

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,412

IN THE MATTER OF:

Served June 13, 2008

Application of DAN ALLEN, Trading)
as ALLEN LIMO SERVICE, for a)
Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2008-012

This matter is before the Commission on applicant's response to Order No. 11,339, served May 9, 2008, which dismissed this proceeding for applicant's failure to comply with the Commission's application requirements.

I. REQUEST TO REOPEN

Under the Compact, an application to obtain a certificate of authority shall be made in writing, verified, and shall contain the information required by the application form and accompanying instructions.¹ An applicant may be required to publish notice of the application in a newspaper of general circulation in the Metropolitan District and furnish any supplemental information necessary for a full and fair examination of the application.² Failure to comply with the Commission's application requirements warrants dismissal.³

This application was filed on January 25, 2008. On February 15, the Commission instructed applicant to publish notice of this application in a newspaper of general circulation in the Metropolitan District no later than February 29 and file an affidavit of publication and certain other documents no later than March 14. The Commission later extended the publication deadline to April 2 and the filing deadline to April 16. Applicant thereafter filed some but not all of the required documents. Accordingly, this application was dismissed without prejudice on May 9. Applicant subsequently filed the remaining required documents on May 14. For good cause shown, this proceeding shall be reopened under Commission Rule No 26.⁴

II. APPLICATION

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

¹ Compact, tit. II, art. XI, § 8; Regulation No. 54-02.

² Regulation No. 54-04(b).

³ *In re One, LLC, t/a Bon Voyage*, No. AP-04-103, Order No. 8212 (Aug. 5, 2004).

⁴ See *In re Fast Transp. Corp., t/a Fast Transp.*, No. AP-07-152, Order No. 10,839 (Oct. 19, 2007) (same).

seating capacity of less than 16 persons only, including the driver. The application is unopposed.

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 commencing operations with one limousine. Applicant proposes operating under contract tariffs with private entities.

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 applicant's fitness,⁵ but in this case, applicant has a history of regulatory violations. 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.⁶

Applicant held WMATC Certificate of Authority No. 1074 from March 16, 2006, until December 27, 2007, when it was revoked for applicant's failure to comply with the Commission's insurance requirements in Regulation No. 58 and pay a \$50 late insurance fee.⁷ The revocation of a certificate of authority for failure to comply with the Commission's insurance requirements, however, does not bar the Commission from reissuing that authority at a later date where there is no evidence of post-suspension operations.⁸

⁵ *In re EMK Services, Inc.*, No. AP-05-168, Order No. 9391 (Mar. 16, 2006); *In re VGA, Inc.*, No. AP-03-73, Order No. 7496 (Oct. 29, 2003).

⁶ Order No. 9391; Order No. 7496.

⁷ *In re Dan Allen t/a Allen Limo Serv.*, No. MP-07-241, Order No. 11,045 (Dec. 27, 2007).

⁸ *In re Henka Int'l, Inc.*, t/a *Worldwide Tours & Travel*, No. AP-03-184, Order No. 8035 (May 27, 2004); *In re Jet Tours USA, Inc.*, No. AP-02-133, Order No. 7078 (Mar. 6, 2003).

Applicant's insurance expired in November 2007. Applicant states he has not operated since then, and there is no evidence to the contrary. In addition, applicant has paid the \$50 late fee and has satisfactorily accounted for his vehicles and vehicle markings. The Commission has found other applicants fit under similar circumstances.⁹ Applicant, however, shall serve a one year period of probation as a means of ensuring prospective compliance.¹⁰

III. REQUEST TO WAIVE REGULATION NO. 61

Commission Regulation No. 61 requires each WMATC carrier to display its name and WMATC number on both sides of each vehicle used in WMATC operations. Applicant has requested that the Commission waive the application of Regulation No. 61 with respect to applicant's 10-person stretch limousine.

The vehicle identification markings required by Regulation No. 61 facilitate the processing of customer complaints against WMATC carriers and aid claimants in the recovery of compensation for property damage and injuries caused by WMATC carriers.¹¹ "These purposes must be balanced against other considerations, such as competitive harm."¹²

WMATC carriers must compete against non-WMATC carriers transporting passengers between points in the Metropolitan District under the Compact's "bona fide taxicab service" exclusion for vehicles seating nine persons or less, including the driver. Non-WMATC carriers typically are not required by other regulatory agencies to mark limousines and luxury sedans of that size.¹³ "Requiring WMATC carriers to mark such vehicles thus would put them at a competitive disadvantage relative to non-WMATC carriers."¹⁴

There is no "bona fide taxicab service" exclusion, however, when it comes to operations in vehicles seating more than nine persons, including the driver. Hence, WMATC carriers operating such vehicles between points in the Metropolitan District do not have to compete with non-WMATC carriers operating such vehicles between points in the Metropolitan District.¹⁵

⁹ See *In re Business Logistics Group, L.L.C., t/a ATS, L.L.C.*, No. AP-06-002, Order No. 9652 (June 15, 2006) (verification of no post-suspension operations and payment of outstanding fees and forfeitures); Order No. 8035 (no evidence of post-suspension operations and satisfactory accounting for vehicles and vehicle markings); Order No. 7078 (same).

¹⁰ See Order No. 9652 (same); Order No. 8035 (same).

¹¹ *In re Global Marketing Sys., Inc., t/a Executive Limo. Serv.*, No. AP-07-027, Order No. 10,601 (July 5, 2007).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Accordingly, the Commission routinely waives Regulation No. 61 with respect to limousines and luxury sedans seating nine persons or less, including the driver.¹⁶ Limousines and luxury sedans seating more than nine persons, including the driver, but less than 16 persons, including the driver, must at a minimum display the carrier's WMATC number.¹⁷

IV. CONCLUSION

Based on the evidence in this record, and in light of the one-year period of probation imposed herein, 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.

THEREFORE, IT IS ORDERED:

1. That this proceeding is hereby reopened pursuant to Commission Rule No. 26.

2. That the request to waive Regulation No. 61 is denied, except to the extent indicated above.

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1074 shall be reissued to Dan Allen trading as Allen Limo Service, 6210 8th Street, N.W., Washington, DC 20011-1922.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 1074 has been reissued in accordance with the preceding paragraph.

5. That applicant is hereby directed to 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; (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.

¹⁶ *Id.*

¹⁷ *Id.*

6. That applicant shall be placed on probation for a period of one year commencing with the issuance of a certificate of authority 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 or its members 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.

7. 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