Decision No. R24-0771-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0236CP

MOUNTAIN STAR TRANSPORTATION, LLC DOING BUSINESS AS RED ROCKS SHUTTLE,

COMPLAINANT,

V.

ON LOCATION EVENTS, LLC DOING BUSINESS AS SHUTTLES TO RED ROCKS, AND ACE EXPRESS COACHES, LLC AND RAMBLIN' EXPRESS, INC.,

RESPONDENTS.

INTERIM DECISION REGARDING ACE EXPRESS AND RAMBLIN' EXPRESS MOTION TO LIMIT THE SCOPE OF HEARING

Issued Date: March 13, 2025

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I. STATEMENT

A. Procedural Background

1. This proceeding concerns the formal complaint filed by Mountain Star Transportation, LLC, doing business as Red Rocks Shuttle ("Mountain Star") on May 24, 2024, against On Location Events, LLC, doing business as Shuttles to Red Rocks ("On Location"); Ace Express Coaches, LLC ("Ace Express"); and Ramblin' Express, Inc. ("Ramblin' Express").

2. On June 12, 2024, the Commission referred this proceeding to an administrative law judge ("ALJ") by minute entry.

3. By Decision No. R24-0771-I, issued October 25, 2024, the ALJ denied Ace Express and Ramblin' Express's Motion to Dismiss, finding that Mountain Star made a *prima facie* showing that the services provided by Ace Express and Ramblin' Express, pursuant to their contract with On Location, are common carriage, rather than charter services subject to limited regulation.

B. Ace Express and Ramblin' Express Motion to Limit the Scope of Hearing

4. On February 14, 2025, Ace Express and Ramblin' Express (collectively, "Joint Movants") filed their Motion to Limit the Scope of Hearing ("Motion") requesting the ALJ limit the scope of the hearing, as it relates to Joint Movants, to the following issues: (a) whether Joint Movants' service meets the federal definition of charter service under 49 C.F.R. 390.5T; and (b) whether Joint Movants provided improper common carrier service distinct from federal charter operations.[1] Joint Movants further argue that, in limiting the scope of the hearing, the ALJ should exclude evidence and argument regarding (1) whether passengers were "affiliated" beyond having a common purpose; (2) whether the service operated on regular routes; and (3) any other state-imposed restrictions on charter authority not present in federal law that would otherwise be relevant to this matter.[2]

5. Joint Movants argue that they are authorized by the Federal Motor Carrier Safety Administration to provide charter transportation of passengers pursuant to 49 *Code of Federal Regulations* ("CFR"). 390.5T and are, therefore, subject to limited regulation under 49 U.S.C. § 14501(a)(1)(C), which preempts any state regulation related to the authority to provide intrastate or interstate charter bus transportation. They argue that applying the Commission's definition of charter bus restricts their charter authority in violation of the federal preemption provision.

C. Complainant Response

6. Complainant Mountain Star's response was due on February 26, 2025. Mountain Star filed its Response late on March 3, 2025.[3]

[1] Motion at pp. 9-10.
[2] *Id.* at p. 10.
[3] The Response indicates that counsel for Ace Express and Ramblin' Express agreed to an extension of the 14-day deadline to file its Response on or before March 3, 2025. The ALJ was not made aware of this extension prior to the deadline.

7. Mountain Star opposes the Motion, arguing that the preemption provision in § 14501(a)(1)(C) is not applicable because (a) the Commission's definition of "charter bus" in Rule 6301(a) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* ("CCR") 723-6, and the definition in § 40-10.1-301(2), C.R.S., are not in conflict with the federal definition; (b) preemption requires some nexus between intrastate and interstate transportation whereas Joint Movants' service is purely intrastate; and (c) the Rule falls within the safety exemption to the preemption provision in § 14501(a)(2).

D. Subject Matter Jurisdiction

8. Mountain Star alleges that Joint Movants:

> (1) provide transportation service outside of any permit or authority by providing buses to On Location to unrelated individuals for the purpose of shuttle service between Denver and Jefferson County on the one hand and Red Rocks Amphitheatre on the other hand; (2) are not authorized to provide shuttle service between points in Denver and Jefferson County on the one hand and Red Rocks Amphitheatre on the other hand; (3) are illegally diverting traffic and revenues away from Mountain Star; (4) should cease and desist their operations and be ordered to stop providing shuttle service to On Location; (5) should be assessed civil penalties; and (6) should be suspended.[4]

9. Mountain Star's allegations ultimately hinge on its contention that Joint Movants do not provide charter transportation based on the Commission's definition of charter bus in Rule 6301 and § 40-10.1-301(2), C.R.S.

10. In their Motion, Joint Movants argue that they provide charter bus transportation in accordance with federal law and the Commission is preempted from imposing restrictions on such authority because Congress expressly preempted regulation related to the authority to provide intrastate and interstate charter bus transportation. Joint Movants argue that the Commission's

[4] Response at p. 2.

definition of charter bus does exactly this because it negates their charter authority based on state requirements that are not present in the federal definition.

