

Decision No. R25-0406

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24F-0236CP

MOUNTAIN STAR TRANSPORTATION, LLC DOING BUSINESS AS RED ROCKS SHUTTLE,

COMPLAINANT,

V.

ON LOCATION EVENTS, LLC DOING BUSINESS AS SHUTTLES TO RED ROCKS, AND ACE EXPRESS COACHES, LLC AND RAMBLIN' EXPRESS, INC.,

RESPONDENTS.

RECOMMENDED DECISION DENYING ON LOCATION'S MOTION TO DISMISS AND VACATE HEARING AND GRANTING MOUNTAIN STAR'S FORMAL COMPLAINT

Issued Date: May 29, 2025

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I. STATEMENT

A. PROCEDURAL BACKGROUND

1. This proceeding concerns the Formal Complaint filed by Mountain Star Transportation, LLC, doing business as Red Rocks Shuttle (“Mountain Star” or “Complainant”) on May 24, 2024, against On Location Events, LLC, doing business as Shuttles to Red Rocks (“On Location” or “Respondent”); Ace Express Coaches, LLC (“Ace Express”); and Ramblin’ Express, Inc. (“Ramblin’ Express”).

2. On June 5, 2024, the Commission issued its Order Setting Hearing and Notice of Hearing and Order to Satisfy or Answer, which was then amended on June 6, 2024. The Order to Satisfy or Answer, as amended, required the respondents to satisfy the matters in the complaint or to answer the complaint within 20 days of service.

3. On June 12, 2024, the Commission referred this proceeding to an administrative law judge (“ALJ”) by minute entry.

4. On September 9, 2024, a limited hearing was held, in part, to take testimony or other evidence on the disputed facts concerning the Commission’s subject matter jurisdiction to hear this Formal Complaint.

5. By Decision No. R24-0771-I, issued October 25, 2024, the ALJ found that Mountain Star made a prima facie showing of subject matter jurisdiction and that On Location offered to provide transportation services in violation of § 40-10.1-201, C.R.S., and Commission Rule 6016.¹

6. In the same decision, the ALJ denied Ace Express and Ramblin' Express's Joint Motion to Dismiss, finding that Mountain Star made a prima facie showing that the services provided by Ace Express and Ramblin' Express, pursuant to their contract with On Location, are common carriage rather than charter services subject to limited regulation.²

7. On November 12, 2025, Ace Express and Ramblin' Express filed their Answer.

8. On November 12, 2025, On Location filed its Answer and Counterclaim.

9. By Decision No. R25-0003-I, issued January 6, 2025, On Location's counterclaim alleging violation of Rule 1406(b) by improperly attempting to serve an unauthorized subpoena was dismissed.

10. By Decision No. R25-0037-I, issued January 21, 2025, a procedural schedule was established to govern the proceeding and an evidentiary hearing was scheduled.

11. On February 12, 2025, Ace Express and Ramblin' Express filed a joint Motion to Limit the Scope of Hearing, raising the issue of federal preemption for the first time. By Decision No. R25-0177-I, issued on March 13, 2025, the ALJ construed the motion as a motion to dismiss for lack of subject matter jurisdiction and dismissed Ace Express and Ramblin' Express from this proceeding based on their federal charter authority and federal preemption of state regulation related to the authority to provide charter transportation.

¹ Decision No. R24-0771-I at ¶¶ 94-97.

² *Id.* at ¶ 89.

12. On March 17, 2025, Respondent On Location filed a Motion to Dismiss and Vacate Hearing (“Motion”) asserting a lack of subject matter jurisdiction in light of the ALJ’s findings in Decision No. R25-0177-I.

13. At the scheduled time and place, the hearing was convened. Those parties remaining appeared and participated through counsel.

14. Roman Lysenko testified on behalf of Mountain Star. Rick Van Patten testified on behalf of On Location. Hearing Exhibits 100, 200, 201, and 203-206 were admitted into evidence. At the conclusion of the hearing, evidentiary record was closed, and the matter was taken under advisement.

15. Pursuant to § 40-6-109, C.R.S., the ALJ now transmits the record of the hearing and recommended decision in this matter to the Commission.

B. ON LOCATION’S MOTION TO DISMISS AND VACATE HEARING

16. On Location’s Motion to Dismiss and Vacate Hearing contends that the Commission lacks subject matter jurisdiction over the Complaint in light of Decision No. R25-0177-I. On Location argues that because the subject matter of the claims against On Location is the same as those against Ace Express and Ramblin’ Express— and because the Commission lacks subject matter jurisdiction over those claims— then it also lacks subject matter jurisdiction over the remaining claims against On Location.

17. On Location focuses on the ALJ’s use of the term “chartering party” in Decision No. R25-0177-I to argue that it is immune from regulation because its operations are part of a broader federal charter transportation scheme.

18. Mountain Star filed its Response to the Motion on March 31, 2025.

19. Mountain Star opposes On Location's Motion to Dismiss arguing that On Location is not a chartering party under Colorado statute and, in any event, the federal preemption provision applicable to Ace Express and Ramblin' Express is not applicable to On Location because it does not provide charter transportation.

20. Mountain Star contends that the Commission has subject matter jurisdiction over its claims against On Location because it violated Colorado law when it offered to provide transportation services which it did not have authority to provide in violation of Commission Rules.

