

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 15,486

IN THE MATTER OF:

Served April 2, 2015

BETTER BUSINESS CONNECTION, INC., )  
T/A BBC EXPRESS, WMATC No. 227; BBC ) Case No. MP-2013-028  
VAN SERVICE, INC., T/A BBC CHARTER )  
AND LIMO; ABE'S LIMO, INC., T/A )  
ABE'S LIMO; and BEST BUS COMPANY, )  
LLC, T/A BBC: Investigation of )  
Violation of Article XI, Section )  
Nos. 6(a) & 11(b), of the Compact, )  
WMATC Reg. Nos. 61, 62, & 63, and )  
WMATC Order Nos. 12,238 & 13,258 )

Application of BEST BUS COMPANY, ) Case No. AP-2013-019  
LLC, Trading as BBC, for a )  
Certificate of Authority -- )  
Irregular Route Operations )

This matter is before the Commission upon respondents' response to Order No. 14,594, served February 26, 2014, which directed respondents to produce certain documents, cease advertising WMATC service on the internet, and show cause why the Commission should not assess civil forfeitures against respondents, and/or suspend or revoke Certificate of Authority No. 227, for operating without authority and violating certain Commission regulations.

**I. JURISDICTION**

The Washington Metropolitan Area Transit Regulation Compact,<sup>1</sup> (Compact), applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District,"<sup>2</sup> excluding "transportation solely within the Commonwealth of Virginia."<sup>3</sup>

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<sup>1</sup> 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> Compact, tit. II, art. XI, § 1. The Metropolitan District includes: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties . . . . Compact, tit. I, art. I.

<sup>3</sup> Compact, tit. II, art. XI, § 3(g).

A person may not engage in transportation subject to the Compact unless there is in force a Certificate of Authority issued by the Washington Metropolitan Area Transit Commission (WMATC) authorizing the person to engage in that transportation.<sup>4</sup> "A person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority."<sup>5</sup> "Each authorized carrier shall: . . . (b) observe and enforce Commission regulations established under [the Compact]."<sup>6</sup>

A carrier or any person controlling, controlled by, or under common control with a carrier shall obtain Commission approval to -

- (i) consolidate or merge any part of the ownership, management, or operation of its property or franchise with a carrier that operates in the Metropolitan District;
- (ii) purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier that operates in the Metropolitan District; or
- (iii) acquire control of another carrier that operates in the Metropolitan District through ownership of its stock or other means.<sup>7</sup>

The Commission may investigate on its own motion a fact, condition, practice, or matter to determine whether a person has violated or will violate a provision of the Compact or a rule, regulation, or order.<sup>8</sup>

## II. RESPONDENTS

Better Business Connection, Inc., trading as BBC Express, has held WMATC Certificate of Authority No. 227 since June 15, 1993.

BBC Van Service, Inc., trading as BBC Charter and Limo, was conditionally granted WMATC Certificate No. 1656 on November 25, 2009.<sup>9</sup> The conditional grant order noted that BBC Charter and Limo had a presumptive control relationship with BBC Express and admonished BBC Charter and Limo to keep its assets, books, finances and operations completely separate from those of BBC Express.<sup>10</sup> Sharing of office space was allowed, but this was not to be construed as permission to

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<sup>4</sup> Compact, tit. II, art. XI, § 6(a).

<sup>5</sup> Compact, tit. II, art. XI, § 11(b).

<sup>6</sup> Compact, tit. II, art. XI, § 5(b).

<sup>7</sup> Compact, tit. II, art. XI, § 3(a).

<sup>8</sup> Compact, tit. II, art. XIII, § 1(c).

<sup>9</sup> *In re BBC Van Serv., Inc., t/a BBC Charter and Limo*, No. AP-08-179, Order No. 12,238 (Nov. 25, 2009).

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

share revenue vehicles or operating authority.<sup>11</sup> The issuance of Certificate No. 1656 was expressly made contingent on BBC Charter and Limo filing additional documents and passing a vehicle inspection conducted by Commission staff within 180 days.<sup>12</sup> BBC Charter and Limo failed to satisfy the conditions for issuance of operating authority within the time allotted, thereby voiding the Commission's approval.<sup>13</sup>

Abe's Limo, Inc., trading as Abe's Limo, applied for WMATC operating authority in 2010, but the application was dismissed on March 22, 2011, for failure to prosecute.<sup>14</sup>

Best Bus Company, LLC, was conditionally granted WMATC Certificate No. 1933 on May 9, 2012.<sup>15</sup> The conditional grant order noted that Best Bus Company had a control relationship with BBC Express, WMATC No. 227, and admonished Best Bus Company to keep its assets, books, finances and operations completely separate from those of BBC Express.<sup>16</sup> Sharing of office space was allowed, but this was not to be construed as permission to share revenue vehicles or operating authority.<sup>17</sup>

The issuance of Certificate No. 1933 to Best Bus Company was expressly made contingent on Best Bus Company filing additional documents and passing a vehicle inspection conducted by Commission staff within 180 days.<sup>18</sup> To that end, Best Bus Company presented two vehicles for inspection, each marked "Owned by Abe's Limo Inc." and "Operated by BBC". When staff advised Best Bus Company that the Commission did not recognize the "BBC" trade name, Best Bus Company filed an application to add that name to the yet-to-be-issued Certificate No. 1933. The trade name application was later dismissed for Best Bus Company's failure to prosecute.<sup>19</sup>

Ultimately, Best Bus Company failed to timely satisfy the conditions for issuance of Certificate No. 1933, thereby voiding the Commission's approval.<sup>20</sup> Best Bus Company renewed its proposal to conduct WMATC operations under the "BBC" trade name in an application

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<sup>11</sup> *Id.*

<sup>12</sup> *See id.*

<sup>13</sup> *See id.* (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); *see also* Commission Reg. No. 66-01 (failure to comply with conditions of grant within 180 days voids approval).

<sup>14</sup> *In re Abe's Limo, Inc., t/a Abe's Limo*, No. AP-10-030, Order No. 12,772 (Mar. 22, 2011).

<sup>15</sup> *In re Best Bus Co.*, No. AP-12-053, Order No. 13,258 (May 9, 2012).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *See id.*

<sup>19</sup> *In re Best Bus Co.*, No. AP-12-150, Order No. 13,616 (Nov. 30, 2012).

<sup>20</sup> *See* Order No. 13,258 (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); *see also* Commission Reg. No. 66-01 (failure to comply with conditions of grant within 180 days voids approval).

filed January 23, 2013, in Case No. AP-2013-019. A decision is pending in that proceeding.

### **III. BASIS FOR INVESTIGATION**

The record in the 2012 Best Bus Company trade name application shows that the application fee was paid by check drawn on the account of "BBC Express/Abes Limo". This would appear to violate the admonition in WMATC Order No. 13,258 that Best Bus Company keep its finances completely separate from those of BBC Express.

By letter dated October 18, 2012, Best Bus Company was directed to explain why the application fee was paid by BBC Express/Abe's Limo and to submit proof that the joint BBC Express/Abe's Limo bank account had been dissolved and replaced by separate accounts for these two companies. Best Bus Company did neither.

Although the application fee for Best Bus Company's latest application was paid by check drawn on Best Bus Company's account, the check is drawn on the same bank and displays the same account number as the BBC Express/Abe's Limo check submitted in payment of the 2012 trade name application, which would appear to constitute continued commingling of assets in violation of WMATC Order No. 13,258.<sup>21</sup>

More troubling was the BBC Express website.<sup>22</sup> As of February 15, 2013, the website displayed various vehicles marked "BBC Charter and Limo". At least one of those vehicles also displayed "WMATC 227". This would appear to violate the admonition in WMATC Order No. 12,238 that BBC Charter and Limo keep its assets and operations completely separate from those of BBC Express and that these carriers may not share revenue vehicles or operating authority, and it implicates violations of WMATC Regulation No. 63 regarding advertising. Alternatively, if BBC Express was operating BBC Charter and Limo vehicles, these images on the website as of February 15, 2013, could be considered evidence of violation of Regulation No. 61 regarding vehicle markings and/or Regulation No. 62 regarding vehicle leases.

As of February 15, 2013, the website also accepted reservations for "Abe's Limousine & Tours". Although no WMATC order expressly cautions Abe's Limo against violating the Compact and Commission regulations thereunder, this advertising link between BBC Express and Abe's Limo implicates violations of Article XI, Section Nos. 6(a) and 11(b), of the Compact, requiring carriers operating in the Metropolitan District to obtain WMATC authority and prohibiting carriers from operating under WMATC authority granted to others,

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<sup>21</sup> Best Bus Company has produced some bank records showing the account in question was opened in October 2011 as a Best Bus Company account, but Best Bus Company does not explain why "BBC Express/Abe's Limo", and not "Best Bus Company", appears on the face of the check drawn against that account and submitted in payment of the 2012 Best Bus Company trade name application.

<sup>22</sup> <http://www.bbcexpress.com>.

respectively, and it implicates violations of WMATC Regulation No. 63 regarding advertising. Alternatively, if BBC Express was operating the Abe's Limo vehicles, this feature of the website as of February 15, 2013, could be considered evidence of a violation of Regulation No. 62 regarding vehicle leases.

The Commission accordingly launched this investigation in Order No. 13,741, served February 15, 2013, and therein stayed Case No. AP-2013-019 and directed respondents to: (1) identify their owners, officers, etc.; (2) present their vehicles for inspection by Commission staff; and (3) produce copies of their business records from January 1, 2010, to present. Respondents substantially complied.

After reviewing the documents produced by respondents and the results of WMATC staff's inspection of respondents' vehicles, the Commission issued Order No. 14,594 on February 26, 2014. The order conveyed our preliminary findings of apparent violations of the Compact and certain regulations thereunder committed by respondents in 2010-2013. The order directed respondents to show cause why the Commission should not assess civil forfeitures against respondents, and/or suspend or revoke Certificate of Authority No. 227, in light of those apparent violations. The order also directed respondents to produce certain documents and cease advertising WMATC service on the internet.

Respondents have filed a response to Order No. 14,594. Our analysis of that response follows.

#### **IV. RESPONSE AND FINALIZATION OF PRELIMINARY FINDINGS**

The Commission based its preliminary findings in Order No. 14,594 in part on respondents' response to Order No. 13,741 - including the production of income tax returns, associated tax records, various airline contracts, and other documents - and in part on the Commission's inspection of respondents' vehicles, Commission records pertaining to respondents' internet advertising, and documents that respondents had filed with the Commission in the ordinary course of business.

The preliminary findings fall into the following categories: (A) Operations without WMATC authority from 2010-2012; (B) Operations without WMATC authority in 2013; (C) Violation of Regulation No. 61: Vehicle Markings; (D) Violation of Regulation No. 62: Vehicle Lease; (E) Violation of Regulation No. 63: Advertising; (F) Violation of Regulation No. 64: Out-of-Service Vehicles; and (G) Violation of Regulation No. 55: Tariffs.

The response does not contest any of our preliminary findings. Accordingly, based on the evidence cited in Order No. 14,594, on respondents' failure to controvert our preliminary findings, and on the additional evidence produced by respondents in response to Order No. 14,594, all as discussed below in Section V. Timeline, we recap our preliminary findings and finalize them as follows.

#### **A. Operations Without WMATC Authority From 2010-2012**

As noted in Order No. 13,741, the Compact applies to "the transportation for hire by any carrier of persons between any points in the Metropolitan District."<sup>23</sup> "'Carrier' means a person who engages in the transportation of passengers by motor vehicle or other form or means of conveyance for hire."<sup>24</sup>

In determining the party who in reality is performing a given transportation service, the overall test of substance involving an inquiry into all pertinent factors - including control, responsibility, and assumption of financial risk - is the decisive consideration. Usually, no single factor is by itself conclusive. See *United States v. Drum*, 82 S. Ct. 408 (1962). In the final analysis the question is: does the purported carrier assume to a significant degree the characteristic burdens of the transportation business? Hence, a lessee in a bona fide vehicle-lease arrangement resulting in private carriage must (a) control, direct, and dominate the operations and (b) assume the responsibilities, the risks, the duties and the burdens of transportation. For instance, though a lessee may have operational control over the vehicle, and driver, the lessee is not a bona fide private carrier if the lessor rather than the lessee is actually controlling and directing the transportation service.

*Washington, Va. & Md. Coach Co. v. Scenic Coach Rental, Inc.*, No. 165, Order No. 837 at 4-5 (July 10, 1968).

An entity furnishing both vehicle and driver is presumed to be a carrier.<sup>25</sup> An income tax return showing revenue for transportation service and deductions commonly associated with such service, is evidence that the filer is a carrier.<sup>26</sup>

Article XI, Section 6(a), of the Compact states that "[a] person may not engage in transportation subject to this Act unless there is in force a 'Certificate of Authority' issued by the Commission authorizing the person to engage in that transportation." Article XI, Section 11(b), of the Compact states that "[a] person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority."

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<sup>23</sup> Compact, tit. II, art. XI, § 1.

<sup>24</sup> Compact, tit. II, art. XI, § 4(a).

<sup>25</sup> *In re Ecological Transp. Group, LLC, t/a Ecological Ride & as Ecological Limo*, No. AP-11-112, Order No. 13,246 at 2 (May 2, 2012).

<sup>26</sup> *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7005 at 3 (Jan. 21, 2003).

### **1. Abe's Limo, Inc.**

Based on entries in the 2011 federal income tax return for Abe's Limo Inc., including an entry for vehicle depreciation expense and deductions for repairs & maintenance, insurance, fuel, labor, and driver travel, and based on the Commission's inspection of respondents' vehicles, the Commission made the following preliminary finding: "It thus appears that Abe's Limo, Inc., may have conducted passenger carrier operations for hire in the Metropolitan District in 2011 without WMATC authority, possibly under color of WMATC No. 227, using buses B111, B411, and B511."

Upon further consideration of the record as supplemented by respondents' response to Order No. 14,594, we find that Abe's Limo, Inc., acting individually and in concert with the other respondents, conducted passenger carrier operations for hire under color of WMATC No. 227 in 2013, as discussed below. We cannot say with sufficient certainty, however, that Abe's Limo conducted passenger carrier operations subject to WMATC jurisdiction in 2011.

### **2. BBC Van Service, Inc., t/a BBC Charter and Limo**

Based on several BBC Charter and Limo contracts with two airlines and a hotel for shuttle service in 2010 and 2011, and based on entries in the 2010 federal income tax return for BBC Van Service, Inc., including an entry for vehicle depreciation expense for several vans and buses and deductions for labor, repairs, maintenance, and fuel, the Commission made the following preliminary finding:

It thus appears that BBC Van Service, Inc., t/a BBC Charter and Limo, may have conducted passenger carrier operations for hire in the Metropolitan District in 2010 without WMATC authority using its buses and vans. And it appears such operations may have continued into 2011. Although no 2011 income tax return has been produced for BBC Van Service, Inc., over 80 W-2s and some 60 1099-MISC (nonemployee compensation) forms have been produced for that employer for that year, which is consistent with direct payments to drivers in continuation of service under the aforementioned contracts.

Upon further consideration of the record as supplemented by respondents' response to Order No. 14,594, we find that BBC Van Service, Inc., trading as BBC Charter and Limo, acting individually and in concert with the other respondents, conducted passenger carrier operations for hire under color of WMATC No. 227 in 2010 and 2011.

### **3. Best Bus Company, LLC, t/a BBC**

Based on entries in the 2011 federal income tax return for Best Bus Company, LLC, including deductions for insurance, repairs, maintenance, labor, fuel, driver travel, driver commissions, and car wash and based on a 2012 federal income tax return for Best Bus Company, LLC, with a "Charter Bus Industry" business code and on 93

1099-MISC (nonemployee compensation) forms and 20 W-2 forms issued by Best Bus Company for 2012 that are consistent with direct payments to drivers, the Commission made the following preliminary finding: "It thus appears that Best Bus Company, LLC, t/a BBC, may have conducted passenger carrier operations for hire in the Metropolitan District in 2011 and 2012 without WMATC authority using vehicles provided by others."

Upon further consideration of the record as supplemented by respondents' response to Order No. 14,594, we find that Best Bus Company, LLC, acting individually and in concert with the other respondents, conducted passenger carrier operations for hire under color of WMATC No. 227 in 2012 - and in 2013 as discussed below.

#### **B. Operating Without WMATC Authority: 2013**

The Commission reviewed the following documents in rendering a preliminary finding as to the identity or identities of which respondents transported passengers in 2013:

- vehicle registrations and leases;
- copies of 2013 "Driver's Vehicle Inspection Reports" produced by respondents and identifying the "Company" variously as "BBC", "BBC Express", "BBC Charter & Limo", and "BBC-Abes (or variation thereof);
- "Driver Manifests" produced by respondents for 2013 identifying the carrier(s) as "Abes & BBC Limousine and Tours";
- airline-crew shuttle invoices from "BBC LLC" to 15-20 airlines for shuttle service to and from Dulles and Reagan Airports in 2013;
- merchant banking statements produced by respondents showing receipt by "Best Bus Company LLC" of extensive credit card revenue in 2013;
- 2013 insurance records showing that Better Business Connection, Inc., reported only 10 of the vehicles on respondents' vehicle list; and
- respondents' Internet advertising under the names "BBC", "BBC Limo & Tours", "BBC Charter & Limo", "BBC Express", "Abe's Limousine & Tours", "Best Bus Company", and "Abe's|BBC Limousine & Tours".

After reviewing said documents, the Commission made the following preliminary finding: "It thus appears that Abe's Limo, Inc., BBC Van Service, Inc., and Best Bus Company, LLC, acting individually or in concert, may have conducted passenger carrier operations for hire in the Metropolitan District in 2013."

Upon further consideration of the record as supplemented by respondents' response to Order No. 14,594, we find that Abe's Limo, Inc., and Best Bus Company, LLC, acting individually and in concert



with each other, conducted passenger carrier operations for hire under color of WMATC No. 227 in 2013.

**C. Violation of Regulation No. 61: Vehicle Markings**

Based on Commission staff vehicle inspection reports showing that none of respondents' vehicles displayed the name "Better business Connection, Inc." and that none displayed the WMATC-approved trade name "BBC Express", as required by WMATC Regulation No. 61-01(a), the Commission made the following preliminary finding: "It thus appears that one or more respondents violated WMATC Regulation No. 61 in 2013."

Upon further consideration of the record as supplemented by respondents' response to Order No. 14,594, we find that Better Business Connection, Inc., did not perform its airline contracts in 2013, and hence did not violate Regulation No. 61 in 2013.

As for the other respondents, we find that the markings on the vehicles they presented for inspection by Commission staff in 2013 violated Regulation No. 61.

Commission Regulation No. 61 requires each WMATC carrier to display its name, trade name and certificate number on the side of each revenue vehicle. It is self-evident that this requirement is for the benefit of the riding public. A passenger is entitled to know who is transporting him and under what authority.<sup>27</sup>

As noted in Order No. 14,594, all of the vans and buses produced by respondents for inspection by Commission staff displayed "WMATC 227". None displayed the name "Better business Connection, Inc.", and none displayed the WMATC-approved trade name "BBC Express". All were marked "Owned by Abe's Limo, Inc." and "Operated by BBC". Abe's Limo and Best Bus Company therefore violated Regulation No. 61 by making it appear to the public that these vehicles were being lawfully operated under WMATC authority by Best Bus Company.

**D. Violation of Regulation No. 62: Vehicle Lease**

The Commission first adopted vehicle leasing regulations in 1979 for the following purposes:

- 1) promoting the maximum efficient utilization of manpower and equipment consistent with the public interest and the law;
- 2) informing persons subject to the Commission's jurisdiction what leasing practices may lawfully be conducted;

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<sup>27</sup> *In re Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express*, No. MP-92-05, Order No. 3904 at 4 (Mar. 17), *aff'd*, Order No. 3955 (June 15, 1992).

- 3) assuring clear identification of the carrier to the public and to the users of the service;
- 4) identifying the carrier whose tariff rates must apply to an operation;
- 5) clearly identifying responsibility for an operation;
- 6) preventing circumvention of the Compact through "rental" of operating rights;
- 7) preventing cross-jurisdictional abuse of vehicle licensing and registration requirements;
- 8) assuring equipment availability; and
- 9) assuring continuity of service through appropriately guaranteed lease pricing.<sup>28</sup>

Based on Commission staff vehicle inspection reports showing that all vans and buses presented by respondents for inspection by Commission staff were marked "Owned by Abe's Limo, Inc." and "Operated by BBC", and after noting that no leases were on file for said vehicles as required by WMATC Regulation No. 62, the Commission made the following preliminary finding: "It thus appears that one or more respondents violated WMATC Regulation No. 62 in 2013."

According to Regulation No. 62-02: "No carrier subject to the jurisdiction of this Commission shall operate any motor vehicle(s) as lessee thereof unless the contract of lease has been approved by the Commission."

As noted above, we find that Better Business Connection, Inc., did not perform its airline contracts in 2013. Hence, it did not violate Regulation No. 62 in 2013.

As for the other respondents, upon further consideration of the record as supplemented by respondents' response to Order No. 14,594, we find that Best Bus Company, LLC, violated WMATC Regulation No. 62 in 2013 by performing airline-crew shuttle service in the Metropolitan District in minibuses and 10-passenger vans registered to Abe's Limo.

#### **E. Violation of Regulation No. 63: Advertising**

After quoting Regulation No. 63 governing carrier advertising and reviewing respondents' internet advertising, (see discussion above in Section IV.B), the Commission made the following preliminary finding:

Based on the evidence of respondents' Internet advertising of passenger carrier service in the Washington Metropolitan Area through the websites [www.bbceexpress.com](http://www.bbceexpress.com) and [www.abeslimo.com](http://www.abeslimo.com), it would appear that respondents may be in violation of WMATC Regulation No. 63, inasmuch as said websites do not contain the text

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<sup>28</sup> *In re Veolia Transportation On Demand, Inc.*, No. AP-07-006, Order No. 11,862 (Feb. 24, 2009) (citing *In re Proposed Reg. Relating to Leases of Equip.*, No. 388, Order No. 2011 at 8 (July 24, 1979)).

required by Regulation No. 63, and only Better Business Connection, Inc., possesses authority to advertise passenger carrier service requiring WMATC authority.

Upon further consideration of the record as supplemented by respondents' response to Order No. 14,594, we find that Abe's Limo, Inc., BBC Van Service, Inc., and Best Bus Company, LLC, acting individually and in concert, violated WMATC Regulation No. 63 in 2013 by advertising on the Internet service requiring WMATC authority.<sup>29</sup>

**F. Violation of Regulation No. 64: Out-of-Service Vehicles**

Based on mileage entries in vehicle maintenance records submitted by respondents before and after several of their vehicles were ordered out of service, the Commission made the following preliminary finding:

"[I]t appears from mileage entries on vehicle maintenance records produced by respondents that the following six vehicles were operated while declared out of service.

V-110	VIN Ending	01222
V-210	VIN Ending	85180
V-410	VIN Ending	87777
V-411	VIN Ending	17522
V-511	VIN Ending	42396
S-513	VIN Ending	33415"

Upon further consideration of the record as supplemented by respondents' response to Order No. 14,594, we find that Abe's Limo, Inc., and Best Bus Company, LLC, acting individually and in concert, operated six vehicles while declared out of service in 2013.

**G. Violation of Regulation No. 55: Tariffs**

WMATC Regulation No. 55-02, prohibits carriers from charging rates not on file with the Commission. After comparing the rates of Better Business Connection, Inc., reflected in invoices issued to certain customers with the rates of Better Business Connection, Inc., in tariffs on file with the Commission, the Commission made the following preliminary finding: "It thus appears that to the extent that the trips reflected in the invoices for Air Canada, ANA, and United were performed by Better Business Connection, those trips were performed in violation of Regulation No. 55."

As noted above, we find that Better Business Connection, Inc., did not perform its airline contracts from October 1, 2010, through December 31, 2013. We further find that there is insufficient evidence to reach a finding as to the first three quarters of 2010.

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<sup>29</sup> The display of a WMATC number on vehicles operated by a non-WMATC carrier violates Regulation No. 63-04, as well. *In re Home Health Transp. Servs., LLC*, No. AP-13-317, Order No. 15,051 (Sept. 12, 2014).

## V. TIMELINE

The timeline begins in January 2008 with the payment of Better Business Connection's 2008 annual fee and the filing of Better Business Connection's 2008 WMATC annual report. The fee is paid by check drawn on the account of BBC Van Service. The report includes a list of 39 vehicles - including seven 10-passenger vans (fleet nos. 01-06 and 12) and five minibuses (109-110 and 118-120). Looking forward, these 12 vehicles will not be claimed on the single Better Business income tax return produced by respondents, which covers the tax year ending September 30, 2010. Instead, they will be claimed on BBC Van Service's income tax returns for 2010-2012.

Later in 2008, Better Business Connection renews a contract with Air France calling for airline crew shuttle service between hotels in the District of Columbia, on the one hand, and Dulles Airport, on the other, beginning August 1, 2008, and terminating December 31, 2010.<sup>30</sup>

In December 2008, BBC Van Service files an application for a WMATC certificate of authority in WMATC Case No. AP-2008-179.<sup>31</sup> The application discloses that BBC Van Service is in common control with Better Business Connection. Documents in support of the application identify Mahmoud Omar Abu-Ghannam as president and 49% owner of BBC Van Service and sole owner of Better Business Connection. In addition, the application is signed by BBC Van Service's vice president, Radcliff Taylor, who identifies himself as Better Business Connection's General Manager in the annual reports he files for Better Business Connection in 2008-2015.

On January 26, 2009, while the BBC Van Service application is pending, Better Business Connection once again pays its annual fee by check drawn on the account of BBC Van Service. At the same time, Better Business Connection files its 2009 WMATC annual report. The report includes the seven 10-passenger vans noted above, as well as the five minibuses, plus four new minibuses (fleet nos. 122-125) and a 36-passenger limobus (fleet no. 101), all of which match descriptions for 17 vehicles depreciated on BBC Van Service's 2010-2012 income tax returns.

Later in 2009, Better Business Connection extends two airline-crew shuttle contracts: one contract with Iberia Airlines for service between a hotel in the District of Columbia and Dulles Airport for one year beginning May 1, 2009,<sup>32</sup> and the other contract with Virgin Atlantic for service between the District of Columbia and Dulles Airport from July 16, 2009, to December 31, 2010.<sup>33</sup>

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<sup>30</sup> Contract Tariff No. CT-24A.

<sup>31</sup> *In re BBC Van Serv., Inc., t/a BBC Charter and Limo*, No. AP-08-179, Order No. 12,238 (Nov. 25, 2009).

<sup>32</sup> Contract Tariff No. CT-31.

<sup>33</sup> Contract Tariff No. CT-26A.

The BBC Van Service application in WMATC Case No. AP-2008-179 is then conditionally approved in Order No. 12,238 on November 25, 2009, and the trade name "BBC Charter and Limo" is conditionally approved for use in the Metropolitan District at BBC Van Service's request.<sup>34</sup> But because of BBC Van Service's control relationship with Better Business Connection, BBC Van Service is admonished to keep its assets, books, finances and operations completely separate from those of Better Business Connection, and BBC Van Service is cautioned that conditional approval is not to be construed as permission to share revenue vehicles or operating authority.<sup>35</sup> Finally, BBC Van Service is ordered not to commence WMATC operations until a certificate of authority is issued.<sup>36</sup> BBC Van Service fails to satisfy the conditions of approval, and no certificate is issued.<sup>37</sup>

On January 11, 2010, Better Business Connection pays its 2010 annual fee by check drawn on its own account and files a 2010 WMATC annual report. The vehicles mentioned above all carry over from 2009, except one, minibus no. 120.

On March 3, 2010, Abe's Limo files an application for a WMATC certificate of authority in WMATC Case No. AP-2010-030.<sup>38</sup> The application is signed by its president, Hani Abraham, who later will figure in Abe's Limo joining forces with the other three respondents. The application is dismissed in Order No. 12,772 on March 22, 2011, when Abe's Limo fails to furnish supplemental information necessary for a full and fair examination of the application.<sup>39</sup>

Several months later, Better Business Connection signs two contracts for airline-crew shuttle service between DC hotels, on the one hand, and Reagan Airport and Dulles Airport, on the other: one with American Airlines for service from June 30, 2010, to June 29, 2012;<sup>40</sup> and one with United Airlines for service from August 1, 2010, to July 31, 2012, which ultimately gets extended to April 30, 2016.<sup>41</sup>

And a few months after that, using its "BBC Charter and Limo" trade name, BBC Van Service signs a contract with Colgan Airlines for airline-crew shuttle service to and from Dulles Airport from September 27, 2010, to September 26, 2011, and negotiates a contract

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<sup>34</sup> Order No. 12,238.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</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>38</sup> *In re Abe's Limo, Inc., t/a Abe's Limo*, No. AP-10-030, Order No. 12,772 (Mar. 22, 2011).

<sup>39</sup> *Id.*

<sup>40</sup> Contract Tariff No. CT-29B.

<sup>41</sup> Contract Tariff No. CT-25B.

with Icelandair for similar service from May 1, 2011, to April 30, 2014.<sup>42</sup>

Jumping ahead to mid-2011, Better Business Connection's CPA prepares an income tax return for the tax year October 1, 2009 through September 30, 2010. Depreciation expense is claimed for only two vehicles, neither of which appears on the list of 30 vehicles included in Better Business Connection's 2010 WMATC annual report. The return does however contain significant deductions for contract labor, leases, fuel expense, and vehicle maintenance consistent with a finding that during the period covered by this return, Better Business Connection conducted operations as a passenger carrier within the meaning of the Compact.

This appears to have been the end of the trail for Better Business Connection as a passenger carrier. Although the "Final return" box is not checked on the return, it is the only Better Business Connection tax return that respondents have produced. Indeed, it stands alone as the only evidence tending to establish that Better Business Connection ever actually performed the airline contracts that it held during the 2010-2013 period under investigation.

Who performed Better Business Connection's airline-crew shuttle contracts on and after October 1, 2010, is the focus of the rest of this narrative.

#### **A. 2010 - Last Quarter**

We begin and end with the 2010 income tax return for BBC Van Service, which was prepared by the same CPA that prepared the 2009-2010 tax return for Better Business Connection, as well as all of the other tax returns produced by respondents and herein discussed.

BBC Van Service's 2010 return includes depreciation entries for 17 vehicles. Sixteen match the descriptions of the above-noted seven vans, eight minibuses, and one limobus reported to WMATC by Better Business Connection at the beginning of 2010. Better Business Connection did not claim these vehicles on its own 2010 return, even though Commission records show that most were registered in Better Business Connection's name.

The BBC Van Service return for 2010 also contains significant deductions for contract labor, leases, fuel expense, repairs, and maintenance consistent with a finding that during 2010, BBC Van Service conducted operations as a passenger carrier within the meaning of the Compact. Its contract with Colgan Airlines places at least a portion of those operations in the Metropolitan District.

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<sup>42</sup> See airline contracts produced in this proceeding in response to Order No. 13,741.

Given the absence of evidence that Better Business Connection continued to function as a passenger carrier on and after October 1, 2010, much less directly managed and assumed the expense of day-to-day shuttle operations, and in light of the contracts for airline-crew shuttle service in the Metropolitan District held in BBC Van Service's name and the significant deductions for contract labor, leases, fuel expense, repairs, and maintenance in BBC Van Service's 2010 income tax return, as well as a depreciation expense deduction for vehicles matching vehicles on Better Business Connection's 2010 annual report, and considering the control relationship between the two companies and respondents' failure to controvert our preliminary findings in Order No. 14,594, we conclude that the record supports a finding that BBC Van Service performed some or all of the airline contracts that Better Business Connection held from October 1, 2010, through December 31, 2010, and did so using some of the same vehicles reported to the Commission by Better Business Connection in its 2010 WMATC annual report and claimed by BBC Van Service on its 2010 income tax return.

#### **B. 2011**

Better Business Connection opens 2011 by once again paying its annual fee by check drawn on the account of BBC Van Service. The vehicle list in Better Business Connection's 2011 annual report is identical to the list in its 2010 annual report.

Several months later in 2011, Better Business Connection renegotiates the terms of an existing contract with Lufthansa for airline-crew shuttle service between a DC hotel and Dulles Airport, effective from July 1, 2011, to December 31, 2013.<sup>43</sup> The contract ultimately gets extended to December 31, 2015.

On July 20, 2011, Abe's Limo president Hani Abraham and four others form Best Bus Company, LLC.<sup>44</sup> Mr. Abraham, acting in his capacity as "Member/Manager", later opens an account with Bank of America in Best Bus Company's name on October 28, 2011.<sup>45</sup> These events become more relevant in 2012.

The 2011 BBC Van Service income tax return claims depreciation expense for the same 30 vehicles claimed the year before, including the same 16 apparently reported to WMATC by Better Business Connection at the beginning of both 2010 and 2011. The return also contains significant deductions for contract labor, leases, fuel expense, repairs, and maintenance consistent with a finding that during 2011, BBC Van Service conducted operations as a passenger carrier within the meaning of the Compact. Its contract with Colgan Airlines places at

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<sup>43</sup> Contract Tariff No. CT-23B.

<sup>44</sup> See Attachments A to Best Bus Company applications in WMATC Case Nos. AP-2012-053 and AP-2013-019 and Best Bus Company 2011 income tax return, Schedules K-1.

<sup>45</sup> See Best Bus Company bank resolution filed February 5, 2013, in WMATC Case No. AP-2013-019.

least a portion of those operations in the Metropolitan District. And although the return also reports the sale in 2011 of 12 of the 16 Better Business Connection vehicles, all of those vehicles later reappear on BBC Van Service's income tax return for 2012.

Consistent with its 2011 income tax return, BBC Van Service will issue in January 2012, 60 Forms 1099-MISC documenting over \$500,000 in combined non-employee compensation paid by BBC Van Service in 2011.<sup>46</sup> Many of the names will show up on the November 2012 "Abes & BBC Limousine and Tours" driver manifests for airline-crew shuttle trips discussed below, names such as Amro, Elias, Cypress, Yousri, Dorian, Girgis, and Issam. Some of these people also receive W-2s for wages paid by BBC Van Service in 2011.

Given the absence of evidence that Better Business Connection continued to function as a passenger carrier on and after October 1, 2010, and in light of the contracts for airline-crew shuttle service in the Metropolitan District held in BBC Van Service's name and the significant deductions for contract labor, leases, fuel expense, repairs, and maintenance in BBC Van Service's 2011 income tax return, as well as a depreciation expense deduction for vehicles matching vehicles on Better Business Connection's 2011 annual report, and considering the control relationship between the two companies and respondents' failure to controvert our preliminary findings in Order No. 14,594, we conclude that the record supports a finding that BBC Van Service performed some or all of the airline contracts that Better Business Connection held during 2011, and did so using some of the same vehicles reported to the Commission by Better Business Connection in its 2011 WMATC annual report and claimed by BBC Van Service on its 2011 income tax return.

Before we leave 2011, it is important to observe that the 2011 income tax return for Best Bus Company, which covers the November-December 2011 period, shows vehicle maintenance, fuel expense, and driver commissions consistent with operations as a passenger carrier in 2011. But there is scant evidence in the record directly tying those operations in 2011 to Better Business Connection's and BBC Van Service's airline contracts.

Likewise, the 2011 income tax return for Abe's Limo contains entries for vehicle depreciation and maintenance, fuel expense, and labor expense consistent with operations as a passenger carrier in 2011. But there is little evidence in the record directly tying those operations in 2011 to Better Business Connection's and BBC Van Service's airline contracts.

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<sup>46</sup> Forms 1099 for 2011 were to be issued to recipients no later than January 31, 2012, and filed with IRS by February 28, 2012. See INTERNAL REVENUE SERVICE, GENERAL INSTRUCTIONS FOR CERTAIN INFORMATION RETURNS at 3 & 9 (2011). Available at [www.irs.gov](http://www.irs.gov).



The list of entities tied to Better Business Connection's and BBC Van Service's airline contracts will expand to include Abe's Limo and Best Bus Company in 2012.

### C. 2012

On January 31, 2012, Better Business Connection pays its 2012 annual fee by check drawn ostensibly on the "OPERATING ACCOUNT" of "BBC EXPRESS/ABES LIMO". The vehicle list in Better Business Connection's 2012 WMATC annual report is identical to the list in Better Business Connection's 2011 WMATC annual report, and thus includes the vehicles apparently tied to BBC Van Service.

The following week, "BBC LLC" - which appears to be a contraction of Best Bus Company, LLC - begins issuing passenger transportation invoices to various airlines, including some of the above-noted airlines under contract to Better Business Connection and BBC Van service. The invoices are replete with charges for individual trips in minibuses and 10-passenger vans between DC hotels, on the one hand, and Reagan and Dulles Airports on the other. This invoicing activity will continue throughout 2012 and all of 2013 and encompass 19 airlines overall.

In the meantime, on March 26, 2012, Best Bus Company, LLC, files an application for a WMATC certificate of authority in WMATC Case No. AP-2012-053.<sup>47</sup> The application is signed by Radcliff Taylor as "Vice President - CEO" of Best Bus Company,<sup>48</sup> who acknowledges the existence of a control relationship between Best Bus Company and Better Business Connection. Mr. Taylor supports the application with proof of Best Bus Company having obtained interstate passenger carrier authority from the Federal Motor Carrier Safety Administration (FMCSA) on December 7, 2011. The application indicates that Best Bus Company intends to commence operations with 11 10-passenger vans and 5 minibuses.

The application is conditionally approved in Order No. 13,258 on May 9, 2012.<sup>49</sup> The conditional grant order admonishes Best Bus Company to keep its assets, books, finances and operations completely separate from those of Better Business Connection, and Best Bus Company is cautioned that conditional approval is not to be construed as permission to share revenue vehicles or operating authority.<sup>50</sup> Lastly, Best Bus Company is ordered not to commence WMATC operations until a WMATC certificate of authority is issued.<sup>51</sup>

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<sup>47</sup> *In re Best Bus Co.*, No. AP-12-053, Order No. 13,258 (May 9, 2012).

<sup>48</sup> In a list of officers supporting the application Mr. Taylor is identified as President/GM, and an affidavit in support identifies him as Vice - President/ General Manager.

<sup>49</sup> Order No. 13,258.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

Three months later, while Best Bus Company's application for WMATC authority is pending, Best Bus Company applies in WMATC Case No. AP-2012-150 for permission to use the trade name "BBC" under its yet-to-be-issued WMATC certificate and pays the application fee with a check drawn on the "OPERATING ACCOUNT" of "BBC EXPRESS/ABES LIMO", which as noted above was the account used by Better Business Connection to pay its 2012 annual fee.

When questioned about the potential for public confusion between the proposed "BBC" trade name and Better Business Connection's "BBC Express" trade name, Best Bus Company indicates a willingness to consider adopting a different trade name.<sup>52</sup>

But when asked why the Commission should not require Best Bus Company, BBC Express, and Abe's Limo to establish their own individual bank accounts, Best Bus Company responds by producing a sample check that reads "BEST BUS COMPANY, LLC" and "OPERATING ACCOUNT" but that displays the same account number appearing on the "BBC EXPRESS/ABES LIMO" check, which Best Bus Company declares is now "null and void". It will not become apparent to the Commission until 2013 that the account in question always belonged to Best Bus Company.<sup>53</sup>

The trade name application is dismissed on November 30, 2012, when Best Bus Company fails to furnish all information requested by the Commission as necessary for a full and fair examination of the application.<sup>54</sup>

A week later, Best Bus Company presents two vehicles for inspection on December 6, 2012, in a last-minute effort to prop up its application for WMATC authority in Case No. AP-2012-053. The vehicles are owned by Abe's Limo, and both parties sign a WMATC vehicle lease. But the proceeding closes out that day with no WMATC certificate having been issued due to Best Bus Company's failure to timely satisfy all conditions of the May 9, 2012, grant.<sup>55</sup>

In November 2012, an electronic record of driver manifests is begun under the name(s) "Abes & BBC Limousine and Tours", an appellation reminiscent of the "Abe's Limousine & Tours" name that will appear on the Abe's Limo website in 2013, the "BBC Limo & Tours" name that will appear on the BBC Express website in 2013, and the "Abe's|BBC Limousine & Tours" name that will appear on the BBC Express website in 2013.

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<sup>52</sup> Response filed December 6, 2012.

<sup>53</sup> Compare account card submitted as part of February 5, 2013, response in AP-2013-019 with check submitted with 2012 annual report for Better Business Connection.

<sup>54</sup> *In re Best Bus Co.*, No. AP-12-150, Order No. 13,616 (Nov. 30, 2012).

<sup>55</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).

The entries in the manifests match up with entries in the "BBC LLC" invoices with respect to date, time, trip number, vehicle type, airline, airport, and hotel. The joint log is maintained from November 2012 through May 2013. Best Bus Company merchant services statements and "Operating Account" statements in 2012 and 2013 are consistent with Best Bus Company's receipt of revenue from this invoicing activity.<sup>56</sup>

Jumping ahead to 2013, federal 1099-MISCs issued by Best Bus Company to IRS and 93 recipients in early 2013<sup>57</sup> document over \$1 million in combined non-employee compensation paid by Better Bus Company in 2012. Many of the 1099s match up with the names that appear in the "Abes & BBC Limousine and Tours" manifests.

As for the Best Bus Company 2012 income tax return, we questioned the accuracy of that return in Order No. 14,594, especially the return's single expense entry labeled "SUBCONTRACTOR TO BETTER BUSINESS" in that it exactly equals Best Bus Company's reported revenue for that year. And we commented that we found a single expense entry inconsistent with the 1099-MISCs issued by Best Bus Company for 2012. With the benefit of additional documents produced in response to Order No. 14,594, however, and upon further consideration, the magnitude of the revenue reported in Best Bus Company's 2012 income tax return appears consistent with the total revenue reflected in the airline-crew shuttle invoices issued by Best Bus Company in 2012. And the size of the single entry for "SUBCONTRACTOR" operating expense, when viewed as a single sum consolidating all of the individual expenses of Best Bus Company operations in 2012, is not inconsistent with the sum of wages reported in the 2012 1099-MISCs issued by Best Bus Company to airline-crew shuttle drivers.

Given the absence of evidence that Better Business Connection continued to function as a passenger carrier on and after October 1, 2010, and in light of the Best Bus Company operating account, and the evidence that Best Bus Company billed Better Business Connection clients for airline-crew shuttle trips from February 2012 through December 2012 and paid wages to the drivers operating the vehicles used to perform those trips in 2012, and considering the control relationship between the two companies and respondents' failure to controvert our preliminary findings in Order No. 14,594, we conclude that the record supports a finding that Best Bus Company performed the

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<sup>56</sup> It is interesting to note that American Express merchant service statements for June 2012 through March 2013, read "Best Bus Company LLC" on the first address line and "BBC LLC" on the second.

<sup>57</sup> Forms 1099 for 2012 were to be issued to recipients no later than January 31, 2013, and filed with IRS by February 28, 2013. See INTERNAL REVENUE SERVICE, GENERAL INSTRUCTIONS FOR CERTAIN INFORMATION RETURNS at 3 & 9 (2012). Available at [www.irs.gov](http://www.irs.gov).

airline contracts that Better Business Connection and BBC Van Service held during 2012.

#### **D. 2013**

Best Bus Company, LLC, files a new application for a WMATC certificate of authority in WMATC Case No. AP-2013-019 on January 23, 2013 and proposes operating as "BBC". The application is signed by Radcliff Taylor in his capacity as as "Vice-President - General Manager". The application indicates that Best Bus Company intends to commence operations with 11 10-passenger vans and 5 minibuses and operate under the trade name "BBC". The record in AP-2013-019 includes evidence that as of January 22, 2013, Best Bus Company had reported 19 vehicles and 24 drivers to FMCSA.

On January 25, 2013, Better Business Connection pays its 2013 annual fee by cashier's check and files its 2013 annual report. The vehicle list in the annual report has been trimmed from 30 vehicles in 2012 to six vehicles in 2013: three seating 28 passengers and three seating 38 passengers. Four are registered in the name of Abe's Limo, Inc. Two are registered in the name of Abes Limo Service. None of the six have been reported by Better Business Connection in the past.

On February 15, 2013, the Commission initiates this investigation and stays the application in Case No. AP-2013-019.

Best Bus Company continues issuing invoices to Better Business Connection's airline clients for shuttle trips between the District of Columbia and Reagan and Dulles Airports. The invoices continue throughout all of 2013, but the billing company identity is changed from "BBC LLC" to "Best Bus Company, LLC" beginning with invoices issued in October, making express what had been fairly obvious to begin with, that BBC LLC is a contraction of Best Bus Company, LLC. After all, Best Bus Company is the only LLC among respondents, Best Bus Company had signalled in two WMATC applications its desire to operate under the "BBC" tradename, and the American Express statements display both "Best Bus Company LLC" and "BBC LLC" for a single account.

The matching driver manifests maintained by "Abes & BBC Limousine and Tours" continue through at least May 2013, and the jumble of permutations and combinations of respondents' names and trade names is seen on BBC Express's website both at the beginning of 2013 and at the end.

Meanwhile, on March 22, 2013, respondents produce a list of vehicles in response to Order No. 13,741, issued in this proceeding on February 15, 2013. The list of 44 vehicles includes the three buses and three minibuses reported by Better Business Connection in its 2013 WMATC annual report and owned by Abe's Limo. The 44-vehicle list also includes four sedans registered to Better Business Connection but not reported in Better Business Connection's 2013 annual report.

Also in response to Order No. 13,741, respondents present their vehicles for inspection on various dates in April and May. The buses and vans are marked "Owned by Abe's Limo Inc." and "Operated by BBC". It bears repeating that "BBC" is the trade name proposed in Best Bus Company's WMATC application in Case No. AP-13-019.

Later, Better Business Connection signs a contract with Brussels Airlines for airline-crew shuttle service between "the Airport" and the District of Columbia from June 16, 2013, through June 15, 2015.<sup>58</sup>

Given the absence of evidence that Better Business Connection continued to function as a passenger carrier on and after October 1, 2010, and in light of the 2013 Best Bus Company airline-crew shuttle invoices, the 2013 Best Bus Company merchant service statements, the Abe's Limo vehicles reported on Better Business Connection's 2013 WMATC annual report, the "Abes & BBC Limousine and Tours" driver manifests maintained in 2013, and the "Operated by BBC" markings on respondents' vans and buses in April and May 2013, and considering the control relationships among respondents and their failure to controvert our preliminary findings in Order No. 14,594, we conclude that the record supports a finding that individually and in concert Abe's Limo and Best Bus Company performed the airline contracts that Better Business Connection and BBC Van Service held during 2013.

#### **VI. ASSESSMENT OF FORFEITURES FOR 2010-2013**

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>59</sup> Each day of the violation constitutes a separate violation.<sup>60</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>61</sup> The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.<sup>62</sup>

In their show cause response, respondents state that prior to 2014, "a certain amount of operational, organizational and document undergrowth had accumulated during the Respondents' various corporate existences" and this undergrowth "coupled with the similarity in names . . . lead to easy confusion between the entities and their management

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<sup>58</sup> Contract Tariff No. CT-32.

<sup>59</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>60</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>61</sup> *In re Royal Sys. Servs. Corp., t/a VGA Group*, No. MP-09-109, Order No. 12,439 at 10 (June 11, 2010).

<sup>62</sup> *Id.* at 10.

and employees," and "[t]his confusion was compounded when the Respondents worked and interacted with their business partners and governmental bodies."<sup>63</sup> If this is true, respondents only have themselves to blame. The alphabet soup of trade names that populated respondents' websites was not foisted on them. Those names existed because respondents adopted them for their own purposes, which may have been benign at first but eventually became just another instrument wielded by respondents in furtherance of their scheme to conduct operations in the Metropolitan District by committee instead of through the only WMATC-authorized carrier among them, Better Business Connection.

Even if we were to subscribe to this management-by-chaos theory, advanced in respondents' response but not supported by affidavit, employee negligence is no defense.<sup>64</sup> "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of" the statute.<sup>65</sup> The record does not support respondents' facile explanation, in any event.

The contemporaneous documents tell a story of how BBC Van Service performed Better Business Connection's airline contracts in the fourth quarter of 2010 and throughout 2011 and how Best Bus Company performed Better Business Connection's airline contracts in 2012 through 2013, with Abe's Limo's participation in 2013. Respondents' income tax returns and related income tax filings leave little doubt as to who profited from which activities during the period under investigation. We do not believe that the substitution of Best Bus Company for BBC Van Service at the close of 2011 was some sort of accident. And respondents have yet to produce any amended returns that would enable us to reach a different conclusion.

And the record does not support the suggestion that for almost all of 2012 and for all of 2013, none of respondents' officers and employees realized that the invoices to airlines were all being issued in a name other than Better Business Connection or BBC Express. On the contrary, the opposite of confusion was on display in October 2013, well after this investigation was underway, when respondents made more certain, not less certain, Best Bus Company's identity as the originator of respondents' invoices to airlines by replacing the rather generic "BBC LLC", which had been appearing on all invoices, with "Best Bus Company, LLC", which remained imprinted on all invoices thereafter through the end of the year.

At the end of the day, plain indifference is the explanation that best fits respondents' failure to heed the Commission's clear

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<sup>63</sup> Response of April 28, 2014 at 3-4.

<sup>64</sup> *Id.* at 10.

<sup>65</sup> *United States v. Illinois Cent. R.R.*, 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

warning to BBC Van Service in Order No. 12,238 and Best Bus Company in Order No. 13,258 to keep their operations separate from those of Better Business Connection.

**A. Operations Without WMATC Authority**

The nature of a major airline is that it operates 24 hours a day, 365 days a year. Airline crew layovers occur every day. The record shows that the Reagan and Dulles operations of the 19 airlines under contract with respondents are no exception. The record supports a finding that respondents, other than Better Business Connection, knowingly and willfully conducted airline crew shuttle services on a daily basis, under color of WMATC Certificate No. 227, from October 1, 2010, through December 31, 2013, in violation of Article XI, Sections 6(a) and 11(b), of the Compact, and WMATC Order Nos. 13,258 and 12,238, as follows:

2010-11	BBC Van Service	457 days
2012	Best Bus Co.	365 days
2013	Best Bus Co. & Abe's Limo	365 days

"In setting the daily forfeiture amount, we . . . take[] into consideration Commission precedent that distinguishes carriers operating without authority and without adequate insurance, on the one hand, from carriers operating without authority but with adequate insurance, on the other - assessing a larger amount against those without adequate insurance."<sup>66</sup> The Commission assesses \$500 per day when a carrier operates unlawfully without an effective WMATC Endorsement on file.<sup>67</sup> Accordingly, we assess the following forfeitures against these three respondents in the following amounts:

2010-11	BBC Van Service	\$228,500
2012	Best Bus Co.	\$182,500
2013	Best Bus Co. & Abe's Limo	\$182,500

We will suspend all but 15 percent of these forfeitures, rounded to the nearest \$100, based on the presence of two reduction factors: applicant's production of inculpatory records and voluntary filing of applications.<sup>68</sup> Failure to pay the following net forfeitures in a timely fashion shall result in reinstatement of the full forfeitures.

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<sup>66</sup> Order No. 12,439 at 12.

<sup>67</sup> See *id.* at 13 (assessing \$500 per day against carrier without WMATC authority).

<sup>68</sup> See *In re Zereyakob Assefa Haylemariam, t/a Shalom Transp. Serv.*, No. AP-14-139, Order No. 15,131 at 4 (Oct. 21, 2014) (15% reduction for two factors - producing inculpatory records and filing application); *In re My Own Place, Inc.*, No. AP-12-267, Order No. 13,694 (Jan. 23, 2013) (15% reduction for two factors - admission of wrongdoing and filing of application); *In re Metro Homes, Inc.*, No. AP-10-004, Order No. 12,729 (Feb. 15, 2011) (same).

2010-11	BBC Van Service	\$34,300
2012	Best Bus Co.	\$27,400
2013	Best Bus Co. & Abe's Limo	\$27,400

#### **B. Violations of Regulation Nos. 61-64**

We will assess a forfeiture of \$250 for Abe's Limo, Inc., and Best Bus Company, LLC, knowingly and willfully operating vehicles marked "WMATC 227", in violation of Regulation No. 61.<sup>69</sup>

We will assess a forfeiture of \$250 for Best Bus Company, LLC, knowingly and willfully performing airline-crew shuttle service in the Metropolitan District in 2013 using minibuses and 10-passenger vans under leases not approved by WMATC, in violation of Regulation No. 62-02.<sup>70</sup>

We will assess a forfeiture of \$250 for Abe's Limo, Inc., BBC Van Service, Inc., and Best Bus Company, LLC, knowingly and willfully advertising service requiring WMATC authority in 2013, in violation of Regulation No. 63-04.<sup>71</sup>

We will assess a forfeiture of \$250 for Abe's Limo, Inc., and Best Bus Company, LLC, knowingly and willfully operating six vehicles declared out of service in 2013, in violation of Regulation No. 64-05.<sup>72</sup>

#### **VII. POST-2013 VIOLATIONS**

Order No. 14,594 directed respondents to "immediately cease advertising through the websites [www.bbcexpress.com](http://www.bbcexpress.com) and [www.abeslimo.com](http://www.abeslimo.com) passenger carrier service requiring WMATC authority." Respondents have yet to comply. In their response to Order No. 14,594, respondents appear to defend their failure to comply on the grounds that these websites now comply with WMATC Regulation No. 63.<sup>73</sup> Putting aside for the moment the implicit invalid proposition that carriers are free to disobey unequivocal Commission directives so long as they, the carriers, adopt corrective measures that they deem sufficient, we find that the Abe's Limo website still does not comply with Regulation No. 63.

<sup>69</sup> See Order No. 13,177 (assessing \$250 forfeiture for violation of Regulation No. 61).

<sup>70</sup> See *In re Mobility Express Inc.*, No. MP-11-062, Order No. 13,177 (Feb. 28, 2012) (assessing \$250 forfeiture for violation of Regulation No. 62); *In re Exec. Tech. Solutions, LLC*, No. MP-10-090, Order No. 13,044 (Nov. 8, 2011) (same); *In re Chukwunye Nnakwu, t/a Progressive Med. Care Servs.*, No. MP-08-242, Order No. 12,121 (Aug. 18, 2009) (same).

<sup>71</sup> See *In re America Transp. Servs., Inc.*, No. MP-11-066, Order No. 13,098 (Dec. 28, 2011) (assessing \$250 forfeiture for violation of Regulation No. 63-04).

<sup>72</sup> See Order No. 13,044 (assessing \$500 forfeiture for violation of Regulation No. 64); Order No. 12,121 (assessing \$500 forfeiture for violation of safety provision in Compact, art. XI, § 5(a)).

<sup>73</sup> Response of April 28, 2014 at 4-5, 6.



First, the "abeslimo" website identifies the carrier as "Abe's Limousine & Tours". According to documents filed by respondents in response to Order No. 14,594, Abe's Limo was merged into Better Business Connection on April 24, 2014. And while it would thus appear that Better Business Connection now owns the "abeslimo" website by virtue of the merger, Better Business Connection is not authorized to use the "Abe's Limousine & Tours" trade name in WMATC operations. Despite two trade name applications having been filed in 2014, said trade name has yet to be added to Certificate No. 227 because of Better Business Connection's failure to prosecute those applications.

In both applications, the addition of the "Abe's Limousine & Tours" trade name to Certificate No. 227 was made contingent on Better Business Connection filing additional documents and passing a vehicle inspection conducted by Commission staff.<sup>74</sup> Both orders cautioned Better Business Connection not to operate under the "Abe's Limousine & Tours" trade name unless and until the trade name is added to Certificate No. 227. In the first application, Better Business Connection failed to satisfy said conditions within the 180 days allowed under Regulation No. 66, thereby voiding the Commission's approval.<sup>75</sup> In the second application, which is still pending, Better Business Connection has yet to satisfy all conditions, despite the passage of more than three months.

Second, Better Business Connection is wrong when it argues that "the Abe's Website has removed all reference to WMATC jurisdiction transportation services and refers solely to operations authorized by the District of Columbia Taxicab Commission."<sup>76</sup>

Congress transferred the District's passenger carrier jurisdiction to WMATC in 1960.<sup>77</sup> An exception was carved out for taxicabs and other vehicles seating nine persons or less, including the driver.<sup>78</sup> That exception was narrowed in 1962 to taxicabs and other vehicles seating nine persons or less "used in performing a bona fide taxicab service."<sup>79</sup> The "bona fide taxicab service" modification

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<sup>74</sup> See *In re Better Business Connection, Inc.*, No. AP-14-337, Order No. 15,226 (Dec. 8, 2014); *In re Better Business Connection, Inc.*, No. AP-14-131, Order No. 14,739 (May 1, 2014).

<sup>75</sup> See Order No. 14,739 (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>76</sup> Response of April 28, 2014 at 5.

<sup>77</sup> Pub. L. No. 86-794, § 3, 74 Stat. 1031, 1050 (1960); D.C. CODE § 9-1103.04 (2015).

<sup>78</sup> 74 Stat. 1031, 1036, art. XII, § 1(c).

<sup>79</sup> Pub. L. No. 87-767, 76 Stat. 764, 765 (1962) (amending art. XII, § 1(c)); *Montgomery Charter Serv. v. WMATC*, 325 F.2d 230 (D.C. Cir. 1963) (per curiam).

was preserved in the 1990 Compact amendments that yielded the statute administered by WMATC today.<sup>80</sup>

The "abeslimo" website advertises a full range of service in the Metropolitan District in vehicles seating more than nine persons. Among these services are: "Luxury Bus Services in Washington, D.C."; "Airport Transportation" in vans and buses; "Shuttle" services in vehicles seating "12-25 passengers". The list goes on.

Lastly, the only evidence of DC Taxicab Commission authority having been issued to "Abe's Limo" of which this Commission is aware is the "2009 Operating Authority License Issued to Hani Abraham Trading as Abe's Limo Company" introduced in the Abe's Limo 2010 WMATC application record. Assuming a current version of this license exists, it would stand as evidence of Hani Abraham's authority to conduct operations under the trade name Abe's Limo Company in vehicles seating nine persons or less, and only to the extent that those operations conform to the "bona fide taxicab service" criteria in WMATC Regulation No. 51-09. But that is all.

Accordingly, we hereby assess a forfeiture of \$500 against Better Business Connection for the continued advertising of passenger carrier service requiring WMATC authority in violation of Order No. 14,594 in 2015.

And a forfeiture of \$500 shall be assessed for each day after the date of this order that the "abeslimo" website continues advertising passenger carrier service requiring WMATC authority in violation of Regulation No. 63-04 and Order No. 14,594.

#### **VIII. UNLAWFUL CONSOLIDATION AND FAILURE TO ENFORCE REGULATIONS**

As mentioned above, each WMATC carrier shall observe and enforce Commission regulations established under the Compact.<sup>81</sup> Under Article XII, Section 3(a), of the Compact, Better Business Connection should have obtained Commission approval before consolidating its management and operations with the other respondents.<sup>82</sup> Applications for such approval are governed by Regulation No. 54,<sup>83</sup> which requires public notice and establishment of a protest period.<sup>84</sup> The applications filed under Regulation No. 54 by the other respondents, were for operating authority under Article XI, Section 7, of the Compact, expressly forbade consolidation in the case of BBC Van

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<sup>80</sup> See Compact, tit. II, art. XI, §§ 1(b), 3(f) (codified at D.C. CODE § 9-1103.01 (2015)).

<sup>81</sup> Compact, tit. II, art. XI, § 5(b).

<sup>82</sup> *In re Great American Tours, Inc., & The Airport Connection, Inc. II, & Airport Baggage Carriers, Inc.*, No. MP-96-54, Order No. 4986 (Dec. 17, 1996); *In re All-Star Presidential, LLC, & Presidential Coach Co., & Presidential Limo. Serv., Inc.*, No. MP-95-82, Order No. 4774 (Feb. 27, 1996).

<sup>83</sup> Reg. No. 54-01(b).

<sup>84</sup> Reg. No. 54-04(a).

Service and Better Bus Company, and ultimately culminated in dismissal and denial.

Better Business Connection nonetheless forged ahead, sharing management, money, and motor vehicles with BBC Van Service from October 1, 2010, through December 31, 2011, and with Best Bus Company throughout 2012 and 2013, with help from Abe's Limo in 2013. Whether we characterize Better Business Connection's disregard of regulatory requirements as a failure to enforce WMATC regulations or an unlawful consolidation of management and operations, Better Business Connection now must share the blame.

The violations listed above could not have happened without Better Business Connection's complicity. All but two of the 19 airline contracts performed by the other respondents belonged to Better Business Connection, and the control relationships between Better Business Connection and the other respondents clearly were an integral part of the common enterprise's success, not the least of which was common control over respondents' purse strings.

The record shows a single person authorizing WMATC-related disbursements in 2008-2010 from both Better Business Connection's bank account and BBC Van Service's bank account. The record shows a second person authorizing WMATC-related disbursements in 2011-2014 from Better Business Connection's bank account, BBC Van Service's bank account, and Best Bus Company's bank account, the last of which includes checks identifying the account holder as BBC Express/Abes Limo.

Better Business Connection's management was complicit in allowing the other respondents to operate vehicles in the Metropolitan District that Better Business Connection was reporting to WMATC as being operated under WMATC Certificate No. 227, including one which in 2013 was seen displaying on Better Business Connection's website both the BBC Van Service trade name and the Better Business Connection WMATC number. Indeed, in each of Better Business Connection's WMATC annual reports for 2011-2013, Better Business Connection management failed to report, as required, the consolidation of operations that had taken place the previous year and instead continued reporting vehicles as though Better Business Connection were still operating.

Better Business Connection's persistent enabling of respondents' unauthorized operations for over three years, and filing of multiple misleading annual reports in furtherance thereof, warrants suspension or revocation of Certificate No. 227.<sup>85</sup> Respondents cite *In re Mobility Express Inc.*, No. MP-11-062, Order No. 13,177 (Feb. 28, 2012), as precedent against revocation, but the facts do not match.

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<sup>85</sup> See *In re Malek Investment, Inc., t/a Montgomery Airport Shuttle*, No. MP-98-53, Order No. 5707 (Sept. 22, 1999) (suspension warranted in part because WMATC affiliate violated art. XI, § 11(b), for 200 days).

There was no evidence of unlawful operations in the MEI case as there is here.

However, we must take into account the multiplicity of airline-crew shuttle contracts that Better Business Connection holds and the substantial disruption of airport operations that potentially would follow revocation of Certificate No. 227.<sup>86</sup> And we are mindful of Better Business Connection's exemplary record prior to October 2010 - over 17 years of operations from mid-1993 to late 2010 with barely a blemish. Accordingly, we will stay our hand for the time being.

We will revisit this issue in the merger application ordered below. Better Business Connection will have until then to "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."<sup>87</sup>

In the meantime, the forfeitures assessed above shall be imposed jointly and severally against Better Business Connection and the other respondents.

#### **IX. UNAUTHORIZED MERGER**

The above-noted merger of Abe's Limo into Better Business Connection was done so without WMATC approval. Better Business Connection shall have 30 days to file an application seeking WMATC approval of its merger with Abe's Limo. The application shall also seek Commission approval to the extent that the dissolution of BBC Van Service was, directly or indirectly, attended by a transfer of a substantial part of its property to Better Business Connection.

#### **X. CONCLUSION**

Abe's Limo has merged into Better Business Connection, and BBC Van Service now stands dissolved. Respondents have produced evidence that Better Business Connection recommenced WMATC operations in February 2014 and state that as of April 28, 2014, Best Bus Company operates "solely as the owner of real estate leased to Better Business [Company]."<sup>88</sup>

Once Better Business Connection has ceased violating Regulation No. 63, timely paid the net forfeitures assessed herein (with or without contribution from Best Bus Company), addressed its management deficiencies, and tendered a merger application, the Commission will be in a better position to determine whether it would be consistent with the public interest to approve respondents' reorganization and permit Better Business Connection to retain Certificate No. 227.

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<sup>86</sup> See Order No. 5707 (suspension not imposed due to impact on public).

<sup>87</sup> *In re Academy Express, L.L.C., t/a Academy*, No. AP-11-037, Order No. 12,817 at 5 (Apr. 19, 2011); *In re Pantio Med. Transp.: LLC*, No. AP-11-023, Order No. 12,799 at 3 (Apr. 8, 2011).

<sup>88</sup> Response of April 28, 2014 at 6.

Inasmuch as Best Bus Company no longer proposes operating as a passenger carrier in the Metropolitan District, the application in WMATC Case No. AP-2013-019 stands dismissed.

THEREFORE, IT IS ORDERED:

1. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture in the amount of \$228,500 against BBC Van Service and Better Business Connection, jointly and severally, for BBC Van Service's knowing and willful operations in violation of Article XI, Sections 6(a) and 11(b), of the Compact, and WMATC Order Nos. 13,258 and 12,238, from October 1, 2010, through December 31, 2011, and for Better Business Connection's knowing and willful enablement of those operations in violation of Article XI, Section 5(b), and Article XII, Section 3(a), of the Compact; provided, that all but \$34,300 shall be suspended in recognition of respondents' production of inculpatory records and voluntary filing of applications.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture in the amount of \$182,500 against Best Bus Company and Better Business Connection, jointly and severally, for Best Bus Company's knowing and willful operations in violation of Article XI, Sections 6(a) and 11(b), of the Compact, and WMATC Order Nos. 13,258 and 12,238, throughout 2012, and for Better Business Connection's knowing and willful enablement of those operations in violation of Article XI, Section 5(b), and Article XII, Section 3(a), of the Compact; provided, that all but \$27,400 shall be suspended in recognition of respondents' production of inculpatory records and voluntary filing of applications.

3. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture in the amount of \$182,500 against Best Bus Company, Abe's Limo, and Better Business Connection, jointly and severally, for Best Bus Company's and Abe's Limo's knowing and willful operations in violation of Article XI, Sections 6(a) and 11(b), of the Compact, and WMATC Order Nos. 13,258 and 12,238, throughout 2013, and for Better Business Connection's knowing and willful enablement of those operations in violation of Article XI, Section 5(b), and Article XII, Section 3(a), of the Compact; provided, that all but \$27,400 shall be suspended in recognition of respondents' production of inculpatory records and voluntary filing of applications.

4. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture in the amount of \$250 against Best Bus Company, Abe's Limo, and Better Business Connection, jointly and severally, for Best Bus Company's and Abe's Limo's knowing and willful operation of vehicles marked "WMATC 227" in violation of Regulation No. 61, in 2013, and for Better Business Connection's knowing and willful enablement of those operations in

violation of Article XI, Section 5(b), and Article XII, Section 3(a), of the Compact.

5. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture in the amount of \$250 against Best Bus Company and Better Business Connection, jointly and severally, for Best Bus Company's knowing and willful lease arrangement in violation of Regulation No. 62-02, in 2013, and for Better Business Connection's knowing and willful enablement of that arrangement in violation of Article XI, Section 5(b), and Article XII, Section 3(a), of the Compact.

6. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture in the amount of \$250 against Abe's Limo, BBC Van Service, Best Bus Company, and Better Business Connection, jointly and severally, for Abe's Limo's, BBC Van Service's, and Best Bus Company's knowing and willful advertising of service requiring WMATC authority in violation of Regulation No. 63-04, in 2013, and for Better Business Connection's knowing and willful enablement of that advertising in violation of Article XI, Section 5(b), and Article XII, Section 3(a), of the Compact.

7. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture in the amount of \$250 against Best Bus Company, Abe's Limo, and Better Business Connection, jointly and severally, for Best Bus Company's and Abe's Limo's knowing and willful operation of vehicles declared out of service in violation of Regulation No. 64-05, in 2013, and for Better Business Connection's knowing and willful enablement of those operations in violation of Article XI, Section 5(b), and Article XII, Section 3(a), of the Compact.

8. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture in the amount of \$500 against Better Business Connection for knowing and willful advertising of service requiring WMATC authority in violation of Order No. 14,594, in 2015.

9. That Better Business Connection and the other respondents are hereby directed to pay to the Commission within 30 days of the date of this order, by check or money order, the sum of ninety thousand six hundred dollars (\$90,600); provided that no respondent shall be obligated to pay more than the lesser of: (1) the unpaid amount or (2) \$90,600 as to Better Business Connection; \$28,150 as to Abe's Limo; \$34,550 as to BBC Van Service; and \$55,800 as to Best Bus Company.

10. That the full forfeitures assessed in this order in paragraph nos. 1-3 shall be immediately due and payable to the extent respondents fail to timely pay the net forfeitures assessed those paragraphs.

11. That Better Business Connection may resume advertising through the website [www.bbcexpress.com](http://www.bbcexpress.com) passenger carrier service requiring WMATC authority.

12. That pursuant to Article XIII, Section 6(f), of the Compact, and unless and until otherwise ordered, the Commission shall assess against Better Business Connection a civil forfeiture in the amount of \$500 for each day after the date of this order that the [www.abeslimo.com](http://www.abeslimo.com) website advertises passenger carrier service requiring WMATC authority in violation of Regulation No. 63-04 and Order No. 14,594.

13. That the application of Best Bus Company for WMATC authority in Case No. AP-13-019 is hereby dismissed.

14. That within 30 days from the date of this order Better Business Connection shall file an application under Regulation No. 54 seeking WMATC approval of its merger with Abe's Limo.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER AND HOLCOMB:



William S. Morrow, Jr.  
Executive Director