

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper  
Carrier Classification of, and Complaint  
for Penalties against:

A+ PACIFIC LIMOUSINE, INC.

DOCKET TE-160460  
ORDER 02

INITIAL ORDER CLASSIFYING  
RESPONDENT AS A CHARTER PARTY  
OR EXCURSION SERVICE CARRIER;  
ORDERING RESPONDENT TO CEASE  
AND DESIST; IMPOSING PENALTIES;  
DEFAULT ORDER

**BACKGROUND**

- 1 The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if A+ Pacific Limousine, Inc. (A+ Pacific or Company) is operating as a charter party or excursion service carrier for transportation of passengers for compensation between points in the state of Washington and on Washington’s public highways without the necessary certificate required for such operations. The Commission, through its regulatory staff (Staff), also complains against the Company, alleging five violations of RCW 81.70.220, and requests that the Commission impose penalties of up to \$5,000 per violation for a total potential penalty of \$25,000.
- 2 The Commission convened an evidentiary hearing before Administrative Law Judge Rayne Pearson on November 30, 2016, at 10 a.m. At the hearing, Staff presented documentary evidence and testimony from compliance investigator Michael Turcott. No other party appeared.
- 3 According to Staff’s investigation report, A+ Pacific is owned and operated by Aleksandr Polyukh. Mr. Turcott testified that Staff contacted the Company via email on March 4, 2016, posing as a consumer, and obtained a quote for limo bus service. This conduct gave rise to the first violation alleged in the Complaint for offering to provide transportation services without authority from the Commission.
- 4 Mr. Turcott further testified that Staff contacted the Company a second time via email on March 30, 2016, posing as a consumer, and obtained a quote to transport 20 passengers in June 2016. This conduct gave rise to the second violation alleged in the Complaint for offering to provide transportation services without authority from the Commission.

- 5 Mr. Turcott also testified about the contents of the Company's website, [www.limo01.com](http://www.limo01.com), which advertised charter party and excursion carrier service, and specifically advertised a limo bus that holds up to 20 passengers. The Company's website was active until at least April 2016. The contents of the Company's website constitute the third violation alleged in the Complaint for advertising charter party carrier service without authority from the Commission.
- 6 Mr. Turcott also testified about the contents of the Company's Facebook page, which lists the Company's contact information and displays a photo of the Company's limo bus. The Company's Facebook page constitutes the fourth violation alleged in the Complaint for advertising charter party carrier service without authority from the Commission.
- 7 Finally, Mr. Turcott testified about the Company's online advertisement at [www.rentalimo.com](http://www.rentalimo.com), which advertises the Company's 20-passenger limo bus for a rate of \$171 per hour. The Company's advertisement at [www.rentalimo.com](http://www.rentalimo.com) constitutes the fifth violation alleged in the Complaint for advertising charter party carrier service without authority from the Commission.
- 8 Brett P. Shearer, Assistant Attorney General, Olympia, Washington, represents Staff.<sup>1</sup>

### DISCUSSION AND DECISION

- 9 **Default.** On September 29, 2016, the Commission personally served, via legal messenger, the Complaint and Order Initiating Special Proceeding on an individual over the age of 18 who refused to identify himself, but confirmed that the service address was Mr. Polyukh's residence in Kennewick, WA. The Company failed to appear or otherwise respond to the Complaint.
- 10 Staff moved that A+ Pacific be held in default for failing to appear at the hearing. Staff also requested that it be allowed to present a prima facie case demonstrating that A+

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<sup>1</sup> In adjudications the Commission's regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Pacific was operating as a charter party and excursion service carrier without the required certificate issued by the Commission.

- 11 The Complaint and Order Instituting Special Proceeding includes a notice that any party who fails to attend or participate in the hearing may be held in default according to the terms of RCW 34.05.440 and WAC 480-07-450. RCW 34.05.440(2) provides: "If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding ... the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order." WAC 480-07-450(1) provides that that the Commission may find a party in default if the party fails to appear at the time and place set for a hearing.
- 12 A+ Pacific was properly and legally served with the Complaint and Order Instituting Special Proceeding, which provided due and proper notice of the November 30, 2016, hearing. Based on A+ Pacific's failure to appear, the Administrative Law Judge granted Commission Staff's request to enter a default order and to allow for presentation of its case.
- 13 **Classification as Charter Party or Excursion Carrier.** RCW 81.04.510 authorizes this special proceeding to determine whether A+ Pacific is engaging in business or operating as a charter party or excursion carrier in Washington without the requisite authority. That statute places the burden of proof on the Respondent to demonstrate that its acts or operations are not subject to the provisions of RCW Chapter 81.
- 14 Under WAC 480-30-036, "motor vehicle," as it relates to charter party and excursion carriers, is defined as "every self-propelled vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver." Limousines and executive party vans with seating capacities of 15 passengers or greater are regulated by the Commission as charter party or excursion carriers. Party buses, defined as any motor vehicle whose interior enables passengers to stand and circulate throughout the vehicle because seating is placed around the perimeter of the bus or is nonexistent and in which food, beverages or entertainment may be provided, are regulated by the Commission regardless of passenger capacity.<sup>2</sup>

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<sup>2</sup> RCW 81.70.020(7).

