

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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APPLICATION FOR AUTHORITY TO )  
LEASE A PORTION OF CERTIFICATE )  
OF PUBLIC CONVENIENCE AND )  
NECESSITY PUC NO. 14314 FROM )  
JOHN S. BRUNEL, JOHN H. BRUNEL, )  
KATHERINE BRUNEL, AND DAVID W. )  
BRUNEL, D/B/A LCB, LTD., GOLDEN, )  
COLORADO, TO CASINO TRANSPORTA- )  
TION, INC., GOLDEN, COLORADO. )

DOCKET NO. 92A-532CP

RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
KEN F. KIRKPATRICK

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Mailed Date: February 10, 1993  
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Appearances: James Beckwith, Esq., Arvada,  
Colorado, for Transferor  
and Transferee; and

Charles J. Kimball, Esq.,  
Denver, Colorado, for Intervenor  
Mountain Delivery Shuttle  
Service, Inc., and Gambler's  
Express, Inc.

STATEMENT

This application was filed on October 6, 1992, and the Commission gave notice of the application on October 13, 1992. The application seeks authority to lease Part C of Certificate of Public Convenience and Necessity (CPCN) PUC No. 14314 from LCB, Ltd. (LCB), to Casino Transportation, Inc. (CTI).

Interventions were filed by Transportation Associates of Colorado, Inc., d/b/a Panorama Coaches of Colorado, Inc. (Panorama), on October 19, 1992; by Gambler's Express, Inc. (Gambler's), on November 5, 1992; by Mountain Delivery Shuttle Service, Inc. (Mountain Delivery), on November 5, 1992; and by Black Hawk-Central City Ace Express, Inc. (Ace Express), on November 5, 1992. Panorama withdrew its intervention on November 9, 1992. By Decision No. R92-1479-I, November 25, 1992, the intervention of Ace Express was stricken.

By order and notice dated December 23, 1992, the matter was set for a hearing to be held in Denver on January 11, 1993. At the assigned place and time the undersigned called the matter for hearing. During the course of the hearing Exhibits 1 through 9 were identified, offered, and admitted into evidence. At the

conclusion of the hearing the undersigned requested simultaneous statements of position to be filed by the parties no later than January 20, 1993.

A timely post-hearing statement of position was filed by Gambler's and Mountain Delivery. No timely filing was made by the Applicants. On January 25, 1993, the Applicants filed a letter stating that they would not be filing a statement of position but tendering a list of cases that the Applicants felt were pertinent to this proceeding. The letter is really an abbreviated brief, and it cannot be accepted. It is stricken. On January 27, 1993, Intervenor's filed a similar letter discussing issues of *res judicata* and collateral estoppel. These were to be discussed in the statement of position, there is no reason given for their untimeliness, and the letter received January 27, 1993, is stricken and not considered.

In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

#### FINDINGS OF FACT

1. LCB operated PUC No. 14314, Part C, until approximately November 5, 1992, when the Transferee CTI obtained temporary approval to operate from the Commission. Part C generally authorizes scheduled transportation of passengers and their baggage between certain points in Jefferson County, Colorado, on the one hand, and points in and within two miles of Central City and Black Hawk, Colorado, on the other hand. There are some restrictions. LCB operated scheduled service providing this transportation service continuously from the time it obtained the authority. LCB seeks to transfer this portion of its authority in order to concentrate on its non-casino business. See Decision No. C92-1356.

2. CTI is the Transferee in this proceeding. CTI has been involved in the passenger transportation business since the inception of legalized gambling in Black Hawk and Central City, Colorado in October, 1991. CTI owns a parking facility on Rooney Road in Jefferson County with 900 to 1,000 parking spaces, covering approximately nine acres. From approximately September 28, 1991, through January of 1992, CTI provided free shuttle service to the Black Hawk-Central City area from its parking lot to individuals that purchased parking passes or had parking passes purchased for them. This service was provided primarily for casino employees, although non-employees were also transported. CTI provided five daily scheduled trips westbound and five scheduled trips eastbound during this time period.

3. In January 1992 CTI ceased providing shuttle service and contracted with Panorama to provide essentially the same

schedules. CTI sold parking passes to casinos and provided employees with cards to show the drivers. CTI paid Panorama. Panorama represented to CTI that it had proper authority from this Commission to provide the scheduled transportation service.

4. On August 24, 1992, CTI terminated its relationship with Panorama and contracted with Powder River Transportation Service, Inc. (Powder River), to provide essentially the same service. Powder River represented to CTI that it had proper authority from this Commission to provide the scheduled transportation service. CTI used Powder River until the end of November, 1992, when it obtained temporary authority from this Commission to provide scheduled service from, among other places, its parking facility in Jefferson County to and from Black Hawk and Central City. Prior to obtaining temporary authority CTI also used Transferor LCB on a standby basis.

5. CTI currently has no common or contract carrier authority issued by this Commission.

6. CTI is currently paying its bills as they come due; it is not in bankruptcy; and it is not contemplating bankruptcy.

7. Gambler's Express operates as a common carrier of passengers and their baggage to and from Central City and Black Hawk and from and to areas which overlap in part with the authority sought to be transferred in this application. The same can be said of Mountain Delivery, although Gambler's has recently received temporary approval from this Commission to operate under Mountain Delivery's CPCN, which generally authorizes passenger transportation from the southwestern Denver metropolitan area to and from the Central City and Black Hawk area.

8. CTI and LCB have entered into an arrangement whereby LCB leases the CTI parking facility in Jefferson County for \$1 per month. LCB also has an agreement to purchase transportation services from CTI in accordance with the authority being leased to CTI under the terms of the applicable tariff. LCB utilizes these transportation services in connection with the parking so that an individual that purchases parking is provided transportation to and from the Central City Black Hawk area. CTI discussed this arrangement with staff of the Commission who voiced no objection.

#### DISCUSSION

Rule 2.5 of the Commission's Rules and Regulations Governing Common Carriers by Motor Vehicle for Hire, 4 CCR 723-8, sets

forth the following criteria that Applicants to transfer authority must establish:

- 2.5.1 The Transferee intends to, and will engage in, *bona fide* common carrier operations under the certificate.
- 2.5.2 The Transferor has been, and now is engaged in, *bona fide* common carrier operations under its certificate; and further that the certificate or any part thereof has not been abandoned or allowed to become dormant.
- 2.5.3 All rights held under each certificate are sought to be transferred or that a split of the certificate is in the public interest.
- 2.5.4 The transfer will not result in the common control or ownership of duplicating or overlapping operating rights . . .

In addition to these criteria, the Commission has traditionally required a showing of fitness on behalf of the Transferee before it will allow a certificate to be transferred.

The Intervenors have not seriously challenged the four requirements established by the rules. Their sole argument is that the Transferee has not established fitness.

Intervenors first contend that the Transferee "blatantly violated, and participated in the violation of pertinent Colorado statutes and the Commission's regulations regulating for-hire passenger carriers, since before the advent of gambling in Black Hawk and Central City on October 1, 1992." The undersigned disagrees. The evidence in this proceeding established that for the time period January 1992 through November, 1992 the Transferee obtained the services of carriers that represented that they had appropriate authority from this Commission to render the passenger carrier operations that the Transferee desired in connection with its parking business. There was no evidence whatsoever that the Transferee was ever informed or notified that its conduct was improper. After November, 1992 it obtained temporary authority in this proceeding.

It is true that for approximately three months at the end of 1991 the Transferee provided a shuttle service, on schedule, to and from Black Hawk and Central City in connection with its



parking business. The evidence in this proceeding is insufficient to establish that the Transferee knowingly or intentionally violated any statutes or Commission rules governing for hire transportation. There is no evidence of any enforcement action taken by the Commission.

The complaint filed in the Jefferson County District Court by Intervenor and others against Transferee CTI and others, and the consent judgment and order entered in that proceeding, are too vague and general to establish anything related to the issues in this proceeding.

Intervenor's second major contention of unfitness is based on the continuing relationship that the Transferor and Transferee have and the lease of the CTI parking lot to LCB for token consideration. While the undersigned has some question about the tariff implications, the record does not enable the undersigned to make a finding based on this relationship that the Transferee is unfit in any way. In fact, the lease of the parking facility appears to be a separate transaction from the lease of the authority. See Exhibit No. 4.

