

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 12,800

IN THE MATTER OF:

Served April 8, 2011

Application of UTOUR, LLC, for a) Case No. AP-2011-026
Certificate of Authority --)
Irregular Route Operations)

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Washington Metropolitan Area Transit District. The application is unopposed.

Applicant was conditionally granted such authority last year, but the issuance of a certificate of authority was expressly made contingent on applicant filing additional documents and passing a vehicle inspection conducted by Commission staff.¹ Applicant failed to satisfy the conditions for issuance of operating authority within the time allotted, thereby voiding the Commission's approval.²

Applicant reapplied for a certificate of authority earlier this year, but the application was dismissed without prejudice for want of prosecution.³

Article XI, Section 7(a), of the Washington Metropolitan Area Transit Regulation Compact⁴ provides that the Commission (WMATC) shall issue a certificate of authority to any qualified applicant, authorizing all or any part of the transportation covered by the application, if the Commission finds that: (i) 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; and (ii) the transportation is consistent with the public interest. An applicant must establish financial fitness, operational fitness, and regulatory compliance fitness.⁵

¹ See *In re Utour, LLC*, No. AP-10-005, Order No. 12,310 (Feb. 16, 2010) (conditionally granting Certificate No. 1676).

² See *id.* (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66 (failure to comply with conditions of grant within 180 days voids approval).

³ *In re Utour, LLC*, No. AP-11-001, Order No. 12,703 (Jan. 26, 2011).

⁴ Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

⁵ *In re Metro Day Treatment Center, Inc.*, No. AP-10-032, Order No. 12,729 (Feb. 15, 2011).

Applicant proposes commencing operations with one minibus. Applicant proposes operating under a tariff containing individual and/or group sightseeing rates.

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 an applicant's fitness,⁶ but this applicant has a history of regulatory violations.

I. PAST VIOLATIONS

As noted above, applicant was granted WMATC authority last year subject to the condition precedent that applicant submit certain documents to the Commission and present all vehicles for inspection by Commission staff. Applicant's sole vehicle failed inspection on June 8, 2010, because applicant's WMATC number was not displayed on the vehicle as required by Commission Regulation No. 61. The vehicle subsequently passed inspection by staff on June 25, 2010. At that time, the van was observed to display "WMATC# 1676" on both sides. Ultimately, no certificate of authority was issued because applicant failed to satisfy the other conditions of issuance.

When applicant reapplied earlier this year, Commission staff directed applicant to supplement the record with photos showing removal of the WMATC vehicle markings observed by staff the previous June. Applicant submitted the requested photos by cover letter dated January 15, 2011, and received by the Commission January 25, 2011. The photos showed partial removal of WMATC markings. The number "1676" had been removed from applicant's vehicle but not the characters "WMATC#".

II. ASSESSMENT OF FORFEITURE

A non-WMATC carrier may not, by advertisement or otherwise, hold itself out as authorized to provide services requiring a WMATC certificate of authority.⁷ This prohibition is codified in Commission Regulation No. 63-04(a), which provides that no carrier "regulated by

⁶ *Id.* at 2.

⁷ *In re Jet Tours USA, Inc.*, No. AP-09-130, Order No. 12,443 (June 15, 2010); *In re Haymarket Transp., Inc.*, No. AP-08-181, Order No. 11,873 (Mar. 4, 2009); *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).

the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission." Displaying an unauthorized WMATC carrier number thus violates Regulation No. 63-04(a).⁸ Displaying "WMATC" without a number violates Regulation No. 63-04(a), as well.⁹

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.¹⁰

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.¹¹ 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.¹²

We find that applicant knowingly and willfully violated Regulation No. 63-04(a) and accordingly shall assess a civil forfeiture of \$250.¹³

III. LIKELIHOOD OF FUTURE COMPLIANCE

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of applicant's 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 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.¹⁴

This violation was brought to applicant's attention by letter dated January 31, 2011. Applicant was directed to remove the remaining WMATC markings immediately and confirm removal by written

⁸ See Order No. 12,443 (display of unauthorized number violates Reg. No. 63-04); Order No. 11,873 (same); Order No. 10,482 (same); Order No. 6839 (same).

⁹ See *In re Adventures By Dawn L.L.C.*, No. AP-99-68, Order No. 5837 at 6 (Mar. 14, 2000) (display of "WMATC" alone may be viewed as unlawful declaration of authority).

¹⁰ Compact, tit. II, art. XIII, § 6(f)(i).

¹¹ Order No. 12,443; Order No. 11,873; Order No. 10,482; Order No. 6839.

¹² Order No. 12,443; Order No. 11,873; Order No. 10,482; Order No. 6839.

¹³ See Order No. 12,443 (assessing \$250 forfeiture for displaying unauthorized WMATC markings on vehicle); Order No. 11,873 (same); Order No. 10,482 (same); Order No. 6839 (same).

¹⁴ Order No. 12,729 at 6.

statement and supporting photos. This application, filed February 16, 2011, is supported by photos showing that all WMATC markings have been removed from applicant's vehicle.

The Commission has approved applications in the past where the applicant displayed a WMATC number without Commission approval but did not engage in unauthorized operations.¹⁵ There is no evidence in the record of any unauthorized operations. Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness,¹⁶ subject to a one-year period of probation.¹⁷

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 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 pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against applicant in the amount of \$250 for knowingly and willfully violating Regulation No. 63-04(a).

2. That applicant is hereby directed to pay to the Commission within thirty days of the date of this order, by check or money order, the sum of two hundred fifty dollars (\$250).

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1676 shall be issued to Utour, LLC, 10136 Reprise Drive, Rockville, MD 20850-4810.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued 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

¹⁵ See Order No. 12,443 (approving application despite unauthorized display of WMATC markings); Order No. 11,873 (same); Order No. 10,482 (same); Order No. 6839 (same).

¹⁶ See Order No. 12,443 (payment of forfeiture corrects error and supports fitness finding); Order No. 11,873; Order No. 10,482 (same); Order No. 6839 (same).

¹⁷ See Order No. 12,443 (same); Order No. 11,873 (same); Order No. 10,482 (same).

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.

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 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 BRENNER, HOLCOMB, AND KUBLY:



William S. Morrow, Jr.
Executive Director