

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

PROCEEDING NO. 15A-0783CP

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IN THE MATTER OF THE APPLICATION OF LIBERTY TAXI CORPORATION FOR  
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS  
A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
DENYING APPLICATION; GRANTING  
RENEWED MOTION TO COMPEL; AND  
GRANTING MOTION *IN LIMINE*, IN PART**

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Mailed Date: September 30, 2016

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**I. STATEMENT**

1. On October 1, 2015, Liberty Taxi Corporation (Liberty Taxi, Company, or Applicant) filed an Application for Permanent Authority. That filing commenced this Proceeding.

2. On October 5, 2015, the Commission issued its Notice of Application Filed (Notice) in this Proceeding (Notice at 5); established an intervention period; and established a procedural schedule. On November 23, 2015, Decision No. R15-1244-I vacated that procedural schedule.

3. The following intervened as of right: Colorado Cab Company, doing business as Denver Yellow Cab and Boulder Yellow Cab (Colorado Cab); Colorado Coach Transportation, LLC (Colorado Coach); Colorado Springs Shuttle, LLC (CS Shuttle); Colorado Springs Transportation LLC, doing business as Yellow Cab Company of Colorado Springs

(CS Transportation); MKBS, LLC, doing business as Metro Taxi (Metro Taxi); MT Acquisitions LLC, doing business as Mountains Taxi (Mountains Taxi); and Ramblin' Express, Inc. (REI).

4. Decision No. R16-0089-I<sup>1</sup> granted the requests of Colorado Coach, CS Shuttle, Mountains Taxi, and REI to withdraw their interventions and dismissed the four interventions.

5. Colorado Cab, CS Transportation, and Metro Taxi, collectively, are the Intervenors; each individually is an Intervenor. Applicant and Intervenors, collectively, are the Parties; each individually is a Party. Each Party is represented by legal counsel in this Proceeding.

6. On January 19 and 20, 2016, Liberty Taxi filed Motions to Amend Application and Stipulation. Decision No. R16-0089-I granted the two motions and amended the scope of authority sought in this Proceeding.

7. Liberty Taxi seeks authority to operate as a common carrier by motor vehicle for hire as follows:

Transportation of

passengers in call-and-demand taxi service

between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson, State of Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand.

RESTRICTIONS: This authority is restricted:

- (A) against the transportation of passengers originating in the City of Colorado Springs, State of Colorado;
- (B) against transportation of passengers between all points in Jefferson County, State of Colorado, that are west of Kipling Street, as extended, and between said points, on the one hand, and all points in the Counties of Clear Creek, Gilpin, and Park, State of Colorado, on the other hand;

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<sup>1</sup> That Interim Decision was issued on February 5, 2016 in this Proceeding.

- (C) against transportation of passengers between Black Hawk, Colorado and Central City, Colorado, on the one hand, and all points in an area bounded on the north by I-70, on the east by E-470, on the south by C-470, and on the west by Monaco Parkway, extended, on the other hand;
- (D) against transportation of passengers between Denver International Airport, on the one hand, and Colorado Springs, Colorado, on the other hand; and
- (E) against transportation of passengers between Black Hawk, Colorado and Central City, Colorado, on the one hand, and Boulder, Longmont, and Louisville, Colorado, on the other hand.

Decision No. R16-0089-I at Ordering Paragraph No. 4.

8. Unless the context indicates otherwise, reference in this Decision to the Application is to the October 1, 2015 filing as amended on January 19 and 20, 2016.

9. On November 12, 2015, by Minute Order, the Commission deemed the Application complete within the meaning of § 40-6-109.5, C.R.S. Decision No. R16-0089-I acknowledged Applicant's waiver of § 40-6-109.5(2), C.R.S., in this Proceeding.

10. On November 12, 2015, by Minute Order, the Commission referred this Proceeding to an Administrative Law Judge (ALJ) for disposition.

11. On December 7, 2015, by Decision No. R15-1295-I, the ALJ scheduled a February 10 and 11, 2016 evidentiary hearing in, and established the procedural schedule for, this Proceeding. On January 22, 2016, by Decision No. R16-0055-I, the ALJ vacated that evidentiary hearing and procedural schedule.

12. By Decision No. R16-0130-I,<sup>2</sup> the ALJ scheduled an April 19 and 20, 2016 evidentiary hearing and a procedural schedule.

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<sup>2</sup> That Interim Decision was issued on February 19, 2016 in this Proceeding.

13. On March 17, 2016, Applicant filed its Witness and Exhibit Summary. On June 20, 2016, Applicant filed its financial (bank) statements for the period October 1, 2015 through March 31, 2016.

14. On March 22, 2016, Intervenors Colorado Cab and CS Transportation filed (in one document) their Witness and Exhibit Lists.

15. On March 28, 2016, Intervenor Metro Taxi filed its Witness and Exhibit Lists.

16. On April 13, 2016, Metro Taxi filed (in one document) a Motion to Dismiss [Motion to Dismiss] or Alternative Motion to Compel and to Vacate the Evidentiary Hearing [Motion to Compel and Motion to Vacate] (in its entirety, April 13 Filing). On April 13, 2016, Liberty Taxi filed its Response to the April 13 Filing, to which Metro Taxi was permitted to file a reply.

17. On April 14, 2016, Metro Taxi filed a Supplement to the April 13 Filing (April 14 Supplement). On April 15, 2016, Liberty Taxi filed its Responses to the April 13 Filing and the April 14 Supplement. Liberty Taxi opposed the Metro Taxi motions.

18. On April 20, 2016, the ALJ held a motions hearing. The Parties were present, were represented, and participated. During the motions hearings, the ALJ: (a) based on Liberty Taxi's representations, determined that some of the documents filed under seal are not confidential; (b) denied the Motion to Dismiss; (c) acknowledged Liberty Taxi's agreement to provide to Metro Taxi, not later than April 25, 2016, Liberty Taxi's office space lease agreements; (d) granted the Motion to Compel; and (e) granted the Motion to Vacate. These rulings are memorialized in Decision No. R16-0374-I.<sup>3</sup>

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<sup>3</sup> That Interim Decision was issued on May 2, 2016 in this Proceeding.

19. In granting the Motion to Compel, the ALJ ordered Liberty Taxi to respond to Metro Taxi Discovery Request No. 20 and to provide, not later than May 13, 2016,

the October 2015 through and including March 2016 bank statements of any individual who is willing to make funds available to Liberty Taxi Corporation for its operations; these individuals include at least the individuals whose bank statements Liberty Taxi Corporation provided in its April 13 and April 14, 2016 discovery responses (*see* Exhibit B to the Supplement to Motion to Dismiss or Alternative Motion to Compel and to Vacate the Evidentiary Hearing).

Decision No. R16-0374-I at Ordering Paragraph No. 9 (*italics in original*).

20. In granting the Motion to Vacate, the ALJ vacated the April 19 and 20, 2016 evidentiary hearing and the remaining filing dates in the procedural schedule established in Decision No. R16-0130-I.

21. Based on the Parties' proposal, in Decision No. R16-0374-I, the ALJ scheduled a July 7 and 8, 2016 evidentiary hearing in this Proceeding and established a procedural schedule with additional filing dates.

22. On April 20, 2016, Applicant served its second set of written discovery on Metro Taxi. On April 22, 2016, Metro Taxi filed a Motion for Protective Order (Protective Order Motion).

23. On April 25, 2016, Applicant filed its Response to the Protective Order Motion (April 25 Response). In that filing, Applicant "request[ed] an order ... prohibiting [Metro Taxi from asserting the argument ascribed to Metro in the Response at ¶¶ 2 and 3], since it is beyond the scope of their ability to intervene." April 25 Response at ¶ 5. The ALJ treated this as a motion to determine the scope of the issues in this Proceeding (Motion to Determine Scope of Proceeding). Intervenors filed responses in opposition to this motion. By Decision

No. R16-0514-I,<sup>4</sup> the ALJ granted the Motion to Determine Scope of Proceeding and, as discussed in *id.* at ¶¶ 15-25, determined the scope of the issues in this Proceeding.

