

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,933

IN THE MATTER OF:	Served April 9, 2009
Application of W & T TRAVEL)	Case No. AP-2008-162
SERVICES LLC, Trading as WTTS, for)	
Expansive Amendment of Certificate)	
of Authority No. 1372)	
Application of W & T TRAVEL)	Case No. AP-2008-167
SERVICES LLC, Trading as WTTS, for)	
Temporary Authority -- Irregular)	
Route Operations)	
Formal Complaint of EXECUTIVE)	Case No. FC-2008-001
TECHNOLOGY SOLUTIONS, LLC, WMATC)	
No. 985, Against W & T TRAVEL)	
SERVICES LLC, Trading as WTTS)	

Case No. AP-2008-162 is before the Commission on the application of W & T Travel Services LLC, trading as WTTS, to remove the 15-person seating capacity restriction in Certificate of Authority No. 1372. WTTS also has filed an application in Case No. AP-2008-167 for temporary authority to operate a shuttle contract with the United States Department of Health and Human Services, National Institutes of Health, (NIH), using vehicles with seating capacities in excess of 15 persons, including the driver.

The temporary authority application is opposed by Executive Technology Solutions, LLC, WMATC No. 985. Executive Technology has also filed a complaint in Case No. FC-2008-001 alleging that WTTS has already commenced operations under the NIH contract using vehicles exceeding the seating capacity restriction in Certificate No. 1372.

WTTS has filed a motion to dismiss the complaint on several grounds, including that the Commission does not have jurisdiction over the NIH contract, but WTTS has not filed a motion to dismiss either application.

Finally, WTTS has filed a motion for confidential treatment of the rate schedules in the NIH contract, which WTTS has filed in support of the temporary authority application and as WTTS's Contract Tariff No. CT-2.

The complaint is being consolidated with the two applications under Rule No. 20-02 inasmuch as all three proceedings involve common questions of fact and law.

I. WMATC JURISDICTION AND OTHER GROUNDS TO DISMISS COMPLAINT

The NIH contract requires WTTS to shuttle NIH employees and "others conducting official NIH business" between various points on and off the NIH campus.¹ The NIH campus is located in Montgomery County, Maryland, which is part of the Metropolitan District.² Some of the shuttle routes are confined to the NIH campus. Others extend to points off the NIH campus but within Montgomery County.³

WTTS cites the Commission's holding in *In re Priority One Services, Inc.*, No. AP-96-41, Order No. 4935 (Sept. 17, 1996), that NIH is considered a "federal enclave" or akin to a federal enclave and argues that:

WTTS operates shuttle services that begin and end on the NIH campus, which is considered a federal enclave and not part of the Metropolitan District. While WTTS does, admittedly, run routes that have service to points outside the NIH campus, the vast majority of passengers are transported either to or from a point on the NIH campus and are, therefore, not transported between points in the Metropolitan District. As such, the shuttle service provided by WTTS falls outside the transportation regulated by the Compact, and the Commission does not have jurisdiction to entertain the complaint.⁴

We disagree with WTTS's analysis. Order No. 4935 found that Priority One was fit to receive expanded WMATC authority to operate a contract with NIH similar to the one held by WTTS. That the Commission possessed jurisdiction over some or all of the transportation service rendered under that contract was implicit in the Commission's holding. We reaffirm that implicit holding here and begin by clarifying Order No. 4935.

Priority One did not contest the Commission's jurisdiction over the NIH contract in its application for expanded authority. The issue was whether Priority One's use of 20-passenger vehicles to perform that contract constituted a knowing and willful violation of the seating capacity restriction in Priority One's certificate of authority. The Commission found that any violation committed by Priority One was not knowing and willful for two reasons. First, as to the on-campus portion of the contract, the Commission assumed a violation had occurred but determined that "it would have been reasonable for Priority One to view the Court's holding [in *Universal Interpretive Shuttle Corp. v. WMATC*, 393 U.S. 186, 89 S. Ct. 354

¹ Contract at 11-13.

² Compact, tit. I, art. I.

³ According to the NIH website, the off-campus stops include, among others, the following points in Rockville, MD: Mid Pike Plaza; 6001 Executive Blvd; 6011 Executive Blvd; 2115 E. Jefferson St; 6130 Executive Blvd (EPN/S); 6116 Executive Blvd; 6100 Executive Blvd. See <http://dtts.ors.od.nih.gov/transportation.htm>.

