

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE APPLICATION OF COLORADO)	
MOUNTAIN EXPRESS, INC. FOR)	
TEMPORARY AUTHORITY TO EXTEND)	DOCKET NO. 95A-176CP-
OPERATIONS UNDER CERTIFICATE OF)	EXTENSION-TA
PUBLIC CONVENIENCE AND NECESSITY)	
PUC NO. 7321.)	

**COMMISSION ORDER DENYING
TEMPORARY AUTHORITY**

Mailed date: June 1, 1995
Adopted date: May 31, 1995

I. BY THE COMMISSION:

Statement Findings, and Conclusion

1. On April 20, 1995, Colorado Mountain Express, Inc. filed an application (Docket No. 95A-176CP-Extension-TA) for temporary authority to extend operations under Certificate of Public Convenience and Necessity PUC No. 7321 for the transportation of passengers and their baggage, (1) in scheduled service, (a) between Grand Junction, Colorado, including Grand Junction Municipal Airport (Walker Field), on the one hand, and points within a ten-mile radius of the intersection of Mill Street and Main Street in Aspen, Colorado, on the other hand, via Interstate 70 and

Colorado Highway 82; (b) between Denver, Colorado, on the one hand, and points within a ten-mile radius of the intersection of Mill Street and Main Street, in Aspen, Colorado, on the other hand, via Interstate 70 and Colorado Highway 82; and (2) in call-and-demand limousine service, between points within the Counties of Denver and Mesa, State of Colorado, on the one hand, and points within a ten-mile radius of the intersection of Mill Street and Main Street, in Aspen, Colorado, on the other hand.

2. The Commission gave notice of the application on May 1, 1995. Interventions opposing a grant of the application were filed by Aspen Limousine Service, Inc., doing business as Vans to Vail, Inc. ("ALS"), Hy-Mountain Transportation, Inc. ("Hy-Mountain"), Metro Taxi, Inc. ("Metro"), Cabs, Inc., doing business as Zone Cabs, Inc. ("Zone"), and Sunshine Taxi, Inc. ("Sunshine"). Petitions for leave to intervene were filed by Jerald M. Barnett and Pitkin County Bank and Trust Company.

3. Intervenor Zone is the owner and operator of Certificate of Public Convenience and Necessity PUC No. 1221, and has filed an intervention by right to this application. A review of said certificate reveals that Zone is authorized, as pertinent here, to transport

passengers within and between a defined base area in the Denver metropolitan area, on the one hand, and points within 85 miles of the base area, on the other hand. The service authorized under Certificate No. 1221 is not duplicative of the authority requested within the application. Zone should not be considered as a competitor to the Applicant who is *legally* interested in or affected by Commission action in this case. Therefore, we hold that Zone has no standing to intervene and its intervention should be stricken.

4. Intervenor Metro is the owner and operator of Certificate of Public Convenience and Necessity PUC No. 1481, and has filed an intervention by right, or in the alternative a petition for leave to intervene. A review of Certificate No. 1481 reveals that Metro is authorized, as pertinent here, to transport passengers and their baggage from all points within the City and County of Denver to and from all points within an 85-mile radius of the intersection of 16th and Champa Streets, in Denver, Colorado. As with Zone, the service authorized under Certificate No. 1481 is not duplicative of the authority requested within the application. Metro should not be considered as a competitor to the Applicant who is *legally* interested

in or affected by Commission action in this case, and we hold that Metro has no standing to intervene as a matter of right. In addition, Metro has not stated sufficient reason to be allowed permissive intervention. Metro's inter-vention in this matter will be stricken.

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

6. Pursuant to § 40-6-120(1), C.R.S., the Commission is authorized 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."

7. Each of the letters of support filed on behalf of this application cites that the reason there is an immediate and urgent need for the proposed services is because of the cessation of service by ALS. The scheduled operations of ALS were disrupted for a short period of time during the month of April, 1995. However, Staff investigation and monitoring of the services being provided by ALS has shown, in fact, that ALS has successfully reestablished its scheduled service and is presently operating such schedules.

8. The Commission finds that with the reestablishment of the scheduled

services of ALS, there is an existing carrier capable of providing the service requested, and that with those services being provided, the immediate and urgent need expressed by those supporting the application no longer exists. The Commission will therefore deny the application.

