

Docket No. MC-F-21062

These comments are filed in accordance with 49 C.F.R. §§ 1182.5 and 1182.8.

Colorado Jitney, LLC (Jitney) is a regulated transportation carrier for hire in the State of Colorado subject to the states' Public Utilities Commission governance. Among other services, Jitney is authorized to provide transportation service at Red Rocks Park under its common carrier certificate CPCN 55785. Evergreen Trails, d/b/a Horizon (Horizon) is a regulated transportation carrier for hire in the State of Colorado. Horizon possesses two Certificates of Public Convenience and Necessity (CPCN) and one permitted contract authority issued by the Colorado Public Utilities Commission (Commission) – neither the certificates, nor permit authorize Horizon to provide shuttle service at Red Rocks Park located wholly in Jefferson County, Colorado.

Jitney filed a complaint against Horizon in December 2013 – 13F-1372CP. That docket was dismissed without prejudice in July 2014. In July 2014 Jitney filed another identical formal complaint against the City and County of Denver (Denver) and Horizon for providing unauthorized shuttle services in Red Rocks Park. This complaint (Colorado Public Utilities Commission - 14F-0806CP) is pending and the impetus for this filing. In violation of Commission rules neither Horizon, nor Denver sought or obtained Commission approval to provide the shuttle service in Red Rocks Park. Finally, neither Horizon, nor Denver disputes the execution or performance of the terms of the contract.

Denver and Horizon contend that the Commission does not have subject matter jurisdiction because the roads in Red Rocks Park are *Private* (Emphasis Added) and the service is *Free* (Emphasis Added). Jitney believes Denver's and Horizon's defense is ludicrous and amounts to a confiscation of public lands because the lands and roads were acquired, constructed, and maintained through the use of public funds. Furthermore, it is

an erosion of the original agreement between the City and County of Denver, the State of Colorado, and the United States Government dating to the early 1900's that enabled Denver to purchase lands outside its territorial boundaries for public purposes. In addition, the service is not "free" as Denver contends, but is paid for through a required surcharge in the sale of all tickets.

Furthermore, Denver and Horizon base their defense on "assumptions" and "presumptions". The Respondents' (Denver and Horizon) utilization of CRS § 40-10.1-105 (j) "Transportation performed by the federal government, a state, or any agency or political subdivision of either, whether through an intergovernmental agreement, contractual arrangement, or otherwise"; is a clear misrepresentation of the intent of the statute, and there is zero evidence in the public record to substantiate the Respondents' defense. If the Surface Transportation Board (STB) approves the transfer of Horizon's Colorado Assets to Ace Express, then the Respondents will not be held accountable for any past wrongdoing. These violations of Colorado's Regulations amount to a Class 2 Misdemeanor and need be fully adjudicated in Colorado's legal system.

Docket 14F-0806CP is of great public importance because the Respondents' position disregards three Colorado Supreme Court Decisions. 1) *City and County of Denver v. Public Utilities Commission, 507 P.2d 871 (Colo. 1973)* which stands for the proposition that, outside its home rule political boundaries, Denver needs to obtain PUC approval for any transportation service it wants to provide, or suspend, and 2) *City of Durango v. Durango Transportation, Inc 807 P.2d 1152 (Colo. 1991)* which stand for the proposition that any private company contracted by Denver to provide the service on Denver's behalf, such as Horizon, would be subject to PUC jurisdiction, and in further

reliance on the fact that Red Rocks Park is a taxpayer maintained public park and that the roads in the park, also maintained by taxpayer funds, and built for the purpose of giving the public access to this public park, are accordingly “Public Highways” within the meaning of C.R.S. 40-10.1-101(16). Thirdly, *Board of County Comm’rs v. Flickinger*, 687 P.2d 975 (Colo. 1984) the Colorado Supreme Court held that a road over private land that was gated was nonetheless a public highway because the evidence showed that for over 20 years, the public “continuously entered the Flickinger property through the gate at the foot of the road and used the road for recreational purposes and as a means of access to other adjacent lands” and that the owners had actual knowledge of the public use of the road and “generally acquiesced in it”.

In an apparent attempt to distance Horizon from Commission oversight, Denver cancelled the contract to provide shuttle service at Red Rocks Park because Horizon is selling their assets through the Surface Transportation Board (STB) in this docket. If the STB approves the transfer of Horizon’s Colorado Assets, then the STB shall only aid and abet further violations of Colorado Statutes. As it matters before the STB, Jitney contests the transfer of any and all assets between Horizon and Buyer in this Docket. Jitney believes Horizon’s transfer of Colorado Assets is a real attempt to deny the Commission subject matter jurisdiction and absolve Horizon from wrongdoing and liability for violating public policy. Jitney prays for relief that the STB does not permit the transfer, acquisition, or sale of *any assets* (Emphasis Added) in this docket.

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CERTIFICATE OF SERVICE

I, Bradley J. Doran verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with these comments is true and correct. Further, I certify that I am qualified and authorized to file these comments or pleading. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense. I served a true and correct copy of the upon each of the persons whose names and addresses appear below, by STB e filing system and mailing the same in sealed envelopes properly addressed, with sufficient postage prepaid to carry the same to its destination to the following:

Surface Transportation Board,
395 E Street S.W.,
Washington, DC 20423-0001.

Mark J. Andrews
Strasburger & Price, LLP
Suite 717
1025 Connecticut Avenue, N.W.
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This 8th Day of June, 2015.

Bradley J. Doran
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