

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-196CP

IN THE MATTER OF THE APPLICATION OF MARKETING SERVICES INC. OF PUEBLO,
DOING BUSINESS AS ADVENTURES OUT WEST, INC., FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY
MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING STIPULATED MOTION,
DISMISSING INTERVENTION; GRANTING
APPLICATION, AS AMENDED, UNDER
MODIFIED PROCEDURE; VACATING
HEARING; WAIVING RESPONSE
TIME; AND CLOSING DOCKET**

Mailed Date: June 24, 2004

I. STATEMENT

1. On April 19, 2004, Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc. (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). The Applicant seeks authority to operate as a common carrier of passengers and their baggage in sightseeing service in five counties in Colorado. The Application commenced this docket.

2. The Commission gave public notice of the Application. See Notice of Applications Filed dated May 3, 2004 (Notice) at 2. That Notice established a procedural schedule and a hearing date for this proceeding. The hearing is scheduled for July 7, 2004.

3. RDSM Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs (RDSM or Intervenor), intervened of right. Based on a review of the Commission's record, this is the only intervention filed in this proceeding. Intervenor opposed the granting of the Application.

4. On June 2, 2004, Applicant and Intervenor filed a Stipulated Motion to Restrict Authority and Conditional Withdrawal of Intervention. By Decision No. R04-0596-I and for the reasons articulated in that Order, the undersigned Administrative Law Judge (ALJ) denied that motion.

5. On June 18, 2004, Applicant and Intervenor filed a Stipulated Motion to Restrict Authority and Conditional Withdrawal of Intervention (Stipulated Motion). In that filing Applicant agrees restrictively to amend the authority sought in the Application, and the parties jointly ask the Commission to grant the Stipulated Motion. The Stipulated Motion states that, concurrent with a Commission finding that the proposed restrictions are acceptable, Intervenor will withdraw its intervention. The Stipulated Motion is submitted by all parties in this proceeding and, therefore, is unopposed.¹

6. To be acceptable, restrictions must be restrictive in nature, clear and understandable, and administratively enforceable. Both the authority and any restriction on that authority must be unambiguous and must be wholly contained within the Certificate of Public Convenience and Necessity (CPCN). Both must be worded in such a way that a person will know, from reading the CPCN and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of an

¹ For this reason, response time to the Stipulated Motion will be waived.

authority granted by the Commission is found within the four corners of the CPCN, which is the touchstone against which the operation of a carrier is judged to determine whether the operation is within the scope of the Commission-granted authority. The proposed restrictions meet these standards. Therefore, the ALJ finds and concludes that the three proposed amendments are restrictive in nature, are clear and understandable, and are administratively enforceable.

7. The Stipulated Motion states good grounds, and granting the Stipulated Motion will not prejudice any party. The Stipulated Motion will be granted. The restrictions to the authority sought by Applicant will be accepted.

8. Granting the Stipulated Motion has two impacts. First, the authority sought (as stated in the Application) will be amended to conform with the three restrictive amendments. Second, the intervention of RDSM will be dismissed.

9. Dismissal of the intervention leaves the Application uncontested. The Application now may be processed under the modified procedure, pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-24, without a formal hearing.

10. The hearing scheduled for July 7, 2004, will be vacated.

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

II. FINDINGS AND CONCLUSIONS

12. Applicant is a Colorado corporation.

13. Applicant asks that the Commission issue to it a CPCN to operate as a common carrier by motor vehicle for hire. By the Application, as restricted, Applicant seeks a Letter of Authority (*i.e.*, a CPCN) to provide:

Transportation of

passengers and their baggage in sightseeing service

between all points in the Counties of El Paso, Fremont, Park, Pueblo, and Teller, State of Colorado.

RESTRICTIONS: This authority is restricted as follows:

- (1) All passengers must be dropped off at the same location as the location at which they were picked up.
- (2) Baggage shall not include suitcases.
- (3) Restricted against providing any transportation service that originates at or terminates at the Colorado Springs Municipal Airport, Colorado Springs, Colorado.

14. The verified Application establishes that Applicant is familiar with the Rules, Regulations, and Civil Penalties Governing Common Carriers of Passengers by Motor Vehicle for Hire, 4 CCR 723-31, and agrees to be bound by, and to comply with, those Rules. The verified Application and its supporting documentation also establish that Applicant has sufficient equipment with which to render the proposed service and is financially fit to conduct operations under the authority requested. Therefore, Applicant is fit, financially and otherwise, to provide the proposed service.

15. Review of the verified Application and its supporting documentation indicates a need for the proposed service.

16. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER**A. It Is Ordered That:**

1. The Stipulated Motion to Restrict Authority and Conditional Withdrawal of Intervention is granted.

2. The three restrictions to the Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., are accepted.

3. Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., as that Application has been restricted by the Stipulated Motion to Restrict Authority and Conditional Withdrawal of Intervention, is granted.

4. The intervention filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs, is dismissed.

5. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., as that Application has been restricted, is granted.

6. Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., is granted a Letter of Authority to read as follows:

Transportation of

passengers and their baggage in sightseeing service

between all points in the Counties of El Paso, Fremont, Park, Pueblo, and Teller,
State of Colorado.

RESTRICTIONS: This authority is restricted as follows:

- (1) All passengers must be dropped off at the same location as the location at which they were picked up.
- (2) Baggage shall not include suitcases.
- (3) Restricted against providing any transportation service that originates at or terminates at the Colorado Springs Municipal Airport, Colorado Springs, Colorado.

7. Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., shall file an appropriate tariff with the Commission.

8. Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., shall cause to be filed with the Commission certificates of insurance as required by Commission rules.

9. Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., shall pay the issuance fee and annual vehicle identification fees.

10. Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., may not begin operations under its extended authority until it has met the requirements set out in Ordering Paragraphs 7 through and including 9, above.

11. If Marketing Services Inc. of Pueblo, doing business as Adventures Out West, Inc., does not comply with the requirements of Ordering Paragraphs 7 through and including 9, above, within 60 days of the effective date of this Order, then Ordering Paragraphs 5 and 6, above, shall be void. On good cause shown, the Commission may grant additional time for compliance.

12. The hearing scheduled for July 7, 2004, is vacated.

13. Response time to the Stipulated Motion to Restrict Authority and Conditional Withdrawal of Intervention is waived.

14. Docket No. 04A-196CP is closed.

15. 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.

16. 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.

17. If exceptions to this Recommended 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