

Decision No. R04-0480

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-047BP

IN THE MATTER OF THE APPLICATION OF COCA HEALTHCARE SERVICES COMPANY, 3000 S. JAMAICA COURT, SUITE 300, AURORA, COLORADO 80014, FOR AUTHORITY TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
GRANTING APPLICATION**

Mailed Date: May 11, 2004

Appearances:

Charles, J. Kimball, Esq., Arvada, Colorado for Coca Healthcare Services Company; and

Chester Randall and Roxanne Rodriguez (*Pro Se*),
R&R Transportation, Inc.

I. STATEMENT

1. On January 29, 2004, Applicant, COCA Healthcare Services Company (Applicant) filed an application to operate as a contract carrier by motor vehicle for hire.

2. On February 9, 2004, the Commission issued notice of the application as follows:

For authority to operate as a contract carrier by motor vehicle for hire for the transportation of

passengers and their baggage

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and Larimer, State of Colorado.

RESTRICTION:

This application is restricted to providing transportation services for only Arapahoe County Transportation Services, 1690 W., Littleton Boulevard, Littleton, Colorado 80120.

3. Notices of Intervention were filed by Golden West Commuter, LLC (Golden West) and R&R Transportation, Inc. (R&R).

4. The application was set for hearing for April 13, 2004.

5. On March 23, 2004, Applicant and Golden West filed a Stipulation of Parties, Motion to Restrictively Amend Application and Withdrawal of Intervention. Under the terms of the Stipulation, Applicant proposed to restrictively amend its application by adding the following restrictions to the requested authority:

1. This authority is restricted against service to Denver International Airport from points in Jefferson County and that portion of Denver County lying on and west of Sheridan Boulevard; and
2. This authority is restricted against service from Denver International Airport to points in Jefferson County and that portion of Denver County lying on and west of Sheridan Boulevard; and
3. The authority is restricted against all service to, from, or between points in Jefferson County, Colorado, except for service to or from hospitals, medical clinics, therapy centers, rehabilitation centers, child development centers, schools, and daycare centers located in Jefferson County, State of Colorado.

6. By Interim Order No. R04-0355-I, mailed on April 6, 2004, the restrictive amendment was accepted.

7. The hearing was held as scheduled. Testimony was received from witnesses and Exhibit Nos. 1 through 16 were marked for identification and admitted into evidence. At the conclusion of the hearing, the matter was taken under advisement.

8. Pursuant to § 40-6-109, C.R.S., the record of the proceeding along with a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. Applicant is a Colorado corporation currently engaged in providing home healthcare services.

10. R&R holds Certificate of Public Convenience and Necessity PUC No. 55693 (Exhibit No. 10). This certificate authorizes the following:

Transportation of

passengers and their baggage, in call-and-demand limousine services,

between all hospitals, clinics, therapy centers, rehabilitation centers, child development centers, schools, and daycare centers, and between said points on the one hand, and all points within a 25-mile radius of Colfax Avenue and Broadway in Denver, Colorado, on the other hand.

RESTRICTIONS: This certificate is restricted as follows:

- (1) To providing transportation services to passengers under the age of 15 years of age or younger;
- (2) Against service to or from Denver International Airport;
- (3) Against service to all airports within a 25-mile radius of the intersection of Colfax Avenue and Broadway in Denver, Colorado; and
- (4) Against service to Central City, and Blackhawk, Colorado, casinos and hotels.

11. Dorothy Nwoke is President of COCA Healthcare Services Company. The company currently provides home healthcare services. The company is certified to provide home healthcare for Medicaid clients. (Exhibit No. 5)

12. Applicant seeks a contract carrier permit to provide transportation services for Arapahoe County Transportation Services.

13. Applicant plans to provide transportation services for Arapahoe County with the use of three wheelchair accessible vans. The vans will have wheelchair lifts (Exhibit No. 3).

14. Applicant intends to hire three drivers. The drivers will be certified nursing assistants who will be qualified to assist the passengers to doctor's offices, healthcare clinics, and other places.

15. Applicant will hire personnel to schedule transportation services for Arapahoe County Medicaid clients.

16. Debra Miller, Assistant Director for the Transportation Program of Arapahoe County Community Services testified that Arapahoe County Transportation Services will enter into an agreement with Applicant to provide transportation services to Medicaid clients if the requested authority is granted by the Commission. She stated that Arapahoe County handles 17,000 trips per month and that there are approximately 600,000 reservations that were requested last year for transportation of its clients. She stated that her agency always needs transportation for its clients and that she will ask Applicant to provide transportation for both ambulatory clients and clients confined to wheelchairs. She intends to use Applicant's service weekly.

17. Ms. Miller is of the opinion that Applicant's proposed use of certified nursing assistants as drivers will be important for assisting people who need more care than the average passenger. She will call upon Applicant to provide transportation for both adults and children.