24. In Decision No. R16-0514-I, the ALJ also granted the Protective Order Motion and issued the protective order sought by Metro Taxi.

25. On June 1, 2016, Metro Taxi filed (in one document) a Renewed Motion to Compel and Motion *in Limine* (collectively, June 1 Filing). The ALJ addresses these motions *infra*.

26. On July 7, 2016, at the scheduled time and place, the ALJ convened the evidentiary hearing in this Proceeding. All parties were present, were represented by legal counsel, and participated.

27. The evidentiary record consists of the oral testimony presented and the exhibits admitted during the evidentiary hearing.<sup>5</sup> The ALJ heard the testimony of two witnesses.

28. Eleven documents were marked as exhibits for identification. Of these, the following were admitted into evidence: Hearing Exhibits No. 1,<sup>6</sup> No. 2, and Nos. 4 through and including No. 11.<sup>7</sup>

29. There is no confidential information in the evidentiary record.

30. At the conclusion of the hearing, the evidentiary record was closed. The ALJ took this Proceeding under advisement.

31. Liberty Taxi filed a Post Hearing Statement of Position.

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<sup>4</sup> That Interim Decision was issued on June 14, 2016 in this Proceeding.

<sup>5</sup> No transcript of the evidentiary hearing has been filed in this Proceeding.

<sup>6</sup> As discussed *infra*, Hearing Exhibit No. 1 had stricken from it all information concerning the eight identified participant drivers. As a result, the total shown on the last line is incorrect because it is overstated.

<sup>7</sup> Hearing Exhibit for Identification No. 3 was offered but was not admitted.

32. Colorado Cab, CS Transportation, and Metro Taxi filed a Joint Statement of Position.

**A. Renewed Motion to Compel.**

33. On June 1, 2016, Metro Taxi filed a Renewed Motion to Compel (Renewed Motion). As good cause to grant that motion, Metro Taxi states: (a) Metro Taxi propounded discovery to Liberty Taxi in which, as pertinent here, Metro Taxi sought Liberty Taxi's bank statements for the period October 2015 through and including March 2016 and its office space lease; (b) because Liberty Taxi did not provide the requested documents, Metro Taxi filed a Motion to Compel; (c) during the April 20, 2016 motions hearing, Liberty Taxi represented that it would provide the requested bank statements and office space lease not later than May 13, 2016 and, based on this representation, Metro Taxi withdrew the Motion to Compel as to those documents; (d) Liberty Taxi did not produce the bank statements as promised; (e) Liberty Taxi's financial fitness is at issue in this Proceeding; and (f) as evidence of a source of funding for its operations, Liberty Taxi's bank statements are relevant and discoverable. For these reasons, and in accordance with Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1405(k)(VI),<sup>8</sup> Metro Taxi files its Renewed Motion.

34. In Decision No. R16-0514-I at ¶ 36, the ALJ noted that Metro Taxi had filed the Renewed Motion.

35. No Party filed a response to the Renewed Motion.

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<sup>8</sup> This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.



36. Liberty Taxi did not respond to the Renewed Motion. As a result, and exercising the discretion afforded by Rule 4 CCR 723-1-1400(d), the ALJ deems Liberty Taxi to have confessed that motion.

37. The Renewed Motion states good cause and is unopposed. In addition, Liberty Taxi confessed the motion. Further, no Party will be prejudiced if the motion is granted.

38. For the reasons stated in the motion and because the motion is unopposed and confessed, the ALJ will grant *nunc pro tunc* the Renewed Motion and will order Liberty Taxi to provide, not later than June 20, 2016 at 3:00 p.m., to Intervenors these documents: Liberty Taxi's bank statements for the period October 2015 through and including March 2016.<sup>9</sup>

**B. Motion in Limine.**

39. On June 1, 2016, Metro Taxi filed a Motion *in Limine*. As good cause to grant that motion, Metro Taxi states: (a) in Decision No. R16-0374-I, as pertinent here, the ALJ granted Metro Taxi's Motion to Compel and ordered Liberty Taxi to provide to Intervenors, not later than May 13, 2016, the October 2015 through March 2016 bank statements of any individual who is willing to make funds available for Liberty Taxi's operations; (b) Liberty Taxi's financial fitness is at issue in this Proceeding; (c) as evidence of potential sources of funding, the bank statements of an individual who is willing to make funds available to Liberty Taxi for its operations are relevant and discoverable; and (d) without justification, Liberty Taxi did not provide the bank statements as ordered. For these reasons, and in accordance with Rule 4 CCR 723-1-1405(k)(VI), Metro Taxi asks the ALJ to preclude Liberty Taxi

from introducing any evidence -- through testimony or exhibits -- at the evidentiary hearing relating to any outside sources of funding for [Liberty Taxi's]

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<sup>9</sup> By electronic mail dated June 17, 2016, the ALJ informed the Parties of this ruling. This Decision memorializes that ruling.

operations, including the individuals whose bank statements were previously disclosed by [Liberty Taxi] in this

Proceeding. June 1 Filing at ¶ 12.

40. In Decision No. R16-0514-I at ¶ 36, the ALJ noted that Metro Taxi had filed the Motion *in Limine*.

41. No Party filed a response to the Motion *in Limine*.

42. Liberty Taxi did not respond to the Motion *in Limine*. As a result, and exercising the discretion afforded by Rule 4 CCR 723-1-1400(d), the ALJ deems Liberty Taxi to have confessed that motion.

43. The Motion *in Limine* states good cause and is unopposed. In addition, Liberty Taxi confessed the motion. Further, no Party will be prejudiced if the motion is granted.

44. In the Motion *in Limine*, Metro Taxi seeks to preclude Liberty Taxi from introducing evidence “relating to *any* outside sources of funding for [Liberty Taxi’s] operations” (June 1 Filing at ¶ 12 (emphasis supplied)). The requested remedy goes well beyond the documents, which are limited to bank records of certain individuals, that Decision No. R16-0374-I ordered Liberty Taxi to produce. The ALJ finds that, in the Motion *in Limine*, Metro Taxi does not support the broad requested remedy. Consequently, the ALJ will limit the remedy as set out *infra*.

45. For the reasons stated in the motion and because the motion is unopposed and confessed, the ALJ will grant *nunc pro tunc* the Motion *in Limine*, in part, and will order that, at the evidentiary hearing in this Proceeding, Liberty Taxi will be precluded from introducing any evidence, whether testimonial or documentary: (a) pertaining to any individual who is willing to make funds available to Liberty Taxi for Liberty Taxi’s operations, these individuals include at

least the individuals whose bank statements Liberty Taxi provided in its April 13 and 14, 2016 discovery responses (*see* Exhibit B to the Supplement to Motion to Dismiss or Alternative Motion to Compel and to Vacate the Evidentiary Hearing); and (b) pertaining to the funds themselves (for example, and not by way of limitation, the amount of money that an individual is willing to make available).<sup>10</sup>

46. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this Proceeding along with a written recommended decision.

## **II. FINDINGS OF FACT**

47. Subject to restrictions, Liberty Taxi seeks new permanent authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers, in call-and-demand taxi service: (a) between all points in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties; and (b) between those points, on the one hand, and all points in the State of Colorado, on the other hand.

48. Unless the context indicates otherwise, this Decision refers to Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties, collectively, as the Denver Metropolitan Area, the Denver Metro Area, and the Denver Metropolitan Area Counties.

### **A. Parties.**

49. Applicant Liberty Taxi is a Colorado corporation.

50. Intervenor Colorado Cab is a limited liability company that operates and provides taxicab service in the Denver Metro Area under two trade names: Denver Yellow Cab and

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<sup>10</sup> By electronic mail dated June 17, 2016, the ALJ informed the Parties of this ruling. This Decision memorializes that ruling.

Boulder Yellow Cab. Colorado Cab provides transportation service under Certificate of Public Convenience and Necessity (CPCN) PUC No. 150 and CPCN PUC No. 2378.

