

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-0786CP

IN THE MATTER OF THE APPLICATION OF MY CAR SERVICE NOW, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
GRANTING THE APPLICATION IN PART**

Mailed Date: May 23, 2014

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I. STATEMENT

1. On July 9, 2013, My Car Service Now, LLC (Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). On July 12, 2014, Applicant amended its Application to broaden the physical territory covered by the original Application.

2. The Commission gave public notice of the amended Application on July 15, 2013, as follows:

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

passengers in scheduled service, call-and-demand taxi service, and call-and-demand shuttle service

between all points in the Counties of Larimer and Weld, State of Colorado.

3. Estes Valley Transport Inc. (Estes Valley), Shamrock Taxi of Fort Collins, Inc., and Shamrock Charters, Inc. (collectively, Shamrock or the incumbent), timely intervened of right.

4. During its weekly meeting held August 21, 2013, the Commission deemed the Application complete and referred this matter to an administrative law judge (ALJ) for disposition.

5. On September 30, 2013, the ALJ established procedural deadlines and scheduled the matter for a hearing to take place at the Weld County Combined Courts on November 22, 2013. Decision No. R13-1208-I.

6. On November 1, 2013, Estes Valley filed a “Stipulation” executed by Applicant and Estes Valley. The Stipulation sought to amend the authority sought by the amended Application to add a restriction against providing any transportation service to, from or between points within a twelve-mile radius of the intersection of U.S. Highways 36 and 34 in Estes Park, Colorado. Estes Valley agreed to withdraw its intervention and objection to the Application so long as the restrictive amendment was accepted. *Id.* Shamrock made no filing objecting to the Stipulation.

7. On November 18, 2013, the ALJ accepted the restrictive amendments proposed by the Stipulation, and ordered that the authority sought by the Application be amended as requested by the Stipulation. Estes Valley’s intervention was withdrawn and it was dismissed as a party to this proceeding. Decision No. R13-1446-I.

8. On November 19, 2014, Applicant filed a “Motion to Continue Hearing Scheduled for November 22, 2013” (Motion). The Motion sought to continue the November 22, 2013 hearing and waived the 210-day deadline for a Commission decision to issue as permitted under § 40-6-109.5(3), C.R.S. By Decision No. R13-1450-I issued November 20, 2013, the ALJ granted the Motion and acknowledged Applicant’s waiver of the 210-day deadline imposed by § 40-6-109.5(2), C.R.S.

9. The matter was re-scheduled for a two-day evidentiary hearing on the Application to take place at the Weld County Combined Courts on January 30 and 31, 2014. Decision No. R13-1505-I issued December 5, 2013.

10. At the date, time, and location designated, January 30, 2014, the ALJ convened the hearing. Both parties appeared. Applicant was represented by Mr. Brad Martin, Esq.; Shamrock was represented by Mr. Mark Valentine, Esq. The hearing concluded on January 30, 2014.

11. During the course of the hearing, the following witnesses testified on behalf of Applicant: Ms. Alison Hamling, Mr. William Gentry, Mr. Brian Rudy, Mr. Matthew Neal, Mr. David Grimes, and Mr. Peter Martin. Mr. Brad Whittle, Mr. Todd Michels, and Mr. Matthew Heafner testified on behalf of Shamrock.

12. At the hearing, Hearing Exhibit 1 with hand-written notes and marks was identified, offered and, admitted into evidence. The ALJ also admitted by administrative notice, Exhibits A and B, which Shamrock electronically filed with the Commission on November 12, 2013.

13. Upon the parties' request, the ALJ ordered that the parties may submit simultaneous statements of position by 5:00 p.m. on February 14, 2014. The parties timely made those filings.

14. In reaching this Recommended Decision the ALJ has considered all arguments presented by the parties and all evidence admitted at the hearing, including arguments and evidence not discussed in this Decision.

II. FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS

15. The parties offered the following stipulated facts, which the ALJ accepts.¹ In particular, the ALJ finds that the population of Weld and Larimer Counties, Colorado are each

¹ The parties also asked the ALJ to take administrative notice of their stipulated facts.

over 70,000 and that the population density for each of those counties is over 40 persons per square mile.²

A. Applicant.

16. Applicant, a limited liability company, seeks authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in scheduled service, call-and-demand taxi service, and call-and-demand shuttle service between all points in the Counties of Weld and Larimer, State of Colorado, except for transportation service to, from or between points within a twelve-mile radius of the intersection of U.S. Highways 36 and 34 in Estes Park, Colorado.

17. Mr. Peter Martin, Ms. Beth Martin, Mr. Randy Watkins, and Ms. Nicole Watkins own Applicant in equal shares and are members of the limited liability company. Mr. Martin is the only owner that testified at the hearing. Mr. Martin has an undergraduate degree in psychology from the University of Northern Colorado (UNC), located in Greeley, Colorado.³ He also earned a master's degree in business administration, with an emphasis in finance and accounting from Regis University. Mr. Martin currently works full time at an accounting firm, Kennedy and Coe. He described the firm as one of the top 100 accounting firms in the United States, and a Fortune 500 company. Mr. Martin plays dual roles with the accounting firm. He manages the firm, while also acting as president of a wholly owned subsidiary of Kennedy and Coe, KC Brokerage Services (KC). He is responsible for the day-to-day operations of the accounting firm in northern Colorado. Mr. Martin manages the firm's accounting functions,

² Mr. Matthew Heafner's testimony supports this finding. He testified that, according to the United States Department of Commerce census data from 2012, the approximate population of Weld County was just under 250,000 and Larimer County's approximate population was approximately 300,000.

³ All references herein to Greeley are references to Greeley, Colorado.

consulting practices, personnel and administrative functions, and helps the firm grow its practice. Mr. Martin is not an accountant. He directly manages three employees, and is indirectly responsible for approximately 38 employees, who are assigned to the firm's Loveland office. Mr. Martin has been with Kennedy and Coe for five years. As president of KC, Mr. Martin oversees that operation as it pertains to mergers, acquisitions, and raising capital. KC focuses on debt and equity placement for midsize businesses.

18. Ms. Beth Martin has an undergraduate degree from the University of Northern Colorado in Greeley. Ms. Martin is the office manager for the SERVPRO of Greeley and Windsor, Colorado. SERVPRO is a national franchise that provides office management services, such as accounts receivable, accounts payable, personnel duties (*e.g.*, hiring and firing), and other office management duties. She provides a range of office duties for many small businesses, including management of a small fleet of commercial vehicles. She handles issues relating to those vehicles and the Department of Transportation, such as ongoing vehicle certifications.

19. Mr. Randy Watkins is a partner at an accounting firm based in Denver, Colorado, Anton Collins Mitchell. Mr. Watkins is a Certified Public Accountant (CPA).

20. Ms. Nicole Watkins is a CPA, and the owner of Aliquam, and an unidentified accounting firm. Aliquam provides bookkeeping, consulting, and accounting services for small businesses. Prior to owning her own company, Ms. Watkins worked for another accounting firm, Deloitte and Touche.

