

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
DENYING MOTIONS TO DISMISS**

Issued Date: October 25, 2024

TABLE OF CONTENTS

| | |
|---|----|
| I. STATEMENT..... | 2 |
| A. PROCEDURAL BACKGROUND | 2 |
| B. COMPLAINT..... | 3 |
| C. ACE EXPRESS AND RAMBLIN' EXPRESS MOTION TO DISMISS | 4 |
| D. ON LOCATION MOTION TO DISMISS..... | 5 |
| E. COMPLAINANT RESPONSE | 5 |
| F. LIMITED HEARING..... | 5 |
| G. PARTY POSITIONS..... | 7 |
| II. FINDINGS OF FACT | 8 |
| III. LEGAL STANDARDS | 12 |

1. Pending Motions12

2. Transportation at Issue15

IV. DISCUSSION AND CONCLUSIONS18

1. Ramblin’ Express and Ace Express’ Motion to Dismiss18

2. On Location’s Motion to Dismiss20

V. ORDER.....23

A. It Is Ordered That:23

I. STATEMENT

A. PROCEDURAL BACKGROUND

1. This proceeding concerns the formal complaint filed by Mountain Star Transportation, LLC (“Mountain Star”) doing business as Red Rocks Shuttle 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 5, 2024, the Commission issued its Order Setting Hearing and Notice of Hearing and Order to Satisfy or Answer, which was then amended on June 6, 2024. The Order to Satisfy or Answer, as amended, required the respondents to satisfy the matters in the complaint or to answer the complaint within 20 days from service.

3. On June 12, 2024, the Commission referred this proceeding to an ALJ by minute entry.

4. On June 25, 2024, the On Location Events, LLC Motion to Dismiss was filed by On Location. Pointing to Complainant’s acknowledgement and admission that On Location is a separate and unaffiliated company from both Ace Express and Ramblin’ Express, On Location

states that its Shuttles to Red Rocks program works with Commission-authorized transportation providers that provide round-trip transportation services for concertgoers.

5. On June 26, 2024, the Motion to Dismiss and the Notice of Technical Difficulty was filed by Ace Express and Ramblin' Express ("collectively, "Joint Movants"). Based upon the technical difficulties incurred, the Motion to Dismiss was filed nunc pro tunc to June 25, 2024.¹

B. COMPLAINT

6. The Complaint, which includes 14 exhibits, is verified by Roman Lysenko, owner of Mountain Star.

7. Mountain Star alleges that it is harmed by On Location illegally diverting traffic and revenues away from Complainant.

8. Mountain Star conditionally alleges that "if" On Location acts as a broker, then it advertises its own shuttle brand in violation of Rule 6016(a), (b), and (c) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6, and orders charter buses to transport unrelated individuals in violation of Rules 6001(l) and 6301(a), (b), and (c), 4 CCR 723-6.

9. Mountain Star alleges that On Location is operating without authority and should be ordered to cease and desist its operation and to take down its website offering to provide a shuttle service to Red Rocks.

10. Mountain Star alleges that On Location is operating without authority and should be assessed civil penalties according to the Commission's rules.

11. Mountain Star alleges that Ace Express and Ramblin' Express provide transportation service outside of any permit or authority by providing charter buses to On Location

¹ Rule 1201(d) of the Rules of Practice and Procedure, 4 CCR 723-1.

to unrelated individuals for the purpose of shuttle service between Denver and Jefferson Counties on one hand and Red Rocks Amphitheater on the other hand.

12. Mountain Star alleges that neither Ace Express nor Ramblin' Express are authorized to provide shuttle service between points in Denver and Jefferson Counties on one hand and Red Rocks Amphitheater on the other hand.²

13. Mountain Star alleges that Ace Express and Ramblin' Express are illegally diverting traffic and revenues away from Complainant.

14. Mountain Star alleges that Ace Express and Ramblin' Express are providing services they do not have the authority to provide. Accordingly, they should be ordered to cease and desist their operation and ordered to stop providing shuttle service to On Location.

15. Mountain Star alleges that Ace Express and Ramblin' Express are providing services they do not have the authority to provide. Accordingly, they should be assessed civil penalties according to the Commission's rules.

16. Finally, because Ace Express and Ramblin' Express are providing services they do not have the authority to provide, Mountain Star alleges that authorities should be suspended pursuant to Rule 4 CCR 723-6-6011(a).

