

Decision No. R04-0992

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-264CP-EXTENSION

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IN THE MATTER OF THE APPLICATION OF MTV GROUP, LLC, FOR AN ORDER OF THE COMMISSION AUTHORIZING AN EXTENSION OF OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 55728.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
GRANTING STIPULATED MOTIONS;  
DISMISSING INTERVENTIONS; GRANTING  
APPLICATION, AS AMENDED, UNDER  
MODIFIED PROCEDURE; GRANTING  
MOTION FOR SUBSTITUTION; SHORTENING  
RESPONSE TIME; AND CLOSING DOCKET**

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Mailed Date: August 23, 2004

**I. STATEMENT**

1. On May 17, 2004, MTV Group, LLC (Applicant), filed an Application for Extension of Authority under Certificate of Public Convenience and Necessity PUC No. 55728 for Transportation of Passengers and Their Baggage, Scheduled Service (Application). The Application commenced this docket.

2. The Commission gave public notice of the Application and established a procedural schedule. *See* Notice of Applications Filed dated June 1, 2004. Golden West Commuter, LLC (Golden West), intervened of right. Metro Taxi, Inc. (Metro), intervened of right. These are the only intervenors, and both opposed the granting of the Application.

3. Golden West filed a Motion to Vacate and Reschedule Hearing. By Decision No. R04-0793-I, the undersigned Administrative Law Judge (ALJ) granted that motion and scheduled a hearing in this matter for August 17, 2004.

4. On July 20, 2004, Applicant and Metro filed a Stipulated Motion for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention. On August 9, 2004, this was superseded by a second Stipulated Motion for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention filed by Applicant and Metro. In the second filing Applicant stated that it did not intend to seek overlapping or duplicative authority by virtue of the Application and that it “recognize[d] that Certificate [of Public Convenience and Necessity PUC No.] 55728 will be merged into the authority requested” in this proceeding. *Id.* at 2. In addition, Applicant moved to restrict the Application as follows: “Restricted to the use of vehicles with a seating capacity of between 15 and 32 passengers, including the driver.” Finally, Metro stated that the Commission may deem Metro’s intervention withdrawn if and when the Commission accepts the stipulation as filed.

5. On July 22, 2004, Applicant and Golden West filed a Stipulation of Parties, Motion to Restrictively Amend Application and to Withdraw Intervention. In that filing Applicant moved to restrict the Application by deleting the fourth requested extension of authority and renumbering the remaining authorities sought. Thus, Applicant restricts the Application by removing the following language: “beginning at the intersection of East Colfax Avenue and Broadway; then west on Colfax Avenue to the Colorado Mills Mall at 14500 West Colfax, Golden, Colorado; then returning over the same route to the point of beginning.” In addition, Golden West stated that, concurrent with a Commission finding that the proposed restrictions are acceptable, it will withdraw its intervention.

6. By Decision No. R04-0854-I the ALJ vacated the hearing date of August 17, 2004.

7. On August 16, 2004, Metro and MKBS, LLC, doing business as Metro Taxi (MKBS), filed a Joint Motion for Substitution of Intervenor and Intervenor's Counsel, Request for Shortened Response Time, and Request for Expedited Action (Joint Motion). The Joint Motion states that, as authorized by Decision No. C04-0751, Metro has transferred Certificate of Public Convenience and Necessity (CPCN) PUC No. 1481 to MKBS and that MKBS is now the owner and operator of that authority. The Joint Motion also requests substitution of counsel. The Joint Motion states good cause, and no party will be prejudiced if the Joint Motion is granted. The ALJ will grant the Joint Motion and will order the requested substitution of parties and counsel. As a result of the substitution of parties, MKBS stands in place of Metro in the August 9, 2004, Stipulated Motion for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention.

8. In view of the lack of prejudice to any party and the need to address the two pending Stipulated Motions for Imposition of Restrictive Amendment, the Joint Motion for Request for Shortened Response Time and Request for Expedited Action will be granted. The response time to the Joint Motion will be shortened to and including August 20, 2004.

9. 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 wholly contained within the CPCN. Both must be worded to permit a person to know, from reading the CPCN and without having to resort to any other document, the exact extent of the authority granted and of each restriction. Clarity is essential because the scope of an authority granted by the Commission is found within the four

corners of the CPCN, which is the touchstone against which the operation of a carrier is judged to determine whether the operation is within the scope of the Commission-granted authority. The proposed restrictions meet these standards. Therefore, the ALJ finds and concludes that the proposed amendments are restrictive in nature, are clear and understandable, and are administratively enforceable.

10. The Stipulated Motions state good grounds, and granting the Stipulated Motions will not prejudice any party. The Stipulated Motions will be granted. The restrictions to the authority sought by Applicant will be accepted.

11. Granting the Stipulated Motions has two impacts. First, the authority sought (as stated in the Notice and the Application) will be amended to conform with the restrictive amendments. Second, the two interventions will be dismissed.

12. Dismissal of the interventions leaves the Application uncontested. The Application now may be processed under the modified procedure, pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-24, without a formal hearing.

13. 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**

14. Applicant is a limited liability company operating in the State of Colorado.

15. Applicant asks that the Commission extend CPCN PUC No. 55728 for transportation of passengers and their baggage in scheduled service. By the Application, as restricted, Applicant seeks an extended Letter of Authority as set out in Appendix A to this Decision. Applicant is clear that the extensions of authority sought in this proceeding will merge into CPCN PUC No. 55728.

16. The verified Application establishes that Applicant is familiar with the Rules, Regulations, and Civil Penalties Governing Common Carriers of Passengers by Motor Vehicle for Hire, 4 CCR 723-31, and agrees to be bound by, and to comply with, those Rules. The verified Application and its supporting documentation also establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. Therefore, Applicant is fit, financially and otherwise, to provide the proposed service.

17. Review of the verified Application and its supporting documentation indicates a need for the proposed service.

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

**III. ORDER**

**A. The Commission Orders That:**

1. The Stipulated Motion for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention filed on July 22, 2004, is granted.

2. The Stipulated Motion for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention filed on August 9, 2004, is granted.

3. The restrictions contained in the Stipulated Motions for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention are accepted.

4. The intervention of MKBS, LLC, doing business as Metro Taxi, is dismissed.

5. The intervention filed of Golden West Commuter, LLC, is dismissed.

6. The Application for Extension of Authority under Certificate of Public Convenience and Necessity PUC No. 55728 for Transportation of Passengers and Their Baggage, Scheduled Service filed by MTV Group, LLC, as that Application has been restricted, is granted.

7. MTV Group, LLC, is granted an extension of Certificate of Public Convenience and Necessity PUC No. 55728.

8. As extended and merged, Certificate of Public Convenience and Necessity PUC No. 55728 reads as set out in Appendix A to this Decision, which Appendix is incorporated into this Decision as if set out in full.

9. MTV Group, LLC, shall file an appropriate tariff with the Commission.

10. MTV Group, LLC, shall cause to be filed with the Commission certificates of insurance as required by Commission rules.

11. MTV Group, LLC, shall pay the issuance fee and annual vehicle identification fees.

12. MTV Group, LLC, may not begin operations under its extended and merged authority until it has met the requirements set out in Paragraphs 9 through and including 11, above.

13. If MTV Group, LLC, does not comply with the requirements of Ordering Paragraphs 9 through and including 11, above, within 60 days of the effective date of this Order, then Ordering Paragraphs 7 and 8, above, shall be void. On good cause shown, the Commission may grant additional time for compliance.

14. The Joint Motion for Substitution of Intervenor and Intervenor's Counsel filed by XYZ-Metro Taxi, Inc., formerly known as Metro Taxi, Inc., and MKBS, LLC, doing business as Metro Taxi, is granted.

15. MKBS, LLC, doing business as Metro Taxi, is substituted for Metro Taxi, Inc., as an intervenor.

16. Request for Shortened Response Time filed by XYZ-Metro Taxi, Inc., formerly known as Metro Taxi, Inc., and MKBS, LLC, doing business as Metro Taxi, is granted.

17. The response time for the Joint Motion for Substitution of Intervenor and Intervenor's Counsel, Request for Shortened Response Time, and Request for Expedited Action is shortened to and including August 20, 2004.

18. The Request for Expedited Action is granted.

19. Docket No. 04A-264CP-Extension is closed.

20. 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.

21. 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.

a) 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.

b) 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.

22. 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.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge