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

Docket No. 08A-407CP

IN THE MATTER OF THE APPLICATION OF MILE HIGH CAB, INC. FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A  
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE

**Mile High Cab, Inc's Exceptions to Decision No. R10-0745**

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Mile High Cab, Inc.'s Nonconfidential Statement of Position

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(Starts with Question 7)

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Submitted to Colorado PUC E-Filings System

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**Appendix 1**

Mile High Cab, Inc.'s Nonconfidential Statement of Position

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CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A  
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE

**Mile High Cab., Inc's Statement of Position**

Comes now, Professor Thomas D. Russell, Ph.D., as attorney of record for the applicant  
Mile High Cab, Inc., and files this Statement of Position.

**I. OVERVIEW**

Applicant Mile High Cab, Inc. is a startup taxicab company that seeks a Certificate of  
Convenience and Necessity to operate as a common carrier by motor vehicle for hire for the  
transportation of passengers and their baggage in call-and-demand taxi service between all points  
in the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, State of Colorado, and  
between said points, on the one hand, and all points in the State of Colorado, on the other hand.  
Mile High Cab, Inc. further seeks authority to operate 150 vehicles of all makes and models,  
2000 or newer model year, with a seating capacity of 5 or more persons.

During the first six days of an 11-day hearing, Mile High Cab demonstrated that it was  
financially and operationally fit. During the remaining five days of the hearing, the intervenors  
failed to establish that granting a certificate of public convenience and necessity to Mile High  
Cab, Inc. would harm the public interest. Mile High Cab, Inc. has therefore met the statutory  
requirements to operate as a common carrier by motor vehicle for hire in the areas for which it  
seeks authority.

**II. APPLICABLE LAW**

With regard to the Counties of Adams, Arapahoe, Denver, Douglas, and Jefferson

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C.R.S.A. § 40-10-105(2)(b) sets for the rules for the issuance of certificates, as follows:

(II) In an application for a certificate of public convenience and necessity to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson:

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

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

### III. OPERATIONAL AND FINANCIAL FITNESS

The first six days of the hearing in this matter considered the operational and financial fitness of the applicant, Mile High Cab, Inc. On the seventh day of the hearing—after a break of several days in the hearing schedule—Administrative Law Judge Gomez orally issued a determination that Mile High Cab, Inc. “is operationally and financially fit.” (Tr. Vol. 7:12 ln. 21.)<sup>1</sup> Judge Gomez organized his analysis of the operational and financial fitness of Mile High Cab, Inc. using the criteria that the Commission had applied in the Union Taxi Decision C09-0207.<sup>2</sup> In that decision, the Commission directed that:

[T]he 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;

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<sup>1</sup> References to hearing transcripts, volume, page, and line numbers.

<sup>2</sup> Decision No. C09-0207, mailed date February 27, 2009, at ¶455 citing Decision No. C08-0933, mailed September 4, 2008, at ¶7.



“didn’t find anything in Mr. Rubino’s testimony that indicated that anything was grossly overestimated.” (Tr. Vol. 7:12 ln. 1-3.)

Mile High Cab, Inc.’s business plan includes [REDACTED] for each driver. (Ex. 4). These [REDACTED], which are listed in the pro forma [REDACTED], provide flexibility [REDACTED]. Mr. Rubino, Colorado Cab’s paid opinion witness, did not understand [REDACTED].

If the pro forma financials underestimate expenses or overestimate revenue, Mile High Cab, Inc. has access to additional capital because of leeway with regard to its lease rates. Mile High Cab, Inc. forecasts a weekly lease rate of \$[REDACTED]. Mile High Cab, Inc.’s owner-drivers currently pay weekly leases that are two or three times this amount. Quite simply, this means that the Mile High Cab, Inc. Board of Directors can, if need be, call upon the owner-drivers for additional capital. However, no such need is anticipated.

### **C. Current Cash Balances**

Mile High Cab, Inc. Treasurer, Mr. Mekonnen Gizaw, testified regarding Mile High Cab, Inc.’s current cash balances. Mile High Cab has two accounts—a capital account and an operational expense account. Mr. Gizaw testified that the balance in the expense account was \$[REDACTED] (Ex. 45B) and that the balance in the capital account was \$[REDACTED]. (Ex. 45A).

Mr. Gizaw testified that Mile High Cab, Inc. has not yet spent any money from the capital account, and he testified that Mile High Cab, Inc. would not spend that money unless the application is granted. (Tr. 6:276, ln. 7-16.) The balance in the capital account is the aggregation of \$2,000 from 138 of the company’s owner-drivers. (Id.) Mr. Gizaw testified that the capital account would be used for startup costs and to cover the anticipated loss [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]. (Ex. 4.) This balance provides additional flexibility and headroom with regard to the pro forma financial projections.

**D. Managerial Competence and Experience**

In his oral determination that Mile High Cab, Inc. was operationally and financially fit, Judge Gomez commented on the managerial experience of two of Mile High Cab, Inc.’s witnesses. Mr. Rowland Nwankwo, the company president, has operated taxicabs for years. Judge Gomez noted that Mr. Nwankwo has supervisory and managerial experience outside of the taxi industry for Southland Corporation, where he managed a 7-Eleven, supervised employees, did bookkeeping, took care of the store, did marketing, and had other responsibilities. As Judge Gomez noted, Mr. Nwankwo does not have management experience within the taxicab industry, although Judge Gomez noted that Mr. Nwankwo does have experience training new cab drivers.

Judge Gomez also noted that Mr. Nwankwo has participated in the past in attempting to change taxi-related legislation, and the judge noted “that experience is relevant in determining managerial capabilities and leadership. . . .” (Tr. Vol. 7:6, ln. 20-25, 7 ln. 1.)

In addition to the experience that Judge Gomez highlighted, Mr. Nwankwo has training and an undergraduate degree in accounting. (Tr. Vol. 2:21 ln. 9 – 27 ln. 12.) He has worked in the taxicab industry for 28 years. (Tr. Vol. 2:33 ln. 23-5.) When he was a manager for Southland Corporation, his responsibilities also included dealing with the corporate headquarters and interacting with the neighbors. (Tr. Vol. 2:7 ln. 20 – 14 ln. 13.)

Judge Gomez also remarked on the managerial and other experience of Mr. Edem Archibong, the chairman of the Mile High Cab, Inc. Board of Directors. Judge Gomez

commented on Mr. Archibong's extensive experience in marketing and noted that "The testimony was unrefuted that he [Mr. Archibong] had a very successful business driving his taxi in the services that he provided." (Tr. Vol. 7:7, ln. 22-25.) The judge commented as well that Mr. Archibong had "extensive experience . . . training new drivers." (Tr. Vol. 7:7, ln. 11-12.)

In addition, Mr. Archibong worked as a teacher and in a bank in Nigeria. (Tr. Vol. 5:236 ln. 5 – 239 ln. 16.) He completed a correspondence course with the British Institute of Bankers (Tr. Vol. 5:238 ln. 7-23) before coming to the US to earn an undergraduate degree in Chemistry at Indiana University. (Tr. Vol. 5:231 ln. 2 – 232 ln. 16.) After his college years, Mr. Archibong joined the United States Army in 1986. He received leadership training and promotion to the rank of sergeant. Following the end of his active duty, Sgt. Archibong continued his service in the United States Army Reserve until 1992. (Tr. Vol. 5:225 ln. 15 - 230 ln. 20.)

The US Army trained Mr. Archibong as an optician. (Tr. Vol. 5:226 ln. 12- 23.) Following his active duty, he became a certified optician and worked in business as an optician. At the Colorado Optometric Center, Mr. Archibong was responsible for training optometry students from the University of Houston, the University of Oregon, and the University of California. (Tr. Vol. 5:216 ln. 2-19.) Mr. Archibong worked for LensCrafters as first assistant laboratory manager. (Tr. Vol. 5:218 ln. 6-24.) Later, he also ran an optical shop for an ophthalmologist., where he inventoried frames and managed staff. (Tr. Vol. 5:219 ln. 4-18.)

Mr. Archibong has acted as a leader in the taxi industry in Colorado including, especially, among taxi drivers. For example, he has been extensively involved with Pro-Taxi and served as the organization's first treasurer. (Tr. Vol. 5:249 ln. 10 – 250 ln. 21.) Mr. Archibong started driving a taxicab in 1995 and has been driving full time since 1997. (Tr. Vol. 5:213 ln. 5-25.) A number of his customers testified regarding their very high regard for his business acumen and,



in particular, his customer service. (Tr. Vol. 5: 172 ln. 19 – 208 ln. 9.)

In addition to Mr. Nwankwo and Mr. Archibong, Mr. Gizaw also has experience that is relevant to Mile High Cab, Inc.'s managerial and operational fitness. Mr. Gizaw has an advanced diploma with business management from Ethiopia and an Associates degree in accounting from the Community College of Denver. (Tr. Vol. 6:243 ln. 7 – 16; 249 ln. 3 – 19.) Mr. Gizaw works as an accounts payable manager at KDVR. He worked from 1996 to 1999 managing accounts payable for Premium Concept. He worked as a staff accountant for a casino. (Tr. Vol. 6:241 ln. 12 – 242 ln. 11.) In Ethiopia, Mr. Gizaw worked for Care International, a non-governmental organization, where Mr. Gizaw worked as an accounting manager responsible for the supervision of four staff accountants. (Tr. Vol. 6:242 ln. 12 – 243 ln. 6.)

Judge Gomez agreed that Mile High Cab, Inc. had acted prudently in not yet hiring a general manager. Judge Gomez explained that “hiring a general manager in advance of obtaining authority would unnecessarily risk capital resources.” (Tr. Vol. 7:8, ln. 10-13.) He further “agree[d] with Mile High that it would be difficult to hire a decent and qualified general manager until after authority is obtained. To do so on a speculative basis,” he said, “would be difficult at best.” (Tr. Vol. 7:8, ln. 13-17.)

#### **E. Fixed Physical Facilities**

Likewise, with regard to physical facilities including office space, Judge Gomez noted that “Mile High does not have office space at this time. . . .” Judge Gomez also noted that he “was impressed with the testimony of Mr. Nwankwo that he is speaking with people, officials from the City of Aurora, to work with them in obtaining office space and setting up its base office in Aurora. I think that’s a very prudent and wise way to proceed. So I was very – I was impressed with that testimony.” (Tr. Vol. 7:9 ln. 2-7.)

The Mile High Cab, Inc. pro forma allocates \$[REDACTED] per month for the leasing of facilities and additional sums for telephone, utilities, trash removal, and security systems. (Ex. 4)

#### **F. Dispatch**

With regard to Mile High Cab, Inc.'s plans for dispatch, Judge Gomez agreed that "In the short term, certainly a voice dispatch system is adequate." (Tr. Vol. 7:10, ln. 19-20.) Mile High Cab, Inc. has indicated that its goal is to transition to a digital dispatch system. (Ex. 4.)

Metro Taxi's paid opinion witness Mr. Rubino overstated the complexity of a driver's transitioning from a digital dispatch system to a voice dispatch system. Mr. Rubino said that learning to use a voice dispatch system was like learning a new language. (Ex. 40; (Tr. Vol. 5:125 ln. 6 – 22.) Mr. Archibong, who has taught French and has been a taxi driver for more than 14 years, testified—and demonstrated—that learning French is harder than learning to use a taxicab radio. (Tr. Vol. 6:44 ln. 8 – 15; 44 ln. 20 – 45 ln. 23.)

Mr. Rubino also misrepresented the options with regard to credit card processing in a non-digital dispatch environment. Mr. Rubino suggested that the options were either use of the digital dispatch system or the use of a manual, "knucklebuster" credit card machine with carbon copies of processing slips. (Tr. Vol. 5: 29 ln. 1 – 32 ln. 17.) Mr. Rubino was unaware of the prevalent use in the common carrier industry of handheld credit card processing machines, (Tr. Vol. 5:116 ln. 20 – ln. 120 ln. 1.) During his own testimony, Mr. Archibong demonstrated the use of a handheld credit card machine. (Tr. Vol. 6:58 ln. 24 – 65 ln. 5.)

Finally, discovery disputes during the course of this application process suggest that incumbent companies overstate the benefits of a digital dispatch system. Applicant propounded several questions to intervenors Colorado Cab and Metro Taxi that sought data that one might readily expect a digital dispatch system could produce in summary form including one question

that asked, word-for-word, for the data required by Commission Rule 6255. Colorado Cab responded, reluctantly, with an invitation for counsel to visit a warehouse full of handwritten trip sheets and denied that its digital dispatch system could produce useable summary data.

Likewise, after much fussing, Metro Taxi produced a box full of printed, raw data. The alleged advantages of digital dispatch systems were not on display during the hearing. (See, for example, Tr. Vol. 1:109 ln. 3 – 113 ln. 14 (with regard to Yellow Cab of Denver) and 1:178 ln. 17 – 184 ln. 25.)

### **G. Vehicles of Appropriate Type**

Mile High Cab, Inc's vehicles will all comply with PUC rules. They will be vehicles of all makes and models, 2000 or newer model year, with a seating capacity of five or more persons. Nearly all of Mile High Cab, Inc.'s drivers [REDACTED] [REDACTED]. (Ex. 4.) Those drivers who currently own their cars will simply repaint their existing cars to match the Mile High design. That is, if one scratches the new paint job, one may find yellow paint underneath. (Tr. Vol. 11:92 ln. 3-5.)

### **H. Other Metrics**

[REDACTED]. [REDACTED]  
[REDACTED] the fact that Mile High Cab, Inc.'s fares will be lower; that there will [REDACTED]; that the company is locally owned; and that the company strives to provide high-quality customer service. (Ex. 4.) [REDACTED]  
[REDACTED]  
[REDACTED]. (Tr. Vol. 2:75 ln. 17 – 77 ln. 8.) Yellow Cab's witness Mr. Rubino reluctantly agreed to the superiority of Mile High Cab, Inc.'s [REDACTED] plans as compared with [REDACTED]. (Tr. Vol. 5:60 ln. 10 - 65 ln.

11) Unlike Metro Taxi's paid opinion witness Prof. Paul Dempsey, Mile High Cab, Inc. believes that 1) taxicab passengers engage in market behaviors including price discrimination and 2) with advertising and marketing can expand the demand for high-quality taxicab services.

**Gradual Startup.** As noted above, Mile High Cab, Inc. plans to begin operations gradually rather than putting all of its taxicabs into service on the first day of operation. (Ex. 4) Gradual startup will allow fine-tuning of Mile High Cab, Inc.'s policies, as needed. By starting operations gradually, Mile High Cab, Inc. seeks to avoid creating shocks to the taxicab market as may have been observed downtown Denver with Union Taxi's start of operations. (Tr. Vol. 2:144 ln. 16 – ln. 146 ln. 1.)

**Staffing.** Mile High Cab, Inc. plans a small, efficient staff. Mr. Rubino analyzed the business plans of Mile High Cab, Inc. and [REDACTED]. He agreed that Mile High Cab, Inc.'s plans for and attention to staffing in its business plan were superior to [REDACTED]. (Tr. Vol. 5:75 ln. 2 – 76 ln. 2.) Mile High Cab, Inc. seeks authority similar in size to Freedom Cabs, but as [REDACTED], Mile High Cab, Inc. will have more employees than Freedom. (Ex. 31). Mr. Nwankwo testified that some of the employers would be part-time employees who could work additional hours as demand for call-takers and dispatchers expands or when an employee is ill. (Tr. Vol. 2:182 ln. 2 – 185 ln. 1; 2:189 ln. 25 – 190 ln. 17.)

**Planning for Legal Expenses.** [REDACTED]  
[REDACTED]. (Ex. 4.) Legal expenses have become the biggest hurdle to forming a Colorado taxicab company.

**Experience with PUC Regulations.** Mile High Cab, Inc.'s witnesses and board of directors are all current cab drivers with many years experience with the regulations of the PUC.

**Desire to Provide Better Customer Service.** Mr. Nwankwo and Mr. Archibong

emphasized that Mile High Cab, Inc. will provide high-quality customer service. The existing Better Business Bureau ratings-- D- for Yellow Cab of Denver and F for Metro Taxi--are consistent with the poor ratings that Prof. Mundy, Metro Taxi's witness, found when he surveyed taxicab users and hospitality industry insiders. (Ex. 6 and 7; Tr. Vol. 2:102 ln. 13 – 110 ln. 17; Ex. 53, pp. 30-37.) These survey results, which Prof. Mundy collected prior to the startup of Union Taxi Cooperative, reflect the market as dominated by intervenors Yellow Cab of Denver and Metro Taxi.

