

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-610CP-TA

THE APPLICATION OF VAIL VALLEY TRANSPORTATION, INC. FOR TEMPORARY APPROVAL TO ALLOW BRYAN MACSATA DOING BUSINESS AS COLORADO VAIL VALLEY TRANSPORTATION, TO ASSUME OPERATIONAL CONTROL OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 22485.

**COMMISSION ORDER GRANTING
TEMPORARY APPROVAL**

Mailed Date: December 8, 2004
Adopted Date: December 7, 2004

I. BY THE COMMISSION:

A. Statement

1. On November 23, 2004, Vail Valley Transportation, Inc. (VVT, Inc.), filed an application for temporary approval to allow Bryan Macsata doing business as Colorado Vail Valley Transportation (Colorado Vail Valley Transportation), to assume operational control of Certificate of Public Convenience and Necessity (CPCN) PUC No. 22485 pending Commission consideration of the related application to permanently transfer the certificate.

2. CPCN PUC NO. 22485 authorizes the following transportation services: I. Transportation in charter service of passengers and their baggage A. between all points in Eagle County, State of Colorado, and between said points, on the one hand, and Stapleton International Airport in Denver, Colorado, and Denver International Airport upon commencement of commercial aviation, on the other hand; and B. between all points located within six miles of that portion of I-70 between the intersection of Colorado State Highway 131 and U.S. Highway 6 and the summit of

Vail Pass located in Eagle County, Colorado, and between said points, on the one hand, and all ski areas in the state of Colorado, on the other hand. II. Transportation on call-and-demand and scheduled limousine service of passengers and their baggage between all points in Eagle County, State of Colorado, and between said points, on the one hand, and Stapleton International Airport in Denver, Colorado, and Denver International Airport upon commencement of commercial aviation, and Walker Field in Grand Junction, Colorado, on the other hand. III. Transportation in sightseeing service of passengers and their baggage between all points in Eagle County, State of Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand. This Certificate is restricted as follows: A. Item (I)(B) is restricted to trips that originate and terminate within six miles of that portion of I-70 between the intersection of Colorado State Highway 131 and U.S. Highway 6 and the summit of Vail Pass located in Eagle County, Colorado; B. Item (I)(B) is restricted to providing trips that originate and terminate on the same day; C. Item (I)(B) is further restricted to service for not less than eight passengers per charter vehicle; and D. Item (III) is restricted to providing service that both originates and terminates in Eagle County, Colorado.

3. The Commission gave notice of the application on November 29, 2004.

4. There are no interventions opposing the application.

5. Pursuant to § 40-6-120(2), C.R.S., the Commission may grant temporary approval of a certificate transfer "if it appears that failure to grant such temporary approval may result in destruction of or injury to such carrier or carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public."

B. Findings of Fact

6. A one-page document entitled “Settlement Agreement” was filed with this application. Included in this agreement are the following statements

“This settlement agreement is entered into the 21st day of June 2004, between Bryan Macsata, Cheryl E. Emmeluth, Daniel E. Booz, Vail Valley Taxi, Inc., and VVT, Inc. as follows: (1) This agreement settles all matters in controversy between the parties in Case No. 03CV698 pending in the District Court, Eagle County. (2) No later than July 1, 2004, VVT, Inc., shall initiate transfer to Bryan Macsata of Certificate of Public Convenience and Necessity No. 22485.”

The “Settlement Agreement” is signed by Bryan Macsata, Cheryl E. Emmeluth, and Daniel E. Booz.

7. Bryan Macsata also submitted a letter in support of this temporary authority application. In this letter, Mr. Macsata states “On June 21, 2004, a legal settlement was made between VVT, Inc., and me as part of mediation with Judge Abrams in lieu of a court appearance. Section 2 of the settlement agreement was that: No later than July 1, 2004, VVT, Inc. shall initiate transfer to Bryan Macsata of Certificate of Public Convenience and Necessity No. 22485 at its expense. As of this date (December 6, 2004), I have not received the transfer of this authority, and since the high volume transportation season is upon us in Vail, I would like to be granted at least a temporary authority so I can begin operations before Christmas.”

8. It appears from the “Settlement Agreement” that Bryan Macsata, Cheryl E. Emmeluth, and Daniel E. Booz, are involved in ongoing litigation over the ownership of CPCN PUC No. 22485 and other financial matters. As a result of the agreement signed on June 21, 2004 the ownership of CPCN PUC No. 22485 was to be transferred to Bryan Macsata. This

transfer was not initiated with the Commission by the July 1, 2004 date named in the “Settlement Agreement”.

9. The Commission is aware that the greatest demand for transportation between points in the Eagle County/Vail area and Denver International Airport occur during the ski season. The ski season normally begins in the month of December and continues through March. The greatest demand for the transportation services named in CPCN PUC No. 22485 will also occur in the next several months.

10. VVT, Inc. was granted the authority to suspend CPCN PUC No. 22485 from July 12, 2004 through December 15, 2004 by Decision No. C04-0889 on August 5, 2004. VVT, Inc. has not filed a request either to reinstate CPCN PUC No. 22485 or to extend the suspension period granted by Decision No. C04-0889.

11. The Commission finds that a grant of the temporary approval to allow Colorado Vail Valley Transportation to assume operational control of CPCN PUC No. 22485 will allow additional service to be provided to the public travelling between the Eagle County/Vail area and Denver International Airport. The grant of the temporary approval may also prevent injury to CPCN PUC No. 22485.

C. Conclusions

12. The Commission finds that a failure to grant temporary approval of an assumption of operational control could result in injury to CPCN PUC No. 22485 and ultimately affect service to the public.

13. Colorado Vail Valley Transportation has adequate equipment and financial resources to begin immediate service within the scope of the authority sought.

14. This application for temporary approval is in the public interest.

15. VVT, Inc. and Colorado Vail Valley Transportation are advised that the grant of temporary approval of an assumption of operational control creates no presumption that permanent transfer approval will be granted.

II. ORDER

A. The Commission Orders That:

1. The application filed by VVT, Inc. for temporary approval to allow Colorado Vail Valley Transportation to assume operational control of CPCN PUC No. 22485 is granted.

2. Colorado Vail Valley Transportation is granted temporary approval to assume operational control of CPCN PUC No. 22485 for a period of 180 days commencing from the Mailed Date of this Order.

3. Colorado Vail Valley Transportation shall operate in accordance with all applicable Commission rules and regulations.

4. Colorado Vail Valley Transportation shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Colorado Vail Valley Transportation shall also adopt the tariff of VVT, Inc. This tariff shall become that of Colorado Vail Valley Transportation until changed in accordance with the public utilities law. Colorado Vail Valley Transportation shall pay the appropriate vehicle identification fee. Colorado Vail Valley Transportation shall not assume operational control of CPCN PUC No. 22485 until it has met these requirements, and it has received notice in writing from the Commission stating that it is in compliance and may begin service.

5. If Colorado Vail Valley Transportation does not comply with the requirements of this Order within 30 days of its effective date, then the temporary approval shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within the 30 days.

6. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, re-argument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

7. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
December 7, 2004**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners