

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
ACCEPTING AMENDMENTS TO APPLICATION,
DISMISSING CERTAIN INTERVENERS, SHORTENING
RESPONSE TIME TO MOTION, REQUIRING PARTIES TO
SUBMIT PAPER COPY OF EXHIBITS, AND MODIFYING
START TIME FOR NOVEMBER 24, 2014 HEARING**

Mailed Date: November 10, 2014

TABLE OF CONTENTS

I.	STATEMENT, FINDINGS, AND CONCLUSIONS	1
A.	Amendments to Application	2
B.	Dismissal of Interveners	4
C.	Response Time to Motion.	5
D.	Exhibits	5
E.	Change in Start Time for November 24, 2014 Hearing.	6
II.	<u>ORDER</u>	7
A.	It Is Ordered That:	7

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. Only those portions of the procedural history necessary to understand this Decision are included.

2. 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).

3. Twenty-one separate parties filed timely interventions objecting to the authority sought by Applicant, including Home James Transportation Services, Ltd. (Home James), Alpine Taxi/Limo, doing business as Alpine and Go Alpine (Go Alpine), AEX, doing business as Alpine Express (Alpine Express), Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi) Mercy Medical Transportation Services, LLC (Mercy Medical), Colorado Springs Shuttle, LLC (Colorado Springs Shuttle), Colorado Coach Transportation, LLC (Colorado Coach), Hy-Mountain Transportation (Hy-Mountain), MT Acquisitions LLC doing business as Mountains Taxi (Mountains Taxi), Estes Valley Transport, Inc., (Estes Valley), and Valera Lea Holtorf doing business as Dashabout Shuttle Company and Roadrunner Express (Dashabout).

A. Amendments to Application.

4. On October 24, 2014, the Applicant filed a “Stipulated Motion of Pikes Peak Satcom, d/b/a New-Intercontinental-Express (NICE) on the One Hand, and on the Other Hand, AEX, Inc., d/b/a Alpine Express; Alpine Taxi/Limo, Inc., d/b/a Alpine and/or Go Alpine; Home James Transportation Services Ltd.; and Tazco, Inc., d/b/a Sunshine Taxi to Restrictively Amend the Application, for Conditional Withdrawal of Each Named Intervener’s Intervention, and for a Waiver of the Response Time” (Stipulation).

5. As noticed, the Second Amended Application seeks authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between all points in the State of Colorado. The Stipulation seeks to amend the Second Amended Application to eliminate Gunnison County, Mesa County, Moffat County, Routt County, and to restrict transportation in Grand County to service to and from points in Rocky Mountain National Park. Under the Stipulation, the authority sought by the Second Amended Application would be amended to seek:

Authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in call-and-demand shuttle service, call-and-demand charter service, and call-and-demand sightseeing service between all points in the State of Colorado.

Restrictions. This Application is restricted:

Against providing any transportation service:

- (A) Between any points in Gunnison County, Colorado, and to or from any points in Gunnison County, Colorado;
- (B) Between any points in Routt County, Colorado, and to or from any points in Routt County, Colorado;
- (C) Between any points in Moffat County, and to or from any points in Moffat County;
- (D) Between any points in Mesa County, and to or from any points in Mesa County; and
- (E) Between any points in Grand County, Colorado, and to or from any points in Grand County, Colorado, except that transportation service is permitted to or from those points in Rocky Mountain National Park that are within Grand County, Colorado.

6. If the proposed amendments are accepted, Home James, Go Alpine, Alpine Express, and Sunshine Taxi withdraw their interventions.

7. The time to respond to the Stipulation has expired. *See* Rule 1400(b) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. No intervener filed a Response to the Stipulation. The Administrative Law Judge (ALJ) ALJ deems the interveners' failure to respond a confession of the Stipulation. Rule 1400(d), 4 CCR 723-1.

8. To be acceptable, the proposed amendment must be restrictive in nature, must be clear and understandable, and must be administratively enforceable. Both the common 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 common 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 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.

9. The ALJ finds and concludes that the proposed amendments are restrictive in nature, administratively enforceable, clear and understandable. For good cause shown, and because it is unopposed, the restrictive amendments proposed by the Stipulation will be accepted. The authority sought (as stated in the notice and the Application) will be amended to conform to the restrictive amendments.

B. Dismissal of Interveners.

10. Because the ALJ has accepted the restrictive amendments, Home James, Go Alpine, Alpine Express, and Sunshine Taxi will be dismissed as parties, and their interventions withdrawn, as requested in the Stipulation.

11. On October 28, 2014, Mercy Medical filed a letter stating that if the restrictive amendments proposed by the Stipulation are accepted, that Mercy Medical withdraws its intervention. As the restrictive amendments are accepted, Mercy Medical's intervention will be withdrawn and it will be dismissed as a party to this proceeding.

