

(Decision No. C80-2085)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF	)	APPLICATION NO. 32477
ROCKY MOUNTAIN CHARTER COACH COMPANY,	)	
132 BAYLOR DRIVE, LONGMONT, COLORADO	)	COMMISSION ORDER
80501, FOR A CERTIFICATE OF PUBLIC	)	GRANTING APPLICATION
CONVENIENCE AND NECESSITY TO OPERATE	)	WITH RESTRICTIONS
AS A COMMON CARRIER BY MOTOR VEHICLE	)	
FOR HIRE.	)	

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October 28, 1980
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Appearances: Richard P. Kissinger, Esq., and
Richard J. Bara, Esq., Denver,
Colorado, for Applicant Rocky
Mountain Charter Coach Company;

Raymond M. Kelley, Esq., and
John P. Thompson, Esq., Denver,
Colorado, for Protestants William H.
Jackson, doing business as Durango
Transportation Company and Mesa Verde
Company.

STATEMENT OF THE CASE

Rocky Mountain Charter Coach Company (hereinafter RMCCC) filed an application with this Commission on January 21, 1980, requesting authority to operate as a common carrier, by motor vehicle, for hire over irregular routes in charter and special bus service of passengers and their baggage between all points in Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, La Plata, Larimer, Mesa and Weld Counties, Colorado, on the one hand, and on the other hand, all points in Colorado.

The public was given notice of the application and protests were filed by Fred D. Tiller, doing business as Airport Limousine Service, Inc. (hereinafter Airport Limousine); San Juan Tours, Inc. (hereinafter San Juan); Arrow Transportation, Inc. (hereinafter Arrow); Mesa Verde Company (hereinafter Mesa Verde); James D. Kilber; American Auto Tours, doing business as AA Tours (hereinafter AA Tours), and the Trailways System, consisting of the Denver-Colorado Springs-Pueblo Motorway, American Buslines, Inc., Continental Bus Systems, Inc., and Continental Trailways (hereinafter referred to as the Trailways System). William Howell Jackson, doing business as Durango Transportation Company (hereinafter Durango Transportation) was permitted leave to intervene in this matter on July 15, 1980, in Decision No. C80-1386.

The Commission in Decision No. C80-236 issued a temporary authority in this matter. The Commission entered additional temporary authority in Decision No. C80-1688 for an additional 90 days on August 26, 1980.

Prior to the hearing San Juan, The Trailways System, James D. Kilber, Fred D. Tiller, doing business as Airport Limousine Service, American Auto Tours, doing business as AA Tours and Arrow withdrew their protests to this matter.

The hearing was originally scheduled at 10 a.m., August 5 and 6, 1980 in Denver, Colorado, at the Fifth Floor Hearing Room, 500 State Services Building, 1525 Sherman Street, Denver, Colorado, and on August 12, 1980, in Durango, Colorado.

RMCCC requested on July 30, 1980, an Order to Vacate and Reschedule The Hearing Dates in this matter. In Decision No. R80-1532-I, the August 5, 1980, hearing date was vacated. The remaining hearing dates of August 6, 1980 and August 12, 1980, were unchanged.

After commencement of the hearing as scheduled on August 6, 1980, it was apparent two additional hearing dates were necessary in Denver, Colorado, for hearing. These dates were scheduled in Decision No. R80-1563-I for August 25 and 26, 1980, in Denver, Colorado.

The hearing proceeded as scheduled on August 6, 12, 25 and 26, 1980.

Applicant presented testimony from James D. Rapp, President of RMCCC; Fred Morey, Loveland Travel Agency; Robert Scharrer, Travel Network; Suzanne Person, Owner and President of Colorado Convention and Reservations, Inc.; Bradley Hayden, Coordinator, University of Colorado; Carl O. Gustafson, President, Crossroads Travel; Emma Hanson, Master Travel Agency; John J. Morrissey III, Mayor of Durango; Karen Maas, Vice-President and General Manager KIUP-KRSJ; Marilyn Pierce, Tamarron Resort; Robert C. Hooper, Durango Ski Corporation; Joseph Richter, Owner and Operator of the Landmark Motel; Ron Ford, KDGO; James C. Shepard, President of the Durango Chamber of Commerce; Mark Zempel, General Manager of the Strater Motel; John J. Ahearne, Vice-President, Steamboat Village Resort; Pearl Wolfson, Staccato Tours; Douglas Smyrne, YMCA of the Rockies; Charles Goeldner and Theodore Hannen, RMCCC. Stipulation was entered by counsel for all parties that Robert L. Hemphill, Durango Management & Development Co. and James Crawford, Royal Motel were present in the hearing room on August 12, 1980, ready to testify and that the direct examination, cross-examination and answers of these two witnesses would be substantially the same as previous witnesses testifying in Durango.

Mesa Verde presented testimony from John Ogier, Vice-President and General Manager of Mesa Verde. William Howell Jackson, doing business as Durango Transportation Company testified. The Examiner called Irven T. Burke, of the Staff of the Public Utilities Commission to clarify RMCCC rates and charges under the temporary authority.

Exhibits A, B, C, C-1, D, E, G-1, G-2, H, I, J, K-1 through K-9, L, Q, R, S, T, U, V, W, X, Y and Z were admitted into evidence. Exhibits B-1, D-1, D-2, E, E-2, K, M, N, O and P were rejected and not admitted for consideration in this matter.

At the conclusion of the hearing the matter was taken under advisement.

FINDINGS OF FACT AND CONCLUSIONS THEREON

Based upon all the evidence of record, the following facts are found and conclusions thereon drawn:

1. Rocky Mountain Charter Coach Company requested authority to operate as a common carrier, by motor vehicle, for hire over irregular routes in charter and special bus service of passengers and their baggage between all points in Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, La Plata, Larimer, Mesa and Weld Counties, Colorado, on the one hand, and on the other hand, all points in Colorado.

2. A number of protestants, who originally protested this application withdrew prior to hearing. San Juan, The Trailways System,

James D. Kilber, Fred D. Tiller, doing business as Airport Limousine Service, American Auto Tours, doing business as AA Tours and Arrow withdrew their protests. The remaining Protestant Mesa Verde and Intervenor William Howell Jackson, doing business as Durango Transportation Company, have interests antagonistic to this application only in the counties of La Plata and Mesa. The counties of Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, Larimer and Weld are on the eastern side of the Continental Divide and will hereinafter be referred to as Front Range Counties. Mesa and La Plata Counties will be referred to as Western Slope Counties. After the withdrawal of all the protestants listed above, no opposition from protestants existed regarding the requested authority in the Front Range Counties.

3. Durango Transportation and Mesa Verde Company remained Protestants throughout and presented testimony and evidence alleging that they are currently meeting the transportation needs of La Plata and Mesa Counties.

4. Durango Transportation is currently meeting certain needs in La Plata County. It meets taxicab needs in Durango and is presently meeting the needs of transportation to and from the airport in La Plata County. The needs that Durango Transportation are meeting are limited to the above items.

5. Similarly, Mesa Verde is currently meeting certain needs in La Plata and Mesa Counties. The transportation needs that Mesa Verde currently meets are those within Mesa Verde National Park, to and from Mesa Verde National Park, and ski traffic from Mesa County to Aspen during the winter ski season.

6. Rocky Mountain Charter Coach Company demonstrated that there is a need for special bus and charter operations in the Front Range Counties. Numerous witnesses testified clearly that The Trailways System was retrenching from such operations, had not met these needs and would not meet the needs in the future. Witnesses testified that they would use the requested transportation of RMCCC, if granted. These witnesses had no other operators in the area that could fulfill all their needs. The travel agencies and witnesses were unanimous in their statements that there was a present need not being met which harmed their businesses.

7. RMCCC also demonstrated that certain needs are not being met in and from the La Plata and Mesa Counties area. Specifically, transportation needs from Mesa County to ski areas other than Aspen were not being met. Particularly, the Steamboat Springs area needs were not being met. Also, many witnesses testified that Durango had additional needs for charter bus and special bus service that were not being met.

8. Throughout the hearing, Durango Transportation contended that they could, now that they had initiated service, do all those things which RMCCC proved as needs in the community. Durango Transportation is a newly initiated business, owned and operated by William Howell Jackson, which, although Mr. Jackson has substantial plans for the future, such plans are still in the formation and speculative stage. For example, meeting bus needs for 40 people or more is dependant upon Durango Transportation obtaining additional bank or other financing. Mr. Jackson was awaiting word at the time of the hearing about bank financing which had only been applied for in previous weeks.

9. Mesa Verde also contended that they could meet the needs from Mesa County to ski areas such as Steamboat Springs. The testimony from Steamboat Springs Village personnel contradict such contentions and it seems clear that Mesa Verde meets the needs of Aspen rather than other ski areas in the State of Colorado.

10. RMCCC has personnel who have expertise and are experienced personnel in operating the type of bus operations requested herein, RMCCC will obey the rules and regulations of the Commission regarding such operations. Mr. Rapp, President of RMCCC, has been area general manager of the Trailways System and is presently with Purolator Corporation. Mr. Rapp's duties with Purolator will not conflict with RMCCC operation.

11. RMCCC has sufficient capital and resources available to operate the requested authority. RMCCC has bank financing from the United Bank of Skyline to initiate operations herein. This is money received with a Small Business Administration guarantee. Although the income statement herein does not show a profit in the business operations during the temporary authority period, operations are substantial enough to make this operation financially feasible after the initiation stage.

12. RMCCC had at least 17 buses capable of carrying 46 passengers during the hearing period. This number was scheduled to be increased and a number of buses ordered. RMCCC has sufficient equipment available to meet the needs of the requested authority.

13. RMCCC has done thorough analysis and research before initiating this request and should be granted the application herein with two restrictions based upon the company's capability to operate and its financial situation.

14. During the course of the hearing, it was shown that RMCCC had charged and commenced operations without approved rates and charges from the Public Utilities Commission. This evidence was clear and convincing. The Examiner called Irven T. Burke, of the Transportation Rate Section of the Public Utilities Commission, to clarify what rates and charges were filed with the Commission and the effective date thereof. Mr. Burke reaffirmed that there had been at least two occasions when RMCCC brought rate schedules to him for approval, only one rate schedule or tariff was approved and that that tariff is Exhibit Q which was effective May 21, 1980. Exhibit I shows an originally submitted tariff sheet to the Public Utilities Commission, which was modified by the Staff of the Public Utilities Commission. RMCCC charged rates and charges not approved by this Commission for a short period of time under the temporary authority. A violation of this Commission's authority did occur. This raises a serious question about whether even with RMCCC's experience, personnel and financial condition, it should be permitted to operate. The need demonstrated herein by the public overwhelms the concern about regulatory problems. The substantiality of the need and confusion which existed concerning the effected rates permits a finding that RMCCC acted without utter disregard of the Commission authority and is fit to engage in the operations herein.

15. The Public Utilities Commission has never countenanced a violation of its rules and regulations or permitted any charge or rate not in conformity with those approved by the Public Utilities Commission to be collected and retained. Accordingly, prior to the issuance of any permanent authority, RMCCC should be ordered to refund any and all charges paid by the public for transportation services to RMCCC in excess of any approved rate for any period of time when either no rate was effective or the other rates were effective. This should be done immediately and the books and records of RMCCC should be audited by the Staff of the Public Utilities Commission before a certificate is issued.

16. Durango Transportation and Mesa Verde contend that there is ambiguity of operations permitted as "special bus" service. Decision No. 57386 in Case No. 5180 does set forth guidelines within the Findings portion of the Decision and the Ordering portion which language is not identical.

The Findings portion definition of Decision No. 57386 is stated as follows:

Special Bus Service is:

The transportation of passengers by bus wherein a special service is required, either by groups or individuals, wherein the use of the bus is not exclusive to any group or individual;

The Ordering portion definition of Decision No. 57386 is stated as follows:

"Special Bus" transportation is that transportation, regardless of the purpose undertaken, afforded generally on weekends, holidays, or other special occasions to a number of passengers whom the carrier on its own initiative has assembled into a travel group through its own promotion and sales to individual members of the group of a ticket covering a particular trip or tour planned or arranged by the carrier.

While the language is not identical, no ambiguity exists as to what "special bus service" is. The main characteristic is that it is transportation by bus which is not exclusive to any group or individual. Other characteristics, denominating "special bus service" as "afforded generally on weekends, holidays or other special occasions" or "wherein a special bus service is required" are not limitations. Since 1961, the term "special occasions" has changed with the availability of additional leisure time and special occasions. The transportation needs shown in this matter clearly demonstrate a need for "special bus service" as well as charter service.

17. Pursuant to 40-6-109(6), the Commission finds that due and timely execution of its functions require that the Recommended Decision of Hearings Examiner Jacqueline Vermeulen be omitted, and that this Decision should be the initial Decision of the Commission.

18. An appropriate Order follows.

O R D E R

THE COMMISSION ORDERS THAT:

1. Application No. 32477, being the application of Rocky Mountain Charter Coach Company, to operate as a common carrier, by motor vehicle, for hire over irregular routes in charter and special bus service of passengers and their baggage between all points in Adams, Arapahoe, Boulder, Douglas, Jefferson, Larimer, Weld, Mesa and La Plata Counties, on the one hand, and all points in the State of Colorado, be, and hereby is, granted with restrictions in conformity with this Decision.

2. Rocky Mountain Charter Coach Company be, and hereby is, granted a Certificate of Public Convenience and Necessity as follows:

Transportation - of

Passengers and their baggage, in charter and special bus service, by motor vehicle for hire, over irregular routes,

Between all points in the counties of Adams, Arapahoe, Boulder, Denver, Douglas, Jefferson, La Plata, Larimer, Mesa, and Weld Counties, Colorado, and between said points on the one hand, and all points in the State of Colorado.

RESTRICTED: (1) Against the use of four-wheel drive motor vehicles, (2) Against the transportation of passengers and their baggage to and from the La Plata County Airport, La Plata County, Colorado, and (3) Against the transportation of passengers and their baggage between Mesa County, Colorado, and the City of Aspen and Aspen ski areas,

and this Order constitutes a CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY therefore.

3. The Applicant herein, Rocky Mountain Charter Coach Company, be, and hereby is, ordered prior to the effective date of issuance of the Certificate of Public Convenience and Necessity herein, to file a list of any and all refunds made to customers who were charged rates not approved by this Commission, which records shall be audited by the Staff of the Public Utilities Commission.

4. Rocky Mountain Charter Coach Company shall file with the Commission the appropriate tariff of rates and charges and rules and regulations required by this Commission in addition to maintaining adequate insurance coverage as required by this Commission.

This Order shall be effective forthwith.

DONE IN OPEN MEETING the 28th day of October, 1980.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Elythe S. Miller

Daniel E. Innes

L. Duane Woodward
Commissioners