

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 03A-345CP-TRANSFER-TA

THE APPLICATION OF JON S. NICHOLLS, UNITED STATES BANKRUPTCY TRUSTEE, FOR AND ON BEHALF OF THE MOUNTAIN MEN, INC., DOING BUSINESS AS BEST MOUNTAIN TOURS, FOR TEMPORARY APPROVAL TO ALLOW COLORADO TOUR LINES, LLC, DOING BUSINESS AS GRAY LINE OF DENVER, TO ASSUME OPERATIONAL CONTROL OF A PORTION OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 7010&I.

**COMMISSION ORDER GRANTING
TEMPORARY APPROVAL**

Mailed Date: September 4, 2003

Adopted Date: August 20, 2003

I. BY THE COMMISSION

A. Statement

1. On August 7, 2003, Jon S. Nicholls, United States Bankruptcy Trustee for and on behalf of The Mountain Men, Inc., doing business as Best Mountain Tours (Best Mountain Tours), filed an application for temporary approval to allow Colorado Tour Lines, LLC (CTL), doing business as Gray Line of Denver (Gray Line of Denver), to assume operational control of a portion of Certificate of Public Convenience and Necessity (CPCN) PUC No. 7010&I pending Commission consideration of the related application to permanently transfer the certificate. The portion of CPCN PUC No. 7010&I to be transferred is:

I. Transportation of

passengers and their baggage, in call-and-demand limousine service,

from all points located within the Counties of Denver, Adams, Arapahoe and Jefferson, State of Colorado, to hunting, fishing, camping, skiing, and hiking areas throughout the State of Colorado with the right to return same passenger(s) to the point of origin.

- II. Transportation, on call-and-demand, of passengers and their baggage, from Denver international Airport located in Denver, Colorado, destined to areas on jeep or unnumbered highways located in Grand and Routt Counties Colorado, with the right to return the same passenger(s) to the point of origin.
- III. Transportation, on call-and-demand, in sightseeing service, of passengers, between the area comprised of the Counties of Denver, Adams, Arapahoe and Jefferson, State of Colorado, and between said area on the one hand, and points in the State of Colorado, on the other hand.
- IV. Transportation, in charter service, of passengers and their baggage, between all points in the State of Colorado.

RESTRICTIONS:

- 1. Item No. I of this certificate is restricted against service between Denver International Airport located in Denver, Colorado, and points in Grand and Routt Counties, Colorado.
- 2. Item No. II of this certificate is restricted as follows:
 - (A) to the use of four-wheel drive vehicles; and
 - (B) to rendering service in connection with hunting, fishing, camping, skiing, or hiking trips.
- 3. Item No. III of this certificate is restricted as follows:
 - (A) to transportation that originates and terminates at the same point; and
 - (B) against transportation that originates in either Grand or Routt Counties, Colorado.
- 4. Item No. IV of this certificate is restricted as follows:
 - (A) against transportation of train crews originating or terminating at actual train locations on rail sidings;
 - (B) against point-to-point service in the Counties of Boulder, Denver, Adams, Arapahoe, and Jefferson, State of Colorado;

- (C) against point-to-point service in the Counties of San Juan, Ouray, La Plata, and those portions of San Miguel lying within a thirty (30) mile radius of Ouray, Colorado;
 - (D) against service between points located on Colorado Highway No. 82 in Pitkin County and points located on U.S. Highway No. 6 and I-70 in Eagle, Colorado, State of Colorado, on the one hand, and points in the Counties of Denver, Adams, Arapahoe, Boulder, and Jefferson, State of Colorado, on the other hand; and
 - (E) against limousine service between points in the City and County of Denver, State of Colorado, on the one hand, and all points lying within Grand County, State of Colorado, and located within a twenty (20) mile radius of the intersection of U.S. Highway Nos. 34 and 30 in Granby, Colorado, on the other hand.
2. The Commission gave notice of the application on August 11, 2003.

3. The Mountain Guides, Inc., doing business as Scenic Mountain Tours (Scenic Mountain Tours), filed an intervention opposing the grant of this application. Scenic Mountain Tours has authority under CPCN PUC No. 46986 to provide sightseeing service from Denver and Estes Park, Colorado, to points within a 150-mile radius of Colfax Avenue and Broadway, in Denver, Colorado.

4. Pursuant to § 40-6-120(2), C.R.S., the Commission may grant temporary approval of a certificate transfer “If it appears that failure to grant such temporary approval may result in destruction of or injury to such carrier or carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.”

B. Findings of Fact

5. Best Mountain Tours filed a petition for Chapter 7 bankruptcy in the U.S. Bankruptcy Court on October 28, 2002. Best Mountain Tours filed an application with the Commission to suspend operations under CPCN PUC No. 7010&I on December 16, 2002. The

Commission granted the suspension of operations under CPCN PUC No. 7010&I from September 30, 2002, through March 31, 2003, by Decision No. C03-0138 in Docket No. 02A-670CP. Best Mountain Tours subsequently filed an application with the Commission to continue the suspension of operations under CPCN PUC No. 7010&I on March 3, 2003. The Commission granted the suspension of operations under CPCN PUC No. 7010&I from March 31, 2003, through September 30, 2003, by Decision No. R03-0721 in Docket No. 03A-080CP.

6. CPCN PUC No. 7010&I was sold on July 31, 2003, at a public auction conducted by the U.S. Bankruptcy Trustee. Gray Line of Denver was the highest bidder for the portion of CPCN PUC No. 7010&I named in this application.

7. In this application, Gray Line of Denver states:

The PUC authorized Mountain Men to suspend operations effective September 30, 2002. Mountain Men filed bankruptcy in October. Since then, there have been no operations under Certificate 7010. It is imperative that public service commence in the immediate future, to restore and preserve the value of Certificate 7010. This cannot be accomplished solely by awaiting the results of a permanent transfer approval application. Time is of the essence to CTL (Gray Line of Denver) as well as the U.S. Bankruptcy Trustee as Transferor. A grant of Temporary Authority, therefore will promote the statutory mandate of preserving PUC 7010 and its future usefulness to the public and prevent its injury and destruction. It will also assist Gray Line of Denver in both the immediate and future restoration of public service under Certificate 7010.

C. Conclusions

8. A failure to grant temporary approval of an assumption of operational control could result in injury to CPCN PUC No. 7010&I and ultimately affect service to the public.

9. Gray Line of Denver has adequate equipment and financial resources to begin immediate service within the scope of the authority sought.

10. This application for temporary approval is in the public interest.

11. Jon S. Nicholls, United States Bankruptcy Trustee for and on behalf of Best Mountain Tours, and Gray Line of Denver, are advised that the grant of temporary approval of an assumption of operational control creates no presumption that permanent transfer approval will be granted.

II. ORDER

A. The Commission Orders That:

1. The application for temporary approval of an assumption of operational control filed by Jon S. Nicholls, United States Bankruptcy Trustee for and on behalf of The Mountain Men, Inc., doing business as Best Mountain Tours, is granted.

2. Colorado Tour Lines, LLC, doing business as Gray Line of Denver, is granted temporary approval to assume operational control of Certificate of Public Convenience and Necessity PUC No. 7010&I for a period of 180 days commencing from the Mailed Date of this Order.

3. Colorado Tour Lines, LLC, doing business as Gray Line of Denver, shall operate in accordance with all applicable Commission rules and regulations.

4. Colorado Tour Lines, LLC, doing business as Gray Line of Denver, shall not assume operational control until it has adopted the tariffs of The Mountain Men, Inc., doing business as Best Mountain Tours, which shall become that of Colorado Tour Lines, LLC, doing business as Gray Line of Denver, until changed in accordance with the public utilities law. Colorado Tour Lines, LLC, doing business as Gray Line of Denver, may not begin service until it meets its requirement and has received notice in writing from the Commission that it is in compliance.

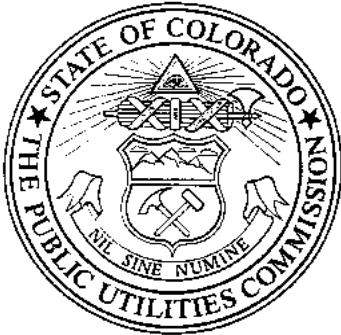
5. If Colorado Tour Lines, LLC, doing business as Gray Line of Denver, does not comply with the requirements of this Order within 30 days of its effective date, then the temporary approval shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within the 30 days.

6. 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 Order.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 20, 2003.**

(SEAL)



ATTEST: A TRUE COPY

**Bruce N. Smith
Director**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners