

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,371

IN THE MATTER OF:	Served May 20, 2008
Application of BOURNE ENTERPRISES,)	Case No. AP-2008-059
LLC, for Voluntary Termination of)	
Certificate No. 1286)	
BOURNE ENTERPRISES, LLC, Suspension)	Case No. MP-2008-069
and Investigation of Revocation of)	
Certificate No. 1286)	

By application filed March 18, 2008, Bourne Enterprises, LLC ("Bourne") seeks voluntary termination of Certificate No. 1286.

The Commission may terminate a certificate of authority under Title II of the Compact, Article XI, Section 10(b), upon application by the holder. The Commission will not approve such an application, however, if the carrier is not in good standing.¹

Bourne is not in good standing for having failed to pay \$200 in late fees. The late fees were triggered under Regulation No. 67-03(a)-(b) by Bourne's failure to file its 2008 annual report and pay its 2008 annual fee on or before January 31. The annual report and fee were due January 31 pursuant to Regulation Nos. 60-01 and 67-02 because Bourne held Certificate No. 1286 on January 1 of this year. Bourne did not tender its annual report and fee until March 18. Bourne requests a waiver of the late fees on the ground that it believed its certificate of authority terminated in 2007 when Medical Transportation Management, Inc., (MTM) assumed responsibility for managing the District of Columbia Medicaid (DC Medicaid) transportation program on behalf of the District of Columbia Department of Health on October 19, 2007, and Bourne lost all of its passengers.

The Commission may waive late fees under Rule No. 29 "upon the filing of a motion showing good cause."² We find that Bourne has not shown good cause for waiving the late fees assessed under Regulation No. 67-03(a)-(b).

First, we find Bourne's professed belief that its operating authority terminated on October 19 when MTM assumed responsibility for DC Medicaid operations less than credible. Bourne's behavior in early October is inconsistent with a belief that its operating authority

¹ *In re Coach One, Inc.*, AP-07-079, Order No. 10,492 (May 17, 2007).

² *Id.*

would be terminating October 19. Bourne's WMATC Insurance Endorsement was cancelled for nonpayment of premium on September 25, 2007, effective October 29, 2007. If Bourne believed its operating authority would be terminating on October 19, there would have been no reason for Bourne to make any further premium payments to extend coverage on and after the October 29 cancellation date. But that is exactly what Bourne did. The Commission received a new WMATC Endorsement for Bourne on October 9, and coverage under that Endorsement was effective October 29 and continued until March 28 of this year. Bourne's payment of premiums for coverage from October 29, 2007, to March 28, 2008, is simply not consistent with a belief that Bourne's operating authority terminated October 19. We find Bourne's contemporaneous actions more persuasive on this point than Bourne's after-the-fact explanation.

Furthermore such a belief, if indeed harbored, simply is not reasonable. Article XI, Section 10(a), of the Compact states that "Certificates shall be effective from the date specified on them and shall remain in effect until amended, suspended, or terminated." Certificate No. 1286 was issued April 26, 2007. The Commission issued no order terminating Certificate No. 1286 in 2007. Therefore, Bourne's professed belief that its operating authority had terminated in 2007 has no substance in fact or law and accordingly offers no basis for waiving the late fees assessed under Regulation No. 67-03(a)-(b).³

Bourne also claims it did not receive notice of the January 31 deadline. The record, however, is to the contrary. Regulation Nos. 60-01 and 67-02 clearly specify a January 31 deadline for filing an annual report and paying an annual fee. Regulation No. 67-03(a)-(b) clearly prescribes a \$100 fee for filing late and a \$100 fee for paying late. The Commission's regulations are published on the Commission's website and are included in each certificate of authority application package.⁴ Further, the Commission sent each carrier, including Bourne, an annual fee invoice and a blank annual report form shortly after the first of the year. The invoice and report form caution each carrier to file and pay on or before January 31 and also warn that those who fail to comply will be subject to a penalty of \$100 for each missed deadline, or \$200 for both. Thus, Bourne was on notice as to the deadline and the late fees.⁵

While Bourne's application for voluntary termination was pending, the WMATC Insurance Endorsement on file for Bourne expired, as noted above, and has not been replaced. Certificate No. 1286, therefore, is automatically suspended under Regulation No. 58-12 and a

³ See *In re Second to None Tour & Travel Inc.*, No. MP-06-135, Order No. 10,639 (July 18, 2007) (rejecting reliance on unreasonable belief).

⁴ Available at <http://www.wmatc.gov/pdf/rules-regs.pdf>.

⁵ See *Transcom, Inc.*, No. AP-05-113, Order No. 9907 (Sept. 13, 2006) (publication of ascertainable standards in regulations and other agency public statements constitutes full notice) (citing *General Electric Co. v. EPA*, 53 F.3d 1324, 1329 (May 12, 1995)).

\$50 late fee is due under Regulation No. 67-03(c). We will waive the \$50 late fee for not filing a replacement WMATC Insurance Endorsement on time inasmuch as Bourne requested voluntary termination well before its WMATC Insurance Endorsement expired.⁶

Because Bourne is not in good standing, we shall deny the application for voluntary termination.⁷ Because Bourne is not in compliance with Commission Regulation No. 58 and has discontinued operating, we shall revoke Certificate No. 1286 pursuant to Article XI, Section 10(c), of the Compact.⁸

The \$200 in late fees shall remain due.

THEREFORE, IT IS ORDERED:

1. That Case Nos. AP-08-059 and MP-08-069 are hereby consolidated pursuant to Commission Rule No. 20-02.

2. That the request for a waiver of late fees under Regulation No. 67-03(a)-(b) is hereby denied.

3. That the application of Bourne Enterprises, LLC, for voluntary termination of Certificate No. 1286 is hereby denied.

4. That Certificate of Authority No. 1286 is hereby revoked.

5. That within 30 days from the date of this order Bourne shall:

- a. remove from its vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 1286 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

⁶ See Order No. 10,492 (same).

⁷ See *id.* (same).

⁸ See *id.* (same).