21. According to Mr. Martin, all of Applicant's owners have lived in the northern Colorado community for some time, and are community-minded. For example, Mr. Martin has lived in Greeley for the last 15 years, and serves on the UNC Alumni Board of Directors,

the Northern Colorado Medical Center Foundation Board of Directors, and is involved with Active Northern Colorado 20/30 (Active 20/30) (a fundraising organization benefitting children in the northern Colorado region). Mr. Martin believes that the northern Colorado community has experienced (and continues to experience) significant growth in population, while continuing to be a geographically dispersed area that is beholden to only one taxi company whose service is lacking. He believes the northern Colorado community has a genuine need for additional transportation options because there is a significant problem with the current available transportation. As an example, Mr. Martin points to the Greeley Downtown Development Authority, an effort to revitalize downtown Greeley. He has participated in this effort by running Greeley Oktoberfest for two years (approximately five to seven years ago). During that experience, Mr. Martin learned that drawing people to downtown Greeley is fairly difficult. He believes that the lack of transportation options have been a key missing ingredient to the downtown revitalization effort. Based upon his personal experience, many people who would prefer to go to restaurants or bars downtown to have adult beverages instead elect to go to restaurants within walking distance of their homes because they cannot count on the incumbent's taxicab service to get them home at the end of the evening. He testified that Applicant's other owners have had the same personal experiences.

22. Mr. Martin has called the incumbent for taxicab service in Greeley approximately six times in the last year. He has had a range of responses, including a taxicab that appeared within 15 minutes, 45 minutes, an hour or more, or not at all. During one incident, the incumbent refused to provide transportation from a golf course in Greeley on September 7, 2013, because, according to the incumbent's operator, the incumbent did not know where the golf course was located, even after being given the address for the golf course.

23. Mr. Martin was the only witness who testified concerning transportation in Larimer County. He testified that it is difficult to get to Fort Collins from Greeley unless you have access to a vehicle. In his experience, there is a great deal of movement between Loveland, Fort Collins, Greeley, Windsor, and some of the surrounding communities. He believes there are many people who live in Greeley, but travel to these other destinations for work or to patronize the businesses in those communities.

24. Mr. Martin's difficulty with transportation in or near Larimer County relates to his work with Active 20/30. In particular, Active 20/30 annually holds two large events, "Derby Party" and "Suitcase Party." One of these events is held at the south end of Larimer County, while the other is held on the Larimer and Weld County border. Active 20/30 has struggled to get attendees coming from Greeley to and from these events. Mr. Martin provided no further details.

25. Although Applicant did not present a written business plan, Applicant does have one. None of Applicant's owners will receive income from the business for the first year. The owners are prepared to fund a loss on the business for some time. Through its owners, Applicant has immediate access to \$50,000 in cash. Mr. Martin is experienced with helping small businesses raise money, find equity, and debt. Mr. Martin's background in helping small businesses get capital will be especially helpful when the need for more money arises. Before taking on new debt, Mr. Martin will use his skills to raise capital through the equity markets (seeking investors). Moreover, each of the four partners have the kind of credit that would enable them to borrow money if necessary, and they are willing to take on debt for the Applicant.

26. Applicant intends to start with two to four Kia Souls. Mr. Martin has researched financing options for the Kia Soul and is aware of many available options. Based on his years in

the community, Mr. Martin believes that two to four vehicles will adequately serve the Greeley community. Applicant intends to expand the business (adding more vehicles) with the growing public demand that Applicant expects will occur once Applicant becomes well known in the community. Applicant's owners are willing to make the sacrifices necessary to be able to provide taxi service 24 hours a day, 365 days a year, even if that means they are each driving a taxi themselves.

27. Applicant chose the Kia Soul because of its unique character, fuel efficiency, positive consumer report rating, safety, and reliability. Kia Souls are five-passenger vehicles, and include space for baggage. Applicant plans to have the vehicles wrapped with its logo, and contact information; based on his research, Mr. Martin believes this will cost approximately \$2,000 per vehicle.

28. Applicant intends to accept payment by credit card, and has researched credit card processing options that will enable processing from vehicles. Applicant has also researched dispatch systems. In addition to the dispatch system, each vehicle will have communication capacity, being equipped with a cellular telephone. In addition, Applicant has explored several different metering options, but has not decided which system it will employ. Applicant has met with an insurance company to review the types of insurance it will be required to purchase, and to prepare for the cost of insurance. Applicant intends to lease a small office space in Greeley, including garage space, where vehicles and other equipment may be stored.

29. The four partners intend to take turns running Applicant's day-to-day operations, and plan to hire a manager to run business in the long term. They intend to hire drivers. Applicant will look for drivers who may have other work part-time, and who are able to provide safe, reliable service, keep the vehicles clean, and handle passengers in a professional manner.

Applicant intends to have a dispatcher on duty 24 hours a day; Applicant understands this will require multiple persons to work in that capacity. Applicant has reviewed the Commission's regulations and intends to comply with those regulations.

B. Public Witness Testimony in Support of Application.

30. Ms. Alison Hamling testified in support of the Application. Ms. Hamling is the "Director of Experience" for the Greeley Downtown Development Authority (the Authority). The Authority's goal is to be an economic development tool for downtown Greeley. The Authority works to create experiences in downtown Greeley which will enhance current businesses and encourage new business growth. As a part of her job duties, Ms. Hamling is responsible for marketing and organizing events for downtown Greeley. She has been with the Authority for three years. One of the obstacles the Authority has faced in its effort to grow the downtown area is a lack of taxi service.

31. Ms. Hamling is heavily involved with organizing an event held in downtown Greeley called Friday Fest. Friday Fest started in 2012. Friday Fest is held during the warmer months, every Friday night, from 5:00 p.m. to 10:00 p.m. During Friday Fest, a "go cup" service is offered. Individuals use the "go cup" to purchase adult beverages at any of the businesses in the downtown Greeley area participating in Friday Fest. Patrons may walk around the Greeley plaza to enjoy the music and the atmosphere with their filled "go cup." They can walk to any participating restaurant or bar to re-fill their "go cup." There does not appear to be a limit on the number of times a patron may have this "go cup" re-filled. Consequently, Friday Fest's "go cup" makes it easy and convenient for patrons to drink adult beverages. As a Friday Fest organizer, Ms. Hamling requested that the incumbent provide regular and visible taxicab service for the Friday Fest events; she did not believe there were enough taxicabs present for past Friday Fest

events. She set up a taxicab stand within the Friday Fest area. She believed that more people would attend Friday Fest if there were more taxicabs available to transport them from the event. According to Ms. Hamling, the incumbent told her it was interested in having a presence at the Friday Fest. However, during 2012, the incumbent had a presence at the event on 2 of the 19 Friday Fests held. Ms. Hamling continued to make the taxicab stand available during all of 2012 until approximately half-way into the 2013 Friday Fest season. She stopped doing this because the incumbent was not utilizing the stand.

32. During the 2013 Friday Fest season, 21 Friday Fests were held. The incumbent appeared for approximately five or six Friday Fests in 2013. Ms. Hamling only ever observed one taxi present at a time at Friday Fest. In 2013, Friday Fest had approximately 29,000 participants. For 2014, Friday Fest will start on May 2nd and continue to September 26th. As of the time of the hearing, in total, 40 Friday Fest events had been held.

33. When Ms. Hamling promoted downtown Greeley to students at the University of Northern Colorado (in Greeley) (UNC), she learned that students do not patronize the downtown Greeley area due to the lack of transportation between downtown and UNC.

34. Ms. Hamling sought additional taxicab service for another event, "Blues Jam Kickoff." That is when she learned that the Greeley area is only served by the incumbent, and that there is no other option. She believes that introduction of an additional taxi company will bring healthy competition into the area and would be productive for downtown Greeley.

35. Mr. William Gentry testified in support of the Application. With his son Ryan, Mr. Gentry owns several bars and restaurants in Greeley, in the area known as "the 9th Street Plaza." In particular, Mr. Gentry owns The Penalty Box, The Jager, Bears, and Grabo's. The Penalty Box is primarily a college bar. The Jager is a small blues and jazz club.

The Penalty Box and The Jager are located in the same building (one upstairs and one downstairs). Each of them serves food and alcohol. The Penalty Box and The Jager have been in business for approximately six and one-half years. Grabo's is a restaurant and sports bar that has been in business for three and one-half years. Bears is a country bar that has been in business since approximately May or June, 2013. Mr. Gentry serves in many roles for these restaurants and bars. He takes on whatever tasks that need to be done, including bookkeeping, ordering supplies, hiring, firing, training, and bartending.

36. Mr. Gentry is a member of the Responsible Alcohol Retailers Association (RARA). The RARA is a group of concerned alcohol retailers (including liquor stores) who come together to ensure responsible alcohol sales. The organization has had police officers give them lectures and advice on how to become more responsible. The organization meets once a month. Lack of taxicab service has become a regular topic of discussion for the organization. According to Mr. Gentry, he and the other members are largely frustrated with the lack of taxicab service in Greeley.

37. During several meetings of RARA, a representative of the incumbent appeared. The representatives repeatedly assured the organization that service would improve, but there has not been a noticeable difference in the service.

38. Mr. Gentry personally calls taxicabs for patrons at his bars and restaurants on a regular basis. In his experience, the average amount of time it takes for a taxi to arrive after having been called is an hour to an hour and 15 minutes. He has seen it take as much as two hours for a taxicab to arrive. This can be problematic because often the taxicabs do not pick up customers by the time the bars close at 2:00 a.m.; the customers cannot wait inside his bars and restaurants after closing time. There have been occasions when taxicabs do not arrive at all after

being called. When he talks to the drivers, they always tell him that they were dispatched only five minutes before arriving. He has personally witnessed patrons give up on waiting for a taxicab because it was taking too long. He has seen these patrons leave without a taxi. Mr. Gentry is very frustrated with the fact that patrons leave without a taxicab, despite making the effort to be responsible by calling a taxicab. Mr. Gentry's employees have personally driven some patrons home when no taxis appeared because they were desperate to stop patrons from driving while intoxicated. The problem with poor taxicab service is consistent at all four of Mr. Gentry's establishments, and in his personal experience seeking taxicab service outside the time-frame of the bar rush.⁴

39. Mr. Gentry does not drive himself. He uses a car service, Sapphire Car Service (Sapphire). He prearranges his daily transportation with Sapphire, on a monthly basis. He has been using Sapphire for a year and a half. He initially tried using the incumbent's taxi service, but found it to be incredibly unreliable. For example, despite having prearranged a morning pick-up time (to be driven to work), the taxis would show up 10 or 20 minutes late.

40. Mr. Brian Rudy has lived in Weld County for 21 years. Mr. Rudy is a small business owner, a city council member for the City of Evans (Evans), and a wrestling coach at Greeley Central High School in Weld County. Mr. Rudy owns two Jimmy John's restaurants in Greeley. Mr. Rudy represents Ward 3 of the City as a city councilman and is serving a four-year term of office. Ward 3 is in Weld County. Mr. Rudy has witnessed rapid growth in the population of Evans.

41. As a city councilman, Mr. Rudy works with the city council to: amend the municipal code for Evans, amend and approve liquor licenses, and address all matters that come

⁴ By "bar rush", the ALJ refers to Thursday, Friday and Saturday nights (early evening and late evening).

before Evans. This includes working with the Greeley Evans Transit (GET) system. The GET is a public bus service that has pick-up and drop-off stations through Greeley and Evans. The GET does not serve the entire geographic area; it does not serve three quarters of Ward 3. The population of Evans is 30,000, with Ward 3 making up approximately 10,000 of that total population. He believes that the GET does not service that area not for a lack of demand, but for a lack of public funding from Evans. As a city councilman, Mr. Rudy has received many complaints from constituents about the lack of available transportation options. It is a problem for his constituents.

42. Before he became a city councilman, wrestling coach and small business owner, Mr. Rudy worked as bartender at Old Chicago in Greeley, while attending UNC. He was a bartender for roughly 13 years. In that role, he was taught to take responsibility for customers who were intoxicated and could not drive. He did his best to make sure those patrons had a safe ride home. On many occasions, he called taxis for his customers. On average, it would take 45 minutes to an hour for a taxi to appear. This became problematic because often the taxis would not pick up customers when the customers had to be out of the restaurant (by 2:00 a.m.).

43. Given his experience with taxis taking 45 minutes to an hour to appear, Mr. Rudy has a personal policy of not bothering to call a taxicab. He has not called a taxicab for himself in approximately four to five years. Because they take too long, if he cannot drive, he chooses to walk rather than call a taxicab. This is the same feeling he gets from his constituents -- that they have given up on calling taxicabs as transportation. Indeed, friends call him for a ride rather than a taxicab.

44. Mr. Matthew Neal supports the addition of a taxicab service in Greeley. He is an attorney with the Colorado Public Defender in Greeley. He has lived in Greeley since July 2013. Prior to that, he lived in the Boulder area for three years.

45. Mr. Neal has had many personal experiences calling taxicabs for transportation in Greeley. He learned quickly that when he needed a taxi, he would have to call multiple times to ensure that a taxicab was actually coming to pick him up. He compared his experiences in Greeley with those that he had in Boulder. In Boulder, Mr. Neal never had any problem getting a cab within 20 to 30 minutes, even on a busy Friday or Saturday night. He assumed the incumbent's service would be similar in Greeley to what he experienced in Boulder. He quickly learned that was not the case.

46. Mr. Neal's first experience calling a taxicab in Greeley was on a weekday morning in July 2013, when he was moving from Boulder to Greeley. He planned to rent a U-Haul moving truck in Greeley, which he would drive to Boulder. He intended to take a taxicab to the U-Haul to avoid leaving his car at the U-Haul office while moving. Once he got his U-Haul truck, he planned to drive it to his home in Boulder, where a group of friends waited to help him move. Mr. Neal called the incumbent for a taxicab as planned. He waited an hour, but no taxicab arrived. He called the incumbent again; he was told that there was no problem and that a taxicab was coming. Another hour went by, and no cab arrived. He called again. Approximately two and a half hours after his first call, the taxicab arrived. During that time, he sat in his empty house, waiting for a taxicab. Meanwhile, his friends in Boulder waited for hours to help him move.

47. Mr. Neal's second experience calling a taxicab in Greeley was in December 2013. While on his way to work at approximately 7:30 a.m. on a Thursday morning, Mr. Neal got a flat

tire. He had his car towed to a tire store. He needed to get to work at the courthouse, so he called the incumbent for a taxicab, at approximately 8:45 a.m. Mr. Neal was eager to get to work that morning because he was scheduled to be in court. He remembers specifically asking the dispatch operator how long it would take for a taxicab to arrive. He decided that if it was going to take too long, he would call a friend for a ride. However, the dispatch operator told him there would be no problem getting a taxicab to him quickly, and that a taxi would be there anywhere within 5 to 30 minutes. While waiting for a taxicab, he walked a few doors down to get breakfast at McDonald's. After waiting for an hour, he called the incumbent again. The operator told him that there was a taxicab on the way and that it would arrive within 5 to 30 minutes. Mr. Neal waited another hour, and still no taxicab had arrived. He began to get nervous that he would be late for court, which was scheduled to start at 1:00 p.m. He started to call friends to get a ride to work. He reached a friend who picked him up and gave him a ride to work. After Mr. Neal was at work, at approximately 12:15 p.m., he received a call informing him the taxicab had arrived. This was approximately three and one-half hours after he initially called for a taxicab at 8:45 a.m.

48. Although Mr. Neal had many positive experiences with taxicabs in Boulder, he has had none in Greeley. His experiences have been so negative that he no longer has any confidence that he could actually get a taxicab in a timely manner. Mr. Neal would frequent businesses in the downtown area more often if he had more confidence in the taxicab service.

49. Mr. David Grimes supports the addition of a new taxi company to Greeley. Mr. Grimes has lived in Greeley for 30 years. He works for Sprint as a "federal government telecom guy." During his 30 years living in Greeley, Mr. Grimes has had many experiences trying to get a taxicab. From his perspective, historically, taxicab service has not been an easy or

timely way of getting around in Greeley. In his experience, it takes a great deal of time to get a taxicab. For example, in the last year, Mr. Grimes has attempted to get a taxicab on several occasions for a Friday, by calling the company on a Thursday night. The dispatch operator told him that the incumbent would not provide pre-arranged transportation service. The last time this happened was in October 2013. He called the incumbent and asked for a taxicab to pick him up the following day at a particular time. The dispatch operator told him they would not do that, and that he needed to call back the following day. So, he did. He called 15 to 20 minutes before he needed to arrive at his destination. It took 45 minutes for a taxi to arrive; when he wanted to get home later that day, it took an hour for a taxicab to arrive. He found this to be very inconvenient.

50. Mr. Grimes has also called the incumbent for taxicabs in the last year from Greeley bars or restaurants on approximately four to six occasions. The shortest time he waited was 45 minutes; the longest time he waited was an hour and ten minutes. Because there is only one company that serves the Greeley area, (the incumbent), Mr. Grimes has had no choice but to call the incumbent, despite his repeated negative experiences. If there were another company, he would most certainly utilize its services. Based upon his personal experiences and observations during his 30 years in Greeley, Mr. Grimes believes there is a public need for an additional taxi company in Greeley.

C. Testimony in Opposition to the Application.

51. Mr. Brad Whittle testified in opposition to the Application on behalf of the incumbent. Mr. Whittle is a Senior Vice President for Veolia Transportation on Demand (Veolia). Veolia owns the incumbent. He has worked in the transportation industry in Colorado for 12 years. Mr. Whittle is a CPA, but is no longer licensed to practice.

52. As Senior Vice President, Mr. Whittle has operational responsibility over Colorado and Kansas. He is also responsible for merger and acquisition activity for Veolia for the entire United States. His day-to-day duties include managing the supervisors who cover the divisions in his territory, supervising human resources employees, and the regional controller, monitoring the profitability of the business, budgets, monthly financial statements, and operational statistics. He is also involved with managing the company's capital expenditures. The incumbent operates approximately 60 vehicles in Larimer and Weld Counties. However, Mr. Whittle did not testify as to the number of drivers designated to serve Larimer and Weld Counties. The incumbent has no plans to increase the number of available drivers for Weld County.

53. In Larimer and Weld Counties, the incumbent is not limited on the number of taxicabs it may put in the field. Under the incumbent's operation, a driver keeps the money from the fares he drives. Consequently, the more trips, the more money drivers make. According to Mr. Whittle, drivers follow the money. The drivers in Greeley have not been terribly busy. Mr. Whittle testified that the company tracks the calls received for transportation and information on when the trip is fulfilled. Mr. Whittle did not know how many trips had been requested and fulfilled for Weld and Larimer Counties in 2013.

54. Mr. Whittle believes that if Applicant is given a permit to operate a taxicab company, the result will be destructive competition. He believes there will be too many taxis in the market and the drivers will not make as much money. In his view, if the drivers do not make as much money, the quality of service will be decreased because the incumbent's high quality drivers will leave the service area. He believes that a grant of authority to a second taxi company would create a downward trend for both companies.

55. Mr. Whittle criticized Applicant for not offering a written business plan. He does not believe Applicant has thought its plan through sufficiently.

56. In 2013, the incumbent's net income was just under \$200,000 from Larimer and Weld Counties, excluding the incumbent's \$280,000 in outstanding accounts receivable. The incumbent spent over \$500,000 on capital expenditures in 2013 for the Larimer and Weld County markets. He explained that capital expenditures are not considered a part of the company's annual expenses because the company takes depreciation on the capital expenditures over a number of years. He reiterated this on cross-examination.

57. The company's largest annual expenses are for salaries, labor, and benefits. The company's expenses also include the cost of marketing and insurance. Mr. Whittle did not provide a figure for the company's annual expenses for Weld and Larimer Counties (for any year). Indeed, when asked whether the company's annual expenses were in excess of \$500,000, Mr. Whittle testified that the \$500,000 figure he cited is only for capital expenditures for purchasing vehicles in 2013. He never provided any numbers as to the company's annual expenses for any year for any market.

58. Mr. Todd Michels is the General Manager for the northern Colorado geographical area for the incumbent's owner, Veolia. Mr. Michels did not testify to his job duties. Weld and Larimer Counties are within the geographical territories that Mr. Michels manages; consequently, he manages the incumbent. According to Mr. Michels, eight of the ten drivers assigned to serve Weld County live in Weld County. When asked how many vehicles are assigned to serve Weld County, Mr. Michels testified that the incumbent operates under "tandem leases" in Weld County. This means that multiple drivers share a single vehicle. For example, one driver will drive during the day shift, while the other drives for the night shift. The vehicles do not have to

return to a base location daily; instead the vehicles return to the base location on a weekly basis. Generally, the vehicles stay in the territory that is being served. The base location is in Fort Collins. Mr. Michels never testified to the number of vehicles assigned to Weld County (even under tandem leases).

59. Currently, the incumbent's entire northern Colorado territory is served by approximately 60 taxicabs, which includes Larimer and Weld Counties. The company is in the process of adding additional vehicles.⁵ Mr. Michels testified that when demand for service increases in Greeley, that the company incentivizes its drivers to fulfill that demand by providing drivers with a credit. He did not explain what this means, nor did he provide any additional information to show this has made any difference. The incumbent believes that ultimately, the Weld County market is not a consistent taxicab market for them. Roughly 20 percent of call demand for northern Colorado is from Weld County, while 80 percent of the volume is from Larimer County. He testified that if a competitor joins the market, the value of the incumbent's capital investment will be diluted because the company will not be able to maximize its return on the capital assets. Mr. Michels did not provide any more information to explain or support this conclusion.

60. Mr. Michels also testified that if a competitor were to join the northern Colorado market, that the incumbent would re-evaluate its commitment to serving the area. In other words, if the incumbent does not meet its goals, the company may elect to scale back its operation or to exit the market entirely. Mr. Michels did not provide any information as to the

⁵ However, according to Mr. Whittle, the incumbent is not adding drivers to serve Weld County, so it is unclear whether the addition of vehicles will improve the service in Weld County. *Supra*, ¶ 52.

company's goals (including whether and to what extent it has met its goals in the northern Colorado market, and why failing to meet its goals would require it to scale back its operation).

61. Mr. Michels also testified that when the incumbent received a request to provide taxicabs at the Friday Fest event, that they did provide taxicabs. He testified that he personally observed the taxicab stand in June 2013 during a Friday Fest event. He said that he also spoke with drivers in attendance at the event. Mr. Michels testified that no one attempted to flag down taxicabs, that no one called for a taxi at the Friday Fest, and that it was "a nonevent" for the taxi drivers. It is unclear whether Mr. Michels was referring to the single event he attended in June 2013. He did not provide any information as to when he sent taxis, how long they were present, at how many of these events his taxis were present, or how many Friday Fests were "nonevents" for his company. Nor did he provide any data to substantiate his testimony that no one flagged or called a taxicab during the event at all.⁶ The ALJ finds it hard to believe that an event such as these, not a single person requested taxicab service.

62. Mr. Matthew Heafner is an Area Call Communications Manager for the incumbent. He testified that for 2013, his company received approximately 6,000 calls per month, or 72,000 per year, requesting transportation service from Weld and Larimer Counties. He did not know how many of those calls were fulfilled or the average amount of time it took for a taxicab to pick up the callers.⁷ However, according to Mr. Whittle's testimony, this is information the incumbent has available to it. *Supra*, ¶ 53. Mr. Heafner did not indicate how

⁶ According to Mr. Whittle's testimony, the incumbent has access to this information. *Supra*, ¶ 53.

⁷ The ALJ specifically asked Mr. Heafner how many of the 72,000 calls in 2013 were fulfilled; he initially testified that all but one of the calls were fulfilled. On cross-examination, Mr. Heafner testified that he did not know how many of the calls were fulfilled.

many of the 72,000 calls per year were for requests from Weld County, as opposed to requests from Larimer County.

D. Burden of Proof.

63. Applicant, as the proponent of an order, bears the burden of proof by a preponderance of the evidence. §§ 13-25-127(1) and 24-4-205(7), C.R.S.; Rule 1500 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1. 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, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole and however slightly, tips in favor of that party.

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

E. Legal Standards Governing Application.

65. As the Application has been amended, the Applicant seeks authority to operate as a common carrier by motor vehicle for hire for the transportation of passengers in scheduled service, call-and-demand taxi service, and call-and-demand shuttle service between all points in the Counties of Larimer and Weld, State of Colorado excluding transportation to, from, or between points within a 12-mile radius of the intersection of U.S. Highways 36 and 34 in

Estes Park, Colorado. Thus, Applicant seeks authority to provide three different types of common carrier service.

66. Scheduled service is the transportation of passengers by a common carrier between fixed points and over designated routes at established times as specified in the carrier's time schedule that is approved by the Commission. Rule 6102(l) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. Shuttle service is the transportation of passengers by a common carrier on a call-and-demand basis charged at a per-person rate; the use of the motor vehicle is not exclusive to any individual or group. Rule 6102(m), 4 CCR 723-6. Finally, taxicab service is transportation of passengers by a common carrier on a call-and-demand basis in a taxicab, with the first passenger having exclusive use of the taxicab unless that passenger agrees to multiple loading. Rule 6102(r), 4 CCR 723-6. As discussed in more detail below, the same legal standard does not apply to all three types of authority sought.

67. Because the population each of Larimer and Weld Counties is more than 70,000, the doctrine of regulated competition applies to the request for authority to operate a taxicab service in those Counties. § 40-10.1-203(2)(b)(I), C.R.S. On the other hand, the doctrine of regulated monopoly applies to Applicant's request for authority to operate call-and-demand shuttle and scheduled service in Larimer and Weld Counties. *Yellow Cab Cooperative Association v. Public Util's Comm'n*, 869 P.2d 545, 548 (Colo. 1994); see e.g., Decision No. R13-0441 issued April 16, 2013 in Proceeding No. 12A-1090CP and Decision No. R13-0370, issued March 28, 2013 in Proceeding No. 12A-1185CP. Indeed, unless legislatively dictated otherwise, the doctrine of regulated monopoly applies. *Rocky Mountain Airways, Inc., v. Public Util's Comm'n*, 509 P.2d 804, 807 (Colo. 1973). And, no statute dictates

a standard other than regulated monopoly to applications seeking to provide call-and-demand shuttle and scheduled service.⁸

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

1. Regulated Monopoly - Shuttle and Scheduled Service in Weld and Larimer Counties.

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

⁸ Section 40-10.1-203(2)(b)(I), C.R.S., applies only to taxicab applications, not to applications to operate shuttle and scheduled services.

70. Whether the incumbent carrier's service is substantially inadequate is a question of fact that the Commission must determine. *RAM Broadcasting*, at 751; *Durango Transportation, Inc. v. Pub. Utils. Comm'n.*, 122 P.3d 244, 247 (Colo. 2005). Thus, the question necessarily must be answered on a case-by-case basis upon the unique facts of the given case. Substantially inadequate service is shown by evidence of "a general pattern of inadequate service" on the part of the incumbent carrier. *Durango Transportation*, at 247-48; *Ephraim*, at 232. Substantial inadequacy can also be demonstrated with evidence that the incumbent carrier is not ready, willing, and able at all times to provide the requested service. *Durango Transportation*, at 247-48. The incumbent carrier is not held to a standard of perfection. *Ephraim*, at 232.

71. Applicant provided no evidence relating to the need for scheduled and shuttle service, as sought by the Application. The witnesses universally focused on a need for taxicab service. Moreover, Applicant offered no evidence describing the scheduled and shuttle service it seeks to provide. Because Applicant failed to present any evidence of a need for scheduled and shuttle service, the ALJ must conclude that Applicant failed to meet the first prong of the regulated monopoly burden, that is, to show by a preponderance of the evidence that the public convenience and necessity requires or will require the scheduled and shuttle service Applicant seeks to provide.⁹ Consequently, the ALJ concludes that Applicant failed to meet its burdens under the doctrine of regulated monopoly.¹⁰ As a result, all that remains is Applicant's request to provide the taxicab service in Larimer and Weld Counties.

⁹ Given this, there is no need to consider whether Applicant met its burden to show the incumbent carrier's service is substantially inadequate or whether Applicant is fit to provide scheduled and shuttle service.

¹⁰ This conclusion would be unchanged even if the lower standard under the doctrine of regulated competition applied to scheduled and shuttle service.

2. Regulated Competition – Taxicab Service in Weld and Larimer Counties.

72. To meet its burden under the doctrine of regulated competition, Applicant must show: (1) that the public needs the proposed service; and (2) that it is fit to conduct the proposed service. § 40-10.1-203(2)(b)(I), C.R.S. Under this doctrine, the controlling consideration is the “public need” or the “public interest.” *Trans-Western Express Ltd., v. Public Utilis. Comm’n*, 877 P.2d 350, 353 (Colo. 1994). The public need is broader than the individual needs and preferences of an applicant’s customers; the question turns upon the needs of the public as a whole. *Id.* at 354. The public need is advanced by “safe, efficient, and economical transportation services.” *Id.* In determining the public need, the Commission may consider the adequacy or inadequacy of existing services. *Id.*

73. The Applicant produced substantial credible evidence demonstrating a public need for the taxicab service it proposes in Weld County. Several witnesses testified to experiences with the incumbent which go well beyond a mere personal preference for Applicant’s service. *Supra*, ¶¶ 30-50. For example, Ms. Hamling’s testimony that the incumbent has repeatedly failed to provide adequate taxicab service for Greeley’s Friday Fest events is credible evidence showing a public need in Weld County for the taxi service sought. Particularly given that Friday Fest offers a “go cup” to make the consumption of adult beverages more convenient, the public need for taxicab service in Weld County is heightened. Moreover, it also demonstrates that additional taxicab service would be in the public interest.

74. As the owner of four restaurants and bars in Greeley, Mr. Gentry’s testimony that his patrons regularly have difficulty getting taxicab service from the incumbent also demonstrates a public need for an additional taxicab service in Greeley. Indeed, his testimony that his patrons have given up on waiting for taxicabs is particularly disturbing. The public need

for a taxicab service is further exemplified by the fact that Mr. Gentry's employees have driven patrons home when no taxicabs appeared because they were desperate to stop patrons from driving while intoxicated. This highlights that the addition of a taxicab service in Weld County is in the public interest.

75. There was additional substantial evidence of a public need for an additional taxicab company outside the bar rush. For example, Mr. Gentry's personal experience with the incumbent's service further supports the conclusion that there is a public need for additional taxicab service in Weld County. As a person who no longer drives, Mr. Gentry is in the perfect position to have tested and retested the incumbent's service. In his experience, the incumbent has been unreliable on a consistent basis. As a city councilman for Ward 3 in Weld County, Mr. Rudy also provided credible evidence of the public need for an additional taxicab service. His constituents have complained to him about the lack of available public transportation; that has become a problem for his constituents. This is further credible evidence that the public needs an additional taxicab service in Weld County. Likewise, Mr. Neal and Mr. Grimes's repeated negative experiences with the incumbent being unreliable support the conclusion that there is a public need for an additional taxicab service in Weld County. *Supra*, at ¶¶ 39-50.

76. Based upon the above, the ALJ finds that Applicant has met its burden to show by a preponderance of the evidence that there is a public need for an additional taxicab service in Weld County.

77. However, Applicant provided almost no evidence of a public need for an additional taxicab service in Larimer County. In fact, the only witness who testified concerning Larimer County at all was Mr. Martin. His testimony was limited to his opinions and his experience with annual fundraising events in or near Larimer County. *Supra*, ¶¶ 23-24.

At best, this shows that the charity may have a need for additional transportation during its events. This is not enough to show by a preponderance of the evidence that there is a public need for an additional taxicab service in Larimer County. The ALJ concludes that Applicant failed to meet its burden to show by a preponderance of the evidence that there a public need for taxicab service in Larimer County.

a. Destructive Competition

78. The incumbent contends that granting Applicant authority to provide taxicab service in Weld County would result in destructive competition. It is appropriate for the Commission to consider the impact of additional competition on the economic health of existing carriers, as well as their ability to provide the public with safe, efficient, and economical service. *Trans-Western Express Ltd.*, 877 P.2d at 354. Providing for the public need and regulating competition demands that some restraints be placed upon inter-carrier competition to avoid destructive competition. *Id* at 353, n.7, citing *Morey v. Pub. Utils. Comm’n (Morey II)*, 629 P.2d 1061, 1066 (Colo. 1981).

79. The Commission has discussed the meaning of destructive competition, stating: “[i]t is important to differentiate between adverse financial impact caused by a normal competitive process and adverse financial impact caused by competition that harms the public interest.” Decision No. C08-0933, at ¶ 32, issued September 4, 2008 in Consolidated Proceeding Nos. 08A-241CP, 08A-281CP-Extension, 08A-283CP, 08A-284CP-Extension, and 08A-300CP (*Union Taxi*). The Commission found that adverse financial impact *per se*, does not prove public detriment because it may serve the public interest or be neutral with respect on the public interest. *Id.* An incumbent taxi carrier seeking to establish public detriment due to its adverse financial impact “should be prepared to open its books and records as a means of

demonstrating such impact and provide evidence of a nexus with detriment to the public interest.” *Id.* Likewise, when an incumbent carrier argues the adverse financial impact on it will result in a negative impact on the quality of service being offered to the public, the Commission expects that carrier to provide “specific evidence of a cause-and-effect relationship between such negative impacts” and the particular application at issue. *Id.* at ¶ 33. Theoretical evidence, or evidence without a risk assessment as to the likelihood of those impacts occurring based upon the application at issue has less probative value than evidence directly connected to the application at issue. *Id.*

80. The incumbent provided witness testimony that the addition of a taxicab service would likely mean fewer trips for the incumbent’s drivers, resulting in less income for their drivers, which may cause the drivers to leave Weld County. However, the incumbent did not provide evidence to support this conclusion. More importantly, other than speculative lay opinion testimony, the incumbent provided no evidence to indicate that the introduction of a new taxicab service would have a negative financial impact on it. It was instead assumed that there would be a negative financial impact on the incumbent. The ALJ is not convinced this is the case. Indeed, there was evidence that because Weld County has been under-served for a significant period of time, that customers have given up on requesting taxicab service; the area could produce a good number of untapped customers who will start to use taxicab service once it is known that there are more options available.

81. Even if the ALJ were to assume that the introduction of a competitor into the market may have an adverse financial impact on the incumbent, the incumbent produced no evidence to show that such an adverse financial impact would harm the public interest. As previously discussed, adverse financial impact *per se*, is not sufficient to prove

public detriment. *Supra* at ¶ 79; *Union Taxi*, Decision No. C08-0933, at ¶ 32. The incumbent did not present financial data or records to demonstrate how the grant of authority would result in a detrimental public impact. Nor did incumbent provide evidence of a nexus between any adverse financial impact on the incumbent to a detriment to the public interest. *Union Taxi*, Decision

No. C08-0933, at ¶ 32. Likewise, the incumbent did not provide specific evidence of a cause-and-effect relationship between such negative impacts and the Application at issue. *Id.* at ¶ 33. And, there was no showing that the operations considered herein, as addressed in evidence at hearing, will impact incumbent's operating results or otherwise impair its ability to provide taxi service under its certificate. Ultimately, incumbent has provided only theoretical and speculative evidence, without any risk assessment as to the likelihood of those impacts occurring as a result of the particular Application at issue. That evidence has little probative value.

82. The ALJ rejects the incumbent's argument that the addition of a taxicab service in Weld County will result in destructive competition. Thus, based on the evidence of record as a whole, the ALJ finds that a grant of authority to Applicant to operate a taxicab service in Weld County will not be detrimental to incumbent's operations.

3. Fitness

83. Applicant carries the burden to establish its "fitness," including, managerial, financial and operational fitness, to conduct the service it proposes. Because the ALJ finds that Applicant failed to establish a public need for taxicab service in Larimer County and failed to establish that the present or future public convenience and necessity requires or will require scheduled and shuttle service in Larimer and Weld Counties, there is no need to consider whether Applicant has shown its fitness for those services. As Applicant has only shown a public need

for a taxicab service in Weld County, the ALJ will consider whether Applicant has met its burden to show fitness to operate that service alone.

84. In general, operational fitness encompasses a consideration of whether the applicant has the equipment, personnel, facilities, and the managerial experience to conduct for-hire passenger carrier operations. Whether the applicant is willing and able to comply with applicable public utilities laws also bears upon the question of fitness. *See, Thacker Brothers Transportation v Public Utilities Commission*, 543 P.2d 719, 721 (Colo. 1975). Although the Commission has no rules quantifying a financial fitness standard, the applicant must make some showing, however minimal, that it either has or has access to financial resources that will enable it to implement the proposed service. *Acme Delivery Service, Inc. v. Cargo Freight Systems, Inc.*, 704 P.2d 839, 843 (Colo. 1985). Fitness must be evaluated on a case-by-case basis upon the unique circumstances of each applicant and the proposed service. *See e.g.*, Decision No. C09-0207, issued February 27, 2009, Consolidated Proceeding Nos. 08A-241CP, 08A-283CP, 08A-284CP-Extension, and 08A-300CP.

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

- minimum efficient scale, that is, whether a minimum size of operation is required and, if such a minimum does exist, conceptually what is the approximate magnitude for markets at issue;
- credit worthiness and access to capital;
- credit history and assessment of financial health over the near future;
- capital structure and current cash balances;
- managerial competence and experience;

- fixed physical facilities such as office space and maintenance garages, as appropriate;
- appropriate licenses and equipment necessary to operate a radio dispatch system; and
- vehicles of appropriate type.

Union Taxi, Decision No. C08-0933, at ¶ 7. The ALJ will endeavor to address each of the above evidentiary factors.

a. Minimum Efficient Scale

86. There was little evidence showing the minimum efficient scale for operating a taxicab service efficiently and reliably in Weld County. Applicant intends to start the business with two to four vehicles and to add vehicles as demand increases. Applicant intends to hire drivers and staff for the dispatch center; Applicant's owners will fill in as needed.

87. The incumbent is the only taxicab service in Weld County, and thus evidence of the incumbent's dedication of resources may be useful in determining the minimum efficiency scale. However, the evidence on this was unclear or incomplete. For example, the incumbent's evidence as to the number of vehicles assigned to serve Weld County was unclear.¹¹ In particular, the incumbent operates in Weld County under tandem-leases with ten drivers assigned to serve the Weld County area. This means that drivers share vehicles; one driver may take the day shift while another takes the night shift. It is entirely feasible that more than two drivers may share the same vehicle. Given that, the ten drivers assigned to Weld County may

¹¹ The incumbent's Statement of Position alleges that it has ten vehicles assigned to service Weld County. Incumbent's citation to the record instead shows that the incumbent has ten *drivers* assigned, not ten vehicles. Mr. Whittle testified that the number of vehicles varies, but that he believes there are five to ten vehicles assigned to Weld County. He also said that Mr. Michels has more accurate information to answer that question. When asked the same question, Mr. Michels explained that the incumbent operates under tandem leases. He did not state how many vehicles were assigned to Weld County. Given both of the witnesses' statements, the ALJ will not rely on Mr. Whittle's testimony as to the number of vehicles assigned to Weld County, as that testimony lacks credibility.

very well be driving a total of five or fewer vehicles. This is not far from Applicant's proposal to start with two to four vehicles. And, given Applicant's plan to expand the operation to add more vehicles as the demand necessitates and Mr. Martin's credible testimony that Applicant will do whatever is necessary to abide by the Commission's rules, the ALJ believes that Applicant will be able to meet the minimum efficient scale necessary to adequately serve Weld County.

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

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

89. Applicant is a limited liability company funded by its four owners. Although Applicant did not present a written business plan, it was clear that Applicant does have one. Applicant has \$50,000 immediately available to it through its owners. Should Applicant require more than \$50,000 (which would be unsurprising), Mr. Martin will use his experience helping small businesses with debt and raising capital to bear. The ALJ has no doubt that Mr. Martin will be able to raise the additional capital that will be needed for Applicant. None of the partners plan to take income from the business for the first year; the owners are prepared to fund a loss on the business for some time. Moreover, all of Applicant's owners have good credit and are willing to take on new debt on Applicant's behalf, as necessary. The ALJ has no reason to doubt Mr. Martin's statements. Indeed, the ALJ found Mr. Martin to be credible.

90. The incumbent argues that \$50,000 is nowhere near what is necessary for Applicant's business. In support, the incumbent points to the fact that it spent \$500,000 in 2013 on capital expenditures, which excludes the cost of insurance, employees, maintenance, and other expenses. This information relates to the incumbent's full operation in both Weld and Larimer Counties, and, therefore is not a fair reflection of expenditures for running the Weld County market, the only market remaining at issue. Moreover, the fact that the incumbent spent \$500,000 on capital expenditures does not mean that Applicant will be required to do so. Incumbent also argues that Applicant would spend all of its \$50,000 to purchase vehicles. However, Mr. Martin testified that he researched the available financing options for purchasing vehicles; he never testified that Applicant would use all of its cash on hand to purchase vehicles. Applicant has researched the specifics of other operating expenses, such as metering, credit card processing, insurance, Commission requirements for hiring drivers, and dispatch systems. As more fully discussed below, the ALJ is convinced that Applicant's owners are savvy business people who can exercise good judgment in spending Applicant's cash so that Applicant is able to obtain all the necessities for providing adequate taxicab service to the Weld County public as required by the Commission's rules.

c. Managerial Competence and Experience.

91. Applicant's owners will manage the business until Applicant hires a manager. Each of the owners is a successful professional. Most of them have experience managing people and running companies. Although none of them have experience working in the transportation industry, given their business savvy, the ALJ believes they will be able to learn the industry quickly and adjust their business approach as necessary. Indeed, each of Applicant's owners is well educated and has enjoyed successful careers. The ALJ believes that what they lack in

experience in the transportation industry, they make up for in management experience, entrepreneurial experience, and dedication to serving the people of Weld County. The partners are willing to make the sacrifices necessary to be able to provide service 24 hours a day, 365 days a year, even if that means they are each driving a taxi themselves. Applicant intends to have a dispatcher on duty 24 hours a day. Applicant has reviewed the Commission's regulations and intends to comply with those regulations. The ALJ finds that the preponderance of the evidence demonstrated that Applicant is managerially fit.

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

92. Applicant has investigated options for office space in Weld County. Applicant appears prepared to rent or lease office space once the authority is approved. Applicant's goal is to have a small facility that would have some garage capacity. Applicant has explored several options that would meet its needs. Understandably, Applicant has not already rented or leased the office space. The ALJ is satisfied that Applicant will be able to lease fixed physical facilities to accommodate its needs, include garage space.

93. Applicant has investigated several options for a dispatch system. Among those options is a dispatch system that includes global positioning satellite (GPS) capabilities. The vehicles will not have radio communications, but they will each have a cellular telephone assigned, so that the drivers are able to easily communicate with dispatch or anyone else as necessary to provide service. Applicant will further investigate and select a dispatch system after its authority is approved. The Commission's rules do not dictate the type of dispatch system required for Applicant to service Weld County, so Applicant is free to choose one that will meet its needs.

e. Vehicles of Appropriate Type.

94. Applicant intends to start with two to four new Kia Souls. Applicant chose the Kia Soul because it has a unique character, good consumer report rating, is reliable, and fuel efficient. The Kia Soul is a five-passenger vehicle with room for baggage. Applicant plans to obtain white vehicles which will be wrapped with its logo and information. Applicant has already investigated the cost of wrapping the vehicles. Applicant agreed to comply with the Commission's rules and regulations relating to information posted on the taxicabs. The ALJ finds that the Kia Soul is a vehicle of appropriate type for a taxicab service.

f. Conclusion as to Fitness.

95. While Applicant's business plan may contain apparent flaws, its usefulness to determine the company's operational and financial fitness has been established. The test of fitness is not perfection. While there may be gaps in the business plan Applicant presented at hearing in terms of financial planning for expenses, this uncertainty is not fatal to a finding of fitness. Given the success and background of Applicant's owners, the ALJ is confident that once Applicant is able to start operations, it will address any gaps in financial planning to ensure that its capital resources are spent appropriately and that more capital is infused into the business as necessary to adequately serve the Weld County community, consistent with the Commission's rules and requirements. The ALJ concludes that Applicant's financial situation is sufficient to initially support it as a start-up taxi company. It has adequate cash on hand to support initial operations and meet short-term contingencies. In addition, the company has a plan to meet additional capitalization needs. As to the other metrics required to meet fitness, the ALJ finds that Applicant's proposals for vehicles, fixed physical facilities have been sufficiently addressed and supported through testimony.

96. Applicant provided credible evidence that it will operate in accordance with the Commission's Rules Regulating Transportation by Motor Vehicle and agrees to be bound by those Rules. Based upon the evidence offered at the hearing as a whole, the ALJ concludes that Applicant has met its burden to show by a preponderance of the evidence that it possesses the financial, operational, and managerial fitness necessary to conduct operations under the authority granted herein.

F. Conclusion.

97. Consistent with the above findings, the ALJ concludes that Applicant failed to meet its burden under the doctrine of regulated competition to provide call-and-demand taxicab service in Larimer County, and that Applicant failed to meet its burden under the doctrine of regulated monopoly to provide scheduled and call-and-demand shuttle service in Weld and Larimer Counties. The ALJ finds that Applicant has met its burden under the doctrine of regulated competition to provide call-and-demand taxicab service in Weld County and that the Commission should grant Applicant such an authority.

98. The authority granted herein is only for operations in Weld County. Thus, the restrictive amendment to the Application previously accepted is not necessary, since it covers areas outside of Weld County.

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

III. ORDER

A. The Commission Orders That:

1. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire filed by My Car Service Now, LLC (Applicant) is granted in part and denied in part.

2. The Applicant is denied to the extent that it seeks a Certificate of Public Convenience and Necessity (CPCN) to operate a common carrier by motor vehicle for hire for the transportation of passengers in scheduled and call-and-demand shuttle service in Weld and Larimer Counties, and to operate as a call-and-demand taxicab service in Larimer County.

3. Applicant is granted a CPCN to operate as a common carrier by motor vehicle for hire

for the transportation of
passengers in call-and-demand taxi service in Weld County, Colorado.

4. To the extent necessary, this Decision modifies the previous amendment to the Application restricting service to, from or between points within a twelve-mile radius of the intersection of U.S. Highways 36 and 34 in Estes Park, Colorado as unnecessary due to the fact that the geographical territory covered by the authority granted already excludes the identified area.

5. Applicant shall operate in accordance with all applicable Colorado law and Commission rules.

6. Applicant shall not commence operation until it has complied with the requirements of Colorado law and Commission rules, including without limitation:

- (a) causing proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission;

- (b) paying to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- (c) having an effective tariff on file with the Commission. Applicant shall file an advice letter and tariff on not less than ten days' notice. The advice letter and tariff shall be filed as a new Advice Letter proceeding and shall comply with all applicable rules. In calculating the proposed effective date, the date received at the Commission is not included in the notice period and the entire notice period must expire prior to the effective date. (Additional tariff information can be found on the Commission's website at dora.colorado.gov/puc and by following the transportation common and contract carrier links to tariffs)]; and
- (d) paying the applicable issuance fee (\$5).

7. If Applicant does not cause proof of insurance or surety bond to be filed, pay the appropriate motor vehicle fees, file an advice letter and proposed tariff, and pay the issuance fee within 60 days of the effective date of this Decision, then the grant of a CPCN shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within 60 days of the effective date of this Decision.

8. The Commission will notify Applicant in writing when the Commission's records demonstrate compliance with ordering paragraph 6.

9. Proceeding No. 13A-0786CP is closed.

10. 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.

11. 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.

12. 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)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge