

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,482

IN THE MATTER OF:

Served May 10, 2007

Application of UNION, INC., for a ) Case No. AP-2007-013  
Certificate of Authority -- )  
Irregular Route Operations )

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 one van. Applicant proposes operating under a tariff containing mileage and/or hourly rates, rates for Medicaid transportation and private pay rates for similar service, and rates for transportation under contracts with government agencies and private entities.

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, that averment would suffice to establish applicant's fitness,<sup>1</sup> but applicant has a history of regulatory noncompliance.

Applicant was granted operating authority last year, but the issuance of a certificate of authority was expressly made contingent

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<sup>1</sup> In re *Executive Technology Solutions, LLC*, No. AP-04-84, Order No. 8273 (Sept. 20, 2004); see In re *Associated Community Servs., Inc.*, No. AP-02-88, Order No. 6839 (Oct. 3, 2002) (same as to compliance fitness); In re *Adventures By Dawn L.L.C.*, No. AP-00-89, Order No. 6087 (Jan. 16, 2001) (same as to compliance fitness).

on applicant filing additional documents and presenting its vehicle for inspection.<sup>2</sup> Applicant failed to file the necessary documents in a timely manner, thereby voiding the Commission's approval.<sup>3</sup> In the meantime, applicant had its vehicle marked so as to display applicant's name and the WMATC number that had been conditionally assigned. But applicant failed to remove those markings when the application became void. Indeed, those markings were still on applicant's vehicle three months after the first application became void and two months after this application was filed. Applicant eventually removed some but not all of the unauthorized markings. The vehicle no longer displays the WMATC number conditionally assigned in the first application but still displays the letters "WMATC".

A non-WMATC carrier may not, by advertisement or otherwise, hold itself out as authorized to provide services requiring a WMATC certificate of authority.<sup>4</sup> This prohibition is codified in Commission Regulation No. 63-04(a), which 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." Displaying an unauthorized WMATC carrier number thus violates Regulation No. 63-04(a).<sup>5</sup>

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.<sup>6</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>7</sup> 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.<sup>8</sup> Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.<sup>9</sup> Violations occurring thereafter are viewed as knowing and willful.<sup>10</sup>

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<sup>2</sup> See *In re Union, Inc.*, No. AP-06-036, Order No. 9630 (June 13, 2006) (conditionally granting Certificate No. 1226).

<sup>3</sup> See *id.* (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66 (failure to comply with conditions of grant within 180 days voids approval).

<sup>4</sup> Order No. 6839.

<sup>5</sup> *Id.*

<sup>6</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>7</sup> Order No. 6839.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

We find that applicant knowingly and willfully violated Regulation No. 63-04(a) and shall assess a civil forfeiture of \$250.<sup>11</sup>

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.<sup>12</sup>

The Commission has approved applications in the past under similar circumstances.<sup>13</sup> Upon payment of the forfeiture assessed herein, the record will support a finding of prospective compliance fitness,<sup>14</sup> subject to a one-year period of probation.<sup>15</sup>

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 the Commission hereby assesses a civil forfeiture against Union, Inc., in the amount of \$250 for knowingly and willfully violating Commission Regulation No. 63-04.

2. That Union, 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 hundred fifty dollars (\$250).

3. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1226 shall be issued to Union, Inc., 1717 K Street, N.W., #600, Washington, DC 20036.

4. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order

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<sup>11</sup> See *id.* (assessing \$250 forfeiture for displaying unauthorized WMATC markings on vehicle).

<sup>12</sup> *Id.*; Order No. 6087.

<sup>13</sup> See Order No. 6839 (approving application despite unauthorized display of WMATC markings); Order No. 6087 (same).

<sup>14</sup> See Order No. 6839 (payment of forfeiture corrects error and supports fitness finding).

<sup>15</sup> See Order No. 6087 (assessing one-year period of probation where "WMATC" observed on applicant's vehicle while previous application pending).

unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

5. That applicant is hereby directed to present its revenue vehicle(s) for inspection and file the following documents within the 180-day maximum permitted in Commission Regulation No. 66: (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 vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

6. That applicant shall be placed on probation for a period of one year commencing with the issuance of Certificate No. 1226 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.

7. 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 AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director