

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,437

IN THE MATTER OF:

Served January 31, 2018

NATIONAL CHILDREN'S CENTER, INC.,)
WMATC No. 189, Investigation of)
Violation of Regulation Nos. 61,)
62, and 64)

Case No. MP-2017-074

This matter is before the Commission on the response of respondent, National Children's Center, Inc., (NCC), to Order No. 17,003, served May 16, 2017.

Order No. 17,003 was issued when informal staff inquiries directed at NCC uncovered grounds for formally investigating NCC's compliance with Commission Regulation Nos. 61 (vehicle markings), 62 (vehicle leases), and 64 (safety).

The order directed NCC to file within 30 days: (1) a current list of all vehicles in its possession, custody, or control and an indication of which vehicles are used in WMATC operations; (2) lease(s) covering vehicles used by NCC in WMATC operations and not registered to NCC; (3) safety inspection certificates dated within the previous 12 months for each vehicle used in WMATC operations; and (4) current for-hire vehicle registration cards for each vehicle used in WMATC operations. The order also directed NCC to present its vehicles for inspection by Commission staff within 45 days.

A recap of the grounds for investigation and respondent's response to Order No. 17,003 are as follows, beginning with Regulation No. 64.

I. REGULATION NO. 64

In the latter half of 2016, WMATC staff conducted an informal investigation of NCC's compliance with the Commission's safety regulation, Regulation No. 64. The investigation focused primarily, but not exclusively, on respondent's compliance with Regulation No. 64-01, which adopts the Federal Motor Carrier Safety Regulations pertaining to commercial motor vehicles (CMVs) and to the drivers of such vehicles. CMVs in this context are for-hire passenger vehicles seating nine persons or more, including the driver.

By letter dated December 15, 2016, respondent was advised that staff had discovered several violations of Regulation No. 64-01. Two months later, respondent informed the Commission that respondent was suspending the use of its CMVs and that it was surrendering the license plates for such vehicles and returning those vehicles to the lessor.

But a comparison of staff's safety inspection report with (1) respondent's 2017 WMATC Annual Report; (2) records produced by respondent regarding returned plates and vehicles; and (3) records obtained from respondent's insurance company; showed that two of the vehicles inspected by staff in December 2016 and found to seat 9 persons including the driver were still in respondent's fleet and still had plates.¹

Staff's investigation in 2016 also revealed that respondent had failed to maintain annual vehicle inspection certificates for its smaller vehicles, as well, contrary to Regulation No. 64-02(b).

Finally, an examination of respondent's 2017 WMATC Annual Report revealed that 15 of the 28 vehicles listed in the report did not have for-hire license plates as required by Regulation No. 64-04.²

In response to Order No. 17,003, respondent has replaced the remaining two CMVs with non-CMVs and submitted a list of 29 vehicles designated for service under WMATC Certificate No. 189. All 29 are non-CMVs. Current safety inspection certificates and for-hire registration cards have been submitted for all but one, a 2011 Chevrolet Impala that respondent possesses but has removed from service.

We find that respondent's response adequately addresses the Commission's concerns with respondent's compliance with Regulation No. 64. The 2011 Impala shall remain out of service until such time as respondent has submitted a current safety inspection certificate and for-hire vehicle registration card for that vehicle and the vehicle has passed an inspection by WMATC staff, as confirmed in writing by the Commission's Executive Director.

II. REGULATION NO. 61

Regulation No. 61-01 requires that vehicles used to transport passengers under WMATC authority shall display the carrier's name and WMATC number. The name and number must appear on both sides of each WMATC vehicle. The markings required by Regulation No. 61 help assign responsibility, and facilitate recovery of compensation, for damage and injuries caused by carriers operating under WMATC authority.³

During staff's 2016 investigation, NCC was directed to present seven vehicles for inspection. Five were not properly marked. Respondent was given 45 days to place the proper markings on its vehicles and produce evidence of having done so. As of May 16, 2017, respondent had failed to produce any such evidence, and according to

¹ Plate Nos. 31916HT, 31917HT.

² Respondent's for-hire plates are those beginning with or ending with the letter "B".

³ *In re Community Multi-Services, Inc.*, No. MP-10-08, Order No. 12,301 (Feb. 2, 2010).

respondent's 2017 WMATC Annual Report, four of the five vehicles remained in respondent's WMATC fleet.⁴

In response to Order No. 17,003, respondent produced all of its WMATC vehicles for inspection by staff, except for the 2011 Impala. All 28 were found to be marked in compliance with Regulation No. 61.

We find that respondent's response adequately addresses the Commission's concerns with respondent's compliance with Regulation No. 61. As noted above, the 2011 Impala shall remain out of service until such time as the Commission's Executive Director has confirmed in writing that said vehicle may be returned to service.

III. REGULATION NO. 62

Regulation No. 62-02 provides in pertinent part:

No carrier subject to the jurisdiction of this Commission may charter, rent, borrow, lease, or otherwise operate in revenue service any motor vehicle to which such carrier does not hold title, except in accordance with this regulation. 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.

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;
- 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 crossjurisdictional abuse of vehicle licensing and registration requirements;
- 8) assuring equipment availability; and
- 9) assuring continuity of service through appropriately guaranteed lease pricing.

In re Proposed Reg. Relating to Leases of Equip., No. 388, Order No. 2011 at 8 (July 24, 1979).

⁴ Plate Nos. 31916HT, 31917HT, 8AX1509, B45946.

It is the Commission's practice to enforce Regulation No. 62-02 by requiring carriers to produce vehicle registrations instead of vehicle titles.⁵ Registrations are more easily produced and have proven to be effective in assuring that the purposes of the regulation are fulfilled.

As of May 16, 2017, six vehicles reported by respondent on its 2017 WMATC Annual Report were registered to Enterprise FM Trust but not covered by a lease on file with the Commission.⁶

In response to Order No. 17,003, respondent has produced registration cards for all 29 vehicles. All 29 are registered in respondent's name.

We find that respondent's response adequately addresses the Commission's concerns with respondent's compliance with Regulation No. 62.

IV. CONCLUSION

Consistent with our foregoing findings, we conclude that respondent's 2011 Impala shall remain out of service until such time as the Commission's Executive Director has confirmed in writing that said vehicle may be returned to service. We further conclude that this proceeding otherwise shall stand terminated.

THEREFORE, IT IS ORDERED:

1. That the 2011 Chevrolet Impala with VIN 2G1WG5EKXB1314509 shall remain out of service until such time as: (a) respondent has submitted for said vehicle a current safety inspection certificate and for-hire vehicle registration card; (b) said vehicle has passed inspection by WMATC staff; and (c) the Commission's Executive Director has confirmed in writing that said vehicle may be returned to service.

2. That this proceeding is hereby terminated.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS RICHARD, MAROOTIAN, and HOLCOMB:



William S. Morrow, Jr.
Executive Director

⁵ See e.g., *In re Z Limo Worldwide Coach Servs., Inc., t/a Z Limo Worldwide*, No. AP-15-280, Order No. 16,212 (Feb. 17 2016) (directing applicant to file lease as required by Commission Reg. No. 62 if applicant is not the "registered" owner).

⁶ Plate Nos. 31916HT, 31917HT, 8AX1508, 8AX1509, 6BL8215, 6BL8216.