

Agenda Date: January 26, 2012
Item Number: B1

REVISED January 25, 2012

Docket: TE-111928
Company Name: HopeSource, CH-64474

Staff: David Gomez, Deputy Assistant Director, Water, Solid Waste and Transportation

Recommendation

Deny the petition for reconsideration filed by CWA, Inc., d/b/a Central Washington Airporter on December 19, 2011.

Background¹

On November 7, 2011, HopeSource filed an application for an auto transportation authority in Docket TC-111928.² HopeSource has operated as a Private, Non-profit Transportation Provider (RCW 81.66) under Utilities and Transportation Commission (UTC or commission) Certificate No. C-905 issued to HopeSource in Docket TN-061083 on April 20, 2007.

Included in HopeSource's application, was a petition seeking forbearance from rate and service regulation as an auto transportation company citing the criteria specified in RCW 81.68.015(5).

HopeSource, in its application of November 7, 2011, proposed to provide auto transportation services for low-income, seniors, and disabled citizens as well as students of rural Kittitas County to access jobs, educational opportunities, medical facilities and recreation. The service will be almost entirely funded through grants from the Washington Department of Transportation (DOT), Central Washington University and Yakima Transit.

Order 01, TC-111928, indicated that HopeSource will not charge anyone for its Yakima to Ellensburg Commuter route service and instead would solicit donations from passengers.³ Commission staff clarifies in this memo that HopeSource is projecting receiving five percent of the funding for its Yakima to Ellensburg Commuter route service from these donations.⁴ HopeSource, however, informed staff that it would not turn away riders who are unable to pay.

RCW 81.68.015 allows the commission to find, with or without a hearing, that a company's service is provided pursuant to a contract with a state agency, or funded by a grant issued by the department of transportation, and that exemption from RCW 81.68 is otherwise in the public interest.

Commission staff's analysis determined that HopeSource's proposed service met the criteria for forbearance specified above. At its regularly scheduled meeting of November 23, 2011, the

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- 1 The background section of this memo is drawn from the background section in Order 01, TC-111928, which was also used by CWA, Inc., d/b/a Central Washington Airporter, in its background section for its petition filed on December 19, 2011.
 - 2 After the November 23, 2011, open meeting, the docket was re-titled TE-111928 to reflect the commission's decision to grant forbearance from rate and service regulation as an auto transportation company.
 - 3 Suggested donation of \$3.00 each way (\$6.00 round trip) per passenger.
 - 4 \$12,464 out of a total budget of \$276,464.

commission granted HopeSource relief from rate and service regulation as an auto transportation company. HopeSource began service on November 27, 2011.

Discussion

Pursuant to WAC 480-07-375 and WAC 480-07-395, CWA, Inc., d/b/a Central Washington Airporter, Certificate No. C-1073 (CWA or company) filed a petition for reconsideration of Order 01 in this case on December 19, 2011. In its petition, CWA asserts the following:

1. CWA has been operating a scheduled bus service for the past seven years along the same route between Yakima and Ellensburg that HopeSource is now operating under an authority granted by the commission in Order 01 of this docket (CH-64474). As a result, CWA is being financially harmed.

Staff's response – Financial impact to other carriers is not a criterion listed in RCW 81.68.015(5) for the commission to consider to grant a company forbearance from rate and service regulation.

2. The commission did not provide CWA a notice and opportunity for hearing on this matter as required under RCW 81.68.040.

Staff response – The notice requirements in RCW 81.68.040 do not apply. Furthermore, RCW 81.68.015(5) specifies that the commission may arrive at its findings and decide on forbearance from rate and service regulation with or without a hearing. The commission considered this item in its regularly scheduled open meeting and, as such, complied with its customary public notice requirements regarding the agenda for the open meeting.

3. HopeSource charges a fare for service between Yakima and Ellensburg and is therefore not funded entirely on grants from the DOT; a requirement for forbearance from rate and service regulation under RCW 81.68.015.⁵ Given this condition, the granting of forbearance from commission regulation to HopeSource is contrary to law.

Staff response –RCW 81.68.015(5) does not require that the service must be fully funded by a grant issued by the DOT.

4. RCW 81.68.015 requires a finding by the commission that; “*exemption from this chapter is otherwise in the public interest.*” CWA believes that it is not in the public’s interest to disregard its financial investment in granting a competing authority to HopeSource.

Staff response - Among the criteria for the commission to grant a company forbearance from rate and service regulation under RCW 81.68.015(5), the impact on the financial investment of other carriers is not one of them. Staff believes the public interest is well served by the positive impact from using federal and other grant dollars to subsidize auto transportation services for low-income, seniors, and disabled citizens as well as students of rural Kittitas County to access jobs, educational opportunities, medical facilities and recreation. CWA competed along with HopeSource in DOT’s grant award process and CWA’s proposal did not prevail.

5 HopeSource receives 95 percent of its funding from grants: 47 percent is funded by a grant from the DOT, 24 percent from Yakima Transit and another 24 percent from Central Washington University.

5. Code of Federal Regulations (CFR), Title 49, Part 604 provides protection for private charter operators from unauthorized competition from recipients of Federal financial assistance. DOT's award of Federal grant funds to HopeSource, invoke protections specified in CFR 49, Part 604 which requires HopeSource to enter into a Charter Service Agreement with CWA.

Staff response – Staff's reading of CFR 49§ 604.2 (c) shows that the Federal grant issued by DOT to HopeSource under Title 49 United States Code (U.S.C.) 5311, does not require the entering, by the grant recipient, into a Charter Service Agreement.

Staff has reviewed the assertions made by the company above and does not see any reason to recommend that the commission grant the company's petition.

Conclusion

Deny the petition for reconsideration filed by CWA, Inc., d/b/a Central Washington Airporter on December 19, 2011.