

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE APPLICATION OF ROCKY)
MOUNTAIN SHUTTLINES, INC., FOR)
TEMPORARY AUTHORITY TO CONDUCT) DOCKET NO. 92A-621CP-TA
OPERATIONS AS A COMMON CARRIER)
BY MOTOR VEHICLE FOR HIRE.)

**COMMISSION ORDER GRANTING
TEMPORARY AUTHORITY IN PART**

Mailed date: December 30, 1992
Adopted date: December 23, 1992

STATEMENT, FINDINGS, AND CONCLUSIONS

BY THE COMMISSION:

1. On November 17, 1992, Rocky Mountain Shuttlines, Inc., filed an application (Docket No. 92A-621CP-TA) for temporary authority to conduct operations as a common carrier by motor vehicle for hire for the transportation of passengers and their baggage, in call-and-demand limousine service, between points in the County of Boulder, State of Colorado, lying east of a line drawn from a point on the Boulder/Larimer County boundary, said point located exactly 13.5 miles west of the northeast corner of Boulder County, to a point located on the Boulder/Jefferson County boundary, said point located exactly 13.5 miles west of the southeast corner of Boulder County, on the one hand, and Stapleton International Airport, on the other hand.

2. The Commission gave notice of the application on November 23, 1992. Interventions opposing a grant of the application were filed by: Yellow Cab Cooperative Association, doing business as Boulder Yellow Cab, Inc.; Mopa Leasing Co., doing business as Broomfield Transportation, Inc.; Boulder Airporter, Inc., doing business as "Airporter;" and American Limousine Service.

3. Amendments to the temporary authority application were

filed by RMS on November 25, 1992, and December 4, 1992. The purpose of the amendment filed November 25, 1992, was to correct an erroneous statement of fact. The amendment filed on December 4, 1992, adds two restrictions regarding vehicle size and geographic service area to the application. The restrictions are stated on the authority, which is the Appendix attached to this decision.

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

5. Section 40-6-120(1), C.R.S., authorizes the Commission 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."

6. The support for this application consists of over 200 letters. The majority of the support letters were submitted by individuals and businesses in the Boulder area.

7. Section 40-6-120(1), C. R. S. provides that the Commission may grant a temporary authority only when there is "no carrier service" capable of meeting the need applied for. Although carrier service does presently exist for the area covered by the application, the Commission has been presented, as part of this record, with evidence of numerous complaints regarding the quality of the existing service.

8. We hold that evidence regarding the quality of existing carrier's service is relevant to the "no carrier service" standard set forth in the statute. Proceedings involving certification of a competing carrier or public utility in a regulated monopoly market present a similar question as the one here (*i.e.*, whether the Commission can approve a temporary authority when carrier service exists, but where that existing service is of poor quality). Notably, the courts have held that a competing certificate of public convenience and necessity may be granted if existing service is substantially inadequate. Rocky Mountain Airways, Inc. v. Public Utilities Comm., 509 P.2d 804 (Colo. 1973); Ephraim Freightways, Inc. v Public Utilities Comm., 380 P.2d 228 (Colo. 1963). We emphasize that the existing service inadequacy must be substantial. Neither mere customer convenience, nor the presence of some customer dissatisfaction with existing carriers is the test. Perfection is not the standard by which existing carrier service will be judged. Ephraim Freightways, Inc., supra; Denver & Rio Grande v. Public Utilities Comm., 351 P.2d 278 (Colo. 1960).

9. Based upon the present record in this case, we are persuaded that existing carrier service is substantially inadequate to the extent we grant the temporary authority in this order. The complaints regarding present service justify the partial approval

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of the application. This determination, inasmuch as it is based upon only the temporary application, shall have no effect on the permanent application proceeding.

10. The Applicant has adequate equipment and financial resources to begin immediate service within the scope of the authority sought and is willing, ready, and able to operate under all commission rules and regulations governing carriers by motor vehicle.

11. The application for temporary authority is in the public interest and should be granted in part.

12. The Applicant is advised that the granting of a temporary authority makes no presumption that the permanent authority will be granted.

