

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,362

IN THE MATTER OF:

Served May 17, 2016

Application of BETTER BUSINESS)
CONNECTION, INC., Trading as BBC)
EXPRESS, WMATC No. 227, to Merge)
With ABE'S LIMO, INC.)

Case No. AP-2015-107

This matter is before the Commission on the application of Better Business Connection, Inc., trading as BBC Express, for Commission approval of the statutory merger of Abe's Limo, Inc., with and into applicant, which took place April 24, 2014. The application is unopposed.

I. SCOPE & STANDARD OF APPROVAL

The Washington Metropolitan Area Transit Regulation Compact,¹ (Compact), applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District,"² excluding "transportation solely within the Commonwealth of Virginia."³

According to Article XII, Section 3(a), of the Compact: A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to -

- (i) consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District;
- (ii) purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or

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, § 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 Compact, tit. I, art. I.

³ Compact, tit. II, art. XI, § 3(g).

- (iii) acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.

The Commission may approve an application under Article XII, Section 3, if it finds that the proposed transaction is consistent with the public interest.⁴ The public interest analysis focuses on the fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.⁵

II. FITNESS OF ACQUIRING PARTY

An acquiring party already controlling an existing WMATC carrier is entitled to a presumption of fitness,⁶ as is an existing WMATC carrier.⁷ That presumption is diminished here by the failure of applicant to obtain Commission approval of the merger beforehand.⁸ According to applicant, the merger took place on April 24, 2014. The presumption is further diminished by applicant's overall history of violating the Compact.⁹

The Commission recently found that Better Business Connection, Inc., knowingly and willfully violated the Compact from October 1, 2010, through December 31, 2013, by consolidating management and operations with three non-WMATC carriers¹⁰ without Commission approval and by otherwise enabling said carriers to transport passengers for hire between points in the Metropolitan District without WMATC authority.¹¹

When an applicant for approval under Article XII, Section 3, of the Compact, or a person controlling such 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)

⁴ Compact, tit. II, art. XII, § 3(c).

⁵ *In re City Sightseeing Wash. DC Inc., t/a Open Top Sightseeing Wash., DC*, No. AP-11-101, Order No. 12,969 at 2 (Aug. 30, 2011); *In re Academy Express, L.L.C., t/a Academy*, No. AP-11-079, Order No. 12,932 (Aug. 2, 2011); *In re First Transit, Inc.*, No. AP-07-194, Order No. 11,729 (Dec. 4, 2008); *In re Veolia Transp. Servs., Inc.*, No. AP-07-001, Order No. 11,580 at 2 (Sept. 18, 2008); Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960) (codified at DC CODE ANN. § 9-1103.04 (2016)).

⁶ Order No. 12,969 at 2; Order No. 11,729 at 2.

⁷ Order No. 12,969 at 2; Order No. 12,932 at 2.

⁸ See *In re Exec. Coach, Ltd.*, No. AP-02-75, Order No. 6797 at 2 (Sept. 3, 2002).

⁹ See *In re Better Business Connection, Inc., t/a BBC Express*, No. MP-13-028, Order No. 15,486 (Apr. 2, 2015) (finding various violations over several years).

¹⁰ BBC Van Service, Inc.; Best Bus Company, LLC; & Abe's Limo, Inc.

¹¹ Order No. 15,486 at 12-28 (citations omitted).

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.¹²

The aforementioned violations were found to be serious and persistent:

Better Business Connection's persistent enabling of respondents' unauthorized operations for over three years, and filing of multiple misleading annual reports in furtherance thereof, warrants suspension or revocation of Certificate No. 227. Respondents cite *In re Mobility Express Inc.*, No. MP-11-062, Order No. 13,177 (Feb. 28, 2012), as precedent against revocation, but the facts do not match. There was no evidence of unlawful operations in the MEI case as there is here.

However, we must take into account the multiplicity of airline-crew shuttle contracts that Better Business Connection holds and the substantial disruption of airport operations that potentially would follow revocation of Certificate No. 227. And we are mindful of Better Business Connection's exemplary record prior to October 2010 - over 17 years of operations from mid-1993 to late 2010 with barely a blemish. Accordingly, we will stay our hand for the time being.

We will revisit this issue in the merger application ordered below. Better Business Connection will have until then to "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."¹³

We are unaware of any mitigating circumstances, but we do see evidence of a sincere effort to correct past mistakes in the form of applicant's payment of civil forfeitures¹⁴ assessed in connection with said violations.¹⁵

¹² Order No. 11,580 at 4.

¹³ Order No. 15,486 at 27-28 (citations omitted).

¹⁴ See *In re Addis Transp., Inc.*, No. AP-11-111, Order No. 13,114 at 6 (Jan. 10, 2012) (prompt payment of forfeiture may be considered correction of past mistakes).

¹⁵ See *In re Better Business Connection, Inc., t/a BBC Express*, No. MP-13-028, Order No. 15,729 at 4-5 (Jul. 13, 2015) (assessing \$14,000); Order No. 15,486 at 29-30 (assessing net combined forfeiture of \$90,600), *modified*, Order No. 15,729 (approving payment plan).

This brings us to applicant's willingness and ability to comply with Commission requirements in the future. The issue is whether applicant has "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."¹⁶

Following the Commission's findings with respect to the various regulatory violations committed by applicant in 2010 through 2013, applicant violated Commission orders again in April 2015 by advertising service under an unapproved trade name.¹⁷ Since then, applicant's compliance record has substantially improved. Applicant has timely filed the instant application as directed by Order No. 15,486, successfully prosecuted a trade name application,¹⁸ maintained compliance with Commission insurance requirements, complied with the Commission's annual report and fee requirements, and kept up with contract tariff filings. It would therefore appear that applicant has put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements.

We find applicant prospectively fit on the record before us, subject to a one-year period of probation.¹⁹

III. EFFECT ON COMPETITION

The primary concern when assessing the effect on competition of a transaction under Article XII, Section 3, is whether the transaction will increase the acquiring party's market share.²⁰ Transactions which do not increase market share give little pause for concern, and the Commission will approve even those transactions which tend to increase market share as long as there is sufficient post-transaction competition to check any adverse effects that such transactions otherwise might produce.²¹

As noted at the outset of this order, the statutory merger of Abe's Limo, Inc., with and into applicant took place April 24, 2014. But Commission records reveal that the parties joined forces at least two years prior to that date. This finding is supported by the following excerpts from Order No. 15,486, issued in WMATC Case No. MP-2013-028 on April 2, 2015 (citations omitted).

¹⁶ *In re Academy Express, L.L.C., t/a Academy*, No. AP-11-037, Order No. 12,817 at 5 (Apr. 19, 2011); *In re Pantio Med. Transp.: LLC*, No. AP-10-124, Order No. 12,631 at 2 (Nov. 19, 2010).

¹⁷ See Order No. 15,729 (finding violations of Commission orders in April 2015).

¹⁸ *In re Better Business Connection, Inc., t/a BBC Express*, No. AP-15-177, Order No. 16,237 (Mar. 4, 2016).

¹⁹ See *In re Bach Vu, t/a Affordable Airport Charter*, No. AP-97-47, Order No. 5400 (Aug. 31, 1998) (finding repeat offender prospectively fit in asset-transfer proceeding subject to probation).

²⁰ Order No. 11,580 at 2-3.

²¹ *Id.* at 3.

On July 20, 2011, Abe's Limo president Hani Abraham and four others form Best Bus Company, LLC. Mr. Abraham, acting in his capacity as "Member/Manager", later opens an account with Bank of America in Best Bus Company's name on October 28, 2011.

* * *

On January 31, 2012, Better Business Connection pays its 2012 annual fee by check drawn ostensibly on the "OPERATING ACCOUNT" of "BBC EXPRESS/ABES LIMO".

The following week, "BBC LLC" - which appears to be a contraction of Best Bus Company, LLC - begins issuing passenger transportation invoices to various airlines, including some of the above-noted airlines under contract to Better Business Connection and BBC Van service. . . . This invoicing activity will continue throughout 2012 and all of 2013 and encompass 19 airlines overall.

In the meantime, on March 26, 2012, Best Bus Company, LLC, files an application for a WMATC certificate of authority in WMATC Case No. AP-2012-053. The application is signed by Radcliff Taylor as "Vice President - CEO" of Best Bus Company, who acknowledges the existence of a control relationship between Best Bus Company and Better Business Connection.

* * *

Three months later, while Best Bus Company's application for WMATC authority is pending, Best Bus Company applies in WMATC Case No. AP-2012-150 for permission to use the trade name "BBC" under its yet-to-be-issued WMATC certificate and pays the application fee with a check drawn on the "OPERATING ACCOUNT" of "BBC EXPRESS/ABES LIMO", which as noted above was the account used by Better Business Connection to pay its 2012 annual fee.

* * *

[W]hen asked why the Commission should not require Best Bus Company, BBC Express, and Abe's Limo to establish their own individual bank accounts, Best Bus Company responds by producing a sample check that reads "BEST BUS COMPANY, LLC" and "OPERATING ACCOUNT" but that displays the same account number appearing on the "BBC EXPRESS/ABES LIMO" check, which Best Bus Company declares is now "null and void". It will not become apparent to the Commission until 2013 that the account in question always belonged to Best Bus Company.

Further review of the record in WMATC Case No. MP-2013-028 reveals that Ferras Ghannam furnished a voided blank copy of a "BBC EXPRESS/ABES LIMO" check to a Better Business Connection client in January 2012 for the purpose of facilitating the client's electronic payment of funds due Better Business Connection under an airline-crew shuttle contract.²² Ferras Ghannam agreed to what was a five-figure payment in his capacity as Account Manager for "Better Business Connection, Inc., trading as BBC Express Charter & Limo."²³ At that time, he also was a co-owner of Best Bus Company and a member of its management.²⁴ And it bears mentioning that according to Commission records, Ferras Ghannam is the son of Mahmoud O. Abu-Ghannam,²⁵ who apparently was president and owner of Better Business Connection before, during, and after the January 2012 consolidation.²⁶

We also note the following simultaneous overlapping ownership and management relationships in January 2012 between (1) applicant and Best Bus Company LLC and (2) Best Bus Company LLC and Abe's Limo, Inc.:

- (1) Radcliff Taylor was general manager of Better Business Connection, Inc., and vice president/CEO of Best Bus Company LLC.²⁷
- (2) Hani Abraham was a director and president of Abe's Limo, Inc., and a member and president of Best Bus Company LLC.²⁸

²² See Case No. MP-13-028 record, Ferras Ghannam email to Melissa Miro of American Airlines, dated Jan. 23, 2012, and attachment.

²³ See *id.* (attachment).

²⁴ See Case No. MP-13-028 record, Best Bus Co. income tax returns for 2011 & 2012, and Response to Order No. 13,819 filed Apr. 15, 2013; WMATC Carrier No. 227 2012 annual fee record, BBC EXPRESS/ABES LIMO check dated Jan. 11, 2012; Case No. AP-13-019 record, Best Bus Co. banking resolution dated Oct. 28, 2011, & signature card dated Apr. 13, 2012; Case No. AP-12-053 record, vehicle leases from Abe's Limo to Best Bus Co. dated Nov. 1, 2011, and Best Bus Co. letters to WMATC dated Apr. 18, 2012. See also Case No. AP-12-150 record, BBC EXPRESS/ABES LIMO check dated July 17, 2012.

²⁵ See Case No. MP-13-028 record, email from ProTorae Law to WMATC dated May 1, 2014.

²⁶ See Case No. AP-08-179 record, BBC Van Service letter to WMATC dated May 11, 2009; Case No. MP-13-028 record, Better Business Connection income tax return for year ended Sept. 30, 2010, Response to Order No. 13,819 filed Apr. 15, 2013, and Answer to Show Cause Order at 2-4 dated April 28, 2014. See also Case No. AP-15-107 record, articles and plan of merger dated Apr. 21, 2014.

²⁷ See 2012 Annual Report of Better Business Connection; Case No. AP-12-053 record, Best Bus Co. application form dated Jan. 31, 2012, & Best Bus Co. letters to WMATC dated Apr. 18, 2012.

²⁸ See Case No. AP-10-030 record, application form dated Mar. 2, 2010 and attachments; Case No. AP-12-053 record, vehicle leases from Abe's Limo to

Hazim Ghannam was a director of Abe's Limo and a member of Best Bus Company LLC.²⁹

It is clear from the foregoing that through the Best Bus Company edifice, Better Business Connection and Abe's Limo consolidated management within the meaning of Article XII, Section 3(a)(i), prior to their merger in 2014 and that this consolidation took place no later than January 2012. Accordingly, our competition analysis under Article XII, Section 3, proceeds from that understanding.³⁰

The Commission defines the relevant market in terms of the common transportation service(s) provided by the parties to the transaction under review and uses the total number of WMATC carriers providing the relevant service and the size of their fleets as a proxy for determining overall market size and derivatively the approximate pre- and post-transaction market shares of the parties at issue.³¹

The WMATC general tariff on file for Better Business Connection at the end of 2011 and beginning of 2012 included hourly charter rates and airport transfer rates.³² Better Business Connection also had a number of contract tariffs on file with WMATC during the same time frame for airline-crew shuttle service.³³ This suggests two relevant markets: the public charter market and the airline-crew shuttle service market.

