

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,695

IN THE MATTER OF:

Served January 23, 2013

Application of FOUR POINTS)
TRANSPORTATION AND MOVING INC. for)
a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2012-111

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that 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. If the applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.¹

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,² but in this case, applicant's president recently emerged from

¹ *In re Metroexpress LLC*, No. AP-12-236, Order No. 13,637 (Dec. 21, 2012); *In re Care Transp. Inc.*, No. AP-08-068, Order No. 11,551 (Sept. 4, 2008).

² Order No. 11,551; *In re Darryl Anthony Lawson, t/a Let's Ride Transp.*, AP-07-102, Order No. 10,863 (Oct. 25, 2007).

a Chapter 7 liquidation bankruptcy proceeding (11 USC § 701 *et seq.*). This calls into question applicant's ability to sustain operations for one year.³ Thus, while applicant's bankruptcy status does not necessarily preclude a finding of applicant's financial fitness, it is cause for looking behind applicant's fitness averment before making a determination that applicant is indeed financially fit.⁴ In addition, applicant has a history of regulatory violations that bear on applicant's compliance fitness.⁵

I. FINANCIAL FITNESS

According to the application, applicant was involved in bankruptcy proceedings at the time the application was filed. When questioned about this, applicant responded by filing a Chapter 7 discharge notice dated September 10, 2012. The notice identifies the discharged debtor as Shafqat Satti, applicant's president.

Applicant also produced two credit reports, one for itself and one for its president. The one for applicant rates applicant as a "High Risk". The one for applicant's president predates the discharge notice and thus is of uncertain value.

We also note that personal checking account statements for applicant's president show "Uber Technologie" deposits that applicant's president has identified as revenue from a "dispatched car service that operates in the DC area."

Considering applicant's high risk credit rating and its president's practice of diverting revenue from applicant's bank account to the president's personal bank account, we cannot say that applicant has demonstrated financial fitness.

II. COMPLIANCE FITNESS

A determination of compliance fitness is prospective in nature.⁶ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁷ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁸

According to the application submitted in this proceeding, applicant does not possess any federal or state passenger carrier authority. Yet, applicant's bank statements from 2011 and 2012 reflect many deposit entries labeled "ACH", which applicant's

³ See Order No. 10,863 (applicant's bankruptcy status raises question of financial fitness).

⁴ See *id.* (applicant's bankruptcy status cause for further inquiry).

⁵ See Order No. 11,551 (history of violations cause for further inquiry).

⁶ Order No. 13,637.

⁷ *Id.*

⁸ *Id.*

president describes as "credit card payments from my personal chauffer (sic) customers." Applicant's bank statements from 2012 also reflect many deposits from "Uber Technologie", which as noted above represent "payments for work" received through "a dispatched car service that operates in the DC area." It thus appears that applicant has been transporting passengers for hire for the past two years without any passenger carrier authority.

WMATC Order No. 13,610, served November 29, 2012, invited applicant to explain this evidence. Applicant's president submitted the following response:

I admit that I did transport these passengers. During this time, I was not aware that I was in violation of Commission rules, regulations, and requirements when transporting personal chauffer (sic) customers or when working with the Uber dispatch service. As of this month, I have ceased involvement and participation with Uber, as well as my association with personal customers. Furthermore, as a show of good faith, I've taken down my business website as to avoid even the appearance of misconduct. Now that I've become fully cognizant of what is necessary for Regulatory Compliance, my aim is to strictly adhere. I apologize for these past violations and promise to abide by the Commission's rules going forward.

When an applicant or a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, 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 the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁹

Applicant's response misses the point. It is not merely that applicant had no WMATC passenger carrier authority at any time during the past two years; it is that there is no evidence that applicant had any passenger carrier authority during the past two years.

We find it difficult to believe that applicant was unaware of the need for passenger carrier authority from some regulatory agency, even if not WMATC. Indeed, according to Uber's "Partner/Driver Terms and Conditions", dated August 2011 and displayed on the Uber website,¹⁰ each driver must "represent, warrant and agree" that it possesses "all

⁹ Order No. 13,637.

¹⁰ <https://www.uber.com/#>.

the appropriate licenses, approvals and authority to provide transportation for hire to third parties in all jurisdictions in which you use the [Uber] Services or Software.”

The service area described in applicant’s website prior to disablement implicates the jurisdiction of the Federal Motor Carrier Safety Administration, the Maryland Public Service Commission, and the Virginia Department of Motor Vehicles, not just WMATC. Having raised the issue in this proceeding, we would expect applicant to have applications underway at those other agencies, but there is no evidence of such activity on their websites.

Accordingly, we cannot say that applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

III. CONCLUSION

Applicant’s precarious financial condition, Mr. Satti’s practice of regarding applicant’s operations as his own, a record of violations committed by both, and Mr. Satti’s apparent failure to fully comprehend applicable regulatory requirements lead us to conclude that applicant has not sustained its burden of demonstrating fitness for WMATC authority at this time.

THEREFORE, IT IS ORDERED that the application of Four Points Transportation and Moving Inc., for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BELLAMY:



William S. Morrow, Jr.
Executive Director