Decision No. C09-0207

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08A-241CP

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

DOCKET NO. 08A-283CP

IN THE MATTER OF THE APPLICATION OF CASTLE ROCK TAXI CAB COMPANY, LLC, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DOCKET NO. 08A-284CP-EXTENSION

IN THE MATTER OF THE APPLICATION OF FREEDOM CABS, INC., FOR AUTHORITY TO EXTEND OPERATIONS UNDER CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PUC NO. 53638 SO THAT, AS EXTENDED, RESTRICTION TO PUC NO. 53628 WOULD READ AS FOLLOWS: ALL OPERATIONS UNDER THIS CERTIFICATE SHALL BE LIMITED TO THE USE OF A MAXIMUM OF 300 VEHICLES IN SERVICE AT ANY TIME.

DOCKET NO. 08A-300CP

IN THE MATTER OF THE APPLICATION OF FLATIRON CAB CORPORATION, DOING BUSINESS AS IRON CAB, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

INITIAL COMMISSION DECISION

Mailed Date: February 27, 2009
Adopted Date: December 30, 2008

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I. STATEMENT

1. This consolidated proceeding involves consideration of four applications for new or additional taxicab authority in and between points in the front-range counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, Colorado (the Eight Counties). The applicants are Union Taxi Cooperative (Union Taxi); Freedom Cabs, Inc., (Freedom Cabs); Flatirons Cab Corporation, doing business as Iron Cab (Iron Cab); and Castle Rock Taxi Cab Company, LLC (Castle Rock Taxi) (collectively referred to as Applicants). The intervenors in this docket are Colorado Cab Company, LLC, doing business as Denver Yellow Cab (Denver Yellow) and/or Boulder Yellow Cab (Boulder Yellow);[1] MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta (Metro Taxi); and Staff of the Public Utilities Commission (Staff). Estes Park Express, Ltd. (Estes Park), initially intervened in this docket as well, but withdrew its intervention before the hearing commenced.[2] Ralph Collins, doing business as Mountains Taxi, also intervened, but did not participate after Iron Cab removed Gilpin County from its application. The Institute for Justice (Institute) is an *amicus curiae*[3] in this docket and the Federal Trade Commission (FTC) filed public comments.

2. The applications range in scope from the request of Union Taxi to operate 262 vehicles over much of the eight-county area to that of Castle Rock Taxi that seeks to begin

[1] Denver Yellow and Boulder Yellow collectively will be referred to as Yellow Cab.

[2] *See* Recommended Decision No. R08-1085-I, mailed on October 10, 2008.

[3] *See* Decision Nos. C08-0919, C08-0920, C08-0921, C08-0922, and C08-0923, mailed August 28, 2008, at ¶5.

operations with two vehicles to serve the area in and near the City of Castle Rock in Douglas County (Castle Rock). Freedom Cabs, an incumbent company, seeks to add 150 additional taxicabs to its existing certificate that authorizes it to operate 150 taxicabs. Iron Cab intends to offer service centering in Boulder County and plans to begin operations with the gradual phase-in of a small number of vehicles.

3. Now, being fully advised in the matter and consistent with the discussion below, we deny Castle Rock Taxi's application; deny Iron Cab's application; grant, in part, Union Taxi's application; and grant, in part, Freedom Cabs' application.

II. PROCEDURAL HISTORY

4. We issued several orders dealing with a variety of procedural issues in the course of this consolidated proceeding. It is not necessary to reiterate each of these orders here, but we review important milestones in this docket below.

5. By Decision No. C08-0933, the Public Utilities Commission (Commission or PUC) found that Iron Cab may appear without counsel, approved Iron Cab's request to amend its application to remove Gilpin County from the proposed geographic territory, and issued guidelines to the ALJ regarding the scope of the testimony and record to be developed at the hearing, interpretation and meaning of House Bill (HB) 08-1227, sequence of the hearing, and other miscellaneous guidelines.

6. The Commission specifically determined that operational and financial fitness of an applicant must be evaluated on a case-by-case basis, based upon unique circumstances of each applicant and the proposed service.

7. By Decision No. R08-0972-I, a stipulation was acknowledged among Union Taxi, Yellow Cab, Freedom Cabs, Metro Taxi, Castle Rock Taxi, and Iron Cab that was presented

during the prehearing conference held in this matter. The partial stipulation requested that, if Freedom Cabs' application is granted, the Commission should issue an order authorizing an extension of operations under Certificate of Public Convenience and Necessity (CPCN) PUC No. 53638 by administratively adding Broomfield County to the authorized territory.

8. Freedom Cabs' application states that "Broomfield County was carved out of Boulder County subsequent to the Commission's authorization of Boulder County as one of the counties to be served under this operating authority." *See* Freedom Cabs' application in Docket No. 08A-284CP-Extension, p. 2. The application implies that no substantive modification or expansion of authority is requested. Rather, a restatement of current authority is requested for purposes of clarification.

9. CPCN PUC No. 53628 (Hearing Exhibit 17), does not indicate that Freedom Cabs was ever authorized to operate in Weld County, Colorado. Because the portion of Broomfield County that is north of the Intersection of County Road 2 and Interstate 25 at Exit 229 was part of Weld County before it became part of Broomfield County, it appears that approval of the proposed stipulation requests geographic expansion of the scope of authority beyond the scope of notice provided in Freedom Cabs' application. Furthermore, the Commission has already dealt with the appropriate territorial description of Freedom Cabs' CPCN in Decision No. C02-0274. Based on the above, the stipulation is denied as moot.

10. By Decision No. R08-1023-I, Docket No. 08A-281CP-Extension was bifurcated from this proceeding and dismissed.

11. At the assigned time and place, this consolidated proceeding was called for hearing. Hearing Exhibits 1 through 31, 33 through 38, 40 through 41, 43, 45 through 58, 60 through 62, 64 through 68, and 70 through 72 were admitted into evidence. Exhibits 3, 10, 11,

15, 52, 54, 65, 66, and 71 were admitted as confidential exhibits, and were identified as confidential by the addition of a letter "C" (*e.g.*, Hearing Exhibit 3C). Hearing Exhibit 59 was initially admitted, over objections, and was stricken a moment later pursuant to the unopposed motion of the party originally requesting admission. Thus, Hearing Exhibit 59 is not in the evidentiary record of this proceeding. At the hearing, no testimony was offered by any public witness.

12. By Decision No. R08-1175-I, the deadline for filing post-hearing statements of position was extended until 3:00 p.m. on Monday, November 10, 2008.

13. Union Taxi, Freedom Cabs, Iron Cab, Castle Rock Taxi, and Yellow Cab each timely filed Statements of Position. Public comments were filed by the FTC on October 3, 2008. In addition, an *amicus* brief was filed by the Institute, prior to hearing, on August 4, 2008.

14. Metro Taxi's Statement of Position was filed with the Commission via facsimile on November 10, 2008. The transmission was completed at or about 3:17 p.m.

15. On November 12, 2008, Metro Taxi's Motion for Acceptance of Late Filed Statement of Position was filed. Metro Taxi requests that the Commission accept the late-filed pleading because counsel experienced a computer malfunction resulting in the deletion of the pleading being prepared for filing. Counsel reconstructed the pleading from an earlier draft and filed the pleading a few minutes after the established filing deadline.

16. No response was filed to Metro Taxi's motion for acceptance of the late-filed pleading. Good cause having been shown for the unopposed request, it will be granted and the Statement of Position of Metro Taxi will be accepted and considered.

17. We also note that the Statement of Position filed by Union Taxi is 73 pages long. Rule 1202(c) of the *Rules of Practice and Procedure*, 4 *Code of Colorado Regulations* (CCR)

723-1 provides that no pleading shall be more than 30 pages in length, excluding any attachments. Rule 1003(a) further provides that the Commission may grant waivers from the Commission rules for good cause shown. In its Statement of Position, Union Taxi states that although it is aware of Rule 1202(c), it believes that parties routinely file statements of position that exceed 30 pages after lenghty hearings and it requests a waiver "to the extent necessary."[4]

18. We note that this consolidated docket involves statutory interpretation issues of first impression and complex policy considerations. In addition, no party in this docket objected to the length of Union Taxi's Statement of Position. We therefore waive Rule 1202(c) on our own motion and we will accept Union Taxi's Statement of Position in full. In the future, however, we expect Union Taxi to seek a waiver of a Commission rule or a requirement contained in a Commission decision by a separate motion, rather than a conditional statement in a footnote, and to clearly state good cause for each particular waiver sought.

19. We are also disappointed to find that Union Taxi's Statement of Position contains such inflammatory statements as "[t]his [proceeding] has been nothing short of a war of attrition as Yellow and Metro pulled out all the stops to make a last stand defending their oligopoly turf"[5] and "Yellow and Metro should not be allowed to defend the fortress that is their shared oligopoly by simply outspending aspiring applicants…"[6] During a previous deliberations meeting held in this docket, we advised Union Taxi against such rhetoric. We repeat that admonition here.

[4] *See* Union Taxi's Statement of Position, filed November 10, 2008, fn. 1, p. 1.
[5] *Id.*, p. 2.
[6] *Id.*, p. 3.

III. FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS

A. Union Taxi.

20. Union Taxi has applied for new permanent authority 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 a twenty (20) mile radius of 16th Street and Champa Street in Denver, Colorado, and from said points, on the one hand, to all points in the State of Colorado, on the other hand. Union Taxi's application is restricted: (1) to the use of vehicles with a seating capacity of seven (7) passengers or less, not including the driver; and (2) to the use of a maximum of two hundred sixty-two (262) vehicles. A copy of Union Taxi's application was admitted as Hearing Exhibit 16.

21. Union Taxi is a Colorado cooperative that was incorporated on June 9, 2008. The cooperative has 262 members, each of whom is identified in Hearing Exhibit 15C. Each member has executed the Union Taxi Corporative Membership Agreement (Membership Agreement), Hearing Exhibit 1. Union Taxi maintains a waiting list for those wishing to purchase a membership in the cooperative. That waiting list included approximately 50 individuals at the time of hearing.

22. Cooperative members are permitted to transfer their membership with Board approval. Since the cooperative's inception, some members left the cooperative for personal reasons and transferred their membership to new members from those on the waiting list

maintained by Union Taxi.[7] Members may also simply withdraw from the cooperative at any time pursuant to Section 1.2 of the Bylaws, Hearing Exhibit 2.[8]

23. Union Taxi contends that approval of its application will lead to improved quality of taxi service in the Denver area and afford Union Taxi drivers an opportunity to earn a living wage.

1. Principal Witnesses.

a. Mr. Abdi A. Buni.

24. Mr. Abdi A. Buni is President and a member of Union Taxi. Since 2003, he has also been the President of ProTaxi, a non-profit organization affiliated with the Communications Workers of America, Local 7777 (CWA).

25. ProTaxi was formed to be a voice for taxi drivers in the Denver area. Mr. Buni led the organization's advocacy for legislative changes affecting the taxi industry over the last two years. ProTaxi and Union Taxi have an unspecified affiliation with the CWA. Union Taxi members will be required to pay CWA membership dues; however, there was testimony that members would not be "full members" because they are independent contractors. *See* Hearing Exhibit 1 at 9(c). In any event, there is clearly some level of CWA support for Union Taxi.

26. Mr. Buni studied engineering at a university before immigrating to the United States. He began driving a taxicab in 1993 in San Diego, California. In 1996, he moved to the Denver area and has been driving a taxicab since 2000. In the past, Mr. Buni has conducted

[7] One member of Union Taxi was tragically killed shortly before the hearing held in this matter. No action has been taken as to this individual membership and Union Taxi is allowing the member's spouse time to consider her wishes as to membership. Membership will be referenced as 262 members.

[8] The method of withdrawal and even the ability to withdraw from the cooperative is a matter of some confusion. *See generally* Hearing Transcript, October 14, 2008, pp. 107 – 127.

driver training for new drivers at both Metro Taxi and Yellow Cab. He currently owns and operates his taxicab pursuant to a contract with Metro Taxi, but also has driven for Yellow Cab. Mr. Buni contends that his experience in the industry demonstrates his knowledge of the taxi business.

27. Outside of the transportation industry, Mr. Buni worked in the hospitality industry. He provided room service for approximately two years at the Hyatt Regency Denver Tech Center and then was manager of three room service shifts. As manager, his responsibilities included supervising staff, customer service, scheduling, accounting for employee overtime, and allocating tips among employees.

28. Mr. Buni stated that he has never been cited for any violation of the Commission's hours of service rules. Although he does not appear to have a comprehensive understanding of Commission rules, he stated that he has never knowingly violated any Commission rule.

b. Mr. Ed Szmajter.

29. Mr. Ed Szmajter is the Chairman of the Board of Union Taxi as well as being a member of the cooperative. Mr. Szmajter was also a founder of ProTaxi and has been active in legislative efforts to change regulation of taxi service in Colorado. Mr. Szmajter studied economics at the University of Connecticut for three years.

30. Mr. Szmajter started driving a taxi in 1998 for the Yellow Taxi Cooperative. In 1994, he joined Freedom Cabs and worked there until 1996, when he moved to Metro Taxi because of disagreements with a general manager at the time. He has been driving a taxi for Metro Taxi since that time.

31. Over the years, Mr. Szmajter has worked as a driver trainer for Yellow Cab and Metro Taxi. He has approximately ten years of experience as a dispatcher, and was the first

dispatcher for Freedom Cabs. When Freedom Cabs began doing business, Mr. Szmajter wrote the dispatch rules and protocols, including establishing zones and a code system for shorthand communications.[9] Dispatch was conducted and queued according to zone.

32. Mr. Szmajter also set up Freedom Cabs' driver accounts and designed its bookkeeping system. He went on to work as a shift manager, meaning that he was responsible for handling all telephone calls and the dispatch of service. He also collected driver payoffs because many drivers found the evening to be a convenient time to visit the offices.

33. Outside of the taxi industry Mr. Szmajter owned and operated a moving company and he previously worked with Student Movers. He also acted as a First-Class Operator at the Henderson Mine, where he was responsible for control room operations. He was second in command on the shift and coordinated staff on tracks in the mine.

c. Mr. Fetseme Gebremariam.

34. Mr. Fetseme Gebremariam is a member of Union Taxi and a director on its Board of Directors. He has also served on the Board of Directors for ProTaxi since November 2006. He has been active in ongoing legislative efforts to change the law regarding the regulation of taxi drivers in Colorado. In those efforts, he worked with legislators and testified in legislature hearings.

35. Mr. Gebremariam has a Bachelor of Science in Mechanical Engineering Technology from Metropolitan State College of Denver (Metro State). While a student, he provided mathematics training for, and conducted, the California Achievement Test that is required for primary and secondary school teachers in Colorado.

[9] A vendor actually installed and setup the equipment.

36. Prior to entering Metro State, Mr. Gebremariam was a project manager for Platte River Industries (PRI). Mr. Gebremariam was responsible for 30 to 40 employees, 8 of which were supervisors directly reporting to him.

37. Mr. Gebremariam initially drove a taxi part time for Metro Taxi, beginning in 2003, while he was working for United Airlines and then Central Parking System. At Central Parking System, he was the night manager and auditor. In 2006, he began driving for Yellow Cab.

2. Planned Operations.

38. The cooperative is managed by a board of directors elected from its membership comprised of owner-drivers. Most of Union Taxi's financial information was submitted under confidential seal. Union Taxi's business plan was admitted as a confidential exhibit without objection as to confidentiality. The business plan reflects the claims and aspirations of Union Taxi for the first two years of operations.

39. Union Taxi initially anticipates all capital requirements being met by the membership of the organization. The company will be initially capitalized by owner-driver investments. The Board views outside equity as being inconsistent with the cooperative form of ownership. All but a few members, who were out of the state at the time of the hearing, paid the first three membership assessments. Collection of the fourth assessment was in progress with approximately one-half of the total membership having paid that assessment at the time of hearing. Additional capital contributions are anticipated before the commencement of operations to fund initial insurance requirements, but they will not be scheduled until an insurance quote is obtained.

40. Capital requirements are minimized in the *pro forma* financials because owners will be providing their own vehicles, radio equipment will be leased or rented, and maintenance and repair operations will be outsourced. Union Taxi anticipates that initial membership fees and ongoing operations will provide adequate capital to commence operation, establish offices, hire employees, initiate member benefits, and provide insurance.

41. Union Taxi's business plan proposes initial retail rates that are slightly higher than those of Freedom Cabs and comparable to existing rates charged by Yellow Cab and Metro Taxi. A copy of the proposed tariff that Union Taxi anticipates filing was admitted as Hearing Exhibit 8.

42. Union Taxi anticipates that its entry into the market will generate substantial favorable advertising. Traditional markings on a taxicab will be utilized including the company name and phone number for service. Union Taxi also anticipates that its affiliation with the AFL-CIO and CWA will promote its business, in addition to yellow page and other advertising (*i.e.*, periodicals and Internet advertising). Research regarding utilization of the Internet to date focused on the availability of a domain name for a website. While it is anticipated that the site will be operational at the commencement of operations, there is no information as to the implementation cost. Mr. Szmajter maintains that there is adequate cushion in the business plan for any additional or unexpected costs of the cooperative.

43. The cooperative will allocate business expenses "at cost" for recovery from the membership. Union Taxi will allocate all costs of the cooperative among the membership through their capital contributions or membership dues.

44. Operating expenses are currently estimated to equate to membership fees. The business plan assumes monthly membership fees, plus an estimate for insurance and for rental of a credit card machine. Union Taxi will require taxi driver accident protection insurance.

45. Mr. Szmajter compared estimates he received for liability insurance with amounts reported to the Commission by incumbent providers in their 2007 annual reports. *See* Hearing Exhibits, 12, 13, and 14. Yellow Cab reports approximately $170 per month per unit. Freedom Cabs reports $490 per month per unit. Metro Taxi reports $378 per month per unit. Mr. Szmajter received one preliminary estimate for insurance. Based upon the estimate received and reported experience, Mr. Szmajter contends that the business plan estimate is in fact high. On cross-examination, it was acknowledged that Mr. Szmajter could not have been aware of any discounts or comparability of coverage provided.

46. Union Taxi has entered into a lease for office space. Initially, Union Taxi will operate from offices with centralized dispatch and administration. Mr. Gebremariam estimates that the leased office space is approximately one half the size of Hearing Room A at the Commission. There are two rooms in the space with doors. The small room will be the dispatch center (estimated at 14’ x 15’). Mr. Szmajter explained several benefits of separating dispatch from the rest of the office. The larger room will contain the desks, file cabinets, and a safe for the security of confidential information. Union Taxi currently has use of the space and lease payments will begin upon approval of Union Taxi’s application. Union Taxi anticipates relocating to a larger space when supported by the operations.

47. Union Taxi identifies several line items that are budgeted conservatively and maintains that any omitted or incorrect expense items can be paid from the resulting cushion in the *pro forma* operating budget.

48. In addition to the cushion created by conservative estimates, Union Taxi contends that there is substantial "headroom" between planned monthly membership fees paid by owner-drivers and the existing market for taxicab leases among incumbent providers.[10]

49. In accordance with the Membership Agreement, Hearing Exhibit 1, Union Taxi's Board of Directors can modify the annual membership fees, in addition to recovery of any additional fees. The Board may allow payment of annual dues on a weekly, monthly, quarterly, or annual basis. In order to ensure timely payment of membership dues, Union Taxi anticipates establishing a security deposit account for each driver. Further, under the terms of the Bylaws and Membership Agreement, suspension and termination of membership can be pursued, as necessary.

50. To the extent profits from operations exceed anticipated expenses, the Board will establish reserves. To the extent that reserve requirements are met, the Board, in consultation with the general manager, can refund any remaining excess net margins to members. As necessary, the Board can also utilize its authority to adjust (up or down) monthly membership fees as necessary.

a. Union Taxi Drivers.

51. Each member will be an owner-driver for Union Taxi if the application is granted. All drivers will be allowed to serve the entirety of Union Taxi's service territory.

52. More than 60 percent of Union Taxi members have more than seven years driving experience and 258 of Union Taxi's 262 members currently drive for one of the incumbent taxi

[10] Because Union taxi contends its lease rates will be lower than its competitors, no discount is anticipated for times when the driver is unable to utilize his vehicle due to injury or repair. However, it was pointed out that a driver has the option of taking his vehicle out of service at a secured area to save insurance costs.

providers, Yellow Cab, Metro Taxi, or Freedom Cabs. Mr. Buni believes that all drivers for Union Taxi will have at least three years of experience as a taxicab driver. However, he acknowledged that the requirement could be waived by the Board. All members currently have a driver's license, and many have permits to serve Denver International Airport (DIA). Union Taxi states it has performed background checks on its members to ensure compliance with the Commission's rules.

53. Approximately 160 members currently own cars that will be used in taxi service by Union Taxi. The remaining members understand that they will be required to obtain cars, and that doing so is a prerequisite of membership. Like Mr. Szmajter, they are prepared to purchase a taxicab to provide service for Union Taxi promptly after authorization is granted.

54. Although there are no associate drivers at this time, Union Taxi members will be allowed to have associate drivers. Associate drivers, common in the industry, allow an owner operator to increase utilization of his taxicab and, at the same time, remain in compliance with the Commission's safety restrictions on driver hours of service. The arrangement will be between the member and the associate driver, and the associate driver will compensate the member for the use of the taxicab. Associate drivers will not be members of the cooperative, nor will they own their own car; however, they will have some obligations to the cooperative. All drivers, including associate drivers, will pay for insurance and maintain records required by the cooperative. There was conflicting evidence as to whether associate drivers will be required to be a member of the CWA, but they will be responsible for paying any association dues if applicable. Although not yet adopted by the Board, all drivers, including associate drivers, will be required to enter into a driver performance agreement regarding obligations such as compliance with Union Taxi rules (*i.e.*, driver appearance) and Commission rules.

b. Vouchers or Accounts.

55. Vouchers are commonly used in the taxi industry. A customer of the taxi company authorizes a customer to utilize a voucher to obtain taxi service. Drivers turn in the voucher to the taxi company after providing the requested service. Under the current operations of incumbent taxi cab companies, drivers are compensated for the taxi service provided on the voucher, perhaps less a service fee. The taxi company then bills the customer for the authorized services and obtains payment. The risk of nonpayment typically lies with the taxi company.

56. Union Taxi anticipates slightly different implementation than that provided in the past. Vouchers or accounts may be established by any driver and will belong to the driver. It is anticipated that invoices will be issued in the name of Union Taxi, but drivers will manage and equitably own the account. As a service to members, Union Taxi will process vouchers and invoice the account. Mr. Szmajter analogizes this consideration to personal accounts of drivers for other carriers. It has not been finally determined how the accounting will be handled for these accounts, including whether funds will be received by Union Taxi or directly deposited into a driver's personal or security account.

c. Training

57. Union Taxi drivers have been trained in safety matters, presumably while driving for incumbent companies. Union Taxi seeks to improve the quality of service to the public through compliance with cooperative and Commission requirements. The cooperative will provide and require annual safe-driver training (similar to that experienced at Metro Taxi). It has not been determined how costs for the class will be paid. It is currently anticipated that the cost will be incurred by the cooperative and passed through to the membership in the form of fees.

d. Staffing

58. The Board has decided to hire, and rely upon, the expertise of an experienced general manager. While the interviewing process has already begun, the cooperative will not hire a general manager until authority is granted, in order to preserve capital resources. *See* Exhibit 3C at 13. An early priority will also be to hire dispatch personnel. While Union Taxi's business plan was developed through the experience of members and external sources, the operations may be affected by the expertise of the general manager.

59. Union Taxi anticipates that the general manager will generally work during the day and be responsible for day-to-day operations. He or she will verify driver trip sheets for compliance with Commission rules,[11] conduct random equipment checks at the time of driver payoffs, annually review drivers, maintain driver-qualification files, review vehicle inspection reports, address driver concerns regarding billing statements or other problems, maintain the cooperative records, and conduct advertising campaigns in consultation with the Board. It is anticipated that the general manager will initially provide bookkeeping service within his or her capabilities and that a bookkeeper will be hired in time. The general manager also will be the primary administrative contact for the Commission.

60. Intervenors raised questions as to the feasibility of a general manager performing all of the services anticipated by Union Taxi. Union Taxi responded that when assigned duties exceed abilities, responsibilities will be delegated to existing or new personnel. Union Taxi also responded that it will hire according to its needs.

[11] Although the specific form of trip sheet has not yet been decided, Mr. Szmajter anticipates that each driver will have seven sheets per week. It is unclear how much time it will take an experienced manager to review trip sheets for compliance with Commission rules.

61. Mr. Szmajter clarified that operations will commence with four dispatchers, in addition to the general manager. In emergencies, the general manager will be available to help dispatchers. Drivers may also be utilized to temporarily support dispatch services.[12] Dispatch will be similar to that he conducted on behalf of Freedom Cabs when it began in 1994.

62. When he was a dispatcher for Freedom Cabs in 1994, Mr. Szmajter was alone overnight and provided phone answering and dispatch service. Using a handheld receiving unit, he was able to move throughout the facility. Although Union Taxi's planned operations are not fully finalized, Mr. Szmajter anticipates that the prevalence of cell phone service may be beneficially integrated into this process.

63. When deemed feasible and necessary, a bookkeeper will be hired to take over tracking individual capital accounts, preparing monthly statements, maintaining accounting records, and possibly preparing annual reports. An independent certified public account will also be hired for consultation as necessary. Additionally, the company consulted with CWA on bookkeeping matters.

e. Equipment.

64. Each member will own and operate his or her taxicab for Union Taxi.

65. Upon approval of Union Taxi’s application, startup operations will commence and cars will be prepared for service. It is anticipated that 20 to 30 cars per week will be put in service over the first four months of operations.

66. A list of equipment for initial operations includes several vehicles (approximately 30) that will be more than ten model years old in 2009, in violation of Commission’s rules. *See*

[12] Drivers doing so would be compensated as a dispatcher or, alternatively, negotiated reductions and lease fees are possible.

Hearing Exhibit 7. Of those, seven will exceed the rule requirements in 2008. Union Taxi will encourage drivers to obtain cars that are five years old or newer, but no more stringent requirements will be mandated than the Commission's rules. Union Taxi will seek the necessary waivers from the age of vehicle rules.

67. Union Taxi aspires to have an all-hybrid fleet by 2012. However, discussions regarding alternative fuel vehicles are still ongoing

68. Union Taxi's business plan estimates the cost to prepare a cab for service. The estimate includes the cost to paint the vehicle, a meter, a top light, a rear backlight, a Denver tax sticker, a Commission stamp, and installation of these items.

69. Union Taxi is currently in the process of researching radio dispatch equipment, top lights, meters, and credit card machines. Contracts for some services have been finalized, while others will not be finalized until authority is granted. Union Taxi anticipates adopting vehicle colors of a white top with a green bottom and red or yellow lettering. Initially, business operations will be supported through two telephone lines. However, additional lines will be added as needed.

70. Union Taxi initially plans to lease or rent a voice dispatch system utilizing a two-way radio similar to that utilized by Freedom Cabs. Although not finalized, Union Taxi anticipates leasing radio equipment that will provide availability of three-channel service and sufficient range to cover the proposed service area.[13]

[13] Mr. Szmajter explained a possible utilization of the three channels would be for one channel among drivers and two channels for segregated dispatch by tower areas. It was also clarified that the dispatch will have the capability to broadcast to all three channels at one time.

71. Mr. Szmajter contends the radio dispatch provides a reasonable and reliable service. He believes that Union Taxi can indefinitely provide quality service to its customers utilizing radio dispatch while reserves are built to ultimately implement a digital system in the future. He acknowledges benefits and efficiency of the digital dispatch system, and that Union Taxi aspires to be at the technological forefront.

72. A key distinction between radio dispatch systems and digital dispatch systems is the ability of the dispatcher to know with certainty where any taxicab is located. Illustratively, a driver near the address of a regular customer that desires to decline a short trip can choose to ignore dispatch. To mitigate these concerns, Union Taxi will not identify a specific pickup or destination address at the time of dispatch.

73. Mr. Gebremariam estimates that calls will be dispatched, on average, in two to three minutes. When a customer calls Union Taxi requesting service, a dispatcher takes down the trip information and announces the proximity of a call. He will wait for the first driver to respond and record the cab number with a timestamp. That driver should then respond to the customer requesting service within 15 minutes. As a driver approaches the pick up area, he reports to dispatch. Only then will the driver be given the actual pickup address. Thus, the possibility of a driver “stealing” the trip is minimized. Once the driver reports ready, the customer is called and told that the taxi will be a minute or two away.

74. Many members currently have global positioning system (GPS) navigation units installed in their taxicabs. Union Taxi will require all drivers to install them within the first year of operations as an important step for customer confidence and credibility of the cooperative.

75. Union Taxi will operate without any fleet cars (*i.e.*, vehicles owned by Union Taxi, as opposed to vehicles owned by drivers); however, it is anticipated that there will eventually be six or seven fleet cars available for the 262 members if necessary.

76. Union Taxi will require safety inspections to be conducted by an independent certified mechanic. Union Taxi's general manager will also conduct random inspections.

77. Union Taxi plans utilization of portable credit card machines allowing electronic transmission of processing similar to that currently utilized by Freedom Cabs. Specific procedures for the issuance of receipt of payment for credit card charges have not been established. Mr. Szmajter assumes that Union Taxi will incur a fee similar to that of Yellow Cab and that the fee will be passed through to drivers as part of their monthly statement. From initial discussions with vendors, Mr. Szmajter believes it may also be possible for credit card payments to be processed directly to driver accounts, less the applicable fee.

B. Freedom Cabs.

78. Freedom Cabs owns and operates Certificate No. 53638. This certificate authorizes Freedom Cabs to provide taxi service between all points in the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, and from all points in the City and County of Denver to all points in Colorado. Freedom Cabs is authorized to use a maximum of 150 vehicles in service at any one time.

79. Freedom Cabs seeks an extension of its existing permanent authority under CPCN PUC No. 53638, by increasing the number of vehicles that it is authorized to operate at any one time from 150 to 300 vehicles.

1. Principal Witnesses.

a. Mr. Haile Michael Gebre Michael.

80. Mr. Haile Michael Gebre Michael is President of Freedom Cabs and he owns 99 percent of the outstanding stock of the company. After earning his bachelor's degree in 1977, he practiced as an auditor at the Canadian Pacific Corp. for four years. After migrating to the United States in 1982, he studied at Metro State to earn a bachelor degree equivalent. He then worked in accounting for Colorado National Bank, and for the State of Colorado in the University of Colorado Medical School's financial department. While working for the State of Colorado, Mr. Michael obtained a herdic license and began driving a taxicab. For approximately six years, he leased a car from an owner driver and drove it for Metro Taxi.

b. Mr. Max Sarr.

81. Mr. Max Sarr is Operations Manager for Freedom Cabs. Mr. Sarr began driving for Freedom Cabs in 1997 or 1998. Mr. Sarr provided dispatch service for Freedom Cabs for four to five years. He was the head dispatcher from 1999 to 2000. After Mr. Michael took over Freedom Cabs, Mr. Sarr was promoted to office manager.

c. Mr. James McGehee.

82. Mr. James McGehee is a Public Accountant who provides services to Freedom Cabs. Mr. McGehee has been working with the company since the middle of 1998 addressing bookkeeping matters. This role expanded to include monthly financials and other matters as assigned.

2. History of Operations.

83. Freedom Cabs was formed in 1995. At that time, Mr. Michael was invited to be a shareholder of the newly formed company. Due to the inability to afford insurance, operations

ceased in 1996. Michael supported continued operations by providing approximately $25,000 in funding per month for six months. Mr. Michael purchased the interest of all but one of the remaining owners in September 2000 to avoid the company filing for bankruptcy protection. One of the selling shareholders remained to manage daily operations and Mr. Michael took over accounting for the company.

84. In 1998, Freedom Cabs was heavily in debt, owing more than $600,000 to creditors. Mr. Michael incurred substantial litigation expenses to prove his ownership interest. After assuming full control of the company, Mr. Michael began negotiating with various governmental and trade creditors regarding outstanding balances.

85. Mr. Michael loaned the company substantial funds to resolve outstanding debts, including $243,000 owed to the Internal Revenue Service, approximately $280,000 for an Equal Employment Opportunity Commission complaint, and $75,000 to $165,000 in smaller collection suits for trade debt.

86. Mr. Michael has not completed a detailed financial analysis of operations proposed under the authority sought in the within application.

87. For the past eight years, Freedom Cabs has operated profitably and is now financially self-supporting. Mr. Michael demonstrated that he has significant independent wealth, and he states his intention to invest appropriately in future operations.

88. In 2001 or 2002, Freedom Cabs applied to the Commission to request 150 additional permits in addition to the 50 originally held. The Commission ultimately granted 100 for a total of 150. Mr. Michael believes this grant helped past operations, but that additional permits will bring about a substantial change in the company.

89. Mr. Michael testified that Freedom Cabs is pursuing unspecified customer accounts, but that it is unable to serve such accounts because of the limitations in Freedom Cabs' existing authority. Mr. Sarr explains that customers of Freedom Cabs appreciate a low-rate economic service, but that the company has had to turn down many requests for accounts because it does not have available capacity to assume service obligations. If approved, Freedom Cabs will expand marketing efforts to increase familiarity with the company logo and advertise company service rates. A specific plan has not yet been formulated and no cost estimate has been made for such plans.

90. Freedom Cabs now seeks an additional 150 permits, for a total of 300. Currently, Freedom Cabs only leases with owner-operators and Mr. Michael would like to expand company-owned fleet operations with the additional authority sought in the application. If Freedom Cabs' application is approved, Mr. Sarr believes that Freedom Cabs can provide better service to all.

3. Current Operations.

91. Mr. Sarr describes Freedom Cabs as a company having a "low-cost" business model. This philosophy has allowed Freedom Cabs to maintain lower lease rates to drivers that have only been increased once in the last eight years.

92. Freedom Cabs currently offers two leases for drivers. Some drivers pay $275 per week plus $18 for accident insurance coverage. The remaining drivers pay $285 per week plus $18 for accident insurance coverage. The difference between the two leases is that the higher one includes a credit card machine with the ability to swipe the card.

93. Freedom Cabs utilizes a voice radio dispatch system. Mr. Sarr points out that a relationship is established between customers and dispatchers through the personal nature of call

handling. Mr. Michael states that the system is designed to operate up to 450 taxicabs, far more than the authority sought. Mr. Michael is familiar with digital dispatch systems, but he believes Freedom Cabs does not need such a system and that Freedom Cabs effectively dispatches through the radio communications system. Mr. Michael is satisfied with the current dispatch system utilized by Freedom Cabs. Based upon his experience as a dispatcher, Mr. Sarr also believes that Freedom Cabs' voice dispatch system is very efficient.

94. Mr. Michael sees his business model to be the same with or without digital dispatch. He does not believe it is cost effective for Freedom Cabs to install new equipment and hire personnel to maintain and operate that new equipment. Mr. Sarr disputes that the digital dispatch system is economically efficient for an operation with 150 taxicabs and believes that the current dispatch system will support the additional authority sought in the application. A technician also reported to Mr. Sarr that the system is technically capable of serving as many as 1,000 cars. Mr. Sarr acknowledges some potential efficiencies of digital dispatch and believes it would be reasonable to consider implementation thereof. If the application is approved, however, the decision would ultimately be up to Mr. Michael.

95. The existing two-way radio dispatch system is offered as an example of how Freedom Cabs is able to conduct a lowest-cost operation. In addition to comparing the relative cost of radio dispatch and digital dispatch systems, Mr. Sarr points out that a digital dispatch system requires additional personnel and higher maintenance costs than a radio dispatch system.

96. Freedom Cabs' current hiring process was reviewed. Freedom Cabs' hiring practices are described as very selective. New driver applicants submit a motor vehicle record that is forwarded to Freedom Cabs' insurance provider for approval. Practically all new drivers for Freedom Cabs are experienced drivers. However, Freedom Cabs still trains new drivers for

three to four hours so they are familiar with equipment and business processes. Freedom Cabs also encourages drivers to establish "personals," as do other companies.[14]

97. Drivers come to Freedom Cabs for "payoff" to pay their weekly lease and reconcile balances with the company. Rather than passing the cost on to drivers, Freedom Cabs absorbs the credit card processing fees charged by credit card companies.

98. Freedom Cabs also uses the payoff as an opportunity to inspect the condition of drivers' vehicles. Any problems are noted and the driver is asked to correct them. Freedom Cabs also relies on inspections conducted by the Commission Staff to monitor vehicle conditions. At this time, Freedom Cabs does not employ a mechanic.

99. Freedom Cabs reviews driver trip sheets at payoff. It is difficult for Freedom Cabs to verify or evaluate a driver's business because there are no bell slips for many trips. For example, there is no call slip for a ride originating at a cabstand or DIA, for personals, or for vouchers.[15] Although all trips should appear on driver trip sheets, Mr. Sarr testified that Freedom Cabs currently has no way of knowing if a trip is omitted from a trip sheet.[16] Mr. Sarr believes that the requested expansion of authority will allow the company to increase administrative support that will in turn allow more thorough review of trip sheets.

100. If a driver's vehicle will be out of service for more than one day, Freedom Cabs allows the driver to use a fleet car for up to four days without any additional fee. If a driver's car will be out of service for more than four days (*i.e.*, more substantial repairs), a driver is charged

[14] If a driver is not able to serve a personal, Freedom Cabs' dispatch service is available to assist in serving the customer.

[15] Vouchers are submitted by call or fax. The driver has a blank voucher in his taxicab that is filled out with information provided. A copy is provided to the customer and the original is turned in to the office for payment.

[16] It is not clear what information might be available from the meter regarding such trips not listed on trip sheets.

$35 per day for use of the spare car in excess of four days. Mr. Sarr explains that these are general guidelines that are evaluated on a case-by-case basis. Use of spare fleet cars allows drivers to earn money for lease obligations and avoids business loss for the company.

101. In 2007, the maximum number of vehicles Freedom Cabs had available for operation during a 24-hour period was 160, of which 15 were owned by Freedom Cabs and 145 were owned by drivers. *See* Exhibit 12, p. 4. *See* Hearing Exhibit 18. Freedom Cabs currently has approximately 120 to 140 vehicles on the road at any one point in time due to drivers being unavailable because of vacation or equipment being unavailable.

102. Freedom Cabs claims that it will promptly replace any drivers lost to Union Taxi, if Union Taxi's application is granted. Freedom Cabs maintains a waiting list, which at the time of the hearing listed approximately 85 drivers.

103. Mr. Sarr explained the purpose of Hearing Exhibit 18 as well as the current status of vehicles listed therein. Subsequent to creation of the list, some waivers have been granted to allow operation outside of the normal useful vehicle life. He noted that approximately one third of vehicles turn over annually. Retirement of vehicles will not necessarily free capacity under current equipment restrictions because current drivers will likely replace their cars in the ordinary course of business and continued driving.

104. Mr. McGehee prepared the 2007 annual report that Freedom Cabs filed with the Commission. *See* Hearing Exhibit 12. He initially explained that the report is based upon initial educated professional assumptions established in 1998. Without technological advancement, Mr. McGehee believes that it is at least impractical, if not impossible, to precisely report accurate information in the annual report.

105. In order to establish the original reporting assumptions, Mr. McGehee drove a few routes that a taxi might drive. He calculated reporting factors for such trips. These calculations were then extrapolated to report Freedom Cabs' operations. Mr. McGehee's analysis was informed by experiences reported by other clients at the time that drove taxicabs.

106. Mr. McGehee states that the adopted assumptions have been consistently applied since their creation. To adjust for time, he has applied an unspecified percentage of annual growth since 2000 to estimate current driver income of approximately $40,000 to $44,000 per year.[17] Mr. McGehee commented that it is difficult to determine drivers' income because drivers do not report to Freedom Cabs the total dollars and tips received; rather, only their lease fee is paid.[18] He has generally observed typically poor recordkeeping by drivers.

107. Mr. McGehee relied upon Mr. Sarr to provide the average driver hours for preparation of the 2007 annual report. Mr. McGehee acknowledged several errors in the preparation of the 2007 annual report. He incorrectly applied the prior assumptions in transferring amounts from the 2006 annual report. He will pursue appropriate actions to amend the report. Mr. McGehee admitted on cross-examination that the only verified number reported on page 3 of the report is the amount of total taxi service revenue retained by the carrier. It became clear that, aside from the financial statements, there is very little reliable operating information in the annual report.

108. At the end of 2007, Freedom Cabs reported total assets of $42,000. *See* Hearing Exhibit 19. Freedom Cabs currently has no material debt other than shareholder loans that are largely owed to Mr. Michael. *Id*. Based on current and historical operations, Mr. McGehee

[17] Mr. McGehee reports that he no longer has any clients that drive taxis. The basis and reasonableness of projected growth since 2000 is not clear.

[18] Mr. McGehee was not aware of trip sheets reported by drivers or information contained therein.

projects the elimination of the negative accumulated adjustment account in 2009. Thereafter, funds generated from operations could be available for future capital investment. During the first six months of 2008, Freedom Cabs generated a net income of approximately $300,000. A substantial portion of those funds were paid to Mr. Michael to reduce shareholder loans.[19]

109. Mr. McGehee contends that the current operations effectively maximize Freedom Cabs' potential, based upon current restrictions on the certificate. He has observed the skills of Mr. Sarr and Mr. Michael and he anticipates that the company can significantly expand operations, if allowed to do so by the Commission.[20]

110. Freedom Cabs' current facilities are described in Hearing Exhibit 25. Mr. Michael is in the process of searching for a new facility to house Freedom Cabs' operations. Although he purchased approximately two and a half acres for a new facility, he has determined that the location was not satisfactory. He is continuing to look for an acceptable facility that would also accommodate an area for drivers to shower and entertain themselves, a three-car garage, and a carwash.

111. Currently, Freedom Cabs operates with six full-time dispatchers and one part-time dispatcher. One or two dispatchers are on the job at any point in time depending on anticipated level of demand. During the day, when two dispatchers are on duty, one generally answers the telephone and one dispatches calls. Outside of normal business hours, the dispatcher acts as shift

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[19] No interest accumulation is reported on the financial statements of Freedom Cabs for shareholder loans because Mr. Michael owns practically all of the company and Freedom Cabs is a Subchapter S Corporation. It is Mr. McGehee's opinion that recording interest expense by the company and interest income for Mr. Michael would have no net tax effect.

[20] On cross-examination, it was shown that the maximum theoretical income for the company at current lease terms and rates is $2,145,000. (150 cabs, times $275 per week times 52 weeks per year).

supervisor. Freedom Cabs anticipates that, if the application is approved, additional dispatchers may be required and the company will be prepared to hire to meet its needs.

112. As office manager, Mr. Sarr is responsible for the day-to-day operations of Freedom Cabs and is ultimately responsible for its compliance with the Commission's rules. He reports directly to Mr. Michael. His typical duties include ensuring that lease payments are timely received by the company, scheduling dispatchers, hiring, establishing procedures, and addressing customer client complaints, including complaints received by the Commission.

113. In addition to an administrative assistant, Freedom Cabs uses three drivers to support Freedom Cabs' operations. One driver is responsible for the care of the company's cars that are identified on Hearing Exhibit 18 as spare cars. A second driver acts as a street supervisor. A third driver is relied upon to handle specific problems with call pickups.

4. Planned Operations.

114. If Freedom Cabs' application is granted, Mr. Michael intends to provide additional resources for Freedom Cabs to diversify its investment. Freedom Cabs plans to add 25 Toyota Prius hybrid vehicles along with 80 to 85 Ford Crown Victorias to its fleet. Mr. Michael had initial discussions with Burt Toyota for the purchase of hybrid vehicles. However, the status remains unsettled pending the outcome of this application. Mr. Michael hopes that these cars could be road ready by the end of the year (*i.e.*, 2008). If Freedom Cabs is authorized to expand taxicab operations, Mr. Michael anticipates selling his remaining outside business interests in order to put his full-time efforts toward Freedom Cabs.

115. Mr. Michael addressed difficulties in getting independent drivers to cover all service requirements. He contends that the addition of fleet cars leased to drivers on a weekly basis will aid in operations because they can be utilized to encourage drivers to accept short trips

through a mutually-beneficial team spirit. He anticipates some fleet drivers will eventually become owner drivers.

116. Mr. Sarr is confident that if the additional authority is granted, Freedom Cabs will be able to continue steady business growth in accordance with long-term plans. The capability to add additional taxicabs will definitely affect business planning and future operations. He notes that the grant of the authority requested will not necessarily dramatically change Freedom Cabs overnight; however, it will facilitate future planned growth. Mr. Sarr anticipates that additional trips for new taxicabs can be derived from marketing efforts and increasing the number of accounts served by Freedom Cabs. He will ensure that there is a steady business flow to support additional drivers in moderate growth, because it is detrimental to Freedom Cabs' interests to hire additional drivers if they will not be able to afford lease payments.

117. Mr. Michael contends that, if his application is granted, Freedom Cabs will be able to effectively compete with other incumbents, as well as Union Taxi if their application is granted. Should the Commission decide to grant only one of the applications of Union Taxi and Freedom Cabs in full, Mr. Michael contends that his experience demonstrates Freedom Cabs' superior legitimacy and fitness.

C. Iron Cab.

118. Iron Cab seeks new permanent authority to provide taxi service between all points in Boulder County (excluding the City of Longmont), and in portions of Broomfield and Jefferson Counties, and from those points on the one hand, to all points in Colorado on the other hand. Although Iron Cab's requested authority does not contain a proposed limitation on the number of vehicles it may operate at any one time, through oral testimony and Exhibit 52C, it indicated a desire to begin with a few taxis and then gradually add to its fleet over time.

1. Principal Witnesses.

a. Mr. John Odde.

119. Mr. John Odde is the President of Iron Cab. He earned a Bachelors of Arts in Hotel Administration from Cornell University. Through his career, Mr. Odde has worked for Holiday Inns as a Senior Assistant Innkeeper and at the corporate headquarters. He worked for the Ramada Inn as a Consulting Manager. After working for other resort companies, Mr. Odde then acquired an interest in two Florida properties, the largest of which was 50 units. After selling the properties in Florida, Mr. Odde moved to Colorado in 2002 and purchased the Lookout Inn and the Hilltop Inn (the Lookout Inn has subsequently been sold).

120. In Florida, Mr. Odde experienced operating a business in a regulatory environment. He owned a real estate brokerage, subject to regulation by the Florida Department of Business and Professional Regulation (Department). The brokerage had 22 independent contractor agents. He understood the importance of maintaining and protecting proper compliance documentation in that environment. His office was subject to inspection by the Department and no fault was found.

121. The Hilltop Inn is located adjacent to a runway on Rocky Mountain Metropolitan Airport property.[21] The property is a "country inn" full-service hotel. It has 16 rooms in addition to meeting rooms; a restaurant serving breakfast, lunch, and dinner; a tea room; and an outdoor bar.

122. Mr. Odde was a club officer in the Air Force for four years before he was honorably discharged. Operating an Officer's Club is analogous to a regulated service because of

[21] The airport was formerly known as the Jefferson County Airport.

the military compliance requirements based upon voluminous rules and regulations. Mr. Odde’s club was subject to inspection and found faultless in his recordkeeping and compliance.

123. Mr. Odde now resides in Boulder, Colorado. His observations of the taxi market are based on his first-hand experience as well as discussion with others, including a neighbor with a disability that relies upon taxi transportation.

124. In 2007, Mr. Duncan Newman became a managing partner of the Hilltop Inn. Since that time Mr. Odde's role has lessened from owner-operator; however, he continues to provide oversight and consultation regarding operations.

125. Mr. Odde estimates that approximately 15 percent of the customers arrive at his hotel directly from DIA. Many utilize public transportation or van services, in addition to for-hire transportation. The hotel typically recommends van service based upon quality of service and cost.

126. Mr. Odde gained interest in the taxicab industry based upon his two sons’ experiences and his own involvement in the hospitality industry. Christopher Odde (Christopher) has been driving a taxicab for approximately nine months. He has a background in litigation support as well as some management experience as a shift manager in the taxi industry. Jonathan Odde (Jonathan) has worked in the taxicab industry for approximately six years, four and a half years of which have been as a dispatch manager and night manager for a taxi company in Gainesville, Florida.[22] The remainder of the time he has driven a taxicab.

127. As owner of the Hilltop Inn, Mr. Odde contends it is impossible to get a cab from his facility. The Inn is located approximately midway between Boulder and Denver. This

[22] Mr. Odde observes that demographically, Gainesville is similar to the Boulder area because of a local university.

experience piqued his interest in starting a taxi company, particularly after it recently took two separate guests over two and a half hours to get to his hotel from DIA. One was transported by Yellow Cab and one was transported by Metro Taxi.

128. One of the customers did not reach the Inn until approximately 2:00 a.m. Mr. Odde acknowledged that the customers likely had not complained to the taxi companies, but noted that people seldom take such matters to the next level for isolated use of service. He also acknowledged that he did not call the company himself to complain regarding the poor service.

129. Mr. Odde believes there are problems with taxi service in the Boulder area. In addition to his own experience, Mr. Odde observed a demonstration of the digital dispatch system utilized by Yellow Cab in Boulder on two occasions. His son, a driver for Boulder Yellow, logged into a computer dispatch zone. Mr. Odde observed one or two taxicabs registered in the zone. Dispatch calls appearing on the computer system were not picked up by an available driver. Rather, taxicabs dropped out of the zone. Subsequently, the dispatch was submitted to adjacent zones.

130. Mr. Odde understands that a taxicab within the zone, available for dispatches, may be dropped from the zone for a period of time if they fail to accept dispatch of a call. However, because of the small area within each zone and the few people waiting for service, practically no queue for service is established. Thus, Mr. Odde questions the effectiveness or ability of Yellow Cab to encourage drivers to accept dispatch of trips appearing in less desirable zones. While Mr. Odde acknowledges the threat of being cut from the dispatch service as a viable threat in busier parts of Denver where queues are perhaps longer, he believes the threat of being put to the bottom of the queue in Boulder is meaningless.

131. Mr. Odde contends that his successful business experience in the hospitality industry qualifies him to be successful in the taxi industry. He has conducted substantial due diligence regarding the Commission's rules. Mr. Odde believes that Rule 6253(c) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6 would allow Iron Cab to require independent contractor drivers to accept dispatch of a call. Through the course of his testimony and the hearing, his understanding changed such that he believed Iron Cab could not require certain activity of independent contract drivers. He will shift his focus to more innovative measures to encourage the closest taxicab to accept dispatch calls by promoting a team spirit with drivers and rewarding those performing the best service. He anticipates building relationships to maintain good drivers that will support prompt service to the public.

132. Mr. Odde has no personal experience in the operation or management of a for-hire passenger transportation company. However, he has had some management experience at hotels that had courtesy vehicles.

b. Mr. Jeff Yarrington.

133. Mr. Jeff Yarrington is the Secretary and Treasurer of Iron Cab. While attending junior college, he identified an interest in computer service training. Pursuing this interest, he was accepted in the first group for an accelerated six-month information technology course leading to an associate degree in technology services. He went on to work in field services, repairing mini computers, and then supporting a software application for the accounting industry. As the head of his department in the latter position, he was responsible for managing and dispatching service calls.

134. Mr. Yarrington also worked in retail and outside services selling computers and peripherals. He then moved to a position of outside sales servicing large customer accounts. He

went on to complete his degree with a Bachelor of Science and Business Administration, with a major in information systems.

135. After moving to California, he worked for a software development company that he partially owned. The company sold help desk and call center software that he believes is comparable to the dispatch functionality used by the taxi industry. As Director of Sales and then Vice President of Marketing and Sales, he pursued the procurement of large clients. Illustrative clients included the Texas Department of Health, Federal Reserve Bank of Atlanta, Siemens, and the Nebraska State Department.

136. Mr. Yarrington worked for Listing Link, as a database administrator and developer. He played an integral role in redesigning the database and data processing that occurred on a 24-hour basis. He went on to head the department for the data processing. At the time, there were 43 feeds with 23 people processing those feeds on a 24-hour basis. The operation grew under his leadership to have more than 1,000 feeds daily requiring only 12 people to process the information.

137. Mr. Yarrington moved to Boulder in April 2005. His primary role for Iron Cab will be addressing office operations. He has been instrumental in managing regulatory matters for Iron Cab in addition to marketing efforts. Mr. Yarrington intends to leverage his technical expertise to streamline and automate requirements for the taxi business (*e.g.*, creation and entry of trip sheet information). Mr. Yarrington also continues as an Herbalife distributor; however, this is not a priority at this time and will be subordinated to the interests of Iron Cab.

138. Mr. Yarrington has no for-hire passenger transportation experience.

2. Planned Operations.

139. In Mr. Odde's opinion, additional taxis are needed for the Boulder area. Based on Mr. Whittle's testimony, he contends that there are four more taxis per person in Denver than in Boulder. He believes there will be a benefit from competition and improvement in quality of service, including shorter response times. He believes that there is some elasticity of demand for taxi service and that he can build on existing services. Based upon his experience in the hotel business and historical difficulties in obtaining service, he believes that Iron Cab can provide good customer service that will generate additional business.

140. Mr. Odde contends that a small company with direct dispatch systems can effectively meet that need. Iron Cab intends to aggressively market itself in the local Boulder area. As a small family-owned local company, and a front runner in "green" energy efficiency, Mr. Odde believes the company is uniquely positioned for success. Iron Cab anticipates its successful marketing will be kicked off through local publicity upon approval of its application.

141. Iron Cab's business plan is somewhat simplified and is represented to be conceptual in nature. It is also represented as one of many possible scenarios that the company may ultimately implement. Iron Cab infers that they will rely upon the expertise of Mr. Odde's sons for industry experience and expertise; however, they did not choose to have them provide any testimony in support of the application.

142. Iron Cab intends to offer service around Boulder and from Boulder to anywhere in Colorado, including DIA. Although the company has not yet contacted DIA for regulatory requirements, it believes that passengers can be dropped off without any particular qualifications. To the extent problems have been addressed by other parties regarding DIA, Mr. Yarrington states that Iron Cab will not contribute to those concerns because no passengers will be picked up

there. Mr. Yarrington acknowledges that no research has been done regarding fees to operate at DIA.

143. Capital requirements are anticipated to be met by contributions from the owners of the company; however, the owners have not entered into a binding contract at the time of the hearing.

144. Iron Cab anticipates that driver leases will allow drivers to operate 24 hours a day, 7 days a week. It has not made any projections of driver trips to be dispatched during any period of time. Mr. Yarrington understands that Christopher currently drives 20 to 24 trips per shift, with roughly half coming from personals and half coming from dispatch and cabstands.

145. The amount of office rent is not yet known because Iron Cab's lease of the facility contemplated in the business plan expired during the course of the litigation. However, based upon the fact that the alternative site previously considered was less expensive than the one in the business plan, Mr. Yarrington believes the *pro forma* amount may be overstated. Mr. Yarrington also believes that insurance costs may be overstated because insurance in Boulder will be less expensive than in Denver.

146. A significant portion of Iron Cab's business plan is to operate in an environmentally friendly manner utilizing taxicabs with higher operating efficiency. The company intends to utilize alternative fuels and plans to have handicap accessible vehicles.

147. Iron Cab plans to buy fleet vehicles and contract with drivers for their taxicabs. As part of the lease, Iron Cab will provide a cellular telephone to the driver that will be utilized in connection with Iron Cab's dispatch system. In the business plan, cellular phone expenses will be based on the number of taxicabs. No decision has been made as to responsibility for loss of the cellular phone.

148. Iron Cab plans to operate a few taxicabs and to increase the number over a few months. This phase-in period was not considered in the company's business plan. Mr. Yarrington has investigated the availability of Subaru vehicles, and reportedly found that the cost will be less than the *pro forma* analysis included in the business plan by approximately $50 per month per car. Through the course of the hearing, Mr. Yarrington stated that Crown Victoria and Toyota Prius vehicles may also be considered for implementation. The company also anticipates purchasing handicapped accessible taxicabs that will utilize compressed natural gas.

149. Iron Cab intends to install a Hydro Assist Fuel Cell (HAFC) kit on vehicles that will increase miles per gallon efficiency by 50 to 70 percent. Iron Cab has one kit that it intends to install on one of their taxicabs. Mr. Yarrington points out that Iron Cab is not required to take any action as a distributor of the HAFC kits and those kits will be offered for sale through Iron Cab's website. This income stream is not reflected in the business plan, and there was no evidence that there is revenue from sales.

150. The company has contracted with Elite Motors to service company vehicles.

151. Iron Cab will equip its taxicabs with GPS navigation equipment, or a cellular phone that will allow directional navigation.

152. The company plans to use computer-assisted dispatch with cellular service. The planned dispatch system allows GPS tracking of taxicabs. Iron Cab contends that this system will uniquely allow Iron Cab to personalize service to customer demands and location. Although no system has been purchased, TeleNav and Verizon are among the vendors being considered. The company has obtained quotes. It has not yet settled on a final choice.

153. Both of these vendors supply a web-based system that allows visual GPS tracking of taxicabs in the dispatch center. Calls will be dispatched using direct connect and group calls on two-way "heavy-duty" cellular telephones that will be purchased by Iron Cab.

154. Mr. Yarrington believes this type of cellular telephone can be beneficially adapted for transportation uses, including the ability to dispatch to all cabs at one time. He intends to use a manner of dispatch that he compares to text messaging using a cell phone. A software application is intended to be installed on the cellular telephones to assist in dispatch processing. Calls are dispatched in general to all or a subset of taxicabs and will be accepted by telephone calls on the cell phone.[23] The dispatcher will be able to transmit a dispatch to a cellular telephone or an optional receiver mounted in a taxicab. The functionality will be the same for either method of receiving dispatch. This system will help ensure calls will be dispatched to the closest available taxicab.

155. Mr. Odde believes it is too soon to actually purchase the system, but plans to do so promptly upon approval of Iron Cab's application.

156. Iron Cab currently has no employees. Mr. Yarrington describes the business plan as being very fluid and able to meet the unknown. For the first 18 months of operations, Iron Cab anticipates that Jonathan, Mr. Odde, and Mr. Yarrington will be the initial employees.[24] Jonathan will be a dispatcher for Iron Cab. Mr. Odde and Mr. Yarrington will also assist in the dispatch role. Three part-time people will also be utilized for dispatch, and possibly a fourth will be added. In order to ensure 24-hour dispatch coverage, each of the three full-time employees will be supported by part-time personnel.

[23] It is anticipated that drivers will be provided Bluetooth headsets for use in connection with cell phones.

[24] Mr. Odde has a daughter that has worked for him in the past as a bookkeeper. She may be called upon in some capacity for Iron Cab; however, no involvement is planned at this time.

157. Christopher will be a driver for Iron Cab and act as the field operations supervisor. He has currently been driving a taxicab for Boulder Yellow under a weekly lease for approximately nine months. Christopher has no other for-hire passenger transportation experience.

D. Castle Rock Taxi.

158. Mr. Ray Rowden is the sole owner of Castle Rock Taxi. He has approximately 12 years of experience as a salesman in the electric industry. He has also been responsible for coordinating orders from his company's warehouse and implementing marketing initiatives for his employer based in Chicago, Illinois.

159. Mr. Rowden is currently employed by Kohler; however, he anticipates leaving that position in late November 2008. He anticipates accepting a contract opportunity as a salesman selling cabinets and believes that will result in commissioned sales of $75,000 to $112,500 per year as an independent contractor. He believes he will have sufficient time to devote to the success of Castle Rock Taxi while fulfilling any contracted responsibilities.

160. Mr. Rowden also works on a part-time basis as a bartender. Based on this experience, he observes a demand for taxi service not being met and believes that there is substantial latent demand that could be met by a local taxi company.

161. Mr. Rowden has no prior experience in the transportation industry.

1. Amendments to Application.

162. On July 1, 2008, Castle Rock Taxi applied for a permanent authority to operate a taxi service in the following geographic area:

> To and from all points in Castle Rock, Sedalia, Louviers, Roxborough, Perry Park, Larkspur, Franktown and Elizabeth. Servicing all points along I-25

between exit 172 (Larkspur) and exit 193 (Lincoln-Douglas County) to specifically service the Lincoln (Douglas County) Light Rail Station.

To Denver International Airport and Colorado Springs Airport.[25]

The application did not contain a restriction on the number of cabs, but Castle Rock Taxi's business plan indicated that it planned to operate with only one to three vehicles, at least in the beginning.[26]

163. On July 2, 2008, Castle Rock Taxi mailed a letter to the Commission, stating that it incorrectly completed the application and requesting that the Commission use the following proposed authority in lieu of the original application:

(a) Proposed geographic area to be served:

Between all points located within 20 miles of that portion of I-25 from its intersection with exit 163 to its intersection with E-470 and from said points on the one hand to Denver International Airport and Colorado Springs Airport on the other hand.

(b) Restrictions to proposed authority:

Against service to points south of the intersection of exit 163 and I-25.

Against service to points north of the intersection of E-470 and I-25.

Against service within Parker city limits.[27]

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[25] *See* Castle Rock's Application dated July 1, 2008, at p. 3.

[26] *See e.g.,* Castle Rock's Statement of Position dated November 10, 2008, at p. 3.

[27] *See* Letter from Ray Rowden on behalf of Castle Rock to Doug Dean, Director of the Commission, dated July 2, 2008.

164. On July 3, 2008, Staff sent a letter to Castle Rock Taxi noting certain deficiencies with its application not related to the proposed geographic scope. In response to the deficiency letter, Castle Rock Taxi also amended its application as follows:

> For authority 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 located within twenty (20) miles of that portion of I-25, from its intersection with exit 163 to its intersection with exit 194, with no points south of the intersection of I-25 and exit 163 and no points north of the intersection of I-25 and exit 194, and from said points on the one hand, to Denver International Airport and Colorado Springs Airport, on the other hand.
>
> <u>RESTRICTIONS</u>:
>
> This application is restricted against service within the City of Parker, State of Colorado.[28]

The Commission noticed Castle Rock Taxi's application in accordance with this amendment on July 7, 2008. The application was subsequently deemed complete.[29]

165. On September 15, 2008, Castle Rock Taxi again requested to amend its application as follows:

> For authority 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 located within twenty (20) miles of that portion of I-25, from its intersection with exit 173 to its intersection with exit 194, with no points south of the intersection of I-25 and exit 173 and no points north of the intersection of I-25 and exit 194, *and from said points on the one hand, to all points in the State of Colorado on the other hand.* (*emphasis added)*

[28] *See* Fax from Ray Rowden on behalf of Castle Rock to Larry Herold, Staff of the Commission, dated July 7, 2008.

[29] *See* Decision No. C08-0714, mailed July 10, 2008, at ¶4 (shortening the public notice of the application and the opportunity to file interventions until July 17, 2008); Rule 1303(b)(III) of the *Rules of Practice and Procedure*, 4 *Code of Colorado Regulations* 723-1 (an application shall be automatically deemed complete if the Commission does not issue a determination on completeness within 15 days of the expiration of the application's notice period).

RESTRICTIONS:

This application is restricted against service within the City of Parker, State of Colorado. This application is also restricted against service in Elbert County, State of Colorado.

166. The ALJ found that by expanding the scope of its authority to include service to all points in the State of Colorado, Castle Rock Taxi sought to expand its proposed authority beyond the notice provided by the Commission in this docket.[30] The ALJ further noted that Castle Rock Taxi failed to serve a copy of its proposed amendment on all other parties in this docket.[31] The ALJ denied Castle Rock Taxi's request to amend the scope of its proposed authority.[32]

167. Finally, on October 16, 2008, Castle Rock Taxi requested leave to amend the scope of authority sought as follows:

For authority 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 located within twenty (20) miles of that portion of I-25, from its intersection with exit 173 to its intersection with exit 194, with no points south of the intersection of I-25 and exit 173 and no points north of the intersection of I-25 and exit 194, and from said points on the one hand, to Denver International Airport and Colorado Springs Airport on the other hand.

RESTRICTIONS:

(a) This application is restricted against service within the City of Parker, State of Colorado.

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[30] *See* Recommended Decision No. R08-1000-I, mailed September 19, 2008, at ¶7; *See also* Rule 1309(a) (…[W]henever a commencing party amends or supplements a pleading, other than through a restrictive amendment, it, or the Commission, as applicable shall provide new notice consistent with Rule 1206. All applicable timelines run from the date of the most recent amendment or supplement, except that a restrictive amendment shall not change applicable timelines.)

[31] *Id.*, at ¶4.

[32] *Id.*, at ordering ¶3.

(b) This application is also restricted against service in Elbert County, State of Colorado.[33]

During the hearing, the ALJ construed this request as a motion, and without objection from other parties, waived response time and granted the motion.[34]

2. Planned Operations.

168. Hearing Exhibit 57 is a map containing the scope of Castle Rock Taxi's amended application. Mr. Rowden offered oral testimony regarding an intention to conduct service outside of the scope of the notice provided for his application.[35] In his oral testimony, he stated that he wishes to serve Larkspur Colorado; however, Larkspur lies outside the scope of the application as amended per Mr. Rowden's request and outside of the scope of notice provided for his application. *See* Notice and Hearing Exhibit 57.

169. Mr. Rowden contends that Yellow Cab is out of touch with the Castle Rock market and that it cannot effectively serve Castle Rock from a terminal more than 35 miles away. Dr. Mundy found that average wait time to the 80108 zip code is between 40 to 59 minutes. Less than 1 percent of the total dispatch trips by Denver Yellow in December 2007 were in either 80104 or 80108 zip codes. Hearing Exhibit 72 at 12, 15. The same would be true for Metro Taxi. *Id.* at 29. Mr. Rowden contends that Yellow Cab uses its certificate to avoid competition and retain control over the territory, but does not serve it. He believes Castle Rock is underserved and that he never sees any Yellow Cabs or Metro Taxi taxicabs in Castle Rock.

[33] *See* Hearing Exhibit 56.
[34] *See* Hearing Transcript, 10/28/2008, p. 74, lines 22-24.
[35] *Id.*, p. 84, lines 15-25.

170. Mr. Rowden notes that public transportation alternatives in Castle Rock are limited and generally only available during normal business hours. He believes that the addition of a locally-based taxicab service will better serve the public.

171. Mr. Rowden distinguishes his proposed service territory from the remainder of these consolidated proceedings. Castle Rock is geographically distinct from the Denver metropolitan area. He contends that a study[36] regarding cities with more than one million in population has no relevance to operations in Castle Rock.

172. Castle Rock Taxi intends to primarily serve Castle Rock, adopting a motto "in Castle Rock for Castle Rock." Although Castle Rock Taxi's requested authority does not contain a proposed limitation on the number of vehicles it may operate at any one time, in his oral testimony, Mr. Rowden indicated the business will be operated on a "small scale," and that he intends to begin operation with only a very few cars. *See* Exhibit 54C. *Pro forma* financial statements included in the business plan are based upon operation of two taxicabs. Mr. Rowden hopes that operations will support adding a third taxicab within three to four months. All taxicabs will be based out of Castle Rock for the foreseeable future.

173. Mr. Rowden does not have any one strategy to determine the number of vehicles to place in service and believes that the market will tell him what is necessary. As the sole owner, Mr. Rowden contends that he will be able to react as needed for the good of his company and its drivers.

174. Mr. Rowden has estimated Castle Rock Taxi’s retail rates. There will be a per mile charge plus a per-minute charge.

[36] The study to which Mr. Rowden refers is provided by Dr. Mundy, and will be discussed below.

175. At this time, Castle Rock Taxi has no bank account. While Mr. Rowden intends to have an office in Castle Rock, there was no facility at the time of hearing. He plans to initiate operations from an office located in his home and move to an office when feasible.

176. As an initial step following the grant of authority, Mr. Rowden intends to form a focus group of potential drivers. Based on input gain through this process, he will attempt to further solidify his business plan. Mr. Rowden believes that his business plan will engender support of new drivers that will join him to empower future growth. He hopes to provide a longevity bonus to drivers through cash payments or lease reductions.

177. Castle Rock Taxi's business plan is based upon leasing two fleet vehicles to drivers on a weekly basis. Projected lease rates will include a fixed amount plus a portion of fares received. If drivers are not able to achieve projected income levels during the first six months of operations, he will consider subsidizing fuel costs or other measures. Drivers will generally determine their own hours, but he wants to ensure that the company has coverage as well. Mr. Rowden anticipates allowing drivers to have associate drivers. Any financial arrangements between an independent contractor and an associate driver would be left to them.

178. Mr. Rowden anticipates conducting background checks for drivers and initiating safety training within the first year. Although he anticipates initially hiring experienced drivers, he has also become aware of training videos through the course of the hearing in this consolidated proceeding. He is also aware of other materials and videos that are available for training. On cross-examination, he admitted that he was not aware of any minimum training requirements.

179. GPS navigation systems will be installed in all taxicabs within 18 months from the commencement of operations.

180. Castle Rock Taxi will implement a hosted computer voice over Internet protocol (VOIP) auto attendant for call handling and dispatch. An integrated software application will allow him to save and view historical information.

181. Mr. Rowden explained that the auto attendant will answer all calls with a voice menu prompt. Illustratively, the caller will be asked to press 1 for a ride or to press 2 for Mr. Rowden. If 1 is pressed, the call will be connected to a driver's cell phone as dispatch. Mr. Rowden believes this system will provide an inexpensive dispatch system; however, on cross-examination, it became clear that Mr. Rowden did not fully understand planned call processing. Mr. Rowden also stated an anticipation of broadcasting all calls to all drivers for dispatch. It is not clear whether and how such an intention will be met by the proposed system.

182. Dispatch will be processed by Mr. Rowden and his phone system. He notes that the hosted VOIP-based dispatch system is not dependent on any computer at his location and that it will continue to function even when computers at his office are turned off. However, computers will be available and relied upon for reviewing and utilizing GPS tracking.

183. Castle Rock Taxi obtained a preliminary estimate for cellular telephone service. GPS phone tracking information can be used to audit trip sheets to verify that his company receives 50 percent of total driver fares.

184. Mr. Rowden reiterated that his business plan is a basic and flexible plan having substantial padding in his business plan projections. However, when he attempted to modify the *pro forma* financials, it became clear that the financials no longer reflect Castle Rock Taxi's plan.

185. During the Castle Rock Taxi rebuttal case, it updated the previously-admitted Business Plan. However, further cross-examination demonstrated errors in the company reaction

to prior testimony. Castle Rock Taxi contends that the business plan still demonstrates profitability of the company that will also be supported by adequate capital resources.

186. Mr. Rowden believes his proposed service will benefit the public interest and that he should be given an opportunity to compete legally, as opposed to "pirate taxis" that he believes to be operating without Commission authorization of the market.

187. Mr. Rowden initially plans to rely on relationships with a friend and his attorney for initial support of the company.

188. Mr. Rowden will be responsible for bookkeeping, in consultation with an independent accountant for a nominal fee. He also will be responsible for marketing the company and responding to all customer service issues.

189. Mr. Rowden does not yet know what hours of the day he will be personally working in the office, but he will be the only non-driver working for the company in the beginning. Therefore, when he is not on duty, the company will have no presence, except for an independent contractor on duty as a driver.

E. Metro Taxi.

190. Metro Taxi owns and operates CPCN PUC No. 1481, which authorizes Metro Taxi to provide taxi service between all points in the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, and between those points and all points within an 85-mile radius of 16th and Champa Streets in Denver, and from all points in the City and County of Denver to all points in Colorado outside the 85-mile radius.

191. Metro Taxi is authorized to use a maximum of 492 vehicles in service at any one time. *See* Hearing Exhibit 33. In 2007, the maximum number of vehicles Metro Taxi had available for operation during a 24-hour period was 404, of which 338 were owned by Metro

Taxi and 66 were owned by drivers. Also in 2007, Metro Taxi employed a total of 88 employees, comprised of 18 persons in management, 16 in its shop, 14 in clerical, 4 dispatchers, and 36 call takers. The maximum number of leases Metro Taxi had with independent drivers during a 24-hour period in 2007 was 464. *See* Hearing Exhibit 13, Part A, lines 21, 22, and 23.

1. Principal Witness.

a. Mr. William Cotter.

192. Mr. William Cotter is a vice president for Metro Taxi and has been a member (co-owner) of Metro Taxi, along with Robert McBride, since about September 2004. He served as General Manager of Metro Taxi for some months during prior ownership. He also served as a shareholder, member of the board of directors and officer of the company under prior ownership from August 1985 until the company was sold in 2001.

193. Mr. Cotter has been active in the Taxicab, Limousine, and Para Transit Association, formerly known as the International Limousine Paratransit Association (TLPA) and served many executive functions for the organization.

194. Mr. Cotter described the history of the company in terms of the authorized number of taxicabs. Metro Taxi was initially authorized to operate 75 cabs. Metro was then authorized to increase the number of taxicabs by increments of 25 taxicabs for each 90-days that it could demonstrate adequate business to support such operation, until a limit of 150 was reached. In the consolidated proceedings of 1990 (approximately), the limit was increased to 300 taxicabs. After purchasing American Cab and Zone Cab, the limit was increased to the current amount, 492.

195. Mr. Cotter contends that 492 taxicabs is a limit that allows efficient operations because Metro Taxi has the flexibly to respond to the substantial seasonality of taxi demand.

Historically, the Commission adopted a total number of vehicles to serve the Denver market. No one could have foreseen that Metro would operate 492 taxicabs. Rather, the Commission determined the number of taxis to serve the market and allocated the same. Thereafter, Metro Taxi purchased two failed companies.

2. Current Operations.

196. Metro Taxi is a full-service taxicab company. Its business philosophy is based on quality service, safety, teamwork, and community involvement. Mr. Cotter summarized three characteristics that makes Metro Taxi a full-service taxicab company: (1) Metro Taxi operates primarily a company-owned fleet of taxi vehicles; (2) Metro Taxi has long operated with a computerized dispatch system, rather than a voice-based radio system; and (3) Metro Taxi is transforming its fleet to high mileage vehicles, including hybrid electric-gasoline vehicles, to bring a needed shift to using less non-renewable petroleum fuel and significantly reducing the emission of greenhouse gases into Denver's atmosphere.

197. Metro Taxi utilized a radio dispatch system prior to 1989, when the company operated 110 to 120 taxicabs under its authority limited to 150 taxicabs. Having been a dispatcher for four years of his career in the industry, Mr. Cotter is familiar with the shortcomings of that system. For communication quality, he equates radio dispatch to using a cell phone in a bad service area. He believes it is impossible for a taxi company to effectively radio dispatch more than approximately 80 taxicabs at any one time and that chaos results in a radio dispatch environment dispatching 80 to 100 taxicabs.

198. Digital dispatch is more effective and efficient because it allows an increased number of calls to be dispatched. An automated system helps the taxi company mitigate the

difficulty of hiring and retaining high-quality dispatchers. Often the best dispatchers are successful taxicab drivers; however, they often prefer driving to dispatching.

199. Metro Taxi implemented and has upgraded dispatch systems more than once since the original adoption in 1989. Metro Taxi is currently implementing an integrated computerized system by AutoCab that integrates virtually all of Metro Taxi's management systems and databases into a single integrated system. It allows better recording and availability of information to document compliance with Commission rules. Using cellular transmission technology coupled with the Internet, the company will no longer rely upon radio towers to communicate with the on-board computer terminal in the vehicle. New technologies greatly expand the speed and bandwidth available between the base system and terminals in the taxicabs. Drivers can contact Metro Taxi and Metro Taxi can dispatch calls much more rapidly and reliably. Finally, the system uses a real-time GPS satellite technology for up-to-the-moment driver location and instantaneous transmission of driving instructions to any location in the coverage area. This allows Metro Taxi to dispatch the closest vehicle to pick up a customer and for drivers to utilize the shortest routes while avoiding traffic delays. According to the manufacturer of the AutoCab system, Metro Taxi can expect that drivers will achieve a 23 percent saving in fuel costs with the full implementation of the system.

200. Based upon his experience, Mr. Cotter believes there is good reason to include a minimum requirement for computer dispatch implementation for companies having more than 100 taxicabs in order to be deemed fit. However, Mr. Cotter acknowledges that no Commission rule currently requires a digital dispatch system.

201. Mr. Cotter addressed some challenges of a taxi company in serving public demand. He acknowledged that, even utilizing fleet vehicles, Metro Taxi cannot require

independent drivers to accept dispatch calls. However, he believes that fleet vehicles allow the company to inspect and ensure the quality, timely retirement, mileage efficiency, type, maintenance, and cleanliness of the vehicle. He believes that increasing efficiency and quality of service can be achieved through fleet ownership to the benefit of the public.

202. Mr. Cotter believes that Metro Taxi's implementation of hybrid taxis is good for Denver, the customer, and the company. Their green program is important to the company and he believes it can be implemented more timely through fleet vehicles than through utilization of an owner-driver group.

203. Metro Taxi points to the Democratic National Convention (DNC) held in Denver from August 25 through 29, 2008, to demonstrate that Metro Taxi successfully services the traveling public despite a 67 percent increase in demand. People were arriving and departing Denver in large numbers on the days immediately before and immediately after those dates. In addition, two other large conventions were held, one just before the DNC (the firefighter's convention), and one after the DNC (the Consumer Electronics Design and Installation Association (CEDIA) convention). The demand for taxi service was significantly higher than normal during that time period. During this peak demand, the normal level of calls, about 4,400, increased to about 10,000 per day. The number of dispatched calls increased from normal levels, about 2,500, to between 4,000 and 5,000 per day. In addition to dispatch calls, there was a large increase in hailed trips, estimated at an additional 2,000 trips per day, bringing the total trips handled by Metro Taxi to approximately 7,000 trips per day during the DNC. Although additional staff was hired and all available vehicles were put into service, Metro Taxi met this

extraordinary demand using its existing vehicle fleet. The company did not need to avail itself of the PUC limited waiver to allow additional vehicles for the DNC period.[37]

204. Mr. Cotter also states that Metro Taxi experienced very few (less than ten) service complaints during this peak period. Metro Taxi did not receive any complaints about its service through the Commission during this time period. Other agencies, like the Denver Metro Convention and Visitors Bureau, also seemed to be satisfied with Metro Taxi's service during this past summer. Based upon the foregoing, he concludes that Metro Taxi provided satisfactory to very good service during the DNC period.

F. Yellow Cab.

205. Denver Yellow owns and operates CPCN No. 2378&I. Hearing Exhibit 46. Denver Yellow is authorized to use a maximum of 300 vehicles to provide taxi service between all points within a 16-mile radius of 16th and Champa Streets in Denver, including DIA in the base area, and from those points to all points in Colorado; and between all points in a 17-mile radius of the intersection of I-25 and Colorado Highway 86 in Castle Rock, and between those points and all points in Colorado.

206. In 2007, the maximum number of vehicles Denver Yellow had available for operation during a 24-hour period was 561, of which 214 were owned by Denver Yellow and 347 were owned by drivers. The total number of vehicles remains about the same currently, but with more company-owned and fewer driver-owned vehicles. Also in 2007, Denver Yellow employed 11 persons in management, 15 in its shop, 13 clerical, and 58 call takers and dispatchers (who also serve Boulder Yellow), for a total of 97 employees. The maximum number of leases Denver Yellow had with independent contractor drivers during a 24-hour period was 531, distributed

[37] *See* Decision No. C08-0672.

among 21 different lease categories. *See* Hearing Exhibit 14, Part A, lines 21, 22, and 23. Yellow Cab maintains its dispatch facilities near I-70 and Quebec.

207. Boulder Yellow also owns and operates CPCN PUC No. 150&I. Boulder Yellow is authorized to provide taxi service between all points in an area described more fully in its Certificate, which generally includes Boulder County east of the foothills (but excluding northeast Boulder County and Longmont), most of the City and County of Broomfield and a small part of northeast Jefferson County, and between those points and all points within a 35-mile radius of U.S. Highway 36 and Arapahoe Avenue in Boulder. *See* Hearing Exhibit 47.

208. Certificate No. 150&I does not restrict the number of vehicles in operation at any one time. *Id.* For the last several years, Boulder Yellow has operated about 45 taxis through its leases with about 60 independent contractor drivers. The precise number is market-driven, based on the ability for drivers to make a living.

1. Principal Witnesses.

a. Mr. Brad Whittle.

209. Mr. Brad Whittle has been the President of Yellow Cab since 2001. Although he has other responsibilities, well over half of his time is spent on the affairs of Denver Yellow Cab. He is also the Regional Vice President for Veolia Transportation (Veolia). In that capacity, the manager of operations in Kansas City reports to him on a daily basis. He estimates that approximately 25 percent of his time is spent in this capacity. Mr. Whittle also is Chief Operating Officer and part owner of a taxicab company in Portland, Oregon. The Oregon operation is run by an on-site general manager. Therefore, a rather small part of his daily effort is devoted to oversight of the Oregon operation.

b. Mr. Ross Alexander.

210. Mr. Ross Alexander is Regional General Manager for Yellow Cab. His region encompasses both Denver Yellow and Boulder Yellow. He has been involved in the taxi industry for approximately 12 years. Before becoming Regional General Manager, he was a repair shop manager, taxi manager, and SuperShuttle manager. He has lived in Boulder for approximately 19 years and uses Yellow Cab's taxi service in Boulder.

c. Mr. Wayne Roberson.

211. Mr. Wayne Roberson is a hospitality manager and trainer of new drivers for Yellow Cab. He has 35 years of experience in the taxi industry. He has worked as a driver, dispatcher, airport limousine processor (for SuperShuttle), operations manager, driver trainer, teacher of defensive driving, and mobility trainer.

d. Mr. William Michael George.

212. Mr. William Michael George has several business interests including his work as a consultant to the Kansas City Transportation Group. He has also been on the Board of Directors of the Kansas City Commission and Visitors Bureau (KCCVB) since 1997 and served as Chairman from 2005 through 2007. The KCCVB promotes tourism and convention activity for the greater Kansas City area.

213. Mr. George has substantial experience since 1985 in the taxi industry in Kansas City. From 1985 to 1997, he worked with Metropolitan Transportation Services, Inc., a full-service ground transportation company. He became the general manager in 1986, and obtained an ownership interest in 1992. The company operated Kansas City's largest cab company, Kansas City Yellow Cab, owning about 60 percent of the permits and operating 340 taxis. Mr. George also started companies providing other transportation services, including an airport

shuttle service known as KCI Shuttle. He became President of the company in 1995 and then sold it in December 1997. He continued working as a consultant to the buyer.

214. In April 2002, Mr. George reacquired the assets of KCI Shuttle. In February 2003, he reacquired the assets of Kansas City Yellow Cab and Carey Limousine Division.[38] Combined operations included approximately 450 vehicles. Kansas City Transportation Group was formed to own the companies. Kansas City Taxi, LLC, owned by Kansas City Transportation Group, was formed to operate the cab service. Kansas City Limousine, also owned by Kansas City Transportation Group, was formed to operate the black car service. Kansas City Shuttle, also owned by Kansas City Transportation Group, was formed to operate the airport shuttle service.

215. Since 1985, Mr. George has been CEO and President of these companies. In July 2007, Mr. George sold the companies and now works as a consultant to the buyer. The Kansas City Transportation Group and Denver Yellow are now both owned by a subsidiary of Veolia.

216. Except for April 2002 to February 2003, Mr. George has been personally responsible for the operation of Kansas City's largest taxicab company, Kansas City Yellow Cab.

2. Current Operations.

a. Boulder.

217. Mr. Whittle estimates that more than one million people are served within the territory of the Denver certificate and that approximately 250,000 to 300,000 are served under

[38] Carey International is a franchise that provides town car and livery service. A livery service is an unmarked town car or limousine that provides point-to-point transportation or airport transfers. This service is also known as "black cars."

the Boulder permit. The general profile of customers served in Boulder is comparable to that of Denver.

218. Boulder Yellow taxicabs operate solely in the Boulder certificated territory. If a Boulder Taxi drives a customer into Denver Yellow's certificated territory, the taxicab will generally deadhead[39] back to Boulder. Although Boulder Yellow has authority to take passengers back to Boulder from DIA, for example, airport procedures make it unlikely that a taxicab will do so.

219. A typical Boulder Yellow lease driver pays is $507 per week for $2,000,000 liability coverage, a Yellow Cab branded vehicle, vehicle maintenance, vehicle registration, a PUC sticker, the right to drive the vehicle, and a portion of the phoned-in calls. Drivers also have the opportunity to create his or her own business, including personals, Yellow Cab accounts, and vouchers. An additional $18 per week provides the equivalent of Workman's Compensation coverage. A comparable lease in Denver costs $440 per week.

220. Yellow Cab relies upon lease fees to operate its business. Accordingly, if Yellow Cab loses drivers due to approval of the pending applications, Mr. Alexander states that those drivers will absolutely be replaced to serve the public as well as existing accounts and to provide revenue for continued operations.

221. In Boulder, Yellow Cab has established a cabstand at 11th Street and the Pearl Street Mall to improve service to the public and drivers. This station facilitates a line for drivers and helps move passengers efficiently. The availability of the station keeps order among competing passengers and competing drivers.

[39] A deadhead trip is a trip without passengers.

222. Hearing Exhibit 58 illustrates the number and distribution of calls for service to Boulder Yellow. Between September 20, 2008, and October 20, 2008, 9,914 calls were dispatched. As previously testified, approximately 45 taxicabs are in operation in Boulder at any point in time. Thus, on average for the period, approximately 15 calls per day were dispatched to each driver.

223. At its office near Interlocken in the Broomfield area, Boulder Yellow employs a general manager who also does marketing, a repair shop with mechanics, a street operations manager, a sales and marketing person, financial personnel to handle driver payoffs (*i.e.*, cage operations), and a supervisor at the cab stand on the Pearl Street Mall on Thursday, Friday, and Saturday nights.

224. Specifically addressing Mr. Odde's testimony, Mr. Alexander described that the marketing efforts of Boulder Yellow specifically included a sales call to the Hilltop Inn approximately three months prior to hearing. The Boulder Yellow representative left a business card for both Boulder Yellow and SuperShuttle.[40]

b. Combined Operations.

225. Some common expenses support operations for both certificated territories. Illustratively, the centralized digital dispatch located at 7500 E. 41st Avenue in Denver, Colorado, is programmed to provide dispatch for Denver Yellow and Boulder Yellow.

226. Yellow Cab's call center processes 30,000 to 35,000 calls per week. Eighty-two percent of calls are dispatched.

[40] The precise timing and motivation for the visit was not addressed; however, the only visit referenced most likely occurred following the filing of Iron Cab's application.

227. Mr. Alexander states that Yellow Cab normally has anywhere from 4 to 12 call takers on duty at any point in time. In peak situations, as many as 15 or 16 call takers will be on duty. Additionally, because 24 workstations are available, managers can also provide further support as necessary. One to two dispatchers are on duty at any point in time.

228. Yellow Cab separately has six full-time employees that work on Medicaid arrangements. These orders are typically received by fax, e-mail, or download. Typically manifests are received a day ahead so that routes can be planned for drivers. Mobility Plus vehicles are also available as taxicabs and can be dispatched utilizing normal procedures. Dispatch priority is provided for calls of this nature because they are expedited for personal dispatch when necessary. Yellow Cab processes approximately 2,000 calls per week for LogistiCare Solutions, LLC, the broker for Colorado's Medicaid service.

229. Essential functions are supported by backup generation for power supply to ensure ability to meet public demand in emergency situations. Yellow Cab has two information technology positions. One supports the generator and the phone system. The second supports computer systems. Both positions support the dispatch system.

230. Mr. Alexander described the call center and dispatch functions. When a customer calls Yellow Cab, they are prompted to request service in Denver or Boulder. The call taker answers the call and confirms the city that the customer is calling from. Then, the appropriate computer screen is retrieved for Denver or Boulder. The digital dispatch system logs calls and increases the efficiency of dispatch in a variety of ways. First, after typing in initial information, other fields are populated from available prior history. The digital dispatch system allows drivers to log in to various geographic zones. The call is electronically dispatched utilizing GPS tracking to the closest taxicab in the zone.

231. The dispatch system allows drivers to contact dispatch by computer or voice. Voice communication is particularly beneficial for emergencies, accidents, requests for driver directions, or any other driver assistance.

232. Yellow Cab is a full-service taxicab company that provides substantial capital necessary to maintain its operations. Mr. Whittle reviewed the capital expenditures budget for the remainder of 2008 and 2009. *See* Hearing Exhibit 45. Mr. Whittle expressed concern regarding the impact of market uncertainty injected into its business planning processes. The potential for increased competitive entry substantially increases the uncertainty he must plan for in the long term. The very nature of this consolidated proceeding makes the company more cautious in its planning. Mr. Whittle projects capital expenditures for 2008 of $570,460 and for 2009 of $1,552,800. Due to the uncertainty, Mr. Whittle indicated an interest in further reducing 2009 expenditures; however, approximately $1,000,000 is planned for replacement of a digital dispatch operating system version that will no longer be supported.

233. Yellow Cab's capital requirements principally are met with internally generated capital, in addition to funding from its parent company. Increased market uncertainty increases the uncertainty as to availability of internally generated earnings to support long-term capital investments. Several cost-cutting measures would likely be implemented, including delaying the purchase of more expensive hybrid vehicles.

234. Mr. Whittle recognizes that a "credit crunch" may also impact availability of capital and otherwise decrease options available to the company. These circumstances will force more reliance upon internally generated funds or investments from the owners, or maybe third-party investors, in order to generate funds for capital equipment expenditures.

235. Over the past few years, Yellow Cab has invested substantial capital to increase the number of handicap-accessible vehicles in its fleet. Four years ago, Yellow Taxi had no handicap accessible vehicles. Currently it has approximately 30 under its "Mobility Plus" brand name. Mobility Plus vehicles are wheelchair accessible vans that are retrofit for rear entry and have floor restraints. Additional passengers can also be accommodated, such as attendants, family, or friends. Specialized training is required for the use of this equipment and Yellow Cab has three people certified to provide this instruction.

236. Market instability would likely affect further investments of this nature and result in cutting of marketing and sales efforts. Notably, costs for specialized disability services clearly are higher than standard services; however, the fare charged is the same as any other service.

237. In 2008, Yellow Cab has spent about $700,000 in capital expenditures, the predominant portion of which is for vehicles. Mr. Whittle describes how the company is always replacing vehicles in its fleet because they typically only last 30 to 36 months. Therefore, turnover of one-third of the fleet per year is relatively normal.

238. A typical taxicab purchase is a used police car with 70,000 to 100,000 miles. Police vehicles are heavier duty than most vehicles and have proven to work well over time as taxicabs. While the company is interested in being "green," they are proceeding with caution.

239. Yellow Cab utilizes some hybrid vehicles, promotes research in the area of hybrid taxis, and has a goal to convert its fleet by 2012. Yellow Cab has ordered an additional 50 kits to convert fleet vehicles to propane. Hybrids typically cost $20,000 to $25,000. In light of the cost, Yellow Cab seeks better information regarding the long-term use of newer vehicles as taxicabs. Illustratively, Mr. Whittle stated that it costs more than $8,000 to replace the battery pack in a Toyota Prius.

240. Yellow Cab currently has no plans to increase lease rates or tariff fares in the spring of 2009.

241. Mr. Alexander describes public demand for taxi service as a “derived demand.” People do not ride in taxicabs for the sake of riding in a taxicab. Rather, taxi service is a means to another end. Therefore, Yellow Cab’s marketing efforts focus on the availability of service for such ends. Restaurants are solicited in hopes of recommendations for service to the restaurant or perhaps needed assistance getting home (*i.e.*, the “original designated driver”). Similarly, signs may be posted at restaurants for the convenience of patrons seeking service. Familiarity is also pursued through yellow page or taxicab advertisements.

242. The ongoing marketing efforts of Yellow Cab evidence a belief that additional demand can be generated through successful marketing efforts, development of new markets, or increasing market share.

243. Mr. Alexander submits that a taxicab driver likely needs 25 bells to survive, on average. Likely 12 to 15 of these would be through dispatch. He further submits that a reasonable take-home pay for a taxi driver in today's market is $30,000.

3. Yellow Taxi Cooperative.

244. Mr. Roberson was a member of the former Yellow Taxi Cooperative that successfully operated from 1979 to 1991. He recalls that membership was proud of their interests. There were approximately 1,200 drivers at its peak. The independent driver association was a union that purchased Yellow Cab as a cooperative. All union members were in the corporative and all cooperative members were in the union.

245. The cooperative was run by a Board of Directors that was elected from the membership. The Board hired a general manager (not a member) to run the organization day-to-day.

246. Mr. Roberson describes how the first three to four years went well and then the cooperative lost its way when the direction of the Board changed. Thereafter, he believes the cooperative was undercapitalized and constantly short of funds for operations, operating “on the cheap." Undercapitalization led to increased lease fees and the cooperative increasingly relied upon debt financing that became harder to get over time. He saw a constant struggle between a desire for lower lease rates and necessary investments.

247. The Board’s makeup changed over time and became a popularity contest. Due to high turnover in the Board, bank officers were constantly brought in to teach new board members basic finance and accounting. Mr. Roberson questions whether some of them ever understood business matters.

248. Over time the Board came to interfere with daily operations. Each board member believed he or she had a particular expertise or would pursue a pet project. The Board failed to take advice from a general manager and some general managers were fired when they would not do the bidding of a particular board member’s interest. This process led to a loss of cohesion.

249. As the number of owner-drivers increased, the Yellow Cab Cooperative lost control when people worked. Trips declined and driver income ultimately declined.

250. Mr. Roberson did not recall difficulty with matters regarding driver discipline. He believed that the union helped to represent drivers, but that there were not a lot of problems in this regard.

251. Mr. Roberson testified that, as problems between the cooperative and the drivers continued, the union attempted to negotiate resolution as somewhat of a check and balance. Mr. Roberson recalls that the National Labor Relations Board decided that a group of independent contractors could not be a union under federal law. The tension between the cooperative and the union led to the cooperative's demise and the sale of its authorities.

252. The operating authority of the Yellow Cab Cooperative Association was transferred to Yellow Transportation, LLC pursuant to Decision No. C95-1260.

253. Mr. Roberson believes the cooperative form of doing business has inherent financial and political problems. Based upon observed similarities between Union Taxi and the Yellow Cab Cooperative, he believes they are destined to follow the same demise. In fact, Mr. Roberson believes Union Taxi has less of a chance to succeed because the Yellow Cab Cooperative had the benefit of stepping into an ongoing business operation with existing branding and staffing.

254. On cross-examination Mr. Roberson acknowledged that taxi companies in Denver with other forms of business structure, specifically corporate forms, have also come and gone, including American Cab and Zone Cab.

4. Kansas City Experience.

255. The city government of Kansas City regulates the taxi business in Kansas City, Missouri. In surrounding areas, 18 municipalities in two states have regulatory authority. Kansas City Yellow Cab is authorized to operate in Kansas City, Missouri, as well as every other municipality that regulates taxicabs in the greater Kansas City area.

256. In September 1984, the Kansas City, Missouri, City Council voted for open entry into the taxi market by eliminating the limit of the number of permits that could be issued for

taxicabs. New entrants only need to meet safety and insurance requirements to go into business. Prior to that time, a surrogate to measure demand for taxi service was utilized based upon one taxicab per 1,000 in population.

257. By May 1985, the number of taxicabs in operations increased by approximately 45 percent from 450 to approximately 650. Incumbent companies lost drivers to new start-up companies, and then immediately started hiring to replace lost drivers.

258. New market entrants offered lower weekly lease fees to attract drivers and other companies lower their fees to maintain or attract drivers. This led to a decline in the quality of vehicles. It became more difficult for companies to find good dispatchers and telephone operators.

259. Mr. George contends that the change in the number of taxicabs had no impact upon demand for taxi service, rather, more taxicabs where chasing the same number of fares. The belief that increasing the number of taxicabs would somehow increase demand never occurred. Drivers then sought more lucrative trips and were willing to wait longer to obtain them. Hotels and their guests became frustrated. He provided illustrative examples that a driver may attempt to decline a trip saying he was not familiar with the destination, he had a flat, or he was waiting on a passenger and could not leave.

260. Because drivers were working longer hours to drive a decreasing number of trips, there was an upward pressure on meter rates. Drivers sought to increase fares per trip to make up for having lesser trips. Between 1985 and 1998, fares increased approximately 108 percent. As prices increased to retain drivers, the price of taxi service eventually exceeded the price of “black car” service.

261. As a result of these factors, the quality of cab service was widely acknowledged to have declined. Demand for taxi service declined and the best taxicab drivers flocked to black cars. Black cars allowed open entry, lower cost of insurance, and lighter regulation.

262. Taxi companies continued to replace drivers lost to the black car market. Because of the turnover and continued demand for drivers, the quality of drivers declined. During the same time period, companies did not invest in new vehicles and the quality of the vehicles declined.

263. Mr. George believes the tipping point in Kansas City leading to re-regulation was the “insurance shuffle.” Illustratively, of a fleet of 25 cars, only 15 or 18 of them might be insured by switching policies. After some very serious wrecks, it was found that cars involved were not insured.

264. The path to re-regulation began in 1998 and culminated in an ordinance in 2000. A Chamber of Commerce subcommittee started looking into the quality of taxi service and the impact on convention business. It was found that demand for service decreased because passengers preferred black car service or other transportation means. Increased taxicab supply led to reduced service quality and reduced investment. In turn, demand was reduced for taxi service.

265. The centerpiece of the June 2000 ordinance became a fixed number of permits. All existing permits at the time were grandfathered. Initially, a fixed cap of 600 was put in place and it was later reduced to 500. No new permits would be issued until the number of outstanding permits dropped below 500. At the time of hearing, 542 permits remain outstanding. The approximate population of Kansas City is 448,000 and the Kansas City metropolitan area has a population of 1.8 to 1.9 million people.

266. Mr. George notes that there was broad support for the reduction of permits from 600 to 500 based on industry requests, supported by the Chamber of Commerce, the Convention Visitors Association, the business community, and general users in the community. He contends that all aspects of the taxi market have since improved, including quality of service.

267. Mr. George highlights the difficulties that Kansas City incurred in reversing the failed attempt to gain market benefits of open entry and the consequences that have been suffered in the interim. Eight years after re-regulation, Kansas City continues in its efforts to regulate the industry and reduce the number of outstanding permits.

268. Based upon his experience in the Kansas City taxi market, Mr. George expressed his opinion as to how the Commission might assess total market demand for taxi service. For this purpose, he suggests ignoring the biggest of events as a once-in-a-generation event. Next, evaluate total fleet performance. If the fleet adequately manages demand, with minimal or no complaints, there are likely at least enough taxis in service. On the other hand, if significant complaints persist over time when a large convention comes to town, it is likely that there are not enough taxis in service.

G. Denver Metro Convention and Visitors Bureau.

269. Mr. William Mitchell is the Director of the Government Community Affairs for the Denver Metro Convention and Visitors Bureau (Bureau). The Bureau is a private nonprofit organization that markets Denver nationally and internationally, for meetings, industry, and destination travel.

270. Mr. Mitchell was called to testify by Metro Taxi regarding a transportation study that it sponsored at the request of officials from the City and County of Denver. The Bureau researched professionals to conduct the study and derived a funding mechanism to pay the

associated costs. Finding no alternative means, the Bureau agreed to accept funds to pay for the study from the incumbent taxi companies. However, the funds were required to be deposited in advance without any ability for such companies to have control over the funds or the study.

271. There never having been such a study of Denver, Mr. Mitchell was referred to Mr. LaGasse to obtain five references for individuals to conduct the study. Mr. Mitchell interviewed and selected Dr. Mundy, as the best qualified candidate having the broadest experience (in terms of the number of studies nationally and internationally), to author the study.

272. A copy of the commissioned study is admitted as Hearing Exhibit 25, the Executive Summary is Hearing Exhibit 26, and Dr. Mundy's demonstrative presentation of the report is Hearing Exhibit 72. The Bureau commissioned the study, but takes no position as to any findings or conclusions contained therein.

273. Mr. Mitchell also addressed some of the larger events that Denver has hosted in recent years. As a part of his role in these events, he often hears complaints regarding a variety of matters that could include taxi service. His office surveys meeting planners following events and taxi service may be included as a topic. More often than not, taxi service will be addressed in comments. Mr. Mitchell personally used taxi service during the DNC and the CEDIA convention and experienced no problems. His office received no complaints regarding taxi service during the firemen's convention, the DNC, or CEDIA.

H. Expert Testimony.

1. Dr. Diana Leslie Moss.

274. Dr. Diana Leslie Moss is Vice President, a Senior Fellow, and a member of the Board of Directors and Advisory Board for the American Antitrust Institute (AAI). A copy of her *curriculum vitae* was admitted as Hearing Exhibit 60. AAI is a nonprofit organization whose

mission is to promote fair competition and consumer protection through rigorous enforcement of the antitrust laws.

275. Dr. Moss was called by Union Taxi to testify as to her designated expertise in the areas of applied microeconomics, industrial organization, antitrust, and regulation.

276. Dr. Moss reviewed economic and other literature, articles, and studies regarding the taxi industry and the regulation thereof, including prehearing disclosures regarding Mr. Dempsey and Dr. Mundy. She also reviewed various economic and legal literature on taxi regulation, deregulation, and market structure issues. Finally, she reviewed information on the Internet and in trade press.

277. Hearing Exhibit 61 is Dr. Moss' expert report that pertains to this proceeding. The demonstrative and illustrative Power Point presentation summarizing her report was admitted as Hearing Exhibit 62.

278. Dr. Moss expressed her opinion regarding the competitive effects of the proposed entry by Union Taxi into the Denver taxi market in the context of her understanding of the legislative intent of House Bill 08-1227.

279. Dr. Moss highlighted competition and consumer welfare, which are construed as key elements of a public interest finding. She supports her analysis by the fundamentals of economics, by studies of the taxi industry, and by comparison to other regulated industries.

280. Dr. Moss describes the *status quo* in the Denver taxi market. First, she states that there are barriers to entry in terms of a no-change policy or moratorium on the current number of operating licenses as well as proposed additional barriers to entry advocated by other parties. Second, there is a lack of competition.

281. Dr. Moss contends that approval of Union Taxi's application will inject beneficial competition, particularly to the dispatch market by reducing the ability of the incumbent firms to extract high lease rates from taxi drivers. In turn, the consumers of taxi services would likely see benefits as a result of entry.

282. Dr. Moss explains that competition policy strives for markets that operate efficiently. In such a market, producers are producing near their cost and charging prices that are reflective of costs. Also, consumers pay prices reflective of the true value they place on the product or the service. Consumers benefit through low prices and high quality while society benefits by the promotion of innovation in products and services. Such a scenario is dependent upon good market structure.

283. A good market structure consists of many sellers and many buyers. Markets with many sellers have relatively low market concentration and relatively low barriers to entry. If there are high entry barriers and high market concentration, a number of adverse effects are likely to occur: market power can be exercised by incumbent firms in the market and there is a higher probability that prices will be high. As a result, output is restricted and quality suffers. There is also less likelihood for innovation in products and services.

284. Dr. Moss recognizes that taxi markets are not perfect markets and she does not argue that they should be. However, she believes the principles of competition still apply to taxi markets and an improved market structure should be pursued for good public policy and outcomes that benefit the public interest.

285. As for the Denver taxi market, Dr. Moss observes two vertically linked market components: a wholesale, or upstream, market for taxi driver services (*i.e.*, taxi drivers offer their services to taxi companies) and a retail, downstream, or output, market for taxi services

consumed by consumers. The market for driver services is based upon unregulated market lease rates. Entry of taxi companies is restricted by the total number of taxicabs authorized—currently 942 permits. The market for consumer services is characterized as typical in terms of prices and service regulated by the Commission.

286. Dr. Moss summarizes the current three incumbent firms and the major features of both driver and consumer service markets. In the taxi driver services market, Dr. Moss observes unregulated lease rates, restricted competition, and restricted entry. In the consumer service market, she observes regulated rates, service quality problems, and high prices (relative to Freedom Cabs) charged by Metro Taxi and Yellow Cab.

287. The Denver taxi market is dominated by two large firms and one small firm. Metro Taxi has a market share of 52 percent, with 492 authorized taxis; Yellow Cab has a market share of 32 percent, with 300 authorized taxis; and Freedom Cabs has a market share of 16 percent, with 150 authorized taxis. Together, Metro Taxi and Yellow Cab account for 84 percent of the market share, based on numbers of authorized taxis. Based upon revenue, Metro Taxi and Yellow Cab account for 91 percent of the Denver taxi market. Based upon number of trips, Metro Taxi and Yellow Cab account for 88 percent of the Denver taxi market.

288. The Herfindahl-Hirschman Index (HHI) measures market concentration. The calculation determines what percentage of the market output is accounted for by the firms in the market.[41] If there are relatively few firms, then concentration is high. If there are relatively many firms, the concentration will be relatively low. Dr. Moss finds that the HHI for the Denver taxi market ranges from 3,984 to 4,245 – a highly concentrated market. With higher HHIs, it is

[41] HHI is the sum of the squaring of the market shares of all the firms in the market. Illustratively, if ten firms each have a 10 percent market share, one would square up all those market squares of 10 percent and get an HHI figure of 1,000. The maximum theoretical HHI is 10,000, one firm with 100 percent market share.

more likely that firms will exercise market power either by themselves or acting in coordination with other firms. Market performance is much more likely to be poor in terms of promoting innovation and efficiency. These circumstances are likely to lead to consumer harm from higher prices.

289. Accepted standard measures of market concentration used in regulation and antitrust under market conditions of restricted entry and high concentrations indicate that an HHI of 1,000 would be considered unconcentrated. An unconcentrated market is more likely to be competitive and beneficial to consumers. In a duopoly where each firm has 50 percent of the market, the sum of the squares of market share numbers yields an HHI of 5,000. Such an HHI would indicate a highly concentrated market. Market outcomes would be less competitive.

290. Based upon the HHI calculated for the Denver taxi market, economic theory indicates that is almost certainly likely that the dominant firms in the market will exercise market power by raising lease rates charged to taxi drivers. Because there are few options in the market, lease rates are high. Drivers have few options to avoid them because there are very few other companies.

291. Dr. Moss points to a recent lease fee increase by Metro of $42 per week in all lease rates that will decrease driver income. As a result of discontent or disgruntled drivers, a concerted action by drivers led to the formation of Union Taxi and the pending application.

292. In Dr. Moss' opinion, the high market concentration in Denver results in high lease rates being passed on to consumers in the form of higher fares. That harms consumers and is not in the public interest.

293. Comparing filed rates, Dr. Moss contends that larger firms are charging much higher prices than Freedom Cabs. She observes this is typical in highly concentrated markets

with dominant firms. There is much less incentive to promote high service quality. Service quality tends to suffer in highly concentrated markets and less competitive outcomes result. Dr. Moss contends this conclusion is supported by conditions observed in Denver because the ratio of the percentage of complaints to market shares for Yellow Cab and Metro Taxi are much higher than for Freedom Cabs. Dr. Moss also contends that Dr. Mundy's report highlights service quality problems.

294. Based upon the foregoing observations, Dr. Moss concludes that Yellow Cab and Metro Taxi are not subject to as much market pressure as they would be in a more competitive market. Notably, Dr. Moss has not shown that the perceived conduct will differ as a result of a marginally lower HHI in a highly concentrated market.

295. Dr. Moss argues that parallels to the Denver taxi market can be observed in other industries, including the California electricity crisis (*e.g.*, between 1999 and 2001). Wholesale prices charged by generators were unregulated and retail markets were regulated. Due to highly concentrated wholesale markets for electricity consisting of very few dominant suppliers, market power was exercised to raise wholesale prices. Those prices were passed on to consumers in the form of higher retail prices.

296. Many regulators pursue the public interest goals to provide consumer choices among high quality, low priced, services, and promoting innovation and product differentiation. Therefore, a number of initiatives over the last 20 years promote competition at wholesale level. Those regulatory reform initiatives have generally resulted in greater efficiency, lower prices, quality improvements, and innovation.

297. Dr. Moss contends that the Commission should follow these examples with tailored regulatory oversight when necessary. Such oversight can smooth transitions to more competitive markets. Then the market picks winners and losers, as opposed to regulators.

298. Dr. Moss recommends that the Commission reject any moratorium on new taxi authorities. Such an approach would perpetuate high market concentration. Continuation of the status quo will likely require increased regulation to protect consumers from ongoing abuse. On the other hand, she recommends the Commission smooth a transition to reformed regulation allowing eased (but not open) entry into the market and allowing increased competition from diverse firms with different business models. More tailored solutions should replace an entry blockade. She believes regulatory reform would improve efficiency and consumer benefits.

299. Addressing the theory of destructive competition, Dr. Moss contends there are a number of problems with the application of the theory to the taxi industry.[42] Under this theory, completely open entry will lead to over-investment, oversupply, and negative earnings. The result is that firms will have difficulty earning profits, leading to degradation or withdrawal of services from the market. First, she contends that the theory assumes irrational investor activity. Second, she contends that the theory applies to industries having very large sunk costs and excess capacity. She contends that the taxi industry does not fit this criteria because there are no high sunk costs; rather there are declining costs over time and large economies of scale.

300. According to Dr. Moss, the theory of destructive competition relies upon open entry. She contends Denver's fundamental problem is a bad market structure. It is dominated by two large firms and one small fringe competitor. She contends that intervenors fail to recognize

[42] Dr. Moss addressed destructive competition in economic terms, rather than an application of Colorado statutes or case law, except as noted in her report.

evidence of market power being exercised in terms of high lease rates and the consumer harm that might flow therefrom.

301. Intervenors typically argue that the principles of competition do not apply to the taxi industry. However, the true intent is to continue avoidance of competitive pressures. She argues that the first step to improve the functioning of any micro-industrial organization is to address market structure by easing entry barriers and promoting competition.

302. Dr. Moss interprets intervenors' arguments to leave no middle ground between open and closed entry. This approach fails to recognize a number of options in between two extreme ends of a spectrum.

303. Dr. Moss disagrees with intervenors' arguments that since reforms have failed in other jurisdictions so they must also fail in Denver. She contends this argument does not allow an apples-to-apples comparison. Market structure will differ, regulatory regime will differ, demand conditions will differ, etc. Therefore, it is difficult to make cross-city comparisons.

304. Dr. Moss rejects arguments of maintaining the status quo of 942 authorized taxicabs and she maintains no good economic analysis has been presented to support such a position. Rather, she contends that Freedom Cabs would be condemned to be a small, fringe competitor, most likely operating below their efficient scale with only 150 permits.

305. Addressing arguments that quality will worsen with entry, Dr. Moss believes that intervenors ignore the salient fact that service quality in Denver is already documented as poor.

306. Intervenors argue that regulatory reforms will not benefit consumers. Dr. Moss contends they ignore substantial economic and legal literature stating that, based on economic analysis, regulatory reforms have benefited consumers.

307. Refuting arguments that the problems are so many that the only policy choice is to maintain the *status quo* for now, Dr. Moss recommends fixing specific problems through measured means and rejecting proposed additional barriers to entry advocated by other parties. To do otherwise increases the distortions in the marketplace. She proposes that standards promote consumer welfare, rather than promote the interests of the incumbent firms.

308. Dr. Moss argues that granting the application of Union Taxi will reduce market power, benefit consumers, and inject competitive discipline into the market. It gives drivers an immediate competitive option to Yellow Cab and Metro Taxi. Authorization to operate 262 taxicabs likely reflects an efficient scale of operation. This conclusion is based upon her opinion of Freedom Cabs' operation with 150 permits. She contends that Freedom Cabs is not operating at minimum efficient scale. It is not able to cover all of the segments of the Denver taxi market with 150 permits. Thus, she believes the minimum efficient operation would require a range of permits greater than 150. She contends that Yellow Cab's operation of 300 taxicabs probably represents the upper bounds of minimum efficient scale because it operates profitably in the industry. Thus, 262 taxicabs are likely near the minimum scale.

309. Dr. Moss contends that diversity of business models will also benefit consumers. A cooperative would have a strong incentive to strive for quality. Having firms with different business models is typically a natural and beneficial result of regulatory reform that will promote lowers costs, higher quality, specialization, and product differentiation.

310. On cross-examination, Dr. Moss acknowledged that she has done no prior work in the taxi industry. Rather, she is applying her experience in applied microeconomics, industrial organization, antitrust, and regulation to the taxi industry.

311. Dr. Moss recognizes that taxi markets are very much a time-differentiated product (*i.e.*, getting a taxicab in downtown Denver at 3:00 a.m. is a very different product than getting a cab at 5:00 p.m.).

