

Decision No. R25-0470

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0471CP-EXT

IN THE MATTER OF THE APPLICATION OF 303 PARTY BUS LLC FOR AUTHORITY TO
EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NO. 55846.

**RECOMMENDED DECISION
GRANTING IN PART AND DENYING IN PART
EXTENSION OF AUTHORITY**

Issued Date: June 25, 2025

TABLE OF CONTENTS

I.	STATEMENT, BACKGROUND, AND FACTUAL FINDINGS.....	2
A.	Procedural Background	2
B.	Factual Findings	3
II.	RELEVANT LAW	21
A.	Commission Jurisdiction	21
B.	Legal Standards to Obtain an Extension to a CPCN	22
III.	DISCUSSION, ANALYSIS AND CONCLUSIONS	26
A.	Public Need and Substantial Inadequacy	26
B.	Fitness.....	32
IV.	ORDER.....	34
A.	The Commission Orders That:	34

I. STATEMENT, BACKGROUND, AND FACTUAL FINDINGS**A. Procedural Background**

1. This proceeding concerns the above-captioned Application (“Application”) seeking to extend operations under Certificate of Public Convenience and Necessity (“CPCN”) No. 55846 filed by 303 Party Bus LLC (“303 Party Bus” or “Applicant”) on October 31, 2024.

2. On November 12, 2024, Mountain Star Transportation, LLC dba Explorer Tours (“Mountain Star” or “Intervenor”) timely filed its Petition for Intervention and Entry of Appearance claiming intervention of right. Mountain Star’s intervention was acknowledged by Decision No. R25-0072-I, issued on January 31, 2025.

3. On December 11, 2024, the Commission referred this matter to an administrative law judge (“ALJ”) by minute entry.

4. By Decision No. R25-0101-I, issued February 13, 2025, a procedural schedule was adopted and a remote evidentiary hearing was scheduled for April 14, 2025.

5. By Decision No. R25-0216-I, issued March 26, 2025, the undersigned ALJ denied Mountain Star’s Motion to Dismiss filed on February 6, 2025.

6. On April 14, 2025, the ALJ called the matter for an evidentiary hearing, as noticed. Both parties appeared.

7. During the hearing, the following persons testified: Messrs. Anthony Bifolck, Isaac Sisneros, Shad Richards, Amanda Miculinich, Donald Van Gilder, Melnia Bender, Corey Ayotte, Roman Lysenko, Marie Zecca, Evelyn Casias, Jeffrey Buxton, and Nicolas Casias. The following Hearing Exhibits were offered and admitted into evidence during the hearing: 100, 101, 104, 106, 107, 109, 111, 200, and 202. Without objection, Hearing Exhibit 113, filed by 303 Party Bus on April 28, 2025, was also admitted as a late-filed exhibit containing a map depicting the zip code

areas identified in the proposed service territory. Hearing Exhibit 112 was used as a demonstrative exhibit but was neither offered nor admitted into evidence.

8. At the conclusion of the evidentiary portion of the hearing, both parties presented closing arguments. The ALJ requested that the parties filing written statements of position ensure they address the issue of perimeter seating, as discussed during the evidentiary hearing, and the legal significance of such seating, as a basis to show substantially inadequate service of the incumbent.

9. 303 Party Bus filed their Statement Regarding Legal Issues and Restrictive Amendment on April 28, 2025. Mountain Star also filed their Statement Regarding Legal Issues of Perimeter Seating on April 28, 2025.

B. Factual Findings

10. 303 Party Bus is a common carrier holding and operating CPCN No. 55846, which authorizes the following:

Transportation of passengers in call-and-demand shuttle and charter service between 6232 Beach Street, Denver, Colorado and the following venues: Red Rocks Amphitheater, 18300 West Alameda Parkway, Golden, Colorado 80401; 1st Bank Center, 11450 Broomfield Lane, Broomfield, Colorado 80021; Sports Authority at Mile High Stadium, 1701 Bryant Street, Denver, Colorado 80204; Coors Field, 2001 Blake Street, Denver Colorado 80205; Ogden Theater, 935 East Colfax Avenue, Denver, Colorado 80218; Fiddlers Green, 6230 Greenwood Plaza Boulevard, Englewood, Colorado 80111; Pepsi Center, 1000 Chopper Circle, Denver, Colorado 80204; Dicks' Sporting Goods Park, 6000 Victoria Way, Commerce City, Colorado 80022; Bluebird Theater, 3317 East Colfax Avenue, Denver, Colorado 80206.

RESTRICTIONS. This authority is restricted: (a) to the use of one vehicle; (b) to the use of a vehicle with a maximum capacity of 44 passengers; (c) to round-trips originating and terminating at 6232 Beach Street, Denver, Colorado that may include stops only at the addresses identified herein; and (d) against service to or from hotels, motels, or airports.

11. 303 Party Bus's Application seeks an extension of CPCN No. 55846 to provide:

Transportation of passengers in call-and-demand shuttle and charter service between: Empower Field 1601 Mile High Stadium Circle, Denver CO 80204; Red Rocks Park and Amphitheatre - Morrison, CO 80465; Ball Arena - 1000 Chopper Circle, Denver CO 80204; Fiddler's Green Amphitheatre - 6350 Greenwood Plaza Blvd, Greenwood Village, CO 80111; Dick's Sporting Goods Park - 6000 Victory Way, Commerce City, CO 80022; Folsom Field - 2400 Colorado Ave; University of Colorado, Boulder, CO 80309; Coors Field - 2001 Blake St, Denver, CO 80205 on one hand and all points in: Zip Codes 80202, 80203, 80204, 80205, 80211, 80214, 80216, State of Colorado on the other hand.

RESTRICTIONS. This authority is restricted: (a) to the use of a vehicle with a seating capacity of 16 to 48 seats; and (b) against service to or from any airports.

12. The Application also states that 303 Party Bus seeks to eliminate all previous restrictions from the existing authority and adding the same new restrictions as the proposed authority.¹

13. Mountain Star is a common carrier holding and operating CPCN No. 55952. As filed with its intervention, CPCN No. 55952 authorizes the following:

(I) Transportation of passengers in call-and-demand sightseeing service originating in Denver and Boulder Counties, to all points in the Counties of Denver, Boulder, Clear Creek, Douglas, El Paso, Grand, Jefferson, and Larimer, State of Colorado, returning to the origination point.

(II) Transportation of passengers in scheduled service and call-and-demand shuttle service: (A) Between all points in Denver County, on the one hand, and all points in Eagle county, on the other hand; (B) Between all points in Denver County, on the one hand, and all points in Pitkin County, on the other hand; and (C) Between all points in the Counties of Eagle and Pitkin, State of Colorado.

(III) Transportation of passengers in call-and-demand shuttle service between all points in Denver County and Origin Hotel Red Rocks at 18485 West Colfax Avenue in Golden, CO 80401, on the one hand, and Red Rocks Park and Amphitheatre, State of Colorado, on the other hand.

¹ See Application at pp. 3-4.

RESTRICTIONS:

Item (II) is restricted against the transportation of passengers in vehicles with a manufacturer's rate passenger capacity of less than 9 passengers, including the driver.

Item (III) is restricted against the transportation of passengers to and/or from Denver International Airport.

14. Mountain Star is the only intervenor in this Proceeding and is opposed to the Application to the extent that it conflicts or overlaps with Mountain Star's service territory (above).

15. Mr. Nicolas Casias is the sole owner of 303 Party Bus and is involved in the management and operations of the company; he also drives the vehicles, if needed. His mother, Ms. Evelyn Casias, has 25-30 years of management experience and has been the company's general manager since 2015, primarily acting as the office manager and conducting other general duties such as bookings, reservations, and customer contact or follow-up, hiring, managing, and training of drivers, insurance, and accounting.

