

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,003

IN THE MATTER OF:

Served May 16, 2017

NATIONAL CHILDREN'S CENTER, INC.,)
WMATC No. 189, Investigation of)
Violation of Regulation Nos. 61,)
62, and 64)

Case No. MP-2017-074

This matter is before the Commission on the apparent violation of Commission regulations by respondent, National Children's Center, Inc., (NCC), WMATC Carrier No. 189.

I. WMATC JURISDICTION

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 A person may not engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Washington Metropolitan Area Transit Commission (WMATC) authorizing the person to engage in that transportation.³ "Each authorized carrier shall: (a) provide safe and adequate transportation service, equipment, and facilities; and (b) observe and enforce Commission regulations established under [the Compact]."⁴

The Commission may investigate on its own motion a fact, condition, practice, or matter to determine whether a person has violated or will violate a provision of the Compact or a rule, regulation, or order.⁵ The Commission may institute a proceeding upon its own motion by the issuance of an order to show cause, an order of

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; and all other cities now or hereafter existing in Maryland or Virginia within the geographic area bounded by the outer boundaries of the combined area of those counties, cities, and airports. Compact, tit. I, art. II.

³ Compact, tit. II, art. XI, § 6(a).

⁴ Compact, tit. II, art. XI, § 5.

⁵ Compact, tit. II, art. XIII, § 1(c).

investigation, or other appropriate order.⁶ For the purpose of an investigation or other proceeding under the Compact, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry.⁷ The Commission shall have access at all times to the accounts, records, memoranda, lands, buildings, and equipment of any carrier for inspection purposes.⁸

Commission records indicate that grounds exist for initiating an investigation of NCC's compliance with Commission Regulation Nos. 61 (vehicle markings), 62 (vehicle leases), and 64 (safety).

II. REGULATION NO. 64

WMATC staff conducted an informal investigation of NCC's compliance with the Commission's safety regulation, Regulation No. 64, in the latter half of 2016. The investigation focused primarily, but not exclusively, on respondent's compliance with Regulation No. 64-01, which adopts the Federal Motor Carrier Safety Regulations pertaining to commercial motor vehicles (CMVs) and to the drivers of such vehicles. CMVs in this context are for-hire passenger vehicles seating nine persons or more, including the driver.

By letter dated December 15, 2016, respondent was advised that staff had discovered several violations of Regulation No. 64-01, including, but not limited to:

- Failure to maintain complete driver qualification files
- Failure to retain driver medical examiner certificates
- Failure to maintain driver hours of service records
- Failure to maintain annual vehicle inspection certificates

Two months later, respondent informed the Commission that respondent was suspending the use of its CMVs and that it was surrendering the license plates for such vehicles and returning those vehicles to the lessor. But a recent comparison of staff's safety inspection report with (1) respondent's 2017 WMATC Annual Report; (2) records produced by respondent regarding returned plates and vehicles; and (3) records obtained from respondent's insurance company; shows that two of the vehicles inspected by staff in December 2016 and found to seat 9 persons including the driver are still in respondent's fleet and still have plates.⁹

⁶ WMATC Rule No. 9-02.

⁷ Compact, tit. II, art. XIII, § 1(e).

⁸ Compact, tit. II, art. XII, § 1(b).

⁹ Plate Nos. 31916HT, 31917HT.

Staff's informal investigation also revealed that respondent had failed to maintain annual vehicle inspection certificates for its smaller vehicles, as well, contrary to Regulation No. 64-02(b).

Finally, an examination of respondent's 2017 WMATC Annual Report reveals that 15 of the 28 vehicles listed in the report do not have for-hire license plates as required by Regulation No. 64-04.¹⁰

III. REGULATION NO. 61

Regulation No. 61-01 requires that vehicles used to transport passengers under WMATC authority shall display the carrier's name and WMATC number. The name and number must appear on both sides of each WMATC vehicle. The markings required by Regulation No. 61 help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority.¹¹

During staff's investigation, NCC presented seven vehicles for inspection at staff's behest. Five were not properly marked. Respondent was given 45 days to place the proper markings on its vehicles and produce evidence of having done so. Respondent has yet to produce any such evidence, and according to NCC's 2017 WMATC Annual Report, four of the five vehicles remain in NCC's WMATC fleet.¹²

IV. REGULATION NO. 62

Regulation No. 62-02 provides in pertinent part:

No carrier subject to the jurisdiction of this Commission may charter, rent, borrow, lease, or otherwise operate in revenue service any motor vehicle to which such carrier does not hold title, except in accordance with this regulation. No carrier subject to the jurisdiction of this Commission shall operate any motor vehicle(s) as lessee thereof unless the contract of lease has been approved by the Commission.

Six vehicles reported by NCC on its 2017 WMATC Annual Report are registered to Enterprise FM Trust but are not covered by a lease on file with the Commission.¹³

V. ORDER TO PRODUCE DOCUMENTS AND PRESENT VEHICLES

NCC shall have 30 days to produce a current list of all vehicles in NCC's possession, custody, or control and to produce the documents specified below relating to those vehicles.

¹⁰ Respondent's for-hire plates are those beginning with or ending with the letter "B".

¹¹ *In re Community Multi-Services, Inc.*, No. MP-10-08, Order No. 12,301 (Feb. 2, 2010).

¹² Plate Nos. 31916HT, 31917HT, 8AX1509, B45946.

¹³ Plate Nos. 31916HT, 31917HT, 8AX1508, 8AX1509, 6BL8215, 6BL8216.

NCC shall have 45 days to present for inspection by Commission staff all vehicles on NCC's current list.

THEREFORE, IT IS ORDERED:

1. That an investigation of respondent's operations in the Washington Metropolitan Area Transit District is hereby initiated under Article XIII, Section 1, of the Compact.

2. That within 30 days respondent shall file:

- a. a current list of all vehicles in its possession, custody, or control and an indication of which vehicles are used in WMATC operations;
- b. a copy of the lease or leases covering the vehicles used in WMATC operations and not registered in NCC's name;
- c. a copy of a safety inspection certificate dated within the previous 12 months for each vehicle used in WMATC operations; and
- d. a copy of the current for-hire registration card for each vehicle used in WMATC operations.

3. That respondent is hereby directed to present all of its vehicles for inspection by Commission staff within 45 days.

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



William S. Morrow, Jr.
Executive Director