

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE APPLICATION OF ABC CARRIERS,)
INC., DOING BUSINESS AS DENVER)
EXPRESS SHUTTLE, INC., FOR)
TEMPORARY AUTHORITY TO CONDUCT) DOCKET NO. 95A-183CP-TA
OPERATIONS AS A COMMON CARRIER)
BY MOTOR VEHICLE FOR HIRE.)
)

**COMMISSION ORDER DENYING
TEMPORARY AUTHORITY**

Mailed date: June 7, 1995
Adopted date: May 17, 1995

I. BY THE COMMISSION:

Statement, Findings, and Conclusion

1. On April 26, 1995, ABC Carriers, Inc., doing business as Denver Express Shuttle, Inc., filed an application (Docket No. 95A-183CP-TA) for temporary authority to conduct operations as a common carrier by motor vehicle for hire for the transportation of passengers and their baggage (1) in call-and-demand limousine service, between all points in the area comprised of the Counties of Douglas, Adams, Jefferson, Clear Creek, and Gilpin, State of Colorado, on the one hand, and all points in the City and County of Denver, State of Colorado, on the other hand; (2) in scheduled and

call-and-demand limousine service, between all points in the Counties of Denver, Arapahoe, and Boulder, State of Colorado; (3) in scheduled and call-and-demand limousine service (a) between Denver International Airport, in Denver, Colorado, on the one hand, and Avon, Colorado, on the other hand, with service to the intermediate points of Vail, Frisco, Dillon, and Copper Mountain, Colorado, and the off-route points of Beaver Creek, Breckenridge, and Keystone, Colorado; (b) between Denver International Airport, in Denver, Colorado, on the one hand, and Aspen, Colorado, on the other hand, with service to the intermediate points of Glenwood Springs, and Snowmass, Colorado; and (4) in scheduled and call-and-demand limousine service, between Eagle County Airport, in the County of Eagle, State of Colorado, on the one hand, and the City of Vail, Colorado, on the other hand, with service to the off-route point of Beaver Creek, Colorado, and the intermediate point of Avon, Colorado. This application is restricted as follows: (1) the scheduled portion of Part (3) (a) is restricted against providing service between the 16th day of April and the 9th day of November of each year; (2) the scheduled portion of Part (3) (b) is restricted

against providing service between the 16th day of April and the 31st day of May of each year, and the 16th day of September and the 9th day of November of each year.

2.The Commission gave notice of the application on May 1, 1995.

Interventions opposing a grant of the application were filed by the following carriers: Metro Taxi, Inc.; Black Hawk - Central City Ace Express, Inc.; Rocky Mountain Shuttlines, Inc., doing business as Rocky Mountain Supercoach, Ltd.; Resort Express, Inc.; Casino Coach, Inc.; Cabs Inc., doing business as Zone Cabs, Inc.; Queen City Transportation, Inc.; Vail Valley Transportation, Inc.; Vail Valley Taxi, Inc.; Boulder Airporter, Inc.; Colorado PUC NO. 191 Corp.; Aspen Limousine Service, Inc., doing business as Vans to Vail, Inc.; Casino Transportation, Inc.; Hy-Mountain Transportation, Inc.; Colorado Mountain Express, Inc.; BBB Transportation, Inc., doing business as Overland Airport Express, Inc.; Yellow Cab Cooperative Association, Inc., and its division, Denver Airport Limousine Service, Inc., doing business as Denver Airport Shuttle; and Golden West Commuter, LLC. Petitions for leave to intervene were timely filed by Colorado Transportation Services, Inc., doing business as American Cab Company of

Denver, Inc., and Jerald M. Barnett. Protests to the granting of the application were filed by Chaffee Transit, Inc. and Cowen Enterprises.

3. Intervenor Resort Express, Inc. heavily relies upon its ICC authority to establish standing to intervene into this application. This Commission has not in the past, and shall not now, recognize the holding of such an authority as giving a carrier standing to intervene in this Commission's proceedings, (*See Decision No. C91-1239, October 7, 1991*). We hold that a carrier who relies upon its federal authority to establish standing to intervene is not an entity "as will be interested in or affected by" any order that may be made by the Commission in this proceeding, (*See § 40-6-109(1), C.R.S.*). Since the Commission has made no determination that an ICC carrier's services are required by the public need, and since the Commission exercises no regulatory authority over a carrier operating under a certificate issued by the Interstate Commerce Commission (*i.e.* the Commission cannot ensure that the carrier's operations are conducted in the public interest), such a carrier should not be considered as a competitor of the applicant nor is said carrier *legally* interested in or affected by Commission action in this case. Therefore, we hold

that Resort Express, Inc., to the extent that it relies upon ICC authority, has no standing to intervene in this proceeding.

