

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14A-0355CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF MOUNTAINSIDE CONCIERGE, LLC TO
EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY NUMBER 55803.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING APPLICATION**

Mailed Date: November 7, 2014

Appearances:

Anthony Edwards, Esq., for Applicant, Mountainside Concierge,
LLC;

Mark Rovito, *pro se*, for intervener San Miguel Mountain
Ventures, LLC doing business as Telluride Express, Wild West
Tours and Montrose Express; and

Milton Williams, *pro se*, for intervener Durango Taxi, LLC.

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 A. The Commission Orders That:40

I. STATEMENT, FINDINGS, AND CONCLUSIONS

A. Procedural History.

1. Mountainside Concierge, LLC (Applicant), filed an Application to Extend Operations Under Certificate of Public Convenience and Necessity No. 55803 (Application) with the Colorado Public Utilities Commission (Commission) on April 18, 2014. Applicant amended its Application on April 28, 2014.

2. The Commission gave public Notice of the Amended Application on May 19, 2014.

3. San Miguel Mountain Ventures, LLC, doing business as Telluride Express, Montrose Express and Wild West Tours (Telluride Express), and Durango Taxi, LLC (Durango Taxi) timely intervened of right in objection to the authority sought by the Amended Application.

4. During its weekly meeting held June 25, 2014, the Commission deemed the Amended Application complete and referred it to an Administrative Law Judge (ALJ) for disposition.

5. On July 1, 2014, the ALJ ordered all parties to obtain counsel or show cause why they may be represented by a non-attorney. Decision No. R14-0738-I. Applicant's counsel, Mr. Anthony Edwards, entered an appearance on July 14, 2014. Telluride Express and Durango Taxi made multiple show cause filings seeking to be represented by non-attorneys.

6. After holding a telephone prehearing conference, at which all parties appeared, the ALJ established procedural deadlines, and scheduled a hearing on the merits of the Amended Application to take place in Silverton, Colorado on September 24, and 25, 2014. Decision No. R14-0848-I issued July 21, 2014.

7. At the date, time, and location designated (September 24, and 25, 2014), the hearing was convened. Mr. Edwards appeared on behalf of Applicant, and Applicant's owner, Ms. Karen Srebacic, also appeared. Mr. Mark Rovito appeared on behalf of Telluride Express and Mr. Milton Williams appeared on behalf of Durango Taxi.

8. Prior to beginning the evidentiary portion of the hearing, the ALJ found that Telluride Express and Durango Taxi met the requirements of Rule 1201(a) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1, and § 13-1-127, C.R.S., to be represented by their designated non-attorneys, and that they had made a sufficient showing that their representatives have authority to represent them in this proceeding. The ALJ ruled that Telluride Express may be represented by Mr. Rovito, and that Durango Taxi may be represented by Mr. Williams.

9. During the course of the hearing, the following witnesses testified on behalf of the Applicant: Ms. Srebacic, Mr. Kimmet Holland, Ms. Lois MacKenzie, Ms. Melody Skinner, Ms. Deanna Jaramillo, Mr. William Tookey, Ms. Lee Margaret Crow, Ms. Margot Early, and Ms. Amy Dickinson. Mr. Rovito and Ms. Traci Younger testified on behalf of Telluride Express. Mr. Williams testified on behalf of Durango Taxi. During the hearing, the following exhibits were identified, offered, and admitted into evidence: 1, 3, 4, 7 through 11, 101, 102, 103, 105, 111, 112, 117, 118, 122, 202, and 207. In addition, per Applicant's unopposed verbal motion during the hearing, the ALJ took administrative notice of the Application filed in this proceeding on April 18, 2014. Hearing Exhibits 104, 107, 109, and 116 were offered but rejected.

10. At the conclusion of the hearing, the ALJ ordered that the parties may file closing statements of position by 5:00 p.m. on October 14, 2014. Applicant and Telluride Express timely filed closing statements of position. Telluride Express's statement of position made several requests for relief relating to evidentiary issues, which are addressed below.

B. Telluride Express's Requests in Its Post-Hearing Statement of Position.

11. Telluride Express's statement of position requests the ALJ reconsider her ruling to reject Hearing Exhibits 103, 104, 116, and 117 into evidence. Telluride Express's "Post Hearing Statement of Position" at ¶¶ 3-6. Telluride Express incorrectly alleges that the ALJ rejected Hearing Exhibits 103 and 117; both of those Hearing Exhibits were admitted into evidence. As such, the company's request to reconsider admission of those Hearing Exhibits is denied as moot. As to Hearing Exhibits 104, and 116, Telluride Express raises no legal basis for reconsideration of the ALJ's ruling, nor does it raise any arguments that it could not have made at the time of the hearing. *Id.* The ALJ will deny Telluride Express's request to reconsider her prior ruling rejecting those exhibits.

12. Telluride Express also requests the ALJ to take administrative notice of the Application and Decision No. R11-0107 in Proceeding No. 10A-0593CP issued February 1, 2011. *Id.* at ¶¶ 6-12. Telluride Express had access to the referenced documents well before the evidentiary hearing. The company could have offered the referenced documents into evidence during the hearing, or requested the ALJ take administrative notice during the hearing. Taking administrative notice at this late date, after the close of evidence, is prejudicial to the other parties' interests as it deprives them of an opportunity to present evidence to controvert the newly admitted evidence, in violation of Rule 1501(c), 4 CCR 723-1.¹ As such, the ALJ will deny Telluride Express's request to take administrative notice of the referenced documents.

C. Evidence Offered in Support of the Amended Application.

1. The Applicant.

13. Applicant is a limited liability company that owns Certificate of Public Convenience and Necessity (CPCN) PUC No. 55803. Hearing Exhibit 7. The Certificate was issued on September 1, 2011. That Certificate permits the transportation of passengers, in charter service:

- I. Between all points in the County of San Juan, State of Colorado;
- II. From all points in the County of San Juan, State of Colorado, on the one hand, to the Durango Mountain Resort, #1 Skier Place, Durango, Colorado 81301 on the other hand;
- III. From all points in the County of San Juan, State of Colorado, on the one hand, to the Sheraton at Tamarron, 40292 U.S. Highway 550, Durango, Colorado 81301 on the other hand; and
- IV. Between all points in the County of San Juan, State of Colorado, on the one hand, and all points in La Plata County, Colorado on the other hand.

¹ Telluride Express's request for administrative notice also does not comply with the requirements of Rule 1501(c) because it did not provide a copy of the records which it requests administrative notice be taken, nor did it provide a detailed statement of the specific facts in those records which it requests the ALJ to take administrative notice.

RESTRICTIONS: This Certificate is restricted as follows:

- a Restricted to the use of motor vehicles with a seating capacity of not more than 6 passengers, including the driver;
- b Items I, II, and III are restricted to providing seasonal service from October 1 through April 30;
- c Items II, III, and IV are restricted to providing transportation of passengers in round trip service;
- d Item IV is restricted:
 - a Against providing service to or from the Durango Mountain Resort, #1 Skier Place, Durango, Colorado 81301; and
 - b Against providing service to or from the Sheraton at Tamarron, 40292 U.S. Highway 550, Durango, Colorado 81301.

Hearing Exhibit 7.

14. Applicant seeks to expand the above authority to permit the transportation of passengers in call-and-demand charter service and call-and-demand shuttle service as follows:

- I. Between all points in the County of San Juan, State of Colorado;
- II. From all points in the County of San Juan, State of Colorado, on the one hand, to the Durango Mountain Resort, #1 Skier Place, Durango, Colorado 81301 on the other hand;
- III. From all points in the County of San Juan, State of Colorado, on the one hand, to the Sheraton at Tamarron, 40292 U.S. Highway 550, Durango, Colorado 81301 on the other hand;
- IV. Between all points in the County of San Juan, State of Colorado, on the one hand, and all points in La Plata County, State of Colorado on the other hand;
- V. Between all points in the Town of Silverton, Colorado;
- VI. From all points in the County of San Juan, State of Colorado, on the one hand, to all points in the County of Ouray, State of Colorado, on the other hand;
- VII. From all points in the County of San Juan, State of Colorado, on the one hand, to all points in the County of Montrose, State of Colorado on the other hand; and

VIII. From all points in the County of San Juan, State of Colorado, to all points in the County of San Miguel, State of Colorado.

RESTRICTIONS: This application is restricted as follows:

- A. All operations under this Certificate are restricted to the use of motor vehicles with a seating capacity of not more than 8 passengers, including the driver.
- B. Items I, II, and III are restricted to providing seasonal service from October 1 through April 30;
- C. Items II, III, IV are restricted to providing transportation of passengers in round trip service;
- D. Item IV is restricted: against providing service to or from the Durango Mountain Resort, #1 Skier Place, Durango, Colorado 81301; and against providing service to or from the Sheraton at Tamarron, 40292 U.S. Highway 550, Durango, Colorado 81301.
- E. Item V is restricted to providing seasonal service from May 1 through September 30.

See Application.

15. Ms. Karen Srebacic is Applicant's sole owner. She manages the Applicant's operation. Applicant is also approved to transport passengers in interstate commerce through its registration with the Unified Carrier Registration System. Hearing Exhibit 9. Applicant also owns a Commission-issued luxury limousine permit. Hearing Exhibit 8. Applicant is a Medicaid approved provider.

16. Ms. Srebacic moved to Silverton, Colorado² in 2003 or 2004, and started her business four years ago. Applicant is based in Silverton. Applicant focuses on serving the Silverton community, which is the only populated city in San Juan County. *See* Hearing Exhibit 4. Indeed, the Amended Application seeks to extend its CPCN so it may provide transportation service between San Juan County and the Counties of Montrose, San Miguel and

² All references to Silverton herein are to Silverton, Colorado.

Ouray. Applicant already has authority to transport passengers to La Plata County and seeks to preserve that portion of the current authority.

17. Applicant currently has an eight-passenger vehicle. As demand requires, Applicant rents additional vehicles. Applicant currently has three drivers. If the extended

authority is granted, Applicant plans to add a vehicle, which would likely be financed. Ms. Srebacic believes Applicant can serve the larger territory sought by the Amended Application because the company's transportation service has been largely reservations-based, so Applicant is able to plan ahead and rent additional vehicles if necessary. In any event, Applicant is prepared to expand the business as necessary to meet her customers' transportation needs under the extended authority.

18. Applicant has an office in Silverton, which has suited Applicant's needs to date. Applicant has standard office equipment enabling Applicant to adequately serve its customers. Dispatch is handled by taking calls for service by cellular telephone; drivers are contacted the same way (at their cellular telephones).

19. The off-season for Applicant's business lasts approximately four months (two months in the fall and winter, and two months in the spring and summer).

20. Silverton is a small and remote town that lacks many essential services and modern day conveniences that exist in larger. For example, Silverton lacks a grocery store, and other shopping options. In addition, there are no physicians based in Silverton, and no emergency medical treatment facilities in Silverton. Likewise, there are no pharmacies, airports, or bus stations in Silverton.

21. The lack of day-to-day goods and services in Silverton creates a strong need for transportation out of town. Indeed, Applicant receives a significant number of requests for transportation to the surrounding counties to a grocery store, to shop for other needed goods, for medical care (*e.g.*, injuries, and medical appointments), to get to the airport and bus station, or for recreational activities.

22. Ms. Srebacic filed the Application after receiving repeated requests from passengers for transportation to the expanded geographical territory identified in the Amended Application. Ms. Srebacic explained that Applicant seeks to help the residents of Silverton and San Juan County get to the surrounding counties so they can access needed services and goods. She is so dedicated to help the people of Silverton, that from time to time, she provides free transportation when going to the surrounding counties for a personal errand.

23. Ms. Srebacic is heavily involved with communicating with passengers about their requests for transportation. Ms. Srebacic has learned that Applicant's passengers and other Silverton residents do not use interveners' service because it is either too expensive, or because the wait to be picked up is too long. People in the community regularly come to Applicant for transportation out of Silverton because Applicant's rates are lower than both interveners, and Applicant provides service without long wait times.

2. Public Witnesses.

24. Mr. Kimmet Holland is the Director of the Silverton and San Juan County ambulance service and has been a paramedic since 1989. The ambulance service is the County's emergency response to 9-1-1 medical emergencies. There is no emergency medical facility in San Juan County. Instead, medical emergencies are treated at the closest hospitals in Durango, Colorado or Montrose, Colorado.³ There are urgent care clinics in Ridgeway, Colorado, and Ouray, Colorado⁴ that may be used as well. The ambulance service transports people seeking ambulance transportation to a hospital or urgent care clinic. Mr. Holland explained that it is their

³ All references herein to Durango are to Durango, Colorado and all references to Montrose are to Montrose, Colorado. Durango is in La Plata County, while Montrose is in Montrose County.

⁴ All references herein to Ridgeway are to Ridgeway, Colorado and all references to Ouray are to Ouray, Colorado. Ridgeway and Ouray are both in Ouray County.

preference to transport only emergency medical patients, but that they do transport non-emergencies when asked (and available).

25. The average cost for an ambulance ride from San Juan County to the hospitals in Durango or Montrose is \$2,000.00. The ambulance service does approximately 170 to 180 trips a year. The majority of the calls come in during the summer.

26. The ambulance service operates with one crew that is on duty 24 hours a day. The crew is comprised of a volunteer member of the community, and a paramedic. Because there is only one crew on duty at a time, if that crew is transporting someone to a hospital, during that transport, San Juan County does not have an emergency ambulance service available to respond to someone in need of emergency medical care.⁵ Instead, calls for emergency medical assistance will be covered by a Durango ambulance service, which is approximately an hour and twenty minutes from Silverton, in good road conditions.

27. Mr. Holland provided many credible examples of situations that commonly occur in San Juan County where people are sick or injured, and cannot drive, but do not need (or do not want) emergency ambulance transport to a hospital. In such instances, the patients still must leave San Juan County for medical care, because the County does not have a physician or the ability to do other standard tests to diagnose patients (such as x-rays). These people must either hire someone to drive them, or must get a ride from a friend or family member.

28. Ms. Lois MacKenzie has lived in Silverton for most of her entire life. She is the Assistant Director of the San Juan County Public Health Service (Public Health) in Silverton. Public Health does not provide patient care. Instead, Public Health's focus is on the overall

⁵ The exception is that if off-duty volunteers receive a message that emergency service is needed, and they are available, they may respond to the emergency. Since the county has only two ambulances, under a best case scenario, two emergencies may be handled at one time.

health of the community, which includes providing vaccinations, taking vital signs, drawing blood, and performing minor procedures such as removing splinters or cinders.

29. There is no pharmacy in Silverton. The nearest pharmacy is in Ridgeway. Durango and Montrose also have pharmacies.

30. Ms. MacKenzie explained that the lack of medical care has been a long-term problem for the San Juan County community, dating back as far as 1908, when Silverton was established. The community has a difficult time attracting and keeping physicians. As is the current situation, Silverton regularly has long periods of time where there is no physician in town. Thus, most of the residents in Silverton have physicians either in Montrose or Durango. In Ms. MacKenzie's experience, a doctor's visit to Montrose or Durango usually takes an entire day. It is difficult for people to take that much time from work, and to get transportation to their medical provider. There is no bus service that takes people from Silverton to the surrounding counties. The result is that people who need medical care often forego it for long periods of time because it is simply too difficult to get the care they need.

31. Ms. MacKenzie is also associated with the Silverton Clinic (the Clinic). The Clinic is located in the same building as Public Health, but is not a part of the same organization. The Clinic provides non-emergency medical care in Silverton, but is limited in the care it can provide for several reasons. First, the Clinic does not have a physician on staff, but has a nurse practitioner. The Clinic is limited to services that nurse practitioners may provide. For example, the Clinic does not do special procedures, such as those requiring sedation. Although the Clinic has an x-ray machine, no Clinic staff member is trained to use the machine. Thus, the Clinic does not do x-rays. This means the Clinic cannot definitively diagnose whether a person has

sprained or fractured an ankle. Consequently, even for a minor ankle injury, it is necessary to leave Silverton in order to be diagnosed and treated.

32. Ms. Melody Skinner has lived in Silverton for almost 35 years. Ms. Skinner describes Silverton as a small and remote “one-road” town. In the winter, there is only one road in and out, as the conditions make other routes untenable. In the summer, there are more roads open for use. The summer sees a great deal of tourism, when the Durango and Silverton Narrow Gauge Railroad brings up to 1,600 people a day to Silverton via train. The nearby National Forest also brings in tens of thousands of tourists during the summer. Based on 35 years living in the community, Ms. Skinner believes that San Juan County is both the poorest and least populated county in Colorado.

33. Ms. Skinner has been working at the San Juan County Sheriff’s Office (Sheriff) for 33 years. As an administrative assistant, her job duties include receiving calls from the public for assistance, dispatching officers, and essentially any tasks the Sheriff’s law enforcement officers do not handle.

34. Ms. Skinner often deals with situations where visitors to Silverton become stranded and seek help out of town from the Sheriff. For example, the Sheriff’s office frequently responds to calls from people who have attempted to drive to Silverton, but panicked when driving on the mountain pass, and can no longer drive due to fear. This has been a major and consistent problem. This creates multiple transportation needs, including transportation for the panicked driver to get off the mountain pass, and transportation for the panicked driver to get out of Silverton. There are times where this issue evolves into a panic attack, requiring emergency medical attention.

35. The area around Silverton experiences regular rock slides year round. During the winter, avalanches hit U.S. Highway 550, the main highway in and out of Silverton.⁶ In fact, the Colorado Department of Transportation monitors 207 paths on highways to and from San Juan County as “avalanche paths.” Hearing Exhibit 117. The rock slides and avalanches cause frequent road delays and closures. Many people end up stranded in Silverton because they have missed their flight or connecting transportation out of the area due to road closures and delays.

36. In addition, many people who ride the train to Silverton from Durango miss the train back to Durango. The train runs seasonally between Durango and Silverton. The train has made a bus available for train passengers to ride one-way. Only those people riding the train may use the bus. During the time of year that the bus does not operate in conjunction with the train, people who miss the return train are stranded in Silverton and come to the Sheriff for help. It is also a common occurrence that after a group rides the train to Silverton, a member of the group becomes ill while in Silverton and needs to be taken out of town for medical care. Altitude related medical issues (including heart attacks) are a frequent occurrence, as many people have difficulty adjusting to the high altitude in Silverton.⁷ Even when the illness is serious enough to take an ambulance, the person’s family members cannot be transported in the ambulance and need transportation out of town.

37. Other people get stranded in Silverton when they have a traffic accident, or when they have ridden a bicycle to town, only to be surprised with a severe storm that effectively blocks their ability to leave. Many people come to Silverton without a vehicle of their own with

⁶ According to Ms. Skinner, U.S. Highway 550 experiences more avalanches than any other highway in the country.

⁷ Ms. Skinner cited an example of a family coming to Silverton on the train, where a grandparent has a heart-attack after arriving, but has no emergency medical physician in town to treat him.

plans to camp for an extended period of time, but decide it is too cold. They, too, get stranded in Silverton. Although not terribly common, there are incidents where people get to Silverton but do not have transportation out of town.

38. The Colorado Trail in San Juan County connects to other surrounding counties. A person can start on the Colorado Trail in a different county, and end up in San Juan County. This creates other common transportation issues brought to the Sheriff's office. For example, someone starting on the Trail in a nearby county may hike to San Juan County and come into distress, or have a family emergency, and need immediate transportation out of the county. Some of these people do make it to Silverton, but still need help getting out of Silverton on an emergency basis.

39. As it serves the public, the Sheriff's office attempts to help people with these transportation related issues by transporting people themselves, or seeking out volunteers in Silverton to transport stranded people. It is not always possible or feasible for the Sheriff to tend to the transportation needs of stranded people or to find volunteers willing to help. When the transportation related issues are significant, the Sheriff's focus is taken away from law enforcement, which is its primary function. The

40. Ms. Skinner has not observed transportation companies providing transportation service in Silverton other than Applicant. She has not contacted either intervener to assist with transportation issues, as the majority of the issues are urgent. The interveners are not available to provide timely assistance with urgent issues since they are not based in Silverton. Ms. Skinner has never seen advertisements or rates posted for either intervener in any of the local publications or venues.

41. Ms. Deanna Jaramillo has lived in Silverton for approximately 37 years. She is the Social Services Case Manager (Case Manager), for San Juan County. She is the Vice Chairman of the Board of Directors for the Silverton Family Learning Center (Learning Center), and the Treasurer for Board of Directors of the Silverton School District No. 1 Board of Education.

42. Based on her work with the two education-related boards, Ms. Jaramillo is also familiar with issues related to schools, including poverty-related issues. Silverton has one school, which serves children from kindergarten through twelfth grade. So many Silverton students qualify for the free or reduced lunch program (57.8 percent of the students), that the State of Colorado made the entire student body eligible for access to the reduced or free lunch program. Ms. Jaramillo explained the school's poverty level reflects San Juan County's poverty level. Hearing Exhibit 3. In San Juan County, 29.8 percent of the children (under age 18) are classified as being "in poverty." *Id.* Moreover, the Silverton residents are impacted by the seasonal nature of its primary source of income -- tourism. Because of that, many Silverton residents do not work year-round, which impacts the amount of income they earn.

43. As the Case Manager, Ms. Jaramillo serves all age groups in San Juan County, with a heavy focus on low-income residents. Many of Ms. Jaramillo's social services clients qualify for assistance, but lack the transportation to get that assistance. Many of her clients do not have vehicles of their own, cannot afford to fix or maintain vehicles they own, or do not drive. Her clients often need to get to Ouray or Montrose. A lot of these people use Applicant's service for transportation, but cannot go everywhere they need, due to Applicant's limited authority. Others attempt to get rides from friends or family, or, when no such options are available, resort to hitchhiking.

44. Ms. Jaramillo has lived in Silverton for her entire life, but has never seen Telluride Express or Durango Taxi vehicles in town, nor has she seen advertisements or rates posted anywhere in town for either intervener. In her opinion, there is a strong need for additional transportation services from San Juan County to the surrounding counties. In addition to her social service clients' needs, others go to the surrounding counties for a variety of reasons, including grocery shopping, doctor or dentist appointments, mental health treatment, education, pharmacies, airport transportation, or to visit family and friends.

45. Mr. William Tookey has been the San Juan County Administrator for more than ten years. He was born and raised in San Juan County.

46. In his role as County Administrator, Mr. Tookey works with the San Juan County Commissioners. The County Commissioners voted unanimously to support the Amended Application in this proceeding.

47. Mr. Tookey sits on the Board of Directors for the Southwest Colorado Council of Governments (Council), and the Region 9 Economic Development District of Southwest Colorado (Region 9). Mr. Tookey has been a member of the Board of Directors for Region 9 for approximately six years and is currently the Vice Chairman of the Board.

