

Decision No. C24-0738

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24V-0361EC

IN THE MATTER OF THE PETITION OF JOSEPH HOWARD EVANS DOING BUSINESS AS OVER THE TOP SERVICES LLC FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE, 4 CCR 723-6, AND STATE STATUTE.

**COMMISSION DECISION DENYING
PETITION FOR RULE WAIVER**

Issued Date: October 14, 2024
Adopted Date: October 9, 2024

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. This matter comes before the Commission for consideration of a Petition for Waiver/Variance of Regulated Intrastate Carrier Rules and State Statute filed on August 23, 2024, by Joseph Howard Evans doing business as Over The Top Services LLC ("Petitioner").

2. Petitioner requests a waiver of Rule 6301(a) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* ("CCR") 723-6, and § 40-10.1-301(2), C.R.S. This rule and statute provide the definition of a charter bus, which is operated by a limited regulation carrier that provides transportation in a motor vehicle with a seating capacity of 33 or more, including the driver, and provides service for a person or group of affiliated persons traveling for a common purpose.

3. Petitioner requests a waiver for a 1999 International 3000 Series 3800, VIN No. 1HVBBABN5XH636727. Petitioner requests a waiver for the period of August 23, 2024, through August 23, 2025.

4. The Commission noticed this petition to all interested persons, firms, and corporations pursuant to § 40-6-108(2), C.R.S., on September 3, 2024. No petition to intervene or otherwise participate in this Proceeding has been filed. This Proceeding is therefore uncontested. Pursuant to § 40-6-109(5), C.R.S., this matter may be determined without a hearing.

5. In accordance with Rule 1003 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1, the Commission may grant a request to waive Commission rules for good cause shown. In rendering its decision, the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

6. In support of its request for waiver, Petitioner states that they purchased the underlying vehicle in 1999 for the purpose of shuttling customers to and from the Purgatory Ski Resort during the summer and winter months. Petitioner claims to have spent over \$25,000 and 300 hours customizing the vehicle to provide service to various events, such as weddings, winery trips, and other special occasions. The vehicle was originally a 77-passenger bus, but with modification can now only seat 24 passengers comfortably. While they understand that a charter bus must have a minimum of 33 available seats, Petitioner is having trouble classifying the vehicle as anything other than a charter bus.

7. For the underlying vehicles, Petitioner submitted multiple interior and exterior photos, as well as a newspaper article issued by The Durango Herald on May 29, 2024. Based on

a review of the submitted photos, the underlying vehicle appears to be in a good and clean condition. The interior photos also appear to support Petitioner's claim that the vehicle has less than 33 available seats for passengers. The submitted newspaper article describes Petitioner's operation in some detail. The article also states, "Evans is currently renovating the first bus to go from holding 77 people to 24 people, and the other buses will have similar capacities."

8. After reviewing all available information, it has been determined that granting Petitioner's waiver request would run afoul of the statutory definition of a charter bus, pursuant to § 40-10.1-301(2), C.R.S., since the underlying vehicle does not have the requisite passenger capacity. While the Commission may occasionally waive its rules, it may not waive statutory requirements. Based on how the Petition has been framed, it would require the aforementioned statute to be waived. Therefore, the Petition is denied. The Commission notes that the underlying vehicle may be eligible for use under other types of available transportation services regulated by the Commission.

II. ORDER

A. The Commission Orders That:

1. The Petition of Joseph Howard Evans doing business as Over The Top Services LLC for a waiver of Rule 6301(a) of the Commission's Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* 723-6, and § 40-10.1-301(2), C.R.S., filed on August 23, 2024, is denied.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an Application for Rehearing, Reargument, or Reconsideration shall begin on the first day after the Commission mails this Decision.

3. This Decision is effective immediately upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 9, 2024.**

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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MEGAN M. GILMAN

TOM PLANT

Commissioners