

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7458

IN THE MATTER OF:

Served October 7, 2003

FAITH TRANSPORTATION, INC., (WMATC)
No. 377), FAITH TRANSPORTATION)
SERVICES, INC., and FAITH SERVICES)
TRANSPORTATION, INC., Investigation)
of Unauthorized Operations)

Case No. MP-2003-57

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

Case No. AP-2003-61

This matter is before the Commission on the failure of respondents to fully comply with the initial order in the investigation, Order No. 7256, served June 20, 2003.

The two proceedings are being consolidated because the question of whether respondents violated the Compact by transferring the operations of Faith Transportation, Inc., to Faith Transportation Services, Inc., -- and possibly to Faith Services Transportation, Inc., -- without Commission approval and respondents' failure to fully comply with the initial order in the investigation is relevant to a determination of whether Faith Services Transportation, Inc., is fit to receive a certificate of authority.

I. INVESTIGATION

On May 12, 2003, the Commission received an application for a certificate of authority from Faith Services Transportation, Inc., a Maryland corporation trading as Faith Transportation (Faith III). Faith III was incorporated on September 26, 2002, by Roosevelt Dickens, its president and director. At that time, Mr. Dickens also was president of Faith Transportation Services, Inc. (Faith II). His relationship with Faith II was formally severed on January 17, 2003, when he was replaced as president by Faith II board member Victoria Joiner, who also is president of Faith Transportation, Inc., WMATC Carrier No. 377 (Faith I).

At the time the application was filed: Faith I was not in good standing with the State of Maryland, having last filed a personal property return on June 15, 2001;¹ Faith II, incorporated on June 29, 2001, by Ms. Joiner and Mr. Dickens, was in good standing with the State of Maryland; and Faith III was in good standing with the State of Maryland. These facts appeared consistent with Faith I discontinuing operations in June of 2001 and transferring those

¹ Faith I has since brought itself into good standing.

operations to Faith II and then possibly to Faith III in violation of the Compact.² This investigation ensued.

Order No. 7256 directed Faith II and Faith III to refrain from, and/or cease and desist from, transporting passengers for hire between points in the Metropolitan District unless and until otherwise ordered by the Commission. The order further directed all three respondents to produce within thirty days any and all records and documents in their possession, custody or control relating to transportation of passengers for hire between points in the Metropolitan District during the period beginning June 15, 2001, and ending June 20, 2003.³ Finally, the order directed Faith I to present all revenue vehicles for inspection within thirty days⁴ and stipulated that Certificate No. 377 would stand suspended and be subject to revocation if Faith I failed to timely comply.

After timely requesting an extension of time, Faith III produced responsive documents and the one vehicle listed in its application. Faith I timely requested an extension of time but produced no documents and no vehicles. Faith II did not request an extension of time and has produced no documents and no vehicles.

Although on the face of the documents produced by Faith III there does not appear to have been any unlawful transfer to Faith III, the failure of Faith I and Faith II to produce any documents or vehicles prevents us from drawing any conclusions with respect to whether any transfer took place from Faith I to Faith II. In any event, because Faith I failed to comply with Order No. 7256, Certificate No. 377 stands suspended, and Faith I shall have thirty days to show cause why Certificate No. 377 should not be revoked. Such showing must include production of all documents required by Order No. 7256 from Faith I and Faith II.

II. APPLICATION

Faith III seeks 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. The application is unopposed.

² A carrier or any person controlling, controlled by, or under common control with a carrier must obtain Commission approval to purchase, lease, or contract to operate a substantial part of the property or franchise of another carrier, or acquire control of another carrier, that operates in the Metropolitan District. Compact, tit. II, art. XII, § 3(a).

³ 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).

⁴ See Compact, tit. II, art. XII, § 1(b) (Commission shall have access at all times to equipment of any carrier for inspection purposes).

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 an 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.⁵ A determination of compliance fitness is prospective in nature.⁶ The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.⁷

According to the application, Faith III proposes commencing operations with one van and charging individual hourly rates. The documents filed by Faith III in response to Order No. 7256, however, reveal that this was not Faith III's primary reason for seeking a certificate of authority. Those documents show that Faith III was organized for the purpose of furnishing transportation in the Metropolitan District under a contract with LogistiCare Solutions, LLC, WMATC Carrier No. 524.

LogistiCare operates a transportation program for disabled riders pursuant to a contract with the Washington Metropolitan Area Transit Authority (WMATA). The program, known as MetroAccess, is WMATA's means of complying with the Americans with Disabilities Act of 1990.⁸ LogistiCare operates a reservation system and subcontracts the transportation service to other WMATC carriers.

LogistiCare had originally entered into a transportation service contract with Faith I, but according to a "PRE-INCORPORATION AGREEMENT" between Faith I and Mr. Dickens, "provision of services under the Metro Access contract became administratively burdensome and expensive for [Faith I] to continue to provide." Accordingly, on August 1, 2002, Faith I and Mr. Dickens agreed that he would form Faith III and that Faith I would assign the LogistiCare contract to Faith III.

