

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0962CP

IN THE MATTER OF THE APPLICATION OF 303 PARTYBUS, LLC 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
MELODY MIRBABA
GRANTING APPLICATION
UNDER MODIFIED PROCEDURE**

Mailed Date: March 10, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On September 4, 2013, 303 Partybus LLC (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application).

2. The Commission gave notice of the Application on September 9, 2013. As originally noticed, the Application sought:

Authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand shuttle and charter service

between 6232 Beach Street, Denver, Colorado and the following venues:

Red Rocks Amphitheater, 18300 West Alameda Parkway, Golden, Colorado 80401;

1st Bank Center, 11450 Broomfield Lane, Broomfield, Colorado 80021;

Sports Authority at Mile High Stadium, 1701 Bryant Street, Denver, Colorado 80204;

Coors Field, 2001 Blake Street, Denver Colorado 80205;

Ogden Theater, 935 East Colfax Avenue, Denver, Colorado 80218;
Fiddlers Green, 6230 Greenwood Plaza Boulevard, Englewood, Colorado 80111;
Pepsi Center, 1000 Chopper Circle, Denver, Colorado 80204;
Dicks' Sporting Goods Park, 6000 Victoria Way, Commerce City, Colorado 80022;
Bluebird Theater, 3317 East Colfax Avenue, Denver, Colorado 80206.

RESTRICTIONS. This application is restricted:

- (a) to the use of one vehicle;
- (b) to the provision of service to no less than 20 passengers at a time;
- (c) to the use of a vehicle with a maximum capacity of 44 passengers; and,
- (d) to trips beginning and ending at 6232 Beach Street, Denver, Colorado.

3. MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi and Northwest Suburban Taxi (Metro), Colorado Cab Company LLC, doing business as Denver Yellow Cab (Colorado Cab), and SuperShuttle International Denver, Inc. (SuperShuttle) timely intervened of right in this proceeding.

4. During the Commission's weekly meeting held October 16, 2013, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

5. On January 3, 2014, Colorado Cab filed a "Stipulation, Motion for Approval of Restrictive Amendments and Conditional Withdrawal of Interventions" (Stipulation). The Stipulation was executed by Colorado Cab, Applicant, and SuperShuttle.

6. Later that same day, Metro filed a "Motion for Conditional Withdrawal of Intervention" (Motion). The Motion states that if the amendments to the Application proposed

by the Stipulation are approved, that Metro's objection to the Application will be resolved and Metro's intervention will be withdrawn.

7. On January 17, 2014, the ALJ held a hearing regarding the language of the proposed amendment to the Application in the Stipulation. Decision No. R14-0020-I. Applicant and counsel, Mr. Knute Brody, appeared at the hearing. Metro appeared through counsel, Ms. Cesilie Garles; Colorado Cab and SuperShuttle appeared through counsel, Mr. Mark Valentine. At the hearing, the parties discussed the issues identified by Decision No. R14-0020-I. Applicant agreed to amend the Application to address those issues, as set forth below and to waive the 210-day statutory deadline for a Commission decision to issue in this proceeding.

8. By Decision R13-0074-I issued January 17, 2014, the ALJ accepted the proposed amendments to the Application, as discussed at the hearing and in the Stipulation and acknowledged Applicant's waiver of the 210-day statutory deadline. The Application was amended to read (in its entirety), as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand shuttle and charter service

between 6232 Beach Street, Denver, Colorado and the following venues:

Red Rocks Amphitheater, 18300 West Alameda Parkway, Golden, Colorado 80401;

1st Bank Center, 11450 Broomfield Lane, Broomfield, Colorado 80021;

Sports Authority at Mile High Stadium, 1701 Bryant Street, Denver, Colorado 80204;

Coors Field, 2001 Blake Street, Denver Colorado 80205;

Ogden Theater, 935 East Colfax Avenue, Denver, Colorado 80218;

Fiddlers Green, 6230 Greenwood Plaza Boulevard, Englewood, Colorado 80111;

Pepsi Center, 1000 Chopper Circle, Denver, Colorado 80204;

Dicks' Sporting Goods Park, 6000 Victoria Way, Commerce City, Colorado 80022;

Bluebird Theater, 3317 East Colfax Avenue, Denver, Colorado 80206.

RESTRICTIONS. This application is restricted:

- (a) to the use of one vehicle;
- (b) to the use of a vehicle with a maximum capacity of 44 passengers;
- (c) to round-trips originating and terminating at 6232 Beach Street, Denver, Colorado that may include stops only at the addresses identified herein; and
- (d) against service to or from hotels, motels, or airports.

9. As required by Decision No. R13-0074-I, the Application was re-noticed to the public with the amendments.

10. Although Metro, Colorado Cab, and SuperShuttle (interveners) were not required to file a new intervention to the amended Application, Decision No. R14-0074-I required that any intervener who objects to the amended Application, make a filing on or before the expiration of the intervention period indicating its objection to the amended Application.

11. Decision No. R14-0074-I also warned that if the interveners do not make a filing objecting to the Application by the close of the intervention period, that they will be deemed to have no objection to the amended Application, and that their interventions will be withdrawn as requested in the Stipulation and Motion.

12. The intervention period ended on February 26, 2014. *See* the January 27, 2014 Notice of Application.

13. No new interventions were filed; none of the interveners made a filing objecting to the amended Application.

14. Because none of the interveners filed an objection to the amended Application, the interveners are deemed to have no objection to the amended Application. The interveners' interventions will be withdrawn as requested in the Stipulation and Motion.

15. Withdrawal of interventions means that the amended Application is no longer opposed.

16. However, on February 10, 2014, Applicant paper-filed a Supplement to its Application (Supplement). The Supplement appeared to ask that the Application be amended yet again. Because Applicant is represented by counsel and counsel did not submit or sign the Supplement, the ALJ ordered Applicant to make a filing by February 21, 2014 explaining the meaning of the Supplement. Decision No. R14-0181-I issued February 14, 2014.

17. One week after the deadline, on February 28, 2014 at 4:32 p.m., Applicant's counsel submitted a paper-filing entitled, "Notice of Withdrawal of February 10, 2014 Supplemental filing" (Notice) which addresses the issues identified by Decision No. R14-0181-I.

18. However, before this paper-filing was processed into the official record, the electronic record maintained through the Commission's e-filing system, the ALJ issued Decision No. R14-0226-I on March 3, 2014, scheduling a hearing regarding the Supplement. When the ALJ issued Decision No. R14-0226-I, Applicant's Notice had neither been input into e-filings, nor had it otherwise reached the ALJ.

19. Applicant's Notice addressed the issues identified by Decision No. R14-0181-I. The Notice made it clear that Applicant wished to withdraw the Supplement, and continues to seek the authority as the Application was amended by Decision No. R14-0074-I.

20. After finding that Applicant's Notice addressed all issues in Decision No. R14-0081-I, the ALJ issued Decision No. R14-0223-I on March 4, 2014, which vacated the

hearing on the Supplement Decision No. R14-0223-I. The Decision also noted that the amended Application is unopposed, because interveners failed to make a filing by the close of the intervention period objecting to the amended Application, and because no new interventions were filed. The Decision also indicates that because the Application is unopposed, the ALJ will issue a written recommended decision on the merits of the Application without an evidentiary hearing.

21. As previously noted, since all interventions have been withdrawn, the amended Application is unopposed. Pursuant to § 40-6-109(5), C.R.S., and Rule 1403,4 *Code of Colorado Regulations* (CCR) 723-1 of the Commission's Rules of Practice and Procedure, the uncontested Application may be considered under a modified procedure, without a formal hearing.

22. The ALJ finds that the Application demonstrates good cause to grant the requested authority. The Application establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6, and agrees to be bound by and to comply with, those Rules. The Application and its supporting documentation establish that Applicant has sufficient equipment with which to render the proposed service, and is financially, operationally, and managerially fit to perform the proposed service. In addition, the Application and supporting documents establish that the present or future public convenience and necessity requires, or will require the transportation service as requested. Therefore, because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the permit should be granted.

23. In accordance with § 40-6-109, C.R.S., the ALJ now transmits the record in this proceeding along with this written recommended decision. The ALJ recommends the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the interventions filed by MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi and Northwest Suburban Taxi (Metro), Colorado Cab Company LLC, doing business as Denver Yellow Cab (Colorado Cab), and SuperShuttle International Denver, Inc. (SuperShuttle) are withdrawn.

2. Metro, Colorado Cab, and SuperShuttle are dismissed as parties to this proceeding.

3. 303 PartyBus LLC's (Applicant) Supplemental filing made on February 10, 2014 is withdrawn.

4. Applicant is granted a Certificate of Public Convenience and Necessity (CPCN) to Operate as a Common Carrier by Motor Vehicle for Hire.

5. Applicant's CPCN provides Applicant with authority to:

operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle and charter service

between 6232 Beach Street, Denver, Colorado and the following venues:

Red Rocks Amphitheater, 18300 West Alameda Parkway, Golden, Colorado 80401;

1st Bank Center, 11450 Broomfield Lane, Broomfield, Colorado 80021;

Sports Authority at Mile High Stadium, 1701 Bryant Street, Denver, Colorado 80204;

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RESTRICTIONS. This authority is restricted:

- (a) to the use of one vehicle;
- (b) to the use of a vehicle with a maximum capacity of 44 passengers;
- (c) to round-trips originating and terminating at 6232 Beach Street, Denver, Colorado that may include stops only at the addresses identified herein; and
- (d) against service to or from hotels, motels, or airports.

6. Applicant shall operate in accordance with all applicable Colorado laws and Commission rules. All operations under the permit granted shall be strictly common carrier operations.

7. Applicant shall not commence the operations under the permit until it has complied with the requirements of Colorado laws and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission. Applicant shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date.

(Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs); and

- (d) paying the applicable issuance fee (\$5).

8. If Applicant does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of operations under the Permit shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

9. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with Ordering Paragraph 7.

10. 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.

11. 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 notranscript 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.

12. 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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge