

Licence Application Decision

Inter-City Bus—Amendment

Application #	9338-20
Applicant & Application Summary	<p>Michael David HATHAWAY <i>Trade Name:</i> Mountain Man Mike's Amend ICBA Licence Simplified ICB Process</p> <ul style="list-style-type: none">• Add the following route on a reservation basis: C. Osoyoos - Kelowna
More Information	<ul style="list-style-type: none">• Notice of applications and published decisions are published in the Weekly Bulletin.• For convenience, published documents for recent ICB applications are listed on the bus application webpage.
Applicant Information	<p>Current Passenger Transportation Licence: #75194 with:</p> <ul style="list-style-type: none">• Inter-City Bus Authorization (ICBA)• General Authorization (GA) <p>Office:</p> <ul style="list-style-type: none">• P O Box 953 Kaslo, BC V0G 1M0
Submissions & Public Comments	None received.
Board Decision	<p>The application is approved in whole.</p> <p>Proposed terms and conditions respecting Route C are established as requested in the application summary.</p>
More Info	<p>Notice of applications and published decisions are posted in the PT Board Bulletin. For convenience, published documents for recent ICB applications are listed on the bus application webpage.</p>
Decision Date	June 11, 2020
Panel Chair	William Bell

I. Introduction

The applicant, Michael David Hathaway, doing business as Mountain Man Mike's Mountain Man Mike's (MMM), has a licence to operate inter-city buses (ICBs). The licence includes the following routes and minimum route frequencies (MRFs):

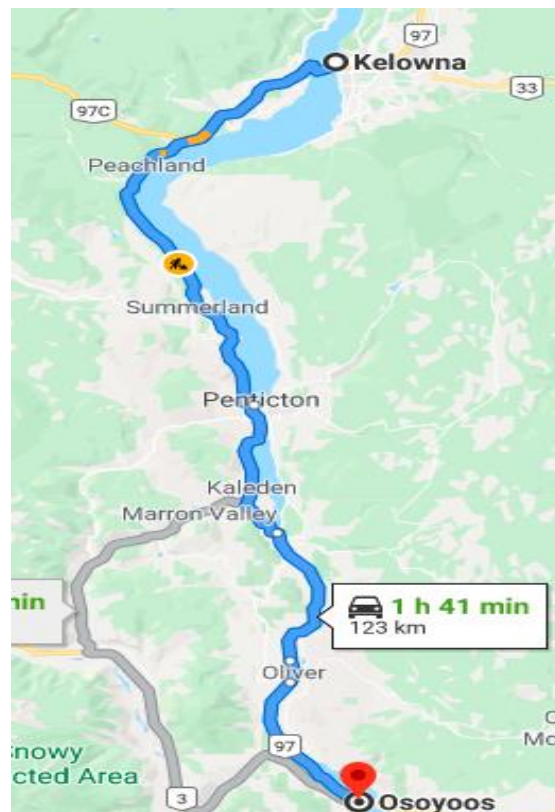
- Route A (Kaslo - Kelowna) with MRF of 1 trip per week in each direction
- Route B (Kaslo - BC/Alberta border) with MRF of 1 trip per week in each direction

MMM is applying to:

- Add 1 route (Osoyoos - Kelowna with MRF of 1 trip per week in each direction)

II. Applicant's Proposal:

Figure 1 Proposed Route C



III. Background

This application was originally submitted on the Basis of Urgent Public Need. In a decision dated May 20, 2020 the Board found that the applicant had not demonstrated an Urgent Public need. As a result, the application was published in the weekly bulletin and is now proceeding through the Board's regular, but simplified process for ICBs.

Mountain Man Mike's current ICB operation was approved by the Board in May 2019 with service provided to passengers on a year-round basis with advanced reservations by phone, online, with an app on a passenger's smartphone or tablet. Tickets are also available to purchase through a driver, from a local agent at pick-up points or through a third-party travel agent transportation broker. The service uses 22 and 20 passenger buses and includes courier shipping which is not regulated by the Board.

Michael Hathaway is the sole proprietor of the ICB operation. Its head office is in Kaslo, B.C.

IV. Mandate & Jurisdiction

This application is made under the *Passenger Transportation Act* (the "Act"). The Act regulates the licensing and operation of commercial passenger transportation vehicles in BC.

Under the Act, the Passenger Transportation Board (the "Board") makes decisions on applications for inter-city buses. The Board has the authority to consider and approve applications for new licences as well as applications from existing licensees to change terms or conditions of their licences.

In February 2018, Greyhound Transportation Canada ULC (Greyhound Canada) received approval on its application 256-17 to the Board to withdraw service on most routes in the North Central Region of BC, and on a number of corridors elsewhere in the province, including the Hope-Princeton Highway.

In July 2018, Greyhound Canada issued a news release stating that as of October 31, 2018, it will stop providing bus service in Western Canada. Greyhound was the sole operator on many corridors of BC and its departure put many routes and communities at risk of losing

inter-city bus service and access to safe and essential transportation for work, education, health and family-related purposes.

To encourage other operators to fill the gap left by Greyhound's exit, the Board fast tracked applications using a simplified application process. This package remains currently available for operators applying to operate inter-city buses (ICBs) on corridors in BC that do not have commercial ICB service. It is available regardless of whether or not the absence of service is the result of Greyhound Canada's withdrawal on October 31, 2018.

The Board's mandate is stated in section 28 of the Act. Section 28(1) of the Passenger Transportation Act says that the Board may approve, in whole or in part, an application forwarded to it under s. 26(1) after considering whether:

- (a) there is a public need for the service the applicant proposed to provide under any special authorization.
- (b) the applicant is a fit and proper person to provide that service and is capable of providing that service, and
- (c) the application, if granted, would promote sound economic conditions in the passenger transportation business in British Columbia.

The Act allows the Board to, among other things,

- accept evidence and information that it considers relevant, necessary, and appropriate, whether or not the information would be admissible in a court of law. [Section 15]
- conduct written, electronic or oral hearings, or any combination of them, as the Board, in its sole discretion, considers appropriate. [Section 17]
- require further information from an applicant. [Section 27(1)(b)]

Section 26(2) of the Act requires the Board to publish the fact and nature of applications and section 27(3) requires the Board to consider applications and any written submissions it receives as result of publication. Section 27(5) says that people who make submissions are not entitled to disclosure of further information, unless the Board orders otherwise.

If the Board approves an application, it will set terms and conditions of licence primarily with respect to routes and service levels.

V. Procedural Matters

Route C does not have ICB service and I will consider it based on criteria the Board established for Simplified ICB Applications. The applicant submitted required forms.

This application is being conducted by way of a written hearing.

VI. Applicant's Rationale and Submissions

Public Explanation

The applicant provided the following text in the Application Summary that was published in the *Weekly Bulletin*:

"There are currently towns that cannot access any ICB provider. By adding this currently non-serviced highway section to the Mountain Man Mike's bus route this can include eight more communities and provide an alternate route of travel to major metropolitan cities. Providing the public with options of travel is in the best interest to the public and prevents sudden gaps in service such as the void left by Greyhound and the unprecedented COVID 19 event which has left many communities without any form of service."

Submissions & Applicant's Response

The Board did not receive submissions on this application.

VII. Reasons for the Board's Decision

Section 28(1) of the Act sets out the factors the Board must consider with respect to this application as noted above.

Applicant Fitness

(1) Is the applicant a fit and proper person to provide its proposed service, and is the applicant capable of providing the service?

The Board looks at this question in two parts:

- (a) is the applicant a *fit and proper person* to provide the proposed service; and,
(b) is the applicant *capable* of providing the service?

First, with *fit and proper*, the *Oxford English Dictionary* defines *fit* as including “well adapted or suited to the conditions or circumstances of the case, answering the purpose, proper or appropriate possessing the necessary qualifications, properly qualified, competent, deserving.” Also, the dictionary defines *proper* as including “suitable for a specified or implicit purpose or requirement; appropriate to the circumstances or conditions; of the requisite standard or type; apt, fitting; correct, right.” When looking at whether an applicant is fit and proper, the Board does so in the context of the passenger transportation industry in British Columbia. This includes the regulatory system that grants businesses a licence which confers on them both the authorization they need to provide their service and an ongoing obligation to operate in accordance with proper standards of conduct.

Second, capability is generally understood to mean that an applicant has the ability or qualities necessary to skillfully and effectively meet its obligations and achieve the results it says it will achieve. When looking at capability, the Board reflects on whether the applicant has demonstrated that it has the knowledge and understanding of relevant regulatory requirements and policies that govern passenger transportation providers, and whether it is able to comply with those requirements. It also looks at whether the applicant has the background, skills and knowledge to manage its proposed service, and the financing to operate it. The Board expects an applicant to demonstrate its competence and ability by providing sound and realistic information in its business plan and financial statements that is consistent and compatible with the transportation service it proposes.

MMM has been operating a viable ICB service since May 2019. The disclosure forms of Unlawful Activity and Bankruptcy indicates no negative concerns about the operator. The applicant also signed the Board’s Declaration that it will operate its vehicles in accordance with the Passenger Transportation Act and the Liquor Control and Licencing Act in B.C.

MMM’s current National Safety Code rating is “Satisfactory-Unaudited” which is acceptable to the Board. The application included a Condensed Operating Plan and financial information. The latter included a Balance Sheet as at December 31, 2019 and a Profit and Loss Income Statement for January-December 2019 as well as 36-month Cash Flow Projections (July 2020-June 2023) that are rational.

MMM plans to add two more buses to its fleet this year and together with its current fleet it will have the capacity to service the added run on a weekly basis. It would appear the applicant has the wherewithal to start-up the added ICB service. This in combination with its experience and operational knowledge suggest the capability to establish and maintain a reliable ICB service for the proposed Route C.

Based on the information and evidence above, I find that MMM continues to be a fit and proper entity to provide the proposed service, and that it has demonstrated it is capable of providing the service.

(2) Is there is a public need for the service the applicant proposes to provide?

An applicant is required to demonstrate public need by showing that there are people who would use the proposed service. Applicants should provide clear information about the service it proposes, and they should provide supporting evidence that is factual and objective. They should not rely on general claims and their own opinion. The Board reviews applications and considers the extent and type of need that has been demonstrated for the proposed service.

The Board looks at the state of inter-city bus services in the area where the applicant is applying to operate. It may consider such things as:

- a. Will the service fill a gap in the market?
- b. Has an inter-city bus company recently left the market?

Has the applicant shown that current service levels are unsatisfactory?

The applicant is to operate an ICB service from Osoyoos, B.C. to Kelowna, B.C. once a week, but plans to offer daily service during peak holiday seasons. ICB service was formerly provided by Greyhound Canada on the corridor through its Routes B2 (City of Kelowna - City of Penticton) and Route C (City of Vancouver -Town of Osoyoos). There are no commercial ICB operators on the route at the present time. The proposed MMM service restores the availability of an ICB transportation option. I have considered this prior service and the current gap as representing public need. Included also with the application were approximately 55 Gmail or Google Mail enquiries from the public seeking travel on the corridor as a whole or in parts.

These enquiries were related to needed travel to fulfill medical appointments, connect with other ICB networks and air travel or family/relatives at Kelowna or other route points/communities on the corridor. Many were from seniors and younger adults who cannot or do not drive and who seek the affordability of ICB travel.

I find that there is a public need for the proposed service.

(3) Would approving the application support sound economic conditions in the passenger transportation business in British Columbia?

In considering sound economic conditions, the Board strives to balance public need for available, accessible and reliable commercial passenger transportation services with overall industry viability and competitiveness. The Board considers the issue from a wide-ranging perspective, which includes a consideration of harm to other industry participants. Generally speaking, it is the Board's view that the overall economic interests of the transportation business weigh more heavily than the economic and financial interests of any particular applicant.

The Board considers how the service could benefit the market and whether the market has the capacity to absorb additional services. It may consider such things as:

- c. Will the service give the public additional transportation options?
- d. Does the market place have the capacity to absorb another service?
- e. Are there inter-city bus providers in the target market area?
- f. Will the services supplement another non-transportation business?

The proposed added route allows an added option for passengers using the applicant's current Route A (Kaslo to Vancouver and return via Highway 3) and expands ICB options and services on the route at Osoyoos north to and south from Kelowna. I note the application received no submissions. Any impact on current services by Silver City Stagelines (SCS) that operates an ICB service from Kaslo to Kelowna via Rock Creek should be minor. As noted in the Board's decision that initially approved MMM (See application decision re 4449-19 published May 9, 2019) the MMM and SCS ICB services are distinct with respect to the types of vehicles operated, service locations, short-haul vs long-haul, etc. Overall, approving this application should help complement and raise the profile of both ICB operations.

I find that approving the application would promote sound economic conditions in the passenger transportation industry in B.C.

To ensure a smooth transition of service, I am requiring the applicant to post time schedules and implement its time schedules for the proposed route stops and website reservations by the dates set out in Appendices I and II of this decision.

The terms and conditions of licence specify required stops and minimum frequencies. The applicant may, however, at some point want to expand its service to other stops along the approved routes. I have, therefore, approved a term and condition of licence that allows this flexibility.

VIII. Conclusion

For the reasons above, this application is approved as set out in this decision. The Board establishes notice and activation requirements, and terms and conditions of licence that are attached to this decision as Appendices I and II. These form an integral part of the decision.

Michael David HATHAWAY

Mountain Man Mike's

Appendix 1: Requirements to Publish Time Schedules

A Passenger Transportation Licence must be issued by the Registrar of Passenger Transportation under section 29 or renewed under section 34 of the *Passenger Transportation Act* before the special authorization approved in this decision may be exercised.

Direction to the Applicant Regarding Notice and Implementation

Unless otherwise ordered by the Passenger Transportation Board, Michael David Hathaway must, for Route C, post time schedules online and make bookings available to the public through its online reservation system no later than **July 31, 2020**.

Direction to the Registrar of Passenger Transportation Regarding Issuance

The Registrar of Passenger Transportation (Registrar) may only issue a licence to Michael David Hathaway with terms and conditions that are approved in this decision and set out in Appendix 2 after the Registrar is satisfied that, no later than **July 31, 2020**, Michael David Hathaway has posted time schedules online and made available to the public its online reservation system.

Michael David HATHAWAY

Mountain Man Mike's

Appendix 2: Terms & Conditions of Licence

Special Authorization INTER-CITY BUS AUTHORIZATION (ICBA) Terms & Conditions	
Definitions	"Board" means the Passenger Transportation Board "Registrar" means the Registrar, Passenger Transportation
A. Legislative Requirements	
Vehicle Identifiers	Each motor vehicle operated under this authorization must display, at the times and in the form and manner required by the Registrar, a vehicle identifier that is: (a) issued to the licensee by the Registrar; or (b) authorized by the Registrar to be issued by the licensee.
B. Services	
Services	Transportation of passengers must be provided: (a) on a scheduled basis; and (b) in accordance with minimum frequencies and other terms and conditions of licence that apply to the routes and route points.
Schedules	The licence holder must publish, in a manner accessible to the general public, a schedule for each route with the time and location of each stop; and must carry in each vehicle a copy of the schedule that the vehicle is following.
Service Exception	Routes may only be operated on a "pre-booked" or "reservation required" basis if the route points are: (a) designated as reservation required in the licence; (b) identified as pre-booked or reservation required in all current; published schedule information; and (c) available at all times for pre-booking or reservation on the licensee's website. When these conditions are met and when no reservations have been received for pick up or drop off at one or more points on the route by the time service is scheduled to be provided, the licence holder has the option of not providing service to those points that would otherwise be

	required.
Alternative Points	The licence holder may pick up or drop off passengers at any location, municipality or unincorporated area that is between the terminating points and along the highway corridors for the inter-city bus routes below.
Route A	
Terminating Point 1:	Village of Kaslo
Terminating Point 2:	City of Vancouver
Corridors:	Highway 1: Vancouver – Hope Highway 3: Hope – YCG Airport Highway 3A: YCG Airport – Balfour Highway 31: Balfour – Kaslo
Route Points	Minimum Frequencies
Village of Kaslo	1 trip per week (each direction)
Ainsworth	1 trip per week (each direction)
Balfour	1 trip per week (each direction)
City of Nelson	1 trip per week (each direction)
City of Castlegar	1 trip per week (each direction)
Christina Lake	1 trip per week (each direction)
City of Grand Forks	1 trip per week (each direction)
City of Greenwood	1 trip per week (each direction)
Rock Creek	1 trip per week (each direction)
Town of Osoyoos	1 trip per week (each direction)
City of Keremeos	1 trip per week (each direction)
Town of Princeton	1 trip per week (each direction)
District of Hope	1 trip per week (each direction)
City of Chilliwack	1 trip per week (each direction)
City of Abbotsford	1 trip per week (each direction)
City of Vancouver	1 trip per week (each direction)
Route B	
Terminating Point 1:	Village of Kaslo
Terminating Point 2:	BC/Alberta Border (Highway 3)
Corridors:	Highway 31: Kaslo – Balfour

Highway 3A: Balfour – Nelson Highway 6: Nelson – Salmo Highway 3: Salmo – BC/AB Border (HWY 3)	
Route Points	Minimum Frequencies
Village of Kaslo	1 trip per week (each direction)
Ainsworth	1 trip per week (each direction)
Balfour	1 trip per week (each direction)
City of Nelson	1 trip per week (each direction)
Village of Salmo	1 trip per week (each direction)
Town of Creston	1 trip per week (each direction)
City of Cranbrook	1 trip per week (each direction)
City of Fernie	1 trip per week (each direction)
BC/AB Border (HWY 3)	n/a
Route C	
Terminating Point 1:	Town of Osoyoos
Terminating Point 2:	City of Kelowna
Corridor:	Highway 97
Route Points	Minimum Frequencies
Town of Osoyoos	1 trip per week (each direction)
Town of Oliver	1 trip per week (each direction)
Town of Kaleden	1 trip per week (each direction)
City of Penticton	1 trip per week (each direction)
Town of Summerland	1 trip per week (each direction)
District Municipality of Peachland	1 trip per week (each direction)
City of Westbank	1 trip per week (each direction)
City of Kelowna	1 trip per week (each direction)
C. Other Requirements	
Transfer of a licence	This special authorization may not be assigned or transferred except with the approval of the Board pursuant to section 30 of the <i>Passenger Transportation Act</i> .
Liquor Control and Licensing	The licensee must at all times ensure passenger directed vehicles under their licence are operated in compliance with the <i>Liquor Control and</i>

Act. Cannabis Control and Licensing Act	<i>Licensing Act and the Cannabis Control and Licensing Act.</i>
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