Finally, while the Transferee was unable to provide exact financial details, CTI is paying its bills as they become due, is not contemplating bankruptcy, and is sufficiently financially fit to operate the authority as requested.

#### CONCLUSIONS

1. CTI intends to engage in and will engage in *bona fide* common carrier operations under Part C of CPCN PUC No. 14314.

2. LCB has been, and until the time of the temporary approval granted by this Commission, was engaged in, *bona fide* common carrier operations under Part C of PUC No. 14314. Part C is not abandoned or dormant.

3. Transferring by lease Part C of PUC No. 14314 is in the public interest.

4. The transfer of Part C of PUC No. 14314 will not result in the common control or ownership of duplicating or overlapping operating rights.

5. Transferee is a fit Transferee, financially and otherwise.

6. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

ORDER

THE COMMISSION ORDERS THAT:

1. Docket No. 92A-532CP, being an application to authorize the transfer by lease of Part C of PUC No. 14314 from John S. Brunel, John H. Brunel, Katherine Brunel, and David W. Brunel, d/b/a LCB, Ltd., Golden, Colorado, to Casino Transportation, Inc., Golden, Colorado, is granted for a period of 60 months commencing on the effective date of this Order.

2. Casino Transportation, Inc., is authorized to operate the following portion of Certificate of Public Convenience and Necessity PUC No. 14314:

Transportation, on schedule, of  
passengers and their baggage  
between:

- (A) Points in that portion of Jefferson County bounded by Sheridan Boulevard on the east, 44th Avenue on the north to its intersection with Colorado Highway 58, thence west along Colorado Highway 58 to its junction with U.S. Highway 6, thence southwest along an imaginary line to the junction of I-70 and exit 256 near Lookout Mountain, thence southeast along an imaginary line to the intersection of U.S. Highway 285 and Colorado Highway 8, thence east along U.S. Highway 285 to its intersection with Quincy Avenue, as extended, thence east along Quincy Avenue, as extended, to Sheridan Boulevard, thence north on Sheridan Boulevard to the point of beginning; and
- (B) Points within a 1/2 mile radius of the intersection of Golden Gate Canyon Road and Colorado State Highway 93 lying south and west of said intersection;

On the one hand, and on the other hand, points in and within two miles of Central City and Black Hawk, Colorado via U.S. Highway 6, I-70, Colorado State Highways 93, 119, and 279 serving intermediate points in Jefferson County on and within 1/2 mile of that portion

of I-70 between interchange 256 and the Jefferson/Clear Creek County boundary with the right to use Golden Gate Canyon Road for operating convenience only.

RESTRICTIONS: This authority is restricted:

- (1) To service to or from hotels and motels only in the following described areas:
  - (a) On and south of Colfax Avenue, north of Alameda Avenue, west of Sheridan Boulevard, and east of Youngfield Street; and
  - (b) Within one mile of Sixth Avenue from Youngfield Street on the east to the Jefferson/Gilpin County line on the west. This restriction (1) shall not apply to service to or from points in Golden, Colorado and the Denver West Office Park;
- (2) Against providing service to or from the Holland House Hotel in Golden, Colorado;
- (3) To serving points named in the carrier's published schedule at least two of which will be south of Alameda Avenue; and
- (4) To the use of vehicles with a seating capacity of at least ten passengers plus the driver.

3. On the effective date of this Order LCB, Ltd., shall cease all operations, if any, under Part C of Certificate of Public Convenience and Necessity PUC No. 14314.

4. Applicant shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Applicant shall also file an appropriate tariff and pay the issuance fee and annual vehicle identification fee. Operations may not begin until these requirements have been met. If the Applicant does not comply with the requirements of this ordering paragraph within 60 days of the effective date of this Order, then the ordering paragraph granting authority to the Applicant shall be void. On good cause shown, the Commission may grant additional time for compliance.

5. 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.

6. 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.

7. 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.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

  
Administrative Law Judge