

Decision No. C14-1421

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

PROCEEDING NO. 13A-0892CP-TRANSFER

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IN THE MATTER OF THE APPLICATION FOR AUTHORITY TO TRANSFER CONTROL OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 1481 FROM MKBS LLC, DOING BUSINESS AS METRO TAXI TO SUPERTAXI, INC.

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**COMMISSION DECISION DENYING EXCEPTIONS**

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Mailed Date: December 3, 2014  
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**I. BY THE COMMISSION****A. Statement**

1. This Decision addresses exceptions filed by Union Taxi Cooperative (Union Taxi) and Freedom Cabs, Inc. (Freedom Cabs), to Recommended Decision No. R14-0853 (Recommended Decision). Applicants MKBS, LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi, or Northwest Suburban Taxi (MKBS or Metro Taxi), and SuperTaxi, Inc. (SuperTaxi) (collectively, Joint Applicants), filed a response to the exceptions. As explained in more detail below, we deny the exceptions.

**B. Factual and Procedural Background****1. Application**

2. On August 8, 2013, Metro Taxi and SuperTaxi filed a Joint Application for Authority to Transfer Control of Certificate of Public Convenience and Necessity PUC No. 1481 from Metro Taxi to SuperTaxi (Joint Application). The Joint Applicants had entered into an agreement to sell and transfer control of the limited liability company membership interests in MKBS to SuperTaxi. Certificate of Public Convenience and Necessity (CPCN) PUC No. 1481 authorizes Metro Taxi to operate a maximum of 492 taxicabs at any given time<sup>1</sup> to provide point-to-point taxi service within the Counties of Adams, Arapahoe, Boulder, Denver, Douglas, and Jefferson, and between those points on the one hand, and all points within an 85-mile radius of the intersection of 16th and Champa Streets in Denver, on the other hand. The sale and transfer are contingent upon the Commission's approval of the transfer of control of CPCN PUC No. 1481 from Metro Taxi to SuperTaxi.<sup>2</sup>

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<sup>1</sup> Joint Application, Ex. 2.

<sup>2</sup> Confidential Hearing Exhibit 2 at 44-45.

3. SuperTaxi is the parent company of multiple subsidiaries that operate taxicabs along the Colorado Front Range under certifications from the Commission. SuperTaxi is the parent company of Colorado Cab Company, LLC (Colorado Cab). Colorado Cab operates Denver Yellow Cab, authorized to operate a maximum of 300 vehicles in the Denver metropolitan area pursuant to CPCN PUC No. 2378, and Boulder Yellow Cab, authorized in eastern Boulder County pursuant to CPCN PUC No. 150. Colorado Cab, in turn, is the parent company of Shamrock Taxi of Fort Collins, which operates under CPCN PUC No. 13043 in the Fort Collins area.<sup>3</sup>

4. SuperTaxi is also the parent company of Colorado Springs Transportation, LLC (Colorado Springs Transportation), which operates CPCN No. 109 in the Colorado Springs area.<sup>4</sup>

5. The Joint Applicants state that, if the application is granted and the transaction is consummated, MKBS/Metro Taxi will continue to operate as an autonomous taxi company, including owning and operating its current facilities, equipment, and other assets.<sup>5</sup> The Joint Applicants further state that over time functions that are common to both Metro Taxi and Colorado Cab, such as dispatch, marketing, finance, training, and maintenance, will be consolidated.<sup>6</sup> As a result, this transaction will result in a merger of MKBS and SuperTaxi after which Metro Taxi will operate as a subsidiary of SuperTaxi alongside Colorado Cab and Colorado Springs Transportation.<sup>7</sup>

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<sup>3</sup> Recommended Decision at ¶ 2 n. 1; Joint Application at 4.

<sup>4</sup> Recommended Decision at ¶¶ 2 (n. 1), 21, 51; Joint Application at 4, Exs. 2, 5.

<sup>5</sup> Recommended Decision at ¶¶ 13, 15-17; Supplemental Statements in Support of Joint Application at 1.

<sup>6</sup> Recommended Decision at ¶¶ 2, 13.

<sup>7</sup> *Id.* at ¶¶ 2, 28, 34-35.

6. If the transfer is approved, SuperTaxi will be authorized to operate a maximum of 792 taxicabs in the Denver metropolitan area under CPCN PUC No. 1481 (Metro Taxi) and CPCN PUC No. 2378 (Denver Yellow Cab).

7. The Commission noted the interventions as of right filed by Commission Transportation Staff (Staff), Union Taxi, and Freedom Cabs. The Commission referred the Joint Application to Administrative Law Judge (ALJ) Paul C. Gomez for hearing and issuance of a Recommended Decision.

8. By stipulation of the parties, ALJ Gomez bifurcated the hearings. The ALJ scheduled hearings for February 19 through 21 and 24, 2014, to address whether the proposed transfer was in the public interest and whether any portion of Metro Taxi's authority has become dormant. The ALJ set a hearing for March 20, 2014, to address whether the proposed transfer would create overlapping authorities.

9. On March 17, 2014 – three days before the bifurcated hearing on the overlapping authorities issue – Staff, SuperTaxi, and Metro Taxi submitted a proposed revised CPCN PUC No. 1481 that cancels the duplicating and overlapping authority between CPCN PUC No. 1481 and CPCN PUC Nos. 109 and 150 held by SuperTaxi. A joint motion and stipulation filed by Staff, SuperTaxi, and Metro Taxi stated that revised CPCN PUC No. 1481 does not cancel: (a) the “technical but immaterial overlap” with CPCN PUC No. 13043 because the public interest is best served by allowing these authorities to continue to provide service between the core of their respective, distinct base areas out to the perimeter of each operating authority; or (b) the authority of CPCN PUC No. 2378 because it is in the public interest to maintain both certificates according to the terms of the stipulation.

10. Union Taxi and Freedom Cabs continued to raise objections based upon their view of overlapping authorities. The ALJ held the March 20, 2014, evidentiary hearing limited to whether the transfer of the proposed revised CPCN PUC No. 1481 creates impermissibly overlapping authorities.

11. On July 18, 2014, the ALJ issued Decision No. R14-0853 recommending the Commission grant the Joint Application and the March 17, 2014 stipulation by Staff, SuperTaxi, and Metro Taxi for the Commission to accept proposed revised CPCN PUC No. 1481.

## 2. Recommended Decision

12. The Recommended Decision first resolved the threshold issue disputed among the parties, which is the definition of the relevant market for a public interest analysis. Freedom Cabs, Union Taxi, and Staff presented evidence and expert testimony to limit the relevant market to services provided only by regulated taxicabs. In contrast, the Joint Applicants argued that the relevant market should extend beyond regulated taxicabs to the broader for-hire vehicle (FHV) market that includes transportation services provided through several other business models. These include the transportation network companies (TNCs) offering services through digital networks and subject to limited Commission regulation, such as Uber Technologies, Inc. and Lyft, Inc. as well as luxury sedan limousines, common carrier buses, contract carriers (buses and shuttles), and Regional Transportation District on-demand para-transit vehicles.

13. ALJ Gomez held that the relevant market included taxicabs and TNCs because the latter “are reasonable substitutes for taxicab service.”<sup>8</sup> As to the arguments of Freedom Cabs, Union Taxi, and Staff, the ALJ held that they “fail[] to consider the market realities that

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<sup>8</sup> *Id.* at ¶ 97.

despite disparate regulatory treatment, TNCs, and to an extent other FHV that are affiliated with TNCs, directly compete with taxicabs on the streets of metropolitan Denver.”<sup>9</sup> On the other hand, he held that “the extent to which the Joint Applicants attempt to expand the market is untenable” because “[I]mousines, shuttles, RTD buses and light rail, Car2Go, and other rental cars are not apt substitutes for taxicabs for a myriad of reasons.”<sup>10</sup>

14. Next, ALJ Gomez addressed the market concentration analyses of the parties. The Joint Applicants, Freedom Cabs, Union Taxi, and Staff used the Herfindahl-Hirschman Index (HHI) to measure market concentration. Because they used a narrow market definition, the HHI measurements by Freedom Cabs, Union Taxi, and Staff indicated high market concentration after the proposed merger. Specifically, Freedom Cabs and Union Taxi argued that SuperTaxi would have a 63 percent market share post-merger,<sup>11</sup> and Staff (through Dr. Scott England) argued that the merger will result in a 1,034 point increase in the HHI using the traditional HHI analysis based on market shares (or 3,227 points if the percentage of taxi trips provided are used in the analysis). Based on these analyses, Freedom Cabs, Union Taxi, and Staff contended that SuperTaxi would have the ability to raise fares and degrade service, engage in anticompetitive coordination with other market players, exclude smaller rivals and/or erect barriers to market entry by potential competitors, and increase lease rates on taxicab drivers.