11. Whether Joint Movants meet the federal definition of "charter bus transportation" under 49 CFR 390.5T is a matter of statutory construction and a question of law.[5] As such, the crux of Mountain Star's dispute against Joint Movants is not factual, it is a disagreement as to Joint Movant's status under federal law. If Joint Movants are correct that they operate charter transportation subject to federal preemption, then the Commission lacks subject matter jurisdiction to hear the claims against them and the claims cannot be maintained.[6]

12. In moving to limit the scope of the hearing based on authority under federal law and the applicability of the preemption provision in § 14501(a)(1)(C), Joint Movants essentially ask the ALJ to resolve two questions of law that may be dispositive of the claims against them. First, whether the transportation services that Mountain Star complains of are "charter bus transportation" services under federal law. Second, whether the definitions of "charter bus" in Rule 6301(a) and § 40-10.1-301(2), C.R.S., runs afoul of the preemption provision in § 14501.

13. In its Response, Mountain Star raises an additional issue of whether the Commission definition of charter bus falls within the safety exemption to the preemption provision carved out in § 14501(a)(2). This is also a matter of statutory construction not involving factual disputes and may be determined as a matter of law.

14. There are no material factual disputes regarding the transportation service that Ace Express and Ramblin' Express provide, the permits that they hold, or the fact that they did not obtain a Certificate of Public Convenience and Necessity ("CPCN") for the transportation services

[5] *Medina v. State*, 35 P.3d 443, 452-53 (Colo. 2001); *Colo. Div. of Emp. & Training v. Parkview Episcopal Hosp.*, 725 P.2d 787, 790 (Colo. 1986) ("The construction of a statute is a question of law.").

[6] *See Osband v. United Airlines, Inc.*, 981 P.2d 616, 619 (Colo. App. 1998) (citing *City of Grand Junction v. Ute Water Conservancy Dist.*, 900 P.2d 81 (Colo. 1995)).

at issue in this matter. The only disputes relate to Joint Movants' charter authority and the scope of preemption of state regulation, and whether Rule 6301 or § 40-10.1-301(2) regulate charter transportation for safety under the exemption in § 14501(a)(2). These are questions of law involving the interpretation of federal and state regulations and can be resolved as a matter of law.

15. Accordingly, the ALJ interprets Joint Movants' Motion to Limit the Scope of the Hearing as a Motion to Dismiss for Lack of Subject Matter Jurisdiction under C.R.C.P. 12(b)(1).

II. ESTABLISHED FACTS

16. By Decision No. R24-0555-I, issued August 1, 2024, a limited hearing was scheduled, in part, to resolve disputed jurisdictional facts.

17. Individuals purchasing tickets for transportation from On Location are unaffiliated, brought together only by On Location for the purpose of transporting customers from common points of origin to Red Rocks Amphitheater to attend an event.[7]

18. On Location, as a chartering party, engaged Ace Express and Ramblin' Express to provide intrastate passenger transportation for those individuals who purchased tickets from On Location.

19. Ace Express and Ramblin' Express used motor coaches to provide transportation with a seating capacity of over 33 passengers to serve On Location.[8]

20. Charter orders show at least 10 instances where Ace Express and Ramblin' Express each were hired to pick up passengers at one of On Location's pickup sites, drop them off at Red Rocks Amphitheater, and then to later pick up passengers from Red Rocks Amphitheater and drop them off at one of On Location's sites.[9]

[7] *See* Hr. Tr. September 9, 2024, at p. 41:17-23.
[8] (Tr. at 80:11-19, p. 81, ll. 13-17, Tr. p. 95, ll. 15- 23, 99:11-14, Hearing Exhibits 301 and 303).
[9] *See* Hearing Exhibits. 301 and 303.

21. Ramblin' Express' charter orders are pre-populated with On Location's pickup sites, in which one of the pre-populated sites is selected with an "X" next to it.[10]

22. On Location had exclusive control of the buses, including over starting point, destination, and departure times.[11]

23. On Location paid Ace Express and Ramblin' Express, respectively, to transport passengers in chartered coaches.[12]

24. Ace Express is a common carrier and holds the following authorities and permits under state law:

a. Charter or Scenic Bus Permit No. CSB-00214;

b. CPCN 44908;

c. Certificate Number: B-9941; and

d. Permit Number: B-10102.[13]

25. Ace Express also holds Certificate No. MC-908184-C (U.S. DOT No. 2589674) with the U.S. Department of Transportation ("U.S. DOT") authorizing it to "engage in transportation as a common carrier of passengers, in charter and special operations, by motor vehicle in interstate or foreign commerce."[14]

26. Ramblin' Express is a common carrier and holds the following authorities and permits under state law:

a. Charter or Scenic Bus Permit No. CSB-83;

b. CPCN 45392;

[10] *See* Hearing Exhibit 303.
[11] Hearing Exhibit 301 and 303 (specifying service); Tr. at 84: l-24 –85: l-2; Tr. at 86: 9-11; Tr. at 95: 3-12).
[12] Hearing Exhibits 301 and 303
[13] *See* Hearing Exhibit 104.
[14] Exhibit A to the Motion.

c. Certificate Number: 47966; and

d. Permit Number: B-10104.[15]

27. Ramblin' Express also holds Certificate No. MC-248958 with U.S. DOT authorizing it to "operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting passengers, in charter and special operations, between points in the U.S. (except AK and HI)."[16]

III. LEGAL STANDARDS

28. "Where not otherwise inconsistent with Title 40 or these rules, … an Administrative Law Judge may seek guidance from or may employ the Colorado Rules of Civil Procedure."[17]

29. The Commission's rules are consistent with the Colorado Rules of Civil Procedure ("C.R.C.P.").

30. The CRCP apply to the extent practicable in administrative hearings.[18]

1. Subject Matter Jurisdiction

31. Subject matter jurisdiction concerns authority to deal with the class of cases in which it renders judgment.[19]

32. Rule 1308(e), 4 CCR 723-1, and C.R.C.P. 12(b)(1) provides that a party may move for dismissal of a claim based on a "lack of jurisdiction over the subject matter." Under C.R.C.P. 12(b)(1), the plaintiff has the burden of proving subject matter jurisdiction and a trial court may

[15] *See* Hearing Exhibit 105 at 2-4; and Hr. Tr. September 9, 2024, at p. 17, ll. 9-10.
[16] Exhibit B to the Motion.
[17] Rule 1001, 4 CCR 723-1.
[18] *Colo. Div. of Ins. v. Statewide Bonding, Inc.*, 518 P.3d 309, 321 (Colo. App. 2022) (citing *M.G. v. Colo. Dep't of Hum. Servs.*, 12 P.3d 815, 818 (Colo. App. 2000); Rule 15 of the Dep't of Pers. & Admin. Procedural Rules, 1 CCR 104-1).
[19] *In Re Marriage of Stroud*, 631 P.2d 168, 170 (Colo. 1981).

make appropriate factual findings to determine subject matter jurisdiction.[20] "[I]f all relevant evidence is presented to the trial court, and the underlying facts are undisputed, the trial court may decide the jurisdiction issue as a matter of law."[21]

33. Such a defense may be raised at any time during the proceedings, and "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."[22]

2. Federal Preemption

34. The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."[23] Accordingly, Congress has the power to preempt state law.[24] "Under the preemption doctrine, the Supremacy Clause invalidates state laws that interfere with, or are contrary to, federal laws."[25] The question of whether a federal statute preempts state law is one of statutory construction and is therefore a question of law.[26]

35. Paramount to any preemption analysis are the following two principles: (1) "Congress's purpose in enacting the federal legislation is controlling;" and (2) the presumption that "Congress did not intend to preempt the historic police powers of the state unless that was the clear and manifest purpose of the federal legislation."[27]

[20] *Medina*, 35 P.3d at 452 (citing *Trinity Broad., Inc. v. City of Westminster*, 848 P.2d 916, 925 (Colo. 1993); *City of Lakewood v. Brace*, 919 P.2d 231, 231 (Colo. 1996)).
[21] *Id.*
[22] C.R.C.P. 12(h)(3); *Medina*, 35 P.3d at 452 ("Issues concerning subject-matter jurisdiction may be raised at any time.").
[23] U.S. Const. art. VI, cl. 2.
[24] *Arizona v. United States*, 567 U.S. 387, 399 (2012).
[25] *People in Int. of C.Z.*, 360 P.3d 228, 234 (Colo. App. 2015).
[26] *Fuentes-Espinoza v. People*, 408 P.3d 445, 448 (Colo. 2017).
[27] *Colo. Div. of Ins. v. Statewide Bonding, Inc.*, 518 P.3d 309, 316 (Colo. App. 2022) (citing *Fuentes-Espinoza v. People*, 408 P.3d 445 (Colo. 2017)).

36. There are three forms of federal preemption: express, field, and conflict preemption.[28] Joint Movants assert only express preemption in their Motion.

37. "A state law is expressly preempted when Congress 'withdraw[s] specified powers from the States by enacting a statute containing an express preemption provision.'"[29] As such, congressional intent is clearest in the case of express preemption.

38. In determining the scope of an express preemption provision, the focus is on "the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent."[30]

39. "If federal law preempts state law, the state trial court lacks subject matter jurisdiction to hear a claim," and any claim for relief based on the preempted state law cannot be maintained.[31]

IV. DISCUSSION AND CONCLUSIONS

40. For the reasons discussed below, Joint Movants' Motion to Limit Scope of Hearing, construed as a Motion to Dismiss for Lack of Subject Matter Jurisdiction pursuant to C.R.C.P. 12(b)(1), will be granted.

41. First the ALJ notes that while established facts have been included in this decision for purposes of clarity, the issue here is Joint Movants' status under federal law and does not require new findings of fact. There are no remaining disputes regarding the services Ace Express and Ramblin' Express provide, the permits that they each hold, or their lack of CPCN.

