

Decision No. R14-0104-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1163BP

IN THE MATTER OF THE APPLICATION OF LIBERTY TRANSPORTATION, LLC, FOR A PERMIT TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**INTERIM DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
APPROVING AMENDMENT AND REQUIRING
INTERVENORS TO MAKE FILINGS**

Mailed Date: January 27, 2014

I. STATEMENT

1. On October 30, 2013, Liberty Transportation, LLC (Liberty Transportation or Applicant), filed a verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire. That filing commenced this Proceeding.

2. On November 18, 2013, Applicant filed a supplement to the October 30, 2013 filing.¹ Reference in this Interim Decision to the Application is to the October 30, 2013 filing as supplemented on November 18, 2013.

3. On November 4, 2013, the Commission issued its Notice of Application Filed (Notice) in this proceeding (Notice at 4). The Notice established an intervention period, which has expired, and contained a procedural schedule. On December 13, 2013, Decision No. R13-1540-I vacated that procedural schedule.

¹ The November 18, 2013 filing includes information filed under seal because Applicant claims that the information is confidential.

4. The following timely intervened as of right in this Proceeding: Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Yellow Cab); Colorado Springs Transportation, LLC (CST); and MKBS, LLC, doing business as Metro Taxi and/or Taxis Fiesta and/or South Suburban Taxi and/or Northwest Suburban Taxi (Metro Taxi). Each opposes the Application.

5. CST, Metro Taxi, and Yellow Cab, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties. Each party is represented by legal counsel.

6. On December 11, 2013, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

7. On December 11, 2013, by Minute Order, the Commission deemed the Application to be complete as of that date. Pursuant to § 40-6-109.5, C.R.S., and absent an enlargement of time by the Commission or Applicant's waiver of the statutory provision, the Commission should issue its decision on the Application no later than July 9, 2014.

8. As noticed, Liberty Transportation sought authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado; and
- (C) against providing transportation services to or from Denver International Airport and hotels.

9. On January 8, 2014, Liberty Transportation filed amendments to the Application (January 8 Filing). Applicant seeks authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Denver, and Jefferson, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from Denver International Airport;
- (D) against providing transportation services to or from hotels and motels; and
- (E) against the operation of more than two (2) vehicles at any one time.

January 8 Filing at 1.

10. As filed, the authority was restricted “against service to all hotels and motels and the Denver International Airport.” *Id.* For clarity, the ALJ divided that single restriction into Restrictions (C) and (D), as shown above.

11. The January 8 Filing states that it is made pursuant to an agreement reached by the Parties. No intervenor responded to the January 8 Filing.

12. To be acceptable, an amendment must be restrictive in nature; must be clear and understandable; and must be administratively enforceable. Both the contract carrier permit and any restriction on that permit must be unambiguous and must be contained wholly within the authority granted. Both must be worded so that a person will know, from reading the contract

carrier 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 contract carrier permit must be found within the four corners of the authority, which is the touchstone by which one determines whether the contract carrier's operations are within the scope of its Commission-granted authority.

13. The amendments in the January 8 Filing and the resulting contract carrier permit, if the Application is granted, meet the standards stated above. The ALJ will approve the amendments contained in the January 8 Filing at 1.

14. What is unclear from the January 8 Filing is whether the amendments, if approved (as they have been), are sufficient to satisfy the interests of the Intervenors. In addition, it is unclear from the January 8 Filing whether, if the amendments are approved (as they have been), Intervenors withdraw their interventions. Thus, by this Interim Decision, the ALJ will order each intervenor to make, not later than **February 4, 2014**, a filing that clarifies these points.

15. When the intervenor filings are made, the ALJ will address the status of this Proceeding by decision.

II. ORDER

A. It Is Ordered That:

1. Consistent with the discussion above, the Application is amended to seek authority to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Adams, Arapahoe, Denver, and Jefferson,
State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid;
- (B) to providing Non-Emergency Medical Transportation (NEMT) services for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado;
- (C) against providing transportation services to or from Denver International Airport;
- (D) against providing transportation services to or from hotels and motels; and
- (E) against the operation of more than two (2) vehicles at any one time.

2. Not later than February 4, 2014, each intervenor shall make a filing that complies with ¶ 14, above.

3. This Interim Decision is effective immediately.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director