

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1397CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF MAGIC BUS, LLC, DOING BUSINESS
AS MAGIC BUS TOURS, FOR AUTHORITY TO EXTEND OPERATIONS UNDER
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55833.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTIONS; APPROVING STIPULATION;
AMENDING APPLICATION; DISMISSING
INTERVENTION; GRANTING APPLICATION, AS
AMENDED, UNDER MODIFIED PROCEDURE;
GRANTING EXTENSION OF CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY, SUBJECT
TO CONDITIONS; VACATING EVIDENTIARY HEARING;
AND WAIVING RESPONSE TIME TO MOTIONS**

Mailed Date: June 16, 2014

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I. STATEMENT

1. On December 20, 2013, Magic Bus, LLC, doing business as Magic Bus Tours (Magic Bus or Applicant), filed an Application for Permanent Authority to Extend Operations under Certificate of Public Convenience and Necessity PUC No. 55833 (Application). That filing commenced this Proceeding.

2. On January 13, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 3); established an intervention period; and established a procedural schedule. On February 20, 2014, Decision No. R14-0191-I vacated that procedural schedule.

3. On February 12, 2014, Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO (Shamrock Taxi), timely intervened as of right. Shamrock Taxi opposes the Application.

4. Shamrock Taxi is the Intervenor. Applicant and Intervenor, collectively, are the Parties.

5. Pursuant to Decision No. R14-0191-I, Applicant is represented by Mr. Michael Murphy, who is not an attorney. Intervenor appears through legal counsel.

6. On February 19, 2014, by Minute Order, the Commission deemed the Application complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., absent other action, the Commission should issue its decision on the Application not later than September 17, 2014.

7. On February 19, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

8. Because Intervenor opposed the Application, a hearing was necessary. On March 6, 2014, by Decision No. R14-0237-I, the ALJ scheduled a June 4, 2014 evidentiary hearing and established the procedural schedule in this matter.

9. On April 18, 2014, Shamrock Taxi filed (in one document) a Motion *in Limine* and Motion to Dismiss. On May 14, 2014, for the reasons discussed in Decision No. R14-0510-I, the ALJ denied this motion as moot.

10. On April 23, 2014, Applicant filed a request for additional time within which to comply with the filing requirements of Decision No. R14-0237-I. For the reasons discussed in Decision No. R14-0510-I, the ALJ granted this request; modified the procedural schedule established in Decision No. R14-0237-I; and retained the June 4, 2014 hearing date.

11. On April 23, 2014, Applicant filed its list of witnesses and exhibits. On May 27, 2014, Applicant filed its Corrected List of Witnesses.

12. On May 21, 2014, Intervenor filed its Witness and Exhibit List.

13. On June 3, 2014, the Parties filed a Joint Notice of Settlement and Motion to Vacate Hearing. The Motion to Vacate Hearing states good cause; and no party will be prejudiced if the response time to the Motion to Vacate Hearing is waived and if the Motion to Vacate Hearing is granted. The ALJ will waive response time; will grant the Motion to Vacate Hearing; and will vacate the June 4, 2014 evidentiary hearing *nunc pro tunc*.¹

14. In the Application as noticed on January 13, 2014, Magic Bus sought to extend its operations under Certificate of Public Convenience and Necessity PUC No. 55833 (the CPCN) to operate as a motor vehicle for hire as follows:

Transportation of

passengers in sightseeing service

between all points within a 29-mile radius of the intersection of Mountain Avenue and College Avenue, Fort Collins, Colorado.

RESTRICTIONS: This authority is restricted:

(A) Against providing service to or from airports;

¹ By electronic mail sent on June 3, 2014, the ALJ granted the Motion to Vacate Hearing and informed the Parties that the hearing was vacated. This Decision memorializes that ruling.

- (B) Against providing transportation services to, from, or between points within a 12-mile radius of the intersection of U.S. Highway 34 and U.S. Highway 36 in Estes Park, Colorado; and
- (C) Restricted to a total fleet size of four vehicles or fewer.

15. On June 9, 2014, Parties filed (in one document) a Stipulation, Motion for Approval of Restrictive Amendments [Motion for Approval], and Conditional Withdrawal of Interventions [*sic*] (June 9 Filing).

16. The June 9 Filing is a joint filing. The ALJ finds that waiving response time to the Motion for Approval will not prejudice any party. The ALJ will waive response time to the June 9 Filing.

17. In the June 9 Filing, Magic Bus agreed to amend the Application to include additional restrictions. Magic Bus seeks to extend operations under its CPCN to operate as a motor vehicle for hire as follows:

Transportation of

passengers in sightseeing service

between all points within a 29-mile radius of the intersection of Mountain Avenue and College Avenue, Fort Collins, Colorado.

RESTRICTIONS: This authority is restricted:

- (A) To providing service in vehicles with a capacity of not fewer than 14 passengers except that one vehicle may have a capacity of six passengers or more;
- (B) The vehicle with a capacity of six passengers or more may not be used to service new trips beginning between 8 p.m. and 7 a.m., and shall have a flat screen television;
- (C) To providing service using no more than four vehicles at one time;
- (D) To providing transportation for the sole purpose of viewing or visiting places of natural, historic, or scenic interest such that the transportation begins and terminates at the same point;

- (E) Against providing transportation services to, from, or between points within a 12-mile radius of the intersection of U.S. Highway 34 and U.S. Highway 36 in Estes Park, Colorado; and
- (F) Against providing service to or from airports.

18. To be acceptable, an amendment to the authority sought must be restrictive in nature; must be clear and understandable; and must be administratively enforceable. The authority granted by a CPCN, including any restrictions, must be unambiguous and must be contained within the CPCN. The CPCN must be worded so that a person will 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 a CPCN must be found within the four corners of the authority, which is the touchstone by which one determines whether a carrier's operations are within the scope of its Commission-granted authority.

19. The amendments contained in the June 9 Filing, and, if the amended Application is granted, the resulting extended CPCN meet the standards stated above. The ALJ will accept the amendments contained in the June 9 Filing and will amend the authority sought by Applicant in this Proceeding.

20. Based on the foregoing discussion, the ALJ finds that the Parties have met their burden with respect to the Motion for Approval. In addition, the ALJ finds that granting the motion will not prejudice either party. Consequently, the ALJ will grant the Motion for Approval.

21. Granting the Motion for Approval and accepting the amendments to the scope of the authority sought in the Application has these effects. First, the authority stated in the Application will be amended to conform to the amendments contained in the June 9 Filing.

Second, the condition precedent stated in the Conditional Withdrawal of Interventions is satisfied; and, at the request of Shamrock Taxi, the ALJ will dismiss its intervention.

22. Dismissal of the intervention leaves the amended Application uncontested and unopposed.

23. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,² an uncontested and unopposed application may be considered under the Commission's modified procedure and without a formal hearing. The ALJ finds that the amended Application should be considered, and will be considered, under the modified procedure and without a formal hearing.

24. 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

25. Applicant is a Colorado limited liability company.

26. By the Application, as amended, Applicant seeks an extended CPCN to operate as a motor vehicle for hire as follows:

Transportation of

passengers in sightseeing service

between all points within a 29-mile radius of the intersection of Mountain Avenue and College Avenue, Fort Collins, Colorado.

RESTRICTIONS: This authority is restricted:

- (A) To providing service in vehicles with a capacity of not fewer than 14 passengers except that one vehicle may have a capacity of six passengers or more;

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

- (B) The vehicle with a capacity of six passengers or more may not be used to service new trips beginning between 8 p.m. and 7 a.m., and shall have a flat screen television;
- (C) To providing service using no more than four vehicles at one time;
- (D) To providing transportation for the sole purpose of viewing or visiting places of natural, historic, or scenic interest such that the transportation begins and terminates at the same point;
- (E) Against providing transportation services to, from, or between points within a 12-mile radius of the intersection of U.S. Highway 34 and U.S. Highway 36 in Estes Park, Colorado; and
- (F) Against providing service to or from airports.

27. The record establishes that Applicant is familiar with the Rules Regulating Transportation by Motor Vehicles, found at Part 6 of 4 CCR 723, and agrees to be bound by, and to comply with, those Rules as applicable to it. The record establishes that Applicant has sufficient equipment with which to render the proposed extended transportation service, has the experience to conduct operations under the extended authority requested, and is financially fit to conduct operations under the extended authority requested. Review of the record indicates a need for the proposed extended transportation service. Because the Applicant is fit, financially and otherwise, to perform the proposed extended transportation service and because the other prerequisites have been met, the ALJ will grant the amended Application and will issue the requested and extended CPCN subject to conditions.

28. Having determined that the extended CPCN should issue, the ALJ finds that granting the amended Application, granting the extended CPCN, and the extended CPCN should be subject to the conditions contained in the Ordering Paragraphs below. **Questions concerning the conditions should be directed to Mr. Gabe Dusenbury of the Commission Staff (telephone no.: 303.894.2046).**

29. In accordance with § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Motion for Approval of Restrictive Amendments, which motion was filed on June 9, 2014, is granted.

2. Consistent with the discussion above, the restrictive amendments filed on June 9, 2014 are approved.

3. Consistent with the discussion above, the verified Application for Permanent Authority to Extend Operations under Certificate of Public Convenience and Necessity PUC No. 55833, which was filed on December 20, 2013 by Magic Bus, LLC, doing business as Magic Bus Tours, is amended to conform to the terms of the restrictive amendments filed on June 9, 2014.

4. Consistent with the discussion above, the withdrawal of intervention filed by Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO, is granted.

5. Shamrock Taxi of Ft. Collins, Inc., doing business as Yellow Cab of Northern Colorado and/or Yellow Cab NOCO, is dismissed as a party in this Proceeding.

6. Subject to the conditions stated below, the verified Application for Permanent Authority to Extend Operations under Certificate of Public Convenience and Necessity PUC No. 55833, which was filed by Magic Bus, LLC, doing business as Magic Bus Tours, on December 20, 2013, as that filing has been amended, is granted.

7. Subject to the conditions stated below, Magic Bus, LLC, doing business as Magic Bus Tours, is granted a Certificate of Public Convenience and Necessity to operate as a common carrier by motor vehicle for hire as follows:

Transportation of

passengers in sightseeing service

between all points within a 29-mile radius of the intersection of Mountain Avenue and College Avenue, Fort Collins, Colorado.

RESTRICTIONS: This authority is restricted:

- (A) To providing service in vehicles with a capacity of not fewer than 14 passengers except that one vehicle may have a capacity of six passengers or more;
- (B) The vehicle with a capacity of six passengers or more may not be used to service new trips beginning between 8 p.m. and 7 a.m., and shall have a flat screen television;
- (C) To providing service using no more than four vehicles at one time;
- (D) To providing transportation for the sole purpose of viewing or visiting places of natural, historic, or scenic interest such that the transportation begins and terminates at the same point;
- (E) Against providing transportation services to, from, or between points within a 12-mile radius of the intersection of U.S. Highway 34 and U.S. Highway 36 in Estes Park, Colorado; and
- (F) Against providing service to or from airports.

8. The authority granted in Ordering Paragraph No. 7 is conditioned on Magic Bus, LLC, doing business as Magic Bus Tours, meeting the conditions contained in this Decision and is not effective until Magic Bus, LLC, doing business as Magic Bus Tours, has met the conditions set out in Ordering Paragraph No. 9.

9. Magic Bus, LLC, doing business as Magic Bus Tours, shall not begin operation under the Certificate of Public Convenience and Necessity granted by this Decision until it has satisfied all of the following conditions:

(a) Magic Bus, LLC, doing business as Magic Bus Tours, 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. Magic Bus, LLC, doing business as Magic Bus Tours, shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(b) Magic Bus, LLC, doing business as Magic Bus Tours, 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) Magic Bus, LLC, doing business as Magic Bus Tours, 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 Certificate of Public Convenience and Necessity granted by this Decision, Magic Bus, LLC, doing business as Magic Bus Tours, shall pay to the Commission the vehicle identification fee required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of that fee and if applicable, Magic Bus, LLC, doing business as Magic Bus Tours, shall pay to the Commission, for each vehicle to be operated

under the Certificate of Public Convenience and Necessity granted by this Decision, the fee for those vehicles pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(e) Magic Bus, LLC, doing business as Magic Bus Tours, has received from the Commission a written notice that Magic Bus, LLC, doing business as Magic Bus Tours, has complied with conditions (a) through (d) in this Ordering Paragraph and may begin providing transportation service.

10. If Magic Bus, LLC, doing business as Magic Bus Tours, does not comply with the requirements of Ordering Paragraph No. 9 within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 6 and No. 7 shall be void. On timely motion and for good cause shown, the Commission may grant Magic Bus, LLC, doing business as Magic Bus Tours, additional time for compliance.

11. The right of Magic Bus, LLC, doing business as Magic Bus Tours, to operate under the Certificate of Public Convenience and Necessity granted by this Decision shall depend upon the compliance of Magic Bus, LLC, doing business as Magic Bus Tours, with all present and future laws, regulations, and orders of the Commission.

12. The Motion to Vacate Hearing filed on June 3, 2014, is granted, *nunc pro tunc*.

13. The evidentiary hearing in this Proceeding scheduled for June 4, 2014 is vacated *nunc pro tunc*.

14. Response time to the Motion to Vacate Hearing is waived.

15. Response time to the Motion for Approval of Restrictive Amendments is waived.

16. 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.

17. 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.

18. 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)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director