In a similar situation in the past, where "the overwhelming majority of applicant's violations were not willful," the Commission approved

⁴ *In re Executive Technology Solutions, L.L.C.*, No. AP-04-84, Order No. 8273 (Sept. 20, 2004).

⁵ *Id.*

the application on the condition that applicant pay a civil forfeiture for the violations with respect to which applicant was "on notice."⁶

The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.⁷ Accordingly, one of the factors the Commission takes into consideration when determining the appropriate size of a forfeiture is whether the carrier profited from its misdeeds.⁸

We will assess a civil forfeiture against applicant in the amount of \$250 per day⁹ for 150 days, for a total of \$37,500. We will suspend all but \$7,500 in recognition of applicant's cooperation during these proceedings¹⁰ and reported profit of approximately \$5,700 from operations at the per-trip rate.¹¹ Failure to pay the net forfeiture in timely fashion shall result in reinstatement of the full \$37,500.

In addition, we will place applicant on probation for one year, commencing with the issuance of a certificate of authority in accordance with this order.¹²

Based on the evidence in this record, and in consideration of the terms of probation prescribed herein and applicant's anticipated payment of forfeiture, the Commission finds that the proposed transportation is consistent with the public interest and that 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.

II. TEMPORARY AUTHORITY

Because we approve the application for a certificate of authority, the application for temporary authority is moot.

III. REQUEST FOR CONFIDENTIAL TREATMENT

Applicant has requested that the Commission treat certain documents produced in this proceeding as confidential business records. We will grant applicant's request in part. Given our

⁶ *In re Charles B. Mainor, t/a Mainor's Bus Serv.*, No. AP-99-04, Order No. 5575 (Apr. 7, 1999). A person who knowingly and willfully violates a provision of the Compact is subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation; each day of the violation constitutes a separate violation. Compact, tit. II, art. XIII, § 6(f).

⁷ *In re Phoenix Limo. & Tour Co.*, No. AP-98-10, Order No. 5304 (Apr. 6, 1998).

⁸ *Id.*

⁹ See Order No. 5575 (assessing forfeiture of \$250/day for unauthorized operations); 5304 (same).

¹⁰ See Order No. 5575 (reducing forfeiture in light of cooperation).

¹¹ See Order No. 5304 (reducing forfeiture for lack of profit).

¹² See Order No. 8273 (placing applicant on 1-year probation).

holding that the ICE/INS contracts are within our licensing jurisdiction and considering that the Compact stipulates that each carrier "shall file with the Commission, publish, and keep available for public inspection tariffs showing . . . fixed-rates and fixed-fares for transportation subject to this Act," said contracts shall remain a part of the public record. The invoices generated under those contracts, however, contain potentially sensitive information about the itineraries of high-ranking Homeland Security officials, and for that reason shall be withheld from public view. Applicant's abstract of its invoices, on the other hand, does not contain any information about the movements of Homeland Security officials and shall remain a part of the public record to support our findings and conclusions.¹³

Applicant may reclaim the invoices once these proceedings, including any appeals, have terminated.

IV. REQUEST FOR WAIVER OF REGULATION NO. 62-08

Pending the issuance of a certificate of authority in accordance with this order, applicant proposes subcontracting out the executive sedan service it provides under the ICE contract. To that end, applicant has entered into an agreement with Vicar Limousine Service, Inc., WMATC Carrier No. 357, requiring Vicar to furnish that service using sedans and drivers supplied by applicant.¹⁴ Regulation No. 62-08, however, generally prohibits a WMATC carrier from leasing drivers and vehicles from the same source. Applicant requests a waiver of this rule to avoid the disruption that would result from Vicar having to locate and hire drivers with the proper security clearances.

Regulation No. 62-08 is designed to prevent carriers without WMATC authority from operating in the Metropolitan District through the guise of a so-called lease arrangement. It reflects the rebuttable presumption that an entity which furnishes both a vehicle and a driver under a lease agreement is actually a passenger carrier.¹⁵

¹³ See *In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, & Malek Investment of Va., Inc., & Assadollah Malekzadeh*, No. MP-98-53, Order No. 5707 (Sept. 22, 1999) (reservations log retained in redacted form to protect passenger identities and phone numbers); *In re American Coach Lines, Inc.*, No. AP-85-27, Order No. 2801 (Nov. 26, 1985) (applicant ordered to produce documents for inspection by staff and protestants, with confidential names and addresses redacted from protestants' copies); *In re International Limo. Serv., Inc.*, No. AP-80-26, Order No. 2318 (Mar. 3, 1982) (party permitted to redact confidential names and addresses).

¹⁴ Vicar already operates vans and minibuses of its own under a similar arrangement with applicant.

¹⁵ *In re Orbital Shuttle, Inc.*, No. AP-99-60, Order No. 5736 (Nov. 2, 1999).

That presumption is not rebutted where the lessor retains significant control and the lessee avoids the risks, responsibilities and burdens of transportation.¹⁶ Such is not the case here. Under the contract tariff and standard WMATC lease signed by the parties and filed by Vicar, all control and responsibility for operating applicant's sedans passes to Vicar for the duration of the subcontract and lease.

For good cause shown, the request shall be granted.

V. REQUEST FOR WAIVER OF REGULATION NO. 61

Applicant requests a waiver of the Commission's vehicle marking requirements as they apply to applicant's executive sedans. Regulation No. 61-01 requires that each WMATC carrier display its name and WMATC number on both sides of each vehicle operated under WMATC authority. Unless Regulation No. 61 is waived, Vicar would be required to display its name and number on both sides of each sedan leased from applicant, and applicant would be required to display its name and number on both sides of each such sedan once a certificate of authority has been issued to applicant and the lease is terminated.

The Commission routinely waives the application of Regulation No. 61 with respect to limousines and luxury sedans [seating nine persons or less, including the driver, and] 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," as that term is defined in Commission Regulation No. 51-09.¹⁷

For good cause shown, Regulation No. 61 shall be waived with respect to applicant's executive sedans seating nine persons or less, including the driver.

THEREFORE, IT IS ORDERED:

1. That the application for temporary authority is denied as moot.
2. That applicant's requests for confidential treatment of business records and waiver of Regulation Nos. 61 and 62-08 are granted to the extent described above.

¹⁶ *Id.*

¹⁷ *In re Executive Technology Solutions, L.L.C.*, No. AP-04-84, Order No. 8779 (June 17, 2005).

3. That Certificate of Authority No. 582 shall be issued to Transcom, Inc., 14905 Finegan Farm Drive, Darnestown, MD 20874, upon applicant's timely compliance with the following conditions:

a. Applicant shall pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashiers check, the sum of seven thousand five hundred dollars (\$7,500), for knowing and willful violations of the Compact.

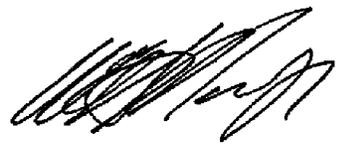
b. Applicant shall present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or 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; and (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.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 582 has been issued in accordance with the preceding paragraph.

5. That applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 582 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

6. 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 AND CHRISTIE:



William S. Morrow, Jr.
Executive Director