

(Decision No. C95-411)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE APPLICATION OF COLORADO)	
MOUNTAIN EXPRESS, INC. FOR)	
EMERGENCY TEMPORARY AUTHORITY TO)	DOCKET NO. 95A-176CP-
EXTEND OPERATIONS UNDER)	
CERTIFICATE OF PUBLIC)	EXTENSION-ETA
CONVENIENCE AND NECESSITY PUC)	
NO. 7321.)	

**COMMISSION ORDER DENYING
EMERGENCY TEMPORARY AUTHORITY**

Mailed date: May 5, 1995
Adopted date: May 4, 1995

I. BY THE COMMISSION:

A. Statement:

1. On April 20, 1995, Colorado Mountain Express, Inc. filed an application (Docket No. 95A-176CP-Extension-ETA) for emergency temporary authority to extend operations under Certificate of Public Convenience and Necessity PUC No. 7321 for the transportation of passengers and their baggage, (1) in scheduled service, (a) between Grand Junction, Colorado, including Grand Junction Municipal Airport (Walker Field), on the one hand, and points within a ten-mile radius of the intersection of Mill Street and Main Street in Aspen,

Colorado, on the other hand, via Interstate 70 and Colorado Highway 82; (b) between Denver, Colorado, on the one hand, and points within a ten-mile radius of the intersection of Mill Street and Main Street, in Aspen, Colorado, on the other hand, via Interstate 70 and Colorado Highway 82; and (2) in call-and-demand limousine service, between points within the Counties of Denver and Mesa, State of Colorado, on the one hand, and points within a ten-mile radius of the intersection of Mill Street and Main Street, in Aspen, Colorado, on the other hand.

2. Interventions as of right opposing a grant of the application were filed by Aspen Limousine Service, Inc., doing business as Vans to Vail, Inc. ("ALS"), and Hy-Mountain Transportation, Inc. Also, petitions for leave to intervene were filed on behalf of Jerald M. Barnett and the Pitkin County Bank and Trust Company.

3. By § 40-6-120, C.R.S., the application for emergency temporary authority is under consideration for a Commission order.

4. Pursuant to § 40-6-120(1), C.R.S., the Commission is authorized to grant temporary authority when there appears to be "an immediate and urgent need to any point or within a territory having no carrier service capable of meeting such need." Section 40-6-120(4) further

states: "If the Commission is of the opinion that an emergency exists, it may issue emergency temporary authority or approval at once by making specific reference in its order to the circumstances constituting the emergency, in which case no notice need be given, but any such emergency authority or approval shall expire no later than thirty days after it was issued."

5.The burden of proof created by this statute is indeed heavy. The applicant must meet a two-fold test in order to satisfy the criteria demanded by the law. First, that there is an emergency need for the transportation services, and second, that there is no existing carrier capable of meeting the need. If the applicant fails to meet either test, the application cannot be granted.

B.Finding of Fact:

- 1.The support filed on behalf of this application consists of six letters. Each of these letters claims that an emergency need for additional transportation service has been created by the cessation of the scheduled service by ALS.
- 2.ALS refutes such claims as being erroneous and states that "Although there has been a disruption in service, ALS has, in fact, resurrected its scheduled service between Aspen/Snowmass and DIA, serving all intermediate

points on CSH 82 and I-70; as of April 23, 1995 at 6:15 A.M."

3. Though the scheduled service has been reduced to one arrival time and one departure time per day, the transportation staff of the Commission has affirmed that ALS is, in fact, once again providing scheduled transportation services between Aspen and Denver International Airport.

4. This schedule represents an extreme reduction in the number of arrival times and departure times from what is normally provided during the ski season, however, such a schedule does fall within the historical norm for demand at this time of year.

C. Conclusion:

1. With the resurrection of scheduled service by ALS and the historical lull in the demand for ground transportation services during this off-season, the Commission cannot find that an emergency need for additional ground transportation has been created; and, that there is no other carrier service capable of providing the service.

2. This application for emergency temporary authority is not in the public interest and should be denied.

3. The denial of this application makes no presumptions as to the final disposition of the temporary and permanent

applications. The temporary and permanent applications will be determined on the evidence presented using the proper statutory criteria.

II. ORDER

A. The Commission Orders that:

1. This application is denied.
2. The petitions for leave to intervene filed on behalf of Mr. Jerald M. Barnett and the Pitkin County Bank and Trust Company are denied as moot.
3. 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 or serves this Decision.

B. This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING May 4, 1995.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ATTEST: A TRUE COPY

ROBERT J. HIX

Bruce N. Smith
Director

CHRISTINE E.M. ALVAREZ

VINCENT MAJKOWSKI

Commissioners

ORDER-ACX

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 95A-176CP-EXTENSION-ETA
DECISION NO. C95-411
(Page 1 of 2 Pages)

I, Bruce N. Smith, Director of The Public Utilities Commission of the State of Colorado, certify that I served a true and correct copy of the above Commission Decision -- entered in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination on the date noted on this certificate at Denver, Colorado.

APPLICANT:

Colorado Mountain Express, Inc.
P. O. Box 580
Vail, CO 81658

APPLICANT'S ATTORNEY:

Thomas J. Burke, Jr., Esq.
JONES & KELLER, P.C.
Suite No. 1600
1625 Broadway
Denver, CO 80202

INTERVENOR:

Aspen Limousine Service, Inc.
dba Vans to Vail, Inc.
P. O. Box 1368
Glenwood Springs, CO 81602

INTERVENOR'S (ASPEN) ATTORNEY:

James A. Beckwith, Esq.
Suite No. 7
7910 Ralston Road
Arvada, CO 80002

INTERVENOR:

Hy-Mountain Transportation, Inc.
Attn: David Hyman, President
111 C Airport Business Center
Aspen, CO 81611

PETITIONER:

Pitkin County Bank and Trust Company
c/o Lee E. Lucero, Esq.
L. E. Lucero & Associates, P.C.
Suite No. 203
651 Chambers Road
Aurora, CO 80011-7127

PETITIONER'S (PITKIN) ATTORNEY:

Lee E. Lucero, Esq.
L. E. Lucero & Associates, P.C.
Suite No. 203
651 Chambers Road
Aurora, CO 80011-7127

WITNESS MY HAND AND THE SEAL OF
THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

BRUCE N. SMITH
DIRECTOR

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 95A-176CP-EXTENSION-ETA
DECISION NO. C95-411
(Page 2 of 2 Pages)

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PETITIONER:

Mr. Jerald M. Barnett
c/o Dale E. Isley, Esq.
WILLIAMS & ISLEY, P.C.
Suite No. 1225
1775 Sherman Street
Denver, CO 80203

PETITIONER'S (ATTORNEY:

Dale E. Isley, Esq.
WILLIAMS & ISLEY, P.C.
Suite No. 1225
1775 Sherman Street
Denver, CO 80203

ROUTE:

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OF THE STATE OF COLORADO

BRUCE N. SMITH
DIRECTOR