51. Intervenor CS Transportation is a limited liability company that operates and provides taxicab service in the Denver Metro Area under the trade name Yellow Cab Company of Colorado Springs. CS Transportation provides transportation service under CPCN PUC No. 109.

52. Intervenor Metro Taxi is a limited liability company that provides taxicab service in the Denver Metro Area under four trade names: Metro Taxi, Taxis Fiesta, South Suburban Taxi, and Northwest Suburban Taxi. Metro Taxi provides transportation service under CPCN PUC No. 1481.

**B. Witnesses.**

53. Mr. Hafeedh Ferjani is the individual who, in his words, “will lead the company right now.” He has resided in Colorado for 25 years. Mr. Ferjani received a bachelor’s degree in economics in France and received two degrees from the University of Colorado - Denver: a Masters of Business Administration and a Masters of Marketing. Mr. Ferjani has owned and operated an Allstate Insurance Company-affiliated insurance agency for the past 15 years. Prior to owning the insurance agency, Mr. Ferjani held a management position at a Marriott hotel. As a result of his employment history, Mr. Ferjani has experience in the hospitality industry and in working with individuals from diverse backgrounds.

54. Mr. Daniel Woldu is the micro-enterprise program manager of Community Enterprise Development Services (CEDS), a non-profit organization, and has held this position since January 2015. Prior to this position, Mr. Woldu worked for CEDS as a financial manager. As CEDS’s micro-enterprise program manager, Mr. Woldu’s duties are to provide micro-loans to entrepreneurs who are low-income immigrants or refugee-asylees and who reside in the Denver

Metropolitan Area and to manage or to oversee those micro-loans. Mr. Woldu authored the letter that is Hearing Exhibit No. 10; this letter is discussed *infra*.

55. The ALJ finds the witnesses to be credible and relies on their testimony in reaching the Decision in this Proceeding.

56. On some points pertaining to the CEDS loans/funds, the testimony of Liberty Taxi witness Ferjani is not consistent with that of Metro Taxi witness Woldu. Where the two testimonies are inconsistent, the ALJ finds the testimony of Metro Taxi witness Woldu, who is responsible for the micro-loan program at CEDS, to be better-founded and relies on that testimony.

**C. Prior Liberty Taxi Application to Provide Taxicab Service.**

57. At various times during the evidentiary hearing in the instant Proceeding, Applicant witness Ferjani or the attorneys referred to Liberty Taxi's prior application for authority to provide taxicab service. The ALJ includes this discussion to place those references in context.

58. On June 30, 2009, Liberty Taxi filed an application to provide taxicab service between all points in the Denver Metropolitan Area Counties and between all points in those counties, on the one hand, and all points in Colorado, on the other hand. (This is the same service area that Liberty Taxi seeks authority to serve in the instant Proceeding.) The June 2009 filing commenced Proceeding No. 09A-498CP.<sup>11</sup>

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<sup>11</sup> That Proceeding was captioned *In the Matter of the Application of Liberty Taxi Corporation for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire*.

59. ALJ Paul C. Gomez consolidated the 2009 Liberty Taxi application proceeding with Proceedings No. 09A-479CP,<sup>12</sup> No. 09A-489CP,<sup>13</sup> and No. 09A-490CP-Extension.<sup>14</sup>

60. After an evidentiary hearing, as pertinent here, Judge Gomez found Liberty Taxi to be financially and operationally fit and to have met all then-existing requirements. Consequently, he granted the 2009 Liberty Taxi taxicab application, in part, and subject to conditions. Decision No. R11-0234<sup>15</sup> at Ordering Paragraph No. 6.

61. Upon consideration of exceptions filed to Decision No. R11-0234 and review of the evidentiary record, the Commission concluded “that Liberty Taxi is not financially fit[.]” Decision No. C11-0805<sup>16</sup> at ¶ 58; *see generally id.* at ¶¶ 49-57 (bases for conclusion). In addition, although finding that it need not decide the issue of operational fitness because Liberty Taxi had not established financial fitness, the Commission “express[ed] some reservations” about Liberty Taxi’s operational fitness. *Id.* at ¶ 58. Consequently, the Commission granted the exceptions; did not adopt Judge Gomez’s recommended decision with respect to Liberty Taxi; and denied the 2009 Liberty Taxi taxicab application because Liberty Taxi had not met its burden of proof with respect to its financial and operational fitness.

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<sup>12</sup> That Proceeding was captioned *In the Matter of the Application of Rockies Cab Company for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire*.

<sup>13</sup> That Proceeding was captioned *In the Matter of the Application of Denver Cab Cooperative, Inc., doing business as Denver Cab Coop, for Permanent Authority to Operate as a Common Carrier by Motor Vehicle for Hire*.

<sup>14</sup> That Proceeding was captioned *In the Matter of the Application of Colorado Cab Company, LLC, for Authority to Extend Operations under Certificate of Public Convenience and Necessity No.2378&I*.

<sup>15</sup> That Decision was issued on March 4, 2011 in consolidated Proceedings No. 09A-479CP, No. 09A-489CP, No. 09A-490CP-Extension, and No. 09A-498CP.

<sup>16</sup> That Decision was issued on July 28, 2011 in consolidated Proceedings No. 09A-479CP, No. 09A-489CP, No. 09A-490CP-Extension, and No. 09A-498CP.

62. The Commission affirmed its rulings in Decision No. C11-0992<sup>17</sup> (Order Denying Applications for Rehearing, Reargument, and Reconsideration) and in Decision No. C13-0974<sup>18</sup> (Decision Denying Motion for Reconsideration of Denial of the Application).

**D. Planned Operations.**

63. Liberty Taxi is a start-up company. At present, Liberty Taxi has no authority to operate as a taxicab service in Colorado. Consequently, it has no history of operation.

64. Liberty Taxi has a business plan for its taxicab operations and has taken preliminary steps toward implementation of its business plan. Liberty Taxi will not implement its business plan and will not complete the work to provide taxicab service until it receives the requested CPCN.

65. Liberty Taxi has a Board of Directors that has at least five members. Whether members of the Board of Directors draw a salary from Liberty Taxi is unknown.

66. Liberty Taxi has an unknown number of corporate officers. At present, the corporate officers do not draw a salary from Liberty Taxi.

67. In Liberty Taxi's view, a traditional taxicab company typically obtains fares by customer calls and taxicab stand walk-ups. Liberty Taxi plans to use a different approach: (a) Liberty Taxi management will hold weekly meetings to ascertain the events that will occur during the week and, in addition, customers will contact Liberty Taxi through technology to schedule trips; (b) using these data, the management will provide drivers with a daily schedule of what they are to do that day; and (c) Liberty Taxi requires each driver to follow the schedule

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<sup>17</sup> That Decision was issued on September 16, 2011 in consolidated Proceedings No. 09A-479CP, No. 09A-489CP, No. 09A-490CP-Extension, and No. 09A-498CP.

<sup>18</sup> That Decision was issued on August 12, 2013 in consolidated Proceedings No. 09A-479CP, No. 09A-489CP, No. 09A-490CP-Extension, and No. 09A-498CP.

provided. In addition to the trips listed in the daily schedule, a driver may take a fare when the customer requests that driver.

68. Liberty Taxi's business plan is to attract and to retain repeat customers who are accustomed to using technology. To that end, Liberty Taxi will push customers to use a smart phone to contact Liberty Taxi, to request taxicab service, and to pay fares.

69. Customers will be able to contact Liberty Taxi by landline telephone, but Liberty Taxi will discourage the use of those telephones.

70. Liberty Taxi will not have meters in the taxicabs. The Android smart phone in the taxicab will serve that purpose.

71. Liberty Taxi will accept on-line prepayments, on-line or in-cab debit card payments, and on-line or in-cab credit card payments. When a trip is booked, Liberty Taxi will inform the customer that the fare may be paid by credit card only.

72. Liberty Taxi will permit a driver, on a trip-by-trip basis and after consultation with a supervisor, to accept cash to pay for a fare. In Liberty Taxi's view, accepting cash will be a rare event, usually reserved for emergency situations.

73. Liberty Taxi will place each driver's biographical information on-line, and customers will have access that information. A customer will be able to select and to request a specific driver. To encourage each driver to provide excellent customer service, Liberty Taxi will reward a driver if multiple customers request that individual.

74. Liberty Taxi will obtain insurance coverage for the taxicab vehicles, worker's compensation insurance for Liberty Taxi employees, and office liability insurance with equipment coverage. Because Liberty Taxi will not implement its business plan until it receives the requested CPCN, Liberty Taxi has not entered into a contract for insurance coverage.



75. Liberty Taxi contacted an insurance broker to obtain an insurance quote for insurance coverage for the taxicab vehicles, for worker's compensation insurance, and for office liability insurance with equipment coverage. Hearing Exhibit No. 9 is an undated letter from Liberty Taxi witness Ferjani to Burns & Wilcox underwriting for Ivantage containing the insurance quotes requested by Liberty Taxi. Liberty Taxi witness Ferjani prepared the letter to reflect the information he received during a telephone conversation.

76. The undated letter states that Ivantage will provide, for 300 vehicles, property damage and bodily injury insurance at a quoted annual premium of \$ 1,476,000 (\$ 410 per vehicle per month) with an initial payment of \$ 198,000 and then 10 payments.<sup>19</sup> The undated letter also states that Liberty Taxi will begin with 50 taxicab vehicles "reaching out the 300 [vehicle] level within a year" (Hearing Exhibit No. 9 at 1). The undated letter does not contain quotes based fewer than 300 vehicles. Under the insurance policy, Liberty Taxi will be the insured party.

77. The undated letter states that Ivantage will provide worker's compensation insurance for Liberty Taxi's employees at an annual premium of \$ 2,779 and office liability insurance with equipment coverage for an annual premium of \$ 1,750.

78. In total, based on the undated letter (Hearing Exhibit No. 9) and with a fleet of 300 taxicabs, Liberty Taxi's total annual insurance premiums, assuming no changes, will be \$ 1,480,529. Liberty Taxi will pay the insurance premiums using \$ 430 of the \$ 750 monthly fee paid by each driver.

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<sup>19</sup> The undated letter does not state the amount of each of the ten payments and does not contain the schedule for making the ten payments.

79. There is no evidence as to: (a) the date on which Liberty Taxi witness Ferjani obtained the insurance quotes contained in the undated letter (Hearing Exhibit No. 9); and (b) the date on which Liberty Taxi witness Ferjani sent the undated letter (Hearing Exhibit No. 9). As a result, there is no evidence that the undated letter was prepared for the instant Proceeding and not for the earlier Proceeding No. 09A-498CP.

80. Aside from Liberty Taxi witness Ferjani's testimony, there is no evidence that the insurance carrier or its agent agreed to the terms stated in the undated letter and that Ivantage will provide insurance under the stated terms.

81. There is no record evidence on Liberty Taxi's days and hours of operation. Based on the record evidence and particularly Liberty Taxi's business plan as explained at the hearing, it is unclear how Liberty Taxi will meet the Rule 4 CCR 723-6-6254(a)<sup>20</sup> requirement that it must "be available to provide service 24 hours per day, every day of the year."

82. There is no record evidence on Liberty Taxi's plans to advertise, or otherwise to market, the availability of its taxicab service.

83. Additional aspects of Liberty Taxi's business plan are discussed *infra* in this Decision.

**E. Equipment.**

84. In this Decision, because she views them as significant, the ALJ focuses on Liberty Taxi's taxicab vehicles and dispatch system.

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<sup>20</sup> This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723 (Transportation Rules).

**1. Vehicles.**

85. At full strength, Liberty Taxi plans to operate a fleet of 300 taxicabs. Liberty Taxi will begin operations with between 19 and 50 taxicabs. As circumstances warrant and based on its assessment of the situation, Liberty Taxi will add taxicabs as needed to provide service throughout the Denver Metro Area. As a result, Liberty Taxi does not know the date by which it will have a fleet of 300 taxicabs.

86. With respect to the vehicles available when Liberty Taxi commences operation as a taxicab company, Liberty Taxi now owns or has three vehicles; plans to buy seven vehicles; and will have additional vehicles that are owned by Liberty Taxi drivers and that the drivers make available for use in Liberty Taxi's fleet.

87. Liberty Taxi's business plan permits a driver to bring the driver's own vehicle to be used as a taxicab. The driver will pay the cost of having her/his vehicle outfitted as a taxicab and painted in the Liberty Taxi colors. In addition, each driver who brings a vehicle must agree that, once outfitted as a Liberty Taxi taxicab, s/he will not use the vehicle as a personal vehicle and will not use the vehicle to provide service for any other regulated transportation carrier. At the time of the hearing, Liberty Taxi had not determined whether to have a policy on the use of a driver-owned vehicle, once outfitted as a Liberty Taxi taxicab, to provide service for a Transportation Network Company (TNC).<sup>21</sup> Finally, Liberty Taxi will permit a driver who provides (*i.e.*, owns) a taxicab vehicle to take that vehicle home when the driver is not on-duty.

88. Liberty Taxi's business plan provides for Liberty Taxi to purchase, in its own name, vehicles to be used as taxicabs. Liberty Taxi will pay the cost of having its vehicles outfitted as taxicabs and painted in the Liberty Taxi colors.

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<sup>21</sup> Section 40-10.1-602(3), C.R.S., defines TNC. Uber and Lyft are examples of TNCs.

89. Liberty Taxi has contracted with two garages to provide these vehicle maintenance services: oil changes and any incidentals.

## **2. Dispatch System.**

90. Liberty Taxi has a written agreement with Logistics Taxi to provide Liberty Taxi's taxicab dispatch system (dispatch system).<sup>22</sup> The dispatch system is digital. Logistics Taxi can provide Liberty Taxi with the software necessary for taxicab dispatch as well as for black car (*e.g.*, TNC-related) operation and any other transportation need that Liberty Taxi may have. Logistics Taxi also will provide training on the dispatch system to at least one Liberty Taxi manager.

91. Liberty Taxi chose this dispatch system because it provides functions that Liberty Taxi sees as the best fit for Liberty Taxi in, at least, these areas: (a) dispatching taxicabs; (b) tracking the availability and the location of taxicabs; (c) tracking drivers' availability based on hours of service; and (d) providing customers with the ability to use technology to arrange for taxicab service, to receive information from Liberty Taxi, and to pay for the provided service.

92. Of special interest to Liberty Taxi, the dispatch system permits a customer to use advanced technology (*e.g.*, Skype, Snapchat, IMO, Viper) while in the taxicab. In Liberty Taxi's opinion, this feature permits Liberty Taxi to differentiate itself from other taxicab carriers and furthers Liberty Taxi's overall business plan.

93. The dispatch system permits customers to book appointments up to one year in advance and to request a specific driver. The dispatch system permits a customer to arrange

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<sup>22</sup> The agreement is not in the record.

on-line payment of the fare or to pay the fare by credit card or debit card in-vehicle at the conclusion of the ride.

94. The evidentiary record is unclear whether the dispatch system requires Liberty Taxi to own, or to rent from Logistrics Taxi, in-office equipment. If in-office equipment is required, the evidentiary record does not contain either (if applicable) the cost of that equipment if purchased or (if applicable) the lease terms for that equipment.

95. Each taxicab must have an in-vehicle Android smart phone; this is the only in-vehicle equipment that the dispatch system requires. Liberty Taxi drivers who own the taxicab vehicles must provide the Android smart phone.

96. The dispatch system requires a driver to log in and, after log-in: (a) allows driver access to the dispatch system; and (b) keeps track of the number of hours the driver has driven and the trips the driver has made. If a driver exceeds the number of hours the driver is permitted to be on duty, the dispatch system locks the driver out automatically. The record is unclear as to whether, as required by Rule 4 CCR 723-6-6255(a)(IV), the dispatch system has a feature that automatically logs a driver as on-duty when the taxicab vehicle is within 500 feet of a known taxi stand or is within 2 miles of Denver International Airport.

