

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0043CP-EXT

IN THE MATTER OF THE APPLICATION OF CCT HOLDINGS LIMOS, LLC DOING BUSINESS AS COLORADO CANNABIS TOURS FOR PERMANENT AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 55977.

**RECOMMENDED DECISION DENYING APPLICATION
AND CLOSING PROCEEDING**

Issued Date: September 6, 2024

TABLE OF CONTENTS

I. STATEMENT.....	2
A. Background.....	2
II. BURDEN OF PROOF	4
III. FINDINGS OF FACT	5
A. Colorado Cannabis Tours	5
B. Explorer Tours	9
IV. CONCLUSIONS OF LAW	11
A. Legal Standard.....	11
1. Regulated Monopoly	11
2. Fitness to Conduct the Proposed Service	12
a. Operational Fitness.....	12
b. Managerial Fitness	12
c. Financial Fitness	13
3. Substantial Inadequacy of Existing Service/Public Need for the Proposed Service	13
B. Application of Law to Facts	15
1. Burden of Proof.....	15
2. Scope of Amended Application Versus Evidence Presented at Hearing	15
3. Fitness to Conduct the Proposed Service	17

a. Managerial Fitness	17
b. Operational Fitness.....	17
c. Financial Fitness	18
4. Substantial Inadequacy of Explorer Tours’ Service/Public Need for Proposed Service.....	18
V. ORDER.....	20
A. The Commission Orders That:	20

I. **STATEMENT**

A. **Background**

1. On January 19, 2024, CCT Holdings Limos, LLC doing business as Colorado Cannabis Tours (“Colorado Cannabis Tours”) filed the application described in the caption above (“Application”).

2. On January 22, 2024, the Commission issued public notice of the authority sought by Colorado Cannabis Tours in the Application as follows:

For an order of the Commission authorizing the extension of Certificate of Public Convenience and Necessity (CPCN) No. 55977.

Currently, CPCN No. 55977 authorizes the following:

Transportation of passengers, in call-and-demand shuttle service between all points in the Counties of Adams, Arapahoe, and Denver, State of Colorado.

If the extension is granted, CPCN No. 55977 will read:

Transportation of passengers, in call-and-demand shuttle service between all points in the Counties of Adams, Arapahoe, Denver, Jefferson, Clear Creek, Larimer, and Pueblo, State of Colorado.

3. On January 25 and February 14, 2024, Mountain Star Transportation LLC, doing business as Explorer Tours (“Explorer Tours”) and Aspire Tours LLC (“Aspire Tours”) filed interventions and entries of appearance, respectively. Explorer Tours and Aspire Tours claimed that the extended authority sought by Colorado Cannabis Tours would overlap with their own authority described in Certificate of Public Convenience and Necessity (“CPCN”) Nos. 55952 and 55865, respectively. Explorer Tours and Aspire Tours further asserted that they would be harmed if the Application is granted.

4. On February 28, 2024, the Commission deemed the Application complete and referred the proceeding by minute entry to an Administrative Law Judge (“ALJ”). The proceeding was subsequently assigned to the undersigned ALJ.

5. On April 12, 2024, the ALJ issued Decision No. R24-0230-I that set of a deadline of May 20, 2024 for Colorado Cannabis Tours to file and serve witness and exhibit lists and exhibits, and a deadline of June 10, 2024 for Explorer Tours and Aspire Tours to file and serve witness and exhibit lists and exhibits.

6. On April 23, 2024, Colorado Cannabis Tours filed a Statement Regarding Hearing in which it expressed a preference for a remote hearing. No other party filed a Statement Regarding Hearing or any other document expressing a preference for the method for conducting the hearing.

7. On April 29, 2024, Colorado Cannabis Tours and Aspire Tours filed a Joint Motion for Approval of Stipulation Regarding Restrictions and Withdrawal of Intervention (“Joint Motion”).

8. On May 1, 2024, the ALJ issued Decision No. R24-0289-I that scheduled a remote evidentiary hearing in this proceeding for June 27, 2024.

9. On May 24, 2024, the ALJ issued Decision No. R24-0350-I that granted the Joint Motion and dismissed Aspire Tours from the proceeding. As a result, the Application was amended to delete Larimer County and add the following restrictions:

Transportation of passengers, in call-and-demand shuttle service between all points in the Counties of Adams, Arapahoe, Denver, Jefferson, Clear Creek, and Pueblo, State of Colorado.

RESTRICTIONS:

1. Restricted against the transportation of passengers in Clear Creek County any earlier than three (3) hours before sunset each day.

2. Restricted against the transportation of passengers to/from Rocky Mountain National Park, Estes Park, and Mount Evans/Mount Blue Sky Scenic Byway.

3. Restricted against the transportation of any passengers under the age of twenty-one (21) pursuant to Colorado Department of Revenue, Marijuana Enforcement Division regulations.

10. Colorado Cannabis Tours and Explorer Tours both filed and served witness and exhibit lists and exhibits by the deadlines established in Decision No. R24-0230-I.

11. The hearing went forward on June 27, 2024. Michael Eymer testified on behalf of Colorado Cannabis Tours and Roman Lysenko testified on behalf of Explorer Tours. Exhibits 100-125 and 200-202 were admitted into the evidentiary record. At the conclusion of the hearing, the ALJ took the case under advisement.

II. BURDEN OF PROOF

12. Except as otherwise provided by statute, the Administrative Procedures Act imposes the burden of proof in administrative adjudicatory proceedings upon “the proponent of an order.”¹ The party bearing the burden must prove their case by a preponderance of the

¹ § 24-4-105(7), C.R.S.

evidence.² The evidence must be “substantial evidence,” which is defined as “such relevant evidence as a reasonable [person’s] mind might accept as adequate to support a conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”³ This standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence.⁴

III. FINDINGS OF FACT

A. Colorado Cannabis Tours

13. The Commission issued CPCN No. 55977 to Colorado Cannabis Tours on July 18, 2022. CPCN No. 55977 authorizes Colorado Cannabis Tours to provide call-and-demand shuttle service between all points in Adams, Arapahoe, and Denver counties. If the Amended Application is granted, Colorado Cannabis Tours’ territory would be expanded to include Jefferson, Clear Creek, and Pueblo Counties. The Amended Application would also restrict Colorado Cannabis Tours as described above.⁵

14. Colorado Cannabis Tours also has a luxury limousine permit issued by the Commission on May 8, 2019.⁶

15. Colorado Cannabis Tours is a mobile hospitality business that provides transportation in mobile consumption lounges in which customers are permitted to consume their own marijuana. Colorado Cannabis Tours has three permits issued by Colorado’s Marijuana

² Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1.

³ See, e.g., *City of Boulder v. PUC*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. PUC*, 949 P.2d 577, 585 (Colo. 1997)).

⁴ *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985).

⁵ *Supra* at ¶ 9.

⁶ Hr. Ex. 100.

Enforcement Division (“MED”) that allow Colorado Cannabis Tours to operate its mobile consumption lounges consistent with Colorado laws regulating the consumption of marijuana. The regulations of the Marijuana Enforcement Division require Colorado Cannabis Tours’ vehicles to have blinds that must be down and closed when customers are consuming marijuana so that people outside the vehicle cannot witness the consumption. They also require the customers to be recorded the entire time they are in the vehicle.⁷

16. Colorado Cannabis Tours provides transportation to dispensaries and cultivation facilities where tours of those facilities take place. Mr. Eymer testified that he is seeking to extend CPCN No. 55977 to provide tours to additional dispensaries and cultivation facilities in the new counties (Jefferson, Clear Creek, and Pueblo).⁸ Mr. Eymer testified that there are no companies with both MED-licenses to provide mobile consumption lounges and Commission-issued CPCNs to serve Jefferson (including Red Rocks Amphitheater), Clear Creek, and Pueblo counties.⁹

17. Mr. Eymer cited a Statewide Transportation Plan authored by the Colorado Department of Transportation concluding that Colorado’s population has been and will continue to grow at an annual 7% rate through 2030, and then decline to a 4% rate by 2045. The biggest population increases are expected to take place in the Front Range area. With the growth in population, Colorado’s transportation needs will also expand. Mr. Eymer thus suggested that the Statewide Transportation Plan supports the conclusion that the demand for the type of transportation service his company provides will also expand.¹⁰

⁷ Hr. Tr. June 27, 2024, pp. 19:18-26:2; Hr. Ex. 101.

⁸ Hr. Tr. June 27, 2024, pp. 28:7-31:4.

⁹ *Id.* at pp. 33:8-36:3; 45:18-46:4.

¹⁰ *Id.* at pp. 36:5-38:13 (citing Hr. Ex. 113 at 18 and 64).

18. Mr. Eymer also testified regarding traffic count data purporting to show the number of vehicles driving to Lookout Mountain Park, home to the Buffalo Bill Museum and Grave, and Red Rocks Amphitheater. According to Mr. Eymer, the data in Exhibits 116 and 117 shows that 2,988 and 4,908 vehicles travelled to those locations each day, respectively.¹¹

19. Exhibit 116 provides data from three traffic counts that took place in August 2015, 2016, and 2022 at the intersection of Lookout Mountain Road and Charros Drive. The “[a]verage daily traffic volume” resulting from the three counts is 2,988. It is not clear how many houses and/or businesses are located between that intersection and the entrance to Lookout Mountain Park. As a result, the ALJ finds that Exhibit 116 provides no conclusive evidence of vehicles traveling, and/or the demand for transportation services, to Lookout Mountain Park.

20. Exhibit 117 provides data from two traffic counts that took place in August 2015 and July 2022 at a point south of the intersection of Hogback Road and Alameda Parkway. The “[a]verage daily traffic volume” of the two traffic counts is 4,908 vehicles per day. Mr. Eymer testified that Exhibit 117 shows the number of vehicles traveling to a point outside of the box office of Red Rocks Amphitheater.¹² However, because the vehicle counter was located south of the intersection of Hogback Road and Alameda Parkway, it counted vehicles traveling north or south along Hogback Road/County Road 93, not southwest/northeast along Alameda Parkway, which leads to Red Rocks Amphitheater’s box office. Accordingly, the ALJ finds that Exhibit 117 provides no conclusive evidence of vehicles traveling, and/or the demand for transportation services, to Red Rocks Amphitheater.

¹¹ *Id.* at pp. 38:22-42:4.

¹² *Id.* at pp. 40:20-42:4.

21. Mr. Eymer further testified that there are no Commission-approved and MED-licensed providers of shuttle service to Red Rocks Amphitheater. As a result, no entity can provide shuttle transportation in a mobile consumption lounge in which customers can consume marijuana while being transported to/from Red Rocks Amphitheater. Finally, Mr. Eymer testified that he believes there is demand for additional shuttle service to/from Red Rocks Amphitheater based on his experience providing luxury limousine service in mobile consumption lounges to that event venue.¹³ Based on the foregoing, Mr. Eymer concluded that there is demand for the service proposed in the Amended Application.

22. Mr. Eymer also testified that it is not “fathomable” to him that Explorer Tours is satisfying the demand for shuttle service to Jefferson County and Red Rocks Amphitheater because Explorer Tours is “a moderately-sized company.” He further speculated that Explorer Tours’ vehicles are “booked out” and thus full for the shuttle services it provides based on information in Explorer Tours’ annual report filed with the Commission stating that it has five vehicles with seating capacity of nine to 15 passengers and five permanent employees. Because it does not have a MED license, Explorer Tours cannot provide shuttle service in a mobile marijuana consumption lounge. Mr. Eymer concluded that Explorer Tours transportation service does not satisfy the existing demand for shuttle service generally, or for shuttle service in mobile consumption lounges specifically.¹⁴

23. Mr. Eymer also testified that Colorado Cannabis Tours has the vehicles and employees to serve the currently unmet demand in the proposed expanded territory. To the extent it would need to expand its operations to meet the demand in the proposed new territory,

¹³ *Id.* at pp. 45:18-46:8.

¹⁴ *Id.* at pp. 58:13-59:17.

Colorado Cannabis Tours has the financial ability to do so. However, Colorado Cannabis Tours did not provide documentary evidence showing, or specific testimony regarding, its current finances or access to capital.¹⁵

24. Finally, Mr. Eymer testified that the Amended Application would limit Colorado Cannabis Tours to providing shuttle service as a mobile consumption lounge.¹⁶ However, the attorney for Colorado Cannabis Tours stated in his closing argument that the authority proposed in the Amended Application would not so restrict Colorado Cannabis Tours. In other words, if the Amended Application is approved, Colorado Cannabis Tours would be permitted to provide shuttle service to customers aged 21 and older regardless of whether they intend to consume marijuana in Colorado Cannabis Tours' mobile transportation lounges.¹⁷

B. Explorer Tours

25. The Commission issued CPCN No. 55952 to Explorer Tours on May 23, 2023 that authorizes Explorer Tours to provide, among other things, call-and-demand shuttle service between all points in Denver and Red Rocks Amphitheater, and call-and-demand sightseeing service originating in Boulder and Denver counties to all point in the counties of Denver, Boulder, Clear Creek, Douglas, El Paso, Grand, Jefferson, and Larimer.¹⁸ Prior to receiving CPCN No. 55952, Explorer Tours operated pursuant to a Commission-issued luxury limousine permit for 12 years.¹⁹ Explorer Tours currently operates as a shuttle, sightseeing, and luxury limousine company.²⁰

¹⁵ *Id.* at pp. 59:18-60:4.

¹⁶ *Id.* at pp. 48:4-49:3.

¹⁷ *Id.* at p. 91:4-8.

¹⁸ Hr. Ex. 200.

¹⁹ Hr. Tr. June 27, 2024, p. 67:9-13.

²⁰ *Id.* at p. 67:9-13.

26. Explorer Tours has six Sprinter vans that can each transport up to 14 people, and a 56-person motor coach. Explorer Tours can thus transport up to 140 passengers at any one time. Explorer Tours' fleet is paid off and it has the financial means to purchase more vehicles as necessary. Explorer Tours has more than the five employees listed in Hearing Exhibit 125, which states that the filer must list "the largest number of staff on any (24-hour period) in the year 2023."²¹ Mr. Lysenko testified that Explorer Tours is willing and able to add vehicles and staff to satisfy any additional demand that its current resources cannot accommodate.²²

27. Explorer Tours has never sold-out its available seats for shuttle service to an event at Red Rocks Amphitheater. Mr. Lysenko testified that there is more demand for luxury limousine service to events at Red Rocks Amphitheater than for shuttle service. He believes that, following the Covid pandemic, attendees of events at Red Rocks Amphitheater are more willing to share transportation to Red Rocks with people they know via luxury limousine service versus with people they do not know via shuttle service. As a result, Mr. Lysenko believes that there is more demand for luxury limousine service to Red Rocks Amphitheater than there is for shuttle service.²³

28. Mr. Lysenko further testified he has researched and understands the requirements for providing mobile marijuana consumption lounge service. However, he has not applied to obtain the requisite permissions/licenses to provide such a service because his research shows that there is insufficient demand for such a service to be provided as a shuttle service. Instead, to the extent there is demand for a mobile marijuana consumption lounge service, it is as a luxury limousine service that provides transportation to a single chartering party, the members of which

²¹ Hr. Ex. 125 at 5.

²² Hr. Tr. June 27, 2024, pp. 67:19-69:4.

²³ *Id.* at pp. 69:6-70:8.

typically have a preexisting relationship with each other. His research has revealed that people who want to consume marijuana in a vehicle want to do so with people they know, and not with strangers. According to Mr. Lysenko, the individual customers of shuttle service are typically unrelated, or are members of small groups, and the individual customers either do not know each other, or do not know members of the other small group(s) riding in the vehicle at the same time. However, Mr. Lysenko testified that if demand arises for a mobile transportation lounge shuttle service, he will apply for the required licenses/permissions and make the required alterations to his vehicles to provide the service.²⁴

IV. CONCLUSIONS OF LAW

A. Legal Standard

1. Regulated Monopoly

29. The granting of a certificate to operate a call-and-demand shuttle and charter service is governed by the doctrine of regulated monopoly. The regulated monopoly doctrine is based on the principle that fewer carriers who can make a reasonable return will give the public safe, efficient, and economical service, and that increasing the number of providers ultimately results in a deterioration of service and higher rates for the public.²⁵ The corollary to this principle is that incumbent carriers are afforded some protection from competition. However, an incumbent common carrier is only entitled to protection from new competition if it provides service that is adequate to satisfy the needs of the public.²⁶ Accordingly, under the regulated monopoly doctrine, an applicant must prove that: (a) it is fit to conduct the proposed service;

²⁴ *Id.* at pp. 70:18-73:11, 75:24-76:18

²⁵ See *Archibald v. PUC*, 171 P.2d 421, 423 (Colo. 1946); *Morey v. PUC*, 629 P.2d 1061, 1066-67 (Colo. 1981).

²⁶ *Ephraim Freightways, Inc. v. PUC*, 380 P.2d 228, 231 (Colo. 1963); *Miller Bros., Inc. v. PUC*, 525 P.2d 443, 446-447 (Colo. 1974).

(b) any existing certificated carrier's service in the proposed service area is substantially inadequate; and (c) there is a public need for the service proposed by the applicant.²⁷

2. Fitness to Conduct the Proposed Service

30. The fitness element consists of three sub-elements: (a) operational; (b) managerial; and (c) financial fitness. Fitness must be evaluated on a case-by-case basis upon the unique circumstances of each applicant and the proposed service.²⁸

a. Operational Fitness

31. In general, operational fitness encompasses a consideration of whether the applicant has the equipment, personnel, and facilities to conduct for-hire passenger carrier operations. The following factors are relevant to the fitness inquiry: (a) whether the applicant has at least the minimum efficient scale necessary to run the proposed service (which addresses the question of whether a minimum size of operation is required) and, if such a minimum does exist – what is the approximate magnitude for the market at issue; (b) whether the applicant has fixed physical facilities such as office space and maintenance garages, as appropriate; and (c) whether the applicant has a sufficient number of vehicles of the appropriate type to provide the proposed service.²⁹

b. Managerial Fitness

32. The managerial fitness factor addresses whether the applicant has the business management experience of managing employees, setting and maintaining budgets, and complying with applicable laws and regulations.³⁰ Managerial experience in business involving a

²⁷ See *Durango Trans., Inc. v. PUC*, 122 P.3d 244, 247-252 (Colo. 2005).

²⁸ See, e.g., Decision No. C09-0207 at ¶¶ 6, 454 issued in Consolidated Proceeding Nos. 08A-241CP, 08A-283CP, 08A-284CP-Extension, and 08A-300CP on February 27, 2009.

²⁹ See Decision No. C08-0933 at ¶ 7 issued in Consolidated Proceeding Nos. 08A-241CP, 08A-281CP-Extension, 08A-283CP, 08A-284CP-Extension, and 08A-300CP on September 4, 2008.

³⁰ See Decision No. R10-0339 at ¶ 103 issued in Proceeding No. 09A-073CP on April 9, 2010.

common carrier regulated by the Commission is particularly relevant to this factor. A business plan demonstrating that an applicant can balance the operational, financial, and legal requirements of running a common carrier business is particularly good evidence of managerial fitness.

c. Financial Fitness

33. The Commission has never promulgated rules or regulations specifying a financial fitness standard. However, as a general matter, the applicant must make some showing, however minimal, that it either has or has access to financial resources that will enable it to implement the proposed service. Factors that are relevant to the analysis are: (a) the applicant's credit worthiness and access to capital; (b) the applicant's credit history and assessment of financial health over the near future; and (c) the applicant's capital structure and current cash balances. The evidence of financial fitness need not be overwhelming in order for an applicant to satisfy its burden.³¹

3. Substantial Inadequacy of Existing Service/Public Need for the Proposed Service

34. While the substantial inadequacy of existing service and the public need for the proposed service are separate factors, they are closely related. Indeed, the adequacy of the incumbent's service is integral to the question of whether the public needs the proposed additional service.³² If the existing service is adequate, the Commission cannot find that the public convenience and necessity requires the addition of a carrier.³³

³¹ Decision No. R15-0376 at ¶ 72 issued in Proceeding No. 14A-1008CP on April 24, 2015; *Thacker Brothers Transportation v Public Utilities Commission*, 543 P.2d 719, 721 (Colo. 1975).

³² *Ephraim Freightways, Inc.*, 380 P.2d at 231.

³³ See *Yellow Cab Cooperative Association v. PUC*, 869 P.2d 545, 548-49 (Colo. 1994).

35. Whether the incumbent carrier's service is substantially inadequate is a question of fact that must be analyzed on a case-by-case basis.³⁴ Substantially inadequate service is established by evidence of "a general pattern of inadequate service" on the part of the incumbent carrier.³⁵ Substantial inadequacy can also be demonstrated with evidence that the incumbent carrier "is [not] ready, willing, and able to provide transportation to anyone who might request it."³⁶ Such a showing can be made by evidence that the public perceives the incumbent's rates as prohibitively expensive, and that the incumbent does not have sufficient personnel and/or equipment to service the demand for its transportation service.³⁷

36. A mere showing that there is enough business to warrant more than one certified carrier is insufficient to establish substantial inadequacy.³⁸ Likewise, substantial inadequacy is not established through "expressions of mere opinion, preference, and desire and willingness to use the services of [the applicant] over the services of" an incumbent carrier.³⁹ Finally, the incumbent carrier is not held to a standard of perfection because "when a common carrier renders services to numerous customers in a wide territory undoubtedly some dissatisfaction will arise and some legitimate complaints result."⁴⁰

37. While the foregoing summarizes the evidence relied upon in prior cases, the Commission is authorized "to consider a broad range of factors in its substantial-inadequacy

³⁴ *Durango Trans., Inc.*, 122 P.3d at 248.

³⁵ *Id.* (quoting *Ephraim Freightways, Inc.*, 380 P.2d at 232).

³⁶ *Id.* at 248.

³⁷ *Id.* See also *id.* ("If the incumbent carrier's rates are so high as to amount to a denial of service, . . . the Commission must consider this fact in determining whether carrier's service is substantially inadequate.")

³⁸ *Durango Trans., Inc.*, 122 P.3d at 248 (citing *Donohue v. PUC*, 451 P.2d 448, 449 (1960)).

³⁹ *Id.* (quoting *PUC v. Weicker Transfer & Storage Co.*, 451 P.2d 448, 449 (Colo. 1969)).

⁴⁰ *Ephraim Freightways, Inc.*, 380 P.2d at 232.

analysis.”⁴¹ Such an approach is consistent with the Commission’s directive to grant sufficient transportation authority to “ensure that the public’s transportation needs are met.”⁴²

B. Application of Law to Facts

1. Burden of Proof

38. In its closing argument, Colorado Cannabis Tours asserted that Explorer Tours: (a) bears the burden of “putting into question” the Amended Application; and (b) with one exception, failed to “put into question” the requested expanded authority in the Amended Application. The lone exception is the requested shuttle service to Red Rocks Amphitheater.⁴³ Colorado Cannabis Tours concluded that the extended authority sought in the application other than to Red Rocks Amphitheater must be granted because Explorer Tours failed to carry its burden.

39. Colorado Cannabis Tours is incorrect. Rule 1500 of the Commission’s Rules of Practice and Procedure states in relevant part: “The burden of proof and the initial burden of going forward shall be on the party that is the proponent of a decision, unless previously agreed to or assumed by a party. The proponent of the order is that party commencing a proceeding.” Here, Colorado Cannabis Tours commenced the proceeding by filing its Application. Accordingly, the ALJ concludes that Colorado Cannabis Tours bears the burden of proof.

2. Scope of Amended Application Versus Evidence Presented at Hearing

40. The Amended Application seeks to add Jefferson, Clear Creek, and Pueblo counties to the shuttle service territory of Colorado Cannabis Tours included in CPCN No. 55977 subject to the restrictions stated above. The evidence presented at the hearing, however,

⁴¹ *Durango Trans. Inc.*, 122 P.3d at 250.

⁴² *Id.*

⁴³ Hr. Tr. June 27, 2024, p. 186:1-9.

addressed shuttle service primarily to Red Rocks Amphitheater, with limited evidence relevant to the demand for service to Lookout Mountain Park.

41. As justification, Colorado Cannabis Tours contended that Explorer Tours objected only to the part of the proposed expanded authority that “overlaps” with Explorer Tours’ authority, which is Jefferson and Clear Creek counties. Colorado Cannabis Tours further stated that it limited its presentation of evidence to the part of the Amended Application to which Explorer Tours objected in its Intervention. Colorado Cannabis Tours thus implied that: (a) the Amended Application should be granted as to Pueblo county because Explorer Tours did not object to the expansion of CPCN No. 55977 to that county; and (b) Colorado Cannabis Tours was not required to provide evidence of fitness because the information on those topics in the Application is sufficient and Explorer Tours did not put those elements “at issue” in its intervention.⁴⁴

42. Colorado Cannabis Tours did not cite any authority supporting its argument and the ALJ is unaware of any. The ALJ concludes that Colorado Cannabis Tours’ argument is incorrect. As concluded above, Colorado Cannabis Tours bears the burden of proof in this proceeding. As a result, Colorado Cannabis Tours must prove by a preponderance of the evidence the elements of the regulated monopoly doctrine with respect to the entirety of the extended authority it seeks in the Amended Application. Colorado Cannabis Tours’ interpretation of the scope of Explorer Tours’ intervention, even if correct, does not lessen Colorado Cannabis Tours’ burden.

⁴⁴ See *id.* at pp. 104:4-105:10. Cf. Decision No. R19-0422-I at ¶¶ 11-17 issued in Proceeding No. 19A-0144CP on May 20, 2019 (sightseeing and shuttle service are sufficiently similar to provide the basis for a holder of sightseeing authority to intervene in and oppose an application proceeding seeking overlapping shuttle authority).

3. Fitness to Conduct the Proposed Service

a. Managerial Fitness

43. Explorer Tours does not dispute that Colorado Cannabis Tours has the managerial fitness to support the requested expanded authority. The record reflects that Mr. Eymer has successfully operated Colorado Cannabis Tours for ten years.⁴⁵ Accordingly, the ALJ finds and concludes that Colorado Cannabis Tours has satisfied its burden with respect to managerial fitness.

b. Operational Fitness

44. Mr. Eymer testified that there is unmet demand for transportation service to Red Rocks Amphitheater and Lookout Mountain Park. However, he did not testify as to whether Colorado Cannabis Tours would add vehicles to accommodate its requested expanded authority.⁴⁶ Mr. Eymer testified that Colorado Cannabis Tours provides limousine service to Red Rocks Amphitheater.⁴⁷ Further, the record does not reflect whether Colorado Cannabis Tours currently has excess capacity to alleviate some of the alleged unmet demand for transportation services to Red Rocks Amphitheater. As a result, the record does not support the conclusion that approval of the application would have any impact on the alleged unmet demand for transportation services to Red Rocks Amphitheater or anywhere else in the requested expanded territory.

45. Based on the foregoing, the ALJ finds and concludes that Colorado Cannabis Tours has not carried its burden of establishing that it has operational fitness to serve the expanded authority requested in the Amended Application.

⁴⁵ Hr. Tr. June 26, 2024, p. 20:12-16.

⁴⁶ *Id.* at pp. 93:17-24, 122:22-123:25, 134:15-23.

⁴⁷ *Id.* at pp. 45:18-46:8.

c. Financial Fitness

46. Colorado Cannabis Tours provided no evidence regarding its financial fitness to provide shuttle service in the requested expanded service. As a result, the ALJ concludes that Colorado Cannabis Tours has not satisfied its burden with respect to this element.

4. Substantial Inadequacy of Explorer Tours' Service/Public Need for Proposed Service

47. The evidence regarding the substantial inadequacy of Explorer Tours' service and the public need for the proposed service is: (a) the traffic count data summarized above; (b) the seating capacity of Red Rocks Amphitheater; (c) the concert schedule at Red Rocks Amphitheater from May to September 2024, which results in the potential sale of 1.9 million tickets to concerts during that period; and (d) Explorer Tours' maximum capacity of 140 seats to serve Red Rocks Amphitheater at any one time.⁴⁸

48. The ALJ concludes that Colorado Cannabis Tours has not satisfied its burden of proving that Explorer Tours' service is substantially inadequate and that there is a public need for the service proposed in the Amended Application. The evidence establishes that there may be enough business to warrant more than one certified carrier. However, such a showing is insufficient to establish substantial inadequacy.⁴⁹ Instead, it must also be established that the incumbent carrier is not ready, willing, and able to provide transportation to satisfy that demand.⁵⁰ Colorado Cannabis Tours has not presented any such evidence. On the contrary, the

⁴⁸ *Id.* at pp. 86:15-88:20.

⁴⁹ *Durango Trans., Inc.*, 122 P.3d at 248 (“a showing that there is ‘sufficient business to warrant two certified carriers’” is insufficient to establish a public need for the applicant’s proposed service) (citing *Donohue*, 451 P.2d at 449).

⁵⁰ *Id.* at 248.

evidence establishes that Explorer Tours has excess capacity in its existing vehicles and is ready, willing, and able to satisfy any currently unmet demand.⁵¹

49. In addition, Mr. Lysenko testified credibly that his research reveals that, while there is demand for a mobile transportation lounge to Red Rocks Amphitheater, it is for luxury limousine, and not shuttle, service. Mr. Lysenko also testified credibly that he will apply for the required licenses/permits to operate mobile transportation lounges in his service territory if there is demand for the provision of such transportation as a shuttle service within Explorer Tours' service territory. As a result, the ALJ concludes that Colorado Cannabis Tours has not satisfied its burden of establishing that there is an unmet public need for shuttle service in a mobile transportation lounge within the proposed service territory or that Explorer Tours' service is substantially inadequate in that alleged submarket.⁵² For the same reason, Colorado Cannabis Tours has not satisfied its burden of establishing that there is an unmet public need for shuttle service generally within the proposed service territory or that Explorer Tours' service is substantially inadequate.

50. Accordingly, based on the foregoing, the undersigned ALJ finds and concludes that Colorado Cannabis Tours failed to carry its burden of establishing the substantial inadequacy of Explorer Tour's service and the public need for the service proposed in the Amended Application.

51. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, a written recommended decision containing findings of fact and conclusions of law, and a recommended order.

⁵¹ Hr. Tr. June 27, 2024, pp. 67:19-70:8.

⁵² Decision No. R19-0784 issued in Proceeding No. 19A-0144CP on September 24, 2019 (holding that substantial inadequacy/public need within a sub-market of the overall shuttle market is a basis for granting an application for a CPCN over the objection of an incumbent carrier).

V. ORDER**A. The Commission Orders That:**

1. The above-captioned application filed on January 19, 2024 by CCT Holdings Limos, LLC, doing business as Colorado Cannabis Tours, and amended as described in Decision No. R24-0350-I issued on May 24, 2024, is denied.

2. Proceeding No. 24A-0043CP-EXT is closed.

3. 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.

4. 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 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 basic findings 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.

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

6. Response time to any exceptions that may be filed is shortened to seven days.

(S E A L)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CONOR F. FARLEY

Administrative Law Judge

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,
Director