

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,489

IN THE MATTER OF:

Served July 21, 2016

IBEX TRANSPORTATION LLC, Suspension)
and Investigation of Revocation of)
Certificate No. 2687)

Case No. MP-2015-201

Investigation of Violation of Title)
II, Article 14 of the Compact, and)
Commission Regulation No. 55,)
Directed to: IBEX TRANSPORTATION)
LLC, WMATC No. 2687)

Case No. MP-2015-160

These proceedings are before the Commission on respondent's response to Order No. 16,255, served March 16, 2016, in Case No. MP-2015-160, and failure to respond to Order No. 16,312, served April 26, 2016, in Case No. MP-2015-201.

I. CASE NO. MP-2015-160

Under Title II, of the Compact, Article XI, Section 14(c), "A carrier may not charge a rate or fare for transportation subject to [the Compact] other than the applicable rate or fare specified in a tariff filed by the carrier under [the Compact] and in effect at the time."¹ Under Regulation No. 55, a carrier must file a general tariff if it offers standardized service at universally applicable rates.² A carrier must file a contract tariff if it offers tailored service on a continuing basis at negotiated rates.³

Last year, WMATC became aware that respondent was providing tailored service on a continuing basis at negotiated rates under contract with Medical Transportation Management, Inc., (MTM), the manager of the District of Columbia Medicaid non-emergency medical transportation program. By letter dated July 20, 2015, Commission staff advised respondent of the Commission's tariff filing requirements and admonished respondent to file an acceptable contract tariff covering its operations with MTM on or before August 24, 2015. On August 28, 2015, WMATC obtained an updated list of providers from

¹ See also Commission Regulation No. 55-02 ("[n]o carrier shall demand, receive, or collect any compensation for any transportation or transportation-related service, except such compensation as is specified in its currently effective tariff for the transportation or transportation-related service provided.")

² Regulation No. 55-07; *In re Better Business Connection, Inc., t/a BBC Express*, No. MP-13-028, Order No. 14,594 at 11 (Feb. 26, 2014).

³ Regulation No. 55-08; Order No. 14,594 at 11.

MTM. Respondent's name was on that list, but respondent had yet to file an acceptable MTM tariff with WMATC.

Order No. 15,853 directed respondent to show cause why respondent should not be assessed a civil forfeiture, and/or ordered to cease and desist providing passenger transportation for MTM, for failure to comply with Article XI, Section 14, of the Compact and Commission Regulation No. 55. Respondent filed an acceptable contract tariff covering its operations with MTM on October 14, 2015, but did not explain why a civil forfeiture should not be assessed for respondent's violation of Article XI, Section 14, of the Compact and Commission Regulation No. 55 prior to the effective date of the new tariff.

The Commission accordingly assessed a \$250 civil forfeiture against respondent in Order No. 16,027 for knowingly and willfully performing passenger transportation for MTM in 2015 without a valid contract tariff. The order directed respondent to pay the forfeiture by January 6, 2016. Respondent did not respond.

The Commission thereafter issued Order No. 16,255 giving respondent until April 15, 2016, to show cause why Certificate No. 2687 should not be revoked for respondent's failure to pay said forfeiture. Respondent eventually paid the forfeiture on April 14, 2016.

II. CASE NO. MP-2015-201

While Case No. MP-2015-160 was pending, Certificate No. 2687 became automatically suspended on November 21, 2015, pursuant to Regulation No. 58-12, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 15,992, served November 23, 2015, noted the automatic suspension of Certificate No. 2687 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 2687, and gave respondent 30 days to replace the terminated endorsement and pay a \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 2687.

Respondent paid the late fee on December 1, 2015, and submitted an acceptable \$1.5 million primary WMATC Insurance Endorsement on December 9, 2015, and the suspension of Certificate No. 2687 was lifted in Order No. 16,037, on December 9, 2015, but because the effective date of the new endorsement is December 9, 2015, instead of November 21, 2015, the order gave respondent 30 days to verify cessation of operations as of November 21, 2015, and 30 days to produce copies of respondent's pertinent business records from September 1, 2015, to December 9, 2015, in accordance with Regulation No. 58-14(a). Respondent did not respond.

Subsequently, in accordance with Regulation No. 58-14(b), Order No. 16,163 gave respondent until February 28, 2016, to show cause why the Commission should not assess a civil forfeiture against

respondent, and/or suspend or revoke Certificate No. 2687, for knowingly and willfully conducting operations under an invalid/suspended certificate of authority and failing to produce documents as directed. The show-cause deadline was later extended to May 20, 2016, at respondent's request, but respondent has yet to submit any statement and has yet to produce any documents.

III. INTERIM REVOCATION IN CASE NO. MP-2016-082

On June 7, 2016, the Commission revoked Certificate No. 2687 in Case No. MP-2016-082.⁴ Certificate No. 2687 had become suspended on May 1, 2016, for respondent's failure to file an acceptable 2016 annual report, and pay an associated \$150 late fee, on or before April 30, 2016. Order No. 16,325 gave respondent until June 2, 2016, to show cause why Certificate No. 2687 should not be revoked. Respondent did not respond.

The revocation of Certificate No. 2687 in Case No. MP-2016-082 dispenses with the issue of whether Certificate No. 2687 should be revoked in Case No. MP-2015-160. And it dispenses with the issue of whether Certificate No. 2687 should be suspended or revoked in Case No. MP-2015-201. But it does not dispense with the issue of whether the Commission should assess a civil forfeiture in Case No. MP-2015-201.

IV. FINDINGS AND ASSESSMENT OF FORFEITURE

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.⁵

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁶ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁷

Because respondent has failed to produce copies of its business records from September 1, 2015, to December 9, 2015, as required by Regulation No. 58-14(a) and Order No. 16,037, and because respondent has offered no explanation for this noncompliance, we find that respondent has failed to show cause why the Commission should not assess a civil forfeiture of \$250 against respondent for knowingly and willfully failing to produce documents.⁸

⁴ *In re Ibex Transp. LLC*, No. MP-16-082, Order No. 16,409 (June 7, 2016).

⁵ Compact, tit. II, art. XIII, § 6(f).

⁶ *In re Metro Transcare LLC*, No. MP-14-042, Order No. 15,916 (Oct. 20, 2015).

⁷ *Id.*

⁸ See *id.* (assessing \$250 for failing to produce documents).

THEREFORE, IT IS ORDERED:

1. That Case Nos. MP-2015-160 and MP-2015-201 are hereby consolidated pursuant to Rule No. 20-02.

2. That Case No. MP-2015-160 is hereby terminated.

3. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Regulation No. 58-14(a) and Order No. 16,037.

4. That respondent is hereby directed to pay to the Commission within 30 days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

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

A handwritten signature in black ink, appearing to read 'W. S. Morrow, Jr.', is positioned above the printed name and title.

William S. Morrow, Jr.
Executive Director