

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5113

IN THE MATTER OF:

Served June 26, 1997

Application of MEGAHEDS, INC., )  
Trading as MEGAHEDS )  
TRANSPORTATION, for a )  
Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-97-24

Application of MEGAHEDS, INC., )  
Trading as MEGAHEDS )  
TRANSPORTATION, for Temporary )  
Authority -- Irregular Route )  
Operations )

Case No. AP-97-25

Applicant seeks temporary authority and a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. Applicant's president/majority shareholder provides taxicab service in the metropolitan area.

The applications are unopposed, but Commission staff filed comments and a motion to consolidate both cases. As reflected in the caption above, the motion shall be granted on the grounds that the issue of applicant's fitness is common to both proceedings and that both applications are ripe for decision.<sup>1</sup> Because we decide the application for a certificate of authority, we shall deny the temporary authority application as moot.

SUMMARY OF EVIDENCE

Applicant proposes commencing operations with four vans. Applicant has filed as its proposed tariff a contract with United Airlines executed and effective as of May 1, 1997. The contract contains a per capita rate for transportation of United Airlines employees between Dulles Airport and the Savoy Suites Hotel in the District of Columbia.

Applicant filed a balance sheet as of April 15, 1997, showing assets and equity of \$21,000, each. Applicant's projected cash flow for the year ending April 30, 1998, shows cumulative net cash flow of \$49,759. Projected gross revenue is based on the United Airlines contract and a separate contract with the Savoy Suites.

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<sup>1</sup> See Commission Rule No. 20-02 (providing for consolidation of proceedings involving common question of law or fact where no prejudice to applicant will result).

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder. Commission staff, on the other hand, have submitted evidence that applicant was observed performing the United Airlines contract on May 28, 1997, and allege that the "conclusion that applicant has been operating the United Airlines contract since May 1 is inescapable."

Applicant does not deny performing the contract from May 1 through May 28; rather, applicant explains via a response filed June 3, 1997, that it was advised by an attorney that WMATC operating authority was unnecessary for the purpose of transporting airline crew members between Dulles Airport and the District of Columbia. Attached to the response is a copy of a memo which applicant relies on as proof it received that advice.

#### DISCUSSION AND CONCLUSIONS

This case is governed by the Compact, Title II, Article XI, Section 7, regarding applications for certificates of authority, Article XII, Section 3, regarding applications for approval of common control, and Article XIII, Section 6(f) regarding civil forfeitures. Before we proceed to decision under these sections, we first reaffirm the Commission's jurisdiction over prearranged transportation of flight crews in interstate commerce.

##### I. Commission Jurisdiction Over Flight Crew Transportation

It is curious, to say the least, that an applicant would question at this late date the Commission's jurisdiction over transportation of flight crews between Dulles Airport and the District of Columbia. The Commission has exercised jurisdiction over motor passenger carriers operating in interstate commerce within the Washington Metropolitan Area Transit District since Congress first approved the Compact in 1960.<sup>2</sup> That jurisdiction continues today.<sup>3</sup> The District of Columbia has been a part of the Metropolitan District since the beginning.<sup>4</sup> Dulles was added to the Commission's jurisdiction by act of Congress in 1962.<sup>5</sup> Dulles and DC are still within the Metropolitan District.<sup>6</sup> The Commission has a long history of exercising jurisdiction over airline crew transportation between

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<sup>2</sup> Act of Sept. 15, 1960, Pub. L. No. 86-794, 74 Stat. 1031 (1960).

<sup>3</sup> Compact, tit. I, art. II, § 2 & tit. II, art. XI, § 1(a).

<sup>4</sup> 74 Stat. at 1032.

<sup>5</sup> Act of Oct. 9, 1962, Pub. L. No. 87-767, 76 Stat. 764 (1962).

<sup>6</sup> Compact, tit. I, art. I.

Dulles, on the one hand, and DC, on the other.<sup>7</sup> We therefore hold that performance of the United Airlines contract requires WMATC operating authority.

The authority cited by applicant to the contrary is inapposite. Applicant makes reference to the Interstate Commerce Commission's (ICC's) decision in the "Air Couriers" case. We take this to mean the unpublished opinion in Air Couriers Int'l, Inc., No. MC-C-10894 (July 15, 1985), aff'd sub nom., Pennsylvania Public Utility Comm'n v. United States, 812 F.2d 8 (D.C. Cir. 1987), in which the ICC held (1) that transportation of flight crews between Baltimore Washington International Airport and Columbia, MD, "was interstate in character because it was provided pursuant to a 'common arrangement' between the air carrier and the motor carrier," and (2) that such transportation was exempt from ICC jurisdiction under 49 U.S.C. § 10526(a)(8)(A) because it was "transportation of passengers by motor vehicle incidental to transportation by aircraft." 812 F.2d at 9-10.