Faith III was incorporated on September 26, 2002, and entered into the LogistiCare contract on October 1, 2002. That same day, Faith III entered into a subcontract with Faith I whereby Faith I agreed to perform the LogistiCare contract on Faith III's behalf. The contract term was one year, and although the subcontract could be extended for one or more additional periods of one year upon notice from Faith I, a letter dated May 21, 2003, from Ms. Joiner to WMATA in support of Faith III's participation in the MetroAccess program

⁵ In re Adventures By Dawn L.L.C., No. AP-99-68, Order No. 5837 (Mar. 14, 2000).

⁶ Id.

⁷ Id.

⁸ 42 U.S.C. § 12101, et. seq. (1999).

characterized the subcontract as Faith I's agreement to operate the LogistiCare contract "until [Faith III] can take over full operations."

Failing to mention this contract in the application constitutes a material omission.⁹ The public and other WMATC carriers should have had an opportunity to comment on these preexisting arrangements, and while the LogistiCare contract at issue apparently has been cancelled,¹⁰ Faith III has failed to demonstrate the candor expected of an applicant.

Faith III also failed to mention in its application that the "PRE-INCORPORATION AGREEMENT" between Faith I and Mr. Dickens contained a provision restricting Mr. Dickens from selling his shares in Faith III without the consent of Faith I and LogistiCare. Absent that consent, Faith I had the option of purchasing all of Dickens's shares. Faith I also had the option to purchase all of Dickens's shares upon his death. Obviously, these provisions raise common control issues that should have been aired as part of the application but only came to light because of the investigation.

We are further concerned about Mr. Dickens's silence regarding the reason Faith II was formed and its activities while he was at the helm. It was obvious from the initial order in the investigation that these issues are at the core of the Commission's inquiry. Mr. Dickens may not be able to produce Faith II documents at this time, but he certainly could have offered a statement based on his personal knowledge of Faith II's affairs while he was its president instead of leaving this issue open-ended.

Faith III's failure to produce bank statements from all checking accounts likewise leaves a troubling hole in the record. The bank statements produced by Faith III show a substantial transfer of tens of thousands of dollars on April 17, 2003, to a Faith III account at another bank. This raises the questions of why an account was established at another bank, why the funds were transferred to that other account and why the statements from that other account were not produced.

Lastly, it is the obligation of each WMATC carrier not only to observe Commission regulations but to enforce them, as well. Order No. 7256 directed Faith I to produce all revenue vehicles for inspection, including all MetroAccess vehicles. Faith III could have used its position as primary contractor to see that the MetroAccess vehicles assigned to Faith I were produced in accordance with Order No. 7256. The failure to do so seriously detracts from this application.

We cannot say on this record that applicant is fit and that approving the application would be consistent with the public interest.

⁹ Faith I's annual report for 2002 indicates that Faith I operated thirty vehicles under the LogistiCare contract last year.

¹⁰ A copy of LogistiCare's August 21, 2003, termination notice, which was furnished by Faith III, states that it is effective immediately.

III. CONCLUSION

We credit Faith III with cooperating in the investigation. This does not, however, compensate for the deficiencies in the investigatory record attributable to Faith III and its president and the material omissions in Faith III's application prior to the investigation.

Inasmuch as Faith I has failed to comply with the Commission's investigation, it shall have thirty days to show cause why we should not revoke its authority.

THEREFORE, IT IS ORDERED:

1. That Cases Nos. MP-2003-57 and AP-2003-61 are hereby consolidated.

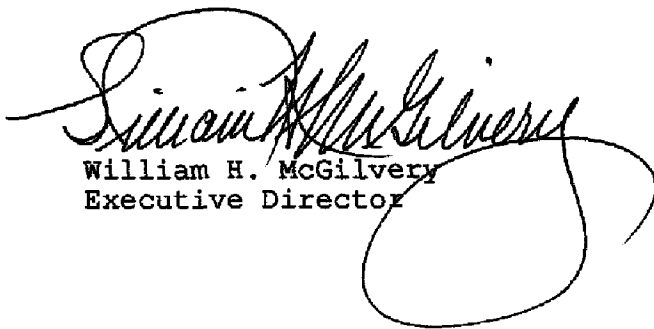
2. That the application of Faith Services Transportation, Inc., trading as Faith Transportation, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

3. That no operations may be conducted under Certificate of Authority No. 377 unless and until otherwise ordered by the Commission.

4. That Faith Transportation, Inc., shall have thirty days to show cause why Certificate No. 377 should not be revoked for willful failure to comply with Order No. 7256, which showing shall include production of all documents required by Order No. 7256 from Faith I and Faith II.

5. That Faith Transportation, Inc., may file within 15 days from the date of this order a request for oral 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. McGilver
Executive Director