21. As the Motion contests the Commission's subject matter jurisdiction, the ALJ first addresses it.

1. Applicable Law

22. Rule 1308 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* ("CCR") 723-1, provides that a respondent may file a motion to dismiss for lack of jurisdiction over the subject matter.³

23. "Where not otherwise inconsistent with Title 40 or these rules, ... an Administrative Law Judge may seek guidance from or may employ the Colorado Rules of Civil Procedure."⁴ The Colorado Rules of Civil Procedure ("C.R.C.P.") apply to the extent practicable in administrative hearings.⁵

24. Subject matter jurisdiction concerns the authority to deal with the class of cases to render judgment.⁶

³ Rule 1308(e), 4 CCR 723-1.

⁴ Rule 1001, 4 CCR 723-1.

⁵ *Colo. Div. of Ins. v. Statewide Bonding, Inc.*, 518 P.3d 309, 321 (Colo. App. 2022) (citing *M.G. v. Colo. Dep't of Hum. Servs.*, 12 P.3d 815, 818 (Colo. App. 2000); Rule 15 of the Dep't of Pers. & Admin. Procedural Rules, 1 CCR 104-1).

⁶ *In Re Marriage of Stroud*, 631 P.2d 168, 170 (Colo. 1981).

25. Rule 12(b)(1), C.R.C.P., provides that a party may move for dismissal of a claim based on a “lack of jurisdiction over the subject matter.” Subject matter jurisdiction is determined by examining the substance of the claim based on the facts alleged and the relief requested.⁷

26. Under Rule 12(b)(1), the plaintiff has the burden of proving subject matter jurisdiction and a trial court may make appropriate factual findings to determine subject matter jurisdiction.⁸ “[I]f all relevant evidence is presented to the trial court, and the underlying facts are undisputed, the trial court may decide the jurisdiction issue as a matter of law.”⁹

27. Such a defense may be raised at any time during the proceedings, and “[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”¹⁰

28. The Supremacy Clause of the United States Constitution provides that federal law “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”¹¹ Accordingly, Congress has the power to preempt state law.¹²

29. “Under the preemption doctrine, the Supremacy Clause invalidates state laws that interfere with, or are contrary to, federal laws.”¹³ The question of whether a federal statute preempts state law is one of statutory construction and is therefore a question of law.¹⁴

⁷ *City of Aspen v. Kinder Morgan, Inc.*, 143 P.3d 1076, 1078 (Colo. App. 2006) (citing *State ex rel. Colo. Dep’t of Health v. I.D.I. Inc.*, 642 P.2d 14 (Colo. App. 1981)).

⁸ *Medina*, 35 P.3d at 452 (citing *Trinity Broad., Inc. v. City of Westminster*, 848 P.2d 916, 925 (Colo. 1993); *City of Lakewood v. Brace*, 919 P.2d 231, 231 (Colo. 1996)).

⁹ *Id.*

¹⁰ C.R.C.P. 12(h)(3); *Medina*, 35 P.3d at 452 (“Issues concerning subject-matter jurisdiction may be raised at any time.”).

¹¹ U.S. Const. art. VI, cl. 2.

¹² *Arizona v. United States*, 567 U.S. 387, 399 (2012).

¹³ *People in Int. of C.Z.*, 360 P.3d 228, 234 (Colo. App. 2015).

¹⁴ *Fuentes-Espinoza v. People*, 408 P.3d 445, 448 (Colo. 2017).

30. Paramount to any preemption analysis are the following two principles: (1) “Congress’s purpose in enacting the federal legislation is controlling;” and (2) the presumption that “Congress did not intend to preempt the historic police powers of the state unless that was the clear and manifest purpose of the federal legislation.”¹⁵

2. Discussion

31. On Location suggests the ALJ’s Interim Decision found that “the transportation to Red Rocks provided by Ace and Ramblin’ to [On Location] is preempted by federal law.”¹⁶ This is a misstatement of the ALJ’s decision and the scope of the federal preemption in 49 U.S.C. § 14501(a)(1)(C), which precludes state regulation “relating to ... the authority to provide intrastate or interstate charter bus transportation.”

32. In Decision No. R25-0177-I, the ALJ found that the claims against Ace Express and Ramblin’ Express were based upon Ace Express and Ramblin’ Express acting outside their authority as common carriers when in fact they each had federal authority to operate the transportation at issue. Mountain Star argued that Ace Express and Ramblin’ Express were not providing charter transportation because they did not satisfy the Commission’s definition of charter bus in Rule 6301. However, the ALJ found that the definition in Rule 6301(a) is preempted under 49 U.S.C. § 14501(a)(1)(C) because it places greater restrictions on the authority to operate charter transportation than under federal law.

33. Because the basis of the claims against Ace Express and Ramblin’ Express were that they exceeded their authority as common carriers, the preemption of Rule 6301 required dismissal of those claims because it established that Ace Express and Ramblin’ Express were

¹⁵ *Colo. Div. of Ins. v. Statewide Bonding, Inc.*, 518 P.3d 309, 316 (Colo. App. 2022) (citing *Fuentes-Espinoza v. People*, 408 P.3d 445 (Colo. 2017)).

¹⁶ Motion at p. 4.

operating under federal charter authority based on federal law and not under state law. As such, the Complaint presented no valid basis for the claims against Ace Express and Ramblin' Express in light of Decision No. R25-0177-I.

34. The Interim Decision found that Rule 6301 is preempted by 49 U.S.C. § 14501(a)(1)(C) and that preemption meant Ace Express and Ramblin' Express had federal authority to provide the transportation at issue. The ALJ did not determine that the Commission wholesale lacks subject matter jurisdiction over the entire transportation scheme detailed in the Complaint. With regard to the Complaint and claims at issue in this proceeding, the preemption only precludes subject matter jurisdiction over the claims relying on the preempted portions of Rule 6301.

35. Nevertheless, On Location urges the ALJ to extend this preemption ruling to the claims against it because it operates as part of the same transportation scheme as Ace Express and Ramblin' Express.¹⁷ The fact that On Location works with Ace Express and Ramblin' Express for the transportation they provide does not make them one entity subject to the same rules and regulations.

36. While the Complaint alleges that all three Respondents violated Commission Rules, the basis of those violations is not the same for each entity. The basis of the claims against Ace Express and Ramblin' Express is that they are transportation providers acting outside the scope of their authority as outlined in their respective Certificates of Public Convenience and Necessity ("CPCN").¹⁸ The basis of the claims against On Location is that it offers to provide transportation in violation of Rules 6016 and 6202 of the Rules Regulating Transportation by

¹⁷ See Motion at pp. 3-6.

¹⁸ Complaint at ¶ 11.

Motor Vehicle, 4 CCR 723-6, because it does not have authority to provide the transportation it advertises.¹⁹ As such the preemption ruling specific to Rule 6301—which meant Ace Express and Ramblin’ Express were acting under federal charter authority and not constrained by their CPCN—does not affect Rules 6016 and 6202 or any claims based on those intact Rules.

37. Given this context, the ALJ is not persuaded by On Location’s arguments for two reasons. First, On Location’s focus on the use of the term “chartering party” in Decision No. R25-0177-I is misplaced as the use of the term to describe the federal charter has no bearing on the state law claims against On Location. The claims against On Location relate to its offer to provide transportation for which it had no authority and not its position as a customer in the federal charter. Second, Rules 6016 and 6202, which are the basis of the claims against On Location, are not related to the authority to provide intrastate or interstate charter transportation and are, therefore, not preempted by 49 U.S.C. § 14501(a)(1)(C).

38. On Location’s focus on the term “chartering party” in Decision No. R25-0177-I is based on a misunderstanding of federal preemption law and is simply not relevant to whether On Location’s advertisement of transportation services violated Commission Rules.

39. In its Motion, On Location argues that the ALJ found “that the transportation to Red Rocks provided by Ace and Ramblin’ to [On Location] is preempted and authorized by federal law.”²⁰ On Location goes on to claim that “the prior issues raised regarding (1) [On Location] as a ‘chartering party’ and [On Location’s] Commission ‘authority’ or permits to provide or offer transportation chartered with Ace and Ramblin’...” are “issues” related to the authority to provide

¹⁹ Complaint at ¶¶ 6, 16-19.

²⁰ Motion at p. 4.

charter transportation and are thus preempted.²¹ In essence, On Location argues that, because it is a chartering party with regard to Ace Express and Ramblin' Express's transportation services, any action it takes related to those services is preempted because the claims against Ace Express and Ramblin' Express were preempted.

40. In response to these arguments, Mountain Star contends that On Location is not a "chartering party" based on the Colorado statutory definition and therefore preemption does not apply.

41. However, federal preemption provisions do not preempt "issues" or "transportation" as On Location suggests. The Supremacy Clause gives Congress the power to preempt state law.²² Thus, in preemption cases, "the question is whether state *law* is pre-empted by a federal statute, or in some instances, a federal agency action."²³

42. Indeed, the preemption provision that On Location relies on specifies the type of state law that may be preempted as follows:

(1) Limitation on State Law. No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any *law, rule, regulation, standard, or other provision having the force and effect of law* relating to—

...

²¹ Motion at pp. 6-7. "As a result of the federal preemption rulings in the Interim Decision...the prior issues raised regarding (1) [On Location] as a 'chartering party' and [On Location's] Commission 'authority' or permits to provide or offer transportation chartered with Ace and Ramblin'; and (2) the interpretation of the Commission 'Transportation Broker' Rule 6001 and Rule 6016 as to [On Location] may be determined as a matter of law. All such *issues* have 'a connection with, or reference to,' the authority to provide charter bus transportation based on the record in this proceeding and are preempted by federal law as to [On Location], like Ace and Ramblin'." (emphasis added). The ALJ does not address the "issue" related to "the interpretation of Commission 'Transportation Broker' Rule 6001" in the context of federal preemption because it is not clear what, if anything, On Location is arguing with regard to Rule 6001(www).

²² See *Arizona v. United States*, 567 U.S. 387, 399 (2012) ("Congress has the power to preempt state law."); *People in Int. of C.Z.*, 360 P.3d 228, 234 (Colo. App. 2015) ("Under the preemption doctrine, the Supremacy Clause invalidates state laws that interfere with, or are contrary to, federal laws.").

²³ *POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 111 (2014) (citing *Wyeth v. Levine*, 555 U.S. 555, 563 (2009)).

