

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-351CP-ETA

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THE APPLICATION OF UNITED CAB, LLC FOR EMERGENCY TEMPORARY AUTHORITY TO CONDUCT OPERATIONS AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

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**COMMISSION ORDER DENYING  
EMERGENCY TEMPORARY AUTHORITY**

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Mailed Date: July 27, 2004

Adopted Date: July 9, 2004

**I. BY THE COMMISSION:**

**A. Statement**

1. On July 6, 2004, United Cab, LLC (United Cab) filed an application for emergency temporary authority to conduct operations as a common carrier by motor vehicle for hire for the transportation of passengers and their baggage, in taxi service, between all points within a 18-mile radius of the intersection of Colfax Avenue and Broadway, Denver, Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

2. Denver Taxi, LLC doing business as Yellow Cab (Yellow Cab), Freedom Cabs, Inc. (Freedom Cabs) and Metro Taxi, Inc. (Metro Taxi) filed interventions opposing this application.

3. Pursuant to § 40-6-120(1), C.R.S., the Commission is authorized to grant temporary authority when "there appears to be an immediate and urgent need to any point or within a territory having no carrier service capable of meeting such need." Section 40-6-120(4),

C.R.S., further states: "If the Commission is of the opinion that an emergency exists, it may issue temporary authority or approval at once by making specific reference in its order to the circumstances constituting the emergency, in which case no notice need be given, but any such emergency authority or approval shall expire no later than thirty days after it was issued."

4. In its application, United Cab must show that an emergency exists, and also must demonstrate two things: first, that there is an immediate and urgent need for the proposed transportation services, and second, that there is no existing carrier capable of meeting the need. If United Cab fails to meet either test, the application must be denied. Section 40-6-120(1).

5. Freedom Cab may provide taxi service, under Certificate of Public Convenience and Necessity (CPCN) PUC No. 53638, between all points in the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, State of Colorado.

6. Metro Taxi may provide taxi service, under CPCN PUC No. 1481, between all points in the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, State of Colorado.

7. Yellow Cab may provide taxi service, under CPCN PUC No. 2378 & I, between all points within a 16-mile radius of the intersection of 16<sup>th</sup> and Champa Streets in Denver, Colorado.

**B. Findings of Fact**

8. In support of its application, United Cab states it "consists of 90 cab drivers who have left their association with Freedom Cab. Freedom Cab now has only 25% of its fleet to service a customer base that required 120 cabs. The Commission has already found the need for service that Freedom Cab formerly provided and is now incapable of filling. There exists no

other entity that can fill the emergency void in taxi services to the public created by Freedom Cab's loss of drivers other than United Cab."

9. United Cab filed 142 letters in support of its application. The majority of these letters are form letters. The form letters include the statement "This letter is offered as a reference for the Denver Taxicab Drivers, and in support of 24/7 safe and reliable Taxi service. I believe it is extremely important to let us, the public help to decide on the need and the success of this valuable service. A safe, reliable Taxicab service is extremely important to me and for our community." The form letters do not include any statements that indicate an immediate and urgent need exists for the taxi service requested by United Cab in this application.

10. Forty-six letters were submitted by individuals or business owners. The authors of these letters generally listed addresses in the Denver and Aurora area. While the authors of these letters express a desire to have taxi service continue to be available at its current level, it appears the authors of these letters are expressing support for the service previously provided by Freedom Cab drivers. The writers of these letters also do not include any statements that indicate an immediate and urgent need exists for the taxi service requested by United Cab in this application.

11. In its intervention, Freedom Cab states it can operate 150 taxicabs under CPCN PUC No. 53638. Freedom Cab claims that prior to the departure of the drivers that formed United Cab, it was operating 148 taxicabs. At one point after these drivers departed Freedom Cab was only able to operate 48 taxicabs. Freedom Cab claims it is now operating 99 taxicabs.