- 15 The record shows that on two occasions, A+ Pacific offered to provide transportation services, and that on three occasions, A+ Pacific advertised as a charter party or excursion service carrier.
- 16 By failing to appear at the hearing, A+ Pacific failed to meet the burden of proving that its business operations are not subject to the provisions of RCW 81.70.220. The Commission finds on the basis of the evidence presented by Staff through exhibits and witness testimony that A+ Pacific is conducting business that requires Commission approval without the necessary operating authority. The Commission accordingly orders A+ Pacific to cease and desist from such conduct, as required by RCW 81.04.510.
- 17 **Penalty.** At the hearing, Staff recommended the Commission impose penalties of \$5,000 for each of the five violations alleged in the Complaint, for a total penalty of \$25,000.
- 18 The Commission may consider a number of factors when determining the level of penalty to impose, including whether the violations were intentional, whether the company was cooperative and responsive in the course of Staff's investigation, and whether the company promptly corrected the violations once notified.<sup>3</sup> Here, A+ Pacific received extensive technical assistance prior to the Commission instituting this special proceeding; the Complaint describes multiple technical assistance letters sent to the Company explaining that its operations require a certificate from the Commission. Moreover, A+ Pacific failed to appear at the hearing to provide any explanation for the violations or describe what steps the Company has taken, if any, to come into compliance.
- 19 Given the Company's history of disregarding the Commission's authority – including its failure to appear at the November 30, 2016, hearing – we find that the maximum penalty, as proposed by Staff at hearing, is appropriate. Accordingly, we impose the maximum penalty of \$5,000 for each of the five violations alleged in the Complaint, for a total penalty of \$25,000.

### FINDINGS AND CONCLUSIONS

- 20 (1) The Commission is an agency of the state of Washington vested by statute with authority to regulate persons engaged in the business of providing auto

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<sup>3</sup> Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

transportation services, including charter party or excursion carrier services, over public roads in Washington.

- 21 (2) The Commission has jurisdiction over the subject matter of this proceeding and over A+ Pacific.
- 22 (3) On at least two occasions, A+ Pacific offered to provide charter party or excursion carrier services within the state of Washington without first having obtained a certificate from the Commission, in violation of RCW 81.70.220.
- 23 (4) On at least three occasions, A+ Pacific advertised to provide charter party or excursion carrier services without first having obtained a certificate from the Commission, in violation of RCW 81.70.220.
- 24 (5) A+ Pacific is classified as a charter party or excursion service carrier within the state of Washington pursuant to RCW 81.04.510.
- 25 (6) Pursuant to RCW 34.05.440(2), A+ Pacific is held in default for failing to appear at the November 30, 2016, hearing.
- 26 (7) A+ Pacific should be directed to cease and desist from providing charter party and excursion carrier services over public roads in Washington as required by RCW 81.04.510.
- 27 (8) A+ Pacific should be penalized \$25,000 for five violations of RCW 81.70.220.

**ORDER**

THE COMMISSION ORDERS:

- 28 (1) A+ Pacific Limousine, Inc. is held in default. Should A+ Pacific Limousine, Inc. fail to respond to this Order by filing a written motion within ten (10) days requesting that the order be vacated pursuant to WAC 480-07-450(2), the default in this proceeding shall remain in place.
- 29 (2) A+ Pacific Limousine, Inc. is classified as a charter party or excursion service carrier within the state of Washington.

- 30 (3) A+ Pacific Limousine, Inc. is ordered to immediately cease and desist operations  
as a charter party or excursion service carrier within the state of Washington  
without first obtaining a permit from the Commission.
- 31 (4) A+ Pacific Limousine, Inc. is assessed a penalty of \$25,000, which is due and  
payable no later than 10 days from the effective date of this Order.
- 32 (5) The Commission retains jurisdiction over the subject matter and the parties to this  
proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective December 1, 2016.

RAYNE PEARSON  
Administrative Law Judge

### NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and **two (2)** copies of your Petition or Answer by mail delivery to:

Attn: Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
P.O. Box 47250  
Olympia, Washington 98504-7250