THEREFORE THE COMMISSION ORDERS THAT:

1. Rocky Mountain Shuttlines, Inc. is granted temporary authority as a common carrier by motor vehicle for hire for a period of 180 days commencing from the mailed date of this order, with authority as set forth in the attached Appendix to the Decision and Order.

2. Rocky Mountain Shuttlines, Inc. shall not commence operations until all requirements have been met and notice in writing has been received from the Commission that the Applicant is in compliance and may begin service. If the Applicant does not comply with the requirements of this ordering paragraph within 30 days of the effective date of this Order then ordering paragraph 1 above, which grants authority to the Applicant, shall be void, and the authority granted shall then be void. On good cause shown, the Commission may grant additional time for compliance, if the request for additional time is filed within the 30 days.

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.

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4. This Order is effective on its day of mailing.

ADOPTED IN OPEN MEETING December 23, 1992.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

CHAIRMAN ROBERT E. TEMMER DISSENTING.

CHAIRMAN ROBERT E. TEMMER DISSENTING:

I respectfully dissent. Although I agree totally with the holding or theory expressed in paragraph 8 of the Statement, Findings, and Conclusions that service quality is relevant in determining whether existing carriers are capable of meeting the need, I believe it is misapplied in this case. As noted in the cases cited in paragraph 8, the test is not perfection, and some complaints can be expected when carriers serve large numbers of customers. I believe that is the situation we have here. It is obvious there is some customer dissatisfaction. However, the record also contains letters of support for the existing carrier, stating that good service is provided. As I read the letters submitted by the Applicant, a theme emerges that there is a desire for a competing carrier in hopes of having improved service as a result of competition. I do not find a theme that shows the existing services of existing carriers are substantially inadequate to meet the needs that exist, especially on this record. I believe that the hearing for the permanent authority application is the appropriate place to answer the question of whether the existing carriers are providing service that is substantially inadequate to meet the needs. While it is tempting to try to address the complaints expressed in the support letters in this application, I would deny the request for temporary authority because in my view this record does not establish substantial inadequacy.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Chairman

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Appendix
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Decision No. C92-1626
Docket No. 92A-621CP-TA
December 23, 1992

Transportation of

passengers and their baggage, in call-and-demand limousine service, between points within the City Limits of Boulder, and points within the following described area (a) Colorado Highway 119 on the west, (b) Jay Road on the south, (c) Mineral Road on the north, (d) and 79th Street as extended on the east, on the one hand, and Stapleton International Airport, on the other hand.

The temporary authority is restricted as follows:

1. Against providing service which either originates or terminates at the following locations in Boulder: Boulderado Hotel, Boulder Inn, Clarion Hotel, Broker Inn, Days Inn, Holiday Inn, Golden Buff, Arapahoe Lodge, Residence Inn, Marriott Courtyard, University Inn, College Inn, Highlander Inn, Skyland, Lazy L, Homewood Suites, Gunbarrell Inn, Sandy Point Inn, Pearl Street Inn, Briar Rose, and the main campus of the University of Colorado; and
2. Against providing service in vehicles with a seating capacity of seven passengers or less including the driver.

ORDER-KA

APPLICANT:

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Greeley, CO 80631

APPLICANT'S ATTORNEY:

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Denver, CO 80203

INTERVENOR:

Yellow Cab Cooperative Association
dba Boulder Yellow Cab, Inc.
2907 55th Street
Boulder, CO 80301

INTERVENOR'S (YELLOW) ATTORNEYS:

Richard J. Bara, Esq.
1155 Sherman Street
Denver, CO 80203

James F. Frost, Esq.
1600 Broadway, No. 1950
Denver, CO 80202

INTERVENOR:

Mopa Leasing Co.,
dba Broomfield Transportation,
Inc.
555 Alter Street, Unit B
Broomfield, CO 80020

INTERVENOR:

Boulder Airporter, Inc.
dba "Airporter"
P. O. Box 4237
Boulder, CO 80306

INTERVENOR:

American Limousine Service
7055 Dover Way
Arvada, CO 80004

INTERVENORS (BOULDER) (AMERICAN)
ATTORNEY:

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