

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF YELLOW CAB COOPERATIVE)
ASSOCIATION TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 2378&I)
CURRENTLY HELD AND OPERATED BY YELLOW)
CAB COOPERATIVE ASSOCIATION.)

DOCKET NO. 95A-118CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF YELLOW CAB COOPERATIVE)
ASSOCIATION TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 174&I)
CURRENTLY HELD AND OPERATED BY YELLOW)
CAB COOPERATIVE ASSOCIATION.)

DOCKET NO. 95A-119CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF YELLOW CAB COOPERATIVE)
ASSOCIATION TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 180&I)
CURRENTLY HELD AND OPERATED BY YELLOW)
CAB COOPERATIVE ASSOCIATION.)

DOCKET NO. 95A-120CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF YELLOW CAB COOPERATIVE)
ASSOCIATION TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 1198)
CURRENTLY HELD AND OPERATED BY YELLOW)
CAB COOPERATIVE ASSOCIATION.)

DOCKET NO. 95A-121CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF YELLOW CAB COOPERATIVE)
ASSOCIATION TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 150&I)
CURRENTLY HELD AND OPERATED BY YELLOW)
CAB COOPERATIVE ASSOCIATION.)

DOCKET NO. 95A-122CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF YELLOW CAB COOPERATIVE)
ASSOCIATION TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 4302)
CURRENTLY HELD AND OPERATED BY YELLOW)
CAB COOPERATIVE ASSOCIATION.)

DOCKET NO. 95A-123CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF YELLOW CAB COOPERATIVE)
ASSOCIATION TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 177&I)
CURRENTLY HELD AND OPERATED BY YELLOW)
CAB COOPERATIVE ASSOCIATION.)

DOCKET NO. 95A-124CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF YELLOW CAB COOPERATIVE)
ASSOCIATION TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CONTRACT CARRIER PERMIT)
NO. B-8254 CURRENTLY HELD AND OPERATED)
BY YELLOW CAB COOPERATIVE ASSOCIATION.)

DOCKET NO. 95A-125BP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF DENVER AIRPORT LIMOUSINE)
SERVICE, INC. TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 82)
CURRENTLY HELD AND OPERATED BY DENVER)
AIRPORT LIMOUSINE SERVICE, INC.)

DOCKET NO. 95A-126CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF DENVER AIRPORT LIMOUSINE)
SERVICE, INC. TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 13175)
CURRENTLY HELD AND OPERATED BY DENVER)
AIRPORT LIMOUSINE SERVICE, INC.)

DOCKET NO. 95A-127CP-
TRANSFER

IN THE MATTER OF THE JOINT APPLICATION)
OF YELLOW CAB COOPERATIVE ASSOCIATION,)
DENVER AIRPORT LIMOUSINE SERVICE, INC.)
AND YELLOW TRANSPORTATION, LLC FOR)
APPROVAL OF THE TRANSFER OF CERTAIN)
ASSETS OF DENVER AIRPORT LIMOUSINE)
SERVICE, INC. TO YELLOW TRANSPORTATION,)
LLC, INCLUDING CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY NO. 2778&I)
CURRENTLY HELD AND OPERATED BY DENVER)
AIRPORT LIMOUSINE SERVICE, INC.)

DOCKET NO. 95A-128CP-
TRANSFER

COMMISSION RULING ON EXCEPTIONS

Mailed Date: December 13, 1995
Adopted Date: December 13, 1995

BY THE COMMISSION:

This matter comes before the Commission for consideration of exceptions to the Recommended Decision herein, Decision No. R95-912, issued by the Administrative Law Judge ("ALJ") on September

14, 1995. In that decision, the ALJ recommended approval of the 11 applications filed in this proceeding by Applicants Yellow Transportation, LLC ("Yellow Transportation") and Yellow Cab Cooperative Association and Denver Airport Limousine Service, Inc. (collectively referred to as "YCCA"). Those applications seek Commission approval of the transfer of all operating authorities and related assets of YCCA to Yellow Transportation, LLC. In part, the Applicants propose to transfer to Yellow Transportation all rights under Certificate of Public Convenience and Necessity ("CPCN") PUC No. 2378 & I. That certificate authorizes YCCA to use up to 600 cabs in its taxi operations, generally within the Denver Metropolitan area.

The Commission issued notice of the applications on April 3, 1995, and Metro Taxi, Inc. ("Metro"), Colorado Transportation Service, Inc. d/b/a American Cab Company ("American"), and Commission Staff ("Staff") timely intervened. After conducting hearings in this matter, the ALJ issued Decision No. R95-912 in which he recommended approval of the applications and the proposed transfers of assets in their entirety. In reaching his decision, the ALJ rejected a number of arguments by Intervenors. Intervenors submitted exceptions to the Recommended Decision pursuant to the provisions of § 40-6-109(2), C.R.S. Applicants YCCA and Yellow Transportation have filed responses to the exceptions.

Generally, the exceptions suggest that: (1) the ALJ applied an incorrect standard in reviewing the proposed transfer of assets, and that the ALJ misconstrued the Commission's authority to impose

conditions upon the transfer; (2) the ALJ erred in refusing to apply the doctrine of dormancy to a portion of the authorities proposed for transfer; (3) the public interest (*i.e.* the need to avoid destructive competition in the market for taxi service in the Denver Metropolitan area) requires that YCCA be permitted to transfer a portion of existing authority only; and (4) the applications filed in these dockets do not reflect as the transferee the actual party approved by the bankruptcy court.¹ Intervenors ultimately request that, if the applications are approved, the Commission restrict the transfer to a maximum of 300 vehicles (*i.e.* the transferee's operating rights would be limited to a maximum of 300 cabs).

Now being duly advised in the premises, we will grant the exceptions. We determine that we possess the legal prerogative to impose conditions upon proposed asset transfers by regulated carriers when the public interest requires such action; and that a portion of YCCA's operating authority has become dormant; and, that the public interest mandates that the transfer of assets be limited to 300 vehicles.

