

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 25A-0293CP

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IN THE MATTER OF THE APPLICATION OF BABY FOX TOURS LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

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**RECOMMENDED DECISION DENYING APPLICATION  
FOR CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY AND CLOSING PROCEEDING**

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Issued Date: October 30, 2025

**I. STATEMENT AND RELEVANT PROCEDURAL BACKGROUND**

1. This Decision recommends that the Public Utilities Commission (“Commission”) deny Applicant Baby Fox Tours, LLC’s (“Baby Fox”) Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire, as amended on July 3, 2025 (“Application”). The Application seeks to provide call-and-demand charter, sightseeing, and shuttle service. The primary dispute in this Proceeding is whether the public needs the proposed service and whether the incumbents’ service is substantially inadequate. As discussed below, the Administrative Law Judge (“ALJ”) answers these questions in the negative.

2. Consistent with its Application, Baby Fox seeks authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand

charter service, call-and-demand shuttle service, and call-and-demand sightseeing service:

(I) between Denver International Airport, on the one hand, and Black Canyon of the Gunnison National Park, Great Sand Dunes National Park, Mesa Verde National Park, and/or Rocky Mountain National Park, on the other hand;

(II) between Denver International Airport, on the one hand, and Aspen, Arapahoe Basin, Beaver Creek, Breckenridge, Buttermilk, Copper Mountain, Crested Butte, Eldora, Keystone, Loveland, Monarch, Purgatory, Snowmass, Steamboat Springs, Telluride, Vail, Winter Park, and/or Wolf Creek, Colorado, on the other hand;

(III) between Denver International Airport, on the one hand, and Mesa County and/or La Plata County, Colorado, on the other hand;

(IV) between all points in the Counties of Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, El Paso, Jefferson, Larimer, Park, Pueblo, Teller, and Weld.<sup>1</sup>

3. Mountain Star Transportation LLC doing business as Explorer Tours (“Mountain Star”) and Epic Charter LLC (“Epic”) (together “Joint Intervenors”) filed a timely Notice of Intervention by Right, Alternative Motion for Intervention, Entry of Appearance, and Request for a Hearing (“Joint Intervenors Intervention”). Mountain Star operates scheduled service and call-and-demand shuttle service within the proposed service territories.<sup>2</sup> Epic also operates scheduled service and call-and-demand shuttle service within the proposed service territories.<sup>3</sup>

4. On July 28, 2025, Applicant filed a Response to the Joint Intervenors Intervention.

5. On August 13, 2025, the Commission deemed the Application complete and referred the proceeding by minute entry to an ALJ for a determination.

6. By Decision No. R25-0648-I (issued September 8, 2025), the ALJ acknowledged the Joint Intervenors Intervention and set the Proceeding for hearing on October 16, 2025 at 10:00 a.m.<sup>4</sup>

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<sup>1</sup> Application Amendment at p. 1

<sup>2</sup> Exhibit 200.

<sup>3</sup> Exhibit 201

<sup>4</sup> Aspire Tours LLC (“Aspire”) filed an intervention after the deadline set forth in the Notice and did not establish good cause for the late filing. The ALJ denied Aspire’s request to intervene in Decision No. R25-0648-I.

7. The ALJ convened the hearing at approximately 10:00 a.m. on October 16, 2025. During the hearing, William Fox testified on behalf of Applicant. Applicant did not present any exhibits. Roman Lysenko testified for Joint Intervenors. Joint Intervenors offered into evidence two exhibits: Exhibit 200 (Explorer's Letter of Authority) and Exhibit 201 (Epic's Letter of Authority). The ALJ admitted both exhibits with no objection.