[28] *Fuentes-Espinoza*, 408 P.3d at p. 448.
[29] *Id.* (quoting *Arizona*, 567 U.S. at p. 399) (alteration in original); *see also Statewide Bonding*, 518 P.3d at p. 317 ("As its name implies, express preemption occurs when Congress enacts legislation that, on its face, expressly preempts state law.").
[30] *Commonwealth of Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 125 (2016) (quoting *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 594 (2011)).
[31] *Osband*, 981 P.2d at p. 619 (citing *Ute Water Conservancy Dist.*, 900 P.2d 81).

1. Congress expressly preempted state regulation relating to the authority to provide intrastate charter bus transportation.

42. 49 U.S.C. § 14501(a) contains the following:

> **(1) Limitation on State Law.** No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to—
> …
>
> (C) the authority to provide intrastate or interstate charter bus transportation.
>
> This paragraph shall not apply to intrastate commuter bus operations, or to intrastate bus transportation of any nature in the State of Hawaii.
>
> **(2) Matters not covered**.—Paragraph (1) shall not restrict the safety regulatory authority of a State with respect to motor vehicles, the authority of a State to impose highway route controls or limitations based on the size or weight of the motor vehicle, or the authority of a State to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization.

43. As both Joint Movants and Complainant acknowledge, the key preemptive language here is "relating to." In *Morales v. Trans World Airlines, Inc.*, the United States Supreme Court found that the language "relating to" indicates a broad preemptive purpose.[32] The court reasoned that "[t]he ordinary meaning of these words is a broad one—'to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with.'" [33]

44. The *Morales* court reviewed its prior decisions interpreting the same "relating to" language in the Employee Retirement Income Security Act of 1974 ("ERISA"), where it had held that "state law 'relates to' an employee benefit plan, and is preempted by ERISA, 'if it has a connection with, or reference to, such a plan.'"[34] It then applied the same reasoning to the Airline Deregulation Act ("ADA"), stating that "[s]ince the relevant language of the ADA is identical, we

[32] *Morales v. Trans. World Airlines, Inc.*, 504 U.S. 374, 383 (1992).
[33] *Id.* (quoting Black's Law Dictionary 1158 (5th ed. 1979)).
[34] *Id.* at p. 384 (quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1992)).

think it appropriate to adopt the same standard here: State enforcement actions having a connection with or reference to airline 'rates, routes, or services' are preempted."[35]

45. Three years after its *Morales* decision, in *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* ("Blue Cross"), the supreme court was again tasked with interpreting the "relate to" language in ERISA and cautioned against taking it "to the furthest stretch of its indeterminacy" such that "preemption would never run its course."[36]

46. The *Blue Cross* court—acknowledging that the "relate to" language is "frustratingly difficult" to define—determined it must "look instead to the objective of the ERISA statute as a guide to the scope of the state law that Congress understood would survive."[37] The court reiterated that congressional intent delineates the scope of preemption and eschewed the unbounded literalist approach that could be applied to the "relate to" language.[38]

47. Section 14501(a)(1) also uses the broad preemptive language present in the ADA and ERISA and the ALJ finds no cause to depart from the reasoning in *Morales* and previous preemption cases with the caveat that Congress's purpose in enacting the statute is the guiding factor in determining the preemptive scope.

48. As applied specifically to § 14501(a)(1)(C), this approach suggests that Congress intended to preempt any state regulation having "a connection with, or reference to," the "authority to provide intrastate or interstate charter bus transportation." Putting aside for the moment the meaning of "charter bus transportation," which is discussed below, the ALJ addresses Mountain Star's position that there must be some nexus between intrastate and interstate transportation for the preemption to apply.

[35] *Id.*
[36] 514 U.S. 645, 656 (1995).
[37] *Id.*
[38] *Id.*

49. Looking first to the plain language of § 14501(a)(1)(C) to discern congressional intent, the provision appears to proscribe state regulation that would interfere with the authority to provide either intrastate or interstate charter transportation. The terms "intrastate" and "interstate" are connected by the conjunction "or." While the use of "or" "can sometimes introduce an appositive—a word or phrase that is synonymous with what precedes it (e.g. 'Batman or the Caped Crusader')—its ordinary use is almost always disjunctive," indicating that the words it connects have separate meanings.[39] However, statutory context may overcome the ordinary, disjunctive meaning of "or" in certain situations.[40]

50. Given the use of the disjunctive between the terms "intrastate" and "interstate," § 14501(a)(1)(C), on its face, indicates that Congress intended to preempt state regulation over purely intrastate charter transportation. The title of § 14501—"Federal authority over intrastate transportation"—further supports this plain meaning as it establishes that, in enacting § 14501, Congress's concern was its ability to regulate at least some aspects of intrastate transportation.

51. However, Mountain Star argues that § 14501(a)(1)(C) must be read in light of 49 U.S.C. § 13501, which provides that:

> The Secretary and the [Surface Transportation] Board have jurisdiction…over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier—
>
> (1) between a place in—
>
> (A) a State and a place in another State;
>
> (B) a State and another place in the same State through another State;

[39] *U.S. v. Woods*, 571 U.S. 31, 45-46 (2013) (citing *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)).
[40] *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 87 (2018).

