

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0116CP

IN THE MATTER OF THE APPLICATION OF 3940 EXPRESS SERVICES LLC, FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION ACCEPTING
AMENDMENT; DISMISSING INTERVENTION;
GRANTING APPLICATION AMENDED UNDER
MODIFIED PROCEDURE; AND CLOSING PROCEEDING**

Issued Date: September 16, 2024

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I. STATEMENT

1. On March 11, 2024, 3940 Express Services LLC (“Express Services”) initiated this proceeding by filing an application seeking a Certificate of Public Convenience and Necessity (“CPCN”) to Operate as a Common Carrier by Motor Vehicle for Hire (“Application”) with the Colorado Public Utilities Commission (“Commission”).

2. On March 18, 2024, the Commission provided public notice of the Application by publishing a summary of the same in its Notice of Applications Filed:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in-call-and-demand shuttle service

between all points in the Counties of Adams, Arapahoe, Boulder, Bloomfield, Denver, Douglas, El Paso, Jefferson, Larimer County, State of Colorado

3. On April 15, 2024, Mountain Star Transportation LLC, doing business as Explorer Tours (“Explorer”) filed its Intervention through non-attorney Roman Lysenko. Mr. Lysenko signed Explorer Tours’ Petition for Intervention and stated therein he is the owner and President of Explorer Tours. This filing attached Commission Authority No. 55952 held by Explorer.

4. On April 17, 2024, Estes Park Charters Corporation (“Estes Park”), filed its Intervention through its counsel Mark Valentine. This filing attached Commission Authority No. 54696 held by Estes Park¹.

5. On April 17, 2024, Denvers Airport Transport, LLC (“Denvers Airport”) filed its Intervention through its counsel Gabriella Stockmayer. This filing noted Commission Authority No. 55995 held by Denvers Airport.

6. On April 24, 2024, the Commission deemed the application complete and referred it by minute entry to the undersigned Administrative Law Judge (“ALJ”) for disposition.

¹ The caption on the Notice of Intervention filed by Estes Park also includes Home James Transportation Services, and Fun Time Trolley, LLC. The body of the intervention does not mention these entities and a copy of their Commission Authority was not attached to the filing. Home James Transportation Services, and Fun Time Trolley, LLC are not parties to this proceeding.

7. On May 15, 2024, by Decision No. R24-0327-I, all interventions were granted, and a prehearing conference was scheduled.

8. On May 28, 2024, a prehearing conference was held in the above captioned proceeding. The Applicant failed to appear at the scheduled time for the prehearing conference. The undersigned ALJ allowed an additional 15 minutes for the Applicant to appear. During the break, the undersigned ALJ discovered that the Applicant was not listed on the certificate of service for Decision No. R24-0327-I.

9. The undersigned ALJ concluded that the Applicant may not have been served with Decision No. R24-0327-I.

10. On May 31, 2024, by Decision No. R24-0367-I, the prehearing conference was rescheduled for July 11, 2024.

11. On July 17, 2024, by Decision No. R24-0511-I, the parties agreed to a procedural schedule and an evidentiary hearing was scheduled for September 17 and 18, 2024,

12. On August 2, 2024, the Applicant made a filing stating that all parties had agreed to a settlement. The filing included three separate agreements that the Applicant made with each of the intervenors.

13. On August 8, 2024, the undersigned ALJ informally contacted the parties in this matter by email. The email contained a revised authority for the Applicant that incorporated the three separate agreements and requested verification that this proposed authority was acceptable to all parties.

14. On August 9, 2024, Explorer filed its Notice of Withdrawal. In its Notice of Withdrawal, Explorer stated if the restrictive amendments submitted by the Applicant on August 2, 2024 are approved, it shall withdraw its intervention.

15. On August 9, 2024, Denver's Airport filed its Notice of Conditional Withdrawal. In its Notice of Conditional Withdrawal, Denver's Airport stated if the restrictive amendments submitted by the Applicant on August 2, 2024 are approved, it shall withdraw its intervention.

16. On August 22, 2024, Estes Park filed its Notice of Conditional Withdrawal. In its Notice of Conditional Withdrawal, Estes Park stated if a restrictive amendment (which was not contained in the August 2, 2024, filing) is approved, it shall withdraw its intervention. This proposed amendment did not conform to the authority sent by email on August 8, 2024 by the ALJ.

17. On August 30, 2024, the Applicant made a filing stating an additional agreement was made with Estes Park and contained a new amended authority.

18. On September 4, 2024, the undersigned ALJ emailed the parties to confirm that the additional filing by the Applicant did not affect the conditional withdrawal of Explorer or Denver's Airport. Both parties confirmed that they did not object to the new proposed authority.

19. On September 6, 2024, Estes Park filed its Second Notice of Conditional Withdrawal.

20. Under the amendment, the restrictively amended authority will read:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in shuttle service:

I) Between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Douglas, El Paso, and Jefferson.

Restrictions:

A) No transportation service may be provided to or from:

- 1) Red Rocks Park and Amphitheater;
- 2) Rocky Mountain National Park;
- 3) Pikes Peak;
- 4) Garden of the Gods Park; and
- 5) Lookout Mountain Park.

- II) Between all points in Larimer County that are located east of U.S. Highway 287; and between said points on the one hand, and all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, the other hand.

Restrictions:

- A) No transportation service may be provided to or from points in Larimer County that are located west of U.S. Highway 287;
- B) No transportation service may be provided between any point in Larimer County and any airport located in Denver County or any airport in Larimer County;
- C) No transportation service may originate in the City and County of Denver, except from Denver International Airport and the Residence Inn Denver Cherry Creek, 670 South Colorado Boulevard;
- D) No transportation service may be provided to or from:
- 1) Red Rocks Park and Amphitheater;
 - 2) Rocky Mountain National Park;
 - 3) Pikes Peak;
 - 4) Garden of the Gods Park; and
 - 5) Lookout Mountain Park.
- III) Between points in Denver County; and between said points on the one hand, and all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Douglas, El Paso, Jefferson, and Larimer on the other hand.

Restrictions:

- A) No transportation service may be provided to or from points in Larimer County that are located west of U.S. Highway 287;
- B) No transportation service may be provided between any point in Larimer County and any airport located in Denver County or any airport in Larimer County;
- C) No transportation service may originate in the City and County of Denver, except from Denver International Airport and the Residence Inn Denver Cherry Creek, 670 South Colorado Boulevard.
- D) No transportation service may be provided to or from:
- 1) Red Rocks Park and Amphitheater;
 - 2) Rocky Mountain National Park;
 - 3) Pikes Peak;
 - 4) Garden of the Gods Park; and

5) Lookout Mountain Park.

21. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be contained wholly within the permit. Both must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an authority must be found within the four corners of the permit, which is the touchstone by which one determines whether the operation of a contract carrier is within the scope of its Commission-granted authority. The proposed amendment to the Application meets these standards.

22. The ALJ finds and concludes that the proposed amendment is restrictive in nature, is clear and understandable, and is administratively enforceable.

23. The restriction to the authority sought by Applicant (*i.e.*, the amendment to the Application) will be accepted.

24. Accepting the amendment to the Application has two impacts. First, the authority sought will be amended to conform to the restrictive amendment. Second, the interventions of the Intervenors will be withdrawn.

25. Withdrawal of the interventions and dismissal of the Intervenors leaves the Application, as amended, uncontested. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403 of the Rules of Practice and Procedure, 4 Code of Colorado Regulations (CCR) 723-1, the uncontested Application may be processed under the modified procedure, without a formal hearing.

26. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

27. Applicant is a limited liability company in good standing.

28. Applicant requests authority to begin operations as a common carrier.

29. The verified Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by, and to comply with, those rules. The verified Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. Finally, review of the verified Application indicates a need for the proposed service. Therefore, because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the authority should be granted.

30. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER**A. It Is Ordered That:**

1. The Motion to Amend its Application, filed by, 3940 Express Services LLC (“Express Services”) is granted.

2. The verified Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle is amended consistent with the discussion above.

3. The evidentiary hearing scheduled for September 17 & 18, 2024 is vacated.

4. The interventions filed by Mountain Star Transportation LLC, doing business as Explorer Tours, Estes Park Charters Corporation, and Denvers Airport Transport, LLC are withdrawn, and they are dismissed from the proceeding.

5. Express Services, is granted a Certificate of Public Convenience and Necessity to Operate as a Common Carrier of Passengers by Motor Vehicle as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in shuttle service:

I) Between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Douglas, El Paso, and Jefferson.

Restrictions:

A) No transportation service may be provided to or from:

- 1) Red Rocks Park and Amphitheater;
- 2) Rocky Mountain National Park;
- 3) Pikes Peak;
- 4) Garden of the Gods Park; and
- 5) Lookout Mountain Park.

II) Between all points in Larimer County that are located east of U. S. Highway 287; and between said points on the one hand, and all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, the other hand.

Restrictions:

A) No transportation service may be provided to or from points in Larimer County that are located west of U.S. Highway 287;

B) No transportation service may be provided between any point in Larimer County and any airport located in Denver County or any airport in Larimer County;

C) No transportation service may originate in the City and County of Denver, except from Denver International Airport and the Residence Inn Denver Cherry Creek, 670 South Colorado Boulevard;

D) No transportation service may be provided to or from:

- 1) Red Rocks Park and Amphitheater;
- 2) Rocky Mountain National Park;
- 3) Pikes Peak;
- 4) Garden of the Gods Park; and

5) Lookout Mountain Park.

III) Between points in Denver County; and between said points on the one hand, and all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Douglas, El Paso, Jefferson, and Larimer on the other hand.

Restrictions:

- A) No transportation service may be provided to or from points in Larimer County that are located west of U.S. Highway 287;
- B) No transportation service may be provided between any point in Larimer County and any airport located in Denver County or any airport in Larimer County;
- C) No transportation service may originate in the City and County of Denver, except from Denver International Airport and the Residence Inn Denver Cherry Creek, 670 South Colorado Boulevard.
- D) No transportation service may be provided to or from:
 - 1) Red Rocks Park and Amphitheater;
 - 2) Rocky Mountain National Park;
 - 3) Pikes Peak;
 - 4) Garden of the Gods Park; and
 - 5) Lookout Mountain Park.

6. Express Services shall operate in accordance with all applicable Colorado laws and Commission rules.

7. Express Services shall not commence operation under the extended authority until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond ("Form G") coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission, Express Services shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period

must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs); and

(d) paying the applicable issuance fee.

8. If Express Services, does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the Permit shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

9. The Commission will notify Express Services in writing when the Commission's records demonstrate compliance with paragraph 7.

10. Proceeding No. 24A-0116CP is closed.

11. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

12. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

13. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

14. If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the

administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

15. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director