

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,596

IN THE MATTER OF:

Served September 29, 2016

Petitions to Waive Regulation)
No. 67-03, Filed by:)

Case No. MP-2016-169

NBA CORPORATION, Trading as NBA)
COACH, WMATC No. 305)

AMERICAN EAGLE LIMOUSINE & TRAVEL)
SERVICE, INC, WMATC No. 644)

ANGELIC LUXURY COACH, INC., WMATC)
No. 695)

NABIL AZEKRI, Trading as)
ANDALOUSLIMO, WMATC No. 2057)

BAZ CORPORATION, Trading as EAST)
COAST LIMOUSINE SERVICES, WMATC)
No. 2203)

XQUISITE TRANSPORTATION L.L.C.,)
WMATC No. 2326)

DC EXECUCAR LLC, WMATC No. 2771)

This matter is before the Commission on the petitions of the above-captioned carriers for waiver of Regulation No. 67-03.

Commission Regulation No. 60-01 provides that each carrier holding a certificate of authority on the first day of the calendar year shall file an annual report on or before January 31 of that year. Regulation No. 67-02 provides that each carrier holding a certificate of authority on the first day of the calendar year shall pay an annual fee of \$150 on or before January 31 of that year. The Commission emailed annual report and annual fee reminders to virtually all carriers, including petitioners, on December 21, 2015, and mailed invoices and prepopulated report forms to all carriers on January 5, 2016.

Each of the above-captioned carriers held a certificate of authority on January 1, 2016. Each failed to comply in timely fashion with Regulation No. 60-01 and/or Regulation No. 67-02. As a result, each was automatically assessed \$150 or \$300 in late fees pursuant to Regulation No. 67-03(a) and/or 67-03(b). Each carrier, with the exception of Xquisite Transportation L.L.C., has paid said late fee(s)

and is requesting a refund. Xquisite is seeking to be excused from having to pay late fees in the first instance.

Commission Rule No. 29 provides that the Commission may waive its rules "upon the filing of a motion showing good cause." The Commission is consolidating these petitions into one proceeding pursuant to Rule No. 20-02 to resolve the common question of whether good cause has been shown to waive the aforementioned late fees under Regulation No. 67-03.¹

After careful consideration of the grounds offered by each petition, we conclude that none establishes good cause for granting the relief requested, for the following reasons.

I. Carrier No. 305, NBA Corp.

According to Commission records, the Commission received neither an annual fee nor an annual report from Carrier No. 305 by the deadline. The Commission advised NBA of this by letter dated February 3, 2016. The annual fee and an incomplete annual report were subsequently received on February 5. An email rejecting the annual report was sent to NBA on February 8. A complete annual report was not received by WMATC until May 9.

NBA contends that it mailed the fee and incomplete report on January 28 and that "bad weather" delayed delivery to WMATC.

As noted above, the Commission emailed annual report and fee reminders to virtually all carriers, including petitioners, on December 21, 2015. The email encouraged carriers to submit their fee payments and annual reports electronically so as to "avoid the risk of loss or delay in the mail." The annual report instructions mailed to all carriers on January 5 cautioned carriers that to be considered timely, "the report and fee must be received at the WMATC office by 4:30 p.m. (or submitted online by 11:59 p.m.)" on February 1, 2016.

By waiting until the last moment to tender the report and payment by mail, NBA assumed the risk that they would not arrive at WMATC by the deadline.² Furthermore, bad weather does not explain why it took NBA three months to file a complete annual report after being informed that the report filed February 5 had been rejected.

Accordingly, the NBA petition is denied.

II. Carrier No. 644, American Eagle Limo. & Travel Service, Inc

According to Commission records, the Commission received neither an annual fee nor an annual report from Carrier No. 644 by the deadline. The annual fee was received by check on February 2, and the annual report was received online on February 4.

¹ See *In re Winter Growth, Inc.*, No. MP-08-084, Order No. 11,303 (Apr. 24, 2008) (consolidating Reg. No. 67-03 waiver petitions).

² *In re M & C Enterprise, Inc., t/a Chariots For Hire*, No. MP-14-116, Order No. 14,938 at 2 (July 24, 2014).

American Eagle vaguely contends that "[t]here was a delay in remitting the report due to the weather." We find this contention unavailing.

As noted above, the Commission encouraged carriers by email in December to submit their fee payments and annual reports electronically so as to "avoid the risk of loss or delay in the mail," and the Commission cautioned carriers in early January that to be considered timely, "the report and fee must be received at the WMATC office by 4:30 p.m. (or submitted online by 11:59 p.m.)" on February 1, 2016.

American Eagle had most of January to meet the deadline. other carriers were subject to the same weather conditions in January as American Eagle and managed to meet the deadline.

Accordingly, the American Eagle petition is denied.

III. Carrier No. 695, Angelic Luxury Coach

According to Commission records, the Commission received Angelic Luxury Coach's annual fee on time but not its annual report. WMATC did not receive the annual report until February 17, more than two weeks after the deadline.

Angelic Luxury Coach states that when it paid the annual fee online, it thought it "had completed the entire submission." Why it believed paying the fee also satisfied its obligation to file a report is not explained. Angelic Luxury Coach's failure to promptly rectify matters after being advised by letter dated February 3, 2016, that the report was still due, leaves the Commission without a sufficient basis for waiving the late fee.

Accordingly, the petition of Angelic Luxury Coach is denied.

IV. Carrier No. 2057, Nabil Azekri t/a Andalouslimo

According to Commission records, the Commission received neither an annual fee nor an annual report from Carrier No. 2057 by the deadline. The annual fee and annual report were received by mail on February 2.

The check and report are dated January 20, and Mr. Azekri contends that he mailed them "a week before the due date." He argues that the reason WMATC received them late was "probably due to snow."

As noted above, the Commission encouraged carriers by email in December to submit their fee payments and annual reports electronically so as to "avoid the risk of loss or delay in the mail," and the Commission cautioned carriers in early January that to be considered timely, "the report and fee must be received at the WMATC office by 4:30 p.m. (or submitted online by 11:59 p.m.)" on February 1, 2016.

By waiting until late in the month to tender the report and fee by mail, Mr. Azreki assumed the risk that they would not arrive at WMATC by the deadline.³

Accordingly, the petition of Nabil Azekri t/a Andaloulimo is denied.

V. Carrier No. 2203, East Coast Limousine Services

According to Commission records, the Commission received East Coast Limousine Services' annual fee on time but not its annual report. WMATC did not receive the annual report until April 29, three months after the deadline.

East Coast Limousine Services states that it mailed the report and check in the same envelope on January 14, but there is no evidence of that in the record. And East Coast Limousine Services' failure to promptly rectify matters after being advised by letter dated February 3, 2016, that the report was still due, leaves the Commission without a sufficient basis for waiving the late fee.

Accordingly, the petition of East Coast Limousine Services is denied.

VI. Carrier No. 2326, Xquisite Transportation L.L.C.

To date, the Commission has received neither an annual fee nor an annual report from Carrier No. 2326.

Xquisite's CEO, Anthony Shoats, explains in Xquisite's petition that ill health affected his ability to operate a motor vehicle for an extended period of time.

The issue before us is not Mr. Shoats' inability to operate a motor vehicle; rather, it is Xquisite's failure to pay its 2016 annual fee and file its 2016 annual report. And in this regard we note that Mr. Shoats' medical condition did not prevent him from electronically filing a change of address notice with the Commission on January 12, 2016. Mr. Shoats offers no explanation for why he could submit a change of address electronically in January but not tender Xquisite's annual fee and report electronically in January.

At any rate, the duty to comply with Commission requirements falls on the carrier, not its individual officers.⁴ And in this case, the change of address filed by Mr. Shoat designated a second person as Xquisite's WMATC contact. Mr. Shoats offers no explanation of why the contact failed to ensure that the report and fee were tendered.

Accordingly, the petition of Xquisite Transportation L.L.C. is denied.⁵

³ Order No. 14,938 at 2.

⁴ *In re M & M Medvan, Inc*, No. MP-12-054, Order No. 13,276 (May 18, 2012).

⁵ We note for the record that Certificate No. 2326 was revoked on April 26, 2016, for Xquisite's willful failure to comply with WMATC Regulation Nos. 58

VII. Carrier No. 2771, DC Execucar LLC

According to Commission records, the Commission received neither an annual fee nor an annual report from Carrier No. 2771 by the deadline. The annual fee and annual report were received electronically on February 3.

DC Execucar blames its tardiness on "the January 2016 blizzard," asserting that "due to the inclement weather USPS mail delivery was mixed up and [WMATC's] letter delivered extremely late. Immediately upon receipt of [WMATC's] notice, [DC Execucar] filed the annual report and renewal fees online."

We are not persuaded by DC Execucar's argument that it did not receive timely notice of its annual report and fee obligations. DC Execucar was on notice of those obligations first and foremost by virtue of the publication of Regulation Nos. 60-01 and 67-02 on the Commission's website at all times pertinent to this proceeding. In addition, as noted above, the Commission emailed annual report and fee reminders to virtually all carriers, including petitioners, on December 21, 2015, and the Commission mailed invoices and prepopulated report forms to all carriers on January 5, 2016. Coming as it did near the end of the month, we do not see how the snowstorm in January could have interfered with either the December email or the January 5 mailing, much less both.

Accordingly, the petition of DC Execucar is denied.

THEREFORE, IT IS ORDERED:

1. That the above-captioned petitions are hereby consolidated for decision pursuant to Commission Rule No. 20-02.
2. That all petitions are denied.

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



William S. Morrow, Jr.
Executive Director