> (C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;
>
> (D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or
>
> (E)the United States and a place in a foreign country to the extent the transportation is in the United States; and
>
> (2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

52. Mountain Star argues that the federal government's general jurisdiction over motor carrier transportation overcomes the plain meaning of the preemption provision because § 13501 does not include transportation operating solely within a single state in the general jurisdiction.

53. The ALJ finds that both the plain meaning and statutory context favor the disjunctive meaning of "or" and therefore the separate meaning of the terms "intrastate" and "interstate."

54. First, the federal government's power to regulate transportation is rooted in the commerce clause.[41] Under the commerce clause, Congress may properly regulate instrumentalities of commerce even though the threat to interstate commerce may come only from intrastate activities.[42] Congress may also regulate those activities that substantially affect interstate commerce.[43] Further, because regulation of an intrastate activity "may be essential to a comprehensive regulation of interstate commerce even though the intrastate activity does not itself 'substantially affect' interstate commerce," Congress may even regulate noneconomic local activity "if that regulation is a necessary part of a more general regulation of interstate commerce."[44]

[41] U.S. Const. art. 6, cl. 2.
[42] U.S. Const. art. 6, cl. 2; *see U.S. v. Morrison*, 529 U.S. 598, 609 (2000).
[43] *Morrison*, 529 U.S. at p. 609.
[44] *Gonzales v. Raich*, 545 U.S. 1, 37 (2005).

55. Thus, federal regulation of intrastate activity is not necessarily incompatible with federal jurisdiction over interstate activity. Within the context of a complex regulatory scheme, such as transportation, the federal government has a legitimate interest in the consistent permitting and regulation of particular types of transportation even if some of it is purely intrastate.

56. Additionally, as noted above, § 14501(a)(1)(C) refers to the federal government's "authority" over intrastate transportation, not its jurisdiction. The two terms are not synonymous. While the federal government has jurisdiction over interstate transportation, it may have authority to regulate intrastate transportation if such regulation is necessary to carry out a greater regulatory scheme. As such, its authority over certain aspects of intrastate transportation may properly fall within its jurisdiction over interstate transportation.

57. Second, as Mountain Star recognizes, "there is a presumption that every provision of a statute is intended to serve a purpose and should be given effect." In the same chapter on general jurisdiction, Congress included § 13504 which states that "[n]either the secretary nor the Board has jurisdiction under this subchapter over transportation, except transportation of household goods, by a motor carrier operating solely within the State of Hawaii." If Congress did not have the ability to regulate some purely intrastate transportation, then it would not need to specifically exempt from its jurisdiction transportation by a motor carrier operating solely within the State of Hawaii as it would already be exempted.

58. The ALJ is not convinced that the statutory context, particularly the general grant of jurisdiction in § 13501, defeats the plain meaning of § 14501(a)(1).

59. Mountain Star argues that Congress must have intended some nexus between intrastate and interstate charter transportation for the preemption to apply, but it has provided no case law or argument as to what this nexus would entail. It points to certain intrastate transportation

that is federally regulated and some that is not, but this is of little help in determining whether Congress intended something other than the plain meaning of the provision. Mountain Star has failed to establish that there must be some nexus between intrastate and interstate charter transportation for the preemption provision to apply.

60. Having found that § 14501(a)(1)(C) preempts state regulation having a connection with or reference to the authority to provide both intrastate and interstate charter bus transportation, the next issue is whether Joint Movants are providing "charter bus transportation" under federal law.

2. Joint Movants' transportation services constitute "charter bus transportation" under federal law.

61. As discussed above, the preemptive intent in § 14501(a)(1) is clear; the scope of that preemption is less so. Joint Movants identify two issues in their Motion regarding the preemptive scope of § 14501(a)(1)(C): (1) whether the transportation services that Mountain Star complains of fall within the federal definition of "charter bus transportation;" and (2) whether the relevant parts of the Commission rule defining "charter bus" relate to the authority to provide charter bus transportation and therefore violate the preemption provision, discussed in the subsection below.

62. Federal regulation, pursuant to 49 C.F.R. § 390.5T, defines "charter transportation" as follows:

> *Charter transportation of passengers* means transportation, using a bus, of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place or origin.

63. A "bus" is also defined in § 390.5T as "any motor vehicle designed, constructed, and/or used for the transportation of passengers, including taxicabs.

