

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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APPLICATION OF COLORADO PUC NO. 191)
CORPORATION, BOULDER, COLORADO, FOR)
AUTHORITY TO ELIMINATE A RESTRIC-)
TION FROM CERTIFICATE OF PUBLIC.)
CONVENIENCE AND NECESSITY)
PUC NO. 45269.)

DOCKET NO. 91A-168CP
RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK

Mailed Date: August 4, 1994

Appearances: Mark Williams, Esq., Denver,
Colorado, for the Applicant;
and

Richard J. Bara, Esq., Denver,
Colorado, for Yellow Cab
Cooperative Association
and Denver Airport Limousine,
Inc.

STATEMENT

This application was originally filed February 21, 1991. Yellow Cab Cooperative Association and Denver Airport Limousine Service, Inc. (DAL), attempted to intervene in this proceeding, but their intervention was dismissed. See Decision No. R91-454-I, April 9, 1991.

The matter proceeded to hearing on July 2, 1991, and the application was granted by Decision No. R91-991, July 15, 1991. Exceptions to that decision were denied and Decision No. R91-911 was adopted by the Commission as its decision. See Decision No. C91-1629. DAL pursued judicial review and in Yellow Cab Cooperative Association v. PUC, 869 P.2d 545 (Colo. 1994) the Supreme Court of Colorado held that the Commission erred in dismissing the intervention of DAL, vacated the Commission's order, and remanded the case to the Commission for further proceedings.

In accordance with the remand order a hearing was held on July 29, 1994, in a Commission hearing room in Denver, Colorado. During the course of the hearing Exhibits A through I were identified; Exhibits B through G and I were admitted; Exhibit A was rejected. Administrative notice was not taken of Exhibit H. At the conclusion of the Applicant's case-in-chief DAL moved to

dismiss the application for failure to prove a *prima face* case. The undersigned granted the motion.

In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits in this proceeding including a written recommended decision containing findings of fact, conclusions thereon, and a recommended order.

FINDINGS OF FACT

1. PUC No. 191 Corp. (191 Corp.) operates under the authority of PUC No. 45269. Generally, that certificate authorizes scheduled passenger service between Stapleton International Airport, until commercial air operations cease, and Denver International Airport, upon the commencement of commercial air operations, on the one hand, and all points located within a one-mile radius of the intersection of Colfax and Broadway, in Denver, Colorado, on the other hand. The certificate is restricted to the use of vehicles with a passenger capacity of not less than 9 passengers including the driver nor more than 12 passengers excluding the driver.

2. Applicant runs scheduled operations between the airport and several large downtown hotels. These hotels frequently book large groups from organizations and conventions with departure and arrival times scheduled close together. During certain seasons, the Applicant experiences overload conditions and there may be more passengers than seats available. This requires that the Applicant use an additional vehicle.

3. If the application were granted the Applicant would use 21 passenger vehicles which could be available quickly through a sister corporation. Applicant has the financial wherewithal and the overall means to utilize the larger equipment. If the application were granted, 191 Corp. would continue to comply with the Commission's rules and regulations. It is a fit Applicant.

4. It costs the Applicant \$3,000 per year to insure an 11-passenger vehicle and \$4,700 per year to insure a 21-passenger vehicle. An 11-passenger vehicle can be purchased for approximately \$23,000; a 21-passenger vehicle for \$40,000.

DISCUSSION

In Yellow Cab v. Public Utilities Commission, *supra*, the Colorado Supreme Court clarified that any change in the terms and conditions initially imposed on one carrier's authority may be authorized only if the Applicant establishes a public need for the change, and any existing service which is of a type that the Applicant seeks to offer must be shown to be substantially inadequate. The Applicant in this proceeding has failed to establish either of those two criteria.

The public need evidence offered consisted of generalized claims that granting the application would lead to increased efficiencies on behalf of the carrier which would be passed on as cost savings to the customers or public at large. However, as brought out on cross-examination, during the three years that Airporter ran larger vehicles while judicial review was pending, its fares increased. There was no evidence offered of public demand for service in larger vehicles, other than the Applicant's claim that some customers would like it.¹

Similarly, the only evidence offered to indicate that the existing service of DAL was substantially inadequate was one complaint contained in the files of the PUC, which appears to have been attended to by DAL. There was also some evidence that an employee of DAL had indicated that he experienced driver turnover. This is a far cry from establishing by a preponderance of evidence that there is a public need for the proposed service and that the existing service is substantially inadequate. Indeed, Applicant offered no specific instances of inadequate service of DAL at all.

CONCLUSIONS

1. PUC No. 191 Corp. has failed to establish by a preponderance of the evidence that there is a public need for the service that it proposes in this application.

2. PUC No. 191 Corp. has failed to establish by a preponderance of the evidence that the existing service of DAL is substantially inadequate.

3. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

ORDER

THE COMMISSION ORDERS THAT:

1. Docket No. 91A-168CP, being an application of PUC No. 191 Corporation, is dismissed.

2. 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.

¹ There was offered as an exhibit, which was rejected, support letters from several hotels indicating support for larger vehicles. However, these letters were all at least three years old, one over four years old, and were not admitted into the proceeding on the grounds that they were irrelevant to the circumstances existing today.

3. As provided by § 40-6-109, 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 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 BASIC FINDINGS 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.

4. If exceptions to this 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


Administrative Law Judge