**American Dream.** Mr. Nwankwo and Mr. Archibong are first-generation immigrants who came to the United States seeking better lives for themselves and their families within a competitive American marketplace that rewards hard work. Mr. Abdalah Ismael, a current Union Taxi Like driver who formerly drove for Yellow Cab of Denver, explained why he took time off from his job to testify in favor of Mile High Cab, Inc.'s application. He explained that:

6 A Well, today, even though I have to go  
7 once a week to airport, and my airport was supposed to  
8 be today, the reason I cancelled, I have four kids.  
9 And I know how I go through my life, and I know all of  
10 these people as Mile High. I get an opportunity in the  
11 United States, they have to get it, so they can live a  
12 better life, rather than somebody working \$600 a week.  
13 So that they can get the same thing, you know, they can  
14 have a better life. (Tr. Vol. 11:123 ln. 6-14.)

#### IV. PUBLIC INTEREST

Following Judge Gomez's interim conclusion that Mile High Cab, Inc. is "operationally and financially fit to provide the proposed service," the burden shifted to the intervenors to "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." C.R.S.A. § 40-10-105(2)(b)(II)(B). The statutory requirement is conjunctive. That is, the opponents must show that the public convenience and necessity does not require the grant of the application, *and* the

opponents must also show that the issuance of the certificate of public convenience and necessity would harm the public interest.

Intervenors Colorado Cab and Metro Taxi both elected not to present any evidence concerning any economic harm that they might experience if Mile High Cab, Inc. were to be successful. These intervenors deliberately sought to avoid opening their books with regard to this issue. Intervenor Yellow Cab of Colorado Springs also did not present any evidence concerning any negative economic impact upon its business.

With regard to the public interest, Metro Taxi made two arguments. The first argument concerned air pollution. The second argument was, essentially, that there were already enough taxi cabs in Denver. Neither argument was successful.

**A. Air Pollution**

Metro Taxi’s argument with regard to pollution seems to be that the grant of authority to Mile High Cab, Inc. will result in more air pollution, and for this reason the Commission should require an Environmental Impact Statement or, perhaps, not issue the certificate.

There are four problems with this argument. The first is that federal law preempts state law in this area. The second problem is that Metro Taxi impermissibly seeks rule-making in this docket. The third problem is that Metro Taxi offered no systematic evidence at all concerning the pollution impact of the grant of the Application. The fourth problem is that evidence at the hearing suggested that Mile High Cab drivers may generate less pollution than they currently do because when they move from being Yellow Cab or Metro drivers to Mile High Cab, they are likely to drive fewer hours than they now do.

**(1) Pre-emption**

Metro Taxi’s paid opinion witness, Mr. Tray Letzring, offered his opinion that “it is

prudent to require a thorough Environmental Impact Review to confirm any potential negative impacts have been appropriately mitigated before permitting these additional 150 taxicabs to further saturate and pollute our community.” In his two-page opinion letter, Mr. Letzring referred to both Environmental Impact Statements and Environmental Impact Reports. (Ex. 48)

Mr. Letzring was neither independent nor qualified. Mr. Letzring lacked the ability to evaluate independently the conclusions of Prof. Dempsey or Prof. Mundy. Mr. Letzring had no training in law, no understanding of the legal basis for environmental review, and no training of substance with regard to statistics. He uncritically accepted the conclusions of Professors Dempsey and Mundy. Mr. Letzring also did nothing more than read the packet of material that Metro Taxi sent to him; he brought no other literature to bear upon what he read. He read the packet and then tacked on his own call for some sort of environmental review but whether that would be under state or federal law, Mr. Letzring could not say. Mr. Letzring displayed no familiarity with the Clean Air Act during his testimony. He had no idea that “CAFE”—as used in the phrase “CAFE Standards”—was an acronym for Corporate Average Fuel Economy. He was unqualified to discuss the issue of federal preemption. Metro Taxi paid thousands of dollars for Mr. Letzring’s testimony. (See, generally, Tr. Vol. 7: 64 ln. 15 – 65 ln. 8; 76 ln. 2 – 17; 71 ln. 16 – 75 ln. 3; 78 ln. 15 – 100 ln. 7.)

Federal law preempts state law concerning the regulation of air pollution that taxicabs might generate. Two recent federal cases involving taxis make this clear. On June 22, 2009, a federal judge in New York City struck down Mayor Bloomberg’s effort to encourage hybrid taxis over the Ford Crown Victorias that comprise nearly all of New York City’s taxis. Judge Crotty found that New York City’s “Lease Cap Rules relate[d] to fuel economy and emissions regulation, which are substantially federal concerns.” Judge Crotty held that the Energy Policy

and Conservation Act (EPCA) and the Clean Air Act (CAA) preempted the rules. *Metropolitan Taxicab Board Of Trade v. City of New York*, --- F.Supp.2d ----, 2009 WL 1748871 (S.D.N.Y.). Likewise, in Boston, Federal District Court Judge Young found that the EPCA preempted the City of Boston's policies attempting to push the taxi fleet into greater usage of hybrid vehicles. Judge Young emphasized the sweeping nature of federal preemption in this area. *Ophir v. City of Boston*, --- F.Supp.2d ----, 2009 WL 2606341 (D.Mass.).

Because federal law preempts state law concerning the air pollution that taxicabs might generate, the Colorado PUC may not adopt air pollution standards for taxicabs. Furthermore, Mr. Letzring's suggestion of an Environmental Impact Statement (EIS) is also an impossibility under all circumstances, as an EIS is not a creature of state law but rather of federal law, specifically the National Environmental Protection Act (NEPA) 42 U.S.C.A. § 4331 (1970).

## **(2) Impermissible Rule-Making**

Second, the requirement of an EIS or some other type of environmental review in the middle of this adjudicatory docket would be impermissible rule-making. Metro Taxi's suggestion, through Mr. Letzring, that the Commission require an environmental review would violate the state's Administrative Procedures Act. C.R.S.A. § 24-4-101, *et seq.* This proceeding is an adjudication; requiring that there should be a environmental review before permitting the operation of additional taxis is making a rule.) *See Colorado Office of Consumer Counsel v. Mountain States Tel. and Tel. Co.*, 816 P.2d 278, 284 (Colo. 1991) ("agency proceedings that primarily seek to or in effect determine policies or standards of general applicability are deemed rule-making proceedings.")

## **(3) No Data concerning Pollution**

Third, intervenors presented no systematic evidence whatsoever regarding the possible



pollution impact of granting Mile High Cab, Inc.'s application. There have been no traffic counts; no measure or estimate of any type of pollution; no estimate of the alleged effect of pollution over the area for which Mile High Cab, Inc. seeks authority. There has been no examination of the types of vehicles that Mile High Cab, Inc. will operate, and no estimation of the number of hours that the cars will be in operation. In short, intervenors have offered no data to support any findings regarding pollution.

#### **(4) Mile High Drivers may Reduce Pollution**

Fourth, there is a good argument that granting authority to Mile High Cab, Inc. will result in a reduction of pollution. [REDACTED]

[REDACTED]. Several Union Taxi drivers testified at the hearing that they now drive fewer hours for Union Taxi than they formerly drove when they were Yellow Cab of Denver drivers. With lower lease rates, they now drive only six to ten hours where they used to drive as many as 15-17 hours daily. (Tr. Vol. 11: 88 ln. 17 – 89 ln. 12; 11:129 ln. 8 – 22; 112 ln. 1 – 8; 119 ln. 7 – 18.) During cross-examination, Mr. Letzring reluctantly admitted that driving fewer hours in the same car produced less pollution. (Tr. Vol. 7:96 ln. 16 – 98 ln. 3.) Thus, because Mile High Cab, Inc. lease rates will be lower than those of Yellow Cab of Denver and Metro Taxi, moving to Mile High Cab may result in the production of less pollution. Any increase in the production of pollution would come only after Yellow Cab of Denver and Metro Taxi hire additional drivers.

Metro Taxi's argument concerning pollution is specious. Federal law preempts state action. Further, Mr. Letzring has suggested adding rule-making to an adjudicatory docket. No witness produced any systematic data concerning pollution. And, the lower lease rate of Mile High Cab, Inc. may reduce pollution by allowing drivers to drive fewer hours.

## **B. Number of Taxis**

Intervenor Metro Taxi also attempted, *inter alia*, to argue that that are already enough or too many taxis. Metro Taxi's evidence and witnesses did not address the number of taxis at all in the counties of Douglas, Jefferson, Arapahoe, and Adams. Nor did Metro Taxi's evidence address the number of taxicabs in any other part of the state with the exception of two parts of Denver County—the airport and a portion of downtown Denver.

**Denver International Airport**—Since June 1, 2009, Denver International Airport (DIA) has limited the number of taxicabs that may wait in the Ground Transportation holding lot before proceeding to the cab stands to pick up arriving passengers. This policy, which DIA instituted independently of the Public Utilities Commission, is expected to become a permanent policy.

