

Decision No. R14-1414-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0964CP

IN THE MATTER OF THE APPLICATION OF LOONEY LOOP 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
MANA L. JENNINGS-FADER
REQUIRING APPLICANT TO RETAIN
LEGAL COUNSEL IN THIS MATTER
AND MODIFYING DECISION NO. R14-1365-I**

Mailed Date: November 26, 2014

I. STATEMENT

1. On September 25, 2014, Looney Loop (Looney Loop or Applicant) filed an Application for New Permanent Authority to Operate as a Common Carrier of Passengers by Motor Vehicle for Hire (Application). That filing commenced this Proceeding.

2. On October 6, 2014, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 5); established an intervention period; and established a procedural schedule. On November 13, 2014, Decision No. R14-1365-I vacated that procedural schedule.

3. On November 12, 2014, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

4. Colorado Jitney, LLC, doing business as Colorado Jitney (Intervenor), timely intervened. Intervenor opposes the Application and is represented by legal counsel in this matter.

5. Applicant and Intervenor, collectively, are the Parties.

A. Applicant to Retain Legal Counsel.

6. Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1201(a)¹ requires a party in an adjudication before the Commission to be represented by an attorney except that, pursuant to Rule 4 CCR 723-1-1201(b)(II) and as relevant here, an individual who is not an attorney may appear to represent the interests of a closely-held entity, as provided in § 13-1-127, C.R.S. The Commission has held that, unless an exception applies, a party must be represented by legal counsel in an adjudication and that the burden to prove that an exception applies is on the party that seeks to appear without legal counsel. In addition, the Commission has held that, if a party does not establish that an exception applies to it, there are two consequences: first, filings made by an individual who is not an attorney on behalf of the party are void and of no legal effect; and, second, the party must be represented by an attorney in order to participate in a prehearing conference, in an evidentiary hearing, and in oral argument.

7. This is an adjudication before the Commission. Looney Loop is a Colorado limited liability company, is a party in this matter, and is not represented by an attorney in this Proceeding.

8. If Looney Loop wishes to be represented in this matter by an individual who is not an attorney, then Looney Loop must prove that it meets the requirements to proceed in this case without an attorney.

9. By Decision No. R14-1365-I at ¶ 15 and Ordering Paragraph No. 5, the ALJ ordered Applicant either to retain legal counsel for this Proceeding or to show cause why it should be permitted to proceed in this matter without legal counsel. If Applicant chose to retain

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

counsel, its counsel was to enter an appearance no later than November 24, 2014. If Applicant chose to show cause, it was to make its show cause filing no later than November 24, 2014.

10. Decision No. R14-1365-I contained the following advisements:

Looney Loop is advised, and is on notice, that if it fails either to show cause or to have its attorney file an entry of appearance as required by this Interim Decision, the ALJ will issue a subsequent Interim Decision that requires Looney Loop to retain legal counsel to represent it in this Proceeding.

Looney Loop is advised, and is on notice, that if the ALJ issues a subsequent [Interim] Decision that requires Looney Loop to retain legal counsel and if Looney Loop then fails to retain legal counsel, the ALJ will dismiss the Application.

Id. at ¶¶ 18-19 (bolding in original).

11. On November 13, 2014, the Commission served Decision No. R14-1365-I on Applicant by first-class U.S. mail. The Commission mailed that Interim Decision to the Denver, Colorado mailing address for Applicant that is shown on the Application. As of the date of this Interim Decision, that mailing has not been returned to the Commission as undeliverable. Applicant is presumed to have received Decision No. R14-1365-I.

12. As of the date of this Interim Decision, no attorney has entered an appearance on behalf of Looney Loop. As of the date of this Interim Decision, Looney Loop has not requested additional time within which to retain counsel.

13. As of the date of this Interim Decision, Looney Loop has not responded to the order to show cause (*i.e.*, Decision No. R14-1365-I). As of the date of this Interim Decision, Looney Loop has not requested additional time within which to respond to the order to show cause.

14. Looney Loop failed to comply with the Decision No. R14-1365-I requirement that Looney Loop either retain legal representation or show cause. The failure was unexplained and unexcused. Looney Loop was advised of the consequences of a failure to comply.

15. The ALJ finds that, although given the opportunity to do so, Looney Loop has not established that it comes within the exception contained in Rule 4 CCR 723-1-1201(b)(II). Therefore, in accordance with Rule 4 CCR 723-1-1201(a), the ALJ finds that Looney Loop must be represented by an attorney in this case.

16. By this Interim Decision, the ALJ will order Looney Loop to retain an attorney to represent it in this matter and will order the attorney for Looney Loop to enter an appearance on or before **December 3, 2014**.

17. Looney Loop is advised and is on notice that it cannot proceed in this case unless it is represented by an attorney who is admitted to practice law in, and who is in good standing in, Colorado.

18. Looney Loop is advised and is on notice that the failure of its counsel to enter an appearance as required by this Interim Decision will result in dismissal of the Application without prejudice.

B. Modification of Filing Requirement in Decision No. R14-1365-I.

19. In Decision No. R14-1365-I at ¶ 31 and Ordering Paragraph No. 12, the ALJ ordered Applicant to make, not later than November 28, 2014, a filing that (a) contains a proposed procedural schedule and (b) complies with ¶¶ 31-35 of that Interim Decision.

20. At the time the ALJ issued Decision No. R14-1365-I, Applicant was not required to be represented by legal counsel in this matter. As discussed above, Applicant now must be represented by an attorney in this Proceeding.

21. Because Applicant must be represented by an attorney, the filing that complies with Decision No. R14-1365-I at ¶ 31 and Ordering Paragraph No. 12 must be made by Applicant's attorney. Applicant's counsel must enter an appearance in this matter not later than December 3, 2014. To allow time for Applicant's counsel to confer with Intervenor's counsel and to make the required filing, the ALJ will modify Decision No. R14-1365-I by changing the date for making a filing that complies with ¶¶ 31-35 of that Interim Decision; the filing date will be **December 10, 2014**.

22. The requirement that Applicant's counsel make the filing and the change in the filing date are the only modifications to Decision No. R14-1365-I. In all other respects, Decision No. R14-1365-I remains in effect.

II. ORDER

A. It Is Ordered That:

1. Looney Loop shall retain an attorney who is licensed to practice law in Colorado and who is in good standing in Colorado to represent it in this Proceeding.

2. Not later than December 3, 2014, the attorney for Looney Loop shall enter an appearance in this Proceeding.

3. If the attorney for Looney Loop does not enter an appearance as required by Ordering Paragraph No. 2, the Administrative Law Judge will dismiss this Proceeding without prejudice.

4. Decision No. R14-1365-I is modified as follows: (a) counsel for Looney Loop must make the filing required by Decision No. R14-1365-I at ¶ 31 and Ordering Paragraph No. 12; and (b) not later than December 10, 2014, counsel for Looney Loop shall make a filing

that complies with Decision No. R14-1365-I at ¶ 31 and Ordering Paragraph No. 12. The remainder of Decision No. R14-1365-I remains in effect.

5. The Parties are held to the advisements in the Interim Decisions issued in this Proceeding.

6. 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