48. The Council is a regional organization for the governing five counties and municipalities in Region 9. The Council is tasked with finding regional solutions for local government, including housing, transportation, and developing tourism.

49. Region 9's mission is to be a regional leader, work cooperatively with the private and public sectors to enhance economic conditions and improve the region's economic prosperity. Hearing Exhibit 4.

50. As a part of that mission, Region 9 published a “2013 Report,” (Report) which provides economic snapshots of the Region 9 communities. Hearing Exhibit 4. The Report estimates that as of 2012, Silverton should have 622 residents, with 60 residents in unincorporated San Juan County. *Id.* at 14. In 2012, the County’s unemployment rate - 8.5 percent - was higher than both the state’s and the nation’s rates. *Id.* According to the Report, the Total Personal Income (TPI) per person in 2011 for San Juan County residents was \$19,213.00. *Id.* at 15. TPI is the sum of all income paid to residents of San Juan County from various sources, including employment income, transfer payments, dividends, interest, rent, and residency adjustments. *Id.* San Juan County residents had an estimated Per Capita Income (PCI) of \$29,854.00 for 2011. *Id.* This is significantly lower than both the national PCI, which was \$41,560.00 in 2011, and Colorado’s PCI, which was \$44,053.00 in 2011. *Id.*

51. Through his work with both boards, Mr. Tookey has followed the transportation process and development in the area over six years. Based on his observations and experience, Mr. Tookey believes that San Juan County lacks regular transportation service available to meet its needs. San Juan County has a long history of difficulties with obtaining and retaining transportation options. This is due, at least in part, to the fact that there are mountain passes around Silverton, making it difficult to get to, and isolated from the surrounding communities. The County lost a battle to keep bus service in the area, and lost a battle to obtain new bus service.

52. San Juan County has struggled economically since the closure of the local mine. Many people lack financial resources to own or lease their own vehicle, or to pay for the necessary maintenance for vehicles. Limited financial resources also reduces the amount of money that San Juan County residents have available to pay for transportation.

53. In his opinion, additional transportation options are needed to the surrounding counties for many reasons. He cited many of the same reasons other witnesses cited (*e.g.*, essential goods, medical attention, airport, bus station, recreation). In addition, there are many older residents in San Juan County that find it more and more difficult to drive in good conditions; those residents do not drive at all in winter conditions. Many people hike on trails that connect to surrounding counties and end up in Silverton believing they can take a shuttle or taxi to their originating county. As there are no providers based in Silverton that can transport them anywhere other than La Plata County, these hikers face difficulty and long delays in obtaining transportation to their originating county.

54. Ms. Lee Margaret Crow has lived in Silverton for the last 35 years. Ms. Crow does not drive herself due to a medical condition. She uses Applicant for her transportation needs. She leaves Silverton for doctor's appointments in both Durango and Montrose. Applicant is not able to transport Ms. Crow to those counties under its current CPCN. If Applicant's extended authority is granted, Ms. Crow intends to use the company's service to the expanded geographical territories.

55. Ms. Crow has used Durango Taxi for transportation in the past. The last time she used that company was several months prior to the September 2014 hearing. She no longer uses Durango Taxi due to long wait times. In addition, she had a terrible experience with a Durango Taxi driver who scared her with his driving.

56. Ms. Crow has never used Telluride Express.

57. As a long-time member of the Silverton community, Ms. Crow is aware that many other members of the community also do not drive. She explained that a lot of people do not own a vehicle, and many seniors do not drive when the road conditions are difficult.

58. Ms. Margot Early is a resident of San Juan County. She no longer drives due to medication she takes. Ms. Early uses Applicant's service for all of her transportation needs. For example, Applicant takes her to doctor appointments, to visit friends and family members, and to the airport (in La Plata County). She requires transportation to La Plata County, Ouray County and San Miguel County, but Applicant's current CPCN does not permit it to transport Ms. Early to those counties. If Applicant's extended authority is granted, Ms. Early will use the company's service to the expanded geographical territories.

59. Without Applicant's transportation service, Ms. Early would not be able to live in Silverton because she cannot afford other transportation out of town for essential services and goods. She testified that many older members of the Silverton community are in the same position.

60. Medicaid pays for (at least some of) Ms. Early's transportation. Ms. Early uses Applicant for transportation even when it is not paid for by Medicaid. She does not use Durango Taxi because she assumed that Durango Taxi charges a significant amount because it is not based in Silverton or San Juan County. She deduced this because Durango Taxi must drive at least two four 49-mile legs back and forth from Durango to Silverton in order to provide any round-trip originating in Silverton.

61. Ms. Early called Telluride Express on September 22, 2014 to find out the cost for a round trip from Silverton to Ridgeway. The Telluride Express representative told her it would cost \$300.00 each way, or \$600.00 for the round trip. She also called Durango Taxi that same day, and was told that it would cost \$150.00 each way, or \$300.00 round trip for transportation from Silverton to Durango. She cannot afford either of these rates.

62. Ms. Amy Dickinson has lived in Silverton for one year. She does not drive for fear of the mountain passes that surround Silverton. She frequents the surrounding counties of San Miguel, Montrose, and La Plata. She goes to those counties for grocery and other shopping, to take classes, for recreation, and to get to the airport. When she cannot get a ride from a friend, she uses Applicant's service.

63. Ms. Dickinson has contacted both interveners in the past to determine their rates for round trips. She spoke with Durango Taxi when she first moved to town, and was quoted \$400.00 round-trip from Silverton to Durango. A few weeks prior to the hearing, she was planning a trip out of Colorado to visit family. She spoke with Telluride Express about transportation to several airports. Telluride Express quoted her a cost of \$400.00 for a one-way trip to the airports in Montrose and Grand Junction, Colorado. The cost of transportation to the airport with Telluride Express was more than Ms. Dickinson's airfare out of Colorado. Ms. Dickinson cannot afford to use either of interveners' transportation service.

D. Evidence Offered in Opposition to Amended Application.

64. Mr. Mark Rovito purchased Telluride Express with his wife in 2008. Before that, he provided information technology services for Telluride Express, starting in 2002. Mr. Rovito's wife worked for Telluride Express starting in 2000 (for prior owners) and was the company's general manager under the prior ownership. As relevant here, Telluride Express's authority allows it to provide call-and-demand taxi and call-and-demand limousine (shuttle) service between all points within a 100-mile radius of the United States Post Office in Telluride, Colorado.

65. Telluride Express has over 50 vehicles available for use, and leases additional vehicles as necessary. During peak season, Telluride Express has 61 drivers available. None of

those 61 drivers are based out of Silverton or San Juan County. Telluride Express has 11 office staff year-round, and 18 office staff during peak season. Telluride Express has an answering service and an on-call dispatcher available 24 hours a day, 7 days a week.

66. Telluride Express has drivers who live in Ridgeway, Montrose, Colona, Norwood, Placerville, and Telluride, Colorado. The drivers only work when called for a trip. When a reservation is made, the driver may have the vehicle with him or her at his home base before departing for the trip. But if there is no reservation the driver plans to fulfill, the vehicles are not available at the driver's home. Vehicles are stored both in Telluride and Montrose, with the majority of vehicles being in Montrose.

67. Montrose is 59 miles from Silverton. Hearing Exhibit 1. According to Mr. Rovito, it takes approximately an hour and twenty minutes to drive one-way between Silverton and Montrose in good road conditions. Telluride is 74 miles from Silverton. *Id.* Thus, a drive from Telluride to Silverton will take longer than an hour and twenty minutes. As the majority of vehicles are stored in Montrose, Telluride Express requires at least an hour and twenty minutes to pick up a passenger seeking transportation out of Silverton.

68. Mr. Rovito testified that a one-way fare from Silverton to Montrose (or vice versa) is \$75.00 but requires a two-person minimum. Thus, Telluride Express would charge a total \$150.00 for a one-way trip from Silverton to Montrose; round trip fare is \$300.00. Mr. Rovito provided no explanation for the much higher price quotes that other witnesses cited.

69. Mr. Rovito suggests to his customers wishing to go to Silverton that they rent a vehicle and drive themselves, as that is less costly than using Telluride Express.

70. Telluride Express rarely receives requests for transportation to or from San Juan County. Hearing Exhibit 102. In fact, Telluride Express has performed only six trips to or from

San Juan County since January 2014. Telluride Express does not track calls it receives requesting pricing information for its services. Thus, Telluride Express does not know the number of calls it received for pricing information for trips out of San Juan County, when those did not result in service.

71. Telluride Express does not advertise its services in San Juan County because it has decided there is not enough business in the area to justify advertising costs.

72. Mr. Rovito believes that Ouray, Montrose, and San Miguel Counties are well served in whole or in part by Telluride Express and other carriers, including Durango Taxi. But, when asked how a person in Silverton in need of transportation on a moment's notice may get transportation, Mr. Rovito answered "by whatever carriers they can." Mr. Rovito was unable to identify a single carrier, (other than Applicant), who may provide service at a moment's notice to residents in Silverton and San Juan County.

73. Mr. Rovito suggested that Applicant can adequately serve the transportation needs of the San Juan County area with its current authority because it is able to transport passengers to La Plata County, which has the same services and amenities in the proposed expanded geographical areas. In other words, he suggested that those wishing to go somewhere other than La Plata County should adjust their plans or needs to go to La Plata County so that Applicant may transport them.

74. Mr. Rovito believes that granting the Amended Application would result in diluted revenues for the existing carriers, and that the carriers need all the available revenue to stay financially viable during the off season or the poor ski years. He asserts that granting the Amended Application would adversely impact Telluride Express. He provided no evidence to

support these assertions. But, he did provide evidence that his company did a total of six trips since January 2014 in and out of Silverton. Hearing Exhibit 102.

75. Ms. Traci Younger is one of Telluride Express's dispatchers and has worked for the company for two years. In her experience, Telluride Express provides the majority of its transportation services to and from San Miguel County. It also does a good number of trips to Montrose County. In her experience, Telluride Express receives requests for transportation to or from San Juan County and Silverton very infrequently.

76. Mr. Milton Williams is Durango Taxi's sole owner. Durango Taxi leases its Commission authority from Durango Transportation, LLC. As relevant here, Durango Taxi's authority permits it to transport passengers in call-and-demand taxi, call-and-demand charter, and call-and-demand shuttle service between San Juan County and all points in the State of Colorado. Hearing Exhibit 202.

77. In June 2013, when Durango Taxi first began operating under the leased authority, it had two vehicles on the road, with a third vehicle available. The company has expanded to six vehicles, and is planning to purchase at least one more four-wheel drive vehicle. Durango Taxi has five scheduled drivers on duty for the day shift, with two drivers available for 12-hour shifts. The arrangement allows Durango Taxi to have two drivers available at all times. The company has dispatchers available to receive requests for transportation 24 hours a day.

78. Durango Taxi is based out of Durango. This means that its vehicles are located in Durango and that its trips depart from Durango, 49 miles from Silverton. Hearing Exhibit 1. It takes approximately an hour and twenty minutes to drive from Durango to Silverton in good road conditions. This creates a significant delay in the company's response time for trips originating

out of Silverton. It can take several hours to get to Silverton (from Durango) in the winter when there is snow on the roads.

79. Durango Taxi has attempted and is still attempting to create an anchor or a base in Silverton, but has been unable to do so. Durango Taxi is unable to predict if it will ever be able to have an anchor or base in Silverton.

80. Mr. Williams noted that many inquiries for transportation to or from San Juan County are received, but 50 percent do not result in a trip. Most of those inquiries are for taxi service, not shuttle or charter service. Since operating under its leased authority, with the exception of one trip, Durango Taxi has provided only taxi service out of Silverton. Mr. Williams estimated that the company has performed trips to or from San Juan County once every other week, excluding the winter, which is far less frequent.

81. The taxi rate is \$4.00 per mile; the shuttle rate is \$0.75 per person with a minimum of four people, plus \$3.00 per mile; the charter rate is \$3.00 per mile on a prearranged basis.

82. Montrose is 59 miles from Silverton. Hearing Exhibit 1. Thus, under its most commonly used service (taxi service), Durango Taxi's round-trip rate from Silverton to Montrose is \$472.00. Telluride (which is San Miguel County), is 74 miles from Silverton. *Id.* Durango Taxi's round-trip taxi rate from Silverton to Telluride is \$592.00. Transportation to locations closer to Silverton is also costly. For example, since Ouray is 23 miles from Silverton, the round-trip taxi rate is \$184.00.

83. Mr. Williams was focused on his major concern that there are many unlicensed individuals and entities operating as a taxi service in the southwestern Colorado area. Mr. Williams appreciates that Applicant sought out the appropriate authority from the

Commission, rather than operating illegally, as has been his experience with so many others in the industry.

E. Burden of Proof and Legal Standards.

84. Applicant, as the proponent of an order, bears the burden of proof by a preponderance of the evidence. §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 1500 of the Commission's Rules of Practice and Procedure, 4 CCR 723-1. The preponderance standard requires the fact finder to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

85. Although the preponderance standard applies, the evidence must be substantial. Substantial evidence is defined as "such relevant evidence as a reasonable person's mind might accept as adequate to support a conclusion . . . it must be enough to justify, if a trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury." *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (internal citation omitted).

86. The Applicant seeks to extend operations under its CPCN, to operate as a common carrier in call-and demand shuttle and charter service within expanded geographical territories, including Ouray County, San Miguel County, and Montrose County. As such, the doctrine of regulated monopoly applies to Applicant's request to extend its operations. *Yellow Cab Cooperative Association v. Public Util's Comm'n*, 869 P.2d 545, 548 (Colo. 1994); *Rocky Mountain Airways, Inc. v. Public Util's Comm'n*, 509 P.2d 804, 807 (Colo. 1973) (unless legislatively dictated otherwise, the doctrine of regulated monopoly applies); *see e.g.*,

Decision No. R13-0441 issued April 16, 2013 in Proceeding No. 12A-1090CP and Decision No. R13-0370, issued March 28, 2013 in Proceeding No. 12A-1185CP.

87. Regulated monopoly is based on the principle that fewer carriers who can make a reasonable return on their investment will give the public safe, efficient, and more economical service, and that increasing the number of providers ultimately results in a deterioration of service and higher rates for the public. *See Archibald v. Pub. Utils. Comm'n et al.*, 171 P.2d 421, 423 (Colo. 1946); *see e.g., Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061, 1066-67 (Colo. 1981). This principle is the guiding force behind the protections given to existing carriers; an incumbent carrier is only entitled to protection from new competition if it provides adequate service to the public. *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n.*, 380 P.2d 228, 231 (Colo. 1963).

88. Under the regulated monopoly doctrine, an applicant must show: (1) it is fit to provide the proposed service; (2) that the present or future public convenience and necessity requires or will require its service; and (3) that the service of existing carriers within the proposed service area is substantially inadequate. § 40-10.1-203(2)(b)(I), C.R.S.; *Trans-Western Express Ltd., v. Public Utils. Comm'n*, 877 P.2d 350, 353 (Colo. 1994); *RAM Broadcasting v. Pub. Utils. Comm'n*, 702 P.2d 746, 750 (Colo. 1985); *Denver and Rio Grande Western Railroad v. Pub. Utils. Comm'n.*, 351 P.2d 278, 280 (Colo. 1960).

