

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 13,539

IN THE MATTER OF:

Served October 18, 2012

Application of SKYHAWK LOGISTICS, )  
INC., for a Certificate of ) Case No. AP-2012-070  
Authority -- Irregular Route )  
Operations )

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

The Washington Metropolitan Area Transit Regulation Compact, (Compact),<sup>1</sup> 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 the 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>2</sup> A determination of compliance fitness is prospective in nature.<sup>3</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>4</sup> Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.<sup>5</sup>

**I. HISTORY OF VIOLATIONS**

Applicant previously held WMATC Certificate of Authority No. 406 from February 26, 1998, until July 19, 2001, when the Commission revoked Certificate No. 406 for applicant's willful failure to comply with: (1) Article XI, Section 7(g), of the Compact and Commission Regulation No. 58, governing insurance; (2) Article IV,

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<sup>1</sup> Washington Metropolitan Area Transit Regulation Compact, Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), *amended by* Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

<sup>2</sup> *In re Nur Corp.*, No. AP-10-178, Order No. 12,730 (Feb. 15, 2011).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Section 4(a), of the Compact, Regulation No. 67 and Order No. 3601, governing annual fees; (3) Article XII, Section 1(a), of the Compact and Regulation No. 60-01, governing annual reports; and (4) Article XI, Section 14, of the Compact and Regulation No. 55, governing tariffs.<sup>6</sup>

Applicant reapplied for operating authority later in 2001, and the application was approved in early 2002 in substantial part on the basis of applicant's representation that it had access to, was familiar with, and would comply with the Compact and the Commission's rules and regulations thereunder.<sup>7</sup> Certificate No. 406 was reissued to applicant on February 22, 2002, and suspended four times over the next five and one-quarter years for willful failure to comply with Regulation No. 58, governing insurance.<sup>8</sup> The Commission lifted the suspension the first three times<sup>9</sup> and revoked Certificate No. 406 the fourth.<sup>10</sup>

Applicant reapplied for WMATC operating authority in 2007. During the course of the application proceeding, the Commission discovered applicant had committed new violations and assessed a civil forfeiture against applicant in the amount of \$45,000 for 163 days of admitted operations in 2007 while suspended/revoked, including 17 days while uninsured.<sup>11</sup> The Commission suspended all but \$7,500 in recognition of applicant's admission of guilt and having voluntarily reapplied for WMATC authority.<sup>12</sup>

The 2007 application was approved on November 19, 2008, on the basis of evidence showing that applicant had subcontracted its government contracts to a WMATC carrier in good standing while applicant's application was pending and on the condition that applicant timely pay the \$7,500 net forfeiture and serve a one year period of probation.<sup>13</sup> Applicant paid the forfeiture, and Certificate

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<sup>6</sup> *In re Skyhawk Logistics, Inc.*, No. MP-01-042, Order No. 6291 (July 19, 2001).

<sup>7</sup> *In re Skyhawk Logistics, Inc.*, No. AP-01-100, Order No. 6503 (Jan. 29, 2002).

<sup>8</sup> *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,406 (Apr. 16, 2007); *In re Skyhawk Logistics, Inc.*, No. MP-05-043, Order No. 8653 (Apr. 19, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-05-032, Order No. 8607 (Mar. 22, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-04-077, Order No. 7887 (Mar. 22, 2004).

<sup>9</sup> *In re Skyhawk Logistics, Inc.*, No. MP-05-043, Order No. 9653 (June 15, 2006); *In re Skyhawk Logistics, Inc.*, No. MP-05-032, Order No. 8619 (Mar. 30, 2005); *In re Skyhawk Logistics, Inc.*, No. MP-04-077, Order No. 8059 (June 3, 2004).

<sup>10</sup> *In re Skyhawk Logistics, Inc.*, No. MP-07-072, Order No. 10,681 (Aug. 8, 2007).

<sup>11</sup> *In re Skyhawk Logistics, Inc.*, No. AP-07-195, Order No. 11,693 at 4 (Nov. 19, 2008).

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.* at 4-6.

No. 406 was reissued on January 27, 2009, but it was suspended not two months later for applicant's failure to maintain proof of adequate insurance on file with the Commission.<sup>14</sup> Applicant later admitted to performing a Defense Intelligence Agency (DIA) contract within WMATC jurisdiction while suspended and without adequate insurance. The Commission subsequently assessed a \$26,000 civil forfeiture and revoked Certificate No. 406 in Order No. 12,101, served July 24, 2009.<sup>15</sup>

## **II. LIKELIHOOD OF FUTURE COMPLIANCE**

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future 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>16</sup>

The record shows that applicant promptly paid the \$26,000 forfeiture on October 7, 2009, and according to a statement filed in this proceeding by applicant's President-CEO, O. Jimmy Ogunniyi, applicant has "filed an affidavit in accordance with Rules Nos. 28 and 58-14 verifying cessation of operations as of July 24, 2009 and to date." Mr. Ogunniyi further asserts that applicant's "operations were subcontracted to Reston Limousine Services under WMATC No. 241." But the only affidavit in this record merely verifies removal of vehicle markings, and applicant's subcontract with Reston Limousine to perform applicant's contract with DIA did not commence until September 21, 2009.

In addition, we do not see any evidence that applicant has "put in place personnel and/or process sufficient to prevent recurring violations of routine regulatory requirements."<sup>17</sup>

## **III. OPPORTUNITY TO SUPPLEMENT RECORD**

In the interest of ensuring a full and fair determination of this application, applicant will be given an opportunity to supplement the record in the following manner.

Applicant may supplement the record with evidence regarding its apparent performance of the DIA contract from July 24, 2009, through

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<sup>14</sup> *In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 11,895 (Mar. 17, 2009).

<sup>15</sup> *In re Skyhawk Logistics, Inc.*, No. MP-09-044, Order No. 12,101 (July 24, 2009).

<sup>16</sup> *In re Exec. Tech. Solutions, LLC*, No. AP-12-033, Order No. 13,250 (May 3, 2012).

<sup>17</sup> *In re HP Transp. Servs., Inc.*, No. AP-07-257, Order No. 11,242 at 2 (Mar. 31, 2008).

September 20, 2009, and otherwise show cause why the Commission should not assess a forfeiture against applicant for performing the DIA contract during that period in violation of Article XI, Section 6(a), of the Compact.

Applicant also may supplement the record with evidence regarding any changes applicant has made in personnel and/or process since the revocation of Certificate No. 406.

THEREFORE, IT IS ORDERED:

1. That applicant shall have 30 days to submit evidence regarding its apparent performance of the DIA contract from July 24, 2009, through September 20, 2009, and otherwise show cause why the Commission should not assess a forfeiture against applicant for knowingly and willfully violating Article XI, Section 6(a), of the Compact.

2. That applicant shall have 30 days to submit evidence of any changes applicant has made in personnel and/or process since the revocation of Certificate No. 406 on July 24, 2009.

3. That applicant may submit within 15 days from the date of this order a written request for oral hearing that specifies the grounds for the request, describes the evidence to be adduced, and explains why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BELLAMY:



William S. Morrow, Jr.  
Executive Director