

(Decision No. R84-553)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE APPLICATION OF)	
JFM LEGAL DELIVERY, INC., 840 SOUTH)	
GAYLORD STREET, DENVER, COLORADO)	APPLICATION NO. 35742
80209, FOR A CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY TO OPER-)	RECOMMENDED DECISION OF
ATE AS A COMMON CARRIER BY MOTOR)	EXAMINER THOMAS F. DIXON
VEHICLE FOR HIRE.)	

May 14, 1984

Appearances: Del J. Ellis, Esq.,
Denver, Colorado, for Applicant.

I. H. Kaiser, Esq.,
Denver, Colorado, for Yellow Cab
Cooperative Association;

Mark A. Davidson, Esq.,
Denver, Colorado, for United
Messengers, Inc.

STATEMENT

On July 26, 1983, JFM Legal Delivery, Inc. (JFM) filed the within application. Subsequent to notice by the Commission on August 2, 1983, protests were filed by Yellow Cab Cooperative Association (Yellow Cab) and United Messengers, Inc. (UMI) on August 5, 1983, and by Pony Express Courier Corporation (Pony Express) on August 8, 1983. Pursuant to notice issued September 21, 1983, this matter was set for hearing on September 16, 1983, in the Commission Hearing Room, Denver, Colorado. On September 23, 1983, Yellow Cab filed a Motion to Vacate which was granted and this matter and reset for hearing on January 4, 1984, in the Commission Hearing Room, Denver, Colorado.

This matter proceeded to the hearing as scheduled. During the course of the hearing, four exhibits were marked for identification; however, only Exhibit 3 was admitted into evidence. The hearing could not be completed on January 4, 1984. As a result, this matter was reset for further hearing on February 15, 1984. On that date Applicant completed its case in chief. At the conclusion of Applicant's case in chief, motions to dismiss were made on behalf of UMI and Yellow Cab. These motions were granted.

Pursuant to CRS 40-6-109, this Examiner now transmits to the Commission the record and exhibit in this matter together with this recommended decision.

FINDINGS

Based upon all the evidence on record, the following is found as fact:

1. JFM Legal Delivery, Inc., is a Colorado corporation. Jude E. Martinez is the President of JFM. JFM was incorporated in 1982. Prior to that for a period of approximately 2 years, Mr. Martinez and his wife operated the business and served legal process.

2. JFM holds no authority from the Commission. By this application, it seeks a certificate of public convenience and necessity to operate as a common carrier by motor vehicle for hire for the transportation, on call and demand, of documents, business papers, and packages between all lawyers' offices located in the Counties of Denver, Jefferson, Adams, Arapahoe, Boulder, and Douglas, State of Colorado, and between such points, on one hand, and, on the other hand, all points located in the Counties of Denver, Jefferson, Adams, Arapahoe, Boulder, and Douglas, State of Colorado. The application is restricted against the transportation of coins and currency or any item weighing in excess of 100 lbs.

3. JFM's principal office is located at 494 South Vine Street, Denver, Colorado. The employees of the corporation use three vehicles to serve legal process. The same vehicles would be used in the event the authority sought in this application were granted. The present equipment is sufficient to conduct the proposed operations and Applicant would acquire additional equipment if necessary to meet the demands. Applicant proposes to provide a service for attorneys wherein its employees would stop at various attorneys' offices to pick up documents and business papers as well as legal process and then deliver the documents to courts, other lawyers, clients, or other businesses within the named counties. At present, Applicant already serves legal process to many of these same attorneys. However, Applicant believes it needs transportation authority to transport legal process from attorneys' offices, to and from the courts, or to the parties upon whom process is served. In addition, Applicant intends to transport documents between lawyers' offices which would not generally be considered service of legal process. Applicant has requested this authority, in part, because of requests from attorneys to transport documents on their behalf and in order to provide them with a better service. Applicant does not contend that the existing transportation services provided by authorized common carriers are inadequate.

4. Both attorneys and office personnel testified in support of this application. These potential customers generally advised that they had used the services provided by JFM for the service of legal process. They perceived a need for the type of services proposed by JFM. Specifically, it was generally thought that it would be beneficial to have JFM pick up legal process at attorneys' offices and then transmit those documents to courts to be issued by the court clerks, then to have the documents returned to JFM who could transport them to the attorneys' offices if necessary or transport them directly to the party upon whom the process was to be served. Once service of process had been made, the

return of service would be transported by JFM back to court or to the attorney who had requested the service. These customers also advised that they felt additional service could be provided for the transportation of documents and business papers between lawyers' offices.

The majority of the customers who testified acknowledged that they were unaware of the existing services provided by authorized common carriers. Several of these customers advised they would not use such services as those provided by Yellow Cab because they considered their business to be primarily the transportation of people rather than "critical" legal documents. Those customers who had used the services provided by JFM were very satisfied with the services that they had been provided.

5. Both Yellow Cab and UMI are authorized to provide transportation of legal documents between lawyers' offices and other businesses throughout portions of the named counties in this application.

