

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0962CP

IN THE MATTER OF THE APPLICATION OF 303 PARTYBUS, LLC FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
SCHEDULING HEARING**

Mailed Date: January 8, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. On September 4, 2013, 303 Partybus LLC, (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application).

2. The Commission gave notice of the Application on September 9, 2013.

As originally noticed, the Application sought:

Authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers in call-and-demand shuttle and charter service

between 6232 Beach Street, Denver, Colorado and the following venues:

Red Rocks Amphitheater, 18300 West Alameda Parkway, Golden, Colorado 80401;

1st Bank Center, 11450 Broomfield Lane, Broomfield, Colorado 80021;

Sports Authority at Mile High Stadium, 1701 Bryant Street, Denver, Colorado 80204;

Coors Field, 2001 Blake Street, Denver Colorado 80205;

Ogden Theater, 935 East Colfax Avenue, Denver, Colorado 80218;

Fiddlers Green, 6230 Greenwood Plaza Boulevard, Englewood, Colorado 80111;
Pepsi Center, 1000 Chopper Circle, Denver, Colorado 80204;
Dicks' Sporting Goods Park, 6000 Victoria Way, Commerce City, Colorado
80022;
Bluebird Theater, 3317 East Colfax Avenue, Denver, Colorado 80206.

RESTRICTIONS. This application is restricted:

- (a) to the use of one vehicle;
- (b) to the provision of service to no less than 20 passengers at a time;
- (c) to the use of a vehicle with a maximum capacity of 44 passengers; and,
- (d) to trips beginning and ending at 6232 Beach Street, Denver, Colorado.

3. On October 4, 2013, MKBS LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi and Northwest Suburban Taxi (Metro) timely intervened of right.

4. On October 9, 2013, Colorado Cab Company LLC, doing business as Denver Yellow Cab (Colorado Cab), and SuperShuttle International Denver, Inc. (SuperShuttle), timely intervened of right.

5. During the Commission's weekly meeting held October 16, 2013, the Commission deemed the Application complete and referred it to an administrative law judge (ALJ) for disposition.

6. On January 3, 2014, Colorado Cab filed a "Stipulation, Motion for Approval of Restrictive Amendments and Conditional Withdrawal of Interventions" (Stipulation). The Stipulation was executed by Colorado Cab, Applicant, and SuperShuttle.

7. Later that same day, Metro filed a "Motion for Conditional Withdrawal of Intervention" (Motion).

8. Based upon the Motion and Stipulation, the ALJ vacated the evidentiary hearing scheduled for January 6 and 7, 2014. Decision No. R14-0013-I.

9. The ALJ has reviewed the Stipulation and the proposed authority in the Application. The ALJ will schedule a hearing to address several concerns relating to the proposed authority, as set forth below. This will not be an evidentiary hearing.

10. The common carrier permit and any restrictions to it must be unambiguous and contained wholly within the authority granted. It must be worded so that a person will know, from reading the permit and without having to resort to any other document, the exact extent of the authority and of each restriction. Clarity is essential because the scope of a common carrier permit must be found within the four corners of the authority, which is the touchstone by which one determines whether the operation of a common carrier is within the scope of its Commission-granted authority.

11. While the amendment to the Application in the Stipulation is clear, unambiguous, and administratively enforceable, the ALJ finds that the original proposed language of the authority is open to multiple interpretations and presents operational issues.

12. In particular, the ALJ finds the following language unclear given the remaining language of the proposed authority, “to trips beginning and ending at 6232 Beach Street, Denver, Colorado.” The proposed authority also lists a number of addresses where Applicant would be permitted to transport passengers. The ALJ construes the referenced proposed language to mean that transportation to any of the identified addresses are not the terminating point of the trip; instead all trips terminate at the point of origination, that is, 6232 Beach Street, Denver, Colorado. The language as currently drafted does not plainly reflect this intent. The language may be modified in a number of ways to make it clear and understandable,

administratively enforceable, and restrictive in nature.¹ At hearing, the parties should be prepared to address this issue.

13. In addition, the proposed authority includes the following restriction, “to the provision of service to no less than 20 passengers at a time.” This restriction raises operational questions, particularly when read in conjunction with the restriction described in paragraph 12 above. Specifically, the language of the proposed authority assumes the following: (1) that all trips must originate and terminate at the Beach street address; and (2) that Applicant must transport 20 passengers at a time. Thus, if the trip begins with 20 passengers, and one passenger does not get back on the vehicle after being taken to an authorized address, 19 passengers are left. Because Applicant is restricted to providing service to 20 passengers at a time, Applicant could not transport the remaining 19 passengers to the Beach Street address without operating in violation of the authority. This creates a scenario that may not be in the public interest. The parties should be prepared to address this issue at the hearing.

14. Applicant is reminded that the ALJ can only modify the proposed authority in the Application if the modification is restrictive in nature. If the modification is not restrictive, the Application must be re-noticed to the public to give other interested parties an opportunity to intervene. The Notice period is 30 days.

15. In order to address the identified issues, a hearing will be held as scheduled below.²

¹ For example, the language could be modified to read, “to round-trips originating and terminating at 6232 Beach Street, Denver, Colorado, that may include stops only at the addresses identified in this Certificate.”

² The parties informally agreed to the identified hearing date.

16. Although Applicant is not required to personally appear at the hearing, *e.g.*, counsel may represent Applicant at the hearing, given the issues, it is advisable for Applicant to personally appear.

II. ORDER

A. It Is Ordered That:

1. A hearing in this proceeding is scheduled as follows:

DATE: January 17, 2014
TIME: 11:00 a.m.
PLACE: Commission Hearing Room
1560 Broadway, 2nd Floor
Denver, Colorado

2. This Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director