

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 20,927

IN THE MATTER OF:

Served September 17, 2024

AQUILIT INC., Suspension and )  
Investigation of Revocation of )  
Certificate No. 3429 )

Case No. MP-2024-067

This matter is before the Commission on respondent's request, filed August 21, 2024, for an oral hearing and issuance of a subpoena compelling representatives of respondent's insurance company to appear at that hearing. We note at the outset that this proceeding has already concluded. Order No. 20,870, served August 9, 2024, revoked respondent's WMATC Certificate of Authority for failure to pay a \$100 insurance late fee. Said order constitutes a final order of the Commission subject to reconsideration under Article XIII, Section 4, of the Compact, and judicial review under Article XIII, Section 5.

**I. PROCEDURAL HISTORY**

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."<sup>1</sup> A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.<sup>2</sup>

During the period relevant to this proceeding, Commission Regulation No. 58 required respondent to insure the revenue vehicles operated under Certificate No. 3429 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 3429 was rendered invalid at 12:01 a.m. on July 7, 2024, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent expired without replacement. Order No. 20,823, served July 8, 2024, noted the automatic suspension of Certificate No. 3429 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 3429, and gave respondent 30 days to replace the terminated endorsement and pay the \$100 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 3429.

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<sup>1</sup> Compact, tit. II, art. XI, § 6(a).

<sup>2</sup> Compact, tit. II, art. XI, § 7(g).

After Order No. 20,823 was issued, respondent's insurance company filed a replacement \$1.5 million primary WMATC Insurance Endorsement on July 8, 2024, with an effective date of July 7, 2024. However, respondent failed to pay the \$100 late insurance fee within 30 days and respondent's WMATC Certificate of Authority was revoked in Order No. 20,870, pursuant to Regulation No. 58-15(a).

## II. REQUEST FOR ORAL HEARING

Article XI, Section 10(c), of the Compact, provides that the Commission may suspend or revoke a certificate of authority for willful violations after notice and hearing. A paper hearing is normally all the statute requires.<sup>3</sup> An oral hearing is unnecessary, in any event, if no material issue of fact is in dispute.<sup>4</sup>

As this Commission has previously observed in a similar case, "[o]bviously, only an unusual set of circumstances would result in a material fact being genuinely disputed. The sole factual question is whether appropriate evidence of insurance has been filed with the Commission, and the Commission's official records normally constitute the best evidence of whether such a filing has been made."<sup>5</sup> Today, we would add to that a second factual issue of whether respondent paid an insurance late fee, which the Commission first imposed in 2006.

Respondent requests an oral hearing to adduce live testimony regarding the following assertions: (1) no lapse in insurance coverage occurred in July 2024; (2) failure to timely file the WMATC Insurance endorsement was due to the negligence of respondent's insurance company; (3) the Commission should have rescinded its order of suspension and waived the \$100 late fee to serve justice; (4) an email sent to an individual Commission employee constitutes a "writing" under Maryland, Virginia, District of Columbia, and federal law; and (5) the actions of an unnamed Commission employee should be scrutinized for racial bias and misconduct that allegedly occurred prior to the issuance of respondent's WMATC Certificate of Authority in Case No. AP-2020-151, which concluded on January 22, 2021.

Respondent's first assertion is undisputed. The record shows that respondent's WMATC Insurance Endorsement, filed July 8, 2024, lists an effective date of July 7, 2024, establishing that respondent had an insurance *policy* in place at all relevant times. But respondent's violation consisted of a failure to maintain an effective *WMATC Insurance Endorsement* on file with the Commission at all times as required by Regulation No. 58-02. The WMATC Insurance Endorsement amends the

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<sup>3</sup> *In re Sydney Shuttle, LLC*, No. MP-07-064, Order No. 10,792 (Sept. 28, 2007)

<sup>4</sup> *Id.*; *In re Diamond Tours, Inc.*, No. MP-82-06, Order No. 2347 (June 24, 1982), *aff'd on reconsideration*, Order No. 2354 (Aug. 5, 1982) (holding carrier was not denied due process of law by the absence of a public hearing nor did the Commission exceed its statutory authority by suspending and revoking the certificate without an oral, trial-type hearing).

<sup>5</sup> Order No. 2354 at 3 n.5.

underlying insurance policy to provide additional protection to the public, including for example, extending it to cover "the operation, maintenance, or use of a motor vehicle in performing transportation subject to certification under the Compact, whether or not such motor vehicle is described in the [p]olicy."

The record shows that respondent had no effective WMATC Insurance Endorsement on file with the Commission from 12:01 a.m. on July 7, 2024, until 3:53 p.m. on July 8, 2024. Respondent's WMATC operating authority was therefore automatically suspended pursuant to Article XI, Section 7(g), of the Compact, which provides that a "Certificate of Authority is not valid unless the holder is in compliance with the insurance requirements of the Commission" and Regulation No. 58-12(a), which states that "[f]ailure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority." At the time Order No. 20,823 was issued, it was unknown when, if ever, a replacement WMATC Insurance Endorsement covering respondent's operations would be filed. Issuance of that order was consistent with due process in light of the need for immediate action to safeguard the public and the low risk of erroneous deprivation to respondent.

Respondent's second assertion, that late filing of the WMATC Insurance Endorsement was due to the negligence of its insurance company, even if proven, would not affect the result in this case. This Commission has previously held "[t]hat respondent's noncompliance with Regulation No. 58 and consequent suspension of [respondent's WMATC Certificate of Authority] was the alleged product of insurance broker error does not negate the willfulness of respondent's violations."<sup>6</sup> It was respondent's duty to maintain on file an effective WMATC Insurance Endorsement, which could be accomplished using any insurer meeting the requirements of Regulation No. 58-04(c). If respondent feels that the particular insurer it selected failed to perform some contractual or other duty owed to respondent, it may pursue recourse against that insurer in an appropriate forum. But such action appears unnecessary. Documents submitted by respondent in support of its request include an email from respondent's insurer to respondent dated July 10, 2024, stating, "[b]ecause of this error, we did get an approval to reimburse the \$100.00 fee that was sent by the WMATC. A draft will be issued in your business's name and mailed within 72 hours."

Respondent's third assertion is that the Commission should have rescinded its suspension order and waived the \$100 late fee to serve justice. But after respondent belatedly reestablished acceptable proof of insurance on file with the Commission, rescission of an order properly issued at a time respondent lacked a WMATC Insurance Endorsement on file would not have been a proper response. Instead, issuance of an order lifting the suspension pursuant to Regulation No. 58-13 would have been. However, because respondent failed to pay the insurance late fee noted

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<sup>6</sup> Order No. 10,792 at 3.

in Order No. 20,823 and assessed under Regulation No. 67-03(c) within 30 days, the conditions for issuing a lift-suspension order outlined in Regulation No. 58-13 were not satisfied.

Under Article IV, Section 4(a), of the Compact, "[t]he Commission shall have the power to establish fees under regulations, including but not limited to filing fees and annual fees." Pursuant to this power, the Commission has enacted Regulation No. 67-03(c), which provides "[t]he following late fees shall be due and payable upon the failure of a carrier to: Timely file a WMATC Certificate of Insurance and Policy Endorsement -- \$100." We find that assessment of the late fee was proper in this case.

The Commission may waive its fees upon the filing of a motion showing good cause,<sup>7</sup> but this is discretionary. Whatever the merits of respondent's argument supporting waiver of the insurance late fee, the Commission did not grant a waiver of the late fee while this case was pending and revocation of respondent's WMATC Certificate of Authority for failure to pay it was not in error. To the extent respondent's current filing constitutes a motion requesting waiver of the late fee, we decline to consider the issue at this late stage.<sup>8</sup>

Respondent's fourth assertion, that an email sent to an individual Commission employee constitutes a "writing" under Maryland, Virginia, District of Columbia, and federal law, is a legal argument rather than a proffered fact that would necessitate a hearing. But whether an email constitutes a "writing" is beside the point. Emails do not satisfy the requirements of Commission Rule No. 4, governing formal requirements as to pleadings, documents, and other papers filed in proceedings. Under Rule No. 4-01, [p]leadings, documents, or other papers filed with the Commission in any proceeding shall clearly show the case designation, title of the proceeding before the Commission and a general description of the filing, such as 'Complaint,' 'Motion'" etc." Under Rule No. 4, pleadings, documents, and other papers shall be on letter size paper, signed in ink by the party in interest, or by the party's attorney, and if filed by a person in a representative capacity on behalf of a party in interest, other than an attorney, shall be subscribed to and verified under oath. To the extent that several emails purportedly sent by respondent's president to the Commission's assistant general counsel in July 2024 requested formal Commission action, we find that those emails did not properly raise those matters before the Commission. The record shows that Commission staff duly alerted the

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<sup>7</sup> *In re VIP Transp., LLC*, No. MP-23-100, Order No. 20,681 (Apr. 2, 2024); *In re David Timothy Robinson, t/a DR&W Transp. Servs.*, No. MP-09-010, Order No. 11,946 (Apr. 23, 2009) (citing Commission Rule No. 29).

<sup>8</sup> See *In re Natrajakumar Sampangiraj, t/a Sunrise Limo. Serv.*, No. MP-12-066, Order No. 13,542 (Oct. 19, 2012) (denying waiver of insurance late fee where motion was submitted 6 days after electrical outage cited as grounds for waiver ended).

sender of those emails of these deficiencies and advised them to review the Commission's rules and regulations or consult legal counsel.

Respondent's fifth assertion, raising accusations of racial bias by a Commission employee in a previous proceeding where applicant successfully obtained a WMATC Certificate of Authority that concluded in January 2021, would, if proven, be cause for serious concern, but are not relevant to the issues in this proceeding, namely, whether respondent violated Regulation No. 58 and whether respondent paid a \$100 insurance late fee.

Because this proceeding has already concluded, and because the assertions for which respondent wishes to adduce testimonial evidence are either undisputed in the record or irrelevant to a determination of the issues in this proceeding, respondent's request for oral hearing is denied.

### **III. REQUEST FOR ISSUANCE OF SUBPOENA**

Respondent has requested that the Commission issue a subpoena compelling representatives from Progressive Northern Insurance Company to testify at a hearing regarding the following three issues: 1) whether there was a lapse in respondent's insurance coverage in July 2024; 2) whether respondent executed an electronic funds authorization on July 1, 2024, to pay its insurance premium; and 3) whether respondent's insurer "failed to discharge their duty" by not timely filing a WMATC Insurance Endorsement at the Commission.

Under Article XIII, Section 1(e), of the Compact, "[f]or the purpose of an investigation or other proceeding under this Act, the Commission may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry.

Under Commission Rule No. 18-01, a "request for issuance of a subpoena other than to compel the production of documentary evidence may be made either by motion or orally upon the record to the officer presiding at the hearing. A showing of general relevance and reasonable scope of the evidence sought may be required and the subpoena will be issued or withheld accordingly."

The first two issues raised by respondent are facts that are undisputed in the record, and sworn oral testimony regarding them is unnecessary. The third issue may be relevant to a private suit between respondent and its insurer, but is not relevant to the issues in this proceeding, namely, whether respondent maintained a WMATC Certificate of Insurance on file with WMATC at all times and whether respondent paid a \$100 late fee.

For the foregoing reasons, and because this proceeding has already concluded with the issuance of a final order, respondent's request for issuance of a subpoena is denied.

#### **IV. RULE NO. 7-01**

We are unable to discern in respondent's "Request for Administrative Hearing" any request for reconsideration of Order No. 20,870. However, assuming *arguendo*, that respondent's filing constitutes an application for reconsideration satisfying the requirements of Article XIII, Section 4(a), of the Compact and Commission Rule No. 27, we shall address one additional argument raised by respondent.

Citing Commission Rule No. 7-01, respondent argues that filing a WMATC Insurance Endorsement on July 8, 2024, was timely despite the fact that its previous endorsement expired at 12:01 a.m. on Sunday, July 7, 2024.

Commission Rule No. 7-01, entitled "Computation of Time", provides:

Except as otherwise provided by law, in computing any period of time prescribed or allowed by any rule, regulation, or order of the Commission or by the Compact, the day of the act, event, or default from or after which the designated period of time begins to run shall not be included, but the last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday designated in Rule 2-11, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday. In the event the period of time to be computed does not exceed ten days, Saturdays, Sundays, and holidays shall not be counted.

To illustrate operation of Rule No. 7-01, if a Commission order directs a carrier to perform an act within 30 days, and the 30<sup>th</sup> day after the order is served is a Sunday, the carrier is afforded until the next business day to complete that act. However, deadlines involving fixed dates do not involve computations of time subject to Rule No. 7-01.<sup>9</sup>

Regulation No. 58-12(a) provides that "[f]ailure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority." Filing a WMATC Insurance Endorsement on July 8, 2024, was not "prior to termination" of the previous endorsement which occurred

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<sup>9</sup> *In re Partial Waiver of Rules of Prac. & Proc. & Reguls.*, Gen. Order No. 24 at 2 (Apr. 27, 2020).

on July 7, 2024, and we find no error in Order No. 20,823 or Order No. 20,870.

THEREFORE, IT IS ORDERED that respondent's request for oral hearing and request for issuance of a subpoena is hereby denied and Order No. 20,870 is affirmed.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS LACKEY, KERSHBAUM, AND RICHARD:

A handwritten signature in blue ink that reads "Jeffrey M. Lehmann". The signature is fluid and cursive, with the first name "Jeffrey" being the most prominent.

Jeffrey M. Lehmann  
Executive Director