

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,109

IN THE MATTER OF:

Served August 3, 2009

VGA, INCORPORATED, WMATC Carrier)
No. 445, Investigation of Violation)
of Seating Capacity Restriction and)
Unauthorized Transfer of Assets)

Case No. MP-2009-108

ROYAL SYSTEM SERVICES CORP.,)
Trading as VGA GROUP, Investigation)
of Unauthorized Operations)

Case No. MP-2009-109

Case No. MP-2009-108 is being initiated to determine whether VGA, Incorporated, (VGA), WMATC Carrier No. 445, knowingly and willfully violated the seating capacity restriction in its certificate of authority and transferred assets to Royal System Services Corp., trading as VGA Group, (Royal) without Commission approval.

Case No. MP-2009-109 is being initiated to determine whether Royal has been operating assets acquired from VGA under color of Certificate No. 445.

I. BACKGROUND

Certificate of Authority No. 445 authorizes VGA to transport passengers for-hire between points in the Metropolitan District in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver.

VGA filed an annual report in 2007 listing two 47-passenger vehicles, two 25-passenger vehicles, and three 21-passenger vehicles. Commission staff noticed the discrepancy in 2008 and promptly reminded VGA that operation of the aforementioned vehicles violates the seating capacity restriction in Certificate No. 445.

VGA subsequently filed an application to remove the seating capacity restriction in Certificate No. 445. The application was conditionally approved on July 1, 2008, but the reissuance of Certificate No. 445 without a seating capacity restriction was expressly made contingent on VGA filing additional documents and passing a vehicle inspection conducted by Commission staff.¹ VGA failed to satisfy the conditions for reissuance within the time

¹ See *In re VGA Incorporated*, No. AP-08-078, Order No. 11,449 (July 1, 2008) (conditionally approving amendment of Certificate No. 445).

allotted, thereby voiding the Commission's approval as of December 28, 2008.²

VGA thereafter filed its 2009 annual report on February 2, 2009. The report lists the seven aforementioned vehicles seating more than fifteen persons each, plus an additional 52 passenger vehicle.

VGA filed a second application to remove the seating capacity restriction in Certificate No. 445 on February 20, 2009. That application was dismissed April 16, 2009, without prejudice for VGA's failure to comply with the Commission's application requirements.³ No further application has been forthcoming.

On April 23, 2009, Royal filed an application for a certificate of authority. The application was rejected as incomplete. Although styled an application for a new certificate, Articles of Sale and Transfer obtained from the Maryland Department of Assessments and Taxation website⁴ indicate that VGA and Royal agreed in June of last year that VGA would transfer substantially all of its assets, including its name, vehicles, and transferable licenses, to Royal. The Articles are dated June 1, 2008, were filed with the Department on October 1, 2008, and reference a Purchase and Sales Agreement dated December 31, 2008.

II. INITIATION OF INVESTIGATION

The Commission may investigate on its own motion a fact, condition, practice, or matter to determine whether a person has violated or will violate a provision of the Compact or a rule, regulation, or order.⁵ For the purpose of an investigation or other proceeding under the Compact, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry.⁶ The Commission shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes.⁷

If the Commission finds that a person has violated a provision of the Compact or any requirement established under it, the Commission shall issue an order compelling compliance and effecting other just and reasonable relief.⁸

² See *id.* (approval of amendment void upon applicant's failure to timely satisfy conditions of reissuance).

³ *In re VGA, Inc.*, No. AP-2009-017, Order No. 11,942 (Apr. 16, 2009).

⁴ <http://sdatcert3.resiusa.org/ucc-charter/>.

⁵ Compact, tit. II, art. XIII, § 1(c).

⁶ Compact, tit. II, art. XIII, § 1(e).

⁷ Compact, tit. II, art. XII, § 1(b).

⁸ Compact, tit. II, art. XIII, § 1(d).

With few exceptions not relevant here, a person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation.⁹ As noted above, Certificate No. 445 authorizes VGA to transport passengers for-hire between points in the Metropolitan District in vehicles with a manufacturer's designed seating capacity of 15 or fewer persons, including the driver. It does not authorize VGA to operate vehicles seating more than fifteen persons, including the driver. Inasmuch as VGA admits to possessing vehicles exceeding the seating capacity restriction in Certificate No. 445 since 2007, we will open an investigation to determine the nature and extent of any operations conducted by VGA in those vehicles.

Under Article XI, Section 11, of the Compact, Commission approval must be obtained to transfer a WMATC Certificate of Authority, and a person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority. Inasmuch as the sale of assets from VGA to Royal appears to have been consummated sometime between June 1, 2008, and December 31, 2008, we will open an investigation to determine the nature and extent of any operations conducted by Royal using assets acquired from VGA and any operations conducted by Royal under color of Certificate No. 445.

Respondents will be directed to produce copies of their business records from the relevant time periods. Respondents also will be directed to present for inspection all vehicles in their possession, custody, or control.

The two investigations shall be consolidated under Rule No. 20-02 inasmuch as both involve common questions of fact and law.

III. ORDER TO CEASE AND DESIST

VGA's authority in the Metropolitan District is limited to operations in vehicles seating fifteen persons or less. Royal has no authority to operate in the Metropolitan District. Accordingly, VGA will be directed to cease and desist from transporting passengers for-hire between points within the Metropolitan District in vehicles seating more than 15 persons, including the driver. Royal will be directed to cease and desist from transporting passengers for-hire between points within the Metropolitan District in any vehicles.

THEREFORE, IT IS ORDERED:

1. That an investigation of VGA, Incorporated, its operations within the Washington Metropolitan Area Transit District, and transfer

⁹ Compact, tit. II, art. XI, § 6(a).

of its assets is hereby initiated in Case No. MP-2009-108 pursuant to Article XIII, Section 1, of the Compact.

2. That an investigation of Royal System Services Corp., trading as VGA Group, and its operations within the Washington Metropolitan Area Transit District is hereby initiated in Case No. MP-2009-109 pursuant to Article XIII, Section 1, of the Compact.

3. That Case Nos. MP-2009-108 and MP-2009-109 are hereby consolidated pursuant to Commission Rule No. 20-02.

4. That VGA is hereby directed to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District in vehicles seating more than 15 persons, including the driver.

5. That Royal is hereby directed to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District.

6. That VGA is hereby directed to produce within fifteen days (1) a complete list of vehicles in VGA's possession, custody, or control; (2) copies of the for-hire registration cards for those vehicles; and (3) a copies of the current safety inspection certificates for those vehicles.

7. That VGA is hereby directed to present all of its vehicles for inspection by Commission staff within thirty days.

8. That Royal is hereby directed to produce within fifteen days (1) a complete list of vehicles in Royal's possession, custody, or control; (2) copies of the for-hire registration cards for those vehicles; and (3) a copies of the current safety inspection certificates for those vehicles.

9. That Royal is hereby directed to present all of its vehicles for inspection by Commission staff within thirty days.

10. That within thirty days from the date of this order, each respondent shall produce any and all books, papers, correspondence, memoranda, contracts, agreements, and other records and documents, including any and all stored electronically, that are within its possession, custody or control and which relate to the transportation of passengers for hire between points in the Metropolitan District during the period beginning January 1, 2007, as to VGA, and June 1, 2008, as to Royal, and ending on the date of this order, including, but not limited to any and all:

- a. customer contracts and invoices;
- b. invoices from other carriers;

- c. calendars and itineraries;
- d. correspondence;
- e. bank and payroll records;
- f. insurance documents;
- g. advertising materials; and
- h. income tax and personal property returns.

11. That Certificate of Authority No. 445 shall stand suspended and be subject to revocation without further proceeding upon VGA's failure to timely comply with this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director