

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 25A-0293CP

IN THE MATTER OF THE APPLICATION OF BABY FOX TOURS LLC FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER
BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION ADDRESSING INTERVENTIONS
AND LEGAL REPRESENTATION, SCHEDULING
EVIDENTIARY HEARING, ESTABLISHING
PROCEDURAL SCHEDULE, AND SETTING HEARING**

Issued Date: September 8, 2025

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I. RELEVANT PROCEDURAL HISTORY

1. On July 2, 2025, Applicant Baby Fox Tours, LLC (“Baby Fox” or “Applicant”) filed its initial application described in caption above. On July 3, 2025, Baby Fox filed amendments to questions 9 and 10 on the initial application (the initial application with amendments is referred to as the “Application”).

2. On July 7, 2025, the Colorado Public Utilities Commission (“Commission”) issued public notice of the authority Baby Fox sought in the Application (“Notice”) as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand

charter service, call-and-demand shuttle service, and call-and-demand sightseeing service:

(I) between Denver International Airport, on the one hand, and Black Canyon of the Gunnison National Park, Great Sand Dunes National Park, Mesa Verde National Park, and/or Rocky Mountain National Park, on the other hand;

(II) between Denver International Airport, on the one hand, and Aspen, Arapahoe Basin, Beaver Creek, Breckenridge, Buttermilk, Copper Mountain, Crested Butte, Eldora, Keystone, Loveland, Monarch, Purgatory, Snowmass, Steamboat Springs, Telluride, Vail, Winter Park, and/or Wolf Creek, Colorado, on the other hand;

(III) between Denver International Airport, on the one hand, and Mesa County and/or La Plata County, Colorado, on the other hand;

(IV) between all points in the Counties of Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, El Paso, Jefferson, Larimer, Park, Pueblo, Teller, and Weld.¹

3. In the Notice, the Commission also stated that any person desiring to intervene as a party had to do so within 30 days from the Notice issue date.²

¹ See Notice at p. 4.

² *Id.* at p. 1.

4. On July 23, 2025, Mountain Star Transportation LLC doing business as Explorer Tours (“Explorer”) and Epic Charter LLC (“Epic”) (together “Joint Intervenors”) filed a Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance, and Request for a Hearing (“Joint Intervenors Intervention”).

5. On July 28, 2025, Applicant filed a Response to the Joint Intervenors Intervention.

6. On August 10, 2025, Aspire Tours LLC (“Aspire Tours”) filed a Petition for Intervention and Entry of Appearance (“Aspire Intervention”).

7. On August 13, 2025, the Commission deemed the Application complete and referred the proceeding by minute entry to an Administrative Law Judge (“ALJ”) for a determination.

8. On August 18, 2025, Applicant filed a Response to the Aspire Intervention.

II. RELEVANT LAW

A. **Intervenors**

9. In proceedings such as this, there are two classes of intervenors: those who claim to possess a legally protected right that may be impacted by the proceeding (intervention of right), and those who claim to possess pecuniary or tangible interests that may be substantially impacted by the proceeding (permissive intervention).³ To intervene of right, a carrier’s intervention must: state the basis for the claimed legally protected right that may be impacted by the proceeding; include a copy of the carrier’s authority; show that the carrier’s authority is in good standing; identify the specific parts of the authority that are in conflict with the application; and explain the consequences to the carrier and the public interest if the application is granted.⁴ An intervenor’s

³ Rule 1401(b) and (c), of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (“CCR”) 723-1 See § 40-6-109(a), C.R.S.; and *RAM Broadcasting of Colo. Inc., v. Public Utilities Comm’n*, 702 P.2d 746, 749 (Colo. 1985).

⁴ Rule 1401(b) and (f)(I), 4 CCR 723-1.

letter of authority provides the basis for the legally protected right that an intervenor claims may be impacted by the proceeding. Thus, when determining whether an intervention of right is appropriate, it is important to determine whether the intervenor's letter of authority shows that it has the right to operate in a manner that may be impacted by an application's requested authority.

