

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,637

IN THE MATTER OF:

Served December 8, 2021

Application of USA TRAN INC. for a)
Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2021-119

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

This is the third application filed by this applicant. Applicant, formerly named USA Trans Inc., was granted operating authority in 2016, but the issuance of a certificate of authority was expressly made contingent on applicant filing additional documents and passing a vehicle inspection conducted by Commission staff.¹ Applicant failed to satisfy the conditions for issuance of operating authority within the time allotted, thereby voiding the Commission's approval.² Applicant reapplied for operating authority in 2019, but the application was dismissed without prejudice for want of prosecution.³

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. If the applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority must establish financial fitness, operational fitness, and regulatory compliance fitness.⁴ A determination of compliance fitness is prospective in nature.⁵ The purpose of the inquiry is to protect the public from those

¹ See *In re USA Trans Inc.*, No. AP-16-051, Order No. 16,304 (Apr. 18, 2016) (conditionally granting Certificate No. 2894).

² 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).

³ See *In re USA Trans Inc.*, No. AP-19-053, Order No. 18,131 (Apr. 29, 2019).

⁴ *In re George Towne Trolley Tours & Transp. LLC*, No. AP-17-135, Order No. 17,335 (Dec. 5, 2017).

⁵ *Id.*

whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁶ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁷

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 applicant is under common control with a company currently advertising transportation services requiring a WMATC certificate of authority, without holding such authority, in violation of Commission Regulation No. 63-04.

I. CONTROL RELATIONSHIP AND VIOLATIONS

Applicant is controlled by five people, each of whom are officers and shareholders. According to records obtained from the Virginia State Corporation Commission, those same five people also formed USA Guided Tours DC LLC, a Virginia LLC, on February 13, 2020. In addition, records obtained from the District of Columbia Department of Consumer and Regulatory Affairs indicate that four of applicant's five principals were the only beneficial owners of a District of Columbia LLC, also named USA Guided Tours DC LLC, which was formed on August 16, 2013, but whose entity status now stands revoked.

USA Guided Tours' website, www.usaguidedtours.com, currently advertises passenger transportation services within the Washington Metropolitan Area Transit District, including "Washington DC Airport Shuttle Service by USA Guided Tours" and a four-hour individually ticketed sightseeing tour of Washington monuments and memorials commencing and terminating at the U.S. Navy Memorial, located at 701 Pennsylvania Avenue, N.W., in Washington, DC. These services require a WMATC certificate of authority, which USA Guided Tours does not possess.

A non-WMATC carrier may not, by advertisement or otherwise, hold itself out as authorized to provide services requiring a WMATC certificate of authority.⁸ This prohibition is codified in Commission

⁶ *Id.*

⁷ *Id.*

⁸ *E.g., In re Jet Tours USA, Inc.*, No. AP-09-130, Order No. 12,443 (June 15, 2010).

Regulation No. 63-04(a), which provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission."

Applicant acknowledges that USA Guided Tours sells tour packages in Washington DC, but asserts that USA Guided Tours "hires licensed and insured transportation companies to provide the transportation logistics" and "is not a transportation company." However, applicant does not identify any properly licensed companies that USA Guided Tours hires and applicant's explanation is not consistent with language on the USA Guided Tours website advertising transportation "by USA Guided Tours" or website photos of vehicles displaying "USA Guided Tours" and "USA Trans Inc" identification markings. We find that by holding itself out to perform transportation or transportation services within the Metropolitan District through its website, USA Guided Tours is in violation of Regulation No. 63-04.⁹

The record also shows that USA Guided Tours is displaying an unauthorized WMATC carrier number. Its Facebook page¹⁰ contains a photograph of a Mercedes Sprinter van with vehicle markings that include applicant's name and the WMATC carrier number provisionally assigned to applicant in Case No. AP-2016-051. But as previously noted, applicant did not fulfill the conditions of issuance of a certificate of authority in that proceeding, and failed to obtain WMATC authority. Displaying an unauthorized WMATC carrier number violates Regulation No. 63-04.¹¹

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.¹²

⁹ See *In re Glob. Express Limo. Serv., Inc.*, No. AP-02-32, Order No. 6772 (Aug. 13, 2002) (non-WMATC carrier's advertisement of WMATC regulated service violates Reg. 63-04); *In re BMG Limo. & Jet Serv., LLC, t/a BMG Limo. Serv.*, No. AP-20-53, Order No. 6760 (Aug. 5, 2002) (same).

¹⁰ USA Guided Tours, FACEBOOK (Aug. 4, 2021), <https://www.facebook.com/USAGuidedTours/posts/4161183567330375>.

¹¹ See, e.g., *In re Utour, LLC*, No. AP-11-026, Order No. 12,800 (Apr. 8, 2011) (display of unauthorized WMATC number or "WMATC" without a number violates Regulation No. 63-04(a)).

¹² Order No. 17,335 at 2.

USA Guided Tours continues unlawfully advertising service requiring a WMATC certificate of authority and displays photographs of a vehicle with unauthorized WMATC vehicle markings. The seriousness and persistence of these violations are readily apparent, and applicant has furnished no evidence of mitigating circumstances or sincere efforts to correct these mistakes. The Commission has denied applications in the past under similar circumstances.¹³

III. CONCLUSION

Unless and until applicant and all entities in a control relationship with applicant cease holding themselves out to perform transportation requiring a WMATC certificate of authority, we cannot say that applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.

THEREFORE, IT IS ORDERED: that the application of USA Tran Inc. for a certificate of authority, irregular route operations, is hereby denied without prejudice.

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



Jeffrey M. Lehmann
Executive Director

¹³ See *In re Ene Tours, LLC*, No. AP-18-029, Order No. 17,648 at 2 (June 1, 2018) (denying application by applicant under common control with previously revoked WMATC carrier that failed to remove vehicle markings and continued to advertise transportation service requiring a WMATC certificate of authority on website); Order No. 17,335 (denying application where applicant failed to remove WMATC number from vehicles and was advertising transportation service requiring a WMATC certificate of authority); Order No. 6772 (denying application due to applicant's advertisement of WMATC-regulated service); Order No. 6760 (same).