15. The Joint Applicants contended that their HHI calculation based on their broader market definition revealed that the merger will result in a reasonable market share that will decrease over time as the market continues to expand with the introduction of additional TNCs.<sup>12</sup>

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<sup>9</sup> Recommended Decision at ¶ 94.

<sup>10</sup> *Id.* at ¶ 95.

<sup>11</sup> Joint Exceptions at 8.

<sup>12</sup> Recommended Decision at ¶¶ 28, 34.

The Joint Applicants also argued that the proposed merger and transfer of Metro Taxi's authority will provide the merged companies "lower average costs, the ability to purchase assets in bulk at lower costs, including newer vehicles to replace aging taxicabs in both companies' fleets, and consolidated facilities that will reduce costs."<sup>13</sup> The Joint Applicants also argued that the merger will allow them to consolidate and update their dispatch systems so their fleets will be more efficiently distributed throughout, and thus better able to serve their authorized service areas.<sup>14</sup> They concluded that the merger will allow them to compete better in the broader for-hire-vehicle market while still providing regulated taxi service.<sup>15</sup>

16. ALJ Gomez did not adopt the analyses of the Joint Applicants or the intervenors. Specifically, he noted that the proffered market concentration analyses were inaccurate because they did not include TNCs (due to the fact that TNCs are not required to report their numbers) or MT Acquisitions, LLC, doing business as Mountains Taxi, which has been authorized to expand its fleet by an additional 30 taxicabs on the west side of the Denver metro area.<sup>16</sup> ALJ Gomez concluded that while "post transfer, the market concentration will increase to some [unspecified] extent," a determination of the public interest requires a weighing of any increases in market concentration against other factors.<sup>17</sup>

17. Based on this analytical framework, the Recommended Decision found the transaction to be in the public interest due to anticipated economies of scale and improved dispatch of the combined companies.<sup>18</sup> Specifically, ALJ Gomez found that the merger will

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<sup>13</sup> *Id.* at ¶ 104.

<sup>14</sup> *Id.* at ¶ 105.

<sup>15</sup> *Id.* at ¶¶ 13, 16, 26, 77, 81.

<sup>16</sup> *Id.* at ¶ 103.

<sup>17</sup> *Id.* at ¶ 102.

<sup>18</sup> *Id.* at ¶¶ 102-105.

provide the Joint Applicants with lower average costs that will allow them to replace aging taxicabs with newer vehicles, compete better in the marketplace, and provide quality and safe service.<sup>19</sup> He also held that the merger would allow the parties to consolidate and update their dispatch system, “result[ing] in more efficiency in deployment of each company’s fleet during peak demand.”<sup>20</sup> ALJ Gomez further held that Commission regulation and competition in the marketplace from the other taxicab companies, as well as from TNCs and other transportation alternatives, will check any anti-competitive behavior by the combined entity.<sup>21</sup> These transportation alternatives include carriers with scheduled authority, call-and-demand limousine/shuttle authority, contract carrier permits (*e.g.*, non-emergency medical transportation), luxury limousines, third party brokers, rental car companies, and, bus and light rail service. The ALJ also reasoned that the Commission’s continuing oversight of Joint Applicants’ rates and other regulatory obligations will ensure that taxicab service remains affordable and reliable.<sup>22</sup>

18. Finally, the ALJ addressed Staff’s request to find that some portion of Metro Taxi’s authority has become dormant through lack of use. Dr. England opined that between 95 and 228 vehicles of Metro Taxi’s 492-vehicle authorization had become dormant through non-use. As a result, Dr. England argued that Metro Taxi should be allowed to transfer between 264 and 395 authorized taxicabs if the application is approved. ALJ Gomez rejected this analysis, holding that Metro Taxi is not required to operate to its full authority at any one time and that Metro Taxi had satisfied its burden of establishing that none of its authority had gone

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<sup>19</sup> *Id.* at ¶ 104.

