

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0468BP

IN THE MATTER OF THE APPLICATION OF RIDE 4 MED INC. FOR A PERMIT
TO OPERATE AS A CONTRACT CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
GRANTING MOTION; APPROVING
STIPULATION; AMENDING APPLICATION,
SUBJECT TO CONDITIONS; DISMISSING
INTERVENORS; GRANTING APPLICATION, AS
AMENDED, UNDER MODIFIED PROCEDURE AND
SUBJECT TO CONDITIONS; GRANTING CONTRACT
CARRIER PERMIT, SUBJECT TO CONDITIONS;
AND WAIVING RESPONSE TIME TO MOTION**

Mailed Date: September 17, 2014

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I. STATEMENT

1. On May 14, 2014, Ride 4 Med Inc. (Ride or Applicant) filed a verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire (original Application). That filing commenced this Proceeding.

2. On May 19, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 7); established an intervention period; and established a procedural schedule. On June 26, 2014, Decision No. R14-0719-I vacated the procedural schedule.

3. Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab), timely intervened in this Proceeding. Colorado Cab is a party in this Proceeding and opposed the original Application.

4. Colorado Springs Transportation, LLC (CST), timely intervened in this Proceeding. CST is a party in this Proceeding and opposed the original Application.

5. MKBS, LLC, doing business as Metro Taxi (Metro Taxi), timely intervened in this Proceeding. Metro Taxi was a party in this Proceeding and opposed the original Application. On August 20, 2014, Decision No. R14-1013-I amended the original Application; granted Metro Taxi's motion; and dismissed Metro Taxi from this Proceeding.

6. Shamrock Taxi of Ft. Collins, Inc. (Shamrock Taxi), timely intervened in this Proceeding. Shamrock Taxi is a party in this Proceeding and opposed the original Application.

7. Colorado Cab, CST, and Shamrock Taxi, collectively, are the Intervenors. Applicant and Intervenors, collectively, are the Parties. Pursuant to Decision No. R14-0719-I, Applicant is represented by an individual who is not an attorney.¹ Each intervenor is represented by legal counsel.

8. On June 25, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

¹ In Decision No. R14-0719-I at ¶ 22, the Administrative Law Judge advised Applicant and its representative that Applicant's non-attorney representative is held to the same procedural and evidentiary rules and standards as those to which attorneys are held.

9. On June 25, 2014, by Minute Order, the Commission deemed the original Application complete as of that date. Pursuant to § 40-6-109.5(2), C.R.S., and absent an enlargement of time by the Commission or Applicant's waiver of the statutory provision, a Commission decision on the original Application should issue no later than January 21, 2015.

10. On July 21, 2014, by Decision No. R14-0860-I, the ALJ established the procedural schedule and scheduled a November 6 and 7, 2014 evidentiary hearing in this matter. On September 16, 2014, by Decision No. R14-1136-I, the ALJ vacated the evidentiary hearing and the procedural schedule.

11. As noticed by the Commission, the original Application 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 Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld, State of Colorado.

RESTRICTIONS: This authority is restricted:

- (A) to the transportation of passengers who are recipients of Medicaid; and
- (B) to providing Non-Emergency Medical Transportation (NEMT) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203.

Notice at 7.

12. On July 28, 2014, Applicant and Metro Taxi filed (in one document) a Stipulated Motion for Imposition of Restrictive Amendments and Conditional Withdrawal of Intervention. By Decision No. R14-1013-I, the ALJ granted the motion and amended the scope of the authority sought in the original Application.

13. With the amendment, Applicant 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 Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld, 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) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;
- (C) against providing transportation to or from hotels, motels, or airports;
and
- (D) to no more than two (2) vehicles in operation at any given time.

Decision No. R14-1013-I at Ordering Paragraph No. 2.

14. On September 15, 2014, the Parties filed (in one document) their Stipulation, Motion for Approval of Restrictive Amendments [Motion for Approval] and Motion for Conditional Withdrawal of Interventions [Motion for Withdrawal].

15. Given that all Parties made the September 15, 2014 filing, the ALJ finds that waiving response time to the Motion for Approval and to the Motion for Withdrawal will not prejudice any party. The ALJ will waive response time to the Motion for Approval and to the Motion for Withdrawal.

16. In the Motion for Approval, Ride moves to amend the authority sought by the original Application, as amended on August 20, 2014. If the Motion for Approval is granted, Ride 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 Arapahoe, Boulder, Broomfield, 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) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;
- (C) against providing transportation to or from hotels, motels, or airports;
- (D) to no more than two (2) vehicles in operation at any given time; and
- (E) against the provision of service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25.

Motion for Approval at ¶ 4.