The Commission's intrastate jurisdiction is not at issue here. Even in the absence of a common arrangement between the air carrier and the motor carrier, transportation of flight crews from Dulles to DC is an interstate movement because the passengers must cross the DC-VA border. The Commission exercises jurisdiction over interstate passenger movements pursuant to powers conferred by Congress under and through the Commerce and Compact Clauses of the United States Constitution, respectively.<sup>8</sup>

Likewise, the exemption under Title 49 of the United States Code for passenger transportation "incidental to transportation by aircraft" is inapplicable to movements under the Compact.<sup>9</sup> The current version, now codified at 49 U.S.C. § 13506(a)(8)(A), operates to limit the jurisdiction of the Secretary of Transportation and the

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<sup>7</sup> E.g., In re Call-A-Messenger, Inc., & Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, No. AP-88-66, Order No. 3369 (June 29, 1989); In re Brown's Limo. Crew Car, Inc., No. CP-87-07, Order No. 3035 (May 27, 1987); In re The Airport Connection, Inc., No. AP-84-14, Order No. 2544 (Apr. 10, 1984); In re Airline Baggage & Crew Transfer, Inc., No. CP-83-09, Order No. 2464 (Sept. 8, 1983); In re Airport Limo, Inc., No. AP-78-56, Order No. 2001 (June 6, 1979); In re Central Delivery Serv., Inc., No. 271, Order No. 1363 (Oct. 18, 1974); In re Yellow Cab d/b/a/ All States Limo. Serv., No. 270, Order No. 1362 (Oct. 18, 1974); In re Airport Transport, Inc., No. 56, Order No. 365 (June 17, 1964).

<sup>8</sup> Easy Travel, Inc., v. Jet Tours USA, No. FC-94-01, Order No. 4469 at 4-5 (Jan. 5, 1995).

<sup>9</sup> In re VIP Coach Servs., Inc., & White House Sightseeing Corp., No. AP-84-06, Order No. 2550 (May 1, 1984); In re Atwood's Transport Lines, Inc., Order No. 1656 (Mar. 8, 1977); Order No. 1363; Order No. 1362; In re Airport Transport, Inc., No. 28, Order No. 218 (Nov. 14, 1962).

Surface Transportation Board.<sup>10</sup> It does not purport to limit the jurisdiction of any other regulatory agency. There is no corresponding exemption under the Compact.<sup>11</sup> That omission was a conscious decision on the part of Congress when it approved the Compact, albeit not at first.

Prior to enactment of the original version of the Compact in 1960, there was much discussion and debate over the division of jurisdiction between WMATC and the ICC. "The [ICC] was primarily concerned with [avoiding] the creation of dual jurisdiction over long haul carriers which may operate within the Metropolitan District as a part of a regular route interstate operation."<sup>12</sup> Neither the ICC nor any of the other participants in the legislative process, including the Civil Aeronautics Board, voiced concern over the absence of an "incidental to air" exception to WMATC's jurisdiction.<sup>13</sup> On the other hand, there simply was no discussion of the merits one way or the other.<sup>14</sup> That changed in 1962.

In 1962, the Commission presented to Congress for its approval four amendments to the Compact.<sup>15</sup> The first and third are relevant here. The first added Dulles International Airport to the Commission's jurisdiction.<sup>16</sup> The third clarified the Commission's jurisdiction over bona fide taxicab service.<sup>17</sup> The House and Senate committees overseeing the amendments reported that adding Dulles to the Commission's jurisdiction was important because it was believed that "the Dulles Airport is an integral part of the metropolitan area" and that "transportation facilities to and from the airport must be

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<sup>10</sup> The ICC's jurisdiction was transferred to the Secretary and the Board in 1996 pursuant to the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995).

<sup>11</sup> See Compact, tit. II, art. XI, § 3 (listing exclusions).

<sup>12</sup> American Coach Lines, Inc., No. MC-C-30038, 1988 Fed. Car. Cas. (CCH) ¶ 37,547 at 47,489 (Sept. 8, 1988).