C. Response Time to Motion.

12. On November 5, 2014, Colorado Springs Shuttle, Colorado Coach, Hy-Mountain, Mountains Taxi, Estes Valley, and Dashabout filed a "Motion to Take Testimony by Telephone" (Motion). The Motion seeks to take testimony of the named interveners' witnesses by telephone, for the convenience of the out-of-town witnesses. Responses to the Motion are due on November 19, 2014. *See* Rule 1400(b) 4 CCR 723-1. The first day of the hearing is November 13, 2014. Given this, the ALJ will shorten the response time to the Motion to November 13, 2014. Rule 1400(b), 4 CCR 723-1. The parties may provide their position on the Motion at the time of the November 13, 2014 hearing.

13. The ALJ notes that this hearing was scheduled on July 17, 2014. Decision No. R14-0837-I. Although the interveners had four months to file a timely Motion, they instead waited until the week before the hearing to file this Motion. This type of practice is strongly discouraged. The delay in filing the Motion is inexcusable. The interveners and their counsel are warned that inexcusable delay in the filing motions such as the one at hand may result in denial of such motions.

D. Exhibits.

14. The ALJ took great pains to provide the parties with clear instructions on how exhibits should be numbered, in order to avoid extensive delays to renumber exhibits, and confusion as to exhibit numbering at the time of the hearing. *See* Decision No. R14-0837-I.

Each party was assigned a block of exhibit numbers. Not all parties have followed the requirements of Decision No. R14-0837-I in terms of exhibit numbering. *See, e.g.,* Colorado Cab Company's exhibits filed September 29, 2014 (numbered A-F).

15. Applicant has listed 152 potential witnesses. The hearing is set for eight days. The parties will be pressed to complete all the witnesses' testimony in that time. Thus, delays due to the parties' failure to properly number their exhibits will be costly to all parties, and is unacceptable. The parties must number their exhibits *prior to the commencement of the hearing* in the manner required by Decision No. R14-0837-I.

16. In addition, the ALJ ordered that by November 5, 2014 at 5:00 p.m., each party deliver a paper copy of their pre-marked exhibits with an exhibit list to the ALJ. Decision No. R14-0837-I. Most of the parties failed to do this.¹ The parties who failed to do this must immediately deliver these documents to the ALJ.²

17. Given the parties' failure to comply with Decision No. R14-0837-I, the ALJ strongly advises the parties to review that Decision again to ensure they are in compliance with all other requirements.

E. Change in Start Time for November 24, 2014 Hearing.

18. Sometime during the week of November 3, 2014, the Commission changed its weekly meeting from November 26, 2014 to November 24, 2014. Given this change, the hearing scheduled to start at 9:15 a.m. on November 24, 2014 will instead start at 10:00 a.m.

¹ As there are a very large number of interveners in this proceeding, the ALJ will not list each intervener who failed to comply. The parties who failed to comply are aware of their failure to act.

² The parties should note that the Commission's office will be closed on November 11, 2014. The ALJ will be at the office that day, so the parties may deliver the documents by sliding them under the door at the Commission's reception office.

II. ORDER**A. It Is Ordered That:**

1. The “Stipulated Motion of Pikes Peak Satcom, d/b/a New-Intercontinental-Express (NICE) on the One Hand, and on the Other Hand, AEX, Inc., d/b/a Alpine Express; Alpine Taxi/Limo, Inc., d/b/a Alpine and/or Go Alpine; Home James Transportation Services Ltd.; and Tazco, Inc., d/b/a Sunshine Taxi to Restrictively Amend the Application, for Conditional Withdrawal of Each Named Intervener’s Intervention, and for a Waiver of the Response Time” is granted.

2. The second amended 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 is amended as set forth in ¶ 5 above.

3. The intervention filed by Home James Transportation Services, Ltd., (Home James) is withdrawn. Home James is dismissed as a party to this proceeding.

4. The intervention filed by Alpine Taxi/Limo, doing business as Alpine, and Go Alpine (Go Alpine) is withdrawn. Go Alpine is dismissed as a party this proceeding.

5. The intervention filed by AEX, doing business as Alpine Express (Alpine Express) is withdrawn. Alpine Express is dismissed as a party to this proceeding.

6. The intervention filed by Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi) is withdrawn. Sunshine Taxi is dismissed as a party this proceeding.

7. The intervention filed by Mercy Medical Transportation Services, LLC (Mercy Medical) is withdrawn. Mercy Medical is dismissed as a party this proceeding.

8. The response time to the “Motion to Take Testimony by Telephone” is shortened to the time the November 13, 2014 hearing is scheduled to commence.

9. The parties who have failed to provide copies of their pre-marked exhibits to the ALJ as ordered by Decision No. R14-0837-I shall do so immediately.

10. The hearing scheduled for November 13, 14, 17 through 21, and 24, 2014 shall be on the merits of the Application as amended by this Decision. The hearing scheduled for November 24, 2014 shall commence at 10:00 a.m. to accommodate the Commission's weekly meeting.

11. 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