

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 20,551

IN THE MATTER OF:

Served January 3, 2024

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

Case No. AP-2023-051

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. 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.¹ A determination of compliance fitness is prospective in nature.² The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.³ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁴

This is the fourth 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.⁵ Applicant failed to satisfy the conditions for issuance of operating authority within the

¹ *In re George Towne Trolley Tours & Transp. LLC*, No. AP-17-135, Order No. 17,335 (Dec. 5, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *See In re USA Trans Inc.*, No. AP-16-051, Order No. 16,304 (Apr. 18, 2016) (conditionally granting Certificate No. 2894).

time allotted, thereby voiding the Commission's approval.⁶ Applicant reapplied for operating authority in 2019, but the application was dismissed without prejudice for want of prosecution.⁷ Applicant reapplied again for operating authority in 2021, but the application was denied for failure to establish regulatory compliance fitness, because applicant's affiliate was unlawfully advertising service requiring a WMATC certificate of authority and displaying photographs of a vehicle with unauthorized WMATC vehicle markings.⁸

The record in the instant proceeding shows that applicant's affiliate continues to engage in the same violations that prompted us to deny applicant's 2021 application.

I. CONTROL RELATIONSHIP AND VIOLATIONS

Applicant is controlled by four people, each of whom are officers and shareholders. According to records obtained from the District of Columbia Department of Licensing and Consumer Protection, those same four people are the beneficial owners of USA Guided Tours DC LLC, a District of Columbia limited liability company formed on August 16, 2013. Furthermore, records obtained from the Virginia State Corporation Commission indicate applicant's four controlling members, along with a fifth person, formed a Virginia limited liability company, also named USA Guided Tours DC LLC, on February 13, 2020.

USA Guided Tours' website, www.usaguidedtours.com, continues to advertise passenger transportation services within the Washington Metropolitan Area Transit District requiring 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.⁹ This prohibition is codified in Commission 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."

Commission staff surfaced this issue in correspondence to applicant, which responded as follows:

USA Guided Tours DC LLC is a separate entity dedicated to selling Leisure and Travel

⁶ See *id.* (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66-01 (failure to comply with conditions of grant within 180 days voids approval).

⁷ See *In re USA Trans Inc.*, No. AP-19-053, Order No. 18,131 (Apr. 29, 2019).

⁸ See *In re USA Tran Inc.*, No. AP-21-119, Order No. 19,637 (Dec. 8, 2021).

⁹ *E.g.*, *In re Jet Tours USA, Inc.*, No. AP-09-130, Order No. 12,443 (June 15, 2010).

services to the public. USA Guided Tours DC LLC promotes guided sightseeing tours of Washington DC National Mall, Monuments and Museums (Shuttle Corp vs. Washington Transit Comm'n, 339 U.S. 186 (1968)). USA Guided Tours DC LLC does not market or convey any content to the public that it operates under the authority of the WMATC Commission.

Applicant's statement does not advance its case. First, although USA Guided Tours is a legal entity separate from applicant, it is under common control with applicant and its violation of Commission Regulation No. 63-04 is relevant to a consideration of applicant's fitness.¹⁰

Second, in the case cited by applicant, *Universal Interpretive Shuttle Corp. v. WMATC*, the Supreme Court held that the U.S. Secretary of the Interior's exclusive authority to contract for services on the National Mall was undiminished by the compact creating WMATC, and therefore a transportation provider that had contracted with the Secretary to conduct guided tours on the Mall did not require a WMATC certificate of public convenience and necessity, a forerunner of today's WMATC certificate of authority.¹¹ That holding is inapplicable to the situation before us, because applicant does not contend that USA Guided Tours operates pursuant to a contract with the U.S. Secretary of the Interior. Indeed, through its website, USA Guided Tours advertises transportation services directly to the public, and those services, while in the vicinity of the Mall, are on the public streets or highways of the Metropolitan District, including Pennsylvania Avenue, Constitution Avenue, Independence Avenue, and 17th Street.

Third, although applicant argues that USA Guided Tours does not convey to the public that it operates under WMATC authority, the record shows otherwise. The USA Guided Tours website homepage displays a photograph of a black van with vehicle markings that include "WMATC 2894," the number provisionally assigned to applicant in Case No. AP-16-051. But as previously noted, applicant failed to obtain WMATC authority in that proceeding. Displaying an unauthorized WMATC carrier number on the USA Guided Tours website violates Regulation No. 63-04.¹² Moreover, in addition to displaying a WMATC number indicating its operations are authorized by this Commission when they are not, USA Guided Tours advertises transportation services on its website that require WMATC authority to perform.

¹⁰ See *Old Town Trolley Tours of Wash., Inc. v. Wash. Metro. Area Transit Comm'n*, 129 F.3d 201, 205 (D.C. Cir. 1997) (not arbitrary for WMATC to consider affiliate's misdeeds).

¹¹ See *Universal Interpretive Shuttle Corp. v. Wash. Metro. Area Transit Comm'n*, 393 U.S. 186 (1968).

¹² 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)).

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.¹³

Applicant's affiliate, USA Guided Tours, continues to unlawfully advertise service requiring a WMATC certificate of authority and display photographs of vehicles with unauthorized WMATC vehicle markings. The seriousness and persistence of these violations are readily apparent, and they could be considered flagrant inasmuch as they have continued after we specifically identified them in our decision denying applicant's previous application in December 2021. 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.¹⁴

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.

¹³ Order No. 17,335 at 2.

¹⁴ 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); *In re Glob. Express Limo. Serv., Inc.*, No. AP-02-32, Order No. 6772 (Aug. 13, 2002) (denying application in part due to applicant's advertisement of WMATC-regulated service); *In re BMG Limo. & Jet Serv., LLC, t/a BMG Limo. Serv.*, No. AP-20-53, Order No. 6760 (Aug. 5, 2002) (denying application due to applicant's advertisement of WMATC-regulated service).

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 LACKEY AND RICHARD:



Jeffrey M. Lehmann
Executive Director