Mr. Patrick Heck testified that DIA instituted the policy due to resource constraints at DIA. Mr. Heck acknowledged that there was additional space in the parking lot where taxicabs wait, so physical space was not the constraint that led DIA to institute the policy. (Ex. 58.) Instead, Mr. Heck identified the cost of janitorial services for a restroom/snack building near the holding lot as the resource constraint that led DIA to limit the number of cabs in the holding lot. Mr. Heck identified no other resource constraint that led to the imposition of the taxicab limitation. (Tr. Vol. 8:84 ln. 17 – 85 ln. 5; 65 ln. 4 – 15.)

The DIA taxicab policy may may have pushed cabs to downtown Denver. Union Taxi Cooperative began operation on May 4, 2009. Before June 1, 2009, DIA did not authorize any Union Taxis to use the airport holding lot. For this reason, Union Taxis during the month of May 2009 that might otherwise have been at the airport of necessity had to be somewhere else—including downtown Denver. That is, the institution of DIA's limitations on taxicabs

DIA regulates the number of cabs in its holding lot. The grant of authority to Mile High

Cab, Inc. will not increase the number of cabs in the holding lot. (Tr. Vol. 8:82 ln. 7 – 82.)

There was no evidence that the grant of authority to Mile High Cabs, Inc. would affect the DIA taxicab policy in any way that would harm the public interest.

**Downtown Denver**—Metro Taxi attempted to show that there were too many taxicabs in downtown Denver. Their evidence, which was contradictory at best, was limited to a small area roughly between Broadway and Larimer and 14<sup>th</sup> St. to perhaps 17<sup>th</sup> St. To the extent that there was any evidence of a problem, the issue was limited to business hours on week days. There was no evidence that in the evenings or on weekends that anyone at all felt that there were too many taxicabs downtown. Indeed, the Prof. Mundy's survey data suggested just the opposite—that the downtown area is underserved by taxis. (Ex. 53, pp. 30-37.)

Metro Taxi presented several of its own drivers as witnesses in an attempt to show that since the beginning of operations by Union Taxi, the cab stands in Denver have been overcrowded. However, Metro's driver witnesses testified that the cab stands downtown have always been crowded. Mr. Reuben Olguin, a current Metro driver, has been driving since the 1990s. He testified as follows:

23 Q [By Mr. Russell] Okay. You also -- let's see. At the  
24 start of your testimony, you mentioned that you -- have  
25 you -- let's see. You started driving in 1991; is that  
[p. 131]

1 right?

2 A [by Mr. Olguin] April '91.

3 Q Okay. And you worked -- at that time,

4 did you mostly work the southwest and Golden area?

5 A I worked my area where I live, yes,

6 southwest.

7 Q Okay. Was there a reason you didn't come

8 downtown to work?

9 A I just didn't like the work in the

10 downtown area. I just like to work the streets.

11 Q Okay.

12 A I mean, I get a fare downtown, I'll take

13 it down there, that's it. I go back where I was.

14 Q You wouldn't get in a stand and --  
15 A It was too full. They're too full all  
16 the time.  
17 Q In the 1990s they're too full?  
18 A There was still a lot of cabs there, yes,  
19 sir, mostly Yellow.  
20 Q Mostly Yellow?  
21 A At that time. We didn't have Union then.  
22 Q So in the 1990s, your experience downtown  
23 was that the cabstands were mostly full?  
24 A They were still full, yes.  
25 Q Okay. And today, they're full as well?  
[p. 132]  
1 A They are. They wait for the airport  
2 runs, that's why they sit at the hotels. That's the  
3 only reason.  
4 Q Okay. But in the 1990s, mostly Yellow in  
5 those cabstands, and now it's changed to mostly orange?  
6 A That's all it is, orange.

([Tr. 9: p. 130, ln. 23 – p. 132. ln. 6].)

The displacement of yellow cabs by orange cabs does not harm the public interest. The replacement of yellow cabs with orange cabs represents the natural result of price competition, as the per mile tariff of Union Taxi's orange cabs is 25 cents less than for Yellow Cab of Denver.

Metro Taxi also presented Ms. Christine O'Donnell, a lobbyist who is the current president of the Colorado Hotel and Lodging Association. Ms. O'Donnell had no information whatsoever concerning the counties of Adams, Arapahoe, Douglas, or Jefferson. Ms. O'Donnell sponsored a letter that she sent to Denver's mayor on behalf of the Metro Denver Hotel Association. In the third paragraph of the letter, Ms. O'Donnell writes that "a recent broad brush survey of MDHA hotel members did not reveal any significant problems with the influx of new cabs. . . ." (Ex. 49) That is, the information that Ms. O'Donnell collected herself using her own survey reveal no problems among hoteliers related to the start of operations by Union Taxi nor to the appearance downtown of Union Taxis

The remainder of the letter is a constellation of hearsay and otherwise secondary or

tertiary information that Ms. O'Donnell claimed to have received in various meetings with Metro Taxi's lobbyists and others. In her letter, Ms. O'Donnell refers to "five (5) additional cab company applications in front of the PUC right now."<sup>6</sup> Notably, Ms. O'Donnell's letter includes the false claim that "Union Taxi . . . does not have a central dispatch. . . ." (Id.) When asked on cross-examination if she intended to correct this falsehood, which she had sent to Denver's mayor, Ms. O'Donnell answered defiantly "No" and "Why would I?" (Tr. Vol. 10:103 ln. 19 & 20). Mr. Russell followed up by asking "so if you find out that that in fact is not true, that Union Taxi has a dispatch, you have said that you would not write to the Mayor to correct that error; is that right?" Ms. O'Donnell answered "I would not be inclined to write and correct every single thing I might have said in my lifetime, no." (Tr. Vol. 10:104, 9-14.)

Mr. Michael Hancock, a member of the Denver City Council who represents District 11, including the neighborhoods of Montbello and Green Valley Ranch, also was a witness for Metro. During cross-examination, Mr. Hancock stated that "I have never received any [money] personally from Metro Taxi." When asked, Mr. Hancock volunteered that Metro Taxi supported some events and a foundation in his city council district. (Ex. 8:20 ln. 13-25.) Mr. Hancock did not mention or volunteer that he had received campaign contributions from the owners and managers of Metro Taxi. Cross-examination revealed that Mr. Hancock's 2006 campaign finance report includes contributions dated April 13, 2006 of \$1,000 from Mr. William Cotter, co-owner of Metro Taxi; \$1,000 from Mr. Robert McBride, co-owner of Metro Taxi; \$250 from Mr. Antonio Garcia, a Metro Taxi employee; \$250 from Ms. Annette Marsette, a Metro Taxi employee; \$250 from Mr. Michael Hart, Communications Manager at Metro Taxi; and \$250 from Mr. Kyle Brown, General Manager at Metro Taxi. (Ex. 55, Ex. 24, Tr. 8:20, ln. 12 – 39:6.)

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<sup>6</sup> Mile High Cab, Inc. believes that from two to four of the pending applications may not progress to the stage of a PUC hearing.

Mr. Hancock admitted that he has no specialized training in transportation and that he had not personally conducted any research, survey, or examination of taxicabs in Adams, Arapahoe, Jefferson, or Douglas Counties. (Tr. Vol. 8:19 ln. 2-14.) He admitted that he did not regard himself as an expert on taxicabs. (Tr. Vol. 8:19 ln. 18-20.) Nonetheless, on direct examination by Metro’s attorney, Mr. Hancock claimed that there was an “oversupply” of taxicabs in downtown Denver. When asked, he was unable to quantify the excess. (Tr. Vol. 8:17 ln. 14-18.) After referring to the alleged oversupply of taxicabs in downtown Denver, the only problem that Mr. Hancock identified was that he had “personally seen taxi drivers parked at meters in downtown Denver, which they’re not supposed to do. . . .” (Tr. Vol. 8:17 ln. 23-25.) This, Applicant submits, is evidence of a problem for the parking authority and not or a revenue opportunity for the city—either way, this is not evidence of harm to the public interest.

On cross-examination, Mr. Hancock admitted that “particularly the seniors who use taxi services in [his] district would appreciate lower taxi fares.” When asked to elaborate, Councilman Hancock explained that “Because it’s tough, and probably they’re living on fixed incomes. I’m speculating. I would believe that they would be the greatest benefit, and the factors.” Mr. Hancock further admitted that his district “has had substantial economic difficulty over the last couple of years.” (Tr. Vol. 8:50 ln. 25 and 51 ln. 1-13.) Mr. Hancock’s testimony is evidence that granting Mile High Cab, Inc.’s application will enhance the public interest.

Professor Ray Mundy also testified as a witness for Metro Taxi. Prof. Mundy was a paid opinion witness. Prior to his appearance, Prof. Mundy was served with a *subpoena duces tecum* for his expert file, previous reports, financial information, and other taxicab related materials. When questioned about his responses to the subpoena, Prof. Mundy had difficulty aligning his testimony with reality. Judge Gomez ordered Prof. Mundy to further comply, without additional

compensation, with the *subpoena*.

Prof. Mundy, a frequent witness on behalf of incumbent taxi companies, testified regarding a report that he had authored in 2008. Metro Taxi and Colorado Cab funded the \$75,000 study, which the Denver Visitors Bureau commissioned. (Tr. Vol. 10:44 ln. 19 – 48 ln. 19.) The survey predates the operation of Union Taxi, and much of the report focused on downtown Denver. By Prof. Mundy's own admission, the report's Secret Shopper surveys and surveys of taxicab users lacked statistical validity. The comments drawn from the unscientific surveys largely excoriate the taxicab service, which at the time was dominated by Yellow Cab of Denver and Metro Taxi. Prof. Mundy notes:

As shown by these summary statistics, written responses, and comparisons with other cities, there would appear to be considerable dissatisfaction with Denver taxicabs expressed by the frequent user groups represented in this survey. A 70% negative comment score on our scales could be taken as an immediate need for the community to address the issues raised by this survey. However, these negative results should not be viewed out of context. Readers should note that these respondents are individuals that could be expected to call for a taxi numerous times but not use it themselves. Thus, there would appear to be a major difference in the findings between those of the secret shoppers and the frequent users. This is unusual but not unexplainable. These frequent users are mostly in the hospitality industry where high levels of customer service are not only important but necessary for survival.

(Ex. 53, p. 34-35.) Shortly following this summary statement that addresses empirical (if statistically unreliable) data, Prof. Mundy shifts to describing Metro Taxi and Yellow Taxi—the funders of his study—in highly favorable terms.

Prof. Mundy, in his 2008 study, asserted that “For right now, the correct number of taxi permits in Denver is 942.” (Ex. 53, p. 101.) The Commission rejected his argument and authorized the start of Union Taxi and the expansion of Freedom Cab.

Notwithstanding the argument of Prof. Mundy, there is no magic number for how many taxis there should be in Denver. Indeed, there is no upper limit. Mile High Cab, Inc.'s expert,

Prof. Robert Hardaway offered a better analysis when Judge Gomez questioned him

6 Q [Judge Gomez] Okay. So the sub-question I have from  
7 that is -- and I understand the context in which you  
8 are referring to the taxicab companies as cartel  
9 members; but say, for instance, in a market such as  
10 Denver, which is the one that's at issue here, when  
11 does a marke[t] move from having cab companies operate in  
12 a cartel-like fashion to one that is, at least in some  
13 sense, a competitive market?

14 Is there a number? Is there a magic  
15 number when you jump from this number to this number  
16 and then you have a competitive environment or how do  
17 you make that determination?

18 A [Professor Hardaway] One end of the spectrum is perfect  
19 competition, where there is virtually an unlimited  
20 number -- like, in theory, that was true from the  
21 farming industry for some time. The other end of the  
22 industry is where you have the monopolist, like AT&T,  
23 that for a number of years was the sole provider of  
24 telephone services. And then there's the middle ground  
25 in between.

[p. 68]

1 But I wouldn't set a number so much as I  
2 would say that if prices are not fixed, either by some  
3 government entity or by permitting the members -- it  
4 usually has to be a small number, because if you have  
5 too many members in the industry, it's impractical for  
6 them to get together. But if you have five or six --  
7 this was a problem in airlines for a while, when they  
8 can get together and fix -- and fix prices.  
9 So the point would be, where there are so  
10 many in the industry that it's impractical for them to  
11 get together and set prices on their own; at that point  
12 when it becomes too many members to practically permit  
13 that, that's the point at which I would say it's --  
14 that would the point

18 Q Okay. In your direct examination, you  
19 made a statement -- I'm paraphrasing, but I think there  
20 is no such thing as an oversupply in the market. What  
21 do you mean by that?

22 A What I meant was there's never an  
23 oversupply of producers that are producing -- are  
24 providing the highest quality service. The way that  
25 our economy works is what's been called by Schumpeter

[p. 69]



1 as creative destruction.  
2 And I noted, in answering one of the  
3 questions in cross-examination, that a number of  
4 airlines did in fact fail; but that's the whole idea of  
5 competition is that you allow the best producers -- the  
6 ones that are most efficient, the ones that provide the  
7 lowest prices, highest quality -- they survive. And  
8 the ones that can't don't survive.  
9 And so there's never an oversupply in the  
10 sense -- in the sense that -- well, let me put it a  
11 different way: There could be an oversupply in any  
12 industry if there is no way for them to fail. And if  
13 you have a regulated market like the aviation industry,  
14 prior to deregulation, they simply weren't allowed to  
15 fail because -- there was no way for them to fail,  
16 really, because they never had to worry about  
17 competition.  
18 And if their cost and expenses went up,  
19 they would simply go to CAB and say, Please let us  
20 raise our prices; and they would say okay. So there  
21 was never any industry -- never any airline that failed  
22 under the regulatory regime. But even though the  
23 aviation industry increased by something like 10,000  
24 percentage points from 1938 to 1978, not a single  
25 competitor was allowed in.

(Tr. Vol. 11:67 ln. 6 – 68 ln. 17.) Professor Hardaway's two important points are first that there is no magic number of taxicabs for any market, because the more appropriate question is whether there are enough different firms so that the transaction costs are too high to allow collusion. His second, correlative point is that there is no such thing as an oversupply or saturation of the market, as competition forces the weaker competitors to improve their service or exit the market. The question, then, is not how many taxis there are, but how many firms.

In sum, Metro Taxi focused narrowly on the daytime, Monday-to-Friday downtown Denver segment of the taxicab industry and attempted to demonstrate an oversupply of taxis. However, Metro's own witnesses undermined the conclusion by noting that the cab stands have always been crowded, that the hoteliers have not complained about the number of cabs, and that, when surveyed, hospitality industry insiders familiar with cab services as they existed prior to

Union Taxi entering the market were highly unsatisfied with taxi service. Rather than proving that Mile High Cab, Inc.'s entry into the market might harm the public interest, the evidence at the hearing has shown instead that expanded competition in the taxicab market is just what is needed. Furthermore, apart from some discussion concerning DIA, there was no evidence of any kind presented regarding oversupply of taxicabs in Adams, Arapahoe, Douglas, or Jefferson counties.

**C. Benefitting the Public Interest**

Competition—whether based upon quality of service or price—is something that the Colorado General Assembly has sought to enhance for years in the taxi industry. Mile High Cab, Inc. intends to bring high-quality, customer-oriented taxicab service to the Denver market. Mile High Cab, Inc. will compete with existing cab companies with regard to the level of service provided and also on the basis of price. For example, Yellow Cab of Denver and Metro Taxi both charge \$2.25 per mile. Mile High Cab, Inc. intends to charge 25 cents less per mile. Unlike all the intervenors, Mile High Cab, Inc. will not charge extra for groceries nor for additional passengers.

Mile High Cab, Inc.'s business plan is not to spend time sitting in cab stands in downtown Denver. As the business plan and testimony made clear, Mile High Cab, Inc. intends to expand the market for taxicab service through the area it seeks to serve. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition, Mile High Cab, Inc. intends to engage in pro bono support of domestic violence victims and [REDACTED].

## **V. GEOGRAPHIC SCOPE OF AUTHORITY**

### **A. Within and between Adams, Arapahoe, Denver, Douglas, and Jefferson Counties**

Applicant Mile High Cab, Inc. has applied for authority under C.R.S.A. § 40-10-105(2)(b)(II). A grant of authority and certificate will enable Mile High Cab, Inc. to operate taxicabs within and between the five counties of Adams, Arapahoe, Denver, Douglas, and Jefferson.

### **B. From Denver to All Points in Colorado**

The grant of authority to operate within Denver County includes authority to operate from Denver to any point in the state of Colorado, regardless of the size of the destination county. The statute specifies that

**§ 40-10-105(2)(d)(I)** The holder of a certificate of public convenience and necessity that contains authority to operate as a taxicab between points in the city and county of Denver shall also be deemed to hold taxicab authority from points in the city and county of Denver to all points in the state of Colorado.

For this reason, the intervention of Estes Valley Transport is irrelevant. Estes Valley operates from DIA to Estes Park and also to Weld County. Mile High Cab, Inc., if successful with its application, will received authority to operate from Denver County to both of those points consistent with C.R.S.A. § 40-10-105(2)(d)(I).

### **C. From Adams, Arapahoe, Douglas, and Jefferson Counties to All Points in Colorado**

Applicant believes that the Commission is presently misinterpreting the statutory scheme that regulates the grants of certificates of public convenience and necessity. Applicant believes that the Commission is applying the statutory scheme in a manner that is inadvertently antidevelopmental.

**(1) From Adams, Arapahoe, Douglas, and Jefferson Counties to Counties of Fewer than 70,000**

Applicant anticipates that the Commission will apply the doctrine of regulated monopoly to taxicab travel from the four counties of Adams, Arapahoe, Douglas, and Jefferson to all those Colorado counties with populations of fewer than 70,000 persons. Applicant believes this an incorrect application of the law.

With regard to travel within and between small counties of fewer than 70,000 persons, the General Assembly has specified that the doctrine of regulated monopoly applies. The statute makes clear that:

**§ 40-10-105 (2)(a)** The granting of a certificate of public convenience and necessity to operate a motor vehicle for hire as a taxicab within and between counties with a population of less than seventy thousand, based on the federal census conducted in 2000, shall be governed by the doctrine of regulated monopoly.

However, between large counties of 70,000 or more persons and small counties of fewer than 70,000 persons, the statutory scheme fails to specify any standard at all. In connection with the Union Taxi decisions, the Commission has determined that the doctrine of regulated monopoly should apply because regulated monopoly is the background or default rule in the state. Such a rule is fundamentally antidevelopmental.

Applicant perceives at some point over the last 50 years or so, the Commission has mislaid the purpose of the doctrine of regulated monopoly. The doctrine protects a single, existing business within a county. Put differently, there can be no monopoly unless a business already exists. As the Colorado Supreme Court has explained, “The mandate to avoid duplication of service is known as the doctrine of regulated monopoly.” *City of Fort Morgan v. Colorado Public Utilities Com'n*, 159 P.3d 87, 94 (Colo., 2007). The goal, then, is the protection of prior service—the monopoly—against the intrusion of service that overlaps or duplicates the monopoly. Avoiding duplication of service requires that there be a preexisting, first provider.

Consider, for example, San Juan County, which had a population of 558 in the 2000

Census. Assuming, arguendo, that a taxicab company already exists in Colorado's least populous county, then the doctrine of regulated monopoly is available so that the company may shield itself from competition and prevent a new business from duplicating the monopoly service that the existing company provides. Upon notice from the Commission that an applicant has asked for authority that may duplicate the authority of the existing San Juan County company, the San Juan County company may then intervene in the proceeding and protect itself with the doctrine of regulated monopoly.

The doctrine of regulated monopoly, then, can have application only when there is a preexisting business. Assuming, on the other hand, that no taxicab company at all exists in San Juan County, then there is no "monopoly" to protect, and so the doctrine of regulated monopoly can have no application. In the absence of a preexisting business, application of the doctrine of regulated monopoly is antidevelopmental. Requiring a common carrier that is attempting to enter an area where there is no preexisting carrier to investigate and then prove the absence of business is needlessly burdensome and, given the patchwork quality of certificates of authority to operate as common carrier, the hunt is both difficult and expensive. This is the reason for Notice under the Commission Rules 1206(a) and 1207(b).

In *Colorado Municipal League v. Public Utilities Com'n of State of Colo.*, 687 P.2d 416, 419 (Colo.,1984), the Colorado Supreme Court has made clear that:

The findings of the PUC concerning disputed questions of fact are generally not subject to judicial review. § 40-6-115(2), 17 C.R.S. (1973). Findings will not be set aside because the evidence is conflicting, or because conflicting inferences can be drawn from the evidence, but **only if the record lacks competent evidence to support them.** *Morey v. PUC*, 629 P.2d 1061 (Colo.1981); *Ephraim Freightways, Inc. v. PUC*, 151 Colo. 596, 380 P.2d 228 (1963). (emphasis supplied)

For 46 Colorado counties with populations under 70,000 in the 2000 Census, there is not a scintilla of evidence in the record in this matter to support the Commission's application of the

doctrine of regulated monopoly. For Alamosa, Archuleta, Baca, Bent, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Dolores, Eagle, Elbert, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Kiowa, Kit Carson, La Plata, Lake, Las Animas, Lincoln, Mineral, Moffat, Montezuma, Montrose, Otero, Ouray, Park, Pitkin, Prowers, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summit, and Teller Counties, there is no evidence in the record of an existing common carrier that is entitled to the largesse of the regulated monopoly. If such carriers do indeed exist in these counties, then those carriers received notices of the application in this matter and have chosen not to intervene. With regard to authority to operate between Adams, Arapahoe, Douglas, and Jefferson Counties and each of these 46 smaller counties, Applicant believes that the Commission should treat the counties as open territory with no existing carriers entitled to the protection of the doctrine of regulated monopoly. As the Colorado Supreme Court explained in *Rocky Mountain Natural Gas Co., Inc. v. Public Utilities Commission*, 199 Colo. 352, 617 P.2d 1175 (Colo., 1980), “When there is no pre-existing right to serve an area, even if there is presently service to a contiguous area, the new area ‘could be certificated to whomever the P.U.C., exercising its expertise, determined was best able to serve the territory.’” citing *Western Colorado Power Co. v. PUC*, 163 Colo. 61, 428 P.2d 922 (1967).

For six of Colorado’s smaller counties, there is evidence of the existence of an existing carrier, namely Ms. Holtorf’s Dashabout Shuttle/Roadrunner Express. Ms. Holtorf operates a small business, the bulk of which seems to be scheduled service transporting passengers from DIA to the six small counties of Logan, Morgan, Phillips, Sedgwick, Washington, and Yuma in the northeast corner of the state. Ms. Holtorf testified that she had an average of eight customers per day to or from those counties. (Tr:8:127 ln. 1-11.) Although she makes no mention in her

Statement of Position of her passengers from Adams, Arapahoe, Douglas, and Jefferson Counties, Ms. Holtorf did testify that she carries an occasional few passengers from these four counties to the six counties in the northeast corner of the state. For example, Ms. Holtorf identified Adams County as providing the heaviest passenger count of the four counties with three passengers per week. (Tr:8:130 In. 21 134 In. 9) Applicant notes that Ms. Holtorf's carriage of three passengers per week from Adams County to the northeast corner of the state along with her professed ability to carry more may entitle her to the protection of the doctrine of regulated monopoly.<sup>7</sup> Unlike the 46 counties above, there is evidence that her business exists, and she did intervene after receiving Notice. The only doubt that Mile High Cab, Inc. would like to raise with regard to its overlap with Ms. Holtorf's business is that she made no mention of taxi service and instead characterized her business as scheduled service. For this reason, Mile High Cab, Inc. may not be in conflict with Dashabout or Roadrunner.

**(2) From Adams, Arapahoe, Douglas, and Jefferson Counties to Counties of 70,000 or More**

Because Adams, Arapahoe, Douglas, and Jefferson Counties all had populations of greater than 70,000 persons in 2000, there is no question that the doctrine of regulated competition applies between these four counties and other large counties of 70,000 or more. There are six such counties to consider: El Paso, Boulder, Larimer, Weld, Pueblo, and Mesa. Early in the application process, Mile High Cab, Inc. withdrew Boulder and Broomfield Counties from the application. With regard, then, to the remaining five large counties of El Paso, Larimer, Weld, Pueblo, and Mesa, Applicant agrees that the doctrine of regulated competition applies.

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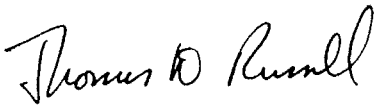
<sup>7</sup> Of course, a grant of authority to Mile High Cab, Inc. to operate within Denver County would include the authority to carry passengers from Denver County to Logan, Morgan, Phillips, Sedgwick, Washington, and Yuma Counties as those counties are necessarily included within All Points. A return trip from those counties to Denver would be subject to another doctrinal test, which at this point in time the Commission has determined is regulated monopoly.

As Judge Gomez explained on the first day of the hearing in this matter, the controlling factor with regard to the doctrine of regulated competition is whether it is in the public interest. (Tr. Vol. 1:25 ln. 5-11.) As Judge Gomez made clear, “Under regulated competition, the impact of additional competition on existing CPCN holders is relevant only to the extent it becomes destructive to their operation. . . .” (Tr: 1:25 ln.11-17.) As noted above, Yellow Cab of Denver and Metro Taxi explicitly stated that they were not presenting any evidence regarding the impact that Mile High Cab, Inc. might have upon their business operations. Nor did Yellow Cab of Colorado Springs present any such evidence. In the absence of any evidence of destructive competition, Mile High Cab, Inc. believes that under the doctrine of regulated competition, the Commission should grant authority to operate between Adams, Arapahoe, Douglas, and Jefferson Counties to the five large counties of El Paso, Larimer, Weld, Pueblo, and Mesa.<sup>8</sup>

## **VI. CONCLUSION**

Having met the requirements for the grant of a certificate of public convenience and necessity, Applicant Mile High Cab, Inc. prays the Commission to approve its application.

Respectfully submitted the 16<sup>th</sup> day of October 2009

s/ 

Prof. Thomas D. Russell, Ph.D.  
Attorney Registration No. 34771  
Law Office of Prof. Thomas D. Russell, Ph.D.  
7873 E. 8<sup>th</sup> Pl. Denver, CO 80230  
[tdrlaw@comcast.net](mailto:tdrlaw@comcast.net) 303-856-7531  
Attorney for Mile High Cab, Inc.

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<sup>8</sup> Authority from Denver County to the five large counties of El Paso, Larimer, Weld, Pueblo, and Mesa is included in the grant from Denver to All Points.



## CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served the foregoing document with exhibits upon the following parties via U.S. mail with adequate postage

Richard L. Fanyo, Esq.  
rfanyo@duffordbrown.com  
Dufford & Brown P.C.  
1700 Broadway, Suite 2100  
Denver, CO 80290-2101  
Attorney for Yellow Cab

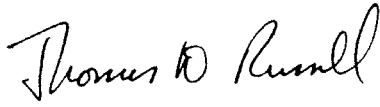
Duane Kamins, Esq.  
5825 Kelley Street  
Houston, TX 77026

Robert W. Harris, Esq.  
Christopher M. Gorman, Esq.  
Harris Karstaedt Jamison & Powers, P.C.  
188 Inverness Drive West, Suite 300  
Englewood, CO 80112

Charles M. Williams, Esq.  
chazwilliams@earthlink.net  
303 East 17<sup>th</sup> Ave., Suite 888  
Denver, CO 80203  
Attorney for Metro Cab

Charles J. Kimball, Esq.  
Kimball & Nespor, P.C.  
5400 Ward Road, Bldg. III, Suite 150  
Arvada, CO 80002  
Attorney for Estes Park Express, Stanley Bros.,  
Dashabout, RoadRunner, Estes Valley Transpt.

Respectfully submitted the 16<sup>th</sup> day of October 2009,

s/ 

Prof. Thomas D. Russell, Ph.D.  
Attorney Registration No. 34771  
Law Office of Prof. Thomas D. Russell, Ph.D.  
7873 E. 8<sup>th</sup> Pl. Denver, CO 80230  
[tdrlaw@comcast.net](mailto:tdrlaw@comcast.net) 303-856-7531  
Attorney for Mile High Cab, Inc.

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**  
Docket No. 08A-407CP

IN THE MATTER OF THE APPLICATION OF MILE HIGH CAB, INC. FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A  
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE

**Mile High Cab, Inc's Exceptions to Decision No. R10-0745**

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**Appendix 2**

Survey Comments about Denver taxicab services.  
Selection from Mundy, Denver Taxi Study.  
(Starts with Question 7)

Arrangements (how?): phone (25), reservations (4), internet (3) and e-mail

Arrangements (by who?): hotel staff (16), hotel guest (4)

### Question 6

Do you arrange shuttle, limousine, bus or van service for your guests?  
How is the service arranged?

	Yes	%	No	%
DOWNTOWN HOTELS:	12	86%	2	14%
OTHER HOTELS:	27	90%	3	10%
ALL HOTELS COMBINED:	39	89%	5	11%

Cab companies mentioned: Yellow (4), Metro (2) and Freedom

Shuttle companies mentioned: Super Shuttle (17), ABC and Shuttle King

Limo companies mentioned: Centennial (2), D&K (2), Ace, Active, ADC, Black Tie, Eddie's, Fox, Polo, Sunset and Swift

Other companies mentioned: All Access, Alliance, Preferred, Premiere Services and RTD

Non-specific: various (6), towncars (4), limos (3), cabs, shuttles and "anything non-cab"

Arrangements (how?): phone (19), reservations (4), internet (3) and e-mail

Arrangements (by who?): hotel staff (15), hotel guest (2)

### Question 7

Please list any comments you would like to make regarding Denver taxicab services.

DOWNTOWN HOTELS:

+	-	n/a	#	Comments

	1		1	My husband and I personally took the Super Shuttle from DIA to 1572 Rare a few days ago. We were the first address by far from the airport but instead took people to two hotels in downtown Denver first. The driver knew this but chose to deliver guests to the Grand Hyatt Hotel. Freedom [good]; Metro & Yellow [poor]. Few of the drivers speak English. They don't seem to know Denver very well. Guests complain that the drivers do not take direct route here. Only interested in trips to DIA (all companies). Freedom cab is the most reasonable [affordability]. Rarely come to door to help with luggage [courtesy of drivers]. Don't know; they don't get out of the cab [appearance of drivers]. Cabbies have repeatedly stopped at our door and told guests it's too dangerous here; that they can take them to a "better" place. Obviously big hotels are paying them for this. <i>Diane Peiker, Owner/Innkeeper.</i>
	1		3	We have cab staging; no calling [re average wait time]. Quality of vehicles reflects poorly on cab companies. Occasional issues with drivers resulting from language barriers or refusal to follow hotel procedures.
	1		4	Drivers don't ever know where the convention center is!! Service here is so bad they are not allowed on property. We use hired service and we own cars.
	1		6	The cabs in this town disappear when you need them most, i.e., snow, rain. They are not happy to go short distances.
	1		7	I am very concerned that when the DNC hits Denver that we will be in a world of hurt! Even when we do have a number of conventions in town the cab system as it stands cannot handle the increase. That is when our business and guests suffer!
	1		8	Taxi drivers most often tell our guests that we are in a bad area (Capitol Hill); that our hotel is dirty, filled with drug users and hookers. This is very bad for business and not true!
	1		9	We have trouble with taxicab drivers fighting with each other in front of guest. Also several guests have been refused rides that are just a few blocks away.
		1	10	They need to allow hailing of cabs at certain key locations, i.e., a few taxi stops on 15th and 17th, Lincoln and Broadway that are not on bus routes (for when people coming out in snow, etc.)
	1		11	Only one [comment]: It would be nice if our taxi cab services could be as proud of "all parts" of the city as we are. Colfax is the longest street in America and "all things" possible can be found here! A positive outlook would be fabulous!! I've heard cab drivers claim I am in a bad neighborhood! No good for service [re courtesy of drivers].
	1		12	Need a better stand in front of Ritz Carlton and Elways Restaurant.
	1		13	Before the DNC, the drivers really need to make attitude changes. They reflect on the city poorly!!
1			14	No problems.
	1		15	Cab service is a serious flaw in our city that is highlighted by many visitors and meeting planners.
1	11	1		
8%	85%	8%		

**OTHER HOTELS:**

+	-	n/a	#	Comments
	1		4	The taxis overcharge our guest and they all charge different
	1		5	Denver taxi companies are unreliable, rude, unprofessional
1			6	When the city is busy, the length of time on the phone increases as well as the time it takes to get a taxi. When the city is slow all comments above are accurate [reference to "very good" rating]

	1		7	Problems getting an ETA from taxis, long wait times for taxis and Super Shuttle, too many stops between hotel and airport on Super Shuttle, high prices for taxis, overall poor customer service!
	1		8	Drivers will ignore short runs. They only respond to airport runs or downtown (10 or more miles). We've tried using cabs for our guests but steer away due to lack of service.
	1		9	Very hard to get a taxi for short trips in this area. They seem to only want airport or downtown Denver runs.
	1		10	We have tremendous difficulty with driver willingness to bring guests from the airport to the hotel since we are such a short distance from the airport (6 miles).
	1		11	Telephone service has much to be desired. They get what they need and hang up on you. Complaints are not handled and dispatch is very rude. Taxis do not practice quality service at all and will argue with employees. Can be very rude. We avoid suggesting taxis to any of our guests and try to use private companies at all cost due to service levels.
		1	13	Better handling of orders/wait times during severe weather.
	1		14	Experience problems about 50% of time! Does anybody speak English anymore? Customer service is horrifying! Several times have been refused service due to snow...we're in Colorado! We would be out of business if we treated people this way.
	1		15	Our guests are not always given the flat rate fee from the airport because we are at the edge of the zone.
	1		16	They need to work on timeliness and politeness.
	1		17	Taxi service is very rude and poor service. [Wait time] too long -- have to call multiple times -- not happy at all.
	1		20	If drivers have issues with other drivers, the drivers need to bring that to the attention of the manager on duty. They do not need to make a scene in the drive of the hotel in front of hotel guests and staff.
	1		21	Customer service skills need to improve. Less taxis at airport and more in metro Denver.
	1		25	Have had Yellow cab drivers sleeping in our parking lot on many occasions, have had guests denied by Yellow due to location, have denied guests wanting to go local in order to get a larger fare, have had taxi drivers enter our hotel and pick arguments with employees.
	1		26	Some operators and drivers are very polite and professional; however, the majority are not polite, they have yelled at us on the [??] and in our lobby.
	1		27	Not a lot of taxis available in the mornings or on Sundays. We often have to call several times to get a taxi and they will regularly say they'll be there in 3-4 minutes and when we call again, we get the same response. I would prefer to be told one is not available than receive a very long wait time.
	1		28	Cab drivers need to be more courteous and it could cost less from airport (cost 65.00 to 70.00)
	1		29	It would be better if Metro Taxi or Yellow Cab wouldn't make our guests wait for more than an hour to be picked up.
	1		30	Too expensive from DIA -- \$35 for 12 miles is BS
	1		31	A lot of times there is no estimated time of arrival, if they come at all. There should be more organization when a call is sent out someone should respond with their ETA. If the call center doesn't receive a callback from the drivers after a few minutes, they should send the call out again and also call the hotel as a courtesy to let us know what's going on. 5-10 minutes for Metro; more than 30 minutes for Yellow [re wait time]
1	20	1		
5%	91%	5%		

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**  
Docket No. 08A-407CP

IN THE MATTER OF THE APPLICATION OF MILE HIGH CAB, INC. FOR A  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A  
COMMON CARRIER BY MOTOR VEHICLE FOR HIRE

**Mile High Cab, Inc's Exceptions to Decision No. R10-0745**

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**Appendix 3**

Offer of Proof re: Excluded Testimony of Dr. Diana Moss  
(Starts with p. 175, line 14)

1 about driver accounts, not about what rules drivers  
2 operate under, or anything to do with hours of service.  
3 This was strictly supposed to be an offer of proof with  
4 respect to financial matters, and we're getting off  
5 into a whole other area now.

6 MR. FANYO: If we are allowed the  
7 opportunity, we would present that testimony, if the  
8 time allowed us to.

9 A.L.J. GOMEZ: Thank you, Mr. Fanyo.

10 Mr. Russell, you said you wanted to make  
11 an offer of proof as well?

12 MR. RUSSELL: Yeah. If I might, Your  
13 Honor, thank you.

14 Regarding Dr. Moss, who was excluded as a  
15 rebuttal witness, just briefly, let me say Dr. Diana  
16 Moss has a PhD from the School of Mines. We would have  
17 offered her as an expert in economics. She has  
18 experience with the American Antitrust Institute, in a  
19 variety of areas. She has worked with the Federal  
20 Energy Regulatory Commission. She serves as a lecturer  
21 at the University of Colorado, Boulder, adjunct faculty  
22 in the Department of Economics, and has taught at some  
23 other places.

24 Should she have been permitted to  
25 testify, Dr. Moss would have testified that taxi

1 markets are no exception to the rule; that competition  
2 provides consumers with maximum benefits, that is lower  
3 fares, higher service quality, safety and innovative  
4 services. She would have testified that key features  
5 of competitive markets include multiple sellers, low  
6 barriers to entry, that their absence increases the  
7 probability that firms will exercise marketing power,  
8 raising prices, restricting service, lowering quality  
9 and innovating less.

10 She would have testified that market  
11 forces do not lead to saturation, but rather  
12 adjustments to supply-demand conditions, including, for  
13 example, the reallocation of taxis to higher demand  
14 market segments, fare adjustments, and temporary  
15 increases or decreases in the number of taxis  
16 in-service.

17 Dr. Moss would have further testified  
18 that carefully restructuring taxi markets for the  
19 easing of entry restrictions is a most important step  
20 in promoting competition and creating benefits for  
21 consumers. She would have testified that the recent  
22 entry of the Union Taxi Cooperative lowered  
23 concentration and increased competition in an duopoly  
24 market. She would have also testified that, given the  
25 effectiveness of the market adjustment process, entry



1 by Mile High will likely reallocate market shares among  
2 more efficient and innovative competitors. This, she  
3 would have testified, would further reduce  
4 concentration and produce competition on the merits.

5 Dr. Moss would have further testified  
6 that Dr. Mundy and Professor Dempsey's warnings about  
7 the perils of competition are based on questionable  
8 assumptions that do not apply to the current Denver  
9 taxi markets. One or both of their -- of Dr. Mundy or  
10 Professor Dempsey's analyses are based on an erroneous  
11 notion of completely open entry, rather than easing of  
12 entry restrictions, with continued lighter handed  
13 regulatory oversight contemplated by the Colorado  
14 Public Utilities Commission.

15 She would have further testified that  
16 Dr. Mundy and Professor Dempsey's warnings were based  
17 upon a biased reading of empirical economical  
18 literature on taxi deregulation. She would have  
19 testified that, on balance, the literature indicates  
20 that entry is unlikely to harm competition or consumers  
21 and may have a benefit for consumers. She would have  
22 testified, as well, that Dr. Mundy and Professor  
23 Dempsey's warnings were based on an antiquated approach  
24 to the taxi market deregulation problems.

25 And, finally, she would have testified

1 regarding the imperfectly structured Secret Shopper and  
2 user surveys that Dr. Mundy used; that she would have  
3 testified those surveys compelled the conclusion that  
4 service in the Denver market was under a duopoly  
5 consisting of Yellow and Metro. No, I'm sorry, I  
6 presented that wrong. She would have said that the  
7 imperfectly structured Secret Shopper and user surveys  
8 compel a conclusion that the service in the Denver  
9 market that Yellow and Metro provided was adequate,  
10 and, thus, therefore, requires full-service taxi  
11 companies, and that that conclusion was incorrect.

12 Thank you, Your Honor.

13 A.L.J. GOMEZ: Thank you Mr. Russell.  
14 Anything else before we wrap-up?

15 MR. FANYO: Just one thing, Your Honor.  
16 We have statements of position scheduled to be filed  
17 October 7th, I believe.

18 A.L.J. GOMEZ: Yes.

19 MR. FANYO: Yellow Cab is only addressing  
20 fitness. You made your ruling at the conclusion of the  
21 Phase 1 of the hearing. I -- it appears to me that a  
22 statement of position filed by us contesting the  
23 evidence on fitness would be fruitless, in light of  
24 your ruling. However, I am willing to give it a go, to  
25 convince you to change your mind, if you were -- you

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**  
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**Mile High Cab, Inc's Exceptions to Decision No. R10-0745**

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**Appendix 4**

Commissioners' Analysis of Regulated Competition and Burden of Proof  
Selection from Decision No. C09-0207

**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,<sup>130</sup> 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

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<sup>130</sup> 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.<sup>131</sup> 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.<sup>132</sup> 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

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<sup>131</sup> See Decision No. C08-0933, mailed September 4, 2008, at ¶30.

<sup>132</sup> *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.<sup>133</sup> 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.

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<sup>133</sup> 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.<sup>134</sup>

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<sup>134</sup> 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.<sup>135</sup> 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.

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<sup>135</sup> 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.<sup>136</sup> 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.<sup>137</sup>

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

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<sup>136</sup> 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.

<sup>137</sup> 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.

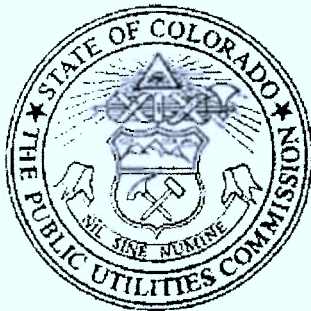
7. Freedom Cabs' application is granted, in part. Freedom Cabs may operate the maximum of 250 vehicles at any one time.

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,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

RONALD J. BINZ

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JAMES K. TARPEY

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MATT BAKER

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Commissioners