4. By § 40-6-120, C.R.S., the application for temporary authority is under consideration for a Commission order.

5. Pursuant to § 40-6-120(1), C.R.S., the Commission is authorized to grant temporary authority when there appears to be "an immediate and urgent need to any point or within a territory having no carrier service capable of meeting such need."

6. The burden of proof created by this statute is indeed heavy. The Applicant must meet a two-fold test in order to satisfy the criteria demanded by the law. First, that there is an immediate and urgent need for the transportation services, and second, that there is no existing carrier capable of meeting the need. If the Applicant fails to meet either test, the application cannot be granted.

7. The support filed on behalf of this application fails to prove that there is an immediate and urgent need for the transportation services requested; and, in light of the 17 interventions filed on behalf of carriers with Commission authority to operate within the scope of the application, we cannot find that there is no other carrier service available.

8.This application for temporary authority is not in the public interest and should be denied.

II.ORDER:

A.THE COMMISSION ORDERS THAT:

1. This application for temporary authority is denied.
- 2.The petitions for leave to intervene filed by Colorado Transportation Services, Inc., doing business as American Cab Company of Denver, Inc., and Jerald M. Barnett, are granted.
- 3.The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Decision.

B.This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING May 17, 1995.

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO

ROBERT J. HIX

CHRISTINE E.M. ALVAREZ

Commissioners

COMMISSIONER VINCENT MAJKOWSKI
CONCURRING IN PART AND DISSENTING
IN PART.

COMMISSIONER VINCENT MAJKOWSKI CONCURRING IN PART AND DISSENTING
IN PART:

I respectfully dissent, in part, from the decision of the majority. I would have denied the petition for leave to intervene filed by the petitioner, Jerald M. Barnett. I do not feel that the petition established the fact that Mr. Barnett has a substantial interest in this matter.

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ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

VINCENT MAJKOWSKI

Commissioners

Bruce N. Smith
Director

ORDER-ADO

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 95A-183CP-TA
DECISION NO. C95-542
(Page 1 of 5 Pages)

I, Bruce N. Smith, Director of The Public Utilities Commission of the State of Colorado, certify that I served a true and correct copy of the above Commission Decision -- entered

in the above numbered matter of record -- upon each of the persons whose names and addresses appear below, by mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination on the date noted on this certificate at Denver, Colorado.

APPLICANT:

ABC Carriers, Inc.
dba Denver Express Shuttle, Inc.
3535 South Richfield Way
Aurora, CO 80013

INTERVENOR:

Colorado Transportation Services, Inc.
dba American Cab Company of Denver,
Inc.
845 West Moreno Avenue
Colorado Springs, CO 80905

INTERVENOR'S (AMERICAN) ATTORNEY:

Kenneth L. Levinson, Esq.
BALABAN & LEVINSON, P.C.
Suite No. 475
1624 Market Street
Denver, CO 80202

INTERVENOR:

Black Hawk - Central City Ace
Express, Inc.
P. O. Box 132
Black Hawk, CO 81402

INTERVENOR:

Rocky Mountain Shuttlines, Inc.
dba Rocky Mountain Supercoach, Ltd.
5454 Conestoga Court
Boulder, CO 80301

INTERVENOR:

BBB Transportation, Inc.
dba Overland Airport Express, Inc.
1858 Arabian Trail
Elizabeth, CO 80107

INTERVENORS (ACE, SUPERCOACH & OVERLAND)

ATTORNEY:

Charles J. Kimball, Esq.
KIMBALL & NESPOR, P.C.
Suite No. 1500
1775 Sherman Street
Denver, CO 80203

INTERVENOR:

Resort Express, Inc.
P. O. Box 1429
Silverthorne, CO 80498

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WITNESS MY HAND AND THE SEAL OF
THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

BRUCE N. SMITH
DIRECTOR

BEFORE THE PUBLIC UTILITIES COMMISSION
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INTERVENOR'S (RESORT) ATTORNEY:

L. E. Lucero & Associates, P.C.
Suite No. 203
651 Chambers Road
Aurora, CO 80011-7127

INTERVENOR:

Jody M. Cowen
dba Cowen Enterprises
Attn: Mr. David G. Haberle
15499 East Saratoga Place
Aurora, CO 80015

INTERVENOR:

Casino Coach, Inc.
Attn: Jim R. Bebee, President
P. O. Box 2308
Frisco, CO 80443

INTERVENOR:

Cabs, Inc.
dba Zone Cabs, Inc.
2358 Washington Street
Denver, CO 80205

INTERVENORS:

Vail Valley Transportation, Inc.
Vail Valley Taxi, Inc.
P. O. Box 2642
Vail, CO 81658-2642

INTERVENORS (ZONE, VAIL

TRANSPORTATION & VAIL TAXI) ATTORNEY:

I. H. Kaiser, Esq.
BERENBAUM, WEINSHIENK & EASON, P.C.
Suite No. 2600
370 - 17th Street
Denver, CO 80202

INTERVENOR:

Queen City Transportation, Inc.
1810 West Colfax Avenue
Denver, CO 80204

INTERVENOR'S (QUEEN) ATTORNEY:

Dale E. Isley, Esq.
WILLIAMS & ISLEY, P.C.
1225 Mellon Financial Center
1775 Sherman Street
Denver, CO 80203

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INTERVENORS:

Boulder Airporter, Inc.
3686 19th Street
Boulder, CO 80303

Colorado PUC No. 191 Corp.
dba Airporter
3686 19th Street
Boulder, CO 80303

INTERVENORS' (AIRPORTER & PUC NO. 191)
ATTORNEY:

Mark W. Williams, Esq.
BERRYHILL, CAGE & NORTH, P.C.
Suite No. 600
1401 - 17th Street
Denver, CO 80202

INTERVENOR:

Aspen Limousine Service, Inc.
dba Vans to Vail, Inc.
P. O. Box 1368
Glenwood Springs, CO 81602

INTERVENOR:

Casino Transportation, Inc.
251 Rooney Road
Golden, CO 80402

INTERVENORS (VANS & CASINO) ATTORNEY:

James A. Beckwith, Esq.
Suite No. 7
7910 Ralston Road
Arvada, CO 80002

INTERVENOR:

Hy-Mountain Transportation, Inc.
Attn: David Hyman, President
111 C Airport Business Center
Aspen, CO 81611

INTERVENOR:

Colorado Mountain Express, Inc.
P. O. Box 580
Vail, CO 81658

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BEFORE THE PUBLIC UTILITIES COMMISSION
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INTERVENOR'S (MOUNTAIN EXPRESS)

ATTORNEY:
Thomas J. Burke, Jr., Esq.
JONES & KELLER, P.C.
Suite No. 1600
1625 Broadway
Denver, CO 80202

ATTORNEY FOR INTERVENOR JERALD M. BARNETT:

Dale E. Isley, Esq.
WILLIAMS & ISLEY, P.C.
1225 Mellon Financial Center
1775 Sherman Street
Denver, CO 80203

INTERVENOR:

Yellow Cab Cooperative Association
dba Yellow Cab, Inc.,
and its Division,
Denver Airport Limousine Service, Inc.,
dba Denver Airport Shuttle
3455 Ringsby Court
Denver, CO 80216

INTERVENOR:

John S. Brunel, John H. Brunel,
Catherine Brunel, Kenneth A. Brunel,
Keith A. Brunel, and David W. Brunel
dba LCB, Limited/Golden West Commuter
P. O. Box 958
Golden, CO 80401

INTERVENORS (YELLOW & LCB) ATTORNEY:

Richard J. Bara, Esq.
Suite No. 315
1155 Sherman Street
Denver, CO 80203

INTERVENOR:

Metro Taxi, Inc.
4268 York Street
Denver, CO 80216

INTERVENOR'S (METRO) ATTORNEY:

Robert W. Nichols, Esq.
NICHOLS & HECHT, LLC
Suite B
600 Pearl Street
Boulder, CO 80302

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BEFORE THE PUBLIC UTILITIES COMMISSION
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PROTESTANT:

Chaffee Transit, Inc.
Attn: Monika A. Griesenbeck, President
132 West First Street
Salida, CO 81201

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