C. ACE EXPRESS AND RAMBLIN' EXPRESS MOTION TO DISMISS

17. Joint Movants contend that the Complaint should be dismissed for the failure to state a claim for which relief can be granted. Joint Movants argue that transportation was provided in accordance with Rule 6301, 4 CCR 723-6, a Certificate of Public Convenience and Necessity ("CPCN") is not required to provide the transportation provided, and the incumbent CPCN holder is not protected from competition by a limited regulation carrier. At all times relevant to the

² See Exhibits 5-13.

Complaint, Joint Movants respectively provided transportation by charter bus under limited regulation permits CSB-00214 and CSB-83.

D. ON LOCATION MOTION TO DISMISS

18. On June 25, 2024, the On Location Events, LLC Motion to Dismiss was filed by On Location. Pointing to Complainant's acknowledgement and admission that On Location is a separate and unaffiliated company from both Ace Express and Ramblin' Express, On Location states that its Shuttles to Red Rocks program works with Commission-authorized transportation providers that provide round-trip transportation services for concertgoers.

19. On Location contends that the Complaint should be dismissed because Complainant failed to comply with Rule 1201, 4 CCR 723-1, and § 13-1-127, C.R.S.

20. On Location disputes that it is subject to Commission jurisdiction because it is not a public utility or any other regulated provider. Based thereupon and admissions within the Complaint, the Complaint should be dismissed.

21. On Location next argues that the Complaint should be dismissed because it fails to state a claim against On Location.

E. COMPLAINANT RESPONSE

22. On July 10, 2024, the Response to Motion to Dismiss was filed by Complainant. Complainant does not address the merits of the motions, but rather contends such matters should be addressed at the scheduled evidentiary hearing.

F. LIMITED HEARING

23. In *Cnty. Banks of Colo. v. Landy*, 2015 Colo. Dist. LEXIS 1913, Judge Charles M. Pratt, District Court Judge in Arapahoe County, summarized a hearing employed to determine subject matter jurisdiction:

A motion made under Colorado Rule of Civil Procedure 12(b)(1) based upon lack of subject matter jurisdiction may go beyond the allegations in the complaint and challenge the facts upon which subject matter jurisdiction depends. *Trinity Broadcasting of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 924 (Colo. 1993). "The burden of establishing subject matter jurisdiction rests on the party asserting jurisdiction" and the "court has wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1)." *Firstier Bank, et al. v. F.D.I.C.*, 935 F.Supp. 2d 1109, 1115 (D. Colo. 2013). Colorado courts look to the federal rules of civil procedure for guidance because of their similarities. *Trinity Broadcasting of Denver*, 848 P.2d at 924. It is the claimants who have "the burden of proving jurisdiction..." *Barry v. Bally Gaming, Inc.*, 320 P.3d 387, 390, 2013 COA 176, 2013 COA 176 (Colo. App. 2013).

24. By Decision No. R24-0555-I, issued August 1, 2024, a limited hearing was scheduled to address Complainant's representation and to resolve disputed jurisdictional facts.

25. By Decision No. R24-0625-I, issued August 28, 2024, the Motion to Vacate Limited Hearing and Schedule Evidentiary Hearing filed by Mountain Star was denied.

26. At the scheduled time and place, the limited hearing was convened to address representation and to resolve disputed jurisdictional facts.

27. As addressed in Decision No. R24-0555-I, Mountain Star was required to obtain counsel or show that representation was not required by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

28. Upon commencement of the hearing, counsel entered an appearance on behalf of Mountain Star, satisfying Decision No. R24-0555-I. Counsel reviewed the complaint and proceeded to prosecute the same. It was found and concluded that remaining issues as to representation are moot.

29. The hearing next turned to testimony or other evidence regarding disputed facts concerning the Commission's subject matter jurisdiction to hear this Formal Complaint with Complainant carrying the burden of proof.

G. PARTY POSITIONS

30. Mountain Star contends that On Location offers and provides passenger transportation without Commission authority to anyone purchasing a ticket. On Location advertises that it will provide transportation and does not disclose passengers will be transported by anyone other than itself. Therefore, On Location is prima facie, a common carrier in Colorado and the PUC has statutory authority to hear complaints against On Location.

31. Mountain Star argues that Ace Express and Ramblin' Express are subject to the Commission' jurisdiction as common carriers. It further contends that the transportation provided is common carriage, rather than that authorized by their charter or scenic bus authorities, because they provide regular and repeated service between On Location's pickup sites and Red Rocks Amphitheater. Pointing to Affidavit 2, it is argued that Mountain Star suggests both that service is provided to unrelated persons and that service is provided to On Location.

32. Ace Express and Ramblin' Express argue that they both are authorized provide charter bus service to On Location pursuant to their limited regulation permits defined and authorized by C.R.S. § 40-10.1-301, rather than subject to the doctrine of regulated monopoly.

33. Regarding the suggestion that service is to unrelated persons, Ramblin' Express and Ace Express contend all the passengers are traveling for a common purpose, to get to Red Rocks and to see a specific show. They contend the statute specifically allows a single chartering party, On Location, to charter a bus for concert patrons attending the same concert. The fact that they each hold common carriage authority is argued to be irrelevant as that service is not at issue herein.

34. On Location contends that it is not a public utility subject to Commission regulation, and that it is not obligated to provide transportation service and members of the public

have no right to demand transportation service. It contends that the “permissive service” to customers is as a private business rather than a public utility. On Location relies upon the fact that passengers, including Mr. Lysenko, were transported to Red Rocks by Ace Express and Ramblin’ Express.

II. FINDINGS OF FACT

35. Mountain Star is a common carrier holding and operating CPCN No. 55952.

Exhibit 14. That certificate authorizes:

(I) Transportation of passengers in call-and-demand sightseeing service originating in Denver and Boulder Counties, to all points in the Counties of Denver, Boulder, Clear Creek, Douglas, El Paso, Grand, Jefferson, and Larimer, State of Colorado, returning to the origination point.

(II) Transportation of passengers in scheduled service and call-and-demand shuttle service: (A) Between all points in Denver County, on the one hand, and all points in Eagle county, on the other hand; (B) Between all points in Denver County, on the one hand, and all points in Pitkin County, on the other hand; and (C) Between all points in the Counties of Eagle and Pitkin, State of Colorado.

(III) Transportation of passengers in call-and-demand shuttle service between all points in Denver County and Origin Hotel Red Rocks at 18485 West Colfax Avenue in Golden, CO 80401, on the one hand, and Red Rocks Park and Amphitheatre, State of Colorado, on the other hand.

RESTRICTIONS:

Item (II) is restricted against the transportation of passengers in vehicles with a manufacturer’s rate passenger capacity of less than 9 passengers, including the driver.

Item (III) is restricted against the transportation of passengers to and/or from Denver International Airport.

36. On Location sells individual tickets for the transportation of passengers on its website, “rrxshuttles.com,” from four points in and around Denver on one hand, including Illegal

Pete's on Colfax, Thirsty Lion at Union Station, Hotel Monaco downtown, and Origin Hotel in Golden, to Red Rocks Amphitheater on the other hand.³

37. On Locations advertises that it has transported 300,000+ riders to 1,300+ shows, operating 2,600+ shuttles over 41,000+ miles.⁴

38. On Location advertises that it “provides a stress-free round-trip transportation service for concertgoers.”⁵

39. Transportation is scheduled corresponding to the dates and times of events at Red Rocks Amphitheater.⁶ Transportation originates, based on the pickup location, either 15 minutes, 30 minutes, or 45 minutes before the “event door time.”⁷

40. When a member of the public purchases a ticket for transportation from On Location, it is delivered to them via email and shows the date for transportation, the show time, the point of origin, and a map showing the destination.⁸

41. At pickup locations, On Location's customers present their tickets to an On Location Employee in exchange for a wristband that allows them to board the vehicle.⁹

42. 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.¹⁰

³ See Hearing Exhibit 101 at 1-3.

⁴ See *id.* at 4.

⁵ *Id.* at 3.

⁶ See Tr. 32:5-10, 60:14-18

⁷ Hearing Exhibit 101 at 6.

⁸ See Hearing Exhibit 103 at 1.

⁹ See Tr. 39:6- 40:6; Hearing Exhibit 103 at 7.

¹⁰ See Tr. 41:17-23.

43. On Location does not hold any permit or authority issued by the Commission authorizing it to provide intrastate transportation of passengers in Colorado.¹¹

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

45. Ace Express and Ramblin' Express used motor coaches with a seating capacity of over 33 passengers to serve On Location.¹² Those motor coaches are marked with the branding of On Location and either Ace Express or Ramblin' Express.¹³

46. On Location had exclusive control of the buses including over starting point, destination, and departure times.¹⁴

47. 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.¹⁵

48. 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.¹⁶

49. On Location paid Ace Express and Ramblin' Express for use of the coaches.¹⁷

50. Ace Express is a common carrier and holds the following authorities and permits:

- a. Charter or Scenic Bus Permit No. CSB-00214;
- b. CPCN 44908;

¹¹ See Tr. 48:6-20, 72:7-10.

¹² (Tr. at 80:11-19, p. 81, ll. 13-17, Tr. p. 95, ll. 15- 23, 99:11-14, Hearing Exhibits 301 and 303).

¹³ See Tr. 41:9-16, 101:4-20.

¹⁴ Hearing Exhibit 301 and 303 (specifying service); Tr. at 84: 1-24 –85: 1-2; Tr. at 86: 9-11; Tr. at 95: 3-12).

¹⁵ See Hearing Exhibits. 301 and 303.

¹⁶ See Hearing Exhibit 303.

¹⁷ Hearing Exhibits 301 and 303

- c. Certificate Number: B-9941; and
- d. Permit Number: B-10102.¹⁸

51. Ramblin' Express is a common carrier and holds the following authorities and permits:

- a. Charter or Scenic Bus Permit No. CSB-83;
- b. CPCN 45392;
- c. Certificate Number: 47966; and
- d. Permit Number: B-10104.¹⁹

52. On Location neither discloses nor hides the fact that Ace Express and Ramblin' Express vehicles transport the passengers purchasing tickets from On Location. The first opportunity for a ticketholder to discover that the bus is operated by Ace Express or Ramblin' Express is when they see the bus arrive at the point of origin for boarding. *See* Tr. 40:13-25. *See* also Tr. 74:8-76:6. On Location does not disclose to ticketholders that it does not own or operate the shuttles. *See* Tr. 33:18-64:2.; *see also* Hearing Exhibit 101.

53. No evidence was shown that On Location employs any vehicle drivers.

54. No evidence was shown that On Location employs any vehicle mechanics.

55. No evidence was shown that On Location owns or leases any property for the storage of vehicles.

56. No evidence was shown that On Location owns or leases any property for the maintenance of vehicles.

57. No evidence was shown that On Location owns any passenger vehicles.

¹⁸ *See* Hearing Exhibit 104.

¹⁹ *See* Hearing Exhibit 105 at 2-4; and Tr. at p. 17, ll. 9-10.

III. LEGAL STANDARDS

58. The Colorado Legislature regulates the transportation of passengers by motor vehicle for hire to protect the public health, safety, and general welfare.²⁰

1. Pending Motions

59. As applicable here, Rule 1308(e), 4 CCR 723-1, provides:

A respondent may file a motion to dismiss a complaint ... prior to filing an answer on any of the following grounds: lack of jurisdiction over the subject matter [or] ... failure to state a claim upon which relief can be granted.

60. "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."²¹

61. The Commission's rules are consistent with the Colorado Rules of Civil Procedure. Rule 12(b) permits defenses of lack of jurisdiction over the subject matter and failure to state a claim upon which relief can be granted, at the option of the pleader, to be made by separate motion filed on or before the date the answer or reply to a Complaint is due. Rule 12(b)(1) and Rule 12(b)(5), C.R.C.P.

62. Subject matter jurisdiction is appropriately examined at any stage in the proceeding. "Absence of subject matter jurisdiction may be noticed at any stage of an action, including appeal."²²

63. Administrative Law Judge Garvey stated the legal standard for deciding a motion to dismiss for lack of subject matter jurisdiction:

Subject matter jurisdiction concerns a tribunal's authority to deal with the type of claim at hand. *See Dev. Recovery Co., LLC v. Pub. Serv. Co. of*

²⁰ *Denver Cleanup Serv., Inc. v. Pub. Utils. Commerce*, 192 Colo. 537, 541, 561 P.2d 1252, 1254 (1977).

²¹ Rule 1001, 4 CCR 723-1.

²² *People v. Lockhart*, 699 P.2d 1332, 1335 n.7 (Colo. 1985), *citing Denver Urban Renewal Authority v. Byrne*, 618 P.2d 1374 (Colo. 1980).

Colorado, 2017 COA 86, ¶ 27. To determine whether it has subject matter jurisdiction, a tribunal must consider the facts alleged and the relief requested to determine the substance of the claim and then determine whether it has authority to entertain that class of case. See *City of Boulder v. Pub. Serv. Co. of Colorado*, 2018 CO 59, ¶ 14.

....

“Subject matter jurisdiction concerns the authority of the [Commission] to decide a particular matter.” *In re Marriage of Haddad*, 93 P.3d 617, 619 (Colo. App. 2004). When considering a motion to dismiss based on lack of subject matter jurisdiction, the below principles apply.

Once subject matter jurisdiction is raised, the complainant bears the burden of proving the existence of the Commission’s jurisdiction to decide the case or claim. *Medina v. Colorado*, 35 P.3d 443, 452 (“Colo. 2001”); *Pfenninger v. Exempla, Inc.*, 12 P.3d 830, 833 (Colo. App. 2000). A complainant may meet this burden by a *prima facie* showing of threshold jurisdiction. *Pioneer Astro Industries, Inc. v. District Court*, 566 P.2d 1067, 1068 (Colo. 1977).

The complaint’s “allegations have no presumptive truthfulness[.]” *Medina*, 35 P.3d at 452 (internal quotation marks and citation omitted).

If necessary to resolve a motion, the Commission may consider evidence outside the complaint. *Smith v. Town of Snowmass Village*, 919 P.2d 868, 871 (Colo. App. 1996). The Commission may weigh the evidence, whether adduced at a hearing or provided in writing, to “satisfy itself as to the existence of its power to hear the case.” *Trinity Broadcasting of Denver, Inc. v. City of Westminster*, 848 P.2d 916, 925 (Colo. 1993).

Finally, if a complainant fails to establish that the Commission has subject matter jurisdiction, the Commission must dismiss the complaint or claim. *City of Boulder v. Public Service Company of Colorado*, 996 P.2d 198, 203 (Colo. App. 1999); see also C.R.C.P. 12(h)(3) (“Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court *shall dismiss* the action” (emphasis supplied)).²³

64. Administrative Law Judge Farley similarly stated the legal standard for deciding a motion to dismiss for failure to state a claim:

²³ Decision No. R21-0189, issued March 29, 2021 at 4-6 (Decision No. R21-0189, was published with an issue date of March 29, 2020. However, Commission systems and the certificate of service confirm the issue date was March 29, 2021.)

Colorado Rule of Civil Procedure (C.R.C.P.) 12(b)(5) allows a respondent to file a motion seeking to dismiss a complaint for “failure to state a claim upon which relief can be granted.” In ruling on such a motion, the Complainant’s allegations of material fact must be accepted as true. However, this tenet is inapplicable to legal conclusions.²⁴ The Commission “may consider only matters stated in the complaint and must not go beyond the confines of the pleadings,”²⁵ except for documents that are referenced in, and central to, the complaint.²⁶ The ALJ may also consider documents that are subject to administrative notice.²⁷

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.”²⁸ A claim has facial plausibility when the complainant pleads factual content that allows the court to draw the reasonable inference that the respondent is liable for the misconduct alleged.²⁹ The plausibility standard is not akin to a “probability requirement.” Indeed, it asks for more than a sheer possibility that a respondent has acted unlawfully.³⁰ Where a complaint pleads facts that are “merely consistent with” a respondent’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’”³¹ Put differently, a complaint that alleges facts that are equally consistent with both legal and illegal conduct has not alleged a plausible claim and must be dismissed.³²

“The chief function of a complaint is to give notice to the defendant of the transaction or occurrence that is the subject of plaintiff’s claims.”³³ As a result, motions to dismiss “are viewed with disfavor.”³⁴ Nevertheless, “only a complaint that states a plausible claim for relief will survive a motion to dismiss.”^{35,36}

65. The Commission is authorized to address complaints as provided in § 40-6-108,

C.R.S.:

²⁴ *Warne v. Hall*, 373 P.3d 588, 591 (Colo. 2016) (adopting the standard for review of motions to dismiss for failure to state a claim enunciated by the U.S. Supreme Court in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

²⁵ *Ashton Props., Ltd. v. Overton*, 107 P.3d 1014, 1018 (Colo. App. 2004).

²⁶ *Prospect Dev. Co. v. Holland & Knight*, 433 P.3d 146, 149 (Colo. App. 2018).

²⁷ *Walker v. Van Laningham*, 148 P.3d 391, 397-398 (Colo. App. 2006).

²⁸ *Warne v. Hall*, 373 P.3d 588, 591 (Colo. 2016).

²⁹ *Twombly*, 550 U.S. at 556 (2007).

³⁰ *Id.*

³¹ *Id.* at 557.

³² *See Warne*, 373 P.3d at 596-597 (citing *Twombly* and *Iqbal*).

³³ *Rosenthal v. Dean Witter Reynolds*, 908 P.2d 1095, 1099-1100 (Colo. 1995). (Internal citations omitted)

³⁴ *Hirsch Trust v. Ireson*, 399 P.3d 777, 779 (Colo. App. 2017)

³⁵ *Warne*, 373 P.3d at 591 (quoting *Iqbal*, 556 U.S. at 679).

³⁶ Decision No. R22-0444-I issued July 29, 2022 at 7-8.

Complaint may be made ... in writing, setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

66. Section 40-10.1-112(2), C.R.S., also provides that “complainant may request any relief that the commission, in its authority, may grant, including an order to cease and desist, suspension or revocation of the motor carrier’s certificate of permit, or assessment of civil penalties.”

2. Transportation at Issue

67. No person may “operate or offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation.”³⁷

68. “The fact that a person carries on operations, in whole or in part, between substantially fixed points or over established routes, or under contracts with more than one person, or by making repeated or periodic trips is prima facie evidence that the person is a common carrier and subject to this part 2 and part 1 of this article.”³⁸

69. No person may “operate or offer to operate a charter bus ... in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this part 3.”³⁹

70. A charter bus is defined as “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

³⁷ §40-10.1-201(1), C.R.S.

³⁸ § 40-10.1-201(2), C.R.S.

³⁹ § 40-10.1-302(1)(a), C.R.S.

from one location to another for a common purpose. A charter bus does not provide regular route service from one location to another.”⁴⁰

71. Section 40-10.1-301, C.R.S. also defines the terms charter basis and chartering party; “as used in this part 3, unless the context otherwise requires.”⁴¹ However, these defined terms do not appear elsewhere in part 3.

72. Charter basis is defined as “on the basis of a contract for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time during which the chartering party has the exclusive right to direct the operation of the vehicle, including selection of the origin, destination, route, and intermediate stops.”⁴²

73. Chartering party is defined as “a person or group of persons who share a personal or professional relationship whereby all such persons are members of the same affiliated group, including a family, business, religious group, social organization, or professional organization. ‘Chartering party’ does not include groups of unrelated persons brought together by a carrier, transportation broker, or other third party.”⁴³

74. To advertise means to “advise, announce, give notice of, publish, or call attention to by the use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign (including signage on a vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property.”⁴⁴

⁴⁰ §40-10.1-301(2), C.R.S.

⁴¹ § 40-10.1-301, C.R.S.

⁴² §40-10.1-301(1), C.R.S.

⁴³ § 40-10.1-301(3), C.R.S.

⁴⁴ § 40-10.1-101(1), C.R.S., *see also* Rule 6001(a), 4 CCR 723-6.

75. Charter Bus, Charter Basis, and Charter Order refer to service by a Limited Regulation Carrier and are defined at rule 6301.⁴⁵

76. The Commission defines charter service to distinguish transportation by a Common Carrier on a Call-and-Demand basis from limited regulation referred to in Rule 6001(k).⁴⁶ “The Passengers are individuals or groups of individuals who share a personal or professional relationship whereby all such individuals are members of the same affiliated group, including a family, business, religious group, social organization, or professional organization. This does not include groups of unrelated individuals brought together by a carrier, Transportation Broker, or other third party.”⁴⁷

77. Service defined by § 40-10.1-301, C.R.S. as that of a Limited Regulation Carrier is excluded from the definition of a common carrier.⁴⁸

78. A transportation broker means a “person, who, for compensation, arranges, or offers to arrange, for-hire, transportation of passengers by a motor carrier under authority not operated by the transportation broker.”⁴⁹

79. One key distinction of a transportation broker is that they undertake no responsibility to the passenger after the passenger is placed with the authorized carrier.⁵⁰

80. In part, Rule 6016 restricts advertising or offering to provide service without, in fact, having an authority or permit to provide such service.⁵¹ However, advertising to arrange

⁴⁵ Rule 6001(k), 4 CCR 723-6.

⁴⁶ Rule 6001(l), 4 CCR 723-6.

⁴⁷ *Id.*

⁴⁸ § 40-10.1-101(4) and Rule 6001(p).

⁴⁹ Rule 6001(www), 4CCR 723-1.

⁵⁰ *Yellow Cab Coop. Asso. v. Colo. Ground Transp. Ctr., Inc.*, 654 P.2d 1331, 1332 (Colo. App. 1982).

⁵¹ Rule 6016(a), 4CCR 723-1.

transportation service as a Transportation Broker is not an offer to provide transportation service; rather, it is an offer to broker transportation service.⁵²

81. Rule 6016 establishes a presumption that a person offers to provide offered transportation service if such person has not disclosed the fact that the services are being arranged by a Transportation Broker.⁵³

82. “Advertising to provide transportation service or advertising transportation service other than by brokerage is an offer to provide the advertised service.”⁵⁴

83. No Motor Carrier, or any officer, agent, employee, or representative of said carrier, shall offer a transportation service in a name, to the character, other than a name appearing on said carrier's Authority or Permit.⁵⁵

IV. DISCUSSION AND CONCLUSIONS

1. Ramblin’ Express and Ace Express’ Motion to Dismiss

84. For the reasons discussed below, Joint Movants’ Motion to Dismiss for failure to state a claim for which relief can be granted, pursuant to C.R.C.P. Rule 12(b)(5) will be denied.

85. As stated above, Joint Movants argue that their transportation was provided in accordance with Rule 6301, 4 CCR 723-6; that a CPCN is not required to provide the transportation provided; and that the incumbent CPCN holder (in this case, Mountain Star) is not protected from competition by a limited regulation carrier. They further argue that, at all times relevant to the Complaint, Joint Movants respectively provided transportation by charter bus under limited regulation permits CSB-00214 and CSB-83.

⁵² Rule 6016(b), 4CCR 723-1.

⁵³ Rule 6016(b), 4CCR 723-1.

⁵⁴ Rule 6016(c), 4CCR 723-1.

⁵⁵ 6016(d), 4CCR 723-1.

86. Joint Movants argue that their services, contracted with On Location, are charter bus services, pursuant to Rule 6301; however, Rule 6301 states explicitly that “[a] Charter Bus does not provide service on a regular route or Schedule.” Joint Movants made no reference to regular route service in their Motion to Dismiss or during the limited evidentiary hearing, nor did they address regular route service in their Statement of Position Regarding Jurisdiction or their Notice of Submission of Proposed Findings of Fact. They simply argue that because their services for On Location are as a limited regulation carrier (*i.e.*, as a charter bus) and conducted pursuant to their Charter or Scenic Bus permits, they are not required to have CPCNs and therefore are not violating their CPCNs.

87. When analyzing the service provided by Joint Movants in their contract with On Location and at issue in this proceeding, it is clear that Mountain Star has made a *prima facie* case that Joint Movants are providing regular route service which, by definition, cannot be considered charter bus services.

88. On Location advertises that it has transported over 300,000 riders to more than 1,300 shows. Hearing Exhibit 101 at 4. It appears that the website and its offered services are available to any member of the public who would like to purchase a ticket; no evidence was presented at the hearing that the general public is in any way limited in who can purchase tickets from On Location’s website. Further, the individuals who are purchasing tickets are unaffiliated and brought together only by On Location for the purpose of transporting them from the established four locations to Red Rocks Amphitheater.⁵⁶

89. Thus, it is found and concluded that Mountain Star has made a *prima facie* showing that the services provided by the Joint Movants, pursuant to their contract with On Location, are

⁵⁶ See Tr. 41: 17-23.

common carriage, rather than charter services subject to limited regulation. None of the permits or authorities held by either Ace Express or Ramblin' Express allow for transportation along a regular route between any of On Location's pickup sites and Red Rocks Amphitheater. Joint Movants are acting outside of their respective Charter or Scenic Bus Permits and Mountain Star has alleged a claim against the Joint Movants for which relief can be granted.

90. Join Movant's Motion to Dismiss for failure to state a claim for which relief can be granted, pursuant to C.R.C.P. Rule 12(b)(5) is denied.

2. On Location's Motion to Dismiss

91. For the reasons discussed below, On Location's Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted, pursuant to C.R.C.P. Rule 12(b)(5), and failure to comply with Rule 1201, 4 CCR 723-1 and § 13-1-127, C.R.S., will be denied.

92. As a preliminary matter, Mountain Star was required by Decision No. R24-0555-I to either obtain counsel or show that representation was not required by an attorney at law currently in good standing before the Supreme Court of Colorado. At the commencement of the hearing, counsel entered an appearance on behalf of Mountain Star and confirmed that he had reviewed the Complaint and was prepared to proceed with prosecution of the same. It was found and concluded that remaining issues as to representation were moot. Therefore, On Location's argument in their Motion to Dismiss that Mountain Star failed to comply with Rule 1201, 4 CCR 723-1 and § 13-1-127, C.R.S., is denied as moot.

93. On Location's primary argument for the Commission lacking subject matter jurisdiction over them is that they are not a regulated provider or a public utility. They point to the fact that they do not themselves transport passengers, employ vehicle drivers or mechanics, own

and operate passenger vehicles, or own or lease properties for the storage and maintenance of vehicles and simply contracted with Ace Express and Ramblin' Express to provide charter bus services as evidence of this fact.

94. However, the evidence presented at the hearing demonstrated that On Location advertises and sells tickets for transportation on their website, "rrxshuttles.com" from four pickup locations to Red Rocks Amphitheater; On Location has exclusive control of the buses used by Ace Express and Ramblin' Express including the transportation starting point, destination, and departure times.⁵⁷ It was also established that On Location neither discloses nor hides the fact that Ace Express and Ramblin' Express transport ticketholders; ticketholders could be first made aware (if they are made aware) that the bus they are using is being by operated by Ace Express or Ramblin' Express when they see their scheduled bus arrive for boarding.⁵⁸ On Location does not disclose to ticketholders that it does not own or operate the shuttles.⁵⁹

95. As stated above, "[a] person shall not operate **or** *offer to operate* as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation."⁶⁰ Similarly, "[a] person shall not operate *or offer to operate* a charter bus ... in intrastate commerce without first having obtained a permit therefor from the commission in accordance with this part 3."⁶¹ Rule 6016(b), 4 CCR 723-1 states that advertising to arrange transportation as a transportation broker is *not* an offer to provide transportation service. (Emphasis added). However, Rule 6016(b) also establishes a presumption that a person offers to provide

⁵⁷ Hearing Exhibit 101 at 1; Hearing Exhibit 301 and 303 (specifying service); Tr. at 84: 1-24 –85: 1-2; Tr. at 86: 9-11; Tr. at 95: 3-12).

⁵⁸ See Tr. 40:13-25. See also Tr. 74:8-76:6.

⁵⁹ See Tr. 33:18-64:2.; *see also* Hearing Exhibit 10.

⁶⁰ §40-10.1-201(1) C.R.S. (emphasis added).

⁶¹ § 40-10.1-302(1)(a) C.R.S. (emphasis added).

offered transportation service if such person has not disclosed the fact that the services are being arranged by a Transportation Broker.⁶²

96. Evidence presented at the limited evidentiary hearing established that On Location neither discloses nor hides that anyone other than On Location will transport passengers. In fact, nowhere on On Location's website where it advertises and sells tickets does On Location disclose that they are arranging services as a transportation broker or give any impression other than that they themselves will be transporting ticketholders. *See* Hearing Exhibit 101. Only when a vehicle operated by Ace Express or Ramblin' Express arrives to the location for boarding might ticketholders have any indication that another company is transporting them.

97. Rule 6106(c), 4 CCR 723-1 states explicitly that "advertising to provide transportation service or advertising transportation service *other than by brokerage is an offer to provide the advertised service.*" (Emphasis added). Because On Location is advertising to provide transportation service and advertising transportation services without disclosing that it is acting as a transportation broker, and advertising or offering to provide service without, in fact, having an authority or permit to provide such service is restricted by Rule 6106(a),⁶³ Mountain Star has made a prima facie showing that On Location is advertising and offering to provide services without the necessary permit or authority to do so. Therefore, the Commission does have subject matter jurisdiction over On Location and over Mountain Star's complaint and claims against On Location.

98. For these same reasons, Mountain Star has also sufficiently stated a claims against On Location over which the Commission has jurisdiction. Therefore, On Location's Motion to

⁶² Rule 6016(b), 4CCR 723-1.

⁶³ Rule 6106(a), 4 CCR 723-1.

Dismiss for lack of subject matter jurisdiction and failure to state a claim for which relief can be granted, pursuant to C.R.C.P. Rule 12(b)(5), is denied.

V. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss filed by Ace Express Coaches, LLC (“Ace Express”) and Ramblin’ Express, Inc. (“Ramblin’ Express”) on June 26, 2024, nunc pro tunc to June 25, 2024, is denied.
2. The Motion to Dismiss filed by On Location Events, LLC (“On Location”) filed on June 25, 2024, is denied.
3. Ace Express, Ramblin’ Express, and On Location, shall each file their respective Answer to the Formal Complaint filed in this matter on or before November 12, 2024.
4. This Decision is effective immediately.

(SEAL)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director