

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6772

IN THE MATTER OF:

Served August 13, 2002

Investigation of Unauthorized)
Operations of WASHINGTON EXECUTIVE)
SEDAN, INC., and GLOBAL EXPRESS)
LIMOUSINE SERVICE, INC.)

Case No. MP-2002-03

Application of GLOBAL EXPRESS)
LIMOUSINE SERVICE, INC., for a)
Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2002-32

The investigation in Case No. MP-2002-03 was initiated on January 7, 2002, in Order No. 6480, after the Commission discovered that Global Express Limousine Service, Inc., was advertising services that require a WMATC certificate of authority. While the investigation was pending, Global Express filed an application for a certificate of authority. The two proceedings are being consolidated because the question of Global Express's fitness for operating authority turns on the outcome of our investigation.

I. INVESTIGATION

Under Article XI, Section 6(a) of the Compact: "A person may not engage in transportation subject to [the Compact] unless there is in force a 'Certificate of Authority' issued by the Commission authorizing the person to engage in that transportation." Article XI, Section 3(f), provides an exception for "vehicles and operations described in Sections 1(b) and 2" of Article XI. The vehicles described in Section 1(b) include taxicabs and "other vehicles that perform a bona fide taxicab service" and have "a seating capacity of 9 persons or less, including the driver."

Under Commission Regulation No. 51-09(c), service must be "priced at rates based on the duration and/or distance of the transportation rendered" to qualify as bona fide taxicab service. Flat fares -- fares that vary according to the selected destination but not according to the selected route or according to the amount of time required to traverse the selected route -- do not meet the duration and/or distance test of Regulation No. 51-09.¹

¹ In re O. Oluokun, Inc., t/a Montgomery County Limo, No. MP-93-43, Order No. 4225 (Dec. 16, 1993).

Regulation No. 63-04 provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission."

Order No. 6480 noted that the web site for Global Express, www.globalexpresslimo.com, advertised service in executive sedans, stretch limousines, executive vans, and buses, and that such service included local trips. The order also noted that the web site displayed flat fares for trips between Washington Dulles International Airport, Ronald Reagan Washington National Airport, Union Station, and "Embassy Row," on the one hand, and various points in the Metropolitan District, on the other. Hourly rates were displayed for trips in luxury sedans, vans (7 & 14 passengers), stretch limousines (6, 8 & 10 passengers), and buses (28 & 55 passengers).

The order explained that a carrier may not transport passengers for hire between points in the Washington Metropolitan Area Transit District (Metropolitan District) without a WMATC certificate of authority and that there is an exception for transportation in vehicles seating nine persons or less, including the driver, but not for those used in flat-fare operations.

The order directed Global Express to produce documents relating to its operations in the Metropolitan District between August 2, 2001, and January 7, 2002.² The order also gave Global Express 15 days to request an oral hearing.

Global Express timely requested a hearing but later withdrew its request without explanation. Global Express subsequently produced records relating to its operations in the Metropolitan District between August 2, 2001, and December 31, 2001. Global Express's records for the period January 1, 2002, through January 7, 2002, were produced later after prompting by Commission staff.

The records confirm that Global Express performed numerous flat-fare trips between points in the District of Columbia and between the District of Columbia and the airports in Northern Virginia during the period in question -- at least one such trip each day. Moreover, Global Express continued advertising such service on its website through at least July 2002.

² The order also directed Global Express's affiliate, Washington Executive Sedan, Inc., to produce documents relating to its operations in the Metropolitan District during the same period, but records obtained from the Business Services and Finance Division of the Maryland State Department of Assessments and Taxation show that Washington Executive Sedan, Inc., forfeited its charter in 1997.

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.³ Each day of the violation constitutes a separate violation.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.⁶ Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.⁷ Violations occurring thereafter are viewed as knowing and willful.⁸ Employee negligence is no defense.⁹

Global Express first filed an application for a certificate of authority on November 5, 2001. The rates proposed in the application included flat fares for service between points in the District of Columbia and between the District of Columbia and the airports in Northern Virginia. We find that Global Express's advertising and performance of such service after that date was knowing and willful within the meaning of the Compact.

We will assess a civil forfeiture against Global Express in the amount of \$250 per day¹⁰ for 63 days of unlawful operations, for a total of \$15,750. We will suspend all but \$2,500, in recognition of Global Express having filed an application prior to commencement of the investigation.¹¹ Failure to pay the net forfeiture in timely fashion shall result in reinstatement of the full \$15,750. We also

³ Compact, tit. II, art. XIII, § 6(f)(i).

⁴ Compact, tit. II, art. XIII, § 6(f)(ii).

⁵ In re Safe Ride Servs., Inc., No. MP-97-83, Order No. 5269 (Feb. 5, 1998); Easy Travel, Inc. v. Jet Tours USA, Inc., No. FC-94-01, Order No. 4649 (Aug. 22, 1995); DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 (Dec. 20, 1993).

⁶ Order No. 5269; Order No. 4649; Order No. 4226.

⁷ Order No. 5269; Order No. 4649; Order No. 4226.

⁸ Order No. 5269; Order No. 4649; Order No. 4226.

⁹ Order No. 4649; Order No. 4226.

¹⁰ See Order No. 5269 at 3 (unauthorized operations assessed at \$250 per day); Order No. 4649 at 3 (same); Order No. 4226 at 3 (same).

¹¹ See Order No. 5269 at 3 (crediting submission of application before commencement of contract); Order No. 4226 at 3 (crediting attempt at same).

will assess a forfeiture of \$250 against Global Express for unlawful advertising.

II. APPLICATION

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. 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 bears the burden of establishing financial fitness, operational fitness, and regulatory compliance fitness.¹² To establish regulatory compliance fitness, an applicant must become familiar with and evidence a willingness to comply with the Compact and Commission regulations.¹³

A determination of compliance fitness is prospective in nature.¹⁴ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.¹⁵ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.¹⁶

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.¹⁷

¹² In re Adventures By Dawn L.L.C., No. AP-00-89, Order No. 6087 (Jan. 16, 2001); In re Adventures By Dawn L.L.C., No. AP-99-68, Order No. 5837 (Mar. 14, 2000).

¹³ Order No. 6087 at 2.

¹⁴ Order No. 5837.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id. at 5-6.

Operating without proper authority is a serious violation. To continue advertising service in the face of an investigatory order declaring it unlawful is the paradigm of flagrancy. The act of filing an application for operating authority is some evidence in applicant's favor but not enough. Unless and until applicant ceases performing, and holding itself out to perform, transportation requiring a WMATC certificate of authority, we cannot say that applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

THEREFORE, IT IS ORDERED:

1. That Cases Nos. MP-2002-03 and AP-2002-32 are hereby consolidated.

2. That Global Express Limousine Service, Inc., shall cease performing, and holding itself out to perform, transportation services requiring a WMATC certificate of authority.

3. That the Commission hereby assesses a civil forfeiture against Global Express Limousine Service, Inc., in the amount of \$250 for knowingly and willfully violating Commission Regulation No. 63-04.

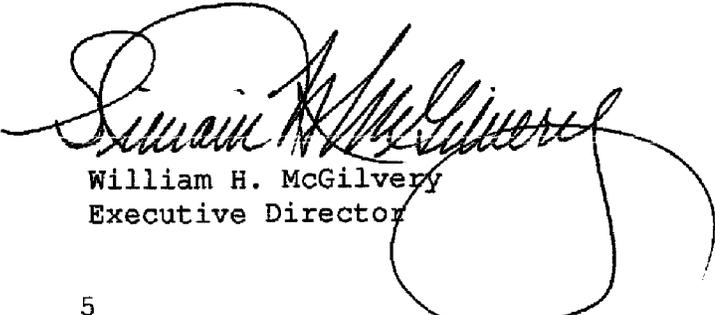
4. That the Commission hereby assesses a civil forfeiture against Global Express Limousine Service, Inc., in the amount of \$2,500 for knowingly and willfully violating Title II of the Compact, Article XI, Section 6(a).

5. That Global Express Limousine Service, Inc., is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two thousand seven hundred fifty dollars (\$2,750).

6. That upon the failure of Global Express Limousine Service, Inc., to timely pay the \$2,750 net combined forfeiture assessed herein, the full combined forfeiture of \$16,000 shall be automatically reinstated and become immediately due and payable.

7. That the application of Global Express Limousine Service, 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. McGilvery
Executive Director