

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0327CP

IN THE MATTER OF THE APPLICATION OF PIKES PEAK SATCOM, INC., DOING BUSINESS AS NEW INTERCONTINENTAL EXPRESS FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
STRIKING INTERVENTIONS**

Mailed Date: July 2, 2014

I. STATEMENT

1. Pikes Peak SATCOM, Inc., doing business as New Intercontinental Express, (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission) on April 10, 2104. Applicant amended its Application on April 16, 2014, and again on May 13, 2014 (second amended Application).

2. The Commission gave public Notice of the second amended Application on May 19, 2014. The Notice required that any party desiring to intervene must file an appropriate pleading within 30 days of the date of the Notice. Thus, the intervention period expired on June 18, 2014.

3. City Cab Co., MT Acquisitions, LLC, doing business as Mountains Taxi, Banaadir Transportation Company (Banaadir), Estes Valley Transport, Inc., Colorado Springs Shuttle, LLC, Colorado Coach Transportation, LLC, Ramblin' Express Inc., Valera Lea Holtorf,

doing business as Dashabout Shuttle Company and Roadrunner Express, Almaz Transportation, LLC (Almaz), MKBS, LLC, doing business as Metro Taxi, SuperShuttle International Denver, Inc., Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, Boulder SuperShuttle, Colorado Springs Transportation, LLC, Mercy Medical Transportation Services, LLC, Hy-Mountain Transportation, Inc., doing business as High Mountain Taxi, Magic Bus, LLC., Home James Transportation Services, Ltd., Alpine Taxi/Limo, doing business as Alpine, and Go Alpine, AEX, doing business as Alpine Express, and Tazco, Inc., doing business as Sunshine Taxi filed timely interventions.

4. During the Commission's weekly meeting held June 25, 2014, the Commission deemed the Application complete and referred the proceeding to an administrative law judge for disposition.

5. Almaz and Banaadir are both represented by counsel in this proceeding. Banaadir's "Entry of Appearance and Intervention" (Banaadir's Intervention) and Almaz's Entry of Appearance and Intervention" (Almaz's Intervention). Both of their interventions claim that the interveners own and operate Certificates of Public Convenience and Necessity, which are alleged to be attached to their interventions. Banaadir's Intervention, ¶ 2, and Almaz's Intervention, ¶ 2.

6. Instead, attached to their interventions are certificates to operate as a contract carrier for motor vehicle for hire.

7. Almaz and Banaadir both argue that the operating rights sought by the Application overlap the rights contained in their authorities, and that they have a legally protected right in the subject matter which would be affected by the granting of this Application. Banaadir's Intervention, ¶ 3, and Almaz's Intervention, ¶ 3.

8. Almaz and Banaadir contend the authority requested by Applicant should not be granted because:

- (a) The operating rights sought by Applicant would partially the authority and service of Intervenor.
- (b) Intervenor is able and willing to provide its authorized service.
- (c) If the application is granted, Applicant would divert traffic from the Intervenor.
- (d) Intervenor is capable of handling a substantially greater volume of traffic than it now enjoys.
- (e) Intervenor has sufficient equipment and capacity to meet the needs of the traveling public within the scope of its authority. Granting this Application would wastefully duplicate the service of Intervenor.
- (f) Granting the Application would endanger the investments of Intervenor, contrary to the public interest.
- (g) There is no unmet need for the services of Applicant, within the scope of Intervenor's authority.

Banaadir's Intervention, ¶ 4, and Almaz's Intervention, ¶ 4.

9. In order to intervene as a matter of right in a transportation application proceeding, Rule 1401 of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, requires a party to hold a common carrier permit, that is, a certificate of public convenience and necessity (CPCN), that conflicts with the authority requested by the applicant. Neither Banaadir's nor Almaz's interventions include a letter of authority for a CPCN issued by this Commission; rather, they include only a contract carrier permit.

10. Banaadir's and Almaz's interventions demonstrate a lack of understanding of their permitted contract services. A contract carrier is not a common carrier. §§ 40-10.1-101(4) and (6), C.R.S. Contract carriage serves distinct specialized and tailored needs of a contracting customer.

11. Colorado law does not afford protection of a contract carrier from competition. *De Lue v. Public Util's Comm'n*, 169 Colo. 159, 166 (Colo. 1969). Only common carriers are obliged to serve the public and have a property interest that is entitled to protection from competition. "Under Colorado law a private [contract] carrier has no legal right to be protected from lawful competition from a common carrier." *Id.*

12. It is well recognized that a contract carrier cannot serve the general public. *Miller Bros., Inc. v. Public Util's Comm'n*, 185 Colo. 414, 421 (Colo. 1974). "The protection of common carriers, therefore, is not an end in itself but a means of promoting the public interest in the coordination of common carrier and contract carrier operations in such a way as not to impair the public's access to common carrier service at reasonable rates." *Regular Route Common Carrier Conference of Colorado Motor Carriers Assoc. v. Public Util's Comm'n*, 761 P.2d 737, 745 (Colo. 1988).

13. Indivisible rights and responsibilities of common carriage simply do not apply to contract carriage. "A common carrier has the duty of giving adequate and sustained public service at reasonable rates, without discrimination. . . . A common carrier is held to the highest degree of care." *Vassos v. Dolce International/Aspen, Inc.*, 2006 U.S. Dist. LEXIS 19370 (D. Colo. 2006), quoting *De Lue v. Public Util's Comm'n*, 169 Colo. 159, 166-67, 454 P.2d 939 (Colo. 1969).

14. Contract carriage is a statutory creation that generally cannot be authorized where it will impair the efficient public service of an authorized motor vehicle common carrier. § 40-11-103, C.R.S. Section 40-10.1-101(6), C.R.S., essentially defines a contract carrier as a carrier providing transportation who is not a common carrier. While a common carrier must convey for all desiring its transportation, a contract carrier owes an obligation only to its contract

customers. *Salida Transfer Co. v. Public Util's Comm'n*, 792 P.2d 809, 810 (Colo. 1990) *citing* *Denver Cleanup Service, Inc. v. Public Util's Comm'n*, 516 P.2d 1252, 1253 (Colo. 1977).

15. As filed, Banaadir's and Almaz's interventions fail to demonstrate that they hold a CPCN conflicting with the authority requested.

16. Because Banaadir and Almaz are not protected from competition of a common carrier, they have no standing as contract carriers to contest the common carrier application. Common carriage is available to the traveling public.

17. As the ALJ has concluded that Banaadir and Almaz have failed to show they have standing to intervene in this proceeding, the ALJ will strike their interventions and will dismiss them as parties to this proceeding.¹

18. Pursuant to the authority provided by Rule 1501(d), 4 CCR 723-1, the ALJ will certify this interim decision as immediately appealable through the filing of a motion subject to review by the Commission *en banc*. Any such motion shall be filed pursuant to Rule 1400 and shall be titled "Motion Contesting Interim Decision No R14-0746-I."

II. ORDER

A. It Is Ordered That:

1. The "Entry of Appearance and Intervention" filed by Banaadir Transportation Company (Banaadir) is stricken; Banaadir is dismissed as a party to this proceeding.

2. The "Entry of Appearance and Intervention" filed by Almaz Transportation, LLC (Almaz) is stricken; Almaz is dismissed as a party to this proceeding.

¹ To the extent that Banaadir and Almaz seek permissive intervention, the ALJ denies permissive intervention, for the reasons and authorities set forth herein.

3. The ALJ certifies this interim decision as immediately appealable through the filing of a motion subject to review by the Commission *en banc*. Any such motion shall be filed pursuant to Rule 1400 and shall be titled "Motion Contesting Interim Decision No R14-0746-I." Motions contesting this interim decision must be filed within 14 days of the date this Decision is served upon Almaz and Banaadir. Any responses to such a motion shall be due with 7 days of service of the motion contesting the interim decision.

4. This Decision is effective immediately.

(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