

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In re Application No. D-079309 of)	DOCKET NO. TC-041725
)	
CWA, INC., d/b/a CENTRAL)	ORDER NO. 02
WASHINGTON AIRPORTER)	
)	INITIAL ORDER GRANTING
For Extension of Authority under)	APPLICATION FOR
Certificate No. C-01073, For a)	EXTENSION OF AUTHORITY
Certificate of Public Convenience and)	
Necessity to Operate Motor Vehicles)	
in Furnishing Passenger and Express)	
Service as an Auto Transportation)	
Company.)	
.....)	

Synopsis: This order would grant CWA an extension of its certificate of public convenience and necessity permitting it to provide intercity passenger and express service between Yakima, Ellensburg, and Cle Elum.

1 **Proceedings.** This is an application by CWA, Inc. d/b/a Central Washington Airporter (CWA or Applicant) for an extension of its authority to furnish passenger service as an auto transportation company between Yakima, Ellensburg, and Cle Elum. CWA currently holds authority to provide passenger service between Yakima, Ellensburg, and Cle Elum, on the one hand, and on the other hand the Seattle-Tacoma International Airport and the Seattle Amtrak station.¹

¹ Permit No. C-1073.

2 **Parties.** David L. Rice, attorney, Seattle, Washington, represents CWA. Jonathan Thompson, Assistant Attorney General, Olympia, Washington, represents the Commission's regulatory staff (Commission Staff or Staff).²

3 **Procedural background.** This application was published in the Commission's weekly Docket for October 11, 2004. The Commission received no protests to the application within 20 days of publication as required by WAC 480-30-032(1). Because this application appeared to request authority that would overlap with that requested in a contemporaneous application filed by Diamond-West Transportation Co., Inc. (Diamond-West) in Docket No. TC-041725, it was noticed for a prehearing conference concurrent with the prehearing conference in the Diamond-West proceeding. No protest to the CWA application was filed, and Diamond-West amended its contemporaneous application to eliminate service that would overlap with that requested in the CWA application.

4 CWA's application requests authority to provide passenger service between Yakima, Ellensburg, and Cle Elum. CWA currently holds authority to provide airporter service between Yakima, Ellensburg, and Cle Elum (on the one hand) and Seattle-Tacoma International Airport and the Seattle Amtrak station (on the other hand).

5 **Memorandum.** The Commission must determine whether or not the applicant meets the requirements set forth in RCW 81.68.040:

² In formal proceedings, such as this case, the Commission's regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an "*ex parte* wall" separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners' policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

No auto transportation company shall operate for the transportation of persons, and baggage, mail and express on the vehicles of auto transportation companies carrying passengers, for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under the revisions of this chapter, a certificate declaring that public convenience and necessity require such operation ... The commission shall have power, after hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company or companies serving such territory will not provide the same to the satisfaction of the commission, and in all other cases with or without hearing, to issue said certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of said privilege sought, and may attach to the exercise of the rights granted by said certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require.

6 In addition, consistent with the Commission's rules for auto transportation companies in Chapter 480-30 WAC, the Commission considers an applicant's financial fitness, and its fitness generally to provide the service for which it seeks authorization. The questions to be addressed are as follows:

- 1) Public convenience and necessity:
 - a) Do the public convenience and necessity require the proposed service?
 - b) Does an existing auto transportation company operating in the territory at issue provide service to the satisfaction of the Commission?
- 2) Financial Fitness:
 - a) Is the company financially fit and capable of providing the service?
 - b) Does the company exhibit regulatory fitness?

7 These questions are considered and answered below.

A. Public convenience and necessity:

8 An applicant for an auto transportation certificate must establish that the public convenience and necessity require the proposed operations. *RCW 81.68.040*. Order M. V. C. No. 1892, *In re Lloyd's Connection, Inc. d/b/a Airport Connection Airporter*, Hearing No. D-2556 (December 1990). Public convenience and necessity require the services of an additional carrier if existing carriers cannot meet the needs of the traveling public. *RCW 81.68.040*. Order M. V. C. No. 1892, *Id.*

9 CWA provided witness statements from seven members of the traveling public who reside in or near the cities CWA seeks to serve: Susan Gardner, Selah; Colleen B. Rose, Yakima; Gloria Irene LaGrave, Cle Elum; Carol Punton, S. Cle Elum; Harvey Vaughan, Ellensburg; David Gee, Yakima; and Katherine Rheume, Selah.

10 Ms. Gardner works at Central Washington University in Ellensburg. She indicated she would use applicant's service to go to and from work, as long as the pickup points and schedules were acceptable. Ms. Rose also is employed at Central Washington University and indicated she would use applicant's service to go to and from work. She pointed out that Greyhound provided a similar service which she does not use because it doesn't run during the hours she would need for work. Ms. Rose stated she would like a pickup location closer to work. She considered a charge of \$20 per week to be affordable.

11 Ms. LaGrave and Ms. Punton would use applicant's service for pleasure trips she makes between Yakima and Cle Elum and between Ellensburg and Cle Elum. They each stated they knew of no other bus system in the area that provides such transportation.

12 Mr. Vaughan stated that he travels between Yakima and Ellensburg frequently (100 times) during the year for pleasure and would use applicant's service. He was unaware of any other provider of service similar to what applicant proposes.

13 Mr. Gee works at Central Washington University and stated he "perhaps" would use applicant's services to travel between Yakima and Ellensburg to get to and from work. He indicated he believed other staff and students at CWU would likely need applicant's service to commute between Yakima and Ellensburg. He stated that he believed Greyhound provided a transportation service similar to what applicant proposes but that Greyhound's cost, inconvenient schedule and inconvenient pickup/drop-off locations prevented him from using Greyhound.

14 Finally, Ms. Rheume would use applicant's services for infrequent pleasure trips between Yakima and Cle Elum. She was unaware of any other service provider in the area.

15 The statements provided by these witnesses demonstrate a public need for applicant's proposed service. Moreover, although some of the witnesses indicated that Greyhound was a carrier that provided service in the same area as applicant, CWA stated in its application that in August 2004 Greyhound discontinued service to Cle Elum completely and reduced their scheduled service to Yakima and Ellensburg. The evidence demonstrates that the service of an existing carrier in the area does not meet the needs of the traveling public.

16 For these reasons, it is concluded that CWA has established that its proposed operations would serve the public convenience and necessity.

B. Fitness

17 **Financial fitness.** The Commission's examination of an applicant's financial fitness must be commensurate with the responsibilities of the public service that

the firm seeks to provide, the risks to the public of failure, and the firm's financial history. *RCW 81.68.040*. Order M. V. C. No. 1899, *In re San Juan Airlines, Inc., d/b/a Shuttle Express*, App. No. D-2589 (March 1991); *modified*, Order M. V. C. No. 1909 (May 1991). However, the Commission does not consider an applicant's financial condition to be a critical element in a grant of authority, if there is credible evidence that the applicant has sufficient financing to begin operations and continue them for a reasonable period while its business is building. Commission Decision and Order, *In re Application of Valentinetti*, App. No. D-78932, Docket No. TC-001566 (2002).

- 18 CWA submitted a statement from its President, Larry Wickkiser, in support of the application. Mr. Wickkiser states that he has been operating a transportation service for eighteen years; that CWA operates five vehicles worth approximately \$325,000 that provide passenger service; that the company maintains the vehicles in good operating condition; that CWA employs eight drivers that are company trained and monitored; that CWA has assets of \$22,141 on its balance sheet; and, that it is insured for \$5 million.
- 19 CWA has demonstrated that it is financially fit to provide the service proposed in its application.
- 20 **Regulatory fitness.** To qualify for authority, an applicant must establish that it is willing and able to comply with Washington laws and Commission rules. Order M. V. C. No. 1892, *In re Lloyd's Connection, Inc. d/b/a Airport Connection Airporter*, Hearing No. D-2556 (December 1990). CWA has fully complied with the Commission's requirements for driver and vehicle safety and has demonstrated that it has an operating system in place that insured continued compliance with laws and rules governing the type of passenger service it seeks to provide.
- 21 It is concluded that CWA has established both the willingness and the ability to comply with Washington laws and Commission rules, and is regulatory fit to be granted the authority it seeks.

22 **Conclusion.** CWA has shown that there is a public need for its service, that no
other existing service satisfies the Commission's requirements for service in the
area, that CWA is financially fit and would comply with all rules and regulations
governing its service. The application should be granted for these reasons in
accordance with RCW 81.68.040.

III. FINDINGS OF FACT

- 23 (1) The Washington Utilities and Transportation Commission is an agency of
the State of Washington, vested by statute with authority to regulate rates,
rules, regulations, practices, accounts, securities, and transfers of public
service companies, including solid waste collection companies.
- 24 (2) CWA is fit, willing and able to conduct operations under the requested
extension of authority.
- 25 (3) No other carrier provides adequate service in the existing area.

IV. CONCLUSIONS OF LAW

- 26 (1) The Washington Utilities and Transportation Commission has jurisdiction
over the parties to and subject matter of this application.
- 27 (2) CWA is fit, willing and able to provide the services requested under
chapter 81.68 RCW and chapter 480-30 WAC.
- 28 (3) The existing transportation company serving the requested territory does
not provide service to the satisfaction of the Commission.

VI. ORDER

29 It is ordered that CWA be granted an extension of its authority to provide passenger and express service between Yakima, Ellensburg, and Cle Elum.

Dated at Olympia, Washington, and effective this 12th day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge