

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,243

IN THE MATTER OF:

Served March 9, 2016

Application of METRO TRANSCARE LLC )  
for a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2015-268

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.<sup>1</sup> A determination of compliance fitness is prospective in nature.<sup>2</sup> The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.<sup>3</sup> Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.<sup>4</sup>

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,

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<sup>1</sup> *In re Reliable Limo. & Bus Serv., LLC*, No. AP-12-183, Order No. 13,775 (Feb. 28, 2013).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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,<sup>5</sup> but this applicant has a history of regulatory violations.

#### **I. HISTORY OF VIOLATIONS**

According to Commission records, applicant held WMATC Certificate No. 1922 from October 2, 2012, to June 19, 2014, when it was revoked in Case No. MP-14-042 after having been suspended on March 21, 2014, for applicant's willful failure to maintain compliance with the Commission's insurance requirements in Regulation No. 58.<sup>6</sup>

Certificate No. 1922 was reinstated on September 12, 2014, in Order No. 15,050, subject to the requirement that applicant verify cessation of WMATC operations from the first day of suspension on March 21, 2014, to reinstatement on September 12, 2014, and further subject to the requirement that applicant produce copies of its business records from January 1, 2014, to September 12, 2014.<sup>7</sup> Of particular interest was the three-month period from March 21, 2014, to July 18, 2014, when respondent was uninsured.

While Case No. MP-14-042 was pending, Certificate No. 1922 was suspended three more times for various violations, including applicant's willful violation of Regulation No. 58, yet again, which ultimately led to revocation of Certificate No. 1922 on August 20, 2015, in Case No. MP-15-135.<sup>8</sup>

Lastly, the Commission assessed a \$250 forfeiture against applicant on October 20, 2015, after applicant failed to produce all of the business records requested in Case No. MP-14-042.<sup>9</sup> And although applicant has produced some new business records in support of this application, none of those records are from 2014.

#### **II. LIKELIHOOD OF FUTURE COMPLIANCE**

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

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<sup>5</sup> *Id.*

<sup>6</sup> *In re Metro Transcare LLC*, No. MP-14-042, Order No. 14,848 (June 19, 2014).

<sup>7</sup> *In re Metro Transcare LLC*, No. MP-14-042, Order No. 15,050 (Sept. 12, 2014).

<sup>8</sup> *In re Metro Transcare LLC*, No. MP-15-135, Order No. 15,808 (Aug 20, 2015).

<sup>9</sup> *In re Metro Transcare LLC*, No. MP-14-042, Order No. 15,916 (Oct. 20, 2015).

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.<sup>10</sup>

Applicant's failure to maintain compliance with Regulation No. 58 a second time was serious enough to warrant revocation of Certificate No. 1922. Applicant eventually corrected the mistake of initially failing to respond to the first revocation order, but applicant's ongoing failure to produce all of the 2014 business records requested in Order No. 15,050 leaves open the question of whether applicant continued operating in 2014 while suspended and then revoked, and it calls into question applicant's current willingness and ability to comply with Commission requirements.

Consequently, we cannot say that applicant has carried its burden of establishing regulatory compliance fitness.<sup>11</sup>

THEREFORE, IT IS ORDERED that the application of Metro Transcare LLC, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB AND DORMSJO:



William S. Morrow, Jr.  
Executive Director

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<sup>10</sup> *Id.*

<sup>11</sup> See *In re Crescent Care, Inc.*, No. AP-10-173, Order No. 12,748 (Mar. 3, 2011) (denying application where applicant's CEO/President had yet to produce records requested in insurance gap investigation).