64. While these definitions provide some guidance as to what constitutes "charter bus transportation" under § 14501(a)(1)(C), one of the difficulties courts have faced when determining the scope of preemption is defining the term "bus."[45] Different courts have agreed that the scope of preemption partially hinges on the definition of "bus" and what constitutes "charter bus transportation," and they have agreed that looking to federal law and plain meaning cannot adequately define the term; however, they have taken different approaches to resolving the issue.[46]

65. In *Alex's Transportation, Inc. v. Colorado Public Utilities Commission*, the United States District Court for the District of Colorado found that because federal law provided no clear definition of "bus" or "charter bus," and looking to legislative history or plain meaning provided no additional clarification, it was proper to look to Colorado law for a definition of charter bus to aid in determining the preemptive scope of § 14501(a)(1)(C).[47] The district court found that a Colorado statute defining "charter bus" as a vehicle with a minimum capacity of 32 passengers

[45] *See Kozak v. Hillsborough Pub. Transp. Comm'n*, 695 F. Supp. 2d 1285, 1298 (M.D. Fla. 2010), *aff'd*, 44 F.3d 1347 (11th Cir. 2011) ("Defining the term 'bus' is therefore necessary in determining Congressional intent with respect to the scope of the intended preemption of state and local regulation of 'charter bus transportation.' The term 'bus' appears to have no uniform definition elsewhere in the United States Code or the Code of Federal Regulations, or in ordinary meaning.") (footnotes omitted); *Alex's Transp., Inc. v. Colo. Pub. Utils. Comm'n*, 88 F. Supp. 2d 1147, 1149 (D. Colo. 2000), *aff'd*, 242 F.3d 387 (10th Cir. 2000) ("[N]either the wording, legislative history of § 14501, nor any other statute or federal regulation provides a clear definition of what passenger vehicle constitutes a bus or charter bus so as to aid in a determination of Congressional intent for the extent of preemption…[T]he Court has not found, and neither side has provided, a singular common meaning of 'bus' which would resolve this controversy.").

[46] *See Kozak*, 695 F. Supp. 2d at p. 1298 (looking to legislative history to define bus); *United Motorcoach Ass'n, Inc. v. City of Austin*, No. A-13-CA-1006-SS, 2014 WL 1091966, at *5 (W.D. Tex. Mar. 17, 2014) (adopting the *Kozak* approach); *Alex's Transp.*, 88 F. Supp. 2d at p. 1149 (looking to state law to define bus); *Exec. Transp. Sys., LLC v. Louisville Reg'l Airport Auth.*, No. CIV.A. 3:06-CV-143-S, 2007 WL 2571908, at *4 (W.D. Ky. Sept. 4, 2007) (citing *Alex's Transp.* for contention that state law can supply the definition of charter bus where Congress did not define a term and no ordinary meaning can be found).

[47] *Alex's Transp.*, 88 F. Supp. 2d at p. 1149.

did not conflict with the federal definition of "charter transportation" under 49 C.F.R. § 390.5T and read the 32-passenger requirement into the preemption provision.[48]

66. Conversely, in *Kozak v. Hillsborough Public Transportation Commission*, the United States District Court for the Middle District of Florida took issue with the approach of applying a state law definition to resolving a federal preemption question as state law provides no indication of congressional intent.[49] Rather, the *Kozak* court looked to legislative history and found that when Congress amended § 14501 in 1998, in part to include the term "charter bus transportation," federal regulations defined "bus" as "[a] vehicle designed to carry more than 15 passengers, including the driver," and that such definition should delineate the scope of preemption.[50]

67. For the purposes of this Motion, however, the approach to defining the term "bus" does not appear to be material. The only difference between the definitions is the passenger capacity of the vehicle, and Joint Movants each have a capacity of over 33 passengers, satisfying either passenger requirement.[51] As such, Joint Movants both operate a "bus" under federal law.

68. As to the remaining elements of the federal Rule 390.5T, Mountain Star contends that Rule 6301 and § 40-10.1-301, C.R.S., are not at odds with the federal rule despite some different language between the state and federal definitions.

69. Section 40-10.1-301(2), C.R.S. defines "charter bus" as follows:

> "Charter bus" means a motor vehicle with a minimum seating capacity of thirty-three, including the driver, that is hired to transport a person or group of persons traveling from one location to another for a common purpose. A

[48] *Id.*
[49] *Kozak*, 695 F. Supp. 2d at p. 1299.
[50] *Id.* (quoting 49 C.F.R. § 393.5 (1998)).
[51] *See* Hr. Tr. September 9, 2024, at p. 80:11-19, p. 81, ll. 13-17, p. 95, ll. 15- 23, p. 99:11-14; Hearing Exhibits 301 and 303.

> charter bus does not provide regular route service from one location to another.

70. Rule 6301(a) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, takes this a step further, adding more elements to the definition of "charter bus" as follows:

> "Charter Bus" means a Limited Regulation Carrier that provides transportation in a Motor Vehicle with a Seating Capacity of 33 or more, including the Driver, and provides service for a Person or group of affiliated Persons traveling for a common purpose, for a specific period of time, during which the chartering party has the exclusive right to direct the operation of the Motor Vehicle, including selection of the origin, destination, route and intermediate stops. A Charter Bus does not provide service on a regular route or Schedule.

