

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

| | | |
|--------------------------------------|---|-----------------------|
| THE APPLICATION OF METRO TAXI, INC. |) | |
| FOR A CERTIFICATE OF PUBLIC |) | DOCKET NO. 94A-349CP- |
| CONVENIENCE AND NECESSITY TO OPERATE |) | EXTENSION |
| AS A COMMON CARRIER BY MOTOR VEHICLE |) | |
| FOR HIRE. |) | |

| | | |
|--------------------------------------|---|----------------------|
| THE APPLICATION OF DONALD W. FUCHS |) | |
| AND RONALD D. OAKLEY, DOING BUSINESS |) | |
| AS PRESTIGE CAB SERVICE, FOR A |) | DOCKET NO. 94A-351CP |
| CERTIFICATE OF PUBLIC CONVENIENCE |) | |
| AND NECESSITY TO OPERATE AS A COMMON |) | |
| CARRIER BY MOTOR VEHICLE FOR HIRE. |) | |

| | | |
|--------------------------------------|---|----------------------|
| THE APPLICATION OF TFG DENVER |) | |
| TRANSPORTATION, INC., DOING BUSINESS |) | |
| AS UNITED CAB, INC., FOR A |) | DOCKET NO. 94A-352CP |
| CERTIFICATE OF PUBLIC CONVENIENCE |) | |
| AND NECESSITY TO OPERATE AS A COMMON |) | |
| CARRIER BY MOTOR VEHICLE FOR HIRE. |) | |

| | | |
|--------------------------------------|---|----------------------|
| THE APPLICATION OF FREEDOM CABS, |) | |
| INC. FOR A CERTIFICATE OF PUBLIC |) | |
| CONVENIENCE AND NECESSITY TO OPERATE |) | DOCKET NO. 94A-354CP |
| AS A COMMON CARRIER BY MOTOR VEHICLE |) | |
| FOR HIRE. |) | |

| | | |
|--------------------------------------|---|----------------------|
| THE APPLICATION OF DIANA LEZARK, |) | |
| DOING BUSINESS AS EVERGREEN TAXI |) | |
| SERVICE, FOR A CERTIFICATE OF PUBLIC |) | DOCKET NO. 94A-410CP |
| CONVENIENCE AND NECESSITY TO OPERATE |) | |
| AS A COMMON CARRIER BY MOTOR VEHICLE |) | |
| FOR HIRE. |) | |

| | | |
|--------------------------------------|---|-----------------------|
| THE APPLICATION OF CABS, INC., DOING |) | |
| BUSINESS AS ZONE CAB, INC., FOR A |) | DOCKET NO. 94A-422CP- |
| CERTIFICATE OF PUBLIC CONVENIENCE |) | EXTENSION |
| AND NECESSITY TO OPERATE AS A COMMON |) | |
| CARRIER BY MOTOR VEHICLE FOR HIRE. |) | |

| | | |
|--------------------------------------|---|----------------------|
| THE APPLICATION OF MILE-HI TAXICAB |) | |
| COMPANY, INC., DOING BUSINESS AS |) | |
| MILE HI CABS, FOR A CERTIFICATE OF |) | DOCKET NO. 94A-424CP |
| PUBLIC CONVENIENCE AND NECESSITY TO |) | |
| OPERATE AS A COMMON CARRIER BY MOTOR |) | |
| VEHICLE FOR HIRE. |) | |

THE APPLICATION OF COLORADO)
TRANSPORTATION SERVICES, INC., DOING)
BUSINESS AS AMERICAN CAB COMPANY OF)
DENVER, INC., FOR A CERTIFICATE OF) DOCKET NO. 94A-436CP
PUBLIC CONVENIENCE AND NECESSITY TO)
OPERATE AS A COMMON CARRIER BY MOTOR)
VEHICLE FOR HIRE.)

THE APPLICATION OF ROCKIES CAB)
COMPANY FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO OPERATE) DOCKET NO. 94A-472CP
AS A COMMON CARRIER BY MOTOR VEHICLE)
FOR HIRE.)

**COMMISSION DECISION GRANTING
EXCEPTIONS IN PART AND
DENYING EXCEPTIONS IN PART**

Adopted Date: May 17, 1995
Mailed Date: May 22, 1995

I. BY THE COMMISSION

STATEMENT:

This matter comes before the Commission for consideration of exceptions to Decision No. R95-68 entered by the Administrative Law Judge ("ALJ") on January 25, 1995. Exceptions to that decision have been timely filed by: Aspen Limousine Service, Inc., doing business as Vans to Vail, Inc. ("Aspen"); Colorado Transportation Services, Inc., doing business as American Cab Company of Denver, Inc. ("American"); Greater Colorado Springs Transportation Co., doing business as Yellow Cab Colorado Springs ("YCCS"); Mile-Hi Taxicab Company, Inc. ("Mile-Hi"); Yellow Cab Cooperative Association, doing business as Yellow Cab, Inc., and its division, Denver Airport Limousine Services, Inc. and Boulder

Yellow Cab ("Yellow"); Rocky Mountain Shuttlines, Inc., doing business as Rocky Mountain Supercoach, Ltd. ("Rocky Mountain"); Black Hawk-Central City Ace Express, Inc. ("Ace Express"); Metro Taxi, Inc. ("Metro"); Diana Lezark, doing business as Evergreen Taxi Service ("Evergreen"); and the Staff of the Colorado Public Utilities Commission ("Staff"). Cabs, Inc., doing business as Zone Cab, Inc., did not file exceptions to the Recommended Decision. Replies to exceptions have been timely filed by Freedom Cabs, Inc. ("Freedom"); Aspen; Yellow; American; Metro; Rocky Mountain; and Ace Express. We now issue our decision on the exceptions.

II. HISTORY OF THE CASE

Prior to 1994, passenger transportation by common carriers, including taxicabs, within the State of Colorado was governed by the doctrine of regulated monopoly. This doctrine, in part, required an applicant for new authority for areas already served by an existing carrier to prove substantial inadequacy of existing service. To illustrate, in *Yellow Cab v. Public Utilities Commission*, 869 P.2d 545, at 548 (Colo. 1994), the Court observed:

We have previously recognized that the power of the PUC to license and regulate motor vehicle passenger carriers is based on principles associated with the doctrine of regulated monopoly. *Ephraim Freightways, Inc. v. Public Utils. Comm'n*, 151 Colo. 596, 599, 380 P.2d 228, 230 (1963). See also *Colorado Transp. Co. v. Public Utils. Comm'n*, 158 Colo. 136, 142, 405 P.2d 682, 685 (1965) (*Colorado Transp. II*). Under this doctrine,

applications for authority to operate a motor vehicle service require a showing that the public convenience and necessity require such service. *Colorado Transp. II*, 158 Colo. at 142-44, 405 P.2d at 685-87. However, a finding of public convenience and necessity is not justified unless the existing service is determined to be substantially inadequate. *Id.*, 158 Colo. at 143-44, 405 P.2d at 686 (quoting *Ephraim*, 151 Colo. at 603, 380 P.2d at 232). In *Ephraim*, we made the following observations illustrative of these principles:

The question involved in the granting or denial of a Certificate of Public Convenience in a particular area is not whether the extent of business in a particular area is sufficient to warrant more than one certified carrier...but rather whether public convenience and necessity demand the (additional service).... While it may be more convenient for (the public users of the service) if there be another service added to the area, this alone is not enough and there must also be a necessity for such service shown by the inadequacy of the existing service.

Ephraim, 151 Colo. at 599-600, 380 P.2d at 231.

See discussion, *infra*, regarding Standard of Review.

The Colorado General Assembly, in the 1994 legislative session, changed the standard for certification of taxicab carriers for certain counties within the State (*i.e.* counties with a population greater than 60,000) from regulated monopoly to regulated competition. Specifically, Senate Bill 113 modified § 40-10-105, C.R.S., to provide:

(2)(a) The granting of any certificate of public convenience and necessity to operate a motor vehicle for hire *as a taxicab within and between counties with a population of sixty*

thousand or greater based on the federal census conducted in 1990 or for the transportation of property shall not be deemed to be an exclusive grant or monopoly, and the doctrine of regulated competition shall prevail.

(b) The commission has the authority to grant more than one certificate of public convenience and necessity to operate motor vehicles as *taxicabs within and between counties with a population of sixty thousand or greater based on the federal census conducted in 1990* or for the transportation of property over the same route or a part thereof or within the same territory or a part thereof if the commission finds that the present or future public convenience and necessity requires or will require such operation.

(emphasis added). Senate Bill 113 became effective on July 1, 1994.

The Denver metropolitan area is presently served by three certificated taxi carriers: Metro, Yellow, and Zone. No new certificates of public convenience and necessity ("CPCN") for taxicabs have been granted in the Denver Metro area (*i.e.* the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson) for at least 40 years, due to the regulated monopoly standard for certification of new carriers or for new authority. After passage of Senate Bill 113, however, a number of applications for new or extended taxicab authority were filed with the Commission, including those applications which are the subject of the present case.

As pertinent to this proceeding, nine applications for new or extended authority were filed. With the exception of Zone and Metro, all applicants sought new CPCNs to operate as a common carrier by motor vehicle for hire for the transportation of passengers and their baggage, in taxi service, between all points within the region comprised of the Counties of Adams, Arapahoe, Boulder, 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. Freedom and Evergreen each applied for the use of 100 taxicabs; American and Mile-Hi for 200. Metro requested expansion of its authority to include 150 additional cabs, a Commission order clarifying that its present certificate authorizes the use of 300 vehicles, and expansion of its authorized geographic area. Zone sought authority to use 25 additional cabs to provide luxury taxi service in new Cadillac sedans.¹

In Decision No. C94-1420, dated October 28, 1994, we found that each of these applications concerned the same service and the same service area. We, therefore, consolidated these applications for hearing pursuant to the principles enunciated in *Ashbacker Radio Corp. v. Federal Communications Commission*, 326 U.S. 327 (1945) (applications

¹ The application by United Cab, Inc. was withdrawn. The applications by Prestige Cab Service and Rockies Cab Company were dismissed prior to hearing for failure to comply with the Commission's procedural rules. In addition, in its exceptions, Metro states that it does not challenge the ALJ's denial of its request for additional taxicabs.

which are mutually exclusive must be considered simultaneously). The consolidated proceedings were assigned to the ALJ for hearing. The ALJ conducted lengthy hearings in this matter commencing October 31, 1994, and continuing until December 9, 1994. After those hearings, the ALJ issued Decision No. R95-68 in which he recommended that the application of Freedom for 100 new cabs be approved, and all other requests for new or additional authority be denied. The ALJ also recommended clarification of Metro's certificate in accordance with its request. Exceptions by the parties followed.

The exceptions and subsequent responses filed in this proceeding generally focus upon the following issues:

- whether the ALJ applied the correct legal standard for taxi service between counties with a population of 60,000 or greater and counties with a population of less than 60,000;
- whether the ALJ's determinations regarding public need for additional taxi service in the Denver Metro area are correct;
- whether the ALJ's determinations regarding destructive competition which could result from approval of additional taxi service at certain levels in the Denver Metro area are correct;
- whether the ALJ's determinations regarding fitness of the respective applicants, his recommended approval of the application by Freedom, and his recommended denial of the remaining applications are correct; and
- whether the ALJ's recommended clarification of the operating authority held by Metro is proper.

Now being duly advised in the matter, we grant the exceptions, in part, and deny them, in part, consistent with the following discussion.

III. STANDARD FOR CONSIDERATION OF APPLICATIONS

We note that the award of common carrier authority, even under the doctrine of regulated competition, is a legislative prerogative granted to the Commission by the Colorado Constitution and by the General Assembly. *Trans-Western Express v. Public Utilities Commission*, 877 P.2d 350, at 354 (Colo. 1994). Under the doctrine of regulated competition, the "public interest" or "public need" is the paramount consideration governing the issuance or denial of a CPCN. *Morey v. Public Utilities Commission*, 629 P.2d 1061 (Colo. 1981). Existing carriers, under the doctrine of regulated monopoly, are entitled to protection against competition so long as the offered service is adequate to satisfy the needs of the area. *Ephraim Freightways, Inc. v. Public Utilities Comm.*, 380 P.2d 228, (Colo. 1963). However, under the doctrine of regulated competition, the impact of additional competition on existing carriers is relevant only to the extent it affects the general public (e.g. the extent to which additional competition might affect existing carriers' ability to provide safe and efficient services to the public). *Trans-Western, supra*, at 357.

The Colorado Supreme Court has previously described the Commission's obligations in applying the regulated competition standard:

The obligation to safeguard the general public against the impaired services and/or higher rates accompanying destructive competition or excessive competition is at the heart of the policy of 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. This is to be contrasted with the protection which is given existing carriers under the test of public convenience and necessity as traditionally applied. Under the latter test, the existing carrier enjoys a modified form of monopoly, having the right to serve expanding needs if it can handle them adequately.'

Arrow Transportation Company v. Hill, 236 Or.
174, 184, 387 P.2d 559, 563-64 (1963)
(emphasis added).

Morey v. Public Utilities Commission, *supra*, at 1066-67.

We observe that in prior cases involving applications for carrier authority under the regulated competition standard the Commission, with Court approval, has considered factors 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. *Miller Bros., Inc. v. Public Utilities Commission*, 525 P.2d 443, at 453 (Colo. 1974). As explained in this decision, these factors, as well as others stated herein, lead us to the conclusion that additional taxicab authority should be granted.

IV. INCIDENTAL SERVICE TO COUNTIES WITH A POPULATION OF LESS THAN 60,000

A number of parties (*i.e.* Staff, Yellow, Aspen, and Ace Express) have filed exceptions to the ALJ's recommendation to permit new carriers to provide limited taxicab service *outside* of the Denver Metro area. The ALJ concluded that any new authority should include "taxi transportation as incidental from points in the six-county Denver metropolitan counties to counties of under 60,000 population...." (Decision No. R95-68, page 11.) In essence, the Recommended Decision would permit new carriers to provide terminating taxi service to points outside of the Metro area, including service to counties with populations of less than 60,000,

providing the service originated within the Metro area. The ALJ reasoned that such limited service was permissible as "incidental" or as an "adjunct" to point-to-point Metro authority.

The above-listed parties except to the ALJ's recommendation. The parties argue that the ALJ has misinterpreted the provisions of Senate Bill 113, that the doctrine of regulated monopoly still applies to all taxi transportation to counties with populations of less than 60,000, that there is no legal basis supporting a grant of "incidental" authority, and that the record does not support the grant of additional taxicab authority for transportation to counties outside of the Metro area. We agree with these arguments, and modify the Recommended Decision accordingly.

Initially, we note that Senate Bill 113 is unambiguous with respect to the change affected in existing law governing taxicab common carriage. The above discussion indicates that, prior to the passage of Senate Bill 113, the law governing all applications for new taxi authority was regulated monopoly. Senate Bill 113 clearly changed existing law for certain applications only. Specifically, Senate Bill 113 provides that the granting of a CPCN to operate taxicabs "*within and between* counties with a population of sixty thousand or greater" (emphasis added) shall be governed by the doctrine of regulated competition. It is plain and clear that the Legislature, in Senate Bill 113, did not intend to

change existing law applying to counties with populations of less than sixty thousand. Therefore, the doctrine of regulated monopoly still applies to applications for authority to provide transportation service to those counties. As noted above, that doctrine requires that an applicant for such authority prove substantial inadequacy of existing service.

We agree with the arguments that there is no statutory or other legal provision which would permit the grant of incidental authority as envisioned in the Recommended Decision. In its Reply to Exceptions, Metro cited a number of cases in support of its contention that the Commission may authorize incidental transportation between the Denver region and other counties (apparently without proof which would satisfy the regulated monopoly standard). We are not persuaded by these arguments. First, a number of the cases cited by Metro involved zoning decisions in which "accessory" or "incidental" uses of property were permitted under the controlling zoning laws. These cases are not pertinent to applications for CPCNs in which the rights of other carriers are implicated in applications for new authority, and in which the doctrine of regulated monopoly controls.