6. Any transportation that is incidental to the service of legal process which is necessary to accomplish that task by JFM does not require authority from this Commission. JFM's primary business under those circumstances is a service of legal process, not the transportation of documents.

7. Since the transportation of documents incidental to the service of legal process does not require authority from this Commission, and since the existing common carriers are authorized to meet the needs of the potential customers who testified, Applicant has failed to demonstrate that there is sufficient public need to grant the authority sought in this application. Moreover, the fact that many of the potential customers prefer to have JFM provide such services is not sufficient evidence of public need since public need is not based upon the individual needs and preferences of the Applicant's proposed customers, but relates to the public in general.

DISCUSSION

Recently, in Application No. 34502-Amended, concerning Flint Engineering and Construction Company, this Commission reiterated that the primary business test is to be used to determine whether certain transportation activity is subject to the jurisdiction of this Commission. The Commission stated that the primary business test criteria to be used are:

- a. Whether the carrier owns the property transported;
- b. Whether orders for the property were received prior to its purchase by the carrier;
- c. Whether the carrier utilizes warehouse facilities, and the extent this storage space is used;
- d. Whether the carrier undertakes any financial risk for the transportation connected enterprise;
- e. Whether the carrier adds an amount identifiable as a transportation charge to a purchase price, and its relation to the distance the goods are transported;
- f. Whether the carrier transports or holds out to transport for anyone other than itself;

- g. Whether the carrier advertises itself as being a non-carrier business;
- h. Whether the carrier's investment in transportation facilities and equipment is the principle part of its total business investment;
- i. Whether the carrier performs any real service other than transportation, from which it can profit;
- j. Whether there is transportation of considered products coordinated with the movement in the opposite direction of other products, so that empty vehicles are not ordinarily dispatched to pick up a load for one-way haul;
- k. Whether the carrier at any time engages for-hire carriers to effect delivery of the products, as might be expected, for example, when it is called upon to fill an order and its own equipment is otherwise engaged;
- l. Whether the products are delivered directly from the shipper to the consignee;
- m. Whether the buying and selling of the considered products is undertaken in order to balance the carrier's motor vehicle operations with the profit yielding backhaul; and
- n. Whether the buying and selling cannot profitably be undertaken but for the availability of equipment which otherwise must be deadheaded incident to the transportation of other merchandise in the opposite direction.

This Commission has previously recognized the use of the primary business test in order to determine whether the Commission should assert jurisdiction over certain transportation, specifically, In the Matter of the Application of Colorado Computer Center, Inc., Decision No. 85925, issued November 7, 1974, the Examiner found that the primary business test of Applicant was computing and processing checks, bank drafts, previously negotiated instruments, and business papers, and that pickup and delivery of these items for customer banks was a necessary and incidental service rendered in furtherance of Applicant's primary business. Moreover, In the Matter of the Application of Joe R. Chavez, Decision No. 22578, issued August 9, 1944, the Commission also used the primary business test to determine whether Applicant required authority to transport certain commodities. Based on these prior Commission decisions and the fact that JFM has been and proposes to continue service of legal process, it is clear from the evidence that JFM's primary business is service of legal process and not transportation of documents. Accordingly, all evidence of need for transportation incidental to the service of legal process is not competent evidence of public need for the authority sought in the application. The remaining evidence presented is not sufficient evidence of public need to warrant granting that portion of the application that is subject to the jurisdiction of this Commission.

CONCLUSIONS

1. Pursuant to CRS 40-10-104, and Rule 8 of the Public Utilities Commission Rules of Practice and Procedure, this Commission has jurisdiction over both the subject matter and the parties in this matter.

2. Applicant has failed to demonstrate that the present or future public convenience and necessity requires that the application be granted.

3. That portion of Applicant's proposed service which relates to transportation of legal process to be served by Applicant is incidental to the primary business of serving legal process. Consequently, Applicant can perform this type of service and the transportation incidental thereto without authority from this Commission.

4. Therefore, the motions to dismiss made on behalf of Yellow Cab and UMI should be granted.

5. Accordingly, it is recommended that the Commission enter the following Order.

O R D E R

THE COMMISSION ORDERS THAT:

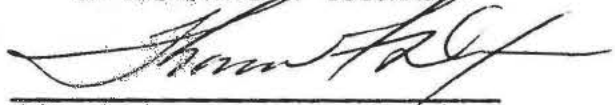
1. The Motions to Dismiss made at the conclusion of Applicant's case be, and hereby are, granted.

2. Application No. 35742, being the application of JFM Legal Delivery, Inc., be, and hereby is, denied.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if such be the case, and is entered as of the date hereinabove set out.

4. As provided by CRS 40-6-109, copies of this Recommended Decision shall be served upon the parties, who may file exceptions thereto; but if no exceptions are filed within twenty (20) days after service upon the parties or within such extended period of time as the Commission may authorize in writing (copies of any such extension to be served upon the parties), or unless such Decision is stayed within such time by the Commission upon its own motion, such Recommended Decision shall become the Decision of the Commission and subject to the provisions of CRS 40-6-114.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO


Examiner

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