

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application of

BEST TRAVEL INC.

For a certificate to operate as a charter
and excursion carrier

DOCKET TE-190190

NOTICE OF INTENT TO DENY
APPLICATION FOR CERTIFICATE;

NOTICE OF OPPORTUNITY
FOR HEARING

I. INTRODUCTION

- 1 **Nature of Proceeding.** The Washington Utilities and Transportation Commission (Commission) hereby provides notice of its intent to deny the application of Best Travel Inc., (Best Travel) for a charter party and excursion service carrier certificate for failure to meet the application requirements set forth in chapter 81.70 RCW and chapter 480-30 WAC.
- 2 **Procedural Background.** On March 21, 2019, Tony Lyu, using the email address usbesttravel@gmail, with the associated name of “Jingli Jin,” filed with the Commission an application for a certificate authorizing Best Travel to operate as a charter party and excursion carrier in the state of Washington.
- 3 Commission Staff (Staff) reviewed Best Travel’s application, as well as the operating history of one other company owned and operated by the spouse or cohabitant of Jingli Jin. For reasons set out below, Staff recommends that the Commission deny Best Travel’s application.

II. APPLICABLE LAW

- 4 Pursuant to RCW 81.70.220(1), no person may engage in the business of a charter party carrier or excursion service carrier without first obtaining a certificate from the Commission authorizing that person to do so.
- 5 RCW 81.70.230(2) requires the Commission to issue a charter party or excursion carrier certificate to an applicant that establishes proof of safety fitness and insurance coverage. WAC 480-30-121, which governs the application process for a charter or excursion carrier permit, provides that an applicant “must be fit, willing, and able to provide service and to comply with state law and the safety and insurance requirements of” chapter 480-30 WAC to receive a certificate.

- 6 The safety requirements referenced in WAC 480-30-121 are set out in WAC 480-30-221. WAC 480-30-221 adopts by reference a number of the federal regulations set out in Title 49 of the Code of Federal Regulations (C.F.R.), including all or portions of 49 C.F.R. parts 40, 379, 380, 382, 383, 385, 390, 391, 392, 393, 395, 396, and 397.
- 7 49 C.F.R. § 385.1005, which WAC 480-30-221 adopts by reference, provides that “[t]wo or more motor carriers shall not use common ownership, common management, common control, or common familial relationship to enable any or all such motor carriers to avoid compliance, or mask or otherwise conceal non-compliance, or a history of non-compliance, with statutory or regulatory requirements prescribed under 49 U.S.C. Chapter 311, subchapter III, or with an order issued under such requirements.”
- 8 The Commission is an agency of the State of Washington, vested by statute with authority to regulate rates, rules, and practices of public services companies, including charter party and excursion service carriers, and has jurisdiction over the parties and subject matter of this proceeding.
- 9 Furthermore, RCW 81.04.540 states “[t]he [C]ommission shall cooperate with the federal government and the United States Department of Transportation, or its successor, or any commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers, to the end that transportation of property and passengers by common carriers in interstate or foreign commerce into and through the state of Washington may be regulated and that the laws of the United States and the state of Washington are enforced and administered cooperatively in the public interest.”

III. FACTUAL ALLEGATIONS

- 10 Staff makes the following factual allegations based on its review and investigation of the application.
- 11 On August 7, 2017, the FMCSA issued a notice of proposed unsatisfactory safety rating to Sky Bird North America Inc. d/b/a Perfect Holiday America (Sky Bird) effective September 22, 2017. On September 7, 2017, the FMCSA issued an Order to Cease All Transportation in Interstate and Intrastate Commerce and Revocation of Registration to Sky Bird (Order to Cease), effective September 22, 2017. On October 18, 2017, Bing Lu of Sky Bird contacted the Commission to request cancellation of its Charter/Excursion certificate. On January 5, 2018, the FMCSA and Sky Bird entered into an Agreement and Consent Order (Consent Order) which upgraded Sky Bird’s safety rating to Conditional. The agreement required Sky Bird to submit various quarterly reports and documents to the FMCSA. On

January 10, 2018, Sky Bird indicated to the FMCSA that the company was not operating.

- 12 On April 3, 2018, Best Travel, under Jingli Jin, obtained a USDOT number and applied for federal operating authority. On May 11, 2018, Sky Bird transferred two vehicles to Best Travel.
- 13 On December 20, 2018, the Regional Field Administrator for the Western Service Center of the FMCSA issued a Record Consolidation Order to Sky Bird and Best Travel. The order alleged that Best Travel was merely a continuation of Sky Bird, that Best Travel and Sky Bird were under common control, and that Best Travel was operating as a new or affiliate entity to avoid the need to comply with regulatory obligations and/or to avoid a negative compliance history.
- 14 On January 8, 2019, Sky Bird and Best Travel petitioned for review of the Record Consolidation Order.
- 15 On March 8, 2019, the FMCSA in FMCSA Docket No. FMCSA-2018-0253 (Eastern Service Center) issued a final order, which found that Best Travel was a reincarnation of Sky Bird. The FMCSA further found that Sky Bird had reincarnated as Best Travel in order to avoid complying with FMCSA orders issued to Sky Bird, to avoid complying with motor carrier safety laws and regulations, and to avoid Sky Bird's negative compliance history. Finally, the FMCSA found that Sky Bird and Best Travel have a common familial relationship because the president of Sky Bird, Bing Lu, was married to the owner of Best Travel, Jingli Jin.
- 16 The March 8, 2019 FMCSA Order lists a number of commonalities between the two companies, as follows:
1. Commonality of officers and management personnel.
 2. Date of company creation. Best travel obtained a USDOT number one week before Sky Bird was required to submit a quarterly report pursuant to the Consent Order.
 3. Commonality of addresses and points of contact.
 4. Commonality of motor vehicle equipment.
 5. Commonality of insurance policies.
 6. Commonality of drivers and other employees.
 7. Commonality of nature and scope of operations.
 8. Commonality of other activity through which the company holds itself out to the public.
- 17 Effective May 8, 2019, in Case No. WA-2017-5081-UNFIT the FMCSA issued a Notice of Failure to Comply with Agreement and Stipulated Order on Consent

for Conditional Upgrade of Safety Rating and Reinstatement of Unsatisfactory Safety Rating and Order to Cease all Transportation in Interstate and Intrastate Commerce and Revocation of Registration (Notice and Order) to Sky Bird and Best Travel. This Notice and Order directed Sky Bird and Best Travel to Cease and Desist from all operations and suspended the companies' USDOT Operating Authority.

- 18 The FMCSA's decision supports a finding that Best Travel is not fit to operate as a charter or excursion carrier. The evidence demonstrates Sky Bird received an unsatisfactory safety rating and was placed out-of-service under Bing Lu's control. Best Travel Inc. proposed to engage in substantially the same business as Sky Bird under the same management personnel and motor vehicle equipment. Therefore, Best Travel is not fit to operate as a charter or excursion carrier because it is a reincarnation of Sky Bird for the purpose of evading federal safety requirements.
- 19 **NOTICE OF OPPORTUNITY FOR HEARING.** Best Travel Inc. may request a hearing to contest the factual allegations set out in this notice. Best Travel may request such a hearing by filing a request for a hearing with the Commission by **June 4, 2019**. An email request must be sent to records@utc.wa.gov, must be directed to the attention of Mark L. Johnson, Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, and must reference Docket TE-190190.
- 20 If Best Travel requests a hearing by June 4, 2019, the Commission will schedule a brief adjudicative proceeding under RCW 34.05.482 and WAC 480-07-610. If Best Travel does not request a hearing by that date, the Commission will enter an order denying the application for a certificate.

DATED at Olympia, Washington, and effective May 24, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK L. JOHNSON
Executive Director and Secretary