

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 13,250

IN THE MATTER OF:

Served May 3, 2012

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

Case No. AP-2012-033

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

The Washington Metropolitan Area Transit Regulation Compact, (Compact),<sup>1</sup> 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 the 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.<sup>2</sup> A determination of compliance fitness is prospective in nature.<sup>3</sup> The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.<sup>4</sup> Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.<sup>5</sup>

**I. HISTORY OF VIOLATIONS**

Applicant previously held WMATC Certificate of Authority No. 985 from June 30, 2005, until February 17, 2012, when Certificate No. 985 was revoked in Order No. 13,167 for applicant's willful failure to comply with Article XI, Section 6, of the Compact, (operating without authority), Regulation Nos. 55 (operating without

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<sup>1</sup> Washington Metropolitan Area Transit Regulation Compact, Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

<sup>2</sup> *In re Nur Corp.*, No. AP-10-178, Order No. 12,730 (Feb. 15, 2011).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

applicable tariff) and 62 (operating without required vehicle lease), and Order No. 12,798 (failing to present vehicles and produce documents), for which applicant was assessed a \$2,250 civil forfeiture, as well.<sup>6</sup>

In addition, Commission records show that Certificate No. 985 was suspended three times for applicant's willful failure to comply with the Commission's insurance requirements in Regulation No. 58.<sup>7</sup>

Finally, Commission records show that the Commission conditionally approved the issuance of Certificate No. 985 in 2004 subject to a one year period of probation due to applicant's then recent violations of Federal Motor Carrier Safety Regulations.<sup>8</sup>

## **II. LIKELIHOOD OF FUTURE COMPLIANCE**

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>9</sup>

Applicant's failure to comply with Article XI, Section 6, of the Compact, Regulation Nos. 55 and 62, and Order No. 12,798 was serious enough to warrant revocation of Certificate No. 985. There is no evidence of any mitigating factors in the record, and the Commission investigation that resulted in revocation of Certificate No. 985 continued for nearly two years because of applicant's failure to fully cooperate.

Applicant, on the other hand, has paid the \$2,250 forfeiture assessed in the revocation order. This may be considered a correction of past mistakes.<sup>10</sup>

Ultimately, however, we cannot say that applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

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<sup>6</sup> *In re Exec. Tech. Solutions, LLC*, No. MP-10-090, Order No. 13,167 (Feb. 17, 2012).

<sup>7</sup> *In re Exec. Tech. Solutions, LLC*, No. MP-11-096, Order No. 13,035 (Nov. 1, 2011); *In re Exec. Tech. Solutions, LLC*, No. MP-06-173, Order No. 10,045 (Nov. 1, 2006); *In re Exec. Tech. Solutions, LLC*, No. MP-05-168, Order No. 9087 (Nov. 1, 2005).

<sup>8</sup> *In re Exec. Tech. Solutions, LLC*, No. AP-04-84, Order No. 8273 (Sept. 20, 2004).

<sup>9</sup> Order No. 12,730.

<sup>10</sup> *In re Addis Transp., Inc.*, No. AP-11-111, Order No. 13,114 (Jan. 10, 2012).

While this application was pending, Commission staff wrote to applicant on March 8, 2012, requesting additional information pursuant to Regulation No. 54-04(b). Staff requested, among other things:

a list of all contracts for transportation in the Washington Metropolitan Area Transit District, [the identity of] the carrier(s) performing those contracts on applicant's behalf, . . . copies of any and all contracts with said carrier(s), and a statement from each such carrier confirming when service on behalf of applicant commenced.

Applicant responded through its attorney on March 22. Although the response did not include a list of applicant's transportation contracts in the Metropolitan District, the response did include the following statement:

Executive Technology Solutions, LLC is currently assisted on the National Navy Medical Center Project by Worldwide Tours and Travel based on their general tariff. Attached is a letter from Worldwide Tours and Travel confirming this arrangement. Additionally, the Contract Tariff was filed on January 23, 2012. However, the company's re-filing accompanies this response. Reston Limousine is now supporting the Department of Homeland Security, ICE under a subcontract agreement with ALEX.

The March 22 response also includes the following statement addressing applicant's willingness and ability to comport with the Compact in the future - a statement expressly affirmed by applicant's president and CEO, Ms. Miran Kim on April 6, 2012:

Executive Technology Solutions. LLC has implemented a new management and oversight structure and maintains the ability and willingness to comport with the Compact and Rules and Regulations. Past violations were due, in part, to improper management. The management structure of the company has been drastically changed in response to the past violations. Ms. Miran Kim, the President and CEO, has taken a greater role in management. Furthermore, an administrative assistant was terminated for her role in the mismanagement of paperwork which led to a violation. Moreover, the company has engaged the undersigned to provide legal guidance to ensure the company operates in compliance with the Compact and the rules and regulations thereunder.

Later, on April 17, 2012, in response to further inquiries from staff regarding applicant's transportation contracts in the Metropolitan District, applicant's president/CEO, Ms. Kim, had this to say:

Our organization provides passenger ground transportation with-in the Washington, DC Metropolitan Area. Although our Organization maintains several contracts for passenger transportation, I now better understand that specific contracts are applicable to the Commission's jurisdiction. After reviewing contracts, there are three such contracts, i. One contract with the United States Navy, ii. A contract with Alternative Experts/United State Department of Homeland Security (DHS-ICE), and the United State Department of Homeland Security (DHS-CIS).

There is nothing in the record to indicate that applicant has been subcontracting the DHS-CIS contract to any WMATC carrier. On the contrary, applicant's failure to disclose the DHS-CIS contract in its March 22 response and Ms. Kim's remark that she "now better understand[s]" WMATC jurisdiction support the opposite conclusion.

Inasmuch as applicant's violation of the Compact and regulations thereunder appears to be ongoing despite an alleged restructuring of management and the hiring of counsel, we cannot say that applicant has carried its burden of demonstrating regulatory compliance fitness.

THEREFORE, IT IS ORDERED:

1. That the application of Executive Technology Solutions, LLC, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

2. That Executive Technology Solutions, LLC, shall immediately cease providing passenger transportation services under the United States Department of Homeland Security (DHS-CIS) contract.

3. That within 30 days, in accordance with WMATC Rule No. 28, Executive Technology Solutions, LLC, shall verify that it has ceased operating the DHS-CIS contract and shall corroborate that verification with a written statement from the DHS-CIS contracting officer and the WMATC carrier hired to perform said contract on applicant's behalf.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director