

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-110CP-TA

THE APPLICATION OF OWNER/DRIVER UNITED CORPORATION, DOING BUSINESS AS BLUE SKY SHUTTLE, FOR TEMPORARY AUTHORITY TO CONDUCT OPERATIONS AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**COMMISSION ORDER DENYING
TEMPORARY AUTHORITY**

Mailed Date: April 22, 2004
Adopted Date: March 31, 2004

I. BY THE COMMISSION:

A. Statement

1. On March 5, 2004, Owner/Driver United Corporation, doing business as Blue Sky Shuttle (Owner/Driver United), filed an application for temporary authority to conduct operations as a common carrier by motor vehicle for hire for the transportation of passengers and their baggage, in scheduled and call-and-demand limousine service, between Denver International Airport, on the one hand, and on the other hand, all points in the following described area: Beginning at the intersection of Interstate 70 and Colorado Boulevard, Denver, Colorado; then west along Interstate 70 to its intersection with Lowell Boulevard; then south along Lowell Boulevard to its intersection with Alameda Avenue; then east along Alameda Avenue, as extended, to its intersection with Colorado Boulevard; then north along Colorado Boulevard, to the point of beginning.

2. The Commission gave notice of the application on March 22, 2004.

3. Nemarda Corporation, doing business as Airport Boulevard Co. and/or ABC Shuttle (Airport Boulevard Co.), Metro Taxi, Inc. (Metro Taxi), and SuperShuttle International Denver, Inc. (SuperShuttle), filed interventions to this application.

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. Owner/Driver United must meet a two-fold test: 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 Owner/Driver United fails to meet either test, the application must be denied.

B. Findings of Fact

6. Airport Boulevard Co. may provide, under Certificate of Public Convenience and Necessity No. 25810 (CPCN), scheduled service between Denver International Airport (DIA) and points in the central and southeastern portions of the Denver metropolitan area. The western boundary of CPCN PUC No. 25810 is the portion of Colorado Boulevard between First Avenue and I-70. The eastern boundary of the area requested in this application is the portion of Colorado Boulevard between Alameda Avenue and I-70. Therefore, the geographic area of CPCN PUC No. 25810 does not overlap with the area requested in this application.

7. Metro Taxi may provide taxi service, under CPCN PUC No. 1481, between all points in the Counties of Adams, Arapahoe, Boulder, Denver, and Douglas, State of Colorado. CPCN PUC No. 1481 allows Metro Taxi to provide taxi service between DIA and all points in

each of these five counties. Metro Taxi may provide taxi service between DIA and all points in the geographic area named in this application.

8. SuperShuttle may provide, under CPCN PUC No. 55686, scheduled and call-and-demand limousine service between DIA and points in the downtown Denver area, and many other points in the central and southeastern portions of the Denver metropolitan area. Super Shuttle may provide scheduled service between DIA and a portion of the geographic area named in this application. Super Shuttle may provide call-and-demand limousine service between DIA and all points in the geographic area named in this application.

9. In support of its application Owner/Driver United states: “Denver Mountain Express, Inc./Amerishuttle, Certificate number 52940, is unable to service their downtown Denver authority. Denver Mountain Express, Inc./Amerishuttle is also not financially fit to operate their downtown Denver authority.”

10. Denver Mountain Express, Inc., doing business as Amerishuttle and/or Blue Sky Shuttle, under CPCN PUC No. 52940, may provide scheduled and call-and-demand limousine service between DIA and a portion of the geographic area named in this application. Amerishuttle filed an application with the Commission on March 12, 2004, to suspend operations under CPCN PUC No. 52940 from March 11, 2004, to June 11, 2004. The application, Docket No. 04A-116CP-Suspension, filed by Amerishuttle was published in the Commission’s Notice of Applications Filed on March 22, 2004. Amerishuttle, on March 24, 2004, filed a request to withdraw its suspension application. The request by Amerishuttle to withdraw the suspension application filed in Docket No. 04A-116CP-Suspension was granted by

the Commission on March 31, 2004. However, the Commission is aware that Amerishuttle is not currently providing any scheduled or call-and-demand transportation service to or from DIA.

11. Owner/Driver United filed 38 letters of support for this temporary authority application on March 16, 2004. Owner/Driver United's temporary authority application was published in the Commission's Notice of Applications Filed on March 22, 2004. Owner/Driver United subsequently filed an additional 85 letters in support of the temporary application on March 29 and 30. Rule 50(i)(10) of the Commission's Rules of Practice and Procedure 4 CCR 723-1 states that "[s]upport for a temporary authority application received after notice of the application filed has been issued by the Commission shall not be considered by the Commission. Therefore, the 85 support letters filed on March 29 and 30, 2004 cannot be considered by the Commission as support for the temporary authority application filed by Owner/Driver United.

12. Metro filed a Motion To Strike Late-Filed Support Letters on March 30, 2004.

13. SuperShuttle filed a Motion To Strike Late-Filed Support Letters on March 30, 2004.

14. The 38 letters filed on March 16, 2004, are form letters signed by individual travelers or employees of hotels located in the Denver metropolitan area. The letters signed by 21 individual travelers state: "I am aware that AmeriShuttle is no longer operating, leaving only one airport shuttle service available for my area. I feel strongly that I should have a choice in transportation services, and that competition is good for me and the traveling public. The existing service is inadequate and not up to standard. There is a real need for more than one shuttle service operating between DIA and my area." The letters signed by 17 hotel employees state: "Since AmeriShuttle has abruptly quit business, there is a real and urgent need for a reliable

second airport shuttle service. The convention and conference season is fast approaching and the one existing shuttle company cannot fully meet the transportation needs of our guests.” However, none of the signers of the 38 letters include any reference to a specific instance in which service was inadequately provided to or from DIA.

15. Metro Taxi may provide taxi service between DIA and the area named in this application. In its intervention Metro Taxi states: “Metro Taxi advises that it has cabs staged around the Denver Metro area and at the holding lot at DIA and has available capacity. Thus existing vehicles are not being used to full capacity or efficiency. Metro Taxi believes that there is more than sufficient unused capacity with existing carriers, including Metro Taxi, to meet the current need for passenger transportation.”

16. SuperShuttle may provide scheduled and call-and-demand limousine service between DIA and the area named in this application. In its intervention SuperShuttle states: “SuperShuttle is currently operating a fleet of 63 vans. It is currently providing 127 scheduled runs making an average of two one-way trips per day between DIA and all of the major downtown hotels, at 15-minute intervals from about 5:00a.m. to about 6:00p.m. SuperShuttle also provides 13 call-and-demand limousine runs making an average of five one-way trips each per day between DIA and points of passenger demand in the metro area. With 3200 passenger seats available per day in the downtown area and a total of 4170 per day available in the metro area, SuperShuttle only carried an average of 698 passengers per day in January and February, 2004, for an overall load factor of just under 17%.”

17. 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." The Commission is aware that Amerishuttle has recently stopped providing any transportation service to the area named in this application. However, Metro Taxi and SuperShuttle are providing service to the area named in this application. Owner/Driver United has not shown that there are no other carriers capable of providing the service requested in this application.

C. Conclusions

18. The Commission finds that an immediate and urgent need for the requested transportation services has not been shown to exist, nor has it been shown that there are no other carriers capable of providing the service.

19. The denial of this application creates no presumption about the final disposition of the permanent authority application. The permanent authority application will be determined on the evidence presented using the statutory criteria.

II. ORDER

A. The Commission Orders That:

1. The application for temporary authority filed by Owner/Driver United is denied.
2. The Motion To Strike Late-Filed Support Letters filed by Metro is denied as moot.
3. The Motion To Strike Late-Filed Support Letters filed by SuperShuttle is denied as moot.
4. 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 Order.

5. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
March 31, 2004.**

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

GREGORY E. SOPKIN

POLLY PAGE

JIM DYER

Commissioners

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