

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,118

IN THE MATTER OF:

Petitions to Waive Regulation No. 67-03, Filed by:)	Served July 27, 2017
ADVENTURES BY DAWN L.L.C., WMATC No. 592)	Case No. MP-2017-101
AMERICARE MEDICAL TRANSPORT, INC., WMATC No. 730)	
ROBERT EARLE GOODE JR, Trading as RELIABLE TRANSPORT, WMATC No. 2051)	
U.S. LIMO LLC, WMATC No. 2094)	
NATIONWIDE PATIENT TRANSPORT, L.L.C., Trading as DMV PATIENT TRANSPORT, WMATC No. 2378)	
FLY LIMO LLC, WMATC No. 2442)	
AOPCS, INC., WMATC No. 2657)	
JKIMI LLC, WMATC NO. 2764)	
PATRICIA TRANSPORTATION, LLC, WMATC No. 2931)	

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.

Each of the above-captioned carriers held a certificate of authority on January 1, 2017. 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 Jkimi LLC has paid said late fee(s) and is requesting a

refund. Jkimi LLC 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 Fly Limo LLC has demonstrated good cause for waiving the \$150 annual fee late fee pursuant to Regulation No. 67-03(b), but not the \$150 annual report late fee pursuant to Regulation No. 67-03(a). None of the other petitioners establishes good cause for granting the relief requested, for the following reasons.

On December 20, 2016, the Commission emailed annual report and annual fee reminders to all carriers with an e-mail address on file, including each petitioner with the exception of Patricia Transportation, LLC, whose WMATC certificate of authority was not issued until December 22, 2016. On January 4, 2017, the Commission mailed annual fee invoices and prepopulated report forms to all carriers, including each petitioner. On January 27, 2017, the Commission e-mailed an annual report and fee reminder to each carrier who had reports or fees still outstanding, including each petitioner in this proceeding. On February 1, 2017, the Commission mailed late fee assessment notices to the address of record of each carrier that failed to timely file a fee or report. On April 3, 2017, the Commission mailed a final notice to each carrier that still owed outstanding annual reports, annual fees, or late fees, including to the following petitioners: WMATC Nos. 730, 2051, 2094, 2442, 2764, and 2931.

I. Carrier No. 592, Adventures By Dawn L.L.C.

Adventures By Dawn was assessed \$300 in late fees. According to Commission records, the Commission received an annual fee and annual report from petitioner on February 1, 2017. Adventures by Dawn states it mailed these items on January 27, 2017, and asserts these items were sent in time to meet the deadline.

As noted above, the Commission emailed annual report and fee reminders to virtually all carriers, including petitioners, on December 20, 2016. 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 4 cautioned carriers that to be considered

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).

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 January 31, 2017.

By waiting until the last moment to tender the report and payment by mail, Adventures by Dawn assumed the risk that they would not arrive at WMATC by the deadline.² Accordingly, the petition of Adventures by Dawn L.L.C. is denied.

II. Carrier No. 730, Americare Medical Transport, Inc.

Americare was assessed \$150 in late fees. According to Commission records, Americare timely paid its annual fee online on January 31, 2017, and e-filed its annual report on March 24, 2017.

Americare states that it filed the annual report on February 1, 2017, and "filed the report, and paid the annual fee the same day." Americare states it received an e-mail confirmation for its fee payment, and was not aware it had to receive another e-mail for the annual report.

There is a discrepancy between Americare's statement and Commission records. According to Americare's own account, it submitted both the annual fee and report late, but according to Commission records, Americare timely paid the annual fee. Even if we view this discrepancy in the light most favorable to petitioner and assume it attempted to file both items before the January 31 deadline, Americare's failure to promptly rectify matters after being advised by letter dated February 1, 2017, that the report was still due, leaves the Commission without a sufficient basis for waiving the late fee.³

Accordingly, the petition of Americare Medical Transport, Inc., is denied.

III. Carrier No. 2051, Robert Earle Goode Jr, t/a Reliable Transport

Petitioner was assessed \$150 in late fees. According to Commission records, Carrier No. 2051 timely filed its report on January 31, 2017, and paid its annual fee on April 26, 2017.

Mr. Goode does not expressly request any relief, and other than an oblique reference to "hardship", and does not set forth any facts that would serve as a basis tending to show good cause for waiving Commission Regulation No. 67-03(b).

A generalized claim of financial hardship unsupported by evidence of petitioner's financial condition does not constitute good

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).

³ *In re Angelic Luxury Coach, Inc.*, No. MP-16-169, Order No. 16,596 at 3 (Sept. 29, 2016) (failure to promptly rectify matters after being advised by letter deprives Commission of basis for waiving late fees).

cause for waiving late fees.⁴ Accordingly, the petition of Robert Earle Goode Jr, trading as Reliable Transport, is denied.

IV. Carrier No. 2094, U.S. Limo LLC

U.S. Limo was assessed \$150 in late fees. According to Commission records, U.S. Limo timely paid an annual fee on January 21, 2017, and filed its annual report on February 22, 2017.

U.S. Limo's owner states that he was not aware he was supposed to submit an annual report, his father had a serious medical condition, and he was out of the country.

We find the professed lack of awareness of the annual report filing requirement by the owner of U.S. Limo unconvincing, given that he personally signed annual reports in 2014 and 2016 and e-filed an annual report in 2015. The illness of a family member of an officer of petitioner does not constitute good cause for waiving late fees.⁵ In addition, petitioner's owner's absence from the country is unavailing because being out of town does not constitute good cause for waiving late fees.⁶ Since the Commission began allowing carriers to e-file annual reports and pay fees online in 2012, carriers can submit reports and fees from any remote location.

Accordingly, the petition of U.S. Limo LLC is denied.

V. Carrier No. 2378, Nationwide Patient Transport, L.L.C., t/a DMV Patient Transport

Nationwide was assessed \$300 in late fees. According to Commission records, the Commission received Nationwide's annual fee and report on May 12, 2017.

Nationwide's owner cites a serious medical issue faced by her and her daughter from January through March and complications that continued into May.

The duty to comply with Commission requirements falls on the carrier, not its individual officers.⁷ If a principal of petitioner was absent or incapacitated, petitioner could have delegated to others the task of complying with Commission requirements.⁸

⁴ *In re Tilly's Limousine & Sedan Servs., Inc.*, No. MP-12-028 at 2 (Apr. 10, 2012).

⁵ *In re M & M Medvan, Inc.*, No. MP-12-054, Order No. 13,276 at 2 (May 18, 2012).

⁶ *In re Landjet Transp. LLC*, No. MP-10-042, Order No. 12,399 at 3 (May 10, 2010).

⁷ Order No. 13,276 at 2.

⁸ *In re Easton Coach Co.*, No. MP-13-052, Order No. 13,876 at 2 (Apr. 19, 2013) (denying late fee waiver after noting duty of carrier to appoint someone to review mail addressed to employee on maternity leave and address matters requiring immediate attention).

Therefore, the petition of Nationwide Patient Transport, L.L.C., trading as DMV Patient Transport, is denied.

VI. Carrier No. 2442, Fly Limo LLC

Fly Limo was assessed \$300 in late fees. According to Commission records, Fly Limo paid an annual fee online on February 17, 2017, and filed its annual report on April 27, 2017.

Fly Limo states that it submitted a change of address form to the Commission on August 11, 2016, but it did not receive a mailed report and invoice at its new address, causing it to file late. Commission records confirm that the report and invoice were mistakenly mailed to petitioner's old address.

We find that petitioner has demonstrated good cause for waiver of Regulation No. 67-03(b). Petitioner notified WMATC of its new address in 2016, but due to a clerical error WMATC mailed the report and fee and late fee assessment notice to petitioner's old address. We find that WMATC's actions may have contributed to petitioner's late submittal of the annual fee.

However, Fly Limo's petition does not explain why, once petitioner became aware of its filing obligations as demonstrated by payment of its annual fee online on February 17, 2017, petitioner still waited until April to file an annual report.

Accordingly, the petition of Fly Limo LLC is granted in part. We shall waive Regulation No. 67-03(b) and direct that \$150 be refunded to Fly Limo LLC. The remainder of the petition is denied.

VII. Carrier No. 2657, Aopcs, Inc.

Aopcs was assessed \$150 in late fees. According to Commission records, Aopcs timely paid an annual fee on January 27, 2017, and filed its annual report on March 3, 2017.

Aopcs states that it mailed an annual report and annual fee in the same envelope in January, but there is no evidence of that in the record. Aopcs had an opportunity to resolve the issue by filing an annual report before late fees were assessed when it was sent a reminder e-mail on January 27, 2017, notifying it that "[a]s of today, Commission records indicate your 2017 annual report and/or your 2017 annual fee remain due." Furthermore, the failure of Aopcs to promptly rectify matters after being advised by letter dated February 1, 2017, that the report was still due, leaves the Commission without a sufficient basis for waiving the late fee. Finally, we take note that this is not the first time Aopcs failed to meet the filing deadlines. It was assessed \$150 in late fees in 2016 for failure to timely file an annual report. Accordingly, the petition of Aopcs, Inc., is denied.

VIII. Carrier No. 2764, Jkimi LLC

Jkimi LLC was assessed \$300 in late fees.⁹ According to Commission records, Jkimi submitted its annual fee and report on February 21, 2017.

Jkimi's owner states that a family member was very sick, prompting him to drive to Georgia on December 5, 2016, and return on February 20, 2017.

As noted above, the illness of a family member of an officer of petitioner and being out of town do not constitute good cause for waiving late fees. Since the Commission began allowing carriers to e-file annual reports and pay fees online in 2012, carriers can submit reports and fees from any remote location.

Accordingly, the petition of Jkimi LLC is denied.

IX. Carrier No. 2931, Patricia Transportation, LLC

Patricia was assessed \$150 in late fees. According to Commission records, Patricia timely paid an annual fee on January 12, 2017, and submitted an incomplete annual report on January 30, 2017. On January 31, 2017, the Commission e-mailed Patricia and informed it that the report was "not acceptable because you did not provide a list of revenue vehicles." On March 2, 2017, Patricia submitted an acceptable annual report.

Patricia filed a statement which appears to explain that it was advised by Commission staff that the vehicle list portion of the annual report form must be filled out only if there were changes in petitioner's vehicle fleet.

Section 6 of the annual report form requires carriers to furnish a list of revenue vehicles used in WMATC operations. The section is marked with an asterisk. The instructions to the form state "[a]ll fields marked with an asterisk (*) must be completed. Even assuming petitioner accurately described its conversation with WMATC staff, it was unreasonable to rely on oral advice that directly contradicts written instructions on the annual report form. In any event, any confusion petitioner may have harbored about the annual report requirements should have been corrected when it received the January 31 e-mail explaining that its report was not acceptable because it did not complete the list of revenue vehicles, and again after the February 1 late fee assessment notice was mailed, advising petitioner that the report was still due. Yet petitioner waited two more months before filing a complete annual report.

⁹ We note for the record that Certificate No. 2764 was revoked on June 1, 2017, for Jkimi's failure to pay the \$300 in late fees at issue in this petition. *In re Jkimi LLC*, No. MP-17-062, Order No. 17,030 (June 1, 2017).

The failure of Patricia to promptly rectify matters leaves the Commission without a sufficient basis for waiving the late fee. Accordingly, the petition of Patricia Transportation, LLC, 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 the petition of Fly Limo LLC, WMATC No. 2442, is granted in part. Regulation No. 67-03(b) is hereby waived as to Fly Limo LLC, and \$150 shall be refunded.

3. That all other petitions are denied.

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

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

William S. Morrow, Jr.
Executive Director