17. Intervenors state: if the Commission approves the amendments contained in the Motion for Approval, their “interests will be satisfied and their intervention[s] shall be deemed withdrawn.” Motion for Withdrawal at ¶ 6.

18. 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.

19. The restrictive amendments proposed in the Motion for Approval and the resulting contract carrier permit meet the standards stated above. The ALJ will approve the amendments contained in the Motion for Approval at ¶ 4, as set out above.

20. The ALJ finds that the Motion for Approval states good cause and that no party will be prejudiced if that motion is granted. The ALJ will grant the Motion for Approval. The ALJ will approve the Stipulation.

21. Approving the restrictive amendments to the original Application as amended on August 20, 2014 (*i.e.*, to the scope of the contract carrier permit that Applicant seeks) has these effects. First, the contract carrier authority sought, as stated in the original Application as amended on August 20, 2014, will be amended to conform to the amendments contained in this Decision. Second, the Motion for Withdrawal will be granted; and the Intervenors will be dismissed.

22. Dismissal of the Intervenors leaves the Application uncontested and unopposed.

23. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1403,² the Commission may consider an uncontested and unopposed application pursuant to the Commission's modified procedure and without a formal hearing. The ALJ finds

² This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

that the Application should be considered, and will be considered, under the Commission's modified procedure and without a formal hearing.

24. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this Proceeding along with a written recommended decision.

II. FINDINGS, DISCUSSION, AND CONCLUSION

25. Applicant is a Colorado limited liability company.

26. By the Application, as amended, Applicant seeks a permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Arapahoe, Boulder, Broomfield, 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) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;
- (C) against providing transportation to or from hotels, motels, or airports;
- (D) to no more than two (2) vehicles in operation at any given time; and
- (E) against the provision of service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25.

27. The original Application establishes that Applicant: (a) is familiar with the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723 Part 6; (b) agrees to be bound by those Rules that are applicable to it; and (c) agrees to comply with those Rules that are applicable to it. The original Application and its supporting documentation establish that Applicant has sufficient

equipment with which to render the proposed transportation service; has the experience to conduct operations under the authority requested; and is financially fit to conduct operations under the authority requested. In addition, the original Application and its supporting documents establish that the service proposed is specialized and is tailored to meet the customer's distinct needs. Finally, review of the original Application and its supporting documentation indicates a need for the proposed contract carrier service. Because the Applicant is fit, financially and otherwise, to perform the proposed service and because the other prerequisites have been met, the ALJ will grant the Application, as amended, and will issue the contract carrier permit subject to conditions.

28. Having determined that the contract carrier permit should issue, the ALJ finds and concludes that the contract carrier permit should be subject to the conditions contained in the Ordering Paragraphs below.

29. One of the conditions stated in the Ordering Paragraphs is: before commencing service as a contract carrier, Ride must file with the Commission its written contract with the Colorado Department of Health Care Policy and Financing to provide Non-Emergency Medical Transportation. The basis for this condition is Rule 4 CCR 723-6-6209, which governs the contracts pursuant to which a contract carrier provides transportation service. That Rule reads:

- (a) Except as otherwise permitted by law, a contract carrier shall not enter into a contract for transportation with any person not named in the contract carrier's permit.
- (b) Except as otherwise permitted by law, a contract carrier shall not engage in any act of transportation for compensation except *in compliance with the contract between the contract carrier and the person named in the contract carrier's permit.*
- (c) *Contracts shall be written.*
- (d) *At a minimum, all contracts shall specify the following:*

- (I) the names of the parties to the contract;
 - (II) the provisions regarding the scope and terms of transportation and accessorial services to be provided; and
 - (III) the date(s) and terms of the contract, including rates.
- (e) A contract carrier shall not operate in conflict with the contract carrier's permit.
 - (f) A contract carrier shall not operate in conflict with the contract carrier's tariff.

(Emphasis supplied.) Ride may file this contract under seal if Ride believes that the contract constitutes or contains confidential information. *See* Rules 4 CCR 723-1-1100 and 723-1-1101.

30. **Questions concerning completion of the conditions should be directed to Mr. Gabe Dusenbury of the Commission Staff (telephone no.: 303.894.2046).**

31. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. The Motion for Approval of Restrictive Amendments, which motion was filed on September 15, 2014, is granted.

2. Consistent with the discussion above, the verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire filed on May 14, 2014, as amended on August 20, 2014, is further amended.

3. The Motion for Conditional Withdrawal of Interventions, which motion was filed on September 15, 2014, is granted.

4. Colorado Cab Company LLC, doing business as Denver Yellow Cab and Boulder Yellow Cab, is dismissed from this Proceeding.

5. Colorado Springs Transportation, LLC, is dismissed from this Proceeding.
6. Shamrock Taxi of Ft. Collins, Inc., is dismissed from this Proceeding.
7. Consistent with the discussion above and subject to the conditions stated below, the verified Application for New Permanent Authority to Operate as a Contract Carrier of Passengers by Motor Vehicle for Hire filed on May 14, 2014, as amended, is granted.

8. Subject to the conditions stated in the Ordering Paragraphs below, Ride 4 Med Inc. is granted a contract carrier permit to operate as a contract carrier by motor vehicle for hire as follows:

Transportation of
passengers

between all points in the Counties of Arapahoe, Boulder, Broomfield, 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) for the Colorado Department of Health Care Policy and Financing, 1570 Grant Street, Denver, Colorado 80203;
 - (C) against providing transportation to or from hotels, motels, or airports;
 - (D) to no more than two (2) vehicles in operation at any given time; and
 - (E) against the provision of service in Douglas County south of a line beginning on the Douglas/Jefferson border to a point on the Douglas/Elbert boundary, this line being parallel to an east-west line drawn through exit 172 of Interstate 25.
9. All operations under the contract carrier permit granted by Ordering Paragraph No. 8 shall be strictly contract operations. The Commission retains jurisdiction to make such amendments to this contract carrier permit as the Commission deems advisable.

10. The authority granted in Ordering Paragraph No. 8 is conditioned on Ride 4 Med Inc. meeting the conditions contained in this Decision and is not effective until Ride 4 Med Inc. meets the stated conditions.

11. Ride 4 Med Inc. shall not begin operation under the contract carrier permit granted by this Decision until it has satisfied all of the following conditions:

(a) Ride 4 Med Inc. shall file with the Commission a copy of the written contract with the Colorado Department of Health Care Policy and Financing to provide Non-Emergency Medical Transportation. The written contract must meet the requirements of Rule 4 *Code of Colorado Regulations* 723-6-6209(d). Ride 4 Med Inc. may file this contract under seal if Ride 4 Med Inc. believes that the contract constitutes or contains confidential information.

(b) Ride 4 Med Inc. shall file with the Commission an advice letter and proposed tariffs, as required by Rules 4 *Code of Colorado Regulations* 723-1-1210(b) and 723-1-1210(c) and Rule 4 *Code of Colorado Regulations* 723-6-6207. The tariffs shall have a proposed effective date that is not earlier than ten days after the advice letter and proposed tariffs are filed with the Commission. In calculating the proposed effective date, the date on which the Commission receives the advice letter and proposed tariffs is not included in the ten-day notice period; and the entire ten-day notice period must expire prior to the proposed effective date. Ride 4 Med Inc. shall file the advice letter and proposed tariffs as a new Advice Letter proceeding.

(c) Ride 4 Med Inc. shall cause to be filed with the Commission *either* proof of insurance coverage (Form E or self-insurance) *or* proof of surety bond coverage, as required by and in accordance with Rule 4 *Code of Colorado Regulations* 723-6-6007.

(d) Ride 4 Med Inc. shall pay to the Commission the \$ 5.00 issuance fee required by § 40-10.1-111(1)(a), C.R.S.

(e) For each vehicle to be operated under the contract carrier permit granted by this Decision, Ride 4 Med Inc. shall pay to the Commission the annual motor vehicle fees as required by Rule 4 *Code of Colorado Regulations* 723-6-6009. In lieu of those fees and if applicable, Ride 4 Med Inc. shall pay to the Commission, for each vehicle to be operated under the contract carrier permit granted by this Decision, the fee for that vehicle pursuant to Rule 4 *Code of Colorado Regulations* 723-6-6401 (the Unified Carrier Registration Agreement).

(f) Ride 4 Med Inc. has received from the Commission a written notice that Ride 4 Med Inc. has complied with conditions (a) through (e) in this

Ordering Paragraph and may begin providing transportation service pursuant to the contract carrier permit granted by this Decision.

12. If Ride 4 Med Inc. does not comply with the requirements of Ordering Paragraph No. 11 within 60 days of the effective date of this Decision, then Ordering Paragraphs No. 7 and No. 8 shall be void. On good cause shown by an appropriate and timely filing made in this Proceeding, the Commission may grant Ride 4 Med Inc. additional time within which to comply with the requirements of Ordering Paragraph No. 11.

13. The right of Ride 4 Med Inc. to operate pursuant to the contract carrier permit granted by this Decision shall depend on Ride 4 Med Inc.'s compliance with all applicable present and future statutes, Commission regulations, and Commission decisions.

14. Response time to the Motion for Approval of Restrictive Amendments is waived.

15. Response time to the Motion for Conditional Withdrawal of Interventions is waived.

16. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

17. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may

stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

18. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(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