

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

THE APPLICATION OF HIGHLANDERS)
SIGHTSEEING COMPANY FOR)
TEMPORARY AUTHORITY TO CONDUCT) DOCKET NO. 96A-0207CP-TA
OPERATIONS AS A COMMON CARRIER)
BY MOTOR VEHICLE FOR HIRE.)

**COMMISSION ORDER DENYING
TEMPORARY AUTHORITY**

Mailed date: June 10, 1996
Adopted date: June 5, 1996

I. BY THE COMMISSION:

Statement, Findings, and Conclusion

1. On May 8, 1996, Highlanders Sightseeing Company ("Highlanders"), filed an application (Docket No. 96A-207CP-TA) for temporary authority to conduct operations as a common carrier by motor vehicle for hire for the transportation of passengers and their baggage, in charter and sightseeing service, between all points within the State of Colorado. This application is restricted to the use of four wheel drive vehicles.

2. The Commission gave notice of the application on May 13, 1996. Interventions opposing a grant of the application were filed by Denver Taxi, LLC; Boulder Taxi, LLC; Denver Shuttle, LLC; Durango Transportation, Inc.; Deanna R. Cline, in care of The Dee Hive Tours; Aspen Limousine Service, Inc., doing business as Airport Shuttle Colorado, Inc.; Alpine Express, Inc.; Airport Shuttle Colorado; Alpine Taxi/Limo, Inc.; Home James Transportation Services,

Ltd.; and The Mountain Men, Inc., also known as Best Mountain Tours.

On May 23, 1996, Casino Coach, Inc., filed an untimely intervention.

3. On May 28, 1996, Highlanders filed a pleading entitled Motion to Dismiss and Strike from Public Record the Document Entitled "Intervention by Right to Both Permanent and Temporary Authority Application". On May 31, 1996, Highlanders along with Alpine Express, Inc., Alpine Taxi/Limo, Inc., and Home James Transportation Services, Ltd., filed a Joint Stipulated Motion for Imposition of Restrictive Amendment to Application and Contingent Withdrawal of Interventions.

Also on May 31, 1996, Highlanders and The Dee Hive Tours, filed a Joint Motion for Acceptance of Restrictive Amendment and Withdrawal of Intervention. On June 4, 1996, Highlanders and Aspen Limousine Service, Inc., doing business as Airport Shuttle, and also on the same date, Highlanders and Durango Transportation, Inc., filed Joint Stipulated Motion(s) for Imposition of Restrictive Amendments to Application and Contingent Withdrawal of Interventions. On June 5, 1996, The Mountain Men, Inc., also known as Best Mountain Tours, filed a Reply to Motion to Strike Motion to Dismiss Temporary Authority Application.

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

4. 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.

5. 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.

6. The support filed on behalf of this application fails to prove that there is an immediate and urgent need for the transportation services requested, or that there is no other carrier service available capable of providing the service. Several of the intervenors have expressed a willingness to withdraw from this proceeding, however, many of the proposed restrictive amendments include language which is both vague and unclear. Even if all of the interventions to this proceeding were to be withdrawn, the application does not meet the criteria demanded by the law for granting a temporary authority. Because of this, the proposed restrictive amendments and motions to withdraw are moot.

7. The intervention of Casino Coach, Inc., was not timely filed and should be stricken from the record. The Applicant's motion to dismiss and strike intervention of The Mountain Men, also known as Best Mountain Tours, should be denied. 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 is denied.
2. The Applicant's Motion to Dismiss and Strike from Public Record the Document Entitled "Intervention by Right to Both Permanent and Temporary Authority Application," filed on May 28, 1996, is denied.
3. The Joint Stipulated Motion(s) for Imposition of Restrictive Amendment to Application and Contingent Withdrawal of Interventions filed by the following carriers: Durango Transportation, Inc.; Aspen Limousine Service, Inc., doing business as Airport Shuttle Colorado, Inc.; Alpine Express, Inc.; Alpine Taxi/Limo, Inc.; and Home James Transportation Services, Ltd., are denied as being moot.
4. The Joint Motion for Acceptance of Restrictive Amendment and Withdrawal of Intervention filed by Deanna R. Cline, in care of The Dee Hive Tours, is denied as being moot.
5. The intervention of Casino Coach, Inc. is stricken as being untimely file.
6. 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.

C.ADOPTED IN OPEN MEETING June 5, 1996.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 96A-207CP-TA
DECISION NO. C96-532
(Page 1 of 3 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:

Highlanders Sightseeing Company
Suite No. 1100
4894 Chambers Road
Denver, CO 80239

INTERVENORS:

1. Denver Taxi, LLC.
7500 East 41st Avenue
Denver, CO 80216
2. Boulder Taxi, LLC
7500 East 41st Avenue
Denver, CO 80216
3. Denver Shuttle, LLC
7500 East 41st Avenue
Denver, CO 80216

INTERVENORS' (1-2-3) ATTORNEY:

Melissa A. Dalla, Esq.
DENMAN & CORBETTA, P.C.
Suite No. 702
1290 Broadway
Denver, CO 80203

INTERVENOR:

4. Durango Transportation, Inc.
P. O. Box 1445
Durango, CO 81302

INTERVENOR'S (4) ATTORNEY:

DEITCH LEGAL SERVICES
Phillip W. Snyder, Esq.
Jeffrey Deitch, Esq.
P. O. Box 2113
Durango, CO 81302

INTERVENOR:

5. Deanna R. Cline
c/o The Dee Hive Tours
506 Harrison Avenue
Leadville, CO 80461

INTERVENOR (5) ATTORNEY:

Joseph J. Folz, Jr., Esq.
12343 East Cornell Avenue
Aurora, CO 80014

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
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 96A-207CP-TA
DECISION NO. C96-532
(Page 2 of 3 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.

INTERVENOR:

6. Aspen Limousine Service, Inc.
dba Airport Shuttle Colorado, Inc.
330 - 7th Street
Glenwood Springs, CO 81602

INTERVENOR'S (6) ATTORNEY:

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

INTERVENORS:

7. Alpine Express, Inc.
P. O. Box 1250
Gunnison, CO 81230
8. Alpine Taxi/Limo, Inc.
P. O. Box 775066
Steamboat Springs, CO 80477

9. Home James Transportation
Services, Ltd.
P. O. Box 279
Winter Park, CO 80482

INTERVENORS' (7-8-9) ATTORNEY:

Charles M. Williams, Esq.
WILLIAMS & ISLEY, P.C.
1225 Mellon Financial Center
1775 Sherman Street
Denver, CO 80203

INTERVENOR:

10. Airport Shuttle Colorado, Inc.
330 - 7th Street
Glenwood Springs, CO 81602

INTERVENOR'S (10) ATTORNEY:

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

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
OF THE STATE OF COLORADO

CERTIFICATE OF SERVICE

DOCKET NO. 96A-207CP-TA
DECISION NO. C96-532
(Page 3 of 3 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.

INTERVENOR:

11. The Mountain Men, Inc.
aka Best Mountain Tours
3003 South Macon Circle
Aurora, CO 80014

INTERVENOR'S (11) ATTORNEY:

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

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

ROUTE:

1
2
3
4
6-Docketing
9
10
10.1
20
21
30
31 (2 copies)
40 (5 copies)
50
60
Black Book
Operating Rights Unit
DMS (plus certificate)

ORDER-AHU

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

BRUCE N. SMITH
DIRECTOR