

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 12,282

IN THE MATTER OF:

Served January 14, 2010

Formal Complaint of EXECUTIVE) Case No. FC-2009-001
TECHNOLOGY SOLUTIONS, LLC, WMATC)
No. 985, Against W & T TRAVEL)
SERVICES LLC, Trading as WTTS,)
WMATC No. 1372)

This matter is before the Commission on the complaint of Executive Technology Solutions, LLC, WMATC No. 985 against W & T Travel Services LLC, trading as WTTS, WMATC No. 1372.

Under the Washington Metropolitan Area Transit Regulation Compact, Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), "A person may file a written complaint with the Commission regarding anything done or omitted by a person in violation of a provision of [the Compact], or in violation of a requirement established under it."¹ "If the respondent does not satisfy the complaint and the facts suggest that there are reasonable grounds for an investigation, the Commission shall investigate the matter."² "If the Commission determines that a complaint does not state facts which warrant action, the Commission may dismiss the complaint without hearing."³ A complaint shall contain, among other things: (1) "A clear and concise statement of the facts upon which the filing is based";⁴ and (2) "A reference to the specific section or sections of the Act, rules, regulations, or orders of the Commission on which the filing is based and which authorizes the Commission to take the requested action or grant the requested relief."⁵

Before reaching the merits of the complaint, we must rule on two preliminary motions.

I. MOTIONS

Executive Technology Solutions has filed a motion for leave to file an amended complaint. We shall deny the motion. What purports to be an "Amended Complaint" is actually an addendum to the complaint that asks the Commission to delete certain paragraphs in the complaint and insert two pages of additional text in Paragraph 8 of the complaint. There is no provision in the Commission's rules for filing

¹ Compact, tit. II, art. XIII, § 1(a).

² Compact, tit. II, art. XIII, § 1(b)(i).

³ Compact, tit. II, art. XIII, § 1(b)(ii).

⁴ Commission Rule No. 10-02(d).

⁵ Commission Rule No. 10-02(f).

an amended complaint, and it is not the Commission's burden to conform the complaint in accordance with the deletions and additions specified in the addendum. The additional text violates the "clear and concise statement" requirement in Rule No. 10-02(d), in any event.

WTTTS has filed a motion for summary judgment. We shall deny this motion, as well. Under Rule No. 21-05(a), the Commission may grant summary judgment "if the Commission on review of the record as a whole, finds that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." One of the material facts allegedly not in dispute is that a certain WTTTS vehicle passed inspection by Commission staff prior to June 10, 2009. Complainant has not conceded this point. Summary judgment, therefore, is not appropriate.

II. COMPLAINT

The complaint alleges that on June 9 and 10, 2009, WTTTS engaged in the "advertising, promotion, offering for sale, and/or sale of "for-hire" transportation services" using an "unauthorized" "2003 Ford Bus" on Rockville Pike in Bethesda, Maryland.⁶ The complaint further alleges that "[t]hrough the[se] means" WTTTS "performed for-hire transportation services without proper authority."⁷ The complaint cites Title II of the Compact, Article XI, Section 6(a),⁸ which provides that "A person may not engage in transportation subject to this Act unless there is in force a 'Certificate of Authority' issued by the Commission authorizing the person to engage in that transportation." WTTTS admits operating the 2003 Ford Bus on Rockville Pike on June 10, 2009.⁹

Commission records show that WTTTS has held Certificate of Authority No. 1372 since April 26, 2007. Originally, operations under Certificate No. 1372 were restricted to vehicles seating 15 persons or less, including the driver. Removal of the seating capacity restriction in Certificate No. 1372 was approved in Order No. 11,933, served April 9, 2009, subject to the condition that WTTTS file certain documents and present its revenue vehicles for inspection by Commission staff. WTTTS timely presented most of its vehicles for inspection and otherwise substantially satisfied the conditions of issuance as of April 16, 2009. The Commission's Executive Director issued Certificate No. 1372 that day without a seating capacity restriction.¹⁰ Commission records show that amended Certificate No. 1372 was in force on June 9 and 10, 2009. We therefore find that neither the alleged operation of the 2003 Ford Bus on June 9, 2009,

⁶ Complaint, ¶¶ 7-8 at 3.

⁷ Complaint, ¶ 10 at 4.

⁸ Complaint, ¶ 11 at 4.

⁹ Answer, ¶ 8 at 2.

¹⁰ The Commission has issued other Certificates of Authority upon a finding of substantial compliance with the conditions of issuance prescribed in the Commission's approval order. See *In re Haymarket Transp., Inc.*, No. AP-08-181, Order No. 12,186 (Oct. 8, 2009) (and orders cited therein).

nor the admitted operation of the 2003 Ford Bus on June 10, 2009, constitutes a violation of Article XI, Section 6(a), of the Compact.

Although WTTTS did not violate Article XI, Section 6(a), of the Compact, the record shows that the 2003 Ford Bus was one of the vehicles WTTTS did not present for inspection, as directed by Order No. 11,933, prior to reissuance of Certificate No. 1372. The Executive Director's letter transmitting amended Certificate No. 1372 admonished WTTTS not to operate that vehicle until such time as it passed inspection by Commission staff. WTTTS acknowledges receiving the letter,¹¹ and as noted above, WTTTS admits operating the 2003 Ford Bus on Rockville Pike on June 10, 2009. According to the Commission's vehicle inspection records, WTTTS did not present the 2003 Ford Bus for inspection by Commission staff until July 21, 2009.

WTTTS has submitted several affidavits to establish the proposition that the 2003 Ford Bus was inspected by Commission staff on April 15, 2009, but the affidavits lack credibility. The affidavits purport to establish the dates when 20 of WTTTS's vehicles were presented for inspection by WMATC staff, including the 2003 Ford Bus. Few of the alleged dates of inspection in the affidavits match the dates in the Commission's vehicle inspection records. The affidavit of WTTTS's president, Darnell Lee, also attempts to identify which vehicles were inspected by which Commission staff members, but none of these vehicle inspector allegations agree with the Commission's vehicle inspection records. Thus, when WTTTS claims that the 2003 Ford Bus passed inspection prior to July 21, 2009, the record simply does not support that contention.

We are troubled by WTTTS's premature operation of a vehicle the Commission had directed WTTTS to present for inspection. On the other hand, the record shows that the 2003 Ford Bus had passed a safety inspection within the 12 months prior to June 9 and 10, 2009,¹² and that the 2003 Ford Bus was properly marked in accordance with Regulation No. 61 when staff inspected it on July 21, 2009. From complainant's allegation of "advertising" services by means of operating said vehicle, it would appear that the 2003 Ford Bus was marked in accordance with Regulation No. 61 as of June 9 and 10, 2009, as well.

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

¹¹ Motion for Summary Judgment, ¶ 17 at 4.

¹² The date of the inspection was October 8, 2008. Under WMATC Regulation No. 64, carriers must comply with the Federal Motor Carrier Safety Regulations at Title 49 of the Code of Federal Regulations. Under 49 CFR 396.17, vehicles of the size in question, 16 passengers or more including the driver, must pass a safety inspection once every 12 months.

civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.¹³

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.¹⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹⁵ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.¹⁶

We shall assess a civil forfeiture of \$1,000 against WTTS for operating a vehicle before presenting it for inspection as directed by Order No. 11,933.¹⁷ We believe suspension of Certificate No. 1372, as requested by complainant, is not warranted on the record before us in the absence of a safety violation or violation of Regulation No. 61.

THEREFORE, IT IS ORDERED:

1. That the Motion to File Amended Complaint is denied.
2. That the Motion for Summary Judgment is denied.

3. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against W & T Travel Services LLC, trading as WTTS, WMATC No. 1372 in the amount of \$1,000 for knowingly and willfully violating Order No. 11,933 as amplified by the Executive Director's letter of April 16, 2009.

4. That W & T Travel Services LLC, trading as WTTS, WMATC No. 1372, 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 one thousand dollars (\$1,000).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND CHRISTIE:



¹³ Compact, tit. II, art. XIII, § 6(f).

¹⁴ Compact, tit. II, art. XI, § 10(c).

¹⁵ *In re Emanco Transp. Inc*, No. MP-08-217, Order No. 11,751 (Dec. 16, 2008).

¹⁶ *Id.*

¹⁷ See *id.* (assessing \$1,000 for failure to present vehicles); *Metro Health-Tech Servs., Inc.*, No. MP-08-057, Order No. 11,677 (Nov. 12, 2008) (same).

William S. Morrow, Jr.
Executive Director