(C) the authority to provide intrastate or interstate charter bus transportation.²⁴

43. An example of express preemption is found in 49 U.S.C. § 14501(a)(1)(C) as Congress has stated an intent to “withdraw specified powers from the States by enacting a statute containing express preemption provision.”²⁵ In such cases, the scope of preemption is found in “the plain wording of the clause, which necessarily contains the best evidence of Congress’ preemptive intent.”²⁶ There is nothing in the statute to suggest that the preemption provision could apply to something so nebulous as an “issue” or “transportation” which do not have the force and effect of law. As such, On Location’s entire argument as to preemption is inherently flawed because it fails to identify any “law, rule, regulation, standard, or other provision having the force and effect of law” to be preempted.

44. The use of the term chartering party and the Colorado statutory definition are wholly irrelevant to the remaining claims which are related to On Location’s advertisement of transportation services. There is no dispute that On Location is the customer engaging Ace Express and Ramblin’ Express’s services, but the fact that it is a customer with regard to the federal charter does not mean that it cannot also be an advertiser of transportation services subject to Commission Rules, and On Location provides no statutory interpretation or case law to support such an assertion. That is, On Location’s role as a customer in the context of the federal charter simply does not give it free rein to advertise transportation in violation of Commission Rules.

45. Because the claims against On Location do not rely on the preempted Rule 6301, On Location’s federal preemption argument would only preclude the claims against On Location if Rules 6016 and 6202 are preempted by 49 U.S.C. § 14501(a)(1). They are not.

²⁴ 49 U.S.C. § 14501(a) (emphasis added).

²⁵ *Fuentes-Espinoza v. People*, 408 P.3d 445 at p. 448 (quoting *Arizona*, 567 U.S. at p. 399).

²⁶ *Commonwealth of Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 125 (2016) (quoting *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 594 (2011)).

46. There are two aspects of the transportation scheme at issue here. The first is the federal charter services provided by Ace Express and Ramblin' Express to On Location. The second is On Location's advertisement and sale of tickets for transportation. The claims against On Location relate only to this second aspect.

47. While these two aspects are obviously related in fact because tickets were sold by On Location for transportation on Ace Express and Ramblin' Express's charter buses rather than the advertised service, this does not establish that Rules 6016 and 6202 are "related to the authority to provide intrastate or interstate charter bus transportation."²⁷

48. Rule 6016, as discussed further in the sections below, prohibits anyone from providing or offering to provide transportation without the proper authority or permit, which includes the advertising of such services other than by brokerage.²⁸ The Rule does not describe the requirements to obtain such authority or permit, nor does it describe the parameters of such authority; it simply states that transportation services cannot be offered or advertised without the proper authority or permit. Rule 6016 does not restrict or narrow the authority to provide intrastate or interstate charter transportation and therefore does not fall within the scope of preemption.

49. Similarly, Rule 6202 prohibits anyone from operating or offering to operate as a common carrier or contract carrier without obtaining the necessary certificate or permit and paying the application fee.²⁹ Rule 6202 does not outline the requirements to obtain the necessary certificate or permit, and it expressly applies only to common carriers and contract carriers. As such, the preemption provision does not apply.

²⁷ 49 U.S.C. § 14501(a)(1)(C).

²⁸ Rule 6016, 4 CCR 723-6.

²⁹ Rule 6202, 4 CCR 723-6.

50. On Location cannot argue that it has no authority or permit to provide any type of transportation, does not need any authority or permit to operate its business, and has never sought any such authority or permit, and then simultaneously seek protection under a preemption provision concerned with the authority to provide charter transportation under federal law.

51. Because Rules 6016 and 6202 are not related to the authority to provide charter transportation, 49 U.S.C. § 14501(a)(1)(C) does not preempt those Rules nor does it preclude subject matter jurisdiction over the claims against On Location.

52. The ALJ is satisfied that the Commission has subject matter jurisdiction over the claims against On Location. Accordingly, On Location's Motion to Dismiss based on subject matter jurisdiction will be denied and the ALJ continues its discussion as to the remaining claims.

II. FINDINGS OF FACT

53. The ALJ incorporates relevant findings of facts from the limited hearing to resolve disputed jurisdictional facts.³⁰

54. Mountain Star is a common carrier holding and operating CPCN No. 55952.³¹

Mountain Star's certificate authorizes the following:

(I) Transportation of passengers in call-and-demand sightseeing service originating in Denver and Boulder Counties, to all points in the Counties of Denver, Boulder, Clear Creek, Douglas, El Paso, Grand, Jefferson, and Larimer, State of Colorado, returning to the origination point.

(II) Transportation of passengers in scheduled service and call-and-demand shuttle service: (A) Between all points in Denver County, on the one hand, and all points in Eagle county, on the other hand; (B) Between all points in Denver County, on the one hand, and all points in Pitkin County, on the other hand; and (C) Between all points in the Counties of Eagle and Pitkin, State of Colorado.

³⁰ See, Decision No. R24-0771-I.

³¹ Complaint, Ex. 14.

(III) Transportation of passengers in call-and-demand shuttle service between all points in Denver County and Origin Hotel Red Rocks at 18485 West Colfax Avenue in Golden, CO 80401, on the one hand, and Red Rocks Park and Amphitheatre, State of Colorado, on the other hand.

RESTRICTIONS:

Item (II) is restricted against the transportation of passengers in vehicles with a manufacturer's rate passenger capacity of less than 9 passengers, including the driver.

Item (III) is restricted against the transportation of passengers to and/or from Denver International Airport.

55. On Location sells individual tickets for the transportation of passengers through its website, "rxshuttles.com," between four points in and around Denver on the one hand, and Red Rocks Amphitheatre on the other hand.³²

56. At the time the Complaint was filed, On Location advertised on its website that it "provides a stress-free round trip transportation service for concertgoers."³³

57. The website also included images of buses with On Location's own "Shuttles to Red Rocks" branding, but no Ace Express or Ramblin' Express branding.³⁴

58. When a member of the public purchases a ticket for transportation from On Location, the ticket is delivered to the purchaser via email and shows the date of transportation, the time of the concert, the point of origin, and a map showing the destination.³⁵

59. At the pickup locations, On Location's customers present their tickets to an On Location employee in exchange for a wristband that allows them to board the vehicle.³⁶

³² Hr. Ex. 101 at pp. 1-3.

³³ *Id.* at p. 3.

³⁴ *Id.* at pp. 1-2.

³⁵ Hr. Ex. 103 at p. 1.

³⁶ *Id.* at p. 7.

60. On Location does not hold any state or federal permit or authority authorizing it to provide intrastate transportation of passengers in Colorado.³⁷

61. On Location engaged Ace Express and Ramblin' Express to provide intrastate passenger transportation for those individuals who purchased tickets from On Location.

62. Ace Express and Ramblin' Express used their own motor coaches to serve On Location.³⁸ These motor coaches are marked with the branding of On Location and either Ace Express or Ramblin' Express, as applicable.³⁹

63. On Location had exclusive control of the buses including control over the points of origin, destination, and departure times.⁴⁰

64. No evidence was shown that On Location employs any vehicle drivers or mechanics.

65. No evidence was shown that On Location owns or leases any property for the storage or maintenance of vehicles.

66. No evidence was shown that On Location owns any passenger vehicles.

67. Charter orders show at least 10 instances, where Ace Express and Ramblin' Express were each hired to pick up passengers at one of On Location's pickup sites, drop them off at Red Rocks Amphitheatre, and then to later pick up passengers from Red Rocks Amphitheatre and drop them off at one of On Location's sites.⁴¹

68. On Location paid Ace Express and Ramblin' Express for use of the coaches.⁴²

³⁷ On Location's Statement of Position at p. 1; Hr. Tr. Sept. 9, 2024, at pp. 48:6-20, 72:7-10; Hr. Tr. Mar. 20, 2025, at p. 11:12-15.

³⁸ See Hr. Tr. Sept. 9, 2024, at pp. 80:11-19, 81:13-17, 95:15-23, 99:11-14; Hr. Exs. 301 and 303.

³⁹ Hr. Tr. Sept. 9, 2024, at pp. 41:9-16, 101:4-20.

⁴⁰ Hr. Exs. 301 and 303; see Hr. Tr. Sept. 9, 2024, at pp. 84:1-24, 85:1-2, 86:9-11, 95:3-12.

⁴¹ See Hr. Exs. 301 and 303.

⁴² Hr. Exs. 301 and 303.

69. Ace Express and Ramblin' Express, are federally authorized to provide intrastate charter bus transportation.⁴³

70. On Location neither discloses nor hides the fact that Ace Express and Ramblin' Express vehicles transport the passengers who purchased tickets from On Location. The first opportunity for a ticketholder to discover that the bus is operated by Ace Express or Ramblin' Express is when they see the bus arrive at the point of origin for boarding.⁴⁴

71. At the time the Complaint was filed, On Location did not disclose to ticketholders that it does not own or operate the shuttles used to provide transportation.⁴⁵

72. Since the filing of the Complaint, On Location has updated its website to include the following disclaimer:

On Location arranges your round-trip transportation with local, third-party transportation providers that operate pursuant to applicable permits and laws. Such third-party transportation providers own and operate the vehicles that will transport you to your destination. If you have any questions, concerns, or complaints regarding your transportation experience, please contact us and we will promptly work to resolve the matter with our local transportation partners.⁴⁶

73. At the evidentiary hearing on March 20, 2025, On Location stated its intention to maintain the above disclaimer on its website.⁴⁷

III. LEGAL STANDARDS

74. Pursuant to § 40-6-108(1)(a), C.R.S., regarding complaints against public utilities:

Complaint may be made by the commission on its own motion or by any corporation, person, chamber of commerce, or board or trade, or by any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or by any body politic or municipal corporation

⁴³ See Decision No. R25-0177-I.

⁴⁴ Hr. Tr. Sept. 9, 2024, at pp. 40:13-25, 74:8-76:6.

⁴⁵ See Hr. Tr. Sept. 9, 2024, at p. 33:18-64:2; *see also* Hr. Ex. 101.

⁴⁶ Hr. Ex. 205, at p. 2.

⁴⁷ Hr. Tr. Mar. 20, 2025, at p. 60:1-7.

by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation, or change heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

75. Commission Rule 1302 also provides that:

Any person may file a formal complaint at any time. A formal complaint shall set forth sufficient facts and information to adequately advise the respondent and the Commission of the relief sought and, if known, how any statute, rule, tariff, price list, time schedule, decision, or agreement memorialized, accepted, or approved by Commission decision is alleged to have been violated.⁴⁸

76. “The commission is not required to dismiss any complaint because of the absence of direct damages to the complainant.”⁴⁹

1. Transportation

77. Rule 6016(a) provides that “[n]o person shall offer to provide a transportation service without an Authority or Permit to provide such service.” This is consistent with § 40-10.1-201(1), C.R.S., which states that “[a] person shall not operate or offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation.”⁵⁰

78. “Advertising to provide transportation service or advertising transportation service other than by brokerage is an offer to provide the advertised service.”⁵¹

79. While advertising a transportation service as a transportation broker is not an offer to provide the transportation service, “[a] Person shall be presumed to have offered transportation

⁴⁸ Rule 1302, 4 CCR 723-6.

⁴⁹ § 40-6-108(1)(d), C.R.S.

⁵⁰ See also § 40-10.1-104, C.R.S. (“A person shall not operate or offer to operate as a motor carrier in this state except in accordance with this article [10.1].”).

⁵¹ Rule 6016(c), 4 CCR 723-6.

service if the Person has not disclosed the fact that the services are being arranged by a Transportation Broker.”⁵²

80. Commission Rule 6202(a) provides that “[n]o Person shall operate or offer to operate as a Common Carrier or a Contract Carrier, without obtaining the appropriate Certificate or Permit and paying the application fee and or the annual Motor Vehicle identification fees as set forth in rule 6102.”⁵³

2. Civil Penalties

81. It is the Commission’s duty “to see that the constitution and statutes of this state affecting public utilities, and persons subject to article 10.1 or 10.5 of this title [40], ... are enforced and obeyed and that violations thereof are promptly prosecuted and penalties due the state are recovered and collected.”⁵⁴

82. “Any person may file a complaint against a motor carrier for a violation of this article or a rule adopted under this article. The complainant may request any relief that the commission, in its authority, may grant, including an order to cease and desist, suspension or revocation of the motor carrier’s certificate or permit, or assessment of civil penalties. Upon proof of violation, the commission may issue an order to cease and desist, suspend or revoke the motor carrier’s certificate or permit, assess civil penalties as provided in article 7 of this title, or take any other action within the commission’s authority. In assessing civil penalties under this subsection (2), the commission is not constrained by the procedural requirements of section 40-7-116.”⁵⁵

⁵² Rule 6016(b), 4 CCR 723-6.

⁵³ Rule 6202(a), 4 CCR 723-6.

⁵⁴ § 40-7-101, C.R.S.

⁵⁵ § 40-10.1-112(2), C.R.S.

83. “A person who operates or offers to operate as a motor carrier as defined in section 40-10.1-101 ... is subject to civil penalties as provided in this section and sections 40-7-113 to 40-7-116, in addition to other sanctions that may be imposed pursuant to law.”⁵⁶

84. The maximum civil penalty for one violation of Commission Rule 6016 is \$500 per violation.⁵⁷

85. The maximum civil penalty for one violation of Commission Rule 6202 is \$1,100 per violation.⁵⁸

86. In addressing civil penalties, the Commission considers any evidence concerning some or all of the following factors:

- a. the nature, circumstances, and gravity of the violation;
- b. the degree of the respondent’s culpability;
- c. the respondent’s history of prior offenses;
- d. the respondent’s ability to pay;
- e. any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- f. the effect on the respondent’s ability to continue in business;
- g. the size of the respondent’s business; and
- h. such other factors as equity and fairness may require.⁵⁹

IV. DISCUSSION AND CONCLUSIONS

A. TRANSPORTATION

87. According to Mountain Star, the remaining claims against On Location are that it offered to provide transportation services which it lacked authority to provide in violation of Commission Rules 6016 and 6202.⁶⁰

⁵⁶ § 40-7-112(1)(a), C.R.S.

⁵⁷ Rule 6018(e), 4 CCR 723-6.

⁵⁸ *Id.*

⁵⁹ Rule 1302(b), 4 CCR 723-1.

⁶⁰ Mountain Star also seeks penalties for an alleged violation of Commission Rule 6008. *See* Mountain Star’s Statement of Position at ¶¶ 58, 88. However, the Complaint did not include any claim for relief related to Rule 6008 and the Mountain Star cites Rule 6008 for the first time in the Statement of Position. As such, the ALJ declines to address Mountain Star’s Rule 6008 argument.

88. On Location argues that—given the scope of its activities and the regulatory regime governing Ace Express and Ramblin’ Express’s activities—the only remaining issue is whether it is required to obtain authority, a certificate, or a permit from the Commission to operate its business.⁶¹

89. On Location’s narrow framing of the issue presumes that it acted as a transportation broker when it advertised the transportation at issue; however, because On Location advertised itself as a transportation provider rather than a broker of transportation service, its advertisement was an offer to provide transportation.

90. A transportation broker is defined as “a Person, who, for Compensation, arranges, or offers to arrange, for-hire, transportation of Passengers by a Motor Carrier under authority not operated by the Transportation Broker.”⁶²

91. Although Rule 6016(b) provides that “[a]dvertising to arrange transportation service as a Transportation Broker is not an offer to provide transportation service,” it also states that “[a] Person shall be presumed to have offered transportation service if the Person has not disclosed the fact that the services are being arranged by a Transportation Broker.”⁶³ Subsection (c) further clarifies that “[a]dvertising to provide transportation service or advertising transportation service other than by brokerage is an offer to provide the advertised service.”

92. Here, because On Location advertised itself as a transportation provider and failed to disclose that it would act as a transportation broker, it did in fact offer the transportation service at issue pursuant to Rule 6016(c). Because it offered the transportation services, it cannot be considered a broker who “arranges, or offers to arrange, for-hire transportation of Passengers by a

⁶¹ On Location’s Statement of Position at p. 2.

⁶² Rule 6001(www), 4 CCR 723-6 (emphasis added).

⁶³ Rule 6016(b), 4 CCR 723-6.

Motor Carrier *under authority not operated by the Transportation Broker,*” because its advertisement suggests it holds such authority.

93. Thus, the issue is not whether On Location considers itself a transportation broker, the issue is whether On Location’s advertisement of transportation services without the authority to provide such services violated Rules 6016 and 6202.

94. The ALJ finds that the advertisement of transportation services appearing on On Location’s website at the time the Complaint was filed violates Rules 6016 and 6202.

1. Rule 6016 – Restrictions on Offering or Advertising Transportation Service

95. Section 40-10.1-201(1), C.R.S. plainly states that “[a] person shall not operate or offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation.”

96. Commission Rule 6016, titled “Restrictions on Offering or Advertising Transportation Service,” plainly states that “[n]o Person shall offer to provide a transportation service without an Authority or Permit to provide such service.”⁶⁴

97. Mountain Star argues that On Location was in violation when it advertised transportation to Red Rocks Amphitheatre which it did not have authority or permit to provide and without disclosing that it intends to act as a transportation broker.

98. On Location does not address the violation of Rule 6016 as alleged in the Complaint.⁶⁵ Rather, On Location relies on its contention that because it is a transportation broker

⁶⁴ Rule 6016(a), 4 CCR 723-6.

⁶⁵ While On Location does note that there are “issues regarding advertising and transparency that might remain in this case,” it does not acknowledge that such “issues regarding advertising and transparency” fall under Rule 6016. See On Location’s Statement of Position at p. 8.

that does not provide a transportation service, it is not required to obtain any authority or permit and therefore did not violate any Commission Rules.⁶⁶ On Location simply contends that “no certificates, permits, or authority are needed from the Commission, [it] is operating lawfully, and Mountain Star’s claims fail.”⁶⁷

99. As stated above, On Location’s failure to identify itself as a transportation broker precludes it from being considered as such with regard to the advertisement and offer at issue here.

100. On Location also argues that because it is not a public utility it is not subject to Commission Rules. Rule 6016 proscribes any “Person,” not any public utility or common carrier, from offering transportation that it is not authorized to provide. Similarly, §40-10.1-201, C.R.S. is not restricted to any public utility or common carrier.

101. The term “Person” is defined in the Commission Rules as “Commission staff or any individual, firm, partnership, corporation, company, association, cooperative association, joint venture, governmental entity, or other legal entity.”⁶⁸ The term “Person” is also defined in Title 40 as “any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity.”⁶⁹ Neither the statutory or regulatory framework indicate that only public utilities can violate Commission Rules or Colorado law. As On Location is a limited liability corporation it is certainly a “Person” subject to the restrictions on advertising transportation.

102. At the time the Complaint was filed, On Location advertised on its website transportation services between four points in Denver and Jefferson counties to Red Rocks

⁶⁶ On Location’s Statement of Position at p. 6.

⁶⁷ *Id.*

⁶⁸ Rule 1004(v), 4 CCR 723-1.

⁶⁹ § 40-1-102(10), C.R.S.

Amphitheatre.⁷⁰ On Location did not have authority or a permit to provide this transportation.⁷¹

On Location did not disclose this information to potential customers on its website.⁷²

103. In fact, the website affirmatively indicates that On Location is the transportation service provider. On Location's website stated that "On Location's Shuttles to Red Rocks program provides a stress-free round-trip transportation service for concertgoers."⁷³ The website also showed large images of buses with On Location's own "Shuttles to Red Rocks" branding (i.e. not Ace Express or Ramblin' Express).⁷⁴

104. Adding to the perception that On Location offered to provide transportation, On Location referred to the services at issue as its own throughout its website with phrases such as: "Join *us* for a comfortable ride to the iconic Red Rocks Amphitheatre," and "*Our* departure time varies by shuttle stop."⁷⁵ Further, in its "By the Numbers" section, On Location boasted that since 2015 its Shuttles to Red Rocks brand has serviced "300K+ Total Riders" across "1300+" shows, with "2600+ Shuttles Operated" and "41K+ Miles Driven."⁷⁶ These "unprecedented results" are all attributed to Shuttles to Red Rocks.⁷⁷ Although the "By the Numbers" section stated that Shuttles to Red Rocks has served as a "trusted partner," the implication is that it partners with the brands shown immediately below these statistics, including Limelight Hotels, Live Nation, AEG, and others.⁷⁸ Neither Ace Express nor Ramblin' Express are included in the section showing On Location's partners, nor were they shown to have been included anywhere else on the website.⁷⁹

⁷⁰ Hr. Ex. 101.

⁷¹ On Location's Statement of Position at p. 1; Hr. Tr. Sept. 9, 2024, at pp. 48:6-20, 72:7-10; Hr. Tr. Mar. 20, 2025, at p. 11:12-15.

⁷² Hr. Ex. 101.

⁷³ *Id.* at p. 2.

⁷⁴ *Id.* at pp. 1-2.

⁷⁵ *Id.* at pp. 3, 6 (emphasis added).

⁷⁶ *Id.* at p. 4.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

105. It is not until pick up that passengers first see the buses with both On Location branding and either Ace Express or Ramblin' Express branding.⁸⁰

106. On Location's advertising suggested that it is more than just a broker, and members of the public viewing the website would have had no reason to suspect that On Location was not the transportation provider.

107. Because On Location advertised transportation services as their own services, and "[a]dvertising to provide transportation service...is an offer to provide the advertised service,"⁸¹ On Location undoubtedly offered to provide transportation services.

108. Thus, at the time the Complaint was filed, On Location "offer[ed] to provide a transportation service without an Authority or Permit to provide such service."⁸²

109. Although it may have intended to act as a transportation broker, On Location is "presumed to have offered transportation service [because it did] not disclosed the fact that the services are being arranged by a Transportation Broker."⁸³

110. The violation of Rule 6016 and §40-10.1-201, C.R.S. is clear. On Location advertised that it provided a transportation service that it had no authority or permit to provide, and it did not disclose that it was doing so as a transportation broker. Nothing on its website suggested that it was not the transportation provider. While On Location has since modified its website to inform potential customers that the transportation it advertises is provided by third parties,⁸⁴ this does not negate a prior violation of Commission Rules.

⁸⁰ Hr. Tr. Sept. 9, 2024, at pp. 40:13-25, 74:8-76:6.

⁸¹ Rule 6016(c), 4 CCR 723-6.

⁸² Rule 6016(a), 4 CCR 723-6.

⁸³ Rule 6016(b), 4CCR 723-6.

⁸⁴ Hr. Ex. 101.

2. Rule 6202 – Prohibited Operations

111. Rule 6202 prohibits any person from operating or offering to operate as a common carrier or contract carrier, without obtaining the necessary certificate or permit and paying the required fees.⁸⁵

112. As it is undisputed that On Location did not obtain any certificate or permit or pay any Commission fees, it violated Rule 6202 if it operated or offered to operate as a common carrier or contract carrier. Absent Ace Express and Ramblin' Express's federal charter authority, which does not extend to On Location, the transportation services advertised are common carrier services as On Location indiscriminately offers to sell tickets to the public for transportation to Red Rocks Amphitheatre.⁸⁶

113. As determined above, On Location's advertisement is found to be an offer to provide transportation services. Because On Location offered to provide transportation services as a common carrier, it offered to operate as a common carrier.

114. Accordingly, for the reasons stated above, the ALJ finds that On Location violated Commission Rule 6202 as it offered to operate as a common carrier or contract carrier.

B. REMEDIES

115. Mountain Star requests an order requiring On Location to cease and desist its operations and to impose civil penalties. Mountain Star is not, as On Location suggests, seeking an award of damages nor could it from this Commission.

116. Without determining sufficiency of modifications to Mountain Star's website—an issue which has not been properly raised or briefed as it did not exist at the time the Complaint

⁸⁵ Rule 6202(a), 4 CCR 723-6.

⁸⁶ See Rule 6001(p), 4 CCR 723-6; § 40-1-102, C.R.S.

was filed—On Location will be required to cease offering to provide transportation for which it does not have the authority or permits to provide in violation of Rule 6016 and 6202 without disclosing that it acts as a transportation broker. Modifications will also be considered as a mitigating factor as to the imposition of any requested penalty.

117. As stated above, in determining whether to assess civil penalties, the factors to consider include:

- a. the nature, circumstances, and gravity of the violation;
- b. the degree of the respondent's culpability;
- c. the respondent's history of prior offenses;
- d. the respondent's ability to pay;
- e. any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- f. the effect on the respondent's ability to continue in business;
- g. the size of the respondent's business; and
- h. such other factors as equity and fairness may require.⁸⁷

118. Based upon the totality of circumstances here, safety of the traveling public was not in jeopardy as the ticketed transportation service demonstrated was in fact provided by Ace Express or Ramblin' Express in compliance with their authority, and there is no evidence that they failed to comply with any relevant state or federal regulations. Although the customers may not have been aware of the actual transportation provider, the transportation provided was not unlawful.

119. As the offense here is the advertisement appearing on On Location's website at the time the Complaint was filed, On Location is clearly culpable for the violation of Rules 6016 and 6202. However, there is no evidence of any history of prior offenses other than the advertisement at issue here, and there is no evidence that On Location intentionally misled customers by failing to disclose that it was not providing transportation service.

⁸⁷ Rule 1302(b), 4 CCR 723-1.

120. Further, On Location presented evidence at the hearing that since the Complaint was filed, it has changed its website to inform potential customers that it does not provide transportation but works with local third-party transportation providers.⁸⁸ The ALJ finds that this shows a good faith effort in attempting to achieve compliance.

121. Based upon the totality of circumstances, including that any civil penalty for proven violations would not benefit Mountain Star, the undersigned finds that imposing civil penalties would not further the public interest and are not warranted in this proceeding.

V. **ORDER**

A. **It Is Ordered That:**

1. The Motion to Dismiss and Vacate Hearing (“Motion”) filed by On Location Events, LLC, doing business as Shuttles to Red Rocks (“On Location”) is denied.

2. The Formal Complaint filed by Mountain Star, LLC, doing business as Red Rocks Shuttle (“Mountain Star”) is granted in part, consistent with the discussion above.

3. On Location shall cease and desist from providing and offering to provide services as a common carrier until such time as it has complied with all Colorado statutes and Commission rules governing such operations.

4. While On Location has violated Colorado law and Commission Rules, no civil penalty will be imposed herein for the reasons stated above.

⁸⁸ Hr. Ex. 205.

5. This Decision is effective immediately.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director