<sup>13</sup> See Washington Metro. Area Transit Reg. Compact, H.R. Rep. No. 1621, 86th Cong., 2d Sess. 20-22 (1960) (discussing federal agency comments); Washington Metro. Area Transit Reg. Compact, S. Rep. No. 1906, 86th Cong., 2d Sess. 22-25 (1960) (discussing same).

<sup>14</sup> See H.R. Rep. No. 1621 at 20-22 (discussing federal agency comments); S. Rep. No. 1906 at 22-25 (discussing same).

<sup>15</sup> 76 Stat. 764.

<sup>16</sup> Id.

<sup>17</sup> Id.

coordinated with the facilities that serve the metropolitan area."<sup>18</sup> The Committees further reported with regard to expansion of the Commission's bona fide taxicab service jurisdiction:

With specific reference to motor carrier transportation service between fixed termini and on regular schedules to and from airports the Transit Commission concedes that such transportation is exempt from regulation under the Federal Motor Carrier Act. However, it points out that this vacuum in regulation, insofar as the National Capital region is concerned, has been filled by the compact. The Transit Commission notes that nowhere in the compact or in the legislative history was any mention made of exempting transportation to and from airports by motor vehicles, and that the only question which arose during the congressional hearing on the compact concerning the Commission's jurisdiction over transportation to and from airports was the question of jurisdiction over helicopters. It was agreed that the Commission's jurisdiction would not extend to cover helicopter operations. This, in the Commission's contention, evidences an intention to give the Commission jurisdiction over all other forms of transportation except, of course, over vehicles falling within the taxicab exemption.

. . . .

The committee believes that the position of the Transit Commission is well taken and recommends that Congress give its consent to all four of the proposed amendments.

H.R. Rep. No. 1979 at 5-6; S. Rep. No. 2156 at 5-6.

The Committees' reports are significant. "When a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation."<sup>19</sup> The following pertinent exchange which took place during the House debates further confirms Congress's intent:

Mr. GROSS. Mr. Speaker, further reserving the right to object, I think we are entitled to a reasonable explanation of this resolution, because it may have some serious ramifications for some people. I would like to know whether this should be known as the "O. Roy Chalk-Montgomery" resolution? Who is back of this

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<sup>18</sup> Washington Metro. Transit Compact Amendments, H.R. Rep. No. 1979, 87th Cong., 2d Sess. 2 (1962); Washington Metro. Transit Compact Amendments, S. Rep. No. 2156, 87th Cong., 2d Sess. 2 (1962).

<sup>19</sup> United States v. Board of Commissioners, 435 U.S. 110, 134, 98 S. Ct. 965, 980 (1978).

so-called compact to stop taxicabs from hauling tourists to various points of interest in the Washington area, if that is the purpose of this legislation?

Mr. WILLIS. The people back of this resolution happen to be the Legislatures of Maryland and Virginia, represented by our colleague, the gentleman from Virginia, GOVERNOR TUCK, and the gentleman from Maryland [Mr. MATHIAS]. A couple of years ago we passed a compact bill dealing with Washington metropolitan area transit.

Since that time the Legislatures of Virginia and Maryland have again adopted identical measures, based on their experience, enacting minor amendments to the compact we have already approved. For example, since that time the Dulles Airport is or is about to be in operation and therefore will be included within the area affected by the compact.

Mr. MATHIAS. I do not want to put words into the mouth of the agency, but I would say, No. 1, we are proposing to enlarge the area of transportation here because of the geographical location of the Dulles Airport and, No. 2, we are attempting to remedy an error which became apparent in practice over the last several years. These are not major changes in policy.

108 CONG. REC. 15,600-01 (1962). The four amendments passed as proposed.<sup>20</sup>

The legislative history, thus, clearly establishes that "Congress, in creating the WMATC and in specifically extending the WMATC's transportation authority to include Dulles Airport, intended that the WMATC regulate the transportation of passengers from the airport."<sup>21</sup> This grant of jurisdiction to WMATC at least means that no privately-owned motor passenger carrier may transport passengers for hire between Dulles and the District of Columbia without a WMATC certificate,<sup>22</sup> except taxicabs and other vehicles performing a bona fide taxicab service.

Congress's approval of the amended Compact in 1990 without deletion of the reference to Dulles Airport and without enactment of an "incidental to air" exclusion reinforces the Commission's

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<sup>20</sup> 76 Stat. at 764-66.

<sup>21</sup> Executive Limo. Serv., Inc. v. Goldschmidt, 628 F.2d 115, 119 (D.C. Cir. 1980).

<sup>22</sup> Id. at 119.

jurisdiction over flight crew ground transportation in the Metropolitan District.<sup>23</sup> Against this background, we see little room for reversing decades-long precedent rejecting an interpretation of the Compact embracing such an exclusion.

## II. Assessment of Civil Forfeiture

Based on the evidence adduced by staff, the terms of the United Airlines contract, applicant's response, and a contract tariff and lease agreement between applicant and Carrier No. 362 showing that applicant has subcontracted performance of the United Airlines contract to Carrier No. 362 beginning June 20, we conclude that applicant operated the United Airlines contract from May 1, 1997, through June 19, 1997 -- a total of 50 days -- without proper authority.

The Compact, Title II, Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>24</sup> The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.<sup>25</sup> Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.<sup>26</sup> Violations occurring thereafter are viewed as knowing and willful.<sup>27</sup>

When applicant filed its application for WMATC operating authority on April 29, 1997, it swore under oath that it was familiar with Compact requirements and would faithfully comply. Accordingly, applicant's operations after April 29 are viewed as knowing and willful. Applicant attempts to deflect this finding by asserting it received advice from an attorney that WMATC authority was not necessary to perform the United Airlines contract, implying that the application was filed for some other purpose. We are not convinced.

The so-called "advice" is an unauthenticated memorandum titled "FACSIMILE TRANSMISSION COVER," addressed to "Mr. Bill Bloom" and

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<sup>23</sup> See National Bus Traffic Ass'n, Inc. v. United States, 249 F. Supp. 869, 872 (N.D. Ill. 1965) (reenactment of statute without change evidences congressional approval of long-standing administrative interpretation), aff'd per curiam w/o opinion, 382 U.S. 369 (1966).

<sup>24</sup> DD Enters., Inc., t/a Beltway Transp. Serv., v. Reston Limo. Serv., No. FC-93-01, Order No. 4226 at 1-2 (Dec. 20, 1993).

<sup>25</sup> Id. at 2.

<sup>26</sup> Id. at 2.

<sup>27</sup> Id. at 2.

purportedly transmitting seven or eight pages. Assuming the memo is genuine, we cannot accept it as evidence that applicant was advised as alleged. First, although the memo advises "Mr. Bloom" that he requires "no authority from WMATC to transport flight crews between IAD and downtown DC under a contract with the airline," Mr. Bloom is not an officer or shareholder of applicant and is not otherwise identified as a person whose knowledge of the matters asserted therein may be attributed to applicant. Second, even if Mr. Bloom's knowledge may be attributed to applicant, and even though the memo is dated April 21, 1997, there is no indication of when applicant became aware of it. Third, the memo is followed by three pages from Title 49 of the United States Code, but there is no indication that these were among the seven or eight transmitted, and even if they were, this leaves at least four pages missing. Finally -- and most importantly -- the attorney who purportedly rendered this advice is designated in the application as applicant's representative in this proceeding. Inasmuch as the only transportation proposed in the application is the transportation covered by the United Airlines contract, it would appear that applicant's attorney ultimately advised applicant to obtain a certificate of authority for the purpose of performing the United Airlines contract.

We will assess a civil forfeiture against applicant in the amount of \$250 per day<sup>28</sup> for 50 days, for a total of \$12,500. We will suspend all but \$2,000, in recognition of applicant's having filed an application prior to commencement of the contract.<sup>29</sup> Failure to timely pay the net forfeiture shall result in reinstatement of the full \$12,500.

### III. Application for Certificate of Authority

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. The burden is on applicant to establish its financial fitness, operational fitness, and regulatory compliance fitness.<sup>30</sup> No issues are raised in the record with regard to applicant's financial and operational fitness. Applicant's unlawful operations from May 1 through June 19 cast doubt on applicant's regulatory compliance fitness.

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future

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<sup>28</sup> See id. at 3 (operation of contract without authority assessed at \$250 per day).

<sup>29</sup> See id. at 3 (recognizing attempt to file application before commencement of contract).

<sup>30</sup> In re Reston Limo. & Travel Serv., Inc., t/a Reston Limo., No. AP-93-36, Order No. 4232 (Jan. 11, 1994).



compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>31</sup>

Few violations are more serious than operating without authority. We regard the violations as borderline flagrant. On the other hand, we cannot characterize the violations as persistent. It is significant that applicant has subcontracted out the United Airlines contract to a properly licensed carrier pending a decision on this application.<sup>32</sup> Upon payment of the forfeiture assessed herein, applicant's correction of past errors will be complete<sup>33</sup> and the record will support a finding of prospective compliance fitness.

Based on the evidence in this record, therefore, 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, subject to applicant timely paying the civil forfeiture assessed herein.

Applicant is reminded that in the event a certificate of authority is issued pursuant to this order, applicant may not perform the Savoy Suites contract, mentioned in Note C to Exhibit E, unless and until that contract has been properly filed as a contract tariff and become effective in accordance with Commission Regulations Nos. 55 and 56.

#### IV. Application for Approval of Common Control

Article XII, Section 3(a)(iii), of the Compact states that a carrier shall obtain Commission approval to acquire control of a WMATC carrier through ownership of its stock or other means. A provider of taxicab service, such as applicant's president/majority shareholder, is a "carrier" for purposes of this section of the Compact.<sup>34</sup>

The Commission may approve acquisition of control under Article XII, Section 3, if the Commission finds the acquisition consistent with the public interest.<sup>35</sup> The public interest analysis focuses on

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<sup>31</sup> Id. at 2.

<sup>32</sup> See id. at 2 (assignment of contract pending outcome of application cited as factor in compliance fitness).

<sup>33</sup> In re Jet Tours USA, Inc., No. AP-94-50, Order No. 4649 at 9 (Aug. 22, 1995).

<sup>34</sup> In re Executive Coach, Ltd., No. AP-91-12, Order No. 3666 (Apr. 2, 1991).

<sup>35</sup> Compact, tit. II, art. XII, § 3(c).

the acquiring party's fitness, the resulting competitive balance and the interests of affected employees.<sup>36</sup>

Analysis of the relevant factors supports a finding of consistency with the public interest. Our current finding of applicant's fitness permits an inference of the acquiring party's fitness.<sup>37</sup> Applicant's operations are unlikely to have a significant adverse effect on competition.<sup>38</sup> The interest of affected employees is not an issue where an applicant has no prior operations.<sup>39</sup>

Each carrier is admonished to keep its assets, books and operations completely separate from the other's. Sharing of office space will be allowed, but this should not be construed as permission to share revenue vehicles or operating authority.<sup>40</sup>

THEREFORE, IT IS ORDERED:

1. That staff's motion to consolidate Cases Nos. AP-97-24 and AP-97-25 is granted.

2. That the application for temporary authority is denied.

3. That Certificate of Authority No. 397 shall be issued to Megaheds, Inc., trading as Megaheds Transportation, 2505 Wisconsin Avenue, N.W., Washington, DC 20007, upon applicant's timely compliance with the following conditions:

A. Applicant shall pay to the Commission within thirty days from the date of this order, by money order, certified check, or cashiers check, the sum of two thousand dollars (\$2,000), for knowing and willful violations of the Compact.

B. Applicant shall file with the Commission within thirty days from the date of this order: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) an equipment list stating the year, make, model, serial number, vehicle number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) evidence of ownership or a lease as required by Commission Regulation No. 62 for each vehicle to be used in revenue

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<sup>36</sup> 74 Stat. at 1050; In re Washington Shuttle, Inc., t/a Supershuttle, No. AP-96-13, Order No. 4966 at 9-10 (Nov. 8, 1996), aff'd, Order No. 4996 (Jan. 8, 1997).

<sup>37</sup> Order No. 4966 at 10.

<sup>38</sup> See id. at 5-8 (finding monopolization of airport ground transportation market unlikely); Order No. 4996 at 11-13 (same).

<sup>39</sup> Id. at 10.

<sup>40</sup> Id. at 12.

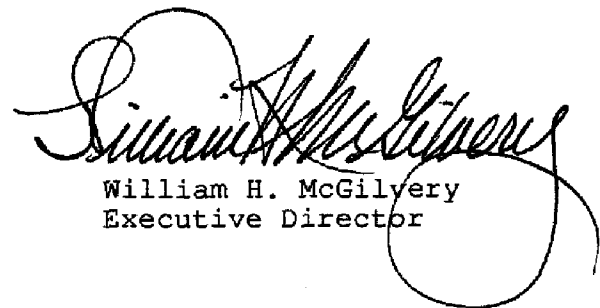
operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

4. 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.

5. That the full civil forfeiture of \$12,500 shall stand reinstated and become immediately due and payable upon applicant's failure to timely pay the net forfeiture of \$2,000.

6. 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 ALEXANDER, LIGON, AND MILLER:



William H. McGilvery  
Executive Director