

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,064

IN THE MATTER OF:

Served November 29, 2011

NATIONAL CHILDREN'S CENTER, INC., )  
WMATC No. 189, Investigation of )  
Violation of Commission Regulation )  
No. 61 )

Case No. MP-2011-089

This matter is before the Commission on the response of respondent to Order No. 13,016, served October 12, 2011, directing respondent to show cause why the Commission should not order certain vehicles out of service, assess a civil forfeiture, and/or suspend or revoke Certificate No. 189 for respondent's violation of Commission Regulation No. 61.

**I. ENFORCEMENT FRAMEWORK**

The Washington Metropolitan Area Transit Regulation Compact,<sup>1</sup> (Compact), applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District."<sup>2</sup> A person may not engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Washington Metropolitan Area Transit Commission (WMATC) authorizing the person to engage in that transportation.<sup>3</sup> "Each authorized carrier shall: (a) provide safe and adequate transportation service, equipment, and facilities; and (b) observe and enforce Commission regulations established under [the Compact]."<sup>4</sup>

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,

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<sup>1</sup> 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).

<sup>2</sup> Compact, tit. II, art. XI, § 1. The Metropolitan District includes: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports. Compact, tit. I, art. II.

<sup>3</sup> Compact, tit. II, art. XI, § 6(a).

<sup>4</sup> Compact, tit. II, art. XI, § 5.

regulation, or order.<sup>5</sup> If the Commission finds that a respondent 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.<sup>6</sup>

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>7</sup> Each day of the violation constitutes a separate violation.<sup>8</sup>

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.<sup>9</sup>

## II. GROUNDS FOR INVESTIGATION

Under Regulation No. 61, each vehicle operated under a WMATC certificate of authority must display the carrier's name and WMATC number. The markings required by Regulation No. 61 help assign responsibility and facilitate recovery of compensation for damage and injuries caused by carriers operating under WMATC authority.<sup>10</sup> Respondent holds WMATC Certificate of Authority No. 189 and is thus subject to Regulation No. 61.

On June 14, 2011, at 9:55 a.m., a Commission staff member observed a van operating near the Washington Hospital Center in Northwest Washington, DC. The letters "NCC", respondent's initials, were displayed on the front. Otherwise, the van was unmarked.

The van had a District of Columbia license plate with the number "B40724". According to Commission records, this vehicle is operated by respondent under WMATC Certificate No. 189.

Staff wrote to respondent on June 17, 2011, instructing respondent to present its revenue vehicles for inspection on or before July 15. Respondent requested and was granted two extensions but ultimately failed to present all vehicles for inspection. Of the vehicles that were presented, several revealed violations of Regulation No. 61.

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<sup>5</sup> Compact, tit. II, art. XIII, § 1(c).

<sup>6</sup> Compact, tit. II, art. XIII, § 1(d).

<sup>7</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>8</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>9</sup> Compact, tit. II, art. XI, § 10(c).

<sup>10</sup> *In re First Choice Health Servs. LLC*, No. MP-11-075 Order No. 12,972 (Sept. 9, 2011).

### III. SHOW CAUSE ORDER AND RESPONSE

Commission Order No. 13,016, served October 12, 2011, gave respondent 30 days to show cause why: (1) eight vehicles not presented for inspection and four vehicles that failed inspection, as identified in an appendix to Order No. 13,016, should not be ordered out of service; (2) a civil forfeiture should not be assessed against respondent; and/or (3) Certificate No. 189 should not be suspended or revoked for respondent's knowing and willful violation of and failure to comply with Commission Regulation No. 61.

On October 20, 2011, respondent filed a statement from its Director of Administration, Larry Laughery, explaining that respondent attempted to comply with Commission staff's instructions "but had difficulty getting the correct signage installed within the time allotted." The statement does not explain, however, why the markings on respondent's vans, including apparently the eight not presented for inspection, required correction in the first place. On the other hand, we do note that all 12 vehicles identified in Order No. 13,016 subsequently passed inspection by Commission staff on November 8, 2011.

### IV. FINDINGS AND ASSESSMENT OF FORFEITURE

We find that respondent has shown cause why the Commission should not order any of respondent's vehicles out of service and why the Commission should not suspend or revoke Certificate No. 189. Respondent has not shown cause why the Commission should not assess a civil forfeiture.

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>11</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>12</sup> Employee negligence is no defense.<sup>13</sup> "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.<sup>14</sup>

The record shows that Commission staff observed one violation of Regulation No. 61 on June 14, 2011, three violations of Regulation No. 61 on August 4, 2011, and one violation of Regulation No. 61 on August 5, 2011. We will assess a forfeiture of \$250 per day for each

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<sup>11</sup> *In re Executive Tech. Solutions, LLC*, No. MP-10-090, Order No. 13,044 at 4 (Nov. 8, 2011); *In re C.P.R. Med. Transp. LLC.*, No. MP-10-053, Order No. 12,872 at 8 (June 1, 2011); *In re Paramed Med. Transp., Inc.*, No. MP-02-50, Order No. 7012 at 4 (Jan. 24, 2003).

<sup>12</sup> Order Nos. 13,044 at 4; 12,872 at 8; 7012 at 4-5.

<sup>13</sup> Order Nos. 13,044 at 4; 7012 at 5.

<sup>14</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

of the three days<sup>15</sup> (\$750 total) respondent was observed to have knowingly and willfully violated Regulation No. 61.<sup>16</sup>

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$750 for knowingly and willfully violating Commission Regulation No. 61.

2. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of seven hundred fifty dollars (\$750).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director

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<sup>15</sup> May 5, 2010; December 22 & 23, 2010; and February 25, 2011.

<sup>16</sup> See *In re C.P.R. Med. Transp. LLC*, No. MP-10-053, Order No. 12,872 (June 1, 2011) (same).