

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7879

IN THE MATTER OF:

Served March 19, 2004

Application of DICKENS )  
TRANSPORTATION SERVICES, INC., ) Case No. AP-2003-135  
for a Certificate of Authority -- )  
Irregular Route Operations )

Applicant 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.

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.<sup>1</sup> A determination of compliance fitness is prospective in nature.<sup>2</sup> The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.<sup>3</sup>

This is the second application signed by applicant's president, Roosevelt Dickens. Last year, Mr. Dickens filed an application on behalf of Faith Services Transportation, Inc. The application was denied last October for failure to establish regulatory compliance fitness.<sup>4</sup> The lack of fitness finding stemmed from material omissions in the application and from Mr. Dickens' failure to fully cooperate with the Commission's investigation of Faith Transportation, Inc.,

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<sup>1</sup> In re Faith Servs. Transp., Inc., t/a Faith Transp., No. AP-03-61, Order No. 7458 (Oct. 7, 2003).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

WMATC No. 377, (Faith I), Faith Transportation Services, Inc., (Faith II), and Faith Services Transportation, Inc., (Faith III).

During the course of the Faith proceedings the Commission discovered that Faith III had entered into a contract with LogistiCare Solutions, LLC, to provide transportation services for disabled riders under the MetroAccess program of the Washington Metropolitan Area Transit Authority (WMATA) and that Faith I was performing the LogistiCare contract pursuant to a subcontract with Faith III until such time as Faith III obtained its own certificate of authority. The MetroAccess program is WMATA's means of complying with the Americans with Disabilities Act of 1990.<sup>5</sup> LogistiCare operates a reservation system and subcontracts the transportation service to WMATC carriers.

We noted our concern that Faith III's application failed to disclose the LogistiCare contract as the reason for Faith III seeking authority. We further noted our concern about Mr. Dickens' silence regarding the reason Faith II was formed and its activities while he was its president, since it appeared that prior to the formation of Faith III, Faith II may have had a hand in performing the LogistiCare contract or other transportation requiring a WMATC certificate of authority.

The initial order in this proceeding directed Mr. Dickens to address those unresolved issues. Mr. Dickens responds that Faith II had no activities during the time he served as its president and that it closed on July 21, 2003, "without capital, vehicles, contracts or income." This contrasts with his statement during the Faith proceedings that as of June 16, 2003, Faith III was subleasing office space to Faith II and sending it space occupancy invoices, in other words billing it for rent. Indeed, a few weeks earlier Faith II had pledged its "complete support" and the "full power" of its "resources" in a May 21, 2003, letter to WMATA backing Faith III's participation in the MetroAccess program. The letter noted that Faith II shared office space with Faith III and that Faith II was being "invoiced for repairs, offices, utilities, payroll and other administrative services."

Admittedly, Mr. Dickens was no longer president of Faith II at the time of his earlier statement, but the picture he would paint of a dormant shell corporation is at odds with the record in the prior proceeding. It also does not square with his statement in this proceeding that Faith II is currently the subject of "IRS attachment proceedings." The existence of an attachment proceeding implies the existence of someone real and something tangible to attach.<sup>6</sup>

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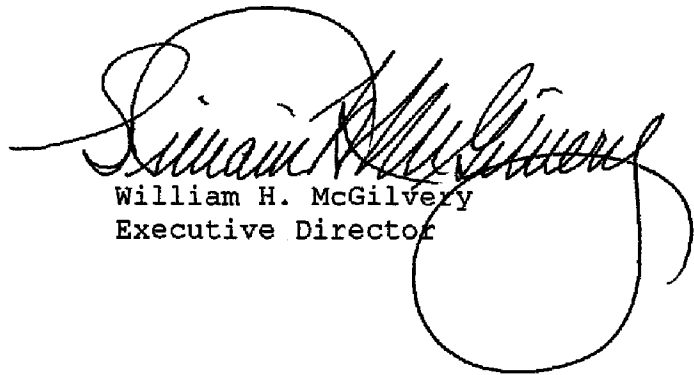
<sup>5</sup> 42 U.S.C. § 12101, et. seq.

<sup>6</sup> In this regard, we note that while Faith III has been dissolved the Maryland Department of Assessments and Taxation website lists both Faith I and Faith II as active corporations.

The bottom line is that Mr. Dickens' terse responses to the Commission's inquiries into these compliance-related matters still appear calculated to reveal less rather than more. They do not rise to the level of disclosure expected of an applicant who bears the burden of production and persuasion on the issue of fitness to serve the public. Until Mr. Dickens is more forthcoming with a full and detailed history of Faith II, we cannot say that his company has met its burden of proof.<sup>7</sup>

THEREFORE, IT IS ORDERED that the application of Dickens Transportation Services, Inc., for a certificate of authority, irregular route operations, is hereby denied without prejudice.

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



William H. McGilvery  
Executive Director

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<sup>7</sup> See In re The SALTS Corp., No. AP-03-141, Order No. 7754 (Feb. 20, 2004) (application dismissed for failure to disclose information about related entity).