312. Dr. Moss understands that a taxi company operating at a minimum efficient scale is a concept on the production side as to how many taxis should be in the fleet to serve market demand as efficiently as possible, or at least cost. Typically, she describes that an industry's long-run average cost curves are U-shaped. Costs decline as the scale of the operation increases, then flattens over a period output, and then increases. Firms operating at least cost operate at minimum efficient scale. In Denver, three incumbents operate with very different scales. The number of authorized permits will directly affect operations. When firms operate taxicabs that will allow a minimum scale, firms typically can compete more effectively.

313. Dr. Moss believes that Freedom Cabs demonstrates this principle because Freedom Cabs largely serves DIA and they do not have the fleet size to be able to serve the dispatch market. They are not serving in the entire market. In response to questioning regarding Freedom Cabs' profitability as an indication of operating at a minimum efficient scale, Dr. Moss opined that Freedom Cabs effectively reduced the market served based upon the number of authorized taxicabs. They have concentrated managerial and business expertise based upon fleet limitations. As a consequence, they are not a significant competitor outside of those concentrated areas.

314. Addressing a hypothetical scenario where the Commission decided to grant only 150 permits to either Union Taxi or Freedom Cabs, Dr. Moss addressed the alternatives. Dr. Moss contends that it would be detrimental to the public interest to grant a new entrant authority subject to restrictions that will not permit operations at a minimum efficient scale.

Thus, Union Taxi would be in a very difficult position to serve the entire Denver taxi market in a way that would provide needed competition with Metro Taxi and Yellow Cab. On the other hand, if 150 permits were granted to Freedom Cabs, their operations could certainly expand their service to provide larger market coverage. She went on to explain that more competition in the market is better than less. She implies benefits of a fourth competitor in Union Taxi, but with significant risks of debilitating some competitors and their ability to provide effective competition. In sum, it would be a very difficult situation.

315. To evaluate whether approval of a given application could be detrimental to the public interest, Dr. Moss considers the structure of the market as the primary issue. Thus, the Commission must consider the scale and scope of firms to efficiently operate. She contends demand for taxi service in the Denver taxi markets has grown, there are complaints regarding service quality, requests for service are not being dispatched (or taxis are not reaching their riders), and there are symptoms of market dysfunction and malfunction. Because there are different markets involved in servicing consumers in the entire Denver taxi industry, Dr. Moss recommends against a hasty conclusion that additional taxicabs will create destructive competition.

316. Questioned as to the risk of the Commission approving an oversupply of taxis to serve the market, Dr. Moss contends that the best market structure would require allowing more competitors entry and approving pending applications. She recommends that the Commission pursue a goal of reducing market concentration.

317. Dr. Moss does not believe the Denver taxi market reflects a natural oligopoly. In a natural oligopoly, few incumbent firms are best able, from a cost standpoint, to serve the entire market demand. However, the market structure of the taxi market, in Denver, has most definitely

been determined by regulatory fiat, meaning the Commission has picked its firms and granted the authority of firms to operate and has also chosen the scale, through the issuance of permits, at which they can operate.

318. Within regulated markets, competitors will specialize to differentiate their products and service (*i.e.*, focus upon a niche service). This is expected in more competitive market environments and is very beneficial to consumers. While there is potential for such efforts to harm service in other areas, Dr. Moss suggests that the Commission address specific problems through regulation.

319. Dr. Moss commented upon the effects of driver income upon the public interest. If drivers are earning adequate income, quality and driver retention would be encouraged, affecting how independent contractors maintain and operate their assets.

320. Dr. Moss addressed an extreme hypothetical scenario where overinvestment has occurred in the Denver taxi market. If a new application for additional permits is then received, she recommended that the Commission could then protect the market from further overinvestment through good demand forecasting.

321. Dr. Moss notes that taxi service demand is very much derived from other features (*e.g.*, air transportation, population growth, population density, growth in the downtown area, growth in the surrounding suburbs). These factors will determine growth and demand for taxi service.

322. To logically and reasonably link the number of permits with demand conditions in a market, the Commission should apply a balanced, well-thought-out analysis. However, she contends the hypothetical scenario is not reflective of current conditions in the Denver taxi market.

323. Assuming the Commission will permit some additional number of taxicabs, Dr. Moss was asked how the Commission should determine how many more taxicabs to authorize. As an economist, she might attempt to model both the supply side and the demand side using some basic assumptions about how firms interact with one another in the industry. Then considering regulations in place, she would estimate the optimal total number of permits. Dr. Moss acknowledges this would be very costly, difficult, and controversial. She recommends more fruitful efforts in the current marketplace would focus upon market structure and reducing entry barriers.

324. Assuming the Commission were to determine that 200 additional permits would be issued, Dr. Moss was asked whether the Commission should grant those permits to Union Taxi. She concluded that, in that hypothetical scenario, injecting a new competitor is better than not, even if less than what is likely the efficient scale for Union Taxi to enter.

325. Dr. Moss was asked to address the relative priority for the Commission to consider: the perceived demand of the market versus the minimum efficiency of a new competitor. As a matter of public policy, to promote the public interest, she would recommend the Commission issue permits to allow firms to operate as efficiently as possible. Particularly in this market, competition should be injected. Subsequently, the Commission can address specific considerations of size, scope, and scale. Effectively, she reiterates her primary focus upon market structure.

2. Dr. Ray A. Mundy.

326. Dr. Ray A. Mundy, a consultant with the Tennessee Transportation & Logistics Foundation, testified on behalf of Metro Taxi as an expert witness in the structure, economics, and public policy of the taxicab industry. His comprehensive *curriculum vitae*, including

educational and academic background, experience, professional work, and presentations, reports, and testimony, was admitted as Hearing Exhibit 23. A list of past projects that involved analysis of taxicab and taxicab operations, regulations, and economic analysis was admitted as Hearing Exhibit 24.

327. Dr. Mundy conducted a detailed study of the taxi industry and associated regulatory and public policy issues in the Denver metropolitan area. Hearing Exhibit 25 is a report to the Denver Convention and Visitors Bureau regarding the empirical findings of the quality and level of taxicab service with a set of recommendations for moving forward to improve services even further here in Denver. Hearing Exhibit 26 is an Executive Summary of the report.

328. Dr. Mundy recognizes that taxicab companies vary in today's market. There are tremendous economies of scale that are achieved by having a large, dense network of taxicabs all associating through one call center. Companies having a large number of taxicabs distributed through the community, but dispatched through one call center, improves efficiencies gained and service to the public through shorter response times and minimal deadhead miles.

329. Dr. Mundy described some of the potential pitfalls of a radio dispatch system. With a general call radio type system, a request for cab service is received and broadcast over a radio to all cabs. A driver might respond saying they are only 2 miles away, yet they may in fact be 20 miles away. Another example might be announcement of a frequent request for service to the grocery store from an area or address. Drivers may decide that the trip is not valuable enough to justify a response and the customer will not be picked up.

330. Dr. Mundy characterizes taxicab companies on a sliding scale, from a total taxi firm to a firm oriented as individual drivers. Hearing Exhibit 72 at 4. This range equates to the

value of the operating authority. A total taxi firm, a rarity today, owns and maintains a fleet of vehicles. It will have a marketing staff and employees conduct all operations, including driving. The vast majority of taxicab markets have evolved to companies owning most or all of a taxicab fleet, but utilizing lease drivers. This trend allows flexibility of capital and allows independent contractors flexibility to work the hours they desire. Next along the trend are taxicab companies owning a permit to operate, but no fleet. All taxicabs are leased from owner operators. In this type of business, owner-operators may or may not visit the taxi company facility, but operate under the company's colors. Next along the continuum, a taxi company does not have a dispatch or marketing effort. The company primarily leases their colors and provides insurance to independent owner-operators. Finally, at the lowest level, there is open entry to begin operations. Fragmentation occurs and every taxicab operator owns their own permit. There is little dispatch and permits are leased to the highest bidder.

331. Dr. Mundy considers Metro Taxi and Yellow Cab to be very good full-service taxicab companies with a full-service dispatch area. Companies typically look at their vehicles every day, ensure proper maintenance, and invest substantial capital in their fleets. There is similarly investment in the enterprise with respect to facilities, people, personnel, marketing programs, and modern dispatch systems. Dr. Mundy also describes both Yellow Cab and Metro Taxi as community cab companies because the bulk of their business is derived from their call center, hotel stands, voucher trips, accounts, and other markets developed by individual drivers. In summary, he finds Yellow Cab and Metro Taxi to be very strong competitors, well capitalized, and well managed.

332. Dr. Mundy considers Freedom Cabs to be in the middle of his continuum because it primarily utilizes owner-operators. There is less of a physical facility and less marketing.

Freedom Cabs is struggling to respond to the marketplace and he believes it to be undercapitalized.

333. Dr. Mundy indicated that Denver has the largest fleet of hybrid cabs in the United States, an indication of conscientiousness about energy and pollution.

334. Dr. Mundy's report includes extensive detailed empirical analysis of incumbent taxicab operations in the Denver metropolitan area. It is apparent that companies serve a large service area having varying population densities. He concludes that current taxicab companies are providing a level of service that customers would find acceptable. He concluded that incumbent providers have very good, very reasonable statistics with respect to the average and even the maximum amount of time that zones would require for service response.

335. Dr. Mundy's analysis also provides some insight regarding taxicab drivers in the market. One measure of the health of a taxicab company and its drivers is based upon turnover, as measured by the average days worked by the individual drivers. Satisfied drivers that are making a decent living do not want to lose their position. Increases in turnover indicates poor management, low incomes, or both.

336. Because independent contractors determine their own working hours, Dr. Mundy was not surprised to find that driver income is highly varied.

337. In order to estimate total market demand, Dr. Mundy recommends against historical formulas, such as population, number of airport trips, and number of hotels. He finds such surrogates to estimate demand for taxicab service to be out of date. Rather, he recommends that the Commission determine the level of public demand by analyzing data available from digital dispatch systems of the type utilized by Metro Taxi and Yellow Cab. He contends that the use of such technology will allow the Commission to maintain an appropriate level of permits

authorized for service. Based on availability of observed demand, he contends that any other surrogate is less beneficial. Dr. Mundy recommends that the Commission rely upon dispatch trips completed per day and total trips taken by each of the cabs within a particular company, when available. Illustratively, during December 2007, Yellow Cab averages five to six dispatch trips per day and Metro Taxi averages six to eight dispatch trips per day.

338. Dr. Mundy requested Yellow Cab to take a random sample of 100 drivers, including both bell runners and airport drivers, to estimate gross revenue (based on the actual vouchers, credit cards, and other payments processed by the Yellow Cab cashier system), before deduction of any driver expense, for different classes of drivers. Cash fares and tips varied by driver type and were imputed into gross revenue, based on industry knowledge and driver interviews. Hearing Exhibit 25 at 56.

339. Denver Yellow aggregated average driver income information and reported the information to Dr. Mundy. Hearing Exhibit 72 at 24. Dr. Mundy found that income levels are most directly related to the types of service a driver focuses upon. Income appears directly related to the type of cab service provided. The gross revenue income of bell runners averages $69,000 per year with an income range of $45,000 to $105,000. The airport/cabstand/walk-up driving style delivers a gross revenue average of $46,000 *per annum*. Hearing Exhibit 25 at 53. Dr. Mundy did not attempt to study net income of drivers.

340. Denver Yellow reported the tenure of its drivers to Dr. Mundy. Hearing Exhibit 72 at 21. Based thereupon, he concludes that Yellow Cab, for the taxi industry, has a very low rate of turnover.

341. Dr. Mundy describes Metro Taxi as a good example of a full-service cab company with a very professional organization, driver training, and break room facilities for drivers. The

firm invested substantial capital in their new state-of-the-art dispatching system. It has GPS-based systems, coupled with phone identification systems. When an individual calls, their location is automatically sent to the computer and other information is gathered by voice prompt. In some cases the trip is dispatched by the computer. The closest taxicab is dispatched using the system's ability to monitor each taxicab's location. These systems are capable of presenting the driver a map to follow for the route and monitoring travel to ensure the driver follows the route. Logging of activity over time allows monitoring for the extent of driving off-of-route and a driver may be disciplined accordingly.

342. Regarding Freedom Cabs, Dr. Mundy concludes that the company is severely undercapitalized based upon lack of a large dispatch system capable of supplying the kind of service desirable to a community. Freedom Cabs' dispatch technology is an outdated radio dispatch system. However, he considered it somewhat noteworthy that Freedom Cabs utilizes a very modern credit card collection system.

343. Using available technology, efficiency of operations can be maximized and the level of service delivered can be assured. Dr. Mundy opined that, in absence of implementing available technology, the public loses an opportunity for a very high level of service.

344. A measure of service to the public is the extent of trips that are not completed because the customer is not at the requested service location when the taxicab arrives. Dr. Mundy finds that a company completing 80 percent of its calls is doing very well. He found acceptable ratios in Denver.

345. Another measure is based upon survey results of restaurants and hotels. In his experience, a low return rate of surveys indicates satisfaction with service and a higher response rate indicates worse service quality. In his study of Denver, Dr. Mundy observed a 20 percent

response rate, which is on the low side. Based upon his analysis of the responses, Dr. Mundy found that downtown establishments report better service than those outside of the downtown area. The root of the problem is the lack of willingness of some of the drivers to service hotels outside the downtown area. He found little motivation for change in this regard.

346. In addition to surveys, Dr. Mundy also engaged secret shoppers to report on taxi service. While anecdotal in nature, they provide data about a specific trip. Dr. Mundy notes that such reports merely report events and that they have no statistical significance.

347. Taken as a whole, he found the Denver metropolitan area to have very good to acceptable taxicab service for a major metropolitan area. On the other hand, where problems were noted, he found no penalty for poor service because customers were being treated one at a time.

348. Dr. Mundy summarizes the pending applications, similar to many faced in the 1980s, as a request to fragment the taxi industry. The ultimate question the Commission must decide is how to best serve public interest and not allow the industry to become fractionalized and oversupplied so that service is deteriorated.

349. Dr. Mundy responds to those advocating benefits of taxi deregulation. He contends that any benefits are restricted to small cities, perhaps 20,000 to 25,000 in population. In smaller communities, he contends that word of mouth will educate the community in a way that it can efficiently respond. Typically these cities have fewer visitors, customers live locally, and many people are known throughout the community. Harmful effects observed of open entry and deregulation do not seem to yield the poor customer service found in larger cities. As a result, smaller communities are more likely able to accept open entry and maintain a higher level of service. *See also* Hearing Exhibit 50 at 58. To the contrary, Dr. Mundy finds that service

levels decline tremendously in larger metropolitan areas with increased fragmentation and open entry. In larger markets, each trip is more likely to be the only trip provided to a passenger by a driver. Thus, a passenger is less likely to be able to make a timely informed decision in selecting a taxicab for service.

350. Dr. Mundy recommends that the Commission:

a) Consider reducing the permissive age of vehicle in taxicab service from ten to five years, noting that many cities have done so. He observes that allowing different cab companies to charge different rates is often confusing to the customers. After noting that the difference is currently not significant in Denver, this concern is most notable when a return trip costs a different amount than the original trip or when multiple parties traveling together pay different rates.

b) Require drivers to serve bells the same way it would serve a hail call to address drivers unwilling to serve some customer requests. This would require a driver on duty to serve the customer. Utilizing modern technology, companies know the location of the taxi and would be in a position to monitor and enforce such a direct obligation.

c) Eliminate the oversupply of taxicabs at the DIA.

d) Require minimum dispatch technology and service documentation, including electronic capture of all trips, GPS dispatch, turn-by-turn routing instructions, and GPS tracking of route compliance. This will allow the Commission to determine the number of taxicabs needed to serve an area based upon observed demand while helping to ensure fairness to customers and aid the Commission in monitoring compliance.

e) Lift barriers to entry for potential competitors wishing to provide equivalent service, defined as fit and able to meet Dr. Mundy's recommended standards. This equates to a preference, based upon the public interest, for full-service taxicab companies.

f) Increase requirements for taxi companies to utilize company-owned vehicles for the majority of operations. Through vehicle ownership, companies will protect invested capital by more frequent inspections, better maintenance, better vehicles, and protecting the image of their company. He contends that reliance upon owner-operators makes it very difficult for a taxi company to maintain a level of service.

g) Grant additional entry of companies having a long run view of their firm and the community, professional management, modern technology, sufficient capitalization, and a profit motive.

h) Require all taxi companies to provide a minimum of nine total trips per shift per taxi. Dr. Mundy believes modern technology helps make this a reasonable goal. He admitted on cross examination that Yellow Cab and Metro Taxi did not dispatch nine trips per shift, but he also noted that dispatch trips reflect only 30 to 40 percent of total trips. By implementing regulation based upon actual trips taken, the Commission is better able to balance supply and demand. Failure to achieve this criterion is recommended to result in a reduction of fleet size. Dr. Mundy provides that adoption of his recommendation assures drivers a reasonable opportunity to earn a living. It also gives the company a stake in getting dispatch trips to support driver operations.

i) Abandon any regulation of driver lease rates. While some components are able to be calculated, all components clearly cannot be. The lease amount, in large part, is based upon the value generated by a full-service taxi company and a driver's perceived opportunity to operate under the terms of a lease, for a specific company, in a specific market.

351. Dr. Mundy warns against too much fragmentation among providers within a larger service territory. As a consequence, smaller companies with insufficient vehicles to serve the territory cannot provide reasonable response times and it is more likely that individual drivers will speculate as to the value of a long trip to pick up a customer based upon anticipated trip revenue. Such situations create significant inefficiencies in a taxicab system.

352. Dr. Mundy provides several alternative means to address an oversupply of taxicabs at DIA, effectively limiting the number of taxicabs able to serve at times and encouraging those taxicabs to serve other markets. He contends that driver incomes will increase through such efforts. Times when taxis are allowed to operate at the airport will be more productive and the taxi can be more efficiently utilized during times when operation at the airport is not allowed.

353. Dr. Mundy concluded that Denver did not require a significant addition to the number of taxicabs serving the public during the time of the DNC because existing infrastructure and capacity could be utilized for service. Excess capacity at DIA was a substantial factor to

success during the DNC because the excess DIA capacity, diverted to downtown service, became more economic in that time of increased demand.

354. Dr. Mundy believes that current providers in the market have significant additional capacity to serve, particularly given the excess capacity at DIA.

355. Although Dr. Mundy did not observe this in the current Denver market, he warns that an excess of taxicab service and a high degree of competition will lead to cab companies attempting to organize special arrangements for taxicab service at busier locations such as hotels.

356. Because existing fleets adequately served the public during the DNC peak demand under any reasonable interpretation, Dr. Mundy contends there is no demonstrated need for additional taxicabs to meet public demand. If anything, efforts should focus upon increasing cabs in the community by correcting the imbalance of taxicabs serving DIA. Despite the Commission having authorized additional taxicabs for a period including the DNC, Dr. Mundy understands that significant additional capacity was not, in fact, added.

357. Dr. Mundy provides an example of a means to encourage taxicabs to serve more of the community than DIA. If drivers transporting passengers to DIA were allowed to pick up a departing passenger without significant delay, drivers serving the community for the pick up would be rewarded and drivers parked in a holding lot would be further delayed. Over time, this would increase efficiency in airport operations. In modeling, Dr. Mundy has also found that such efforts would significantly reduce $2 million worth of wasted fuel and approximately 7 million tons of greenhouse gases by this taxi system.

358. Dr. Mundy proposes long-term recommendations for the Denver metropolitan area including:

a) Setting minimum requirements for entrants to be fit and able based upon the standard currently achieved by Yellow Cab and Metro Taxi with a company-owned fleet of not less than 150 taxicabs. Application of available technology would change the face and quality of taxi service. Based upon empirical study and experience in other cities, Dr. Mundy opines that drivers of company-owned taxicabs have a better response to service requests and thus better serve the public.

b) Phasing out the formal hearing process in favor of proving capitalization and ability to enter the marketplace with an approved standard of service defined as fit and able.

c) Requiring the driver on duty that is closest to a service request to accept the dispatch and serve the customer.

359. Dr. Mundy acknowledges that these criteria would not be appropriate for smaller communities having populations of approximately 20,000 or less.

360. Addressing Dr. Moss' report, Dr. Mundy characterizes the report to be reminiscent of those kinds of testimony and academic articles written in the '70s and '80s. It addresses the theory of the firm and macro competition, but he contends it does not address the taxi industry.

361. Because cab service is a derived demand, Dr. Mundy contends that demand for service in the Denver taxi market will not be affected by the addition of taxicabs providing service. Approving all pending applications would result in approximately a 40 percent increase in the number of taxicabs authorized to operate. Therefore, an oversupply would be created, leading to problems such as arguing at hotel cabstands and "the buying of hotel doors."[43] In the aftermath of oversupply, Dr. Mundy contends that increased supply of taxicabs will cause current drivers to see a 30 to 40 percent loss in their revenue. Affected drivers will either drive more hours to earn the same income or they will have an immediate reduction of income. In a

[43] Presumably, Dr. Mundy meant that taxi drivers purchase preferential treatment from hotel personnel, such as doormen, who thereafter arrange trips for the benefit of the paying drivers.

situation of oversupply, Dr. Mundy contends that the bad will drive out the good. The best long-term drivers will simply leave the industry if they cannot continue to the earn income they have achieved over the years.

362. Taxi companies tend to pursue rate increases to retain drivers. Rate increases are requested based upon documentation that then-current rates charged for the fewer number of trips will not allow them to earn a living wage. Although to a lesser degree, Dr. Mundy predicts a similar outcome from the grant of an additional 200 taxicabs.

363. If the Commission were to authorize an additional 200 to 300 taxicabs, Dr. Mundy expects that service quality will deteriorate, as has happened in other cities. In absence of significant latent demand, adding 200 to 300 more taxicabs would simply decrease the amount of business each cabdriver had each day. He believes open entry based upon a low fitness standard will, as in city after city, result in poor service and higher rates.

364. Dr. Mundy contends that a well-capitalized taxi company operating 150 cabs can afford to purchase a very good dispatch system, buy marketing services, and compete in an area the size of Denver. He opines that Freedom Cabs needs capital, not vehicles, to be a full-service cab company.

365. Dr. Mundy describes destructive competition to mean that markets, market structures, and services are oversupplied, at least temporarily, with cheaper goods. As a result, the market is destroyed. Dr. Mundy uses the term "open entry" to describe when a regulatory body adopts a low or non-existent fitness standard, with entry occurring over time through incremental approvals.

366. Addressing his opinion regarding excess capacity at DIA, Dr. Mundy was asked why the public interest would be harmed by granting new permits to serve the community as

opposed to attempting to force drivers to serve against their perception of their own best interest. He offers that even the addition of taxis that are restricted from serving DIA might oversupply the downtown area. A small supply of new cabs in the marketplace could harm the public interest.

367. Dr. Mundy testified that the specific geographic location of the base of a cab company does not really have any significant impact at all on the ability of that company to serve in the community.

3. Mr. Alfred LaGasse, III.

368. Mr. Alfred LaGasse, III, is the Chief Executive Officer of the TLPA, formerly known as the International Taxicab Association and the International Taxicab and Livery Association. TLPA is a national organization representing approximately one thousand owners and managers of the full for-hire transportation industry. Mr. LaGasse was called by Yellow Cab to testify regarding his designated expertise in fields of taxi regulation and taxi regulatory standards.

369. Mr. LaGasse has worked with the organization since 1978. Since that time, he has held the offices of Assistant to the Chief, Executive Vice President, and Chief Executive Officer. A copy of Mr. LaGasse's *curriculum vitae* was admitted as Hearing Exhibit 35.

370. Over the course of his tenure at TLPA, Mr. LaGasse has studied the taxi industry, particularly its regulatory aspects. TLPA has focused on providing accurate data for studies conducted by others, including the U.S. Department of Transportation (DOT). More recently, TLPA has conducted its own research. While all communities have some unique aspects, TLPA has found that basic regulatory factors are not as unique as communities may believe.

371. The Taxicab Company Standards Task Force of TLPA was tasked with drafting a set of taxicab regulatory standards for metropolitan areas having a population greater than one million as well as taxicab driver standards for major metropolitan areas. The resulting Taxicab Company Standards were admitted as Hearing Exhibit 30. The resulting Taxicab Driver Standards were admitted as Hearing Exhibit 31. Each of these standards has been adopted by TLPA.

372. Mr. LaGasse recommends that the Commission use these standards as a guideline for managing the operation of the taxicab industry in the Denver metropolitan area. TLPA contends that all major metropolitan areas would benefit from their adoption. Although not developed specifically for Denver, they were developed to meet the regulatory needs of any major metropolitan area having a population greater than one million, a major airport, a true tourist trade (including convention business), and a cabstand business (*i.e.*, major hotels, the convention center, sporting events, and medical facilities).

373. Mr. LaGasse does not find radio dispatch necessarily deficient, but a computerized dispatch system is necessary to provide the best service to the general public in a metro area of a population of 1 million or more. He believes that requiring a carrier to have computerized capability should be a measure in the pending applications affecting a large population, and that the applicants providing what is most needed by the travelling public should stand out when compared to standards set forth in Hearing Exhibit 30.

374. The standards provide that safety and quality of service requires a computer dispatch system. Mr. LaGasse describes such systems as the single most significant advancement in the taxicab industry in the past 20 years. These systems allow improved efficiency and vehicle tracking by the taxi company. Drivers no longer have to waste miles to

report their location. Historical problems with drivers self-identifying their location no longer exist. Computerized systems allow the dispatch of the most available taxicab (*i.e.*, time, distance, vehicle characteristics, and special needs) to meet passenger requirements. In turn, the system allows drivers to transmit distress signals to the central office in the case of a personal or passenger emergency. The efficiencies gained allow drivers to rely upon dispatch service, rather than having to constantly cruise to attract business. However, contrary to the recommended standards, Mr. LaGasse acknowledges that hundreds of TLPA members use radio dispatch, some of whom operate in a population center of 1 million or greater. He also acknowledged that a reasonable Commission might allow entry with radio dispatch and a plan to migrate to digital dispatch at a later time.

375. Mr. LaGasse emphasized the targeted area of the standards focus upon major metropolitan areas, such as Denver. He does not believe such a standard would be appropriate in a smaller community where taxi operations are substantially different. Generally, service in a smaller community focuses upon dispatch service because there are fewer trip generators (*e.g.*, cabstands at airports or hotels). Therefore, smaller communities simply cannot support a large full-service taxi company.

376. When asked if he could be more specific regarding size that could justify application of a digital dispatch system, Mr. LaGasse offered that he was not aware of any company operating less than 100 taxicabs that utilizes a fully automated computer dispatch system. For fleets between 20 to 100 taxicabs, he would expect a computer assisted (*i.e.*, not fully automated) system; for fleets smaller than 20 taxicabs, the required capital costs of digital dispatch are not justifiable and a two-way radio system would likely be used.

377. The Company Standards recognize a critical need for balancing the supply of taxicabs with the need for taxicab service. Mr. LaGasse contends that an oversupply of taxis leads to declines in productivity per vehicle (*i.e.*, fewer passengers in the vehicle per day). Such a decline reduces driver income leaving the choices to quit, make less money, work longer hours, or pursue other conduct in violation of Commission rules or Colorado law. Historically, the average decline in an oversaturated market is about 22 percent. Indications of undersupply would include excessive passenger wait times for service or complaints of lack of service.

378. With downward pressure on driver income, service deteriorates for everyone. It is more likely that drivers will make a judgment on the value of every dispatched trip. For example, there was a study conducted in San Diego during a time when Mr. LaGasse describes the market as oversaturated. It was found that trip refusals increased from 2 percent to 18 percent. Mr. LaGasse believes this represents a serious deterioration in the quality of service that the public receives.

379. Asked how one determines the point of oversupply, Mr. LaGasse responded that such a level can be quantified as oversupply, near oversupply, or undersupply, based upon the trips per day that taxis drive. One could also monitor the level of business or driver income. Reductions in driver income lead to the inability of companies to make infrastructure investments. When drivers suffer, company revenues decrease, and investment decreases. Vehicles get older and installed technology gets stale. The best way for taxi companies to survive is to reduce costs through increased long-term efficiency. However, such improvements are reliant upon capital investments that companies become less willing to make.

380. In the early 1980s, there was an inquiry into whether deregulation of the taxi industry would be beneficial. The DOT, from TLPA's perspective, encouraged communities to

experiment, providing grant funds for technical assistance. Published DOT studies supported regulatory change. There were two major focuses: entry and fares. Some communities chose not to deregulate fares, only entry; some communities only deregulated fares; and some deregulated both.

381. Mr. LaGasse describes other harm to the public interest resulting from an oversupply of taxicabs. He offers that Seattle provides one of the better documented cases of competition for passengers at cabstands. A hotel only allowed cabs licensed by that hotel to serve its cabstand because it found the city's standard for taxi service to be unacceptable. An oversupply of taxicabs can lead to over-congestion at a cabstand. Drivers that have waited in line a long time may have been eating and leaving trash in their car. Increased driver wait time creates a need for restroom facilities. Mr. LaGasse has personally witnessed aggressive behavior between drivers fighting over a passenger. A major factor in reregulating the industry in Seattle came from drivers physically fighting over the passengers arriving from ships.

382. Mr. LaGasse generally acknowledges that his experience may sound counterintuitive to others. However, his study of the taxi market indicates that once the number of taxis is determined to support demand, there is little effect upon demand from a further increase in the supply of taxicabs. Passengers need a trip when they need a trip. Therefore, productivity per cab can only decrease with the addition of more taxicabs. The cost per trip must increase for drivers not to lose income. Thus, drivers lobby for increases and companies support the driver in lobbying for higher fares so they can meet lease obligations. Mr. LaGasse testified that this scenario has occurred in every documented case that he is aware of, although he also acknowledged the Commission’s role in the process to request a rate increase.

383. In 23 major metropolitan areas that adopted minimal entry standards, rates increased during the first year, on average, 29 percent. Mr. LaGasse contends that an oversupply of taxicabs in Denver, however reached, will result in similar effects. The same level was not observed in smaller communities. Mr. LaGasse is not aware of a single major metropolitan area that achieved lower taxicab fares after a significant increase in market number of taxi permits.

384. As to the effect of higher fares upon demand, Mr. LaGasse segregates two segments in the market. The affluent market is largely unaffected. However, low-income consumers that utilize taxi service are very price sensitive. As prices increase, the latter group may seek out transportation alternatives.

385. Mr. LaGasse distinguishes the market for taxi service from other types of services, particularly at cabstands. It is extremely difficult for passengers to comparison shop taxi service on the basis of price or otherwise. Cabstands typically operate on a first-in-first-out basis. A typical driver, having waited in a queue, will believe there is some right to serve the first passenger when he reaches the front of the line. It is not practical for a passenger to skip a first cab and go to the second cab. While some effects may be mitigated through staffing, it will likely not be made more practical. This is consistent with Mr. LaGasse's experience as a sophisticated traveler.

386. In a Federal Trade Commission taxi study, it was found difficult in these types of environments to have competition in first-in-first-out markets. Historically, DOT studies have also documented this problem as an inhibitor to the market working.

387. On cross-examination, testimony was solicited of Mr. LaGasse as to why the Commission should not grant the authority requested in the pending applications and then subsequently address issues if and when they arise. Mr. LaGasse explained that quite a few

communities experimented with lowering entry barriers. As a result, he opines that most of them are struggling today to regain control of the industry.

388. Noting the one-way nature of the process, he contends it is very difficult to subsequently reduce the number of taxicabs authorized to operate. Typically, what he has seen is that all existing operations are grandfathered and the problem is effectively overcome through attrition, population growth, or otherwise, over a period of several years. He suggests that problems of this nature cannot be solved overnight and that the public lives with that damage for a long time.

389. Unsure of whether Colorado employs licensing differentiation, Mr. LaGasse explained that in and around Washington, D.C., cab licenses are broken out by region or city. Mr. LaGasse pinpoints the key fact that taxicab drivers tend to go to the business without regard to the scope of the geographic territory certified. In order to avoid additional taxicabs flocking to current business centers, he notes that licensing differentiation among geographic territories can limit a driver's ability to do so. Thus, the Commission can assure some level of geographic diversity. He illustrates that Arlington, Virginia, licenses its own cabs and allows them to only pick up passengers in Arlington, Virginia. While they are able to drive passengers to Washington, D.C., they cannot operate point-to-point in Washington, D.C. As a result, service is promoted in the suburban areas and taxicabs do not migrate to Washington, D.C.

390. Mr. LaGasse was asked whether the Commission should apply the same standards to an applicant seeking to serve one small municipality as one seeking to serve the entire Denver metropolitan area. He accepts that the Commission might adopt different standards for the smaller applicant if its taxicabs will be prohibited from operations in Denver. However, if the

new entrant will be able to serve Denver, he believes the standards must be the same. Otherwise, upon approval, the service can simply migrate to Denver.

391. Given a hypothetical scenario that continued applications seek to serve each city other than Denver, Mr. LaGasse was asked whether there could be long-term detrimental effects upon balkanization. He recommends that the Commission measure service standards and make regulatory responses as needed. For example, a new entrant might be allowed to serve only an underserved portion of a larger geographic territory.

392. In order to estimate market demand for taxi services in the Denver metropolitan area, Mr. LaGasse recommends that the Commission first monitor certain areas that can be monitored (*e.g.*, the airport) as an indicator for the market. One can also monitor the existence and extent of lines at hotel stands. For installed computer dispatch, and possibly manual dispatch (depending on record availability), requests for service can be measured. Response times for requests for service could be calculated to ensure passengers are picked up in a reasonable amount of time. Mr. LaGasse further suggested that the Commission should monitor current trends of driver income, as one factor to determine whether or not the market is oversaturated or undersaturated. Any grant of new authority would be based upon such factors.

393. Mr. LaGasse recommends that the Commission’s focus remain on what is best for the passengers and the services that the passengers need to receive, rather than what drivers and companies want.

394. Mr. LaGasse was asked to comment on the ability of a regulatory agency, or other body, to downsize an authorized carrier if it could be determined that there existed an oversupply of cabs serving the populous. Mr. LaGasse could not testify to any situation whereby an authorized carrier actively using its authority had ever been forced to reduce its fleet. He

suggested tools available for use over time, including limiting the ability to transfer authorities or lack of use (in essence, abandonment). In any event, these changes take a substantial period of time to correct an oversupply of taxicabs.

4. Dr. Paul Stephen Dempsey.

395. Dr. Paul Stephen Dempsey is a Tomlinson Professor of Law at the Science Institute of Air & Space Law at McGill University. He has four college degrees: a Bachelor of Arts and a Juris Doctorate degree from the University of Georgia; a Master of Laws degree from George Washington University; and a Doctor of Civil Laws degree from McGill University.

396. After becoming a lawyer, he worked with the Interstate Commerce Commission, then the Civil Aeronautics Board. After moving to Denver, he became a Transportation Lawyers Associate Professor of Law and Director of the Transportation Law Program at the University of Denver College of Law. He was faculty editor of the Transportation Law Journal and Director of the National Center for Intermodal Transportation (a national transportation center established by the United States Congress).

397. In 1994, he helped start Frontier Airlines (Frontier). The airline grew to serve approximately 50 cities in the United States, Canada, and Mexico, with approximately 50 aircraft. He is currently Vice Chairman of the holding company for the airline. He is also chairman of Linx Aviation, which flies Bombardier Q400s out of Denver, feeding the Frontier fleet and network.

398. Since 2003, Professor Dempsey has been Director of the Institute of Air & Space Law at McGill University. He holds the endowed chair there in law and global governance.

399. Professor Dempsey has extensively published in the field of transportation law and economic policy. His expert report in this matter, entitled Economic Regulation of the Taxicab Industry, is Hearing Exhibit 50.

400. Professor Dempsey was called by Metro Taxi to testify as to his designated expertise in transportation law and policy.

401. Professor Dempsey initially addresses the significant differences among major segments of the market for taxi services and the limitations upon the operation of such markets. However, all of the segments similarly do not provide a competitive market opportunity because it is practically impossible for a passenger or potential patron to bargain on the basis of price. In the cabstand market, a patron rejecting the next taxicab in the queue causes enormous difficulty in the system and it can lead to altercations. Even in the street-hail market, it is impractical for a patron to negotiate the price at the curb.

402. Professor Dempsey expresses imperfections of the market and why they are not (and cannot be) competitive because the customer has imperfect information. A perfectly competitive market assumes access to perfect information. However, it is very difficult to assess the quality of a transportation experience before it is consumed. For example, one is likely already in a taxicab before one can observe the attitude and honesty of the driver, the cleanliness of the vehicle, or whether a circuitous route will be taken. He also identifies significant transactions cost concerns because there is often no reasonable opportunity to negotiate the terms of service in a timely and meaningful manner.

403. Professor Dempsey describes external impacts upon taxi service. He notes that wait times will theoretically be decreased if the number of taxis on the road is increased. However, if the supply becomes excessive, relative to demand, several negative impacts result.

For example, traffic congestion and environmental pollution increase. He notes that Denver continues to have environmental attainment problems that have been ongoing at least since 1979. The costs of such excess are externalized to the public.

404. A number of cities have experimented with deregulation of the taxicab industry. In the 1980s the Federal Trade Commission and the DOT commissioned a number of studies to assess experiences in deregulated taxi markets. Professor Dempsey characterizes these published studies to have revealed less than satisfactory results, including decreased income levels for taxi drivers, decreased taxicab utilization, and decreased efficiency. Environmental pollution and fuel consumption increased, the age of vehicles in service increased, the quality of drivers began to decline. In conclusion, the public interest was not well served. Prof. Dempsey summarily states that external forces in most of the communities led to re-regulation.

405. Turning to his review of the current Denver taxicab market, Professor Dempsey primarily relied upon Dr. Mundy's report, rather than an independent analysis. Professor Dempsey agrees with Dr. Mundy’s characterization that taxicab demand is derived demand. Reasonable people do not pay for taxicab service in order to cruise around the city for no purpose. Rather, someone might travel to DIA because they have purchased an airline ticket. Professor Dempsey also agrees that taxicab waiting queues at DIA in excess of two hours, on average, are excessive.

406. Professor Dempsey describes how the Commission should determine the size of the demand for taxi service at DIA by measuring the number of origin and destination passengers from airlines because all passengers are coming from or going to airplanes. DIA has experienced a surge in passenger traffic due to the introduction of Southwest Airlines.

407. Since the preparation of his report, Professor Dempsey noted that the country, at least the financial community, seems to have gone into a financial tailspin. Because taxi demand is a derived demand, he anticipates that the number of passenger trips will decline and that the number of potential drivers will increase. As a result, he opines that equipment utilization and driver income will decline from increasing the number of taxicabs authorized.

408. Professor Dempsey contends that the public interest will be harmed by increasing the supply of taxicabs because additional supply does not generate significant increases in demand. It can lead to unsavory practices including drivers needlessly increasing the length of trips. This is obviously detrimental to the paying passenger as well as the public because of excessive fuel consumption, increased pollution, and more traffic congestion.

409. Professor Dempsey illustratively distinguished the experience of traveling to Baltimore and Washington, D.C. Washington, D.C., has more taxicabs than Los Angeles, which is the second largest city in the United States. The taxicabs are old and their condition is extremely poor. Although there is not very significant regulation of entry in Washington, D.C., there is a zone system that attempts to regulate pricing. The studies he has reviewed of zone systems indicate an enormous amount of cheating.

410. Due to dissatisfaction with the quality of taxicabs coming to Baltimore from Washington, D.C., regulators in the City of Baltimore (Baltimore), the county, and the airport issued a request for proposal (RFP) for a sole-source provider of taxis. Conditions of the RFP included limitations upon the age of vehicle and established pricing. As a result, prices are cheaper in Baltimore than in Washington, D.C. Yet, Baltimore taxicabs are relatively new, very clean, and provide transportation at a very fair price. He recalled one occasion where the trip from Baltimore to Washington, D.C. cost approximately $55. Attempting to hail a return trip

from Washington, D.C. to Baltimore, he attempted to negotiate a price but found that every taxi wanted to charge in the neighborhood of $70 to $90. In addition to higher price, the taxicabs were in far worse condition and not air conditioned. He ultimately paid a higher price for the return trip.

411. Having lived in Denver for several years, Professor Dempsey often rode in taxicabs from Park Hill to Stapleton International Airport. He easily obtained service to the airport because taxicabs were available from downtown. The fare was reasonable. However, for the return trip with a taxicab having waited in a queue, he experienced resistance and poor attitudes of drivers. His experiences indicate that the drivers' wait in the queue was excessive.

412. Professor Dempsey counters the applicability Dr. Moss' experience with fixed utilities and antitrust theory to the taxi market. Her resume does not indicate experience in taxicab markets. He characterizes her approach as one assuming that competition produces a better result. While acknowledging this may be true in many markets, he disputes that this is true in the taxi industry because of differing economic characteristics. He believes that circumstances in Washington, D.C. illustrate the point.

413. Professor Dempsey criticizes Dr. Moss' analogy for deregulation of the wholesale electric utility market in California because she fails to consider the resulting multi-billion dollar financial meltdown.

414. Professor Dempsey contends that Dr. Moss' theory of this case fails to recognize that perfect competition is not possible in the taxi industry and that pursuit thereof is not likely to be in the public interest. He contends that effectively deregulating entry into taxi service in Denver would have a number of adverse impacts. The result would be an excessive number of

taxis relative to demand, a condition that he believes already exists based upon Dr. Mundy's report.

415. Based upon the experience of other cities that have deregulated the taxi industry, he believes that an oversupply of taxicabs will lead to an upward impact on consumer pricing. *See* Hearing Exhibit 50 at 23.

416. On cross-examination, Professor Dempsey acknowledged that he testified against any additional taxicab allotments to Freedom Cab in 2002.

417. Professor Dempsey also acknowledged that the within application will not result in open entry or deregulation of the taxi industry in Colorado and that there are varying degrees of deregulation that have been explored or attempted over the past several years. The Commission does, and will continue to, regulate the rates and service quality of carriers.

418. Professor Dempsey summarized his recommendation that the public interest in regulation of the taxi industry should focus upon the appropriate ratio of taxis to passengers as well as prompt, safe, and reasonably priced service for the public. At the same time, efficient and well managed firms should have a reasonable opportunity to earn a reasonable return on their investment.

419. Professor Dempsey was asked to opine as to the public interest considerations regarding the number of providers in the Denver taxi market given a determined total number of taxicabs. He commented that there is no correct answer as to the number of competitors except that increased fragmentation increases the difficulty to establish a new company that has the ability to invest in the fixed overhead of the dispatch business. A company must have a fleet of sufficient size to adequately serve a proposed geographic region. Thus, necessary fleet size impacts the number of providers that can operate under the fixed level of taxicabs authorized.

He generally believes that the public benefits from more than one provider, which allows for some competition and consumer preference. Alternatively, mechanisms can be implemented, like in Baltimore, to incentivize one carrier to meet a checklist of expectations. Periodic bidding of the contract also incentivizes compliance.

5. Mr. Joseph Rubino.

420. Mr. Joseph Rubino is an independent consultant to the transit industry. He was called by Yellow Cab to testify regarding his designated expertise in the field of passenger ground transportation, including taxi operations, management, and financial matters.

421. Mr. Rubino began working in the industry as a taxicab driver in 1974 and became a taxicab manager in 1976. He then started Metro Transportation, a taxi company in Miami, Florida, with 37 taxicabs. He worked as general manager and Executive Vice President. Under the umbrella of Metro Transportation of Miami, other companies were owned to provide different services. The total business built to a peak of about 350 taxicabs; about 150 paratransit vehicles; some buses; some premium services (*i.e.*, limousine and town car); a courier service; private medical contracting; and a brokerage providing services and dispatching for other companies. In 1997, Metro Transportation was purchased by Coach U.S.A., a subsidiary of Veolia. Mr. Rubino's responsibilities expanded to encompass other Coach U.S.A. companies across the United States. In 2000, he became an industry consultant.

422. In the late '80s and early '90s, Mr. Rubino sent staff to Denver to set up Metro Transportation's taxi business and taking them from a 30 or 40 car company up to about 350 cars. That company, now under different ownership, is Metro Taxi.

423. Mr. Rubino consults as a generalist providing several types of services. His largest public-sector client is the Federal Transit Administration. As part of a team, he conducts

seminars for taxicab companies regarding how to access federal grants funds. His portion helps companies create their best and most profitable form through application of general business principles. He is also currently studying how taxicab companies take part in paratransit programs in 30 different cities. In the private sector, he works for purchasers and providers of transportation services in several areas. However, the dominant part of his business is teaching a company's taxicab drivers how to make more money in their business. The Taxicab 101 program is also called Excellence in Transportation. Because successful drivers are the most important aspect of full-service companies, they want drivers to make money. Otherwise, the business will fail.

424. Mr. Rubino also consults for management of taxi companies. He may be hired by a company having some problem, identified or not, to observe the entire company and make recommendations for improvements. Based upon his experience, he can help isolate any number of problems and make recommendations as to how those problems can be addressed.

425. Mr. Rubino has experience with taxi cooperatives as a driver, manager, and consultant.

426. As a manager of Metro Taxi, he followed the group of drivers that left Yellow Cab to form Super Yellow. Although known as Association, based on his experience, he observed that the evolution was approximately the same as that of a cooperative. An organization of drivers forms and the drivers own shares, based upon a predetermined format. Super Yellow focused upon service at the airport with approximately 350 drivers. As alternative forms of accessing the airport increased, their business decreased. Over time, the number of cars decreased to 70 or 80 cars.

427. Mr. Rubino identified two successful cooperative consulting clients including a cooperative in Oregon, with about 20 cars, and one in Los Angeles, with about 1,100 cars. Both formed out of full-service companies where they chose from a cooperative. In both cases, the original company continued to exist as a seller of services to the cooperative for a fee (*i.e.*, dispatch, advertising, telephone service, and maintenance). Mr. Rubino was also familiar with other taxi cooperatives that he would characterize as successful.

428. Mr. Rubino reviewed the confidential business plans of Union Taxi and Iron Cab and prepared reports thereupon as Hearing Exhibits 65C and 66C.

429. First, Mr. Rubino acknowledged that a taxi corporative has a sound theoretical basis. However, problems arise when the reasons for starting a cooperative are not valid. Despite the fact that a cooperative may be formed by a group having very good taxicab driving skills, those skills may not translate into operation of a business. He believes that Union Taxi's business plan contains many errors and omissions, such as a vast overstatement of prospective income and a vast underestimate of probable expenses. Some parts of the company, necessary for operations, are not considered. Based upon these observations, Mr. Rubino questions the viability of this enterprise.

430. The taxi industry is plagued with turnover of drivers. Because Union Taxi's projected income relies upon all drivers paying 100 percent of their lease fee for the entire year, he questions feasibility of the revenue stream and infers that Union Taxi assumes that it will not lose drivers, never have a driver's vehicle break down, and never have a driver put his vehicle in the shop.

431. Mr. Rubino opines that it is very common to constantly have a turnover of 10 or 15 percent of drivers within a relatively short period of time.[44] He combines this consideration with the fact that it is also customary for 10 or 15 percent of vehicles on a fleet to be out of service for mechanical reasons. Thus, he concludes it is very common for 20 percent of vehicles to not be on the road and producing revenue at any given time. This industry-wide experience motivates many companies to carry spare fleet vehicles for deployment when necessary.

432. The fact that Union Taxi currently has a waiting list of 50 to 60 drivers wanting to join the cooperative was not convincing to him. Mr. Rubino mentions that many companies have waiting lists of drivers, but commonly many of these drivers will not be available for a variety of reasons (*i.e.*, another job, changed plans, or having moved). He does not believe the waiting list will be adequate to support the first six months of operations. Rather, Union Taxi will require a constant year-round backlog of 50 or 60 drivers.

433. While Union Taxi touts that all drivers will be owner-drivers, Mr. Rubino believes this will be the main reason that Union Taxi may not be successful. This opinion is consistent with Mr. Sarr's concerns expressed on behalf of Freedom Cabs and its motivation to include company-owned vehicles in its requested authority. Mr. Rubino points out that the drivers who own their own cab can more freely move to another company.

434. Mr. Rubino identifies what he believes is a driver's true motivation regarding lease rates. Although lease rates may be the stated concern, it is far more likely that the true concern is drivers not making the desired level of income after paying the lease and other expenses. Thus, despite Union Taxi's lower planned lease rate, drivers will leave the company if

[44] Mr. Rubino provides an example of this statement: A client with 160 cars constantly attempts to recruit 10 or 15 drivers. During the course of the year, they may replace 60 or 70.

they are not able to make the living they desire. Mr. Rubino believes many Union Taxi members are destined to the same fate of dissatisfaction with Union Taxi as their current companies. Thus, many will choose to leave Union Taxi, in time, for greener pastures.

435. Mr. Rubino made clear that companies have failed or succeeded as both corporations and cooperatives. A company will succeed or fail based upon the skills or knowledge and the capital available to those forming the entity. He adds that the selection of business form has historically been based upon external considerations such as tax laws. The format of cooperative chosen by Union Taxi will not prove successful in the taxi industry because drivers will no longer have those services supplied by the full service company. Mr. Rubino contends that Union Taxi's business plan is flawed and that the company will not succeed without regard to whether it was a corporation or a cooperative.

436. Mr. Rubino, recognizing prevailing economic conditions, believes that drivers will experience conditions that will make them unable to timely pay their obligations, despite company plans. Because he believes that Union Taxi will not have the financial flexibility to work with drivers, driver retention will be negatively affected.

437. Mr. Rubino generally recognized that more frequent payment of lease fee requirements improves collectability and attempted to illustrate difficulties that Union Taxi will encounter. However, this argument is not persuasive because Union Taxi has the flexibility to require drivers to pay with varying frequency. Additionally, he did not address the ability or extent of payments through other means. Illustratively, the company may control a security account or fares paid by credit cards. There is at least a possibility that these matters may be managed in such a way to decrease the frequency of accounting.

438. Factoring in Mr. Rubino's opinion as to driver turnover or revenue shortfall, he believes that Union Taxi significantly overstated their monthly revenue.

439. Mr. Rubino opined that, on average, Union Taxi drivers would require anywhere from 15 to 20 total trips per shift to make a decent living, depending upon the geography, length of trip, the driver, etc. On average, a driver might also pick up three to five trips on his own, from cabstands, hailed, or otherwise. Thus, 10 to 12 trips would like require company dispatch for an average driver. For successful drivers, he believes the number may rise to 12 to 14.

440. Assuming 262 total cars, perhaps 180 will be on the street at any given time. Mr. Rubino estimates that 4,000 to 5,000 total calls may need to be answered during the course of the day to dispatch an adequate number of trips (*i.e.*, including calls for dispatch, callbacks, no shows, as well as other types of calls). Call volumes will vary with demand.

441. Assuming Union Taxi's plans for answering the telephone and dispatching, he contends it will be impossible for Union Taxi to process calls necessary to dispatch a 262-car fleet. Rather, he believes up to four times the number of people will be necessary, half of which would be full-time dispatchers. Projecting these various assumptions, Mr. Rubino contends that Union Taxi's monthly call center personnel costs are significantly understated in the business plan.

442. Mr. Rubino uses an accepted rule of thumb in the industry that for every seven cars on the street, a company will need one person in the office (*i.e.*, all staff, including call takers, dispatch, mechanics, etc). Therefore, he contends that a company of 262 vehicles would most likely need approximately 37 people in the office.

443. Combining overstated revenues and understated call center expenses, Mr. Rubino contends that Union Taxi has significantly overstated its income from net monthly operations,

without regard to training expenses, road supervisors, and claims handling people. The business plan also omits any business development personnel, which is generally another three or four people. He contends the total capital in the business plan could substantially miss the mark. He believes that planned capital available will be exhausted within six months.

444. Turning to Iron Cab's business plan, Mr. Rubino demonstrates Iron Cab’s lack of understanding of the independent contractor relationship, specifically a lack of understanding regarding what services an independent contractor can be directed to perform. Although testimony during the hearing by Iron Cab acknowledged this issue, Mr. Rubino contends that this was a strong portion of the company’s planned promotions. Without this planned aspect, he contends there will be a shortfall in resources to promote their business. Mr. Rubino also contends that it is overly optimistic for Iron Cab to assume that drivers will do what the company desires. Mr. Rubino contends that Iron Cab does not have a good marketing plan or demonstrates how they can produce any business.

445. Contending that the market area underutilizes taxi service, Mr. Rubino argues that Iron Cab will be even more dependent upon non-existent business development plans. In addition to promoting the existence of Iron Cab, the company must also create the demand for services. Further, he contends that reliance upon drivers for business development will ultimately fail because drivers will perceive this effort as something they are providing, rather than what they are paying the company to provide through lease fees.

446. Noting Iron Cab’s dispatcher allocation plans, he concludes it will be impossible to take actions necessary to ramp up operations as contemplated by the business plan. Staffing is required to ramp up operations because of the need to train and orient drivers. There is

insufficient staffing planned for this need. He projects that three or four people experienced in the taxi industry will be required to build the company.

447. Mr. Rubino criticizes Iron Cab's assumptions regarding full time employees. He is skeptical about reliance upon ownership to fill this void because the taxi business is a 24-hour per day, 7-day per week, business for the entire year.

448. Mr. Rubino believes that Iron Cab underestimated payroll costs and that the company will have difficulty obtaining personnel due to assumptions made regarding training, bonuses, benefits, paid vacation, or sick leave. He suspects there may be retention issues and that there are unaccounted expenses and assumptions regarding legal and religious holidays.

449. Mr. Rubino addressed Dr. Moss' report, Hearing Exhibit 67. After noting Dr. Moss' argument that the current environment of two dominant firms and one fringe competitor is not desirable, he states that this reflects a common environment in the taxi industry. He acknowledges that it would also not be atypical for a medium or larger city to have 20 cab companies in operation.

450. Mr. Rubino argues that Dr. Moss' theoretical analysis is not supported by evidence of the taxi industry and she failed to demonstrate any knowledge of the taxicab industry. Further, she disregards or underestimates the experiences from the results of years of industry experience. He criticized Dr. Moss' failure to address major cities that deregulated to disastrous results and subsequently reregulated taxi service.

451. Mr. Rubino agreed that there is some elasticity in a market, but there is also demand that is not served well, and there is also demand that is just very low. General economic conditions also significantly impact the elasticity of demand for taxi services. In an area with extensive public transportation alternatives, a poorer economy might encourage people to utilize

less expensive means than taxicab service. Though not the same service, one might ride a bus, rather than a taxi.

I. Operational and Financial Fitness, Generally

452. An applicant seeking to provide taxicab service within and between the Counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson has the initial burden of proving that it is operationally and financially fit to provide the proposed service. An applicant is not required to prove the inadequacy of existing taxicab service, if any, within the applicant's proposed geographic area of operation. *See* § 40-10-105(2)(b)(II), C.R.S.

453. During the Commission Deliberations Meeting held in these dockets on July 18, 2008, the Commission noted that it has never promulgated rules quantifying a fitness standard. It therefore invited the parties to submit comments on the meaning of operational and financial fitness.[45]

454. In their comments, the parties and the Institute generally agreed that the Commission should determine operational and financial fitness of an applicant on a case-by-case basis and consider the unique circumstances of each applicant and the proposed service.[46] The Commission agreed and found that operational and financial fitness of an applicant must be evaluated on a case-by-case basis based upon unique circumstances of each applicant and the proposed service.

[45] *See* Decision Nos. C08-0776, C08-0777, C08-0778, C08-0779, and C08-0780, mailed July 25, 2008, at ¶10.

[46] *See, e.g.*, Amicus Curiae Brief on behalf of the Institute, submitted August 4, 2008, at pp. 6-8; Union Taxi's Comments regarding operational and financial fitness, an open market approach, and the public interest standard, submitted August 4, 2008, at ¶7; and Union Taxi's Reply Comments, submitted August 15, 2008, at ¶6, fn. 6 (citing comments of Yellow Cab, Freedom Cab, and the Institute).

455. In issuing guidelines to the ALJ regarding the scope of the testimony and record to be developed at the hearing, the Commission stated that:

> The ALJ should endeavor to compile a record regarding each applicant's financial and operational fitness. In doing so, the ALJ should, without limitation, solicit evidence and develop findings of fact on the following topics with respect to each applicant: (a) minimum efficient scale, that is, whether a minimum size of operation is required and, if such a minimum does exist, conceptually what is the approximate magnitude for markets at issue in this docket; (b) credit worthiness; (c) access to capital; (d) capital structure; (e) current cash balances; (f) credit history and assessment of financial health over the near future; (g) managerial competence and experience; (h) fixed physical facilities such as office space and maintenance garages, as appropriate; (i) appropriate licenses and equipment necessary to operate a radio dispatch system; (j) vehicles of appropriate type; and (k) other metrics that may be appropriate.[47]

456. The Commission also issued a guideline to the ALJ to hear testimony and to develop a record on whether Union Taxi is operationally and financially fit as a whole, not whether its individual members are fit.

457. Union Taxi states that when determining the operational and financial fitness of an applicant, the Commission should evaluate each applicant on a case-by-case basis and consider the unique circumstances of each proposed business model.[48] Union Taxi argues that the Commission should reject the standards proposed by the experts for Metro Taxi and Yellow Cab.[49]

458. Union Taxi argues that if the intervenors believe the Commission should amend its existing taxi regulations and adopt the new standards proposed by the experts of Metro Taxi and Yellow Cab, they should petition the Commission to open a rulemaking docket. Union Taxi

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[47] *See* Decision No. C08-0933, mailed September 4, 2008, at ¶7.

[48] *Id.*

[49] Dr. Ray Mundy and Mr. Alfred LaGasse, for example, recommended that all new entrants must use computerized dispatch, or maintain a minimum number of company owned cars, or commit to a minimum number of dispatch trips per vehicle per day.

points out that if the Commission were to adopt new standards in the present adjudicative proceeding, these changes would be applied on a prospective basis, which would violate the Colorado Administrative Procedure Act (Colorado APA).[50]

459. We agree with Union Taxi that adopting standards different from the current rules to judge fitness of new applicants would be impermissible in an adjudicatory docket. The cases that Union Taxi cites in its Statement of Position are directly on point. The parties and the Institute are correct in that the Commission should evaluate fitness on a case-by-case basis, in light of the scope of authority sought.

J. Union Taxi's Burden of Proof—Operational and Financial Fitness—Rebuttable Presumption of Public Need.

460. As noted above, Union Taxi applied to use a maximum of 262 vehicles in a large portion of the eight-county area. Among the Applicants in this docket, Union Taxi requests the greatest number of taxicabs. With that in mind, we now apply the operational and financial fitness metrics to the evidence presented by Union Taxi.

a. Managerial Competence and Experience.

461. Yellow Cab points out that, of the three members of Union Taxi who testified at the hearing, only Mr. Szmajter has any experience in operating or managing a taxi company.[51] At Freedom Cab, Mr. Szmajter was a dispatcher and established dispatch procedures and rules. Furthermore, he was a night shift manager, established a basic bookkeeping system, and collected payoffs from drivers. At both Yellow Cab and Metro Taxi, Mr. Szmajter trained other

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[50] Union Taxi cites *Colorado Office of Consumer Counsel v. Mountain States Tel. and Tel. Co.*, 816 P.2d 278, 285 (holding that the Commission exceeded its authority by establishing standards applicable to all telecommunications providers in an adjudicatory proceeding); and *Home Builders Ass'n of Metro. Denver v. Pub. Utils. Comm'n*, 720 P.2d 552, 560-561 (holding that the Commission exceeded its authority in an adjudicatory proceeding by engaging in rulemaking without complying with the Colorado APA) in support of its argument.

[51] *See* Yellow Cab's Statement of Position dated November 10, 2008, p. 8.

drivers.[52] However, as Yellow Cab points out, Mr. Szmajter has had no such experience since 2000. Further, he testified that he does not intend to be involved in the day–to-day management of Union Taxi; instead, he plans to drive.[53]

462. On the other hand, Union Taxi argues that the experiences of its members in the multi-year legislative campaign that preceded the enactment of HB 08-1227 are relevant to their leadership and managerial capabilities.[54] We agree that these experiences are relevant. In addition, Mr. Gebremariam had supervisory and managerial experience outside of the taxi industry[55] and Mr. Buni had some leadership experience training new drivers.[56] Finally, the fact that Mr. Szmajter will not be involved in the direct day-to-day management does not mean that Union Taxi may not consult with him on a particular matter if the need arises. He also testified that he will most likely run for a position on Union Taxi's Board of Directors.[57]

463. Yellow Cab also points out that Union Taxi has not yet hired a general manager. At the time of the hearing, Union Taxi had collected only two resumes. Yellow Cab argues that neither candidate is well-qualified.[58] However, we find that the fact that Union Taxi has not yet spent significant time and expense to hire a general manager to be understandable. Hiring a general manager on a salary basis in advance of obtaining authority would unnecessarily risk capital resources. We also agree with Union Taxi that it is difficult to hire the best-qualified general manager until after authority is obtained.

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[52] *See* Hearing Transcript, 10/15/2008, p. 159, line 8 to p. 160, line 6; p. 161, line 4 to p. 163, line 3.
[53] *Id.*, p. 218, lines 19-23.
[54] *See* Union Taxi's Statement of Position dated November 10, 2008, p. 44.
[55] *See* Hearing Transcript, 10/15/2008, p. 10, lines 7-10.
[56] *See* Hearing Transcript, 10/14/2008, p. 81, line 14 to p. 82, line 4.
[57] *See* Hearing Transcript, 10/15/2008, p. 218, lines 12-15.
[58] *See* Yellow Cab's Statement of Position dated November 10, 2008, p. 9.

b. Fixed Physical Facilities, Including Office Space and/or Maintenance Garages.

464. Yellow Cab points out that the office space from which Union Taxi plans to begin its operations is relatively small.[59] While this may be true, Union Taxi may acquire a larger space once it deploys its entire fleet or this action otherwise becomes necessary.[60]

c. Minimum Efficient Scale.

465. The witnesses for Union Taxi were questioned as to how the company arrived at proposing 262 cabs in its application. Mr. Szmajter testified that the company could not operate competitively unless it had a minimum of 250 permits. Thus, Union Taxi established between 250 and 300 members as its goal.[61] On the other hand, Mr. Gebremariam testified that there was no previous decision by Union Taxi as to the number but, once the company opened its membership, 262 persons happened to sign up.[62] Dr. Moss similarly testified that, in her opinion, 262 cabs is the ballpark of being a minimally efficient scale for the particular market Union Taxi seeks to serve.

466. Considering the number of permits currently allotted to Freedom Cabs and Yellow Cab, and considering the testimony concerning Freedom Cabs' operations contrasted with those of Yellow Cab, we believe that 262 vehicles is at or above the minimum efficient scale.

d. Dispatch.

467. The expert witnesses testifying for the intervenors generally argue that the voice dispatch system Union Taxi proposes is less than optimal. However, as Union Taxi points out,

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[59] *Id.*
[60] *See* Union Taxi's Confidential Business Plan, Hearing Exhibit 3C, p. 15.
[61] *See* Hearing Transcript, 10/15/2008, p. 195, lines 1-10.
[62] *See* Hearing Transcript, 10/15/2008, p. 149, lines 14-21.

the Commission rules do not currently require a digital dispatch system. Union Taxi argues that the Commission should not adopt new standards in the present adjudicative docket, but in a separate rulemaking docket instead.[63] We agree and also find that, at least in the short term, the voice dispatch system proposed by Union Taxi will be adequate. Furthermore, Union Taxi proposes to migrate to a digital dispatch system in the near future.[64] We will consider revisiting this issue in a subsequent rulemaking and/or investigatory docket.

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

468. The intervenors claim that Union Taxi failed to account for several expenses in its business plan and *pro forma* financials. For example, Mr. Rubino argues that projected revenues of Union Taxi do not take into account driver turnover or vehicle downtime and significantly underestimate personnel and marketing expenses.[65]

469. On the other hand, Union Taxi states that *pro forma* financials are, by definition, summary in nature and cannot address every detail. Union Taxi further argues that these types of documents are living documents; they are not static nor are they required to be so.[66] Union Taxi also argues that Mr. Rubino's estimates of out-of-service times due to vehicle maintenance or driver illness are overstated because the out-of-service times for its three witnesses were far less.[67] In addition, as Union Taxi points out in its Statement of Position, nothing in its bylaws provides that a member who is out of service is excused from paying his or her membership

[63] *See* Union Taxi's Statement of Position dated November 10, 2008, pp. 16-20.
[64] *See* Union Taxi's Confidential Business Plan, Hearing Exhibit 3C, p. 11.
[65] *See* Hearing Exhibit 65C.
[66] *See* Union Taxi's Statement of Position dated November 10, 2008, pp. 15-21.
[67] *See* Union Taxi's Statement of Position dated November 10, 2008, p. 29.

dues.[68] Union Taxi also claims that Mr. Rubino did not find any items that it overestimated and estimated its insurance expenses very conservatively.[69]

470. Overall, we are concerned that Union Taxi's business plan may be too inflexible. Union Taxi states that it calculated its *pro forma* financials and estimated membership fees assuming 262 owner-drivers.[70] Furthermore, it is unclear whether Union Taxi's Board of Directors will actually be able to prevent a driver who wishes to leave the cooperative from doing so. We are concerned about declining revenues if Union Taxi has more drivers leaving than it is able to replace.

f. Conclusions.

471. We find, on balance, that Union Taxi is operationally and financially fit. The test of fitness is not perfection. There are some weaknesses in the business plan and *pro forma* financials, but overall these documents are well thought-out. We do not believe that a cooperative structure as such is necessarily a disadvantage and, furthermore, Union Taxi can reorganize itself in the future if warranted. We find that Union Taxi's case created a rebuttable presumption of public need for its proposed service. Therefore, the burden of proof shifted to the parties opposing the application to prove that the public convenience and necessity does not require granting the application and that the issuance of the certificate would be detrimental to the public interest.

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[68] *Id.*
[69] *Id.*, at p. 34.
[70] *See e.g.*, Hearing Transcript 10/14/2008, p. 71, line 24-p. 72, line 1.

K. Freedom Cabs' Burden of Proof—Operational and Financial Fitness—Rebuttable Presumption of Public Need.

472. To compete effectively with the two largest incumbent taxi companies (Yellow Cab and Metro Taxi),[71] Freedom Cabs seeks extended authority to add 150 cabs to its existing 150-cab authority,[72] which it operates in a large portion of the eight-county area. We now apply the operational and financial fitness metrics to the evidence presented by Union Taxi.

a. Minimum Efficient Scale.

473. By way of background, the Commission granted Freedom Cabs authority to operate 50 cabs in the Denver metropolitan area in approximately 1995. The Commission then increased that allotment to 150 vehicles in 2002.[73] During the hearing in this docket, Freedom Cabs argued that its present fleet of 150 vehicles is used to near-capacity and that it possesses inadequate scale with which to grow its business and to compete effectively with the two largest incumbent taxi companies.[74] It also claimed, *inter alia*, that that it could not consider the lease or purchase of a digital dispatch system equipped with a GPS and other advanced features because it has too few cabs over which to amortize such an expenditure.[75] Freedom Cabs concluded that it is in a conundrum, where it lacks the means to compete on an equal footing with Yellow Cab and Metro Taxi due to present vehicle restrictions and cannot attract additional capital to do so in the future.[76]

[71] *See* Freedom Cabs' Statement of Position dated November 10, 2008, p. 2.

[72] Freedom seeks to amend CPCN PUC No. 53638 by changing restriction (A) from "All operations under this certificate shall be limited to the use of a maximum of 150 vehicles in service at any time" to "All operations under this certificate shall be limited to the use of a maximum of 300 vehicles in service at any time."

[73] *See* Freedom Cab's Statement of Position dated November 10, 2008, pp. 4-5.

[74] *Id*., p. 7.

[75] *Id.*, pp. 6-7.

[76] *Id.*

474. Mr. Haile Michael Gebre Michael, president of Freedom Cabs, and Mr. Max Sarr, its manager, testified that due to the present limitations in its certificate, the company had to turn down several requests for out-of-state corporate accounts as it did not have available vehicles to assume these obligations.[77] Mr. Sarr also testified that if the Commission were to grant Freedom Cabs' application, the company will be able to grow "slowly but surely."[78] Overall, however, we find that Freedom Cabs did not present a detailed business plan.

475. In addition, we note that even given its present authority, Freedom Cabs could still increase its business. Even though its present certificate allows it to operate 150 vehicles *at any one time*, Freedom Cabs could nevertheless have a significantly larger *fleet* of vehicles. Mr. Sarr, for example, testified that Freedom Cabs could have more vehicles in its fleet than it has now and still be within the limits of its certificate.[79] Further, before 2002, even though it had authority to operate only 50 vehicles at any one time, it had 76 vehicles leased to drivers.[80] We question why we do not see a similar relationship between fleet size and vehicles in use at any one time, if Freedom Cabs had to turn away accounts. Yellow Cab also argues that even given its present authority, Freedom Cabs could change its business practices to bring itself closer to being a full-service, efficient taxi company, but has not done so.[81]

[77] *See* Hearing Transcript, 10/16/2008, p. 199, lines 21-24; p. 222, lines 16-23; *See also* Hearing Transcript 10/24/2008, p. 156, lines 8-10.

[78] *See* Hearing Transcript, 10/24/2008, p. 186, lines 16-17.

[79] *Id.*, p. 167, lines 2-17.

[80] *See* Recommended Decision No. R02-218, at p. 12, attached to Freedom Cab's Statement of Position as Exhibit A.

[81] *See* Yellow Cab's Statement of Position dated November 10, 2008, p. 13;

b. Credit Worthiness/Access to Capital/Credit History and Assessment of Financial Health in the Near Future.

476. We find that Freedom Cabs has undergone a remarkable turnaround since Mr. Michael assumed leadership and control over the company in 2000. Mr. Michael loaned substantial sums of money to the company to resolve outstanding debts.[82] Since that time, Freedom Cabs operated profitably and it is due to pay its remaining debts in 2009.[83]

477. On the other hand, the intervenors claim that the true extent of Freedom Cabs' operations is murky and that its annual report is unreliable.[84] We agree that Freedom Cabs' 2007 annual report contains errors.

c. Managerial Competence and Experience.

478. We find that Mr. Michael and Mr. Sarr have relevant experience in all aspects of taxi operations. Both men drove taxicabs themselves for substantial periods of time and were involved in managing taxi companies.[85] Mr. Sarr also worked as a dispatcher for Freedom Cabs.[86] Finally, Mr. Michael has business management and accounting experience outside of the taxicab industry as well.[87] We find that Freedom Cabs satisfies this fitness metric.

d. Fixed Physical Facilities.

479. In its Statement of Position, Freedom Cabs stated that the present physical space from which it operates is "pinched."[88] Mr. Michael testified that he is in the process of searching

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[82] *See* Hearing Transcript, 10/16/2008, p. 194, line 3 to p. 195, line 20.

[83] *Id.*, p. 196, lines 7-8; Hearing Transcript, 10/24/2008, p. 34, lines 8-13.

[84] *See* Metro Taxi's Statement of Position dated November 10, 2008, p. 12.

[85] *See* Hearing Transcript, 10/16/2008, p. 188, line 9 to p. 190, line 19; *See generally* Hearing Transcript 10/17/2008, p. 272, line 9 to p. 276, line 12.

[86] *See* Hearing Transcript 10/17/2008, p. 273, lines 1-20.

[87] *See* Hearing Transcript, 10/16/2008, p. 188, lines 11-14.

[88] *See* Freedom Cab's Statement of Position dated November 10, 2008, p. 6.

for a new facility to house Freedom Cabs and to accommodate an area for drivers to shower and entertain themselves, a three-car garage, and a carwash.[89]

e. Vehicles of Appropriate Type.

480. Mr. Michael testified that he intends for Freedom Cabs to diversify its investment. He plans to add approximately 25 Toyota Prius hybrid vehicles and 80 to 85 Ford Crown Victorias to Freedom Cabs' fleet.[90] Mr. Michael testified that he had initial discussions with Burt Toyota for the purchase of hybrid vehicles.[91]

f. Conclusions.

481. Freedom Cabs, unlike the other three Applicants in this docket, has a track record of past performance. The courts and administrative agencies recognize that past performance is a much better indicator of the future than promises of performance by a new applicant. *See, e.g., Citizens Comm. Ctr. v. FCC*, 447 F.2d 1201, 1208 (D.C. Cir. 1971); *Central Florida Enters., Inc. v. FCC*, 98 F.2d 37, 41 (D.C. Cir. 1978). The concerns that we have with Freedom Cabs, such as lack of details in its business plan, lack of information regarding Mr. Michael's outside business interests, and the extent and sources of his access to capital, would raise a significant doubt as to operational and financial fitness of a new applicant. Freedom Cabs, however, has shown that it can survive and thrive in very challenging circumstances. Despite Freedom Cabs' shortcomings, we find on balance that Freedom Cabs is operationally and financially fit. We reiterate that the test of fitness is not perfection. We find that Freedom Cabs' case created a rebuttable presumption of public need for its proposed service. Therefore, the burden of proof shifted to the

[89] *See* Hearing Transcript, 10/16/2008, p. 209, line 6 to p. 210, line 13.
[90] *Id.*, p. 214, lines 2-13.
[91] *Id.*, p. 257, lines 14-23.

parties opposing the application to prove that the public convenience and necessity does not require granting the application and that the issuance of the certificate would be detrimental to the public interest.

L. Iron Cab's Burden of Proof—Operational and Financial Fitness—Rebuttable Presumption of Public Need.

482. Although Iron Cab did not propose a specific limit on the number of vehicles in its application, it became clear during the hearing that it plans to begin operating with approximately 10 vehicles and eventually expand to a fleet consisting of 45 vehicles.[92] Because it plans to serve only a portion of the eight-county area, Iron Cab has a lesser burden with respect to fitness than either Freedom Cabs or Union Taxi. With that in mind, we now apply the fitness metrics to the evidence presented by Iron Cab.

a. Managerial Competence and Experience.

483. Mr. John Odde, the president of Iron Cab, and Mr. Jeff Yarrington, its secretary-treasurer, have no prior experience in the transportation industry.[93] On the other hand, this lack of experience to some extent can be mitigated by the small scale operation. In addition, Mr. Odde successfully operated a regulated business in Florida, where maintenance of proper compliance documentation was critical.[94] We also agree that Mr. Odde's experience as a club officer in the Air Force is relevant since military compliance requirements are based on voluminous rules and regulations.[95]

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[92] *See* Hearing Transcript, 10/27/2008, p. 262, lines 7-11; Hearing Exhibit 52C; Iron Cab's Statement of Position, p. 20.

[93] *See* Hearing Transcript, 10/24/2008, p. 267, lines 2-12; Hearing Transcript, 10/27/2008, p. 217 line 25 to p. 218, line 3; Hearing Exhibit 52C.

[94] *See* Hearing Transcript, 10/27/2008, p. 136, line 21 to p. 138, line 22.

[95] *Id.*

484. Mr. Odde testified that his sons, Christopher Odde (Christopher) and Jonathan Odde (Jonathan), have experience in the taxi industry and both will be involved with Iron Cab.[96] Christopher has worked as a taxi driver for approximately nine months for Boulder Yellow Cab.[97] Jonathan has worked in the taxi industry for approximately six years, including four and a half years as a dispatch and night shift manager for a taxi company in Gainesville, Florida, and about a year and a half as a taxi driver for Boulder Yellow.[98] Iron Cab proposes that Jonathan will be in charge of dispatch and Christopher will be a driver and a field operations supervisor.[99] However, neither Christopher nor Jonathan testified at the hearing and were therefore not subject to cross-examination. Our evaluation of their competence and experience therefore is rather limited.

485. During the hearing, Iron Cab admitted that it initially misunderstood its ability to require an independent contractor driver to accept a dispatched call or to direct such a driver to perform other activities. During the hearing, John Odde testified that his understanding changed and that he now understood he could not require certain activity of independent contract drivers.[100,101] Therefore he stated that he will shift his focus to more indirect measures to encourage the closest taxicab to accept dispatch calls by promoting a team spirit with the drivers and rewarding the drivers that perform the best.[102]

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[96] *See* Hearing Transcript, 10/24/2008, p. 258, lines 22-24.

[97] *Id.*, p. 258, lines 8-10; p. 272, lines 15-21.

[98] *Id.*, p. 274, line 25 to p. 275, line 9; p. 276, line 12 to p. 277, line 25.

[99] *Id.*, p. 258, line 24 to p. 259, line 8.

[100] *Id.*, p. 282, line 19 to p. 283, line 8.

[101] Pursuant to § 40-11.5-102(1), C.R.S., lease agreements between independent contractor drivers and motor carriers may require the drivers, among other things, to be familiar with applicable statutes and regulations, to pass driver safety training, and to not drive for other carriers during the lease. These provisions do not affect the independent contractor status of the drivers. However, the possible provisions listed in § 40-11.5-102(1), C.R.S., stop short of the type of control that Iron Cab proposed in its business plan.

[102] *See* Hearing Transcript, 10/27/2008, p. 120, lines 15-24.

486. We agree with the intervenors' concern that Iron Cab's two principals have no prior experience in the for-hire transportation industry. We also find that Iron Cab does not necessarily understand the role of independent contractor drivers or the full extent of its ability to control or direct them under Colorado statutes and regulations. Given the balance of evidence presented at the hearing, we find on balance that Iron Cab does not have sufficient managerial competence and experience for the authority proposed in its application,[103] although it may have been sufficient for a smaller geographic territory.

b. Minimum Efficient Scale.

487. We question whether Iron Cab would be able to adequately service its proposed geographic territory with only approximately ten vehicles. As Yellow Cab points out, Iron Cab's proposed area of operation is larger than that of Boulder Yellow Cab.[104] Boulder Yellow Cab has approximately 45 vehicles in its fleet.[105] We note that this number has been relatively stable over the past few years and has been driven by market demand because Boulder Yellow Cab's certificate has no vehicle restrictions.[106] This suggests that the approximate number of vehicles Iron Cab will need to serve its proposed area of operation is somewhere in that range. Mr. Alexander testified that, in his opinion, 25 vehicles is the minimum needed to serve the Boulder area[107] and Iron Cab proposes to start with less than half of that minimum. Overall, we find that Iron Cab's proposal is not minimally efficient for the geographic area it seeks to serve,[108] although it could be minimally efficient for a smaller portion of that area.

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[103] Chairman Binz dissents from this finding but he will not be authoring a dissenting opinion.

[104] *See* Yellow Cab's Statement of Position dated November 10, 2008, p. 17.

[105] *See* Hearing Transcript, 10/28/2008, p. 241, lines 1-3.

[106] *See* Hearing Transcript, 10/23/2008, p. 232, line 9 to p. 233, line 18.

[107] *See* Hearing Transcript, 10/28/2008, p. 309, lines 6-9.

[108] This is not to say that Iron Cab could not *survive* at such a small scale, but only that service to the public would be significantly less than ideal.

488. We also agree with Yellow Cab and Mr. Rubino that Iron Cab's staffing plan may not sufficient for the scale of operation proposed. However, it may be sufficient for a smaller operation serving a smaller geographic area.

c. Cash Balances and Credit Issues.

489. Iron Cab currently has a small amount of money in its bank account(s).[109] It has no legally binding agreement with its shareholders to contribute additional funds; instead the agreement is based on a handshake.[110] In addition, during the hearing Iron Cab was not sure how the recent financial downturn may have affected some of the finances of the three shareholders.[111] We are concerned about Iron Cab's current cash balances and we also find that Iron Cab failed to show adequate access to capital.

d. Fixed Physical Facilities.

490. The amount of office rent is not yet known because Iron Cab's ability to lease the facility contemplated in the business plan expired during the course of this proceeding.[112] In its Statement of Position Iron Cab stated that the office rent figure in its business plan is on the high side based upon the fact that the alternative site previously considered was less expensive than the one in the business plan.[113] We find that there is insufficient evidence to comment one way or the other on this aspect of Iron Cab's case.

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[109] *See* Hearing Transcript, 10/28/2008, p. 44, lines 16-25.
[110] *See* Hearing Transcript, 10/27/2008, p. 208, lines 6-12.
[111] *See e.g.* Hearing Transcript, 10/28/2008, p. 209, lines 12-21, p. 210, lines 5-7.
[112] *See* Hearing Transcript, 10/27/2008, p. 233, line 12-p. 234, line 13.
[113] *Id.*, p. 273, lines 8-16.

e. Dispatch.

491. Iron Cab plans to use computer-assisted dispatch with cellular service. Although no system has been purchased at the time of the hearing, the company obtained quotes from two vendors.[114] We find that Iron Cab's dispatch system would be sufficient for the territory it seeks to serve.

f. Conclusions.

492. We find that Iron Cab prepared its business plan and presented its case during the hearing in good faith. It has shown that it is relatively more operationally and financially fit, than Castle Rock Taxi, another *pro se* applicant in this docket. However, we must determine whether Iron Cab is fit in light of the scope of authority it seeks. We conclude that, considering its proposed scope of operations and geographic area, Iron Cab has not satisfied the metrics associated with minimum efficient scale, managerial competence and experience, access to capital, and fixed physical facilities. We therefore deny its application at this time. However, we note that Iron Cab may be fit to serve a smaller area. Because Iron Cab failed to meet its initial burden of proof, we need not evaluate whether its proposed service would be in the public interest.

M. Castle Rock Taxi's Burden of Proof—Operational and Financial Fitness—Rebuttable Presumption of Public Need.

493. In its Statement of Position, Castle Rock Taxi agrees with the intervenors and admits that its original business plan and *pro forma* were inadequate.[115] However, Castle Rock Taxi argues that its new business plan and revised *pro forma*, show that the company is

[114] *See* Hearing Transcript, 10/24/2008, p. 259, lines 15-24.
[115] *See* Castle Rock's Statement of Position dated November 10, 2008, p. 2.

operationally and financially fit.[116] In its Statement of Position, Castle Rock Taxi maintains its position that its business plan is “flexible and nimble” and claims that now it is “much more fleshed out.”[117]

494. We note that Castle Rock Taxi’s Hearing Exhibit 71C was not prepared prior to the hearing and the intervenors may not have had adequate time or information to prepare for their cross-examination of that exhibit through pre-hearing discovery. We therefore find that the probative value of Hearing Exhibit 71C is limited. As for Castle Rock Taxi’s original business plan and *pro forma*, it is clear they no longer reflect the company’s planned operations.

495. We therefore agree with Yellow Cab that the record contains little concrete and reliable information that is probative of Castle Rock Taxi’s financial or operational fitness.[118] We now discuss how the fitness metrics apply to the evidence presented by Castle Rock Taxi.

a. Managerial Competence and Experience.

496. Mr. Rowden, the sole owner of Castle Rock Taxi and the only non-driver working for the company, has no experience in the transportation industry. Nevertheless, Castle Rock Taxi proposes that Mr. Rowden assume responsibility for most aspects of the company’s operations, including management, marketing, hiring and training, dispatch, and possibly even driving.[119,120] On top of this, Mr. Rowden works part-time as a bartender and may have contract

[116] *Id.*

[117] *Id.*; Hearing Transcript 10/28/2008, p. 61, lines 17-18.

[118] *See* Yellow Cab’s Statement of Position dated November 10, 2008, p. 18.

[119] *See* Hearing Transcript, 10/28/2008, p. 114, line 22 to p. 115, line 3; p. 116, line 23 to p. 117, line 4; p. 119, line 14 to p. 120, line 2; p. 121, line 2 to p. 123, line 6; p. 139, lines 17-19.

[120] Mr. Rowden testified that his friend who is an attorney may assist with certain legal issues. He has not determined, however, how he will pay for these services. *See* Hearing Transcript, 10/28/2008, p. 121, lines 15-25. Mr. Rowden also testified that he *may* have an accountant assist him in the beginning. *Id*., p. 122.

employment as a cabinet salesman.[121] We therefore find that Castle Rock Taxi has insufficient staffing to manage its operations and insufficient managerial competence and experience.

b. Fixed Physical Facilities.

497. Castle Rock Taxi does not have a physical location or an office facility. Mr. Rowden proposes to operate the company out of his home instead. Since Mr. Rowden is the only Castle Rock Taxi representative with access to this office, Castle Rock Taxi's office would be staffed only when Mr. Rowden is at home. Further, at the time of the hearing, Mr. Rowden did not know what hours of the day he would be working in the office.[122] We find that this arrangement, even on a temporary basis, is insufficient to support Castle Rock Taxi's geographic territory.

c. Vehicles of Appropriate Type.

498. Castle Rock Taxi currently does not have the vehicles necessary to begin operations and it appears to be uncertain what types of vehicles or how many it would use if its authority were granted. As Yellow Cab points out, Castle Rock Taxi's proposals on this subject wavered at the hearing.[123] It is therefore difficult to evaluate whether or not Castle Rock Taxi possesses (or will possess) appropriate vehicles to begin operations.

d. Credit Worthiness/Access to Capital/Credit History and Assessment of Financial Health in the Near Future.

499. We agree with Yellow Cab that Castle Rock Taxi has not demonstrated its access to capital or its creditworthiness. Mr. Rowden testified that he may be able to obtain a loan from

[121] *Id.*, 10/28/2008, p. 64, lines 18-22; p. 60, lines 3-7.
[122] *Id.*, p. 86, lines 10-21; p. 147, line 10 to p. 148, line 4.
[123] *See* Yellow Cab's Statement of Position dated November 10, 2008, p. 20.

his father to support the company, although he would prefer to work with a private investor.[124] At the time of the hearing, he only had informal conversations with possible private investors.[125] We are also uncertain of the extent to which Mr. Rowden's father is willing or able to provide a loan to the company and Mr. Rowden did not produce any documentation to that effect. We find that Castle Rock Taxi has not shown adequate access to capital or creditworthiness.

500. We agree with the intervenors that Castle Rock Taxi's projections are unreliable. In its Statement of Position, Castle Rock Taxi admitted that its new business plan and *pro forma* contained two mathematical errors, which were pointed out by Metro Taxi on cross-examination.[126,127] We are also concerned that assumptions on down time due to vehicle maintenance in Castle Rock Taxi's revised business plan and *pro forma* are not well supported by the record.

e. Licenses and Equipment Necessary to Operate a Dispatch System.

501. Mr. Rowden testified that Castle Rock Taxi planned to use a computerized cell phone dispatch system. However, on cross-examination, it appeared that he did not understand exactly how this system would work.[128] On cross-examination, Mr. Rowden also testified that he planned to use meters in his taxicabs. However, when asked whether it is possible to program the meters to calculate both mileage and minute charge at the same time, Mr. Rowden stated that he was not sure.[129] We find that Castle Rock Taxi failed to propose an adequate dispatch system.

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[124] *See* Hearing Transcript, 10/28/2008, p. 169, lines 7-16.

[125] *See* Hearing Transcript, 10/31/2008, p. 76, line 9 to p. 78, line 2.

[126] *See* Castle Rock's Statement of Position dated November 10, 2008, p. 3.

[127] Indeed, at the hearing, Mr. Rowden stated "Am I doing this right? It was late when I did this [Hearing Exhibit 71C]." *See* Hearing Transcript, 10/31/2008, p. 41, line 5.

[128] *See* Hearing Transcript, 10/28/2008, p. 120, lines 17-21., p. 141, lines 18-20.

[129] *See* Hearing Transcript, 10/28/2008, p. 164, lines 3-11.

f. Conclusions.

502. We are mindful that Castle Rock Taxi needs to make only a relatively modest showing of fitness (compared with other Applicants in this docket) since it plans to operate only one to three vehicles in a relatively small part of the eight-county area. We also understand that business plans and *pro formas* are summary documents and cannot address every single detail. We further agree in principle that it is important for a taxicab carrier or indeed any business to be flexible. However, we find that Castle Rock Taxi's business plan is fluid and flexible to a fault, and it is virtually tantamount to having no reliable business plan at all. It is in such a state of flux that there is little, if any, concrete and reliable evidence on the record that is probative of operational and financial fitness. We disagree with Castle Rock Taxi that its new business plan is more "fleshed out" than its original plan.

503. We conclude that Castle Rock Taxi did not satisfy the fitness metrics and that, in light of the total facts and circumstances of this case and the scope of authority sought,[130] it is neither operationally nor financially fit. We therefore deny Castle Rock Taxi's application. Because Castle Rock Taxi failed to meet its initial burden of proof, we need not evaluate whether its proposed service would be in the public interest.

N. Regulated Competition and the Burden of Proof on Rebuttal.

1. Legal Background

504. Except as otherwise provided in § 40-10-105(2)(b)(II), C.R.S., the granting of a CPCN to operate a motor vehicle for hire as a taxicab within and between counties with a population of seventy thousand or greater, based on the federal census conducted in 2000, is not

[130] As we noted previously, Castle Rock Taxi's proposals regarding the scope of authority also wavered throughout the course of this docket.

deemed to be an exclusive grant or monopoly, and the doctrine of regulated competition prevails. *See* § 40-10-105(2)(b)(I), C.R.S.

505. We previously found that HB 08-1227 did not repeal the doctrine of regulated competition for the Eight Counties, but instead focused on reallocating the burdens of proof.[131] We also noted that, while HB 08-1227 did not result in a complete entry deregulation, there was a possibility of interpreting HB 08-1227 as having more ramifications than *merely* shifting burdens of proof.[132] We anticipated that this possibility will be more fully explored during the hearing.

506. Under HB 08-1227, after an applicant has met its initial burden of proof regarding operational and financial fitness, a rebuttable presumption of public need for the service arises. The party or parties opposing the application then bear a twofold burden to prove: (1) that the public convenience and necessity does not require granting the application; *and* (2) that the issuance of the certificate would be detrimental to the public interest [emphasis added]. *See* § 40-10-105(2)(b)(II)(B), C.R.S.

507. With regard to prong (2) of the opponents' burden, we stated in Decision No. C08-0933:

> It 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. Adverse financial impact *per se*, is not sufficient to prove public detriment – such adverse financial impact may serve the public interest or be neutral with respect to the public interest. A reasonable conclusion can be derived only from the analysis of facts and data – including actual and forecasted financial information. To the extent that an incumbent taxi carrier wishes to demonstrate public detriment due to an adverse financial impact on its financial condition, then the incumbent should be prepared to open its books and

[131] *See* Decision No. C08-0933, mailed September 4, 2008, at ¶30.
[132] *Id*.

> records as a means of demonstrating such impact and provide evidence of a nexus with detriment to the public interest.
>
> Yellow Cab alleges that additional competition may have an adverse impact on the quality of service currently being offered to the public. [Footnote omitted]. While this may be a potential problem, we expect the ALJ to look for specific evidence of a cause-and-effect relationship between such negative impacts and the particular applications pending before the Commission. Evidence that is theoretical in nature or without any risk assessment as to the likelihood of those impacts occurring as a result of these applications will have less probative value than such evidence tied to these particular applications.

With that in mind, we now consider the evidence presented by the opponents of Union Taxi's and Freedom Cabs' applications.

2. Economic and Policy Considerations

508. Our conclusion is founded, in part, on our analysis of the market and our statutory obligation to oversee the taxicab markets. Regulated competition remains the scheme by which we will oversee the taxicab markets at issue in this matter. Accordingly, we will strive to achieve the necessary balance between market forces and regulatory instrumentalities. Although we are attempting to incorporate more market forces into the mix, we recognize that market forces have limitations, as do regulatory measures. In achieving this balance we do not have a specific market entry algorithm that could utilize, for example, such economic considerations such as a specific market share, or HHI value. Instead, we consider a variety of factors, and blend those with our experience with these markets in particular and the regulatory process generally. Presently, the taxicab markets, both wholesale and retail, are highly concentrated. HHI calculations and other market share analyses presented in this case reveal a market well beyond the threshold of problematic concentration. Specifically, there are two large firms and one smaller company currently providing service in this market.

509. Our preferred solution to this concentration is to address it directly insofar as we are adding both additional capacity and new, independent sources of wholesale and retail supply. By adding a new company, Union Taxi, which is about 75 percent the size of Yellow Cab and about 45 percent the size of Metro Taxi, we are augmenting and diversifying – *i.e.,* de-concentrating – both wholesale and retail supply. Similarly, we are expanding the smallest existing firm to a size that is about 85 percent the size of Yellow Cab and about 50 percent the size of Metro Taxi.

510. As discussed earlier, we believe that the new firm and the enlarged firm are of sufficient scale to exceed minimum efficient scale and thereby apply market pressure to the incumbents. Simply put, we expect that the injection of new competitive forces in the form of a larger Freedom Cab and the new Union Taxi cooperative will invigorate the market. However, we are also taking precautions in the event the market does not develop as we hope. In particular, we intend to open a rulemaking docket to review our rules pertaining to quality of service and other issues. We will also monitor closely the status of competition in the wholesale and retail markets, with attention to prices, service quality, and other variables. We will consider appropriate measures to prevent re-concentration of the market in subsequent rulemaking and/or investigatory dockets.

511. We also find that a less concentrated market is likely to be a more dynamic market where forces of competition and rivalry will work in unison with regulatory oversight. Therefore, addition of new providers and capacity is an appropriate regulatory strategy in a market governed by the doctrine of regulated competition. Adding new capacity to this market is also an appropriate economic technique for markets affected with a public interest, in which some competition is possible and where use of markets forces is preferable to more traditional

regulatory schemes. It is not clear that the taxicab market at issue here is a natural monopoly, as that term is used traditionally in regulatory economics and case law. Accordingly, in such situations, a mixture of regulatory implements can lead to outcomes which are preferable to either an unregulated free-entry market or to a single firm market regulated with traditional regulatory schemes.

512. One purpose of regulation is to emulate, in part, the processes and outcomes possible from a competitive market – to the extent such outcomes can be approximated. Consequently, we will regulate this market using a mixture of traditional and non-traditional regulatory tools seasoned liberally with market forces and will create appropriate diagnostics in order to adjust the regulatory scheme as needed. One, but not the only, method is the creation and refinement of rules in a subsequent docket that will be applicable to all market participants.

513. We believe that, as the new entrants to the market gain customers and revenue over time, the market shares of revenue will be more evenly distributed. The market share of the largest incumbent firms will likely decline, imparting pressure on those incumbents to act in a manner consistent with the competitive process described by Dr. Moss. Generally, this means that incumbents will respond by cutting costs where possible in order to meet or beat the prices, terms, and conditions offered by its new competitors.

514. This pressure will apply at both the wholesale and retail levels for taxicab service. This new competitive force may also affect the relevant labor markets; *i.e.*, for drivers and other personnel involved in the provision of service. This competition for labor may also lead to downward pressure on wholesale lease rates even without changes in the retail rates charged the end-use customer. As market concentration decreases, wholesale and retail markets will become more competitive.

515. We believe that more competition in this market will not necessarily resemble the textbook, idealized variety. Instead, it will manifest itself through both the fact and perception of rivalry between the market participants. Especially in relatively concentrated markets, firms are aware of each other and are generally cognizant of the actions of the other. These firms monitor several operations data, such as revenues, earnings, and volume variables. These data will fluctuate with the level of business. The taxicab company management will attempt to link these variations with other phenomena, such as loss of business, to a rival or competitor. It is likely that management will employ tactics to counter a reduction in revenue in order to reclaim lost business and revenues. If a taxicab company experiences a drop in the number of leases, it may reasonably counter with a reduction in lease price. As this process continues wholesale prices will move closer to costs and there will pressure to reduce costs where possible and to be more efficient.[133] Over the longer term, taxicab companies will search for other means of gaining an advantage over their rivals, which in turn may lead to new means of providing high quality service at lower costs.

516. We believe that the reduction in market concentration that will occur as a result of adding providers and new capacity is not harmful to public interest and may prove to be beneficial. While the incumbents presented evidence that additional firms and taxicab capacity is unnecessary and is likely to lead to undesirable forms of competition, we disagree with that position. The incumbents offered evidence that the incumbents are not using all of their existing capacity. Thus, they argue, excess capacity currently exists and that additional capacity will only add to this excess and will lead to unhealthy competition, or destructive competition.

[133] In economic and regulatory vernacular, cost includes a normal return or normal profit.

517. The Commission is aware of its obligations to protect the public against the deleterious effects of excessive or destructive competition which can manifest in excessive prices, poor service, and other measures. One possible component in a properly-weighted index of public interest and public convenience and necessity is driver compensation. We are not unconcerned about driver income but we find that monitoring driver incomes will require special effort. As part of our monitoring and rulemaking exercises, we intend to examine means of measuring drivers' circumstances and behavior, including the relationship of wholesale to retail rates and the implications thereof on driver income.

518. We also are cognizant of our obligation to structure the competitive landscape in a manner which both minimizes the likelihood of socially-damaging carrier behavior while maximizing the possibility for healthy competition and rivalrous activity between carriers. We believe the incumbents, including Freedom Cabs as currently configured, have a record which demonstrates competence. While the revenue streams for some or all providers may not meet current projections absent our action in this case, that event, *per se,* does not translate deterministically to destructive competition or harm to the public interest. Indeed, such fluctuations may indicate the functioning of a healthy competitive process and the normal ebbs and flows of action and reaction in a competitive, rivalrous market.

519. Consequently, we distinguish between healthy and unhealthy competition. First, relevant case law does not support the notion that a reduction in the revenue stream of an incumbent, in and of itself, constitutes harm to the public interest. Nor is such an outcome a sufficient indication of destructive or harmful competition. Further, a reduction in market share does not translate clearly into harm to the incumbent. In order for the market to become more

balanced and for the beneficial forces of competition and rivalry to operate in the desired manner we fully expect incumbents to experience changes in their revenue streams.

520. The incumbents did not differentiate in this case between the normal and healthy process of competition and destructive or excessive competition. The incumbents argued that the entry and expansion strategies of Union Taxi and Freedom Cabs were not consistent with healthy competition. The incumbents posited that only full scale entry was appropriate. Through the testimony of Dr. Mundy, the incumbents argued that an entrant must enter on a large scale – one comparable to the incumbents, have a fleet of cars that are largely company-owned, a maintenance facility of appropriate size to service its fleet, have state-of-the-art equipment of all types - especially a digital dispatch with GPS capabilities, have years of demonstrated expertise in the taxicab business, and a combination of significant assets and access to capital markets.

521. While that scenario may be desirable in some sense, it is by no means necessary or required. We believe that imposing such a requirement on a potential entrant could constitute a very high entry barrier. Indeed, imposing any one of those criteria as a condition necessary for certification is unreasonable and unnecessary. The entry method advocated by Dr. Mundy imposes additional costs on a potential entrant. Conventional economic analysis reinforces the common sense notion that, as entry costs rise, entry is discouraged or even precluded. Even if an entrant were able to enter under such conditions, the ability of this new firm to sustain itself through cost recovery and profitable operation is compromised due to the greater initial costs.[134]

[134] This barrier has two prongs. The first prong is the accumulation of the requisite investment capital prior to entry, that is, the 'up-front' cost. The second prong is the difficulty of recovering the higher level of costs necessary to cover current operating expenses and to cover the cost, over time, of the initial capital. We believe that the risk of entry varies directly with entry costs, while probability of success varies inversely with entry costs.

522. Generally, we believe it is an acceptable practice for a new provider to enter a market with something less than state-of-the-art facilities as long as the entrant shows itself to be financially and managerially fit. For instance, we do not believe it is necessary for a firm to own its fleet or to have the most advanced communications technology. It is entirely appropriate if a new firm enters using acceptable technologies, adds capacity, and upgrades its facilities over time. We certainly don't expect Union Taxi to enter at its full capacity on the first day of operation.

523. It is also appropriate to allow a new entrant to grow into the market at a pace suited to its capabilities. While it is true that full-scale entry would place more competitive pressure on market incumbents, a more gradual increase also imparts pressure proportional to the scale of entry. We believe such a staged approach is more likely to lead to an entrant being able to remain as a viable force in the market relative to large scale entry that is poorly conceived. Further, if the entrant expands prudently, it will not expand past the point of profitable operation, even if that point is below its full capacity.[135] A smaller scale staged entry also reduces the regulatory risk of adding capacity: if costs are incurred for full scale entry but that level of entry is not sustainable over the short run, the risk of financial distress of entrant and incumbents is reduced. As a regulatory principle, it is preferable to approach market equilibrium from a position of lower to greater capacity rather than working backwards from a situation of excessive capacity.

[135] The concept of minimum efficient scale is relevant here. The estimates of minimum efficient scale vary among the witnesses. We find Mr. Rubino's approach is sensible and persuasive.

524. In summary, we believe the regulatory scheme we have crafted will serve as an appropriate means of oversight. We believe that our actions will increase overall market pressure so that firms will serve the public at a lower social cost compared to a more traditional regulatory scheme.[136] We also expect that a more competitive market may create additional benefits. For example, we expect less upward pressure on retail prices - either in the form of decreases or through longer time intervals between proposed increases. We also expect a similar effect on service quality and consumer choice among more taxicab providers. Further, we expect that there will be competition among cab companies for drivers due to an increase in the number of taxicab companies, with possible implications for wholesale lease rates.[137]

525. We do not grant applications in full, choosing to exercise our discretion in crafting a solution that protects the public interest. We will add capacity, as appropriate, without relying on any firm estimate overall market capacity or overall market demand. We have reduced the applicants' request to achieve an appropriate balance in the market, including not just overall capacity but also the distribution of those authorizations. Consistent with our obligation to reasonably constrain inter-carrier competition so as to avoid destructive competition, we find that increasing the number of firms increases choice for retail and wholesale customers. Generally, having more firms in a particular market is preferable to having fewer firms as long as the firms are viable. As the number of viable firms increases, it is reasonable to expect that revenues will

[136] By incorporating market mechanisms, we can minimize the regulatory obligations of these taxicab providers and therefore the direct costs of overseeing this market relative to a more traditional approach.

[137] At this time, we conclude that increasing the number of companies that lease cabs is a superior regulatory solution than directly regulating the lease rate. However, we will continue to monitor these lease rates. We believe that the introduction of new lease options in the form of alternative sources of supply will impose market discipline on those lease rates.

become more evenly distributed in the marketplace, evidencing lessened concentration, an outcome that will inure to the benefit of consumers.

3. Summary of the Testimony

526. Several witnesses, including Dr. Mundy, Mr. Cotter, and Mr. Mitchell, testified that the incumbent companies were able to provide for the increased demand during the DNC without difficulty. Dr. Mundy opined that, because existing fleets adequately served the public during the DNC, there is no demonstrated need for additional taxicabs to meet public demand.

527. Mr. Whittle stated that the potential for increased competitive entry substantially increases the uncertainty he must plan for in the long term and that, in the event the Commission grants the pending applications, Yellow Cab will substantially reduce capital expenditures. Several cost-cutting measures would likely be implemented, including delaying the purchase of more expensive hybrid vehicles. Market instability would also likely affect investments such as handicap-accessible vehicles. *See generally* ¶¶232 – 236.

528. Mr. George testified at length about the Kansas City experience. *See generally* ¶¶297–313.

529. Dr. Mundy describes destructive competition to mean that markets, market structures, and services are oversupplied resulting in market destruction. Dr. Mundy uses the term "open entry" to describe when a regulatory body adopts a low or non-existent fitness standard, with entry occurring over time through incremental approvals.

530. With regard to deregulation, Dr. Mundy finds that service levels decline tremendously in larger metropolitan areas with increased fragmentation and open entry. Dr. Mundy contends that demand for service in the Denver taxi market will not be affected by the addition of taxicabs providing service. Approving all pending applications would result in

approximately a 40 percent increase in the number of taxicabs authorized to operate. Oversupply will cause current drivers to see a 30 to 40 percent loss in their revenue, and bad drivers will drive out the good because the best long-term drivers will simply leave the industry if they cannot continue to earn the same income. Furthermore, taxi companies tend to pursue rate increases to retain drivers. If the Commission were to authorize an additional 200 to 300 taxicabs, Dr. Mundy expects that service quality will deteriorate, decreasing the amount of business each cabdriver had each day, and resulting in poor service and higher rates. *See generally* ¶¶349 – 363.

531. Mr. LaGasse testified that an oversupply of taxis leads to declines in productivity per vehicle. Such a decline reduces driver income leaving the choices to quit, make less money, work longer hours, or pursue other conduct in violation of Commission rules or Colorado law. With a downward pressure on driver income, Mr. LaGasse gave examples of resulting service deterioration. Drivers lobby for increases and companies support the driver in lobbying for higher fares so they can meet lease obligations. Mr. LaGasse contends that an oversupply of taxicabs in Denver, however reached, will result in similar effects. *See generally* ¶¶377 – 383.

532. Professor Dempsey testified about the less-than-satisfactory results in cities that have experimented with deregulation. Professor Dempsey contends that the public interest will be harmed by increasing the supply of taxicabs, leading to unsavory practices including drivers needlessly increasing the length of trips, excessive fuel consumption, increased pollution, and more traffic congestion. He contends that effectively deregulating entry into taxi service in Denver would have a number of adverse impacts. The result would be an excessive number of taxis relative to demand, a condition that he believes already exists based upon Dr. Mundy's report. He believes that an oversupply of taxicabs will lead to an upward impact on consumer

pricing. On the other hand, Professor Dempsey acknowledged that the within application will not result in open entry or deregulation of the taxi industry in Colorado and that the Commission will continue to regulate the rates and service quality of carriers. Lastly, Professor Dempsey commented that there is no correct answer as to the number of competitors except that increased fragmentation increases the difficulty of establishing a new company having the ability to invest in the fixed overhead of the dispatch business. He generally believes that the public benefits from more than one provider, which allows for some competition and consumer preference. *See generally* ¶¶404 – 419.

533. Mr. Rubino criticized Dr. Moss' failure to address major cities that deregulated with disastrous results and subsequently reregulated taxi service. He observed that cities that previously deregulated are returning to regulation.

3. Findings and Conclusions.

534. We reiterate the important distinction between adverse financial impact caused by a normal competitive process and adverse financial impact caused by competition that harms the public interest. To the extent that the intervenors attempted to show the latter by demonstrating both an adverse financial impact and its nexus to the public detriment, they have failed to do so. While there is some testimony in the record indicating that investments will be negatively impacted, such as investments in handicapped-accessible vehicles, there was no testimony that such investments would not be made by other taxi companies. We find that a normal competitive process will determine which companies will make sound, efficient, and revenue-generating investments.

535. We also reiterate our statement that theoretical evidence or evidence without any risk assessment will have less probative value than evidence tied to the applications in this

docket. The testimony summarized above concerning detriment to the public interest is certainly more than mere theory (the testimony concerning Washington, D.C., and Kansas City, for example), but that testimony deals almost exclusively with *deregulation* or *open entry*. We agree with Union Taxi that we are not dealing with a deregulated or open entry model in this docket. Considering our multi-faceted evaluation of fitness in this docket, we are certainly not dealing with Dr. Mundy's description of open entry as a low or non-existent fitness standard. Rather, we are dealing with a model that allows the Commission to authorize, on a case-by-case basis, such additional, incremental, and fit entry as would benefit the public (or at least not harm it). We also regulate the taxi industry by promulgating and enforcing applicable rules.

536. Interestingly, the main issue is not necessarily the number of companies in the market. Mr. Rubino acknowledged that it would not be atypical for a medium or larger city to have 20 cab companies in operation. Rather, the more important issue is the number of cabs in the market, the oversupply of which arguably leads to the harm to the public interest. While we agree that total deregulation may lead to such a detrimental result, we are not convinced that incremental entry will have the same effect. Moreover, the witnesses acknowledge the Commission's role in ratemaking, and we believe that the Commission will serve as a buffer in keeping consumer prices reasonable while allowing the taxi companies the opportunity to earn a reasonable return on their investments.

537. We find, therefore, that the opponents in this docket have failed to prove that issuance of certificates to Union Taxi and Freedom Cabs would be detrimental to the public interest. Because HB 1227 is phrased in the conjunctive, we need not consider whether intervenors proved that the public convenience and necessity does not require granting the application.

O. Grant of Certificates of Public Convenience and Necessity.

1. Union Taxi.

538. Union Taxi applied for authority 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 a twenty (20) mile radius of 16th Street and Champa Street in Denver, Colorado, and from said points, on the one hand, to all points in the State of Colorado, on the other hand. Union Taxi's application is restricted as follows: (1) to the use of vehicles with a seating capacity of seven (7) passengers or less, not including the driver; and (2) to the use of a maximum of two hundred sixty two (262) vehicles. Based upon the discussion above, we grant Union Taxi's requested authority, in part, with one additional restriction, described below.

539. We believe that authorization to operate 262 taxicabs would be at or above a minimum efficient scale of operation. However, not all vehicles should be in use at all times. Assuming one driver per vehicle, having all 262 vehicles in use at all times would obviously lead to violations of the Commission's safety rules pertaining to driver hours of service. While Union Taxi has testified to the possibility of using associate drivers (in part to address the Commission's safety restrictions), Union Taxi has also acknowledged that additional efforts will be necessary to address associate drivers. Moreover, some times of the day are obviously busier for taxi business than others. We believe that the public interest demands round-the-clock taxi operations spread reasonably throughout the day, rather than the having all 262 vehicles in operation only during the busiest times of the day. For all these reasons, we restrict Union Taxi's certificate to the use of a maximum of 220 vehicles in service at any time. Practically, the use of 220 vehicles in service at any time will also account for vehicle maintenance and driver vacation or absence.

540. Union Taxi's certificate shall read as follows:

Authority 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 a twenty (20) mile radius of 16th Street and Champa Street in Denver, Colorado, and from said points, on the one hand, to all points in the State of Colorado, on the other hand.

RESTRICTIONS: This certificate is restricted:

(1) to the use of vehicles with a seating capacity of seven (7) passengers or less, not including the driver;

(2) to the use of a maximum of two hundred sixty-two (262) vehicles; and

(3) to the use of a maximum of two hundred twenty (220) vehicles in service at any time.

541. We note that deleting restriction (2) in favor of adding restriction (3) would not be appropriate. Doing so would expand the scope of Union Taxi's original application and would impermissibly expand the scope of Union Taxi's certificate compared to the public notice of Union Taxi's application.

2. Freedom Cabs.

542. Freedom Cabs applied for an order of the Commission authorizing an extension of operations under CPCN PUC No. 53638 by changing restriction (A) from "All operations under this certificate shall be limited to the use of a maximum of 150 vehicles in service at any time" to "All operations under this certificate shall be limited to the use of a maximum of 300 vehicles in service at any time." We grant Freedom Cabs' application, in part, restricting the maximum number of vehicles in service at any time to 250.

543. We have already stated our belief concerning minimum efficient scale. In restricting Freedom Cabs' certificate to 250 vehicles in use at any time, we are mindful of the following: (1) we grant these applications incrementally to reduce the threat of harm to the

public interest; (2) we acknowledge the past performance of Freedom Cabs as a better indicator of future performance than promises of performance by a new applicant; and (3) we believe that the 250-vehicle restriction, being an efficient scale of operation, will allow Freedom Cabs to compete effectively with Yellow Cab and Metro Taxi.

IV. ORDER

A. The Commission Orders That:

1. The Motion for Acceptance of Late Filed Statement of Position filed by MKBS, LLC, doing business as Metro Taxi &/or Taxis Fiesta (Metro Taxi) is granted.

2. The partial stipulation among Union Taxi Cooperative (Union Taxi), Freedom Cabs, Inc. (Freedom Cabs); Flatirons Cab Corporation, doing business as Iron Cab (Iron Cab); and Castle Rock Taxi Cab Company, LLC (Castle Rock Taxi) related to appropriate geographic description of Freedom Cabs' Certificate of Public Convenience and Necessity is denied as moot.

3. Union Taxi's Statement of Position is accepted in full. We waive Rule 1202(c) on our own motion.

4. Castle Rock Taxi's application is denied.

5. Iron Cab's application is denied.

6. Union Taxi's application is granted, in part. Its Certificate of Public Convenience and Necessity shall read as follows:

> Authority 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 a twenty (20) mile radius of 16th Street and Champa Street in Denver, Colorado, and from said points, on the one hand, to all points in the State of Colorado, on the other hand.

RESTRICTIONS: This certificate is restricted:

(1) to the use of vehicles with a seating capacity of seven (7) passengers or less, not including the driver;

(2) to the use of a maximum of two hundred sixty-two (262) vehicles; and

(3) to the use of a maximum of two hundred twenty (220) vehicles in service at any time.

7. Freedom Cabs' application is granted, in part. Freedom Cabs may operate the maximum of 250 vehicles at any one time.

8. The 20-day time period provided by § 40-6-114, C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the effective date of this Order.

9. This Order is effective on its Mailed Date.

B. ADOPTED IN COMMISSIONERS' DELIBERATIONS MEETINGS December 30, 2008.

(S E A L)

ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RONALD J. BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners