

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1163BP

IN THE MATTER OF THE APPLICATION OF LIBERTY TRANSPORTATION, LLC, FOR A
PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTIONS; DISMISSING
INTERVENTIONS; GRANTING
APPLICATION, AS AMENDED, UNDER MODIFIED
PROCEDURE AND SUBJECT TO CONDITIONS;
GRANTING CONTRACT CARRIER PERMIT,
SUBJECT TO CONDITIONS; AND WAIVING
RESPONSE TIME TO MOTIONS**

Mailed Date: January 31, 2014

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I. STATEMENT

1. On October 30, 2013, Liberty Transportation, LLC (Liberty Transportation or Applicant), filed a verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this Proceeding.

2. On November 18, 2013, Applicant filed a supplement to the October 30, 2013 filing.¹ On January 8, 2014, Liberty Transportation filed amendments to the Application.² Unless the context indicates otherwise, reference in this Decision to the Application is to the October 30, 2013 filing as supplemented on November 18, 2013 and as amended on January 8, 2014.

3. On November 4, 2013, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 4). The Notice established an intervention period and contained a procedural schedule. On December 13, 2013, Decision No. R13-1540-I vacated that procedural schedule.

4. Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Yellow Cab), timely intervened in this Proceeding. Yellow Cab is a party in this Proceeding and opposes the Application.

5. Colorado Springs Transportation, LLC (CST), timely intervened in this Proceeding. CST is a party in this Proceeding and opposes the Application.

6. MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi), timely intervened in this Proceeding. Metro Taxi is a party in this Proceeding and opposes the Application.

7. CST, Metro Taxi, and Yellow Cab, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties. Each party is represented by legal counsel.

¹ The November 18, 2013 filing includes information filed under seal because Applicant claims that the information is confidential.

² These amendments are discussed below.

8. On December 11, 2013, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

9. On December 11, 2013, by Minute Order, the Commission deemed the Application to be complete as of that date.

10. On January 8, 2014, Liberty Transportation filed amendments to the Application (January 8 Filing). By that filing, Applicant sought authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of

passengers

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

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from Denver International Airport;
- (D) against providing transportation services to or from hotels and motels; and
- (E) against the operation of more than two (2) vehicles at any one time.

January 8 Filing at 1.

11. As filed, the authority was restricted “against service to all hotels and motels and the Denver International Airport.” January 8 Filing at 1. For clarity, the ALJ divided that single restriction into Restrictions (C) and (D), as shown above.

12. On January 22, 2014, CST and Yellow Cab jointly filed a Motion for Conditional Withdrawal of Intervention (January 22 Motion). In that filing, each intervenor states that, if the

Commission approves the amendments contained in the January 8 Filing, the intervenor's "interests will be satisfied, and [its] intervention[] may be deemed withdrawn." January 22 Motion at ¶ 5.

13. On January 27, 2014, by Decision No. R14-0104-I, the ALJ approved the amendments contained in the January 8 Filing.³ Approving the restrictive amendments to the Application had two effects. First, the contract carrier authority sought by Applicant was amended to conform to the authority as stated in that Decision. Second, the condition precedent stated in the January 22 Motion was satisfied.

14. Given the nature of the January 22 Motion, no party will be prejudiced if the ALJ waives response time. The ALJ will waive response time to the January 22 Motion.

15. The ALJ will grant the January 22 Motion as it states good cause and as no party will be prejudiced if that motion is granted. The ALJ will dismiss the interventions of CST and Yellow Cab.

16. On January 30, 2014, Metro Taxi filed a Motion for Withdrawal of Intervention (Metro Taxi Motion).⁴ In that filing, Metro Taxi states that approval of the amendments by Decision No. R14-0104-I satisfies Metro Taxi's interests in this matter. As a result, "Metro Taxi seeks to withdraw its intervention in this proceeding." Metro Taxi Motion at ¶ 6.

17. Given the nature of the Metro Taxi Motion, no party will be prejudiced if the ALJ waives response time. The ALJ will waive response time to the Metro Taxi Motion.

³ In that Interim Decision, the ALJ also required Intervenors to make filings. The January 22 Motion satisfies the filing requirement contained in Decision No. R14-0104-I.

⁴ In Decision No. R14-0104-I, the ALJ required Intervenors to make filings. The Metro Taxi Motion satisfies that filing requirement.

18. The ALJ will grant the Metro Taxi Motion as it states good cause and as no party will be prejudiced if the Metro Taxi Motion is granted. The ALJ will dismiss the intervention of Metro Taxi.

19. Dismissal of the interventions leaves the Application uncontested and unopposed.

20. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,⁵ the Commission may consider an uncontested and unopposed application pursuant to the Commission's modified procedure and without a formal hearing. The ALJ finds that the Application should be considered, and will be considered, under the Commission's modified procedure and without a formal hearing.

21. 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, DISCUSSION, AND CONCLUSION

22. Applicant is a Colorado limited liability company.

23. By the Application, as discussed above, Applicant seeks a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

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

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;

⁵ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

- (C) against providing transportation services to or from Denver International Airport;
- (D) against providing transportation services to or from hotels and motels; and
- (E) against the operation of more than two (2) vehicles at any onetime.

24. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723 Part 6 and agrees to be bound by, and to comply with, those Rules as applicable to it. The Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed transportation service; has the experience to conduct operations under the authority requested; and is financially fit to conduct operations under the authority requested. In addition, the Application and its supporting documents establish that the service proposed is specialized and is tailored to meet the customer's distinct needs. Finally, review of the Application and its supporting documentation indicates a need for the proposed contract carrier service. Because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the ALJ will grant the Application and will issue the contract carrier permit subject to conditions.

25. Having determined that the contract carrier permit should issue, the ALJ finds and concludes that the contract carrier permit should be subject to the conditions contained in the Ordering Paragraphs below. **Questions concerning completion of the conditions should be directed to Ms. Vanessa Condra of the Commission Staff (telephone no.: 303.894.2850).**

26. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER**A. The Commission Orders That:**

1. The Motion for Conditional Withdrawal of Intervention, which motion was filed on January 22, 2014, is granted.

2. Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, is dismissed from this Proceeding.

3. Colorado Springs Transportation, LLC, is dismissed from this Proceeding.

4. The Motion for Withdrawal of Intervention, which motion was filed on January 30, 2014, is granted.

5. MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi, is dismissed from this Proceeding.

6. Subject to the conditions stated below, the verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire filed by Liberty Transportation, LLC, on October 30, 2013, as supplemented on November 18, 2013 and as amended on January 8, 2014, is granted.

7. Subject to the conditions stated in the Ordering Paragraphs below, Liberty Transportation, LLC, is granted a contract carrier permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

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

RESTRICTIONS: This authority is restricted:

(A) to the transportation of passengers who are recipients of Medicaid;

- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from Denver International Airport;
- (D) against providing transportation services to or from hotels and motels; and
- (E) against the operation of more than two (2) vehicles at any one time.

8. All operations under the contract carrier permit granted by Ordering Paragraph No. 7 shall be strictly contract operations. The Commission retains jurisdiction to make such amendments to this contract carrier permit as the Commission deems advisable.

9. The authority granted in Ordering Paragraph No. 7 is conditioned on Liberty Transportation, LLC, meeting the conditions contained in this Decision and is not effective until Liberty Transportation, LLC, meets the stated conditions.

10. Liberty Transportation, LLC, shall not begin operation under the contract carrier permit granted by this Decision until it has satisfied all of the following conditions:

(a) Liberty Transportation, LLC, shall file with the Commission an advice letter and proposed tariffs, as required by Rules 4*Code of Colorado Regulations* 723-1-1210(b) and 723-1-1210(c) and Rule 4*Code of Colorado Regulations* 723-6-6207. The tariffs shall have a proposed effective date that is not earlier than ten days after the advice letter and proposed tariffs are filed with the Commission. In calculating the proposed effective date, the date on which the Commission receives the advice letter and proposed tariffs is not included in the ten-day notice period; and the entire ten-day notice period must expire prior to the proposed effective date. Liberty Transportation, LLC, shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(b) Liberty Transportation, LLC, shall cause to be filed with the Commission *either* proof of insurance coverage (Form E or self-insurance) *or* proof of surety bond coverage, as required by and in accordance with Rule 4*Code of Colorado Regulations* 723-6-6007.

(c) Liberty Transportation, LLC, shall pay to the Commission the \$ 5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(d) For each vehicle to be operated under the contract carrier permit granted by this Decision, Liberty Transportation, LLC, shall pay to the Commission the annual motor vehicle fees as required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of those fees and if applicable, Liberty Transportation, LLC, shall pay to the Commission, for each vehicle to be operated under the contract carrier permit granted by this Decision, the fee for that vehicle pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(e) Liberty Transportation, LLC, has received from the Commission a written notice that Liberty Transportation, LLC, has complied with conditions (a) through (d) in this Ordering Paragraph and may begin providing transportation service pursuant to the contract carrier permit granted by this Decision.

11. If Liberty Transportation, LLC, does not comply with the requirements of Ordering Paragraph No. 10, above, within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 6 and No. 7, above, shall be void. On good cause shown by an appropriate and timely filing made in this Proceeding, the Commission may grant Liberty Transportation, LLC, additional time within which to comply with the requirements of Ordering Paragraph No. 10, above.

12. The right of Liberty Transportation, LLC, to operate pursuant to the contract carrier permit granted by this Decision shall depend on Liberty Transportation, LLC's compliance with all applicable present and future statutes, Commission regulations, and Commission decisions.

13. Response time to the Motion for Conditional Withdrawal of Intervention filed on January 22, 2014 is waived.

14. Response time to the Motion for Withdrawal of Intervention filed on January 30, 2014 is waived.

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 § 40-6-109, 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 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.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge