

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 14,133

IN THE MATTER OF:

Served August 7, 2013

Application of GEM AMBULANCE, LLC,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2013-167

This matter is before the Commission on applicant's response to Order No. 14,037, served June 27, 2013, which dismissed this proceeding for applicant's failure to comply with the Commission's application requirements. Applicant has filed a request to reopen this proceeding.

I. CAUSE FOR DISMISSAL AND GROUNDS FOR REOPENING

Under the Washington Metropolitan Area Transit Regulation Compact,¹ (Compact), an application to obtain a certificate of authority shall be made in writing, verified, and shall contain the information required by the application form and accompanying instructions.² An applicant may be required to furnish any supplemental information necessary for a full and fair examination of the application.³ Failure to comply with the Commission's application requirements warrants dismissal.⁴

By letter sent June 6, 2013, applicant was required to furnish supplemental information on or before June 20, 2013, pursuant to Commission Regulation No. 54-04(b). Applicant timely submitted some but not all of the required information. Accordingly, the application was dismissed June 27, 2013.

On July 8, 2013, applicant filed a request to reopen this proceeding. The request is accompanied by and supplemented with the remaining required information. For good cause shown, this proceeding shall be reopened under Commission Rule No 26.⁵

¹ 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).

² Compact, tit. II, art. XI, § 8; Regulation No. 54-02.

³ Regulation No. 54-04(b).

⁴ *In re One, LLC, t/a Bon Voyage*, No. AP-04-103, Order No. 8212 (Aug. 5, 2004).

⁵ See *In re Abdelrazig Hassan Shawkat*, No. AP-13-076, Order No. 13,865 (Apr. 12, 2013) (same).

II. FITNESS AND PROPOSED TRANSPORTATION

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.

Applicant proposes commencing operations with one wheelchair van. Applicant proposes operating under a tariff containing rates for mileage and/or hourly priced transportation, rates for Medicaid transportation, rates for private pay ambulatory/wheelchair transportation, and rates for transportation under contracts with private entities.

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.

Based on the evidence in this record, and subject to the following trade name condition, 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.

III. TRADE NAME CONDITION

The Commission may attach to the issuance of a certificate of authority, and to the exercise of the rights granted under it, any term, condition, or limitation that is consistent with the public interest.⁶

As noted in the caption, applicant's name is Gem Ambulance, LLC. By letter dated June 6, 2013, applicant was advised that WMATC Regulation No. 63-05 states that: "No [WMATC] carrier may hold itself out to the public as being capable of rendering life support service."

⁶ Compact, tit. II, art. XI, § 7(d).

Applicant was directed to submit a signed statement explaining why applicant should not be required to propose a non-ambulance trade name for non-ambulance WMATC operations as a condition of approving this application. Applicant responded as follows:

Gem Ambulance is an experienced Basic Life Support (BLS) level ambulance provider in the state of New Jersey. We wish to expand our services into the states of Delaware, Maryland, and the Washington Metropolitan Area. Gem should not need to propose a non-ambulance trade name, as we currently are an ambulance company.

Ambulance service is not "transportation for hire" within the meaning of the Compact.⁷ Any passenger requiring, requesting or expecting transportation in a vehicle outfitted with life support equipment or operated by persons with training in life support procedures should be transported in an ambulance.⁸ Under Regulation No. 55-09: "No [WMATC] tariff may contain a rate, rule or regulation for life support service. Such service may not be provided under a WMATC tariff."

The potential confusion that would result from approving applicant's use of its legal name in WMATC operations is obvious, and applicant's failure to acknowledge the difference between ambulance service and non-ambulance service underscores the need for prophylactic measures. "Thus, while denying an application is not the appropriate remedy for potential name confusion, it is grounds for ordering an applicant to propose a different name for use in the Metropolitan District as a condition of approval."⁹ Accordingly, applicant will be required to propose a non-ambulance trade name for non-ambulance WMATC operations as a condition of approving this application.

THEREFORE, IT IS ORDERED:

1. That this proceeding is hereby reopened under Commission Rule No 26.

2. That applicant shall have 30 days to propose a non-ambulance trade name for use in WMATC operations, as supported by proof of registration of said trade name with the Maryland Department of Assessments and Taxation.

⁷ *In re Freestate Transp., L.L.C.*, No. AP-10-085, Order No. 12,483 at 2 (July 19, 2010); *In re Aria - Trans. Inc.*, No. AP-06-184, Order No. 10,000 (Oct. 25, 2006); *In re Therese T. Sime, t/a Exact Enterprise*, No. AP-06-037, Order No. 9690 (June 28, 2006).

⁸ *In re Rules of Prac. & Proc. & Regs., Nos. 51, 55 & 63*, No. MP-96-21, Order No. 4786 at 4 (Mar. 12, 1996).

⁹ *In re Belete Kefargie Teshawerk, t/a Shalom Transp.*, No. AP-12-106, Order No. 13,545 at 2 (Oct. 19, 2012); *In re D C Tours Inc*, No. AP-02-113, Order No. 7047 at 2-3 (Feb. 25, 2003).

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 2266 shall be issued to Gem Ambulance, LLC, 400 East Pratt Street, 8th Floor, Baltimore, MD 21202-3180, with such trade name as may be approved for use in WMATC operations in accordance with the preceding paragraph.

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 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 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 BELLAMY:



William S. Morrow, Jr.
Executive Director