

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7496

IN THE MATTER OF:

Served October 29, 2003

Application of VGA, INCORPORATED,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2003-73

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. 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.

Applicant proposes commencing operations with two 15-passenger vehicles. Applicant's proposed tariff contains rates for service under a contract with the U.S. Forest Service. The contract originally required service in vehicles with a seating capacity of no less than twenty passengers, including the driver, but has been amended to permit the use of vehicles with a seating capacity of no less than fifteen passengers, including the driver. The contract currently is being operated by Skyhawk Logistics, Inc., WMATC No. 406, pursuant to a subcontract with applicant.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish applicant's fitness,¹ but in this case applicant has a history of regulatory violations.

¹ In re Quiana Tours, Inc. & William E. Gillison, t/a Quiana Tours, No. AP-02-140, Order No. 7316 (July 17, 2003).



Applicant previously held Certificate of Authority No. 445 under the name VGA Enterprises Inc.² The certificate was revoked on January 16, 2002, for applicant's willful failure to comply with Regulation No. 58, the Commission's insurance regulation.³ Applicant reapplied for a certificate of authority on March 12, 2002, but the application was denied without prejudice for lack of compliance fitness on July 22, 2002, based on findings that applicant had operated in the Metropolitan District while suspended, revoked and uninsured and that applicant had operated in Maryland without authority from the Maryland Public Service Commission (MDPSC).⁴

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.⁵

In the course of deciding the application filed in 2002, the Commission found that applicant's previous violations were serious and persistent but that applicant's subcontracting arrangement with Skyhawk Logistics was some evidence of applicant's willingness and ability to comport with the Compact and rules and regulations thereunder in the future. However, applicant's continuation of WMATC operations without insurance and its operations in Maryland without proper authority mitigated against finding applicant fit at that time. We must thus determine whether the evidence of compliance fitness presented in this application warrants a different finding.

According to the affidavit of applicant's president, Vince Akins, applicant has not conducted passenger carrier operations in the Metropolitan District since May 23, 2002, and has not conducted passenger carrier operations in Maryland since June 4, 2002. There is no evidence in the record to the contrary.

In addition, applicant's attorney states that she has been retained to ensure applicant's "full compliance with all WMATC rules and regulations" and help applicant "avoid future violations." Retaining an attorney to ensure compliance has been cited by the Commission in the past as a factor in sustaining a grant of authority to an applicant with a prior history of regulatory violations.⁶

² Applicant changed its name from VGA Enterprises Inc. to VGA, Incorporated, on September 10, 2002.

³ In re VGA Enters., Inc., No. MP-01-110, Order No. 6492 (Jan. 16, 2002).

⁴ In re VGA Enters., Inc., No. AP-02-34, Order No. 6736 (July 22, 2002), affirmed on reconsideration, Order No. 6806 (Sept. 20, 2002).

⁵ Order No. 6736.

⁶ See In re Japan Travelers Serv., Inc., No. AP-92-34, Order No. 4055 (Feb. 17, 1993); In re Ruchman & Assocs., Inc., t/a RAI, Inc., No. AP-91-32, Order No. 3911 (Mar. 25, 1992).



We have approved the applications of certain wayward carriers in the past subject to the condition -- imposed under Article XI, Section 7(d), of the Compact -- that they serve a period of probation as a means of ensuring prospective compliance.⁷ We believe that probation would be appropriate here, as well, given the circumstances.

One last matter remains. Applicant requests a restricted certificate notwithstanding that one of the vehicles described in the application as seating 15 passengers is included in an insurance list of 20-passenger vehicles filed by applicant last year in support of its application for reconsideration of Order No. 6736, the order denying applicant's previous request to have Certificate No. 445 reissued. The record also shows that applicant still owns three other vehicles on the 20-passenger vehicle list, one acknowledged to be in applicant's possession but allegedly converted to package delivery, one currently leased to Skyhawk, and one allegedly leased to a company in Alabama. Under the circumstances, applicant will be directed to present all of its vehicles for inspection - not just the vehicles in its application - as a condition precedent to the reissuance of Certificate No. 445, except that as to the Alabama vehicle applicant may file a notarized affidavit from the lessee attesting that the lease is still in effect and the vehicle in lessee's possession.

Based on the evidence in this record, and in consideration of the terms of probation prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that 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.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 445 shall be reissued to VGA, Incorporated, 14625 Baltimore Avenue, #288, Laurel, MD 20707.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until Certificate No. 445 has been reissued in accordance with the preceding paragraph.

3. That applicant shall file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a list of all vehicles owned, possessed or otherwise controlled by applicant, stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity, and indicating which will be used in revenue operations; (d) a copy of the vehicle registration card (for-hire registration card if the vehicle is to be used in revenue operations) for each vehicle owned, possessed or otherwise controlled by applicant; (e) a lease for each non-owned vehicle to be used in revenue operations in accordance

⁷ E.g., In re Shirlington Limo. & Transp., Inc., No. AP-02-20, Order No. 6709 (June 21, 2002) (one year); In re Adventures By Dawn L.L.C., No. AP-00-89, Order No. 6087 (Jan. 16, 2001) (same).

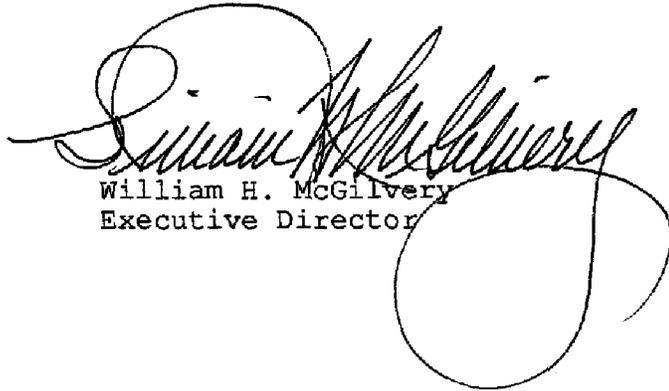
with Commission Regulation No. 62; and (f) proof of current safety inspection of each revenue vehicle by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

4. That applicant shall produce all of its vehicles for inspection by Commission staff within thirty days; provided that, as to the vehicle leased to Stanley Jones & Sons, applicant may in the alternative file a notarized affidavit from the lessee attesting that the lease is still in effect and that vehicle is still in lessee's possession.

5. That applicant shall be placed on probation for a period of one year commencing with the reissue of Certificate of Authority No. 445 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

6. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

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



William H. McGilvery
Executive Director