

Decision No. R04-0494

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-049BP

IN THE MATTER OF THE APPLICATION OF DIALED-IN-AUTO, LLC, 3060 SOUTH DAHLIA STREET, DENVER, COLORADO 80222 FOR AUTHORITY TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING MOTION TO
DISMISS INTERVENTION;
VACATING HEARING DATE AND
PROCEDURAL SCHEDULE; AND
GRANTING APPLICATION UNDER
MODIFIED PROCEDURE**

Mailed Date: May 12, 2004

I. STATEMENT

1. The captioned application of Dialed-In-Auto, LLC (Dialed-In), was filed with the Colorado Public Utilities Commission (Commission) on January 29, 2004, and was published in the Commission's "Notice of Applications Filed" on February 9, 2004. It is currently scheduled for hearing on June 3, 2004. See, Decision No. R04-0439-I.

2. Golden West Commuter, LLC (Golden West) and R&R Transportation, Inc. (R&R), filed interventions in this matter.¹

¹ The Golden West intervention has been withdrawn on the basis of restrictive amendments agreed to by Dialed-In. See, Decision No. R04-0374-I.

3. On May 4, 2004, Dialed-In filed a Motion to Strike Intervention; Motion to Handle Matter as Unopposed; Motion to Postpone Rule 71(B) Filings Pending Rulings on These Motions; Request for Attorney Fees and Costs (Motions) in this matter.

4. On May 5, 2005, response time to the Motions was shortened to May 11, 2004. *See*, Decision No. R04-0464-I.

5. On May 10, 2004, R&R filed its Response to the Motions.

6. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record in this proceeding along with a written recommended decision.

II. FINDINGS AND CONCLUSIONS

A. Motion to Dismiss Intervention

7. The Motions seek dismissal of the R&R intervention on the basis of R&R's failure to comply with Interim Order No. R04-0374-I and/or its failure to respond to discovery. If the R&R intervention is dismissed, Dialed-In requests that its application be treated as uncontested and processed under the Commission's modified, no-hearing procedure. In addition, Dialed-In requests postponement of the May 14, 2004, deadline imposed by Interim Order No. R04-0374-I for filing its witness and exhibits list pending disposition of the Motions. Finally, the Motions request an award of attorney's fees and costs, presumably incurred in connection with preparing and filing the same.

8. The Response states that R&R has attempted to contact counsel for Dialed-In via telephone to discuss a settlement but has been unable to reach him, either because he is unavailable or because he has failed to return the subject calls. Therefore, it objects to Dialed-In's request for an award of attorney's fees and costs. The Response does not address or contest

Dialed-In's allegations that R&R has failed to comply with Interim Order No. R04-0374-I or that it has failed to respond to discovery.

9. The Motions and the material attached thereto establish that R&R was served with Dialed-In's First Set of Discovery (Discovery) on April 19, 2004. Assuming receipt within two days of mailing, R&R's objections to the Discovery were due on or before April 28, 2004. *See, 4 Code of Colorado Regulations (CCR) 723-1-77(b)(3)*. A review of the Commission's records reveals that no objections were filed. As a result, R&R's responses to the Discovery were due on or before April 29, 2004. *See, 4 CCR 723-1-77(b)(1)*. By correspondence dated April 30, 2004, Dialed-In advised R&R that it would move for dismissal of its intervention in the event responses to the Discovery were not received on or before May 3, 2004. R&R has not contested Dialed-In's contentions it failed to respond to the Discovery on or before that date or that Dialed-In was adversely affected by that failure.

10. Rule 77(c)(4) of the Commission's Rules of Practice and Procedure, 4 CCR 723-1-77(c)(4), provides that any party adversely affected by the failure of another party to respond to discovery may seek the dismissal of that party from the proceeding. The record establishes that R&R failed to respond to the Discovery and that such failure has adversely affected Dialed-In's ability to adequately prepare for the hearing in this matter. Therefore, the R&R intervention will be dismissed on that basis.

11. Dialed-In's request that this application be processed under the Commission's modified, no-hearing procedure will be granted and its request for an award of attorney's fees and costs will be denied. The hearing date and procedural schedule established by Interim Order

No. R04-0439-I will be vacated. This renders moot Dialed-In's request for a postponement of the deadline for submission of its witness and exhibits list.

B. Disposition of Application Under Modified Procedure

12. By this application, Dialed-In seeks authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of

passengers and their baggage

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

RESTRICTIONS:

- I. Restricted to providing transportation services for: (A) Jewish Family Service of Colorado, 3201 South Tamarac Drive, Denver, Colorado 80231; and (B) Arapahoe County Transportation Services, 1690 West Littleton Boulevard, Littleton, Colorado 80120; and
- II. Restricted against providing transportation services to or from Denver International Airport, Denver, Colorado.

13. Dismissal of the R&R intervention renders the application uncontested.

Therefore, it is eligible for processing under modified procedure pursuant to § 40-6-109(5), C.R.S., and Rule 24 of the Commission's **Rules of Practice and Procedure**, 4 CCR 723-1-24, without a formal hearing.

14. The verified application submitted by Dialed-In establishes that it is familiar with the Commission's Rules, Regulations and Civil Penalties Governing Contract Carriers of Passengers by Motor Vehicle for Hire and that it agrees to be bound by the same. The application and the attachments thereto also indicate that Dialed-In has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the

authority requested. Therefore, it is fit, financially and otherwise, to provide the proposed service.

15. The letters of support appended to the application establish that the contract carrier service proposed is specialized and tailored to meet the distinct transportation needs of the entities Dialed-In proposes to serve and, further, that such service will not impair the efficient public service of common carriers serving the same geographic area encompassed by the application.

III. ORDER

A. The Commission Orders That:

1. The Motion to Strike Intervention; Motion to Handle Matter as Unopposed; Motion to Postpone Rule 71(B) Filings Pending Rulings on These Motions; Request for Attorney Fees and Costs filed in this proceeding by Dialed-In Auto, LLC, is granted, in part, consistent with the provisions of this recommended decision.

2. The intervention previously filed in this proceeding by R&R Transportation, Inc., is dismissed.

3. Docket No. 04A-049BP, being an application of Dialed-In Auto, LLC to operate as a contract carrier by motor vehicle for hire, is granted.

4. The procedural schedule and the currently scheduled hearing date of June 3, 2004, established in this matter by Interim Order No. R04-0439-I are vacated.

5. Dialed-In Auto, LLC is hereby granted a contract carrier permit to read as follows:

Transportation of

passengers and their baggage

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

RESTRICTIONS:

- I. Restricted to providing transportation services for: (A) Jewish Family Service of Colorado, 3201 South Tamarac Drive, Denver, Colorado 80231; and (B) Arapahoe County Transportation Services, 1690 West Littleton Boulevard, Littleton, Colorado 80120; and
- II. Restricted against providing transportation services to or from Denver International Airport, Denver, Colorado.

6. Applicant shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Applicant shall also file an appropriate tariff and pay the issuance fee and annual vehicle identification fee. Operations may not begin until these requirements have been met. If the Applicant does not comply with the requirements of this ordering paragraph within 60 days of the effective date of this Order, then the ordering paragraph granting authority to the Applicant shall be void. On good cause shown, the Commission may grant additional time for compliance.

7. 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.

8. 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.

9. 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