⁴ Motion to Dismiss at 3.

(1968),] as a declaration that this Commission does not have jurisdiction over transportation conducted exclusively within a federal enclave." Hence the assumed violation could not have been knowing and willful. The Commission, however, expressly declined to rule on whether the Court's reasoning in *Universal Interpretive Shuttle* could be applied to the NIH on-campus routes so as to exclude those routes from WMATC jurisdiction.

Second, as to the off-campus routes, because Priority One was servicing the off-campus routes using four government-owned buses and prior Commission precedent held that under certain circumstances a carrier's operation of government-owned vehicles does not violate the Compact, "Priority One's operation of NIH's vehicles [could not] be considered a knowing and willful violation of the Compact." There is no allegation here that the vehicles WTTs is operating off campus are owned by NIH. On the contrary, the record shows that WTTs is leasing those vehicles from Priority One. Even if WTTs was operating government-owned vehicles, WTTs would have to show that it was not supervising and insuring the operation but merely acting as a supplier of drivers.⁵

Although the Commission found it unnecessary in *Priority One* to reach a definitive holding on its jurisdiction over shuttle routes confined to the NIH campus, certain issues taken up later in this order require that we reach a holding here.

We start with the observation in Order No. 4935 that "the roads connecting the various NIH buildings in Bethesda are not county roads within the official domain of Montgomery County, the jurisdiction in which NIH lies; rather, they are apparently under the jurisdiction of the Secretary of Health and Human Services." Since the issuance of Order No. 4935, a fence has been installed around the perimeter of the NIH campus, according to the NIH security information webpage.⁶ Access is controlled by NIH security personnel.⁷ No one may enter the campus without an NIH ID badge or visitor pass.⁸ Employee vehicles may enter the campus at a number of points, but visitor vehicles and commercial delivery vehicles are restricted to a single entry point each.⁹ Commercial delivery vehicles are inspected before they may travel on campus roads.¹⁰ Likewise, visitors must either park their vehicles at the entry point or submit their vehicles to inspection before proceeding onto campus roads.¹¹ We do not believe the framers of the

⁵ See *In re LAM Assocs., Inc.*, No. AP-01-74, Order No. 6398 (Oct. 22, 2001) (operator of government-owned vehicles held to be carrier); *In re Government Contracting Resources, Inc., t/a GCR, Inc.*, No. AP-97-56, Order No. 5236 (Dec. 3, 1997) (same).

⁶ See <http://security.nih.gov/>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Compact intended that the Commission regulate transportation confined to such non-public roadways.

According to Article XI, Section 1, of the Compact, "This Act shall apply to the transportation for hire by any carrier of persons between any points in the Metropolitan District." Article XI, Section 4(a), defines "carrier" as a person who engages in the transportation of passengers by motor vehicle or other form or means of conveyance for hire." Article XI, Section 4(a), defines "motor vehicle" as "an automobile, bus, or other vehicle propelled or drawn by mechanical or electrical power on the public streets or highways of the Metropolitan District and used for the transportation of passengers." (emphasis added). Given the limited public access to the NIH campus, we cannot say that the roads within the NIH campus are "public streets or highways" within the meaning of the Compact.

We thus conclude that shuttle routes lying wholly within the boundaries of the NIH campus are, on this record, outside our jurisdiction.

The off-campus routes, on the other hand, clearly traverse "public streets or highways". Hence, a distinction must be drawn between the jurisdiction of NIH to manage transportation over non-public roads within its domain and the jurisdiction of the Commission to regulate the transportation of passengers to and from NIH over public streets and highways.¹² The Commission has a long history of regulating the transportation of NIH employees and official visitors to and from the NIH campus.¹³ There is nothing in this record that would cause us to depart from that history. We thus reaffirm that the off-campus portion of the NIH contract lies within the Commission's jurisdiction.

As for WTTS's other grounds for dismissing the complaint, we find that: (1) as an existing WMATC carrier, Executive Technology has standing to challenge unlawful conduct of other WMATC carriers;¹⁴ the Commission may order the relief requested by Executive Technology, including an order to cease and desist, suspension of operating authority, assessment of forfeiture, and probation;¹⁵ and (3) WTTS has

¹² See *In re Airport Transport, Inc.*, No. 83, Order No. 486 at (May 28, 1965), *aff'd per curiam, sub nom., Bartsch v. WMATC*, 357 F.2d 923 (4th Cir. 1966) (holding that Washington National Airport is a "point" within the Metropolitan District).

¹³ *E.g.*, *In re Diplomat Limo. & Livery Serv., Inc.*, No. CP-90-05, Order No. 3593 (Dec. 18, 1990); *In re James M. Smith, Inc.*, No. CP-82-04, Order No. 2358 (Aug. 16, 1982); *In re Reston Commuter Bus, Inc.*, No. CP-80-02, Order No. 2120 (June 13, 1980).

¹⁴ *Old Town Trolley Tours v. Wash. Metro. Area Transit Comm'n*, 129 F.3d 201, 202-03 (D.C. Cir. 1997).

¹⁵ Compact, Article XI, Section 10(c); Article XIII, Sections 1(d) and 6(f).

not satisfied the complaint by filing an application for expanded authority.¹⁶ Accordingly, the motion to dismiss shall be denied.

WTTS requests an extension of time to answer the complaint in the event the motion is denied. Rule No. 12-01 states that: "An answer shall be filed to any formal complaint or petition filed by any person other than the Commission by each respondent against whom any relief is requested." Rule No. 12-03 states that: "All answers shall be filed within fifteen (15) days of service of the pleading to which the answer is to be filed, unless otherwise ordered by the Commission." WTTS's 15 days have long since run, and no such order has issued. Rule No. 7-05 states that the Executive Director may extend a deadline for "good cause", but the Executive Director has not issued any such extension, and we do not see where good cause exists.

As explained in the motion to dismiss, the motion was filed "in lieu of an answer" "in the interest of efficiency and conserving resources". There is no provision in the Commission's rules, however, for substituting a motion for an answer.

WTTS could have incorporated the essential elements of an answer into the motion. Under Rule No. 12-02, an answer "must admit or deny each material allegation of the pleading to which it responds and shall be so drawn as to fully disclose the particular grounds upon which it is based." "All matters not specifically denied or to which no affirmative defense is pleaded are deemed admitted." There are no specific denials in the motion to the central allegation in the complaint that WTTS has already commenced operations under the NIH contract using vehicles exceeding the seating capacity restriction in Certificate No. 1372. It would not have been any less efficient and would not have consumed any additional resources to include such a statement.

Under the circumstances, we see no purpose to be served by extending these proceedings. The evidence in the record contradicts WTTS's broad denials, as discussed below, and WTTS has had ample opportunity to issue a specific denial of the central allegation. The request for an extension of time to file an answer therefore shall be denied.

We now turn to the merits of the complaint.

II. MERITS OF COMPLAINT

As noted above, the gravamen of the complaint is that WTTS has commenced operations under the NIH contract using vehicles exceeding the seating capacity restriction in Certificate No. 1372. WTTS's own documents strongly indicate that this is true.

WTTS filed the NIH contract as its Contract Tariff No. CT-2 on September 4, 2008. The effective date of the contract is September 1,

¹⁶ See *Easy Travel, Inc., v. Jet Tours USA*, No. FC-94-01, Order No. 4410 (Oct. 20, 1994) (staying complaint at request of parties pending outcome of application for WMATC authority).

2008. The contract calls for regularly scheduled shuttle service of employees, patients, and others conducting official NIH business between the NIH campus and other points in the Metropolitan District and between those other points.¹⁷ Patient transportation has been subcontracted to Priority One Services, Inc., WMATC No. 135, for the duration of WTTTS's Contract Tariff No. CT-2, apparently with NIH's permission,¹⁸ and Priority One has filed the subcontract as its Contract Tariff No. CT-26. This leaves WTTTS with the responsibility of performing the non-patient portion of the contract. The contract expresses a preference for the use of 24-passenger buses in connection with non-patient transportation, but WTTTS is permitted to substitute smaller vehicles.¹⁹

WTTTS also filed a vehicle lease between WTTTS and Priority One naming WTTTS as the lessee. The lease is effective August 31, 2008. The lease prohibits WTTTS from leasing the vehicles or assigning the lease to anyone else during the term of the lease, which ends on August 31, 2009. WTTTS must pay Priority One over \$12,000 per month during the life of the lease. Attached to the lease is a table of vehicles covered by the list. The seating capacities range from 20 to 30 persons. With minor exception, the list of vehicles attached to the lease matches the list of vehicles attached to WTTTS's application for temporary authority. Although the lease was rejected for filing because WTTTS may not legally operate vehicles seating more than fifteen persons, there is nothing in the record to indicate that the parties have abandoned that lease.

We also must consider the photographic evidence produced by Executive Technology. Complainant has produced copies of photographs of four buses. The license plate numbers match those of four vehicles on the list attached to the temporary authority application, and those four vehicles appear on the list attached to the Priority One lease. All four are marked with WTTTS's name and WMATC number. Three are marked "MID PIKE", which we take corresponds to the Mid Pike Plaza route noted above.

Finally, we must consider that WTTTS has not alleged that someone else is performing the NIH employee shuttle service that WTTTS is contractually obligated to perform. Indeed, WTTTS's position in the temporary authority application is that no existing WMATC carrier is able or eligible to perform that service under the NIH contract. Of course, that must be WTTTS's position for that application to succeed.

In sum: WTTTS was contractually obligated to commence NIH employee shuttle operations on September 1, 2008; WTTTS has been

¹⁷ Contract at 11-13.

¹⁸ A letter from the NIH contracting officer in support of WTTTS's temporary authority application states that NIH has "an immediate need for WTTTS to provide shuttle service to our employees", as opposed to employees and patients. Consistent therewith, the letter describes WTTTS as the "sole prime contractor on this contract", as opposed to simply the sole contractor.

¹⁹ Contract at 12.

leasing minibuses furnished by the previous NIH contract holder since August 31, 2008, at considerable expense to WTTTS; WTTTS has placed its WMATC number on at least four of those vehicles; WTTTS has identified Priority One as the subcontractor for NIH patient transportation but has identified no subcontractor for NIH employee transportation; WTTTS has not specifically denied commencing NIH employee shuttle services using the aforementioned minibuses despite ample opportunity to do so.

All of the evidence points to WTTTS. We thus find that WTTTS has been operating the NIH employee shuttle service since September 1, 2008, using minibuses with seating capacities in excess of 15 persons, including the driver.

III. ASSESSMENT OF FORFEITURE

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.²⁰ Each day of the violation constitutes a separate violation.²¹

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.²²

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.²³ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by careless disregard whether or not one has the right so to act.²⁴ Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.²⁵ Violations occurring thereafter are viewed as knowing and willful.²⁶

In his affidavit supporting WTTTS's reply to Executive Technology's protest to the temporary authority application, WTTTS's CEO, Mr. Darnell Lee, claims WTTTS believed in "good faith" that the NIH contract was not subject to WMATC jurisdiction. Neither Compact precedent nor the facts of this case support that statement.

The only precedent offered in support is Order No. 4935, but as noted above, that order held just the opposite, that Priority One was

²⁰ Compact, tit. II, art. XIII, § 6(f)(i).

²¹ Compact, tit. II, art. XIII, § 6(f)(ii).

²² Compact, tit. II, art. XI, § 10(c).

²³ *In re Skyhawk Logistics, Inc.*, No. AP-07-195, Order No. 11,693 at 3 (Nov. 19, 2008); *In re Emanco Transp. Inc.*, No. AP-07-016, Order No. 11,304 at 4 (Apr. 24, 2008).

²⁴ Order No. 11,693 at 3; Order No. 11,304 at 4.

²⁵ Order No. 11,693 at 3.

²⁶ Order No. 11,693 at 3.

fit to receive WMATC authority to operate the off-campus portion of a similar NIH contract.

As for the facts, WTTS filed the NIH contract as its Contract Tariff No. CT-2 on September 4, 2008. A receipted copy marked "Approved" was returned to WTTS the next day, but the accompanying lease was rejected. From this, WTTS should have understood the Commission's position was that the NIH employee shuttle fell under the Commission's jurisdiction and that WTTS could only operate the shuttle service using vehicles seating 15 persons or less, as permitted under the contract. At no time has there been any basis for WTTS placing its WMATC number on vehicles seating more than 15 persons.

We therefore find that WTTS knowingly and willfully violated the seating capacity restriction in Certificate No. 1372 by operating the NIH employee shuttle service since September 1, 2008, using minibuses with seating capacities in excess of 15 persons, including the driver.

Because these cases were ripe for decision as of December 31, 2008, we will assess a civil forfeiture against WTTS in the amount of \$250 per day²⁷ for the 122 days beginning September 1, 2008, and ending December 31, 2008, for a total of \$30,500. We will suspend all but \$7,500 in recognition of WTTS's voluntary filing of these applications,²⁸ albeit six weeks after commencing operations. Failure to pay the net forfeiture in timely fashion shall result in reinstatement of the full \$30,500.

We now turn to the applications.

IV. EXPANDED AUTHORITY APPLICATION - CASE NO. AP-08-162

Under Article XI, Section 10(b), of the Compact, the Commission may amend a certificate of authority upon application by the holder. A carrier seeking expanded operating authority must show that it is fit and that the proposed transportation is consistent with the public interest.²⁹ This application is unopposed.

Applicant proposes commencing operations with three vans and seventeen minibuses. Applicant proposes operating under a tariff containing charter rates, Airport shuttle rates, private-pay ambulatory and wheelchair rates, and rates for transportation under contracts with private entities and government agencies.

²⁷ See *In re Sky Blue Tours, Inc.*, No. MP-08-162, Order No. 11,689 (Nov. 19, 2008) (assessing \$250 per day for violating seating capacity restriction); *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7005 (Jan. 21, 2003) (same), *aff'd on recon.*, Order No. 7096 (Mar. 19, 2003); see also Order No. 11,693 (assessing \$250 per day for unauthorized operations); *In re Transcom, Inc.*, No. AP-05-113, Order No. 10,114 (Nov. 30, 2006) (same).

²⁸ See Order No. 11,693 at 4 (reducing forfeiture in light of voluntary filing); Order No. 7096 (same).

²⁹ *In re L.J. Express, Inc.*, No. AP-04-116, Order No. 8276 (Sept. 20, 2004).

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 be sufficient to establish an applicant's fitness but not when an applicant has a history of regulatory violations.³⁰ 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.³¹

Operating without authority is a serious violation.³² That applicant had some WMATC authority and \$5 million in WMATC Insurance Endorsements on file with the Commission at all relevant times mitigates in WTTS's favor. The violation was persistent in that WTTS apparently never seriously explored the possibility of subcontracting its portion of the contract to an existing "8(a) certified" WMATC carrier. But we do not consider WTTS's violation of the seating capacity restriction to be flagrant. WTTS filed the NIH Contract as its Contract Tariff No. CT-1 and attempted to file the associated lease from Priority One. So we cannot say WTTS entirely flouted our jurisdiction. Upon payment of the forfeiture assessed herein, WTTS will have corrected its past mistakes,³³ and the record will support a finding of prospective compliance fitness,³⁴ subject to a one-year period of probation.³⁵

Based on the evidence in this record, and in consideration of the terms of probation and other conditions prescribed herein, the Commission finds that the proposed transportation is consistent with

³⁰ *In re Zohery Tours Int'l, Inc.*, No. AP-07-053, Order No. 10,602 (July 5, 2007); *In re BLS Limo Group*, No. AP-07-056, Order No. 10,472 (May 9, 2007).

³¹ Order Nos. 10,602; 10,472; *In re Shirlington Limo. & Transp., Inc.*, No. AP-02-20, Order No. 6709 (June 21, 2002); *In re Reston Limo. & Travel Serv., Inc., t/a Reston Limo.*, No. AP-93-36, Order No. 4232 (Jan. 11, 1994).

³² Order No. 6709.

³³ See *id.* (same).

³⁴ *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).

³⁵ See Order No. 10,602 (assessing one-year period of probation); Order No. 10,482 (same); Order No. 10,472 (same); Order No. 6709 (same).

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.

V. TEMPORARY AUTHORITY APPLICATION - CASE NO. AP-08-167

Under Title II of the Compact, Article XI, Section 13(a), the Commission may grant temporary authority if there is an immediate need for service that is not available. It is not clear that WTTTS has made its case that no other WMATC carrier is able and eligible to perform the NIH employee shuttle service. Protestant Executive Technology, identifies seven WMATC carriers that are "in good standing with the Commission, and would be pleased to assist NIH with this service." WTTTS's response to this is that most of these companies are not eligible to provide this service because they are not "8(a) certified" by the United States Small Business Administration. But "most" does not rule out "all".

We do not need to reach this issue, however. Inasmuch as we have approved the application for an expanded certificate of authority, we will deny the application for temporary authority as moot.³⁶

VI. REQUEST FOR CONFIDENTIAL TREATMENT

WTTTS requests that pages 3-7 of the NIH Contract Tariff not be disclosed to the public. Those pages contain WTTTS's pricing schedules for the base year of the contract and option years one through four. WTTTS acknowledges that the Compact requires WMATC carriers to publish their "rates and charges" and make them available to the public, but WTTTS contends that these pages contain more than rates and charges.

According to the contract, the rate schedules on pages 3-7 contain "unit prices(s)" that "the Government shall pay to" WTTTS.³⁷ Each rate schedule line item specifies the rate for a particular service to be provided by WTTTS. Each line item also specifies an hourly, monthly, or quarterly rate, the number of hours, months, or quarters service shall be provided, and the total annual charge. All but four of the line items are described elsewhere in the contract as "firm fixed price[s]".³⁸

The rate schedule line items for service performed by WTTTS under Certificate No. 1372 must be published and made available for public inspection, regardless of their characterization in the contract as unit prices.³⁹ Line items that do not correspond to

³⁶ See *In re Roberson Int'l, Inc.*, No. AP-07-026, Order No. 10,394 (Apr. 6, 2007) (denying temporary authority application as moot).

³⁷ Contract at 3.

³⁸ Contract at 2.

³⁹ See *In re Transcom, Inc.*, No. MP-09-034, Order No. 11,865 (Feb. 27, 2009) (WMATC carrier's government passenger contract unit prices not confidential).

service performed by WTTS under Certificate No. 1372 may be redacted as follows.

The rate schedule line items in WTTS's Contract Tariff No. CT-2 are divided into six categories: "Employee Shuttle", "Patient Routes", "Onsite Project Management", "Option - Nextbus Technology", "Fuel Surcharge", and "Incentive Payment".

The "Employee Shuttle" category is divided into eight subcategories, line items 1a-1h. Line items 1a and 1b list the rates for WTTS's on-campus operations. As held above, those routes fall outside our jurisdiction. Accordingly, line items 1a and 1b may be redacted from WTTS's Contract Tariff No. CT-2.

The "Patient Routes" category is divided into nine subcategories, line items 2a-2i. Because Priority One is performing the "Patient Routes" service under subcontract to WTTS for the duration of WTTS's Contract Tariff No. CT-2, with NIH's consent as noted above, and because Priority One has filed the subcontract as its Contract Tariff No. CT-26, the record supports a finding that WTTS is not the "carrier" with respect to that service. The "Patient Routes" line items 2a-2i, therefore, may be redacted from WTTS's Contract Tariff No. CT-2.

THEREFORE, IT IS ORDERED:

1. That Case Nos. FC-2008-001, AP-2008-162, and AP-2008-167 are hereby consolidated pursuant to Commission Rule No. 20-02.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a net civil forfeiture against applicant in the amount of \$7,500 for knowingly and willfully violating the seating capacity restriction in Certificate No. 1372 by operating the NIH employee shuttle service since September 1, 2008, using minibuses with seating capacities in excess of 15 persons, including the driver.

3. That applicant is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of seven thousand five hundred dollars (\$7,500).

4. That the full forfeiture of \$30,500 assessed in this order shall be immediately due and payable if applicant fails to timely pay the net forfeiture.

5. That the application for temporary authority is denied as moot.

6. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1372 shall be reissued, as amended consistent with this order, to W & T Travel Services LLC, trading as WTTS, 5831 Allentown Road, Camp Springs, MD 20746.

7. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 1372 has been reissued in accordance with the preceding paragraph.

8. 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 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; (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; and (f) the original Certificate No. 1372 issued April 26, 2007.

9. That line items 1a, 1b, and 2a-2i may be redacted from WTTS's Contract Tariff No. CT-2.

10. That applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 1372 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.

11. That the approval of amendment 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 CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director