10. Persons or entities seeking permissive intervention in a proceeding must: state the specific grounds relied upon for intervention; identify the claim or defense within the scope of the Commission's jurisdiction on which the requested intervention is based, including the specific interest that justifies intervention; explain why the filer is positioned to represent that interest in a manner that will advance the just resolution of the proceeding; and must demonstrate that the subject proceeding may substantially affect the pecuniary or tangible interest of the movant and that the movant's interests would not otherwise be adequately represented.⁵

B. Legal Representation

11. Generally, parties appearing before the Commission must be represented by an attorney authorized to practice law in Colorado.⁶ However, an individual may appear without an attorney on behalf of a company after establishing its eligibility to do so.⁷ To be eligible to be represented by a non-attorney, all the below conditions must be met:

- The company must not have more than three owners;
- The amount in controversy must not exceed \$15,000; and
- The non-attorney individual seeking to represent the company must provide the Commission with satisfactory evidence demonstrating that person's authority to represent the company in the proceeding.⁸

⁵ Rule 1401(c), 4 CCR 723-1.

⁶ Rule 1201(a), 4 CCR 723-1.

⁷ Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S.

⁸ Rule 1201(b)(II), § 13-1-127(2) and (2.3)(c), C.R.S.

12. It is presumed that a corporation's officers, a partnership's partners, a limited partnership's members, and persons authorized to manage a limited liability company have authority to represent the company in a proceeding.⁹ A written resolution from a company specifically authorizing the individual to represent the company's interests in the proceeding may also be relied upon as evidence of the individual's authority to represent the company.¹⁰

III. FINDINGS, ANALYSIS, AND CONCLUSIONS

A. Joint Intervenor's Intervention

13. Explorer and Epic state they may intervene of right because the authority sought here conflicts and overlaps with their authorities.¹¹ In support, Explorer states that its CPCN No. 55952 allows it to provide call-and-demand sightseeing service originating in Denver and Boulder Counties, to all points in the Counties of Denver, Boulder, Clear Creek, Douglas, El Paso, Grand, Jefferson, and Larimer, State of Colorado, returning to the origination point.¹² Explorer provided a copy of its Letter of Authority.

14. Epic possesses two relevant CPCNs and states CPCN No. 56012 allows it to provide scheduled service and call-and-demand shuttle service transportation of passengers, between all points in Denver County and the Origin Hotel Red Rocks at 18485 West Colfax Avenue in Golden, Colorado 80401, on the one hand, and the Red Rocks Park and Amphitheater, State of Colorado, on the other hand. Epic states this authority is restricted against the transportation of passengers to and/or from Denver International Airport.¹³ In addition, Epic holds CPCN No. 56009 to provide transportation of passengers, in scheduled service and call-and-

⁹ § 13-1-127(2) and (2.3)(c), C.R.S.

¹⁰ § 13-1-127(3), C.R.S.2

¹¹ Explorer/Epic Intervention at p. 2.

¹² *Id.*

¹³ *Id.* at pp. 2-3.

demand shuttle service: (A) Between all points in Denver County, on the one hand, and all points in Eagle County, on the other hand; (B) Between all points in Denver County, on the one hand, and all points in Pitkin County, on the other hand; and (C) Between all points in the Counties of Eagle and Pitkin, State of Colorado. This authority is restricted against the transportation of passengers in vehicles with a manufacturer's rated passenger capacity of less than nine passengers, including the driver.¹⁴ Epic provided copies of both Letters of Authority.

15. In response, Baby Fox makes several arguments against the Joint Intervenors Intervention, including that the Joint Intervenors have not established that they can earn revenue through providing Mandarin-language tour services.¹⁵ Baby Fox also argues that the public interest in ensuring quality tour services outweighs the Joint Intervenors' private rights and interests, and that "[o]nly through healthy competition can current authority holders be incentivized to provide competitive, quality services."¹⁶

16. Applicant appears to misunderstand a critical legal concept relating to CPCNs in Colorado. Although the Commission determines whether to grant a CPCN based (in part) on whether the present or future public convenience and necessity requires or will require the proposed service, the Commission applies the regulated monopoly doctrine when deciding that question.¹⁷ The regulated monopoly doctrine is based on the principle that fewer carriers who can make a reasonable return will give the public safe, efficient, and more economical service, and that increasing the number of providers ultimately results in a deterioration of service and higher rates for the public.¹⁸ Ultimately, the regulated monopoly doctrine does protect incumbent common

¹⁴ *Id.* at p. 3.

¹⁵ Response to Joint Intervenors Intervention at p. 2.

¹⁶ *Id.* at pp. 2-3.

¹⁷ *Ephraim Freightways Inc., v. Pub. Utils. Comm'n*, 380 P.2d 228, 230 (Colo. 1963). See § 40-10.1-201(1), C.R.S.

¹⁸ See e.g., *Denver & R.G. W. R. Co., v. Pub. Utils. Comm'n*, 351 P.2d 278, 280 (Colo. 1960).

carriers from competition.¹⁹ The Colorado Supreme Court explained that the regulated monopoly doctrine grants incumbent common carriers a “competitive advantage” because the public convenience and necessity warrants it.²⁰ As a result, where an incumbent common carriers’ authority overlaps with an application’s proposed authority, and the existing carrier has otherwise met Rule 1401(f)’s requirements, the Commission has repeatedly acknowledged that such incumbent carriers may intervene as of right.²¹ The incumbent’s legally protected interest arises from its property interest in its CPCN (*i.e.*, its authority). Indeed, the Commission has essentially codified this principle through the intervention of right standards in Rule 1401(f)(I), 4 CCR 723-1. For all these reasons, the ALJ rejects Baby Fox’s arguments relating to these issues.

17. The Joint Intervenors: timely filed their intervention and attachments thereto; established that Joint Intervenors’ CPCNs overlap or conflict with Applicant’s requested authority; and otherwise met Rule 1401(f)(I)’s requirements.

B. Aspire Intervention

18. Aspire seeks to intervene in this Proceeding of right, or in the alternative, by permission.²² However, Aspire filed its intervention after the deadline set forth in the Notice.²³

¹⁹ See *e.g.*, *Ephraim Freightways Inc.*, 380 P.2d at 230. This protection is not unlimited. Under the regulated monopoly doctrine, a common carrier serving a particular area is only entitled to protection against competition if its service is adequate to satisfy the public’s needs. *Id.* Conversely, the existence of adequate and satisfactory service by motor carriers serving the area negates a public need and demand for added service. *Id.* at 231.

²⁰ See *Yellow Cab Co-op. Ass’n v. Pub. Utils. Comm’n*, 869 P.2d 545, 550 (Colo. 1994).

²¹ See *e.g.*, Decision No. R24-0788-I (issued October 31, 2024) in Proceeding No. 24A-0344CP-EXT; Decision No. R23-0260-I (issued April 20, 2023) in Proceeding No. 23A-0078CP; Decision No. R19-0422-I (issued May 20, 2019) in Proceeding No. 19A-0144CP; Decision No. R15-1046-I (issued September 14, 2015) in Proceeding No. 15A-0648CP.

²² Aspire Intervention at p. 2.

²³ See Notice at p. 1 (any person seeking to intervene must file the appropriate pleading within 30 days of the Notice, or by August 6, 2025).

Moreover, Aspire did not articulate the basis for its late intervention and did not establish good cause for the late filing.²⁴ Consequently, the ALJ will deny Aspire's request to intervene.

C. Parties' Legal Representation

19. A business' sole proprietor may represent their business in proceedings before the Commission.²⁵

20. In its Application, Baby Fox noted its sole proprietor is Xiaomei Fox and that it wished for Xiaomei Fox to represent the business as its sole proprietor.²⁶ Baby Fox also noted on the Application that the amount in controversy in this Proceeding did not exceed \$15,000.²⁷

21. Based on the foregoing and the record as a whole, the ALJ finds that Baby Fox meets the requirements of Rule 1201(b)(II), 4 CCR 723-1, and § 13-1-127, C.R.S. The ALJ will permit non-attorney Xiaomei Fox to represent Baby Fox in this proceeding as a sole proprietor.

22. Both Explorer and Epic wish to be represented in this Proceeding by each entity's owner, Roman Lysenko.²⁸ Both Explorer and Epic state that they are closely-held entities with no more than three owners and that the amount in controversy does not exceed \$15,000.²⁹

23. Both Explorer and Epic have provided information indicating that they meet the three criteria required for its president and owner, a non-attorney, to represent them in this Proceeding.

24. Based on the foregoing and the record as a whole, the ALJ finds that Explorer and Epic, as Joint Intervenors, meet the requirements of Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-

²⁴ See also Rule 1401(a), 4 CCR 723-1, which notes that the Commission may allow late intervention, subject to reasonable procedural requirements, for "good cause shown."

²⁵ Rule 1201(b)(II) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR"), 723-1 and § 13-1-127, C.R.S.

²⁶ See Application at p. 7.

²⁷ *Id.*

²⁸ See Explorer/Epic Intervention at pp. 4-5.

²⁹ *Id.*

127, C.R.S., to be represented by a non-attorney, Roman Lysenko, in this proceeding and will permit him to do so.

IV. REMOTE HEARING

25. Based on the flexibility it affords the parties and their witnesses, the evidentiary hearing in this matter will be held in a remote format. A remote hearing is where the parties and ALJ appear remotely. The hearing will be scheduled for October 16, 2025, at 10:00 a.m. as ordered below. A webcast of the proceedings will be available to the public through the Commission's website.

26. This Decision, Attachment A, and Attachment B provide important information and instructions to facilitate holding the remote hearing, which all parties must follow.

27. The procedures developed for the remote evidentiary hearing are intended to replicate, as practicable, evidence presentation as it occurs when parties and witnesses are present in the hearing room. For example, participating by video conference allows parties and witnesses to view exhibits on the video conference screen while the exhibits are being offered into evidence and witnesses testify about them.

28. The remote evidentiary hearing will be conducted via video conference using the Zoom platform. Attachment A to this Decision provides information about the Zoom platform and how to use Zoom to participate in the remote hearing. To minimize the potential that the remote hearing may be disrupted by non-participants, the link and meeting ID, or access code to attend the hearing will be provided to the parties by email approximately one week before the hearing and the parties and witnesses will be prohibited from distributing that information to anyone not participating in the hearing.

29. At the hearing, the parties may call witnesses, present evidence, and make arguments in support of their position. Evidence includes documentary exhibits, testimony, and other tangible items that a party wishes the ALJ to consider in reaching a decision as to the allegations in this proceeding. Given that the hearing will require remote participation by video conference, exhibits must be presented electronically.

30. The Public Utilities Commission Administrative Hearings Section uses box.com to receive and manage exhibits that are first presented in this type of hybrid evidentiary hearing.³⁰ As such, it is essential that the parties ensure they can access and use box.com prior to the evidentiary hearing. To this end, the parties will be provided box.com links and instructions to: (a) upload exhibits for use during the hearing; and (b) download exhibits once they are presented during the hearing.

31. Each party must: (a) pre-mark all hearing exhibits with a hearing exhibit number within their assigned number block before uploading the exhibits to the party's designated box.com folder; (b) sequentially page-number each page of exhibits longer than two pages, with the first page number as page 1, regardless of content, before uploading the exhibits to the party's designated box.com folder; and (c) upload all pre-marked exhibits into each party's respective designated box.com folder prior to the presenting them during the hearing.

32. Attachment B outlines procedures and requirements for marking and formatting exhibits aimed at facilitating efficient and smooth electronic evidence presentations at the remote hearing. It is very important that the parties carefully review and follow all requirements in this Decision and Attachments A and B.

³⁰ Box.com is a web-based document sharing service. When exhibits are first presented during the hearing, the Commission will receive them electronically from each party's box.com folder for display.

33. To efficiently organize the numbering and preparation of exhibits for the hearing, the parties shall use a unified numbering system for all hearing exhibits. Blocks of hearing exhibit numbers are assigned as follows:

- Applicant is assigned hearing exhibit numbers 100 to 199; and
- Joint Intervenors are assigned hearing exhibit numbers 200 to 399.

34. Applicant must file a list of the witnesses he intends to call during the hearing and to file a copy of the exhibits he intends to use as evidence during the hearing (marked with hearing numbers in the block described above) by September 25, 2025.

35. Joint Intervenors must file their lists of witnesses they intend to call during the hearing and to file copies of the exhibits they intend to use during the hearing (marked with hearing numbers in the block described above) by October 9, 2025.

V. ADDITIONAL ADVISEMENTS

36. The parties are advised and are on notice that this proceeding is governed by the Rules of Practice and Procedure found at 4 CCR 723-1. The ALJ expects the parties to be familiar with and to comply with these rules. A party's failure to comply with these rules may result in decisions adverse to their interests. The rules are available on the Commission's website (<https://puc.colorado.gov/pucrules>) and in hard copy from the Commission.

37. A party's failure to appear at the scheduled evidentiary hearing may result in decisions adverse to their interests.

38. The ALJ will hold an informal practice video conference session if requested by any party to give the parties an additional opportunity to practice using Zoom and box.com before the hearing.

39. The parties may contact the Commission Legal Assistants by email at casey.federico@state.co.us or stephanie.kunkel@state.co.us to schedule an informal practice videoconference session.

40. The parties will receive information and a link to participate in the informal practice session by email.

41. Additional procedural requirements may be addressed in future interim decisions.

42. The parties are reminded that filings with the Commission must also be served upon all other parties in accordance with Rule 1205 of the Rules of Practice and Procedure, 4 CCR 723-1.

VI. ORDER

A. It Is Ordered That:

1. The Intervention of Right of Mountain Star Transportation LLC doing business as Explorer Tours (“Explorer”) and Epic Charter LLC (“Epic”) (together “Joint Intervenors”) is acknowledged.

2. The request for permissive intervention by Aspire Tours LLC is denied.

3. The parties in this Proceeding are Baby Fox Tours, LLC (“Baby Fox”) and Joint Intervenors.

4. A remote hearing is scheduled as follows:

DATE: October 16, 2025

TIME: 10:00 a.m.

WEBCAST: Commission Hearing Room

METHOD: Join by video conference using Zoom at the link to be provided in an email from the Administrative Law Judge OR Commission Staff³¹

5. Nobody should attend the hearing in person at the Commission's offices.
6. Baby Fox must file a list of the witnesses it intends to call during the hearing and file a copy of the exhibits it intends to use as evidence during the hearing (marked with hearing numbers in the block described above) by **September 25, 2025**.
7. Joint Intervenors must file a list of the witnesses they intend to call during the hearing and file a copy of the exhibits they intend to use as evidence during the hearing (marked with hearing numbers in the block described above) by **October 9, 2025**.
8. Baby Fox is assigned hearing exhibit numbers 100-199 and Joint Intervenors are assigned hearing exhibit numbers 200-399.
9. Participants in the hearing may not distribute the hearing link, access, or ID code to anyone not participating in the hearing. Participants may not appear in person at the Commission for the above-scheduled hearing. Instead, they must participate in the hearing from remote locations, consistent with the requirements of this Decision.
10. All participants must comply with the requirements in Attachments A and B to this Decision, which are incorporated into this Decision.
11. The parties will be held to the advisements in this Decision.

³¹ Additional information about the Zoom platform and how to use the platform are available at: <https://zoom.us/>. All are strongly encouraged to participate in a test meeting prior to the scheduled hearing. See <https://zoom.us/test>.

12. This Decision is effective immediately.

(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

KELLY A. ROSENBERG

Administrative Law Judge