9. This application for temporary authority is not in the public interest and should be denied.

II. ORDER

A. THE COMMISSION ORDERS THAT:

1. This application is denied.
2. The petition for leave to intervene filed by Pitkin County Bank and Trust Company is granted.
3. The petition for leave to intervene filed by Jerald M. Barnett is granted.
4. The intervention by right filed on behalf of Cabs Inc., doing business as Zone Cabs, Inc., is stricken.
5. The intervention by right filed by Metro Taxi, Inc., is stricken.
6. The petition for leave to intervene filed by Metro Taxi, Inc. is denied.
7. 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.

B. This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING May 31, 1995.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

COMMISSIONER VINCENT MAJKOWSKI
CONCURRING IN PART AND DISSENTING
IN PART.

COMMISSIONER VINCENT MAJKOWSKI CONCURRING IN PART AND DISSENTING
IN PART:

I respectfully dissent, in part, from the decision of the

majority. I would have denied the petitions for leave to intervene filed by the petitioners, Jerald M. Barnett and the Pitkin County Bank and Trust Company. It is my position that neither party has established the fact that they have a substantial interest in this matter.

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ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

VINCENT MAJKOWSKI

Bruce N. Smith
Director

Commissioners

ORDER-ADE

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 95A-176CP-EXTENSION-TA
DECISION NO. C95-513
(Page 1 of 2 Pages)

I, Bruce N. Smith, Director of The Public Utilities Commission of the State of Colorado,

certify that I served a true and correct copy of the above Commission Decision -- entered in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination on the date noted on this certificate at Denver, Colorado.

APPLICANT:

Colorado Mountain Express, Inc.
P. O. Box 580
Vail, CO 81658

ATTORNEY FOR APPLICANT:

Thomas J. Burke, Jr., Esq.
JONES & KELLER, P.C.
Suite No. 1600
1625 Broadway
Denver, CO 80202

INTERVENOR:

Aspen Limousine Service, Inc.
dba Vans to Vail, Inc.
P. O. Box 1368
Glenwood Springs, CO 81602

INTERVENOR'S (VANS) ATTORNEY:

James A. Beckwith, Esq.
Suite No. 7
7910 Ralston Road
Arvada, CO 80002

INTERVENOR:

Hy-Mountain Transportation, Inc.
Attn: David Hyman, President
111 C Airport Business Center
Aspen, CO 81611

INTERVENOR:

Metro Taxi, Inc.
Suite No. 4700
1700 Lincoln Street
Denver, CO 80203

INTERVENOR'S (METRO) ATTORNEY:

Robert W. Nichols, Esq.
NICHOLS & HECHT, LLC
Suite B
600 Pearl Street
Boulder, CO 80302

INTERVENOR:

Cabs, Inc.
dba Zone Cabs, Inc.
2358 Washington Street
Denver, CO 80205

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WITNESS MY HAND AND THE SEAL OF
THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

BRUCE N. SMITH
DIRECTOR

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 95A-176CP-EXTENSION-TA
DECISION NO. C95-513
(Page 2 of 2 Pages)

I, Bruce N. Smith, Director of The Public Utilities Commission of the State of Colorado, certify that I served a true and correct copy of the above Commission Decision -- entered in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination on the date noted on this certificate at Denver, Colorado.

INTERVENOR'S (ZONE) ATTORNEY:

I. H. Kaiser, Esq.
BERENBAUM, WEINSHIENK & EASON, P.C.
Suite No. 2600
370 - 17th Street
Denver, CO 80202

ATTORNEY FOR INTERVENOR PITKIN COUNTY

BANK AND TRUST CO.:
L. E. Lucero & Associates, P.C.
Suite No. 203
651 Chambers Road
Aurora, CO 80011-7127

INTERVENOR:

Sunshine Taxi, Inc.
3009 East Aspenwood Court
Grand Junction, CO 81504

ROUTE:

1, 2, 3, 4, 6-Docketing, 9, 10, 20,
21, 30, 31/2 copies, 40/5 copies, 50,
60, Black Book, Text Management,
Operating Rights Unit, DMS (plus
certificate), Index.

INTERVENOR'S (SUNSHINE) ATTORNEY:

Mark A. Davidson, Esq.
LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.
Suite No. 2800
633 17th Street
Denver, CO 80202

ORDER-ADE

ATTORNEY FOR INTERVENOR JERALD M.

BARNETT:

Dale E. Isley, Esq.
WILLIAMS & ISLEY, P.C.
1225 Mellon Financial Center
1775 Sherman Street
Denver, CO 80203

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WITNESS MY HAND AND THE SEAL OF
THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

BRUCE N. SMITH
DIRECTOR