89. Applicant's fitness burden includes managerial, operational, and financial fitness to provide the service proposed. In general, operational fitness encompasses a consideration of whether an applicant has the equipment, personnel, facilities, and the managerial experience to conduct the proposed operation. Whether the applicant is willing and able to comply with applicable public utilities laws also bears upon the question of fitness. *See, Thacker Brothers Transportation v Public Utilities Commission*, 543 P.2d 719, 721 (Colo. 1975). Although the

Commission has no rules quantifying a financial fitness standard, the applicant must make some showing, however minimal, that it either has or has access to financial resources that will enable it to implement the proposed service. *Acme Delivery Service, Inc. v. Cargo Freight Systems, Inc.*, 704 P.2d 839, 843 (Colo. 1985). Fitness must be evaluated on a case-by-case basis upon the unique circumstances of each applicant and the proposed service. *See e.g.*, Decision No. C09-0207, issued February 27, 2009, Consolidated Proceeding Nos. 08A-241CP, 08A-283CP, 08A-284CP-Extension, and 08A-300CP.

90. The Commission has provided the following guidelines for the evidentiary factors that are relevant to the fitness inquiry:

- minimum efficient scale, that is, whether a minimum size of operation is required and, if such a minimum does exist, conceptually what is the approximate magnitude for markets at issue;
- credit worthiness and access to capital;
- credit history and assessment of financial health over the near future;
- capital structure and current cash balances;
- managerial competence and experience;
- fixed physical facilities such as office space and maintenance garages, as appropriate;
- appropriate licenses and equipment necessary to operate a radio dispatch system; and
- vehicles of appropriate type.

Decision No. C08-0933, at ¶ 7, issued September 4, 2008 in Consolidated Proceeding Nos. 08A-241CP, 08A-281CP-Extension, 08A-283CP, 08A-284CP-Extension, and 08A-300CP (*Union Taxi* decision).

91. Whether the incumbent carrier's service is substantially inadequate is a question of fact that the Commission must determine. *RAM Broadcasting*, at 751; *Durango*

Transportation, Inc., v. Pub. Utils. Comm'n., 122 P.3d 244, 247 (Colo. 2005). Thus, the question necessarily must be answered on a case-by-case basis upon the unique facts of the given case. Substantially inadequate service is shown by evidence of “a general pattern of inadequate service” on the part of the incumbent carrier. *Durango Transportation, Inc.*, at 247-48; *Ephraim*, at 232. Substantial inadequacy can also be demonstrated with evidence that the incumbent carrier is not ready, willing, and able at all times to provide the requested service. *Durango Transportation Inc.*, at 247-48. The incumbent carrier is not held to a standard of perfection. *Ephraim*, at 232.

F. Discussion.

1. Fitness.

92. As explained, Applicant carries the burden to establish its “fitness,” including, managerial, financial and operational fitness, to conduct the service it proposes. The ALJ will endeavor to address each of the relevant evidentiary factors identified in the *Union Taxi* decision, set forth above. *Supra* ¶ 90.

93. Because Silverton is the only populated city in San Juan County, discussion of the factors relevant to fitness focuses on Silverton.

a. Minimum Efficient Scale

94. There was little evidence showing the minimum efficient scale for operating under the extended authority requested. The estimated population of Silverton as of 2012 is 622 residents with an additional 60 residents in unincorporated San Juan County. Hearing Exhibit 4, at 14. Applicant already has one vehicle in operation, and intends to add another one if the Amended Application is granted. Applicant also leases additional vehicles for use during the busiest times. Applicant has three drivers available who live in Silverton. None of the

incumbents-interveners are based in Silverton, and their primary service areas have a more dense population than that of Silverton. As a result, interveners' minimum efficiency scale is not helpful. For example, serving a community of approximately 682 residents requires a much different minimum efficiency scale than a community with 17,000 residents. In any event, the evidence was clear that the minimum efficiency scale varies depending on the time of the year, whether it is busy season, or off-season. Ms. Srebacic provided credible testimony that Applicant is prepared and able to add vehicles and drivers as necessary to meet the minimum efficiency scale necessary to adequately serve the public under the extended authority.

95. Moreover, the speculative nature inherent in all business plans cannot be overlooked. A business plan is a basic design for a business reflecting the company's major ideas, strategies, and management team. A business plan should be fluid so that it may adapt as the business evolves to meet the demands of reality. Applicant appears to understand this, and plans to adapt and expand its business to evolve as needed.

b. Capital Structure, Current Cash Balances, Credit Worthiness, Access to Capital, Credit History, and Assessment of Financial Health.

96. Applicant is a limited liability company owned by Ms. Srebacic. Applicant's balance sheet shows that it operates at a profit, and that it has assets. Hearing Exhibit 10. As Applicant already has a working office, and dispatch system, the majority of the future financial investment would be in purchasing, leasing, or renting vehicles. Given Applicant's balance sheet and financial history, the ALJ is confident that Applicant's financial health is such that it will be able to support the extended operations sought by the Amended Application.

c. Managerial Competence and Experience.

97. Ms. Srebacic has been successfully managing Applicant since it received its CPCN in September 2011. This direct experience running a transportation company in San Juan County provides Ms. Srebacic with adequate knowledge to successfully manage Applicant under extended operations. The ALJ finds that the preponderance of the evidence demonstrated that Applicant is managerially fit.

d. Fixed Physical Facilities; Appropriate Licenses and Equipment Necessary to Operate a Dispatch System.

98. Applicant operates out of an office in Silverton, which already has the equipment needed for the extended operations sought by the Amended Application. Applicant has already an adequate dispatch system in place through the use of cellular telephones.

e. Vehicles of Appropriate Type.

99. Applicant has a 2008 GMC Yukon in operation which can seat eight passengers, including the driver. Applicant intends to add another vehicle if the Amended Application is granted. Applicant also leases additional vehicles for use during the busiest times. Applicant's vehicle has four-wheel drive capacity, which is appropriate and necessary for travel in and out of San Juan County during the winter months.

f. Conclusion as to Fitness.

100. The test of fitness is not perfection. While there may be gaps in the plan Applicant presented at hearing in terms of financial planning for expenses, this uncertainty is not fatal to a finding of fitness. Given Ms. Srebacic's success running Applicant for the last four years, the ALJ is confident that once Applicant is able to start extended operations, it will address any gaps in financial planning to ensure that its capital resources are spent appropriately and that

more capital is infused into the business as necessary to adequately serve the areas covered by the extended CPCN, consistent with the Commission's rules and requirements. The ALJ concludes that Applicant's financial situation is sufficient to support the extended operations sought. It has adequate cash on hand to support initial operations and meet short-term contingencies. As to the other metrics required to meet fitness, the ALJ finds that Applicant's proposals for vehicles and fixed physical facilities have been sufficiently addressed and supported through testimony to meet the minimum efficiency scale necessary to provide adequate service under the extended authority sought. In sum, the ALJ finds that Applicant met its burden to prove by a preponderance of the evidence that it is financially, managerially, and operationally fit to provide the proposed service.

2. Public Convenience and Necessity and Substantial Inadequacy

101. In addition to showing fitness, the regulated monopoly doctrine requires Applicant to show both: (1) that the present or future public convenience and necessity requires or will require its service, and (2) that the service of existing carriers within the proposed service area is substantially inadequate. *Supra*, ¶¶ 88 and 91. Because Silverton is the only populated city in San Juan County, discussion of these factors is focused on service in and out of Silverton to the surrounding counties identified in the Amended Application.

