

Decision No. R11-0234

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

DOCKET NO. 09A-479CP

IN THE MATTER OF THE APPLICATION OF ROCKIES CAB COMPANY FOR
PERMANENT AUTHORITY TO OPERATE AS A COMMON CARRIER BY MOTOR
VEHICLE FOR HIRE.

DOCKET NO. 09A-489CP

IN THE MATTER OF THE APPLICATION OF DENVER CAB COOPERATIVE,
INC., D/B/A DENVER CAB COOP, FOR PERMANENT AUTHORITY TO OPERATE
AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DOCKET NO. 09A-490CP-EXTENSION

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.

DOCKET NO. 09A-498CP

IN THE MATTER OF THE APPLICATION OF LIBERTY TAXI CORPORATION,
FOR PERMANENT AUTHORITY TO OPERATE AS A COMMON CARRIER BY
MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
GRANTING APPLICATION OF LIBERTY TAXI
CORPORATION; GRANTING APPLICATION OF
COLORADO CAB COMPANY; AND DENYING
APPLICATION OF DENVER CAB CO-OP**

Mailed Date: March 4, 2011

Appearances:

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Duane H. Kamins, Esq., Houston, Texas, for RDSM Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs;

Charles J. Kimball, Esq., Kimball & Nespor, P.C., Arvada, Colorado, for Applicant, for Estes Park Express, Ltd., Rounds and Casey, doing business as Estes Valley Transport, and Valera Lea Holtorf, doing business as Dashabout Shuttle Company and Roadrunner Express.

Robert W. Harris, Esq., Harris Karstaedt Jamison & Powers, P.C., Denver, Colorado, for MKBS, LLC, doing business as Metro Taxi &/or Taxi’s Fiesta &/or South Suburban Taxi;

Jake Eisenstein, Eisenstein Law, LLC, Denver, Colorado, for Liberty Taxi Corporation; and

Stephen A Bain and Kendor P. Jones, Welborn Sullivan Meck & Tooley, P.C., Denver, Colorado, for Denver Cab Cooperative, Inc., doing business as Denver Cab Co-op and Green Cab.

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I. STATEMENT

1. Rockies Cab Company, LLC (Rockies Cab) filed an application for a Certificate of Public Convenience and Necessity (CPCN) to operate as a common carrier by motor vehicle for hire for taxi service between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson, Colorado on June 29, 2009 in Docket No. 09A-479CP. The Application further sought authority to operate 215 vehicles of all makes and models, 2000 or newer model year, with a seating capacity of 5 or more persons.

2. Denver Cab Cooperative, Inc., doing business as Denver Cab Coop (Denver Cab) filed an application for a CPCN to operate as a common carrier by motor vehicle for hire for taxi service between all points located within a 30-mile radius of the intersection of 16th Street and Champa Street in Denver, Colorado, and from said points, on the one hand, to all points in the State of Colorado, on the other hand on June 30 2009 in Docket No. 09A-489CP. This application is restricted: (A) to the use of vehicles with a seating capacity of seven passengers or less, not including the driver; and (B) to the use of a maximum of 240 cabs.

3. Liberty Taxi Corporation (Liberty Taxi) filed an application for a CPCN to operate as a common carrier by motor vehicle for hire for taxi service between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and

Jefferson, Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand on June 30, 2009 in Docket No. 09A-498CP.

4. Intervenors in these applications include: SuperShuttle International Denver, Inc. and Colorado Cab Company, LLC, doing business as Denver Yellow Cab and/or Boulder Yellow Cab and/or Boulder SuperShuttle and/or Boulder Airporter and/or Boulder Airport Shuttle and/or Boulder Express Shuttle (Colorado Cab); MKBS, LLC doing business as Metro Taxi and/or Taxi Fiesta and/or South Suburban Taxi (Metro Taxi); and RDSM Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs (YCCS).

5. Colorado Cab filed an application for a CPCN to extend operations under its CPCN PUC No. 2378&I on June 30, 2009, in Docket No. 09A-490CP-Extension, by amending Restriction B to read: “All operations under this certificate shall be limited to the use of 450 cabs in service at any one time.”¹

6. Intervenors in the Colorado Cab Application include: Metro Taxi; and, YCCS. Gregg Rounds and Thomas Casey, doing business as Estes Valley Transport (EVT), and Valera Lea Holtorf, doing business as Dashabout Shuttle Company and/or Roadrunner Express (Dashabout) also intervened in these dockets.

II. PROCEDURAL HISTORY

7. Pursuant to Decision No. R09-0927-I, issued August 20, 2009, the undersigned ALJ consolidated Docket Nos. 09A-479CP, 09A-489CP, and 09A-498CP. It

¹ Restriction B of Colorado Cab’s original CPCN PUC No. 2378&I reads: “All operations under this certificate shall be limited to the use of 300 cabs in service at any one time.”

was found that *Ashbacker Radio Corporation v. FCC*, 326 U.S. 327, 66 S.Ct. 148, 90 L.Ed. 108 (1945) required these four dockets to be consolidated.²

8. While it was determined that those three dockets should be consolidated, Docket No. 09A-490CP-Extension was not included as part of the motion to consolidate. Pursuant to Decision No. R09-1036-I, issued September 17, 2009, Docket No. 09A-490CP-Extension was included in the consolidated proceeding.

9. It was also noted in Decision No. R09-1167-I, issued October 15, 2009, that Rockies Cab and Liberty Taxi each failed to enter appearances at the pre-hearing conference, nor did either party respond to the directives of Decision No. R09-1036-I to obtain legal counsel or show cause why legal counsel was not necessary in this matter by the October 5, 2009 deadline. Denver Cab did enter an appearance at the pre-hearing conference, but indicated that its attorney had withdrawn from representing it in this matter. Denver Cab represented that it was seeking new legal counsel and requested an extension of time in order to retain an attorney. Denver Cab was given until October 30, 2009 to obtain legal counsel in this matter. Liberty Taxi and Denver Cab each subsequently retained legal counsel.

10. Rockies Cab failed to make any filings as required under Decision No. R09-1167-I and failed to move its application forward in any manner whatsoever. Therefore, the ALJ granted YCCS's Motion to Dismiss as it applies to Rockies Cab. The application of Rockies Cab was dismissed.

² *Ashbacker* requires that where a licensing agency has competing applications before it, and the surrounding circumstances indicate that the grant of one would preclude the grant of another, the agency may not hear one application before it hears the other. As has been held in numerous agency decision matters, the doctrine is one founded on practicalities and a balancing of a licensee's due process rights with agency control of its own calendar.

11. During the course of the evidentiary hearing, YCCS and Liberty Taxi reached an agreement whereby Liberty Taxi sought to restrict its proposed authority in the original application by restricting its proposed service area. Liberty Taxi's application was noticed by the Commission as follows:

For authority to operate as a common carrier by motor vehicle for hire for the transportation of

passengers and their baggage in call-and-demand charter, limousine, sightseeing, and 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.

12. Liberty Taxi now indicates that it will operate under the trade name "Cyber Cab." In addition, Liberty Taxi proposes to restrict its authority as follows:

Transportation of

passengers in taxi service:

- (A) Within and between all points in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, State of Colorado; and
- (B) From all points in the City and County of Denver, including Denver International Airport, on the one hand, to all points in the State of Colorado, on the other hand.

RESTRICTIONS:

- (I) Part A is restricted against service to, from or between points lying within that portion of Douglas County lying south of an east-west line drawn through Exit 172 of Interstate Highway 25 and parallel to the northern boundary of El Paso County.

13. Liberty Taxi therefore restricts its service to taxi service in the areas delineated above and also seeks to restrict the number of vehicles it is authorized to operate to a maximum of 215 vehicles in use at any one time.

14. An evidentiary hearing in this matter was held from January 25 through 29, 2010, and February 8 through 10, 2010. Appearances were entered by counsel for Applicants, Denver Cab, Liberty Taxi, and Colorado Cab, as well as for Intervenor, Metro Taxi, YCCS, Dashabout, and EVT. Some 75 exhibits were offered into evidence and 65 exhibits were admitted. Specifically, Hearing Exhibit Nos. 1, 3, 5, 7, 9, 13, 14, 19 through 37, 39 through 54, 56, 57, 63 through 67, and 69 through 75 were admitted into evidence. Hearing Exhibit Nos. 4, 8, 55, 58 through 62, and 68 were admitted as confidential exhibits.³

15. Pursuant to Decision No. R10-0312-I, issued March 31, 2010, the deadline for filing Closing Statements of Position was extended to April 5, 2010.

16. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record and exhibits of this proceeding, as well as a written recommended decision.

³ Of note, the Office of the Attorney General entered an appearance on behalf of Commission Transportation Staff, seeking a protective order preventing members of the Transportation Staff from testifying on behalf of a party to this consolidated proceeding. As a result, the subpoena was withdrawn.

III. FINDINGS OF FACT

A. Operational, Managerial, and Financial Fitness

1. Denver Cab

a. Company Overview

17. Denver Cab seeks permanent authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in taxi service, between all points located within a 30-mile radius of the intersection of 16th Street and Champa Street in Denver, Colorado, and from said points, on the one hand, to all points in the State of Colorado, on the other hand. The application is restricted: (A) to the use of vehicles with a seating capacity of seven passengers or less, not including the driver; and (B) to the use of a maximum of 240 cabs. However, the company subsequently amended its Application by restricting the proposed authority to the use of a maximum of 175 cabs.

18. Primary witnesses on behalf of Denver Cab were its president, Mr. Nouman Ibrahim; its vice president of operations, Mr. Mulugeta Gebreslassei; and, member of the board of directors and human resources manager, Mr. Kiflom Tesfay. In addition, Mr. David G. Hill of ENCANA Oil and Gas offered testimony regarding the company's proposal to use natural gas powered vehicles. Professor Robert Hardaway, a professor at the University of Denver, Sturm College of Law testified as an expert witness on behalf of Denver Cab.

19. Denver Cab was formed as a Colorado Cooperative, organized under the Colorado Cooperative Act with its principal place of business in Denver, Colorado. According to its Application, the cooperative (co-op) structure will reinforce the overall mission of the company which is to provide high quality taxi service while ensuring the

owner-drivers earn a more livable wage. Because the drivers (referred to as “owner-drivers”), as members of the co-op will fully own and control the co-op, it is the belief of the board of directors that the owner-drivers will have the incentive and control to better ensure a high level of customer service, and the organizational structure will provide for a high level of democratic governance. Additionally, each owner-driver will have one vote on any issue presented to the membership, including the election of the board of directors. Consistent with the number of taxicabs sought in the amended Application, the number of owner-drivers will be limited to 175 at any given time.

20. In order to become a member of the co-op, drivers are required to pay a membership fee, which is held in a co-op account to cover start up expenses. These initial fees are required under the co-op’s membership agreement which was included as an exhibit with the Application. Ongoing operational expenses will be covered through monthly membership fees and other revenue sources such as advertising revenue. In addition to the initial fee, owner-drivers will pay a monthly fee somewhat similar to a lease fee. In addition, drivers will pay for insurance plus a rental fee for credit card processing devices.

21. Additionally, each driver will bear the cost of “hacking up” or preparing the vehicle for use as a Denver Cab taxi. This includes the cost of painting, placing logos, installing roof lights, radios, and meters. The most significant cost however, is converting the vehicle to run on natural gas. In many cases, the conversion cost may be equal to or greater than the value of the vehicle itself.

22. While the conversion cost is steep, Mr. Nouman Ibrahim, president of the co-op testified that he is confident all drivers will convert their vehicles to natural gas.

Notably, there is no formal agreement proposed for drivers to agree to the conversion. If certain drivers are not able to afford to convert their cars to natural gas, Mr. Ibrahim speculated that the company may pick up the initial cost and charge the drivers for the conversion through a monthly fee.

23. While Denver Cab intends to operate 175 cabs, it does not intend to begin operating at its maximum operating authority. Rather, it intends to begin operations with slightly less than half of its authorized vehicles and slowly add additional vehicles quarterly until it reaches 175 vehicles. The co-op intends to hire drivers with a minimum of three years of taxicab driving experience. Additionally, it intends to enforce a 15-minute response time to pick up passengers from the time drivers are notified and accept the fare.

24. Denver Cab proposes to market its services through the internet, billboards, newspaper, and television. While it does not have a specific marketing strategy, it nonetheless proposes to market itself based on what specific strategy seems to be working best.

25. In order to assist its drivers to become more customer service oriented, Denver Cab will pay for its drivers to take the Teofl Exam, which tests for English competency. It will also pay for computer training courses for those drivers who wish to participate. Installing LCD units in vehicles will be conducted at a later time depending on revenues.

26. Because the co-op structure of the entity will provide for a high level of democratic governance, it allows it to provide a higher level of service to the public than is currently provided to incumbents, according to Denver Cab's Application. Further, it

will operate on a cost-basis, which the co-op believes allows each owner-driver to retain a greater portion of profits earned.

b. Managerial Experience

(1) Mr. Nouman Ibrahim

27. Mr. Ibrahim is one of the founders and current president and member of the board of directors of the co-op. Mr. Ibrahim, originally from the Sudan holds a bachelor of fine arts degree which he earned in the Sudan, as well as a master's degrees in fine art from the University of Dallas in Dallas, Texas, awarded in 2002. He began his driving career as a part-time taxi driver in Dallas beginning in 1999 where he learned customer service skills. Mr. Ibrahim then attended truck driving school in 2002 and drove 18-wheel rigs for about a year.

28. In 2003 he went back to driving a taxi full time and in 2005 helped start a cab company in Dallas known as United Cab. Mr. Ibrahim represented that there were approximately 2,700 to 3,000 cabs affiliated with 19 cab companies in the Dallas area. Mr. Ibrahim stated that he started United Cab in order to assist drivers by allowing them to operate under better conditions than they were used to. United Cab was formed as a corporation and each driver was issued one share of the company. About 120 drivers were employed with United Cab. Mr. Ibrahim was not only the founder and organizer of the company, he also served as president and recruited drivers. He dealt with all aspects of the company including personnel, dispatch, maintaining adequate insurance, and other day-to-day duties of operating a taxi company. United Cab is still operating in the Dallas area.

29. Mr. Ibrahim left Dallas in 2006 and moved to Denver where he again drove trucks for approximately eight months before he went back to driving cabs for Yellow Cab in 2007. Mr. Ibrahim concentrated on operating out of Denver International Airport (DIA) and worked about 12 to 14 hours a day. He left Yellow Cab because of new airport restrictions that limited the number of cabs that could operate out of the airport per day, and due to higher lease rates.

(2) Mr. Mulugeta Gebreslassei

30. Mr. Gebreslassei will serve as a vice-president for Denver Cab. He holds an associate's degree and a BA in business administration and accounting which he earned at the University of Addis Ababa in Ethiopia. He also earned a BA degree in accounting from Metro State College in Denver.

31. While in Ethiopia, Mr. Gebreslassei was a sales supervisor for a brewery (Meta Beer Company). His job duties included preparing regional budgets and preparing revenue and expense reports for the company. Mr. Gebreslassei also worked for Trans-Ethiopia Company for two years as an accountant where he prepared various financial statements including: balance sheets, profit and loss statements, as well as statements reflecting retained earnings and cash flow. He was employed as an accountant for Net Consulting Engineers from 2000 to 2003.

32. Mr. Gebreslassei began driving a taxi for Yellow Cab in 2004, while he was attending Metro State College. In 2006, he started driving for Freedom Cab. Mr. Gebreslassei noted that he has not held a management position with either Yellow Cab or Freedom Cab.

(3) Mr. Kiflom Tesfay

33. Mr. Tesfay will serve as the secretary, is a member of the board of directors, and specializes in human resources. He has been in the transportation business since 1996. Mr. Tesfay has hotel managerial experience in the Sudan and worked as a company controller in Saudi Arabia. He began driving a taxi in Montreal, Canada for several years before he moved to Denver in 1996. He started as a limousine driver in Denver before he became a taxi driver. He has driven for Zone Cab, American Cab, Metro Taxi, and Freedom Cab. Mr. Tesfay subsequently started his own limousine business in Denver, ABM Limousine, which is still in business.

34. Other proposed officers are detailed in the Confidential Business Plan which is identified as Hearing Exhibit No. 4. Many of those listed officers have significant experience driving a taxi or business experience. A complete list of members of the board of directors is contained in Hearing Exhibit No. 5.

c. Company Capitalization

35. There will be no outside investors involved in financing Denver Cab. As a result, it proposes to charge owner-drivers an initial membership fee which will provide it start up revenue. The amount of the initial membership fee is contained in the co-op's *pro forma* financial statements within its Confidential Business Plan. Each of the proposed 175 owner-drivers will be required to pay this initial fee. In exchange for the initial membership fee, owner-drivers will be awarded a one share ownership in the co-op with voting rights on all company matters presented to the drivers by the board.

36. The co-op already has cash on hand to cover costs such as legal fees and other incidental costs. Denver Cab's current cash position is represented in its balance

sheet entered into evidence as Confidential Hearing Exhibit No. 8. Mr. Ibrahim represented that the co-op expects to receive another significant influx of cash when its CPCN is granted. Denver Cab claims that its overhead costs will be low due to its co-op structure, which is similar to the structure of Union Taxi.

37. In addition to the initial membership fee, owner-drivers will be required to pay a monthly membership fee plus the credit card swipe machine rental and insurance fees,⁴ as well as paying the costs of hacking up their vehicles to meet Denver Cab's requirements. The owner-drivers will also be required to pay the cost of converting their vehicles to run on natural gas. Mr. Ibrahim and Mr. Gebreslassei are confident that the owner-drivers will pay the required amounts and any additional amounts of cash necessary to keep the co-op solvent. However, it was noted through Mr. Ibrahim's testimony that the driver's agreement provides that drivers may veto any additional fees (See Exhibit H to Denver Cab's Application).

38. Instead of imposing a deadline for potential owner-drivers to pay the initial fee, Mr. Gebreslassei stated that owner-drivers may now pay when the co-op receives its operating authority. With the initial membership fees that have been collected to date, coupled with payment of that fee from the remainder of the owner-drivers, as well as with collection of monthly dues from each owner-driver, it is anticipated that those fees and charges will more than adequately cover operating expenses. Because of the structure of the co-op and payments made by the co-op on behalf of the owner-

⁴ Some discrepancy in the testimony exists regarding insurance fees. While Mr. Ibrahim indicated that drivers would be required to pay a monthly insurance fee, Mr. Gebreslassei testified that insurance fees could come out of the driver-owner's monthly dues.

drivers, it is expected that Denver Cab can operate at slightly less than 50 percent of its capacity in order to break even.

39. While Mr. Ibrahim's testimony was slightly confusing regarding what drivers have paid what amounts to date, it appears that all 175 drivers have paid some portion of the initial membership fee and the remainder is expected to pay the balance due if Denver Cab is granted a CPCN. Approximately 20 percent of the 175 drivers have paid the full amount, while all 9 board members have paid the full amount. As stated previously, because the co-op is operated on a cost-based model, any excess proceeds collected by the co-op from its members will either be returned to the members or retained as reserves for future expenditures.

40. It was noted on cross-examination that certain expenses were excluded from the balance sheet including insurance costs and legal fees. Mr. Gebreslassei represented that even with the addition of these expenses he would still project a profit for the company at the end of its first year of operation. Of particular note, Mr. Gebreslassei also conceded that the accounts receivable amount listed in the balance sheet includes a promise by those potential owner-drivers to pay the initial fee upon a grant of authority.

41. Denver Cab proposes four primary sources of income to finance its operations, initial membership fees; monthly membership dues; advertising placed on taxicabs; and other services provided to its drivers such as maintenance. As stated previously, Denver Cab is certain it will not seek bank loans or investors to finance any portion of its operations. Mr. Ibrahim and Mr. Gebreslassei stated that initial membership

fees and monthly membership dues will be the primary source of revenue to cover initial and ongoing expenses.

d. Corporate Governance

42. Because Denver Cab will be structured as a cooperative, each owner-driver will receive one vote regarding any pending issue presented to drivers by the board. The board of directors will be elected by the owner-drivers and will be initially set at nine members. It will be up to the board to deal with the day-to-day operations of the co-op and in that regard, the board will appoint a management team to handle daily operations. A 20 percent vote of the voting owner-drivers is required to request a membership meeting.

43. It is the witnesses' testimony that this structure will result in more participation and loyalty from the owner-drivers and will also result in lower costs to each driver. Additionally, it is the co-op's contention that its structure will lend itself to impose obligations regarding quality of service and safety on its owner-drivers that cannot be imposed by companies with independent contractor drivers.

e. Vehicles and Facilities

44. Denver Cab will utilize facilities located on Parker Road in Denver. The co-op's facilities will include a 12,000 square foot office and it will contract for a mechanic to service owner-driver taxicabs. The repair shop will be located on-site and owner-drivers will be charged for repairs. Denver Cab proposes to acquire a smaller office in Southeast Denver. It intends to have sufficient space for dispatchers and other officer personnel, as well as space for owner-drivers to congregate.

45. Based on the information provided in its Application, it appears that the bulk of vehicles owner-drivers will provide will be vehicles standard in the industry such as Ford Crown Victoria, Fusion, mini vans, and vans that can be converted to be wheelchair accessible. Vehicles will be painted green as an indication of the co-op's preference for natural gas powered vehicles.

46. Regarding the dispatch system, the co-op intends to initially utilize a two-way radio dispatch system similar to that utilized by Union Taxi. No time period was provided for upgrading the dispatch system to a digital system.

f. Staffing

47. In addition to the 175 owner-drivers, Denver Cab intends to employ several managers, call-takers, dispatchers, and cashiers. No positions have been filled to date, but it is anticipated that if the co-op's authority is granted, it will begin hiring necessary personnel and as business increases, hire additional personnel as needed. Witnesses for Denver Cab all emphasized that it intends to stress good customer service skills for all its employees.

g. Testimony of Mr. David Hill for Denver Cab

48. Mr. Hill is a vice president for ENCANA Oil and Gas, a natural gas transportation company. His resume was admitted into evidence as Hearing Exhibit No. 19. His testimony centered around the benefits of natural gas powered cars. Mr. Hill offered that natural gas benefits include approximately 25 percent less carbon dioxide emissions than gasoline powered cars as well as reduced carbon monoxide emissions and 60 percent less reactive hydro carbons than gasoline.

49. Mr. Hill emphasized that natural gas powered cars generally have lower maintenance costs and operate at an 80 to 90 percent lower decibel level than diesel powered cars. In addition, natural gas is equivalent to about 50 cents per gallon cheaper at the pump than gasoline.

50. Mr. Hill noted that there are 13 natural gas refueling stations available to the public in the Front Range area. Three stations are located at DIA and four others throughout the Denver metro area. Individual stations are located in Brighton, Boulder, Castle Rock, and two stations in Colorado Springs.

51. While admitting to some drawbacks to the use of natural gas including price volatility and the time and costs to convert vehicles to natural gas use, as well as the limited number of refueling stations, Mr. Hill nonetheless noted that oil reserves in the United States (U.S.) are limited and the domestic oil supply has peaked. While the U.S. produces 8 million barrels of oil per day, it imports an additional 12 million barrels per day. In other words, it imports 68 percent of its oil.

52. Mr. Hill noted the high cost of converting a car to run on natural gas, but pointed out that state and federal tax credits may be available for conversions which may reduce those costs significantly and in some cases reduce the costs to zero.

**h. Expert Testimony of Professor Robert Hardaway on
Behalf of Denver Cab**

53. Professor Robert M. Hardaway testified as an expert for Denver Cab. Professor Hardaway is currently a professor of law at the University of Denver Sturm College of Law. He has held that position since 1979. He also served as a visiting professor at the University of California-Hastings Law School in San Francisco,

California and as a visiting professor at George Washington University Law School in Washington, D.C.

54. Professor Hardaway holds a B.A. degree with a major in economics, *cum laude* from Amherst College in Massachusetts and a *juris doctor* from New York University Law School in New York City, Order of the Coif. Professor Hardaway generally teaches civil procedure and evidence, as well as constitutional law and contract law. He has also taught and supervised courses in transportation law.

55. Professor Hardaway has published several articles regarding transportation in the *Transportation Law Journal* as well. He co-authored several law review articles with Professor Dempsey. He published a paper in the *Hamline Journal of Public Law and Policy*. Professor Hardaway also practiced law in the U.S. Navy JAG Corps, and for several years served as an Arapahoe County Assistant Deputy District Attorney. He practiced as a public defender and was an associate for the law firm of Rovera, Demuth and Iberger. Professor Hardaway is currently the faculty advisor for the *University of Denver Transportation Law Journal*.

56. His basic premise is that there should be pure competition in the Denver taxi market and all comers should be allowed to compete if they meet stringent health and safety standards. He argues that it is in the public interest to have competition because it reduces price fixing by preventing an oligopoly market.

57. According to Professor Hardaway, Denver is underserved by the taxi industry. He goes on to conclude that even if the market is not underserved, the public interest is compromised by the lack of competition since the public does not receive the full benefits of competition. Professor Hardaway defines the public interest as the

availability of profits to the incumbents, the welfare of incumbent employees, and what is good for the public, in this case that is competition.

2. Liberty Taxi

a. Company Overview

58. Liberty Taxi seeks authority to provide taxi service between all points in the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson, Colorado, and between said points, on the one hand, and all points in the State of Colorado, on the other hand. However, by written stipulation with YCCS filed and approved on January 27, 2010, Liberty Taxi further restricts its Application to exclude a particularly defined portion of Douglas County from the operation of its proposed authority if the Application is granted in full. That restriction reads as follows:

RESTRICTIONS:

- (I) Part A above is restricted against service originating within that portion of Douglas County lying south of an east-west line drawn through Exit 172 of Interstate Highway 25 and parallel to the northern boundary of El Paso County.

In turn, YCCS agreed to withdraw its intervention of Liberty Taxi's Application.

59. Witnesses for Liberty Taxi included Ms. Najiba Ferjani, its president and director of public relations; Mr. Lotfi Chalbi, vice president overseeing major business and technology issues; Mr. Hichem Chetouane, vice president overseeing daily taxi operations; Mr. Hichem Sandid, manager of operations, shuttle services, and para-transit.

60. Liberty Taxi was incorporated in Colorado on June 28, 2009. Its board of directors is comprised of eight members chosen annually by the stockholders at their annual meeting. The company is authorized to issue 100 shares of stock. Stockholders at

the time of the hearing included Najiba Ferjani owning 40 percent of the outstanding shares; Mr. Hichem Sandid owning 30 percent of the outstanding shares; and Mr. Lotfi Chalbi owning 30 percent of outstanding shares. Liberty Taxi's Articles of Incorporation; Bylaws; Internal Revenue Service Employee Identification Number; and Colorado Business Registration were entered into evidence as Hearing Exhibit Nos. 22, 23, 24, and 25 respectively.

61. Ms. Ferjani will handle public relations for the company and manage an escrow account that will be established for community service activities. It is anticipated that based on revenue performance, the company will place \$100 from each driver's lease fees into an escrow account monthly to provide community service funding and projects; provide zero interest loans to drivers; and to fund employee social gatherings. Ms. Ferjani hopes to eventually establish a 501(c)(3) non-profit organization in conjunction with Liberty Taxi in order to fund ongoing community service projects, which will be a significant portion of Liberty Taxi's strategy.

62. While the company's originally filed business plan provided that drivers would be entitled to a share of stock for every six membership interests purchased, testimony by Ms. Ferjani indicated that drivers will not be able to purchase membership interests in the company as originally contemplated.

63. Liberty Taxi proposes to operate what it considers a unique business plan. Liberty Taxi's business strategy is complex and somewhat difficult to explain. This Order will touch on the high points of its proposed program. Utilizing proprietary software developed in conjunction with Amadeus Consulting of Boulder, Colorado, Liberty Taxi proposes to integrate its dispatch capabilities with a website and reservation

system, route planning, ride sharing and what it terms “hot spot” functions, as well as metering, payment processing, and advertising functions. Liberty Taxi claims that this type of system is unique because each function will operate on a high speed wireless data network platform. According to the company, separate functions and devices such as digital dispatch service, two-way radios, meters, and global positioning systems (GPS) that interface with the dispatch system will no longer be necessary because all will be integrated by Liberty Taxi’s proprietary software.

64. There are several facets to Liberty Taxi’s operating strategy. It proposes to focus on providing service to what it terms “disadvantaged passengers” which it defines as those riders requiring additional assistance due to physical and mental conditions, passengers who do not own a car, and elderly passengers. Liberty Taxi has identified this group as an underserved and untapped market in the Denver area.

65. The company also proposes to establish a ride share program pursuant to the Commission’s multi-loading rules. In conjunction with the ride share program, Liberty Taxi proposes to establish various “hot spots” at locations throughout the metro area from which ride sharing can be initiated. According to Mr. Chalbi’s testimony, hot spots can be any location such as the airport, malls, coffee shops, restaurants, and the like. Through the establishment of hot spots, Liberty Taxi is in essence creating its own cab stands.

66. The ride share concept works when the first rider in the taxi accepts a ride share request. The first rider may also decline to ride share. Since this first rider “owns” the ride, it is his or her choice to ride share on that particular trip. If the first rider accepts a ride share (sharing the cab with another rider going along a similar route and to a

destination in close proximity to the first rider) then the cost for the ride of each rider will be adjusted and each rider winds up paying less for the trip.

67. Apparently, under this concept, riders can accept ride share on the company's website or by text message or by phone. In order to participate in ride share, customers may register on the website and store profiles (this is optional). Drivers will have profiles on the website as well. The company hopes that this will help establish a personal relationship between the public and the drivers.

68. In order to manage the ride share concept, customers will actually text an intermediary company for a taxi. The reservation will then be shared with other riders in the vicinity going in generally the same direction. Once a reservation is made, it will be sent to the customer's cell phone by text message and to the driver. This was identified as a TEXXI program. The underlying ride share concept is described as when a customer gets in a cab and has the opportunity to ride with additional customers, either prior to departure or during the course of the trip. The first rider is informed that there is a possibility for one or more additional riders to share the cab ride. The first rider may be informed of a ride share possibility before the trip starts or while the rider is in transit. All ride share information will be processed by the integration of GPS, the proprietary software and displayed in the cab through a Sony Dash screen installed in the back of the taxi.

69. Additionally, riders already in transit will be able to accept a ride share if someone in the vicinity of the taxi's route is going in the general direction of the first rider. According to Liberty Taxi witnesses, all the ride share information including routes, location of taxis and riders, and the location of those seeking ride sharing and

route destinations are all captured and managed by the proprietary software. Mr. Chalbi stated that the ride share program is strictly voluntary. Mr. Chalbi noted that similar ride share programs have already been established in New York City utilizing Ride Amigo and Hitch Hiker, as well as London, England and Quebec, Canada which utilize Taxibus.

70. In order to provide riders in transit with up-to-date information on ride sharing and advertising, each taxi will be equipped with a Sony Dash screen which provides GPS information and web access via MiFi.⁵ The Sony Dash will also broadcast focused advertising, that is, the advertising broadcast to the rider will be dependent on factors such as the rider's destination. However, the key to having all parts of the ride share process work effectively is the proprietary software. The software is intended to automate advertising, routing, and dispatch all into a seamless system that identifies taxi locations, hot spot locations, passenger locations, routes, and dispatch the closest taxi to pick up the passenger and provide the appropriate advertising to the Sony Dash depending on the passenger's destination.⁶

71. While testimony from Metro Taxi drivers (discussed further below) provides that cab stands in the downtown and Cherry Creek areas are overcrowded leading to congestion in those areas, Liberty Taxi's business model creates its own cab stands through the use of hot spots. Hot spots are established based on several factors including high traffic areas and a business's willingness to be a hot spot. Hot spots serve as gathering places for passengers in order to aggregate into a shared ride. That business is then identified on Liberty Taxi's website as a hot spot where a passenger can get a taxi.

⁵ Presumably, this is a mobile version of WiFi.

⁶ *E.g.*, if a passenger's destination is Cherry Creek, the advertising displayed will be for businesses located in the Cherry Creek shopping district.

Hot spots can be spread out throughout the entire metro area thereby eliminating the need for Liberty Taxi cabs to congregate in already established cab stands adding to already existing congestion. Mr. Chalbi maintains that being a hot spot is in a business's interest because it draws additional customers to the business and that business can also benefit from the directed advertising displayed on the Sony Dash screen.

72. Mr. Chalbi recognized the risks of the business model. The main concern is that potential riders may not initially participate in the process because it will take time for people to become familiar with and utilize the ride share program. However, once people learn the system, Mr. Chalbi is confident that they will be drawn to it because of the ease of finding many hot spot locations and the possibility of lower fares by taking advantage of the ride share program.

73. Mr. Chalbi points out the social advantages to the company's business model. The ride share program encourages social interaction, lowers the cost per passenger mile of taxi rides, and is environmentally friendly in that it lowers the company's carbon footprint by reducing the number of taxicab trips.

(1) Managerial Experience

(a) Ms. Najiba Ferjani

74. Ms. Ferjani is one of the principle founders of Liberty Taxi and intends to serve as its president and the head of public relations. Ms. Ferjani concedes that she has no taxi or transportation experience, nor has she ever driven a taxi. It is for this reason that she will defer the majority of the day-to-day management of the business to Mr. Chalbi, Mr. Chetouane, and Mr. Sandid.

75. Ms. Ferjani is originally from Tunisia, where she earned a B.S. in marketing and management from the University of Management and Business in Tunis, Tunisia. Ms. Ferjani's experience includes managing an insurance agency and heading a community nonprofit organization assisting refugees to adjust to life in the United States. According to Liberty Taxi's Application, Ms. Ferjani has also aided refugees displaced by the war in Iraq, as well as Burmese refugees from the border regions of Thailand. In addition to English, Ms. Ferjani is fluent in written and spoken Arabic and French. Ms. Ferjani's resume was admitted as Hearing Exhibit No. 39.

76. Prior to arriving in the United States, Ms. Ferjani worked for International Commercial Union Bank in Tunisia. Her duties included managing several industrial groups and servicing their accounts and managing lines of credit based on the client's needs and market growth.

77. While Ms. Ferjani is a founder of Liberty Taxi, it is clear she recognizes her lack of experience in the transportation industry, and more specifically the taxi industry. It is her intention to focus on the community service aspects of the business plan by heading a non-profit arm of Liberty Taxi that will be heavily involved in philanthropic endeavors. As stated previously, Ms. Ferjani intends to create a sort of charitable trust under the umbrella of Liberty Taxi that will assist refugees, provide other means of community service, and offer zero interest loans to Liberty Taxi drivers. Ms. Ferjani and her family is also providing the bulk of start-up funding for Liberty Taxi.

(b) Mr. Lotfi Chalbi

78. Mr. Chalbi is a vice president for Liberty Taxi and will oversee company operations. Mr. Chalbi is also from Tunisia. His area of specialty is wireless, internet,

and 3G communications. He earned a B.A. degree in economics in Tunisia, as well as an associate degree in accounting. Like Ms. Ferjani, Mr. Chalbi is fluent in English, French, and Arabic.

79. Mr. Chalbi's experience includes working as a senior credit analyst for Sprint Nextel in Denver. There, Mr. Chalbi reviewed company policies and ensured that company procedures were in compliance with federal and state regulations. Mr. Chalbi was also responsible for several other duties such as reviewing partner reseller accounts, assisting with disaster area logistics and coverage, implementing a credit scoring system, and creating a system to prevent on-line fraud. In addition, Mr. Chalbi has experience as a Business Analyst for Nextel where he evaluated business credit scores based on credit reports in order to determine whether to extend credit to various business accounts. Mr. Chalbi also worked as a call center trainer for Nextel in Las Vegas, Nevada and for a credit support company in Lone Tree, Colorado. Mr. Chalbi has also received training in sexual harassment prevention, discrimination in the work place, management behavior, and mentoring skills.

80. Additionally, Mr. Chalbi has experience as a principal in a search engine optimization company and also specializes in Aircards. Mr. Chalbi assisted in preparing Liberty Taxi's business plan. Mr. Chalbi's resume was entered into evidence as Hearing Exhibit No. 45.

(c) Mr. Hichem Chetouane

81. Mr. Chetouane will serve as a vice president of Liberty Taxi and will oversee the company's daily taxi operations and serve on the board of directors. Mr. Chetouane earned a B.A. in hospitality management in Tunis, Tunisia, as well as

specialized studies in hospitality and tourism. He earned a German language diploma from the Goethe Institute and a Spanish diploma from the Spanish embassy, both located in Tunis. Mr. Chetouane is fluent in Arabic, French, English, Italian, Spanish, and German. He also received training from several sources including the Tunisian tourism Ministry in marketing, investment, and promotions.

82. Mr. Chetouane has extensive experience in the hospitality and transportation industry. He worked as a night manager and auditor for the Comfort Inn and Sleep Inn in Ft. Myers, Florida and as the marketing and general manager for the Enjoy Restaurant Group in Orlando, Florida. Overall, he has over ten years of transportation experience including as director of operations for Coach USA in Orlando. There, Mr. Chetouane was responsible for the overall operations and performance of the company and administered a \$4.5 million operating budget. According to Mr. Chetouane's resume (Hearing Exhibit No. 47), he was key in the reorganization and restructuring of the company which turned an annual loss of approximately \$250,000.00 into an annual profit of \$575,000.00 in the first year after the reorganization. Mr. Chetouane managed a staff of 100 full time employees and over 30 part time employees.

83. In addition to his reorganization and restructuring experience with Coach USA, Mr. Chetouane also indicated he was responsible for reducing the company's labor costs by 15 percent over three years by renegotiating labor contracts and implementing a payroll control system. He also was instrumental in obtaining large contracts with government and university clients. Mr. Chetouane worked for Coach USA for four years.

84. Mr. Chetouane currently is vice president and secretary for Imperial Transportation, a company he founded in Davenport, Florida. There, he oversees daily operations and manages an office staff of 6 and 30 independent contract drivers. Imperial Transportation provides limousine and town car service in Florida.

85. As vice president overseeing operations for Liberty Taxi, Mr. Chetouane intends to set safety and customer service standards immediately for the company and continuously monitor those standards to ensure compliance with Commission regulations. Mr. Chetouane intends to implement a one week training program for drivers to ensure they are familiar with standards for safety and customer service.

86. While Mr. Chetouane conceded that he is not familiar with the Denver area, nor does he have specific experience in the taxi industry, he is confident that his experience in the transportation industry in general will translate well into running Liberty Taxi. He feels that the main concerns in the transportation industry of passenger comfort and safety are also a priority in the taxi industry.

(d) Mr. Hichem Sandid

87. Mr. Sandid will serve as Liberty Taxi's manager of operations and will also oversee its shuttle services and implement a strategy to provide para-transit services. Mr. Sandid is a graduate of California State University Northridge earning a BA degree in finance. Mr. Sandid's resume is identified as Hearing Exhibit No. 48.

88. Mr. Sandid began his career as a convenience store manager in West Hollywood, California where he managed the store and trained and supervised new employees. He also managed the store inventory and increased sales by improving employee-customer relationships. In addition, Mr. Sandid has worked as a senior

financial advisor supervising 25 to 30 people with First Wholesale Lending in Reseda, California. In that position, he prepared adjustable and fixed loans and examined and evaluated loan applications and recommended loan approvals.

89. As for his transportation experience, Mr. Sandid has approximately four years experience as a taxi driver in the Los Angeles, California area. He worked for approximately two years as an access para transit driver for Global Paratransit in Gardena, California providing transportation for disabled and elderly customers including wheelchair, visually impaired, mentally challenged, and elderly passengers. Mr. Sandid trained extensively for the position and has extensive knowledge in providing para transit services. Mr. Sandid also drove for City Cab in Los Angeles and United Independent Taxi for which he currently drives. He has driven a taxi since early 2008. Mr. Sandid expects to have a field operating position with Liberty Taxi and will oversee the para transit program within the company. He explained that this will allow him to be out on the street overseeing drivers and allow him to conduct ride along training for new drivers.

(2) Company Capitalization

90. While some of the initial officers of Liberty Taxi have made initial cash contributions to fund start up costs, not all officers have made such a contribution. According to the testimony of Mr. Chalbi, while a meeting for prospective drivers was held prior to the hearing in this matter, only five made the initial required contribution. Because Liberty Taxi did not meet its initial goal of getting 25 drivers to make the initial contribution, it intends to lower the price of what it terms the “individual license” for new drivers to acquire. The individual license will provide drivers the right to operate a lease

with Liberty Taxi. In the event a driver wishes to quit or is fired, the company will buy back the license based on “market price.”

91. Liberty Taxi provided its balance sheet as part of its Application packet which indicates that the company has \$125,000 on hand. Ms. Ferjani has made a substantial cash contribution to the company from a joint account which is held in her husband’s and brother-in-law’s name. While there was no indication that the brother-in-law has consented to the use of the funds for this purpose, Ms. Ferjani testified that he is aware the money in that particular account is to be used for start up costs for Liberty Taxi. Hearing Exhibit No. 26 is a copy of a bank statement from US Bank for Ms. Ferjani indicating an amount of funds contributed to Liberty Taxi as testified to by Ms. Ferjani. Hearing Exhibit No. 27 is a bank statement for Liberty Taxi from US Bank which confirms Ms. Ferjani’s statement regarding her cash contribution to the company. Additionally, Hearing Exhibit No. 32 is a Fidelity Investments statement for Mr. Chalbi which indicates funds available consistent with his testimony regarding his contribution to the company

92. Although Mr. Chalbi stated that only five potential drivers made the initial cash contribution, he represented that the remaining drivers were waiting to see whether Liberty Taxi would be granted a CPCN. If this was the case, he was confident the other drivers would contribute the initial license fee in order to obtain a lease to drive for Liberty Taxi.

93. Regarding ongoing operational revenues, Mr. Chalbi indicated that Liberty Taxi’s unique business plan would allow it to earn significant advertising revenues in addition to driver lease fees. Liberty Taxi’s *pro forma* financials show that its breakeven

point is 215 taxis. While Liberty Taxi claims it has a total of \$125,000.00 cash on hand, testimony reveals that the cost of its proprietary software, which is the feature that distinguishes the company is over \$460,000 with 25 percent required as a down payment.

94. The officers testifying on behalf of Liberty Taxi seem to be aware of the considerable start up costs and are ready to provide additional contributions besides operating revenue in order to keep the company afloat. For example, Mr. Chalbi has pledged approximately \$47,000.00 while Mr. Sandid testified that he has access to capital through his credit cards and up to \$500,000.00 from family in Tunisia. In addition, as discussed previously, the company intends to sell membership licenses at a cost of \$6,000.00 each. However, no indication was provided of any commitments to the membership licenses at that cost.

95. Testimony was provided that the company has applied for three commercial loans from three separate banks. That testimony also indicated that the loans are pending based on the outcome of this proceeding. Hearing Exhibit Nos. 33 and 34 purport to be affidavits provided by Ms. Ferjani's husband and Mr. Mohammed Faseehuddin pledging an additional \$118,000 and \$155,000 respectively to the company in capitalization should its proposed authority be granted.

96. Liberty Taxi projects that its ongoing operational revenue will also sustain the company and provide a profit based on its lease fee of \$1,150 per month. In addition, Liberty Taxi also proposes to earn revenue from its garage and maintenance facilities employing a mechanic in-house and charging its drivers for vehicle maintenance and repair.

97. In addition to lease fee revenue, Liberty Taxi projects its advertising revenue to be significantly higher than other taxi companies due to its unique business model of utilizing in cab direct advertising. Liberty Taxi proposes selling licensing rights to its proprietary ride share software to taxi companies in the U.S. and abroad. It has no projections as to the value of those licensing rights. Based on Mr. Chalbi's testimony, Liberty Taxi projects that it will earn a net profit of slightly more than \$100,000.00 its first year of operation and nearly \$150,000.00 in its second year. In the event the company does not earn revenues as projected, its officers claim that they will forego salaries until such time as revenues meet expectations.

(3) Corporate Governance

98. As stated previously, Liberty Taxi was incorporated June 28, 2009. The ownership group of Liberty Taxi will consist of Ms. Ferjani owning 40 percent of the company, with Mr. Chalbi and Mr. Sandid each owning a 30 percent interest. The company will be directed by a nine-member board of directors. While the company initially proposed to offer one share of the company for a driver who purchases six membership interests, it appears that is no longer the case.

99. The board of directors will oversee various officers of the company typically designated as vice presidents. While the board will generally make policy decisions, the company officers will oversee daily operations.

(4) Vehicles and Facilities

100. According to Mr. Chalbi, the company has negotiated a tentative lease agreement for approximately 3,000 square feet of office space located on Parker Road adjacent to I-225. The space is large enough to include all internal staff including offices,

driver's area, dispatch, call center, and driver's meeting area. The company plans on entering a firm lease upon a grant of authority to operate. See, Hearing Exhibit No. 31.

101. Liberty Taxi proposes to have its own repair and maintenance garage facilities. The company intends to employ its own master mechanic and has entered into a tentative lease for a three-bay garage located at Holly and Evans in Denver.

(5) Staffing

102. Regarding its staffing requirements, Liberty Taxi intends to initially employ four dispatchers and have two dispatchers on duty at all times. The company represents that only two dispatchers are needed because most of the dispatchers' duties will be automated with the proprietary software. Additionally, the company intends to employ an officer manager and bookkeeper and employ up to 15 employees, including managers to oversee various aspects of its operations. Liberty Taxi expects to retain outside consultants for various professional services including a Certified Public Accountant (CPA) and an attorney.

(6) Expert Testimony of Edward Harvey for Liberty Taxi

103. Liberty Taxi offered the testimony of Mr. Edward Harvey regarding the viability of its proposed business model and its operational and financial fitness. Mr. Harvey is the principal of Harvey Economics. He has 36 years of experience conducting resource studies and studying community change. He has provided economic consulting for public and private clients conducting economic, financial, and market studies. His work focuses upon regulatory compliance or change, new business

opportunities and impact upon businesses, employees, government, and affected populations.

104. Mr. Harvey has extensive experience testifying as an expert witness in economic, marketing, and related matters in state and federal district courts, as well as before state boards and commissions. However, Mr. Harvey does not have direct experience in the taxi industry. Mr. Harvey stated that while he has never done a study of the Denver taxi industry, that is not important because the fundamental principles which drive businesses in terms of what markets are and the establishment of markets, how they change over time, and competition within those markets apply across all sorts of businesses. Mr. Harvey's *curriculum vitae* was entered into evidence as Hearing Exhibit No. 57.

105. According to Mr. Harvey, the aspects of Liberty Taxi's business model that will drive profits are the ride share program, the establishment of hot spots, and the use of an in-cab directed advertisement that advertises on a constant basis directed to the customer and his or her destination. Additionally, Mr. Harvey feels that the company's focus on the special needs population is also important and will help drive profits. Most notably the ride share program is the key to Liberty Taxi's business as it will provide lower costs per passenger mile by spreading costs of a taxi ride among several passengers. What Liberty Taxi in effect proposes is offering roughly analogous goods and services for a lower price, which should lead to an increase in passenger volume. Mr. Harvey used the analogy of WalMart as an example of a company that expanded the market place with lower cost products that may not be specifically what the consumer wants, but is nonetheless consumed due to the low cost.

106. In analyzing the hot spot concept, Mr. Harvey noted that benefits could inure to Liberty Taxi and the businesses designated as hot spots by increased traffic and as a result, an additional revenue source. Virtually any business from a yoga studio to Denver Health Medical Center can serve as a hot spot. Mr. Harvey feels that with the proliferation of cell phones, WiFi, and other technology, the time is right for the business model proposed by Liberty Taxi.

107. Regarding the taxi market in the Denver metro area in relation to Liberty Taxi's proposal to serve special needs and low income passengers, Mr. Harvey identified several important demographic characteristics. The population of the metropolitan area is approximately 2.7 million, with 1 million households. Of that population, approximately 1.4 million persons are employed in some capacity. Of that total population, 300,000 households or 30 percent have an income less than \$35,000 annually. The disabled population is approximately 250,000 or 9 percent of the total population, while the population of the 65 and over age group is also approximately 9 percent of the total metro area population. This presents a significantly underserved market for Liberty Taxi to target.

108. Mr. Harvey also identified 70 percent of the total taxi market outside of the City of Denver, while two-thirds of Yellow Cab's and Metro Taxi's calls are within Denver and 50 percent of their trips are within the city limits. This business concentration, along with the demographic information identified above provides a good opportunity to build a market outside the Denver city limits.

109. Mr. Harvey also found the taxi industry in the Denver area to be a robust industry. According to his research, Freedom Cab, Metro Taxi, and Yellow Cab had

combined revenues of \$15 million in 2000, which grew to approximately \$20 million by 2006. The combined revenue of those three incumbents approached \$24 million in 2008. The three incumbents had a total of 3.7 million taxi trips in 2006 and the average number of days worked by drivers per month was 20 in 2006.

110. In comparing the number of cabs per 1,000 population in Denver with other comparable cities in the U.S., Denver has approximately 0.46 cabs per 1,000 population, while cities such as Boston, Philadelphia, Atlanta, Houston, San Francisco, and Detroit have approximately 1.1 to 3.75 cabs per 1,000 population. Mr. Harvey concludes that the Denver taxicab market may be underserved and as a result, there would be no destructive effect of Liberty Taxi entering the market. Further, Mr. Harvey finds that Liberty Taxi's proposal to open or expand the market by going after new or underserved markets and its focus on opening new markets by serving price sensitive riders, technology savvy riders, and those interested in social interaction are all reasons why Liberty Taxi's entry into the marketplace will not be destructive. In this instance, competition from Liberty Taxi would bring in new technology and serve new markets.

111. Other benefits cited by Mr. Harvey to Liberty Taxi's market entry and utilizing its ride sharing concept would be reductions in carbon, sulfur dioxide, nitrogen dioxide, and other harmful pollutants, in addition to reducing the cost per ride, which in turn may reduce traffic congestion in areas such as downtown Denver.

(7) Testimony of Software Developer Mr. Jonathan Fries

112. Mr. Fries is the Director of Client Engagement for Amadeus Consulting, the software development company engaged by Liberty Taxi to develop the software to power its ride share and dispatch system. Mr. Fries' resume is identified as Hearing Exhibit No. 49. Mr. Fries testified that his company has developed proprietary software programs for 25 to 30 projects. It typically takes three months to develop the software.

113. In this case, Mr. Fries concluded that the heart of Liberty Taxi's system is the dispatch system which must be able to handle text messages, e-mails, phone calls, and track taxicabs throughout the day through a GPS based system. In addition, the website must be developed to schedule rides, share rides, and locate hotspots. The software will also have an e-commerce component. For the in-cab system, custom software must be developed that allows the driver to interact with the dispatch system.

114. It is Mr. Fries' opinion that the technology is readily available to develop the system Liberty Taxi proposes and in fact, nothing within the proposal would involve cutting edge technology. It is just a matter of fitting all the components together.

115. The development costs for the software will be approximately \$460,000. The Amadeus Consulting development proposal is identified as Hearing Exhibit No. 50 and the high level requirements as Hearing Exhibit No. 51. Amadeus Consulting will follow the typical software development process by identifying the detailed requirements, which is the blueprint for the software; development of the functional requirements of the software; the software development process which will be developed in increments so the user can start using components of the software as developed; and finally, the release candidate which is the general completion of the project.

3. Colorado Cab

(1) Company Overview

116. Colorado Cab seeks authority to extend operations under CPCN PUC No. 2378&I by amending Restriction B to read: “All operations under this certificate shall be limited to the use of 450 cabs in service at any one time.” However, by written stipulation with YCCS filed and approved on January 27, 2010, Colorado Cab further restricts its Application to exclude a particularly defined portion of Douglas County from the operation of the additional 150 taxis if the Application is granted in full. That restriction reads as follows:

RESTRICTION:

Against transportation originating from any point in Douglas County, State of Colorado, that is located south of a line beginning on the Douglas/Jefferson County boundary, and extends to a point on the Douglas/Elbert County boundary, said line is parallel to the northern El Paso County boundary as drawn through exit 172 [o]f Interstate Highway 25.

In turn, YCCS agreed to withdraw its intervention to Colorado Cab’s application.

117. Colorado Cab operates CPCN PUC Nos. 2378&I and 150&I and has operated those authorities since December 2004. It also owns and operates CPCN PUC Nos. 191 and 54008 that authorize it to provide call-and-demand limousine service. Colorado Cab provides taxi service through its Denver Yellow Cab business unit. (See, Hearing Exhibit Nos. 52 and 53.) Veolia Transportation on Demand (VTOD or Veolia) is the indirect parent corporation (through Super Taxi, Inc.) of Colorado Cab, which owns and manages a national passenger transportation business, including taxi

companies in Denver, Boulder, Ft. Collins, Kansas City, Pittsburgh, and Baltimore. VTOD's North America operations are based in Chicago, Illinois.

118. In addition to Denver Yellow Cab, Colorado Cab (Colorado Cab Company, LLC) operates other transportation business in the Front Range area. VTOD, the indirect parent of Colorado Cab is a worldwide transportation company and its North American operations employ thousands of employees in 22 states. Colorado Cab bills itself as a full service taxi company providing services to its drivers such as a call center and digital dispatch support; marketing support; creating business partnerships to provide its drivers more business; maintenance support; training; insurance; and its Mobility Plus special needs transportation services.

119. Colorado Cab has an extensive inventory of vehicles whose size is estimated to be about 520. Nonetheless, due to population growth in the Denver metro area since 1990, Colorado Cab finds itself bumping up against its maximum authority of 300 vehicles in operation at any given time. While the number of drivers it contracts with is somewhat cyclical in nature with characteristic growth and dip cycles, the overall trend has been an increase in drivers applying with the company. In fact, Mr. Whittle testified that the company currently has a waiting list of drivers seeking to enter into lease agreements with Colorado Cab.

120. Colorado Cab utilizes a digital dispatch system which it recently spent a significant sum of money to upgrade, including installation of mobile dispatch terminals in its vehicles. Mr. Whittle represents that this allows Colorado Cab to distribute cabs more thoroughly through the metro area. Additionally, Colorado Cab utilizes an iPhone or Blackberry application which allows users to order a cab from their cell phone. Riders

also have the ability to book rides through the company's website. It is Mr. Whittle's contention that all these innovations and improvements can generate demand for more taxi service, including increased marketing and advertising.

121. Colorado Cab also provides para transit transportation services and works with Logisticare, a local transportation broker for Colorado Medicaid patients to provide transportation when needed. It has seen this business grow significantly in the last five years. Mr. Whittle stated that the company has received a grant to add more wheelchair accessible vehicles to its fleet and this is another factor in its proposal to increase its vehicle pool.

122. Although Colorado Cab has over 500 vehicles at its disposal, it ensures that only 300 are on the road at any given time through its GPS digital dispatch system which tracks taxicabs and identifies their location within the metro area. It also ensures that its owner-operators do not exceed time limits through review of their weekly trip sheets and reports produced from the dispatch system. In addition, Colorado Cab keeps driver supervisors constantly on the street.

(2) Managerial Experience

(a) Mr. Tom Lavoy, Chief Financial Officer VTOD

123. Mr. Lavoy is employed as the chief operating officer for VTOD, which in turn owns Colorado Cab. Among other things, Mr. Lavoy oversees the management and allocation of VTOD's capital. Mr. Lavoy has 25 years of experience in finance and operations management, including 10 years of experience with public company financing, including Securities and Exchange Commission reporting and compliance,

investor relations, corporate administration, cash flow management, contract administration, and operations system control. Mr. Lavoy also has more than 12 years experience in the transportation industry at the executive level.

124. Regarding Colorado Cab's Application for an extension of its authority, Mr. Lavoy will be responsible for providing Colorado Cab with access to internal capital to finance any equipment costs and ongoing operations should it be necessary.

(b) Mr. Brad Whittle, President, Colorado Cab

125. Mr. Whittle is the president of Colorado Cab and a regional vice president for VTOD involved in acquisitions for the company. Mr. Whittle has eight years of executive level experience in the transportation industry with Veolia and its subsidiaries. He has been with Colorado Cab as its president since 2000 and was promoted to vice president for Veolia in 2004 and now serves as senior vice president. Mr. Whittle oversees taxi, para transit and shuttle operations in Colorado and Kansas City. Prior to his employment with Veolia, Mr. Whittle was employed as a CPA and as a chief financial officer.

(c) Mr. Ross Alexander, Area General Manager, Veolia Transportation on Demand

126. Mr. Alexander serves as area general manager for Colorado Cab and has held that position since 2008. Prior to that he managed the repair shop and managed Yellow Cab in Denver and Boulder. Mr. Alexander has 13 years in the transportation business and 9 years of experience as a general manager. Mr. Alexander is also involved in sales and marketing for Colorado Cab and is responsible for setting up cab stands for

special events and concerts such as the annual ski show and events at the Pepsi Center. Mr. Alexander won an award for his service during the Democratic National Convention held in Denver in 2008. Additionally, Mr. Alexander is a member of the board of directors of Visit Denver, formerly known as the Denver Visitors and Convention Bureau.

**(d) Mr. Randy Jensen, General Manager,
Denver Yellow Cab**

127. Mr. Jensen serves as a general manager for Denver Yellow Cab. He has served in that capacity for two years as of the date of the evidentiary hearing in this matter. Mr. Jensen's responsibility includes overseeing the day-to-day operations of Denver Yellow Cab. He is involved in marketing, maintenance, insurance, safety, driver recruitment and screening, credit card processing cashier operations, and compliance with Commission regulations.

**(e) Mr. Mike Rivera, Driver Operations
Manager, Denver Yellow Cab**

128. Mr. Rivera is the driver operations manager for Denver Yellow Cab and has held this position for six years. In addition to the drivers he manages, Mr. Rivera oversees one other manager and two support staff. His primary duties are to review driver contracts and resolve issues such as non-payment of fees. He also has responsibility for safety issues and he conducts accident reviews for the company.

(3) Company Capitalization

129. Colorado Cab seeks to increase the number of cabs it is authorized to operate at any given time from 300 to 450 cabs. While Mr. Whittle and Mr. Lavoy testified that should it be necessary, VTOD will provide necessary capital to finance the proposed expansion, those witnesses indicated that it is anticipated that financing the

expansion will come from internal Colorado Cab funds. Hearing Exhibit No. 54, which is Colorado Cab's Annual Report for 2008 shows that the company had paid miles in that year totaling 7,190,208 miles, which included total trips and DIA flat rate trips. The balance sheet submitted as part of its 2008 Annual Report further shows that its current assets at that time were \$2.8 million, its total assets were \$22 million, and its cash and equity balance was \$1.7 million. Colorado Cab's income statement revealed that its 2008 revenues were \$11.79 million and its operating expenses were \$9.5 million, including taxes.

130. Mr. Whittle explained that the total expansion costs of increasing the number of its authorized vehicles in service from 300 to 450 will be completely covered through internally generated capital, which Colorado Cab can easily absorb given its revenue streams. Any capital available from VTOD is a secondary source of capital and is not expected to be utilized. The add-on capital costs of the proposed expansion are detailed in Colorado Cab's confidential business plan entered into evidence as Hearing Exhibit No. 55.

(4) Vehicles and Facilities

131. Colorado Cab's vehicle list entered into evidence as Hearing Exhibit No. 56 is over 10 pages and lists approximately 480 taxi vehicles including both driver-owned and company-owned vehicles.⁷ Colorado Cab represents that approximately 10 percent of its total vehicles are in the shop for repair at any given time and others are

⁷ Testimony offered by Mr. Whittle indicated that the company had approximately 520 vehicles through its fleet and owned by owner-operators.

reserved as spares or loaner cabs to no charge to owner-drivers whose cabs are being repaired.

132. The list of vehicles shows that while Ford Crown Victoria cars make up to the bulk of its vehicles, Colorado Cab also utilizes minivans, hybrids, special needs accessible vans, and other similar vehicle types. In addition, 50 of the Crown Victorias have been converted to run on propane fuel.

133. Colorado Cab's offices and facilities are located at 7500 E. 41st Avenue in Denver. It has been located there for the past ten years. The facilities are located on eight acres and include administrative offices, a call center, a driver training room and all of its computer facilities. A full maintenance facility is also located there, which includes a full maintenance and repair shop as well as a full radio maintenance shop. The maintenance shop has seven bays and lifts to service vehicles quickly. The radio shop has three lifts and can do repair work on the hardware for the company's digital dispatch and GPS system. The maintenance and radio shop employs 11 to 12 mechanics as well as a manager to oversee those operations. The maintenance facilities are able to handle vehicle hack ups as well as propane conversions. Microwave towers are attached to its offices to communicate with drivers throughout the city.

134. The company's facilities also includes an area where drivers can transact their daily or weekly business of paying leases and exchanging credit cards and charge account vouchers for cash and to take care of other driver paperwork. The driver's room contains tables and chairs, as well as computers with internet access. The cashiering functions are contained in a portion of the driver's room. Colorado Cab's headquarters also has extensive parking areas in order to handle the large volume of vehicles parked

there on a daily basis. Additionally, a propane fueling station is located at the company's facilities so drivers utilizing cabs converted to operate on propane can fuel up rather than trying to locate a station elsewhere.

135. Mr. Whittle testified that due to the facility's size, it can easily handle an additional fleet of 150 cars. Additionally, its maintenance facilities and offices are also capable of handling an expansion of that size.

(5) Staffing

136. It is the company's position that it currently has the staff and management in place to handle an addition to its fleet of 150 vehicles. Colorado Cab has driver operations staff involved in recruiting, compliance, scheduling, and ensuring hours of service compliance as well as quality control. The company has street operations staff to do spot inspections of drivers and vehicles and to meet with businesses such as hotels to address quality issues. Colorado Cab has a department to identify and obtain new markets such as flight and railroad crew transportation. It has a large call center with a significant staff and management including call takers and dispatchers.⁸

137. The staffing enumerated above is in addition to the management team which includes Mr. Lavoy, Mr. Whittle, Mr. Alexander, Mr. Jensen, and Mr. Rivera. In addition to this management team, Colorado Cab has other management overseeing areas such as human resources, sales and marketing, and finance.

⁸ As with most information in this area, the exact figures are confidential and are contained in the company's business plan identified as Hearing Exhibit No. 55.

IV. FINDINGS ON OPERATIONAL AND FINANCIAL FITNESS

138. Section 40-10-105(2)(b)(II), C.R.S. (2008), requires that:

(A) “[i]n an application for a [CPCN] to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson:

The applicant shall have the initial burden of proving that it is operationally and financially fit to provide the proposed service. The applicant shall not be required to prove the inadequacy of existing taxicab service, if any, within the applicant’s proposed geographic area of operation.

139. While the Commission has not promulgated rules regarding the operational and financial fitness standard, it did set out in some detail in Decision No. C09-0207, Docket No. 08A-241CP, issued February 27, 2009, the considerations in making such a determination. Foremost, the Commission determined that “operational and financial fitness of an applicant must be evaluated on a case-by-case basis upon unique circumstances of each applicant and the proposed service.” Consequently, operational and financial fitness is determined on the unique circumstances of the matter at hand regardless of findings in a previous application docket.

140. In providing direction to the ALJ in the Union Taxi matter, the Commission set out detailed guidelines to be considered in determining operational and financial fitness.⁹ There, the Commission stated:

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

⁹ See, Decision No. C08-0933, Consolidated Docket Nos. 08A-241CP, 08A-283CP, 08A-284CP-EXT, and 08A-300CP, issued September 4, 2008.

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.

141. Since Decision No. C09-0207 was issued the Commission has not promulgated rules regarding the standards to determine operational and financial fitness. However, the undersigned ALJ finds it appropriate to employ those comprehensive standards developed in Decision No. C09-0207 to determine operational and financial fitness here for each Application.

A. Burden of Proof

142. Applicant, as the proponent of an order, bears the burden of proof by a preponderance of the evidence to show operational and financial fitness. § 13-25-127(1), C.R.S.; §2 4-4-205(7), C.R.S.; Rule 4 *Code of Colorado Regulations* 723-1-1500, Rules of Practice and Procedure. 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). 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 this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

B. Minimum Efficient Scale**1. Denver Cab**

143. Denver Cab seeks authority to operate 175 taxis in the Denver metropolitan area. The issue is whether this meets the criteria for the smallest amount of taxi cabs necessary to take advantage of economies of scale regarding relevant costs in the Denver taxi market. Consideration must be given to Denver Cab's proposed 175 taxis in relation to other similar size cab companies in the area and considering Denver Cab's approach to gradually ramp up to full capacity over the course of one or two quarters. However, little evidence was presented by Applicant or Intervenors of what minimum size of operation is required to meet minimum efficient scales. Therefore, it is not possible to determine this prong of preferred findings advocated by the Commission. However, the ALJ does not find this lack of evidence or inability to make a finding regarding minimum efficient scale fatal to the Application. As the Commission noted in Decision No. C09-0207, while this should be included in a finding of financial and operational fitness, no single prong of the findings advocated by the Commission is required and failure to meet an individual prong or lack of evidence to consider that prong is not in itself fatal to a finding of fitness.

2. Liberty Taxi

144. Liberty Taxi seeks authority to operate 215 taxis in its proposed operating area at any one time. Through testimony and other filings, Liberty Taxi represents that 215 cabs represent its estimated minimum number of taxis to reach its break-even point. Similar to Denver Cab, Liberty Taxi proposes to ramp up its service slowly, initially introducing 50 cabs and adding inventory over the course of time, depending on

ridership, until it hits its maximum operating level of 215 taxis. As with the analysis for Denver Cab regarding this prong of the analysis, the ALJ finds that insufficient evidence exists to determine the marginal number of taxis necessary and still allow a taxi provider to take advantage of economies of scale regarding costs.

3. Colorado Cab

145. Colorado Cab already possesses authority to operate 300 taxis at any given time. It seeks to add 150 more taxis to that authority. A grant of that request would place Colorado Cab closer to Metro Taxi as the largest taxi company in the Denver market in terms of the number of authorized cabs on the street at any one time.¹⁰ The ALJ reiterates that no finding regarding minimum efficient scale can be made here; however, this is not fatal to any of the Applicants' showings of operational and financial fitness.

C. Credit Worthiness; Access to Capital; Capital Structure; Current Cash Balances; Credit History and Financial Health over the Near Future

1. Denver Cab

146. As a co-op, Denver Cab's capital structure must be analyzed for operational and financial fitness as a whole, rather than an analysis of its individual owner-drivers. The Commission was clear regarding this sort of analysis in Decision No. C09-0207 and the ALJ will adhere to that analysis here.

¹⁰ Metro Taxi is authorized to operate a maximum of 492 taxis at any one time.

147. Both Colorado Cab and Metro Taxi complain that Denver Cab failed to understand or address fundamental problems associated with its financial structure. Metro Taxi points out that Denver Cab has no access to capital other than contributions it will receive from its owner-drivers. This, coupled with the fact that the co-op itself has no credit history makes it imperative that Denver Cab collect all proposed fees from its owner-drivers. Denver Cab concedes that it lowered the number of authorized cabs from 240 to 175 because it was only able to obtain membership fees from 175 members. Denver Cab maintains that 175 drivers have committed to contribute an additional amount of money that will provide the co-op with substantial start up revenues.¹¹ However, as of the date of the hearing, the co-op had collected less than half of that amount. Although 175 drivers committed to be owner-members of the co-op, only 20 percent had paid the full initial membership as of the hearing. Denver Cab asserts that the rest of the drivers are waiting for the Commission Decision before committing the additional money. Denver Cab further asserts that it expects an influx of cash once it receives its operating authority.

148. In addition to the initial assessment, drivers will pay a monthly fee, while somewhat low compared to other fees, it is in addition to the initial assessment. Owner-drivers will be responsible for monthly insurance costs and credit card rental fees as well. Denver Cab argues that the fees drivers will pay are significantly lower than Colorado Cab and Metro Taxi drivers pay. However, Colorado Cab and Metro Taxi point out that in addition to additional fees owner-drivers may be assessed to cover start up costs,

¹¹ The specific figures are confidential and are contained in the co-op's *pro forma* financial projections in Hearing Exhibit No. 2.

drivers must also pay a substantial amount to convert their vehicles to natural gas power. While tax credits may be available, there is no guarantee of those credits or the amount that owner-drivers will receive.

149. Denver Cab is confident that its members will fund whatever is necessary to ensure the co-op is successful. It is also confident that once it receives its operating authority the remaining approximately 80 percent of owner-drivers who have not paid the initial membership fee will do so quickly. Metro Taxi, however, argues that should Denver Cab fail to collect the entire amount associated with those initial fees at a minimum, it has no access to additional capital or credit which will render it significantly underfunded.

150. The ALJ agrees that many questions surround the efficacy of Denver Cab's business plan and financial projections. There is validity to the criticism of the projections proffered by Colorado Cab and Metro Taxi. Denver Cab based its entire projections on the assumption that 175 owner-drivers will pay the initial membership fee and at all-times pay monthly lease fees except for exemptions as provided in the business plan. Notably, Denver Cab does not account for vehicle breakdowns, accidents, driver attrition, or other factors that will most likely have an impact on its revenue and cost projections. Denver Cab has placed great emphasis in its owner-drivers' loyalty and willingness to continually contribute additional capital in addition to ongoing monthly fees without securing additional capital through outside investors or bank credit.

151. Although securing capital exclusively from owner-drivers is a legitimate strategy, the concern here is that Denver Cab has placed an extremely heavy financial burden on its members by not only requiring an initial membership fee, but also most

likely requiring its members to make additional capital calls in order to meet unexpected start up and operational costs. Coupled with these costs is the requirement for members to pay for highly expensive conversions for their vehicles to operate with natural gas. Based on the testimony regarding the cost for such conversions, it may in many circumstances exceed the value of the vehicle itself. While testimony was received from Mr. Hill that some tax credits may be available for those conversions, there was no testimony that owner-drivers would apply for them or that the co-op would seek tax credits on their behalf.

152. The lack of access to capital other than from owner-drivers under the circumstances here presents a significant barrier to Denver Cab to maintain itself as a going concern, especially in the initial start-up period of the co-op. The significant fees and charges imposed on owner-drivers including conversion costs places a heavy burden on them that they may not be able to meet, especially in the start-up phase of the company when passenger traffic may be lighter than with an established, well known taxi company.

153. The accuracy of business plans and financial projections is always subject to armchair quarterbacking. After all, the accuracy of those projections may not be finally assessed until well into the future. Here, Denver Cab has relied entirely on its owner-drivers' faith in the co-op to provide any necessary capital to ensure the co-op's viability. It is found that Denver Cab has placed too much financial burden on the backs of its members in order to sustain it during start up and through any contingencies that may arise. This may have been tenuous under normal circumstances, but when coupled with the fact that members must also find funding for expensive fuel conversions, which

is the entire crux of Denver Cab's business plan – to operate as a “green” company with natural gas vehicles – it is unreasonable to assume that its members can afford such a significant financial commitment.

154. Denver Cab's financial plan is not a viable plan to allow for initial expenses and allow for growth, no matter how miniscule. Denver Cab's strategy to fund the co-op is a high risk venture relying on a group with limited means to sustain that strategy. By choosing to ignore capitalization from outside investors or through bank loans, Denver Cab has severely limited its options to obtain necessary cash, especially at a time when it is most critical, during the start up phase of the co-op.

2. Liberty Taxi

155. Colorado Cab and Metro Taxi are highly critical of Liberty Taxi's capital structure and plans to finance the company. Metro Taxi points out that the only tangible source of revenue it was able to produce was a bank statement indicating it has approximately \$42,000 cash on hand and five sold memberships. Metro and Colorado Cab note that Liberty Taxi has not shown any other sources of institutional credit available to fund the operations, or any funding from other sources such as outside investors. Those intervenors are concerned that there appears to be no firm commitments for capital for Liberty Taxi other than \$42,000 in the company's bank account. While Liberty Taxi purportedly has \$125,000 cash on hand, Metro Taxi argues that no supporting evidence of that money existing was brought forth. Both Metro Taxi and Colorado Cab maintain that given the expenses associated with the company's elaborate dispatch system, Liberty Taxi is clearly underfunded.

156. Liberty Taxi, on the other hand argues that it has indeed demonstrated that it is financially fit. Regarding startup capital, the company argues that it in fact does have \$125,000 cash on hand and its bank account with US Bank has a balance of \$41,995. In addition, the president of Liberty Taxi, Ms. Ferjani and her husband have an account at US Bank in the amount of \$55,000 which is available to the company.

157. In addition to those funds, Mr. Chalbi testified to and provided as exhibits two accounts, one with Fidelity Investments and one with Wells Fargo that contain balances of approximately \$28,000 and \$19,000 respectively. Mr. Chalbi pledges those funds to Liberty Taxi if it receives its operating authority. It appears that the company has available to it, approximately \$144,000 upon a grant of operating authority from these sources alone. The ALJ agrees with Liberty Taxi that there is no reason to doubt the veracity of those claims.

158. Liberty Taxi also appears to have access to other sources of capital. Testimony revealed that the company has sought three separate commercial loans from area banks which final approval is pending the outcome of the company's application. In addition, Hearing Exhibit Nos. 33 and 34 indicate that Liberty Taxi has received pledges from the community for two large loans. Ms. Ferjani's husband, Hafedh Ferjani signed a notarized affidavit pledging to loan \$118,000 to the company and Dr. Mohammed Faseehuddin also signed a notarized affidavit pledging to loan \$155,000 to the company, dependent on the company obtaining a CPCN. Finally, Mr. Sandid testified that he has access to a substantial sum of money from accessing credit through his credit cards (approximately \$45,000) as well as from his family in Tunisia.

159. Therefore, while Liberty Taxi's business model is an expensive proposition, and it has only sold five memberships to date, the overall capital structure and access to capital of Liberty Taxi appears to be generally sound and provides for the company's initial growth. It is found that the company has determined a strategy for the availability of necessary capital to provide for initial expenses and to fund ongoing capital requirements until the company can sustain itself through revenue earned from taxi fares and advertising. Although most of the capital available to Liberty Taxi is based on oral and written commitments from individuals (and possibly from three bank loans) there is no reason to question the veracity of those claims and commitments.

3. Colorado Cab

160. Colorado Cab is a well established and well funded transportation enterprise. Testimony and its annual report show that it earns significant revenue and net income on a yearly basis. Colorado Cab is a subsidiary of Veolia, a multi-national company with its North American operations based in Chicago. Colorado Cab has access to internal capital to fund the expansion of its fleet either through revenue from Denver Yellow Cab operations, or if necessary, from a capital infusion from its parent – Veolia. Colorado Cab showed that it easily possesses the resources to fund the increase of the 150 cabs it seeks without the necessity to seek outside capital. In fact, in its Statement of Position, Metro Taxi the sole opposition to Colorado Cab's application stated that while it contests the financial fitness of Denver Cab and Liberty Taxi, it "is not arguing on the issue of Colorado Cab's financial fitness."

161. As a result, it is found that Colorado Cab meets all the established criteria for financial fitness, including credit worthiness, access to capital, credit history, and assessment of financial health in the near term.

D. Managerial Competence and Experience

1. Denver Cab

162. While Metro Taxi and Colorado Cab are critical of the management experience of Denver Cab's proposed management team. It appears that the members of the management team offering testimony, as well as all nine members of the board of directors are experienced taxi drivers. In sum they have over 60 years of experience driving for taxi companies in the Denver metropolitan area.

163. In addition, Mr. Ibrahim, the president of the company and board chairman has significant experience in starting a taxi company in Dallas, Texas – United Cab Services - which he started and ran for several years. This type of knowledge is invaluable and rare to have. Further, Mr. Gebreslassei has significant experience as a taxi driver as well as holding an accounting degree from Metro State College of Denver. Mr. Tesfay is highly experienced in the transportation business and has been in the transportation industry since 1995.

2. Liberty Taxi

164. As with Denver Cab, Metro Taxi and Colorado Cab are also highly critical of Liberty Taxi's management experience. Both intervenors focus on the fact that Liberty Taxi's president, Ms. Ferjani, has no experience in the taxi industry and will not be involved in management. Metro Taxi argues that prior unrelated managerial experience or unsubstantiated claims of success as a manager are simply not enough. The

intervenors argue that key management positions will be filled by personnel with little or no taxi experience.

165. Liberty Taxi argues that its key employees and managers are experienced supervisors with successful histories. While conceding that Ms. Ferjani does not have experience in the transportation industry, Liberty Taxi notes that she recognizes this fact and as a result has limited her role to public relations, community development, and outreach. She does have management experience in running a successful family-owned insurance agency and holds an undergraduate degree in management from Tunisia.

166. Other key management personnel are well qualified and capable of operating a successful taxi company. Mr. Chalbi, who will oversee operations has a degree in economics and as with other key personnel is fluent in several languages. He has significant management experience in telecommunications as well as wireless technology which is key to the company's business model. Mr. Chetouane, who will head all transportation operations has executive experience as the regional operations manager for Coach USA for several years. His testimony described the contributions he made to the company by increasing revenue and employee morale during his tenure. Equally significant, he started his own luxury limousine service in Florida which appears to be a success.

3. Colorado Cab

167. The experience of Colorado Cab's key management personnel is also unchallenged. The resumes of Mr. LaVoy, Mr. Whittle, Mr. Alexander, Mr. Jensen, and Mr. Rivera all demonstrate extensive tenures and experience in the transportation industry

and the taxi industry in particular. Their experience and managerial fitness is unchallenged by Metro Taxi.

E. Fixed Physical Facilities

1. Denver Cab

168. Metro Taxi points out that Denver Cab currently has no office space, physical facilities, or a maintenance facility. The only thing Denver Cab was able to offer was that they have plans to lease a 12,000 square foot facility if its authority is granted. Metro Taxi argues that in order to meet this standard, an applicant must have facilities in place at the time of the hearing.

169. Denver Cab provided testimony that it currently has an office at 1642 S. Parker Road, Suite 116, Denver, Colorado. It also has plans to acquire additional office space and maintenance facilities should its Application be approved.

2. Liberty Taxi

170. Metro Taxi argues again that Liberty Taxi has no office space, physical facilities, or a maintenance facility. The company has nothing concrete except a proposal to rent space. According to Metro Taxi, this promise to meet this requirement at some unknown time is inadequate to meet this standard.

171. Liberty Taxi argues that it has negotiated a tentative lease agreement with PBZ Properties, LLC for 3000 square feet of office space located near I-225 and Parker Road. It describes the space as containing 14 private offices, a conference room, and a reception area. The location also has ample parking. Liberty claims it has planned for its own maintenance area and repair facilities and has arranged for a master mechanic to work for the company on a salaried basis. The mechanic has signed a lease at Holly and

Evans for a three-bay garage where he is operating under his own name. If Liberty Taxi's CPCN is granted, the mechanic will work full time for the company out of these facilities.

3. Colorado Cab

172. Again, it is undisputed that Colorado Cab possesses adequate facilities to handle the addition of 150 cabs into its fleet. Its headquarters at 7500 E. 41st Avenue near the intersection of I-70 and Quebec contains offices for dispatch and call center personnel, management offices, a driver's lounge and work area, cashiering functions, and a large maintenance garage and radio garage to handle all repairs. It also has ample parking that can handle the proposed increase in fleet size. The adequacy of its facilities was unquestioned.

F. Dispatch

1. Denver Cab

173. Denver Cab proposes to initially utilize a radio dispatch system in which a base station is located at its facilities and relays calls to its drivers on the road. It claims that it will explore the option of utilizing a digital dispatch system sometime within the first year of operation. In the interim, the co-op believes that a two-way radio dispatch system is adequate to respond to demand.

174. Metro Taxi takes the position that such a system is inadequate and will lead to increased congestion. As such, Metro Taxi argues that Denver Cab has failed to meet its burden in proving an adequate dispatch system.

2. Liberty Taxi

175. Liberty Taxi's proposed dispatch system is described as a state of the art digital dispatch system that integrates dispatch, communications, and advertising. It is a highly complex system and is described in more detail above. The software that will drive the system however, is expensive at approximately \$463,000 to design and install. The dispatch system proposed by Liberty Taxi is at the heart of its entire business model. The integrated system will provide it with the capability to incorporate a ride share program, establish hot spots throughout the metro area to pick up passengers and arrange for ride share opportunities, as well as provide in-cab advertising focused on the passengers' destination.

176. Metro Taxi argues that the cost of the proposed dispatch system software runs the risk that Liberty Taxi will not be able to come up with sufficient capital to implement it, which in turn may result in it having no dispatch system at all, or an inadequate alternative such as a radio dispatch system.

3. Colorado Cab

177. Colorado Cab currently utilizes a digital dispatch system with GPS capabilities to track the location of its cabs on a large monitor in its dispatch room. The features of its dispatch system are on a fundamental basis, somewhat similar to the basic features of the system proposed by Liberty Taxi. Colorado Cab asserted that its system is efficient and enables it to track taxi movements and efficiently and effectively notify the closest available taxi to pick up a customer. As with other aspects of Colorado Cab's operations and facilities, the sufficiency of its digital dispatch system is unchallenged.

G. Vehicles**1. Denver Cab**

178. Denver Cab's drivers already own their own vehicles, which are the typical make and model for use in the taxi industry, such as Ford Crown Victoria, Windstar, and other large four door vehicles and vans. Those vehicles will be de-hacked if necessary and hacked up with Denver Cab equipment and in the company's colors. The age of vehicles proposed to be utilized ranges anywhere from 2001 to 2008 model years according to the company's Exhibit J attached to its application.

2. Liberty Taxi

179. Liberty Taxi proposes to equip its vehicles with two Sony Dash units as described in more detail above. One unit will provide dispatch and communication information to the driver and will be mounted on the dashboard. The second unit will be mounted in the back and will provide passengers with secure internet connectivity and display internal advertisements and trip specific information including mileage route, cost, and ride share information.

180. According to the specifications of the integrated dispatch system, each cab will be wirelessly connected to a high-speed 3G or 4G WiMax data network with Verizon Wireless as the potential provider. Each taxi will be fitted with a roof mounted LCD or LED screen to display external advertising. Each vehicle will also be equipped with a USB credit card reader that will connect with the driver's Sony Dash screen.

181. Liberty Taxi also represented that in addition to the vehicles needed to provide its authorized service, it intends to acquire several additional vehicles to utilize as spares to provide to drivers when their vehicles are in for repairs.

3. Colorado Cab

182. Colorado Cab intends to acquire the additional 150 vehicles over the course of the first year. The bulk of the fleet will be expanded through purchases of typical taxi industry vehicles as described previously as Ford Crown Victorias and similar type vehicles. The remaining additions to its inventory will be from owner-operator owned vehicles. Colorado Cab represents that it intends to provide a mix of sedans and mini-vans, as well as wheelchair accessible vehicles. The mix of vehicles also includes hybrids.

H. Conclusions

183. It is readily apparent that Colorado Cab's facilities, financial structure, and management are all well within the realm of adequate. There was no real challenge to the facilities it maintains or the experience and competence of its management team. Likewise, given the nature of the company's corporate structure and ready access to capital, its ability to fund the expansion it seeks was also unchallenged. Therefore, it is found that Colorado Cab has met its burden of proof under the statute to show that it is operationally and financially fit pursuant to § 40-10-105(2)(b)(II), C.R.S.

184. There was a significant challenge to Liberty Taxi's operational and financial fitness as detailed above. However, as the undersigned ALJ has noted previously, there is inherent in all business plans and *pro forma* financial statements a modicum of speculation. Business plans and *pro forma* projections serve not as a specific, rigid document which is expected to be strictly adhered to, but as fluid documents setting a general course of action that is subject to pitfalls, the application of possibilities and theories to reality. Therefore, business plans are by definition fluid

documents that contain business models that are expected to change and adopt to changes depending on economic and market situations. Nevertheless, a business plan and the business model that stems from the plan must reflect an understanding of the realities of the industry in which the business is attempting to enter and whether the proposed plan is rooted somewhat in reality.

185. Liberty Taxi has presented key management personnel that possess the education, knowledge, and experience necessary to operate a taxi company. Their varied backgrounds and management experience will complement the unique business model proposed by Liberty Taxi. Even though only one of the proposed officers has actual taxi experience, this is more than offset by Mr. Chetouane's significant experience as an executive level manager for a large multi-national transportation company. Each key officer brings a certain expertise to the company necessary to move its unique business model forward.

186. While Metro Taxi and Colorado Cab were highly critical of Liberty Taxi's capitalization, it appears that its access to sufficient capital to operate the company and implement its highly complex digital dispatch system is met through loans and pledges from various individual sources, as well as its proposal to complete loan agreements with at least three banks. There is no reason to question the veracity of these claims and indeed, that veracity was not seriously challenged through cross-examination by the intervenors.

187. As for the other standards to consider in determining operational and financial fitness, it is found the Liberty Taxi's proposal for vehicles, fixed physical

facilities such as maintenance and operational facilities are sufficiently addressed in the business plan and supported through testimony.

188. It is clear that Liberty Taxi proposes a highly complex and unique dispatch system that integrates many functions. While the intervenors leveled some criticism regarding the company's ability to implement such a system and regarding the costs associated with it, the ALJ nonetheless finds that such a dispatch system meets the burden of proof to show that the dispatch system is adequate. Therefore, it is found that Liberty Taxi has met its burden of proof under the statute to show that it is operationally and financially fit pursuant to § 40-10-105(2)(b)(II), C.R.S.

189. Denver Cab generally met its burden regarding several of the metrics for operational fitness. However, the ALJ harbors some deep concerns regarding its financial fitness. The testimony revealed that its plan was to seek no outside sources of funding either from bank loans or outside investors. It intended to acquire all its capital from its owner-drivers through initial membership fees, ongoing lease fees, and additional capital calls as needed. While this can be a sufficient method to acquire capital, it also comes with risks. The main risk is that owner-drivers will not be able to provide capital on an on-demand basis as the situation dictates. This risk is further exacerbated here by the fact that in addition to the above-mentioned fees drivers must also pay for an expensive conversion of their vehicles from gasoline to natural gas power. The conversion cost may sometimes exceed the value of the vehicle.

190. The ALJ finds that such a heavy financial burden placed on drivers with no access to outside capital is simply untenable. While there are no guarantees that a startup company will have ready access to capital during its beginnings, to reject outside

sources of capital in favor of complete reliance on its owner-drivers is not a sound financial plan. With the high costs faced by its drivers, Denver Cab cannot rely on them to continually fund the co-op when necessary. Therefore, it is found that with regard to the critical standard of financial fitness, Denver Cab has failed to meet its burden that it is financially fit. Therefore, its Application will not be considered under the second phase of the required analysis which is the rebuttable presumption of public need. Rather, Denver Cab's Application will be dismissed for failure to meet its burden to show that it is financially fit.

V. REBUTTABLE PRESUMPTION OF PUBLIC NEED

191. As it is found that Applicant has sustained its burden of proof pursuant to subsection (b)(II)(A) of § 40-10-105(2), C.R.S., the provisions of subsection (b)(II)(B) are therefore implicated. Subsection (b)(II)(B) provides as follows:

(B) If the applicant sustains its initial burden of proof as set forth in sub-paragraph (A) of this subparagraph (II), there shall be a rebuttable presumption of public need for the service, and the party or parties opposing the application shall bear the burden to prove that the public convenience and necessity does not require granting the application and that the issuance of the certificate would be detrimental to the public interest.

Additionally, except as otherwise provided in § 40-10-105(2)(b)(II), C.R.S., the granting of a CPCN to operate as a taxicab provider “within and between counties with a population of seventy thousand or greater, based on the federal census conducted in 2000, shall not be deemed to be an exclusive grant or monopoly, and the doctrine of regulated competition shall prevail.” *Id.* (Emphasis added).

192. In Decision No. C08-0933, issued September 4, 2008, the Commission noted that House Bill (HB) 08-1227 which amended § 40-15-105, C.R.S., did not repeal

the doctrine of regulated competition for the eight metropolitan area counties, but instead, among other things, reallocated the burdens of proof. Under the public need standards of § 40-10-105(2)(b)(II)(B), C.R.S., the Commission may only grant the authority sought if the public convenience and necessity so require, coupled with a finding that there is no detriment to the public interest.

193. The Colorado Supreme Court has determined that the doctrine of regulated competition, which governs taxicab companies operating in the Denver metropolitan area, focuses more on the “public interest” or “public need.” *Trans-Western Exp., Ltd. v. Pub. Utils. Comm’n*, 877 P.2d 350, 353 (Colo.1994) (“Under the doctrine of ‘regulated competition,’ the controlling consideration is public need.”); *see also Morey v. Pub. Utils. Comm’n*, 629 P.2d 1061, 1064 (Colo.1981) (*Morey II*); *Morey v. Pub. Utils. Comm’n*, 582 P.2d 685, 687 (1978) (*Morey I*); *Miller Bros., Inc. v. Pub Utils. Comm’n*, 525 P.2d 443, 452 (1974).

194. In *Morey II*, the supreme court clarified the distinction between the “public convenience and necessity” generally, and the “public interest”-“public need” standard pursuant to regulated competition:

The difference between the test of “public interest” and the test of “public convenience and necessity” (as that test evolved under the doctrine of ‘regulated monopoly’) is...one of degree, i.e., the extent to which governmental regulation will be used to inhibit free competition. The legislative policy...is to regard motor carrier competition as desirable and to subject that competition to regulation only to the extent that it is necessary to do so in serving the public interest. Stated in another way, the 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.¹²

Morey II, 629 P.2d at 1066-67 (omissions in original).

195. In considering an application under the doctrine of regulated competition, the supreme court has held that the Commission may consider:

[T]he impact additional competition may have, not only on the conflicting economic 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. The obligation to safeguard the general public against the impaired services and/or higher rates accompanying destructive or excessive competition is at the heart of the policy of regulated competition.

Id. at 1066.

196. In Decision No. C02-733, issued July 2, 2002, the Commission, noting its previous analysis in Decision No. C95-456, issued May 22, 1995, which in turn cited to *Miller Bros.*, discussed the considerations in determining public need and the factors the Commission may consider such as:

the availability and adequacy of existing service; the desirability of increasing competition among carriers; and the necessity for avoiding impairment of operations of existing carriers. Decision No. C95-456, at 10. While the Commission is not bound by its prior decisions, we consider the supreme court's blessing of our previous criteria an indication of their merit, and determine that they continue to be useful to our deliberations. These criteria likewise adequately take into consideration the requirement that what is known as excessive or destructive competition must be avoided.

citing *Trans-Western*, 877 P.2d at 353.

¹² This quote refers to "public interest" instead of "public need," however, the *Morey II* court used both terms interchangeably in this context.

197. In Decision No. C02-733, the Commission reinforced its policy for determining whether there is a public need for additional taxicab authority under the doctrine of regulated competition by considering and properly balancing "... the availability and adequacy of existing service; the desirability of increasing competition among carriers; and the necessity for avoiding impairment of operations of existing carriers, specifically with an eye toward avoiding 'excessive' or 'destructive' competition." *Id.* at ¶7, pp. 13-14.

198. While the requirement for an applicant to sustain its burden of proof of public need for its proposed service has been abolished by HB 08-1227; nevertheless, the issue of public need remains a crucial factor in the Commission's determination. Indeed, the Commission, in Decision No. C09-0207 determined that "[r]egulated competition remains the scheme by which we will oversee the taxicab markets at issue in this matter. Accordingly, we will strive to achieve the necessary balance between market forces and regulatory instrumentalities." *Id.* at ¶ 508, p. 139. It is these well-established canons to which this Recommended Decision will strive to adhere.

199. In this consolidated proceeding, Colorado Cab and Liberty Taxi have sustained their respective burdens of proof regarding operational and financial fitness. Therefore, the burden shifts to Metro Taxi to rebut the presumption of public need as it applies to Colorado Cab and Liberty Taxi that arises pursuant to the statutory language. The burden to rebut public need as it applies to Liberty Taxi is borne by Colorado Cab and Metro Taxi as intervenors in that application.

VI. DISCUSSION AND CONCLUSIONS

200. It is axiomatic that “public need” is the paramount concern under the regulated competition doctrine. HB 08-1227 certainly shifted the burden of proof regarding public need from the applicant to those opposing the application. Nonetheless the “public need” standard remains one of the overarching issues in determining whether to grant a common carrier authority application for taxi service in the Denver metropolitan area, coupled with a determination as to whether the application is in the public interest.

201. In determining public need under the doctrine of regulated competition, the ALJ reiterates that factors such as the availability and adequacy of existing service may be considered, along with the competitive character of the existing service. *See Miller Bros.*, 185 Colo. at 434, 525 P.2d at 453. Further, in *Morey II*, the Colorado Supreme Court stated in relevant part that:

As a corollary of our holding that the “public need” is broader than the individual needs and preferences of an applicant’s customers, we agree that the Commission may consider the impact additional competition may have, not only on the conflicting economic 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 service. The obligation to safeguard the general public against the impaired services and/or higher rates accompanying destructive or excessive competition is at the heart of the policy of regulated competition.

Morey II, 629 P.2d at 1066 (citations omitted). As noted *supra*, the court further noted that:

The legislative policy...is to regard motor carrier competition as desirable and to subject that competition to regulation only to the extent that it is necessary to do so in serving the public interest. Stated in another way,

the 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.

Id. At 1066-67 (omissions in original).

202. In determining whether intervenors have successfully met their burden of proof to rebut the presumption of public need and whether the public convenience and necessity does not require granting the application, and that the issuance of the certificate would be detrimental to the public interest, the testimony and evidence of the expert witnesses must be compared and contrasted with the testimony of witnesses such as taxi drivers themselves. There is no bright line that separates the doctrinal standards at issue here. “Public need,” “public interest,” and “public convenience and necessity” are standards that overlap one another and the issues that affect one, in some way touch on the resolution of the others. Indeed, § 40-10-105(2)(b)(II)(B), C.R.S., blends those three standards together in establishing an intervenor’s burden of proof. Consequently, the ALJ’s analysis, while touching on all three standards, nonetheless incorporates the three doctrines as a single analysis.

203. It is clearly established that the Commission is charged with regulating the taxicab market in Colorado. In the Denver metropolitan area, the market is to be regulated pursuant to the doctrine of regulated competition. As such, the Commission has determined that it will strive to achieve the necessary balance between market forces

and regulatory instrumentalities.¹³ The Commission recognized that both market forces and regulatory measures have limitations. As a result, there is no specific algorithm available which can be executed and repeatedly return a result that is in the public interest. Each application for taxicab authority must be considered pursuant to its own merits and consistent with the situation and environment at that time.

204. As indicated previously, the burden to rebut the presumption of public need is upon the party opposing the Application. In this case that is Metro Taxi.¹⁴ In support of its argument that the remaining applications of Liberty Taxi and Colorado Cab are not in the public interest, Metro Taxi presented six witnesses, two of which work in parking enforcement for the City of Denver, as well as four of its drivers to testify as to the state of the taxicab industry in the Denver metropolitan area. The witnesses testifying on behalf of Metro Taxi included Ms. Tina Scardina and Mr. Joseph Richardson for the Denver Public Works Department Right of Way Enforcement. Four Metro Taxi drivers also testified including Mr. Ray Baldwin, Mr. Edward Rembert, Mr. Charles Helton, and Mr. Charles Goheen.

205. Ms. Scardina and Mr. Richardson testified that in their duties they have encountered many incidents where taxi drivers are failing to comply with parking laws in the downtown area. They stated that taxis are parking at meters and either driving away or placing the minimum coinage in the meter when parking enforcement officers are present. Ms. Scardina and Mr. Richardson attribute this to too many taxis in the downtown area and not enough cab stand spaces.

¹³ See, Decision No. C09-0207, p. 139, ¶508.

¹⁴ While Colorado Cab opposed the Applications of Liberty Taxi and Denver Cab, it did not offer a substantive argument regarding the public interest.

206. The four Metro Taxi drivers testifying on behalf of the company talked of the oversupply of taxis in the market and the inability to park at cabstands due to the oversupply of cabs in the city. The crux of the drivers' testimony is that there is an oversupply of taxis in the Denver area.

207. The testimony regarding the public interest was limited in this proceeding. Little or no testimony was offered regarding the state of the Denver taxicab market and the state of taxi competition in general. While Metro Taxi offered the testimony of several witnesses with experience regarding crowding in the downtown area, this testimony was generally anecdotal and was not supported by any studies or reports.

208. Metro Taxi also points to a letter filed by then Mayor John Hickenlooper in which he expressed concern with the oversupply of taxicabs in the downtown area. Specifically, the mayor noted the excess supply of taxis in the downtown area without digital dispatch systems and the resulting unruly cabstands and traffic and parking violations due to overcrowding.

209. While the mayor's letter is interesting, it is not based on any factual findings by the mayor or his office, but is most likely based on hearsay and other third party representations whose veracity cannot be verified.

210. With little testimony or evidence rebutting the presumption of public interest, the ALJ notes that the analysis here will instead focus on the attributes of granting Liberty Taxi's and Colorado Cab's applications.

211. Recommended Decision No. R10-0745, Docket No. 08A-407CP, issued July 20, 2010, focused on the supply of taxis in the marketplace and the effect of oversupply and of injecting a market close to capacity with an undifferentiated product.

That Recommended Decision further found that the dangers of introducing undifferentiated capacity into a nearly full market included the possibility of shallow-pocketed and similarly structured companies with limited resources and equipment dropping out of the market and the very real possibility of a re-concentration of the market that would run counter to the legislative intent of opening the market to competition.

212. It was noted that the Commission had stated that it was embarking on a policy of balancing market forces and regulatory instrumentalities to determine whether to introduce additional capacity into the Denver taxicab market, it also tempered that policy with the realization that it had increased the market supply significantly. The Commission indicated that it intended to implement regulations pertaining to service quality and other issues, as well as closely monitor the status of competition in the wholesale and retail markets with particular attention to prices, service quality, and other variables.

213. The Commission also intended to consider appropriate measures to prevent re-concentration of the market.¹⁵ The Commission recognized its obligation under the doctrine of regulated competition to structure the competitive landscape in a manner which both minimizes the likelihood of socially-damaging carrier behavior, while maximizing the possibility for healthy competition and beneficial rivalrous activity between carriers. It is notable that the Commission, in granting Union Taxi's and Freedom Cabs applications, nonetheless reduced the amount of vehicles sought by each

¹⁵ See, Decision No. C09-0207 at p. 140, ¶510.

provider in order to “achieve an appropriate balance in the market, including not just overall capacity but also the distribution of those authorizations.”¹⁶ It was emphasized that the Commission was concerned about over-saturating the market with taxis until it could be determined whether the Denver market had in fact effectively absorbed the 34 percent increase in supply.

214. The crux of Recommended Decision No. R10-0745 was that when a market is at or near capacity, a homogeneous, undifferentiated entrant does not serve the public interest. It was determined that such an entrant would harm incumbent taxi providers economically and impede the ability of those carriers to provide safe, economical, and efficient service by forcing these undifferentiated entrants to crowd high capacity areas such as downtown and the Cherry Creek area.

215. While Recommended Decision No. R10-0745 relied on driver testimony as to overcrowding, that was due to the significant and substantial expert testimony that supported those anecdotal statements. That is not the case here. No expert testimony was provided regarding the public interest standard. Therefore, since each case stands on its own merits, such anecdotal evidence is difficult to accept here without supporting expert testimony or studies.

216. Additionally, while it was found in Recommended Decision No. R10-0745 that the addition of 150 undifferentiated cabs would likely cause an oversupply of the market and result in inefficiencies such as reduced customer service, inadequate vehicles, lower driver net income and, a re-concentration of the market, the situation here is virtually the complete opposite.

¹⁶ *Id.* at p. 146, ¶525.

217. Here, Liberty Taxi presents an innovative and creative business model that will foster robust competition in that it will require incumbents to respond through their own innovative service by upgrading technology, providing higher standards of customer service, or lower prices. It is found that this is the type of healthy, robust competition envisioned by the Commission and the legislature.

218. The ALJ finds that the extension of the operating authority sought by Colorado Cab will also lend itself to a more competitive environment. While adding a significant number of cabs on the streets, Colorado Cab itself utilizes a digital dispatch system and has the resources to seek out additional markets to increase customer demand. Colorado Cab witness Mr. Whittle testified that the use of a digital dispatch system, as well as aggressively pursuing voucher customers for its drivers, and increasing marketing and advertising all help to grow demand for more taxi business. This applies with equal weight to both Liberty Taxi's unique ride share and integrated dispatch system and Colorado Cab's ability to aggressively market and advertise its services.

219. The ALJ does not find it a necessary outcome that high customer volume areas such as downtown and Cherry Creek will suffer additional overcrowding by granting both applications. Each provider will utilize a digital dispatch system, which evidence allows the company to effectively position its cabs throughout the metro area, thus alleviating the issue of congestion. Indeed, Liberty Taxi's proposal would move its taxis adjacent to the various hotspots it will establish as part of its model. Therefore, it is found that the applications of Colorado Cab and Liberty Taxi avoid the issues raised previously concerning undifferentiated products and congestion by utilizing state of the art dispatch technologies. Clearly, these two products are sufficiently differentiated from

the other companies sufficiently to foster the type of healthy competition that will result in a robust, energetic market that will foster higher customer service standards and improved service.

220. As a result, it is found that intervenors have failed to sustain their burden of proof and have therefore failed to rebut the presumption of public need for the proposed authorities of Liberty Taxi and Colorado Cab. Intervenors have further failed to sustain their burden of proof that the proposed service would be detrimental to the public interest, or that the public convenience and necessity does not require the granting of the applications.

221. Therefore, Colorado Cab's Application to extend its authority by authorizing an additional 150 cabs that may be in service at any time is granted.

222. The Application of Liberty Taxi for authority to provide taxi service in its proposed service territory is granted in part. The ALJ is still concerned regarding the number of cabs that will be on the streets as a result of the grant of these two applications. Oversupply and its detrimental effects on the market and on incumbent carriers is still a valid concern. As the Commission found in the Union Taxi application, its obligation under the doctrine of regulated competition is to structure the competitive landscape in a manner which both minimizes the likelihood of socially-damaging carrier behavior, while maximizing the possibility for healthy competition and beneficial rivalrous activity between carriers. As a result, the ALJ finds it in the public interest to limit the number of cabs Liberty Taxi is authorized to have in service at any given time to 150. Despite Liberty Taxi's claims that its breakeven point is 215 cabs, the ALJ finds that

given the level of saturation existing in the Denver market, authority for 150 taxis allows for less of a market shock than if the entire authority is granted.

223. It must be kept in mind that by this Decision, the supply of taxis in the Denver market is increased by another 300 taxis. While it appears that amount can be sustained given the structure of the two companies, it must be noted that any decision to increase the supply of taxis in the Denver market must be tempered by the doctrine of regulated competition that has been interpreted to mean, in part, that “established carriers are entitled to protection only insofar as they need to be shielded from the danger of an oversupply of transportation services.” *See, Morey II*, 629 P.2d at 1066. This is the current law and the ALJ intends to follow that law until it is altered by the legislature.

224. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

VII. ORDER

A. The Commission Orders That:

1. The application of Denver Cab Cooperative, Inc., doing business as Denver Cab Co-op and Green Cab for authority to operate as a taxi common carrier in the Denver Metropolitan Area is denied without prejudice consistent with the discussion above.

2. The application of Colorado Cab Company, LLC (Colorado Cab) for authority to extend operations under its Certificate of Public Convenience and Necessity PUC No. 2378&I is granted.

3. Colorado Cab is authorized to increase the number of cabs in service at any given time from 300 cabs to 450 cabs.

4. The extended authority of Colorado Cab is restricted as follows:

RESTRICTION:

Against transportation originating from any point in Douglas County, State of Colorado, that is located south of a line beginning on the Douglas/Jefferson County boundary, and extends to a point on the Douglas/Elbert County boundary, said line is parallel to the northern El Paso County boundary as drawn through exit 172 of Interstate Highway 25.

5. The application of Liberty Taxi Corporation (Liberty Taxi) for authority to operate as a taxi common carrier in the Denver Metropolitan area is granted in part.

6. Liberty Taxi is granted authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers

- (A) Within and between all points in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, State of Colorado; and
- (B) From all points in the City and County of Denver, including Denver International Airport, on the one hand, to all points in the State of Colorado, on the other hand.

RESTRICTIONS:

- (I) Part A is restricted against service to, from or between points lying within that portion of Douglas County lying south of an east-west line drawn through Exit 172 of Interstate Highway 25 and parallel to the northern boundary of El Paso County.
- (II) To the use of 150 vehicles at any given time.

7. The authority granted in Ordering Paragraph No. 6 is conditioned upon Liberty Taxi meeting the requirements contained in this Order and the authority is not effective until these requirements have been met.

8. Liberty Taxi shall not commence operation until it has:
 - (a) Caused proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission in accordance with Rule 6007 (Financial Responsibility) 4 *Code of Colorado Regulations* (CCR) 723-6;
 - (b) For each vehicle to be operated under authority granted by the Commission, paid to the Commission, the \$50.00 vehicle identification fee required by Rule 4 CCR 723-6-6009, or in lieu thereof, has paid the fee for such vehicle(s) pursuant to Rule 4 CCR 723-6-6401 (Unified Carrier Registration Agreement);
 - (c) Filed a tariff in compliance with Rule 4 CCR 723-6-6207 (Tariffs), with an effective date no earlier than ten days after the tariff is received by the Commission;
 - (d) Paid the \$5.00 issuance fee required by § 40-10-109(1), C.R.S., or § 40-11-108(1), C.R.S.; and
 - (e) Received notice in writing from the Commission that it is in compliance with the above requirements and may begin service.

9. Any questions regarding the completion of these requirements may be directed to Gary Gramlick of Commission Transportation Staff at 303-894-2870.

10. If Liberty Taxi does not comply with the requirements of Ordering Paragraph No. 8 above, within 60 days of the effective date of this Decision, then Ordering Paragraph No. 6 above shall be void. On good cause shown, the Commission may grant Liberty Taxi additional time for compliance with this Order.

11. The right of Liberty Taxi Corporation to operate shall depend upon its compliance with all present and future laws and regulations of the Commission.

12. 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.

13. 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.

14. 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

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director