

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,341

IN THE MATTER OF:

Served April 19, 2021

Application of FULLINGTON)
TRAILWAYS, LLC, for a Certificate) Case No. AP-2021-006
of Authority -- Irregular Route)
Operations)

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

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish an applicant's fitness, but this applicant has a history of regulatory violations.

I. HISTORY OF VIOLATIONS

Applicant was issued WMATC Certificate of Authority No. 1820 on June 10, 2011, and last held authority on October 27, 2020, when it was revoked for applicant's failure to comply with the Commission's carrier annual report filing requirements.¹ The revocation order noted that the 2020 annual report would remain due and gave applicant 30 days to surrender Certificate No. 1820 to the Commission and file a notarized affidavit and supporting photographs verifying removal of WMATC markings from applicant's vehicles. Applicant did not comply.

¹ *In re Fullington Trailways, LLC*, No. MP-20-132, Order No. 19,107 (Oct. 27, 2020).

Prior to the events in 2020, Certificate No. 1820 was suspended three other times for insurance violations.² The first of those insurance proceedings resulted in revocation of Certificate No. 1820 for applicant's failure to comply with the Commission's insurance requirements in Regulation No. 58 and pay a \$100 late fee assessed under Regulation No. 67-03(c),³ but the certificate was subsequently reinstated after applicant belatedly filed the necessary WMATC Insurance Endorsement and paid the fee.⁴

II. LIKELIHOOD OF FUTURE COMPLIANCE

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

Applicant's failure to maintain compliance with the Commission's annual report requirements in Regulation No. 60 warranted revocation of Certificate No. 1820, and applicant's failure to respond to the revocation order by surrendering Certificate No. 1820 and confirming removal of vehicle markings persisted for several months. On the other hand, during the course of this proceeding, applicant submitted a notarized affidavit and supporting photographs evidencing removal of WMATC markings from applicant's vehicles and a notarized affidavit indicating Certificate No. 1820 cannot be located. There is no evidence in the record of post-suspension or post-revocation operations within the Metropolitan District, or other unauthorized operations.

² *In re Fullington Trailways, LLC*, No. MP-13-002, Order No. 13,652 (Jan. 2, 2013); *In re Fullington Trailways, LLC*, No. MP-15-002, Order No. 15,277 (Jan. 2, 2015); *In re Fullington Trailways, LLC*, No. MP-15-219, Order No. 16,087 (Dec. 31, 2015).

³ *In re Fullington Trailways, LLC*, No. MP-13-002, Order No. 13,810 (Mar. 15, 2013).

⁴ *In re Fullington Trailways, LLC*, No. MP-13-002, Order No. 14,012 (June 19, 2013).

⁵ *In re Metro Transcare LLC*, No. AP-17-047, Order No. 17,193 at 3 (Sept. 8, 2017).

The Commission has found other applicants fit under similar circumstances.⁶ Applicant shall serve a 1-year period of probation as a means of ensuring prospective compliance.⁷

III. CONCLUSION

Based on the evidence in this record, and considering the terms of probation and other conditions prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 1820 shall be issued to Fullington Trailways, LLC, 316 E. Cherry Street, Clearfield, PA 16830-2319.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

4. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 1820 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute

⁶ See, e.g., *In re Galaxy Limo. Servs., LLC*, No. AP-15-099, Order No. 16,044 (Dec. 11, 2015) (timely cessation of affiliate operations, surrender of affiliate certificate, payment of outstanding affiliate fees, confirmation of no vehicle markings); *In re Henka Int'l, Inc., t/a Worldwide Tours & Travel*, No. AP-03-184, Order No. 8035 (May 27, 2004) (no evidence of post-suspension operations and satisfactory accounting for vehicles and vehicle markings).

⁷ See Order No. 16,044 (same); Order No. 8035 (same).

grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB, RICHARD, AND LOTT:

A handwritten signature in blue ink, reading "Jeffrey M. Lehmann". The signature is fluid and cursive, with a prominent initial "J" and "L".

Jeffrey M. Lehmann
Executive Director