102. Applicant presented substantial credible evidence that the present public convenience and necessary requires the service it proposes under the Amended Application. Silverton's remote location and small town nature creates unique needs for consistent and accessible transportation service. Silverton is surrounded by mountains and mountain passes. The mountain passes surrounding Silverton include windy roads at a high altitude. During good road conditions, the drive presents challenges. During the winter, those challenges are doubled.

103. Transportation related issues are often brought to the Sheriff's office, which reduces the amount of time the Sheriff's office has to focus on its primary function as a law enforcement entity. As a result, the lack of available transportation has a negative impact on Silverton and its residents.

104. Many people living in Silverton do not have transportation of their own or do not drive; visitors to Silverton often do not have their own transportation. Many people have difficulty driving, due to physical infirmities, or fear of the mountain passes. Silverton is not served by a public bus system.

105. Because Silverton is a small town with limited goods and services, residents must leave for many of the most basic day-to-day activities, goods, and services. For example, those in Silverton leave town (and San Juan County) for basic health care (*e.g.*, medical, dental, mental health, prescriptions), groceries, home goods, car repair, education, recreation, and to visit family and friends. The lack of medical care in Silverton is compounded by the fact that San Juan County's ambulance service can only serve one emergency at a time.

106. The public witnesses provided credible testimony that Silverton's heightened transportation needs to the surrounding Counties of Montrose, San Miguel and Ouray are not being met.

107. Based on the foregoing, the ALJ concludes that Applicant met its burden to show by a preponderance of the evidence that the present public convenience and necessity requires the service Applicant proposes.

108. Much of the problems related to the adequacy of the interveners' service in and out of Silverton arise from interveners' chosen base location (the location where their vehicles are stationed). Neither intervener has vehicles that are stationed in Silverton or in San Juan County.

109. Durango Taxi is based in Durango (La Plata County). As a result, Durango Taxi's drivers generally depart from Durango. Durango is 49 miles, and an hour and twenty minutes from Silverton in good conditions. Hearing Exhibit 1. It can take several hours to get to Silverton from Durango when there is snow on the roads. Mr. Williams implicitly acknowledged that Durango Taxi's service in and out of Silverton would be improved if the company had an anchor in Silverton. Indeed, Mr. Williams testified that he has attempted and is still attempting to establish a base in Silverton. To date, those efforts have been unsuccessful.

110. Although Telluride Express has drivers who live in areas that are closer to Silverton than Durango or Montrose, by and large, Telluride Express vehicles are not stationed at the drivers' homes.⁸ The majority of Telluride Express's vehicles are stationed in Montrose, 59 miles from Silverton. Hearing Exhibit 1. Other vehicles are stationed in Telluride, 74 miles from Silverton. *Id.*

Montrose is at least an hour and twenty minutes from Silverton in good driving conditions. The drive from Telluride takes longer than that. Hearing Exhibit 1. With poor road conditions, which are frequent in and around the mountain passes that surround Silverton, the wait for a driver is significantly longer (many hours). Indeed, the Colorado Department of Transportation monitors

⁸ The only circumstance where that may vary is when the driver has the vehicle at his home to respond to a reservation. In such a case, the driver still must use the vehicle to honor the reservation. Thus, as a practical matter, having drivers who live in towns closer to Silverton does not improve the timeliness of Telluride Express's service out of Silverton.

207 paths on highways to and from San Juan County as “avalanche paths.” Hearing Exhibit 117. The distance between interveners’ departure point and Silverton dictates that when someone in Silverton is in immediate need of transportation, neither Durango Taxi nor Telluride Express can meet that immediate need. For example, Ms. Skinner does not contact either intervener to assist with transportation issues brought to the Sheriff’s office, as interveners cannot provide timely assistance with urgent issues since they are not based in Silverton.

111. In short, under the best road conditions, neither Durango Taxi nor Telluride Express are able to pick up passengers in less than an hour and twenty minutes after being dispatched for a trip.⁹ This substantial wait time creates a pattern of inadequate service, and shows that interveners are not ready, willing and able to meet Silverton’s transportation needs. *See Durango Transportation, Inc.*, 122 P.3d at 251 and 253 (upholding Commission’s consideration of incumbent’s wait times, and conclusion that incumbent’s service is substantially inadequate, based in part, on 45 minute wait time to provide service).

112. Based on the foregoing, the ALJ finds that the Applicant met its burden to prove by a preponderance of the evidence that interveners’ service is substantially inadequate because interveners’ transportation service out of Silverton requires a substantial wait-time of at least an hour and twenty minutes.

113. Long wait times are not the only problem with interveners’ service out of Silverton. Interveners’ rates present a significant obstacle to those needing transportation out of Silverton to the surrounding counties. During the hearing, Mr. Rovito argued that rates charged by Telluride Express and Durango Taxi are irrelevant, particularly since the Commission

⁹ This estimate assumes that a driver will depart to Silverton immediately upon being dispatched, an optimistic assumption.

approved their rates. Mr. Rovito fails to recognize the difference between the Commission's purposes in regulating common carrier rates and in granting transportation authority.

114. The Commission's purpose in regulating rates is to protect customers while affording monopoly status to the service provider. *Durango Transportation Inc.*, at 250. By contrast, the Commission's purpose in granting transportation authority is to ensure that the public's transportation needs are met. *Id.* The Colorado Supreme Court held that if an "incumbent carrier's rates are so high as to amount to a denial of service. . . the Commission must consider this fact in determining whether the carrier's service is substantially inadequate; this is so regardless of the Commission's earlier determination that the rates guaranteed the carrier a reasonable rate of return." *Id.* at 250. The Supreme Court went on to uphold the Commission's decision that the motor carrier's service was substantially inadequate, based in part, on the fact that the company's services were priced so high as to be tantamount to denial of service. *Id.* at 248-49; *see Town of Fountain v. Pub. Utils. Comm'n*, 447 P.2d 527, 531 (Colo. 1968). Thus, it is both appropriate and necessary to consider whether, in this proceeding, the interveners' rates are so high as to be tantamount to a denial of service.

115. Due to Silverton's remote location, Durango Taxi's \$4.00 per mile taxi rate quickly becomes very costly. Durango Taxi's round-trip taxi fare: from Silverton to Montrose is \$472.00, from Silverton to Telluride is \$592.00, and from Silverton to Ouray is \$184.00. The charter and shuttle rates are not much better. The round-trip charter fare from Silverton to Montrose is \$354.00, from Silverton to Telluride is \$444.00, and from Silverton to Ouray is \$138.00. The round-trip shuttle fare Silverton to Montrose is \$357.00, from Silverton to Telluride is \$447.00 and from Silverton to Ouray is \$141.00. Mr. Williams testified that half of the inquiries Durango Taxi receives for transportation in and out of Silverton do not result in a

trip. It can be reasonably inferred that those inquiries do not result in transportation because the company's rates for transportation in and out of Silverton are cost-prohibitive.¹⁰

116. Telluride Express's rates for service out of Silverton are similar. Telluride Express's rate for a round-trip from Silverton to Montrose, with a two-person minimum is \$300.00. The fact that Telluride Express requires a two-person minimum creates an additional obstacle one must overcome in order to use the service. Telluride Express quoted Ms. Dickinson a fare of \$400.00 for one-way transportation to the airport in either Montrose or Grand Junction. The rate Ms. Early received from Telluride Express for a round-trip from Silverton to Ridgeway is even more alarming at \$600.00 (or \$300.00 one-way).

117. Mr. Rovito implicitly acknowledged that Telluride Express's rates are high. In particular, when his clients ask for transportation to Silverton, Mr. Rovito recommends that they rent a car, as that would be less costly than hiring Telluride Express.

118. Interveners' rates for transportation out of San Juan County to surrounding Counties are exorbitant, particularly in light of San Juan County's economic condition. There was much evidence indicating that San Juan County suffers from poor economic conditions. For example, so many of the County's students qualify for the free or reduced lunch program, that the entire student body now qualifies for the free or reduced lunch program. The school's poverty level is a reflection of San Juan County's poverty level. *See* Hearing Exhibit 3. In San Juan County, 29.8 percent of the children (under age 18) are classified as being "in poverty." *Id.*

¹⁰ They may also not result in service due to the minimum hour and twenty minute wait time.

119. The TPI in 2011 for San Juan County residents was \$19,213.00. Hearing Exhibit 4, at 15. The PCI for San Juan County residents in 2011 (\$29,854.00) was significantly lower than the nationwide PCI (\$41,560.00) and the state-wide PCI (\$44,053.00) for the same time-period. *Id.* In 2012, the County's unemployment rate - 8.5 percent- was higher than both the state's and the nation's rates. Due to the seasonal nature of Silverton's primary source of income—tourism— many Silverton residents do not work year-round; this negatively impacts the amount of income residents can earn.

120. Several witnesses provided evidence of Silverton and San Juan County's poor economic conditions. *Supra*, ¶¶ 32, 42, 43, 45, 50, 52, 59, 61 and 63. For example, as a case manager, Ms. Jaramillo's work is heavily focused on serving the County's low-income residents. A number of her clients either cannot afford to own or lease a vehicle, or cannot afford to maintain the vehicles they have. Ms. Jaramillo's clients resort to hitchhiking because they cannot afford transportation.

121. Ms. Srebacic testified that her passengers and many others in Silverton have expressed that they do not use interveners' services because they are unaffordable.

122. The rates Telluride Express quoted for transportation to an airport were so high that Ms. Dickinson could not afford to use the company's service. Due to her limited income, Ms. Dickinson cannot afford to use either of interveners' service.

123. Ms. Early does not use Durango Taxi because she believed their rates would be unaffordable because the company is not based in Silverton. Her belief was confirmed when she received a quote from Telluride Express representative for a round-trip fare of \$600.00 from Silverton to Ridgeway. She called Durango Taxi for their rate for the same round-trip and was quoted a round-trip fare of \$300.00. She cannot afford these rates. Ms. Early would be unable

to live in Silverton without Applicant's service, because she cannot afford transportation out of town for needed goods and services. She knows many others in the community in the same position.

124. The problem with interveners' rates is compounded by the fact that Silverton's residents must travel to a surrounding county for day-to-day goods and services as well as medical care. The high transportation costs to use interveners' service dramatically increases the cost of obtaining that service or good, and renders the transportation cost-prohibitive.

125. The evidence indicated both that interveners' rates are publicly perceived as prohibitively expensive, and that the rates are, in fact, so high as to be tantamount to denial of service. This is confirmed by the fact that interveners do not provide a significant amount of transportation out of Silverton, despite the fact that the evidence demonstrated that a substantial demand for such service exists.¹¹

126. Based on the foregoing, the ALJ concludes that interveners' rates to transport passengers out of Silverton to the surrounding counties at issue in the Amended Application are publicly perceived as cost-prohibitive, and are, in fact, so high as to be tantamount to a denial of service.¹² For these additional reasons, the interveners' service of passengers out of Silverton to surrounding counties is substantially inadequate. *Durango Transportation, Inc.*, 122 P.3d at 248-249.

127. The ALJ concludes that Applicant met its burden to show by a preponderance of the evidence that interveners' service between Silverton and the expanded geographical

¹¹ The ALJ notes that evidence showed that granting the Amended Application will have little impact on interveners since they do not currently perform a significant number of trips in and out of Silverton.

¹² This finding is narrow to the rates interveners charge for service from Silverton to the surrounding counties. The ALJ does not opine on interveners' rates for transportation in other areas.

territories in the Amended Application is substantially inadequate for the following reasons: (1) interveners' transportation service out of Silverton requires a substantial wait-time of at least an hour and twenty minutes; (2) the cost of interveners' service in and out of Silverton is publicly perceived as cost-prohibitive; and (3) interveners' rates in and out of Silverton are actually so high as to be tantamount to a denial of service.

G. Conclusion.

128. Consistent with the above findings, the ALJ concludes that Applicant met its burden under the doctrine of regulated monopoly to provide the service sought by the Amended Application.

129. Pursuant to § 40-6-109(2), C.R.S., the ALJ hereby transmits to the Commission the record and exhibits in this proceeding as well as a recommended decision that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. San Miguel Mountain Ventures, LLC, doing business as Telluride Express, Montrose Express, and Wild West Tours (Telluride Express) is authorized to be represented by a non-attorney in this proceeding, Mr. Mark Rovito, *nunc pro tunc*, June 16, 2014.

2. Durango Taxi LLC is authorized to be represented by a non-attorney in this proceeding, Mr. Milton Williams, *nunc pro tunc*, June 24, 2014.

3. For the reasons set forth herein, Telluride Express's request in its Post-Hearing Statement of Position to reconsider rulings as to the admission of Hearing Exhibits and for the Administrative Law Judge to take administrative notice of documents are denied.

4. The Amended Application to Extend Operations Under Certificate of Public Convenience and Necessity PUC No. 55803 filed by Mountainside Concierge, LLC (Applicant) is granted.

5. Applicant's Certificate of Public Convenience and Necessity PUC No. 55803 is hereby extended to permit the transportation of passengers in call-and-demand charter service and call-and-demand shuttle service as follows:

- I. Between all points in the County of San Juan, State of Colorado;
- II. From all points in the County of San Juan, State of Colorado, on the one hand, to the Durango Mountain Resort, #1 Skier Place, Durango, Colorado 81301 on the other hand;
- III. From all points in the County of San Juan, State of Colorado, on the one hand, to the Sheraton at Tamarron, 40292 U.S. Highway 550, Durango, Colorado 81301 on the other hand;
- IV. Between all points in the County of San Juan, State of Colorado, on the one hand, and all points in La Plata County, State of Colorado on the other hand;
- V. Between all points in the Town of Silverton, Colorado;
- VI. From all points in the County of San Juan, State of Colorado, on the one hand, to all points in the County of Ouray, State of Colorado, on the other hand;
- VII. From all points in the County of San Juan, State of Colorado, on the one hand, to all points in the County of Montrose, State of Colorado on the other hand; and
- VIII. From all points in the County of San Juan, State of Colorado, to all points in the County of San Miguel, State of Colorado.

RESTRICTIONS: This permit is restricted as follows:

- A. All operations under this Certificate are restricted to the use of motor vehicles with a seating capacity of not more than 8 passengers, including the driver.
- B. Items I, II, and III are restricted to providing seasonal service from October 1 through April 30;
- C. Items II, III, IV are restricted to providing transportation of passengers in round trip service;

- D. Item IV is restricted: against providing service to or from the Durango Mountain Resort, #1 Skier Place, Durango, Colorado 81301; and against providing service to or from the Sheraton at Tamarron, 40292 U.S. Highway 550, Durango, Colorado 81301.
 - E. Item V is restricted to providing seasonal service from May 1 through September 30.
6. Applicant shall operate in accordance with all applicable Colorado law and Commission rules.
7. Applicant shall not commence operation under the extended authority granted until it has complied with the requirements of Colorado law and Commission rules, including without limitation:
- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;
 - (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
 - (c) having an effective tariff on file with the Commission. Applicant shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs); and
 - (d) paying the applicable issuance fee (\$5).
8. If Applicant does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of the extended authority shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

9. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with ordering paragraph 7.

10. Proceeding No. 14A-0355CP-Extension is closed.

11. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

12. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

13. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director