97. The dispatch system permits Liberty Taxi to communicate, by text message or by telephone, with an individual driver, with a group of drivers, or with all drivers in the fleet, wherever they may be. To be contacted, it appears that the driver must be logged onto the dispatch system.

98. The dispatch system generates reports for Liberty Taxi. These reports, for example, allow a manager to identify the drivers who are signed into the system; to know the location of the vehicles; and to know whether a driver is available to take fares.

99. Logistics Taxi charges an initial set-up fee for the dispatch system. The amount of that fee is unclear.

100. Logistics Taxi charges a dispatch system daily use fee of \$ 1 per vehicle. The fee is paid on a monthly basis. Under Liberty Taxi's business plan: (a) each driver that owns the taxicab vehicle will pay the daily use fee for each day that the driver signs on the dispatch system; and (b) whether Liberty Taxi will pay the daily use fee for Liberty Taxi-owned vehicles is unclear.

**F. Drivers.**

101. At full strength and at some time in the future, Liberty Taxi plans to operate with 300 drivers.

102. At the time of the hearing, 75 individuals had expressed interest in driving for Liberty Taxi after the CPCN is granted. Of these, 19 have indicated that they are available to begin driving immediately. The record is unclear whether, at present, each of the 19 individuals owns a vehicle that the individual will provide for use as a Liberty Taxi taxicab.

103. To be hired as a driver for Liberty Taxi, an individual must be a licensed driver and must provide her/his Colorado motor vehicle record.

104. Liberty Taxi drivers will have the opportunity to become part owners of Liberty Taxi. Liberty Taxi did not explain the process by which drivers become part owners.

**G. Training.**

105. Logistics Taxi will train at least one Liberty Taxi manager on the dispatch system. This training will take two to three days.

106. Once trained, the Liberty Taxi manager(s) will train the drivers on the dispatch system. This training will take three to four hours.

107. There is no evidence with respect to the driver safety training, if any, that Liberty Taxi will provide to its drivers.

108. There is no evidence with respect to the training, if any, on applicable Commission rules and statutory requirements that Liberty Taxi will provide to either its drivers or its managers.

**H. Staffing.**

109. Liberty Taxi witness Ferjani identified himself as the individual who, in his words, “will lead the company right now.” Mr. Ferjani is, among other roles, a manager of Liberty Taxi.

110. Liberty Taxi will hire a manager who will help Liberty Taxi witness Ferjani. This manager will have customer-assistance responsibilities, which may include taking calls from persons requesting taxicab service.

111. To run the dispatch system, Liberty Taxi will hire Information Technology (IT) dispatch system employees. Initially, Liberty Taxi will hire one IT dispatch system employee. When it reaches 300 taxicabs, Liberty Taxi will have a maximum of three IT dispatch system employees. IT dispatch system employees will not take calls from persons requesting taxicab service.

112. There is no evidence with respect to employee salaries.

**I. Fixed Physical Facilities.**

113. For the past five years, Liberty Taxi has leased office space at 1642 South Parker Road, Suite 208, Denver, Colorado. Liberty Taxi intends to remain at that location. At present, Liberty Taxi pays \$ 400 per month in rent.

114. For its initial operation, Liberty Taxi has made arrangements to reserve sufficient parking in its office building parking lot to accommodate the taxicabs when they are not in service. The record contains no evidence with respect to the cost, if any, of this reserved parking. As its fleet grows, Liberty Taxi will make arrangements for parking at nearby buildings.

115. Liberty Taxi has contracted with two garages to provide vehicle maintenance services consisting of oil changes and any incidentals.

116. The record contains no evidence as to who is responsible for, and will pay for, for taxicab vehicle maintenance.

**J. Capital Structure, Access to Capital, and Assessment of Financial Health in the Near Future.**

**1. Liberty Taxi Financial Assets and Statements.**

117. Liberty Taxi witness Ferjani testified that Liberty Taxi has available funds in the amount of approximately \$ 480,000. Liberty taxi Financial assets and statements (Liberty Taxi Financial Assets and Statements) (Hearing Exhibit No. 1) was prepared by Liberty Taxi witness Ferjani and is the document proffered by Liberty Taxi to substantiate that amount.

118. In accordance with the Interim Decision that granted the Motion *in Limine*,<sup>23</sup> the ALJ struck from the proffered Hearing Exhibit No. 1 all information concerning the eight identified participant drivers.

119. As admitted as Hearing Exhibit No. 1, the Liberty Taxi Financial Assets and Statements shows these assets: (a) the Ferjani insurance agency in the amount of \$ 173,046.65; (b) a line of credit from Community Enterprise Development Services in the amount of \$ 200,000; (c) two Liberty Taxi 2006 Lincoln town cars valued at \$ 3,000 each; and (d) one

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<sup>23</sup> That Interim Decision is discussed *supra*.



Liberty Taxi 2009 Ford valued at \$ 9,500. The correct total for Hearing Exhibit No. 1 is: \$ 388,546.65.

120. The \$ 173,046.65 in *Ferjani insurance agency funds*<sup>24</sup> are comprised of: (a) the \$ 164,834.85 that Liberty Taxi witness Ferjani can obtain by terminating his insurance agency's relationship with Allstate Insurance or by borrowing against that amount (Agent Compensation Exclusive Agency Combine Report Summary Premium Report for Termination Payment Period from 09/2014 to 08/2015 dated September 11, 2015 (Hearing Exhibit No. 2) at 1); and (b) a monthly commission payment of \$ 8,211.80 made by Allstate Insurance to Liberty Taxi witness Ferjani's insurance agency on an unknown date.<sup>25</sup>

121. While it is likely that the termination payment has increased since September 2015, the amount of the increase is unknown.

122. The monthly commission payments made by Allstate Insurance vary in amount; whether the \$ 8,211.80 is a typical payment is unknown.

123. Liberty Taxi witness Ferjani depends on the insurance agency commission payments for his personal income.

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<sup>24</sup> As discussed *supra*, the ALJ granted Metro Taxi's Motion *in Limine* and precluded Liberty Taxi from introducing evidence pertaining to any individual who is willing to make funds available to Liberty Taxi for its operations. The Ferjani insurance agency funds fall within that preclusion. The ALJ nonetheless permitted introduction of testimonial and documentary evidence on those funds because Liberty Taxi witness Ferjani provided the testimony, sponsored the documents, and was available for cross-examination.

<sup>25</sup> The Commission Payment Notification from Allstate to Hafedh Ferjani for the payment period June 1 through 30, 2015 is Hearing Exhibit No. 11. That document shows a commission payment in the amount of \$ 8,648.80. This payment differs from, and thus does not support, the monthly commission payment of \$ 8,211.80 shown on Hearing Exhibit No. 1.

124. Liberty Taxi witness Ferjani testified that the \$ 173,046.65 in Ferjani insurance agency funds are available to use as supplemental funding and that they are not necessary for Liberty Taxi to operate with a fleet of 20 taxicabs.<sup>26</sup>

125. Insofar as the evidentiary record shows, there is no document that commits Liberty Taxi witness Ferjani to contribute to Liberty Taxi any amount, let alone the \$ 173,046.65 (which is the maximum amount of his insurance agency's termination payment and an insurance agency commission payment) shown as a Liberty Taxi asset on the first line of Hearing Exhibit No. 1.

126. Insofar as the evidentiary record shows, there is no document that commits Liberty Taxi witness Ferjani to stand surety for Liberty Taxi in any amount, let alone the \$ 173,046.65 (which is the maximum amount of his insurance agency's termination payment and an insurance agency commission payment) that is shown as a Liberty Taxi asset on the first line of Hearing Exhibit No. 1.

127. The Liberty Taxi Financial Assets and Statements document shows a *line of credit to Liberty Taxi from Community Enterprise Development Services in the amount of \$ 200,000*. Hearing Exhibit No. 1 at 1. The referenced \$ 200,000 are loans made to “20 *independent contractors* of Liberty Taxi [in the amount of] \$10,000 [to each independent contractor] to purchase 2008 or newer taxi vehicles. In the future [CEDS] can provide even more *entrepreneurs* more loan funds to achieve taxi ownership.” Letter from Daniel Woldu, Microloan Program Manager, CEDS, dated July 17, 2015 (Hearing Exhibit No. 10) at 1 (emphasis supplied).

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<sup>26</sup> This appears to be a reference to the CEDS-funded vehicles. The CEDS funds are discussed *infra*.

128. At the evidentiary hearing, Metro Taxi witness Woldu explained: (a) CEDS will make loans to individuals who will use the funds to buy vehicles to be used as taxicabs; (b) CEDS will use Liberty Taxi as a reference when determining whether to make an initial loan to an individual who states that s/he will be a driver for Liberty Taxi; and (c) for purposes of initial loan approval, the individual seeking a loan must be affiliated with Liberty Taxi.<sup>27</sup> Of importance in this Proceeding, Metro Taxi witness Woldu testified that, so long as s/he continues to make payments to repay the loan, a loan recipient (*i.e.*, independent contractor driver) is free to drive for whomever s/he chooses. There is no loan condition or requirement that a loan recipient remain with Liberty Taxi as a driver.

129. As the record makes clear, there is no line of credit to Liberty Taxi. Thus, the \$ 200,000 in CEDS funds are not financial assets of Liberty Taxi.

130. The evidence establishes that *Liberty Taxi's known and assured assets* are two 2006 Lincoln town cars valued at \$ 3,000 each and one 2009 Ford valued at \$ 9,500. Liberty Taxi Financial Assets and Statements (Hearing Exhibit No. 1) at 1.

131. Liberty Taxi's current assets total \$ 15,500. None of the assets is cash on-hand.

## **2. Liberty Taxi's Business Bank Account.**

132. Liberty Taxi has a business checking account at U S Bank. Five monthly bank statements for Liberty Taxi's business checking account were admitted into evidence.<sup>28</sup>

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<sup>27</sup> There is no evidence in the record on: (a) the length of time it will take CEDS to process a loan application and, thus, when a loan applicant/prospective Liberty Taxi driver likely will receive the funds; and (b) whether \$ 10,000 is sufficient to purchase a vehicle suitable for use as a taxicab (*i.e.*, a vehicle that meets the requirements of Rule 4 CCR 723-6-6254(b)).

<sup>28</sup> *Hearing Exhibit No. 4* is Liberty Taxi's bank statement for March 1 through 31, 2016. *Hearing Exhibit No. 5* is Liberty Taxi's bank statement for January 1 through 31, 2016. *Hearing Exhibit No. 6* is Liberty Taxi's bank statement for December 1 through 31, 2015. *Hearing Exhibit No. 7* is Liberty Taxi's bank statement for November 2 through 30, 2015. *Hearing Exhibit No. 8* is Liberty Taxi's bank statement for October 1 through 31, 2015.

133. None of the bank statements admitted into evidence contains banking transactions by Liberty Taxi.

134. Liberty Taxi witness Ferjani uses the Liberty Taxi U S Bank business account as his personal account. The transactions shown in the five Hearing Exhibits were Liberty Taxi witness Ferjani's personal transactions and not the transactions of Liberty Taxi, the account holder. Liberty Taxi witness Ferjani has used the Liberty Taxi bank account as his own for some time and plans to continue the practice until Liberty Taxi commences operation under the CPCN.

### **3. Additional Liberty Taxi Financial Information.**

135. There is no record evidence on these issues: (a) whether Liberty Taxi will require a driver to make an initial capital contribution or other initial cash payment in order to obtain an ownership interest in Liberty Taxi; and (b) if a driver must make an initial contribution or payment, the amount required to be paid.

136. The Liberty Taxi Financial Assets and Statements (Hearing Exhibit No. 1) discussed *supra* is the only record evidence concerning the source of Liberty Taxi's funds to commence operations as a taxicab company.

137. Once Liberty Taxi is in operation, each driver will pay a monthly fee of \$ 750. Of this fee, Liberty Taxi will use \$ 430 to cover the cost of insurance and \$ 320 to cover dispatching costs, marketing costs,<sup>29</sup> and management and overhead costs.

138. Liberty Taxi did not provide a projected balance sheet, a projected income statement, or a projected cash flow statement.

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<sup>29</sup> As discussed *supra*, there is no evidence on Liberty Taxi's plan to market its taxicab service.

**K. Managerial Competence and Experience.**

139. Liberty Taxi witness Ferjani identified himself as the individual who, in his words, “will lead the company right now.” Mr. Ferjani is a part owner, a shareholder, an officer, and manager of Liberty Taxi. He has managed Liberty Transportation, LLC, which provides medical transportation for Medicaid patients. He has no experience managing, and have never driver for, a taxicab company.

140. After the CPCN is granted, Liberty Taxi will hire a manager who will help Liberty Taxi witness Ferjani.

141. After the CPCN is granted, Liberty Taxi will retain an outside accountant and will retain outside legal counsel.

**L. Additional Facts.**

142. Additional facts are found throughout the remainder of this Decision.

**III. APPLICABLE LAW**

143. To operate in intrastate commerce as a common carrier by motor vehicle for hire, Applicant must obtain a CPCN that declares that the present or future public convenience and necessity requires or will require the common carrier operations. Section 40-10.1-201(1), C.R.S.

144. In this Proceeding, Applicant seeks a CPCN to operate a taxicab service, which is a service provided by a common carrier by motor vehicle for hire in intrastate commerce. Rules 4 CCR 723-6-6201(c) (definition of call-and-demand service), 723-6-6201(f) (definition of common carrier), and 723-6-6201(r) (definition of taxicab service). *See also* § 40-10.1-101(19), C.R.S. (definition of taxicab service). If the CPCN is granted, Applicant will be subject to Commission regulation pursuant to title 40, article 10.1, part 1 and part 2, C.R.S., and applicable Transportation Rules.

**A. Burden of Proof and Related Issues: Generally.**

145. As the Party that seeks authorization to provide taxicab service, Applicant has the burden of proof with respect to the Application; and its burden of proof is preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. “The evidence underlying the agency’s decision must be adequate to support a reasonable conclusion.” *City of Boulder v. Colorado Public Utilities Commission*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Public Utilities Commission*, 949 P.2d 577, 585 (Colo. 1997)). In addition, the evidence must be substantial evidence, which the Colorado Supreme Court has 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 the 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.

*Id.* The preponderance standard requires the finder of fact 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 (Colo. App. 1985). A party has met the preponderance of the evidence burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

146. If an intervenor recommends that the Commission place a condition on the CPCN, that party carries the burden of proof, and must meet the same preponderance of the evidence standard, with respect to its recommendation.

147. In addition, the Commission has stated that “it is legally permissible for the finder-of-fact to draw reasonable inferences from the evidence presented.” Decision

No. C07-0669<sup>30</sup> at ¶ 7. Assuming the evidence warrants, the ALJ may draw reasonable inferences from the evidence and may base a finding on those reasonable inferences.

148. Moreover, the ALJ is not “bound to accept even the uncontradicted testimony as the gospel truth. ... A court [here, the ALJ/Commission], acting as fact finder, is not bound to accept a statement as true because there is no direct testimony contradicting it.” *Pioneer Construction Company v. Richardson*, 176 Colo. 254, 259, 490 P.2d 71, 74 (1971) (internal citation omitted).

149. Finally, whether Applicant met its burden of proof so that a CPCN should issue and, if a CPCN should issue, whether the Commission should attach conditions to the CPCN are matters of public interest. The Commission has an independent duty to determine matters that are within the public interest. *Caldwell v. Public Utilities Commission*, 692 P.2d 1085, 1089 (Colo. 1984). As a result, the Commission is not bound by the Parties’ proposals. The Commission may do what the Commission deems necessary to assure that the final result is just, is reasonable, is consistent with controlling law, and is in the public interest, provided the record supports the result and provided the reasons for the choices made are stated.

