

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 8779

IN THE MATTER OF:

Served June 17, 2005

Application of EXECUTIVE )  
TECHNOLOGY SOLUTIONS, LLC, for )  
a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2004-84

This matter is before the Commission on applicant's response to Commission Order No. 8725, served May 19, 2005, directing applicant to describe the arrangements it has made for the legal performance of its live proposed contract while this application is pending.

**I. BACKGROUND AND RESPONSE**

This application was granted in Commission Order No. 8273, served September 20, 2004, but the issuance of a certificate of authority was expressly made contingent on applicant filing additional documents. Applicant failed to file the necessary documents in a timely manner, thereby voiding the Commission's approval pursuant to Commission Regulation No. 66. Applicant timely filed an application for reconsideration on April 5, 2005, supported by the documents required by Order No. 8273,<sup>1</sup> but the application did not allege any error on the part of the Commission as required by statute and therefore was denied.

However, based on applicant's belated but substantial compliance with the condition of issuance prescribed in Order No. 8273, the Commission reopened this proceeding on its own initiative pursuant to Commission Rule No. 26-04 to consider whether issuing Certificate of Authority No. 985 to applicant would be consistent with the public interest. As part of the public interest inquiry, Order No. 8725 directed applicant to demonstrate that it had not begun performing the live contract it filed as a tariff while this application was pending.

Applicant responded with an affidavit stating that since its inception all transportation under the proposed contract has been performed by Vicar Limousine Service, Inc., WMATC No. 357, and International Limousine Service, Inc., WMATC No. 38. This is corroborated by copies of invoices from Vicar, which apparently has performed the overwhelming majority of trips. We thus find that applicant has satisfied the Commission's concern that applicant might have prematurely begun operating the proposed contract.

**II. VEHICLE MARKINGS**

We now turn to a request applicant has filed to waive Commission Regulation No. 61 governing vehicle markings. Applicant proposes operating a 6-passenger Lincoln Town car, a 7-passenger Lincoln Navigator and a 10-passenger Dodge van. Applicant requests a waiver of Regulation No. 61 as to all three vehicles on the ground

---

<sup>1</sup> Applicant submitted a request for waiver of Commission Regulation No. 61 in lieu of an affidavit of compliance.

that the client, the Department of Homeland Security, United States Citizenship and Immigration Services (DHS), would prefer for security reasons that the vehicles not be marked.

Commission Regulation No. 61 requires each WMATC carrier to display its name and WMATC number on both sides of each vehicle used in WMATC operations. The markings help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority.<sup>2</sup> Such markings facilitate the processing of customer complaints, as well.<sup>3</sup> The Federal Motor Carrier Safety Administration (FMCSA) has this to say on the importance of vehicle markings.

The FMCSA believes it is important that [vehicles] be properly marked before they are placed into service on the highway. Such markings will assist State officials conducting roadside inspections and accident investigations in attributing important safety data to the correct motor carrier. It will also ensure the public has an effective means to identify motor carriers operating in an unsafe manner.

65 Fed. Reg. 35287, 35288 (June 2, 2000).

These purposes must be balanced against other considerations, such as competitive harm.<sup>4</sup> In that regard, the Commission routinely waives the application of Regulation No. 61 with respect to limousines and luxury sedans operated under WMATC authority on the ground that such markings likely would adversely affect the ability of WMATC carriers operating such vehicles to compete with their non-WMATC rivals, who operate in the Metropolitan District under an exclusion in the Compact for "other vehicles that perform a bona fide taxicab service," as that term is defined in Commission Regulation No. 51-09.<sup>5</sup>

Limousines and sedans meeting the definition in Regulation No. 51-09 operate in the Metropolitan District under passenger carrier authority issued by state and local agencies, which generally do not require such vehicles to be marked in the manner prescribed by Regulation No. 61.<sup>6</sup> Potential customers for limousine and luxury sedan services understandably might find such markings unattractive and obtrusive, putting WMATC limousine and sedan operators who comply with Regulation No. 61 at a competitive disadvantage.<sup>7</sup>

---

<sup>2</sup> In re Escort Limo. Serv., Inc., No. AP-03-48, Order No. 7512 (Nov. 5, 2003); In re Prime Transp. Servs., Inc., No. AP-02-92, Order No. 7511 (Nov. 5, 2003).

<sup>3</sup> Order No. 7512; Order No. 7511.

<sup>4</sup> Order No. 7512; Order No. 7511.

<sup>5</sup> Order No. 7512 (citing Compact, tit. II, art. XI, §§ 1(b) & 3(f)); Order No. 7511 (same).

<sup>6</sup> Order No. 7512 (citing In re Title II, Art. XII, § 1(c) of the Compact, No. MP-83-01, Order No. 2559 (May 24, 1984) (interstate rates for travel in "other vehicles" must conform to rates specified by licensing jurisdiction)); Order No. 7511 (same).

<sup>7</sup> Order No. 7512; Order No. 7511.

The definition in Regulation No. 51-09, however, does not apply to vehicles that seat more than eight passengers in addition to the driver.<sup>8</sup> The competitive harm rationale, therefore, would not justify waiving Regulation No. 61 as to the 10-passenger van applicant proposes operating under Certificate No. 985.

We also note that no mention is made in the proposed contract about any security concerns DHS might have with regard to vehicle markings, and there is nothing in the record from the DHS contracting officer to that effect either. Therefore, we shall waive Regulation No. 61 as to the Town Car and Navigator but not the van.

THEREFORE, IT IS ORDERED:

1. That Commission Regulation No. 61 is waived as to applicant's Lincoln Town Car and Lincoln Navigator.

2. That the request for waiver of Commission Regulation No. 61 as to applicant's Dodge van is denied.

3. That within thirty days from the date of this order, applicant shall present its van for inspection by Commission staff.

4. That upon applicant's van passing staff inspection, Certificate of Authority No. 985 shall be issued to Executive Technology Solutions, LLC, 8639-B 16th Street, Suite 171, Silver Spring, MD 20910.

5. That upon applicant's failure to comply with this order within thirty days, the decision to reopen shall stand rescinded and the proceeding shall be deemed closed.

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



William S. Morrow, Jr.  
Executive Director

---

<sup>8</sup> Regulation No. 51-09(e); see also Compact, tit. II, art. XI, §§ 1(b)(i) & 3(f) (exclusion confined to vehicles with seating capacity of nine persons or less, including driver).