

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,902

IN THE MATTER OF:

Served November 9, 2007

Application of TRANSCOM, INC.,)	Case No. AP-07-192
for a Certificate of Authority --)	
Irregular Route Operations)	
Application of TRANSCOM, INC.,)	Case No. AP-07-193
for Temporary Authority --)	
Irregular Route Operations)	
VICAR LIMOUSINE SERVICE, INC.,)	Case No. MP-07-236
WMATC No. 357, Investigation of)	
Violation of Regulation No. 62-02)	

This matter is before the Commission on applicant's Motion for Expedited Processing of the application for temporary authority and accompanying Motion to Dismiss on Jurisdictional Grounds.

I. BACKGROUND

This is Transcom's third application for operating authority. Transcom was granted operating authority in 2000, but the issuance of a certificate of authority was expressly made contingent on Transcom filing additional documents within thirty days.¹ Transcom failed to file the necessary documents in a timely manner, thereby voiding the Commission's approval.²

Transcom re-applied for operating authority in 2005. Transcom proposed 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. The application was accompanied by a motion to dismiss on the grounds that service under the ICE contract met the definition of "bona fide taxicab service" in Regulation No. 51-09 and thus was exempt from the Commission's licensing jurisdiction pursuant to Article XI, Section 3(f), of the Compact. The Commission disagreed³ and assessed a civil forfeiture against Transcom for operating the ICE contract without a WMATC Certificate of Authority.⁴ To avoid breaching the ICE contract while the application was pending, Transcom entered

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 Transcom'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 *In re Transcom, Inc.*, No. AP-05-113, Order No. 9907 (Sept. 13, 2006).

⁴ *In re Transcom, Inc.*, No. AP-05-113, Order No. 10,114 (Nov. 30, 2006).

into a subcontract and lease arrangement with Vicar Limousine Service, Inc., WMATC Carrier No. 357, requiring Vicar to perform Transcom's ICE contract using sedans and drivers supplied by Transcom.

Transcom's application for a certificate of authority was subsequently approved subject to Transcom's payment of the forfeiture within thirty days and to Transcom serving a one year period of probation.⁵ Approval also was conditioned on Transcom filing certain documents within 180 days.⁶ Transcom timely paid the forfeiture and requested an extension of time to comply with the document filing requirement. The document filing extension was denied without prejudice to Transcom's right to file a new application.⁷

II. ORDER OF CLARIFICATION

The instant application and accompanying Motion to Dismiss appear to have been prompted by Transcom's recent acquisition of a similar sedan contract with ICE's parent agency, the Department of Homeland Security (DHS), and an opinion letter issued by the Commission's Executive Director/General Counsel concluding that the new DHS contract requires WMATC authority. Although Transcom's pleading is styled a motion to dismiss, the relief requested is not dismissal but merely a determination that service under the new DHS contract meets the definition of "bona fide taxicab service" in Regulation No. 51-09 and thus is exempt from the Commission's licensing jurisdiction pursuant to Article XI, Section 3(f), of the Compact. Indeed, in correspondence with the Commission outside this application, Transcom appears to take the position that this application has been filed, at least in part, to acquire the authority sought in Transcom's second application - namely, authority to operate the ICE contract currently subcontracted to Vicar.

Transcom will be directed to clarify whether it is seeking full dismissal through its motion or just a determination that the service under the new DHS contract is bona fide taxicab service. If the answer is full dismissal, Transcom shall address whether Vicar should be permitted to perform the ICE contract to full term without a binding assignment of contract from ICE, and with or without such assignment, whether Vicar should be permitted to perform the ICE contract to full term with Transcom's sedans;

and if so, whether Vicar should be required to hire its own drivers and mark said sedans with Vicar's name and WMATC number in accordance with Regulation No. 61. If Transcom is not seeking full dismissal, Transcom shall explain why the Commission would not have full jurisdiction over the new DHS contract pursuant to Regulation No. 51-09(d), in the event this application is approved.

⁵ See *Id.* (conditionally granting Certificate No. 582).

⁶ *Id.*

⁷ *In re Transcom, Inc.*, No. AP-05-113, Order No. 10,638 (July 18, 2007).

III. INVESTIGATION OF VIOLATION OF REGULATION NO. 62-02

As noted above, Transcom entered into a lease arrangement with Vicar that enabled Vicar to perform Transcom's ICE contract using sedans and drivers supplied by Transcom. The lease would not have been legal without a waiver of Regulation No. 62-08, which generally prohibits a WMATC carrier from leasing drivers and vehicles from the same source.⁸ Such a waiver was granted during the course of Transcom's second application.⁹ But no waiver of Regulation No. 62-02 was granted. That regulation stipulates that during the term of any lease filed by a WMATC carrier:

The motor vehicle(s) named in the contract of lease shall be operated by, and under the complete control of, the lessee, and no other, for the entire period of the lease, and for all regulatory purposes including insurance, rates, and charges, vehicle identification, and motor vehicle fuel and road taxes, such motor vehicle(s) shall be considered as the vehicle(s) of the lessee. (emphasis added).

An inquiry directed to Vicar's insurance broker reveals that Vicar has not reported to its insurers any of the vehicles identified in the Transcom lease. Although the lease expired October 1, 2007, along with the subcontract, the parties' arrangement continues, as reflected in Vicar's timely amendment to its contract tariff and Transcom's assurances in correspondence with the Commission outside this application that a new lease will be filed with the Commission on or before October 26. Accordingly, Vicar will be directed to show cause why it should not report the Transcom-leased vehicles to Vicar's insurers or cease operating them.

This investigation is being consolidated with Transcom's temporary authority application and Motion to Dismiss because the outcome may bear on whether it would be in the public interest to continue the waiver of Regulation No. 62-08 if this proceeding is dismissed.

THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-07-193 and MP-07-236 are hereby consolidated pursuant to Commission Rule No. 20-02.

2. That within thirty days from the date of this order, Transcom shall clarify whether it is seeking full dismissal of its temporary authority application and/or certificate of authority application, and if full dismissal is sought:

⁸ Order No. 10,114.

⁹ *Id.*

- a. Address whether Vicar should be permitted to perform Transcom's ICE contract to full term without a binding assignment of contract from ICE; and
- b. Address whether Vicar should be permitted to perform the ICE contract to full term with Transcom's sedans, and if so, whether Vicar should be required to hire its own drivers and mark said sedans with Vicar's name and WMATC number in accordance with Regulation No. 61.

3. That within thirty days from the date of this order, if Transcom is not seeking full dismissal, Transcom shall explain why the Commission would not have full jurisdiction over Transcom's new DHS contract pursuant to Regulation No. 51-09(d), in the event the Commission approves Transcom's application for temporary authority and/or application for a certificate of authority.

4. That within thirty days from the date of this order, Vicar shall show cause why it should not report to its insurers any and all vehicles leased from Transcom or why it should not immediately cease operating said vehicles.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director