150. There is no dispute that these legal principles apply in this Proceeding.

151. The ALJ is mindful of, and applies, these principles in reaching her decision in this Proceeding.

**B. Burden of Proof and Related Issues: § 40-10.1-203(2)(b)(II), C.R.S.**

152. Applicant seeks to provide taxicab service in the Denver Metro Area.

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<sup>30</sup> Decision No. C07-0669 was issued on August 7, 2007 in Proceeding No. 07G-092CP, *Colorado Public Utilities Commission v. Michael McMechen, Doing Business as A Better Move*.

153. Section 40-10.1-203(2)(b)(II)(C), C.R.S., contains the elements that Applicant must prove in this Proceeding to obtain the requested CPCN:

In an application for a certificate to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, the *applicant has the burden of proving that it is operationally and financially fit to provide the proposed service*. The commission shall not consider the applicant's corporate structure when determining whether to approve or disapprove the application for a certificate. The applicant need not prove the inadequacy of existing taxicab service, if any, within the applicant's proposed geographic area of operation. *If the commission determines that the applicant has proved its operational and financial fitness, the commission shall grant the applicant a certificate.*

(Emphasis supplied.)

154. The Commission has not promulgated rules governing applications for CPCNs to provide taxicab service but, rather, has chosen to provide guidance with respect to the factors (or metrics) to be used when evaluating such applications. The Commission has stated that the

*operational and financial fitness of an applicant must be evaluated on a case-by-case basis based upon unique circumstances of each applicant and the proposed service.*

In issuing guidelines to the ALJ [who would hold the evidentiary hearing and prepare an initial Commission Decision] regarding the scope of the testimony and record to be developed at the hearing, the Commission stated that:

The ALJ should endeavor to compile a record regarding each applicant's financial and operational fitness. In doing so, the ALJ should, without limitation, solicit evidence and develop findings of fact on the following topics with respect to each applicant: **(a)** 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 in this docket; **(b)** credit worthiness; **(c)** access to capital; **(d)** capital structure; **(e)** current cash balances; **(f)** credit history and assessment of financial health over the near future; **(g)** managerial competence and experience; **(h)** fixed physical facilities such as office space and maintenance garages, as appropriate; **(i)** appropriate licenses and equipment necessary to operate a radio dispatch system; **(j)** vehicles of appropriate type; and **(k)** other metrics that may be appropriate.



The Commission also issued a guideline to the ALJ to hear testimony and to develop a record on whether [an applicant cooperative] is operationally and financially fit as a whole, not whether its individual members are fit.

Decision No. C09-0207<sup>31</sup> at ¶¶ 454-56 (footnote omitted) (*italics and bolding supplied*). The Commission later clarified that specific findings need not be made on each of the enumerated factors (or metrics)

because the Commission evaluates fitness on a case-by-case basis, in light of the scope of the authority sought, so all of the metrics may not be relevant in all cases. ... Further, metrics other than those [enumerated above] may also be relevant.

Decision No. C11-0339<sup>32</sup> at ¶ 15 (internal citation omitted).

155. Business plans, particularly for start-up businesses, can provide information on, and insight into, whether the applicant taxicab company meets the Commission-identified factors (or metrics). Addressing the examination of a business plan in the context of an application for a CPCN to provide taxicab service, Judge Gomez wrote:

[An intervenor] also takes issue with the fluidity of [the applicant's] *pro forma* financial statements and business plan. However, the speculative nature inherent in all business plans cannot be overlooked. **A business plan (and the *pro forma* financial projections contained therein) is a basic blueprint for a business which reflects the major points of the company's ideas, strategies, and management team.** However, a business plan is not expected to be static, but instead is a fluid document that will change and adapt as the business evolves to meet the demands of reality. As such, projections and estimates made in a business plan must be analyzed from the point of view that they are inherently inaccurate and subject to change as the company moves forward. Nonetheless, **a business plan must also be analyzed to determine whether management understands the realities of the industry in which it is attempting to compete**

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<sup>31</sup> That Decision was issued on February 27, 2009, in Consolidated Proceedings No. 08A-241CP, No. 08A-283CP, No. 08A-284CP-Extension, and No. 08A-300CP. In each of the four Proceedings, the applicant either sought a CPCN to provide taxi service or sought to extend an existing CPCN that authorized taxi service.

<sup>32</sup> That Decision was issued on March 30, 2011 in Proceeding No. 09A-258CP, *In the Matter of the Application of K2 Taxi, LLC, for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire*. In that Decision, the Commission granted, in part, an Application for Rehearing, Reargument, or Reconsideration of Decision No. C11-0081 with respect to limitations on the scope of the CPCN awarded in Proceeding No. 09A-258CP.

**and whether the projections and milestones contained in the plan in some way reflect those realities.**

While [the applicant's] business plan may contain apparent flaws, it is nonetheless useful to determine the company's managerial, operational, and financial fitness. As the Commission noted in the Union Taxi Order, the test of fitness is not perfection. ...

Decision No. R10-1225<sup>33</sup> at ¶¶ 81-82 (bolding and underlining supplied) (footnote omitted). The undersigned finds Judge Gomez's reasoning to be sound and persuasive and, thus, adopts this approach in considering the Application in the instant Proceeding.

156. In short, when evaluating an application for a CPCN to provide taxicab service, "consideration certainly should be given to the financial status of the applicant as well as the applicant's ability to render the service in an efficient and reliable manner." Decision No. C11-0805<sup>34</sup> at ¶ 21 (internal citations and quotation omitted). When examining these issues, however, one must remember that

[w]hether or not a particular amount of capital is sufficient for an applicant to be found financially fit may depend, *inter alia*, on the exact size and demographics of proposed service territory, fleet size, or whether it plans to provide any specialized services. Likewise, the minimum efficient scale also may depend on exact size and demographics of a proposed service area. The same is true regarding the adequacy of dispatch, vehicles, managerial experience, and fixed physical facilities.

Decision No. C11-0992 at ¶ 8.

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<sup>33</sup> That Decision was issued on November 12, 2010 in Proceeding No. 09A-258CP, *In the Matter of the Application of K2 Taxi, LLC, for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire*. In Decision No. C11-0081, issued in Proceeding No. 09A-258CP on February 8, 2011, the Commission found the ALJ's findings and conclusions regarding the fitness of the applicant in that Proceeding to be supported by the evidentiary record and, on that basis, denied exceptions addressed to the issue of that applicant's fitness.

<sup>34</sup> That Decision was issued on July 28, 2011, in Consolidated Proceedings No. 09A-479CP, No. 09A-489CP, No. 09A-490CP-Extension, and No. 09A-498CP. In each of the four Proceedings, the applicant either sought a CPCN to provide taxi service or sought to extend an existing CPCN that authorized taxi service.

157. Moreover, in § 40-10.1-203(2)(b)(II)(A), C.R.S., the General Assembly found, determined, and declared that enactment of § 40-10.1-203(2)(b)(II)(C), C.R.S.,

may open the door to multiple taxicab companies entering the taxicab service market within the metropolitan areas of Colorado and will lead to free market competition, expanded consumer choice, and improved quality of service.

Addressing the impact of § 40-10.1-203(2)(b)(II)(C), C.R.S., on evaluation of an application for a CPCN to provide taxicab service and being mindful of the legislative findings and conclusions in § 40-10.1-203(2)(b)(II)(A), C.R.S., Chief ALJ G. Harris Adams wrote:

Competitive markets have low barriers of entry. Competitors fail over time. A competitive market exerts no preference or control among incumbents and new entrants. ... By enacting [§ 40-10.1-203(2)(b)(II)(C), C.R.S.], the Legislature has given preference to customer forces of market competition over regulatory structures intended to ensure adequate and available service.

Decision No. R16-0213<sup>35</sup> at ¶ 123. The undersigned ALJ finds Judge Adams's reasoning sound and persuasive and adopts this approach in considering the Application in the instant Proceeding.

158. Lastly, when evaluating whether an applicant is operationally and financially fit to provide taxicab service, it is critical to remember: "The test of fitness is not perfection." Decision No. C09-0207 at ¶ 471.

159. Upon a showing of an applicant's operational and financial fitness to provide taxicab service, the Commission

has the power to issue a [CPCN] to a common carrier or to issue [a CPCN] for the partial exercise only of the privilege sought, and may attach to the exercise of the

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<sup>35</sup> That Decision was issued on March 11, 2016 in Proceeding No. 15A-0648CP, *In the Matter of the Application of Green Taxi Cooperative for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire*. On June 3, 2016, by Decision No. C16-0476 at Ordering Paragraph No. 2, the Commission adopted "Recommended Decision No. R16-0213 as a Decision of the Commission without modification."

rights granted by the [CPCN] such terms and conditions as, in the commission's judgment, the public convenience and necessity may require.

Section 40-10.1-203(1), C.R.S. The Commission affirmed this authority in Decision No. C16-0476.

160. There is no dispute that these legal principles apply in this Proceeding.

161. The ALJ is mindful of, and applies, these principles in reaching her decision in this Proceeding.

#### **IV. DISCUSSION AND CONCLUSIONS**

162. In reaching this Decision, the ALJ considered all arguments presented by the Parties. In addition, in reaching this Decision, the ALJ considered the entire evidentiary record, including evidence not specifically addressed in this Decision.

163. Liberty Taxi argues that the evidence demonstrates that it is operationally and financially fit to provide the proposed service and that, based on the evidence, the Commission must grant the requested CPCN for taxicab service.

164. Intervenors challenge Applicant's financial and operational fitness and argue that, because Applicant has not met its burden of proof, the Application should be denied.

165. As discussed *supra*, whether an applicant is financially and operationally fit depends on the scope of the proposed undertaking and is assessed on a case-by-case basis.

166. In assessing the evidence presented on Liberty Taxi's financial fitness, the ALJ took into consideration Liberty Taxi's status as a start-up taxicab company. The ALJ also took into consideration that a "business plan (and the *pro forma* financial projections contained therein) is a basic blueprint for a business which reflects the major points of the company's ideas, strategies, and management team." Decision No. R10-1225 at ¶ 81.

167. Based on the entire evidentiary record and applying the principles pertaining to § 40-10.1-203(2)(b)(II), C.R.S., that are discussed *supra*, the ALJ finds that Liberty Taxi has not met its burden to prove its financial fitness to operate as a taxicab company in the Denver Metro Area Counties.

168. With respect to *funds to commence operation as a taxicab company*, Liberty Taxi did not establish that it has access to the capital needed to commence operation as a taxicab company.

169. *First*, Liberty Taxi relies on the Liberty Taxi Financial Assets and Statements (Hearing Exhibit No. 1) to substantiate its claimed assets. For the reasons discussed *supra* at ¶¶ 117-31, that document is not an accurate statement of the Company's current assets and financial resources. Read in light of the evidence, the Liberty Taxi Financial Assets and Statements (Hearing Exhibit No. 1) establishes that Liberty Taxi's current assets consist of three vehicles with a total value of \$ 15,500 and that Liberty Taxi has no cash on-hand with which to commence operation.

170. *Second*, Liberty Taxi has a business bank account at U S Bank. The evidence establishes that Liberty Taxi witness Ferjani uses this account for his personal banking. As a result, the bank accounts in evidence as Hearing Exhibits No. 4 through No. 8 contain no information on Liberty Taxi's available funds. Liberty Taxi presented no evidence on its current cash balances.

171. *Third*, Liberty Taxi did not identify the source(s) of capital that are available to it. The testimony of Liberty Taxi witness Ferjani is clear that the \$ 173,046.65 in Ferjani insurance agency funds shown on the Liberty Taxi Financial Assets and Statements (Hearing Exhibit No. 1), while available for supplemental funding, are not necessary for Liberty Taxi to

commence operation with 20 taxicabs. A reasonable inference from this undisputed testimony is that Liberty Taxi has one or more *other* sources of capital that it will use to commence its taxicab operation. The Liberty Taxi Financial Assets and Statements (Hearing Exhibit No. 1) lists as a Liberty Taxi asset \$ 200,000 in CEDS funds. The record establishes that the CEDS funds are not available to Liberty Taxi; CEDS loans those funds to Liberty Taxi's drivers. Liberty Taxi witness Ferjani did not identify any additional source(s) of capital that are available to Liberty Taxi.

172. Other than the Liberty Taxi Financial Assets and Statements (Hearing Exhibit No. 1), the record contains no evidence on the source(s) of Liberty Taxi's funds to commence operation. Thus, by way of example and not limitation, Liberty Taxi did not identify or explain the source(s) of the funds that it will use to pay: (a) the initial, and potentially significant, down payment for insurance coverage; (b) the initial set-up fee for the dispatch system;<sup>36</sup> (c) the cost to have the Liberty Taxi-owned vehicles outfitted as taxicabs and painted in the Liberty Taxi colors; and (d) assuming Liberty Taxi will pay for the phones, the cost of the Android phones required for drivers of Liberty Taxi-owned taxicabs to log on the dispatch system.

173. With respect to *funds to cover on-going operations*, Liberty Taxi identified only one source: the \$ 750 monthly fee to be paid by each driver. Liberty Taxi will use \$ 430 to cover the cost of insurance and \$ 320 to cover dispatching costs, marketing costs, and management and overhead costs. Because Liberty Taxi did not provide *pro forma* projected financial statements, the record does not contain Liberty Taxi's projected monthly expenses and, thus, the ALJ cannot assess whether the monthly fees are sufficient to cover those projected monthly expenses. Further complicating this issue: (a) Liberty Taxi did not provide a clear statement of the number of taxicabs it will have in its fleet when it begins operation; (b) Liberty

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<sup>36</sup> Both the initial set-up fee and the payment terms (if any) for that fee are unknown.

Taxi did not provide a clear statement of the number of drivers it will have when it begins operation; and (c) Liberty Taxi cannot estimate the increments by which, and when, it will increase its taxicab fleet and the number of drivers.

174. As a result, the record evidence contains little or no credible evidence on the following: (a) Liberty Taxi's access to capital to commence operation; (b) Liberty Taxi's credit worthiness; and (c) Liberty Taxi's projected operating revenues, capital, and operating expenses. These three factors (or metrics) are critical to a determination of Liberty Taxi's financial fitness. Liberty Taxi failed to provide persuasive evidence on any of the three.

175. In sum, on this record, Liberty Taxi did not evidence a reasonable understanding of: (a) the initial investment and costs to commence operation as a taxicab company capable of providing taxi service throughout the Denver Metro Area; (b) the recurring expenses that Liberty Taxi will incur or likely will incur (*e.g.*, employee salaries, insurance premiums, marketing costs, vehicle maintenance costs) to provide taxi service throughout the Denver Metro Area; and (c) the funding sources that, with a plausible degree of certainty, it either has or will have available to make the necessary investment and to pay its initial and recurring expenses.

176. Based on the entire evidentiary record, the ALJ concludes that Liberty Taxi has not met its burden of proof to establish, by a preponderance of the evidence, that it is financially fit to provide taxicab service in the Denver Metro Area.

177. Because the ALJ concludes that Liberty Taxi has not established its financial fitness, the ALJ does not reach: (a) the issue of Liberty Taxi's operational fitness; and (b) the issue of minimum efficient scale.

178. For the reasons discussed in this Decision, the ALJ will deny the Application.

179. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

**V. ORDER**

**A. The Commission Orders That:**

1. Consistent with the discussion *supra*, the Application for Permanent Authority filed by Liberty Taxi Corporation (Liberty Taxi) on October 1, 2015, as amended, is denied.

2. Consistent with the discussion *supra*, the Renewed Motion to Compel is granted, *nunc pro tunc*.

3. Consistent with the discussion *supra*, the Motion *in Limine* filed on June 1, 2016 is granted, in part, *nunc pro tunc*.

4. 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.

5. 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 recommended 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 a basic finding 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.

6. If exceptions to this Recommended 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)



ATTEST: A TRUE COPY

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

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Administrative Law Judge