<sup>20</sup> *Id.* at ¶ 105.

<sup>21</sup> *Id.* at ¶¶ 106-112.

<sup>22</sup> *Id.* at ¶ 110.

dormant. The ALJ thus affirmed Metro Taxi's authority to operate up to 492 taxicabs at any given time and found that such authority will be included in the transfer to SuperTaxi.<sup>23</sup> Finally, ALJ Gomez approved the proposed revised CPCN PUC No. 1481 submitted under the stipulation and settlement agreement between Staff, SuperTaxi, and Metro Taxi.<sup>24</sup>

### 3. Exceptions

19. On August 27, 2014, Freedom Cabs and Union Taxi filed joint exceptions to the Recommended Decision (Joint Exceptions). The Joint Exceptions request the Commission to reject the Recommended Decision for four main reasons, which are summarized here and discussed in more detail below.

20. First, they argue that ALJ Gomez disregarded the "accepted" competition analysis presented in opposition to the proposed transaction and instead adopted an "unorthodox" market analysis.<sup>25</sup> Specifically, Freedom Cabs and Union Taxi argue that ALJ Gomez should have accepted their experts' opinions regarding increased market concentration resulting from the proposed transaction as measured by the HHI.<sup>26</sup> According to Freedom Cabs and Union Taxi, the ALJ's analysis relies on speculation, disregards the evidence of increased market concentration, and thereby "implicitly rejects the legislative policy that regulated competition prevail in the Denver metropolitan area taxi marketplace."<sup>27</sup>

21. Second, Freedom Cabs and Union Taxi contend that ALJ Gomez used an impermissibly broad definition of the market that includes TNCs, and that there is no record

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<sup>23</sup> *Id.* at ¶¶ 121-126.

<sup>24</sup> *Id.* at ¶¶ 127-135.

<sup>25</sup> Joint Exceptions at 3.

<sup>26</sup> *Id.* at 4, 5-8.

<sup>27</sup> *Id.* at 3.

evidence of the number of TNCs in the Denver market.<sup>28</sup> Freedom Cabs and Union Taxi argue that the relevant market should be limited to regulated taxicabs.

22. Third, the exceptions assert that ALJ Gomez's decision is contrary to public policy as expressed in legislative and "longstanding [c]ommission policy" of rejecting proposed transfers of authority where the result would be "a massively concentrated market that will squeeze out or otherwise harm competition."<sup>29</sup> According to Freedom Cabs and Union Taxi, "if the recommended decision becomes final, the overly concentrated marketplace of 2008 will have been restored and enhanced by virtue of the transaction's approval."<sup>30</sup>

23. Finally, Freedom Cabs and Union Taxi argue that ALJ Gomez's dormancy analysis is incorrect because the Joint Applicants did not carry their burden of proving a lack of dormancy and the ALJ should have accepted Dr. England's analysis that the authority transferred should be limited to between 264 and 395 taxicabs.<sup>31</sup> Freedom Cabs and Union Taxi also assert that the ALJ used the wrong standard for dormancy.<sup>32</sup>

24. On September 10, 2014, the Joint Applicants filed a response to the joint exceptions. In their response, SuperTaxi and Metro Taxi first argue that ALJ Gomez correctly applied the HHI based on a market definition including TNCs and also correctly concluded that while there will be increased market concentration, Commission regulation, and competition will deter anti-competitive behavior.<sup>33</sup> Second, the Joint Applicants assert that the qualitative evidence in the record concerning TNCs is sufficient to support the ALJ's inclusion of TNCs in

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<sup>28</sup> *Id.* at 8-11.

<sup>29</sup> *Id.* at 18.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> *Id.* at 12-17.

<sup>32</sup> *Id.* at 4, 13-14.

<sup>33</sup> Joint Response to Joint Exceptions at 3-4, 6-8.

the relevant market.<sup>34</sup> Third, SuperTaxi and Metro Taxi argue that ALJ Gomez's decision is not contrary to House Bill (HB) 08-1227 or Commission policy.<sup>35</sup> Finally, the Joint Applicants assert that ALJ Gomez's dormancy analysis is supported by the record and consistent with established dormancy principles.<sup>36</sup>

25. By this Decision, we deny the Joint Exceptions filed by Freedom Cabs and Union Taxi and adopt ALJ Gomez's Recommended Decision.

**C. Discussion**

26. Under 4 *Code of Colorado Regulations* 723-6-6205(c)(XVI) of the Commission's Rules Regulating Transportation by Motor Vehicle, applicants seeking Commission approval of the transfer of an authority bear the burden of proving:

- (A) that the transferor has not abandoned the authority and has not allowed the authority to become dormant;
- (B) that the transferor has been and is engaged in bona fide operations under its authority ...;
- (C) that the transfer is not contrary to the public interest;
- (D) that the transfer will not result in the common control or ownership of duplicating or overlapping authorities; and
- (E) that the transferee will engage in bona fide regulated intrastate carrier operations and is fit to do so, except in transfers involving foreclosures of encumbrances, executions in satisfaction of a judgment or claim, or transfers pursuant to a court order.

27. The Joint Exceptions contend that the Joint Applicants failed to carry their burden of proving subsections (A) and (C). As explained more fully below, we agree with ALJ Gomez

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<sup>34</sup> *Id.* at 7.

<sup>35</sup> *Id.* at 6.

<sup>36</sup> *Id.* at 8-10.

that the Joint Applicants satisfied their burden of proving subsections (A) and (C) by a preponderance of the evidence.

### 1. Public Interest

28. In the Recommended Decision, ALJ Gomez defined the factors relevant to the public interest inquiry for a proposed transfer of taxicab authorities as follows:

In this context, the public interest can be characterized as encompassing the transportation public which expects reasonably priced, comfortable, and safe ground transportation services, and to a certain extent taxicab drivers who require reasonable lease options that allow them to earn a living wage by working reasonable hours. Those public interest elements also encompass other components such as economies of scale, which are then passed on to the traveling public. However, these elements are subsumed by the overarching public interest standard which is to preserve competition in the taxicab market.<sup>37</sup>

The Joint Exceptions do not dispute ALJ Gomez's definition of the "public interest," which is consistent with the definitions of "regulated competition" and "public interest" endorsed by the Colorado Supreme Court in *C.M. Morey v. Colo. Public Utilities Commission*.<sup>38</sup> Thus, we accept the Recommended Decision's definition of the "public interest."

#### a. Market and Competition Analysis

29. We agree with the Joint Applicants that ALJ Gomez properly analyzed the impact on competition resulting from the proposed transaction and transfer of CPCN PUC 1481. We also agree that ALJ Gomez's analysis is supported by the record.

30. ALJ Gomez defined the relevant market as including regulated taxicabs and TNCs,<sup>39</sup> but noted the limited evidence of TNCs' overall fleet size due to the absence of any

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<sup>37</sup> Recommended Decision at ¶ 73.

<sup>38</sup> 629 P.2d 1061, 1066 (Colo. 1981) (upholding the Commission's definition of the "public interest" in providing "regulated competition" of common carriers as "promot[ing] the safe, adequate, economical and efficient transportation to the public and foster sound economic conditions in transportation" and "safeguard[ing] the general public against the impaired service and/or higher rates accompanying destructive or excessive competition.").

<sup>39</sup> Recommended Decision at ¶¶ 96-97.

regulatory requirement for TNCs to report this information.<sup>40</sup> ALJ Gomez concluded that TNCs were not factored into the HHI calculations presented by Staff, Freedom, and Union.<sup>41</sup> ALJ Gomez did not, however, disregard the HHI. Instead, he held that it is a tool to be balanced against other factors to determine whether the transfer is in the public interest.<sup>42</sup> Applying this analytical framework, ALJ Gomez found that the transaction is in the public interest due to anticipated economies of scale, improved dispatch of the combined companies, and competition from TNCs and other for-hire-vehicles that will promote affordable rates and opportunities for drivers. The ALJ also relied upon the Commission's continued regulation of taxicab services, including rates, that will protect consumers from unreasonable charges and services.

31. We agree with ALJ Gomez's analysis. Freedom Cabs and Union Taxi are incorrect when they argue that the relevant market must be limited to regulated taxicabs. TNCs compete directly against taxicabs for customers who view TNCs as reasonable substitutes for taxicab service. During the 2014 session, the Colorado General Assembly passed Senate Bill (SB) 14-125, which authorizes the TNC model of offering the same or substantially similar transportation services to Colorado consumers. Under SB 14-125, TNCs are companies "that use[] a digital network to connect riders to drivers for the purpose of providing transportation."<sup>43</sup> A TNC driver "uses his or her personal vehicle to provide services for riders matched through a transportation network company's digital network" who "need not be an employee of a transportation network company."<sup>44</sup> TNCs are subject to only "limited regulation," which means that, unlike taxicab companies, they are not required to obtain Commission approval of their

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at ¶ 102.

<sup>42</sup> *Id.*

<sup>43</sup> SB 14-125, § 6; § 40-10.1-602(3), C.R.S.

<sup>44</sup> SB 14-125, § 6; § 40-10.1-602(4), C.R.S.

rates or the number of vehicles offering services. TNCs are not obligated to file tariffs or report vehicle numbers to the Commission.<sup>45</sup> Further, pursuant to SB 14-125, taxicab companies “may convert to a transportation network company model or may set up a subsidiary or affiliate transportation network company.”<sup>46</sup> These provisions, and SB 14-125’s description of TNCs, confirm that taxicab companies and TNCs operate in the same market. Based on the foregoing, ALJ Gomez correctly concluded that the relevant market for the Commission’s public interest analysis includes both taxicab companies and TNCs.

32. We also disagree with Freedom Cabs and Union Taxi that ALJ Gomez did not attach appropriate weight to the HHI. ALJ Gomez correctly concluded that, while the HHI is a useful tool in analyzing the impact of a proposed merger on the concentration of the market served by two merging companies, it is one of several factors to be considered.<sup>47</sup> Moreover, the import of the HHI analysis proposed by Freedom Cabs and Union Taxi is diminished because it did not account for TNC services, Mountains Taxi, and other for-hire-vehicles.

33. We agree with ALJ Gomez that the HHI results should be balanced or weighed against the benefits of the transfer. As noted above, the public interest standard requires analysis of several factors. ALJ Gomez correctly determined based on the evidence that the transfer will benefit consumers through improved economies-of-scale that will result in lower costs and increased efficiency in the dispatch of vehicles through a consolidated dispatch system.

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<sup>45</sup> SB 14-125, § 5; § 40-10.1-117, C.R.S.

<sup>46</sup> SB 14-125, § 6; § 40-10.1-605(n), C.R.S.

<sup>47</sup> *FTC v. Swedish Match*, 131 F.Supp.2d 151, 167 (D.D.C. 2000) (if HHI indicates high concentration, other factors must be considered to determine whether they mitigate the HHI measurement “leading to the conclusion that the merger is not likely to lessen competition”); *U.S. v. Archer-Daniels-Midland Co.*, 781 F.Supp. 1400, 1421 (S.D. Iowa 1991) (the HHI is a “[c]ommon device[] for assessing concentration levels. . . . [However,] [o]ther factors [must] . . . be considered in evaluating the probable effects of a merger in the relevant market.”) (quoting *Brown Shoe Co. v. U.S.*, 370 U.S. 294, 344 (1962)).

The introduction of TNC business models, which allow providers and customers to manage requests for transportation services and the availability of drivers through digital networks, places a heightened importance upon the quality and efficiency of dispatch systems. ALJ Gomez correctly concluded that these benefits will improve the Joint Applicants' ability to compete in the marketplace and to provide quality and safe service. Finally, ALJ Gomez correctly reasoned that the competition provided by TNCs, taxicab companies, and other vehicles for hire, as well as the regulatory oversight of this Commission, will inhibit potential anticompetitive conduct resulting from the transfer.

34. In sum, we reject the exception by Freedom Cabs and Union Taxi that ALJ Gomez did not properly analyze the impact on competition resulting from the proposed transaction and transfer of CPCN PUC 1481. ALJ Gomez properly analyzed that question and his decision is supported by the record.

**b. Legislative and Commission Policy**

35. We also disagree with Freedom Cabs and Union Taxi that ALJ Gomez's decision contravenes any legislative or Commission policy. Freedom Cabs and Union Taxi cite HB 08-1227 and argue that the "recommended decision disregards and does violence to the Colorado Legislative Assembly's 2008 declaration that in the eight-county Denver metropolitan area the doctrine of regulated competition is to prevail in taxi licensing."<sup>48</sup> This argument disregards SB 125's alteration of the transportation market and its regulatory structure by permitting an indeterminate number of TNC vehicles that provide the same or similar transportation services to taxicabs. As noted above, we agree with ALJ Gomez's conclusion that the proposed transfer and continued market competition will allow the Joint Applicants to

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<sup>48</sup> Joint Exceptions at 4.

compete better in this changed market and lead to improved services to consumers, and that regulatory oversight by this Commission will ensure that fares remain reasonable.

36. We agree with ALJ Gomez's conclusion that the Joint Applicants carried their burden of proving that the proposed transfer is not contrary to the public interest.

## **2. Dormancy**

37. Freedom Cabs and Union Taxi challenge ALJ Gomez's dormancy analysis on two grounds. First, they argue that ALJ Gomez used the wrong standard in analyzing dormancy. According to Freedom Cabs and Union Taxi, to avoid a finding of dormancy Metro Taxi was required to prove that it has used its full operational authority of 492 vehicles. Second, they contend that the Joint Applicants did not carry their burden of proving a lack of dormancy, and ALJ Gomez should have accepted the dormancy analysis of Dr. England, who testified that the authority transferred should be limited to between 264 and 395 taxicabs. We reject both arguments.

### **a. Standard**

38. ALJ Gomez held that dormancy is a flexible concept that must be evaluated on a case-by-case basis. His holding is consistent with a prior Commission decision, in which we held that dormancy "is a somewhat flexible concept" that "mean[s] an abandonment or termination of services the reactivation of which will result in damages either to the public interest or to intervening or protesting carriers who conducted operations during the interruption of said services."<sup>49</sup> We thus reject the argument by Freedom Cabs and Union Taxi that the standard used by ALJ Gomez is incorrect.

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<sup>49</sup> Decision No. C98-1129 at 8, Proceeding No. 97A-477CP issued November 20, 1998.

**b. Analysis and Conclusion**

39. We also agree with ALJ Gomez's decision not to decrease the number of vehicles Metro Taxi can operate post-transfer below its current authorization of 492 vehicles for several reasons.

40. First, Metro Taxi's operating authority permits Metro Taxi to operate "a maximum of 492 vehicles . . . at any one time."<sup>50</sup> It does not require Metro Taxi to operate 492 vehicles *at all times*. As explained at the hearing, demand fluctuation, driver availability, and vehicle maintenance dictates that a portion of every taxi company's fleet will be off the road at any given time.<sup>51</sup> These facts do not mean that any portion of Metro Taxi's operating authority has become dormant.

41. Second, Metro Taxi entered into evidence its 2012 Annual Report filed with the Commission.<sup>52</sup> Metro Taxi's general manager, Kyle Brown, testified at the hearing that the number "451" from the 2012 Annual Report represents an average number of all of the vehicles that Metro would have throughout the entire year.<sup>53</sup> He also testified that the "451" does not include the approximately 50-vehicle fleet from South Suburban Taxi, which is a subsidiary of Metro Taxi.<sup>54</sup> He further stated that Metro taxi has had sufficient drivers and vehicles to operate to the limit of its authority.<sup>55</sup> Based on the foregoing, SuperTaxi estimated that there were no less than 480 Metro Taxis on the road at any one time.<sup>56</sup> Thus, we agree that the 2012 Annual Report

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<sup>50</sup> Hearing Exhibit 3.

<sup>51</sup> Recommended Decision at ¶ 118.

<sup>52</sup> Hearing Exhibit 39 at 4.

<sup>53</sup> Transcript, Vol. 1, at 20-21.

<sup>54</sup> Transcript Vol. 1 at 21-23; Confidential Transcript Vol. 1 at 30, 43.

<sup>55</sup> Confidential Transcript Vol. 1 at 30.

<sup>56</sup> Recommended Decision at ¶ 119; SuperTaxi's Closing Statement at 6.

and Mr. Brown's testimony establish that Metro Taxi was using up to its limit of 492 vehicles in 2012.

42. Third, Freedom Cabs and Union Taxi did not present any evidence that either expended resources to meet demands for taxicab service not satisfied by the alleged failure of Metro Taxi to use the full extent of its operational authority. They did not present any evidence that allowing Metro to use its full authority of 492 taxicabs post-transfer would damage the public interest. As explained above, a finding as to either could justify a finding of dormancy under our standard. Freedom Cabs and Union Taxi thus did not present sufficient evidence to contradict the evidence presented by Metro Taxi that none of its authority has gone dormant.

43. Finally, we agree with ALJ Gomez that limiting Metro Taxi's operating authority could adversely impact taxicab service in the metro area. As ALJ Gomez found based on Dr. England's analysis, Freedom Cabs and Union Taxi focus on the higher revenue trips to Denver International Airport, providing 24 and 22 percent of the overall Denver International Airport (DIA) trips, respectively.<sup>57</sup> They do not focus on the less-lucrative non-DIA trips in the metro area, providing 3 and 13 percent of those trips.<sup>58</sup> In contrast, Metro Taxi and Denver Yellow Cabs provide approximately 49 and 35 percent of the non-DIA trips, respectively.<sup>59</sup> Further, as ALJ Gomez also found, it is unlikely that Freedom Cabs or Union Taxi would divert vehicles dedicated to DIA trips to non-DIA trips due to the significant average difference in fares between the two categories of trips.<sup>60</sup> Thus, granting the request by Freedom Cabs and Union

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<sup>57</sup> *Id.* at ¶ 124.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

Taxi to limit the number of vehicles that Metro Taxi can operate at any one time will lead to a deficit in taxicab service in the Denver metro area.

44. Based on the foregoing, we agree with ALJ Gomez that the Joint Applicants have satisfied their burden of proving by a preponderance of the evidence that none of the authority provided by CPCN No. 1481 has gone dormant.

## **II. ORDER**

### **A. The Commission Orders That**

1. The Joint Exceptions to Recommended Decision No. R14-0853 filed on August 27, 2014 by Union Taxi Cooperative and Freedom Cabs, Inc. are denied.

2. 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 Decision.

3. SuperTaxi, Inc. shall not commence operation of MKBS, LLC, doing business as Metro Taxi, Taxis Fiesta, South Suburban Taxi, or Northwest Suburban Taxi (Metro Taxi) or Metro Taxi's authority under Certificate of Public Convenience and Necessity PUC No. 1481 until it has:

- a) caused an updated proof of insurance (Form E or self-insurance) or surety bond (Form G) coverage to be filed with the Commission in accordance with applicable rules reflecting any necessary changes in light of the transaction;
- b) paid to the Commission, the motor vehicle fee (\$5) for each vehicle to be operated under authority granted by the Commission, or in lieu thereof, paid the fee for such vehicle(s) pursuant to the Unified Carrier Registration Agreement;
- c) filed an updated adoption notice that adopts as its own the currently effective tariff of Metro taxi;
- d) paid the applicable issuance fee (\$5);

- e) filed an acceptance of transfer form, executed by SuperTaxi and Metro Taxi; and,
- f) received notice in writing from the Commission that it is in compliance with the above requirements and may begin service.

4. If SuperTaxi, Inc. does not comply with the requirements of this Decision within 60 days of its effective date, then the approval to transfer Certificate of Public Convenience and Necessity PUC No. 1481 shall be void. For good cause shown, the Commission may grant additional time for compliance if the request for additional time is filed within the 60 days.

5. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
October 29, 2014.**

(S E A L)



ATTEST: A TRUE COPY

*Doug Dean*

Doug Dean,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

JOSHUA B. EPEL

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PAMELA J. PATTON

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GLENN A. VAAD

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Commissioners