

Decision No. R14-0725-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0327CP

IN THE MATTER OF THE APPLICATION OF PIKES PEAK SATCOM, INC., DOING BUSINESS AS NEW INTERCONTINENTAL EXPRESS 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
REQUIRING MAGIC BUS, AEX, AND SUNSHINE
TAXI TO OBTAIN COUNSEL OR MAKE SHOW
CAUSE FILING, AND REQUIRING
MAGIC BUS TO MAKE SUPPLEMENTAL FILING**

Mailed Date: June 30, 2014

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. Pikes Peak SATCOM, Inc., doing business as New Intercontinental Express (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application) with the Colorado Public Utilities Commission (Commission) on April 10, 2014. Applicant amended its Application on April 16, 2014, and again on May 13, 2014 (second amended Application).

2. The Commission gave public Notice of the second amended Application on May 19, 2014. The Notice required that any party desiring to intervene must file an appropriate pleading within 30 days of the date of the Notice.

3. City Cab Co., MT Acquisitions, LLC, doing business as Mountains Taxi, Banaadir Transportation Company, Estes Valley Transport, Inc., Colorado Springs Shuttle, LLC, Colorado Coach Transportation, LLC, Ramblin' Express Inc., Valera Lea Holtorf, doing business

as Dashabout Shuttle Company and Roadrunner Express, Almaz Transportation, LLC, MKBS, LLC, doing business as Metro Taxi, SuperShuttle International Denver, Inc., Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, Boulder SuperShuttle, Colorado Springs Transportation, LLC, Mercy Medical Transportation Services, LLC, Hy-Mountain Transportation, Inc., doing business as High Mountain Taxi, Magic Bus, LLC. (Magic Bus), Home James Transportation Services, Ltd., Alpine Taxi/Limo, doing business as Alpine, and Go Alpine, AEX, Inc., doing business as Alpine Express, (AEX) and Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi) filed timely interventions.

A. Parties Must Be Represented by Counsel or Must Show Cause Why They May Be Represented by Non-Attorney.

4. Magic Bus is a limited liability company. AEX and Sunshine Taxi are both incorporated companies. None of these companies are represented by attorneys licensed to practice law before the Colorado Supreme Court in this proceeding.

5. This is an adjudicative proceeding before the Commission.

6. Generally, a party in a proceeding before the Commission must be represented by an attorney authorized to practice law in the State of Colorado. Rule 1201(a), of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1.

7. The Commission has emphasized that this requirement is mandatory. Filings made by non-attorneys on behalf of a party who fails to demonstrate that the party may proceed without counsel are void and of no legal effect. *See, e.g.*, Decision No. C05-1018, Proceeding No. 04A-524W; Decision No. C04-1119, Proceeding No. 04G-101CP; and Decision No. C04-0884, Proceeding No. 04G-101CP.

8. There are some exceptions to the requirement that parties be represented by counsel. However, Magic Bus, AEX and Sunshine (collectively, interveners), have failed to meet their burden to show that any of those exceptions apply to them in this proceeding. *See* Rule 1201(b)(II), 4 CCR 723-1 and § 13-1-127, C.R.S. And, notably, if they wished to be represented by a non-attorney, they were required to establish their entitlement to do so in their intervention.¹ Rule 1201(b)(II), 4 CCR 723-1.

9. The ALJ acknowledges that Sunshine attempted to meet the requirements of Rule 1201(b)(II), 4 CCR 723-1 by its filing titled “Sworn Filing by Tazco, Inc. d/b/a Sunshine Taxi Establishing Self Representation” (Sunshine Representation Filing). However, the filing does not establish a factual basis for the ALJ to conclude that less than \$15,000 is in controversy in this proceeding. Indeed, the Sunshine Representation Filing does the opposite, stating, “[a]s re-noticed, the amended application seeks broad, statewide authority, which Sunshine Taxi acknowledges could increase the amount in controversy beyond \$15,000.” Sunshine Representation Filing, ¶ (b)(i). The ALJ is inclined to agree with this conclusion.

10. Despite its acknowledgement that the amount in controversy may exceed \$15,000, Sunshine states that its current evaluation is that less than \$15,000 is in controversy, based upon the original Application. The original Application did not seek unrestricted state-wide common carrier authority. Sunshine Representation Filing, ¶ (b)(ii). However, the authority sought by the amended Application is in controversy. The original authority sought is not in controversy in this proceeding. And, the amended Application does seek broad, unrestricted state-wide common

¹ Given this, the ALJ is well within the standards of the law to strike these interventions without allowing these interveners an additional opportunity to comply with Rule 1201(b)(II), 4 CCR 723-1. In future proceedings, the ALJ will not give Magic Bus, AEX and Sunshine a second opportunity to comply with this Rule.

carrier authority. As such, Sunshine's original statement that the amount in controversy may exceed \$15,000 is more credible.

11. These interveners will be ordered to either obtain counsel, or to make a filing that shows cause why Rule 1201, 4 CCR 723-1 does not require them to be represented in this matter by an attorney at law currently in good standing before the Supreme Court of the State of Colorado.

12. If interveners elects to show cause, they must make a filing that: (a) establishes that they are a closely-held entity (*e.g.*, that it has no more than three owners); (b) states that the amount in controversy in this matter does not exceed \$15,000 and explains the basis for that statement; (c) identifies the individual who will represent a party in this matter; (d) establishes that the identified individual is an officer; and (e) if the identified individual is not an officer, has appended to it a resolution from a party's Board of Directors that specifically authorizes the identified individual to represent a party in this matter.

13. Particularly given the broad nature of the authority sought here, the interveners should be careful to provide a credible factual basis to support their assertion that less than \$15,000 is in controversy.

14. Magic Bus, AEX and Sunshine are advised and on notice that if legal counsel does enter an appearance on their behalf, or they do not make a show cause filing meeting the requirements of Rule 1201(b)(II) and § 13-1-127, C.R.S., as set forth in ¶¶ 12-13 and above by the deadline set forth below, the ALJ may strike their interventions, dismiss them as parties, and prevent them from participating in this proceeding.

B. Magic Bus Must File a Copy of Its Letter of Authority.

15. In addition, Magic Bus's intervention fails to comply with Rule 1401(e), 4 CCR 723-1, which requires that a copy of the intervener's letter of authority (authority) be filed with its intervention. Magic Bus's intervention states that a copy of its authority is attached, but none is provided.

16. Given Magic Bus's statement that a copy of its authority is attached, it is likely that Magic Bus inadvertently failed to include the attachment with its filing. Based on this, the ALJ will give Magic Bus an opportunity to correct this error. Magic Bus will be ordered to file a copy of its authority by the deadline set forth below.

17. Magic Bus is advised and on notice that failure to file a copy of its authority by the deadline set forth below may result in a Decision striking its intervention, dismissing it as a party, and preventing it from participating in this proceeding.

II. ORDER

A. It Is Ordered That:

1. Magic Bus, LLC. (Magic Bus), AEX, Inc., doing business as Alpine Express, and Tazco, Inc., doing business as Sunshine Taxi must have legal counsel enter an appearance in this proceeding, or make a show cause filing that comports with ¶ 12 and 13 above on or by 5:00 p.m. on July 14, 2014.

2. On or by 5:00 p.m. on July 14, 2014, Magic Bus shall file a copy of its letter of authority with the Commission in this proceeding.

3. The parties shall be held to all advisements in this Decision.

4. This Decision shall be 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