

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,637

IN THE MATTER OF:

Served December 21, 2012

Application of METROEXPRESS, LLC, )  
for a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2012-236

This application was dismissed in Order No. 13,566 on November 2, 2012, for applicant's failure to produce within 14 days certain information pertinent to this proceeding requested by letter dated October 9, 2012. Applicant subsequently produced the additional information on November 19, 2012. For good cause shown, this proceeding shall be reopened under Commission Rule No 26.<sup>1</sup>

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. 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>

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<sup>1</sup> See *In re Michael Seifu, t/a Limo Treat*, No. AP-11-105, Order No. 13,001 (Oct. 5, 2011) (same).

<sup>2</sup> *In re Junior's Multi Enters., Inc.*, No. AP-12-028, Order No. 13,595 (Nov. 27, 2012).

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

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

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

## I. THE RECORD

According to Commission records, applicant's president, Abdoulaziz Adili Toro, served as President/Executive Director of an earlier entity also named Metroexpress LLC ("Metroexpress I"). Metroexpress I held WMATC Certificate No. 1661 from July 9, 2010, until August 11, 2011, when the certificate was revoked in Order No. 12,943 for Metroexpress I's willful failure to comply with the Commission's insurance requirements in Regulation No. 58 and pay a \$50 late fee in accordance with Regulation No. 67-03(c).<sup>6</sup> The revocation order gave Metroexpress I thirty days to surrender the original WMATC Certificate No. 1661 and file an affidavit and supporting photographs verifying removal of vehicle markings. Metroexpress I did not comply. Instead, Mr. Toro waited for more than one year to form the instant Metroexpress and cause the instant Metroexpress to apply for WMATC operating authority on October 5, 2012.<sup>7</sup>

By letter dated October 9, 2012, applicant was directed to file a statement explaining why approving this application would be consistent with the public interest when Metroexpress I had yet to comply with the terms of Order No. 12,943. Applicant responded, belatedly, by surrendering the original WMATC Certificate No. 1661 and submitting a statement, which in pertinent part states: "In the past few months, when the license was suspended, the company did not operate and the vehicles were not in use. The cars were parked and company logos were covered (pictures enclosed)." The photos show two vans. Both vans display for-fire plates issued by Maryland. One van displays what appear to be several strips of black tape applied to both sides of the vehicle toward the rear. The other van shows no signs of markings and no tape.

According to Maryland MVA records obtained by Commission staff, the van with no markings and no tape was not acquired and/or registered for hire by Metroexpress I until August 20, 2011 - nine days after WMATC Certificate No. 1661 was revoked.

## II. LIKELIHOOD OF FUTURE COMPLIANCE

When an applicant or a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness

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<sup>6</sup> *In re Metroexpress LLC*, No. MP-11-056, Order No. 12,943 (Aug. 11, 2011).

<sup>7</sup> Maryland Department of Assessments and Taxation records indicate that Metroexpress I's right to do business was forfeited by the Department on October 3, 2011. <http://sdatcert3.resiusa.org/ucc-charter/>.

and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>8</sup>

On this record, we cannot say that applicant has demonstrated a likelihood of future compliance. First, covering vehicle markings is not the equivalent of removing them.

Second, acquiring a van nine days after WMATC Certificate No. 1661 was revoked and retaining both vans and their for-hire plates for 15 months is not consistent with a halt in operations. That there is nothing in the record to indicate that Metroexpress I possessed any passenger carrier authority from any other agency entitling it to for-hire plates in August 2011 only makes matters worse.

Third, applicant's statement filed November 19, 2012, that the vans have not been operated for "the past few months," hardly seems elastic enough to cover the entire 15 months that Certificate No. 1661 has been revoked. Moreover, the idea that Metroexpress I would acquire a vehicle after the revocation of Certificate No. 1661 and place it in cold storage for over one year does not seem plausible.

Accordingly, 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 that this proceeding is hereby reopened and that the application of Metroexpress, LLC, 7607 Topton Street, New Carrollton, MD 20784, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BELLAMY:



William S. Morrow, Jr.  
Executive Director

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<sup>8</sup> Order No. 13,595.