## **II. RELEVANT LAW**

8. The proponent of the requested CPCN, or Applicant, bears the burden of proof by a preponderance of the evidence that the Commission should grant the Application.<sup>5</sup> For a CPCN, the Commission applies the regulated monopoly doctrine, which is based on the principle that fewer carriers who can make a reasonable return will give the public safe, efficient, and economical service, and that increasing the number of providers ultimately results in a deterioration of service and higher rates for the public.<sup>6</sup> This principle is the guiding force behind the protections given to existing carriers. However, an incumbent common carrier is only entitled to protection from new competition if it provides service that is adequate to satisfy the public's needs.<sup>7</sup> Accordingly, under the regulated monopoly doctrine, an applicant must prove that: (a) there is a public need for the service proposed by the applicant; (b) the existing service in the proposed service area is substantially inadequate; and (c) it is fit to conduct the proposed service.<sup>8</sup>

### **A. Public Need for Proposed Service/ Substantial Inadequacy of Existing Service**

9. While the public need for the proposed service and the substantial inadequacy of existing service are separate factors, they are closely related. Indeed, the adequacy of the

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<sup>5</sup> See § 24-4-105(7), C.R.S. and Rule 1500 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1.

<sup>6</sup> See *Morey v. PUC*, 629 P.2d 1061, 1066-1067 (Colo. 1981).

<sup>7</sup> *Miller Bros., Inc. v. PUC*, 525 P.2d 443, 446-447 (Colo. 1974).

<sup>8</sup> See *Durango Trans., Inc. v. PUC*, 122 P.3d 244, 247-252 (Colo. 2005).

incumbent's service is integral to the question of whether the public needs the proposed additional service.<sup>9</sup> If the existing service is adequate, the Commission cannot find that the public convenience and necessity requires the addition of a carrier. In addition, if an applicant cannot establish that the proposed service is needed, the Commission cannot find that the public convenience and necessity requires the addition of a carrier.

10. Whether the incumbent carrier's service is substantially inadequate is a question of fact that must be evaluated on a case-by-case basis.<sup>10</sup> Substantial inadequacy can also be demonstrated with evidence that the incumbent carrier "is [not] ready, willing, and able to provide transportation to anyone who might request it."<sup>11</sup> Such a showing can be made by evidence that the public perceives the incumbent's rates as prohibitively expensive, and that the incumbent does not have sufficient personnel and/or equipment to service the demand for its authority.<sup>12</sup>

11. Merely showing that there is enough business to warrant more than one certified carrier is insufficient to establish substantial inadequacy.<sup>13</sup> Similarly, substantial inadequacy is not established through "expressions of mere opinion, preference, and desire and willingness to use the services of [the applicant] over the services of" an incumbent carrier.<sup>14</sup> Finally, the incumbent carrier is not held to a standard of perfection because "when a common carrier renders services to numerous customers in a wide territory undoubtedly some dissatisfaction will arrive and some legitimate complaints result."<sup>15</sup>

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<sup>9</sup> *Ephraim Freightways, Inc., v. PUC*, 380 P.2d 228, 231 (Colo. 1963).

<sup>10</sup> *Durango Trans., Inc.*, 122 P.3d at 248.

<sup>11</sup> *Id.* at 248.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 248 (citing *Donohue v. PUC*, 451 P.2d 448, 449 (1960)).

<sup>14</sup> *Id.* (quoting *PUC v. Weicker Transfer & Storage Co.*, 451 P.2d 448, 449 (Colo. 1969)).

<sup>15</sup> *Ephraim Freightways, Inc.*, 380 P.2d at 232.

12. If the applicant's evidence tends to prove the incumbent carrier's substantial inadequacy, "it was incumbent upon [the existing carrier] to rebut this evidence."<sup>16</sup>

**B. Applicant Fitness**

13. In addition to the above, an applicant must also establish that it is fit to conduct the proposed service. The fitness element consists of three parts: (a) operational; (b) managerial; and (c) financial. As the Applicant, Baby Fox bears the burden to prove each fitness element. Fitness must be evaluated on a case-by-case basis upon the unique circumstances of each applicant and the proposed service.<sup>17</sup>

14. **Operational Fitness.** In general, operational fitness encompasses a consideration of whether the applicant has the equipment, personnel, and facilities to conduct for-hire passenger carrier operations. The following factors that are relevant to the fitness inquiry are: (a) whether the applicant has as least the minimum efficient scale necessary to run the proposed service, which addresses the question of whether a minimum size of operation is required and, if such a minimum does not exist, what is the approximate magnitude for the market at issue; (b) whether the applicant has fixed physical facilities such as office space and maintenance garages, as appropriate; and (c) whether the applicant has a sufficient number of vehicles of the appropriate type to provide the proposed service.<sup>18</sup> In addition, whether the applicant is willing and able to comply with applicable public utilities laws also bears upon the question of operational fitness.<sup>19</sup>

15. **Managerial Fitness.** The managerial fitness factor addresses whether the applicant has the business management experience of managing employees, setting and maintaining budgets,

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<sup>16</sup> *Id.* at 231-32.

<sup>17</sup> *See, e.g.*, Decision No. R18-0246 (April 12, 2018) in Proceeding No. 17A-0669CP.

<sup>18</sup> *Id.*

<sup>19</sup> *See Thacker Brothers Transportation v PUC*, 543 P.2d 719, 721 (Colo. 1975).

and complying with applicable laws and regulations.<sup>20</sup> A business plan demonstrating that an applicant can balance the operational, financial, and legal requirements of running a transportation service is particularly good evidence of managerial fitness.

16. **Financial Fitness.** The Commission has never promulgated rules specifying a financial fitness standard. However, as a general matter, the applicant must make some showing, however minimal, that it either has or has access to financial resources that will enable it to implement the proposed service. Factors relevant to the analysis are: (a) the applicant's credit worthiness and access to capital; (b) the applicant's credit history and assessment of financial health over the near future; and (c) the applicant's capital structure and current cash balances. The evidence of financial fitness need not be overwhelming for an applicant to satisfy its burden.<sup>21</sup>

### **III. FACTUAL FINDINGS**

17. William Fox testified that the goal of Baby Fox's owner is to provide tour services to predominantly, but not exclusively, Mandarin speakers. Baby Fox wants to provide tours to people coming from China who are interested in native language services. Mr. Fox testified that Baby Fox would offer spoken tour services and would plan the tour routes based on the participants' needs.

18. Mr. Fox testified that Baby Fox's goal is to start its proposed business and see where it goes in terms of need. However, Mr. Fox testified that Baby Fox is not aware of, and has no data related to, whether Mandarin-based tour services are needed or will be needed in their proposed service areas.

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<sup>20</sup> See, e.g., Decision No. R18-0246 (April 12, 2018) in Proceeding No. 17A-0669CP.

<sup>21</sup> *Id.*

19. Baby Fox did not provide any testimony or other evidence showing that Baby Fox's proposed service is needed.

20. Joint Intervenors' owner, Roman Lysenko, testified that he has been in the transportation industry in Colorado since 2011. Mr. Lysenko testified that Joint Intervenors possess large fleets that include four motor coaches, shuttle buses, and transit vans, and that Joint Intervenors are willing and able to expand their resources as customer demand requires.

21. Mr. Lysenko testified that Joint Intervenors have had requests from customers for tours in German and French but have never had a customer request a tour in Mandarin. If a customer requested a tour in Mandarin, Mr. Lysenko testified that Joint Intervenors have multiple options available to them to fulfill that request and would do so. For example, Mr. Lysenko said his businesses could either hire a Mandarin-speaking tour guide or they could use a recorded tour.

22. The ALJ finds that Baby Fox did not present any evidence to establish a public need for the proposed service in any of the proposed service areas.

23. Moreover, in the proposed service areas that overlap with Joint Intervenors', Baby Fox did not present any evidence to establish that Joint Intervenors' service is inadequate.

24. Because Baby Fox did not establish a public need for its proposed service in any of the proposed service areas, or that Joint Intervenors' service is inadequate in the overlapping service areas, the ALJ finds that Baby Fox failed to meet its burden of proof.<sup>22</sup> Given this, the ALJ finds it is unnecessary to evaluate Applicant's fitness to operate, and does not do so.

25. The ALJ recommends that the Commission deny Baby Fox's Application.

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<sup>22</sup> See *supra*, paragraphs 8-12.

**IV. ORDER****A. The Commission Orders That:**

1. Applicant Baby Fox Tours, LLC's Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire, as amended July 3, 2025, is denied.
2. Proceeding No. 25A-0293CP is closed.
3. The 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.
4. As provided by § 40-6-106, 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 recommended 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 a basic finding 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.



5. 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. Responses to exceptions are due within seven days of the date exceptions are served.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

KELLY A. ROSENBERG

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Administrative Law Judge

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

Rebecca E. White,  
Director