

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19A-0144CP

IN THE MATTER OF THE APPLICATION OF MOUNTAIN STAR TRANSPORTATION LLC
DOING BUSINESS AS EXPLORER TOURS 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
CONDITIONALLY ALLOWING TELEPHONE
TESTIMONY AND INTERPRETER**

Mailed Date: July 16, 2019

TABLE OF CONTENTS

I. STATEMENT.....	1
A. Summary.....	1
II. BACKGROUND, FACTUAL FINDINGS, AND CONCLUSIONS	2
A. Motion for Telephone Testimony.....	3
B. Motion for Interpreter.....	6
III. ORDER.....	8
A. It Is Ordered That:	8

I. STATEMENT

A. Summary.

1. This Decision addresses Mountain Star Transportation LLC’s (Mountain Star) “Motion to Allow for Commission Appointed Interpreters [sic] for Two Witnesses” (Motion for Interpreter) and “Motion to Allow Testimony by Telephone for Two Witnesses” (Motion for

Telephone Testimony). Mountain Star will be permitted to call the two witnesses identified in its Motion for Telephone Testimony by telephone if it ensures that both witnesses have access to all exhibits that have been filed in this proceeding while they testify. If this condition is not met, the witnesses will not be permitted to testify by telephone. Mountain Star will be permitted to use an interpreter for the identified witness testimony if: it pays the full cost of an interpreter; the interpreter Mountain Star hires may not have a personal interest in the proceeding or personal relationship with someone involved with the proceeding; and the interpreter must qualified to interpret verbal and written communication through knowledge, training, education, or experience. The interpreter will be required to take an oath or affirmation on the record that he or she will make a true translation.

II. BACKGROUND, FACTUAL FINDINGS, AND CONCLUSIONS

2. This matter is scheduled for a hearing on July 24, 2019 on Mountain Star's Application for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire, as amended (Amended Application). Decision No. R19-0525-I. Both referenced Motions pertain to that hearing.

3. Three interveners, CKIMY, LLC, doing business as iLIMO (iLIMO), Aspire Tours LLC (Aspire), and Ullr Tours, doing business as Colorado Sightseer (Ullr), object to the Amended Application and are parties to this proceeding.

4. Mountain Star filed its Motion for Telephone Testimony and Motion for Interpreter on June 6, 2019. On June 11, 2019, Aspire and Ullr filed a "Consolidated Response . . . to Motion to Allow Interpreters and Motion to Allow Testimony by Telephone" (Response). Aspire and Ullr do not object to Mountain Star's request for an interpreter but asks that "the Commission require that any interpreter hired for the hearing in this proceeding be certified to

ensure the highest degree of accuracy and reliability.” Response at 1. Aspire and Ullr object to the Motion for Telephone Testimony. Response at 2-4. iLIMO filed no response to either of Mountain Star’s Motions.

5. The Administrative Law Judge (ALJ) deems iLIMO’s failure to file a response to the Motions as confessing the Motions. Rule 1400(d), Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1.

A. Motion for Telephone Testimony.

6. Mountain Star seeks an order allowing two of its disclosed witnesses, Natalia Krasulenko and Andrey Golovan, to testify by telephone at the July 24, 2019 hearing in this matter. Motion for Telephone Testimony at 2; see “Exhibit and Witness Summaries and Exhibit List,” at 2-3 (Exhibit and Witness Summaries) and “Applicant’s Witness List,” at 2 (Witness List). The witnesses will testify about the public need for the service proposed in Mountain Star’s Application, including issues relating to obtaining such service from the existing motor carriers. *Id.* In support of its Motion for Telephone Testimony, Mountain Star states that both witnesses are out of the country in the Ukraine, and attendance in person is cost prohibitive and imposes difficult time constraints. *Id.* In addition, the witnesses would need to obtain travel visas from the Ukraine, which can take as long as 60 days. *Id.* at 3. And, at least one witness has young children who she cannot leave for extended periods of time. *Id.* Mountain Star argues that these issues essentially prevent the witnesses from being able to testify in person. *Id.*

7. Mountain Star also argues that Interveners have ample time to prepare for telephone cross-examination based on the witness disclosures it made in this proceeding. Motion for Telephone Testimony at 4. Mountain Star first disclosed these witnesses on May 9, 2019, in its Exhibit and Witness Summaries, then again on July 10, 2019 in its Witness List. Both

disclosures include contact information for the witnesses. Exhibit and Witness Summaries, at 1-2; Witness List at 2. And both include phone numbers and addresses in the Ukraine. *Id.* Mountain Star asserts that the witnesses will not refer to documents in their direct testimony, so their telephone testimony “should be relatively straightforward.” Motion for Telephone Testimony at 4.

8. Aspire and Uller “strongly oppose” the Motion for Telephone Testimony, arguing that the subjects of the relevant witnesses’ testimony are primary issues in this proceeding, and therefore, it is “crucial that these witnesses be subject to cross examination in person so that the Commission may assess each witness’ credibility and reliability with respect to these key issues.” Response at 2. Aspire and Uller also state that they have serious concerns about the accuracy of other witnesses’ testimony on the subjects that will be discussed by the two witnesses who Mountain Star seeks permission to testify by telephone. They argue that they will be “significantly impaired” in their ability to demonstrate potential similar inaccuracies by these witnesses by telephone, but do not provide a factual basis to support this argument. Response at 2. Aspire and Uller make no allegation that these witnesses have made inaccurate statements or even that they have concerns about the accuracy of statements these witnesses have made. Response 1-3. Rather, it appears that Aspire and Uller are concerned about the accuracy of other witnesses’ testimony, and assume that the same concerns may arise with the telephone witnesses. Response at 2. Aspire and Uller allege no facts to support this assumption. *Id.*

9. As the proponent of an order, Mountain Star carries the burden of proof in this proceeding; this also means that Mountain Star has the right to present its case by oral and documentary evidence and to cross-examine witnesses. §§ 24-4-105(7), and 40-6-101(1), C.R.S. Interveners have these same rights. *Id.* But, the right to cross-examine witnesses is not unlimited.

Youngs v. Industrial Claim Appeals Office, 316 P.3d 50, 59 (Colo. App. 2013). In fact, the right to cross-examination may be restricted when doing so does not deny the right to cross-examination. *Id.* Because telephone testimony does not restrict or limit the questions that may be asked on cross-examination, it does not restrict the right to cross-examine witnesses. For example, Interveners may ask the witnesses the same questions by telephone as they would in person. The record contains no facts to contradict this. But, even if telephone testimony could be viewed as a restriction on cross-examination, it certainly does not amount to denial of the right to cross-examine the witnesses.

10. It is undisputed that the subjects of the telephone witnesses' testimony is relevant to the Application. The cost, time, and other constraints for in person testimony are significant. In fact, it appears that unless these witnesses are allowed to testify by telephone, they will not be able to testify at all. As a result, if telephone testimony is not permitted, Mountain Star's ability to meet its burden, and right to represent its case through oral evidence may be impaired. See §§ 24-4-105(7), and 40-6-101(1), C.R.S. The ALJ finds that Mountain Star has shown good cause for an order permitting these witnesses to testify by telephone, and that doing so does not deny Interveners the right to cross-examine the witnesses. The ALJ will allow the identified witnesses to testify by telephone so long as the conditions described in this Decision are met.

11. Mountain Star states that it will not refer to documents while examining these witnesses, but it is unknown whether Interveners will need to do so. Thus, the ALJ will require Mountain Star to ensure that the witnesses have access to all exhibits filed in this proceeding by any party, in paper or electronic format. In addition, Mountain Star must also ensure that the witnesses have access to a computer or other electronic device at which they may electronically receive and access additional documents electronically as necessary during the course of their

testimony.¹ The ALJ encourages Interveners to coordinate with Mountain Star in advance of the hearing to ensure they are able to provide these witnesses with documents electronically before or at the time of their testimony. This may be accomplished by emailing documents to the witnesses, or using an online service that all parties and the witnesses may use to share and access files electronically (*e.g.*, Dropbox).

12. Finally, Mountain Star will be responsible to ensure the witnesses are available when called to testify, and that they follow the instructions for calling in to the evidentiary hearing.

B. Motion for Interpreter.

13. Mountain Star's Motion for Interpreter seeks the Commission to "appoint" an interpreter for two witnesses, Natalia Krasulenko and Ludmila Kamaeff, who both speak Russian as their primary language and have difficulty with English. Motion for Interpreter at 2. Mountain Star argues that these witnesses' testimony will be better preserved if an interpreter is used. *Id.* at 3. It appears that if its Motion is granted, Mountain Star proposes to hire an interpreter who has been vetted through the Judicial Department's Office of Language Access. *Id.* at 3-4. Mountain Star has agreed to pay for the costs of an interpreter. *Id.* at 4.

14. The Motion for Interpreter is unopposed. The ALJ finds that Mountain Star has shown good cause for the use of an interpreter for the referenced witnesses during hearing. Subject to the below conditions, the ALJ will allow Mountain Star to use an interpreter for the identified witnesses. This does not mean that the ALJ is appointing an interpreter.

¹ This will ensure that Interveners may electronically provide the witnesses with documents for impeachment purposes, if necessary, during the course of the witnesses' testimony.

15. Mountain Star's use of an interpreter is subject to the following conditions:

- (a) Mountain Star pays the full cost of the interpreter;
- (b) Mountain Star must demonstrate that the interpreter is qualified by knowledge, skill, experience, training, or education to accurately interpret and translate spoken Russian to English, including the specific dialect(s) the witnesses speak, and to interpret and translate *spoken and written* English to Russian, also including the specific dialects the witnesses speak; and
- (c) Mountain Star's chosen interpreter may not have a personal interest in the outcome of this proceeding, or have a personal relationship with a person involved in this proceeding.

16. Mountain Star must demonstrate its compliance with the above requirements at the time of the hearing, or before the hearing by making a filing.

17. The interpreter will also be required to take an oath that he or she will make a true and correct translation from Russian to English and vice versa, including the specific dialects the witnesses speak.

18. The ALJ highlights that the interpreter *must be able to translate written English* into spoken Russian, including the specific dialect that the witnesses speak, to ensure that the parties may use exhibits or other documents during the course of these witnesses' testimony. The ALJ notes that Mountain Star has indicated it will not use or refer to exhibits during these witnesses' testimony, but it is unknown whether Interveners intend to do so. For this reason, the ALJ encourages Interveners to coordinate with Mountain Star should they anticipate the need for the interpreter to translate written documents, as the interpreter may need additional time to review the documents in order to translate them.

III. ORDER

A. It Is Ordered That:

1. Mountain Star Transportation LLC's (Mountain Star) "Motion to Allow for Commission Appointed Interpreters [sic] for Two Witnesses" (Motion for Interpreter) and "Motion to Allow Testimony by Telephone for Two Witnesses" (Motion for Telephone Testimony) are conditionally granted.

2. Mountain Star witnesses Natalia Krasulenko and Andrey Golovan may testify by telephone at the July 24, 2019 hearing in this matter, subject to the below conditions.

3. Mountain Star is responsible for ensuring that both witnesses call into the Commission hearing room when Mountain Star is ready to call them as witnesses. To do so, the witnesses must dial 1 (872) 240-3212, and enter the following access code: 722594725. The witnesses may be required to enter the United States country code when calling the referenced number.

4. Mountain Star must ensure that the telephone witnesses have access to all the exhibits filed by all parties in this proceeding, whether electronically or on paper, during their testimony.

5. Mountain Star must also ensure that the telephone witnesses have access to a computer or other electronic device at which they may electronically receive and access additional documents as necessary during the course of their testimony.

6. Consistent with the above discussion, Mountain Star may use an interpreter for witnesses Natalia Krasulenko and Ludmila Kamaeff at the July 24, 2019 hearing in this matter, subject to the below conditions. Mountain Star may meet the described conditions at the time of the evidentiary hearing, or before it, by making a filing.

7. Mountain Star is responsible for paying for the full cost of the interpreter.
8. Mountain star must demonstrate that the interpreter is qualified by knowledge, skill, experience, training, or education to accurately interpret and translate spoken Russian to English, including the specific dialect(s) the witnesses speak, and to interpret and translate *spoken and written* English to Russian, including the specific dialects the witnesses speak.
9. Mountain Star's chosen interpreter may not have a personal interest in the outcome of this proceeding, or have a personal relationship with a person involved in this proceeding.
10. The interpreter will be required to take an oath that he or she will make a true and correct translation from Russian (including the specific dialects the witnesses speak), to English and vice versa.
11. 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