12. Metro Taxi, under CPCN PUC No. 1481, may operate up to 492 taxicabs. In its intervention, Metro Taxi states it is “ready willing and able to provide service within the scope of its authority” and “has unused capacity and certainly could transport additional riders.”

13. Yellow Cab, under CPCN PUC No. 2378&I, may operate up to 300 taxicabs. In its intervention, Yellow Cab states “Yellow Cab and Metro Taxi’s ability to fill the reduction in Freedom Cab’s fleet will be easier than one might think. A large majority of Freedom Cab’s drivers have chosen to wait in the holding lot at Denver International Airport and at hotel cab stands for high fare airport trips almost exclusively. This has produced a chronic situation of many more taxis available for airport trips than the public demand warrants, with as many as 100 taxis regularly waiting in the Denver International Airport’s holding lot for as long as four or five hours for a single trip. Thus, the primary effect of the temporary reduction in Freedom Cab’s fleet is most likely to be a more rational number of taxis waiting for airport fares, with more trips and higher incomes for those drivers, instead of any reduction in service to the public.”

### **C. Conclusions**

14. United Cab has not met the requirements set forth in § 40-6-120(1), C.R.S. to obtain emergency temporary authority. United Cab has not provided evidence that an emergency exists that warrants granting the requested authority. Nor has United Cab demonstrated that an immediate and urgent need exists for the transportation service named in this application, and it has not been shown that there are no carriers capable of providing this service.

15. This application for emergency temporary authority is not in the public interest.

16. Although we must thus deny this application, the Commission’s order will have no affect on any subsequent applications United Cab may file with the Commission.

**II. ORDER**

**A. The Commission Orders That:**

1. The application for emergency temporary authority filed by United Cab, LLC is denied.

2. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.

3. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING  
July 9, 2004.**

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Commissioners

CHAIRMAN GREGORY E. SOPKIN  
SPECIALLY CONCURRING.

**III. CHAIRMAN GREGORY E. SOPKIN SPECIALLY CONCURRING:**

1. For those who did not have the benefit of being in the Commission's Hearing Room "A" on July 9, 2004, I will describe the scene. Scores of former taxicab drivers for Freedom Cab filled the room. Their request was simple: they wanted approval to start their own taxi company to succeed or fail on the merits. They filed letters of support from business owners who expressed their support for the drivers and the quality of taxi service these drivers have provided in the past. They did not ask for government subsidy. They sought only government sanction (specifically, ours), because Colorado law requires it.

2. The law binds us. And the law states that we could not grant United Cab's application unless there is an immediate and urgent need for the new taxicab service, *and there is no carrier capable of meeting that need*. C.R.S. § 40-6-120(1). Given this Everestesque standard, we had no choice but to deny the application. We encouraged the company to come back to file a permanent application.

3. United Cab should be aware, however, of the standard applicable to permanent applications. Since the Company's application involves taxicab authority to operate in counties greater than a population of sixty thousand, the applicable standard is that of "regulated competition." C.R.S. § 40-10-105(2). This phrase is about as meaningful as "socialistic capitalism" but, never fear; the Colorado Supreme Court has weighed in. It has stated what "regulated competition" is not. It is not deregulation.<sup>1</sup> It is not to be determined solely on the basis of "the needs or preferences of an applicant's customers."<sup>2</sup> What is it? "[T]he Commission may consider the impact additional competition may have, not only on the conflicting economic

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<sup>1</sup> *Morey v. Public Utilities Com'n*, 629 P.2d 1061, 1066 (Colo. 1981).

interests of competing carriers, ... but also on the ability of existing carriers to provide their customers and the public generally with safe, efficient and economical transportation services.”<sup>3</sup>

Put another way:

[T]he policy is to protect existing carriers from the competition arising out of the granting of new permits only if there is a necessity for such protection. There is no necessity for such protective regulation unless the granting of a new permit will presently or prospectively impair the ability of carriers with existing permits to adequately serve the public. Established carriers are entitled to protection only insofar as they need to be shielded from the danger of an oversupply of transportation services.<sup>4</sup>

The Commission may also consider the “adequacy” or “inadequacy” of current service.<sup>5</sup> We are cautioned that, while the controlling consideration is “public need,” this need may be so disserved by “destructive” or “excessive” competition as to justify denial of an application for common carrier authority.<sup>6</sup>

4. To anyone familiar with litigation, the barrier to entry erected here is formidable. In order to meet the “regulated competition” standard, United Cab will have the burden of proof to show, by presenting competent evidence at hearing, that granting its application will *not*: (1) harm the ability of existing carriers to provide safe, efficient and economical transportation services; and (2) result in an “oversupply” of transportation services or “destructive” or “excessive” competition. Even if it can meet these inexact standards, the Commission apparently still has the discretion to deny the application if it deems the service from exiting carriers to be “adequate,” or if it considers unacceptable the effect of competition on the “economic interests” of competing carriers.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.* (citation omitted)

<sup>4</sup> *Id.* at 1067 (citing *Arrow Transp. Co. v. Hill*, 387 P.2d 559, 563-64 (Or. 1963)).

<sup>5</sup> *Trans-Western Express, Ltd. v. Public Utilities Com’n*, 877 P.2d 350, 354 (Colo. 1994).

5. The result of all this is quite predictable. Freedom Cab's application to start a taxicab company a decade ago resulted in weeks of hearing, a platoon of lawyers, and tens of thousands of dollars of legal fees, fighting over the same issues outlined above; and this was under the "regulated competition" standard. The transaction cost is so high and the result so uncertain that not one company has been granted permission to start a taxicab business in Denver since Freedom Cab. In practice, "regulated competition" is little different from "regulated monopoly."<sup>7</sup>

6. Stories abound of cab drivers at DIA sitting at the airport for five hours before obtaining a fare. Those in favor of protectionist regulation point to this as proof of too many cabs. Those without an agenda will note that the DIA fare – \$43 – is fixed by the regulator, and therefore has no obvious relationship to what the free market would bear. With deregulation of transportation rates, an enterprising cab driver might charge \$30, and get two or three fares in the same time that \$43 yielded one.

7. The pro-regulation protectionist then warns of safety issues, claiming the \$30 fare necessarily spells danger. This is both unfounded and a red herring. Unfounded because of the safety record of Southwest Airlines. A red herring because proposals to the legislature to deregulate transportation services have included the requirements of minimum insurance and safety inspection (no different than the safety requirements of existing regulation). The inquiry

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<sup>6</sup> *Id.* at 353.

<sup>7</sup> The Institute for Justice claims that the taxicab industry was "deregulated" in Colorado by adoption of the "regulated competition" statute. See [www.ij.org/media/economic\\_liberty/denver/background.shtml](http://www.ij.org/media/economic_liberty/denver/background.shtml). Given the legal standard and accompanying barrier to entry outlined above, it is hard to agree with this claim.



here is the lack of justification for rate and entry regulation,<sup>8</sup> not the continuance of insurance and safety inspection requirements.

8. A traveler to Reagan or Dulles Airports will find numerous taxicab entrepreneurs competing for your business. By and large, they own their own cabs, and their own companies. Somehow the nation's capitol has survived, even prospered, under "excessive" competition.

9. This is the year 2004. We are a nation built on small business and competition. We are in a state that prides itself on less regulation and a business-friendly climate. Exactly why do we need to prevent entrepreneurs from starting their own business under a theory of "destructive" competition?

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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CHAIRMAN

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<sup>8</sup> In 1984, the Federal Trade Commission conducted a study of taxicab regulation and concluded that, "there is no persuasive economic rationale" for most such regulation, stating "restrictions on entry, minimum fare controls, and restrictions on ride-sharing . . . reduce rather than increase efficiency." See [www.ij.org/media/economic\\_liberty/denver/background.shtml](http://www.ij.org/media/economic_liberty/denver/background.shtml).