18. Intervenor, R&R holds certificate of public convenience and necessity, PUC No. 55693. R&R provided transportation services to Arapahoe County Transportation Services, however, it no longer does.

19. In a letter dated March 31, 2004 (Exhibit No. 9), Arapahoe County Transportation Services terminated its agreement with R&R. R&R requested the Public Utilities Commission to suspend operations for Intervenor's inability to obtain liability insurance. Ms. Roxanne Rodriquez, Intervenor's President testified that Intervenor's authority has been suspended by the Commission, however, she intends apply for reinstatement and for an extension of her authority. She has attempted to obtain a new agreement with Arapahoe County to provide service after R&R's authority is reinstated. R&R has not transported passengers for Arapahoe County since approximately July of 2003.

III. DISCUSSION

20. An applicant who requests a contract carrier permit has the burden of establishing that the proposed service is superior or distinctly different from the service provided by authorized common carriers. *Denver Clean-up Service, Inc. v. PUC*, 1971 Colo. 537, 561 P.2d 1252 (1977); *Pollard Contracting Company, Inc. v. PUC*, 644 P.2d 7 (1982). If Applicant is successful in establishing that its service is superior to common carriers, a *prima facie* case is established. Intervening common carriers may then present evidence that they have the ability and willingness to meet a client's needs. If the intervening common carriers present this evidence, the burden then shifts to the Applicant to establish that it can better meet the unique or distinctive needs of the client. Whether the granting of a contract carrier permit would impair the service of existing common carriers serving within the area of the proposed service of the contract carrier is a consideration.

21. In addition to the above law, 4 *Code of Colorado Regulations* 723-23-4 establishes minimum criteria for the issuance of a contract carrier permit as follows:

- 4.1.1 An applicant shall bear the burden of providing that the service it proposes to provide to potential customers is specialized and tailored to meet the potential customers' distinct needs.
- 4.1.2 An intervenor may then present evidence to show that it has the ability as well as the willingness to meet the distinctly specialized and tailored needs of the potential customers.
- 4.1.3 If an intervenor establishes it has the ability and willingness to meet the distinctly specialized and tailored needs of the potential customers, the applicant must then demonstrate that it is better equipped to meet such needs of the potential customers than the intervenor.
- 4.1.4 An intervenor must then establish that the proposed operation of the contract carrier will impair the efficient public service of common carriers serving in the same area as is proposed in the application.

22. The evidence of record establishes that Applicant has met its burden of establishing that the service it proposes to provide to Arapahoe County Transportation Services is specialized and tailored to meet the needs of Arapahoe County's Medicaid clients. The evidence establishes that Applicant will provide certified nursing assistant drivers to assist its passengers in supporting and delivering the persons to doctor appointments, medical clinics, and other places. Drivers will be especially trained to assist persons in wheelchairs and will accompany the persons into the doctor's offices and medical facilities. Applicant's vans will also have wheelchair ramps or lifts to accommodate persons in wheelchairs.

23. It is found that Applicant is financially fit as indicated in its balance sheet (Exhibit No. 2), and in all other respects is fit to hold a contract carrier permit from this Commission. The proposed equipment to be used by Applicant is adequate to provide transportation for its passengers referred by Arapahoe County Transportation Services. Applicant is also Medicaid certified to provide transportation for Medicaid clients. The evidence also establishes that

Applicant is familiar with the needs of the people it will be transporting for Arapahoe County since it has been involved in the business of providing home healthcare.

24. It is also found that granting of a contract carrier permit to Applicant would not impair the efficient transportation of common carriers.

25. Pursuant to § 40-6-104(2), C.R.S., it is recommended the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. COCA Healthcare Services Company is granted a contract carrier permit by motor vehicle for hire for:

The transportation of
passengers and their baggage

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and Larimer, State of Colorado.

RESTRICTIONS:

1. This application is restricted to providing transportation services for only Arapahoe County Transportation Services, 1690 W. Littleton Boulevard, Littleton, Colorado 80120;
2. This authority is restricted against service to Denver International Airport from points in Jefferson County and that portion of Denver County lying on and west of Sheridan Boulevard;
3. This authority is restricted against service from Denver International Airport to points in Jefferson County and that portion of Denver County lying on and west of Sheridan Boulevard;
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2. The authority granted above is conditioned on Applicant meeting the requirements contained in this Order, and is not effective until these requirements have been met. All operations shall be strictly contract operations.

3. Applicant shall file the necessary tariffs, required insurance, and follow any other requirement of the Commission. Operations may not begin until these requirements have been met and the Applicant has been notified by the Commission that operations may begin. If the Applicant has not complied with the requirements of this ordering paragraph within 60 days of the effective date of this Order, then ordering paragraph no. 1 which grants authority to the Applicant shall be void, and the authority granted shall then be void. On good cause shown, the Commission may grant additional time for compliance.

4. 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.

5. 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.

6. 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