16. 303 Party Bus has held its current CPCN, No. 55846, since April 28, 2014.² The within application seeks an extension of its authority.

17. 303 Party Bus's proposed extended territory is defined by zip codes. See, Hearing Exhibit 113. The 80211 zip code is where 303 Party Bus books approximately 40 percent of its reservations. The remainder of the zip codes represent locations where 303 Party Bus believes they would like to transport to down the line. Mr. Casias believes that the demand for his company's services has increased every year, except for the year of the COVID-19 pandemic. He therefore believes the proposed extension is the solution to be able to create more pickup spots in Denver where groups can be safely transported.

² Hearing Exhibit 101.

18. 303 Party Bus currently has 10 buses in their fleet and employs 26 drivers, some of whom have been with the company for seven or eight years. All 10 vehicles have perimeter-style seating where passengers face the center of the vehicle. Those vehicles originally having front-facing seating were changed to perimeter seating. The vehicles are owned by the company—the vehicles that had been financed for a short period of time have since been paid off. 303 Party Bus typically purchases buses that are a few years old and then converts them to “look like totally new vehicles.” They currently have office and garage space sufficient to support the additional locations they seek to serve in their extended territory and are prepared to obtain more garage space if needed. Should the proposed extension be granted, both Mr. Casias and Ms. Casias stated that 303 Party Bus would be willing and able to purchase more buses (at least four) and hire more drivers.

19. 303 Party Bus submitted Hearing Exhibit 111 as evidence of the company’s finances for 2023. The documents show that 303 Party Bus had sales in 2023 in the amount of \$877, 054.83 and a gross profit of \$466,649.79.³ Their net income was \$170,862.33.⁴ The exhibit also states that 303 Party Bus has a total of \$288,149.22 in current assets and fixed assets in the amount of \$94,676.85, for a combined total of \$382,826.07.⁵ Therefore, Ms. Casias believes the company has adequate financial fitness to operate, as they have cash in the bank and could sell some of their vehicles, should they need to. Ms. Casias testified that she has no concerns with the financial health of 303 Party Bus or facing a downturn if their extension is granted.

20. 303 Party Bus plans to charge \$50 per ticket, which is 20 percent cheaper than Mountain Star’s pricing. Mr. Casias admitted he did not set this price in consideration of what

³ Hearing Exhibit 111 at 1.

⁴ *Id.*

⁵ Hearing Exhibit 111 at 2.

Mountain Star and other providers are charging; rather, he wanted to be “a little cheaper” to help the younger generation be able to afford transportation, as he thinks Mountain Star is too expensive. He also stated he wanted to be able to beat their price and is willing to lower his price if needed. Mr. Jeffrey Buxton, consultant for 303 Party Bus, similarly stated that, while he did not discuss it with 303 Party Bus, his opinion was that anytime there is more than a ten percent difference in price, it becomes material to the customer. He testified that he believes 303 Party Bus’s cost structure is appropriate and adequate to serve their proposed expanded territory. He also wrote a business plan for 303 Party Bus to purchase two additional buses if their extension in this proceeding is approved and calculated that their breakeven point per bus is 50%. He believes that 303 Party Bus has more than sufficient assets on hand to provide extended service; and stated that they have approximately \$200,000 in liquid assets, which is more than enough to purchase buses while also maintaining necessary cash flow until they can “build up” volume for Red Rocks.

21. 303 Party Bus employs Isaac Sisneros as a mechanic for the company’s fleet of vehicles. Mr. Sisneros provides services for a few party bus companies in Colorado and also acts as a shop manager for 303 Party Bus; he has worked full time for them since 2017. Mr. Sisneros works at 303 Party Bus’s storage unit, where they keep their vehicles, on Mondays and Tuesdays. His duties include checking driver reports, checking if anything in the fleet vehicles has broken down over the weekend, bringing in supplies and fluids for the vehicles, etc. He has also built and remodeled buses for 303 Party Bus, installed stereo equipment for the fleet, and does much of the vehicles’ heavy maintenance for average wear and tear. He inspects and/or provides maintenance on all 10 of 303 Party Bus’s vehicles at least once or twice a week. He believes that 303 Party Bus’s facility is in adequate shape for the services they provide in Colorado and its vehicles are maintained in a sufficient way to drive to the locations contained in their proposed extension.

22. 303 Party Bus also employs Shad Richards to work on their fleet. Mr. Richards is a master technician with a commercial vehicle repair facility; he has been working on 303 Party Bus's vehicles since 2016 or 2017. Mr. Richards does the major repairs for 303 Party Bus's fleet, such as taking apart the engine, pulling the transmission, air conditioning work, and any structural problems. He also conducts the fleet's PUC and CDOT ("Colorado Department of Transportation") inspections. Mr. Richards testified that the fleet has passed all inspections and if anything fails, he "red tags" the vehicle until the repair is made. He believes the condition of the fleet is always good. Although he has seen some mechanical issues, no safety issues have been found. Mr. Richards also stated that he has never had a problem with 303 Party Bus in terms of payment, and he believes they have adequate vehicles to serve all the locations in their proposed extension.

23. The location on the proposed extension that was the subject of the majority of the evidence presented is Red Rocks Amphitheatre ("Red Rocks"). In part, 303 Party Bus is authorized provide round trip call-and-demand shuttle and charter service to Red Rocks originating and terminating at 6232 Beach Street, Denver, CO using vehicles with a maximum capacity of 44 passengers. However, Mr. Casias testified that he noticed Red Rocks transportation becoming a "nightmare." He testified that at the end of concerts or shows at Red Rocks, there was a buildup of people trying to leave with not enough cars and rideshare prices shooting up. He also testified that he personally visits a popular bar in Denver, Recess Beer Garden, where he frequently hears feedback from other patrons that was "not great." He opines that something needed to be done about transportation to Red Rocks and Mr. Casias believes he can make his proposed extended service work.

24. Mr. Casias also testified about operations conducted during a period when he was picking up passengers from Recess Beer Garden, which he acknowledges was not authorized under his current CPCN.

25. After not obtaining an extension for the existing CPCN in Proceeding No. 23A-0552CP-EXT, 303 Party Bus ceased operating the service from Recess Beer Garden (the timing of which shall be discussed below). Mr. Casias stated that the company has had plenty of people inquire about additional service because the “demand is there.” Mr. Casias testified that 303 Party Bus sells out its fleet “all the time” and the company continues to grow in demand. Finally, Mr. Casias anticipates that 303 Party Bus’s proposed extension would be provided using perimeter seating buses “as long as it keeps working as good as it’s working.” He stated they have no problem filling party buses at the moment. However, if the demand changed, 303 Party Bus would consider changing their seating in their vehicles.

26. 303 Party Bus presented the testimony of two customers, Mr. Anthony Bifolck and Mr. Corey Ayotte, and three drivers, Ms. Amanda Miculinich, Mr. Don Van Guilder, and Ms. Melnia Bender.

27. Mr. Anthony Bifolck is generally familiar with Colorado bus transportation from taking buses to concerts and other venues. Specifically addressing Red Rocks, he is familiar with 303 Party Bus because he was part of a group transported by them. Since then, and over the last three to four years, Mr. Bifolck stated he has ridden with 303 Party Bus nine to twelve times, 303 Party Bus is his favorite company to work with because the ride is a safe, efficient, and an enjoyable time, and that it is his preferred method for transportation to concerts at Red Rocks. He testified that 303 Party Bus has great customer service and provides a good experience with no issues. He has also ridden with other companies that have forward-facing seating and stated that

he usually does not have a choice for a type of seating and ends up using whatever kind of seating that company provides. However, if given the choice, he would choose perimeter seating over forward-facing seating because it is more engaging and inclusive, allows for more interaction between people on the bus, and more of the experience he is looking for. He admitted that all of his trips with 303 Party Bus were private groups, but he has also used public shuttles and stated he would not feel uncomfortable with perimeter seating on public shuttle rides. Finally, he stated he would go to concerts or other events at the other locations included in 303 Party Bus's proposed extension and would take a perimeter seating bus to each if given the option.

28. Mr. Corey Ayotte has been a customer of 303 Party Bus for a few years and stated he has used their transportation service at least 20 times. He said he usually books trips with 303 Party Bus to Red Rocks but has also used them to attend a few other venues as well. He has used other companies in the past but now uses 303 Party Bus exclusively, mostly due to their reliability and having never had issues with them. He finds their services to be convenient and easy. Their vehicles are nice and aesthetically pleasing. His friends have always had a good time on the rides. He stated that he had no safety or customer complaints or issues about 303 Party Bus. He believes that if any issues did arise, then Mr. Casias takes care of them quickly. Mr. Ayotte has taken transportation with forward-facing seats to Red Rocks in the past and would not do it again. For him, forward-facing seating is a deal breaker because he is a very social person and the social aspect of perimeter seating is why he prefers it and is "the whole point of having a party bus."

29. Mr. Ayotte opined without foundation that he did not believe any one company could serve all of the locations contained in 303 Party Bus's proposed extension. When asked if he would be willing to get on a perimeter-seating bus with other members of the public if he could not fill a bus with his own group, Mr. Ayotte stated he would be fine with that. However, Mr.

Ayotte admitted he has not purchased any shuttle rides to Red Rocks in the past three years and has not checked if any of the public shuttles that go to Red Rocks use perimeter seating. When asked what 303 Party Bus provides in their services that Mountain Star does not or cannot, he stated he did not know, as he has never contacted Mountain Star for use of their transportation service, nor has he ever been denied service by them.

30. Ms. Amanda Miculinich testified she has been driving for 303 Party Bus on nights and weekends since August 2017. The number of times she drives each week depends on how busy 303 Party Bus is, ranging from once or twice a week to five or six times per week. Volume also dictates the number of times she drives to Red Rocks each week. The buses she drives each fit 32-34 passengers. She opines that customers like perimeter-style seating in vehicles, which allows for socializing, standing up, dancing, etc. She stated that individuals looking for their own buses have approached 303 Party Bus vehicles and remarked positively about the perimeter seating inside. Overall, she believes there is a high demand for customers seeking rides to Red Rocks but also stated that it depends on who is performing at Red Rocks on a particular night, as there are some nights where the venue is packed with buses and others where there are only a few. While driving to Red Rocks, Ms. Miculinich has experienced individuals approaching the bus she is driving and has been asked if they could purchase a ticket; she has had to tell them that the buses are private rides and they do not sell tickets like that.

31. Ms. Miculinich testified that there are as many as 20 other transportation companies operating at Red Rocks, and at least more than five to ten. She opines without foundation that no single company could adequately serve the number of customers that desire to go to Red Rocks on any given night. On a busy night, 303 Party Bus alone transports 400-500 people to Red Rocks. She testified that even a company with five buses (each seating 50-60 people) would not be

sufficient, based upon the fact the venue's seating capacity is nearly 10,000 and she could be driving there as many as five nights per week. She also believes that Mountain Star is unable to transport all of the individuals who want a ride to Red Rocks on any given night from any desired pickup location.

32. When asked how she knew that existing companies cannot handle the demand and that there is a need for more transportation, she testified that it was because often all ten of 303 Party Bus's vehicles were in use for private rides, sometimes three or four times a week. She believes 303 Party Bus's proposed extension is needed because 303 Party Bus is already there and receives many requests for Red Rocks. When asked how she knows there is demand for shuttle service specifically from 303 Party Bus, she stated she does not know that but opines based on her driving experience for 303 Party Bus.

33. Mr. Don Van Gilder is in his third year driving for 303 Party Bus. At the time of his testimony, he had driven 12 trips so far this year. He remarked that driving to the first concert of the season at Red Rocks, there were 25 buses in the lot he parked in. On some nights there are even more, so he believes there is a "pretty big demand" for Red Rocks. While he did not look in every bus he saw in the lot, he did not see any coach buses. That same night, all of 303 Party Bus's fleet were at Red Rocks and other drivers reported that all of their companies' buses were out too. Therefore, Mr. Van Gilder believes that, without 303 Party Bus's fleet at Red Rocks, at 25 people per bus, there would be 250 people looking for spots on buses that would not exist. Mr. Van Gilder believes the demand is specifically for perimeter-style seating and that customers would "flip" if they got onto a bus with friends and had to sit in seats facing forward. He echoed the sentiments of other witnesses preferring perimeter seating and stated that he himself would not use transportation with other kinds of seating unless it was all that was available. When asked why

303 Party Bus specifically was needed if other companies utilize perimeter-style seating, Mr. Van Gilder testified that if every other company's buses were all being used, there would be "a ton" of people looking for buses if 303 Party Bus did not exist.

34. Mr. Van Gilder testified that 303 Party Bus routinely has all 10 of their buses in use on the same night. He therefore doesn't believe even a company with 50 buses would be able to fulfil the capacity that's needed in Denver. He believes that on "some nights" existing companies would have adequate capacity to serve all the destinations that 303 Party Bus seeks to serve in its extension, perhaps in the winter months. When asked if he had ever checked the availability of other existing shuttle companies on busy nights, Mr. Van Gilder admitted he had not and was basing his comments on individuals seeking a 303 Party Bus for a private ride. He believes that plenty of people would like a ride to Red Rocks from Recess Beer Garden. He believes that if individuals were given the option to buy an individual seat on a bus that would be cheaper than using Uber or Lyft. When asked why they are not utilizing the existing companies that offer such services, Mr. Van Gilder believed it was because they were not available, or Mountain Star's buses were gone.

35. Ms. Melnia Bender has been a driver with 303 Party Bus for four years, driving anywhere between one and seven trips per week. As a driver with 303 Party Bus, Ms. Bender has only driven private groups, always using perimeter-style seating. She believes there is demand for more transportation to all of the locations listed in 303 Party Bus's proposed extension, as that is why there are so many party bus companies. Her opinion on demand for each location is based on her personal observations as a driver. She also believes there is demand for perimeter-style seating, although she admitted having no experience with forward-facing seating. When asked how many people attending an event at Red Rocks would want to use a public shuttle, she stated she did not

know. She stated she had experienced people knocking on the windows of her bus asking if they could get a ride, and admitted she does not know what the demand for a public shuttle with perimeter-style seating is, as she has dealt only with private rides.

36. 303 Party Bus also presented testimony from a consultant, Mr. Jeremy Buxton, who they hired to assist in preparing the within application. Mr. Buxton operated a ski bus company from 2011 to 2018. Based upon operations conducted pursuant to Commission authority, he is familiar with the Commission's rules and regulations.

37. Mr. Buxton opines that customer demand for safe public Red Rocks transportation is "huge." He opines that public transportation trips to Red Rocks are less than "demand in this marketplace," serving 6-7 percent of those attending concerts at Red Rocks.

38. Mr. Buxton presented an analysis supporting "huge" public demand beginning with a listing of all 148 shows published on the Red Rocks season schedule (*See*, Hearing Exhibit 106). He states the venue has a seating capacity of 9,500 people, although not all shows sell out. 1.7 million ticketed patrons attended events at Red Rocks during the 2024 season (*See*, Hearing Exhibit 107).

39. Mr. Buxton explained that he calculated the 6-7 percent range based upon driver testimony presented during hearing. Drivers observed 20 to 25 buses, so he used 25 buses. He then assumed an average of 35 passengers per bus, recalling that drivers reported mostly shuttle-sized buses and only a few motor coaches. Applying a formula of multiplying 25 busses times 35 passengers, times the 148 concerts, he then divided by the 1.7 million reported ticketed patrons to estimate the number of passengers taking public transportation to Red Rocks. Based on these numbers, he then offered this is "much" lower than demand. If the application is approved, he believes through marketing additional demand will be developed.

40. When asked if he believed there is a need for a submarket of perimeter-seating vehicles and an unmet public demand for perimeter-seating vehicles, Mr. Buxton stated that, “offering perimeter seating buses are not just an unmet demand but that a market can be substantially created in order to help increase the percentage of people taking public transportation to concert sites.” When asked how you can “create demand,” Mr. Buxton stated that marketing is used to create it and that 303 Party Bus is creating the marketplace for perimeter seating buses. Mr. Casias , he said, built the market, told people he built it, and got the word out so that people would ride his buses. When asked if that meant 303 Party Bus would need his help in the future to create demand, Mr. Buxton stated that was correct and he would be working with 303 Party Bus after this evidentiary hearing to help create the demand for their services.

41. Ms. Marie Zecca, owner of a marketing company called Blaze Marketing, also testified about her work with 303 Party Bus. She testified that she worked with 303 Party Bus to develop their website, flyers, and advertising, attempting to reach people looking for perimeter-style seating and a social activity in their transportation. She stated that 303 Party Bus was advertising for Red Rocks specifically, but also social events in general where people are looking for the social aspect and connected to perimeter seating. She testified that the terms that most often lead individuals to 303 Party Bus’s website are “party bus” and “limo bus;” she did not recall ever seeing the term “charter bus” lead anyone to the website. She was not familiar with Mountain Star, but did review their company website and did not believe they were a competitor to 303 Party Bus, since their website contains Suburbans and black cars. She also testified that she believes perimeter- style seating is for a different type of customer than those looking for transportation with a company like Mountain Star.

42. When asked if she believes perimeter-style seating was a submarket in the transportation industry, she testified it was a “luxurious experience” at a reduced cost. She also believes that, based on her experience, there is demand for perimeter-style seating for the locations in 303 Party Bus’s proposed extension. She has also been a customer of 303 Party Bus and recalled instances where she could not book a bus because all their buses were sold out, and no other company could offer a bus because they were also sold out.

43. While Red Rocks was the location discussed the most during the evidentiary hearing, there are several other locations 303 Party Bus included in their proposed expansion. Mr. Buxton opined there is public demand for all of the venues sought to be served in the application and that 303 Party Bus will be able to adequately serve those venues. Ms. Miculinich stated that she believed 303 Party Bus had sufficient vehicles and management experience to transport customers to all of the locations in their proposed extension. She also believes there is “always” a public demand for these locations, as thousands of people are attending large events at them; she stated that she has seen 30 or 50 buses at events at these locations, so a single company running five to seven buses at such an event would not be enough to serve the public need for such an event. Mr. Van Gilder also believes there is unmet demand for the other locations on 303 Party Bus’s proposed extension. Ms. Bender expressed a similar sentiment. Using Empower Field as an example; she stated that the capacity at Empower Field is 76,000 people, so there are “tens of thousands” of people who may need a ride to this location. Therefore, she believes, one company cannot serve all those people for one event—these events are “bigger than one company.” She believes there is demand for each location in 303 Party Bus’s proposed extension, based again on her personal observations as a driver.

44. Mr. Buxton also reviewed Mountain Star's published pickup locations in Denver. He believes the trade area represented by the locations indicated equates to the downtown Denver area. Further, the trade area surrounding any point shrinks as congestion around that point increases. He also questions availability of parking near these points of origination. 303 Party Bus seeks to serve a broader area of Denver. Without regard to Mountain Star's service territory, Mr. Buxton points to Hearing Exhibit 109 as the area served and describes a larger proposed geographic area, including downtown, represented by the zip codes to be served by 303 Party Bus. He concludes that Mountain Star is serving a small portion of the City and County of Denver, thus service is inadequate.

45. Mr. Buxton believes there is a public need for all locations and zip codes in 303 Party Bus's proposed extension. He also testified that he does not believe Mountain Star is adequately serving the zip codes in the proposed extension, or adequately serving Red Rocks. Mr. Casias echoed this belief, stating there is unmet demand for the other locations on 303 Party Bus's proposed extension. He testified about a concert in Denver where, afterwards, Uber was reportedly charging passengers \$120 for transportation, and said he would like to explore other venues and neighborhoods listed in the application to see what is possible to provide safe transportation with perimeter seating.

46. Mr. Roman Lysenko is the owner of Mountain Star. Mountain Star has been operating for 14 years with a luxury limousine permit, and for five years as a common carrier providing shuttles to Red Rocks and tours around Colorado. Mountain Star has a professionally built website, vehicles with GPS trackers, an administrative panel for bookings for drivers, and software to manage bookings. Their fleet consists of three Suburbans, five 14-passenger sprinter

transit vans, two 28-passenger shuttle buses, and four 56-passenger motor coaches, with another being obtained in June of this year. Mountain Star employs 12 full-time drivers.

47. Mr. Lysenko testified that Mountain Star had previously used vehicles with perimeter-style seating on their trips to Red Rocks. He had success using luxury limousines and party buses, which would sell out. However, when they shifted towards public shuttles, customers began to complain about the perimeter-style seating. Customers complained about others they did not know on the bus sliding around into their space or even in their laps, feeling uncomfortable, and wanting their own seat. After receiving these complaints, Mountain Star sold their party buses and intentionally purchased motor coaches and shuttle buses with forward-facing seats.

48. For their shuttle services, including to Red Rocks, Mountain Star uses motor coaches, shuttle buses, and sprinter vans, none of which have perimeter-style seating. At Red Rocks, Mountain Star typically runs one motor coach and two shuttle buses on busier nights, amounting to a little fewer than 100 passengers. They also experience slower nights. Mr. Lysenko testified that there are some nights they only transport five to ten passengers. In the past, they have even transported only one passenger per night. Thus, Mountain Star is operating at a level “way under” and “not even close” to their capacity.

49. Mr. Lysenko testified that Mountain Star would be happy to purchase additional vehicles and add perimeter-style seating, if there was demand for it; however, Mr. Lysenko stated they have never received calls from customers requesting such seating. Later, Mr. Lysenko elaborated, stating that Mountain Star would be happy to switch back to perimeter-style seating if witnesses in the hearing stated that seating type was a deal breaker for them, or that they would not use shuttle service solely because of forward-facing seats. As evidence, Mr. Lysenko pointed out that Mountain Star could purchase almost seven party buses for the price of one motor coach.

50. Mr. Lysenko agreed that perimeter-style seating works great for private parties, but not for public shuttles. In his opinion, since the COVID-19 pandemic, demand has shifted more towards private car services, buses, or Suburbans. In his experience, potential customers do not want to share spaces with individuals they do not know or who are not in their group. As a result, Mountain Star has taken a hit since the pandemic. While luxury limousine and private trips increased, public shuttle rides decreased. This shift in demand is why Mountain Star intervened in this proceeding and has concerns about another company being allowed to compete against it.

51. Mr. Lysenko believes that companies see lots of people at Red Rocks and assume there is demand without doing research; this leads to cutting business from existing companies when public transportation is already suffering. From his experience, there are already several kinds of transportation and “no one is stranded” at Red Rocks. He is concerned that too many companies operating will lead to them “lowballing” each other. He points to 303 Party Bus’s charge of \$50 per ticket to Mountain Star’s \$69 as evidence; he stated that Mountain Star’s \$69 fare gives them the opportunity to operate profitably, and 303 Party Bus’s “lowballing tickets” will result in a spiral to the bottom that is contrary to the protections afforded incumbent providers under the doctrine of regulated monopoly.

52. Many of the witnesses who testified during the hearing were unfamiliar with Mountain Star and thus unfamiliar with their services. Mr. Casias, however, in his testimony mentioned “issues” with Mountain Star last year, stating that people were complaining to 303 Party Bus about Mountain Star. However, Mr. Casias did not specify any of these complaints or issues with Mountain Star or otherwise elaborate on the inadequacy of Mountain Star’s services.

53. There was also testimony given regarding a previous application for an extension of authority from 303 Party Bus that resulted in an evidentiary hearing between 303 Party Bus and

Mountain Star. That proceeding, 23A-0552CP-EXT, resulted in a denial of 303 Party Bus's proposed extension by Decision No. R24-0599, issued on August 20, 2024. The Decision also discussed 303 Party Bus's unauthorized, illegal shuttle services from Recess Beer Garden to Red Rocks and properly recognized that evidence of unauthorized operations cannot evidence a showing of public demand.

54. Mr. Casias testified that he had gone out of town when Decision No. R24-0599 was issued and was thus unable to shut down his website selling individual seats/shuttle tickets. During the time he was away, customers continued to purchase shuttle tickets for Red Rocks. Mr. Casias stated that he began addressing this issue when he returned, but did not want 303 Party Bus to get a reputation for "bailing" on ticketholders or damage the positive reputation the company had built over two years. Ultimately, according to Mr. Casias, 303 Party Bus ended up refunding some customers' tickets or provided the rides to Red Rocks free of charge to remain in compliance.

55. Mr. Casias, however, did not specify how long customers were still able to purchase shuttle tickets on 303 Party Bus's website after Decision No. R24-0599 was issued; he only stated he began "addressing" the purchased tickets when he returned from out of town. Mr. Lysenko testified that he was able to purchase a shuttle ticket from 303 Party Bus for an event to be held at Red Rocks on September 27, 2025. He purchased the ticket three days before the event was to take place, on September 24, 2025—over a month after Decision No. R24-0599 was issued.⁶ Mr. Casias testified that Mr. Lysenko's ticket was refunded and that particular ride was never run.

56. It's also unclear from the evidence provided when Mr. Lysenko's ticket was refunded, or when 303 Party Bus ceased advertising shuttle services. Mr. Casias only testified that the ticket was refunded, and the ride was never run. Mr. Lysenko testified that he believed the ride

⁶ Hearing Exhibit 202 at 1-4.

was cancelled the day before it was to occur, which he recalled was two days after he filed a formal complaint against 303 Party Bus. Mr. Lysenko attempted to ask Mr. Casias about the timing of 303 Party Bus advertising for and operating shuttle service after Decision No. R24-0599 was issued; Mr. Casais only testified that they stopped “later on” after Mr. Lysenko’s complaint was filed. He also testified that they began this proceeding and filed for an extension of their CPCN four weeks later.

57. On October 2, 2024, Mr. Lysenko filed a formal complaint against 303 Party Bus, initiating Proceeding No. 24F-0430CP.⁷ The Application in this Proceeding was filed approximately four weeks later, on October 31, 2024. The evidence shows that 303 Party Bus continued to at least offer to provide shuttle services for over a month after the Decision denying their first requested extension in Decision No. R24-0599, issued August 20, 2024. Advertising did not cease until sometime after Mr. Lysenko’s formal complaint in Proceeding No. 24F-0430CP was filed. By Decision No. R25-0353, issued May 7, 2025, summary judgment was granted in favor of Mr. Lysenko, thereby resolving the proceeding. 303 Party Bus was ordered to cease and desist providing common carrier service beyond the limits of their Commission Authority.⁸

II. RELEVANT LAW

A. Commission Jurisdiction

58. The Commission has authority to issue certificates to operate as a common carrier under Colo. Const. art. XXV, § 40-10.1-103(1) and 203(1), C.R.S., (2023).⁹ Common carriers may only operate with a Commission-issued certificate declaring that the present or future public convenience and necessity requires or will require the common carrier’s operation.¹⁰ Motor carriers

⁷ Decision No. R25-0353, issued May 7, 2025, at 1.

⁸ Decision No. R25-0353, issued May 7, 2025, at 12.

⁹ See *Miller Brothers, Inc. v. Pub. Utilis. Comm’n*, 525 P.2d 443, 446 (Colo. 1974).

¹⁰ § 40-10.1-201(1), C.R.S

providing call-and-demand shuttle and charter service are common carriers.¹¹ Thus, the Commission has jurisdiction to issue an extension of a certificate of public convenience and necessity allowing motor carriers, such as 303 Party Bus, to provide call-and-demand shuttle and charter service.

B. Legal Standards to Obtain an Extension to a CPCN

59. As the proponent of an order, 303 Party Bus bears the burden of proof by a preponderance of the evidence.¹² The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence.¹³ A party has met this burden of proof when the evidence, on the whole and however lightly, tips in favor of that party.¹⁴ Although the preponderance standard applies, the evidence must be substantial. Substantial evidence is such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion.¹⁵

60. Applicants seeking an extension of a CPCN must establish their financial, managerial, and operational fitness to conduct the proposed extension of operations.¹⁶ In general, operational fitness encompasses a consideration of whether the applicant has the equipment, personnel, and facilities to operate the proposed service. The Commission has identified the following evidentiary factors as relevant to the fitness inquiry: minimum efficient scale to operate under the proposed authority; credit worthiness and access to capital, credit history and assessment of financial health in the near future; capital structure and current cash balances; managerial competence and experience; fixed physical facilities such as office space and maintenance garages;

¹¹ Rule 6001(nnn), 4 CCR 723-6.

¹² §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 1500, 4 CCR 723-1

¹³ *Swain v. Colorado Dep't of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

¹⁴ *Schocke v. Dep't of Revenue*, 719 P.2d 361, 363 (Colo. App. 1986).

¹⁵ *City of Boulder v. Pub. Utilis. Comm'n*, 996 P.2d 1270, 1278 (Colo. 2000).

¹⁶ Rule 6203(a)(XI), 4 CCR 723-6.

appropriate licenses and equipment necessary to operate a dispatch system and vehicles of appropriate type.¹⁷ Whether the applicant is willing and able to comply with applicable public utilities laws also bears upon the question of fitness.¹⁸

61. In addition to fitness, applicants must show that the present or future public convenience and necessity requires or will require the proposed service.¹⁹ In deciding that question, the Commission applies the regulated monopoly doctrine for the service proposed here.²⁰ Commission Rules reflect the regulated monopoly doctrine by requiring an applicant to demonstrate: the public need for the proposed service; that granting the authority is in the public interest; and that the existing service is inadequate.²¹

62. The regulated monopoly doctrine is based on the principle that fewer carriers who can make a reasonable return will provide the public safe, efficient, and more economical service, and that increasing the number of providers ultimately results in a deterioration of service and higher rates for the public.²² With this regulated monopoly protection comes the obligation to indiscriminately accept and carry passengers (for compensation) and to “furnish, provide, and maintain such services, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public, and as shall in all respects be adequate, just, and reasonable.”²³ As such, under the regulated monopoly doctrine, a common carrier serving a particular area is only entitled to protection against competition if its

¹⁷ See e.g., Decision No. C08-0933, at ¶ 7, Consolidated Proceeding Nos. 08A-241CP, 08A-281CP-Extension, 08A-284CP-Extension, and 08A-300CP.

¹⁸ See *Thacker Brothers Transp. v. Pub. Utils. Comm’n*, 543 P.2d 719, 721 (Colo. 1975).

¹⁹ See § 40-10.1-201(1), C.R.S.

²⁰ *Ephraim Freightways Inc. v. Pub. Utils. Comm’n*, 380 P.2d 228, 230 (Colo. 1963).

²¹ Rule 6203(a)(XVII), 4 CCR 723-6.

²² See e.g., *Denver & R.G. W. R. Co., v. Pub. Utils. Comm’n*, 351 P.2d 278, 280 (Colo. 1960).

²³ § 40-3-101(2), C.R.S.; See Rule 6001(p), 4 CCR 723-6; see § 40-10.1-103(1), C.R.S., (common carriers are public utilities within the meaning of articles 1 to 7 of title 40, Colorado Revised Statutes).

service is adequate to satisfy the public's needs.²⁴ Indeed, the existence of an adequate and satisfactory service by motor carriers serving the area negates a public need and demand for added service by an additional carrier.²⁵ As a result, the public need and adequacy elements are closely related.²⁶

63. The Commission has “wide discretionary powers in determining the demands of ‘public convenience and necessity.’”²⁷ The Commission may consider a “broad range of evidence in determining whether an incumbent carrier’s service is substantially inadequate.”²⁸ The Colorado Supreme Court has noted that the Commission may consider any relevant evidence in demonstrating whether the public convenience and necessity requires additional service.²⁹ The Court has expressly approved, as relevant, consideration of various aspects of incumbents’ service and operation, including rates and charges, speed and efficiency and quality of its facilities, organization, equipment, and personnel.³⁰ For example, in *Durango Transportation, Inc.*, the Court approved the Commission’s reliance on evidence that the incumbent’s rates were so high as to be “tantamount to a denial of service to the tourist population requiring transportation...”³¹ This is consistent with the Commission’s purpose in granting a transportation authority to “ensure that the public’s transportation needs are met.”³²

64. An applicant may demonstrate substantially inadequate service through evidence that the incumbent is not ready, willing, and able at all times to render service to anyone who might

²⁴ *Ephraim Freightways Inc.*, 380 P.2d at 230.

²⁵ *Id.* at 231.

²⁶ *See id.* at 230-231.

²⁷ *Pub. Utils. Comm’n v. Donahue*, 335 P.2d 285, 288 (Colo. 1959).

²⁸ *Durango Transp. Inc.*, 122 P.3d at 250.

²⁹ *Id.*

³⁰ *Id.* at 251.

³¹ *Id.* at 249.

³² *Id.* at 250.

demand it.³³ But the Commission is not required to find that the incumbent has failed or refused to provide service to a requesting customer.³⁴ An applicant must show that the incumbent has demonstrated a general pattern of inadequate service.³⁵ But, “the test of inadequacy is not perfection.”³⁶ That is because any common carrier providing service to many clients will receive some legitimate complaints.³⁷ Expressions of mere opinion, preference, desire, and willingness to use an applicant’s service over an incumbent’s, alone, do not establish that the Incumbent’s service is substantially inadequate.³⁸ Put differently, if expressions of preference are supported by evidence relating to the adequacy of the incumbent’s service, such evidence may establish substantial inadequacy.

65. Although the applicant bears the burden of proving that the incumbent carrier’s service is substantially inadequate, “where an applicant’s evidence tend[s] to prove the existing carrier’s substantial inadequacy, ‘it [is] incumbent upon [the existing carrier] to rebut this evidence.’”³⁹

66. Based on the foregoing, 303 Party Bus must show by a preponderance of the evidence that: (1) it is financially, operationally, and managerially fit to conduct the proposed service; (2) the public needs the proposed service; (3) the current service in the area is substantially inadequate; and (4) approving the Application is in the public interest. If 303 Party Bus meets its burden, Mountain Star must rebut evidence concerning substantial inadequacy by a preponderance of the evidence.

³³ *Id.* at 247, citing *Ephraim*, 380 P.2d at 232.

³⁴ *Id.* at 251.

³⁵ *Id.* at 248.

³⁶ *Ephraim Freightways Inc.*, 380 P.2d at 232.

³⁷ *RAM Broadcasting*, 702 P.2d at 750.

³⁸ *See Durango Transp. Inc.*, 122 P.3d at 248, quoting, *Pub. Utils. Comm’n v. Weicker Transfer & Storage Co.*, 451 P.2d 448, 449 (Colo. 1969).

³⁹ *Id.* at 250 (quoting *Ephraim Freightways Inc.*, 380 P.2d at 231-32).

III. DISCUSSION, ANALYSIS AND CONCLUSIONS

A. Public Need and Substantial Inadequacy

67. 303 Party Bus is authorized to provide call-and-demand shuttle and charter service, in addition to luxury limousine service. In this application, 303 Party Bus seeks to extend its operations by modifying restrictions upon the existing authority, proposing an extension to the existing CPCN, expanding the authorized geographic service territory, and proposing new restrictions upon the entire authority, as extended. 303 Party Bus must demonstrate that the public convenience and necessity requires the proposed service, as opposed to other services.

68. As an initial matter, the ALJ finds that the majority of the proposed extension addresses transportation service outside of Mountain Star's authorized service. Mountain Star is not entitled to regulated monopoly protection for those proposed transportation services differing from those services it is authorized to provide. Based upon the limited evidence presented and the scope of the incumbent authority, the ALJ concludes that those portions of the extension sought in the Application to serve areas outside of Mountain Star's authorized service territory are unopposed by an incumbent provider.

69. The remainder of the proposed extension overlaps the authority held by Mountain Star and includes call-and-demand shuttle and charter service to Red Rocks.

70. The testimony of 303 Party Bus's drivers collectively provided credible but anecdotal observations limited to operations serving Red Rocks under existing authority, rather than the proposed extension. Each driver described equipment utilized by transportation providers providing unspecified services in the area and parking lots around Red Rocks. Illustratively, there was evidence that several of the buses might have been those belonging to 303 Party Bus providing

luxury limousine service that is not relevant here. Aside from the type of transportation, the evidence failed to demonstrate unmet demand for the proposed service.

71. Evidence regarding the number of passengers served by incumbent service would not have been necessary to show to prevail. However, those observations are the foundation for Mr. Buxton's argument that public demand exists for the proposed service. He then applied information from public announcements from Red Rocks. Red Rocks' website states a plan to serve 1.6 million ticketed customers during the season by hosting 148 events.

72. Drivers for 303 Party Bus described the number of buses observed during an event at Red Rocks. Without any foundation other than Red Rocks' website and impressions of 303 Party Bus drivers, Mr. Buxton calculated an average number of ticketed customers per event and a percentage of concertgoers requiring public transportation. This resulted in his opinion that approximately six to seven percent of total customers would demand public transportation to Red Rocks.

73. Mr. Buxton's argument, however, is fatally flawed as it is built upon a false foundation. Logically and by definition, observing buses that transported concertgoers to Red Rocks, during such an event at Red Rocks, can only possibly demonstrate public demand currently met by all incumbent transportation providers utilizing that equipment (assuming they were all being operated) without any regard to the type of service proposed to be provided. Thus, the argument fails to demonstrate unmet public demand for services proposed to be offered. In fact, 303 Party Bus's consultant, Mr. Buxton, testified repeatedly that 303 Party Bus would be "creating" demand for its services, specifically creating a sub-market for perimeter-style seating. The standard to obtain an extension for an existing CPCN is not "creating" demand for the proposed extended services, but that there is existing, unmet demand for those services. Further,

Mountain Star is entitled to pursue the creation of such demand within the scope of its authority until such time as the services are shown to be substantially inadequate to meet public demand (i.e. for those services as opposed to other services).

74. Also, the evidence failed to show that unmet demand is based upon the number of concertgoers using public transportation of any specific type. Leaving aside the lack of showing of demand for the proposed service, the argued percentage of concertgoers using public transportation is again being met by incumbent providers (i.e. including those entitled to protection from competition and those not). These concertgoers could use numerous types of transportation to get to Red Rocks, including driving private vehicles, luxury limousines, charter scenic buses, transportation network companies, contract carriers, or common carriers. Demand for the proposed extension of service—call-and-demand shuttle service to Red Rocks—was not shown to be evidenced by the buses observed, which were described as providing transportation to concert goers.

75. 303 Party Bus argues that it is offering a transportation service that Mountain Star does not provide, namely call-and-demand shuttle service utilizing vehicles with perimeter- style seating. In their Statement Regarding Legal Issues and Restrictive Amendment they argued that, while there is no Commission precedent or authority regarding a “submarket” not served by Mountain Star based on vehicle perimeter seating, the Commission stated in Decision No. C19-0941 of Proceeding No. 19A-0144CP that the lack of prior Commission decisions regarding a submarket does not preclude the Commission from recognizing the submarket.⁴⁰ 303 Party Bus further stated that they would be willing to include an equipment restriction amendment to their

⁴⁰ 303 Party Bus LLC Statement Regarding Legal Issues and Restrictive Amendment, filed on April 28, 2025 at 1-2, *citing* Proceeding No. 19A-0144CP, Decision No. C19-0941 (mailed Nov. 19, 2019) at ¶ 28.

Application, restricting them to their proposed submarket (i.e., vehicles with interior perimeter seating).⁴¹ Mountain Star, conversely, argued that seating configuration is a matter of personal preference and does not distinguish it as a different transportation service. Further, such personal preferences do not establish a submarket and cannot demonstrate substantial inadequacy of existing services.⁴² Additionally, Mr. Lysenko testified that he is ready, willing, and able to meet demand for providing service utilizing perimeter seating.

76. Aside from failing to demonstrate unmet public demand for call-and-demand shuttle service utilizing perimeter seating, the ALJ is not persuaded by 303 Party Bus that the public convenience and necessity requires approval of the extension for perimeter-style seating due to unmet public demand for transportation not provided by Mountain Star. First, witnesses testified that seating style was a personal preference. Mr. Bifolck, for example, stated that he has ridden with other companies (with forward-facing seating) and does not have a choice for a type of seating, so he ends up using whatever kind of seating that company uses. He testified that if given a choice he would select perimeter-style seating, but that is just his personal preference. Mr. Van Gilder similarly stated he would not use transportation without perimeter-style seating, unless it was all that was available. Even Mr. Ayotte, who stated the strongest preference for perimeter-style seating, admitted he had not checked if any of the existing public shuttle companies servicing Red Rocks used perimeter-style seating, and in fact had not purchased any public shuttle rides to Red Rocks in the past three years.

77. Also, as testified to by 303 Party Bus's drivers and by Mr. Lysenko, other companies currently servicing Red Rocks utilize buses with perimeter-style seating (without

⁴¹ Statement Regarding Legal Issues and Restrictive Amendment at 3.

⁴² Mountain Star's Statement Regarding Legal Issues of Perimeter Seating, filed on April 28, 2025, at 3.

addressing the type of service). Mountain Star itself utilized this type of seating in the past. When asked, then, why 303 Party Bus's extended services were needed with other companies using perimeter-style seating, Mr. Van Gilder only said there would be "a ton" of people looking for buses if 303 Party Bus did not exist. Neither he, nor any of 303 Party Bus's other witnesses evidenced of unmet demand for the proposed service, nor why 303 Party Bus's perimeter-seating buses were needed to meet such hypothetical demand. However, Mr. Lysenko, who had utilized perimeter-style seating in public shuttles in the past, testified credibly that it was unsuccessful and he eliminated them from his fleet. He stated that, while perimeter-style seating worked well for charter and party buses where everyone knew one another, customers on public shuttles complained about not having a defined seat and individuals that they did not know sliding into or otherwise invading their personal space or laps. Mr. Lysenko's conversion of his fleet from party buses or limos to motor coaches, sprinter vans, and shuttle buses is credible evidence supporting this testimony. Finally, Mr. Lysenko testified that if he experienced demand for perimeter-style seating or otherwise received even one phone call requesting perimeter-style seating for his services, he would add perimeter-style seating back into his fleet. However, he has never received such requests. In fact, Mountain Star is operating significantly under capacity and is able to transport more passengers and acquire more buses, if necessary.

78. If there was any direct evidence presented by 303 Party Bus at all of public demand for call-and-demand shuttle service to Red Rocks, it would more likely than not have related to their illegal unauthorized shuttle service from Recess Beer Garden to Red Rocks.⁴³ The Supreme

⁴³ Decision No. R24-0599 issued in Proceeding No. 23A-0552CP-EXT.

Court has held that an applicant who was conducting illegal operations could not, as a matter of law, demonstrate public necessity for additional services by its unauthorized operations.⁴⁴

79. The totality of the evidence demonstrated that 303 Party Bus operates a thriving, successful charter bus operation, or “party bus” operation, which has been successfully chartered by several satisfied customers. Despite this success, only one witness indicated even a possible interest in utilizing the proposed call-and-demand shuttle service, and he did not demonstrate demand for such service from any provider. Furthermore, he was unaware of the existence of Mountain Star and has never attempted to utilize their service, which further undermines 303 Party Bus’s argument.

80. Finally, 303 Party Bus did not present any evidence whatsoever regarding the inadequacy of Mountain Star’s services other than attempting to distinguish equipment utilizing perimeter seating. As stated above, witnesses were either entirely unfamiliar with Mountain Star or had never inquired about their services. Neither had any of the witnesses experienced inadequate services from Mountain Star. Many of the witnesses had never even attempted to use any public shuttles to Red Rocks, from any company. Mr. Casias testified briefly that he had heard about issues regarding Mountain Star and its services but provided no specific complaints or information about these issues whatsoever.

81. For the reasons discussed, the ALJ concludes that 303 Party Bus failed to meet its burden to establish by a preponderance of the evidence, as it pertains to the proposed call-and-demand shuttle service to Red Rocks, that there is a unmet public need for the proposed extension

⁴⁴ See generally, *G&G Trucking Co. Inc. v. Public Utilities Commission*, 745 P.2d 211 (Colo. 1985); *McKenna v. Nigro*, 372 P.2d 744 (Colo. 1962).

of service, that the incumbent service is substantially inadequate, and that granting the Application is in the public interest.

82. As stated above, the remaining locations in the Application for extension of service (i.e. other than to Red Rocks) are unopposed. Taking the evidentiary record as a whole, including the modest unchallenged evidence of demand for call-and-demand shuttle service to serve Empower Field, Ball Arena, Fiddler's Green Amphitheatre, Dick's Sporting Goods Park, Folsom Field, or Coors Field, it is found that 303 Party Bus met its burden to establish by a preponderance of the evidence that there is a public need for the proposed extension of service.

B. Fitness

83. Based on the findings discussed above and for the reasons discussed below, the ALJ finds that 303 Party Bus has met its burden to show by a preponderance of the evidence that it is financially, managerially, and operationally fit to conduct the extension of services that is approved by this Recommended Decision.⁴⁵ The evidence demonstrating fitness is largely uncontested. Mr. Casias has owned and operated 303 Party Bus for over 10 years, and his mother, Ms. Casias, has been the general manager of 303 Party Bus for approximately 10 years. Both therefore have sufficient experience in the transportation industry sufficient to support the proposed operations approved. 303 Party Bus has an office and a storage facility for its fleet, with the ability to expand should they procure more vehicles. 303 Party Bus is earning a profit and has adequate assets, both fixed and liquid, to operate its services, including the proposed extension. Finally, 303 Party Bus's existing fleet of 10 vehicles is appropriate and sufficient to render the

⁴⁵ See §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 6203(a)(XI), 4 CCR 723-6; and Rule 1500, 4 CCR 723-1.

proposed extension of services, especially considering that 303 Party Bus has the ability and means to purchase additional vehicles and hire additional drivers should their extension be granted.

84. The proven failure of 303 Party Bus to comply with Commission decisions and rules less than a year ago is troubling as to the managerial qualifications required to demonstrate fitness. 303 Party Bus staff taking reservations for transportation appear to have a very limited understanding of those Commission decisions and rules governing the proposed operations. At a minimum, 303 Party Bus advertised illegal operations for over a month after Decision No. R24-0599 was issued, and not for just a few days as Mr. Casias implied.

85. In finding Applicant sufficiently fit to partially grant the requested extension, it is notable to the undersigned that 303 Party Bus has engaged the assistance of legal counsel as well as a consultant having experience operating a transportation service subject to Commission regulation. Supporting learning, as needed, through the extension of authority will assist management to operate in compliance with Commission regulations. The Commission long ago established that discretion permits public demand for transportation service to take precedence over previous violations of Commission rules and Colorado law.⁴⁶ Additionally, denying the entirety of the requested extension here is not the only means of enforcement available to the Commission should 303 Party Bus fail to comply in the future.

86. It is found that extended operations sought in the Application other than to serve Red Rocks is reasonable, in the public interest, and should be granted, in part, consistent with the discussion above.

87. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record in this proceeding and recommends that the Commission enter the following order.

⁴⁶ Decision No. C94-1184 at 5, issued on September 13, 1994, in Proceeding No. 92A-621CP.

IV. **ORDER**

A. **The Commission Orders That:**

1. The Application for Permanent Authority to Extend Current Operations under Certificate of Public Convenience and Necessity (“CPCN”) No. 55846 filed by 303 Party Bus LLC (“303 Party Bus” or “Applicant”) on October 31, 2024, is granted, in part, consistent with the discussion above and subject to the conditions identified below.

2. 303 Party Bus is granted an extension under Certificate of Public Convenience and Necessity No. 55846 to operate as a common carrier by motor vehicle for hire as follows as follows:

Transportation of passengers

(I) in call-and-demand shuttle and charter service

between Empower Field, 1601 Mile High Stadium Circle, Denver CO 80204; Ball Arena, 1000 Chopper Circle, Denver CO 80204; Fiddler’s Green Amphitheatre, 6350 Greenwood Plaza Blvd, Greenwood Village, CO 80111; Dick’s Sporting Goods Park, 6000 Victory Way, Commerce City, CO 80022; Folsom Field, 2400 Colorado Avenue; University of Colorado, Boulder, CO 80309; or Coors Field, 2001 Blake Street, Denver CO 80205,

on one hand and all points within the area near downtown Denver defined as follows:

beginning at the intersection of East 1st Avenue and Lincoln Street, then north along Lincoln Street to East 6th Avenue; then west along East 6th Avenue and continuing west along West 6th Avenue and the West 6th Avenue Freeway to Carr Street; then north along Carr Street to West 26th Avenue; then east along West 26th Avenue to Sheridan Boulevard; then south along Sheridan Boulevard to West 17th Avenue; then east along West 17th Avenue to Meade Street; then North along Meade Street, as extended, to Interstate 70; then east along Interstate 70 to Interstate 25; then north along Interstate 25 to East 62nd Avenue; then east along East 62nd Avenue, as extended, to York Street; then south along York Street to East 58th Avenue; then west along East 58th Avenue to Franklin Street; then South along Franklin Street to a point intersecting a line, as extended, along East 48th Avenue; then east along that line and continuing east on East 48th Avenue, as extended, to North Quebec Street; then south along North

Quebec Street to Smith Road; then west along Smith Road to Colorado Boulevard; then south along Colorado Boulevard to East 17th Avenue; then west along East 17th Avenue to York Street; then north along York Street to East 22nd Avenue; then west along East 22nd Avenue to Washington Street; then south along Washington Street to East 1st Avenue; then west along East 1st Avenue to the point of beginning,

State of Colorado, on the other hand.⁴⁷

(II) in call-and-demand shuttle and charter service

between 6232 Beach Street, Denver, Colorado, on the one hand and the following venues: Red Rocks Amphitheater, 18300 West Alameda Parkway, Golden, Colorado 80401; 1st Bank Center, 11450 Broomfield Lane, Broomfield, Colorado 80021; Ogden Theater, 935 East Colfax Avenue, Denver, Colorado 80218; and the Bluebird Theater, 3317 East Colfax Avenue, Denver, Colorado 80206, State of Colorado, on the other hand.

RESTRICTIONS:

This authority is restricted:

- (a) to the use of a vehicle with a seating capacity of 16 to 48 seats;
- (b) against service to or from any airports; and
- (c) Part (I) is restricted against originating or terminating transportation service at points within the area in downtown Denver defined as follows: beginning at the intersection of 19th Street and Curtis Street, then northeast along Curtis Street to 20th Street, then southeast along 20th Street to Stout Street, then southwest along Stout Street to 19th Street; then northwest along 19th Street to the point of beginning.

3. 303 Party Bus must operate in accordance with all applicable Colorado laws and Commission rules.

4. 303 Party Bus may not commence operation under the extended authority granted until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- a. cause proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;

⁴⁷ This general downtown Denver area, as restricted, lies within and approximates the area currently known as Zip Codes 80202, 80203, 80204, 80205, 80211, 80214, 80216 as of the writing of this Recommended Decision.

- b. pay to the Commission, the motor vehicle fee (\$50.00) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- c. file with the Commission and have an effective, publicly available tariff, which includes the extended authority. The tariff should comply with Rule 6208 of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. The tariff shall be filed in a *new* Advice Letter/Tariff proceeding on not less than ten days' notice prior to a proposed effective date. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the proposed effective date;
- d. register an authorized representative as a File Administrator on behalf of Applicant in the Commission's electronic filing system (E-Filings) and agree that Applicant shall receive notifications electronically through E-Filings. Information can be found at:

<http://www.dora.state.co.us/pls/efi/EFI.homepage>; and

- e. pay the applicable fee (\$5.00) for the issuance of the extended authority.

5. If 303 Party Bus does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee ***within 60 days*** of the effective date of this Decision, then the grant of the extension will be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

6. The Commission will notify 303 Party Bus in writing when the Commission's records demonstrate compliance with ordering paragraph 4.

7. 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.

8. 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.

9. 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.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

ATTEST: A TRUE COPY

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

Rebecca E. White,
Director