

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0059CP

IN THE MATTER OF THE APPLICATION OF UNIVERSAL TRANSPORTATION, 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
DISMISSING APPLICATION WITHOUT PREJUDICE**

Mailed Date: April 1, 2014

I. STATEMENT, FINDINGS OF FACT, AND CONCLUSIONS

1. Universal Transportation LLC (Applicant), filed the above-captioned proceeding with the Colorado Public Utilities Commission (Commission) on January 14, 2014.

2. The Commission provided public notice of the Application on January 27, 2014.

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 service

between

(A) all points within an area beginning at the intersection of Park Avenue and Colfax Avenue, Denver, Colorado, thence northwest along Park Avenue to its intersection with Interstate 25; thence south along Interstate 25 to its intersection with Colfax Avenue; thence east along Colfax Avenue, to the point of beginning; on the one hand, and Denver International Airport, on the other hand; and

(B) all points within an area beginning at the intersection of Dayton Street and Hampden Avenue, Denver, Colorado, thence west along Hampden Avenue to its intersection with Holly Street; thence south along Holly Street as extended, to its intersection with Arapahoe Road; thence east along Arapahoe Road to its intersection with Dayton Street; thence north

along Dayton Street as extended, to the point of beginning; on the one hand, and Denver International Airport, on the other hand.

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

4. During the Commission's weekly meeting held March 5, 2014, the Commission deemed the Application complete and referred the proceeding to an administrative law judge (ALJ) for disposition.

5. On March 11, 2014, this proceeding was scheduled for a prehearing conference for April 1, 2014 at 10:00 a.m. pursuant to Rule 1409(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. Decision No. R14-0269-I. The prehearing conference was scheduled to take place at the Commission's office in Denver, Colorado. Decision No. R14-0269-I specifically states that all parties are expected to appear at the prehearing conference. The Decision warned that failure to appear may result in dismissal of the Application.

6. The ALJ convened the prehearing conference at the designated date, time, and place (April 1, 2014 at 10:00 a.m.). Ms. Cesilie Garles appeared on behalf of Metro; Mr. Mark Valentine appeared on behalf of Colorado Cab and SuperShuttle. Applicant did not appear.

7. The ALJ recessed the hearing for an additional 15 minutes until 10:15 a.m., to provide Applicant a further opportunity to appear. Applicant still did not appear. Metro made a verbal motion to dismiss the Application based upon Applicant's failure to appear at the

mandatory prehearing conference. Metro argued this amounts to a failure to prosecute the Application. Colorado Cab and SuperShuttle joined the Motion. The ALJ granted the Motion and issues this recommended decision consistent with that ruling.

8. Applicant did not make a filing seeking to continue the prehearing conference; nor has Applicant made a filing showing good cause for its failure to appear at the prehearing conference.

9. The record shows that Applicant is a registered filer with the Commission's E-Filing System. The certificate of service generated by the Commission's E-Filing System for the Decision scheduling the prehearing conference, Decision No. R14-0269-I, shows that the Decision was served upon Applicant through the Commission's E-filing System on March 11, 2014. The ALJ finds and concludes that notice of the prehearing conference, Decision No. R14-0269-I, was properly served on Applicant through the Commission's E-Filing System pursuant to Rule 1205(b), 4 CCR 723-1.

10. Failing to appear at the hearing, notice of which was properly given, constitutes a failure to prosecute this matter thereby warranting dismissal of this proceeding. *See Rathbun v. Sparks*, 425 P.2d 296, 298-99 (1967) (plaintiff's failure to prosecute case with reasonable diligence warrants its dismissal).

11. In addition, Applicant has also failed to prosecute the Application by its failure to comply with Decision No. R14-0271-I issued March 11, 2014. Rule 1201(a), requires a party in an adjudicatory proceeding before the Commission be represented by an attorney. 4 CCR 723-1. This is an adjudicative proceeding before the Commission; Applicant is not represented by counsel. Decision No. R14-0271-I gave Applicant an opportunity to make a filing to comply with the requirements of Rule 1201(b), 4 CCR 723-1, so it may proceed without counsel, or to

have counsel enter an appearance. Decision No. R14-0271-I. The deadline to make the filing or to have counsel enter an appearance was March 25, 2014. Decision No. R14-0271-I warned Applicant that failure to make the required filing or have counsel's entry of appearance filed by March 25, 2014 may result in dismissal of the Application. The Decision also warned that unless Applicant establishes an exception to Rule 1201(a), 4 CCR 723-1, that any filing made by a non-attorney on its behalf is void and of no legal effect.

12. Applicant failed to have counsel enter an appearance and failed to make a filing that meets the requirements of Decision No. R14-0271-I and Rule 1201(b), 4 CCR 723-1. This is an additional failure to prosecute the Application. Moreover, because Applicant has failed to have an attorney enter an appearance on its behalf and failed to meet the requirements of Rule 1201(b) to be represented by a non-attorney, its Application is void and of no legal effect, since it was filed by a non-attorney. *See, e.g.*, Decision No. C05-1018, Proceeding No. 04A-524W issued August 30, 2005; No. C04-1119, Proceeding No. 04G-101CP issued September 28, 2004; and No. C04-0884, Proceeding No. 04G-101CP issued August 2, 2004. These are additional grounds warranting dismissal of the Application.

13. For the foregoing reasons and authorities, the Application should be dismissed.

14. Pursuant to § 40-6-109, C.R.S., and for the foregoing reasons and authorities, the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, the verbal motion to dismiss made at the April 1, 2014 prehearing conference by MKBS, LLC, doing business as Metro Taxi, Taxis Fiesta,

South Suburban Taxi, and Northwest Suburban Taxi and joined by Colorado Cab Company LLC, doing business as Denver Yellow Cab and SuperShuttle International Denver Inc., is granted.

2. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by Universal Transportation LLC is dismissed without prejudice.

3. Proceeding No. 14A-0059CP is closed.

4. 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.

5. 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 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 basic findings 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.

6. If exceptions to this 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

MELODY MIRBABA

Administrative Law Judge