

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7420

IN THE MATTER OF:

Served September 24, 2003

METRO HEALTH-TECH SERVICES INC.,)
WMATC No. 589, Investigation of)
Tariff and Lease Violations)

Case No. MP-2003-66

This matter is before the Commission to determine whether respondent violated the Compact and Commission regulations by providing contract passenger service in the Metropolitan District using non-owned vehicles without having filed the contract as a tariff and without having filed vehicle leases.

I. BACKGROUND

Under the Compact, each carrier must file a tariff with the Commission and keep a copy available for public inspection.¹ A carrier may not charge a rate or fare for transportation subject to the Compact other than the applicable rate or fare specified in a tariff filed with the Commission and in effect at the time.² A WMATC carrier must file a lease with the Commission for each non-owned revenue vehicle.³

On December 16, 2002, the Commission received a list of carriers providing passenger service in the Washington Metropolitan Area under contracts with LogistiCare Solutions, LLC, WMATC Carrier No. 524.⁴ Respondent's name was on the list, but the Commission could find no record of respondent having filed the contract as a tariff. Commission staff advised respondent to file a LogistiCare contract tariff, and any applicable lease,⁵ no later than January 10, 2003. On January 16, respondent assured the Commission that the necessary documents would be filed the following day. Nearly six months went by with no filing from respondent. This investigation ensued.

The initial order in this proceeding, Order No. 7279, served June 30, 2003, directed respondent to produce within thirty days any and all records and documents in its possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning December 1,

¹ Compact, tit. II, art. XI, § 14(a).

² Compact, tit. II, art. XI, § 14(c); Commission Regulation No. 55.

³ Commission Regulation No. 62.

⁴ LogistiCare has a contract with the Washington Metropolitan Area Transit Authority to operate a transportation service for disabled passengers under the name "MetroAccess." LogistiCare primarily operates a reservation system and subcontracts the bulk of the transportation function to other carriers.

⁵ In most cases, LogistiCare furnishes the vehicles.

2002, and ending on June 30, 2003.⁶ The order also gave respondent thirty days to present its vehicles for inspection.⁷

II. RESPONSE

Respondent filed an acceptable LogistiCare lease on July 9, 2003. An acceptable LogistiCare contract tariff was accepted for filing on July 17, 2003.

Respondent presented eleven vehicles for inspection over the course of several days in July, nine LogistiCare vehicles and two non-LogistiCare vehicles.⁸ Several were presented for re-inspection in August.

Respondent produced responsive documents on August 6, 2003, after requesting a week extension.

III. FINDINGS

A. Lease and Tariff Violations

As noted above, Section 14 of the Compact and Regulation No. 55 impose a tariff filing requirement on each carrier, and Regulation No. 62 imposes a lease filing requirement on each carrier operating a non-owned vehicle.

The LogistiCare lease filed by respondent begins February 2, 2002, and is open-ended. The LogistiCare contract tariff covers service beginning February 3, 2002, and currently runs through February 2, 2004. By failing to file the tariff and lease prior to commencing service, respondent violated Section 14 of the Compact and Regulation Nos. 55 and 62.

B. Vehicle Marking Violations

The inspections of respondent's vehicles not only confirmed ownership of many by LogistiCare, the inspections revealed violations of the Commission's vehicle marking requirements, as well.

Commission Regulation No. 61 requires each WMATC carrier to display on both sides of each revenue vehicle the carrier's name or trade name and the carrier's WMATC number.⁹ The carrier's name must be preceded by the phrase "Operated By" if some other name also appears on the vehicle.¹⁰ The markings must be legible during daylight hours

⁶ See Compact, tit. II, art. XIII, § 1(c),(e) (Commission may investigate whether a person has violated the Compact and for the purpose of an investigation may "require the production of books, papers, correspondence, memoranda, contracts, agreements, or other records or evidence which the Commission considers relevant to the inquiry"); art. XII, § 1(b) (Commission shall have access at all times to accounts, records, and memoranda of any carrier for inspection purposes).

⁷ See Compact, tit. II, art. XII, § 1(b) (Commission shall have access at all times to equipment of any carrier for inspection purposes).

⁸ A twelfth vehicle, VIN ending 92078, is alleged to be a non-revenue vehicle and was not presented for inspection.

⁹ Regulation No. 61-01.

¹⁰ Regulation No. 61-01(a).

from a distance of fifty feet.¹¹ Markings less than two and one-half inches in height are presumed not to be legible from fifty feet.¹²

When the two non-LogistiCare vehicles were inspected in July, respondent's name and number were observed on both sides of each vehicle. Respondent's name was four inches high. Respondent's WMATC number was three inches high. No other markings were noted. Accordingly, we find that the markings observed on these two vehicles complied with Regulation No. 61.¹³

All of the LogistiCare vehicles, when first inspected in July, displayed the owner's name (LogistiCare), respondent's WMATC number, and the words "Operated By" (appropriately positioned), but only five displayed respondent's full name.¹⁴ Respondent subsequently presented three of the four partial-name vehicles for re-inspection in August, and those three were observed to display respondent's full name at that time.¹⁵

As for legibility, the owner's name and the words "Operated By" were displayed at a height of one inch on all vehicles. All other markings were at least three inches high. The legibility standard does not apply to the owner's name inasmuch as the owner's name need not be displayed. Respondent has requested that we waive the legibility requirement as to "Operated By." The purpose of preceding the carrier's name with the phrase "Operated By" when two names appear on the vehicle is, obviously, to signal which is the carrier. But if the other name is not readily legible, it hardly matters. Therefore, under the circumstances, we will grant the request.

Based on staff's inspections and taking into account the waiver granted herein, we find that respondent was in violation of Regulation No. 61 with regard to the four partial-name vehicles as of the first inspections in July.

IV. CONCLUSION

A person who knowingly and willfully violates a provision of the Compact is subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for each subsequent violation.¹⁶ Respondent shall have thirty days to show cause why the Commission should not assess civil forfeitures for respondent's violations of Section 14 of the Compact and Regulation Nos. 55, 61 and

¹¹ Regulation No. 61-02.

¹² Id.

¹³ Respondent, however, has yet to produce a certificate of safety inspection for one of these vehicles, vehicle no. 001, VIN ending 145473.

¹⁴ By full name we mean Metro Health-Tech Services. Two of the four vehicles only displayed "METRO HEALTH-TECH." Two only displayed "METRO HEALTH."

¹⁵ Vehicle no. 3629, VIN ending 19913, only displayed "METRO HEALTH-TECH" but was not presented for re-inspection in August.

¹⁶ Compact, tit. II, art. XIII, § 6(f).

62. In the meantime, respondent is admonished not to operate the three vehicles that have yet to pass inspection by staff.¹⁷

THEREFORE, IT IS ORDERED:

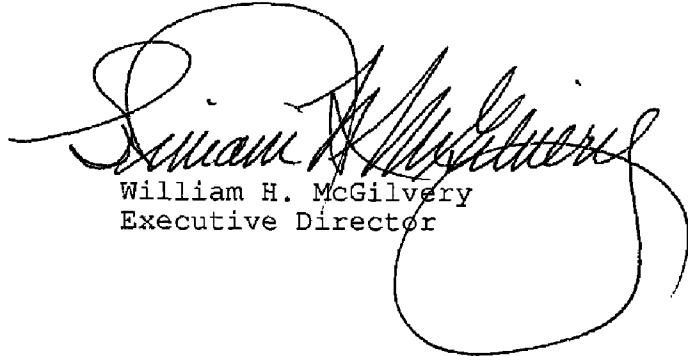
1. That the legibility standard of Regulation No. 61 is waived with respect to the phrase "Operated By" as currently configured on respondent's LogistiCare vehicles.

2. That the three vehicles which have not been demonstrated to comply with Commission requirements, as identified in this order, may not be operated unless and until they pass inspection, as verified in writing by Commission staff.

3. That within thirty days respondent shall show cause why the Commission should not assess civil forfeitures for violations of Section 14 of the Compact and Regulation Nos. 55, 61 and 62.

4. That respondent may file within 15 days from the date of this order a request for an oral show cause hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER AND MCDONALD:



William H. McGilvery
Executive Director

¹⁷ See supra notes 8, 13 & 15.