71. Mountain Star first argues that unlike the federal rule, Rule 6301 does not include the term "contract" in its definition but instead uses the phrase "affiliated persons" to convey the same meaning. Mountain Star provides no support for this assertion beyond a reference to the Merriam-Webster definition of "affiliated" as "closely associated with another typically in a dependent or subordinate position."[52]

72. The ALJ is, again, unconvinced. Merriam-Webster's online dictionary defines a "contract," in relevant part, as a binding agreement between two or more persons or parties, or a business arrangement for the supply of goods or services at a fixed price.[53] Neither of these definitions require close association between the parties to a contract, nor a dependent or subordinate position. Indeed, if a contract required the close association of parties, no online purchase would be considered a contract, and no cell phone or utility agreement would be a contract. Additionally, affiliation does not require an agreement or arrangement that is binding. The terms "affiliated persons" and "under a single contract" simply cannot be read to convey the same meaning.

[52] Response at p. 7.
[53] Merriam-Webster (last accessed Mar. 7, 2025).

73. Further, Mountain Star concludes that "[t]he individuals being grouped together in Rule 390.5T's definition are associated with each other because they are traveling under a single contract and for a common purpose," but this is exactly what Joint Movants argue, that their passengers have the common purpose of attending a Red Rocks event and are operating under a single contract facilitated by On Location. Mountain Star's argument essentially reads the affiliation requirement out of Rule 6301 to make it compatible with the federal rule, which supports Joint Movants' argument that the affiliation requirement is not present in the federal definition.

74. Next, Mountain Star contends that the phrase "[a] Charter Bus does not provide service on a regular route or Schedule" in Rule 6301 is a more verbose version of "travel[ing] together under an itinerary either specified in advance or modified after having left the place of origin" in the federal definition. This also implicates the phrase "[a] charter bus does not provide regular route service from one location to another" in § 40-10.1-301, C.R.S. The ALJ disagrees that these meanings are consistent.

75. Mountain Star suggests that both of these phrases convey that charter transportation is intended for singular events that are unique to that group of passengers and unique in route or schedule.[54] However, a route or schedule can be specified in advance, as here, without being regular. Joint Movants' schedules depend on the time and day of events at Red Rocks and whether or not a charter is booked for a specific event. They do not run at regular intervals or set times of day, they run based on when On Location has need for them.

76. While Joint Movants may make stops at specified locations, they are not required to do so if no passengers were scheduled in advance to be picked up at one of the locations. Aside

[54] Response at pp. 7-8.

from any pre-scheduled pickups, they may also determine the best route to take to Red Rocks based on traffic conditions and are not required to follow a regular route.

77. Finally, the term "or" is again used to require that the itinerary for charter transportation may either be specified in advance *or* modified after having left the place of origin. The plain language indicates that either a specified itinerary or the ability to modify is permitted for charter transportation. In this case, the itinerary is specified in advance.

78. Thus, the ALJ finds that Ace Express and Ramblin' Express also satisfy the remaining elements of charter transportation in 49 C.F.R. § 390.5T. On Location contracts with Ace Express and Ramblin' Express under a single contract for the exclusive use of buses to transport groups of people with the common purpose of attending a specific event at Red Rocks, at a fixed charge and under a specific itinerary controlled by On Location. Joint Movants' services at issue here fall within the definition of charter bus transportation under § 14501(a)(1)(C) and they are subject to the federal preemption provision.

3. The portions of Rule 6301(a) and § 40-10.1-301(2) that add restrictions to charter authority not present under federal law are preempted.

79. Having found that Joint Movants provide charter bus transportation, the next question is whether the Commission's definition of "charter bus" under Rule 6301, and the statutory definition under § 40-10.1-301, impose greater restrictions on charter authority than permitted under federal law, effectively negating charter authority where it would otherwise exist under the federal definition.

80. The definition of charter bus contained in Rule 6301 clearly goes beyond that of the federal definition. Unlike the federal definition, to be considered a "charter bus" under Rule 6301, the vehicle cannot operate on a regular route or schedule, and the passengers must be

affiliated beyond having a common purpose. Similarly, to be considered a "charter bus" under § 40-10.1-301, the vehicle cannot operate on a regular route. The issue here is whether the additional state requirements relate to the "authority" to provide charter bus transportation.

81. These definitions all distinguish charter transportation from other types of passenger transportation, and § 14501(a)(1)(C) hinges on the type of transportation being offered. If the Commission applies its own definition of charter bus, then Joint Movants would not be authorized to provide charter transportation without a prior affiliation of the passengers and a decision as to nonregularity of route and schedule—whereas they otherwise would be authorized under the federal definition, which has no such requirement regarding affiliation or route and schedule regularity.

82. A state definition of charter bus that places restrictions on the authority to provide charter transportation that are not present under federal law clearly has "a connection with" the authority to provide charter bus transportation.

83. As such, Commission Rule 6301 and § 40-10.1-301 are related to the authority to provide intrastate or interstate charter bus transportation in violation of § 14501(a)(1)(C). Those portions of Rule 6301 and § 40-10.1-301 that conflict with the federal definition, i.e., the passenger-affiliation requirement and the route and schedule restriction, are void and without effect.

4. Rule 6301 and § 40-10.1-301 do not fall within the safety exemption carved out in § 14501(a)(2).

84. The Colorado Legislature regulates the transportation of passengers by motor vehicle for hire to protect the public health, safety, and general welfare.[55]

[55] *Denver Cleanup Serv., Inc. v. Pub. Utils. Commerce*, 561 P.2d 1252, 1254 (Colo. 1977).

85. Section 14501(a)(2) limits the scope of the preemption to ensure that states may still regulate transportation for safety.[56] However, any law or regulation related to the authority to operate charter bus transportation rather than the safety of the service is preempted.

86. In its Complaint, Mountain Star did not contend and has not provided any evidence that either Ace Express or Ramblin' Express are operating in violation of any safety codes or ordinances. Mountain Star alleges only that Joint Movants are operating outside of their authority as common carriers based on their failure to obtain a CPCN for the transportation services between points in Denver and Jefferson Counties on one hand and Red Rocks Amphitheater on the other hand. The crux of Mountain Star's allegations is commercial—it argues that Ace Express and Ramblin' Express are operating outside of their permits and diverting traffic and revenues away from itself.

87. Mountain Star now argues in its Response to the Motion that Rule 6301, which is simply the Commission's definition of "charter bus," is a safety regulation within a state's police powers, and specifically exempted from federal preemption under § 14501(a)(2). In so arguing, Mountain Star also calls into question § 40-10.1-301.

88. In *City of Columbus v. Ours Garage & Wrecker Serv., Inc.*, the U.S. Supreme Court states that "Congress' clear purpose [for Sections 14501(a)(2) and (c)(2)(A)]…is to ensure that its preemption of States' economic authority over motor carriers…'not restrict' the preexisting and traditional state power over safety."[57] Mountain Star acknowledges this but suggests that excluding regular route and schedule from the definition of charter bus relates to Colorado's power to

[56] This includes a state's authority to regulate motor vehicles for safety, impose highway route controls or limitations based on a motor vehicle's size or weight, or require minimum amounts of financial responsibility relating to insurance and self-insurance authorization.

[57] 536 U.S. 424, 426 (2002).

regulate for safety, pointing to the fact that Joint Movants operate downtown and at Red Rocks "during times when congestion is more likely."[58]

89. Section 14501(a)(1)(C) is clear that it preempts state regulation over the *authority* to provide charter transportation, not safety. It does not prevent states from making regulations as to stops on public roads or locations, the volume of surrounding pedestrian traffic, and the general flow of traffic as Mountain Star suggests. States may, for example, create and enforce no-stopping zones on downtown streets to address such concerns; however, Mountain Star failed to demonstrate that such a regulation is at issue here.

90. Accordingly, the ALJ finds the inclusion of route and schedule restrictions in Rule 6301 and route restrictions in § 40-10.1-301 do not fall within the safety exemption in § 14501(a)(2).

5. Mountain Star's state law claims against Ace Express and Ramblin' Express cannot be maintained as they are subject to federal preemption.

91. Since Mountain Star's claims against Joint Movants are based on their lack of authority to provide the services at issue as common carriers, which is premised on the erroneous presumption that they lack charter authority, the ALJ finds that it lacks subject matter jurisdiction to hear the claims against Joint Movants as the state law claims are preempted by federal law.

92. As stated above, there are no relevant factual disputes regarding the services Ace Express and Ramblin' Express provide, the permits that they each hold, or their lack of CPCN. Mountain Star's claims against Ace Express and Ramblin' Express rely only upon state law. As the ALJ has found that Ace Express and Ramblin' Express are in fact authorized to provide

[58] Response at p. 9 (Mountain Star provides no support for its assertion but urges the ALJ to take judicial notice of typical congestions times).

charter bus transportation under federal law, they are not required to obtain a CPCN to operate their charter transportation service.

93. Accordingly, as the ALJ has found that § 14501(a)(1)(C) preempts the portions of Commission Rule 6301 that are at issue here, as well as the related portions of § 40-10.1-301 as to the transportation provided by Ace Express and Ramblin' Express to On Location and the Commission lacks subject matter jurisdiction to hear the claims against Joint Movants.

6. Partially Vacating Hearing.

94. By Decision No. R25-0037-I, issued January 21, 2025, this matter is set for a two-day hearing commencing on March 20, 2025. In light of the narrowed scope of the proceeding as a result of this decision, one day should be sufficient. The second day scheduled will be vacated.

V. ORDER

A. It Is Ordered That:

1. The Motion to Limit the Scope of the Hearing ("Motion") filed by Ace Express Coaches, LLC ("Ace Express") and Ramblin' Express, Inc. ("Ramblin' Express") on February 12, 2025, is granted.

2. Accordingly, as the Motion is construed as a motion to dismiss for lack of subject matter jurisdiction, the claims against Joint Movants Ace Express and Ramblin' Express are dismissed.

3. The Complaint is dismissed as to Ace Express and Ramblin Express. They are no longer parties to this proceeding.

4. The second day of hearing scheduled in this matter on March 21, 2025, is vacated. The hearing scheduled for March 20, 2025, remains scheduled.

5. This Decision is effective immediately.

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

Rebecca E. White,
Director