Best Bus Co. dated Nov. 1, 2011, Federal Motor Carrier Safety Admin. Letter to Hani Abraham, Pres., Best Bus Co., dated Jan. 6, 2012, and Va. State Corp. Comm'n printout dated Mar. 27, 2012; Case No. AP-13-019 record, Best Bus Co. banking resolution dated Oct. 28, 2011, & signature card dated Apr. 13, 2012; Case No. MP-13-028 record, Best Bus Co. income tax returns for 2011 & 2012, Response to Order No. 13,819 filed Apr. 15, 2013, and Answer to Show Cause Order at 2-4 dated April 28, 2014. See also Case No. AP-15-107 record, articles and plan of merger dated Apr. 21, 2014.

²⁹ See Case No. AP-10-030 record, application form dated Mar. 2, 2010 and attachments; Case No. AP-12-053 record, Best Bus Co. letters to WMATC dated Apr. 18, 2012; Case No. AP-13-019 record, Best Bus Co. banking resolution dated Oct. 28, 2011, & signature card dated Apr. 13, 2012; Case No. MP-13-028 record, Best Bus Co. income tax returns for 2011 & 2012, Response to Order No. 13,819 filed Apr. 15, 2013, and Answer to Show Cause Order at 2-4 dated April 28, 2014.

³⁰ See Order No. 11,580 at 3-4 (analyzing 3-year old precursor transaction).

³¹ See Order No. 12,969 at 4 (discussing individually-ticketed sightseeing market concentration); Order No. 12,932 at 2 (discussing charter market concentration); Order No. 11,729 at 2-3 (discussing contract charter market v. public charter market).

³² See WMATC Carrier No. 227 General Tariff No. GT-4 effective July 19, 2004.

³³ See Order No. 15,486 at 13-15 nn. 40, 41, 43 & accompanying text.

Regarding the parties' relative shares of the public charter market, we see on one side of the ledger that Better Business Connection listed 30 vehicles in its WMATC annual report in January 2012.³⁴ Although Better Business Connection had ceased operating as a carrier in late 2010, Better Business Connection's commonly-controlled affiliate, BBC Van Service, assumed the role of carrier under WMATC No. 227 at that time and continued operating in that capacity through late 2011 in Better Business Connection's place.³⁵ Indeed, approximately half of the vehicles listed in Better Business Connection's 2012 annual report were reported by BBC Van Service on its 2011 income tax return.³⁶ On the other side of the ledger, we see that Abe's Limo claimed deductions for 24 vehicles on its income tax return for the year ended December 31, 2011.³⁷

Although there is little if any direct evidence that Abe's Limo was conducting operations requiring a WMATC certificate of authority at the end of 2011, if we assume for the purpose of this analysis that Abe's Limo was engaged in such activity, we see that combining the 30-vehicle fleet under Better Business Connection's control with the 24-vehicle fleet under Abe's Limo's control would not have yielded any significant increase in market concentration in the public charter market regulated by WMATC in late 2011/early 2012 given the scores of competitors known to have been operating thousands of vehicles in that market in late 2011.³⁸

As for the effect of the parties' 2012 consolidation on competition in the airline-crew shuttle service market, there is no evidence that Abe's Limo ever held a contract for such service, much less prior to consolidating management with Better Business Connection in January 2012. Approval of the transaction in 2012, in and of itself, therefore, would not have been predicted to increase applicant's share of the relevant WMATC-regulated market had the Commission ruled on this matter in late 2011/early 2012.³⁹

IV. EFFECT ON EMPLOYEES

When Congress first approved the Compact in 1960, it attached several conditions, including the condition that when the Commission assesses whether a merger, consolidation, or acquisition of control is consistent with the public interest, "the term . . . 'public interest' shall be deemed to include, among other things, the interest of the

³⁴ See WMATC Carrier No. 227 2012 annual report.

³⁵ Order No. 15,486 at 14-17.

³⁶ *Id.* at 15 (discussing BBC Van Service vehicles on Better Business Connection's 2011 annual report) & 17 (discussing same vehicles on Better Business Connection's 2012 annual report).

³⁷ See Case No. MP-13-028 record, Abe's Limo 2011 income tax return.

³⁸ See Order No. 12,932 at 2 (finding over 130 WMATC carriers operating 2,450 charter vehicles in late 2011).

³⁹ See *In re Arlington National Cemetery Tours, Inc.*, No. AP-15-160, Order No. 15,913 at 2-3 (Oct. 20, 2015) (analyzing transaction in and of itself).

carrier employees affected."⁴⁰ A further congressional condition is that the Commission may not use its power to approve mergers, consolidations, and acquisitions of control "to break a lawful strike by the employees of any carrier authorized to provide service pursuant to such compact."⁴¹ But the legislative history makes clear that the Compact "does not concern itself with labor problems."⁴²

Inasmuch as BBC Van Service was operating in place of Better Business Connection in 2011, we consider the interest of BBC Van Service drivers. We also consider the interest of Abe's Limo drivers. Tax records produced by BBC Van Service during the Commission's aforementioned investigation of operations under WMATC No. 227 in 2010 through 2013 indicate that BBC Van Service employed 45-50 drivers in 2011.⁴³ Tax records produced by Abe's Limo indicate that approximately half of BBC Van Service drivers also worked for Abe's Limo in 2011, which employed 45-50 drivers overall in 2011.⁴⁴ The 24 drivers that worked for both companies in 2011 went on to work for Best Bus Company in 2012.⁴⁵ Eight Abe's Limo drivers that did not also work for BBC Van Service and 13 BBC Van Service drivers that did not also work for Abe's Limo likewise found employment with Best Bus Company in 2012.⁴⁶

Retaining a majority of pre-consolidation drivers while allowing for some attrition is a legitimate competitive strategy for preserving continuity of post-consolidation operations with a leaner, less costly workforce. The scores of competitors operating thousands of vehicles in the Metropolitan District at the time in question presented what few workers were displaced by the consolidation with ample opportunity for continued employment in the industry.

V. CONCLUSION

On the basis of the foregoing findings, and subject to a one-year period of probation, we conclude that the statutory merger of

⁴⁰ Act of Sept. 15, 1960, Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960).

⁴¹ *Id.* § 4, 74 Stat. at 1050.

⁴² *District of Columbia, Maryland, and Virginia Mass Transit Compact: Hearings on H.J. Res. 402 Before Subcomm. No. 3 of the House Comm. on the Judiciary*, 86th Cong., 2d Sess. 259 (1960) (construing "fifth proviso" of § 3 of Act approving Compact, Pub. L. No. 86-794, 74 Stat. 1031 (1960)); see also WASH. METRO. AREA TRANSIT REG. COMPACT, H.R. REP. NO. 1621, 86th Cong., 2d Sess. 3, 24 (1960) (Compact's affected-employee and strike provisions oriented toward regulatory function rather than labor issues); WASH. METRO. AREA TRANSIT REG. COMPACT, S. REP. NO. 1906, 86th Cong., 2d Sess. 26-27 (1960) (same).

⁴³ See Case No. MP-13-028 record, BBC Van Service, IRS Forms W-2 & 1099 for 2011.

⁴⁴ See Case No. MP-13-028 record, compare *id.* with Abe's Limo, IRS Forms W-2 & 1099 for 2011.

⁴⁵ See Case No. MP-13-028 record, compare BBC Van Service and Abe's Limo, IRS Forms W-2 & 1099 for 2011 with Best Bus Company IRS Forms W-2 & 1099 for 2012.

⁴⁶ See *id.*

Abe's Limo, Inc., into Better Business Connection, Inc., in April 2014, as preceded by consolidation of management in January 2012, is consistent with the public interest.

Although the Commission has in the past cast its merger approval in conditional form subject to an applicant's subsequent submission of certain documents (e.g., vehicle registrations, leases, and safety certificates, plus proof of insurance and an updated general tariff) and to applicant's presentation of vehicles for inspection by WMATC staff,⁴⁷ applicant recently produced such documents, and its vehicles recently passed such an inspection,⁴⁸ in connection with a WMATC trade name proceeding. This order therefore omits such conditions.

THEREFORE, IT IS ORDERED:

1. That based on the findings herein and in consideration of the one-year term of probation assessed herein, the Commission finds that the 2012 consolidation and 2014 merger of Abe's Limo, Inc., and Better Business Connection, Inc., are consistent with the public interest.

2. That Better Business Connection, Inc., is hereby placed on probation for a period of one year commencing with the issuance of this order and that a willful violation of the Compact, or of the Commission's rules, regulations, or orders thereunder during the period of probation shall constitute grounds for immediate suspension and/or revocation of WMATC Certificate No. 227 without further proceedings, regardless of the nature and severity of the violation.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB, DORMSJO, AND RICHARD:



William S. Morrow, Jr.
Executive Director

⁴⁷ Order No. 11,580 at 9.

⁴⁸ *In re Better Business Connection, Inc., t/a BBC Express*, No. AP-15-177, Order No. 16,237 (Mar. 4, 2016).