Metro did cite cases involving the grant of incidental authority to provide common carriage service. See *Purolator Courier Corp. v. Interstate Commerce Comm.*, 598 F.2d 225 (D.C. Cir. 1979); *Curtis, Inc. v. Interstate Commerce Comm.*,

669 F.2d 648 (10th Cir. 1982). However, in the cited cases incidental authority was permitted pursuant to an interpretation of the controlling statute. That is, the statutes involved in those cases authorized incidental service according to the courts' interpretation. Our ruling here--that taxicab service may not be provided outside of the Denver Metro territory--relies upon our conclusion that the applicable statute does not contemplate such service.

Finally, Metro pointed to precedents in which courts invoked the concept of "incidental" service to find that certain businesses were exempt from public utility regulation inasmuch as the offered transportation was incidental to another function. See *Society Hills Carriage v. Public Utilities Comm.*, 581 A.2d 702 (Pa. Cmwlth. 1990) (transportation by horse-drawn carriage was not regulated common carriage where transportation was merely incidental to primary function of entertaining passengers); *Protective Motor Service Co. v. Pennsylvania Public Utilities Comm.*, 286 A.2d 30 (Pa. Cmwlth 1972) (entity was not regulated contract carrier where transportation of money was incidental to principal business of providing security services). In our view, neither do these cases support the grant of incidental authority here. These precedents simply held that the provision of incidental transportation service did not make the involved entities regulated carriers. Here, there is no dispute that the transportation to counties outside of the

Metro region is, in fact, a regulated service. This activity requires a CPCN just as transportation within the Metro area does.

In summary, we reject the suggestion that the Commission may award authority for service outside of the Denver Metro region as incidental to authority for service within the area. To accept this argument would generally be inconsistent with existing law (e.g. the doctrine of regulated monopoly). Moreover, to accept such an argument would be inconsistent with Senate Bill 113 specifically, inasmuch as the statute explicitly distinguished between counties with populations greater than 60,000 and counties with populations less than 60,000. Since the evidence in the record did not establish a public need for service outside of the Metro area, any new authority granted in this docket will be limited to providing service within the area.

V. **PUBLIC NEED**

Some of the parties, in their exceptions, take issue with the ALJ's determination that there was a need for additional taxicab service within the Denver Metro territory. Decision No. R95-68, pages 12-24. That determination was based upon the ALJ's observation that numerous witnesses, representing a broad segment of the public using taxi service in the Metro area, testified to such need. The ALJ observed that there was considerable testimony of poor service or, in some cases, a lack of service to certain communities in the Denver area

such as Five Points, North Park Hill, Montbello, and the near westside. Furthermore, the ALJ recognized that several witnesses testified to a need for additional service to and from various points within the Metro region due to problems of excessive delays in obtaining service or "no shows" from existing carriers. We affirm these findings and conclusions by the ALJ in their entirety.

We note that, for purposes of examination of public need in this proceeding, the pertinent market is the six-county Denver metropolitan area in its entirety. That is, we conclude that the evidence of public need presented at hearing by all parties is relevant to need for the entire region, not simply for isolated sections of the Denver Metro area. For example, evidence by particular individuals regarding the adequacy or availability of existing service is generally a comment upon the need for taxi service in the entire Metro area, inasmuch as the three existing carriers serve most of this area.² Furthermore, this analysis comports with the provisions of Senate Bill 113 which directs the Commission to apply the regulated competition standard to counties, such as the six-county Metro region, with populations greater than 60,000. We finally observe that each of the applications in this proceeding proposed to

² Although there is only one taxi carrier presently certificated to provide service within Boulder, carriers such as Metro already serve this area as part of its "to-and-from" service. In addition, the record contains testimony establishing a need for additional service in Boulder specifically.

provide taxi service essentially to the entire Metro area. Consistent with those proposals, much of the public need or public interest testimony, even that presented by opponents to the applications (e.g. testimony by Drs. Teal, Dempsey), focused upon the entire Denver Metro region. Therefore, notwithstanding any written or oral ruling by the ALJ to the contrary, all testimony and exhibits regarding public need or public interest offered by any party shall be considered by the Commission to determine the general need for taxi service in the Denver Metro area in its entirety.

Our independent review of the record in this case supports the ALJ's determination that there is substantial evidence to support a grant of new or expanded taxicab authority in the Denver Metro region. Thirty-eight public need witnesses testified at the hearing. The following is illustrative of this testimony.

Joseph Henslik, sponsored by Evergreen, testified on November 4, 1994. In part, Mr. Henslik stated that he uses cab service four times per week and anticipates this level of usage will continue for at least the next 12 months. He frequently uses taxi service on the weekends. According to this testimony, timeliness of service is the most important aspect of taxi service. The witness testified that, in the past, he has experienced problems in obtaining timely taxi service 90 percent of the time he requests such service. Mr. Henslik indicated that he has experienced up to three hour

waits for cab service on weekends (11/4/94 transcript, page 24). Furthermore, Mr. Henslik stated that he has been forced to rely on 24-hour advance request for service to meet his needs. He believes that a reasonable level of taxi service should include service within 30 minutes from the time of request.³

In addition to his personal needs, Mr. Henslik testified that he has called for taxi service on behalf of his customers at Christopher Dodge in Lakewood, Colorado (Jefferson County). He has personal knowledge that customers have experienced waits of 45 minutes. Mr. Henslik believes that more cabs in the Denver area is the solution to poor service.

Katherine Kopp, sponsored by Evergreen, testified on November 4, 1994. She needed cab service from 705 South Broadway in Denver to Stapleton International Airport and called Yellow at 2:00 p.m. with a request for service. Since no cab had arrived at the time, she called again at 2:30 p.m. She was told that a cab was within five minutes of picking her up. No cab arrived within that time, and at approximately 2:45 p.m. she again called for service. She was then told that no cab was available. Because she was concerned that she would miss her flight, she requested a friend to pick her up and take her to the airport. She has

³ The Commission's *Rules and Regulations Regulating Taxi Carriers*, 4 CCR 723-14, Rule 11.3, provide that service should be provided within 30 minutes.

since refused to use the services of Yellow. Ms. Kopp believes that more cabs on the street would help lessen the delay she experienced.

Joni Benoit was the manager of the Hondo's Grill restaurant in Englewood, Colorado (Arapahoe County) for a year prior to testifying in this hearing on November 4, 1994. Ms. Benoit stated that her job duties included calling cabs for patrons who needed transportation, including people who were intoxicated. According to the testimony, this occurred four to six times a week mainly in the evening. Ms. Benoit's further stated that her practice was to first call one cab company, Metro or Yellow, for service. Approximately 40 percent of the time that cab did not show up. She would then call the other company. Approximately 10 percent of the time the second company also did not show up (11/04/94 transcript, page 111).

In addition, Ms. Benoit recounted an event in which she called Yellow to provide her service from her home in Aurora to Stapleton. She called at 7 a.m. to be picked up at 8 a.m. to make a 9:30 a.m. flight. Despite several callbacks, no cab ever appeared and she missed her flight (11/04/94 transcript, page 115). She testified that she no longer calls cabs for her personal use. Ms. Benoit indicated that she believes there is a need for additional cab service in the area.

Bruce Ehrhart testified on November 9, 1994 (11/09/94 transcript, page 16). This witness is employed at the Boulder Inn, a hotel located in the City of Boulder. According to the testimony, Mr. Ehrhart's guests use cabs between 50 and 100 times per month in the summer. Mr. Ehrhart has personal knowledge that it takes between 20 minutes and an hour to get taxi service to his hotel. In addition, Mr. Ehrhart noted that he has personally experienced waits of up to an hour trying to get service from the Pearl Street Mall in Downtown Boulder. This witness also believes there is a need for additional taxi service in Boulder.

Charlotte McKinney was sponsored by Mile-Hi and testified on November 10, 1994 (11/10/94 transcript, page 100). Ms. McKinney's testimony indicates: Residing in Capitol Hill and working in downtown Denver, she uses taxis up to six times per week. She also needs to take a taxi from her home and office to various points all over Denver. She has experienced problems in obtaining taxi service to or from northeast Denver. In the last 12 months, Ms. McKinney has experienced 15 instances of no cab showing up after calling for service (11/10/94 transcript, page 116). This has occurred in both daylight and nighttime hours.

Pierre Coleman, sponsored by Evergreen, testified on November 4, 1994. Mr. Coleman stated: He has attempted to use taxi service three times. On all three occasions he

experienced no shows, once from Metro and twice from Yellow. On one occasion, Mr. Coleman lost a day's pay due to the failure of the taxi to show up, even though he had called several hours in advance. He will not use the existing taxi services because of the no-show problems he has experienced. Mr. Coleman believes that a need exists for a new taxi service in the Denver Metro area.

We note that Exhibit No. 5, which was sponsored by Evergreen, contains 200 form letters of support from people located throughout the Denver metropolitan area. In part, these letters state that the metro area has a need for quality taxi service. Exhibit No. 24 is comprised of approximately 50 form letters of support stating that existing cab companies do not provide good service. For example, the letter from Becky McKenzie states that waiting time for a cab is "45-60 minutes or longer." As part of its application, Freedom submitted 20 form letters of support from citizens stating that they had experienced either poor taxi service or no-shows.⁴

Finally, we find that, in accordance with the intent of Senate Bill 113, the public interest will be served by increasing the amount of competition in the market for taxicab service in the Denver Metro region. In particular, we find that the operation of additional carriers and

⁴ The testimony at hearing is, by itself, sufficient to support our finding of need for additional service. The letters of support merely affirm our view that the public interest requires the grant of additional taxi authority.

additional cabs in the area, so long as excessive or destructive competition is avoided, will tend to reduce the delays and no-shows experienced by passengers in the area. In order to promote competition in the relevant market, we find that new taxicab authority should be granted.

We find, in summary, that there is a need for additional taxi service in the Denver Metro region. More specifically, we find that public need has been established for point-to-point service in the area comprised of the Counties of Denver, Adams, Arapahoe, Jefferson, Douglas, and Boulder, State of Colorado. In addition, we find that the record in this case warrants revision of the operating authority held by Metro as discussed *infra*.

VI. DESTRUCTIVE COMPETITION

Having decided that it is in the public interest to grant new taxicab authority, we must now determine what number of new cabs would be appropriate for the Denver Metro region. As noted above, the doctrine of regulated competition requires the Commission to safeguard the public against the impaired services and/or higher rates accompanying excessive or destructive competition. We now set forth our determinations regarding the specific number of new taxis which will serve the public need for taxi service in the Metro area, without resulting in destructive competition. The parties, especially existing carriers, offered certain testimony which addressed this issue.

Dr. Roger Teal, sponsored by Zone, testified in this docket as an expert in the taxi industry and regulatory economics. According to Dr. Teal, the demand for taxi service in the Denver market is likely to be in a gradual long-term decline. The witness based his opinion on his studies of the national taxi industry and on data provided by the incumbents (Zone, Metro, and Yellow) to the PUC. This data depicts a six percent decline in the number of taxi trips in the Denver market between 1989 and 1993.

According to Dr. Teal, studies of the national taxi industry show the demand for taxis to be in a gradual but steady decline in all major cities during the last 20 years. This is because taxis are not competing effectively with alternatives such as rental cars, public transit, and private automobiles. Consequently, the taxicab share of the ground transportation market has declined and continues to decline. The witness also contended that the relocation of the Denver airport from Stapleton (seven miles from downtown Denver) to DIA (20 miles from downtown) would tend to reduce the demand for taxis relative to rental cars and hotel vans.

Dr. Teal contended that any "substantial" amount of new entry would result in destructive competition.⁵ While it is

⁵ According to the witness, "destructive competition" is caused by changes in public policy which lead to severe economic impacts on existing firms. "Severe" means, in part, that existing firms move from being profitable to being unprofitable and that there are declines in safety and service. Dr. Teal noted that the failure of firms due to mismanagement or naturally occurring market changes is to be distinguished from company failures caused by changes in public policy.

difficult to define "substantial" precisely, according to the testimony, five percent is probably not substantial, ten percent would have uncertain effects, but 20 to 25 five percent would certainly be substantial. The witness pointed out that in the Price Waterhouse Study of 21 cities (Exhibit No. 52), relaxed regulation resulted in an average increase of 23 percent more vehicles, and incumbents suffered diminished revenue and ridership.

This witness also predicted the impact of new entrants to the Denver market based upon the observation that the current operating ratios of all incumbents are very near 100 percent. Based upon this ratio, Dr. Teal contended, there is very little room for existing companies to cope with a loss in revenues, and any substantial increase in the number of vehicles will put existing companies in peril. The witness pointed out that Yellow is currently in bankruptcy and Metro has just come out of bankruptcy.

Dr. Teal noted that applicants in this proceeding have requested authorization for a total of 521 additional cabs. Currently, incumbents have approximately 707 cabs on the

street.⁶ Therefore, the proposed increase is approximately 75 percent. The witness claimed that a 75 percent increase in the number of cabs would have disastrous financial impacts on every firm.

We credit Dr. Teal as being well-informed concerning trends in the national taxi industry. Consequently, his opinions regarding the gradual long-term decline in the demand for taxi service were given due weight. We note, however, that Dr. Teal did not provide any statistically verifiable analysis of the Denver market demand for taxis. Therefore, the Commission had no objectively verifiable way of determining the precise number of cabs required in the Denver market or the precise number of new cabs which would result in destructive competition based upon this analysis.

Furthermore, we find that the data relating to the number of taxi trips provided by the incumbents, which depicts a six percent decline in the number of trips between 1989 and 1993, is subject to some question. For example, the Commission does not know to what extent this decline is due to changes in the determinants of demand or due to other factors such as

⁶ This current estimate of the total number of taxicabs in service in the Denver Metro area was actually provided without objection by Zone's attorney (11/30/94 transcript, page 45). It is comprised of 107 cabs for Zone and 300 each for Yellow and Metro. Other estimates of the total number of taxis in service were provided in the docket. For example, Dr. Langland, in his analysis, utilized the following numbers for in-service taxicabs for 1993: 279 for Metro, 272 for Yellow, and 99 for Zone (650 total). See Exhibit No. 82. Mr. Stephen Kurtz assumed a total of 660 taxicabs for his calculations for 1993: 300 for Metro, 260 for Yellow, and 100 for Zone. See Exhibit No. 60. In contrast to in-service totals, the current number of authorized cabs for the existing companies is 300 for Metro, 600 for Yellow, and 142 for Zone (1042 total).

Yellow's inability to put a larger percentage of its authorized cabs on the street. Additionally, we observe that these data are based on unaudited driver reports. Finally, we note that there was testimony from public witnesses which indicated that they would not continue to use taxi service due to delays in obtaining service or no-shows. We cannot assess what influence this factor had upon the decline.

The weight to be attached to Dr. Teal's assertion regarding existing carriers' operating ratios (*i.e.* these ratios are near 100 and there is little room for existing companies to cope with a loss of revenues) depends on the Commission's degree of confidence in the reported operating ratios. We emphasize that these ratios have not been subject to a Commission audit. Consequently, questions remain concerning their reliability. Dr. Langland pointed out that operating ratios can be misleading for purposes of determining profitability. For example, companies can pay high salaries to officers or owners to make its operating ratio look worse. We also find that the impact of Yellow's and Metro's bankruptcy proceedings would depend on understanding the causes of those bankruptcies and details of the current financial status of those companies. These details are not part of the record in this case.

Finally, questions were raised concerning Dr. Teal's reliance on the Price Waterhouse study to draw conclusions about the negative impacts of additional entry in the Denver

market. To illustrate, Staff suggested that the Price Waterhouse study is of limited use since the cities studied were not comparable to the Denver metropolitan area.

Dr. Paul Dempsey, sponsored by Metro, also testified regarding the potential for destructive competition presented by the applications.⁷ In part, Dr. Dempsey presented testimony concerning the economic characteristics of the taxi market, the impact of excessive competition, and recommendations for the Commission. This witness generally agreed with the analysis by Dr. Teal.

Dr. Dempsey observed that users of taxicabs can be divided into three groups: the transportation disadvantaged; non-residents; and affluent residents. He believed that their total demand for service is not accurately estimated by simply considering broad variables such as overall population or economic activity in a metropolitan area. Rather, he suggested that demand in the Denver area, for example, would be more closely related to its population density, the price of taxicab service, automobiles per capita, street congestion, air pollution, availability and price of downtown parking, the number of hotel rooms, the distance between downtown and the airport, the volume of passenger traffic at the airport, and the extent and economic health of competitive alternatives. As for Denver, in particular, Dr.

⁷ Dr. Dempsey is a Professor of Law and Director of the Transportation Law Program at the University of Denver College of Law.

Dempsey stated that the numbers of taxicab trips and passengers have been declining since 1990. Furthermore, the opening of DIA may cause demand to decline as well, not only because taxicabs will become less competitive with respect to other modes of transportation, but also because higher airline ticket prices will cause the number of origin and destination passengers to be smaller than otherwise.

This witness relied heavily upon the Price Waterhouse study for his analysis of the potential for destructive competition resulting from this docket. That study evaluated the outcome of partial or total deregulation of taxicabs in 21 cities prior to 1983. Of these, only four of the smallest cities have retained a completely deregulated system. The other 17 have either fully or partially re-regulated. Dr. Dempsey listed the crucial results from the study of the initial deregulation to be:

(1) a significant increase in new entry; (2) a decline in operational efficiency and productivity; (3) an increase in highway congestion, energy consumption and environmental pollution; (4) an increase in rates; (5) a decline in driver income; (6) a deterioration in service; and (7) little or no improvement in administrative costs.

Dempsey Direct Testimony (12/1/94 transcript, page 37). The "significant increase" in new entry within one year after deregulation was, on average, 23 percent in these 21 cities. See Price Waterhouse study, page i.

Dr. Dempsey's main conclusion from this study concerning destructive competition was:

The manifest objective of prudent regulators is to find an appropriate balance of taxicabs to patrons which ensures consumers safe, efficient, and reasonably priced service while allowing efficient carriers a reasonable return on investment. Clearly a 23 percent increase in capacity is far beyond what can reasonably avoid the deleterious effects of excessive or destructive competition.

Dempsey Direct Testimony, page 61. He urged the Commission to be cautious when allowing entry and that any new authorizations should be phased-in over time.

Dr. Neil Langland, for Staff, also submitted testimony concerning public need and destructive competition.⁸ This witness performed an economic study to estimate the number of taxicabs required in the Denver market. According to this testimony, Dr. Langland could not employ the most commonly used method to estimate demand (i.e. regression analysis) because of a lack of a sufficient number of observations. Therefore, instead of regression, he employed a simpler method to estimate the demand for taxi service: the ratios between taxicabs in-service and two economic variables, the number of wage and salary workers in the Denver metropolitan area and dollars spent on lodging.⁹ Generally, Dr. Langland calculated the average ratio of taxicabs-in-service divided

⁸ Dr. Langland is a Principle Staff Economist with the Commission, and testified as an expert in regulatory economics.

⁹ Dr. Langland claimed that wage and salary workers, "are a useful composite of population and economic activity." See Langland Direct Testimony, page 4. The witness also suggested that dollars spent on lodging are, "a good proxy for tourism activities, including business travel." See Langland Direct Testimony, page 4. According to Dr. Langland, these two variables "likely are the most important drivers of the demand for taxicabs." Langland Direct Testimony, page 4, footnote 8.

by the number of wage and salary workers for the years 1985-1993. He performed the identical calculation for the ratio taxicabs-in-service and dollars spent on lodging. Dr. Langland then assumed that the number of wage and salary workers and dollars spent on lodging would increase by 2.6 percent per year for the period 1994-1996. Using these extrapolated values, the witness estimated demand for taxis with respect to each variable for the years 1994-1996.

In his direct testimony, Dr. Dempsey had observed that deregulation of the industry in other cities had resulted in an average increase of 23 percent of taxis on the road. Notably, Dr. Langland, based on Dr. Dempsey's testimony, added to his above calculation a 23 percent increase to the number of cabs in service in his estimate of demand. Dr. Langland did not use airport data in making his demand projections, arguing that projections of the impact of relocating the airport to DIA are inherently uncertain and unreliable. He recommended that the Commission be cautious in using any such projections.

Based on his analysis, Dr. Langland recommended that the Commission increase the number of authorized taxicabs in the Denver market by approximately 200 to 250 units and grant certificates to two to four new applicants. Implicit in this recommendation is that this number of new cabs would not result in destructive competition.

Mr. Kurtz, sponsored by Zone, testified regarding the financial effects of new entry on the three existing taxicab companies.¹⁰ In doing so, he relied primarily on data taken directly from the 1992 and 1993 annual reports filed with the Commission by Yellow, Metro, and Zone. Mr. Kurtz based his analysis upon the assumption that any number of taxicabs operated by new entrants would result in the same number being lost by the existing companies, in proportion to the current sizes of their fleets. He then calculated the annual revenue loss and adjusted operating income for the three existing companies assuming losses of 20, 40, 60, or 80 cabs in total. His conclusions were, for example, that with a total loss of 40 cabs, Yellow and Zone would probably go out of business and Metro would probably end up in a condition similar to that in which Yellow currently finds itself (*i.e.* in bankruptcy); with a total loss of 80 cabs, all three companies would likely go out of business.

We find these assertions to be incredible. In the first place, Mr. Kurtz's assumption that existing companies would lose one cab for each new cab authorized was absolutely unsupported. Furthermore, Mr. Kurtz failed to include any cost savings which the existing companies would realize in the event their fleet sizes declined. For these reasons, the Commission is unwilling to use Mr. Kurtz's analysis in a

¹⁰ Mr. Kurtz is a certified public accountant and president of Shenkin, Kurtz, Baker and Company, PC.

literal, quantitative way to estimate the impacts on existing companies of new entry. Rather, we interpret the study as another qualitative caution against allowing a level of entry which would result in destructive competition.

Ms. Shriver, sponsored by Zone, is an occupational therapist and certified vocational evaluator. Her testimony related to the taxi driver pool in the Denver Metro area. Ms. Shriver used a sample of 169 drivers for Yellow, Metro, and Zone over the last two to three years to develop the profile of a typical taxicab driver in this area. She then employed data from both the United States as a whole and the Denver region in particular and ultimately estimated that the number of potential taxicab drivers not currently employed as such is four. However, Ms. Shriver acknowledged that this was not a realistic figure, but that it did demonstrate that the pool is small. We agree that this result should not be taken literally. Rather, we view this testimony as yet another admonition that approval of an excessive amount of new cabs could cause destructive competition, with some drivers being recycled among the competitors.

Based upon all testimony regarding the potential for excessive or destructive competition in this case, we affirm the ALJ's finding that 100 new taxicabs should be approved. We note that the cautionary testimony presented by the incumbent carriers (e.g. Teal, Dempsey, Kurtz, and Shriver) does not reveal the precise number of new cabs which could be

approved without subjecting all carriers to destructive competition. Nevertheless, we observe that 100 new cabs is an approximate 15 percent increase over the number of taxis presently in service within the Metro area. This amount is significantly below the 20-25 percent increase which Dr. Teal believed would result in destructive competition.

As for Dr. Langland's recommendation (i.e. that the Commission approve approximately 200 to 250 new cabs for the Metro area), we note that his estimates rested heavily on the use of the 23 percent average increase in the number of new taxis in cities which deregulated the industry. Dr. Langland extracted that statistic (23 percent) from the Price Waterhouse study. However, both Drs. Teal and Dempsey interpreted this study to indicate that such an increase in the Denver market would result in destructive competition. We conclude that, in light of the warnings of Drs. Teal and Dempsey, approval of 200-250 new taxis could lead to excessive competition in the Metro area.

Therefore, a cautious and prudent approach to meeting the public need identified above is to approve 100 new cabs. Approval of 100 additional taxis will enable us to authorize the entry of two new carriers into the Denver Metro market. Selection of a lesser amount would likely limit new entry to one applicant, inasmuch as each entrant requires a minimum number of taxis to serve the entire region and to be financially viable. See discussion, *infra*. The result of

our decision will be to promote competition in the Denver Metro region, consistent with our intent and the intent of Senate Bill 113. Based upon the above-summarized testimony, we also conclude that the entry of two new competitors with a total of 100 new cabs within the Metro area is not so substantial as to result in destructive competition.

VII. FITNESS OF THE APPLICANTS

Having determined that 100 new taxicabs authorizations should be approved, we now proceed to select those applicants which are best suited to meet the public need identified herein. Since neither Zone nor Metro has excepted to the ALJ's denial of their applications for additional cabs, the remaining applicants are American, Freedom, Evergreen, and Mile-Hi. We conclude, as stated above, that under the doctrine of regulation competition, we should seek to promote competition in the Metro area (while avoiding the risks of destructive competition). See *Bowman Transp., Inc. v. Arkansas-Best Freight Sys., Inc.*, 95 S.Ct. 438 (U.S. 1974) (commission may pursue policy in favor of competition). Accord *Wells Fargo Armored Serv. Corp. v. Public Util. Comm.*, 545 P.2d 707 (Colo. 1976).

Consistent with our goal to promote competition, we must consider the minimum fleet size necessary for long-term financial viability of a new taxi company. In Exhibit No. 28, Freedom estimated its break-even point as 30 cabs. Mile-Hi, in Exhibit No. 46, stated that its break-even point was

55 cabs based on a total fleet size of 200 cabs. American stated that its break-even point would be 69 cabs based on a fleet size of 90 cabs. However, no exhibit was provided to support this computation. The owner of Evergreen testified that it would need 50 cabs in order to make a profit. Likewise, this figure is unsupported by an exhibit in the record.

An analysis of Exhibit No. 46, Mile-Hi's business plan, reveals that each cab in its fleet requires \$1,600 of fixed costs for meters, radios, decals, and registrations. As a consequence of reducing its fleet size from 200, its break-even point should decrease accordingly because of reduced fixed costs per cab. A review of Mile-Hi's staffing levels in Exhibit No. 46, also reveals that it planned to have a general manager with a total salary and benefit cost of \$58,500 per year, a personnel manager at \$39,000 per year, an operations manager at \$39,000 per year, a bookkeeper at \$31,200 per year, a sales representative at \$10,816 per year, four phone operators at a total of \$64,896 per year, and three dispatchers at a total of \$60,840 per year. The total annual salary and benefit costs for all of these positions is \$304,252. Mile-Hi may have found that this type of staffing level could be reduced with a smaller-sized company.

Based upon the record in this case, we find that a new carrier will have an adequate opportunity to be financially viable with 50 cabs. This conclusion, along with our

determination to authorize 100 new taxicabs, will enable us to allow two new carriers, each with 50 cabs, into the Metro area taxi market. We reject the notion of splitting the 100 new taxis unevenly between the two new carriers (*i.e.* having one new carrier with less and one with more than 50 cabs). Such action would necessarily favor one new competitor and disadvantage the other (*e.g.* the ability to serve the entire region would be unequal, as well as the opportunity to become financially profitable).

Having determined the number and size of the new taxi companies to be introduced into the Denver market, we must decide which of the four remaining applicants should receive a CPCN. The exceptions filed by American, Evergreen, and Mile-Hi contest the ALJ's recommendation to grant authority only to Freedom. One of the elements of these exceptions is summarized in Evergreen's filing (page 4):

...ALJ Fritzel concluded, after a "comparative analysis of the operating proposals and fitness of the Applicants", that Freedom is "best positioned to serve the public need." (Decision, paragraph 6, page 56). Although ALJ Fritzel refers to conducting a "comparative analysis" of the Applicants, he fails to clearly set forth in the Decision the criteria he used in reaching his ultimate conclusion to grant Freedom's application and to deny the others.

This order specifically addresses the criteria used in determining the allocation of the two new authorities.

We begin by observing that the concept of fitness is broader than a consideration of financial aspects only. In

particular, we conclude that any determination regarding fitness, including any comparative analyses of the applicants, should include consideration of financial capability, managerial and industry experience, and operational aspects.

An assessment of financial capability includes consideration of the amount of start-up money available to the applicant and sources of funding for on-going operations. In part, start-up monies must be sufficient to enable the new company to acquire necessary liability insurance, a radio dispatch system, taxi meters, office equipment and furniture, an office location, training supplies, and utility deposits to establish service. On-going funding is important, inasmuch as a new carrier will need to pay day-to-day operational expenses such as salaries and wages, payroll related taxes and insurance, utility bills, printing expenses for trip sheets and cab receipts, office supplies, accounting, and legal services. Moreover, a new company must have adequate cash reserves during initial operations to cover unexpected expenses, especially since projected revenues may not be fully achieved.

An assessment of managerial experience of the applicants includes consideration of key personnel's previous experience in managing or running a taxi company. In our view, key personnel having held positions with supervisory responsibility within a taxi company should also be given due

credit. Previous experience as taxi drivers on the part of the applicant's principals (e.g. Freedom) should be considered, but to a lesser degree only.

Consideration of operational aspects includes an examination of a company's proposed business plan, and, in particular, unique elements of that plan as compared to other applicants (e.g. Freedom's proposal to emphasize service to underserved communities or geographic areas). Examination of an applicant's proposed business plan is important, since it demonstrates to the Commission that the applicant has a well thought out strategy for its operations.

Based upon these criteria, American is our first choice for an award of new authority. This conclusion is grounded upon American's financial resources and its managerial experience. In particular, we note that the owners of American have pledged \$350,000 for start-up costs and have arranged for a \$300,000 line of credit provided by Omni Bank. These financial resources are far superior to any other applicant. Such resources should be sufficient for American to establish a fleet of 50 cabs and to meet its on-going expense needs, and should be sufficient to allow American to become a viable competitor in the taxicab market in the Denver Metro area.

Furthermore, the owners of American have demonstrated extensive management and industry experience in the taxicab business. Mr. Duane Kamins is the Executive Vice President

and General Manager of Yellow Cab Company of Colorado Springs. Mr Richard Kamins is the Vice President of Yellow Cab Company of Houston. A further description of the owners' managerial and industry experience is contained in American's business plan, Exhibit No. 36. Once again, under this criterion American proved to be superior to all other applicants.

An additional factor favoring American was that it was the only applicant which proposed to have a garage facility with an on-duty mechanic associated with its operations. We believe this would increase the opportunity to ensure safe and reliable transportation service to the public. American also proposed to perform quarterly inspections on the vehicles in its fleet.¹¹

In general, we find that considerations of financial capability and managerial and industry experience lead to the conclusion that American is the first applicant which should

¹¹ We make one general comment on the subject of inspections. The Commission is charged with ensuring safe and reliable taxi service. Consistent with this obligation, the *Rules and Regulations Governing the Operation of Taxicabs*, CCR 723-14, require periodic safety inspections by the Commission's staff. The applicants in this case spoke of performing their own "inspections" on the vehicles. The Commission notes that there are distinctive types of inspections, safety and cleanliness. Safety inspections include an examination of the vehicle's braking system, the steering and suspension system, tail lights and turn signals. Cleanliness inspections include an examination of body damage to the vehicle, interior upholstery condition, and frequency of washing and vacuuming. The Commission is most concerned with safety inspections. Since each of these applicants proposes to use owner/drivers, the degree to which the applicants may be able to perform their own safety inspections would not be as great as compared to the case where the applicants themselves owned the vehicles.

be granted new taxicab authority.¹² The second-ranked applicant, in our estimation, is Freedom. This applicant has \$25,000 of money available for start-up costs, and is negotiating with Colorado National Bank for a line of credit. In addition, Freedom is also pursuing possible funds available through the Mayor's Office of Economic Development and the Downtown Denver Partnership. The owners of Freedom do not have experience in management of a taxi business, but are experienced in the industry, having worked for existing Denver cab companies.

Within its business plan, Exhibit No. 28, Freedom provided an estimated break-even point, estimated start-up costs, pro forma balance sheet and income statement, and a short-term cash flow budget. This document indicates that the company has a well-thought out strategy for initiating operations. Significantly, on page 4 of that plan, Freedom identified its contemplated marketing approach:

...Freedom will pursue a market development strategy of the suburban and lower-income communities to gain a niche in these currently underserved segments.

¹² One weakness in American's application related to its proposed response to service for the disabled community. Specifically, American intends to start to provide this service approximately one year after "getting its feet on the ground." In the meantime, American intends to refer all calls for wheelchair compatible equipment to Yellow, which presently has available equipment for this type of service (American exceptions, page 16). The public testimony in this case indicates that the disabled community is currently underserved. We would encourage American to consider accelerating its plans to provide this service.

The record in this case demonstrates that a public need does exist for responsive taxi service to these underserved markets.¹³

We recognize that, in terms of financial capability and management or industry experience, Freedom is not significantly distinguishable from Evergreen.¹⁴ See discussion, *infra*. Our selection of Freedom over Evergreen (as well as Mile-Hi) is based primarily upon its proposal to emphasize service to segments of the market which, according to the record in this case, are underserved. Freedom was the only applicant to point out that certain submarkets (e.g. Five Points, North Park Hill, Montbello, and the near westside) are presently underserved, and specifically addressed these unique needs in its business plan. While other applicants may now argue, in retrospect, that they will be able to serve these submarkets as well as Freedom, no such intention was offered in a prepared business plan. Freedom's proof of a need in these particular segments of the market and its intention to address such needs, as stated in business plan, distinguishes it significantly from Evergreen and Mile-Hi.

The Commission ranks Evergreen and Mile-Hi (in that order) behind American and Freedom for various reasons, some

¹³ Freedom also plans to obtain a van equipped with a wheelchair lift in order to serve the transportation needs of the disabled community.

¹⁴ As noted *infra*, we have other reservations of a significant nature regarding Mile-Hi's proposal.

of which have already been stated. With respect to Evergreen, we note that this company did not demonstrate financial fitness, or management or industry experience which were superior to Freedom. For example, while Evergreen is an existing carrier and its principal has been involved in running the company for over three years, the enterprise has yet to show a profit. The principal of Evergreen stated that she would take out an equity loan on her commercial property. However, there is no detailed information in the record besides the vehicle listing to show the value of this or other items comprising the \$280,000 estimated total asset figure presented in Exhibit No. 32.¹⁵ In summary, Evergreen failed to demonstrate that it possessed financial capability or management or industry experience superior to Freedom.

At the same time, as explained above, the Freedom application was distinguishable from Evergreen with its emphasis on underserved submarkets in its business plan. In contrast, Evergreen presented no business plan. Evergreen's

¹⁵ An examination of Evergreen's financial statement demonstrates our concerns. The owner of Evergreen testified that she would use the equity available in her existing taxi business as a source of funds. According to the balance sheet, Exhibit No. 32, Evergreen has \$270,000 of equity. However, the balance sheet shows less than \$1,000 of accumulated depreciation on total assets of nearly \$280,000 in a business which has been operating over three years. The Commission finds it difficult to accept that, from an accounting standpoint, the assets of the existing business have depreciated only \$1,000 since 1991. The purpose of depreciation from an accounting perspective is to acknowledge the decrease in value of an asset through their use over time. Proper accounting treatment would provide for depreciation expense since revenues from operations must be sufficient to recoup this expense. Otherwise, the long-term viability of the company would be in jeopardy, since no funds would have been set aside for the assets' eventual replacement. The net effect of properly accounting for depreciation on the actual reported operating losses and equity levels of Evergreen would be to increase the losses and decrease the amount of equity.

principal stated she would have a business plan prepared if granted authority.

As for Mile-Hi, we find that, as was the case with Evergreen, it failed to prove financial capability, or management or industry experience superior to that of Freedom. Freedom's operational plan was also superior to that of Mile-Hi. Moreover, the Commission has concerns regarding Mile-Hi's proposed stock ownership. Mile-Hi is proposing that 51 percent of the stock be owned by its drivers. A driver would acquire his\her initial 1,000 shares by contributing \$1,000 to the company. The driver would also sign the title of his\her vehicle over to the company in exchange for 3,000 shares. The record indicates that many of the particulars surrounding the stock ownership plan have not been fully resolved. For instance: How would Mile-Hi, in distributing stock for vehicles, account for the differences in value of various contributed vehicles (e.g. newer vehicles as compared to older vehicles)? How would drivers convert stock into cash? How would a driver leaving the company receive title back to his/her car?

In conclusion, the Commission finds that American and Freedom should be approved as the two new taxi carriers in this case. In order to lessen the impact of new carrier competition upon the existing companies, and to ensure a smooth and orderly transition to regulated competition, we will direct that the new cabs authorized in this order be

phased-in over a set time period. Specifically, we will authorize American and Freedom to start-up immediately with 30 cabs each. After three months, each company will be allowed to increase its fleet by 10 (to 40 cabs). After another three months, the new companies will be allowed to increase their fleets by another 10 (to 50 cabs in total). This phased-in approach, in addition to lessening the immediate impact upon existing carriers (e.g. existing carriers will have more time to replace drivers who go to the new companies), should afford the new businesses adequate time to obtain insurance, install radios and meters, and paint and decal vehicles.

VIII. AUTHORITY HELD BY METRO TAXI, INC.

In its exceptions, Metro does not seek modification of that part of the Recommended Decision which granted new operating authority to Freedom (at a level of 100 cabs). Neither does Metro seek reversal of that part of the decision which denies its request to utilize more than 300 taxi vehicles. Rather, Metro excepts to the Recommended Decision requesting that we modify PUC 1481, its existing CPCN, to reflect:

- Expansion of the base area of operations from a 16-mile radius of 16th and Champa Streets to an area comprised of the Counties of Denver, Adams, Arapahoe, Douglas, Jefferson and Boulder;
- Expansion of the "in and out" authority from an 85-mile radius of 16th and Champa Streets to a statewide area;

- Revision of the existing wording in the certificate to clarify the use of 300 taxicabs;
- Elimination of restrictions pertaining to the use of vehicles in specific time periods;
- Elimination of the restriction limiting Metro to an office facility at a specific location;
- Elimination of service to specific areas within the operating authority; and
- Elimination of those parts of the certificate related to the transportation of property.

Metro's existing operating authority is contained in Certificate of Public Convenience and Necessity PUC 1481. That authority was last modified by Decision No. C85-939 on July 23, 1985. As presently structured, the certificate contains three principal parts and 21 various restrictions. Part (1) of the certificate authorizes service within a 16-mile radius of 16th and Champa Streets in Denver, Colorado and is restricted against serving Englewood and Fort Logan. Notably, Part (1) is restricted to the use 150 vehicles. Part (2) authorizes service between points in the City and County of Denver, on the one hand, and all points within an 85-mile radius of 16th and Champa Streets, on the other hand. This part of the authority is restricted to the use of 150 vehicles, and is further restricted against the pick-up of passengers within 15 miles of Boulder, Fort Collins, Greeley, Longmont, Loveland, or Brighton, Colorado. Part (3) authorizes the transportation of property.

According to the testimony of William Cotter, President of Metro, Metro presently operates a total of 300 cabs under its certificate (12/05/94 transcript, page 134). Metro has taken the position on several occasions that 300 vehicles are authorized in the certificate (12/05/94 transcript, page 137). Metro has been operating under this premise since 1990 or 1991 (12/05/94 transcript, page 134). According to the testimony, Metro sought the advice of counsel relative to the correct interpretation of the number of vehicles authorized under its certificate (12/05/94 transcript, page 132). In any event, Metro presently provides taxi service to the public throughout the Denver metropolitan area, and, in providing this service, Metro uses 300 taxis. The company presently employs an automated dispatch system which utilizes on board computers in each vehicle (11/23/94 transcript, page 123). The average response time for service is 15 minutes from the time service is requested to the time of pickup (12/05/94 transcript, page 148).

As noted above, in its application Metro sought clarification of the total number of taxicabs authorized under its Certificate PUC No. 1481. The Recommended Decision appears to recognize that Metro's authority allows the use of a total of 300 vehicles (Decision No. R95-68, page 36), while at the same time denying Metro's application in its entirety

(Decision No. R95-68, page 58). We now determine that Metro's CPCN should be clarified as explained in this Decision.

We agree that Certificate PUC No. 1481 is confusing and subject to various interpretations. This is especially true of the vehicle use restrictions as applied to Parts (1) and (2). We conclude that Metro, having relied upon legal advice as to the extent of its certificate, operated its business in a good faith attempt to provide service to the public through maximum use of its (perceived) authorized fleet.¹⁶ More importantly, we find that a substantial portion of the traveling public in the Denver region has come to rely upon the service of Metro. For example, in 1991 Metro provided 541,396 taxi trips, or 25 percent of all trips made in the Denver Metro area in that year (Exhibit No. 57). In 1993, Metro made 757,768 trips, or 36 percent of all taxi trips for the year (Exhibit No. 55). It appears that the public is increasingly relying on Metro for its taxi needs.

Since Metro is presently using its entire fleet to provide service to most of the Denver region, a ruling by this Commission that Metro may not use its fleet in this

¹⁶ While a good faith interpretation may not ripen into a right to amend an existing authority, this evidence is, nevertheless, relevant to our decision to modify Metro's CPCN. The evidence, in particular, demonstrates that Metro's use of 300 vehicles to provide service throughout the Denver region did not amount to deliberate, reckless, or persistent violation of the statutes and rules governing taxi carriers. Therefore, the Commission is not foreclosed from authorizing modification of Metro's CPCN, even if past operations were not precisely consistent with the existing authority. *Red Ball Motor Freight, Inc. v Public Utilities Comm.*, 525 P.2d 439, 442 (Colo. 1974); *Public Utilities Commission v. Verl Harvey, Inc.*, 371 P.2d 453 (Colo. 1962).

manner (i.e. that Metro is authorized to use 150 taxis only for service within the area) would have disastrous consequences for the public. Such a conclusion would severely limit the public's ability to obtain taxi service. In short, the present record demonstrates that there is a public need for Metro to use up to 300 cabs to provide service throughout the Denver territory. We also observe that, inasmuch as Metro is already using its entire fleet of cabs to serve the Denver area, modification of the certificate as Metro requests will not harm competing carriers. That is, granting the requested clarification will not inject new or more competition into the relevant market. Metro is already providing service within the area with the same number of cabs which will be formally authorized under its requested clarification.

Since the public interest and need require it, we will modify the Recommended Decision and rewrite Certificate No. 1481 to eliminate the ambiguity and confusion relative to the vehicle authorization issue. This will clarify Metro's ability to use 300 taxi vehicles throughout the entire geographic scope of its certificate.

The restriction limiting Metro to an office facility at 4268 York Street no longer serves any useful purpose and should be eliminated. Also, the restrictions against serving Englewood and Fort Logan should be expunged from the authority; as should the antiquated restrictions limiting the

authority to a specific number of vehicles during specific time frames.

Effective January 1, 1995, Congress deregulated the intrastate transportation of property with the passage of Public Law 103-305. Therefore, that part of PUC 1481 authorizing the transportation of property will be eliminated. Metro's request for expansion of its "in and out" authority from an 85-mile radius of 16th and Champa Streets to a statewide area is denied. The record, in our estimation, does not demonstrate substantial inadequacy of existing service (under the doctrine of regulated monopoly), or even a public need for such expansion (under the doctrine of regulated competition).

IX. PENDING MOTIONS

Aspen, on March 14, 1995, filed its motion to strike a portion of the reply to exceptions by Metro. Now being duly advised, the motion is denied.

On March 30, 1995, James A. Beckwith filed his motion to withdraw as counsel of record for Aspen. Good cause having been stated the motion will be granted.

X. ORDER

THE COMMISSION ORDERS THAT:

1. The Exceptions filed by Colorado Transportation Services, Inc., doing business as American Cab Company of Denver, Inc., are granted consistent with the above discussion only and are otherwise

denied. Colorado Transportation Services, Inc., doing business as American Cab Company of Denver, Inc., is granted a certificate of public convenience and necessity to operate as a common carrier by motor vehicle for hire for:

Transportation of

passengers and their baggage, in taxi service,

between all points within the area comprised of the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, State of Colorado.

This certificate is restricted:

1. To the use of a maximum of 30 vehicles in service at any time prior to October 1, 1995;
 2. To the use of a maximum of 40 vehicles in service at any time after October 1, 1995 and prior to January 1, 1996; and
 3. To the use of a maximum of 50 vehicles in service at any time after January 1, 1996.
2. Freedom Cabs, Inc., is granted a certificate of public convenience and necessity to operate as a common carrier by motor vehicle for hire for:

Transportation of

passengers and their baggage, in taxi service,

between all points within the area comprised of the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, State of Colorado.

This certificate is restricted:

1. To the use of a maximum of 30 vehicles in service at any time prior to October 1, 1995;
 2. To the use of a maximum of 40 vehicles in service at any time after October 1, 1995 and prior to January 1, 1996;
 3. To the use of a maximum of 50 vehicles in service at any time after January 1, 1996; and
 4. Against opening an office within that portion of a 20-mile radius of the Post Office at Evergreen that lies west of a line drawn north and south through El Dorado Springs and Foxton, Colorado.
3. The Exceptions filed by Metro Taxi, Inc. are granted consistent with the above discussion only and are otherwise denied. The full and complete authority held by Metro Taxi, Inc, under Certificate of Public Convenience and Necessity PUC 1481 is henceforth as follows:

Transportation of

passengers and their baggage, in taxi service,

between all points within the area comprised of the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, State of Colorado, and between said points, on the one hand, and all points within an 85-mile radius of the intersection of 16th and Champa Streets in Denver, Colorado, on the other hand.

This certificate is restricted to a maximum of 300 vehicles in service at any time.

4. Freedom Cabs, Inc. and Colorado Transportation Services, Inc., doing business as American Cab Company of Denver, Inc., shall file certificates of insurance, tariffs, rates, and rules and regulations as required by the rules and regulations of the Commission, and shall pay the issuance fee, annual identification fee, and any other requirements of the Commission. Metro Taxi, Inc. shall file a revised tariff to reflect the changes made to its authority. Operations may not begin until these requirements have been met and the applicants have been notified by the Commission that operations may begin. If Freedom Cabs, Inc., Metro Taxi, Inc., or Colorado Transportation Services, Inc., doing business as American Cab Company of Denver, Inc., does not comply with the requirements of this ordering paragraph within 60 days of the effective date of this Order, then the ordering paragraph which grants authority to the delinquent applicant, shall be void, and the authority granted shall then be void. On good cause shown, the Commission may grant additional time for compliance provided that the request is filed with the Commission within the 60-day time period. Applicants American and Freedom shall have all vehicles successfully complete a safety

inspection by the Commission's Staff prior to placing the vehicles in service. Applicants are reminded to review the Commission's *Rules and Regulations Governing the Operations of Taxicabs* (4 C.C.R. 723-14), especially the requirement regarding obtaining a communication system within 12 months of beginning operations. In addition, applicants are reminded of their obligation to provide service to the public throughout the authorized service area. If the applicants hold title to, or lease more vehicles than authorized in their respective certificates, they shall maintain a system to ensure that no more than the authorized number of vehicles are operated at one time.

5. The Exceptions filed by Yellow Cab Cooperative Association, doing business as Yellow Cab, Inc., and its division, Denver Airport Limousine Services, Inc., Greater Colorado Springs Transportation Co., doing business as Yellow Cab Colorado Springs, and Aspen Limousine Service, Inc., doing business as Vans to Vail, Inc., are granted consistent with the above discussion only and are otherwise denied.
6. The exceptions filed by Black Hawk-Central City Ace Express, Inc. and the Staff of the Public Utilities Commission are granted to the extent consistent

with the above discussion only, and are otherwise denied.

7. The Exceptions filed by Mile-Hi Taxicab Company, Inc. Rocky Mountain Shuttlines, Inc., doing business as Rocky Mountain Supercoach, Ltd., and Diana Lezark, doing business as Evergreen Taxi Service, are denied consistent with the above discussion.
8. The motion of James A. Beckwith to withdraw as counsel of record for Aspen Limousine Service, Inc., doing business as Vans to Vail, Inc., is granted.
9. The motion to strike a portion of the reply to exceptions of Metro Taxi, Inc. filed by Aspen Limousine Service, Inc., doing business as Vans to Vail, is denied.
10. The 20-day period provided for in section 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the Effective Date of this Order.

11. This Order is effective on its Mailed Date.

ADOPTED IN OPEN MEETING May 17, 1995.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Robert J. Hix

Christine E. M. Alvar

Vicent M. Mijanguez
Commissioners