

Decision No. R04-0991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-273CP

IN THE MATTER OF THE APPLICATION OF LANA ADULT DAY CARE, 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 MOTIONS;
DISMISSING INTERVENTIONS; GRANTING
APPLICATION, AS AMENDED, UNDER
MODIFIED PROCEDURE; GRANTING
MOTION FOR SUBSTITUTION; SHORTENING
RESPONSE TIME; AND CLOSING DOCKET**

Mailed Date: August 23, 2004

I. STATEMENT

1. On May 13, 2004, Lana Adult Day Care, Inc. (Applicant), filed a verified Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). The Application commenced this docket.

2. The Commission gave public notice of the Application. See Notice of Applications Filed dated June 1, 2004 (Notice) at 4. That Notice, *inter alia*, established an August 13, 2004, hearing date for this proceeding.

3. Golden West Commuter, LLC (Golden West), Metro Taxi, Inc. (Metro), Denver Taxi, LLC, Boulder Shuttle, LLC, and Boulder Taxi, LLC,¹ intervened of right. Each intervenor opposed the Application.

4. On June 24, 2004, Golden West filed a Motion to Vacate and Reschedule Hearing. By Decision No. R04-0749-I, the undersigned Administrative Law Judge (ALJ) granted that motion and scheduled a hearing in this matter for August 19, 2004.

5. On July 20, 2004, the ALJ ordered Applicant to show cause why the Application should not be dismissed for failure to meet the filing requirements established by the Commission in this proceeding. See Decision No. R04-0806-I. On July 26, 2004, Applicant filed its response to the Order to Show Cause. On August 6, 2004, by Decision No. R04-0921-I, the ALJ discharged the Order to Show Cause.

6. On July 20, 2004, Applicant and Metro filed a Stipulated Motion for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention (Metro Stipulation). In that filing Applicant restricted the Application as follows:

Transportation of

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

between the facilities of Lana Adult Day Care, Inc., 1030 S. Peoria Street, Aurora, Colorado 80012, on the one hand, and, on the other hand, all points in the Counties of Adams, Arapahoe, Boulder, Denver, and Jefferson, State of Colorado.

RESTRICTIONS:

- I. The application is restricted against providing service to or from Denver International Airport;
- II. The application is restricted to providing transportation services only for passengers who are current clients of Lana Adult Day Care, Inc.;

¹ Denver Taxi, LLC, Boulder Shuttle, LLC, and Boulder Taxi, LLC, are referred to collectively as Denver Taxi *et al.*

- III. The application is restricted to the transportation of passengers that are clients of Medicaid and where the transportation charges are paid by Medicaid.

7. Metro stated that the Commission may deem Metro's intervention withdrawn if and when the Commission accepts the Metro Stipulation as filed.

8. On July 29, 2004, Applicant and Golden West filed a Stipulation of Parties, Motion to Restrictively Amend Application and to Withdraw Intervention (Golden West Stipulation). In that filing Applicant moved to restrict the Application by deleting Jefferson County from the permanent authority sought and by adding two restrictions. If the Golden West Stipulation is accepted, the authority would read as follows:

Transportation of

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

between the facilities of Lana Adult Day Care, Inc., 1030 S. Peoria Street, Aurora, Colorado 80012, on the one hand, and, on the other hand, all points in the Counties of Adams, Arapahoe, Boulder, and Denver, State of Colorado.

RESTRICTIONS:

- (1) This authority is restricted against any transportation services to or from Denver International Airport, Denver, Colorado.
- (2) This authority is restricted to providing transportation services only for passengers who are current clients of Lana Adult Day Care, Inc.

9. Golden West stated that, concurrent with a Commission finding that the restrictions in the Golden West Stipulation are acceptable, it will withdraw its intervention.

10. On July 29, 2004, Denver Taxi *et al.* filed a Contingent Withdrawal of Interventions and Objections. In that filing those intervenors stated that the Metro Stipulation, if accepted by the Commission, would satisfy the concerns of Denver Taxi *et al.* with respect to the Application as originally filed. "Accordingly, upon approval of [the Metro Stipulation], [Denver

Taxi *et al.*'s] intervention in this case shall be deemed withdrawn." Contingent Withdrawal of Interventions at 1.

11. By Decision No. R04-0879-I the ALJ vacated the hearing scheduled for August 19, 2004.

12. On August 16, 2004, Metro and MKBS, LLC, doing business as Metro Taxi (MKBS), filed a Joint Motion for Substitution of Intervenor and Intervenor's Counsel, Request for Shortened Response Time, and Request for Expedited Action (Joint Motion). The Joint Motion states that, as authorized by Decision No. C04-0751, Metro has transferred Certificate of Public Convenience and Necessity (CPCN) PUC No. 1481 to MKBS and that MKBS is now the owner and operator of that authority. The Joint Motion also requests substitution of counsel. The Joint Motion states good cause, and no party will be prejudiced if the Joint Motion is granted. The ALJ will grant the Joint Motion and will order the requested substitution of parties and counsel. As a result of the substitution of parties, MKBS stands in place of Metro in the Metro Stipulation.

