

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6736

IN THE MATTER OF:

Served July 22, 2002

Application of VGA ENTERPRISES)
INC. for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2002-34

Applicant seeks reissuance of Certificate of Authority No. 445, which was revoked January 16, 2002, for applicant's willful failure to comply with the insurance provisions of the Compact, the regulations thereunder and Commission Order No. 6430.¹

This application was accepted for filing on March 12, 2002. Notice of the application was published by the Commission in Order No. 6584 on March 22, 2002, and by applicant in a newspaper of general circulation in the Metropolitan District on March 27, 2002. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. If an applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.² A determination of compliance fitness is prospective in nature.³ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁴ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁵

Applicant proposes commencing operations with three vans that are currently leased to Skyhawk Logistics, Inc., WMATC Carrier No. 406, for use in performing a contract between applicant and the

¹ In re VGA Enters., Inc., No. MP-01-110, Order No. 6492 (Jan. 16, 2002).

² In re Adventures By Dawn L.L.C., No. AP-99-68, Order No. 5837 (Mar. 14, 2000).

³ Id.

⁴ Id.

⁵ Id.

U.S. Forest Service. Applicant's proposed general tariff contains an hourly charter rate.

Applicant filed a balance sheet as of February 26, 2002, showing assets of \$341,664; liabilities of \$135,104; and equity of \$206,560. Applicant's projected operating statement for the first twelve months of WMATC operations shows WMATC revenue of \$240,430; expenses of \$176,399; and net income of \$64,031.

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder, but the record suggests otherwise.

Applicant's Forest Service contract runs from October 1, 2001, through September 30, 2002. Certificate of Authority No. 445 was automatically suspended on November 18, 2001.⁶ Applicant should have ceased operations under the Forest Service contract at that time, but applicant's subcontract and lease arrangement with Skyhawk Logistics, Inc., did not become effective until May 23, 2002. Moreover, according to the record, applicant was without insurance coverage from November 18, 2001, through February 21, 2002, and from April 22, onward. It thus appears that applicant operated the Forest Service contract without authority for 186 days and did so while uninsured for 127 days.

The record also indicates that applicant performed transportation between points in Maryland pursuant to a purchase order issued by Estima, Inc., until June 6, 2002, at a time when applicant held no passenger carrier authority from the Maryland Public Service Commission.

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁷

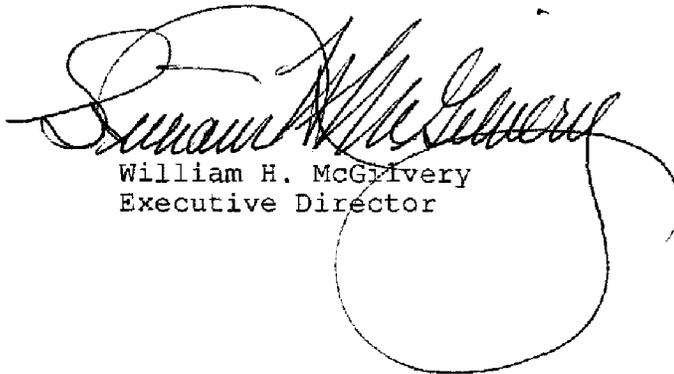
Operating while suspended or revoked is a serious violation, and in this case the violations were clearly persistent. On the other hand, an assessment of compliance fitness is prospective in nature, and applicant's subcontracting arrangement with Skyhawk Logistics is some evidence of applicant's willingness and ability to comport with the Compact and rules and regulations thereunder in the future. But applicant's apparent continuation of WMATC operations without insurance and current operations in Maryland without proper authority mitigates against finding applicant fit at this time.

⁶ In re VGA Enters., Inc., No. MP-01-110, Order No. 6430 (Nov. 26, 2001).

⁷ Order No. 5837 at 5-6.

THEREFORE, IT IS ORDERED that the application of VGA Enterprises Inc., for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, LIGON, AND MILLER:



William H. McGivery
Executive Director