

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,778

IN THE MATTER OF:

Served December 31, 2008

Application of VEOLIA TRANSPORTATION)  
SERVICES, INC., to Merge with )  
YELLOW BUS SERVICE, INC., Trading )  
as YELLOW TRANSPORTATION, WMATC )  
No. 280 )

Case No. AP-2007-001

Application of VEOLIA TRANSPORTATION)  
ON DEMAND, INC., to Acquire Control )  
of WASHINGTON SHUTTLE, INC., )  
Trading as SUPERSHUTTLE, WMATC )  
No. 369 )

Case No. AP-2007-006

This matter is before the Commission on the application of Veolia Transportation Services, Inc., (VTS), for reconsideration of Order No. 11,580, served September 18, 2008, which among other things assessed a net civil forfeiture of \$25,000 against VTS, VTS's parent, Veolia Transportation, Inc. (VTI), and former VTI subsidiary ATC/Vancom, Inc., (ATC), (now merged into VTS), jointly and severally, for knowingly and willfully violating Article XI, Sections 6(a) and 11(b), of the Compact, (operating without authority and operating under another carrier's authority, respectively).

**I. STANDARD FOR RECONSIDERATION**

Under the Compact, a party affected by a final order of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved.<sup>1</sup> The application must state specifically the errors claimed as grounds for reconsideration.<sup>2</sup> The Commission must grant or deny the application within 30 days after it has been filed.<sup>3</sup> If the Commission does not grant or deny the application by order within 30 days, the application shall be deemed denied.<sup>4</sup> If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.<sup>5</sup> VTS timely filed its application on October 17, 2008.

---

<sup>1</sup> Compact, tit. II, art XIII, § 4(a).

<sup>2</sup> Compact, tit. II, art XIII, § 4(a).

<sup>3</sup> Compact, tit. II, art XIII, § 4(b).

<sup>4</sup> Compact, tit. II, art XIII, § 4(c).

<sup>5</sup> Compact, tit. II, art XIII, § 4(d).

## II. GROUNDS FOR RECONSIDERATION

VTS challenges the Commission's finding that VTS's and VTI's violations were knowing and willful. VTS alternatively contends that the net forfeiture of \$25,000, (reduced from \$83,750 in recognition of applicants' production of inculpatory documents), should be further reduced in recognition of applicants' voluntary filing of the instant applications that ultimately brought the violations to light.

### A. Knowing and Willful Nature of Violations

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be 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.<sup>6</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>7</sup> The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.<sup>8</sup>

The Commission found in Order No. 11,580, that ATC was performing charter contract service in the Metropolitan District without a WMATC certificate of authority in September 2005 when VTI, then known as Connex North America, Inc., acquired ATC by purchasing its stock. The Commission further found that instead of assigning ATC's contracts to Yellow Transportation, a wholly-owned subsidiary of VTS at the time and the holder of WMATC Certificate No. 280, "VTI permitted ATC to continue operating its contracts in the Metropolitan District until April 2006, at which time the contracts apparently were assigned to VTS." The Commission concluded that "neither ATC nor VTI had any reasonable basis for believing that ATC could operate the ATC contracts" and that "neither VTS nor VTI had any reasonable basis for believing that VTS could operate the ATC contracts".

On reconsideration, VTS argues that ATC operated all of its contracts until December 31, 2006, and that neither VTS nor VTI was aware at the time that ATC lacked proper authority. The record, however, shows that VTS renewed one of ATC's contracts, a contract with King Farm Transportation Demand Management Company, LLC, in December 2005, effective February 2006. At the time of the renewal, VTS was known as Connex Transit, Inc. The contract clearly identifies Connex Transit (VTS) as the carrier, not ATC. The contract prohibits Connex Transit (VTS) from assigning the contract or subcontracting its duties without the written permission of King Farm. There is no evidence in the record to indicate that Connex Transit (VTS) ever

---

<sup>6</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>7</sup> *In re Executive Coach, Ltd., & Executive Sedan Mgmt. Servs., Inc.*, t/a Washington Car & Driver, No. AP-02-75, Order No. 6797 (Sept. 3, 2002).

<sup>8</sup> *Id.*

assigned this contract or subcontracted the service to any other carrier, including ATC - with or without King Farm's permission.<sup>9</sup>

In any event, there is no suggestion on reconsideration that VTS and VTI were unaware of WMATC's jurisdiction when VTI acquired ATC in September 2005 and when VTS renewed the King Farm contract in December 2005. Indeed, the record is to the contrary. VTS was the owner of record (and known as Yellow Holding Company) when Yellow Bus Service, Inc., trading as Yellow Transportation, obtained WMATC Certificate No. 280 in 1994.<sup>10</sup> And VTS (Yellow Holding) was one of the owners of record (through wholly-owned subsidiary Shuttle Express, Inc.) when Washington Shuttle, Inc., trading as SuperShuttle, obtained WMATC Certificate No. 369 in 1996.<sup>11</sup> VTS's representative on the SuperShuttle application, attorney Alan Moldawer,<sup>12</sup> was later designated to receive official notices on behalf of Connex Transit (VTS) under Article 19 of the King Farm contract. Hence, it is clear that VTS may not claim ignorance of the Commission's jurisdiction. And, therefore, VTI and ATC may not either.<sup>13</sup>

---

<sup>9</sup> The allegations to the contrary in VTS's application for reconsideration are not evidence. See *In re Washington Shuttle, Inc., t/a Supershuttle*, No. AP-96-13, Order No. 4996 at 6 (Jan. 8, 1997) (allegations in brief not accorded evidentiary status). The only statements on this point prior to issuance of Order No. 11,580 come from VTS's counsel and contradict each other. Counsel first represented in a letter dated March 16, 2007, that Yellow Transportation had been operating the King Farm Contract "for approximately two years." Of course, it could not have been two years inasmuch as VTI did not acquire ATC and the King Farm contract until September 2005. Counsel later represented in a letter dated June 20, 2008, that: "From what I have been able to determine from my client, the King Farm contract was operated by ATC until the final merger date of December 31, 2006." Obviously this is counsel's surmise, not his client's testimony. It bears noting that counsel's June 20 letter was submitted in response to Order No. 11,130, served February 6, 2008, which provided that "applicants' response shall be corroborated by pertinent contemporaneous documents." The King Farm contract identifying VTS as the carrier beginning February 2006 is the only pertinent contemporaneous document on this issue in the record.

<sup>10</sup> *In re Yellow Bus Serv., Inc., t/a Yellow Transp.*, No. AP-94-44, Order No. 4434 (Nov. 9, 1994).

<sup>11</sup> *In re Washington Shuttle, Inc., t/a Supershuttle*, No. AP-96-13, Order No. 4966 (Nov. 8, 1996).

<sup>12</sup> *In re Washington Shuttle, Inc., t/a Supershuttle*, No. AP-96-13, Order No. 4801 (Mar. 28, 1996).

<sup>13</sup> See *In re OAO Corp., t/a BMG Limo. Serv.*, No. MP-02-08, Order No. 6760 (Aug. 5, 2002) (controlling officer/shareholder knowledge of Compact and WMATC regulations attributed/imputed to company); *In re L&N Transportation Company, Inc.*, No. MP-01-49, Order No. 6425 (Nov. 16, 2001) (same); *In re L&N Transportation Co., Inc.*, No. MP-01-49, Order No. 6293 (July 19, 2001) (same); *In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter*, No. MP-97-76, Order No. 5276 (Feb. 17, 1998) (same); *In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc.*, No. MP-95-82, Order No. 4774 (Feb. 27, 1996) (same). See also *In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc.*, No. MP-96-54, Order No. 5065 (Apr. 24, 1997) (carrier

Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.<sup>14</sup> Violations occurring thereafter are viewed as knowing and willful.<sup>15</sup> Accordingly, our holding on this issue stands.

#### **B. Reduction of Forfeiture for Filing Applications Voluntarily**

As noted above, the Commission found in Order No. 11,580 that ATC and VTS knowingly and willfully operated the ATC contracts without WMATC authority for 335 days from September 1, 2005, through December 31, 2006. The Commission also found that that VTI - ATC's and VTS's parent - knowingly and willfully caused these acts to occur. Accordingly, the Commission assessed a civil forfeiture against ATC, VTS, and VTI in the amount of \$250 per day for 335 days, for a total of \$83,750, and suspended all but \$25,000 in recognition of the parties' production of inculpatory documents. VTS paid the net forfeiture on October 16, 2008, but argues on reconsideration that the forfeiture should have been further suspended inasmuch as applicants voluntarily filed the applications that brought these violations to the Commission's attention.

The Commission has reduced forfeitures in the past where the violators filed, or made attempts to file, applications for operating authority prior to or during the midst of the violations.<sup>16</sup> However, we see no error in the size of the net forfeiture assessed in Order No. 11,580.

The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of

---

knowledge of Compact and WMATC regulations attributed to commonly-controlled affiliates).

<sup>14</sup> *In re Union, Inc.*, No. AP-07-013, Order No. 10,482 (May 10, 2007); *In re Associated Community Servs., Inc.*, No. AP-02-88, Order No. 6839 (Oct. 3, 2002); *In re Global Express Limo. Serv., Inc.*, No. AP-02-32, Order No. 6772 (Aug. 13, 2002); *In re Charles B. Mainor, t/a Mainor's Bus Serv.*, No. MP-98-69, Order No. 5575 (Apr. 7, 1999); *In re Safe Ride Servs., Inc.*, No. MP-97-83, Order No. 5269 (Feb. 5, 1998); *In re Megaheds, Inc., t/a Megaheds Transp.*, No. AP-97-24, Order No. 5113 (June 26, 1997); *Easy Travel, Inc. v. Jet Tours USA, Inc.*, No. FC-94-01, Order No. 4649 (Aug. 22, 1995); *In re Regency Limo. Serv., Inc.*, No. MP-94-01, Order No. 4323 (June 21, 1994); *DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv.*, No. FC-93-01, Order No. 4226 (Dec. 20, 1993); *In re Mustang Tours, Inc.*, No. MP-93-42, Order No. 4224 (Dec. 15, 1993).

<sup>15</sup> Order Nos. 10,482; 6839; 6772; 5575; 5269; 5113; 4649; 4323; 4226; 4224.

<sup>16</sup> *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7096 (Mar. 19, 2003) (citing Order Nos. 6772; 5269; 5113; 5065; 4226; *In re Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express*, No. MP-92-05, Order No. 3955 (June 15, 1992); see also *In re Zainabu Kamara, t/a Nallah Transp. Express, & Nallah Transp. Express, Inc.*, No. AP-03-96, Order No. 7854 (Mar. 12, 2004) (same).

unjust profits.<sup>17</sup> The net forfeiture of \$25,000 is justified on deterrence grounds alone. When unjust profits are considered, the nearly \$170,000 of revenue on the King Farm contract in 2006 alone confirms the reasonableness of the size of the net forfeiture.<sup>18</sup>

### III. CONCLUSION

Applicants offer no evidence on reconsideration, only argument as to the conclusions to be drawn from the evidence before the Commission when Order No. 11,580 was issued. The argument as to why the Commission should not have concluded that applicants' violations were knowing and willful finds support neither in the facts nor in Commission precedent. Therefore, the net forfeiture, as deemed reasonable on this record, shall stand as assessed in Order No. 11,580.

THEREFORE, IT IS ORDERED: That the application for reconsideration of Order No. 11,580 is denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director

---

<sup>17</sup> *In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, & Malek Investment of Va., Inc., & Assadollah Malekzadeh*, No. MP-98-53, Order No. 5748 at 2 (Nov. 16, 1999).

<sup>18</sup> See *id.* (denying reconsideration of net forfeiture).