

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 19,457

IN THE MATTER OF:

Served July 28, 2021

Application of SWYFT UP, LLC, for a)
Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2021-072

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.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

Normally, such evidence would establish an applicant's fitness, but this applicant has a history of regulatory violations.

I. HISTORY OF VIOLATIONS

Applicant held WMATC Certificate of Authority No. 3154 from April 25, 2018, to October 27, 2020, when it was revoked for applicant's failure to comply with the Commission's carrier annual report requirements and failure to pay an associated late fee.¹ The revocation order noted that the 2020 annual report and \$150 annual report late fee would remain due and gave applicant 30 days to surrender Certificate No. 3154 to the Commission and file a notarized affidavit and supporting

¹ *In re Swyft Up, LLC*, No. MP-20-149, Order No. 19,107 (Oct. 27, 2020).

photographs verifying removal of WMATC markings from applicant's vehicles. Applicant did not comply.

Prior to the events in 2020, Certificate No. 3154 was suspended two other times for insurance violations.²

II. LIKELIHOOD OF FUTURE COMPLIANCE

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of applicant's 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 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.³

Applicant's failure to maintain compliance with the Commission's annual report requirements in Regulation No. 60 warranted revocation of Certificate No. 3154, and applicant's failure to respond to the revocation order by surrendering Certificate No. 3154 and confirming removal of vehicle markings persisted for several months. On the other hand, during the course of this proceeding, applicant paid the \$150 annual report late fee, surrendered Certificate No. 3154 to the Commission, and submitted a notarized affidavit stating that pursuant to Regulation No. 61-06, markings were never placed on its vehicle. There is no evidence in the record of post-suspension or post-revocation operations within the Metropolitan District, or other unauthorized operations.

The Commission has found other applicants fit under similar circumstances.⁴ Applicant shall serve a 1-year period of probation as a means of ensuring prospective compliance.⁵

III. CONCLUSION

Based on the evidence in this record, and considering the terms of probation and other conditions prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed

² *In re Swyft Up, LLC*, No. MP-19-032, Order No. 18,108 (Apr. 11, 2019); *In re Swyft Up, LLC*, No. MP-20-056, Order No. 18,780 (Apr. 13, 2020).

³ *In re TSTG, LLC, t/a TNT Transp.*, No. AP-18-084, Order No. 17,758 at 2 (Aug. 9, 2018).

⁴ See, e.g., *In re Galaxy Limo. Servs., LLC*, No. AP-15-099, Order No. 16,044 (Dec. 11, 2015) (timely cessation of affiliate operations, surrender of affiliate certificate, payment of outstanding affiliate fees, confirmation of no vehicle markings); *In re Henka Int'l, Inc., t/a Worldwide Tours & Travel*, No. AP-03-184, Order No. 8035 (May 27, 2004) (no evidence of post-suspension operations and satisfactory accounting for vehicles and vehicle markings).

⁵ See Order No. 16,044 (same); Order No. 8035 (same).

transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 3154 shall be issued to Swyft Up, LLC, 5518 Charles Street, Bethesda, MD 20814-1615.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents and present its revenue vehicle(s) for inspection within the 180-day maximum permitted in Commission Regulation No. 66: (a) evidence of insurance pursuant to Commission Regulation No. 58; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; and (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia.

4. That applicant shall be placed on probation for a period of one year commencing with the reissuance of Certificate No. 3154 in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB, RICHARD, AND LOTT:



Jeffrey M. Lehmann
Executive Director