

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application No. D-079257 of	)	
	)	DOCKET NO. TC-040369
MUHLBAIER, BARRY & AMY,	)	
d/b/a A & B SPECIALIZED	)	
TRANSPORT,	)	ORDER NO. 01
	)	
for a Certificate of Public	)	
Convenience and Necessity to	)	PREHEARING CONFERENCE
Operate Motor Vehicles in	)	ORDER
Furnishing Passenger and Express	)	
Service as an Auto Transportation	)	
Company	)	
.....	)	

1 **NATURE OF PROCEEDING.** Docket No. TC-040369 is an application (No. D-079257) by Muhlbaier, Barry & Amy, d/b/a A & B Specialized Transport (A & B Specialized Transport or Applicant) for a certificate of public convenience and necessity to operate motor vehicles in furnishing passenger and express service as an auto transportation company.

2 **CONFERENCE.** The Washington Utilities and Transportation Commission (Commission) convened a prehearing conference in this docket at Olympia, Washington on July 8, 2004, before Administrative Law Judge Karen Caillé.

3 **APPEARANCES.** Barry Muhlbaier, Lakebay, Washington represents Applicant. Chris Swanson, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (“Commission Staff” or “Staff”).<sup>1</sup> Contact

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<sup>1</sup> 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*.

information provided at the conference for the parties' representatives is attached as Appendix A to this order.

4 **PROTESTANT.** Bremerton Kitsap Airporter, Inc. filed a timely protest to the docketed application. On June 17, 2004, Bremerton Kitsap Airporter withdrew its protest by letter to the Commission Secretary.

5 **ISSUES.** Attached to this Prehearing Conference Order as Appendix C are the requirements that Applicant must show it has satisfied before the Commission may grant a certificate. Since there are no protests to the application, the Commission will accept written statements from members of the community as to the need for Applicant's services.

6 **PROCEDURAL SCHEDULE.** Applicant will file written statements from members of the community and a list of witnesses who will testify as to need for the service by **July 30, 2004**. The parties agreed that the hearing on the application will be held on **August 18, 2004, beginning at 3:30 p.m. in Room 108, Chandler Plaza, 1300 S. Evergreen Park Drive S.W., Olympia, Washington**. Parties may attend the hearing via the Commission's teleconference bridge (360-664-3846). Appendix B attached to this order reflects the procedural schedule.

7 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** In this proceeding, in order to avoid burdening the Applicant with the filing of multiple copies of evidence that will be used at the hearing, parties should file with the Commission **an original plus 3 copies** of all evidence and other documents. *WAC 480-07-145 (3)(a) and WAC 480-07-460 (1)(a)*. Likewise, the Applicant is excused from the obligation of supplementing its filings in an electronic form. *WAC 480-07-145 (2)(d)*. All filings must be mailed to the Commission Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W. Olympia, Washington 98504-7250, or delivered by hand to the Commission Executive Secretary at the Commission's

Records Center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.

- 8 **NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective this 9th day of July, 2004.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

KAREN M. CAILLÉ  
Administrative Law Judge

<b>APPENDIX A</b>				
<b>PARTIES' REPRESENTATIVES</b>				
<b>DOCKET NO. TC-040369</b>				
<b>COMPANY</b>	<b>REPRESENTATIVE AND ADDRESS</b>	<b>PHONE</b>	<b>FACSIMILE</b>	<b>E-MAIL</b>
<b>A &amp; B Specialized Transport</b>	<b>BARRY MUHLBAIER 601 204<sup>th</sup> Avenue Ct. Lakebay, WA 98349</b>	<b>253-884-7806</b>	<b>253-884-7829</b>	<a href="mailto:mulby2@aol.com"><b>mulby2@aol.com</b></a>
<b>Commission Staff</b>	<b>CHRIS SWANSON Assistant Attorney General 1400 S. Evergreen Park Dr. SW PO Box 40128 Olympia, WA 98504- 0128</b>	<b>360-664-1220</b>	<b>360-586-5522</b>	<a href="mailto:cswanson@wutc.wa.gov"><b>cswanson@wutc.wa.gov</b></a>



## **APPENDIX C**

The Commission may issue to an applicant a certificate of authority to operate as an auto transportation company in the state of Washington if the applicant satisfies the requirements, both procedural and substantive, that are set out in chapter 81.68 RCW and chapter 480-30 WAC.

At the hearing, the applicant must show that it has satisfied the following requirements before the Commission may grant a certificate:

- (1) That there is a public need for the service proposed by the applicant.
  - Need for new service must be established by the testimony of members of the public who actually require the service. The Commission does not accept self-serving statements of an applicant. The applicant must support its application with independent witnesses knowledgeable about the need for service in the territory in which the applicant seeks authority.
  - If the application is protested the Commission will not consider written statements of witnesses whom the applicant has not made available for cross examination at hearing; the Commission will generally only consider live testimony.
  - If the applicant requests a certificate to operate in a territory already served by another certificate holder, the applicant must also show that the existing transportation company or companies will not provide service in that territory to the satisfaction of the Commission.
- (2) That the applicant is fit, willing, and able to provide the proposed service.
  - The applicant must show that it has sufficient financial resources and assets to conduct the proposed operations.
  - The applicant must show that it is willing and able to comply with the applicable laws and the Commission's rules.