**Standard of Review and Commission Authority to Impose Conditions
Upon the Transfer**

Intervenors first suggest that the ALJ applied an incorrect standard of review in recommending approval of the applications.

¹ YCCA filed its voluntary petition pursuant to Chapter 11 of the Bankruptcy Code on December 29, 1993. Presently, YCCA is a debtor-in-possession. The Bankruptcy Court for the District of Colorado has approved the sale of YCCA's assets, including its operating authorities, although some question remains whether the court approved the specific transferees proposed by Applicants here. See discussion *infra*.

We agree with this contention. Notably, the discussion in the Recommended Decision appears to imply that the Commission's authority to review proposed transfers of assets on the part of regulated carriers is limited. For example, the ALJ concluded:

Regarding the buyer, Yellow Transportation, LLC, is a Colorado limited liability company per the provisions of the Colorado corporation code. The only evidence of record is that its principals are sufficiently wealthy to infuse \$2.4 million immediately, with lines of credit totalling in excess of \$4 million, and they meet the ultimate test: they look good to the seller. Since the only evidence of record is that the purchaser will aggressively operate the various authorities....there will be no loss of service to the public. Given that, and the broad public policy regarding granting licenses, certifications, etc., found in § 24-5-101, C.R.S., there appears to be no legal basis upon which to deny approval to Yellow Transportation, LLC.

Decision No. R95-912, at 4.

The reference to § 24-5-101, C.R.S., and its stated public policy relating to the issuance of licenses and certifications, is absolutely inapposite. That statute is intended to expand employment opportunities within licensed or certified professions for persons convicted of crimes, but who have been rehabilitated.² With respect to issuance or transfer of CPCNs for regulated carriers, the primary public policy is to protect or advance the

² Section 24-5-101 provides:

[T]he fact that a person has been convicted of a felony or other offense involving moral turpitude shall not, in and of itself, prevent him from applying for and obtaining public employment or from applying for and receiving a license, certification, permit, or registration required by the laws of this state to follow any business, occupation, or profession....The intent of this section is to expand employment opportunities for persons who, notwithstanding that fact of conviction of an offense, have been rehabilitated and are ready to accept the responsibilities of a law-abiding and productive member of society.

public interest, not simply to certify new or more carriers. See discussion below. For example, § 40-10-105(2), C.R.S., directs that the doctrine of regulated competition shall prevail with respect to certification of new taxi carriers in the Denver Metropolitan region, the service area at issue in this proceeding. Under the regulated competition standard "public need" is the paramount consideration governing the issuance of CPCNs. *Morey v. Public Utilities Commission*, 629 P.2d 1061 (Colo. 1981). The doctrine of regulated competition, at times, may require limitations upon entry into the carrier market, inasmuch as the obligation to safeguard the general public against the impaired services and/or higher rates accompanying destructive or excessive competition is at the heart of the policy of regulated competition. *Trans-Western Express v. Public Utilities Commission*, 877 P.2d 350, at 357 (Colo. 1994).

In short, we agree with Intervenors that the Recommended Decision employed an incorrect standard of review in this case. The primary question, for purposes of Commission review of the proposed transfer, is not whether Yellow Transportation "look(s) good to the seller," or whether "the purchaser will aggressively operate the various authorities," or whether the transfer is consistent with the public policy regarding licenses and certifications found in § 24-5-101, C.R.S. Rather, the Commission reviews proposed transfers of PUC authority pursuant to the provisions of §§ 40-5-105 and 40-10-106, C.R.S. Under those statutes, as supplemented by the general provisions of the Public

Utilities Law and Commission rules, the correct standard of review is whether the transfer of assets is in the public interest. The Colorado Supreme Court itself has articulated this standard as the appropriate one in transfer cases such as the present proceeding. See *Public Utilities Commission v. Stanton Transportation Company*, 386 P.2D 590 (Colo. 1963) (it is the public interest, not the relative interests of the transferor and transferee, that is of paramount importance in such matters).

Given this "public interest" criterion, we agree with the Intervenor's that issues regarding dormancy and destructive competition are relevant to our decision. The Court's decision in *Mobile Pre-Mix Transit v. Public Utilities Commission*, 618 P.2d 663 (Colo. 1980) supports this conclusion. There, the Court concluded that the Commission had authority to deny an application to transfer a contract carrier permit on the grounds that the transfer would provide the purchaser of the permit the substantial opportunity to unfairly compete with common carriers or to discriminate against shippers. In that case, the impact of the proposed transfer of authority on other carriers and the relevant market were found to be pertinent factors in the Commission's ruling upon the application.

Similarly, in *Public Utilities Commission v. Stanton, supra*, the Court ruled that the Commission was empowered to impose conditions on the transfer of a contract carrier authority where the public interest required it. In that case, the Commission had concluded that an unconditional transfer of authority would harm

common carriers. The Court affirmed the Commission's ruling, stating:

(W)e think that the legislative scheme involved in the regulatory statutes clearly gives the Commission the power to consider the effect of a transfer of a private carrier authority on the operations of existing common carriers and to impose such reasonable restrictions as are necessary to conform the transfer to the public interest.... *What is being affected by the restriction is the likelihood of unwarranted competition and resultant economic havoc and loss of existing common carriers in this state.* Under the circumstances, we cannot say that the imposition of this restriction is unreasonable, arbitrary, or beyond the power conferred upon the Commission by the Legislature.

(emphasis added) *Stanton, supra*, at 379.

With respect to questions of dormancy, as it relates to this transfer proceeding, the Intervenors correctly point out that the issue is one commonly raised and considered by regulatory commissions, including the Colorado Commission, in transfer cases. See discussion *infra* at 15. In the present case, questions of dormancy and destructive competition are inseparable: Intervenors argue that a portion of YCCA's authority has become dormant, and reactivation of the dormant authority through the transfer would likely result in destructive competition.

In general, the cited cases point out that the "public interest" standard encompasses those considerations raised by Intervenors. Those cases also demonstrate that the Commission is empowered to restrict transfers of operating authorities, such as those proposed in this proceeding, where the public interest requires it. In fact, § 40-5-105, C.R.S., specifically provides that the assets of any public utility, including any CPCN, may be

sold, "...only upon authorization by the commission and upon such terms and conditions as the commission may prescribe."

Nevertheless, the Recommended Decision holds that the Commission, *in this proceeding*, may not lawfully restrict the transfer to 300 cabs, the approximate number of vehicles actively operated by YCCA, with a concomitant cancellation of the remaining authority (*i.e.* 300 vehicles). The ALJ concluded--and Applicants support this conclusion--that the Commission may not enter such an order (even assuming the doctrine of dormancy applied), since this would amount to a revocation of a part of YCCA's CPCNs. According to the ALJ, the Commission may cancel or revoke a carrier's authority only for violations of statutes, rules or lawful orders, and then only after notice and hearing. Since none of these necessary elements for revocation exist here, the ALJ concluded, the Commission may not grant the relief requested by Intervenors.³

We agree with the Intervenors' exceptions on this issue. In the first place, we reject the characterization of Intervenors' request (*i.e.* restricting the transfer to 300 vehicles and canceling the dormant portion of the authority) as a revocation action. This proceeding, which was initiated by the Applicants, concerns their request for Commission approval of a transfer of assets, including YCCA's operating authorities. As noted above,

³ For example, the Recommended Decision suggests that application of the doctrine of dormancy to limit the transfer of 300 vehicles to Yellow Transportation would result in two 300-cab companies: the transferees would receive authority to operate 300 taxis and YCCA would retain authority for 300 vehicles, since no order of cancellation or revocation could issue here. See Recommended Decision, pages 10-11.

the Commission, in ruling upon that request, may impose conditions on the transfer so long as those conditions are reasonably related to the public interest. Approval of the transfer of portions of the existing CPCNs, contingent upon relinquishment of the dormant portion of the authority, is not legally equivalent to a revocation proceeding. For example, we do not purport to mandate that Applicants go through with the transfer consistent with our conditional approval here (e.g. cancellation of a portion of YCCA's authority).

Secondly, we disagree with Applicants that considerations of due process prevent us from conditioning approval of the transfer as suggested by Intervenors. To the contrary, an order restricting the transfer comports with due process in all respects. Applicants were on notice that, in light of existing law, their applications would be reviewed through the lens of a public interest standard. Therefore, relevant statutes (e.g. §§ 40-5-105, 40-10-106, C.R.S.), Commission rules (e.g. Rule 2.5, Rules and Regulations Governing Common Carriers, 4 CCR 723-8; Rule 50(g), Commission Rules of Practice and Procedure, 4 CCR 723-1), and regulatory and court decisions (e.g. decisions interpreting the doctrine of dormancy and destructive competition) constituted sufficient notice of the principles and standards which we apply here. See *Mountain States Telephone & Telegraph v. Public Utilities Commission*, 763 P.2d 1020, at 1029 (Colo. 1988). As one specific example, Rule 2.5.2, Rules and Regulations Governing Common Carriers, 4 CCR 723-8, provides that:

An application for transfer shall contain all the information required by Rule 50(g) of the Commission's Rules of Practice and Procedure. Applicants for a transfer must further establish that:

The transferor has been, and now is engaged in, *bona fide* common carrier operations under its certificate; and, further, that the certificate or any part thereof has not been abandoned or allowed to become dormant.

In short, Applicants were duly apprised that, under existing law, questions of dormancy and destructive competition could be considered in these proceedings, and that the Commission's determinations on these issues could affect the ultimate resolution of these proceedings. Furthermore, Applicants were afforded a hearing on these issues wherein they had an opportunity to present witnesses and cross-examine the witnesses presented by other parties. No question should exist that the Applicants have had sufficient opportunity to comment regarding the legality and advisability of conditional approval of the transfer as advocated by the Intervenors.

In support of the conclusion that the Commission may not condition transfer of YCCA's assets upon cancellation of authority to operate 300 vehicles, the ALJ and the Applicants cite *Red Ball Motor Freight v. Public Utilities Commission*, 525 P.2d 439 (Colo. 1974), *Buckingham & Gottula Trucking v. Public Utilities Commission*, 504 P.2d 677 (Colo. 1972), and *Public Utilities Commission v. Colorado Motorway*, 437 P.2d 44 (Colo 1968). These cases, in our view, are distinguishable from the present dockets, and we do not interpret any of the cited precedent as precluding the actions taken in this decision.

For example, *Red Ball* was not even a transfer proceeding, and thus, did not concern any of the legal principles (e.g. the authority of the Commission to prescribe terms and conditions of transfers of assets as may be consistent with the public interest) upon which our present decision depends. *Red Ball* holds-- apparently this is the principle for which the Recommended Decision cited the case--that the Commission cannot revoke an authority without compliance with due process. Of course, we agree with that principle. However, approving the present transfer request contingent upon certain conditions is not a revocation action. Our discussion above also explains that conditional approval is consistent with due process.⁴

Buckingham did concern a request to transfer an authority. There, the Court held that the Commission could not alter a CPCN. However in that case all parties, including the Commission, agreed that the Applicants for transfer had demonstrated all prerequisites of the transfer rule including that the transfer was "to the public interest" and that the certificate was in full force and effect. In short, the conclusions in *Buckingham* were based on circumstances inconsistent with the facts found in the present case.

We further observe that there exists specific precedent for a regulatory commission to order cancellation of portions of a dormant authority in a transfer proceeding. See *Houff Transfer*,

⁴ The *Colorado Motorway* case stands for a similar proposition as that enunciated in *Red Ball* (i.e. that the Commission cannot revoke or amend CPCNs without compliance with due process). This case also did not involve a transfer of an authority.

Inc. v. United States, 291 F.Sup. 831 (W.D. Va. 1968) (evidence supported commission finding that it was consistent with the public interest to require cancellation of dormant portions of a certificate as a condition to approving transfer of other rights). The Court's holding in *Stanton, supra* supports this holding. See *Stanton, supra*, at 380 (notice of possible restriction on a transfer of authority was sufficient where Applicants were aware of the evidence supporting the restriction).

Since conditional approval of the transfer in this proceeding comports with due process, we also reject the ALJ's statement that, "[a]ny attempt to arbitrarily revoke portions of YCCA's existing authorities poses significant problems with takings." Recommended Decision, at 11.⁵ The transfer of CPCNs are expressly subject to the Commission's jurisdiction under the statutes cited above. Furthermore, as previously discussed, the Commission may restrict transfers of certificates when the public interest requires it. Since Applicants were on notice that dormancy and destructive competition were at issue in this proceeding, approval of the transfer subject to a condition of relinquishment of portions of the authorities does not represent an unlawful taking.

Finally, we will briefly comment here upon the Applicants' argument that conditional approval of the transfer would violate the automatic stay provisions of the Bankruptcy Code. We disagree with this contention. The Code, 11 U.S.C. § 362(b)(4),

⁵ The Applicants themselves support this statement by the ALJ only half-heartedly. See Joint Applicants' Response to Exceptions, at 20-21.

specifically exempts from its stay provisions commencement or continuation of actions by a governmental unit to enforce such unit's "police or regulatory power." The present action, which was initiated by the Applicants, obviously concerns important regulatory powers of the Commission. As explained *infra* at 23, by conditioning approval of the present transfer of assets the Commission is seeking to protect the public interest, specifically the public interest in maintenance of adequate and reasonable taxi service in the Denver Metropolitan area. For these reasons, we reject Applicants' argument.

Dormancy

Intervenors take exception to the Recommended Decision's conclusions regarding dormancy. The ALJ held that the doctrine could not be applied to YCCA's authorities to limit the number of vehicles transferred to Yellow Transportation. The facts relating to this issue are not in dispute. The evidence indicates that, although its relevant certificate authorizes it to use 600 cabs, YCCA has never operated this number of vehicles. Since 1989, YCCA has actually used the following number of taxis: 385 cabs in 1989; 440 in 1990; 312 in 1991; 289 in 1992; 272 in 1993; and 274 in 1994. During this period of time, another taxi carrier (*i.e.* Metro) increased the number of vehicles it operated. Additionally, the Commission conducted hearings in Docket Nos. 94A-349CP-Extension, 94A-351CP, 94A-252CP, 94A-354CP, 94A-410CP, 94A-422CP-Extension, 94A-424CP, 94A-436CP, AND 94A-472CP ("Consolidated Case") and, on May 17, 1995, issued Decision No. C95-456 concluding

that there was a public need for 100 additional taxis in the Denver Metropolitan area.⁶

The Applicants contend that the ALJ correctly ruled that the doctrine of dormancy cannot be applied in these circumstances to limit the number of vehicles transferred to Yellow Transportation. Specifically Applicants argue: First, dormancy applies only when a carrier fails to meet an affirmative obligation to serve. As developed by the Interstate Commerce Commission ("ICC"), the doctrine has been applied to deny transfers of authorities, only where the carrier has completely ceased operation, has allowed a portion of the geographic scope of the CPCN to go unused, or has failed to meet some other affirmative obligation under the certificate at issue. Second, the restriction in YCCA's CPCN to the use of 600 vehicles does not impose an affirmative obligation on YCCA to operate 600 cabs continuously. This restriction merely precludes use of more than that number of vehicles.⁷ YCCA has never refused to fulfill its obligation to serve within the scope

⁶ The increase of taxis by other carriers in the region at the same time YCCA was decreasing its fleet size indicates that YCCA's failure to operate more vehicles was not due to a lack of demand for service or a lack of public need, but rather was a decision of management independent of demand. See discussion *infra*.

⁷ Both the ALJ and the Applicants question why, if the reference to 600 vehicles in the CPCN were an affirmative obligation to operate that number, the Commission never informed YCCA of this interpretation. To the extent this comment was intended to imply that the Commission is now estopped from applying the doctrine of dormancy to YCCA, no authority was cited. Assuming the statements by the ALJ and the Applicants are accurate, we doubt that the doctrine of estoppel could be applied to prevent a state agency from carrying out its statutory obligations. We also emphasize that regulated carriers such as YCCA are responsible for being aware of the law as it might apply to their actions, independent of any admonitions from this agency. Furthermore, this decision explains that application of the doctrine of dormancy to YCCA's actions here is consistent with past regulatory and judicial interpretations of dormancy.

of its authority, and nothing more was required of it. Third, it would be unwise public policy to adopt Intervenor's view of dormancy, since it would require management to continuously operate the maximum number of vehicles, regardless of public need and demand for service, at the risk of having a portion of the carrier's authority declared dormant. Such a policy would likely lead to destructive competition.

For the reasons stated by Intervenor, we find that the doctrine of dormancy should apply in this case. Dormancy is a well-established regulatory doctrine, and the concept itself is flexible. In determining whether a particular authority is dormant, many factors must be considered including the nature and scope of the operating rights, and the extent to which the capacity and resources of the carrier have been utilized. *Houff Transfer, Inc. v. United States, supra*, at 835.

The court in *Arrow Transportation Co. v. United States*, 300 F.Supp. 813, at 817-818 (D. R.I. 1969) observed:

In reviewing the cases, this court finds dormancy to mean an abandonment or termination of services the reactivation of which will result in damages either to the public interest or to intervening or protesting carriers who conducted operations during the interruption of said services. This is a common sense rule compatible with the concern for the public interest that must be resolved.

Accord Gateway Transportation Co., Inc. v. United States, 371 F.Supp 180 (W.D. Wis. 1973). Notably, a finding of dormancy, as defined in judicial and regulatory precedents, consists of the elements of non-use of an authority (or parts of the authority) and damages to other carriers or to the public interest as a result of

reactivation of dormant rights.

The cases on dormancy have also recognized that dormant rights cannot be sold. *Arrow Transportation, supra*, at 817. The policy reason for not allowing the transfer of a dormant authority (without proof of public need) is that such allowance "would institute new service without a showing of public need therefor...." *Gateway Transportation, supra*, at 181-82.

This Commission itself has long followed these precepts. To illustrate, in *Re Homer M. Monks*, 20 PUR 3d 339 (Colo. PUC 1957), the Commission denied a portion of a transfer application due to a finding of dormancy of the permit. The Commission stated:

It is the conclusion of this commission, and we so declare it to be our policy, that when a permit has been allowed to be dormant and only a small portion of the area authorized to be served is actually served, that the permit, upon transfer or lease, should be restricted and compressed to the service that has been previously rendered. The sound logic behind such a policy should be patent. Other carriers operating in the same area have, of necessity, assumed the burden of rendering the public service which the already-existing carrier has failed to render. This necessitates the commitment of capital, equipment, and man-power to render the public service by the other carriers. To now permit a carrier who has allowed his authority to be substantially dormant to lease or transfer that authority and extend the operation would be tantamount to the granting of new authority in the area without showing the public convenience and necessity therefore....

Re Homer M. Monks, supra, at 340-341. Accord *Re Sven Johanson*, 31 PUR 3d 520 (Colo. PUC 1959).

We find that the doctrine of dormancy, and the principles underlying the doctrine, apply in the present case. The record demonstrates that, while YCCA was operating approximately 300 vehicles less than authorized in its CPCN (from 1991 through 1994)

and, in fact, was actually decreasing its service, other carriers were acting to enlarge their fleets. In particular, the number of active cabs operated by Metro was: approximately 166 in 1991; 220 in 1992; 270 in 1993; and 300 in 1994. We note that from 1990 to 1994, YCCA reduced its active fleet by approximately 166 vehicles. On the other hand, Metro (from 1991 to 1994) increased its number of active vehicles by approximately 150.

Duane H. Kamins, president and sole shareholder of American also testified in this proceeding. Mr. Kamins noted that the decision in the Consolidated Case granted to American authority to operate 50 taxicabs in the Denver metropolitan area.⁸ According to Mr. Kamins, as a result of the Commission's decision in the Consolidated Case he had expended considerable sums of money obtaining a location, purchasing equipment and hiring a staff in order to begin taxi operations. Mr. Kamin's believed that if the transfer of 600 cabs is approved and the transferee begins operation of 600 cabs, American would not survive and he would lose his investment.⁹ This testimony is consistent with our finding that other carriers have made significant investments and undertaken substantial actions to provide more service to the public, while, at the same time, YCCA was reducing its taxi services and failing to operate a greater portion of its authority.

⁸ Mr. Kamins also pointed out that YCCA, in the Consolidated Case, contended that allowing American to operate 50 cabs in the Denver area would result in destructive competition.

⁹ We also observe that, as with American, Freedom Cabs, Inc. was granted new authority for 50 cabs in the Consolidated Case.

In addition, the testimony in this case demonstrates that the public interest would likely be harmed by placement of an additional 300 cabs into service by the transferee here. Specifically, the record is sufficient to show that destructive competition may result by unconditional approval of the transfer. See discussion *infra*.

These circumstances establish that the doctrine of dormancy should apply in this case. In reaching this conclusion, we specifically reject the Applicants' argument that application of the doctrine to a vehicle number restriction is a new "twist" on the notion of dormancy. As noted above, dormancy is an elastic concept. Even if the doctrine had not been applied previously to a certificate with a restriction on the number of vehicles, nevertheless, the fundamental elements for application of the doctrine (*i.e.* non-use of a portion of an authority, and damages to other carriers or to the public interest) exist here.

As discussed above, the record demonstrates that YCCA has failed to exercise the full extent of its authority and, in fact, has decreased its taxi services since 1990; other carriers have expanded their services during the same time period; and this Commission itself has approved new carriers in the Denver taxi market based, in part, upon the number of cabs *actively* operated by YCCA.¹⁰ The record also shows that approval of the transfer, with the right to use 600 vehicles, would likely damage other carriers

¹⁰ Applicants' assertion that the decision to approve new carriers in the Consolidated Case was not based upon YCCA's active cabs is flatly wrong. See discussion *infra* at 24.

and the public interest. See discussion *infra* at 23. These circumstances fit squarely within the doctrine. Consequently, we disagree with all arguments that our holding constitutes a new standard for dormancy, and that due process has been violated.

Furthermore, the Applicants' and the ALJ's characterization of the 600-vehicle provision in YCCA's certificate as a "restriction," instead of an affirmative obligation, places form over substance for purposes of deciding whether the doctrine of dormancy applies here. The Commission, in granting most of the authorities to serve the Denver metropolitan region, has placed restrictions upon the number of vehicles which may be operated by the various carriers in order to prevent destructive competition in this particular market. See Decision No. C95-456 (Consolidated Case). Even though YCCA's certificate denominates the 600-vehicle provision as a "restriction," the fact remains that YCCA had *the authority* to utilize up to 600 cabs in its operations. The 600-vehicle "restriction" in YCCA's certificate granted it more authority than the lesser "restrictions" contained in the CPCNs of competing carriers in the Denver region.¹¹

The doctrine of dormancy applies to circumstances in which a carrier fails to exercise all or portions of its authority. Under the relevant certificate, YCCA had the authority to use up to 600

¹¹ To illustrate, American and Freedom Cabs were granted taxi authority to serve the Denver metropolitan area in the Consolidated Case. Their certificates were "restricted" against the use of more than 50 vehicles. See Decision No. C95-456, at 49. Certainly, the Applicants would not dispute that YCCA's 600-vehicle "restriction" grants it more authority than possessed by American and Freedom Cabs.

vehicles. Its failure to utilize part of that authority subjects the certificate to a finding of dormancy. Characterization of the 600-vehicle provision in the certificate as a mere "restriction" which cannot become dormant is, we find, hypertechnical and inconsistent with the public interest.

As for the Applicants' argument that it is unwise to apply dormancy to a vehicle number restriction because it would require management to continuously operate the maximum authorized vehicles, we respond: This contention fails to acknowledge all the elements of the doctrine. That is, the argument assumes that we would stand ready to declare portions of an authority dormant solely on the grounds of non-use. This assumption is inconsistent with the principle of dormancy. Notably, the above discussion of the doctrine demonstrates that the elements of dormancy are: (1) non-use of an authority or portions of the authority; and (2) damages to other carriers or to the public interest as a result of reactivation of dormant rights.

Moreover, the instant case does not present the circumstances where an authority is declared dormant for non-use alone. Rather, this proceeding concerns YCCA's failure to operate the entirety of its authority--in fact, YCCA decreased its service--while other carriers and this Commission took substantial actions to increase taxi service to the public in the Denver metropolitan area. For these reasons, the Applicants' stated policy concern is not valid.

Destructive Competition

Intervenors next argue that failure to restrict the proposed

transfer herein will likely result in destructive competition in the market for taxi service within the Denver area. This argument is, in essence, part of the contentions regarding dormancy.¹² That is, the portion of the authority which should be restricted against transfer, according to Intervenors, is that portion which YCCA allowed to become dormant. Permitting the transfer of the dormant authority (i.e. 300 cabs) would, Intervenors claim, result in damage to the public interest by causing destructive competition. We agree with these contentions.

We begin by reviewing the determinations made in the Consolidated Case.¹³ In that proceeding, the Commission was charged with determining the specific number of new taxis which would serve the public need for taxi service in the Denver metropolitan area, *without resulting in destructive competition*. After weighing the evidence presented in 22 days of public hearings by five expert witnesses and over 60 additional witnesses we issued Decision No. C95-456 in which we declared:

We conclude that, in light of the warnings of Drs. Teal and Dempsey, approval of 200-250 new taxis could lead to excessive competition in the Metro area. (Decision No. C95-456, at 32)

(W)e observe that 100 new cabs is an approximate 15 percent increase over the number of taxis presently in service within the Metro area. This amount is significantly below the 20-25 percent increase which Dr. Teal believed would result in destructive competition. (Decision No. C95-456, at 32)

¹² Metro witness Dempsey pointed out that one of the underlying rationales of the doctrine of dormancy is to prevent conditions of excessive or destructive competition.

¹³ Our decision in the Consolidated Case, Decision No. C95-456, and portions of the testimony from that proceeding were admitted into the present record.

(A) cautious and prudent approach to meeting the public need identified above is to approve 100 new cabs. Approval of 100 additional taxis will enable us to authorize the entry of two new carriers into the Denver Metro market. (Decision No. C95-456, at 32)

Generally, we determined in the Consolidated Case that the public interest would be served by certification of 100 new taxis based upon the number of active cabs in service. Applicants in the present case are simply incorrect in asserting otherwise.

The testimony in this case supports the conclusion that unrestricted transfer of 600 cabs to Yellow Transportation, including the approximately 300 which have become dormant, would likely result in destructive competition. For example, Dr. Roger Teal, whose testimony was sponsored by Metro, testified in this docket as an expert in transportation economics and policy. According to Dr. Teal, if YCCA were to operate 600 vehicles, there would be substantial adverse competitive impacts on the taxicab industry in the Denver market. (7/11/95 Tr., at 265-266).

Dr. Teal contended that the first casualties would be the two new cab companies authorized by the Commission in the Consolidated Case. Additionally, the witness claimed that incumbents would suffer substantial financial losses because they would definitely suffer a major loss of market share. This is because, according to the testimony, the Denver taxi market is growing very slowly or not at all, and, therefore, vehicle-in-service increases under YCCA's certificate would come at the expense of existing carriers. Consequently, most of the current operators would be much smaller or go out of business.

Dr. Teal also predicted other adverse consequences of such a dramatic increase (i.e. 300 vehicles) in the number of cabs. These included a decrease in the quality of vehicles as the revenue streams of incumbent firms declined and a decline in driver income as trips per vehicle declined. The witness testified that his opinions in the Consolidated Case regarding the gradual long term decline in the demand for taxi service in the Denver market remained unchanged.¹⁴ Notably, in the Consolidated Case he concluded that a 20 to 25 percent increase in the number of cabs on the street in the Denver market would result in destructive competition. Dr. Teal pointed out, in his testimony in the current docket, that the Commission increased the number of cabs serving the Denver market by approximately 14 percent when we added 100 vehicles to the Denver taxicab market in May of 1995. He finally observed, "The addition of 300 vehicles in addition to those 100 vehicles I believe would be clearly a problem for the economic viability of all firms in the market...."¹⁵ (7/11/95 Tr., at 266).

Dr. Teal also offered testimony regarding the likelihood that Yellow Transportation would operate up to 600 vehicles if given the opportunity. According to his analysis, the transferee would be much more viable at 600 cabs than 300 because the amount of revenue needed to generate the cash flows to service the debt and to

¹⁴ Dr. Teal's testimony from the Consolidated Case was admitted into evidence in this proceeding.

¹⁵ We note that an increase of 300 vehicles, the portion of YCCA's certificate which is dormant, in addition to the 100 approved in the Consolidated Case would result in a total increase of approximately 57 percent (400/700) in the number of taxicabs in service in the Denver region.

provide a return on capital would require substantially more cabs on the street.

Dr. Paul Dempsey, a witness sponsored by Metro, also testified in this docket as an expert in transportation law and economics. His testimony indicated that the incumbent taxi firms have unfavorable operating ratios. According to this testimony, typically an operating ratio of 97 or higher is deemed to suggest that a firm may be a candidate for bankruptcy. Dr. Dempsey introduced Exhibit 68 which shows that from 1985 to 1993 two out of the three firms had operating ratios of 97 or higher.¹⁶

This witness also pointed out that the Commission did allow an additional 100 cabs into the Denver taxi market in May, 1995. He further noted that subsequent to that decision anecdotal evidence and media accounts suggest the airport taxi market has decreased since the opening of DIA. Dr. Dempsey pointed to the two to four hour line of taxis waiting for patrons at DIA. Since airfares at DIA rose by 46 percent over the last year, the witness predicted there will be further declines in origination and destination passengers at DIA, and, consequently, reduced demand for taxis.

Dr. Dempsey concluded that Commission approval of the transfer of 600 taxis, as proposed by the Applicants, would create an environment of destructive competition. According to this testimony, the adverse impacts of such an environment would include

¹⁶ The Commission acknowledges, as we did in Consolidated Case decision (C95-456), that these ratios have not been subject to Commission audit. However, Dr. Dempsey pointed out these operating ratios were derived from data submitted to the Public Utilities Commission in the annual reports of the three carriers, and two of the carriers actually did go bankrupt.

declines in operational efficiency and productivity per vehicle, upward pressure to increase rates, declines in driver income, and a deterioration of service. Dr. Dempsey also claimed there would be an increase in highway congestion, energy consumption, and environmental pollution as the transferee put more cabs on the street.

We also comment upon the testimony offered by the Applicants that the Denver taxi market could be stimulated or grown.¹⁷ Briefly, we note that there was conflicting testimony by the experts (Teal, Dempsey, Gorman, Lehr) regarding the ability of a taxi firm to stimulate demand. We observe that no persuasive evidence was offered in this proceeding of the ability of the Denver market, as a whole, to be stimulated by taxi carriers, especially in the face of economic fundamentals such as increasing ownership of private automobiles, growing preference for rental cars, and improvements in mass transit. Therefore, this testimony does not convince us that there is presently a public need to allow the Applicants to reactivate the dormant portion of YCCA's authority.

The testimony discussed above persuades us that unconditional transfer of YCCA's CPCNs, including the unused portion of the authority, is inconsistent with the public interest, inasmuch as it will likely result in destructive competition. Allowing the

¹⁷ The doctrine of dormancy holds that a dormant authority may be transferred upon a showing of public need. *Gateway Transportation, supra*. We note, however, that the possibility of stimulating the market in the future does not necessarily prove that the present public convenience and necessity require reactivation of a dormant authority.

transferee to utilize up to 600 vehicles, at its discretion and uncontrolled by the Commission, contravenes our obligation to protect the public interest.¹⁸

Approval of the Transferee

In its exceptions, Staff contends that the Bankruptcy Court has not authorized the sale of Yellow Cab's assets to Yellow Transportation, LLC, the transferee approved in the Recommended Decision. Rather, Staff points out, the court's order permits Taxi Associates, LLC to acquire the certificates and permits from the transferor. Staff recommends that the Applicants be ordered to obtain a further order from the Bankruptcy Court ratifying approval of the sale to any company other than Taxi Associates, LLC. The Applicants respond that they are in effect seeking approval of the entire transaction described in the application, and will do whatever the Commission requires in this regard.

We note that there is conflicting testimony in the record as to which of five companies--Taxi Associates, LLC; Yellow Transportation, LLC; Denver Shuttle, LLC; Boulder Taxi, LLC; and Denver Taxi, LLC--will actually hold title to the certificates under the terms of the proposed transfer. We also note, however, that the same three individuals (Messrs. Zucker, Ross, and Joseph) own and control all the entities described in the application.

¹⁸ In light of our rulings that portions of YCCA's authority are dormant, that destructive competition would result from unrestricted transfer of the certificates, and that we will condition approval of the transfer upon cancellation of the dormant part of the authority, Metro's argument that the ALJ excluded certain testimony relating to destructive competition is moot. In any event, our review of the argument and the record does not indicate any error. We find that the subject evidentiary rulings by the ALJ were appropriate.

Therefore, we may approve the transfer to the entities which we understand are intended to hold title to the certificates. Although the testimony is conflicting, we understand that Applicants intend that the operating companies (Denver Shuttle, LLC; Boulder Taxi, LLC; and Denver Taxi, LLC) hold the CPCNs. We will approve transfer of the certificates to these entities. In addition, we will direct the joint Applicants to seek ratification from the Federal Bankruptcy Court of the transferees approved here should they decide to accept the condition we have placed upon our approval of the transfer. The operating companies will be required to adopt tariffs, file insurance, and operate the business in their specific names. Applicants are advised that transfer of the certificates to any other entity, including entities controlled by the three principals here, is subject to Commission approval.

We point out that, effective January 1, 1995, Congress deregulated the intrastate transportation of property. Conforming state legislation was passed and signed into law effective May 31, 1995. Pursuant to that legislation, common and contract carrier authority is no longer required to transport property. Therefore, the certificates transferred by this order will be rewritten to eliminate all references to the transportation of property. Certificate of Public Convenience and Necessity 4302 authorizes the transportation of property only, therefore, this certificate will be canceled. The transferees are advised that they must obtain the appropriate property permit if they intend to transport property for hire.

In addition, several of the certificates to be transferred here contain antiquated or obsolete language, references to carriers and certificates no longer in existence, and overlapping and duplicative authority, etc. We will require the transferees to submit an application to redraft Certificates of Public Convenience and Necessity PUC Nos. 150&I, 174&I, 177&I, 180&I, 1198, 150&I to eliminate these problems.

Pending Motions

A Motion for Extension of Time to File Response to Exceptions was filed by Yellow Transportation on October 3, 1995. A Motion for Enlargement of Time to File Exceptions was filed by Metro on October 4, 1995. A Motion to Exceed 30-Page Limit in its Response to Exceptions was filed by the Applicants on October 19, 1995. Good cause having been stated, the motions will be granted.

The Motion to strike a Portion of Joint Applicants' Response to Exceptions filed by Metro on November 3, 1995 will be denied.

THEREFORE, THE COMMISSION ORDERS THAT:

1. The exceptions to Decision No. R95-912 filed by Metro Taxi, Inc.; Colorado Transportation Service, Inc., doing business as American Cab Company; and Commission Staff are granted consistent with the above discussion, and are otherwise denied.

2. The Motion for Extension of Time to File Response to Exceptions filed by Yellow Transportation, LLC is granted.

3. The Motion for Enlargement of Time to File Exceptions filed by Metro Taxi, Inc. is granted.

4. The Joint Applicants' Motion to Exceed 30-Page Limit in

its Response to Exceptions is granted.

5. The Motion to Strike a Portion of Joint Applicants' Response to Exceptions filed by Metro Taxi, Inc. is denied.

6. Yellow Cab Cooperative Association, Inc., doing business as Yellow Cab, Inc., is authorized to transfer Certificate of Public Convenience PUC No. 2378&I to Denver Taxi, LLC. Consistent with the above discussion, transfer of this certificate is conditioned upon its relinquishment of authority to operate 300 cabs.

7. Yellow Cab Cooperative Association, Inc., doing business as Boulder Yellow Cab, Inc., is authorized to transfer Certificates of Public Convenience PUC Nos. 150&I, 174&I, 177&I, 180&I, 1198&I, 4302&I, and Contract Carrier Permit No. B-8254 to Boulder Taxi, LLC.

8. Denver Airport Limousine Service, Inc., doing business as Denver Airport Shuttle, Inc., is authorized to transfer Certificates of Public Convenience PUC Nos. 82, 2778&I, and 13175 to Denver Shuttle, LLC.

9. Henceforth, the full and complete authority under Certificate of Public and Convenience 2378&I shall read and be as follows:

- I. Transportation of passengers and their baggage, in taxi service, between all points located within a radius of 16 miles of 16th and Champa Streets in Denver, Colorado, and also including as part of the base area Denver Inter-national Airport, and from said points, on the one hand, to all points in the State of Colorado, on the other hand.
- II. Transportation of passengers and their baggage, in taxi service, between all points within a 17-mile

radius of the intersection of Interstate 25 and Colorado State Highway 86 at Castle Rock, Colorado, and between said points, on the one hand, and all points within the State of Colorado, on the other hand.

This certificate is restricted as follows:

- A. Restricted against the use of vehicles having a rated capacity greater than seven, not including the driver; and
- B. All operations under this certificate shall be limited to the use of 300 cabs in service at any one time.

Interstate Authority:

Authority to use equipment in the State of Colorado as a common interstate carrier between all points in the State of Colorado, and the Colorado State boundary lines where all highways cross same in interstate commerce, only.

10. Certificate of Public and Convenience 4302 is canceled.

11. Henceforth, the full and complete authority under Contract Carrier Permit B-8254 shall read and be as follows:

- I. Transportation of passengers and their baggage between the IBM Chesapeake Building, Niwot, Colorado, and the IBM main plant building, Niwot, Colorado; and
- II. Passengers and their baggage between all the following named points:
 - A. The IBM office, located in the Arapahoe Shopping Center, Boulder, Colorado;
 - B. The IBM plant located at 28th and Glenwood Streets, Boulder, Colorado; and
 - C. The IBM main plant, located at Niwot, Colorado.
- III. Passengers and their baggage between the National Oceanic and Atmospheric Environmental Research Building No. 3, located at 30th and Arapahoe, Boulder, Colorado, and the National Oceanic and Atmospheric Administration/National Bureau of Standards/Office of Telecommunications Campus

located at 325 Broadway, Boulder, Colorado.

This permit is restricted as follows:

- A. Items No. I and II are restricted to rendering transportation service for only International Business Machines Corporation.
- B. Item No. III is restricted to rendering transportation service for one customer only, National Oceanic and Atmospheric Administration.

12. Within 60 days of the effective date of this order, the transferees shall submit to the Commission an application to redraft Certificates of Public Convenience and Necessity PUC Nos. 150&I, 174&I, 177&I, 180&I, 1198, 150&I for the purpose of eliminating overlapping and duplicating authority, archaic and obsolete language, and references to certificates and motor carriers no longer in existence. Certificates should be merged into one or two operating authorities if possible.

13. Transferees, Denver Taxi, LLC, Denver Shuttle, LLC and Boulder Taxi, LLC shall cause to be filed with the Commission certificates of insurance as required by Commission rules. Transferee shall also file an appropriate tariff and pay the issuance fee and annual vehicle identification fee. The Joint Applicants shall file an acceptance of transfer signed by both the transferor and transferee. Operations may not begin until these requirements have been met. If the Applicants do not comply with the requirements of this ordering paragraph and ordering paragraph 12 within 60 days of the effective date of this Order, then the ordering paragraphs granting approval to the Transferees shall be void. On good cause shown, the Commission may grant additional

time for compliance, if the request is filed within the 60 days.

14. The Joint Applicants shall secure a proper order of the Federal Bankruptcy Court ratifying the sale of the certificates and permit to the transferees herein authorized.

15. The 20-day period provided for in § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Effective Date of this Order.

16. This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING December 13, 1995.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT J. HIX

CHRISTINE E.M. ALVAREZ

Commissioners

COMMISSIONER VINCENT MAJKOWSKI
DISSENTING IN PART.

COMMISSIONER VINCENT MAJKOWSKI DISSENTING IN PART:

I dissent from that portion of the majority opinion which concludes that 300 cabs have become dormant and should not be transferred by YCCA. In my opinion, the finding of dormancy should be limited to 160 cabs. I reach this conclusion based upon the fact that YCCA did activate 440 cabs. I also conclude that the evidence does not establish that transfer of authority for 440 vehicles would result in destructive competition. Therefore, I

would find that YCCA should be permitted to transfer authority for this number of vehicles, with an order of cancellation for the remainder (i.e. 160 vehicles). Otherwise, I agree with the majority opinion in all respects.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

VINCENT MAJKOWSI

Commissioner



ATTEST: A TRUE COPY

Bruce N. Smith
Director