13. In view of the lack of prejudice to any party and the need to address the pending Metro Stipulation and the pending Golden West Stipulation, the Joint Motion for Request for Shortened Response Time and Request for Expedited Action will be granted. The response time to the Joint Motion will be shortened to and including August 20, 2004.

14. 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 CPCN. Both must be worded to permit a person to 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 authority must be 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 restrictions proposed in the Metro Stipulation and in the Golden West Stipulation meet these standards. Therefore, the ALJ finds and concludes that the proposed amendments in the Metro Stipulation and those in the Golden West Stipulation are restrictive in nature, are clear and understandable, and are administratively enforceable.

15. The Stipulated Motions state good grounds, and granting the Stipulated Motions will not prejudice any party. The Stipulated Motions will be granted.

16. The restrictions to the authority sought by Applicant will be accepted. The Application will be limited to providing transportation between Applicant's location and points in the Counties of Adams, Arapahoe, Boulder, and Denver. The ALJ notes that two of the three restrictions in the Metro Stipulation overlap with the two restrictions in the Golden West Stipulation, the difference being the language used to describe the Denver International Airport restriction. The authority as granted will contain only one statement of each restriction.

17. Granting the Stipulated Motions has two impacts. First, the authority sought (as stated in the Notice and the Application) will be amended to conform with the restrictive amendments. Second, all interventions will be dismissed.

18. Dismissal of the interventions 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.

19. 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

20. Applicant is a Colorado corporation.

21. 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 call-and-demand limousine service

between the facilities of Lana Adult Day Care, Inc., 1030 S. Peoria Street, Aurora, Colorado 80012, on the one hand, and, on the other hand, all points in the Counties of Adams, Arapahoe, Boulder, and Denver, State of Colorado.

RESTRICTIONS: This authority is restricted as follows:

- (1) This authority is restricted against any transportation services to or from Denver International Airport, Denver, Colorado.
- (2) This authority is restricted to providing transportation services only for passengers who are current clients of Lana Adult Day Care, Inc.
- (3) This authority is restricted to the transportation of passengers that are clients of Medicaid and where the transportation charges are paid by Medicaid.

22. 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.

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

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

III. ORDER

A. The Commission Orders That:

1. The Stipulated Motion for Imposition of Restrictive Amendment and Conditional Withdrawal of Intervention filed on July 20, 2004, is granted.

2. The Stipulation of Parties, Motion to Restrictively Amend Application and to Withdraw Intervention filed on July 29, 2004, is granted.

3. The 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 Lana Adult Day Care, Inc., are accepted.

4. The intervention of MKBS, LLC, doing business as Metro Taxi, is dismissed.

5. The intervention filed of Golden West Commuter, LLC, is dismissed.

6. The intervention filed by Denver Taxi, LLC, Boulder Shuttle, LLC, and Boulder Taxi, LLC, is dismissed.

7. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by Lana Adult Day Care, Inc., as that Application has been restricted, is granted.

8. Lana Adult Day Care, Inc., is granted a Letter of Authority to read as follows:

Transportation of

passengers and their baggage in call-and-demand limousine service

between the facilities of Lana Adult Day Care, Inc., 1030 S. Peoria Street, Aurora, Colorado 80012, on the one hand, and, on the other hand, all points in the Counties of Adams, Arapahoe, Boulder, and Denver, State of Colorado.

RESTRICTIONS: This authority is restricted as follows:

- (1) This authority is restricted against any transportation services to or from Denver International Airport, Denver, Colorado.
 - (2) This authority is restricted to providing transportation services only for passengers who are current clients of Lana Adult Day Care, Inc.
 - (3) This authority is restricted to the transportation of passengers that are clients of Medicaid and where the transportation charges are paid by Medicaid.
9. Lana Adult Day Care, Inc., shall file an appropriate tariff with the Commission.
10. Lana Adult Day Care, Inc., shall cause to be filed with the Commission certificates of insurance as required by Commission rules.
11. Lana Adult Day Care, Inc., shall pay the issuance fee and annual vehicle identification fees.
12. Lana Adult Day Care, Inc., may not begin operations under its extended authority until it has met the requirements set out in Ordering Paragraphs 9 through and including 11, above.
13. If Lana Adult Day Care, Inc., does not comply with the requirements of Ordering Paragraphs 9 through and including 11, above, within 60 days of the effective date of this Order, then Ordering Paragraphs 7 and 8, above, shall be void. On good cause shown, the Commission may grant additional time for compliance.
14. The Joint Motion for Substitution of Intervenor and Intervenor's Counsel filed by XYZ-Metro Taxi, Inc., formerly known as Metro Taxi, Inc., and MKBS, LLC, doing business as Metro Taxi, is granted.
15. MKBS, LLC, doing business as Metro Taxi, is substituted for Metro Taxi, Inc., as an intervenor.

16. Request for Shortened Response Time filed by XYZ-Metro Taxi, Inc., formerly known as Metro Taxi, Inc., and MKBS, LLC, doing business as Metro Taxi, is granted.

17. The response time for the Joint Motion for Substitution of Intervenor and Intervenor's Counsel, Request for Shortened Response Time, and Request for Expedited Action is shortened to and including August 20, 2004.

18. The Request for Expedited Action is granted.

19. Docket No. 04A-273CP is closed.

20. 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.

21. 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.

22. 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