

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

SUPERSHUTTLE INTERNATIONAL DENVER,

Employer,

and

Case **27-RC-8582**

COMMUNICATIONS WORKERS OF AMERICA,

Petitioner

**COMMUNICATIONS WORKERS OF AMERICA'S
REQUEST FOR REVIEW**

**I. COMPELLING REASONS EXIST TO GRANT
THE UNION'S REQUEST FOR REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, Communications Workers of America ("Union") requests review of Region 27 Regional Director Josserand's February 26, 2010 Decision and Order in the above-named case to the extent he ruled that the Union has a "disabling conflict of interest" and for that reason the Union's representation petition should be dismissed.

On December 11, 2009, the Union filed a "petition seeking to represent the shuttle van drivers employed by SuperShuttle International Denver, Inc." ("Employer" or "SuperShuttle"). (RD D&O p. 1)¹. The Employer raised two issues in an attempt to get the petition dismissed, arguing that: 1) that the shuttle van drivers were independent contractors, not employees, and 2) that the Union's representation of taxi cab drivers who

¹ Citations in the Brief shall be made as follows: Citations to the Regional Director's Decision and Order as RD D&O [page no.]; citations to the Transcript as "T. [page no.]; and citations to Respondent Exhibits as "R. Ex. [exhibit no.]".

own and operate a cooperative taxi cab firm created a disabling conflict of interest that should cause the Union to be disqualified as a representative of the Employer's shuttle van drivers.² A hearing on the Employer's two issues was held on December 28, 2009, and January 7, 8 and 12, 2010. (RD D&O p. 2).

On February 26, 2010 the Regional Director issued his Decision and Order. He ruled that the shuttle van drivers were employees and not independent contractors under the Act. (RD D&O pp. 28 – 38). However, he found that based on the “form of assistance provided by the Union to UTC [Union Taxi Cooperative] in exchange for monthly financial remuneration is in direct conflict with the single-minded representational purpose required of a bargaining representative, since the Union's advocacy on behalf of UTC could have direct, adverse effects on the SuperShuttle Denver bargaining unit.” (RD D&O p. 47). This, according to the Regional Director, caused the Union to have a “disabling conflict of interest” and thus the Union's representation petition should be dismissed. (RD D&O p. 2).

The Union requests review of the Regional Director's decision that the Union has a “disabling conflict of interest” and thus that the Union's representation petition should be dismissed.³ As shown below **compelling reasons exist to grant the Union's Request for Review**. Specifically,

1) The Regional Director's decision on substantial factual issues was clearly erroneous based on the evidence presented at the hearing. Since the Regional Director

² In its brief to the Regional Director, the Employer also raised the question of whether the shuttle van drivers were supervisors. The Regional Director found that the Employer did not raise and the parties did not litigate the supervisory issue at the hearing. (RD D&O p. 2).

³ The Union agrees with the Regional Director's determination that the shuttle van drivers are employees, not independent contractors.

relied on this erroneous reading of the record to reach his conclusion that the Union had a “disabling conflict of interest,” these errors prejudicially affected the rights of the Union.

These substantial factual errors included:

a) The Employer and UTC “compete for a finite number of licenses issued for passenger transportation.” (RD D&O p. 43).

b) That there was a “dispute between UTC and SuperShuttle Denver at the downtown Hyatt Regency convention center hotel.” (RD D&O p. 43).

c) That the Union “assist[s] UTC in matters wholly unrelated to collective bargaining, and has a significant financial interest in the success of UTC” (RD D&O p. 45).

d) That “UTC [pays a] per capita monthly fee . . . to the Union.” (RD D&O p. 45)

e) The Union “gains financially when UTC prospers.” (RD D&O p. 46)

f) The Union’s “intervention on behalf of one entity can result in loss of business for another entity. This can take the form of one company gaining vehicle certificates, while the other entity loses them.” (RD D&O p. 46).

g) That “[i]ntervention by the Union on behalf of UTC could also take the form of one entity gaining a time advantage for curbside waiting at DIA, or for locations to park and wait for passengers in the downtown area, which is precisely the kind of intervention UTC was seeking from the Union in its dispute at the Hyatt.” (RD D&O p. 47).

2) A substantial question of law exists for each of the following reasons:

a) The Regional Director departed from established law when he ruled that UTC and the Employer were direct competitors;

b) The Regional Director departed from established law when he ruled that the Union's representation of taxi cab drivers who are members created a "disabling conflict of interest" that prohibited the shuttle van drivers employed by the Employer from choosing the Union as its collective bargaining representative;

c) The Regional Director departed from established law when he ruled that the fact that the Union did not have a traditional collective bargaining relationship on behalf of its taxi cab driver members created a "disabling conflict of interest" when it sought to represent shuttle van drivers who were allegedly in competition in the same industry;

d) The Regional Director departed from established law when he ruled that the Board's decision in *Alanis Airport Services, Inc.*, 316 NLRB 1233 (1995), was instructive and provided the basis to find that the "relationship between CWA [Union] and UTC [the taxi cab cooperative] creat[ed] a disabling conflict." (RD D&O pp. 41, 42).

The Board should grant the Union's Request for Review, reverse the Regional Director's finding that the Union has a disabling conflict of interest and direct an election among the shuttle van drivers employed by the Employer.

II. FACTS RELEVANT TO THE REQUEST FOR REVIEW

The Employer operates a shuttle van service whose primary function is to transport individuals to or from the airport to hotels or residences. (RD D&O p. 7). To operate at the airport the Employer receives a certificate from the Colorado Public Utilities Commission that describes the boundaries of the Employer's operational area, hours of service and the maximum flat fare (called a tariff) that the Employer can charge for this shuttle service. (RD D&O p. 7). As stated above, the Union has filed a petition to represent the drivers of these shuttle vans. (RD D&O p. 1).

At the time that it filed this petition and continuing to the present, the Union has represented taxi cab drivers who own, operate and drive taxi cabs for Union Taxi Cooperative ("UTC"). (RD D&O p. 26).

UTC is a non-profit cooperative, comprised of 262 drivers, each of whom drives taxi cabs. (T. 14, 72, 73, 75, 76; R. Ex. 3 §1.1; RD D&O p. 24). Like the van and other transportation services, these taxi cab services are subject to regulation under the Colorado Public Utilities Commission. (RD D&O p. 6; R. Exs. 15, 16). Pursuant to the Colorado Public Utility Commission regulations, UTC operates the taxi service under a different certificate than shuttle vans, as these certificates are provided to taxi services and the fare structure is based on mileage, rather than flat fares. (RD D&O p. 8).

UTC, in its bylaws, requires all taxi drivers to be members of the Union. (R. Ex. 2, ¶5).⁴ The Union, through its Local 7777, does not have a collective bargaining relationship with UTC. (RD D&O p. 25; T. 114-15). Nor does it process grievances on behalf of taxi drivers against UTC. (T. 115). However, it provides other representational

⁴ Local Union President Bolton acknowledged that if UTC wanted to change the membership requirement CWA could not stop or prevent it. (T. 128).

services for the taxi cab drivers including lobbying for legislation favorable to the drivers, meeting with parking enforcement officials when they believe that they are being singled out for ticketing, meeting with government officials regarding the cab drivers' licenses, meeting with airport officials concerning the cab driver's working conditions, accompanying cab drivers to court to assist in them in trespass tickets and protest activities where the drivers are denied the ability to use a certain facility. (RD D&O p. 26, 44; T. 105, 106-07, 114, 115, 116). Also, the Union promotes the use of union taxi drivers similarly to how it promotes use of products such as cell phones from unionized companies. (T. 112).

Each taxi cab driver pays monthly membership dues of \$28.00 to the Union. (RD D&O p. 25; see R. Ex. 31 at Bate Stamp 000016 -20; T. 73-74).⁵ UTC collects these dues from the drivers and then sends the total over to the Union on a monthly basis. (T. 38, 39, 73-74; R. Ex. 4; R. Ex. 31 at Bate Stamp 000016-20).⁶ These dues are intermingled with other Union received dues. (RD D&O p. 26; T. 85).

Since it began operating UTC has leased office space from the Local Union. (RD D&O p. 25; T. 20-21, 26). Currently, UTC pays monthly rent in an amount of \$1,000. (R. Ex. 1; R. Ex. 5; T. 95). This monthly amount includes payment of utilities and parking but not telephone. (T. 93, 95, 96) The Local Union set the monthly rent, with utilities after investigating the issue and determining that this was market value for leasing the space. (T. 83, 100, 118-19).

⁵ The membership and dues check off card was put into evidence, although no evidence was presented on whether any of the drivers signed it. (R. 31 at Bate stamp 000002).

⁶ As found by the Regional Director, the drivers do not pay an initiation fee. (RD D&O p. 26; T. 97). However, this fact is not significant since there is no evidence that any Union member is required to pay initiation fees.

At the time that this representation petition was filed, the only UTC owner/driver with any role with the Union was Abdi Buni. Abdi Buni was one of nine members on the UTC board of directors. (T. 58, 60, 61). He is also a paid organizer for the Local Union where he organizes drivers and others at the airport. (T. 85, 98, 108-09). As an organizer he is not assigned to represent the UTC drivers on their issues and does not participate in leadership meetings of Local 7777. (T. 97-98, 119-120). Should the Union prevail in this organizing drive the International and not the Local Union would negotiate the contract and assign the negotiators. (T. 124).

III. REGIONAL DIRECTOR'S DECISION ON DISABLING CONFLICT OF INTEREST

Initially, the Regional Director found that "SuperShuttle and UTC are, in fact competitors." (RD D&O p. 43). He based this conclusion on his factual finding that the Employer and UTC "compete for a finite number of licenses issued for passenger transportation in their overlapping Denver metropolitan territories." (RD D&O p. 43). As further evidence that the Employer and UTC were in competition, the Regional Director cited the situation when UTC "recently sought CWA's assistance in a dispute between UTC and SuperShuttle Denver at the downtown Hyatt Regency convention center hotel." (RD D&O p. 43).

Having found that UTC and the Employer were competitors, the Regional Director examined the relationship between UTC and the Union. Initially he found that the "facts do not establish that CWA has an actual ownership interest in UTC, similar to that present in *Baush & Lomb* [108 NLRB 1555 (1954)]; or that CWA's interests are analogous to the nurse registry operated by the union in *St. John's Hospital* [264 NLRB 990 (1982)]." (RD D&O p. 43). Nonetheless, he found that the Union had a "disabling

conflict of interest” because of the “inherent likelihood that CWA’s bargaining efforts on behalf of SuperShuttle Denver employees would be influenced by interests outside its representative capacity based on its relationship with UTC.” (RD D&O p. 43).

Though he found that the UTC relationship with the Union “is not easily defined within the framework of the above-cited Board cases” he found that the Union’s “involvement with UTC is most closely analogous to IAM’s involvement with MAS in *Alanis, supra.*” (RD D&O p. 44). He then acknowledged that in *Alanis*, the Board never reached the issue of whether “IAM’s involvement with MAS” caused a disabling conflict of interest. (RD D&O p. 44).

The Regional Director found that the lack of a collective bargaining relationship between the Union and UTC distinguished this case from those cases where “a union receives dues from members it represents in multiple bargaining units for employers competing in the same industry.” (RD D&O p. 45). In those cases, the dues were “primarily for representational activities involving the bargaining unit members’ relationship with their employer, not primarily for legal and lobbying matters with governmental entities, in a situation where no collective-bargaining relationship even exists.” (RD D&O p. 45).

But the “factor [the Regional Director found] most critical in the analysis of a disabling conflict of interest” was the “financial interest CWA has in the success of UTC by virtue of the per capital monthly fee it pays to the Union.” (RD D&O p. 45). He noted that these “monies are not used by CWA to defray the costs of traditional collective bargaining” but rather these monies go into the Union’s general fund as payment for

services to UTC that are unrelated to any obligation under the Act to represent the UTC drivers in their relationship with UTC.” (RD D&O p. 46).

He determined that “while the Union does not have a direct financial ownership stake in UTC, it still gains financially when UTC prospers, which is precisely the kind of conflict the Board warned of in *Bausch & Lomb* and *St. John’s Hospital and Health Center*.” (RD D&O p. 46). Thus he concluded that “everything the Union does to assist UTC in return for monthly fees it receives could have a significant impact on the Union’s representational capacity for the SuperShuttle Denver employees.” According to the Regional Director this is because the “nature of the industry in which UTC and SuperShuttle Denver compete is such that intervention on behalf of one entity can result in loss of business for another entity” such as “one company gaining vehicle certificates, while the other entity loses them.” (RD D&O p. 46).

On this basis the Regional Director held that the “form of assistance provided by the Union to UTC in exchange for monthly financial remuneration is in direct conflict with the single-minded representational purpose required of a bargaining representative, since the Union’s advocacy on behalf of UTC could have direct, adverse effects on the SuperShuttle Denver bargaining unit.” (RD D&O p. 47).

Having found that the Union had a “disabling conflict of interest” the Regional Director dismissed the petition.

IV. COMPELLING REASONS THAT WARRANT GRANTING UNION'S REQUEST FOR REVIEW

A. The Regional Director Erred On Substantial Factual Issues That Prejudiced His Conclusion That The Union Had A "Disabling Conflict Of Interest."

The Regional Director's factual findings that caused him to erroneously rule that the UTC and the Employer are competitors and that the Union had a "disabling conflict of interest" include:

1) Regional Director's Factual Finding: The Employer and UTC "compete for a finite number of licenses issued for passenger transportation." (RD D&O p. 43).

This statement is factually inaccurate. In fact, as shown by the Colorado Public Utility Commission regulations offered into evidence as Respondent Exhibit 16, the correct finding is that taxi cab carriers and shuttle van drivers are considered separately under Colorado law and do not compete for the same certificate.⁷

Common carriers are regulated in Colorado by the Colorado Public Utility Commission. There are five types of "common carrier" services under Colorado law: charter, limousine, sightseeing, taxi cab and scheduled carriers. *See* 4 CCR 723-6, provided at R. Ex. 16, at § 6203(a)(VIII)(B) (in its application seeking authority to operate as a common carrier, a company must state "the proposed type of service (*i.e.*, charter, limousine, sightseeing, taxi cab, or scheduled ...). Shuttle van service provided by the Employer are considered "limousine service" under Colorado law, while taxi cab service falls under its own category. "Limousine service" means the transportation of passengers charged at a per person rate, and the use of the motor vehicle is not exclusive

⁷ In this portion of his decision the Regional Director refers to the approval as a license though throughout the rest of his decision he correctly refers to it as a "certificate."

to any individual or group.” *Id. at § 6201(h)*. On the other hand, a “taxicab” is defined as “a passenger-carrying motor vehicle for public hire, with a maximum seating capacity of eight, operating on a call-and-demand basis, the first passenger therein having exclusive use of the motor vehicle unless such passenger agrees to multiple loading.” *Id. at §6001(uu)*. Further, “‘Taxicab carrier’ means a common carrier with common carrier certificate authorizing service by taxicab.” *Id. at § 6251(e)*. Indeed, the application for a certificate for a shuttle van driver requires different facts than the application for the taxi cab driver. *Id. at §6203(a)(XII)(XIII)(XIV)*.

For these reasons it is clear that since the certificates for a shuttle van driver and a taxi driver are different, they are not competing for the same finite number of certificates. Therefore the Regional Director erred when he relied on the finding that these different types of services showed that the taxi cab drivers and shuttle van drivers were competitors.

2) Regional Director’s Factual Finding: There was a “dispute between UTC and SuperShuttle Denver at the downtown Hyatt Regency convention center hotel.” (RD D&O p. 43).

This factual finding by the Regional Director is inaccurate. The only evidence regarding the Hyatt hotel issue was a single e-mail admitted into the record without any supporting testimony whatsoever. In an October 22, 2009 message, UTC General Manager Gudeta Barasso asked Local 7777 president Lisa Bolton for help in addressing an issue at the Hyatt Convention Center hotel where the hotel’s managers were allowing Yellow Cab managers into the hotel to solicit customers instead of allowing them to come out to the cab stand. R. Ex. 31 at Bate Stamp 000008. Barasso stated that he

approached Hyatt's managers but was told that Yellow Cab managers were only present to assist SuperShuttle customers. According to the e-mail, Barasso did not take issue with SuperShuttle getting the passengers. But he then wrote, "However, we have determined on Tuesday October 20, 2009 that yellow cab supervisors are all over the hotel talking to Hyatt's front desk personnel and customers inside the hotel lobbying customers to take either super shuttle or yellow cab. The same supervisors were calling yellow cabs from street to load customers while other taxi cabs are waiting on hotel's taxi stand." *Id.* Thus, it is clear that Barasso's complaint was not with SuperShuttle. Had he had an objection about SuperShuttle, he would have raised it with the Hyatt's managers when he met with them. Instead, Barasso's complaint was with the fact that Yellow Cabs were permitted to pick up passengers without having to wait like other taxi cabs – including those driven by UTC taxi drivers – were required to do. It is apparent that UTC did not contend that SuperShuttle was getting an unfair advantage over the UTC taxi cab drivers, and this clearly is not an example of competition between SuperShuttle's far less expensive shared-ride shuttle service and UTC taxi cab drivers' more expensive taxi cab service.

3) Regional Director's Factual Finding: The Union "assist[s] UTC in matters wholly unrelated to collective bargaining, and has a significant financial interest in the success of UTC" (RD D&O p. 45).

These factually findings are in error. First, the record evidence shows that the Union assists taxi cab drivers who are members of the Union. Moreover, as the UTC is nothing more than a conduit for the taxi drivers, it is the taxi driver-members, not the Union, that is receiving the benefits of the representation from the Union. UTC is a non-

profit cooperative. The revenues gained by the taxi drivers do not benefit the UTC but rather the drivers themselves.

Second, the Regional Director erred when he found that the Union has a “significant financial interest in the success of UTC.” There is no evidence that the Union receives any greater revenues dependent of the success of the taxi drivers. In fact the evidence shows the success of the taxi drivers is irrelevant in determining the amount of dues received by the Union from those drivers. Regardless of how successful each taxi driver is, UTC has a defined number of certificates – 262 – and only one driver can use each certificate. Further, the Union’s dues are a flat amount of \$28 per month for each driver. Thus, dues are not tied to revenues (taxi fares) that each driver receives. For these reasons the taxi drivers’ greater success would not cause an increase in revenues (i.e. dues) that the Union receives from the members.

It was on the basis of these factual findings that led the Regional Director to his erroneous determination that the Union has a financial interest in UTC that causes a “disabling conflict of interest.”

4) Regional Director’s Factual Finding: “UTC [pays a] per capita monthly fee . . . to the Union.” (RD D&O p. 45).

This finding is in error. The evidence shows that each taxi driver pays \$28.00 a month in dues to the Union. Like other employers, UTC merely collects these dues from each of the taxi cab drivers and then sends the total over to the Union on a monthly basis. This is no different than any dues check off type relationship.

It was this finding that led the Regional Director to conclude that the Union receives “monthly financial remuneration” from UTC.⁸ Clearly that conclusion is in error.

5) Regional Director’s Factual Finding: The Union “gains financially when UTC prospers.” (RD D&O p. 46).

For the same reasons described immediately above in paragraph number 4, the Regional Director erred when he found that when UTC prospers the Union gains financially. The Union’s receipt of dues from the taxi drivers is not contingent on the prosperity of the taxi drivers. Therefore, there is no factual support for the Regional Director’s conclusion that the Union’s bargaining efforts for the employees with the Employer would be influenced by “financial interests outside its representative capacity because of its relationship with UTC.” (RD D&O p. 46).

6) Regional Director’s Factual Finding: The Union’s “intervention on behalf of one entity can result in loss of business for another entity. This can take the form of one company gaining vehicle certificates, while the other entity loses them.” (RD D&O p. 46).

For the same reasons described above in paragraph number 1, this factual finding is in error. Since the certificates for the shuttle van drivers are different than the

⁸ The Local Union also receives a monthly rent check from UTC for the leasing of part of its building. However, the evidence undeniably shows that, after an investigation by the Union, the monthly lease amount UTC pays was at market rate for that type of property. This arms-length transaction would not support finding a disabling conflict of interest. *See Garrison Nursing Home*, 293 NLRB at 123 n.10 (fact that petitioning union’s executive director has a lease with an organization of nursing home administrators while trying to organize hospital, “we think it is highly unlikely that such a relationship could be used effectively to undermine collective bargaining between Employer and Petitioner.”). Indeed it did not form, in whole or even in part, the Regional Director’s erroneous conclusion that the Union received monthly financial remuneration from UTC.

certificates for the taxi drivers, the taxi drivers cannot gain certificates when SuperShuttle loses them.

Moreover, even if the Employer lost some or all of the certificates it has to operate the shuttle van service, there is no evidence to support the finding that the taxi cab drivers would gain such certificates. Allocation of certificates is done by the Colorado Public Utility Commission. It has the sole discretion to determine who receives such certificates. So if the Employer lost certificates and the Public Utility Commission decided to issue new certificates, there is no telling who would apply for such certificates and more importantly to whom the Colorado Public Utility Commission would transfer these certificates.

This factual error by the Regional Director was a primary basis for his conclusion that the Union would not have a “single-minded representational purpose” in representing the Employer’s employees. (RD D&O p. 47). As the Union does not gain financially if SuperShuttle fails, there is no factual basis for the Regional Director’s conclusion that the Union would not have the sole interests of the Employer’s employees in mind when it negotiated a collective bargaining agreement on behalf of these employees.

7) Regional Director’s Factual Findings: “Intervention by the Union on behalf of UTC could also take the form of one entity gaining a time advantage for curbside waiting at DIA, or for locations to park and wait for passengers in the downtown area, which is precisely the kind of intervention UTC was seeking from the Union in its dispute at the Hyatt.” (RD D&O p. 47).

Both of these findings are in error.

First, there was no evidence presented that established that either entity had the ability to gain a time advantage for curbside waiting at the airport. Indeed, there was not even any evidence to show that the taxi cabs and the shuttle vans waited and picked up passengers in the same area at the airport.

Second, the evidence shows that the dispute at the Hyatt was with another taxi cab company, Yellow Cab, not the Employer. *See* Paragraph Number 2, above; R. Ex. 31 – Bate Stamp 000008.

This factual finding was a basis for the Regional Director’s conclusion that such intervention could have a “significant impact on the Union’s representational capacity for the SuperShuttle Denver employees.” (RD D&O p. 46). As there is no evidence to support that the Union could interfere with the success of SuperShuttle, there is no basis to conclude that Union’s representational capacity of the Employer’s employees would be affected.

B. In Finding A “Disabling Conflict Of Interest,”
the Regional Director’s Legal Analysis Was In Error.

1. General Law on “Disabling Conflict Of Interest.”

In the first and the seminal case discussing a “disabling conflict of interest,” *Bausch & Lomb Optical Co.*, 108 NLRB 1555, 1559 (1954), the Board found that the certified union had a disabling conflict of interest where the “[u]nion actually controls and operates the company’s business [that] is in direct competition with the Respondent.” The Board based this decision on the potential effect during bargaining for a contract.

We believe that the Union by becoming the Respondent’s business rival has created a situation which would drastically change the climate at the bargaining table from one where there would be reasoned discussion in a background of balanced bargaining relations upon which good-faith

bargaining must rest to one in which, at best, intensified mistrust of the Union's motives would be engendered.

Id. at 1561.

Since *Bausch & Lomb*, the Board cases concerning a “disabling conflict of interest” have broken into two categories:

(1) Cases like *Bausch & Lomb* where the Union itself owned and operated a business that competed with or provided services to the respondent employer. See *St. Johns Hospital and Health Center*, 264 NLRB 990, 992-93 (1982) (“a union may be disqualified from representing an employer’s employees when an enterprise controlled and dominated by the union engages in business with employer as well as when union engages in direct competition with employer.” In that case the union sought to organize hospital while operating a nurse registry that provided nurses to that hospital);

(2) Cases where the potential conflict of interest is that of an agent of the Union who is involved in collective bargaining. See *Harlem River Consumers Cooperative, Inc.*, 191 NLRB 314, 317, 319 (1971) (two union agents who have financial stake in competitor and were not involved in collective bargaining did not cause conflict of interest but a third union agent who had jurisdiction to collectively bargain for respondent’s employees had disabling conflict where “his business provides goods to respondent employer and competitors [and thus] he may be tempted to make demands in bargaining that further those interests;” *Pony Express Courier Corp.*, 297 NLRB 171 (1989) (union founder and business agent may make bargaining demands or be willing to grant concessions that would subordinate employees’ interests to those of his personal consulting business.); *Beverly Enterprises – North Dakota, Inc. d/b/a Garrison Nursing Home*, 293 NLRB 122, 123-24 (1989) (financial relationship between Union’s Executive

Director, who holds large promissory note with respondent employer, is “fraught with the possibility that negotiations between them concerning the payment of the note, including the terms of the offset might affect the collective bargaining relationship process.”)

“The crucial focus of analysis in these cases is bargaining representatives’ ability to pervert the collective-bargaining process, by operating through that process to directly promote interests ulterior to those of fairly and single-mindedly representing employees with whom those bargaining representatives are bargaining.” *Western Great Lakes Pilots Ass’n*, 341 NLRB 272, 282 (2004). Moreover,

[T]he Board and Courts have exercised great care whenever confronted with claims of conflict of interest on the part of bargaining representatives. They impose ‘a considerable burden on a non-consenting employer ... to come forward with a showing that danger of a conflict of interest interfering with the collective bargaining process is clear and present. Hypothesis and speculation are not a sufficient foundation on which to erect a barrier against bargaining.

Id. at 282 (quotations and citations omitted). *See also Alanis Airport Services*, 316 NLRB 1233, 1233 (1995) (“In order to find that a union has a disabling conflict of interest the Board requires a showing of a ‘clear and present’ danger interfering with the bargaining process. The burden on the party seeking to prove this conflict of interest is a heavy one.”). Here, the Regional Director erred in finding that the Employer met its “considerable [and heavy] burden.” *Western Great Lakes Pilots*, 341 NLRB at 282.

As the Regional Director acknowledged in his decision, the record does not support a finding that the Union owns and operates a business that competes with or provided services to the respondent employer. (RD D&O p. 43). Moreover, there is no evidence to support or suggest that the second category of cases applies – where an agent of the Union who is involved in collective bargaining with the Employer also has an

ownership interest in a competitor. Here, the only owner of the business who works for the Union is Abdi Buni. Buni is just one of 262 owners of the business and one of nine members of the UTC Board of Directors. He also works as an organizer for the Local Union. But there is not a scintilla of evidence that Buni would be involved in collective bargaining with the Employer. Indeed, the International, not the Local Union, negotiates the contract.

2. The Regional Director's Legal Analysis Was In Error.

Initially, the Regional Director concluded that UTC and the Employer were competitors. This legal conclusion is wrong for a number of reasons.

Unlike the Employer, UTC is not a for-profit business. Rather it is a non-profit cooperative comprised of independent contractor taxi drivers. The UTC is just a vehicle for each of the taxi drivers to pool resources so that they can get work. UTC "operate[s] on a service-at-cost basis for the mutual benefit of its members." R. Ex. 3, Article VII, § 7.1. After expenses for the pooled resource, the balance of any gross receipts is distributed back to the taxi drivers who created it. R. Ex. 3, Article VII, §7.2(a)(iv) and (c). Thus, it is the individual taxi drivers, not the UTC, who gain when the taxi drivers get more work.

Further, as the taxi drivers operate a different type of service than the shuttle van drivers with different fare structures, they are not directly competing for the same customers. The taxi drivers are, as the Public Utility Commission regulations make clear, used by individuals seeking "exclusive use of the motor vehicle" at a per mile fare rate. The shuttle vans are a shared ride at a flat fee regardless of destination. The taxi cab drivers actual competition is with other taxi cabs, not the shared-ride shuttle vans.

Since the Employer cannot meet its heavy burden to show that the taxi cab drivers directly compete with the Employer, there can be no finding that the Union would have a “disabling conflict of interest.”

But even if the Employer could prove and the Regional Director was correct, that UTC and the Employer are direct competitors, the Regional Director’s finding that there was a “disabling conflict of interest” was in error.

Underlying the Regional Director’s decision were two points: that the Union had a financial interest in the success of the taxi drivers at the expense of SuperShuttle and that the Union did not have a traditional collective bargaining relationship in its representation of the taxi cab drivers.

As stated earlier, the Union has no financial incentive for SuperShuttle not to succeed. The number of taxi drivers working under the UTC banner and the amount of membership dues each of these set number of taxi drivers pays are the same whether or not SuperShuttle is successful.. Therefore, contrary to the Regional Director’s conclusion, the dues that the Union receives from these taxi cab driver members would no impact on how it represents the van drivers of SuperShuttle. Indeed, the fact is that the Union would prosper more if it organized SuperShuttle and negotiated a collective bargaining agreement as it would have more members paying membership dues. Therefore, this case does not rise to the level of cases like *Bausch & Lomb* and *St. John’s Hospital and Health Center* as those cases dealt with entities where the Union had a financial stake in a business. Here, as the Union has no financial stake in the success of UTC, there is no basis to find, as the Regional Director erroneously did here, that the Union would not

have the single-minded purpose of representing the SuperShuttle van drivers in collective bargaining.

The Regional Director further erred when he found legal significance in the fact that since the Union does not have a traditional collective bargaining relationship with UTC, this case is distinguishable from the situation where the Union represents employees of direct competitors in the same industry. (RD D&O p. 45).

As the Board noted in looking at the latter situation, it “does not present such an ‘innate danger’ to the bargaining process that the Board could justify limiting employees’ statutory rights of free choice.” *CMT, Inc.*, 333 NLRB 1307, 1308 (2001). The same is true where, such as here, the Union provides representational services for other members that does not include collective bargaining and grievance processing under a collective bargaining agreement.

There is no case law to support the Regional Director’s conclusion that the Union must have a traditional collective bargaining relationship with each entity to find that the Union can represent members working for different entities within the same industry and not create a conflict of interest. Indeed, this Union’s relationship with these independent contractor taxi cab drivers is not unique and hardly diminishes its role as a representative for these members. For example, other unions, such as the Musicians Union, have members who are independent contractors and for whom the union may not have a traditional collective bargaining relationship. *See, e.g., American Federation of Musicians of U. S. and Canada v. Carroll*, 391 U.S. 99 (1968). As the Supreme Court noted in *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978), “labor’s cause often is advanced

on fronts other than collective bargaining and grievance settlement within the immediate employment context.”

The Regional Director also erred by relying on the Board’s decision in *Alanis Airport Services*, 316 NLRB 1233. The Regional Director’s reliance on that case fails for two reasons.

First and foremost, the Board in *Alanis* never found, or even suggested that the facts in that case would lead to the conclusion that the Regional Director reached here – that there was a “disabling conflict of interest.” Rather, the Board found that the claim was premature and any party could raise it in the future “if there is a change in circumstances.” *Id.* at 1234.

Second, even if one could interpret *Alanis* as finding that, if the alleged competitive business came to fruition there would be a “disabling conflict of interest” it would be inapplicable. Contrary to the Regional Director’s finding that the “analysis in *Alanis* is instructive because the facts regarding [that union’s] involvement with [the potential competitor] are similar to CWA’s involvement with UTC.” (RD D&O p. 41). However the union’s involvement with the potential competitor in *Alanis* is not similar to CWA’s involvement with UTC.

Significantly, in *Alanis*, two of the 55 owners of the potential competitor were the president and secretary-treasurer of the union and they also made up 40% of the potential competitor’s board of directors. *Id.* at 1233. In other words, *Alanis* had the potential to fit into the second category of cases described above – those where the where an agent of the Union who is involved in collective bargaining with the Employer also has an ownership interest in a competitor.

Here, however, there is no one in a leadership position with the Union or its Local who is also an owner or director of UTC. Unlike in *Alanis*, no employee of the Union, the collective bargaining representative that would select the negotiators and bargain the contract if the employees prevailed in an election, has any ownership interest or decision making role with UTC. It is true that the Local Union has an organizer who is one of 262 owners of UTC and one of one of nine directors on UTC's board. But the evidence shows that the organizer is not involved in a leadership role, collective bargaining or representational issues for the Local Union, let alone the Union.

Accordingly, the Regional Director's holding that "the form of assistance provided by the Union to UTC in exchange for monthly financial remuneration is in direct conflict with the single-minded representational purpose required of a bargaining representative" is wrong as a matter of fact and of law. As explained above the Union does not receive monthly financial remuneration from UTC. It receives membership dues from taxi cab drivers who are members of the Union. Further, its representation, through lobbying and other activities is to benefit the taxi drivers not UTC.

To conclude, as the Regional Director does, that the Union, if selected through an NLRB election to represent the shuttle van employees, would not have the single minded purpose in fairly representing them is not supported by the record but rather is pure hypothesis and speculation. However, "[h]ypothesis and speculation are not a sufficient foundation on which to erect a barrier against bargaining." *Western Great Lakes Pilots*, 341 NLRB at 282.

The Employer's employees made a choice to seek exclusive representation with the Union. The Employer's attempted road block to the employee's choice

should not be allowed to stand. As the Board stated in *CMT, Inc.* 333 NLRB at 1309, “the employees are in the best position to decide if representation by the Petitioner will serve their interests and will make that decision by casting their ballots for or against the Petitioner in the representation election.”

V. CONCLUSION

For each and all of these reasons, the Union’s Request for Review should be granted. The Regional Director’s finding that the Union has a “disabling conflict of interest” should be reversed and an election ordered among the Employer’s employees.

Respectfully submitted,



March 12, 2010

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of March, 2010, I electronically filed a true and correct copy the **Union's Request For Review, Certificate of Service, and all portions of the record cited in this brief as required under section 102.67 of the board's rules and regulations** with the NLRB's E-file, electronic filing system.

A true and correct copy of the foregoing and a Certificate of Service was sent via e-mail to:

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Regional Director's Decision and Order

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

SUPERSHUTTLE INTERNATIONAL DENVER, INC.,¹

Employer,

and

Case No. 27-RC-8582

COMMUNICATIONS WORKERS OF AMERICA,

Petitioner.

REGIONAL DIRECTOR'S DECISION AND ORDER

On December 11, 2009, Communications Workers of America (CWA or Union), filed a petition seeking to represent the shuttle van drivers employed by SuperShuttle International Denver, Inc., (SuperShuttle Denver or Employer) in its Denver, Colorado metropolitan area operations.

The Employer contends that this representation petition should be dismissed on the basis that the shuttle van drivers whom it calls "unit franchisees," are independent contractors, not employees within the meaning of Section 2(3) of the Act. The Employer also argued for the first time in its post-hearing brief that the unit franchisees are statutory supervisors under Section 2(13) of the Act because they have the ability to hire relief drivers under their franchise agreements. Finally, the Employer contends

¹ The legal name appears as it was identified throughout the record..

that the petition must be dismissed on the basis that CWA is disqualified from representing the unit franchisees because a disabling conflict of interest exists by virtue of CWA's relationship with Union Taxi Cooperative.

As discussed fully below, I find that the Employer has failed to meet its burden of establishing that the shuttle van drivers are independent contractors based on the analytical framework enunciated by the Board in *Roadway Package System, Inc.*, 326 NLRB 842 (1998) and *Dial-A-Mattress Operating Corporation*, 326 NLRB 884 (1998). I also conclude that the record before me is insufficient to make a determination regarding the supervisory status of the unit franchisees since the Employer did not raise, and the parties did not litigate, the supervisory issue at the hearing. See e.g., *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001).

I do, however, find merit to the Employer's contention that the petition must be dismissed because of the Union's unique relationship with Union Taxi Cooperative. Specifically, I find that relationship constitutes a disabling conflict of interest because it conflicts with the requirement of the Act that a collective-bargaining agent must have a "single-minded purpose of protecting and advancing the interests of unit employees." See, e.g., *St. John's Hospital and Health Center*, 264 NLRB 990 (1982), and the cases cited therein.

STATEMENT OF THE CASE

A hearing was held on December 28, 2009, and January 7, 8, and 12, 2010, in Denver, Colorado, before Todd Saveland, a hearing officer for the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has

delegated its authority in this proceeding to me. Petitioner seeks to represent the following bargaining unit:

INCLUDED: All full-time and part-time shuttle van drivers employed by the Employer in its Denver, Colorado operations.²

EXCLUDED: All other employees, confidential employees, professional employees, managers, guards, and supervisors as defined by the Act.

Upon the entire record in this proceeding, I make the following findings:

1. **Hearing and Procedures:** The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** The Employer, SuperShuttle International Denver, Inc., a wholly owned subsidiary of SuperShuttle International, Inc., maintains an office and principal place of business in Denver, Colorado, and is engaged in the passenger transportation industry. The Employer annually, in the course and conduct of its business operations, purchases and receives goods and materials valued in excess of \$50,000 at its Denver, Colorado facility from points located directly outside the State of Colorado. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. **Claim of Representation:** The labor organization involved, Communications Workers of America, is a labor organization within the meaning of the Act.

² There is no evidence that SuperShuttle Denver has any "part-time" drivers. Rather, the record establishes that approximately 14 "relief" drivers have been screened and approved to drive vans if the unit franchisees elect to take time off. Since the record is devoid of evidence regarding the frequency with which any of the relief drivers are utilized by the unit franchisees, these relief drivers may, at best constitute casual drivers. I am declining to make any findings on this issue on the basis of my decision to dismiss the petition on other grounds.

4. **Statutory Question:** Based upon the record, no question affecting commerce exists concerning the representation of the laborers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

EMPLOYER'S TRANSPORTATION OPERATIONS

A. Background

Historically, SuperShuttle International, Inc., directly hired shuttle van drivers in various cities and airport markets throughout the United States. In approximately 1998, SuperShuttle International began transitioning from a direct hire business model to a franchise business model. The transition began on the East Coast and moved westward. The transition was completed by 2002. The record establishes that this transition process included elimination of shuttle van driver bargaining units through effects bargaining in New York, Washington DC, Baltimore, Los Angeles, Phoenix, and Austin, Texas.³ There is no evidence, however, that the Board, either at the time of the transition, or subsequently, has been called upon to make any findings related to whether the shuttle van drivers constitute independent contractors under the new franchise business model.

Under the franchise business model, SuperShuttle International is the owner and holding company of the registered trademarks and proprietary systems used within the entire SuperShuttle system. SuperShuttle Franchise Corporation is a subsidiary of SuperShuttle International, as is SuperShuttle Denver.⁴ Companies such as SuperShuttle Denver (referred to as "city licensees"), enter into a license

³ The record establishes that the Austin, Texas bargaining unit had actually been represented by CWA, which still represents dispatchers and curb agents in that location.

⁴ SuperShuttle Denver is actually owned by Veolia Transportation on Demand, Inc., which is characterized as the largest private transportation company in North America. Veolia also operates Colorado Cab Company in Denver under the Yellow Cab label.

agreement with SuperShuttle International and SuperShuttle Franchise Corporation for the use of the SuperShuttle trademarks in their respective territories or market areas. These territories or market areas may involve a license to serve a particular airport, or metropolitan area. SuperShuttle Denver is licensed to serve Denver International Airport from surrounding the Denver metropolitan area, including Golden, Colorado. SuperShuttle International has licensed another entity to serve the Boulder, Colorado area. The city licensees, in turn, enter into sublicense franchise agreements with shuttle van drivers to use the SuperShuttle systems and trademark, and to provide transportation services in the applicable market. These van drivers are called "unit franchisees."

B. Regulatory Scheme

The passenger transportation industry is highly regulated at the state and federal levels, as well as by local airport authorities. Thus, both SuperShuttle Denver and Union Taxi Cooperative (UTC) are subject to regulation by the Colorado Public Utility Commission, which has adopted many Federal Department of Transportation regulations, and Denver International Airport. SuperShuttle Denver is also subject to Federal Trade Commission franchise regulations.

1. FTC regulations:

SuperShuttle Franchise Corporation is the master franchisor for both the city franchisees and driver unit franchisees. All of the franchises issued by SuperShuttle Franchise Corporation are regulated by the Federal Trade Commission (FTC). SuperShuttle Franchise Corporation is also subject to state agency franchise regulations in thirteen states, excluding Colorado. FTC requires that prior to any franchise being offered to a prospective franchisee, they must be

provided a franchise disclosure document, which needs to comply with the FTC franchise law disclosure regulations, or applicable state law. Each city's franchise disclosure document is customized to specific state and city permit requirements, and airport authority requirements. The preparation of the franchise disclosure document is subject to annual review and updating to maintain compliance with changes in FTC regulations.

Under current FTC regulations, there are 23 elements that must be disclosed including: parent company information; the city licensee's business structure; date of formation of the legal entities; business experience of the officers and directors of Franchise Corporation and city licenses; any litigation involving either the parent company or city licenses; airport contracts; contact information for any current or former franchisee, any fees that a franchisee is obligated to pay under the terms and conditions of the franchise agreement; any initial startup costs such as the purchase of the franchise or acquisition of a vehicle, and any risks associated with the franchise.

2. Colorado Public Utilities Commission:

SuperShuttle Denver and UTC are both subject to regulation and oversight by the Colorado Public Utilities Commission (CPUC), and their operations are governed under CPUC Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6. SuperShuttle Denver and UTC have been issued certificate numbers by CPUC, authorizing them to engage in the "Transportation of Passengers and their Baggage." SuperShuttle Denver is authorized to operate 86 vans and UTC is authorized to operate 262 taxicabs.

SuperShuttle Denver's certificate specifically describes the boundaries and distances of SuperShuttle Denver's operational area, and the hours of service. There is also a tariff component which sets the maximum flat fares (called tariffs) SuperShuttle Denver can charge. The flat-rate fares range between \$19 and \$33 within the Denver metropolitan area and are set by CPUC based on zip codes. The flat-rate fares outside the Denver Metropolitan area range from \$39 to \$100. Unit franchisees are given a detailed fare chart with established fares for the entire area served by SuperShuttle Denver. SuperShuttle Denver occasionally issues discount coupons through direct mail or offers discounts through discount cards offered by chain stores. Drivers must honor this discounts, but are not allowed to offer their own discounts. Drivers also are not allowed to raise fares if customers are quoted inaccurate fares by SuperShuttle reservations system and have been issued "default letters" for attempting to do so.⁵

Under its current certificate, SuperShuttle Denver has been granted the authority to engage in four specific types of activities. SuperShuttle Denver is authorized to engage in door-to-door residential operations involving the transportation of passengers to and from DIA, or from their residence to other drop off locations such as hotels. SuperShuttle Denver also has the authority to pick up passengers in downtown Denver and transport them to Denver International Airport (DIA) or to other downtown locations. This is referred to as "call-on-demand, " or "point-to-point" authorization. SuperShuttle Denver's certificate also requires it to engage in scheduled pick up services at about eight specific hotels in downtown Denver. SuperShuttle Denver must file a hotel time schedule with the CPUC, and abide by

⁵ The system of driver default letters is discussed *infra* at pages 14-16.

that schedule or risk losing its certification, and it must petition the CPUC to change the downtown hotel service locations, or to raise fares for any of these three types of operations. Finally, SuperShuttle Denver is authorized to engage in charter operations to areas outside the Denver metropolitan area.

UTC and other taxi companies operate under certificates which contain fare structures based on mileage, rather than flat rates. UTC is licensed to operate its 262 taxicabs in the City and County of Denver, and serve DIA.

CPUC regulations govern both SuperShuttle Denver and UTC relating to qualifications of drivers, signage requirements, requirements related to the vehicles including, size, age, maintenance, and numerous other items designed for protection of the public.⁶ In this regard, CPUC has adopted by reference, and incorporated various Federal Department of Transportation (DOT) regulations related to qualifications of drivers, maximum driving times, and medical fitness examinations.

3. Denver International Airport:

The rules governing the operations of SuperShuttle Denver and UTC at Denver International Airport (DIA) are set forth in DIA Regulation Manual, Section 100 Ground Transportation Rules and Regulations. DIA requires that any vehicle operating under a license to pick up and drop off passengers must have a transponder on the vehicle which records the time the vehicle arrives at the airport and leaves the airport, as well as the time the vehicle is at the curbside actively picking up or dropping off passengers, or waiting in the holding area. The transponder is called an "automated vehicle

⁶ The CPUC regulations even include a requirement that drivers be courteous to the public they serve.

identifier," and it is used by DIA to assess monthly fees based on the length of time a vehicle was on DIA property. These fees are called AVI fees. DIA bills SuperShuttle Denver for the AVI fees of its vans on a monthly basis, and SuperShuttle Denver, in turn, deducts the AVI fees from the unit franchisees' settlement checks. While the UTC taxis must also be outfitted with transponders and are assessed AVI fees by DIA, the record is silent as to whether UTC or the individual taxi operators are billed.

C. SuperShuttle Proprietary Systems

SuperShuttle International operates a nationwide reservations system and an automated dispatch system. The reservation system is comprised of two national reservation centers where there are telephone call takers. One is located in Tempe, Arizona, and the other is located in Tampa, Florida. SuperShuttle International also operates an online reservation system. This enables customers around the nation to make reservations either via talking to a live agent or booking reservations online. These reservations are automatically transmitted to the SuperShuttle dispatch system (SDS) for the specific city or market. The reservation will specify the date, time, location, and number of passengers for pick up. The SDS groups the reservations by date, and in chronological order for the time of day. Each van is equipped with a Nextel phone system which informs the van driver of available reservations.

Each van is also required to be outfitted with SuperShuttle's proprietary GPS monitoring system, which allows the city licensee to monitor the whereabouts of the shuttle vans at all times. In this regard, the dispatchers can monitor whether a van is parked in the driver's home driveway, or at a pick up or drop off location, and what route the driver is taking. The GPS tracking system also tracks

the speeds at which the vans are being driven. SuperShuttle Denver receives a weekly GPS vehicle speed report which sets forth the van number, dates, and the number of times the van was clocked traveling at speeds for each of the following ranges: 70-74.9 mph; 75-79.9 mph; 80-84.9 mph; and 85 or higher.

The unit franchisees are either assigned downtown hotel runs or door-to-door (DTD) service. The DTD van drivers are required to turn on their Nextel phone system two hours before they are scheduled to start driving, to see what reservations are available. The dispatch system automatically transmits potential trips to the Nextel phone system when it is activated. The DTD driver reviews the list of available trips, which include the pick up and drop off locations, number of passengers, number of stops, and total fares for the pick up. The driver has a 60-90 second window to bid on a trip, pass on a trip, or do nothing. If the driver bids on the trip, the SDS assigns the trip to that particular vehicle, and the vehicle proceeds to provide the service. After drivers drop off their passengers, they reactivate the Nextel phone system and the process starts over.

If a driver passes, that trip is automatically transmitted to the next driver in the vicinity of the pick up. Similarly, if the driver does not specifically bid or pass on a trip, after the time elapses, the trip passes to the next available driver. DTD drivers are automatically assigned customers by the computer system if they are available and no DTD driver bids on that run. If no DTD driver can be assigned to a customer, SuperShuttle Denver sends a Yellow Cab from its sister cab company and absorbs the cost difference.

Both downtown Denver hotel run drivers and DTD drivers can also be dispatched by the local dispatchers for "ASAP reservation" when a passenger

needs to be picked up immediately to make a flight time, or if for some reason a van is late for a scheduled pickup. Under these circumstances, a unit franchisee is subject to a fine if they refuse the ASAP dispatch.

D. Denver Management Hierarchy

The area general manager for SuperShuttle Denver is Ross Alexander. The day-to-day operations are overseen by general manager Michael Legette. Legette works at the Employer's Denver facility located at I-70 and 41st Avenue. That facility houses the sales, "cash-in," quality assurance, and dispatch departments. Legette is responsible for overseeing the daily operations in the four named departments, and Employer's ticket counter operations at Denver International Airport (DIA). Legette also oversees the franchise drivers.

The "cash-in" department reconciles the shuttle van driver weekly passenger manifests and issues driver settlement checks. The van drivers go to that facility approximately once a week to pick up their settlement checks, upcoming schedules, and any memoranda issued by the Employer.

The quality assurance department is responsible for monitoring the entire dispatch system for compliance with regulations and guest service standards. The quality assurance employees conduct random telephone surveys of guests, review guest comment cards, investigate complaint calls and letters, and conduct the "mystery rider/quality observer" program. This department also conducts bi-monthly vehicle inspections and has the right to conduct additional inspections upon 12-hours verbal or written notice.

The dispatch operations are overseen by the Director of Unit Franchising (also referred to as "franchise manager"), David Schmidt, who reports directly to

Legette. Reporting to Schmidt are four “managers-on-duty” referred to as MODs.⁷ These four managers are assigned to various shifts to cover the 24 x 7 dispatch operations. The current MODs are Alan Russell, Sean Steiner, Sean Frere, and fourth unnamed MOD who recently replaced James Kummerow.⁸ The dispatchers are responsible for monitoring the radio and shuttle van GPS systems of drivers assigned to do door-to-door pick-ups, the drivers assigned to the downtown Denver hotel circuit, and the vans at DIA engaged either actively in curbside drop offs or pick ups or awaiting dispatch in the DIA holding area.

E. Unit Franchisees’ Terms and Conditions of Employment

1. Unit Franchise Agreement:

SuperShuttle Denver currently has 86 unit franchisees. These unit franchisees annually sign a Unit Franchise Agreement (UFA). The UFA is between SuperShuttle Denver and an individual driver, or a legal entity such as a partnership or limited liability corporation formed by a driver. A unit franchisee is not allowed to enter into more than one UFA, or have more than one van. The UFA states that the city licensee “strongly recommends that Franchisee form a business entity to act as the Franchisee and obtain a tax identification number from the Internal Revenue Service.” Despite this encouragement, the evidence establishes that there is only one unit franchisee who has formed and LLC, and that occurred in November 2009. The UFA contains a section designed to specify the unit franchisees’ hours of operation for either an “AM Franchise,” “PM Franchise,” or “Overnight Franchise.” Many of the UFAs entered into evidence, however, did not have the some or all of the spaces in this section

⁷ The Employer uses the term “manager-on-duty interchangeably with “manager of dispatchers.”

⁸ Kummerow now works at the Employer’s DIA ticket counter operation.

completed. The current annual franchise fee is \$1000, although the boilerplate UFA sets that amount at \$3500. The unit franchisee also is required to pay the annual \$250 fee for the CPUC application for a vehicle decal. Finally, while the UFA provides that neither party has the right to renew the agreement, there is no evidence that SuperShuttle Denver has ever refused to renew a UFA. Unit franchisees regularly continue to operate under expired agreements until such time as SuperShuttle Denver provides them with a successor UFA.

By executing the UFA, the unit franchisee agrees to purchase or lease a van meeting specification as to make, model, color, size, age, and mechanical condition. Approximately half of SuperShuttle Denver's 86 unit franchisees own their own vehicle. The UFA also provides that the unit franchisee agrees to use "all equipment, signage, uniforms, and services" approved by SuperShuttle International, which "shall be purchased from suppliers designated or approved by the city licensee." Unit franchisees agree to orientation and training on SuperShuttle systems, and to any training required by the licensing authorities.

The UFA provides 25 bases for termination of the franchise "with notice and no opportunity to cure." The record reflects that SuperShuttle Denver has only exercised this right three times in recent years. The record does not disclose the circumstances under which the right was exercised. The 25 bases for termination without an opportunity to cure fall into two broad categories. The first category includes breaching the UFA by such conduct constituting express default of the terms of the agreement such as failure to pay franchise fees; unauthorized transfer or assignment of the UFA; unauthorized use of trademarks or trade secrets; seizure of the vehicle by a government official or repossession by a creditor; suspension or termination of any

licenses or certifications; entering into an employment or business relationship with a competitor; felony convictions for conduct reflecting unfavorably on SuperShuttle, under reporting revenue to the city licensee, using unauthorized relief drivers; and obtaining business at the expense of the city licensee.

The second category of breaches which can result in immediate termination of the UFA include items related to on-the-job conduct of the unit franchisees such as receiving excessive traffic citations; being involved in an excessive number of accidents, or in an accident resulting in serious property damage and/or bodily injury; receiving an excessive number of customer complaints; falsifying trip sheets, credit card receipts or training and driving records; testing positive for drugs or alcohol; or violating the city licensee's accessibility, violence, harassment and discrimination policies.

Finally, the UFA provides that certain breaches of the UFA will result in "notice and opportunity to cure." The UFA does not specifically enumerate these items but characterizes them as "noncompliance with any requirement in the Agreement or the Manual or prescribed by the City Licensee."

2. Event reports, default letters, and fines:

The dispatchers, MODs, and franchise managers use the so-called "event report" form to record any unusual conduct or event involving the shuttle van drivers. These event report forms are filled out by whomever is involved with the driver, and can form the basis for a subsequent default letter. The event report indicates the date and time of the event, who filled out the form, the name and van number of the involved driver, and a description of the event. If the "event" involves a specific customer, a block of information related to the customer is also filled out. There is also an "action taken" section at the bottom of the form. That section was left blank on most of the

event reports entered into evidence. The event reports are also used to record customer complaints about a discourteous driver or poor driving; unauthorized loading of passengers assigned to a different van; failure to timely bid on to Nextel system at shift start, or quitting before the end of shift; failure to report for work for a given shift; and altering the fares quoted by SuperShuttle Denver for specific passengers. The event reports are also used in instances where dispatchers make mistakes costing the drivers fares, such as dispatching two vans for the same pick up. The drivers are then made whole for the amount of the fare based on the dispatcher's error.

The driver misconduct event reports often result in the Director of Unit Franchising sending the unit franchisees a form letter constituting "official notification" of default of the UFA. These form letters have a section which is filled in for the event at issue, stating the date of default, type of default, and UFA article at issue.⁹ The vast majority of the default letters refer to Article 4, Operations by Franchisee, Section F Reservations, Dispatch, Cashiering, and Vouchers. Some of the letters also contain a brief narrative of the event at issue. The letters end with the boilerplate statement: "This notice falls under 'With Notice and Opportunity to Cure,' as such, any further violations may result in the termination of your Unit Franchise." Examples of infractions listed on the default letters entered into evidence include no call/ no show; failure to report for or abandoning shift; failure to follow dispatch procedures; self-dispatching; driver not in uniform; failure to provide 60-day inspection; failure to comply with cashiering and reporting requirements; and a variety of unsafe driving complaints.

The Employer reserves the right to fine unit franchisees for violating certain policies. On January 23, 2009, the Employer issued a memo reminding the drivers of

the following fine schedule: \$50 fine for "rolling-off" early without MOD approval; \$100 fine for working on unscheduled days without approval of franchise manager; \$100 fine for no show on a scheduled shift; \$50 for being out of uniform; and \$50 for vehicle condition not meeting standards. It appears, however, that the Employer infrequently issues fines to unit franchisees because, while there were dozens of event reports and default letters entered into evidence, only about five of the event reports state that a fine was being assessed.

3. Financial remuneration:

Under the franchise agreement, drivers franchised for AM and PM Shifts are obligated to pay 38 percent of their revenue for transporting passengers to the Employer. Drivers franchised for Overnight Shifts are required to pay 28 percent of their revenue. Drivers "cash out" on a weekly basis by submitting their daily passenger manifests to the cash-in department. These manifests set forth the number of passengers, dollar amount of fares received, whether that revenue was from cash, credit cards, or SuperShuttle's prepaid systems including airport counter tickets or on-line vouchers, and whether the fares were discounted based on coupons issued by SuperShuttle Denver. The Employer then reconciles the drivers' manifests, deletes fees owed to SuperShuttle Denver by the drivers including annual franchise payments if the driver elects to use a payment plan to distribute these payments over the course of the year, vehicle leases if the driver does not own the vehicle, vehicle liability insurance payments, and DIA AVI fees, and either issues a check, or informs the driver of the amount needed to be

⁹ The event report "action" section may also state that a default letter would issue.

tendered to SuperShuttle Denver. Typically the drivers do not turn in cash because their paper receipts from voucher payments are at least equal to the 38 percent of the weekly fares owed to SuperShuttle Denver.

The Employer does not do any tax withholding, nor does it issue W-2 forms to the drivers. The drivers are responsible for any speeding, parking, or other traffic enforcement tickets used by authorities including DIA. The drivers also pay for all of their gasoline and maintenance expenses. They do not park the vans at the Employer's facility when not in use, but park their vehicles at their homes or make other parking arrangements.

4. Vehicles:

About half of SuperShuttle Denver franchisees own their own vehicle. The rest lease vans through Veolia Transportation. Leased vehicles must be maintained by Yellow Cab's maintenance facility. The vehicles must comply with specifications set forth in the Unit Franchise Operations Manual. The specifications include the requirement that the vehicle be painted "SuperShuttle Blue" or white. If unit franchisees want their vans to be blue, they must obtain the blue paint formula specifications from the Employer. Blue vehicles must also meet the yellow decal specifications. If the van is white, the unit franchisee must display the trademark blue and yellow decals. The vehicle interiors must be blue or grey. Vehicles must be replaced when there are either five years old or exceed 450,000 miles. Finally, the vans must be specified Dodge, Ford or Chevrolet models, and must be outfitted with seat belts for eight passengers, unless special permission is obtained.

The only restriction on personal use of the vans is a prohibition on use of a SuperShuttle-marked vehicle for transportation service for another company or as a side transportation business by the unit franchisee. There is no restriction on personal use of the vans for family, day-to-day, or vacation transportation, or on who may be allowed to drive the vehicle when it is not in service for SuperShuttle Denver. There is also no restriction on using the vans for personal businesses unrelated to the transportation of passengers.

Unit franchisees must also abide by a number of policies related to their vehicles. These include restrictions on driver cell phone use, customer and driver seatbelt requirements, and rules regarding stowage of luggage. Drivers are specifically prohibited from stowing laptop computers in the luggage compartment because of past damage liability.

5. Uniforms:

Franchisee drivers are responsible for providing their own uniforms, and order and purchase them through a specified vendor. The specifications regarding what the uniforms will look like and what trademark patches the drivers must wear are contained in the Unit Franchise Operations Manual. City licenses are allowed to institute their own uniform policy by narrowing the choices contained in the Operations Manual uniform policy. The uniforms allowed can either be a blue SuperShuttle Denver polo shirt with khaki pants or shorts; or plain white collared dress shirt or blouse and black pants. All drivers must wear dark dress shoes with dark socks or stockings, and men or women may wear a tie, or women may wear a scarf. Skirts and dresses are not allowed. DIA requires that uniforms comply with its requirement that the company name only appear on the

front and back of uniform shirts and jackets, and on caps, and sets a size limitation. Finally, the unit franchisees are required to meet certain grooming standards and can be issued default letters for having an unkempt appearance.

6. Work schedules:

As noted, SuperShuttle Denver's operations primarily consist of door-to-door (DTD) service, and scheduled downtown hotel service. The Employer has also recently been certified by CPUC to have scheduled service from hotels in the Golden, Colorado area because of an increase in business in that area. DTD service, which constitutes about half of SuperShuttle Denver's overall operations, originates from the nationwide reservation system described above, and curbside service at DIA.

The scheduled start and stop times, and days of the week for the DTD (AM and PM), and Overnight unit franchisees are contained on a biweekly schedule which is put in the drivers' mail slots at the Employer's facility. The unit franchisees provide the franchise manager with their availability for a given two-week period and the franchise manager produces a schedule based on van availability. The record is silent as to the extent of deviation in these assignments from schedule to schedule.

There are 20 vans scheduled for the downtown hotel runs each day. These downtown shuttle van drivers have a scheduled start time, and are scheduled for either the South downtown hotel run or the North downtown hotel run. These vans start at one hotel, and move to the next hotel of their four scheduled hotel stops in order, and then proceed to DIA. The unit franchisees are mandated to make the scheduled hotel stops, but are free to choose their own route to DIA. The vans pick-up reservations passengers, as well as walk up passengers at the

hotel stops. There are times that there are no passengers at a given hotel, in which case the driver waits the scheduled time, and then moves on to the next hotel on the schedule. These downtown drivers can pick up point-to-point passengers at these stops if the passengers need to go to the area of another scheduled hotel stop. After dropping their passengers at DIA, they wait curbside in the area designated for downtown passengers, and pick up available passengers headed for downtown. After dropping passengers at desired downtown locations, the drivers proceed to the starting hotel for a repeat of the process. The downtown unit franchisees repeat their scheduled route five times per shift, and head home after their last drop off at DIA. There are also times that the downtown drivers pick up DTD passengers through the reservations system, but only if these passengers are located on the driver's direct route to DIA. Since many of the passengers picked up downtown are not scheduled through the reservations systems, these unit franchisees operate on the honor system for reporting the cash passengers. SuperShuttle Denver audits such cash reporting through its Mystery Rider program.

Each day, SuperShuttle Denver has six vans assigned to the recently implemented Golden, Colorado hotel schedule. The Golden run operates similarly to the downtown runs, but involves a combination of DTD pickups and hotel stops. The Golden AM drivers make three roundtrips to DIA because of the added distance. The Golden PM drivers make two scheduled DTD and hotel runs. After 6 pm, the three Golden PM vans are dispatched out of DIA holding area by the dispatchers based on walk-ups and incoming computer reservations. While the

Golden runs have fewer passengers than the downtown runs, the fares are considerably higher than the \$19 downtown fare. The Golden fares range from \$35 to \$75 depending on whether the drop-off is within Golden city limits or outside the city limits.

7. Relief drivers:

Unit franchisees may elect to park their van when they wish to take prolonged time off, but they are also permitted under the UFA to use relief drivers to provide transportation services in the franchisee's van. While the UFA provides that relief drivers are under the direct supervision of the unit franchisee, the relief driver must report for work using the same methods as the unit franchisee, and submit the same paperwork. The relief drivers, however, do not receive fare settlement checks directly from SuperShuttle Denver. Rather, the fare settlement checks go to the unit franchisee, who is responsible for paying the relief driver. Similarly, default letters are sent to the unit franchisee, not the relief driver.

Prospective relief drivers must be screened and approved by SuperShuttle Denver for compliance with CPUC and DIA regulations. The screening includes ascertaining that the individuals are properly licensed to transport passengers. SuperShuttle Denver also requires that unit franchisees and relief drivers take a defensive driving course, and pass a drug test based on DIA's requirement that drivers be drug free.

While the record establishes that SuperShuttle Denver has screened and approved 14 relief drivers, neither the Employer nor Union elicited any testimony regarding when such screening occurred, or which unit franchisees sought approval for any of the relief drivers. The record is also devoid of evidence

regarding whether any of the relief drivers have recently driven SuperShuttle Denver vans, or the frequency or number of hours these relief drivers were used.

UNION CONFLICT OF INTEREST

SuperShuttle Denver asserts that the petition should be dismissed because CWA has a disabling conflict of interest based on CWA Local 7777's relationship with UTC. Specifically, SuperShuttle Denver contends that it and UTC are competitors in the passenger transportation industry, based on the fact that they are subject to the same CPUC and DIA regulations, have overlapping transportation territories, and compete head-to-head for the highly competitive downtown hotel customer base needing transportation to and from DIA.

A. UTC's Formation

1. UTC's predecessor:

On July 2, 2007, CWA entered into an Agreement for Affiliation between the Professional Taxicab Operators of Colorado Association (ProTAXI), and the Communications Workers of America, AFL-CIO, Local 7777. The Agreement for Affiliation provided that ProTAXI would become a division of CWA, Local 7777, and abide by Local 7777's constitution and bylaws. The Affiliation Agreement also stated that the Union would provide staff support to the ProTAXI Division regarding matters involving CPUC, DIA, the City and County of Denver, and area hotels. CWA was also obligated to provide attorneys and lobbyists to advocate for the ProTAXI division with the Colorado General Assembly. The Union's advocacy included successfully lobbying for a change in the law through the Colorado legislature, which permitted the CPUC to lower transportation industry entry standards allowing for the legal formation and

certification of UTC to operate as a taxicab cooperative. The change in the law took effect July 1, 2008.

In anticipation of the change in law by the Colorado General Assembly, ProTAXI Union members met in January 2008, to formulate plans to form UTC. In April 2008, the 262 ProTAXI members sought and obtained legal advice regarding the requirements for applying to the CPUC for authorization to form a cooperative to provide taxicab service in the City and County of Denver. The record does not establish whether the Union and ProTAXI ever formally ended their Affiliation Agreement, but it appears that ProTAXI was subsumed by UTC upon UTC's formal legal creation.

2. UTC's incorporation:

On June 9, 2008, UTC filed its Articles of Incorporation of a Cooperative with the Colorado Secretary of State. UTC listed the Union's address (2840 S Vallejo, Englewood, Colorado), as its principal office street address. Abdi Buni was named as the registered agent, and incorporator for UTC. Abdi Buni's address was also given as CWA's address. In June 2008, UTC also adopted cooperative bylaws, and entered into a Colorado Commercial Lease with CWA, effective July 1, 2008, to rent office space and use of the parking lot at the Union hall. UTC entered into a successor lease effective July 1, 2009, with CWA, Local 7777, increasing the amount of monthly rent, and increasing the size of the office space UTC rents from the Union. That lease also covers all utilities except telephone service and includes the right for the UTC members to park their taxicabs at the Union hall when the cabs are not in service.

On July 1, 2008, UTC filed an application to operate as a common carrier by motor vehicle for hire with the CPUC for a permit authorizing the 262 individual UTC

members to begin to offer taxis service under the UTC name in the City and County of Denver. This application was granted, and UTC has had 262 cooperative members and corresponding taxicabs since that time.

3. UTC membership

UTC currently has 262 member drivers, which is the maximum number UTC can have based on its current CPUC certification. UTC has an office staff of eight employees, including dispatchers, call takers, a cashier and bookkeeper. The office employees are overseen by general manager Guadata Brasso. In order to join the cooperative, an individual must sign a UTC Membership Agreement and be accepted into membership by the UTC Board. UTC members pay an initial membership fee. Once accepted, they begin to pay annual membership dues which may be paid on a weekly, monthly, quarterly, or annual basis.¹⁰ UTC members are required to become members of CWA, but are not required to pay initiation fees.

UTC is overseen by a four-member board of directors and five official officers. Abdi Buni was the first president of UTC. Buni, however, was hired as a paid organizer for CWA Local 7777 in July 2009. Accordingly, at the August 2009 Board of Director's meeting, Bushra Saido was elected as Buni's successor. At that same meeting, Yousef Salad and Mengistab Desta were elected as Vice Presidents; Million Mengistu was elected as Secretary; and Takele Merse was elected as Treasurer. The current UTC Board Members are: Abdi Buni, Stan Hawton, Cristian Mateescu, and Gamachu Said.

B. Relationship Between CWA and UTC

¹⁰ The record does not reflect the amount of the initiation fee or annual membership fee because CWA objected to the Employer's attempt to elicit that evidence.

The documentary evidence regarding a relationship between CWA and UTC initially establishes that they have formal landlord/tenant relationship based on the lease for the UTC office space. Other aspects of the relationship between CWA and UTC are more difficult to define. While the record does not reflect direct involvement by CWA in the legal formation of UTC, as discussed, the Union was involved in lobbying efforts with the Colorado General Assembly to seek a change in the law to allow for formation of UTC, which resulted in the elimination of ProTAXI, with which the Union did have a formal affiliation agreement. The record also establishes that CWA does not have a traditional collective-bargaining relationship with UTC to represent the interests of the cooperative taxi drivers, *vis-à-vis* UTC.

The relationship between UTC and CWA is also evidenced by the fact that in July 2009, the Union hired then UTC President Abdi Buni as a paid organizer. While Buni is no longer UTC president, he still holds a position on the UTC board of directors. Buni was involved with the Union as a contact person for ProTAXI, and as such, was regularly copied on e-mail correspondence between UTC and the Union before he was hired as a paid organizer. Buni still is regularly copied on e-mail correspondence between UTC and CWA, and in fact continues to use the same ProTAXI e-mail address he used before the inception of UTC.

Finally, there is evidence that CWA representatives conducted the August UTC Board of Directors meeting at which Buni's successor was elected, and oversaw the election of officers and board of directors members at that meeting.

Notwithstanding the lack of a collective-bargaining relationship, UTC pays a monthly per capita fee of \$28 to CWA for each of its 262 members, which UTC and CWA characterize as "dues." There is no evidence that the UTC members submit

applications for actual membership in CWA, and testimonial evidence establishes that they are not required to pay union initiation fees. These monthly dues paid directly by UTC to the Union amount to \$7336 per month. These monthly per capita dues are in addition to the monthly rent paid by UTC for leasing office and parking lot space and covering utilities. UTC also directly reimburses CWA for such office expenses as the costs of photocopying.

The testimony of CWA, Local 7777's current President, Lisa Bolton, establishes that the monies paid by UTC on behalf of its drivers are mingled with dues from its traditional members, and used for the Union's general operating expenses. The evidence further establishes that in exchange for the monthly "dues" paid to the Union by UTC, the Union provides the same services to UTC that it was obligated to provide ProTAXI pursuant to the written Affiliation Agreement, despite the absence of a written agreement. In this regard, Union President Bolton testified that these services include lobbying for legislation favorable to UTC with the Colorado legislature. Bolton also testified that she has held meetings with "parking enforcement" on behalf of UTC drivers when they believe UTC is being singled out for ticketing. Bolton and other Union officials also meet with government officials regarding the herdic licenses taxi drivers must have to operate, and excise and license plate officials so that the Union can educate UTC drivers regarding issues that arise for renewals. Bolton has also met with officials at DIA regarding heater and air conditioning issues in the building made available to Muslim taxi drivers for daily prayers. CWA representatives have also accompanied UTC members to court to assist them with plea bargaining regarding trespassing tickets.

In August 2009, the also Union intervened on behalf of UTC in a dispute at the Hyatt Regency Colorado Convention Center downtown hotel. That dispute involved the Hyatt Regency filing a formal CPUC complaint against UTC for "bullying other companies out of line." In October 2009, UTC sought the Union's assistance in another dispute at the Hyatt Regency Convention Center. Specifically, UTC sought to have the Union assist in forcing the Hyatt Regency to not allow managers affiliated with SuperShuttle Denver to solicit customers in the hotel lobby.

A few days later, UTC sought assistance from the Union after it was informed that the Cherry Creek Mall intended to authorize two competitor cab companies exclusive access to the mall. CWA sought legal advice from its legal counsel regarding the action taken by Cherry Creek Mall; intervened on UTC's behalf with the mayor's office; and attempted to contact a mall official to discuss the dispute. CWA also organized a demonstration at the mall during the Thanksgiving holiday weekend, and created the leaflets used in the Cherry Creek Mall campaign on behalf of UTC. An announcement for the leafleting action at Cherry Creek Mall was put on the CWA Local 7777 website encouraging all drivers and volunteers to meet at the Local at 9:30 a.m., so the Union could put one passenger in each UTC taxi to be transported to the mall where they would leaflet until 12:30 p.m. At that time the Union leafletters would start calling for UTC taxis to come back and pick them up at the Cherry Creek Mall.

Finally, the evidence establishes that CWA was involved in researching obtaining Smith Defensive Driving Training for the taxi drivers, which included investing \$5,066 for a Smith Trainer to train up to four Union members to deliver the classes to the UTC drivers. CWA also provides photocopying services to UTC at the rate of 3 cents per page, and provides free advertising on the Union's website.

LEGAL ANALYSIS AND CONCLUSIONS

As noted, there are two primary issues in this case: 1) Whether the unit franchisees are employees within the meaning of Section 2(3) of the Act, or independent contractors as asserted by SuperShuttle Denver; and 2) whether there is a disabling conflict of interest based on the Union's relationship with UTC warranting dismissal of the petition. I find, based the record as a whole, and as will be fully explained below, that the unit franchisees are not independent contractors as asserted by the Employer. I also find that the Employer has established that CWA has a disabling conflict of interest based on its relationship with UTC, and I am dismissing the petition on that basis.

SuperShuttle Denver also raised a third issue for the first time in its post-hearing brief. Namely, that the unit franchisees are statutory supervisors within the meaning of Section 2(11) of the Act because they purportedly hire relief drivers. I find that since the Employer did not expressly raise this issue at the hearing, and, thus, the parties did not litigate the supervisory status of the unit franchisees, the record is devoid of sufficient evidence to warrant analysis of this complex issue. In this regard, while the record provides a list of names of purported relief drivers, there is no evidence regarding the relationship between the relief drivers and any current unit franchisees. Accordingly, I find that the Employer has failed to meet its burden of establishing that the unit franchisee shuttle van drivers are statutory supervisors. See e.g., *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001).

A. Independent Contractor Issue

1. Legal framework:

As noted by both parties, Board law establishes that the burden is on SuperShuttle Denver, to prove that the unit franchisees are not employees within the meaning of Section 2(3) of the Act. *BKN, Inc.*, 333 NLRB 143, at 144 (2001). Section 2(3) of the Act, as amended by the 1947 Labor Management Relations Act (Taft-Hartley Act), provides that the term "employee" does not include "any individual having the status of independent contractor." The meaning of this 1947 amendment was first considered by the Supreme Court in *NLRB v. United Insurance Co. of America*, 390 U.S. 254 (1968). The Supreme Court held that the "obvious purpose of the amendment was to have the Board and the courts apply general agency principles in distinguishing between employees and independent contractors under the Act." The Supreme Court also stated that there was no "shorthand formula" or "magic phrase" associated with the common-law test, instead, under the common-law test "all incidents of the relationship must be assessed and weighed with no one factor being decisive."

In *Roadway Package System, Inc.*, 326 NLRB 842 (1998) and *Dial-A-Mattress Operating Corporation*, 326 NLRB 884 (1998), which were decided the same day, the Board rejected the so-called "right of control" approach to analyzing independent contractor status. The right-of-control approach had evolved over time and resulted in greater weight being given to "the manner and means" of the work done by the individuals at issue than to other factors. The Board in *Roadway* and *Dial-a-Mattress*, affirmed that the proper analysis to be used in determining whether an individual is an employee or an independent contractor under Section 2(3), is the common-law agency test which involves the multifactor analysis set forth in Restatement (Second) of Agency,

Section 220(2).¹¹ In *Roadway*, the Board characterized the need for such analysis as follows:

The determination of 'independence' ... ultimately depends upon an assessment of 'all of the incidents of the relationship ... with no one factor being decisive.'" *NLRB v. United Ins. Co.*, 390 U.S. at 258; ... see also *Restatement (Second) of Agency* §220 (1958).") As the Board stated in *Austin Tupler Trucking*, 261 NLRB 183, 184 (1982): "Not only is no one factor decisive, but the same set of factors that was decisive in one case may be unpersuasive when balanced against a different set of opposing factors. And though the same factor may be present in different cases, it may be entitled to unequal weight in each because the factual background leads to an analysis that makes that factor more meaningful in one case than in the other. *Roadway*, supra, at 850.

Both parties urge me to analyze the factors present in this case under a recent decision by the D.C. Circuit Court of Appeals in *FedEx Home Delivery v. NLRB*, 563 F.3d 492 (D.C. Cir. 2009). In *FedEx*, the D.C. Circuit Court of Appeals rejected the weight given by the Board to evidence regarding the entrepreneurial opportunities of the drivers at issue, which the Court concluded outweighed other common law factors. Specifically, the Court stated:

We have considered all the common law factors, and, on balance, are compelled to conclude they favor independent contractor status. The ability to operate multiple routes, hire additional drivers (including drivers who substitute for the contractor) and helpers, and to sell routes without permission, as well as the parties' intent expressed in the contract, augurs strongly in favor of independent contractor status. Because the indicia favoring a finding the contractors are employees are clearly outweighed by evidence of entrepreneurial opportunity, the Board cannot be said to have made a choice between two fairly conflicting views. Though evidence can be marshaled and debater's points scored on both sides, the evidence supporting independent contractor status is more compelling under our precedent. The evidence might have been stronger still had not

¹¹ The common law factors include, *inter alia*, "the extent of control which, by the agreement, the master may exercise over the details of the work"; "the kind of occupation"; whether the worker "supplies the instrumentalities, tools, and the place of work"; "the method of payment, whether by the time or by the job"; "the length of time for which the person is employed"; whether "the work is a part of the regular business of the employer"; and the intent of the parties. *FedEx Home Delivery v. NLRB*, 563 F.3d 492, fn 1 (D.C. Cir. 2009).

the Regional Director erroneously excluded the national data. But even as the record stands, the Board's determination was legally erroneous. *Id.*, at 504.

The Employer argues that the Court in *FedEx* adopted a new test which, "shifted the emphasis away from the unwieldy control inquiry in favor of a more accurate proxy: whether the 'putative independent contractors have significant entrepreneurial opportunity for gain or loss.'" I disagree with the Employer's characterization that the Court adopted a "new test" in *FedEx*. As noted, the Court specifically stated that it analyzed all of the common law factors. The quote relied upon by the Employer was part of the Court's discussion of the Board's analysis of the common law factors and its view that in *FedEx* the entrepreneurial factors predominated. Board cases decided since *Roadway* and *Dial-a-Mattress*, including *St. Joseph's News-Press*, 345 NLRB 474 (2005), and *The Arizona Republic*, 349 NLRB 1040 (2007), explicitly affirm the *Roadway* and *Dial-a-Mattress* analytical framework. In both those cases, the Board engaged in an analysis of all the Restatement factors present before concluding that the evidence of entrepreneurial factors outweighed the other factors, thereby favoring a finding that the individuals at issue were independent contractors.

Applying the common-law agency test to the facts of this case, I find that the factors weigh more strongly in favor of employee status for the SuperShuttle Denver van drivers. See e.g. *Elite Limo Limousine Plus, Inc.*, 324 NLRB 992 (1997), *O'Hare-Midway Limousine Service, Inc.*, 295 NLRB 463 (1989), *enf'd*, *NLRB v. O'Hare-Midway Limousine Service, Inc.*, 924 F.2d 692 (7th Cir. 1991). While both of these cases were decided under the pre-*Roadway* right of control test, many of the factors present in these cases are similar, if not identical to the facts present herein, supporting my finding

that the unit franchisees are statutory employees.¹² Moreover, I find that the entrepreneurial factors present in *FedEx*, *St. Joseph News-Press*, and *The Arizona Republic* are almost non-existent herein.

The *O'Hare-Midway* factors are particularly compelling because of the similarity to the factors present herein. Thus, the *O'Hare-Midway* similarly selected a.m., p.m. or all-day shift, but were not allowed to change their work schedule, or terminate a shift early, without the company's permission. Drivers kept 40 percent of gross fares and paid the remaining amount to the company. The drivers were required to adhere to company rules regarding the manner in which they collected fares, including maintaining records of each fare received. *O'Hare-Midway* had a mandatory dress code, and retained the right to fine or reprimand the drivers for failure to comply with company procedures. Finally, the Company provided no benefits to its drivers, and did not do any tax withholding.

2. Analysis of the common law factors:

While the Restatement on Agency lists ten specific factors for consideration, I have grouped those factors into five categories based on the specific evidence under consideration herein.

¹² In *St. Joseph News-Press*, supra at 478, the Board addressed the viability of its pre-*Roadway* holdings as follows: "In determining the status of the carriers in this case, we rely on the Board's analysis in *Roadway* and *Dial-A-Mattress*. With respect to the Respondent's argument that *Roadway* did not change the legal landscape, and that thus the right of control test is still applicable, we note that although *Roadway* does not directly address the continuing viability of the pre-*Roadway* cases, the Board's analysis in those cases recognized, as does Supreme Court law, that both the right of control and other factors, as set out in the Restatement, are to be used to evaluate claims that hired individuals are independent contractors. Further, we note that since *Roadway*, the Board has continued to cite pre-*Roadway* cases that are consistent with the principles set forth there. The Board will continue to rely on the analysis in such cases, without adopting the Respondent's characterization of the development of the law. [Emphasis added.]"

a. Unit franchisees' work is a part of regular business of Employer

The facts establish that between 1998 and 2002, SuperShuttle International changed its entire method of operations from a direct employment model to a franchise model. In this new model, city licensees such as SuperShuttle Denver in turn entered into UFAs with individual drivers. As a result, individuals seeking to work for SuperShuttle Denver must sign an annual UFA, and agree to be bound by the terms of the Unit Franchise Operations Manual. While the change in SuperShuttle International's business model, and the language of the UFA indicate that the intent of SuperShuttle International is to establish an arms-length, independent contractor relationship with the unit franchisees, I find that this intent factor is outweighed by other factors.

The evidence establishes that unit franchisees have no cognizable bargaining power allowing them to negotiate with SuperShuttle Denver regarding any of the terms of the UFAs. SuperShuttle International unilaterally promulgates the standard UFA, and related Unit Franchise Operations Manual, for use by its city licensees, and reserves the right to unilaterally change the terms from year to year. There is no evidence that any unit franchisee has successfully negotiated changes in any of the terms of the UFA, or any policies contained in the operations manual. Additionally, while the UFA provides that it has an annual term, the record establishes that the shuttle drivers continue to operate under expired UFA's until the Employer provides them with successor franchise agreements. There is also no evidence that SuperShuttle Denver has declined to renew a unit franchisee's agreement upon expiration, and instances of mid-term UFA terminations are rare.

Moreover, the unit franchisees are not independently performing a discrete or

unique part of the Employer's business, they are responsible for performing the entirety of SuperShuttle Denver's normal business operations in the Denver metropolitan area; namely, transporting passengers and their luggage to and from DIA, or other destinations. Because the unit franchisees are the sole face of SuperShuttle International in a particular arena, SuperShuttle International exercises a significant amount of control over the day-to-day functions of the unit franchisees, to protect and enhance its nationwide brand.

b. The method of payment

Unit franchisees charge customers established flat-rate fares and do not have any authority to deviate from the fares set by the Employer, and approved by CPUC. Similarly, unit franchisees must honor discount coupons authorized by SuperShuttle Denver, but cannot offer their own discounts. Unit franchisees must keep detailed daily records of the fares they collect, and whether those fares are from vouchers, credit cards, or cash. This paperwork is turned in weekly, and reconciled by the Employer. AM and PM franchisees are compensated at the rate of 72 percent of the gross fares they collect, and graveyard franchisees are compensated at the rate of 68 percent. After reconciling the drivers' weekly manifests, the Employer deducts its percentage of the fares collected by the unit franchisees, liability insurance payments, AVI fees, vehicle lease payments, and any other fees or fines which might be owed and issues a settlement check to the unit franchisee. SuperShuttle Denver also audits the unit franchisees through the mystery rider program, and issues default letters to drivers who failed such audits, including failure to list cash fares on their manifest.

The Board has held in a number of taxicab and airport transportation service cases that the fact that the drivers' compensation is based on a percentage of fares

collected, supports a finding that the drivers are employees because there is direct correlation between the employer's income and the fares collected. Thus, the employer has a direct financial stake in the work performed by the driver. In cases where the drivers pay a flat fee to the company, the Board has found the drivers to be independent contractors because the drivers have a strong incentive to maximize their trips, since, once the flat fee is recouped, their income is largely profit. In addition, the Board has held that a flat fee insulates a company from variations in income because, regardless of the drivers' actual earnings, the employer receives the same amount. See, e.g. *Elite Limousine* and the cases cited therein. Accordingly, I find that the factors related to the method of payment and significant control over pricing, record keeping, and through the mystery rider audits conducted by the Employer weigh in favor of employee status.

c. Instrumentalities and tools

The record establishes that the about half of the unit franchisees own their vans and the other half lease their vans through SuperShuttle Denver's parent company. The evidence further establishes that the only restriction placed on the unit franchisees is that they cannot use their SuperShuttle-marked vans in businesses that compete directly with SuperShuttle Denver. While these factors weigh in favor of a finding of independent contractor status, I find that there are various other related factors which overcome these two factors. Among the related factors are various mandates placed on the unit franchisees by SuperShuttle Denver. The Employer requires the unit franchisees to maintain specific levels of liability insurance, which they must purchase through a designated carrier by payroll deduction. Moreover, the Employer exercises direct control over the make, model, age, size, and mechanical and physical condition

of the vehicles, including performing bimonthly vehicle inspections. SuperShuttle Denver issues default letters to unit franchisees if they fail an inspection, or their vehicle is found in default. The Employer also has rigid requirements for the color and logos in the vehicles, including that the unit franchisees use specific proprietary paint color formulas. Vehicles must be replaced when they reach either five years of age or 450,000 miles. Similarly, the Employer has a strict uniform policy and grooming standards to which the unit franchisees must adhere. If the drivers are observed out of uniform or unkempt, the Employer issues them default letters, including threatening to purchase new uniform items for the drivers and takes reimbursement from their settlement checks.

The Employer also mandates specific communications equipment, and issues default letters for such things as failure to activate the Nextel system at the start of a scheduled shift. Finally, and most significantly, the Employer mandates that the vehicles have a GPS system that allows the Employer to monitor the vehicle even when it is not in service during scheduled shifts. This monitoring by the Employer includes review of weekly reports charting the speed ranges with which the vehicle was driven and issuance of default letters for traveling at excessive speeds.

d. Control over the details of work.

In addition to SuperShuttle Denver's control over the work details addressed above, I find that the Employer exercises control over other significant details of the daily work performed by the drivers, supporting my finding of employee status. The Employer specifically urges a finding that the unit franchisees are independent contractors because the door-to-door drivers can review the available reservations on their Nextel system and bid or pass on the various available customers. While this is

an important consideration, I find that it is outweighed by other controls placed on the unit franchisees. Specifically, DTD drivers are assigned to passengers by the computer system if no DTD driver accepts a bid. All of the drivers can be assigned so-called ASAP customers by dispatchers, which the unit franchisees are not at liberty to turn down. The drivers assigned to downtown routes (about half the unit franchisees) have no option to select their customers, and can be issued default letters for refusing to take passengers.

While the unit franchisees do have options related to whether they work AM, PM, or Overnight, SuperShuttle Denver controls the number of drivers assigned to each time frame. While drivers can inform the Employer of specific dates they are not available, they have no latitude to elect to take a day off without prior notification. They also cannot start work early or late, or leave work early or late without seeking permission from the MODs. All of the unit franchisees are required to start work at their scheduled time, and if they have not signed onto the Nextel system, the Employer checks their vehicle location via GPS and a dispatcher attempts to contact the driver by radio. The unit franchisees are also required to go through orientation and training on the Employer's equipment and systems when they first become a franchisee, and they are required to take periodic defensive driving courses offered through an entity related to SuperShuttle Denver, as well as other periodic on-the-job training mandated by the Employer. Finally, the unit franchisees are subject to default letters and fines for infractions of the myriad of policies and rules established by the UFA, Operations Manual, and various memoranda issued by the franchise manager, which weigh heavily in favor of my finding of employee status.

e. Entrepreneurial opportunities

In assessing whether the individuals possess entrepreneurial opportunities weighing in favor of a finding of independent contractor status, the Board looks at a variety of factors. Many of these factors discussed above, including method of payment, independence regarding setting work schedules, and vehicle ownership, establish that the Employer has placed significant limitations on the entrepreneurial opportunities of the unit franchisees. Other factors to be considered include whether the unit franchisees have established their own businesses, and are operating as independent companies. Despite language in the UFA encouraging unit franchisees to do so, the Employer only provided evidence of one individual who very recently set up an LLC. The Employer has, in fact, established some barriers to entrepreneurial activities, which warrant a finding that the entrepreneurial opportunities are insufficient to establish independent contractor status. In this regard, unit franchisees are not allowed to franchise for the operation of more than one vehicle. They are also not allowed to hire relief drivers without the relief drivers being approved by the Employer. Finally, the unit franchisees are not allowed to transfer their franchise without prior approval by the Employer.

B. Disabling Conflict of Interest Issue

At issue is whether the relationship between CWA and UTC conflicts with the obligations of the Union as a potential collective-bargaining representative of the SuperShuttle Denver van drivers, as contended by the Employer.

1. Legal framework:

In *St. John's Hospital and Health Center*, 264 NLRB 990 (1982), the Board analyzed the line of cases involving disabling conflicts of interest by unions. It characterized *Bausch & Lomb Optical Company*, 108 NLRB 1555 (1954), as "the

seminal case establishing the conflict-of-interest doctrine." In *Bausch & Lomb*, the Board had found that the employer was no longer obligated to bargain with a union because the union had become a direct business competitor of the employer. The Board in *Bausch & Lomb*, emphasized the important interests of the bargaining unit employees when it stated:

What is envisioned by the Act is that in attempting to [reach] an agreement, the parties will approach the bargaining table for the purpose of representing their respective interests and having approximately equal economic power. The employer must be present to protect his business interests and the union must be there with the single-minded purpose of protecting and advancing the interests of the employees who have selected it as their bargaining agent, and there must be no ulterior purpose. As the Supreme Court has stated: "The bargaining representative, whoever it may be, is responsible to, and owes complete loyalty to, the interests of all whom it represents." [*Ford Motor Co. v. Huffman*, 345 U. S. 330, 338.] . . . In our opinion, the Union's position at the bargaining table as a representative of the Respondent's employees while at the same time enjoying the status of a business competitor renders almost impossible the operation of the collective-bargaining process. For, the Union has acquired a special interest which may well be at odds with what should be its sole concern--that of representing the interests of the Respondent's employees. In our opinion, the situation created by the Union's dual status is fraught with potential dangers. [Emphasis added.] *Id.*, at 1559.

In *St. John's Hospital*, the Board similarly found that the petitioning union, which operated a nurse registry that dispatched 80 percent of the registered nurses to St. John's Hospital, had an "ulterior purpose" that conflicted with the requirement that a collective-bargaining agent have a "single-minded purpose of protecting and advancing the interests" of unit employees. *St. John's Hospital*, *supra*, at 993.¹³ In reaching this conclusion, the Board also relied on *Sierra Vista Hospital, Inc.*, 241 NLRB 631, 634 (1971), which held that: "[A]n Employer has a right to engage in collective bargaining which is not influenced by interests the bargaining representative may have outside its

employee representative capacity.”

This line of cases was also discussed in *Western Great Lakes Pilots Association*, 341 NLRB 272 (2004). In that case the Board affirmed the ALJ's finding that no disabling conflict existed where the union's only action had been to support rule making by the Coast Guard which, if enacted, could have put the employer out of business. The judge noted that the union had not instituted or formulated the rule making at issue, but merely had supported one of the proposals before the Coast Guard rule making body. In finding no disabling conflict, the ALJ stated:

Here, there is no evidence that the Union operates, or ever intends to operate, a pilotage enterprise in competition with Respondent. Nor is there evidence that the Union is either a supplier/customer of Respondent or, beyond that, a creditor of Respondent. Furthermore, there is no evidence that the Union operates any type of enterprise that would naturally give rise to an inability to bargain single-mindedly on behalf of unit employees of Respondent represented by the Union or, in some other fashion, that would naturally compromise the collective-bargaining process as contemplated by the Act. *Id.*, at 282. . . .

Here, there is no other employee-unit, represented by the Union, that would benefit from implementation of the unified pilot management proposal. Moreover, implementation of that proposal cannot be accomplished through the collective-bargaining process. The only way that proposal can be implemented is through action by the Coast Guard or, perhaps, through legislation passed by Congress and signed by the President of the United States. *Id.*, at 282.

In another of the *Bausch & Lomb* line of cases, *Alanis Airport Services, Inc.*, 316 NLRB 1233 (1995), the Board reversed the Regional Director's finding that the intervening union should be disqualified as a potential representative of the unit of baggage handlers because of the union's involvement with a newly-formed company that intended to engage in baggage handling competition with the employer. The

¹³ See also, *Visiting Nurses Association, Inc. Serving Alameda County*, 254 NLRB 49 (1981).

intervenor, International Association of Aerospace Workers, District Lodge 40 (IAM), had an exclusive contract with United Airlines that any subcontracted work must be done by an IAM-represented contractor. United Airlines, and several other airlines, had petitioned the Miami Dade Commission to issue the airlines general permits to provide baggage services. At the time of the Board proceedings, commission hearings had been held, but no decision had issued. In anticipation of a favorable commission ruling, IAM was involved in the formation of Miami Airport Skycaps, Inc. (MAS). The objective of forming MAS was to secure United Airlines' baggage handling work for IAM members if the commission granted the permits.

The Board determined that since of plans of MAS had not yet, and might never, materialize, IAM's involvement in MAS did not constitute a current conflict, thus, it was premature to make a finding that the union had a disabling conflict of interest. The Board also stated:

We find it unnecessary to pass on the Intervenor's contention that its involvement with MAS is too limited to warrant a conclusion that the Intervenor controls or has a symbiotic relationship with MAS, because in any event, for the reasons set forth above, there is no showing that MAS is in competition with the Employer. *Id.*, at fn 4.

Notwithstanding that the Board did not address the intervenor's contention that its involvement was too limited based on of its finding that there was no current competition because MAS had not yet been authorized to handle baggage, the Board's analysis in *Alanis* is instructive because the facts regarding IAM's involvement with MAS are similar to CWA's involvement with UTC. In this regard, the Board listed extensive details of the relationship between IAM and MAS, and also specifically stated that it did not question that the new company would, in fact, compete with Alanis if it obtained a permit allowing it to do so. *Id.*, at fn 3. The Board also stated:

In sum, there is insufficient evidence that MAS is a competitor of the Employer or that the Intervenor would misuse its Section 9 status as set forth above. If there is a change of circumstance, in either respect, a party may raise the issue at that time through appropriate procedures under the Act. [Emphasis added.] *Id.*, at 1234.

Thus, the Board left open the possibility that if IAM won the election, and MAS commenced operations, certification could be revoked pursuant to the Board's holding in *Bausch & Lomb*.

The facts regarding the relationship between IAM and MAS were as follows. MAS was owned by 55 shareholders, each of whom owned one share of stock. Two of the shareholders were officers of IAM (president and secretary-treasurer), who also served on the five-member MAS board of directors. IAM's lodge president was also one of the two incorporators and served as the registered agent for MAS. The articles of incorporation of MAS provided that the corporation could issue shares only to dues-paying members of the IAM. The MAS shareholder baggage handlers formed a new IAM local, Local 626, with the object of representing MAS' employees. MAS and Local 626 shared office space at a building owned by the IAM and two other IAM locals, and MAS was permitted to use that space rent-free during their initial 6-month formative period.¹⁴

2. Analysis and conclusions:

Based on the above-cited authority, I find that the relationship between CWA and UTC creates a disabling conflict with the obligation of the Union as a potential collective-bargaining representative of the SuperShuttle Denver drivers to have single-minded purpose of advancing the interests of the SuperShuttle Denver employees. In

¹⁴ The Union, in its post-hearing brief distinguished various other cases in anticipation of the Employer's arguments. I find those cases inapposite to my determination that a disabling conflict exists herein.

reaching this conclusion, I am mindful that the facts do not establish that CWA has an actual ownership interest in UTC, similar to that present in *Bausch & Lomb*; or that CWA's interests are analogues to the nurse registry operated by the union in *St. John's Hospital*. I am persuaded, nonetheless, that a disabling conflict exists because of the inherent likelihood that CWA's bargaining efforts on behalf of the SuperShuttle Denver employees would be influenced by interests outside its representative capacity based on its relationship with UTC.

a. UTC and SuperShuttle are competitors

In reaching my conclusion that a disabling conflict of interest exists, I initially find that SuperShuttle Denver and UTC are, in fact, competitors. The evidence establishes that they both compete for passenger traffic to and from DIA, throughout the Denver metropolitan area. SuperShuttle Denver and UTC are also both subject to regulation by the same regulatory agencies, and compete for a finite number of licenses issued for passenger transportation in their overlapping Denver metropolitan territories. The fact that UTC and SuperShuttle are in competition is further evidenced by the fact that UTC recently sought CWA's assistance in a dispute between UTC and SuperShuttle Denver at the downtown Hyatt Regency convention center hotel. This dispute arose when UTC contended that SuperShuttle Denver was getting an unfair competitive advantage because it was being allowed by Hyatt management to solicit for passengers in the lobby of the hotel, when UTC was not similarly allowed such access.

Based on my finding that UTC and SuperShuttle are competitors, and that UTC, unlike MAS in *Alanis, supra*, is presently in operation as a competitor of SuperShuttle Denver, I must examine the nature of the relationship between CWA and UTC. While this relationship is not easily defined within the framework of the above-

cited Board cases, it is vastly different than a traditional collective bargaining relationship. In this regard, I find that CWA's involvement with UTC is most closely analogous to IAM's involvement with MAS in *Alanis, supra*. As noted above, while the Board declined to address IAM's contention that its involvement with MAS was too limited to establish a disabling conflict of interest, the Board, nonetheless, made specific findings of fact regarding the relationship between IAM and MAS, and stated that if circumstances regarding MAS changed, a party could raise the conflict issue through appropriate procedures under the Act.

b. Relationship between CWA and UTC

I find, based on the record as a whole, that here is no collective-bargaining relationship between CWA and UTC. CWA does not represent UTC drivers *vis-à-vis* UTC in matters such as collective bargaining, or grievance processing. Rather, CWA receives "dues" from the 262 UTC drivers for interests CWA has outside its employee representative capacity. *Sierra Vista Hospital, supra*.

The evidence establishes that like IAM in *Alanis, supra*, CWA was involved with UTC from its inception. Specifically, CWA assisted UTC's predecessor, ProTAXI, in successful lobbying efforts at the Colorado General Assembly for a change in the law. That change in the law allowed the ProTAXI CWA members to form UTC, enabling UTC to gain entry into the passenger transportation industry. Since its inception, UTC has also leased office and parking lot space from CWA, and has been identified with the Union on its website.

According to the Union's Local President, the assistance CWA currently provides to UTC includes legal advice and legal representation; continued lobbying at the State Legislature; representation with certifying and licensing entities including DIA, CPUC,

and traffic enforcement agencies; and assistance in competitive disputes involving commercial enterprises served by both UTC and SuperShuttle Denver, such as the dispute at the downtown Hyatt.

These facts establish that the relationship between the Union and UTC is significantly different than the circumstances relied upon by the Union in its post-hearing brief involving situations where a union receives dues from members it represents in multiple bargaining units for employers competing in the same industry. In situations where a union represents several different bargaining units of competitors' employees, the dues received are primarily for representational activities involving the bargaining unit members' relationships with their employer, not primarily for legal and lobbying matters with governmental entities, in a situation where no collective-bargaining relationship even exists.

I note also, that this is not a situation like that present in *Western Great Lakes Pilots Association*, where the union merely supported a proposal being considered by the regulatory body, which, if enacted, could have resulted in elimination of the employer. Herein, CWA lobbied for a change at the Colorado General Assembly on behalf of its affiliate ProTAXI, which resulted in the former ProTAXI members forming UTC. But the relationship did not end there, rather, CWA has continued to assist UTC in matters wholly unrelated to collective bargaining, and has a significant financial interest in the success of UTC as discussed immediately below.

c. Disabling financial conflict

The factor I find most critical in the analysis of a disabling conflict, which was not present in *Alanis*, is the financial interest CWA has in the success of UTC by virtue of the per capita monthly fee it pays to the Union. These monthly fees amount to more

than \$88,000 a year and they are received outside of any representative capacity. There is no dispute that these monies are not used by CWA to defray the costs of traditional collective-bargaining, such as bargaining a contract with UTC, or processing grievances pursuant to a contract. Rather, these monies go into the Union's general fund as payment for services to UTC that are unrelated to any obligation under the Act to represent the UTC drivers in their relationship with UTC. In return for this monthly per capita fee, the evidence establishes that the Union continues to provide UTC with the same kinds of assistance the Union had previously provided to ProTAXI by virtue of the Affiliation Agreement.

Here, the Union, in essence, is the competitor because of the kinds of managerial assistance it provides to UTC for financial remuneration in the form of the per capita "dues." Thus, while the Union does not have a direct financial ownership stake in UTC, it still gains financially when UTC prospers, which is precisely the kind of conflict the Board warned of in *Bausch & Lomb* and *St John's Hospital and Health Center*. Namely, the danger that CWA's bargaining efforts on behalf of the SuperShuttle Denver employees would be influenced by its financial interests outside its representative capacity because of its relationship with UTC.

In this regard, I conclude that everything the Union does to assist UTC in return for the monthly fees it receives could have a significant impact on the Union's representational capacity for the SuperShuttle Denver employees. The nature of the industry in which UTC and SuperShuttle Denver compete is such that intervention on behalf of one entity can result in a loss of business for another entity. This could take the form of one company gaining vehicle certificates, while the other entity loses them because CPUC issues a finite number of certificates. This is particularly troubling

since UTC has a 3 to 1 advantage in that its cooperative members hold 262 certificates, and SuperShuttle Denver has 86. Intervention by the Union on behalf of UTC could also take the form of one entity gaining a time advantage for curbside waiting at DIA, or for locations to park and wait for passengers in the downtown area, which is precisely the kind of intervention UTC was seeking from the Union in its dispute at the Hyatt.

Accordingly, I find that the form of assistance provided by the Union to UTC in exchange for monthly financial remuneration is in direct conflict with the single-minded representational purpose required of a bargaining representative, since the Union's advocacy on behalf of UTC could have direct, adverse effects on the SuperShuttle Denver bargaining unit.

ORDER

IT IS HEREBY ORDERED that the petition filed in this case is dismissed.

RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

PROCEDURES FOR FILING A REQUEST FOR REVIEW

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, D.C., by close of business on – **March 12, 2010, at 5 p.m. Eastern Time**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.¹⁵

A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, click on E-Filing, and follow the detailed directions.

¹⁵ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

The responsibility for the receipt of the request for review rests exclusively with the sender.

A failure to timely file an appeal electronically will not be excused on the basis of a claim that the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason, absent a determination of technical failure of the site, with notice of such posted on the website.

DATED at Denver, Colorado this 26th day of February, 2010.

A handwritten signature in black ink, appearing to read "Michael Josseland", written over a horizontal line.

Michael W. Josseland
Regional Director
National Labor Relations Board
Region 27
600 17th Street, 7th Floor, North Tower
Denver, Co 80202-5433

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Super Shuttle International Denver, Inc.,

Employer,

and

Communications Workers of America,

Petitioner.

Case 27-RC-8582

AFFIDAVIT OF SERVICE OF REGIONAL DIRECTOR'S DECISION AND ORDER

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above, I served the above-entitled document(s) by regular mail upon the following persons, addressed to them at the following addresses:

Mr. Ross Alexander
Super Shuttle
7500 E. 41st Avenue
Denver, CO 80216

Mr. Richard Rosenblatt, Esq.
Rosenblatt and Associates, LLC
8085 E. Prentice Avenue
Greenwood Village, CO 80111

Mr. Patrick R. Scully, Esq.
Sherman & Howard, L.L.C.
633 Seventeenth Street, Suite 3000
Denver, CO 80202

Ms. Mary K. O'Melveny
General Counsel
CWA Legal Department
501 Third Street, N.W., Suite 800
Washington, DC 20001-2797

Mr. Albert H. Kogler
Organizing Coordinator
Communications Workers of America, District 7
8085 E. Prentice Avenue
Greenwood Village, CO 80111

Subscribed and sworn to before me this

26th day of February, 2010.

DESIGNATED AGENT


NATIONAL LABOR RELATIONS BOARD

Transcripts

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1 PROCEEDINGS
 2 (Time Noted: 9:40 a.m.)
 3 HEARING OFFICER SAVELAND: We are resuming the hearing
 4 in Case 27-RC-8582, SuperShuttle here in Denver, Colorado.
 5 Hearing Officer Todd Saveland.
 6 We have -- if we could do appearances again. We have
 7 another party brought in. Why doesn't SuperShuttle begin.
 8 MR. SCULLY: Thank you. For SuperShuttle Denver,
 9 Patrick Scully of the law firm of Sherman & Howard.
 10 MR. COMBS: For SuperShuttle Denver, Dan Combs, also
 11 with Sherman & Howard.
 12 MR. WALKER: For Union Taxi Cooperative, Mark Walker
 13 with the firm of Kamlet & Reichert.
 14 MR. GOSCH: For Communications Workers of America,
 15 Stanley M. Gosch, the firm of Richard Rosenblatt &
 16 Associates.
 17 HEARING OFFICER SAVELAND: Thank you.
 18 We've had an extensive discussion off the record about
 19 how to proceed today. There's been subpoenas filed both ad
 20 testificandum and duces tecum. What the parties have agreed
 21 to do, at least initially, is to put witnesses on, question
 22 them, determine whether relevant documents exist and address
 23 those documents as they come up.
 24 There's no particular order that we need to go in. And,
 25 Mr. Scully, since you've sought these persons' testimony,

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1 you're free to choose whichever individual you'd like to
 2 begin with. And if you would like to put some of our
 3 previous discussion back on the record, feel free to do that
 4 now.
 5 MR. SCULLY: okay. I think I'd like to call Bushra
 6 Saido. Mr. Saido, you'll have to correct me if I'm wrong,
 7 but I believe the last name is spelled S-A-I-D-O; is that
 8 correct?
 9 MR. SAIDO: That's correct.
 10 MR. WALKER: He's going to sit here, if that's okay?
 11 MR. SCULLY: Yeah, to pick him up.
 12 HEARING OFFICER SAVELAND: please raise your right hand.
 13 Would you like to swear or affirm?
 14 MR. SAIDO: Yes.
 15 (Whereupon,
 16 BUSHRA SAIDO
 17 was called as a witness by and on behalf of the Employer and,
 18 after having been first duly sworn, was examined and
 19 testified as follows:)
 20 HEARING OFFICER SAVELAND: Please be seated. Thanks for
 21 joining us today. If you could state your name and spell
 22 your last name for the record, please?
 23 THE WITNESS: My name is Bushra Saido. My last is
 24 S-A-I-D-O.
 25 HEARING OFFICER SAVELAND: Thank you.

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1 THE WITNESS: You're welcome.
 2 MR. SCULLY: Thank you.
 3 MR. GOSCH: DO you need him to say his -- spell his
 4 first name for the record, too?
 5 THE WITNESS: B-U-S-H-R-A. B-U-S-H-R-A, that's the
 6 first name.
 7 MR. SCULLY: very good.
 8 MR. GOSCH: Thank you.
 9 DIRECT EXAMINATION
 10 Q. BY MR. SCULLY: Good morning, Mr. Saido:
 11 A. Good morning.
 12 Q. What is your position with Union Taxi?
 13 A. President of UTC.
 14 HEARING OFFICER SAVELAND: Just to clarify, UTC is Union
 15 Taxi Cooperative?
 16 THE WITNESS: Union Taxi Cooperative, yeah.
 17 HEARING OFFICER SAVELAND: Thank you.
 18 Q. BY MR. SCULLY: And, Mr. Saido, UTC, is -- I'm going to
 19 use UTC to refer to the Union Taxi if that's okay with you --
 20 A. Yes.
 21 Q. -- is a taxi company; is that correct?
 22 A. Yes.
 23 Q. And in that capacity there are drivers who provide
 24 service to the Denver area airports; would you agree with
 25 that?

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1 A. Yes.
 2 Q. And SuperShuttle -- are you familiar with SuperShuttle?
 3 A. Not much.
 4 Q. Do you know that it exists?
 5 A. Yeah, I know the name, but I don't know the internal of
 6 the person.
 7 Q. Okay. Do you know that they operate in Denver,
 8 SuperShuttle?
 9 A. Yes.
 10 Q. The blue vans that say SuperShuttle?
 11 A. Uh-hum.
 12 Q. They also take passengers to the airport to your
 13 knowledge?
 14 A. Well, I am a cab driver. I am not, you know -- I don't
 15 know about that.
 16 Q. So you don't know whether or not SuperShuttle takes
 17 people to the airport?
 18 A. Well, that's not part of my -- because this is -- I am a
 19 cab driver. I'm not a SuperShuttle driver.
 20 Q. I understand that.
 21 A. Uh-hum.
 22 Q. Are you aware just because you work in Denver and you
 23 drive a cab?
 24 A. Normally they do any SuperShuttle.
 25 Q. Pardon me?

1 knowledge of this document does need to testify about its
2 authenticity.
3 MR. SCULLY: well --
4 MR. WALKER: we can stipulate that this is the lease
5 between Union Taxi and our UTC and CWA Local 7777 and is the
6 current operative lease.
7 HEARING OFFICER SAVELAND: Will you enter into that
8 stipulation?
9 MR. SCULLY: well, I'll accept it. I don't -- I don't
10 know. It seems to me that the president of the Cooperative
11 would know what the lease is. I want --
12 HEARING OFFICER SAVELAND: He --
13 MR. SCULLY: -- it to be in the record but I don't --
14 you know, it --
15 MR. WALKER: The lease was signed prior to him becoming
16 president, and there hasn't been another lease negotiated
17 since he was president.
18 MR. SCULLY: who --
19 HEARING OFFICER SAVELAND: Who signed it for the co-op?
20 MR. SCULLY: Mr. Walker testified.
21 HEARING OFFICER SAVELAND: But we're trying to get a
22 stipulation.
23 MR. SCULLY: okay. I apologize.
24 HEARING OFFICER SAVELAND: And who signed it? I mean, I
25 don't expect the new president to know if he'd never -- if

1 he's never seen this document, I don't want him testifying
2 about what it is.
3 MR. WALKER: I believe that's Mr. Buni's signature.
4 HEARING OFFICER SAVELAND: it's --
5 MR. SCULLY: Abdi Buni signed it.
6 HEARING OFFICER SAVELAND: Uh-huh.
7 MR. SCULLY: Will you --
8 HEARING OFFICER SAVELAND: It's your stipulation. If
9 you want to enter into it, then I'll accept it.
10 MR. SCULLY: Yeah, I'll enter in the stipulation
11 that this is the lease and that Mr. Buni signed it.
12 HEARING OFFICER SAVELAND: okay. Mr. Walker --
13 MR. WALKER: Yeah.
14 HEARING OFFICER SAVELAND: -- are you happy to stipulate
15 to that? Mr. Gosch, do you have any objection?
16 MR. GOSCH: No objection.
17 HEARING OFFICER SAVELAND: okay. That stipulation is
18 received.
19 Q. BY MR. SCULLY: Do you know that -- do you know of any
20 lease prior to this?
21 A. No.
22 Q. Okay.
23 HEARING OFFICER SAVELAND: When did you become the
24 president? You said --
25 THE WITNESS: it was in September.

1 HEARING OFFICER SAVELAND: september. Okay.
2 THE WITNESS: Yeah, 2009.
3 Q. BY MR. SCULLY: Mr. Saido, do you sign the rent checks?
4 A. No.
5 Q. Who signs those for Union Taxi?
6 A. The manager signs.
7 Q. Who does?
8 A. The manager.
9 Q. The manager. Who's the manager at Union Taxi?
10 A. Gudata Barasso --
11 Q. Barasso, could you spell that last name, please? I'm
12 sorry.
13 A. Again, I -- because I don't want to spell it wrongly.
14 Q. Okay.
15 HEARING OFFICER SAVELAND: The individual's first name?
16 THE WITNESS: Gudata is his first name.
17 HEARING OFFICER SAVELAND: DO you know how to spell
18 that?
19 THE WITNESS: G-U-D-A-T-A.
20 MR. SCULLY: You know, I think I have an e-mail from CWA
21 with his name on it.
22 THE WITNESS: Yeah.
23 MR. WALKER: Yeah, you do. Check.
24 MR. SCULLY: Lots of Abdi Buni stuff. Do you have that
25 at the -- handy, sir? I really didn't think he was copied on

1 any of these.
2 MR. WALKER: I can spell it for you if you'd like.
3 MR. SCULLY: That would be great.
4 MR. WALKER: It's B-A-R-A-S-S-O.
5 Q. BY MR. SCULLY: He's -- Mr. Barasso, is it a mister,
6 Mr. Barasso?
7 A. Yes, Mr. Barasso --
8 Q. He's general manager of Union Taxi?
9 A. Yes.
10 Q. So he's employed by the Cooperative?
11 A. Yes.
12 MR. SCULLY: Let me see what I've marked as Respondent
13 Exhibit 2.
14 HEARING OFFICER SAVELAND: Do you actually want to
15 offer --
16 MR. SCULLY: Oh, I ask for admission of Respondent
17 Exhibit 1?
18 HEARING OFFICER SAVELAND: Any objections?
19 MR. WALKER: None.
20 HEARING OFFICER SAVELAND: Respondent's Exhibit 1 is
21 received.
22 (Respondent's Exhibit 1 received into evidence.)
23 Q. BY MR. SCULLY: Okay. Now, Mr. Buni is still a member
24 of the Cooperative, correct?
25 A. Yes.

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1 Q. And Mr. Buni remains on the board of directors of the
 2 Cooperative?
 3 A. Yes.
 4 Q. And are you familiar with the bylaws of what the board
 5 of Union Taxi does?
 6 A. Yeah.
 7 Q. Okay. You're a board member yourself, correct?
 8 A. Yes.
 9 Q. Well, we'll get to that. Let's start with this. Let me
 10 show you what I've marked as Respondent Exhibit 2.
 11 MR. SCULLY: You need to mark -- do you want to mark his
 12 copy? Sorry.
 13 (Respondent's Exhibit 2 marked for identification.)
 14 Q. BY MR. SCULLY: Mr. Saido, do you recognize Respondent
 15 Exhibit 2 as the membership agreement that you are a party
 16 to?
 17 A. Yes.
 18 Q. Obviously, this is not yours, but this is the same
 19 agreement for every board member and every member of --
 20 A. Every member.
 21 Q. Everybody member. Including the board members; is that
 22 correct?
 23 A. Yeah, board members are members of the Union Taxi
 24 Cooperative.
 25 Q. I understand that.

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1 MR. SCULLY: Ask for admission to Respondent's Exhibit
 2 Two?
 3 HEARING OFFICER SAVELAND: Any objections?
 4 MR. WALKER: None.
 5 HEARING OFFICER SAVELAND: Respondent Exhibit 2 is
 6 received.
 7 (Respondent's Exhibit 2 received into evidence.)
 8 Q. BY MR. SCULLY: Can you turn with me -- well, maybe you
 9 know. Do you know this document pretty well, Mr. Saido?
 10 A. Well, it's a long time.
 11 Q. A long time since you saw it?
 12 A. Yeah, because maybe I cannot tell you everything right
 13 now but, you know, the document --
 14 Q. It's not going to be a quiz, I assure you. Do you agree
 15 with Mr. Walker's statement that you're required to be a
 16 member of and pay dues as a condition of this membership
 17 agreement?
 18 A. Yes.
 19 Q. And that's something that has existed for how long for
 20 you?
 21 A. Well, since the -- it is exactly, if I remember, it is
 22 after we join the Union.
 23 Q. When was that approximately?
 24 A. Approximately it is May, but exactly I don't remember
 25 the date. I'm sorry. I don't remember the date.

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1 HEARING OFFICER SAVELAND: Of what year? May of what
 2 year?
 3 Q. BY MR. SCULLY: Of what year?
 4 A. 2009.
 5 Q. 2009?
 6 A. Yeah.
 7 Q. Okay. And at that time did you have a lease that you
 8 were aware of in place with CWA-7777?
 9 A. No. The lease started after the operation started.
 10 Q. Okay.
 11 HEARING OFFICER SAVELAND: What lease are you referring
 12 to?
 13 MR. SCULLY: The commercial lease.
 14 HEARING OFFICER SAVELAND: The commercial real estate
 15 lease?
 16 THE WITNESS: Yeah.
 17 Q. BY MR. SCULLY: And -- but Union Taxi was housed in the
 18 CWA building prior to there being a lease?
 19 A. No.
 20 Q. Where were you located prior to that?
 21 A. No, we didn't have any office.
 22 Q. Okay. But you existed in May?
 23 A. The office, the Actual office, yeah, after we leased
 24 from CWA.
 25 Q. Okay. Did Union Taxi exist in May of this past year?

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1 A. 2009?
 2 Q. Uh-hum.
 3 A. Yes.
 4 Q. It did? And you did not have a lease at that time, the
 5 CWA-7777, correct?
 6 MR. WALKER: Objection. I'm just trying to get to the
 7 relevance of this. I thought it was that clear and present
 8 danger, not a danger in May of 2009?
 9 HEARING OFFICER SAVELAND: What are you trying to
 10 establish and --
 11 MR. SCULLY: I'm trying to establish the level of
 12 financial assistance and the formation of Union Taxi and the
 13 possibility that that is ongoing and that there are services
 14 that have been provided that have not been accounted for in
 15 any of their responses and that there are things of value
 16 that have passed from CWA to Union Taxi and that they have
 17 never been repaid. And to me that establishes a current
 18 conflict.
 19 HEARING OFFICER SAVELAND: Okay. I'll allow it.
 20 Q. BY MR. SCULLY: So I'm sorry. Mr. Saido, in May do you
 21 know where Union Taxi was located?
 22 A. Well, let me make myself clear. I am new president.
 23 Okay? What I can tell you is simply what I know. That
 24 office was leased as far as my information is concerned. So
 25 we have been there after we sell our operation. That's what

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<p>1 MR. SCULLY: May I have a moment, please?</p> <p>2 HEARING OFFICER SAVELAND: Uh-hum.</p> <p>3 MR. SCULLY: Thank you. I appreciate it. Can you mark</p> <p>4 this as R-3?</p> <p>5 (Respondent's Exhibit 3 marked for identification.)</p> <p>6 MR. WALKER: Thank you.</p> <p>7 MR. SCULLY: Thank you.</p> <p>8 Q. BY MR. SCULLY: Mr. Saido, do you recognize Respondent's</p> <p>9 Exhibit 3 as the Cooperative bylaws of Union Taxi</p> <p>10 Cooperative?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 MR. SCULLY: ask for admission of Union Exhibit -- or</p> <p>14 sorry, Respondent Exhibit 3?</p> <p>15 HEARING OFFICER SAVELAND: Any objections?</p> <p>16 MR. WALKER: None.</p> <p>17 HEARING OFFICER SAVELAND: Respondent Exhibit 3 is</p> <p>18 received.</p> <p>19 (Respondent's Exhibit 3 received into evidence.)</p> <p>20 Q. BY MR. SCULLY: Mr. Saido, were you aware of an attempt</p> <p>21 on the part of CWA Local 7777 to represent the employees,</p> <p>22 office employees of Union Taxi Cooperative this year?</p> <p>23 A. Will you clarify again?</p> <p>24 Q. Were you aware that CWA-7777 made an attempt to</p> <p>25 represent employees of Union Taxi Cooperative?</p>	<p>1 Exhibit 4 which is in front of you.</p> <p>2 A. Uh-hum.</p> <p>3 Q. It's what purports to be a check to CWA Local 7777 for</p> <p>4 November dues it says; is that accurate?</p> <p>5 A. Yes.</p> <p>6 MR. SCULLY: Ask for admission of Respondent's Exhibit</p> <p>7 4?</p> <p>8 HEARING OFFICER SAVELAND: Any objections?</p> <p>9 MR. GOSCH: No.</p> <p>10 HEARING OFFICER SAVELAND: Respondent 4 is received.</p> <p>11 (Respondent's Exhibit 4 received into evidence.)</p> <p>12 Q. BY MR. SCULLY: Are you familiar with -- let me withdraw</p> <p>13 that.</p> <p>14 Mr. Saido, is that a monthly amount, \$7,308, to your</p> <p>15 knowledge, that is regularly paid to CWA-7777?</p> <p>16 A. Yeah.</p> <p>17 Q. So, for instance, it was paid in December for November?</p> <p>18 Was it paid in January for December?</p> <p>19 A. No, it's normally it's paid monthly. It's membership</p> <p>20 due.</p> <p>21 Q. Okay. And as we discussed, that is something that is</p> <p>22 required in the membership agreement that drivers pay these</p> <p>23 dues?</p> <p>24 A. Yeah.</p> <p>25 Q. And that you as the Cooperative pay it over to the</p>
<p>1 A. Do you mean office employee?</p> <p>2 Q. Yes, sir.</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 HEARING OFFICER SAVELAND: How many office employees are</p> <p>6 there?</p> <p>7 THE WITNESS: About eight.</p> <p>8 HEARING OFFICER SAVELAND: Eight?</p> <p>9 THE WITNESS: Yeah.</p> <p>10 HEARING OFFICER SAVELAND: Can you name their positions</p> <p>11 for me? And I don't know if you're including the general</p> <p>12 manager in that?</p> <p>13 THE WITNESS: Excluding general manager --</p> <p>14 HEARING OFFICER SAVELAND: Okay.</p> <p>15 THE WITNESS: -- there are dispatchers --</p> <p>16 HEARING OFFICER SAVELAND: Uh-huh.</p> <p>17 THE WITNESS: -- and call takers, cashier and</p> <p>18 bookkeeper.</p> <p>19 HEARING OFFICER SAVELAND: Okay. Thank you.</p> <p>20 THE WITNESS: Thank you.</p> <p>21 MR. WALKER: This should be 4, right, Patrick?</p> <p>22 MR. SCULLY: oh, yeah, 4. I'm sorry. Will you mark</p> <p>23 this as 4, please?</p> <p>24 (Respondent's Exhibit 4 marked for identification.)</p> <p>25 Q. BY MR. SCULLY: Mr. Saido, can you look at Respondent's</p>	<p>1 Union, correct? You pay their dues for them? You send the</p> <p>2 dues over to the Union?</p> <p>3 A. Because that's the way how things done, we collect from</p> <p>4 the cab drivers --</p> <p>5 Q. Right. I'm --</p> <p>6 A. -- and then we pay. Yeah.</p> <p>7 Q. -- I'm just asking you?</p> <p>8 A. Yeah.</p> <p>9 Q. So -- and how long has this arrangement been in place to</p> <p>10 your knowledge?</p> <p>11 A. I have no clue.</p> <p>12 Q. Are you -- was there ever an affiliation agreement</p> <p>13 reached between Union Taxi Cooperative and CWA-7777 to your</p> <p>14 knowledge?</p> <p>15 A. In terms of what?</p> <p>16 Q. An affiliation agreement, are you familiar with that?</p> <p>17 A. No. No.</p> <p>18 Q. Has there -- have you ever heard of a Labor Peace Act</p> <p>19 election?</p> <p>20 A. Never.</p> <p>21 Q. Would you agree with me, Mr. Saido, that in May there</p> <p>22 was a lot of publicity regarding Union Taxi Cooperative</p> <p>23 becoming an active cab company; do you remember?</p> <p>24 A. Yeah. Yes.</p> <p>25 Q. Am I mischaracterizing? Was there a lot of publicity?</p>

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1 A. The amount of money is collected from the cab drivers,
 2 the members themselves, and that amount is paid to the
 3 insurance company. That's it.
 4 Q. I understand that.
 5 A. Uh-huh. If you -- yeah.
 6 Q. I understand that part.
 7 A. Uh-huh.
 8 Q. I'm talking about when it started?
 9 A. I don't know.
 10 Q. Okay.
 11 MR. WALKER: I'll --
 12 MR. SCULLY: He doesn't know. He doesn't know.
 13 THE WITNESS: Yeah.
 14 MR. WALKER: -- stipulate, if you'd like, there were
 15 significant amounts paid up front by each driver as initial
 16 capitalization of the Cooperative. I don't actually know the
 17 exact amount, but I do know that that did take place, that
 18 each driver had to put up a significant sum of money.
 19 MR. SCULLY: He doesn't --
 20 HEARING OFFICER SAVELAND: That's not much of a
 21 stipulation, so let's just move on from that.
 22 MR. SCULLY: Thanks.
 23 Q. BY MR. SCULLY: Do you know Abdi Buni personally?
 24 A. As a cab driver I know him.
 25 Q. So I don't know, is that personally or not?

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1 A. No. As a cab driver I know him.
 2 Q. Okay. Do you know that he's currently employed by
 3 CWA-7777?
 4 A. I have no clue.
 5 Q. You have no clue?
 6 A. Yeah. What I know is a cab driver.
 7 Q. Okay. So he is currently a cab driver to your
 8 knowledge?
 9 A. Yes.
 10 Q. And he's currently a board member?
 11 A. Yes.
 12 Q. When was your last board meeting? Do you remember? I'm
 13 sorry. Do you remember when your last board meeting was?
 14 A. Yesterday.
 15 Q. Yesterday?
 16 A. Yes.
 17 Q. Was Mr. Buni in attendance?
 18 A. No.
 19 Q. No. When was -- do you remember the one before that
 20 one?
 21 A. Oh, boy. We have a meeting every month, monthly.
 22 Q. Monthly?
 23 A. Yeah, a monthly meeting.
 24 Q. Do you know if Mr. Buni was at the last one or no?
 25 A. Yeah, he is.

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1 Q. He was?
 2 A. Yeah.
 3 Q. And do you decide in those board meetings where you're
 4 going to take the Cooperative, where you -- what your goals
 5 are for the business and things like that?
 6 A. He's a single member, okay? So like any members give
 7 his opinion. That's it.
 8 Q. I'm not asking about Mr. Buni.
 9 A. Uh-huh.
 10 Q. I'm sorry.
 11 A. Uh-huh.
 12 Q. That was unclear. I'm asking about what happens at
 13 board meetings when you meet. Do you discuss the future of
 14 the Cooperative and where your business is going to?
 15 MR. WALKER: Objection, relevance to the disabling fault
 16 conflict of interest.
 17 HEARING OFFICER SAVELAND: Mr. Scully?
 18 MR. SCULLY: The dual agents involved in these
 19 discussions regarding the scope and direction of their
 20 business I think is relevant.
 21 HEARING OFFICER SAVELAND: But are you referring
 22 specifically to Mr. Buni or not?
 23 MR. SCULLY: I'm referring -- well, the subject matter
 24 of what they discuss in board meetings. He's already said
 25 Mr. Buni is a board member and that he attends board

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1 meetings.
 2 HEARING OFFICER SAVELAND: Okay.
 3 MR. SCULLY: so I'm trying to establish what they talk
 4 about in board meetings, and it connects insofar as they
 5 discuss the scope and direction of the business.
 6 HEARING OFFICER SAVELAND: Okay. You can keep it narrow
 7 but --
 8 MR. WALKER: we'll stipulate --
 9 HEARING OFFICER SAVELAND: -- Mr. Buni is here, right?
 10 MR. SCULLY: NO.
 11 MR. WALKER: NO.
 12 HEARING OFFICER SAVELAND: oh, he'll be here tomorrow?
 13 MR. SCULLY: NO.
 14 MR. WALKER: The subpoena was for Mr. Buni and/or the
 15 current president.
 16 HEARING OFFICER SAVELAND: okay. Well, keep asking your
 17 questions.
 18 MR. SCULLY: Am I allowed to ask that question?
 19 HEARING OFFICER SAVELAND: which?
 20 MR. SCULLY: The question of if they discuss the scope
 21 and direction of the business in board meetings?
 22 HEARING OFFICER SAVELAND: sure.
 23 MR. WALKER: we'll stipulate to that.
 24 HEARING OFFICER SAVELAND: Yeah, I mean it's --
 25 MR. SCULLY: Okay.

1 HEARING OFFICER SAVELAND: -- that's a simple question.
 2 Go -- you can reask it.
 3 MR. SCULLY: Okay.
 4 HEARING OFFICER SAVELAND: You can answer his previous
 5 question if you remember it.
 6 THE WITNESS: Yeah, I know, sir. No problem. Okay.
 7 Come again, please?
 8 Q. BY MR. SCULLY: Do you discuss where -- the scope and
 9 the direction of the Cooperative, the business?
 10 A. Definitely like any organization, business organization
 11 we discuss.
 12 Q. I thought it was a good question.
 13 A. Yes.
 14 Q. Do you remember Mr. Buni in any of these meetings
 15 disclosing to the board that he was an agent of CWA-7777?
 16 A. No. What we know is Mr. Buni is member of the board of
 17 directors. So whenever we have meeting like any board of
 18 directors he's a member, he's there actually.
 19 HEARING OFFICER SAVELAND: How many board members do you
 20 have?
 21 THE WITNESS: Nine.
 22 HEARING OFFICER SAVELAND: And you? Including you?
 23 THE WITNESS: Nine. Yeah.
 24 HEARING OFFICER SAVELAND: Okay. Does he have a special
 25 title?

1 THE WITNESS: No. Simple board member.
 2 HEARING OFFICER SAVELAND: Simple board member?
 3 THE WITNESS: Yes.
 4 HEARING OFFICER SAVELAND: So you're the president --
 5 THE WITNESS: President.
 6 HEARING OFFICER SAVELAND: -- and then you have a
 7 secretary?
 8 THE WITNESS: Two vice presidents.
 9 HEARING OFFICER SAVELAND: Okay.
 10 THE WITNESS: One secretary.
 11 HEARING OFFICER SAVELAND: Yes.
 12 THE WITNESS: One treasurer. Others are members.
 13 HEARING OFFICER SAVELAND: Okay.
 14 THE WITNESS: Four of them are members.
 15 Q. BY MR. SCULLY: And Mr. Buni was the immediate past
 16 president, correct, the president before you?
 17 A. Yes.
 18 Q. And the signatory on the lease? Did he sign the lease
 19 as well, Mr. Buni?
 20 A. No. Board of director does not enter into the
 21 day-to-day activities. It is only the manager that signs on
 22 the check.
 23 Q. Mr. Saido, did you talk with anybody at CWA-7777 about
 24 this hearing before today?
 25 A. No.

1 Q. Was this hearing discussed at the board meeting
 2 yesterday?
 3 A. No.
 4 Q. Oh, I'm sorry. Has the board set any compensation for
 5 the board members?
 6 A. It's in the bylaw.
 7 Q. It's in the bylaws?
 8 A. Yes.
 9 Q. That they are compensated?
 10 A. Yes.
 11 Q. Okay. All the board members are compensated?
 12 A. All.
 13 Q. I mean, under the bylaws, I guess?
 14 A. Well, exactly what I know is there is something in the
 15 bylaw that's written, and I can't tell you where it is. So
 16 that's what I know.
 17 Q. Do they actually -- do you know if the board members
 18 actually receive compensation for being on the board?
 19 A. So the --
 20 MR. WALKER: Objection. Just what's the relevance of
 21 UTC's compensation or not of this board?
 22 MR. SCULLY: Okay. They're all required to be members
 23 by these membership agreements. They're all required to pay
 24 dues with no apparent representation provided by the Union.
 25 MR. GOSCH: Objection.

1 MR. SCULLY: They -- they're not representing them as
 2 employees.
 3 HEARING OFFICER SAVELAND: Well, what's the objection,
 4 Mr. Gosch?
 5 MR. SCULLY: What's the objection?
 6 MR. GOSCH: The objection is he keeps making this
 7 statement, and it's simply not true. He says it over and
 8 over again, and it's simply not true. And he's --
 9 HEARING OFFICER SAVELAND: what does he keep saying?
 10 MR. GOSCH: -- also -- he keeps saying over and over
 11 again that the drivers don't get any representation. It's
 12 not true.
 13 HEARING OFFICER SAVELAND: Well --
 14 MR. GOSCH: They get representation.
 15 MR. SCULLY: well, they don't negotiate on it.
 16 MR. GOSCH: And he's -- and he's given a subpoena to
 17 someone to talk about it today, and she's here. So why he
 18 keeps making the statement instead of asking her about it,
 19 she's here.
 20 HEARING OFFICER SAVELAND: We can clarify. It's with
 21 Ms. Bolton --
 22 MR. SCULLY: We have testimony from this witness but
 23 I --
 24 HEARING OFFICER SAVELAND: -- Ms. Bolton, right?
 25 MR. GOSCH: I'm sorry, what?

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<p>1 five-minute break.</p> <p>2 MR. SCULLY: Thank you.</p> <p>3 HEARING OFFICER SAVELAND: Go off the record.</p> <p>4 (Off the record.)</p> <p>5 HEARING OFFICER SAVELAND: If I could -- come on up.</p> <p>6 You may be seated. Just remind you that you're still under</p> <p>7 oath.</p> <p>8 THE WITNESS: Yeah. Okay.</p> <p>9 HEARING OFFICER SAVELAND: Thank you.</p> <p>10 Go ahead, Mr. Walker.</p> <p>11 FURTHER RECROSS-EXAMINATION</p> <p>12 Q. BY MR. WALKER: Mr. Bushra, the negotiation came up that</p> <p>13 Union -- UTC could grow, you know, however much bigger.</p> <p>14 Based on UTC's present authority from the Public Utilities</p> <p>15 Commission, is its size capped at this point at where it's</p> <p>16 at?</p> <p>17 A. Yes. Yeah.</p> <p>18 Q. And so basically you can't have more than the 263</p> <p>19 drivers that you have right now?</p> <p>20 A. No, we don't. Only 162.</p> <p>21 Q. So it's capped unless we got more --</p> <p>22 A. Yes. Yeah.</p> <p>23 Q. -- you know, we'd have to go back to the PUC again --</p> <p>24 A. Yes.</p> <p>25 Q. -- which took us a year the first time so --</p>	<p>1 A. Every month?</p> <p>2 Q. Yeah.</p> <p>3 A. Yeah.</p> <p>4 Q. And what does it do with those dues? Does it turn them</p> <p>5 over to Local 7777?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 MR. GOSCH: That's the only question I had.</p> <p>9 HEARING OFFICER SAVELAND: Anything else?</p> <p>10 MR. SCULLY: Yeah.</p> <p>11 FURTHER REDIRECT EXAMINATION</p> <p>12 Q. BY MR. SCULLY: Mr. Saido, is that cap referred to by</p> <p>13 Mr. Walker on drivers or vehicles?</p> <p>14 A. Come again?</p> <p>15 Q. Is that cap referred to on drivers or vehicles?</p> <p>16 A. I'm not clear.</p> <p>17 HEARING OFFICER SAVELAND: Mr. Walker said that --</p> <p>18 THE WITNESS: Yeah.</p> <p>19 HEARING OFFICER SAVELAND: -- you had a cap of 262.</p> <p>20 THE WITNESS: Yes.</p> <p>21 HEARING OFFICER SAVELAND: So is that 262 drivers or</p> <p>22 cabs?</p> <p>23 THE WITNESS: 262 spots.</p> <p>24 Q. BY MR. SCULLY: Cabs?</p> <p>25 A. Yeah.</p>
<p>1 MR. SCULLY: Who's testifying?</p> <p>2 MR. WALKER: We're cross-examining the witness here. So</p> <p>3 a little bit of reading.</p> <p>4 HEARING OFFICER SAVELAND: That's fine.</p> <p>5 Q. BY MR. WALKER: The other issue, I just wanted to be</p> <p>6 clear, is UTC operated on a not-for-profit basis?</p> <p>7 A. It is a nonprofit organization.</p> <p>8 Q. So the fees that are collected from the drivers are at</p> <p>9 the lowest possible amount to cover its costs?</p> <p>10 A. Yes.</p> <p>11 Q. And that the intention being that the drivers retain as</p> <p>12 much money as possible?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 MR. WALKER: That's all I have.</p> <p>16 MR. GOSCH: I do have one question.</p> <p>17 HEARING OFFICER SAVELAND: Mr. Gosch, go ahead.</p> <p>18 MR. GOSCH: Yes, sir.</p> <p>19 FURTHER RECROSS-EXAMINATION</p> <p>20 Q. BY MR. GOSCH: Mr. Bushra, UTC collects union dues from</p> <p>21 the drivers; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. And what does it do with those union dues?</p> <p>24 A. Come again?</p> <p>25 Q. What does it do with the dues that it collects?</p>	<p>1 Q. Cabs; is that right?</p> <p>2 A. It is -- what is actually given from the PUC is 262.</p> <p>3 Q. And it refers to the number of vehicles?</p> <p>4 A. Members.</p> <p>5 Q. So you can only have -- it's a limitation of the number</p> <p>6 of drivers per cab?</p> <p>7 A. It is limited. Yeah, this is 162.</p> <p>8 HEARING OFFICER SAVELAND: But 262 cars?</p> <p>9 THE WITNESS: Yes.</p> <p>10 HEARING OFFICER SAVELAND: Or 262 people?</p> <p>11 THE WITNESS: well, actually what is -- both is no</p> <p>12 members --</p> <p>13 HEARING OFFICER SAVELAND: Uh-huh.</p> <p>14 THE WITNESS: -- but 262 --</p> <p>15 HEARING OFFICER SAVELAND: so they're giving you --</p> <p>16 THE WITNESS: Yeah.</p> <p>17 HEARING OFFICER SAVELAND: -- 262 licenses?</p> <p>18 THE WITNESS: Yeah.</p> <p>19 HEARING OFFICER SAVELAND: And each cab has a license?</p> <p>20 THE WITNESS: Cab, yeah.</p> <p>21 HEARING OFFICER SAVELAND: And each driver has a</p> <p>22 license?</p> <p>23 THE WITNESS: Definitely.</p> <p>24 HEARING OFFICER SAVELAND: Are we clear?</p> <p>25 MR. SCULLY: No.</p>

1 HEARING OFFICER SAVELAND: Okay.
 2 Q. BY MR. SCULLY: You can have more than one driver
 3 operating a cab?
 4 A. No.
 5 Q. You can't have -- so you don't -- you only have one
 6 driver per cab? You limit that?
 7 A. Yes. Yes.
 8 Q. Where is that stated?
 9 A. What's that?
 10 Q. Where is that stated? Do you limit them as the
 11 Cooperative or is it --
 12 A. Yes, it is because it is ownership cab. Nobody gives to
 13 somebody else.
 14 HEARING OFFICER SAVELAND: So you never have a relief
 15 driver?
 16 THE WITNESS: Yeah. They -- no. Because it is my
 17 cab --
 18 HEARING OFFICER SAVELAND: Yes.
 19 THE WITNESS: -- I voted by myself --
 20 HEARING OFFICER SAVELAND: Right.
 21 THE WITNESS: -- I am not giving to anybody else.
 22 Q. BY MR. SCULLY: Isn't that up to you?
 23 A. To do -- no. We don't have relations. We don't do
 24 that. Nobody can drive, you know, without having -- and so
 25 on and so forth.

1 Q. Okay. But that's fine. But isn't that -- if that
 2 person --
 3 A. No.
 4 Q. -- has a herdic --
 5 A. No.
 6 Q. -- can't you decide as an operator?
 7 A. No. I am not a decider. I'm not -- as a member I am
 8 not deciding to give my cab to somebody else.
 9 Q. And no owner can do that under what law? Is there some
 10 law that prohibits you as an owner from making that decision,
 11 or is that just your personal view?
 12 A. Well, not my personal view. We do have rules and
 13 regulations.
 14 Q. Okay. Which one? I mean, where is it written that you
 15 can't as an owner decide to have --
 16 A. My lawyer can provide that.
 17 Q. I'm asking you. I'm not asking your --
 18 HEARING OFFICER SAVELAND: Well, I mean, if his attorney
 19 can provide the document --
 20 THE WITNESS: Yes.
 21 HEARING OFFICER SAVELAND: -- then let's see that.
 22 MR. SCULLY: Fine.
 23 HEARING OFFICER SAVELAND: That'd be great.
 24 MR. WALKER: I don't have such a document.
 25 MR. SCULLY: Because --

1 MR. WALKER: It's the --
 2 MR. SCULLY: -- it doesn't exist.
 3 MR. WALKER: Right. Well --
 4 MR. SCULLY: Because it doesn't exist. There is no such
 5 rule.
 6 MR. WALKER: Within the Cooperative, they've taken the
 7 policy at this point in time that it's one driver, one cab
 8 so --
 9 HEARING OFFICER SAVELAND: I mean, are --
 10 MR. SCULLY: There's no regulation. I mean, they're --
 11 HEARING OFFICER SAVELAND: Are you talking about a
 12 Colorado regulation?
 13 MR. SCULLY: That's what I thought he was talking about.
 14 HEARING OFFICER SAVELAND: Let's, you know --
 15 MR. SCULLY: He's said the PUC --
 16 HEARING OFFICER SAVELAND: -- let's be a bit liberal
 17 here.
 18 MR. SCULLY: -- the PUC is regulations.
 19 MR. WALKER: For his law.
 20 HEARING OFFICER SAVELAND: He --
 21 MR. SCULLY: That's what I assumed that he was referring
 22 to.
 23 HEARING OFFICER SAVELAND: Well, I think you made an
 24 incorrect assumption.
 25 MR. SCULLY: Okay.

1 HEARING OFFICER SAVELAND: He's not giving a legal
 2 opinion if --
 3 MR. SCULLY: He said -- okay. So --
 4 HEARING OFFICER SAVELAND: Hey, a rule is a policy. If
 5 he wants to clarify, but go easy.
 6 Q. BY MR. SCULLY: Is it -- okay. Is it the Cooperative
 7 that tells you you can't have more than one?
 8 A. It's PUC rules and regulations.
 9 Q. That's what he said.
 10 HEARING OFFICER SAVELAND: That's clear.
 11 THE WITNESS: Yeah.
 12 HEARING OFFICER SAVELAND: Yeah, that's clear.
 13 MR. SCULLY: Okay. Well, then I just -- okay. And you
 14 don't have such a regulation, Mr. Walker?
 15 MR. WALKER: No.
 16 MR. SCULLY: Thank you.
 17 MR. WALKER: And -- no.
 18 Q. BY MR. SCULLY: Can you define the term dues for me,
 19 Mr. Saido?
 20 A. What?
 21 Q. Dues?
 22 A. Dues?
 23 Q. What do you mean when you say the word dues?
 24 A. I doesn't say -- it is not my terminology.
 25 Q. Okay. It was Mr. Gosch's terminology?

1 A. Yeah.
 2 Q. Thank you.
 3 MR. SCULLY: Nothing further.
 4 HEARING OFFICER SAVELAND: Anything else? You may step
 5 down. Thank you.
 6 THE WITNESS: Thank you.
 7 (Witness excused.)
 8 MR. WALKER: Is Union Taxi released at this point?
 9 MR. SCULLY: No, I'm -- I think for the day, but I'm
 10 persisting in my subpoena, and I would like the ability to
 11 recall Mr. Saido if --
 12 HEARING OFFICER SAVELAND: Today?
 13 MR. SCULLY: Not today.
 14 HEARING OFFICER SAVELAND: Are you sure? Only because I
 15 mean I --
 16 MR. SCULLY: Well, I don't know. I --
 17 HEARING OFFICER SAVELAND: Well, I don't want to release
 18 him and then have --
 19 MR. SCULLY: Maybe we should finish with Ms. Bolton.
 20 HEARING OFFICER SAVELAND: Yeah. Why don't you just --
 21 we'll stick out through the lunch hour at least and then
 22 evaluate at that time. So is Ms. Bolton the next witness?
 23 MR. SCULLY: Yes.
 24 HEARING OFFICER SAVELAND: Ms. Bolton, if you could come
 25 up here. Thank you.

1 Q. And how long were you executive vice president?
 2 A. We have three-year terms, so three years.
 3 Q. And prior to that?
 4 A. I was a vice president.
 5 Q. And how long were you a vice president?
 6 A. Two terms, six years.
 7 Q. How long in total have you been working for 7777 in some
 8 capacity?
 9 A. As a member or --
 10 Q. As an officer in the co-op?
 11 A. Officer, I was elected in 1998, December of 1998.
 12 Q. Is it fair to say that you're familiar with how a Union
 13 operates and manages its finances?
 14 A. I would think that's fair, yes.
 15 Q. Okay. Through your experience as an officer?
 16 A. Yes. We do have a secretary/treasurer, so I'm not that
 17 person but --
 18 Q. Okay. Who's that?
 19 A. Dale Feller (ph.).
 20 Q. And how long has Mr. Feller been in that position? Do
 21 you know?
 22 A. Well, he was elected at the same time I was.
 23 Q. Okay. Do you know whether or not Mr. Feller was the
 24 signatory on the lease with Union Taxi Cooperative?
 25 A. I would have to look at the lease. I don't know if it

1 MR. SCULLY: I promise I'll try to keep this short.
 2 HEARING OFFICER SAVELAND: Please raise your right hand.
 3 Would you like to swear or affirm?
 4 (Whereupon,
 5 LISA BOLTON
 6 was called as a witness by and on behalf of the Employer and,
 7 after having been first duly sworn, was examined and
 8 testified as follows:)
 9 HEARING OFFICER SAVELAND: You may be seated. Please
 10 state your name and spell your last name for the record.
 11 THE WITNESS: Lisa Bolton, B-O-L-T-O-N.
 12 DIRECT EXAMINATION
 13 Q. BY MR. SCULLY: Good morning, Ms. Bolton.
 14 A. Good morning.
 15 Q. What's your position with CWA-7777?
 16 A. I am the Local president.
 17 Q. How long have you been Local president?
 18 A. December 2008 was our election.
 19 Q. A little less than a year?
 20 A. A little more than a year.
 21 Q. Oh, no, a little more than a year. See, I'm still in
 22 2009.
 23 A. Yes.
 24 Q. Where -- did you have a position prior to that?
 25 A. Yes, I was the executive vice president prior to that.

1 was the prior president or Dale.
 2 Q. All right. But you weren't involved in negotiating
 3 that?
 4 A. Except for talking about fair market value in our
 5 neighborhood.
 6 Q. All right. How many square feet do they have?
 7 A. I don't know the exact amount of square feet. It's the
 8 south end of our building.
 9 Q. There's been a lot of testimony. You've been present
 10 for the hearing so far today, correct?
 11 A. Yes.
 12 Q. Can you tell me whether or not the payment of -- from
 13 Union Taxi Cooperative is segregated from representational
 14 funds at CWA-7777?
 15 A. I don't know what you mean.
 16 Q. In other words, is it --
 17 A. I mean, do you mean do we have different accounts?
 18 Q. Is it in a different account than your
 19 representational -- other representational dues?
 20 A. Well, to my knowledge -- I don't know.
 21 HEARING OFFICER SAVELAND: Are you sure that you
 22 understand the question?
 23 THE WITNESS: I -- no, I guess I don't understand the
 24 question.
 25 HEARING OFFICER SAVELAND: Because I want to make sure

1 you're answering a question that you understand so --
 2 THE WITNESS: Okay. Well --
 3 HEARING OFFICER SAVELAND: Mr. Scully, why don't you go
 4 through that, parse it out.
 5 Q. BY MR. SCULLY: what's the largest unit that 777 -- did
 6 I say four sevens?
 7 A. Represents?
 8 Q. Yeah.
 9 A. Qwest.
 10 HEARING OFFICER SAVELAND: Yeah.
 11 Q. BY MR. SCULLY: Qwest?
 12 A. Uh-hum.
 13 Q. And how big is that bargaining unit for -- that you
 14 recall? In other --
 15 A. For us?
 16 Q. Yeah, just for you. I know it's a 14-state region.
 17 A. Approximately 1900 members.
 18 Q. All right. They pay dues?
 19 A. Yes.
 20 Q. There is a due structure provision?
 21 A. Yes.
 22 Q. So Qwest pursuant to that in the collective bargaining
 23 agreement sends you a dues check, correct?
 24 A. Through the International, I believe.
 25 Q. Okay. But does that money ultimately come to corporate?

1 A. Yes.
 2 Q. Is the Union Taxi Cooperative money that is paid from
 3 the Cooperative cashed separately from that --
 4 A. Not that I know of.
 5 Q. It's intermingled with those funds?
 6 A. Yes.
 7 Q. Is Mr. Abdi Buni a paid organizer for CWA-7777?
 8 A. Yes.
 9 Q. How long has he held that position?
 10 A. A few months. I don't know the exact date.
 11 Q. Was he a board member prior to that, executive board
 12 member?
 13 A. He was an E-Board member prior to Union Taxi. There was
 14 no -- there's no taxi E-Board member right now.
 15 Q. Okay.
 16 A. No one ran for that position.
 17 Q. But there's a spot?
 18 A. Yes. There was a spot on the last ballot for Pro TAXI.
 19 Q. Okay. They're -- the only people that would be eligible
 20 at this time, and you correct me if I'm wrong, would be the
 21 drivers of the Cooperative for that E-Board spot?
 22 A. No.
 23 Q. Okay.
 24 A. You're wrong.
 25 Q. But other people?

1 A. We have other taxicab members.
 2 Q. So those other people would be eligible for that E-Board
 3 spot?
 4 A. Yes.
 5 Q. Pro TAXI, can you tell me what Pro TAXI was since you
 6 referenced it?
 7 A. Pro TAXI was an association that was affiliated with
 8 CWA.
 9 Q. And you had an agreement with Pro TAXI?
 10 A. Yes.
 11 Q. That defined what that relationship was?
 12 A. Yeah. I believe we gave you that document.
 13 Q. In response to the subpoena? I'm sorry. I'll show it
 14 to you.
 15 MR. SCULLY: I don't intend to use it as an exhibit
 16 necessarily --
 17 HEARING OFFICER SAVELAND: Okay.
 18 MR. SCULLY: -- necessarily. But should I mark it or --
 19 HEARING OFFICER SAVELAND: NO.
 20 Q. BY MR. SCULLY: Just to refresh your recollection.
 21 A. Yes.
 22 HEARING OFFICER SAVELAND: Just identify it if you could
 23 for the record?
 24 THE WITNESS: This is the Pro TAXI affiliation agreement
 25 with our Local.

1 HEARING OFFICER SAVELAND: Okay. Why don't we have it
 2 entered?
 3 MR. SCULLY: Okay. Fine. Let's -- do you want to mark
 4 it as R-7.
 5 THE WITNESS: Do I keep it?
 6 MR. SCULLY: she'll take it. Eventually it will get
 7 back to you.
 8 HEARING OFFICER SAVELAND: Do you have copies?
 9 MR. SCULLY: I don't.
 10 HEARING OFFICER SAVELAND: Okay.
 11 MR. SCULLY: I'll have to make copies at break.
 12 HEARING OFFICER SAVELAND: Okay.
 13 (Respondent's Exhibit 7 marked for identification.)
 14 THE WITNESS: Thank you.
 15 COURT REPORTER: Uh-hum.
 16 HEARING OFFICER SAVELAND: Do you want to just circulate
 17 it so that we can --
 18 MR. SCULLY: Oh, yeah, I'm sorry. I know Stan has seen
 19 it. Mr. Walker?
 20 HEARING OFFICER SAVELAND: Any objection?
 21 MR. WALKER: NO.
 22 THE WITNESS: Thank you.
 23 HEARING OFFICER SAVELAND: And that's 7?
 24 MR. SCULLY: 7, sir.
 25 HEARING OFFICER SAVELAND: Respondent's 7 is received.

1 pay these people?
 2 A. With -- well, they turn in a voucher, and we run it
 3 through our bookkeeper, and she would pay them a check.
 4 Q. Okay. And some of these individuals to your
 5 recollection were board members of Union Taxi Cooperative?
 6 A. I -- no.
 7 Q. None?
 8 A. Not that I know of, no. I don't know. Was your
 9 question just board members or just CWA taxi drivers?
 10 Q. Well, I -- you're right, I initially asked about
 11 anybody.
 12 A. Right.
 13 Q. How about members of Union Taxi Cooperative, do you
 14 recall cutting checks to those --
 15 A. Not that I recall, no.
 16 Q. So it was everybody other than the Union Taxi
 17 Cooperative people?
 18 A. There could have been in the past. I don't remember,
 19 you know, every check that I signed --
 20 Q. Okay. That's fair.
 21 A. -- for, you know, for the six years but --
 22 Q. So can you -- and I'm sorry. Can you say with certainty
 23 whether or not people who are currently Union Taxi
 24 Cooperative members received or did not receive any of these
 25 checks? Do you know?

1 MR. SCULLY: Yeah, she's referring to R-1, I believe.
 2 HEARING OFFICER SAVELAND: Uh-hum.
 3 MR. SCULLY: Do you have R-1?
 4 (Off the record.)
 5 MR. WALKER: Mr. Saido inadvertently wrote on one of
 6 them. So if we could get another copy of -- it appears to
 7 be --
 8 MR. SCULLY: I would like to see what he wrote.
 9 MR. WALKER: -- 2 -- 2, 3, 4.
 10 HEARING OFFICER SAVELAND: Hey, you don't have to show
 11 him what he wrote. I mean, if he's got notes that he wanted
 12 to make --
 13 MR. SCULLY: why not?
 14 HEARING OFFICER SAVELAND: what difference does it make?
 15 MR. SCULLY: well, I don't know. That's the point.
 16 HEARING OFFICER SAVELAND: Well, if there's no
 17 objection.
 18 MR. WALKER: I object. I don't know what his, you know,
 19 note's about, Ms. Bolton's testimony has to do with this.
 20 HEARING OFFICER SAVELAND: Yeah, I don't think you need
 21 to see it. I've got a clear copy in Ms. Bolton's hands.
 22 That can become our 7 for the record.
 23 MR. SCULLY: Well, I -- well, first of all, there's only
 24 one copy of R-7 that needs to be taken a copy. Second of
 25 all, if he wrote on an official exhibit in this proceeding, I

1 A. I can't say for sure.
 2 Q. So it's possible they might have, but you don't know?
 3 A. Right.
 4 Q. There have been -- has the Local held cookouts for Union
 5 Taxi Cooperative drivers?
 6 A. Yes.
 7 Q. Are the utilities segregated out for the portion of the
 8 building that Union Taxi Cooperative has?
 9 A. As in which kind of utilities? I believe they have
 10 their own phone bill and all that. We pay the electricity.
 11 Q. What else do you pay?
 12 A. Well, our normal operating expenses.
 13 Q. Water?
 14 A. Yes.
 15 Q. Sanitation?
 16 A. I believe that's in the lease. I mean, if I could look
 17 at the lease, I think it may be spelled out in there.
 18 HEARING OFFICER SAVELAND: Do we have that exhibit?
 19 MR. SCULLY: we might have it. Do we have that exhibit,
 20 a witness copy? It's up here? Okay. I'm sorry. Number 1.
 21 THE WITNESS: So that's the Pro TAXI --
 22 MR. GOSCH: R-1?
 23 THE WITNESS: Oh, that was --
 24 MR. SCULLY: Yeah, it should be R-1.
 25 THE WITNESS: -- with Bushra.

1 think I am entitled to see it.
 2 Q. BY MR. SCULLY: So did you want to point out in R-1
 3 where you think you're referring to?
 4 A. Are you talking to me?
 5 Q. Yes. I'm sorry.
 6 A. Well, utilities is Number 5 --
 7 Q. Okay.
 8 A. -- and it says, "Lessor will pay all utilities," and it
 9 talks about heating and cooling.
 10 Q. Okay. So -- but that's not entirely accurate?
 11 A. We pay the heat and the cooling.
 12 Q. Right. But you don't pay all the utilities?
 13 A. Not the phone.
 14 Q. Right.
 15 A. Nothing that has to do with Union Taxi operating
 16 business do we pay.
 17 Q. Except for the electricity?
 18 A. We pay the electricity of the whole building.
 19 Q. And the sanitation, obviously, that would go --
 20 A. That's included in the lease. I mean, that's included
 21 in the \$1,000 a month that they pay us.
 22 Q. Okay. But you agree sanitation's a utility?
 23 A. Trash collection, I don't know. Is that what you mean?
 24 Q. Yeah. I'm connecting it to their business --
 25 A. As a phone company person, I wouldn't say it's a

1 utility, but it is included in the lease.
 2 HEARING OFFICER SAVELAND: Yeah.
 3 Q. BY MR. SCULLY: but I assume I -- and all I'm getting at
 4 is I assume that the Cooperative has some amount, correct?
 5 A. I assume so --
 6 Q. Believe me, it's not a trick.
 7 A. No, I just don't understand.
 8 Q. Okay. Where -- is there a place for housing the cabs
 9 themselves on your premises?
 10 A. They can use our parking lot.
 11 Q. Okay.
 12 A. But we don't want long-term parking to, you know, impede
 13 with other people coming and going, other members as well.
 14 Q. Are there any garage facilities there?
 15 A. No.
 16 Q. Are those folks, the drivers, permitted to do work on
 17 their vehicles in your parking lot?
 18 A. I don't know if they've ever asked to do that.
 19 Q. Okay.
 20 A. They put the radios and things in in one section when
 21 they --
 22 Q. So they did that work on your parking lot?
 23 A. Well, in kind of a -- one area, yes.
 24 Q. But was --
 25 A. It's not a parking space.

1 Q. Okay. Was it on your premises?
 2 A. It's on our property. Uh-huh.
 3 Q. Okay. And they installed their radios there?
 4 A. Uh-hum.
 5 HEARING OFFICER SAVELAND: There's no garage?
 6 THE WITNESS: No.
 7 HEARING OFFICER SAVELAND: Okay. So they're just doing
 8 that work? And when you say radio, you mean the two-way
 9 radio for dispatch?
 10 THE WITNESS: Their -- now, whatever they did, I'm not
 11 really -- you know, whatever they installed once they started
 12 business.
 13 HEARING OFFICER SAVELAND: Okay.
 14 Q. BY MR. SCULLY: And it's -- let me strike that. Did any
 15 of these folks from Union Taxi Cooperative pay an initiation
 16 fee?
 17 A. To the Union?
 18 Q. Uh-hum.
 19 A. No.
 20 Q. Okay. And you mentioned that the taxi drivers are -- is
 21 there a separate division at 7777 for them in terms of -- are
 22 they listed as a bargaining unit?
 23 A. Well, if you're referring to the website, they're
 24 underneath the section that has bargaining units.
 25 Q. Okay. Is Mr. Buni effectively assigned to that --

1 A. No.
 2 Q. -- I mean, does he work with that bargaining unit?
 3 A. Well, he works for UTC. I have a vice president that's
 4 in charge of the driver issues for Union -- for CWA taxi
 5 drivers.
 6 Q. Who's that individual?
 7 A. Linda Harris.
 8 Q. Okay. But Mr. Buni is permitted to organize in that
 9 area?
 10 A. They're fully organized. You mean Union Taxi drivers
 11 or --
 12 Q. No. No. I mean among taxi drivers, that Mr. Buni, is
 13 he permitted or expected to organize them all?
 14 A. He's -- yeah, he's working as an organizer.
 15 Q. In that area?
 16 A. In several areas --
 17 Q. Okay.
 18 A. -- actually.
 19 Q. But not at Qwest?
 20 A. No.
 21 Q. But he does work with drivers?
 22 A. Drivers and --
 23 Q. I'm not saying exclusively but --
 24 A. No. But, yeah, in other -- yes, he does. And other
 25 workers as well.

1 Q. In this what's termed a -- on the website as bargaining
 2 unit, what percentage are from Union Taxi Cooperative?
 3 A. You mean members?
 4 Q. How many -- yeah, of this.
 5 A. Well, we have approximately 3,000 members.
 6 Q. In -- of taxi drivers?
 7 A. No. Of everybody, you see all these people.
 8 Q. I understand that.
 9 A. Uh-hum.
 10 Q. And if you don't know, you don't know. But do you know
 11 what percentage the Union Taxi Cooperative members make up
 12 that group of taxi drivers that are CWA-7777?
 13 A. Oh, I don't know. I'm sorry. No.
 14 Q. No?
 15 MR. SCULLY: Nothing further. And subject to my
 16 documents entered.
 17 HEARING OFFICER SAVELAND: Uh-hum. Mr. Gosch?
 18 MR. GOSCH: I need to make copies of a document I just
 19 took a minute now. I don't have copies for everybody here.
 20 HEARING OFFICER SAVELAND: Sure. Let's go off the
 21 record, and let's get a copy of --
 22 MR. SCULLY: R-7.
 23 HEARING OFFICER SAVELAND: -- 7?
 24 MR. GOSCH: 7.
 25 HEARING OFFICER SAVELAND: Yeah.

1 (Off the record.)
 2 HEARING OFFICER SAVELAND: Go ahead Mr. Gosch. Yeah.
 3 MR. GOSCH: Okay. Thank you.
 4 CROSS-EXAMINATION
 5 Q. BY MR. GOSCH: Ms. Bolton, on examination from the
 6 company you talked -- you were asked questions about the
 7 lease, and you said you had discussions about the fair market
 8 value. What did you mean that you had discussions about
 9 that?
 10 A. Well, there was some space right next door to us, so we
 11 called and found out how much it was and made the price in,
 12 you know, in that ballpark.
 13 Q. Okay. And that ballpark came to \$1,000 a month?
 14 A. Uh-huh.
 15 Q. Do you -- does Local 7777 provide space to other groups
 16 other than UTC?
 17 A. Yes.
 18 Q. What kind of groups do you provide space to?
 19 A. Like our retiree chapter.
 20 Q. So your retiree chapter, are these people members?
 21 A. They're retired members.
 22 Q. And what does that mean to be a retired member? Do they
 23 pay dues?
 24 A. They pay retiree dues, yes.
 25 Q. Okay. When you -- the space that they use, do they pay

1 MR. SCULLY: But what is the relevance?
 2 MR. GOSCH: Well, I think there has been an insinuation
 3 that there is some sort of, you know, unfair activity that's
 4 going on and some relationship where money passes back and
 5 forth, and we figure actually that's not the case.
 6 MR. SCULLY: They're not -- may I respond?
 7 HEARING OFFICER SAVELAND: Sure.
 8 MR. SCULLY: There's no foundation that the retirees are
 9 an employer. There's no foundation that the retirees are
 10 engaging in any sort of competing business or that any of
 11 these other people are engaging in any sort of competing
 12 business. They can have the Boys & Girls Club of America
 13 over and give them free space.
 14 The point here and that -- the thing that has been so
 15 strenuously argued by Petitioner is that the limited issue is
 16 a disabling conflict of interest, in that regards a competing
 17 business, and the status of the Cooperative as an employer.
 18 And I don't see the connection between whatever they, you
 19 know, the Union decides to do because they think it's the
 20 nice or right thing to do and the issues in this case.
 21 MR. GOSCH: Mr. Hearing Officer, he doesn't have to see
 22 the connection. This is not --
 23 MR. SCULLY: I'm asking for a connection.
 24 MR. GOSCH: I mean --
 25 HEARING OFFICER SAVELAND: Well, I mean, Mr. Gosch just

1 for that space?
 2 A. No.
 3 Q. It's provided for free?
 4 A. Yes.
 5 Q. Okay. Do you ever make copies for that group?
 6 A. We make copies for them, we provide secretarial
 7 assistance, do mailings, et cetera.
 8 Q. Do you charge them for any of those things?
 9 A. No.
 10 Q. Do you represent them as a collective bargaining agent
 11 currently, the retirees?
 12 A. No.
 13 Q. What sort of --
 14 A. We --
 15 Q. -- representational activities do you do for your
 16 retirees?
 17 A. Well, for retirees, a lot of legislative issues.
 18 MR. SCULLY: Can we have a clarification as to
 19 relevance? Are retirees running a competing business that
 20 I'm unaware of?
 21 MR. GOSCH: Oh, no. We're just expressing that -- what
 22 Local 7777 offers to various groups. And unlike UTC, which
 23 is an arm's length transaction in this case, they offer it to
 24 their members for free.
 25 HEARING OFFICER SAVELAND: Okay. I'll allow it.

1 started his questioning. Why don't we let the record
 2 develop.
 3 MR. SCULLY: Okay. That's fine.
 4 HEARING OFFICER SAVELAND: And, actually, if we could
 5 just go off the record again.
 6 (Off the record.)
 7 Q. BY MR. GOSCH: Are there other groups that you provide
 8 space to besides the retirees?
 9 A. Jobs with Justice has an office in our building.
 10 Q. What is Jobs with Justice?
 11 A. It's an organization that helps workers.
 12 Q. Okay. Do you charge them for the space?
 13 A. No.
 14 Q. Do you provide copies to them?
 15 A. Uh-hum. Yes.
 16 Q. Ms. Bolton, what representational activities do -- does
 17 CWA provide for drivers?
 18 A. Well, we work at the member's request on driver issues.
 19 Several different types of issues that, I probably can't even
 20 name them all, but things like parking enforcement.
 21 Q. What does that mean parking enforcement?
 22 A. Well, like if -- let's say that our members get a ticket
 23 or feel that a parking enforcement officer is singling them
 24 out in some way, I've had meetings down at, you know, the
 25 parking enforcement people. I've had meetings at the herdic

1 license, excise and license place trying to understand how
 2 you get your herdic license, and if you don't get it renewed
 3 what, you know, what education things can we do for our
 4 members.
 5 Q. Do you provide these services only for UTC members or
 6 for other driver members?
 7 A. No, all taxi drivers that are CWA members. DIA issues.
 8 Q. What -- when you say DIA, you mean Denver International
 9 Airport?
 10 A. Yes.
 11 Q. What issues have come up there that the Local has
 12 provided representation to drivers?
 13 A. The main issue at DIA is this building in the holding
 14 lot where a lot of the drivers do their praying throughout
 15 the day, and the heating and the air-conditioning units were
 16 not working. And all the taxicabs go there, or all the
 17 companies go there. And there's just one building. And so
 18 like in a day like this, there's no way they could be out
 19 there without heat to pray, or in a hot summer day with the
 20 sun beating down on this glass building, they could not do
 21 their praying in that building.
 22 Also, the -- all the molding around that building is now
 23 damaged or worn-out or something, and I -- before the
 24 holidays, I was trying to get a hold of someone to help us
 25 figure out a way that we can redo that molding because the

1 Q. Okay. Who are the four?
 2 A. Yellow, Metro, Freedom, and Union Taxi.
 3 Q. Union being UTC?
 4 A. UTC.
 5 Q. Okay. And the agreement -- or the rumors that you heard
 6 about Cherry Creek, who was going to be excluded?
 7 A. The two cab companies that were going to go into this
 8 agreement effective November 1st were Yellow and Metro.
 9 Q. Okay. And what steps did Local 7777 take on behalf of
 10 drivers about this?
 11 A. Well, I did try calling Nick LeMasters in the Cherry
 12 Creek Mall, but I didn't really get any information about
 13 that. Prior to this agreement we had met with someone at the
 14 mayor's office just about general issues at Cherry Creek, but
 15 we wanted to inform the public that we thought it was unfair
 16 for Cherry Creek Mall to keep out half -- two cab companies,
 17 and so we organized leafletting activity to educate the
 18 public. Do you want --
 19 Q. Just give me a second. She'll give you one.
 20 A. Do you want mine?
 21 Q. No. Okay. You take that one, and I'll take this one.
 22 Thank you.
 23 (Petitioner's Exhibit 1 marked for identification.)
 24 MR. SCULLY: Are these the same?
 25 THE WITNESS: Yeah. They were cut in half, leaflets.

1 water from the snow melts and it gets on their prayer rugs
 2 and, you know, it's just a respect thing, and it's a driver
 3 issue.
 4 Q. There's been testimony about -- or I think it was
 5 characterized as a dispute at Cherry Creek Mall. Are you
 6 familiar with that dispute?
 7 A. Yeah.
 8 Q. Did you have any involvement with that dispute?
 9 A. In -- did I cause it? In what way? No.
 10 Q. Fair enough. Did Local 7777 take any actions on behalf
 11 of drivers in regard to the dispute?
 12 A. Yes. Actually it started, if I may --
 13 Q. Please.
 14 A. -- with a couple of drivers getting trespassing tickets.
 15 They're -- when -- well, it was kind of prior to, but because
 16 they got out of their cab in the over 100 degree weather, and
 17 so they're supposed to sit in their taxis with the sun
 18 beaming down. And so we went down to the courts with them to
 19 make sure they understood how that they could plea bargain.
 20 We weren't lawyers, but I mean we helped in that. Shortly
 21 after that, I think the rumor started that they were going to
 22 go into -- Cherry Creek was going to go into this exclusive
 23 agreement and block two -- at least two other cab companies.
 24 Q. How many major cab companies are there in Denver?
 25 A. To my knowledge there's four.

1 Q. BY MR. GOSCH: Yeah, Ms. Bolton, can you describe what
 2 Petitioner Exhibit 1 is?
 3 A. It's the leaflet that we put together to hand out
 4 outside Cherry Creek Mall and the surrounding area.
 5 Q. And is this one of the documents that we turned over to
 6 SuperShuttle in response to their subpoena?
 7 A. Yes.
 8 Q. And did you -- did Local 7777 create this document?
 9 A. Yes.
 10 Q. And it's the same on top and bottom, these were half
 11 sheets?
 12 A. Yeah, we cut them in half.
 13 Q. All right. The fifth line down it says, "Union Taxi and
 14 Freedom Cab charge lower fares than Yellow Cab and Metro
 15 Taxi." Is that something that you wrote in there? You knew
 16 about the entire thing?
 17 A. I was -- yeah. The --
 18 Q. Okay. And were you involved in that? Was Local 7777
 19 involved in that?
 20 A. Yes.
 21 Q. Okay. Was this only on behalf of drivers for Union
 22 Taxi?
 23 A. No. It was on behalf of any drivers that were excluded
 24 from being at Cherry Creek in the cab line.
 25 Q. Okay.

1 MR. GOSCH: I'd move for admission for Petitioner's
 2 Exhibit 1.
 3 HEARING OFFICER SAVELAND: Any objections?
 4 MR. SCULLY: I'll save it for cross. No objection.
 5 HEARING OFFICER SAVELAND: Petitioner's Exhibit 1 is
 6 received.
 7 (Petitioner's Exhibit 1 received into evidence.)
 8 Q. BY MR. GOSCH: Ms. Bolton, you described a system of
 9 paying lost wages. As I understood it, you said you weren't
 10 sure if you'd paid the lost wages to any of the UTC drivers;
 11 is that correct?
 12 A. Yes.
 13 Q. What employers has the Local paid lost wages for, the
 14 workers of what Local?
 15 A. Well, Qwest, Avia, AT&T, Dex.
 16 Q. And under what circumstance would the Local pay lost
 17 wages for these folks?
 18 A. If the member is doing Union business.
 19 Q. And what is Union business?
 20 A. Well, they could be working on legislative issues, they
 21 could be working on mobilization issues, they could be
 22 working on member education issues, they could be working on
 23 grievances, several things.
 24 Q. And, Ms. Bolton, you were asked about Abdi Buni, and you
 25 said that he works in organizing other workers as well as

1 drivers; is that correct?
 2 A. Yes.
 3 Q. What other workers does he work on organizing?
 4 A. We work -- we're working a lot at the airport.
 5 Q. Okay.
 6 A. Do I need to be specific?
 7 Q. And is it also --
 8 MR. SCULLY: I don't really want to know --
 9 MR. GOSCH: Yeah.
 10 MR. SCULLY: -- but I'll stipulate that I don't, you
 11 know --
 12 THE WITNESS: We're doing a lot of work at DIA.
 13 Q. BY MR. GOSCH: Okay. Not just for drivers?
 14 A. No, not for drivers.
 15 MR. GOSCH: Those were all the questions I have. Thank
 16 you.
 17 HEARING OFFICER SAVELAND: Mr. Walker?
 18 MR. WALKER: No questions.
 19 HEARING OFFICER SAVELAND: Mr. Scully?
 20 MR. SCULLY: Yes.
 21 REDIRECT EXAMINATION
 22 Q. BY MR. SCULLY: Take a look at P-1, Ms. Bolton.
 23 A. Uh-hum.
 24 Q. Will you show me where it says driver on there? Is the
 25 word driver used anywhere on that document?

1 A. No, not that I see.
 2 Q. In fact, only company is named/used in that document;
 3 isn't that correct?
 4 A. Cherry --
 5 Q. Can you verbalize a response?
 6 A. Yes.
 7 Q. Those were companies. And what you did with respect to
 8 this support, it resulted or -- and it was designed to result
 9 in a benefit to Union Taxi Cooperative. Wouldn't you agree
 10 with that as well?
 11 A. No.
 12 Q. Isn't it the Cooperative that was being excluded? Isn't
 13 that what you're referring to here?
 14 A. Freedom Cab and Union Taxi.
 15 Q. I'm sorry. I -- you're absolutely right. There are two
 16 of them. But with respect to the Cooperative, the
 17 Cooperative benefited from interaction in supporting their
 18 access to Cherry Creek?
 19 A. Well, it depends on what you say as benefiting --
 20 Q. Well, you --
 21 A. -- because I didn't -- I don't know where the
 22 negotiations are. I don't do any of that piece. We wanted
 23 to educate the public --
 24 Q. Uh-hum.
 25 A. -- on what was happening at Cherry Creek to our CWA taxi

1 driver members.
 2 Q. And you wanted Cherry Creek to admit Union Taxi
 3 Cooperative to Cherry Creek to allow the Cooperative access?
 4 A. That was part of it, yes.
 5 Q. And that's -- that is how the cab industry works, right,
 6 the company gets access or authority to serve different
 7 areas? Wouldn't you agree with that based on what you know?
 8 A. That's how -- I'm sorry, could you repeat that?
 9 Q. Do you agree that companies get access or don't get
 10 access to certain pickup places and curbs and things like
 11 that?
 12 A. I mean, I just thought -- I -- to my knowledge every
 13 taxi can go anywhere. That's all I knew.
 14 Q. Okay. But they couldn't go -- Union Taxi Cooperative
 15 couldn't go to Cherry Creek and --
 16 A. Sit in the cab line.
 17 Q. Okay. And on the bottom of this flyer, there's that
 18 number again for Union Taxi Cooperative, isn't it?
 19 A. Uh-hum.
 20 Q. And the -- that number's to their dispatch; is that
 21 right?
 22 A. Yes.
 23 Q. And you distributed this to the public --
 24 A. Yes.
 25 Q. -- around Cherry Creek?

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1 A. Uh-hum.
 2 Q. Okay. Urging them to call Union Taxi Cooperative,
 3 correct?
 4 A. Yes.
 5 Q. Now --
 6 A. We urge people to use our Union services of all of our
 7 companies. Like AT&T Mobility, we urge all of our members to
 8 use AT&T cell phones. We put that on our Union boards. We,
 9 you know, we urge all of our members and families to use
 10 Qwest services because they're our members.
 11 HEARING OFFICER SAVELAND: why is it at the bottom of
 12 this page it says, "OPEU Number 5"?
 13 THE WITNESS: That is -- our secretarial staff is
 14 members of Office Professional Employees International Union.
 15 HEARING OFFICER SAVELAND: Okay.
 16 THE WITNESS: so that's their Union bug --
 17 HEARING OFFICER SAVELAND: Uh-hum.
 18 THE WITNESS: -- on everything that they do.
 19 MR. SCULLY: Blueprint.
 20 THE WITNESS: Yeah.
 21 HEARING OFFICER SAVELAND: Thank you.
 22 THE WITNESS: uh-hum.
 23 Q. BY MR. SCULLY: Ms. Bolton --
 24 THE WITNESS: That's their Local number.
 25 Q. BY MR. SCULLY: -- you have certified representative

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1 status with respect to AT&T, don't you?
 2 A. You mean, are they part of CWA?
 3 Q. That you are certified as the representative or
 4 recognized as the bargaining representative for those
 5 employees, correct?
 6 A. For Mobility.
 7 Q. Right.
 8 A. I don't have other AT&T people anymore in our Local.
 9 Q. And that is -- that's -- those are the people you're
 10 talking about when you say you urge people to use cell
 11 phones?
 12 A. Uh-hum.
 13 Q. Okay. And --
 14 A. And Mobility PCA.
 15 Q. Right. And you represent -- you're the bargaining
 16 representative of the Qwest employees; isn't that right?
 17 A. Well, the International holds all the contracts. Is
 18 that -- I mean, 7777 doesn't hold the contract with Qwest.
 19 Is that what you mean? Our International Union holds all of
 20 our contracts but it -- I guess, I --
 21 Q. Are you the representative for the -- are you a
 22 representative --
 23 A. Yeah.
 24 Q. -- for the purposes of bargaining --
 25 A. Yeah.

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1 Q. -- with Qwest employees?
 2 A. Well, I guess I just want to make sure we understand
 3 each other because I wasn't on the bargaining team.
 4 Q. Okay.
 5 A. That's an elective position. But I am a representative
 6 to uphold the collective bargaining agreement, if that's what
 7 you mean.
 8 Q. So you handle grievances, things of that nature?
 9 A. Not really my position, but I have, yes.
 10 Q. And that's in relation to the employer Qwest, right?
 11 A. Yes.
 12 Q. Okay. And you have a contract with them?
 13 A. Yes.
 14 Q. Okay. You have no such bargaining relationship or
 15 status with respect to Union Taxi Cooperative, do you?
 16 A. They do not have a collective bargaining agreement.
 17 Q. And you are not certified or recognized as the
 18 bargaining representative of the Cooperative drivers by the
 19 Cooperative, are you? Do you understand the question?
 20 A. I'm not sure if I understand.
 21 Q. I'm sorry. I'll rephrase it.
 22 A. We work on member issues.
 23 Q. Let me ask it a different way.
 24 A. Okay.
 25 Q. The Cooperative, Union Taxi Cooperative --

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1 A. Uh-hum.
 2 Q. -- the company, does not recognize 7777 as the
 3 bargaining representative of the drivers like --
 4 A. In --
 5 Q. -- Qwest and AT&T do, right?
 6 A. In -- but in what way? I mean, if they have driver
 7 issues, they'll come to us and we'll work on driver issues.
 8 Q. I'm not referring to the drivers. I'm referring to the
 9 Cooperative.
 10 A. Okay. We don't have a contract with them. Is that what
 11 you're asking me, a collective bargaining agreement?
 12 Q. That certainly is a question I would ask you, yes, you
 13 don't have a collective bargaining agreement?
 14 A. No.
 15 Q. You don't process grievances for them?
 16 A. No.
 17 Q. Okay. You don't engage and negotiate --
 18 A. Not with Union Taxi. I mean, if they have a grievance
 19 in the sense of an issue, I'll go to wherever they need me to
 20 go.
 21 Q. If you go to some agency. But you don't deal with Union
 22 Taxi Cooperative, do you --
 23 A. No.
 24 Q. -- on behalf of the drivers?
 25 A. No, I have not yet at least. No.

1 Q. And you have never done that?
 2 A. No.
 3 Q. Okay. So is it your position that what gets paid from
 4 Union Taxi Cooperative to the Local is payment for you going
 5 to the mayor's office and to -- and doing all those other
 6 things?
 7 A. Yes.
 8 Q. Okay.
 9 A. That's the purpose of their union dues to deal with
 10 worker issues and legislative issues and working conditions
 11 really where our --
 12 Q. Okay. But you don't indicate, you just call them
 13 membership dues?
 14 A. That's what they are called.
 15 Q. I understand that that's your understanding. And you
 16 don't keep them separate from the dues of the people who work
 17 at Qwest where you have collective bargaining agreements,
 18 right?
 19 A. Not to my knowledge, no.
 20 Q. Is there any other company that you're -- that you deal
 21 with where such a relationship exists where the company
 22 requires its members or drivers to pay dues as a condition of
 23 them being, you know, having this relationship with a company
 24 and there's no collective bargaining agreement, you're not
 25 the bargaining representative? Is that circumstance unique?

1 driver members.
 2 Q. Who pay dues on their own?
 3 A. Who pay dues.
 4 Q. On their own, right?
 5 A. Yes.
 6 Q. Okay. It's not what I'm asking.
 7 A. Okay.
 8 Q. I'm asking if you deal with any other company, okay,
 9 where there's an agreement that requires the people who are,
 10 you know, who are with that company as a condition of being
 11 with that company to pay dues to CWA-7777, any other
 12 relationship like that that you know of?
 13 A. No, not that I know of. No.
 14 Q. Where there's no collective bargaining agreement?
 15 A. No.
 16 Q. When you talked to your neighbor about the supposed
 17 going rate, did you talk to them about whether or not they
 18 took a security deposit?
 19 A. No. We -- yeah -- no.
 20 Q. Did you talk to them about that?
 21 A. No.
 22 Q. You didn't? Did you talk to them about what the going
 23 rate was per square foot?
 24 A. We called a realtor as well and asked for our area. We
 25 are in a -- when you said Denver Tech Center, I had to laugh.

1 A. I don't know.
 2 Q. Do you know if it's unique to you?
 3 A. Well, I would have a question about that, but I don't
 4 know.
 5 Q. You don't know if it's -- if you have any other
 6 relationship like that?
 7 A. Well --
 8 HEARING OFFICER SAVELAND: if you need him to clarify,
 9 just ask for clarification.
 10 THE WITNESS: Okay.
 11 MR. SCULLY: I'll take them one by one.
 12 Q. BY MR. SCULLY: How about that?
 13 A. Okay.
 14 Q. Do you --
 15 A. Well, go ahead and clarify, and I'll see if I can
 16 understand.
 17 Q. Okay. I'll try and do that as I go.
 18 A. I want to make sure I give you the correct answer to
 19 your question.
 20 Q. And I want you to, too. Okay. Do you have -- do you
 21 deal with any other company, okay, where the people who drive
 22 or work or members of that company are required to pay dues
 23 to CWA-7777 where there's no collective bargaining agreement?
 24 A. We have other -- well, we have other taxi driver --
 25 that's what I'm working in my head. We have other taxi

1 We're in an industrial area --
 2 Q. Uh-hum.
 3 A. -- totally different than the Denver Tech Center. We're
 4 across from Seven --
 5 Q. So someone gave you a square foot?
 6 A. Yeah, a realtor in the area.
 7 Q. Okay. So is that thousand based on that calculation?
 8 A. Yeah. It's very -- it's fair market I would say for
 9 that area.
 10 Q. Did you communicate -- how did you communicate with a
 11 realtor? Did they write it out for you?
 12 A. My Secretary/Treasurer Dale Feller did that.
 13 Q. Okay. So there was writings between them? Do you know?
 14 A. I don't know if it was just phone calls or if he
 15 e-mailed someone, or I do know that we discussed fair market
 16 value in the area for our building.
 17 Q. Who, you and Mr. Feller?
 18 A. Yeah, was what he found out is what I'm saying.
 19 Q. Okay. So he investigated it?
 20 A. Yes.
 21 Q. Okay. So you don't know if there are documents or not
 22 documents with regard to that?
 23 A. No, I don't know.
 24 Q. Okay. And as an agent of CWA-7777, does Mr. Buni
 25 participate in meetings of the leadership of the Local, for

1 lack of a better term?
 2 A. No.
 3 Q. He doesn't?
 4 A. Like officer meetings, executive board meetings?
 5 Q. Right.
 6 A. No.
 7 Q. But when he was an executive board meeting member,
 8 member --
 9 A. Right. That was before Union Taxi was around.
 10 Q. It was Pro TAXI then?
 11 A. Yes.
 12 Q. Is it -- do you think you know why Union Taxi
 13 Cooperative was formed?
 14 A. I mean, that would be pure speculation on my part.
 15 Q. So I'm not asking you to speculate. Do you know why it
 16 was formed?
 17 A. So the drivers could have a better life.
 18 HEARING OFFICER SAVELAND: So I mean then we are
 19 speculating.
 20 MR. SCULLY: Yeah. Yeah.
 21 Q. BY MR. SCULLY: I guess I'm not asking you to speculate.
 22 I'm just asking you if you know?
 23 A. That --
 24 HEARING OFFICER SAVELAND: The fact that she answered it
 25 that she doesn't know I mean by deduction.

1 have very well done that with Mountainville or U.S. West or
 2 Qwest.
 3 Q. On Qwest's behalf?
 4 A. What do you mean on their behalf? To support their
 5 position or --
 6 Q. To support Qwest's position, yes.
 7 A. We've partnered with Qwest before --
 8 Q. To --
 9 A. -- and AT&T.
 10 Q. Okay. Can you give me a specific example of when you've
 11 done that?
 12 A. No.
 13 Q. Okay.
 14 MR. SCULLY: Just a minute, please.
 15 Q. BY MR. SCULLY: Is it accurate to say that what was
 16 Pro TAXI effectively became Union Taxi Cooperative?
 17 A. Not really.
 18 MR. SCULLY: Nothing further.
 19 HEARING OFFICER SAVELAND: Anyone else?
 20 MR. GOSCH: Yeah, I got some.
 21 HEARING OFFICER SAVELAND: Mr. Gosch.
 22 RE-CROSS-EXAMINATION
 23 Q. BY MR. GOSCH: Does the Local or CWA have agreements
 24 with any telecommunications employers to appear before
 25 regulatory agencies about issues of mutual concern?

1 MR. SCULLY: okay. That's fine.
 2 HEARING OFFICER SAVELAND: Okay.
 3 MR. SCULLY: I'm -- you know, that's all I'm asking, if
 4 you know. And I'll ask for a little bit of leeway on this,
 5 Mr. Hearing Officer, and I promise I'll connect this.
 6 Q. BY MR. SCULLY: You're most familiar with the
 7 telecommunications industry, aren't you?
 8 A. I would say for the most part, but as my duties have
 9 changed at the Local with Denver Public Schools and, you
 10 know, different areas, my experience has grown.
 11 Q. Okay. Would you say you're fairly familiar with the
 12 telecommunications industry?
 13 A. Uh-hum. Yes.
 14 Q. Would you agree it's pretty highly regulated as well?
 15 A. Yes.
 16 Q. Can you tell me how many times you appeared on behalf of
 17 Qwest or AT&T at any regulatory board meetings?
 18 A. I cannot tell you a number of times, no.
 19 Q. Have you ever appeared on behalf of Qwest or AT&T?
 20 A. We have definitely partnered legislatively. So I don't
 21 know if you want to tie in the --
 22 Q. No. I mean have you as a representative, have you
 23 appeared on Qwest's behalf, for instance, with, you know, an
 24 FCC matter?
 25 A. Not that I can recall. But throughout 29 years, I could

1 A. Yes.
 2 Q. With whom do we have those agreements?
 3 A. Well, with Qwest, I think with AT&T, Dex, Avia.
 4 Q. And just to be clear, because I don't think anyone's
 5 asked you this, the Local does not own UTC, correct?
 6 A. Oh, no.
 7 Q. Does the Local have a financial stake in UTC?
 8 A. No.
 9 MR. SCULLY: Objection. Calls for a legal conclusion.
 10 It calls for a legal --
 11 HEARING OFFICER SAVELAND: It does?
 12 MR. SCULLY: sure, it does.
 13 HEARING OFFICER SAVELAND: How so? You've been asking
 14 her about finances.
 15 MR. SCULLY: yeah, which are all facts that would go to
 16 the ultimate conclusion of the Regional Director of whether
 17 there was a conflict and a financial interest.
 18 HEARING OFFICER SAVELAND: Maybe you need to parse out
 19 your question so that -- I mean, I get what Mr. Scully's
 20 saying. So reask the question, and we'll go from there.
 21 Q. BY MR. GOSCH: Does the Local regularly pay money to
 22 UTC?
 23 A. No.
 24 Q. Does the Local get any profits from anything that UTC
 25 takes in?

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<p>1 A. No.</p> <p>2 Q. Other than any union dues from your driver members who</p> <p>3 work at UTC, do you -- does the Local get any compensation</p> <p>4 from UTC?</p> <p>5 A. From the lease and the copies, copy machine.</p> <p>6 Q. Thank you. You said the relationship when it comes to</p> <p>7 bargaining a contract. Who is ultimately responsible for the</p> <p>8 negotiation of a contract? Is it the Local or the</p> <p>9 International Union?</p> <p>10 A. The International holds all contracts. They're</p> <p>11 responsible for the bargaining of that contract.</p> <p>12 Q. Okay. And does the International actually assign the</p> <p>13 negotiators to those contracts?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And have you been involved in negotiations where</p> <p>16 you served as assistant to staff from the International?</p> <p>17 A. Yes.</p> <p>18 MR. GOSCH: Yeah, those are all the questions I have.</p> <p>19 MR. WALKER: No.</p> <p>20 HEARING OFFICER SAVELAND: Mr. Scully?</p> <p>21 FURTHER REDIRECT EXAMINATION</p> <p>22 Q. BY MR. SCULLY: Ms. Bolton, the requirement that</p> <p>23 Cooperative, Union Taxi Cooperative imposes on its members to</p> <p>24 pay dues, that is a benefit to the Local Union, is it not?</p> <p>25 A. Well, I mean, any dues you get, I guess, would be a</p>	<p>1 expenses.</p> <p>2 Q. As a result of the Cooperative mandating and sending</p> <p>3 over by check the payment of those dues?</p> <p>4 MR. GOSCH: Objection, asked and answered.</p> <p>5 THE WITNESS: Yeah.</p> <p>6 HEARING OFFICER SAVELAND: Sustained.</p> <p>7 MR. SCULLY: As long as the answer was yes.</p> <p>8 HEARING OFFICER SAVELAND: Well, let's make it clear.</p> <p>9 Why don't you ask it again, let the witness answer so that</p> <p>10 direct is clear. Ask your question again.</p> <p>11 MR. SCULLY: Okay. I think the record is clear.</p> <p>12 HEARING OFFICER SAVELAND: I don't think so -- Do you</p> <p>13 want to move on, or do you want to ask your question again?</p> <p>14 I'm not clear what the answer is.</p> <p>15 Q. BY MR. SCULLY: As a result of the agreement that you</p> <p>16 did not negotiate and with barring the payment of dues, the</p> <p>17 Local benefits as a result of that agreement?</p> <p>18 A. The Local benefits from union dues, from their union</p> <p>19 dues and from all the union dues, yes.</p> <p>20 Q. And from the fact that it's imposed by Union Taxi</p> <p>21 Cooperative as a condition of membership?</p> <p>22 A. Yes. I mean, I --</p> <p>23 Q. That's clear to me.</p> <p>24 MR. WALKER: Is --</p> <p>25 MR. SCULLY: Wait, I'm not --</p>
<p>1 benefit to you -- to your Local --</p> <p>2 Q. And --</p> <p>3 A. -- and I don't --</p> <p>4 Q. Well, do you agree that the reason you get those in part</p> <p>5 at least is because they're imposed by Union Taxi</p> <p>6 Cooperative?</p> <p>7 A. I believe -- you want to know what I believe? I believe</p> <p>8 that the driver's issues are dealt with through us, and they</p> <p>9 want to be members of CWA.</p> <p>10 Q. Well, I'm -- but --</p> <p>11 A. That's what I believe.</p> <p>12 Q. -- the fact of the matter is is that Union Taxi</p> <p>13 Cooperative requires them to pay you; isn't that right?</p> <p>14 A. I didn't negotiate their bylaws.</p> <p>15 Q. Right. And you didn't negotiate that provision, did</p> <p>16 you?</p> <p>17 A. That was something the drivers did.</p> <p>18 Q. But you didn't negotiate that?</p> <p>19 A. Me personally, no, I did not negotiate that.</p> <p>20 Q. But as a result of that agreement, money goes into your</p> <p>21 general fund to pay your salary and the salary of the other</p> <p>22 people at the Local Union; isn't that true?</p> <p>23 A. Their dues money comes to the Local, yes.</p> <p>24 Q. And that that money -- that pays the expenses, correct?</p> <p>25 A. All Union -- yes, all union dues pay the Union's</p>	<p>1 MR. WALKER: Oh, I thought he was done.</p> <p>2 MR. SCULLY: He can just jump in here?</p> <p>3 HEARING OFFICER SAVELAND: Okay. Finish your line of</p> <p>4 questioning. And then, Mr. Walker, we'll get to you.</p> <p>5 MR. WALKER: Sorry.</p> <p>6 Q. BY MR. SCULLY: And are you familiar with the Union,</p> <p>7 with the Labor Peace Act in Colorado?</p> <p>8 A. Somewhat, somewhat familiar with it.</p> <p>9 Q. Are you familiar that it requires a second election to</p> <p>10 authorize a Union security agreement --</p> <p>11 A. Yes.</p> <p>12 Q. -- in the state of Colorado?</p> <p>13 A. Yes.</p> <p>14 Q. You have to go to the Division of Labor, right, and ask</p> <p>15 for a second election; is that accurate?</p> <p>16 A. I don't know the details. I'm sorry.</p> <p>17 Q. But you do have to have a second election, you know</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. And you have to first be certified as the bargaining</p> <p>21 representative under the National Labor Relations Act under</p> <p>22 the Colorado Labor Peace Act; isn't that true?</p> <p>23 A. I don't know. I'm sorry to say I don't -- I mean, I</p> <p>24 don't know the details of that Peace.</p> <p>25 Q. Okay. I will say --</p>

1 HEARING OFFICER SVELAND: Yeah, that's what I was kind
 2 of figuring. Mr. Walker?
 3 MR. WALKER: Just a quick question.
 4 FURTHER RECROSS-EXAMINATION
 5 Q. BY MR. WALKER: If UTC drivers would want to change
 6 their requirements, could CWA stop that or prevent the UTC
 7 drivers from amending its membership agreement?
 8 A. Could we stop them? No.
 9 Q. So they could be -- they are free basically, you know,
 10 within the bylaws in the organization to amend and change
 11 their agreements as they wish, and if they would want to no
 12 longer pay CWA member dues, they could stop?
 13 A. Yeah, if they decided not to, that would be up to them.
 14 Q. Thank you.
 15 MR. SCULLY: Can I follow up on that?
 16 HEARING OFFICER SVELAND: Sure.
 17 FURTHER REDIRECT EXAMINATION
 18 Q. BY MR. SCULLY: And that's -- that certainly they can
 19 make that decision and the people who would be making that
 20 decision include Abdi Buni, who is a paid organizer for
 21 CWA-7777 as a member of the board, correct?
 22 A. I would guess every driver would get a vote, and they
 23 would vote on changing it. I don't know how their bylaws
 24 work and how they change them or add to them or anything
 25 about them. I --

1 HEARING OFFICER SVELAND: Okay.
 2 MR. SCULLY: -- but I would reserve my right to recall.
 3 HEARING OFFICER SVELAND: okay. Ms. Bolton --
 4 MR. GOSCH: And I would say we did not discover any
 5 other documents about the lease. We turned over everything
 6 we had.
 7 HEARING OFFICER SVELAND: okay. Ms. Bolton, you may
 8 stand down.
 9 THE WITNESS: Thank you.
 10 HEARING OFFICER SVELAND: Thank you.
 11 THE WITNESS: I'm leaving these here.
 12 MR. SCULLY: Yes, please do.
 13 (Witness excused.)
 14 HEARING OFFICER SVELAND: What do we have next? We're
 15 almost at 12:30, but if you want to discuss something briefly
 16 and then we'll take perhaps an hour break. So do we have any
 17 other matters? Do we want to get into what you just
 18 addressed, the possibility that there's documents out there
 19 and what specifically are you referencing?
 20 MR. SCULLY: well, I mean, I think that -- I think there
 21 are most certainly documents out there. I don't -- you know,
 22 I would ask for a ruling on the -- I mean, obviously, I
 23 assume that the petition to revoke ad testificandum has been
 24 withdrawn on behalf of both of those parties. I don't know
 25 that.

1 HEARING OFFICER SVELAND: But perhaps that point is
 2 important whether it's an all member vote and you have 260
 3 some members, or is it something that the board of directors
 4 could just change?
 5 THE WITNESS: I don't know, no.
 6 HEARING OFFICER SVELAND: You don't know?
 7 THE WITNESS: No.
 8 HEARING OFFICER SVELAND: okay. Well, we're asking the
 9 wrong person then.
 10 THE WITNESS: Yeah.
 11 MR. WALKER: And those documents are in the record and
 12 they speak for themselves.
 13 HEARING OFFICER SVELAND: The bylaws that reflect that?
 14 MR. WALKER: Yeah.
 15 HEARING OFFICER SVELAND: okay. Thanks. Anything
 16 further with this witness?
 17 MR. SCULLY: No, subject to my document request. And I
 18 think she's -- I think we need to investigate whether or not
 19 there were documents on the sleeves.
 20 THE WITNESS: Documents?
 21 MR. SCULLY: On this supposed fair market value
 22 discussion.
 23 HEARING OFFICER SVELAND: So do we need her anymore
 24 right now?
 25 MR. SCULLY: Not at the moment --

1 MR. WALKER: The petition to revoke?
 2 MR. SCULLY: On ad testificandum subpoenas since you
 3 admitted them.
 4 MR. WALKER: Oh, yeah.
 5 HEARING OFFICER SVELAND: since I have permitted them
 6 to testify.
 7 MR. WALKER: Yeah.
 8 HEARING OFFICER SVELAND: yeah. But what documents are
 9 you referring to? You're not being specific, and I might
 10 know, but I'm not going to make your case for you, so --
 11 MR. SCULLY: well, I think there was reference to
 12 something other than -- I mean there apparently have been
 13 other rent payments. There was testimony that there was no
 14 lease prior to May. So I'd certainly be interested in if
 15 there was some kind of payment prior to May.
 16 There is the fact that there's been advertising
 17 apparently that may or may have been compensated. I don't
 18 even know because I don't know from the scope of what Union
 19 Taxi Cooperative sent me they sent the current and they sent
 20 I guess the most recent check --
 21 MR. WALKER: Yeah.
 22 MR. SCULLY: -- that they had sent them and not the
 23 things that had been previously provided and compensated for.
 24 HEARING OFFICER SVELAND: Uh-hum.
 25 MR. SCULLY: so I -- those are all within the scope of

Respondent Exhibits

COLORADO COMMERCIAL LEASE

This lease agreement is entered into on this the 1st day of June, 2009, by and between:

Communications Workers of America Local 7777, (hereinafter called "LESSOR"), whether one or more, and

Union Taxi Cooperative, (hereinafter called "LESSEE"), whether one or more. For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LESSOR and LESSEE do hereby covenant, contract and agree as follows:

1. **PREMISES AND TERM:** LESSOR, hereby leases to LESSEE for the term commencing on the 1st day of June, 2009 and ending on the 31st day of June, 2009, (the "TERM") the following described premises in its present condition, located in Arapahoe County, Colorado:
Room L001, L002, L003, L004 located in the South end of the basement level and periodic use of meeting rooms at 2840 South Vallejo Street, Englewood, CO 80110

This is a month to month lease and renews each month until 10 days notice is given to LESSEE by LESSOR.

(hereinafter called the "PREMISES or LEASED PREMISES"). LESSEE also has a right for the benefit of LESSEE, its employees, agents and invitees for access to and from the Leased Premises through the building and over property of LESSOR adjoining the Leased Premises, and to use those parts of the building designated by LESSOR for use by LESSEE, including but not limited to toilet rooms, elevators and unrestricted parking areas, if any.

2. **RENEWAL:** LESSEE and LESSOR may agree to extend the lease month to month until 10 days notice is provided by the LESSEE to the LESSOR.

3. **RENT:** The LESSEE covenants to pay to LESSOR as Rent, the sum of one thousand Dollars (\$ \$1,00.00) per month, (hereinafter "the Rent"), in advance without demand on or before the first day of each month at the office of the LESSOR. The Rent for the month of June 2009, which is the first month of this lease shall be paid in the amount of one thousand Dollars) (\$1,000.00), which amount is the prorated rent based upon the date this lease commences.

The LESSEE shall pay the Rent when due and payable, without any setoff, deduction or prior demand whatsoever. Any payment by LESSEE or acceptance by LESSOR of a lesser amount than shall be due from LESSEE to LESSOR shall be treated as payment on account. The acceptance by LESSOR of a check for a lesser amount with an endorsement or statement thereon,

or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and LESSOR may accept such check without prejudice to any other rights or remedies which LESSOR may have against LESSEE.

4. **LATE CHARGES:** LESSEE shall pay a late charge in the amount of fifty percent (50%) of the outstanding delinquent balance for any payment of the rent not made within 10 days after the due date to cover the extra expense involved in handling late payments, but not more than 50 dollars for any one month. This charge is in addition to any other rights or remedies of the LESSOR.

5. **UTILITIES:** LESSOR will pay all utilities. LESSEE understands that the building and space LESSEE will occupy will be heated during the heating months from 7:00am - 5:00pm at approximately 70 degrees and that the same will be cooled to approximately 70 degrees during the cooling months form 7:00am - 5:00pm.

6. **CONDITION OF PREMISES; USE OF PREMISES:** LESSOR agrees that LESSEE, upon paying the rent and on performing all terms of this lease, shall peaceably enjoy the Leased Premises during the term of this lease. By occupying the Leased Premises as a tenant, or installing fixtures, facilities, or equipment or performing finished work, LESSEE shall be deemed to have accepted the same and to have acknowledged that the Premises are in the condition required by this lease.

LESSEE acknowledges that LESSEE has examined and knows the condition of the Leased Premises, and has received the same in good order and repair, and agrees:

- (a) To use these Leased Premises only for Union Taxi Cooperative Office and Dispatch Center.
- (b) To surrender the Leased Premises to LESSOR at the end of the Term or any renewal without the necessity of any notice from either LESSOR or LESSEE to terminate the same, and LESSEE hereby expressly waives all right to any notice which may be required under any laws now or hereafter enacted and in force.
- (c) To surrender possession of these Leased Premises at the expiration of this lease without further notice to quit, in as good condition as reasonable use will permit.

EXHIBIT

Respondent 1

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- (d) To keep the Premises in good condition and repair at LESSEE's own expense, except repairs which are the duty of LESSOR.
- (e) To perform, fully obey and comply with all ordinances, rules, regulations and laws of all public authorities, boards and officers relating to the use of the Premises.
- (f) Not to make any occupancy of the Leased Premises contrary to law or contrary to any directions, rules, regulations, regulatory bodies, or officials having jurisdiction or which shall be injurious to any person or property.
- (g) Not to permit any waste or nuisance.
- (h) Not to use the Leased Premises for living quarters or residence.

LESSEE shall pay (a) for any expense, damage or repair occasioned by the stopping of waste pipes or overflow from bathtubs, closets, washbasins, basins or sinks, and (b) for any damage to window panes, window shades, curtain rods, wallpaper, furnishings, or any other damage to the interior of the Leased Premises.

Any signs placed upon or about such Leased Premises shall, upon the end of the Term of the lease or upon the earlier termination, be removed by LESSEE, and LESSEE shall repair any damage to the Leased Premises which shall be occasioned by reason of such removal.

At all times, LESSEE shall keep the sidewalks, if any, in front of or adjoining the Leased Premises clean and in a sightly and sanitary condition.

All repairs, except those specific repairs set forth below which are the responsibility of the LESSOR, shall be made by the LESSEE at its own expense. If the LESSOR pays for the same or any part thereof, LESSOR shall be reimbursed by LESSEE for such amount.

The LESSOR shall be responsible for making only the following repairs [check those that apply]:

- [N/A] sprinkler system
 - [X] heating, ventilating or air-conditioning system serving the Premises if, and to the extent, installed by LESSOR, and
 - [X] structural repairs to exterior walls, structural columns and structural floors which collectively enclose the Premises (excluding, however, storefronts), and
 - [X] the roof over the Premises.
- Repairs of any and all damage to the building caused by LESSEE shall be paid for by LESSEE.

LESSEE shall give LESSOR notice of the necessity for such repairs and that such repairs did not arise from nor were they caused by the negligence or willful acts of

LESSEE, its agents, concessionaires, officers, employees, licensees, invitees, or contractors.

7. FIXTURES AND TRADE FIXTURES. LESSEE shall make no changes, improvements, alterations, or additions to the Leased Premises unless such changes, improvements, alterations, or additions: (a) are first approved in writing by LESSOR; (b) are not in violation of restrictions placed thereon by the investor financing the construction of the building; and (c) will not materially alter the character of such premises and will not substantially lessen the value of the Leased Premises. LESSOR may not unreasonably withhold approval, and if there is a dispute as to reasonableness, it shall be determined by arbitration.

All improvements made by LESSEE to the Premises which are so attached to the Premises that they cannot be removed without material injury to the Premises, shall become the property of LESSOR upon installation. Not later than the last day of the Term, LESSEE shall, at LESSEE's expense, remove all of LESSEE's personal property and those improvements made by LESSEE which have not become the property of LESSOR, including trade fixtures, cabinetwork, movable paneling, partitions, and the like; repair all injury done by or in connection with the installation or removal of such property and improvements; and surrender the Premises in as good condition as they were at the beginning of the Term, reasonable wear, and damage by fire, the elements, casualty, or other cause not due to the misuse or neglect by LESSEE or LESSEE's agents, employees, visitors, or licensees, excepted. All property of LESSEE remaining on the Premises after the last day of the Term of this lease shall be conclusively deemed abandoned and may be removed by LESSOR, and LESSEE shall reimburse LESSOR for the cost of such removal.

8. SECURITY DEPOSIT: The LESSEE, contemporaneously with the first Rent installment, agrees to deposit with the LESSOR 0.00 Dollars (\$0.00) which sum shall be held by the LESSOR as security for the full faith and performance by LESSEE of all of the terms, covenants and conditions of this lease by LESSEE.

The security deposit shall be held, applied to damages or rent and returned to LESSEE all in accordance with the laws of the state where the Leased Premises are located and in force at the time of execution of this lease.

In compliance with Colorado Code § 38-12-103:

LESSOR shall return to LESSEE the amount of the security deposit remaining after deductions for damages and unpaid rent, with an itemization of amounts withheld, all to be due within thirty (30) days of the termination or expiration of the lease and delivery of possession by

LESSEE. LESSOR may comply by mailing, first class mail, to LESSEE'S last known address.

If the mail is returned, and LESSOR is unable to discover LESSEE'S address after reasonable effort, the deposit becomes the LESSOR'S property 180 days after the first attempted mailing thereof.

9. **LESSOR'S LIEN:** As additional security, LESSEE acknowledges, to the extent allowed by applicable law, the LESSOR'S right to hold and sell with due legal notice all property on or to be brought on the Premises in order to satisfy unpaid Rent, expenses, and utilities. No property of LESSEE brought onto the Leased Premises shall be removed by LESSEE other than in the ordinary course of business as long as LESSEE is in default in the terms of this lease.

10. **DEFAULT:** Each of the following shall be deemed an Event of Default:

- a. Default in the payment of Rent or other payments hereunder.
- b. Default in the performance or observance of any covenant or condition of this lease by the LESSEE to be performed or observed.
- c. Abandonment of the premises by LESSEE.
- d. The filing or execution or occurrence of:
 - i. Filing a Petition in bankruptcy by or against LESSEE.
 - ii. Filing a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief of the same or different kind under any provision of the Bankruptcy Act.
 - iii. Adjudication of LESSEE as a bankrupt or insolvent; or insolvency in the bankruptcy equity sense.
 - iv. An assignment for the benefit of creditors whether by trust, mortgage, or otherwise.
 - v. A petition or other proceeding by or against LESSEE for, or the appointment of, a trustee, receiver, guardian, conservator or liquidator of LESSEE with respect to all or substantially all its property.
 - vi. A petition or other proceeding by or against LESSEE for its dissolution or liquidation, or the taking of possession of the property of the LESSEE by any governmental authority in connection with dissolution or liquidation.

11. **NOTICE OF DEFAULT.** The parties are desirous of giving one another fair notice of any default before termination or other action under this lease requiring such

notice. In the event of an act of default with respect to any provision of this lease, neither party can institute legal action with respect to such default without first complying with the following conditions:

- a. Notice of such event of default must be in writing and must either be hand delivered, mailed to the other party by U.S. Certified Mail, return receipt requested, or if unable to provide notice by these methods, if notice is from LESSOR to LESSEE by posting the notice on the front door of the Leased Premises;
- b. Such written notice shall set forth the nature of the alleged default in the performance of the terms of this lease and shall designate the specific paragraph(s) therein which relate to the alleged act of default;
- c. Such notice shall also contain a reasonably understandable description of the action to be taken or performed by the other party in order to cure the alleged default and the date by which the default must be remedied, which date can be not less than 30 business days from the date of mailing the notice of default.

12. **TERMINATION.** Upon occurrence of any Event of Default, and after proper notice of default has been given, LESSOR may, at its option, in addition to any other remedy or right given hereunder or by law; Give notice to LESSEE that this lease shall terminate upon the date specified in the notice, which date shall not be earlier than 30 days after mailing or delivery of such notice.

The foregoing provisions for the termination of this lease shall not operate to exclude or suspend any other remedy of the LESSOR for breach, or for the recovery of said Rent for the full term.

13. **ACCELERATION.** LESSEE expressly agrees and understands that upon LESSOR'S termination of this Lease, the entire remaining balance of unpaid Rent for the remaining term of this Lease shall **ACCELERATE**, whereby the entire sum shall become immediately due, payable, and collectable. To the extent allowed by law, LESSOR may hold the portion of LESSEE'S security deposit remaining after reasonable cleaning and repairs as a partial offset to satisfaction of the accelerated Rent.

14. **REPOSSESSION.** Upon termination of this lease as provided herein, or pursuant to statute, or by summary proceedings or otherwise, the LESSOR may enter forthwith, without further demand or notice to LESSEE, and resume possession of the Leased Premises. In no event shall such re-entry or resumption of possession or reletting as hereafter provided be deemed to be acceptance or surrender of this lease or a waiver of the rights or remedies of LESSOR hereunder.

15. DEFAULT BY LESSOR. In the event of any default by LESSOR, LESSEE, before exercising any rights that it may have at law to cancel this lease, must first send notice by registered or certified mail, or hand delivery, to LESSOR, and shall have offered LESSOR Thirty (30) days in which to correct and cure the default or commence a good faith effort to cure such default.

16. RELETTING AFTER TERMINATION. Upon termination of this lease in any manner above provided, LESSOR shall use reasonable efforts to relet the Premises.

17. DAMAGES. Upon termination of this lease in any manner above provided, or by summary proceedings or otherwise, LESSEE shall pay to LESSOR without demand or notice the following:

- (a) All Rent and other payments accrued to the date of such termination and a proportionate part of the rent otherwise payable for the month in which such termination occurs.
- (b) All future Rent and other payments to be due under the terms of this lease to the extent Landlord has not been able to offset same by reletting the Premises within 30 days of termination.
- (c) The costs of making all repairs, alterations and improvements required to be made by LESSOR hereunder, and of performing all covenants of LESSEE relating to the condition of the Premises during the Term and upon expiration or sooner termination of this lease, such costs to be deemed prima facie to be the costs estimated by a reputable architect or contractor selected by LESSOR or the amounts actually expended or incurred thereafter by LESSOR.
- (d) The attorneys' fees and other costs.

18. EXCLUSIVITY OF LESSOR'S REMEDIES: The receipt of Rent after default, or after judgment or after execution, shall not deprive the LESSOR of other actions against the LESSEE for possession or for Rent or for damages, and all such remedies are non-exclusive and can be exercised concurrently or separately as LESSOR desires.

19. LESSOR NOT LIABLE FOR INJURY OR DAMAGE TO PERSONS OR PROPERTY: The LESSOR shall not be liable for any injury or damage to any person or to any property at any time on said Premises or building from any cause whatever that may at any time exist from the use or condition of the Premises or building from any cause, during the Term or any renewal of this lease.

20. TAXES: Property taxes on the Leased Premises

shall be responsibility of LESSOR. Taxes on the personal property of Lessee shall be the responsibility of LESSEE. All other taxes shall be the responsibility of the party incurring same.

21. RIGHT OF RE-ENTRY. LESSOR shall have the right, by itself or agent or with others, to enter the Premises at reasonable hours to examine or exhibit the premises, or to make such repairs and alterations as shall be deemed necessary for the safety and preservation of the building, to inspect and examine, to post such notices as LESSOR may deem necessary to protect LESSOR against loss from liens of laborers, materialmen or others, and for the purpose of permitting or facilitating LESSOR's performance of its obligations hereunder, or for any other reasonable purpose which does not materially diminish LESSEE's enjoyment or use of the Leased Premises.

22. HOLDOVER. If LESSEE shall holdover after the expiration of the Term hereof, with the consent of LESSOR, express or implied, such tenancy shall be from month to month only, and not a renewal hereof; and LESSEE agrees to pay Rent and all other charges as provided herein, and also to comply with all covenants of this lease for the time LESSEE holds over. LESSEE shall be entitled to possession until LESSOR has given LESSEE 30 days notice that such month to month tenancy shall be terminated; otherwise, notice is only required as hereinafter provided as notice of default.

If LESSEE shall hold over without the consent of LESSOR, express or implied, then LESSEE shall be construed to be a tenant at sufferance at double the Rent herein provided, prorated by the day until possession is returned to LESSOR.

LESSEE'S holding over beyond the expiration of the notice period of a lawful Notice of Termination constitutes holding over without the consent of the LESSOR, and LESSEE shall be construed to be a tenant at sufferance, at double the Rent herein provided, prorated by the day until possession is returned to LESSOR, without limitation to LESSOR'S remedies and rights of recovery under applicable law.

23. NATURE OF RELATIONSHIP BETWEEN PARTIES. The sole relationship between the parties created by this agreement is that of LESSOR and LESSEE. Nothing contained in this lease shall be deemed, held, or construed as creating a joint venture or partnership between the parties.

24. RIGHT OF LESSOR TO PAY OBLIGATIONS OF LESSEE TO OTHERS. If LESSEE shall fail or refuse to pay any sums due to be paid by it under the provisions of this lease, or fail or refuse to maintain the Leased Premises or any part thereof as herein provided,

then, and in such event, LESSOR, after 10 days notice in writing by LESSOR to LESSEE, shall have the right to pay any such sum or sums due to be paid by LESSEE and to do and perform any work necessary to the proper maintenance of the Leased Premises; and the amount of such sum or sums paid by LESSOR for the account of LESSEE and the cost of any such work, together with interest on such amount at the maximum legal rate from the date of payment by LESSOR until the repayment to LESSOR by LESSEE, shall be paid by LESSEE upon demand in writing. The payment by LESSOR of any such sum or sums or the performance by LESSOR of any such work shall be prima facie evidence of the necessity for such work.

25. MECHANICS AND OTHER LIENS IMPOSED BY LESSEE. LESSEE shall keep the Leased Premises and the improvements at all times during the term free of mechanics and materialmen's liens and other liens of like nature, other than liens created and claimed by reason of any work done by or at the instance of LESSOR, and at all times shall fully protect and indemnify LESSOR against all such liens or claims and against all attorneys' fees and other costs and expenses growing out of or incurred by reason or on account of any such liens or claims. Should LESSEE fail to fully discharge any such lien or claim, LESSOR, at its option, may pay the same or any part thereof, and LESSOR shall be the sole judge of the validity of such lien or claim.

All amounts so paid by LESSOR, together with interest the maximum legal rate from the time of payment by LESSOR until repayment by LESSEE, shall be paid by LESSEE upon demand, and if not so paid, shall continue to bear interest at the aforesaid rate, interest payable monthly, as additional rent.

26. CONDEMNATION CLAUSE: In the event that all or a part of the Premises is taken by eminent domain or conveyed in lieu of eminent domain, if the Leased Premises cannot reasonably be used by LESSEE for their intended purpose, then this lease will terminate effective as of the date that the condemning authority shall take possession of the same.

27. FIRE CLAUSE: The LESSEE agrees to notify LESSOR of any damages to the Leased Premises by fire or other hazard and also of any dangerous or hazardous condition within the Leased Premises immediately upon the occurrence of such fire or other hazard or discovery of such condition.

Upon occurrence of a fire, repairs shall be made by LESSOR as soon as reasonably may be done unless the costs of repairing the Premises exceed 25% of the replacement cost of the building in which case the LESSOR may, at its option, terminate this lease by giving

LESSEE written notice of termination within 30 days of the date of the occurrence.

If the LESSOR does not terminate this Lease pursuant to the paragraph above, then LESSOR has 30 days after the date of occurrence to give written notice to LESSEE setting forth its unqualified commitment to make all necessary repairs or replacements, the projected date of commencement of such repairs, and the LESSOR'S best good faith estimate of the date of completion of the same.

If the LESSOR fails to give such notice, or if the date of completion is more than 90 days after the date of the occurrence, then the LESSEE may, at its option, terminate this lease and the LESSOR will be obliged to refund to the LESSEE any rent allocable to the period subsequent to the date of the fire.

28. WAIVER OF NONPERFORMANCE: Failure of the LESSOR to exercise any of its rights under this lease upon nonperformance by the LESSEE of any condition, covenant or provision herein contained shall not be considered a waiver, nor shall any waiver of nonperformance of any such condition, covenant or provision by the LESSOR be construed as a waiver of the rights of the LESSOR as to any subsequent defective performance or nonperformance hereunder.

29. PAROL EVIDENCE CLAUSE: This instrument constitutes the final, fully integrated expression of the agreement between the LESSOR and the LESSEE, and it cannot be modified or amended in any way except in writing signed by the LESSOR and LESSEE.

30. SUBORDINATION: This lease is subordinate to the lien of all present or future mortgages that affect the Leased Premises and to all renewals, modifications, replacements and extensions of this lease. This clause shall be self-operative but in any event LESSEE agrees to execute promptly and deliver any estoppel certificate or other assurances that LESSOR may request in furtherance of this provision.

31. INSURANCE: LESSEE shall, during the entire term of the lease keep in full force and effect a policy of public liability insurance with respect to the property and the business operated by LESSEE in the property and which the limits of general liability shall be in the amount of

Dollars
(\$ _____) combined single limit, naming LESSOR as additional insured. Such coverage shall include a broad form general liability endorsement. The policy shall contain a clause that the LESSEE will not cancel or change the insurance without first giving the LESSOR ten (10) days prior written notice.

LESSOR shall during the term hereof, at its sole expense, provide and keep in force insurance on the building against loss or damage by fire and extended coverage, in an amount equal to one hundred percent (100%) of the full insurable value, which insurance shall be placed with an insurance company or companies approved by LESSOR and licensed to do business in the state wherein lay the Leased Premises. The term "full insurable value" shall mean actual replacement value of the building (exclusive of costs of excavation, foundations and footing below ground level). The insurance required under this paragraph shall be carried in the name of the LESSOR and LESSEE and shall provide that any proceeds thereunder shall be paid to LESSOR and LESSEE and any applicable mortgage holder, according to their respective interests.

Duplicate originals or certificates of insurance of the policies provided shall be furnished by LESSOR and LESSEE to each other and shall contain an agreement by the insurer that such policy or policies shall not be canceled without at least ten (10) days prior notice to the LESSOR and LESSEE.

32. NOTICES. All notices and communications concerning this lease shall be mailed to the parties at the following addresses:

<p>LESSOR <u>2840 S Vallejo St.</u> <u>Englewood, CO 80110</u></p>	<p>LESSEE <u>2840 S Vallejo Street</u> <u>Englewood, CO 80110</u></p>
_____	_____
_____	_____

33. SALE BY LESSOR. In the event of a sale or conveyance by LESSOR of all or part of the Leased Premises, the same shall operate to release LESSOR from any future liability upon any of the covenants or conditions, express or implied, herein contained in favor of LESSEE, and in such event LESSEE agrees to look solely to the responsibility of the successor in interest of LESSOR in and to this lease. This lease shall not be affected by any such sale, and LESSEE agrees to attorn to the purchaser or assignee. LESSEE agrees to permit LESSOR, at any time within 60 days prior to the expiration of this lease, to place upon or in the window of the leased premises any usual or ordinary For Rent or similar sign and to allow prospective tenants, applicants or agents of LESSOR to enter and examine the Leased Premises during the last 60 days of the term hereof, and to permit LESSOR or LESSOR's agents, at any time during the term hereof, to conduct prospective purchasers through the Leased Premises during reasonable business hours.

34. COURT ACTION, ATTORNEY'S FEES AND COSTS. If, upon failure of either party to comply with any of the covenants, conditions, rules or regulations of and in this lease, and suit should be brought for damages on account, or to enforce the payment of Rent herein stipulated, or to recover possession of the Premises or to enforce any provision hereof, the losing party agrees to pay to the prevailing party reasonable costs and expenses incurred in prosecuting these suits.

35. ASSIGNMENTS AND SUB-LEASE: The LESSEE hereby agrees not to assign this lease voluntarily or involuntarily, nor to sub-lease the Premises or any part of the Leased Premises, without the written consent of the LESSOR, under penalty of instant forfeiture of this lease. All rights and liabilities herein given to or imposed upon either of the parties shall extend to the heirs, executors, administrators, successors and assigns of such party.

36. INTERPRETATION. Whenever any word is used in this agreement in the masculine gender, it shall also be construed as being used in the feminine and neuter genders, and singular usage shall include the plural and vice versa, all as the context shall require.

37. MODIFICATION. Any modification or amendment off this agreement shall be in writing and shall be executed by all parties.

38. SEVERABILITY CLAUSE: If any term, covenant, condition, or provision of this lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

39. LAW TO APPLY: This lease shall be construed under and in accordance with the laws of the State of Colorado. Those laws shall govern every aspect of the enforcement of this lease.

40. ADDENDUMS. The following addendums are attached to this lease and shall be initialed by the parties. (Check all that apply or check none)

- (N/A) Option to Purchase
- (N/A) Arbitration Agreement
- (N/A) Other: _____
- (N/A) None

41. OTHER PROVISIONS:

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UNION TAXI COOPERATIVE
MEMBERSHIP AGREEMENT

1. **Initial Fees.** The undersigned ("Applicant") desires to become a member of Union Taxi Cooperative, a Colorado cooperative (the "Cooperative"), and hereby submits this Membership Agreement, along with the membership application, attached as Exhibit A, for consideration and agrees to pay an amount equal to \$ [REDACTED] of which \$ [REDACTED] shall be the consideration for Applicant's membership in the Cooperative (the "Application Fee") and the remaining \$ [REDACTED] shall be included as part of Applicant's capital account in the Cooperative (the "Initial Membership Dues" and, together with the Application Fee, the "Initial Membership Fee").
2. **Annual Membership Dues.** Applicant acknowledges and agrees that his, her or its continued participation in the Cooperative shall require the payment of annual membership fees ("Annual Dues") and other fees as determined by the board of directors (the "Board") of the Cooperative in their sole discretion ("Additional Fees"). The Board may allow the payment of the Annual Dues on a weekly, monthly, quarterly or annual basis as determined by the in the Board's sole discretion. Failure to pay any membership fees when do may result in a late fee penalty as determined in the Board's sole discretion. Payments made in the form of the Initial Membership Dues, the Annual Dues and the Additional Fees shall be considered part of Applicant's patronage in the Cooperative, as further described in the bylaws of the Cooperative.
3. **Payment.** All fees shall be paid by delivery of a certified or cashier's check, made payable to "Union Taxi Cooperative", by the transfer of any funds delivered by Applicant to Union Taxi Holdco, Inc., through the transfer of the Escrowed Funds (as defined below) from Union Taxi Holdco, Inc. (the "Escrow Agent") or any other method of payment approved by the Board.
4. **Prior Payments to Union Taxi Holdco, Inc.** If Applicant delivered any monies to the Escrow Agent prior to the date hereof, upon the Cooperative's acceptance of Applicant as a member in the Cooperative, the Escrow Agent shall be instructed to deliver such funds to the Cooperative. Any such funds (the "Escrowed Funds") shall be created against any fees due to the Cooperative from Applicant. In the event that Applicant is not accepted as a member in the cooperative, the Escrow Agent shall be instructed to return all Escrowed Funds to the Applicant in accordance with that certain Escrow and Agency Agreement.
5. **Membership.** If accepted, and in exchange for the Application Fee, Applicant shall be admitted on the books and records of the Cooperative as holding one uncertificated membership certificate in the Cooperative (the "Membership Interest") and, subject to compliance with his, her or its obligations as a member in the Cooperative, including, without limitation, timely payment of any Cooperative fees, be entitled to the rights accorded to members in the Cooperative which shall include:
 - (a) the right to participate in the management of the Cooperative and, more specifically, each member shall be entitled to one vote and only one vote on any matter presented by the Cooperative to the members for a vote in accordance with the Cooperative's Articles of Incorporation, Bylaws or as required by applicable law;
 - (b) the right to operate a taxi cab under the Cooperative's certificate of public convenience and necessity if and when obtained from the Colorado Public Utility Commission ("PUC");

- (c) the right to utilize the Cooperative's twenty-four (24)-hour dispatch service;
- (d) the right to receive Worker's compensation insurance to the maximum extent required by Colorado law or PUC regulations;
- (e) account management services as determined by the Board;
- (f) payment of membership dues for Applicant's membership in the Communications Workers of America, Local 7777, if applicable; and
- (g) any other rights of membership as determined by the Board from time to time.

The rights above may be modified by the Board in accordance with the bylaws.

6. **Acceptance of Application.** Applicant understands and agrees that the Board, in its sole discretion, reserves the right to accept or reject member's application.
7. **Rejection of Application.** If member's application is rejected, this Agreement and Applicant's membership application shall be void and all funds received from Applicant by the Cooperative or Union Taxi Holdco, Inc. shall be returned promptly to Applicant, without interest, along with all other documents executed and/or provided by Applicant pursuant to the terms and conditions of this Agreement.
8. **Consent to Tax Treatment.** Applicant, if admitted as a member in the Cooperative, acknowledges and agrees that the amounts of any distributions made by the Cooperative with respect to Applicant's patronage in the Cooperative, which are made in qualified written notices of allocation (as defined in 26 U.S.C. § 1388) and per unit retain allocations which are received by Applicant from the Cooperative, will be taken into account by Applicant at their stated dollar amounts in the manner provided in 26 U.S.C. § 1385(a) in the taxable year in which the qualified written notices of allocation are received by Applicant.
9. **Representations and Warranties.** Applicant hereby represents and warrants to the Cooperative and its representatives and agents as follows:
 - (a) The information provided by Applicant in this Agreement or otherwise to the Cooperative or any of its representatives and agents is true and correct in all respects.
 - (b) Applicant (i) has reached the age of majority, (ii) is a bona fide resident of the state of Colorado, (iii) is legally competent to execute this Agreement, and (iv) does not currently intend to change residence to another state.
 - (c) Unless waived by the Board, Applicant is a member of the Communications Workers of America, Local 7777.
 - (d) Applicant has received a copy of and understands the Cooperative's Articles of Incorporation and Bylaws, which are attached hereto as Exhibit B and Exhibit C, respectively, and has had access to, and an opportunity to inspect, all relevant information and documents relating to the Cooperative. Applicant has also had the opportunity to ask questions of the Board and of the officers of the Cooperative and has received satisfactory answers thereto, and has obtained such additional information as Applicant has desired to obtain regarding the Cooperative.

B

- (e) Applicant (i) has at least three (3) years experience operating a taxi cab in the state of Colorado, (ii) is not prevented from operating a taxi cab in the Denver metropolitan region and in the state of Colorado, and (iii) owns or leases a vehicle that complies with any and all regulations promulgated by the Colorado Public Utility Commission, and (iv) otherwise is suitable to operate a taxi cab in Denver metropolitan region and the state of Colorado.
 - (f) Applicant acknowledges and agrees that its membership in the Cooperative and the Membership Interest ARE NOT transferable without the prior written consent of the Board.
 - (g) The Membership Interest is not a security and only entitles Applicant, if accepted, a right to participate in the Cooperative. The Membership Interest (i) does not entitle Applicant to receive any dividends or a portion of profits, other than patronage refunds, (ii) cannot be pledged or hypothecated, (iii) is not negotiable, and (iv) will not appreciate in value.
10. **Obligations of Membership in the Cooperative.** If accepted as a member to the Cooperative, and for so long as Applicant remains a member of the Cooperative, Applicant covenants, agrees and understands as follows:
- (a) he, she or it shall comply with the rules and regulations imposed by the PUC with regard to the operation of taxi cabs in the State of Colorado or as imposed pursuant to the Cooperative's certificate(s) of public convenience and necessity;
 - (b) he, she or it shall comply with the rules, regulations and policies established by the Board from time to time;
 - (c) he, she or it shall maintain automobile insurance in the minimum amounts as required by the PUC, applicable law and/or the Board; and
 - (d) make any payments in a timely manner and understands that non-payment may result in the Cooperative imposing late fees and/or deducting funds from Applicant's capital account to cover the nonpayment and that continued non-payment may result in suspension or termination of Applicant's right to participate in the Cooperative.
11. **Indemnification.** Applicant hereby agrees to indemnify and hold harmless the Cooperative and its officers, directors, members, employees, consultants, representatives, and agents from and against any and all causes of action, charges, claims, damages, demands, liabilities, losses, obligations, penalties and other recoveries and any and all related costs and expenses (including, without limitation, reasonable attorneys' fees) arising, directly or indirectly, from any misrepresentation made by Applicant herein, any breach by Applicant of the representations and warranties made by Applicant herein, any failure by Applicant to fulfill any of Applicant's covenants set forth herein, or any resale, transfer or other distribution of the Membership Interest in violation of this Agreement or the Cooperative's bylaws.
12. **Confidentiality.** The information contained in this Agreement and the documents accompanying this Agreement is confidential. The disclosure or use of such information, or any other information regarding the Cooperative's business, would adversely affect the Cooperative and its business. Accordingly, Applicant agrees to maintain the confidentiality of the information contained in this Agreement and the documents accompanying this Agreement.

13. **Irrevocability.** Applicant hereby acknowledges and agrees that this Agreement is irrevocable, that Applicant is not entitled to cancel, terminate or revoke this Agreement.
14. **Notices.** Any notice, demand or other communication which any party hereto may be required or may elect to give to any other party hereunder shall be sufficiently given (a) three (3) days after being deposited, postage prepaid, in the United States mail, stamped certified mail, return receipt requested, addressed to such address as may be listed on the books of the Cooperative, or (b) upon personal delivery at such address.
15. **Amendments.** This Agreement may not be amended or modified or any term or provision hereof waived or discharged, except in writing and signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced.
16. **Governing Law; Venue.** This Agreement shall be governed by, construed under and enforced in accordance with the internal laws of the State of Colorado without regard to the state's conflict of law principles. Applicant hereby irrevocably submits to the exclusive jurisdiction of the federal and state courts located in the City and County of Denver, Colorado, in any action or proceeding arising out of or relating to this Agreement.
17. **Assignability.** This Agreement is not transferable or assignable by Applicant.
18. **Survival.** All representations, warranties and covenants contained in this Agreement (including, without limitation, the indemnification provisions hereof) shall survive the acceptance of this Agreement by the Cooperative.

* * * *

This Agreement is executed and delivered by Applicant on the ____ day of _____, 2008.

Signature: _____

Name: _____

Social Security Number: _____

Address: _____

Phone: _____

Facsimile: _____

Email: _____

ACCEPTED AND EFFECTIVE
THIS ____ DAY OF _____, 2008:

UNION TAXI COOPERATIVE

By: _____

Name: _____

Title: _____

E

**EXHIBIT A
UNION TAXI COOPERATIVE
MEMBERSHIP APPLICATION**

I understand that information I provide regarding current and/or previous employer(s) may be used, and those employer(s) will be contacted, for the purpose of investigating my safety performance history as required by 49 C.F.R. § 391.23(d) and (e). I understand that I have the right to:

- Review information provided by previous employers;
- Have errors in the information corrected by previous employers and for those previous employers to resend the corrected information to Union Taxi Cooperative;
- Have a rebuttal statement attached to the alleged erroneous information, if the previous employer(s) and I cannot agree on the accuracy of the information.

Signature: _____ Date: _____

Applicant Information

Name: _____
(First) (Middle) (Last)

Address: _____
(Street) (City) (State) (Zip) (How Long?)

Date of Birth: _____ Social Security Number: _____

Previous address(es): (If at the above address for less than three years)

Address: _____
(Street) (City) (State) (Zip) (How Long?)

Address: _____
(Street) (City) (State) (Zip) (How Long?)

Experience and Qualifications-Driver

State	License No.	Type and endorsements	Expiration Date

Vehicle(s)

Year	Manufacturer	Model	VIN#	Mileage	Own or Lease?

Driving Experience

Class of equipment:	Type of equipment (Van, Tank, Flatbed, etc.)	Dates		Approximate # of Miles (total)
		(From)	(To)	
Vehicle				
Other				

F

Accident record for past three years

Dates	Nature of accident	Fatalities	Injuries
Last accident			
Next previous			
Next previous			

Traffic convictions (other than parking violations) and forfeitures for the past three years

Location	Date	Charge	Penalty

- A. Have you ever been denied a license, permit or privilege to operate a motor vehicle? Yes ___ No ___
- B. Has any license, permit or privilege ever been suspended, revoked or denied? Yes ___ No ___

If the answer to either A or B is yes, explain: (attach additional sheet if necessary)

- C. The Public Utilities Commission has on a file a fingerprint card filed out within the past two (2) years. Yes ___ No ___

If no, please fill out and return the Commission the attached Fingerprint Card.

Employment Record

Provide all employment information for at least three years.

Last employer: Name: _____

Address: _____

Position held: _____ Supervisor: _____ Dates: _____

Salary: _____ Reasons for leaving: _____

Was this employer subject to Federal (or PUC) Motor Carrier Safety Regulations? Yes ___ No ___

Were you subject to controlled substance & alcohol testing under 49 CFR Parts 40/382 while employed here? Yes ___ No ___

Employer: Name: _____

Address: _____

Position held: _____ Supervisor: _____ Dates: _____

Salary: _____ Reasons for leaving: _____

Was this employer subject to Federal (or PUC) Motor Carrier Safety Regulations? Yes ___ No ___

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Were you subject to controlled substance & alcohol testing under 49 CFR
Parts 40/382 while employed here? Yes ___ No ___

Employer: Name: _____
Address: _____
Position held: _____ Supervisor: _____ Dates: _____
Salary: _____ Reasons for leaving: _____

Was this employer subject to Federal (or PUC) Motor Carrier Safety Regulations? Yes ___ No ___

Were you subject to controlled substance & alcohol testing under 49 CFR
Parts 40/382 while employed here? Yes ___ No ___

Employer: Name: _____
Address: _____
Position held: _____ Supervisor: _____ Dates: _____
Salary: _____ Reasons for leaving: _____

Was this employer subject to Federal (or PUC) Motor Carrier Safety Regulations? Yes ___ No ___

Were you subject to controlled substance & alcohol testing under 49 CFR
Parts 40/382 while employed here? Yes ___ No ___

Employer: Name: _____
Address: _____
Position held: _____ Supervisor: _____ Dates: _____
Salary: _____ Reasons for leaving: _____

Was this employer subject to Federal (or PUC) Motor Carrier Safety Regulations? Yes ___ No ___

Were you subject to controlled substance & alcohol testing under 49 CFR
Parts 40/382 while employed here? Yes ___ No ___

Employer: Name: _____
Address: _____
Position held: _____ Supervisor: _____ Dates: _____
Salary: _____ Reasons for leaving: _____

Was this employer subject to Federal (or PUC) Motor Carrier Safety Regulations? Yes ___ No ___

Were you subject to controlled substance & alcohol testing under 49 CFR
Parts 40/382 while employed here? Yes ___ No ___

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.
Date: _____ Signature: _____

H

COOPERATIVE BYLAWS
OF
UNION TAXI COOPERATIVE
(a Colorado cooperative association)

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**ARTICLE I
MEMBERSHIP**

1.1. **Membership.**

(a) **Number of Members.** The maximum number of members in the cooperative (the "Maximum Number") shall be limited to the number of taxi cabs the cooperative receives authorization to operate under its certificate(s) of public convenience and necessity to operate taxi and/or limousine service from the Colorado Public Utilities Commission (the "Commission") and, subject to this Section 1.1(a) may be increased or decreased by the board of directors of the cooperative. If, at any time, the number of members in the cooperative exceeds

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the Maximum Number, the board of directors shall accordingly reduce the number of members by terminating those members in excess of the Maximum Number. In determining the members that are to be terminated, the board of directives may consider, among other things, (a) when the individual became a member of the cooperative or submitted its payment for the membership certificate, if earlier, (b) if applicable, the length of membership of the member in the Communication Workers of America, Local 7777, and (c) whether the member is current on his, her or its payment of membership dues. The cooperative may, in the discretion of the board of directors, establish a waiting list for individuals wishing to be admitted as a member and may impose any restrictions and requirements on prospective members as required by these bylaws, federal and state law and the objective set of uniform policies and conditions established by the board of directors.

(b) **Qualifications for Membership.** To become a member in the cooperative, a person must, unless waived by the board of directors:

- (i) execute and return the Membership Agreement;
- (ii) deliver to the board of directors the initial fee for the membership certificate in the form and amount as determined by the board of directors;
- (iii) agree to be abide by the rules and regulations of the cooperative as may be established from time to time by the members or board of directors of the cooperative;
- (iv) meet all the requirements for application and membership under the Membership Agreement, these bylaws, federal and state law and the objective set of uniform policies and conditions established by the board of directors; and
- (v) be a resident of the state of Colorado.

A person shall not be eligible for membership if the board of directors finds, based on reasonable grounds, that the applicant's admission would prejudice the interests, hinder or otherwise obstruct, or conflict with, any purpose or operation of the cooperative. An applicant shall be considered a member upon acceptance of his, her or its application and payment for the membership certificate in cash, check, money order or other form of payment acceptable to the board of directors.

(c) **Certificates of Interests in the Cooperative.** The cooperative shall not be required to issue any certificates representing memberships, capital stock or other investments in the cooperative. If certificates are issued, the restrictions on transfer of membership must be printed upon every certificate of membership subject to the restrictions. Unless modified by the board of directors, no member may hold more than one certificate in the cooperative.

(e) **No Transfers Permitted.** No membership certificate in the cooperative shall be transferred to any person by the original holder thereof (a) except to the cooperative upon the redemption or acquisition thereof by the cooperative, or (b) unless (i) the member obtains the express written consent the board of directors, (ii) such transfer is otherwise in compliance with applicable law, (iii) the transferee is eligible to become a member of the cooperative as determined by the board of directors and has satisfied the conditions set forth in Section 1.1(b),

and (iv) the cooperative is reasonably satisfied, through an opinion of counsel or otherwise, that the transfer would not prejudice the interests, hinder or otherwise obstruct, or conflict with, any purpose or operation of the cooperative and would not require registration of the membership certificates and otherwise complies with applicable securities laws.

1.2. **Withdrawal, Suspension and Termination of a Member.**

(a) **Withdrawal, Suspension and Termination.** A member may not withdraw from membership in this cooperative, nor may the voting or membership rights of a member be suspended or terminated, except as provided in this Section 1.2. No action taken by either the cooperative or a member pursuant to this Section 1.2 shall impair the obligations or liabilities of either party under any contract between the cooperative and a member which provides that it shall be terminated only as provided therein.

(b) **Withdrawal.** A member may withdraw from the cooperative by providing written notice of his, her or its intent to withdraw to the secretary of the cooperative.

(c) **Suspension and Termination.**

(i) The board of directors may suspend or terminate a member's membership in the cooperative by providing prior notice to the member and giving the member an opportunity for a hearing before the board of directors, or a committee thereof, if the board of directors reasonably believes that the member has (1) ceased operating a taxi cab under the cooperative's certificate(s) of public convenience and necessity, (2) moved from the territory served by the cooperative, (3) ceased to be eligible for membership in the cooperative, or (4) otherwise violated these bylaws, the articles of incorporation, the Commission's rules and regulations and/or applicable law.

(ii) The board of directors shall establish guiding policies for the suspension and termination of a member's participation in the cooperative which shall be used by the board of directors to determine when to suspend or terminate a member.

(iii) During a suspension of a member's membership, the member shall (1) not be authorized to operate under the cooperative's certificate(s) of public convenience and necessity, (2) lose its voting and other rights accorded under these bylaws solely for the period of suspension, and (3) only be reinstated as a member in accordance with the policies and procedures as established by the board of directors. Suspension shall not impact a member's rights pursuant to ARTICLE VII.

(d) **Rights and Interest on Withdrawal or Termination.** On the date at which a member's written notice of intent to withdraw becomes effective or upon the termination of his, her or its membership in the cooperative by the board of directors, all rights and interests of the member in the cooperative shall cease and the member shall be entitled only to payment for the value of the member's property rights and interest in the cooperative, as defined in this Section 1.2, which shall be equitably and conclusively appraised by the board of directors. The property rights and interest of member are defined to mean the amount paid by the member for membership certificates acquired as a condition for membership in the cooperative. The

cooperative shall pay to the member the price paid by the member for the membership certificate upon the admission of a substitute member to the cooperative.

(e) **Payment of Equity Capital.** Subsequent to the effective date of a member's withdrawal or termination of membership in the cooperative, the member shall also be entitled to the repayment of, in addition to his, her or its property rights and interest in the cooperative defined above, the member's equity capital in accordance with the terms and conditions of Section 7.5, as and when such equity capital becomes payable to other members under Section 7.5. Any interest bearing certificates of indebtedness issued by the cooperative to a member pursuant to the provisions of Section 7.5 shall effect a complete and total release of the obligations of the cooperative to the member with respect to equity.

1.3. **Representations of Certain Members.** If a member of the cooperative is other than a natural person, the member may be represented by any individual, associate, officer, manager, or member thereof duly authorized by the member in writing delivered to the secretary of the cooperative.

1.4. **Consent to Tax Treatment.** Each patron who hereafter applies for and is accepted as a member in this cooperative, shall by such act alone, consent that the amounts of any distributions with respect to his, her or its patronage, which are made in qualified written notices of allocation (as defined in 26 U.S.C. § 1388) and per unit retain allocations which are received by him, her or it from the cooperative, will be taken into account by the member at their stated dollar amounts in the manner provided in 26 U.S.C. § 1385(a) in the taxable year in which the qualified written notices of allocation are received by the member.

1.5. **Record of Members.** A record of the members and their full names, addresses, and social security or tax identification numbers shall be kept by the cooperative. Each member shall notify the secretary immediately of any change in his, her or its address, social security or tax identification number.

1.6. **Joint Membership.**

(a) A membership in the cooperative may be held jointly provided that (1) such joint membership is approved by the board of directors, with any conditions or restrictions imposed by the board of directors, and (2) each individual otherwise complies with the membership criteria set forth in Section 1.1(b). The term "member" as used in these bylaws shall be deemed to include joint members and any provisions relating to the rights and liabilities of membership shall apply equally with respect to holders of a joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect to the holders of a joint membership shall be as follows:

(i) the presence at a meeting of either or both shall be regarded as the presence of one (1) member and shall constitute a joint waiver of notice of the meeting;

(ii) the vote of either separately or both jointly shall constitute one (1) joint vote;

- (iii) in the event of a disagreement, each joint member shall be entitled to cast one-half (1/2) vote;
- (iv) a waiver of notice signed by either or both shall constitute a joint waiver;
- (v) notice to either shall constitute notice to both;
- (vi) expulsion of either shall terminate the joint membership; and
- (vii) withdrawal of either shall terminate the joint membership.

(b) Upon the withdrawal, expulsion or death of either party of a joint membership, such membership shall continue to be held by the other party, in the same manner and to the same effect as though such membership had never been joint.

ARTICLE II MEETINGS OF MEMBERS

2.1. **Regular Annual Membership Meeting.** A regular annual membership meeting shall be held annually within sixty (60) days after the close of the fiscal year on a date and at such time and place in the area served by the cooperative as may be determined by the board of directors and specified in the notice of the meeting.

2.2. **Special Membership Meetings.** Special meetings of the members of the cooperative may be called at any time by order of the board of directors the president, and shall be called at any time upon a written petition of at least ten percent (10%) of the members delivered to the president or the secretary of the cooperative stating the specific business to be brought before the meeting and shall state the time, date and place of the meeting. The date of the meeting shall be not less than ten (10) days nor more than sixty (60) days after the date the petition is submitted to the cooperative.

2.3. **Notice of Meetings.** Written or printed notice of every regular and special meeting of the members shall be prepared and mailed to the last known post office address of each member not less than ten (10) days before the meeting. The notice shall state the date, time, place and purpose of the meeting. Notice of any special meeting shall include a statement of the purpose for the meeting. At all special meetings of the members of the cooperative, business brought before the meeting shall be limited to the purpose stated in the notice. The purpose of a regular meeting may include any and all business which is brought before the membership.

2.4. **Membership List.** After establishing the date for a meeting of the membership, the cooperative shall prepare an alphabetical list of the current names and addresses of all its members who are entitled to be given notice of the meeting. The members list shall be available for inspection by any member or member's agent or attorney, for a proper corporate purpose, beginning the earlier of ten (10) days before the meeting or two (2) business days after notice of the meeting is given. The cooperative shall make the members' list available at the meeting, and any member or member's agent or attorney is entitled to inspect the list at any time and for a proper corporate purpose during the meeting or any adjournment.

2.5. Waiver of Notice.

(a) **Waiver of Notice.** When any notice is required to be given to any member of the cooperative by law or under the provisions of the articles of incorporation or bylaws of the cooperative, a waiver thereof in writing signed by the member entitled to the notice, whether before, at, or after the time stated in the notice, shall be equivalent to the giving of the notice.

(b) **Waiver by Attendance.** By attending a meeting, a member: (1) waives objection to lack of notice or defective notice of the meeting unless the member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting; and (2) waives objection to consideration at the meeting of a particular matter not within the purpose or purposes described in the meeting notice unless the member objects to considering the matter when it is presented.

2.6. Voting.

(a) **Voting at Meetings.** At all membership meetings qualified members, including the presiding officer, holding at least one (1) membership certificate shall be entitled to one (1) vote and one (1) vote only. All questions shall be decided by a vote of a majority of the members voting thereon except as otherwise specifically provided by law, the articles of incorporation or these bylaws.

(b) **Proxy and Cumulative Voting.** Voting by proxy and cumulative voting are prohibited at any and all meetings of the cooperative.

(c) **Voting by Mail or Electronic Transmission.** Absent members may vote on specific questions designated by the board of directors (other than the removal of directors) by ballots transmitted by mail to all members by the secretary. The ballots may be returned to the cooperative by mail, facsimile or electronic transmission or by any other reasonable means. The ballots shall be counted only in the meeting at the time at which the vote is taken, provided that all members have been notified in writing, pursuant to action by the board of directors, of the exact wording of the motion or resolution upon which the vote is taken, and a copy of the motion or resolution is forwarded with and attached to the vote of the member voting. If a question for which mailed ballots have been received shall be amended at the meeting, the meeting shall be adjourned with respect to that question until a new vote can be solicited by mail with respect to the amended question.

2.7. Quorum. A majority of the members shall constitute a quorum for the transaction of business at any meeting of the members except for the transaction of business concerning which a different quorum is specifically provided by law; but, in the event a quorum is not present or is lost during the meeting, the meeting may be recessed or adjourned from time to time without further notice by a majority of those present until a quorum is obtained. Any business may be transacted at the resumption of the recessed meeting that might have been transacted at the originally called meeting. Members present and voting in person or other manner authorized by this Section 2.6 shall be counted toward quorum with respect to the matter.

2.8. Action without a Meeting. Actions of the members may be taken without a meeting if the action is agreed to by all members of the cooperative and is evidenced by one or more written

consents together signed by all of the members and filed with the corporate records reflecting the action taken.

2.9. Inspection of Cooperative Records.

(a) A member or such member's agent or attorney is entitled to inspect and copy, at the member's expense, during regular business hours at a reasonable location stated by the cooperative, any of the records described in § 7-56-107(4), Colorado Revised Statute, if the member meets the requirements set forth below and gives the cooperative written demand at least five (5) business days before the date on which the member wishes to inspect and copy such records. Notwithstanding the provisions of this Section 2.9, no member shall have the right to inspect or copy any records of the cooperative relating to the amount of equity capital in the cooperative held by any person or any accounts receivable or other amounts due the cooperative from any person. The cooperative may impose a reasonable charge to cover the costs of labor and material for copies of any documents provided to the member. The charge shall not exceed the estimated cost of production and reproduction of the requested records.

(b) To be entitled to inspect and copy permitted records, the member shall meet the following requirements:

(i) the member has been a member for at least one (1) year immediately preceding the demand to inspect or copy or is a member holding at least five percent (5%) of all of the outstanding equity interests in the cooperative as of the date the demand is made;

(ii) the demand is made in good faith and for a proper corporate business purpose;

(iii) the member describes with reasonable particularity the purpose and the records the member desires to inspect; and

(iv) the records are directly connected with the described purpose.

(c) Notwithstanding any other provision in this Section 2.9, if the records of the cooperative to be inspected or copied are in active use or storage and, therefore, not available at the time otherwise provided for inspection or copying, the cooperative shall notify the member of this fact and shall set a date and hour within three (3) business days of the date otherwise set in this Section 2.9 for the inspection or copying.

ARTICLE III DIRECTORS

3.1. **Number and Qualifications of Directors.** The board of directors of this cooperative shall consist of not less than three (3) members and no more than thirteen (13) members. Only members having the right to vote and who patronize the cooperative shall be elected as directors of this cooperative except that the duly authorized representative of a member, which is not a natural person, shall be eligible to serve as a director. No person shall be eligible for the office of director if the person is in competition with or is engaged in any enterprise that is in competition with the cooperative and if a majority of the board of directors of the cooperative finds at

any time following a hearing that any director is so engaged, the director shall thereupon cease to be a director. A vacancy on the board of directors shall be declared at the discretion of the board of directors after any director fails to attend three (3) consecutive regular board meetings without cause. No director, during the term of his or her office, shall be a party to a contract for profit with the cooperative differing in any way from the business relations accorded regular members or less favorable to the cooperative than that which could be obtained by the cooperative in arm's length negotiations with an independent third party.

3.2. **Nomination; Election.**

(a) **Nomination of Directors.** At the first directors' meeting following the end of the fiscal year but not later than sixty (60) days preceding the annual meeting date, the board of directors shall appoint a nominating committee. The nominating committee shall consist of three (3) members representative of the members of the cooperative. The three (3) members of the nominating committee shall be members having the right to vote and at least two (2) shall not be directors. They shall strive to name at least two (2) nominees for each vacancy who shall have agreed to accept the directorship and its responsibilities if elected. Members present at the annual members' meeting shall also be able to make additional nominations from the floor at the meeting. The nominating committee shall use qualifications under the directors' qualifications section of these bylaws. Each nominee must be willing to accept all the responsibilities of directors of the cooperative, to attend the directors' meetings and other training and informational meetings to better serve as directors and to become familiar with the cooperative's articles of incorporation, bylaws, organizational structure, objectives, policies and progress.

(b) **Election of Directors.** Each directorship shall be filled separately and election shall be by ballot. To be elected, a nominee shall receive a majority of all votes cast for the separate vacancy for which he or she was nominated. Newly elected directors shall become members of the board at the first meeting of the board of directors following their election.

3.3. **Term.** The board of directors shall be elected at each annual meeting of the members and each director shall hold office until the next annual meeting of shareholders, until such director's successor shall be elected and shall qualify, or until such director's earlier death, resignation or removal.

3.4. **Election of Officers.** The board of directors shall hold a meeting within thirty (30) days after the adjournment of the annual membership meeting for the purpose of organizing the board of directors. Nominations for the election of officers shall be made by directors from the floor at the director's meeting where the officers are to be elected. They shall elect (by secret ballot if there is more than one nominee for a position to be filled) a president, one or more vice president(s), a secretary and a treasurer, each of whom shall hold office until the election and qualification of his or her successor unless earlier removed by death, resignation, or for cause. The board may also create, alter, and abolish such additional offices and the duties thereof as it may consider desirable and appoint persons to fill such offices at the pleasure of the board, as the board shall desire. One individual may simultaneously hold more than one office, but may not concurrently hold the offices of president and secretary. The president must be a member of the board of directors.

3.5. Removal of Officers or Directors.

(a) At a meeting called expressly for that purpose, as well as any other proper purpose, a director may be removed for cause by the members in the manner provided in this Section 3.5 upon an affirmative vote of a majority of the members present and voting in person or, if removal of a director is by the board, then by a majority of the members of the board not subject to removal.

(b) The board may remove a director who does not meet the qualifications for board membership set forth in these bylaws.

(c) The members may remove one or more directors only for cause. Removal of directors by the vote of members shall be initiated by written petition signed by at least ten percent (10%) of the members stating the alleged causes or reasons for removing the director. No petition shall seek removal of more than one (1) director.

(d) Within ninety (90) days after receipt of a petition, the board shall schedule the removal vote at a regular or special meeting of the membership upon determination by the board, if necessary, that cause has been stated. Any determination of cause shall be made by a majority of the directors not subject to removal petitions. If more than a majority of the board is subject to removal petitions, then the matter shall be promptly referred to an attorney who has been duly licensed to practice law in Colorado for at least five (5) years and who has not previously represented the cooperative. The attorney's determination of whether cause has been stated shall be final for the purpose of whether to schedule a vote on removal.

(e) Any director subject to a removal petition under any provisions of this Section 3.5 shall be promptly informed in writing by the board and shall have the opportunity, in person and by counsel, to be heard and present evidence at the meeting called for the vote. The persons seeking a director's removal shall have the same privilege.

(f) The board of directors shall have the power to remove any officer of the cooperative with or without cause.

3.6. Referendum. Upon demand of one-third (1/3) of the entire board of directors, made immediately at the same meeting at which the original motion was passed and so recorded, any matter of policy that has been approved or passed by the board must be referred to the entire membership for decision at the next regular or special meeting of the members, and a special meeting may be called for that purpose.

3.7. Vacancies. Whenever a vacancy occurs in the board of directors, other than from the expiration of a term of office, the remaining directors shall appoint a member to fill the vacancy until the next annual meeting of the members.

3.8. Board Meetings. Regular meetings shall be held by the board of directors at least annually at such place and time as the board may determine.

3.9. Special Meetings. Special meetings of the board of directors shall be held whenever called by the president or by a majority of directors at a time and place specified in the call. Any

and all business may be transacted at any special meeting. A meeting of the board of directors may be held at any time or place with or without notice upon the consent of all the directors.

3.10. Notice of Board Meetings. Oral or written notice of each regular or special meeting of the directors shall be given to each director at least forty-eight (48) hours prior to the time of the meeting; provided, that the board may establish regular meeting places, dates and times in which case notice need not be given of those meetings. Notice may be waived by any or all of the directors, and appearance at a meeting shall constitute a waiver of notice thereof, except if a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

3.11. Telephonic Meeting. One or more members of the board of directors or any committee designated by the board may participate in a meeting of the board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

3.12. Quorum; Voting. A majority of the board of directors shall constitute a quorum at any meeting of the board, but in the event a quorum is lost during a meeting the meeting may proceed. All members of the board, including each officer who is a member of the board, shall be entitled to one (1) vote on any question coming before the board, but no director shall vote on any matter in which he or she is personally involved in any capacity other than as a member of the cooperative.

3.13. Assent to Action. A director is considered to have assented to an action of the board unless:

- (a) the director votes against it or abstains and causes the abstention to be recorded in the minutes of the meeting;
- (b) the director objects at the beginning of the meeting and does not vote for it later;
- (c) the director has his or her dissent recorded in the minutes;
- (d) the director does not attend the meeting at which the vote is taken; or
- (e) the director gives notice of his or her objection in writing to the secretary within twenty-four (24) hours after the meeting.

3.14. Action without a Meeting. Actions of the board may be taken without a meeting if the action is agreed to by all members of the board and is evidenced by one or more written consents together signed by all directors and filed with the corporate records reflecting the action taken.

3.15. Compensation. Compensation of the members of the board of directors shall be established by the board of directors at rates determined by the board of directors. Directors may also be reimbursed for actual out-of-pocket expenses incurred in service to the cooperative. Compensation of the members of the board of directors may be altered or amended only by the members of the cooperative at any annual or special meeting.

3.16. **Executive Committee.** The board of directors may in its discretion appoint from its own membership an executive committee of three (3) members, determine the tenure of office of the committee's members and their powers and duties. The board of directors may allot to the executive committee all or any stated portion of the functions and powers of the board of directors, subject to the general direction, approval, and control of the board. Copies of the minutes of any meeting of the executive committee shall be mailed to all directors within five (5) business days following the meeting.

3.17. **Other Committees.** The board of directors may, in its discretion, appoint such other committees from its own number or from the membership, as may be necessary.

3.18. **General Standards of Conduct for Directors and Officers**

(a) Each director shall discharge his or her duties as a director, including duties as a member of a committee, and each officer with discretionary authority shall discharge his or her duties under that authority:

- (i) in good faith;
- (ii) with the care an ordinary prudent person in a like position would exercise under similar circumstances; and
- (iii) in a manner the director reasonably believes to be in the best interests of the cooperative.

(b) In discharging his or her duties, a director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (i) one or more officers or employees of the cooperative whom the director or officer reasonably believes to be reliable and competent in the matters presented;
- (ii) legal counsel, a public accountant, or another person as to matters the director or officer reasonably believes are within such person's professional or expert competence; or
- (iii) in the case of a director, a committee of the board of directors of which the director is to a member if the director reasonably believes the committee merits confidence.

(c) A director or officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this Section 3.18 unwarranted.

(d) A director or officer is not liable as such to the cooperative or its shareholders for any action the director or officer takes or omits to take as a director or officer, as the case may be, if in connection with such action or omission, the director or officer performed the duties of the position in compliance with this section.

ARTICLE IV DUTIES OF DIRECTORS

4.1. **Management of Business.** The board of directors shall have general supervision and control of the business and the affairs of the cooperative and shall make all rules and regulations not inconsistent with law, the articles of incorporation or with these bylaws for the management of the business and the guidance of the members, officers, employees, and agents of the cooperative. The board shall have installed an accounting system which shall be adequate to the requirements of the business, and it shall be the duty of the directors to require proper records to be kept of all business transactions.

4.2. **Employment of Manager and Others.** The board of directors shall employ a manager, define his or her duties, fix his or her compensations and dismiss him or her with or without cause at any time. The board shall authorize the employment of such auditors, agents, and counsel, as it from time to time deems necessary or advisable in the interest of the cooperative, and prescribe their duties.

4.3. **Reports of Business.** The board of directors shall present at each regular meeting of the members and, if appropriate, at special meetings of the members a detailed statement or report of the business of the preceding year. The statements shall show the financial condition of the cooperative at the end of the fiscal year and shall be in a form as shall fully exhibit to the members a complete picture of the assets and liabilities of the cooperative, of the cash on hand, inventory, and indebtedness and all other facts and figures pertinent to a complete understanding of the cooperative's financial position for the period.

4.4. **Insurance.** The board of directors shall provide for the adequate insurance of the property of the cooperative, or property which may be in possession of the cooperative or stored by it and not otherwise adequately insured. The board shall provide for adequate insurance covering liability for accidents to all employees and the public.

4.5. **Depository.** The board of directors shall have the power to select one or more banks to act as depositories of the funds of the cooperative and to determine the manner of receiving, depositing and disbursing the funds of the cooperative and the form of checks and the person or persons by whom checks shall be signed, with the power to change banks and the person or persons signing checks and the form thereof at will.

4.6. **Agreements with Members.** The board of directors shall have the power to carry out all agreements of the cooperative with its members in every way advantageous to the cooperative representing the members collectively.

4.7. **Nepotism.** No immediate relative of any director shall be regularly employed by the cooperative without the approval of a majority of the disinterested directors. Immediate relative is defined as father, mother, brother, sister, spouse, son-in-law, or daughter-in-law.

4.8. **Representation.** The board of directors may designate any member of the cooperative, the cooperative's manager or other cooperative employee to represent the cooperative in any other business entity or trade association in which the cooperative has an interest. The compensation of such representative shall be determined by the board of directors.

**ARTICLE V
DUTIES OF OFFICERS**

5.1. **Duties of the President.** The president shall (a) serve as a member of the board of directors, (b) preside over all meetings of the cooperative and of the board of directors, (c) call special meetings of the board of directors, (d) perform all acts and duties usually performed by a chief executive and presiding officer, and (e) sign all membership certificates and such other papers of the cooperative as he or she may be authorized or directed to sign by the board of directors; provided, however, that the board of directors may authorize any person to sign any or all checks, contracts and other instruments in writing in behalf of the cooperative. The president shall perform such other duties as may be prescribed by the board of directors.

5.2. **Duties of the Vice President.** In the absence or disability of the president, the vice president shall perform the duties of the president. The vice president shall perform such other duties as may be required of him or her by the board of directors.

5.3. **Duties of the Secretary.** The secretary shall attend all meetings of the members and of the board of directors, shall record all votes and the minutes of all proceedings in a book or books to be kept for that purpose, and shall perform like duties for all standing committees when so required. The secretary shall have general charge and supervision of all corporate records except those under the supervision of the treasurer. The secretary shall sign and affix the corporate seal to all membership certificates and such other papers pertaining to the cooperative as he or she may be authorized or directed to sign by the board of directors. He or she shall provide for complete and proper membership records and shall conduct such correspondence as may be delegated to him or her by the board. He or she shall serve all notices required by law and by these bylaws and shall make a full report of all meetings and business pertaining to his or her office at membership meetings. The corporate seal, the book of membership certificates, duplicate copies of the minutes and complete membership records shall be maintained at the principal office of the cooperative. The secretary shall make such corporate reports required by law and shall perform such other duties as may be required of him or her by the cooperative or by the board of directors. He or she shall deliver to his or her successor all records and other property that he or she may have in his or her custody.

5.4. **Duties of the Treasurer.** The treasurer shall have supervision of the cooperative's financial records and shall keep, or cause to be kept, a full and accurate record of all receipts and disbursements thereof. He or she shall render to the board of directors at regular meetings of the board or whenever the board may require it, a statement of all of his or her transactions as treasurer and of the financial condition of the cooperative. He or she shall cause to be prepared and distributed to the members present at each regular meeting of the members a statement of the financial condition of the cooperative. He or she shall perform such other duties as are incident to the office of treasurer or as the board of directors shall prescribe. He or she shall deliver to his or her successor all money, books, and other property belonging to the cooperative that he or she may have in his or her custody.

ARTICLE VI MANAGEMENT

6.1. **Duties of Manager in General.** Under the direction of the board of directors, the manager shall have general charge of the ordinary and usual business operations of the cooperative. The manager shall, so far as practicable, endeavor to conduct the business in such a manner that the members will receive just and fair treatment. The manager shall cause all money belonging to the cooperative to be deposited in a bank or invested in a manner selected by the board of directors and if authorized to do so by the board of directors shall make all disbursements by check or withdrawal therefrom for the ordinary and necessary expenses of the business in the manner and form prescribed by the board of directors. Upon the appointment of his or her successor, the manager shall deliver to him or her all money and property belonging to the cooperative which he or she has in his or her possession or over which he or she has control.

6.2. **Duties of Manager to Account.** The manager shall be required to maintain his or her records and accounts in such a manner that the true and correct condition of the business may be ascertained therefrom at any time. He or she shall prepare monthly and annual statements in the form and in the manner prescribed by the board of directors. He or she shall carefully preserve all books, documents, correspondence, and records of whatever kind pertaining to the business which may come into his or her possession.

6.3. **Duties of Manager Concerning Employees.** The manager shall employ, supervise, and dismiss all employees of the cooperative and fix their compensation subject to the policies and at salaries within ranges adopted by the board of directors not inconsistent with these bylaws. Employees shall be under the direct supervision of the manager. Auditors, agents, or counsel specifically employed by the board of directors shall be under the supervision of the board of directors and not under the manager.

ARTICLE VII CAPITAL

7.1. **Equity Capital.**

(a) **Operation at Cost.** The cooperative shall at all times be operated on a cooperative service-at-cost basis for the mutual benefit of the members.

(b) **Investments in Equity Capital.** In addition to the qualifying investments in the cooperative pursuant to Section 1.1, investments in the equity capital of the cooperative shall be made by the members by the cooperative retaining portions of the members' respective allocated shares of net margins as provided in these bylaws. In addition or as an alternative, the board of directors may require investments in the equity capital of the cooperative on a per unit retain, percentage or other basis established in a written policy of the board of directors or in any applicable marketing, purchasing, or pooling contract.

(c) **Notice of Records.** All allocated shares of net margins and per unit retains shall be deemed a capital investment in the cooperative without any further action by the cooperative other than the giving to the appropriate recipient a written notice of allocation (as defined in 26 U.S.C. § 1388). The cooperative shall keep appropriate books and records showing the

investment in capital by each member or other person in each year. The cooperative may, but shall not be required to, issue such additional evidence of capital investments in the cooperative as the board of directors may prescribe.

7.2. **Gross Receipts.**

(a) **Computation of Net Margins.** The cooperative's net margins, calculated upon the basis of each fiscal year, shall be computed as follows:

(i) **Gross Receipts.** All proceeds from membership dues, the sale of products to members, plus all sums received from all other sources except loans and contributions to this cooperative and investments in its capital, shall be deemed to be "**Gross Receipts.**"

(ii) **Deductions from Gross Receipts.** This cooperative shall deduct from the Gross Receipts the sum of the following items:

(A) All costs and expenses and other charges which are lawfully excludable or deductible from this cooperative's Gross Receipts for the purpose of determining the amount of any net margins of this cooperative.

(B) The board of directors may establish amounts for reasonable and necessary reserves for bad debts, obsolescence, contingent losses, working capital, debt retirement, buildings and equipment and ownership retirement. These reserves shall be allocated among the members and other persons entitled to share in all allocations of the cooperative's net margins. If the board of directors elects not to allocate the reserves among the members, (1) the cooperative shall include the amounts credited to the reserves in computing its taxable income, (2) the tax liability thereon shall be deducted from net margins, and (3) no member or other person entitled to share in the allocation of the cooperative's net margins shall have any right or interest at any time in or to the reserve funds of the cooperative except upon dissolution when the entire reserve funds of the cooperative shall be distributed in accordance with applicable law and these bylaws.

(iii) **Contributions to Surplus.** The net margins, less any tax liability of the cooperative accruing therefrom, attributable to business done for persons who are not members or otherwise qualified to share in allocations of net margins or otherwise derived from nonpatronage related sources may be retained as property of the cooperative in a surplus fund to be used as additional working capital or for such other purposes as may be determined by the directors. This surplus fund shall be distributed only upon dissolution of the cooperative and no member at any time shall have any right or interest in or to the surplus fund, except on dissolution.

(iv) **Cooperative's Net Margins.** The balance of said Gross Receipts which remains after the foregoing deductions shall be deemed to be the "**cooperative's net margins**" which term shall encompass net margins of members and all other persons entitled to share in the allocation of net margins of the cooperative.

(b) **Losses.** In the event the cooperative shall sustain a loss in any manner for any period from operations, casualty, revaluation of assets or otherwise with respect to the

cooperative as a whole or from a particular segment of the cooperative's operations, the board of directors shall determine the manner in which the loss shall be taken into account for accounting, taxation or any other purposes; provided, that in making its determination the board of directors shall take into account all applicable facts and circumstances and account for the loss on a basis which is fair and equitable to all members in the cooperative. In making its determination, the board of directors may authorize actions including, without limitation:

- (i) allocating the loss on an equitable basis to some or all of the members of the cooperative by canceling equity account balances,
- (ii) carrying the loss back or forward to offset earnings of the cooperative or particular segments of its operations in prior or future years,
- (iii) canceling any or all outstanding equity account balances shown on the books of the cooperative, or
- (iv) charging the loss against appropriate reserve or surplus accounts.

The board of directors may, but shall not be required to, submit a recommendation as to apportionment and allocation of any loss to a vote of the members at a meeting of the members duly called and legally held. A vote of a majority of the members present at such a meeting shall be binding upon all the members. No member shall be liable for the debts of the cooperative in an amount exceeding his, her or its membership fee and any equity capital invested in the cooperative.

(c) **Allocation.** The total cooperative's net margins shall be received, by the cooperative, belong to and be held by the cooperative for all its members and shall be allocated to such members at the close of each fiscal year on a patronage basis; provided, however, that if any amount which would otherwise be allocated to any member is less than Ten Dollars (\$10.00), it may be credited by the board of directors to the surplus fund after deducting appropriate tax liabilities and need not be allocated to or among the members. The respective allocated share of the net margins of each member may be computed as determined by the board of directors upon the basis of his, her or its respective patronage of, and the net margins resulting from, the operations, the various pools or the departments, or segments of operations of this cooperative and shall be in proportion to the quantity or value of the products delivered by, or supplies, or equipment procured for, such member. When making allocations through qualified written notices of allocation, this cooperative shall within eight and one-half (8-1/2) months after the close of its fiscal year notify each member or other person in the form of a qualified written notice of allocation (as defined in 26 U.S.C. § 1388) of his, her or its total allocation of cooperative's net margins including the cash portion as well as the amount credited to his, her or its capital account. Each recipient shall treat his, her or its total allocation in the manner prescribed by Section 1.4 of these bylaws and any applicable tax laws.

(d) **Qualified and Nonqualified Allocations.** Allocations of the cooperative's net margins in accordance with this ARTICLE VII may be made in the form of qualified written notices of allocation or nonqualified written notices of allocation as determined by the board of directors.

(e) **Qualified Notice of Allocation; Payment and Reinvestment.** If the cooperative pays any portion of an allocation of the cooperative's net margins by a qualified written notice of allocation, the board of directors shall authorize at such time as it may determine, but in no event later than the fifteenth (15th) day of the ninth (9th) month following the end of the cooperative's fiscal year, the cooperative to pay in cash to each member an amount as determined by the board of directors of at least twenty percent (20%) of the member's allocated share of net margins and the balance of his, her or its allocated share of net margins shall be credited to the appropriate capital account of the member or other person on the books and records of the cooperative. The credit shall be deemed a payment to the member or other person and a reinvestment by him or her in the equity capital of the cooperative.

7.3. **Lien.** To secure the payment of all indebtedness of any member to this cooperative, this cooperative shall have a first lien on the capital investments, net margins, and other property rights and interests, if any, in the cooperative of such member. As one means of enforcing its lien, the cooperative shall be entitled to offset at any time, at the sole discretion of the board of directors, any debt of a member to the cooperative with a corresponding amount of the member's capital investments, net margins and other property rights and interests, if any, in the cooperative. Each member by either joining or patronizing the cooperative shall be deemed to have agreed to sign any instrument necessary to evidence and perfect the lien provided for in this Section 7.3.

7.4. **No Offsets.** No member or other person qualified to share in allocations of cooperative's net margins shall be entitled to demand offset of any portion of such person's allocated share of net margins retained by the cooperative against any indebtedness or claim due the cooperative from such person.

7.5. **Repayment.**

(a) No acquisition, recall or redemption of equity capital in the cooperative shall be made if the result of it would be to render the cooperative unable to pay its debts as they become due in the usual course of business or causes the remaining assets of the cooperative to be less than its liabilities plus the amount necessary to satisfy the interests of the holders of securities or other equity capital preferential to those receiving the distribution if the cooperative were to be dissolved at the time of the distribution. Provided the financial condition of the cooperative will not be impaired, the board of directors in its discretion and subject to the approval of the cooperative's secured creditors having the right to approve equity retirements and the application of the Colorado Cooperative Act, may authorize the retirement of any equity capital in the cooperative at any time when a member or other person owning equity capital in the cooperative shall (1) die, (2) if a non-natural person, liquidate its business affairs and intend to dissolve, (3) cease to operate a taxi cab and/or limousine under the cooperative's certificate(s) of public convenience and necessity for a period of one (1) year, (4) move from the territory served, by the cooperative, or (5) if a natural person, meet age factors or requirements established by the board of directors. Each class of equity capital and all persons in each of the above classifications shall be treated similarly with their respective class or classification, but separate treatment may be given to each class of equity capital or each above classification and the establishment of an equity retirement program with respect to any one class of equity capital or above classification shall not require establishment of a program for each other class or classification and differences

uniformly applied based upon age may be established within each class or classification. The board of directors may, in its discretion, subject to the consent of the cooperative's secured creditors and of the member or other investor in the cooperative's equity capital, issue to the member or other investor interest bearing certificates of indebtedness in substitution and exchange for the equity capital of a member or other investor. The board of directors may also adopt a policy whereby an individual who holds an equity or beneficial interest in a member which is not a natural person may, with the consent of the member and the owner, be treated for equity retirement purposes as if the owner were the owner of his, her or its proportionate share of the member's share in this cooperative.

(b) **Additional Repayment.** If (i) payments to persons entitled to repayment under an equity retirement policy developed by the directors under the immediately preceding paragraph (a) shall have been made or adequate provision made therefor, (ii) the cooperative has obtained the approval of the cooperative's secured creditors, and (iii) the board of directors shall have determined the total amount of members' investments in equity capital shall exceed the amount reasonably needed by the cooperative, the board may at its discretion retire a percentage of the equity capital in the cooperative which the board has determined is not needed. The percentage shall be paid to every holder of equity capital equitably among all on the same percentage basis of their total investments in equity capital regardless of when such investment was made, except that no equity capital shall be repaid under this plan until said member has participated in the cooperative for at least five (5) years. Nothing shall prevent repayment of equity capital to only those who have participated in the cooperative for the aforementioned period, provided there shall be no discrimination on retirement of a percentage of the equity capital for those who have invested or more in equity capital; provided that this shall not prevent the repayment of any amounts otherwise due from time to time to any member who has withdrawn or terminated his, her or its membership.

(c) **Secured Creditor.** For purposes of this section "secured creditor" shall mean only those secured creditors having the contractual right to approve equity retirements by the cooperative.

(d) **Rights and Interests in Reserve Funds, Surplus Accounts or Equity from Non-Qualified Notices of Allocation.** No member shall have any right or interest at any time in or to any reserve fund, surplus accounts or equity capital allocated in the form of non-qualified written notices of allocation, except upon dissolution of the cooperative when any such reserve fund, surplus account, or equity capital shall be distributed in accordance with these bylaws, as otherwise provided by law or as the directors may otherwise determine.

(e) **Liquidity of Assets.** In connection with or in addition to the foregoing, the board of directors may establish policies and practices for the redemption of equity capital based upon the recognition of difference in the character and liquidity of assets held by the cooperative and the resulting impact on availability of funds for equity redemption.

7.6. **Borrowed Capital.** This cooperative may borrow such additional capital from members or any other person or source as permitted by law. It may issue notes or certificates of indebtedness for amounts of borrowed money with such terms and conditions and on which it may pay an interest rate as determined by the board of directors.

7.7. **Commingling of Capital; No Interest.** Investments in equity capital need not be segregated from, and may be invested in, or commingled with, any other assets of the cooperative. No dividend, interest, or any other income shall be declared or paid on account of any capital stock or other equity capital in the cooperative owned by a member or other investor.

ARTICLE VIII DISSOLUTION

8.1. **Dissolution.** Dissolution of a cooperative may be authorized in the following manner:

(a) The board, by a two-thirds (2/3) vote of all the board members, shall first adopt a resolution recommending dissolution. The resolution shall state (i) the reasons why the termination of the affairs of the cooperative is deemed advisable, (ii) the time by which it should be accomplished, (iii) whether or not the board may revoke dissolution, and (iv) the names of three persons and two alternates to act as trustees in liquidation who shall have all the powers of the board to do all things they deem necessary for the efficient distribution of claims to creditors, in liquidation and termination of the affairs of the cooperative, including the sale of all or substantially all of the cooperative's property as they deem necessary if the resolution also provides for a sale of the property. Such trustees and alternates need not be members of the cooperative. Any vacancies in the trusteeship shall be first filled by the designated alternates and then may be filled by such persons as may be designated by the remaining trustees.

(b) The cooperative shall give notice to each member of the regular or special meeting at which the resolution to dissolve will be voted upon. The notice shall state that the purpose or one of the purposes, of the meeting is to consider the proposal to dissolve the cooperative. The notice shall contain or be accompanied by a copy of the proposal or a summary thereof, including a description of the proposed distribution of the cooperative's assets and, if voting by mail is permitted, with a mail ballot attached to it.

(c) The proposal to dissolve shall be approved by a two-thirds (2/3) majority vote of the members present and voting in person or in any other manner authorized by the cooperative pursuant to these bylaws at a regular or special meeting called for such purpose.

8.2. **Distributions upon Dissolution.**

(a) Upon the dissolution of this cooperative, all debts and liabilities of the cooperative shall first be paid according to their respective priorities. Any property remaining after discharging the debts and liabilities of the cooperative shall be distributed to the members and other investors in the cooperative's equity capital in accordance with the following priorities to the extent of funds available therefor, payments within each priority to be made on a pro rata basis without regard to time of investment:

(i) retained portions of the cooperative's net margins or other amounts retained, or accumulated, allocated to memberships or other equity capital accounts representing such retained or accumulated amounts;

(ii) the original price paid for memberships to qualify a person as a member of the cooperative; and

(iii) the remainder of the cooperative's property shall be distributed among the members.

(b) If in winding up of the affairs of the cooperative certain assets are not liquid, have no market value, creditors having claim on these assets have been satisfied and the trustees in liquidation or other persons charged with winding up the cooperative's affairs have determined that the costs involved in delaying the winding up of the affairs of the cooperative exceed the potential benefits, the trustees are authorized to assign the assets or any future proceeds from assets that are not liquid to any local or statewide nonprofit organization that has as one of its principal purposes education or community service. The trustees shall under no circumstances be liable to any other member or equity holder in the cooperative for any claim on any assets assigned by the trustees pursuant to the authority of this article,

ARTICLE IX UNCLAIMED MONEY

A claim for money against the cooperative shall be subject to the provisions of this ARTICLE IX whenever the cooperative is ready, able and willing to pay the claim, and has paid or is paying generally claims arising under similar circumstances, but payment of the claim cannot be made for the reason that the cooperative does not know the whereabouts or mailing address of the one to whom it is payable or the one entitled to payment. If the claim is not actually paid within a period of three (3) years after notification as herein provided, the cooperative shall remove the claim as a liability on its books. No removal shall be made unless the cooperative shall have sent by first class, United States mail, a written notice of eligibility for payment addressed to the person appearing on the cooperative's records to be entitled to payment at the last address of such person shown by the records of the cooperative. If not claimed within three (3) years after giving of notice, the claim shall be deemed extinguished. Any and all amounts recovered by the cooperative pursuant to this ARTICLE IX, after deducting therefrom the amount of any taxes payable thereon, shall be placed in a reserve or surplus account established previously or hereafter by the cooperative.

ARTICLE X DISPUTES

In the event of a dispute between a member and the cooperative concerning any matter arising out of the relationship or transactions between the member and the cooperative, upon request of either party and after ten (10) days' prior notice to the member concerned, the matter shall be set for hearing before the board of directors, who shall hear the same, and shall enter written findings or rulings thereon. The decision of the board of directors in such cases shall be final; provided, however, that either party having received a decision may within sixty (60) days thereafter bring an appropriate action in any court of proper jurisdiction regarding such matter or transaction. Any member affected by the final ruling rendered in the dispute, who shall thereafter refuse to acquiesce or abide by the ruling, shall thereafter be subject to termination of membership in accordance with the provisions of Section 1.2 of ARTICLE I of these bylaws.

**ARTICLE XI
FISCAL YEAR**

The fiscal year of this cooperative shall commence on January 1st of each year and shall end on the following December 31st.

**ARTICLE XII
AMENDMENTS**

Amendments to these bylaws may be proposed by two-thirds majority of the board of directors or by petition presented to the secretary and signed by ten percent (10%) of the members. If notice of the character of the amendment proposed has been given in the notice of the meeting, these bylaws may be altered or amended at any regular or special meeting of the members by the affirmative vote of a majority of the members present or voting by mail or facsimile provided the members so voting have received the exact wording of the amendment.

**ARTICLE XIII
DISTRIBUTION OF BYLAWS**

After adoption of these bylaws or an amendment to them, a copy of these bylaws or the amendment, as the case may be, shall be provided to each member and other person qualified to share in the cooperative's net margins and to each person who later becomes a member or person qualified to share in the cooperative's net margins as shown on the books and records of the cooperative.

* * * * *

**FIRST AMENDMENT TO COOPERATIVE BYLAWS
OF
UNION TAXI COOPERATIVE
(a Colorado cooperative association)**

June 28, 2008

In accordance with Article XII of the Cooperative Bylaws (the "Bylaws") of Union Taxi Cooperative, a Colorado cooperative (the "Cooperative"), the following amendments have been approved by a minimum of two-thirds majority vote of the board of directors (the "Board") and approved by a majority of the members of the cooperative on June 28, 2008.

1. The Bylaws are hereby amended by adding a new Article XIV to the Bylaws immediately following the end of the language contained in Article XIII:

**"ARTICLE XIV
MISSION STATEMENT**

The cooperative shall be owned entirely by the members of the cooperative. The members of the cooperative shall be the sole owners of the cooperative. Each member-owner shall be entitled to one vote and only one vote on any matter presented to the voting member-owners for a vote. Each member-owner of the cooperative shall be a taxicab driver that will be authorized to operate a taxi cab under the cooperative's certificate(s) of public convenience and necessity to operate a taxi and/or limousine service. The purposes of the cooperative are as follows:

(a) to operate the only taxi company in the Denver metropolitan area owned solely by the drivers that are the members of the cooperative;

(b) to obtain one or more certificates of public convenience and necessity from the Commission to operate a taxi cab and/or limousine service in the Denver metropolitan area in accordance with applicable law and the Commission's rules and regulations;

(c) to enable member-owners to operate taxi cabs and/or limousines under the cooperative's certificate(s) of public convenience and necessity, subject to the qualifications and restrictions set forth in these bylaws, applicable law and the Commission's rules and regulations;

(d) to provide services and products to the member-owners of the cooperative in accordance with these bylaws;

(e) to do any and all things incidental to, suitable or proper for the accomplishing of the purposes for which this cooperative is formed; and

(f) to carry out and exercise all of the rights, powers and privileges now or hereafter conferred upon cooperative associates organized under the Colorado Cooperative Act or any amended or successor statute."

2. Article XII (Amendments) is hereby amended and restated as follows:

**"ARTICLE XII
AMENDMENTS**

Amendments, modifications and restatements of these bylaws may be proposed by and approved by a two-thirds majority of the board of directors at a regular meeting of the board of directors or a special meeting called for this purpose. However, the act or acts of the board of directors shall be subject to ratification or rejection at the next regular meeting of the members of the cooperative. Amendments to the bylaws may be proposed by a petition presented to the secretary and signed by ten percent (10%) of the members. If notice of a character of the amendment proposed has been given in the notice of the meeting, these bylaws may be altered or amended at any regular or special meeting of the members by the affirmative vote of a majority of the members present or voting by mail or facsimile provided the members so voting have received the exact wording of the amendment."

* * * *

Petition to Revoke or Modify Subpoenas

Case No.: 27-RC-8582
Union Taxi Cooperative
January 6, 2010

EXHIBIT C

Union Taxi Cooperative's Articles of Incorporation

4

Document processing fee
If document is filed on paper
If document is filed electronically
Fees & forms/cover sheets
are subject to change.

E-Filed
\$125.00
\$ 50.00

Colorado Secretary of State
Date and Time: 06/09/2008 09:31 AM
Id Number: 20081308399
Document number: 20081308399

To file electronically, access instructions
for this form/cover sheet and other
information or print copies of filed
documents, visit www.sos.state.co.us
and select Business Center.

Paper documents must be typewritten or machine printed.

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Incorporation of a Cooperative

filed pursuant to §7-90-301, et seq. and §7-56-201 of the Colorado Revised Statutes (C.R.S)

1. Entity name:

Union Taxi Cooperative

(The name of a cooperative may, but need not, contain the term or abbreviation "cooperative", "association", "incorporated", "company", "limited", "coop", "ass'n", "assn", "assoc.", "inc.", "co." or "ltd.")

2. Use of Restricted Words (if any of these terms are contained in an entity name, true name of an entity, trade name or trademark stated in this document, mark the applicable box):

- "bank" or "trust" or any derivative thereof
 "credit union" "savings and loan"
 "insurance", "casualty", "mutual", or "surety"

3. Principal office street address:

2840 S. Vallejo

(Street number and name)

Englewood

(City)

CO

(State)

80110

(Postal/Zip Code)

United States

(Country - if not US)

(Province - if applicable)

4. Principal office mailing address
(leave blank if same as street address):

(Street number and name or Post Office Box information)

(City)

(State)

(Postal/Zip Code)

(Province - if applicable)

(Country - if not US)

5. Registered agent name (if an individual):

Buni

(Last)

Abdi

(First)

(Middle)

(Suffix)

OR (if a business organization):

6. The person appointed as registered agent above has consented to being so appointed.

7. Registered agent street address:

2840 S. Vallejo

(Street number and name)

Englewood

(City)

CO

(State)

80110

(Postal/Zip Code)

8. Registered agent mailing address
(leave blank if same as street address):

(Street number and name or Post Office Box information)

2

(City) (State) (Postal/Zip Code)

(Province - if applicable) (Country - if not US)

9. If the entity's period of duration is less than perpetual, state the date on which the period of duration expires: (leave blank if perpetual)

(mm/dd/yyyy)

10. Name(s) and address(es) of incorporator(s): (if an individual)

Buni Abdi
(Last) (First) (Middle) (Suffix)

OR (if a business organization)

2840 S. Vallejo
(Street number and name or Post Office Box information)
Englewood CO 80110
(City) (State) (Postal/Zip Code)
United States
(Province - if applicable) (Country - if not US)

(if an individual)

(Last) (First) (Middle) (Suffix)

OR (if a business organization)

(Street number and name or Post Office Box information)

(City) (State) (Postal/Zip Code)
United States
(Province - if applicable) (Country - if not US)

(if an individual)

(Last) (First) (Middle) (Suffix)

OR (if a business organization)

(Street number and name or Post Office Box information)

(City) (State) (Postal/Zip Code)
United States
(Province - if applicable) (Country - if not US)

(If there are more than three incorporators, mark this box and include an attachment stating the true names and mailing addresses of all additional incorporators.)

11. A statement is attached stating the information provided for in §7-56-201(2)(e) or (f).

12. Additional information may be included pursuant to §7-56-201(3), C.R.S. and other organic statutes. If applicable, mark this box and include an attachment stating the additional information.

AA

13. Delayed effective date:
(leave blank if not applicable)

(mm/dd/yyyy)
(Caution: Stating a delayed effective date
has significant legal consequences. Read
line instructions before entering a date.)

Notice:

Causing this document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

14. Name(s) and address(es) of the
individual(s) causing the document
to be delivered for filing:

Gunning Eric D. Esq.
(Last) (First) (Middle) (Suffix)
c/o Kamlet Shepherd & Reichert, LLP
(Street number and name or Post Office Box information)
1515 Arapahoe, Tower 1, Suite 1600
Denver CO 80202
(City) (State) (Postal/Zip Code)
United States
(Province - if applicable) (Country - if not US)

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box and include an attachment stating the name and address of such individuals.)

Disclaimer:

This form, and any related instructions, are not intended to provide legal, business or tax advice, and are offered as a public service without representation or warranty. While this form is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form. Questions should be addressed to the user's attorney.

BB

NOTICE:

This "image" is merely a display of information that was filed electronically. It is not an image that was created by optically scanning a paper document.

No such paper document was filed. Consequently, no copy of a paper document is available regarding this document.

Questions? Contact the Business Division. For contact information, please visit the Secretary of State's web site.

Click the following links to view attachments

Attachment 1
Articles of Incorporation

EXHIBIT

Respondent 4

COMMUNICATIONS WORKERS OF AMERICA
LOCAL 7777
2840 S VALLEJO ST
ENGLEWOOD, CO 80110

Invoice No. D-6

INVOICE

Customer				Misc	
Name	Union Taxi Co-op			Date	12/11/2009
Address	2840 S Vallejo St			Order No.	
City	Englewood	State	CO	Rep	
Phone	303 789-9000			FOB	

Qty	Description	Unit Price	TOTAL
261	NOVEMBER Dues for October 2009	\$ 28.00	\$ 7,308.00
SubTotal			\$ 7,308.00
Shipping			
Tax Rate(s)			
TOTAL			\$ 7,308.00

Payment

Comments _____

Name _____

CC # _____

Expires _____

Stamp area

UNION TAXI COOPERATIVE 2840 S VALLEJO ST ENGLEWOOD, CO 80110 (303) 922-2222		2069
DATE 12/17/09		23-2-1020
PAY TO THE ORDER OF	CWA Local 7777	\$ 7308.00
Seven thousand Three Hundred eight		DOLLARS
FOR NOV. dues		Gudob Baraso



usbank.com

EXHIBIT

Respondent 5

Communications Workers of America
Local 7777
2840 S Vallejo St
Englewood, CO 80110

Invoice No. R-7

INVOICE

Customer				Misc	
Name	UNION TAXI COOP			Date	12/4/2009
Address	2840 S Vallejo St			Order No.	
City	Englewood	State	CO	Rep	
Phone	303 789-9000			FOB	
ZIP	80110				

Qty	Description	Unit Price	TOTAL
1	Rent for November 2009	\$1,000.00	\$ 1,000.00
opeiu #5 aff-cio/b			
SubTotal			\$ 1,000.00
Shipping			
TOTAL			\$ 1,000.00

Payment

Comments

Name _____

CC # _____

Expires _____

Tax Rate(s)

TOTAL \$ 1,000.00

UNION TAXI COOPERATIVE
2840 S VALLEJO ST
ENGLEWOOD, CO 80110
(303) 922-2222

2061

DATE 12/8/09 23-2-1020

PAY TO THE ORDER OF CWA Local 7777 \$ 1000.00

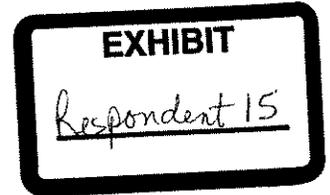
One thousand DOLLARS



Five Star Service Guaranteed usbank.com

FOR Rent Nov. Shirley Barasso

ARTICLE 10
MOTOR VEHICLE CARRIERS



Section

- 40-10-101. Definitions.
- 40-10-102. Subject to control by commission.
- 40-10-103. Compliance.
- 40-10-104. Certificate required - exemptions.
- 40-10-105. Rules for issuance of certificates - standing to protest - judicial review.
- 40-10-105.5. Criminal history record check - taxicab drivers - rules.
- 40-10-106. Transfer of certificate.
- 40-10-107. Powers of commission.
- 40-10-108. Penalty for violations - certificate of public convenience and necessity.
- 40-10-109. Filing and issuance fees for certificates.
- 40-10-110. Carrier's liability insurance policy - filing.
- 40-10-111. Commission to make safety rule.
- 40-10-112. Commission may revoke certificate or impose civil penalty.
- 40-10-113. Penalty for violations of article.
- 40-10-114. Jurisdiction of courts.
- 40-10-115. Commission to notify local authorities - procedure.
- 40-10-116. Transportation of schoolchildren.
- 40-10-117. Rates - limitations.
- 40-10-118. Public utilities law applies.
- 40-10-119. Authority to commingle freight. (Repealed)
- 40-10-120. Registration of interstate carriers - repeal. (Repealed)

A

40-10-101. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Commission" means the public utilities commission of the state of Colorado.
- (2) "Fixed points" and "established route" mean points or a route between or over which any motor vehicle carrier usually or ordinarily operates or holds out to operate any motor vehicle, even though there may be departures from such points or route, whether such departures are periodic or irregular.
- (3) "Motor vehicle" means any automobile, truck, motor bus, or other self-propelled vehicle or any trailer drawn thereby, excluding vehicles operated upon fixed rails and excluding amusement rides. An "amusement ride" is a towed vehicle, including but not limited to a horse-drawn carriage, the principal purpose of which is to carry persons over short distances for their enjoyment and by which the provision of a transportation service is only incidental. "Towed", as used in this section, means incapable of operating under its own power.
- (4) (a) "Motor vehicle carrier" means every person, lessee, trustee, receiver, or trustee appointed by any court whatsoever owning, controlling, operating, or managing any motor vehicle used in serving the public in the business of the transportation of persons for compensation as a common carrier over any public highway between fixed points or over established routes or otherwise, whether such business or transportation is engaged in or transacted by contract or otherwise; except that the term "motor vehicle carrier" does not include a ridesharing arrangement, as defined in section 39-22-509 (1) (a) (II), C.R.S., or a motor vehicle carrier exempt from regulation as a public utility, as defined in section 40-16-101 (4).
 (b) The fact that any such person carries on his operations either in whole or in part between substantially fixed points over established routes, or under contracts with more than one person, or by making repeated or periodical trips shall be prima facie evidence that such person is a motor vehicle carrier and subject to the provisions of this article.
- (5) "Person" means any individual, partnership, corporation, company, association, joint stock association, or other legal entity.
- (6) "Public highway" means every road or highway over which the public generally has a right to travel.

Source: L. 27: p. 499, § 1. L. 31: p. 481, § 1. CSA: C. 16, § 300. CRS 53: § 115-9-1. C.R.S. 1963: § 115-9-1. L. 65: p. 932, § 1. L. 69: p. 955, § 53. L. 71: p. 1105, § 11. L. 79: (4)(a) amended, p. 1561, § 29, effective June 20. L. 80: (4) (a) amended, p. 743, § 3, effective June 30. L. 84: (4)(a) amended, p. 1052, § 5, effective April 12. L. 85: (4)(a) amended, p. 1309, § 6, effective May 29. L. 91: (3) amended, p. 1758, § 2, effective March 12. L. 95: (4)(a) amended, p. 1203, § 5, effective May 31. L. 2004: (4)(a) amended, p. 905, § 32, effective May 21.

ANNOTATION

C.J.S. See 13 C.J.S., Carriers, §§ 1, 18, 67, 78.

Annotator's note. Cases material to this section decided prior to its earliest source, L. 27, p. 499, § 1, have been included in the annotations to this section.

Legislative intent in establishing several types of motor vehicle transportation. The general assembly established several types of motor vehicle transportation, including common and contract carriage. By doing so, without question it intended to protect the public health, safety, and general welfare by providing a framework for the better transportation of persons and property. *City of Denver v. Cleanup Serv. Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

This section applies to common carriers, that is one whose business occupation or regular calling is to carry chattels for all persons who may choose to employ and remunerate him. *Bushnell v. People*, 92 Colo. 174, 19 P.2d 197 (1933).

Contract carriers remain outside scope of regulation. This article was enacted for the regulation of motor vehicle carriers, but the act does not encompass private carriers. Private carriers remain outside the scope of regulation. *Burbridge v. Pub. Utils. Comm'n*, 91 Colo. 134, 12 P.2d 1115 (1932); *Pub. Utils. Comm'n v. Stanton Transp. Co.*, 153 Colo. 372, 386 P.2d 590 (1963).

clear definition of contract carriage. One may look in vain in the statutes or in the rulings of the commission and of the supreme court for a clear definition of contract carriage or for an articulation of specific guidelines to be followed in the issuance of a contract carrier permit. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

The fundamental distinction between a common and contract carrier is that the contract carrier enters into a contract with each of his customers and assumes no obligation to carry for any other, while the common carrier undertakes to carry for all persons indifferently. *Ward Transp. Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

The principal statutory distinction between the two is that a contract carrier is one which is not a common carrier. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

One of the fundamental distinctions between a contract carrier and a common carrier is that a contract carrier has an obligation only to his contract-customers and has no obligation to others desiring carriage. In contrast, the common carrier must convey for all desiring its transportation. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

A motor vehicle carrier cannot at the same time be both a contract carrier and a common carrier by utilizing one part of a truck for common-carrier service and another part of the same truck for contract-carrier service. Such a holding would make regulatory power ridiculous. *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939).

Situation in which carrier is neither common nor private or contract. A milk company which transports all the milk it produces to its processing plant, f.o.b. at the producers' stations is neither a common carrier nor a private or contract carrier for hire, because it then hauls only its own property. *Colo. Milk Transp., Inc. v. Safeway Stores, Inc.*, 269 F.2d 755 (10th Cir. 1959).

Indiscriminately accepting freight is undoubtedly one of the important tests in ascertaining whether or not a certain operation has the elements of a common carrier. *Greeley Transp. Co. v. People*, 79 Colo. 307, 245 P. 720 (1926); *Burbridge v. Pub. Utils. Comm'n*, 91 Colo. 134, 12 P.2d 1115 (1932); *Bushnell v. People*, 92 Colo. 174, 19 P.2d 197 (1933); *McDill v. North E. Motor Freight, Inc.*, 92 Colo. 198, 19 P.2d 204 (1933); *McKay v. Pub. Utils. Comm'n*, 104 Colo. 402, 91 P.2d 965 (1939); *Ward Transp., Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

Carrier who does not accept freight for hire indiscriminately is not a common carrier. A motor vehicle operator engaged in the transportation of freight for hire under contracts with various individuals is not a common carrier because he does not hold himself out as willing to, and does not in fact, accept freight for transportation for hire indiscriminately for all who might or did seek such service. *Ward Transp., Inc. v. Pub. Utils. Comm'n*, 151 Colo. 76, 376 P.2d 166 (1962).

Test used in determining whether applicant is contract carrier held invalid. *Denver Cleanup Serv., Inc. v. Pub. Utils. Comm'n*, 192 Colo. 537, 561 P.2d 1252 (1977).

The constitution and the statutes of this state have given to the business of trash hauling the status of a matter of statewide concern, subject to the jurisdiction of the public utilities commission. Under such circumstances, a city has no power to pass an ordinance which is in conflict with the exercise by the commission of its statutory power. *Givigliano v. Veltri*, 180 Colo. 10, 501 P.2d 1044 (1972).

"Property" embraces matter removed to dumps. The word "property" as applied to the act is intended to and does embrace the transportation for hire of matter and things which the parties remove from various households and establishments and haul to nearby dumps. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed.2d 83 (1967).

Right of property exists in refuse material until it is destroyed. Although the owner of refuse materials may regard them as of no value, still the right to their possession and the need for their disposal are within the control of the individual owner. All of these materials have certain valuable uses under varied circumstances, and even though the owner desires to dispose of or destroy such materials, the right of property continues until disposed of or destroyed. In performing such disposal service, appellant was clearly engaged in the business of a common carrier. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed.2d 83 (1967).

Vehicles engaged in transporting trash are within meaning of section. The amendment of § 40-10-101 expressly to include in the definition of "motor vehicle carrier", as follows: "any motor vehicle used in serving the public in the business of transportation of persons, trash, waste, rubbish, and garbage", did not change the law; it merely clarified it. *Schlagel v. Hoelsken*, 162 Colo. 142, 425 P.2d 39, cert. denied, 389 U.S. 827, 88 S. Ct. 81, 19 L. Ed.2d 83 (1967).

Those who merely secure passengers desiring to make trips as paying guests for private parties planning motor vehicle trips are not functioning as a public utility warranting regulation by the commission. *Yellow Cab Coop. Ass'n v. Colo. Ground Transp.*

<http://www.michie.com/colorado/lpext.dll/cocode/2/692aa/692e4/6a118/6a11a/6a131?f=templates&fn=doc...> 1/7/2010

Center, Inc., 654 P.2d 1331 (Colo. App. 1982).

Applied in Northwest Transp. Serv., Inc. v. Pub. Utils. Comm'n, 197 Colo. 437, 593 P.2d 1366 (1979); Morey v. Pub. Utils. Comm'n, 629 P.2d 1061 (Colo. 1981).

[prev. doc](#) [next doc](#)

40-10-102. Subject to control by commission.

All motor vehicle carriers are declared to be public utilities within the meaning of articles 1 to 7 of this title and are declared to be affected with a public interest and subject to this article and to the laws of this state, including the regulation of all rates and charges pertaining to public utilities, so far as applicable and not in conflict therewith.

Source: L. 27: p. 500, § 2. CSA: C. 16, § 301. CRS 53: § 115-9-2. C.R.S. 1963: § 115-9-2.

ANNOTATION

The general assembly has declared that a "common carrier" is a "public utility". Miller Bros. v. Pub. Utils. Comm'n, 185 Colo. 414, 525 P.2d 443 (1974).

Contract carriage has not been so declared. Miller Bros. v. Pub. Utils. Comm'n, 185 Colo. 414, 525 P.2d 443 (1974).

The commission's authority over common carriers stems from both the constitution and the statutes, while its authority with respect to contract motor carriers is solely statutory. Miller Bros. v. Pub. Utils. Comm'n, 185 Colo. 414, 525 P.2d 443 (1974).

Jurisdiction is expressly conferred on the commission by this section. Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n, 131 Colo. 172, 280 P.2d 442 (1955).

Those who merely secure passengers desiring to make trips as paying guests for private parties planning motor vehicle trips are not functioning as a public utility warranting regulation by the commission. Yellow Cab Coop. Ass'n v. Colo. Ground Transp. Center, Inc., 654 P.2d 1331 (Colo. App. 1982).

Applied in Givigliano v. Veltri, 180 Colo. 10, 501 P.2d 1044 (1972).

40-10-103. Compliance.

No motor vehicle carrier shall operate any motor vehicle for the transportation of persons for compensation on any public highway in this state except in accordance with the provisions of this article.

Source: L. 27: p. 501, § 3. CSA: C. 16, § 302. CRS 53: § 115-9-3. C.R.S. 1963: § 115-9-3. L. 95: Entire section amended, p. 1203, § 6, effective May 31.

ANNOTATION

The streets of a city are highways of the state. *Armstrong v. Johnson Storage & Moving Co.*, 84 Colo. 142, 268 P. 978 (1928).

Injunction may issue to prohibit operation of motor vehicles as carriers for compensation on public highways without proper authority so to do under pertinent state statutes. *Ludlow v. People*, 92 Colo. 195, 19 P.2d 210 (1933); *Kimble v. People*, 92 Colo. 197, 19 P.2d 208 (1933).

Jurisdiction is expressly conferred on the commission by this section. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

40-10-104. Certificate required - exemptions.

(1) No person shall operate or offer to operate as a motor vehicle carrier for the transportation of passengers upon the public highways of this state in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity requires or will require such operation; except that this subsection (1) shall not apply to hearses, ambulances, or other emergency vehicles.

(2) (Deleted by amendment, L. 95, p. 1203, § 7, effective May 31, 1995.)

(3) This article shall not apply to motor vehicles designed and used for the nonemergency transportation of individuals with disabilities as defined in section 42-7-510 (2) (b), C.R.S.

Source: L. 27: p. 501, § 4. CSA: C. 16, § 303. L. 49: p. 270, § 1. L. 51: p. 166, § 1. CRS 53: § 115-9-4. L. 54: p. 99, § 8. C.R.S. 1963: § 115-9-4. L. 65: p. 933, § 2. L. 71: p. 1101, § 1. L. 78: (3) added, p. 522, § 1, effective July 1. L. 80: (1) amended, p. 743, § 4, effective June 30. L. 81: (3) amended, p. 1925, § 1, effective July 1. L. 93: (3) amended, p. 1671, § 91, effective July 1. L. 94: (3) amended, p. 2570, § 95, effective January 1, 1995. L. 95: Entire section amended, p. 1203, § 7, effective May 31. L. 2006: (1) amended, p. 1100, § 16, effective August 7.

ANNOTATION

Am. Jur.2d. See 13 Am. Jur.2d, Carriers, §§ 222, 223, 225.

C.J.S. See 13 C.J.S., Carriers, §§ 66, 67, 77, 78, 334; 73B C.J.S., Public Utilities, §§ 180-192.

Any application by a carrier for a certificate of public convenience and necessity must be determined by the commission on its own individual merits, and consideration must be given to all competent evidence bearing upon the question of whether public convenience and necessity will be served by the granting of such application. Any applicant for a certificate, whether private carrier or otherwise, has the right to establish public convenience and necessity by any relevant evidence. *Ephraim Freightways, Inc. v. Pub. Utils. Comm'n*, 141 Colo. 330, 347 P.2d 960 (1959); *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962).

Before two or more separate authorities may be integrated into one authority, there must be a showing that public convenience and necessity demand the new integrated service. *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962); *Red Ball Motor Freight, Inc. v. Pub. Utils. Comm'n*, 154 Colo. 329, 390 P.2d 480 (1964).

The failure of the commission to take action against one who exceeds the authority granted does not ripen into a grant of authority to carry on an illegal operation. *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962); *G & G Trucking v. P.U.C. of Colo.*, 745 P.2d 211 (Colo. 1987).

The unlawful usurpation of authority and demonstration of the success of such unlawful operation can form no basis for the grant of authority to continue such operation. *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962); *G & G Trucking v. P.U.C. of Colo.*, 745 P.2d 211 (Colo. 1987).

Jurisdiction is expressly conferred on the commission by this section. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

Under this section a common carrier must have a certificate of convenience and necessity and a private or contract carrier must have an authorizing certificate before engaging in such business, and one failing to comply with the law is responsible for damages caused to others. *Colo. Milk Transp., Inc. v. Safeway Stores, Inc.*, 269 F.2d 755 (10th Cir. 1959); *McKenna v. Nigro*, 150 Colo. 335, 372 P.2d 744 (1962).

Public utilities commission is the regulatory body, and as such is the one to determine whether it will or will not issue temporary certificates. *B.D.C. Corp. v. Pub. Utils. Comm'n*, 167 Colo. 472, 448 P.2d 615 (1968).

To be exempt from the provisions of this article, motor vehicles must be designed to transport individuals confined to wheelchairs, and actually must be used solely to transport such individuals. *Black Hawk-Central City Ace Express, Inc. v. Entrup*, 983 P.2d 9 (Colo. App. 1998).

Applied in *Morey v. Pub. Utils. Comm'n*, 629 P.2d 1061 (Colo. 1981).

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40-10-105.5. Criminal history record check - taxicab drivers - rules.

(1) An individual who wishes to become employed or who contracts to drive a taxicab for a holder of a certificate of public convenience and necessity that contains authority to operate as a taxicab shall submit a set of his or her fingerprints to the commission. The commission shall forward the fingerprints to the Colorado bureau of investigation for the purpose of obtaining a fingerprint-based criminal history record check. Upon receipt of fingerprints and payment for the costs, the Colorado bureau of investigation shall conduct a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. The commission shall be the authorized agency to receive information regarding the result of a national criminal history record check. The individual whose fingerprints are checked pursuant to this subsection (1) shall bear the actual costs of the state and national fingerprint-based criminal history record check.

(2) An individual who, prior to May 30, 2007, drives a taxicab as part of his or her employment or contract with a holder of a certificate of public convenience and necessity that contains authority to operate as a taxicab shall comply with the fingerprinting requirements of subsection (1) of this section within thirty days after May 30, 2007.

(3) An individual whose fingerprints are checked pursuant to subsection (1) or (2) of this section may, pending the results of the criminal history record check, drive a taxicab in connection with his or her employment or contract with a holder of a certificate of public convenience and necessity described in subsection (1) of this section for up to ninety days after the commission forwards the fingerprints to the Colorado bureau of investigation or until the commission receives the results of the check, whichever occurs first. Upon the commission's receipt of the results, the individual may resume driving a taxicab for the holder of the certificate, so long as the driving does not violate applicable law and does not occur while the individual has a criminal conviction on his or her record that disqualifies and prohibits him or her from driving a taxicab pursuant to subsection (4) of this section.

(4) An individual whose criminal history record is checked pursuant to this section shall be disqualified and prohibited from driving a taxicab for a holder of a certificate of public convenience and necessity that contains authority to operate as a taxicab if the criminal history record check reflects that:

(a) The individual is not of good moral character, as determined by the commission based on the results of the criminal history record check required by this section;

(b) (I) The individual has been convicted of a felony or misdemeanor involving moral turpitude.

(II) As used in this paragraph (b), "moral turpitude" shall include any unlawful sexual offense against a child, as defined in section 18-3-411, C.R.S., or a comparable offense in any other state or in the United States.

(c) Within the two years preceding the date the criminal history record check is completed, the individual was:

(I) Convicted in this state of driving under the influence, as defined in section 42-4-1301 (1) (f), C.R.S.; driving with excessive alcoholic content, as described in section 42-4-1301 (2) (a), C.R.S.; driving while ability impaired, as defined in section 42-4-1301 (1) (g), C.R.S.; or driving while an habitual user of a controlled substance, as described in section 42-4-1301 (1) (c), C.R.S.; or

(II) Convicted of a comparable offense in any other state or in the United States.

(4.5) The commission shall consider the information resulting from the criminal history record check in its determination as to whether the individual has met the standards set forth in section 24-5-101 (2), C.R.S.

(5) The commission shall, consistent with the requirements of this section, promulgate rules concerning the employment of, contracting with, and retention of an individual whose criminal history record is checked pursuant to this section.

(6) An individual or entity who violates any provision of this section shall be subject to the penalties described in section 40-10-113.

Source: L. 2007: Entire section added, p. 1401, § 3, effective May 30. L. 2008: (3) and (4) amended and (4.5) added, 802, § 25, effective July 1.

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40-10-106. Transfer of certificate.

Any certificate of public convenience and necessity or rights obtained under any such certificate held, owned, or obtained by any motor vehicle carrier may be sold, assigned, leased, encumbered, or transferred as other property only upon authorization by the commission. Absent other facts, the fact that a motor vehicle carrier conducts operations with independent contractors shall not in and of itself constitute a lease or transfer of the certificate.

Source: L. 27: p. 501, § 6. CSA: C. 16, § 305. CRS 53: § 115-9-6. C.R.S. 1963: § 115-9-6. L. 71: p. 1101, § 2. L. 89: Entire section amended, p. 1534, § 22, effective April 12. L. 2009: Entire section amended, (SB 09-292), ch. 369, p. 1982, § 121, effective August 5.

Editor's note: This section was amended in a 2009 act that was passed without a safety clause. The act establishes an effective date of August 5, 2009, for this provision. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

ANNOTATION

Am. Jur.2d. See 13 Am. Jur.2d, Carriers, §§ 204-206.

C.J.S. See 13 C.J.S., Carriers, § 341.

A certificate is by law deemed subject to transfer as any other property, although the approval of the commission is additionally required, and the fitness of the purchaser to succeed to the common-carrier operation of the transferor. *DeLue v. Pub. Utils. Comm'n*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L. Ed.2d 421 (1969).

Order for the public utilities commission to revoke, amend, or alter permits or certificates of participating parties in a transfer, it must comply with the statutory procedural requirements which would legally justify the end sought to be accomplished, issue a notice, hold a hearing at which the respondent is given an opportunity to defend itself, and finally, enter its decision in accordance with the evidence. Anything less will not satisfy the statute nor that quality of fairness required by "procedural due process". *Buckingham v. Pub. Utils. Comm'n*, 180 Colo. 267, 504 P.2d 677 (1972).

Transferee's authority limited to that of transferor. The public utilities commission correctly refused to fragmentize the general commodity certificate transferred and limit the transferee's authority to the service which had been primarily provided by the transferor where the evidence demonstrated the transferor had carried on the business of hauling a broad range of commodities and that it has accepted all freight tendered to it within the scope of its operating authority. *DeLue v. Pub. Utils. Comm'n*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L. Ed.2d 421 (1969).

Contract carrier has no legal interest to assert in a proceeding involving certificate transfer. Since the contract carrier has no right to protection from competition by a common carrier or its successors in interest in has no legal interest or right which it can assert in a proceeding involving the transfer of a common-carrier certificate. *DeLue v. Pub. Utils. Comm'n*, 169 Colo. 159, 454 P.2d 939, cert. denied, 396 U.S. 956, 90 S. Ct. 428, 24 L. Ed.2d 421 (1969).

40-10-107. Powers of commission.

The commission has the power to administer and enforce all provisions of this article including the right to inspect the books and documents of the motor vehicle carriers and operators involved.

Source: L. 27: p. 504, § 11. CSA: C. 16, § 310. CRS 53: § 115-9-11. L. 54: p. 99, § 9. C.R.S. 1963: § 115-9-7.

ANNOTATION

Am. Jur.2d. See 64 Am. Jur.2d, Public Utilities, §§ 146-152.

C.J.S. See 73B C.J.S., Public Utilities, § 214.

Jurisdiction is expressly conferred on the commission by this section. Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n, 131 Colo. 172, 280 P.2d 442 (1955).

40-10-108. Penalty for violations - certificate of public convenience and necessity.

Any person who uses any public highway in this state for the transportation of passengers as a motor vehicle carrier without first obtaining a certificate of public convenience and necessity, or in violation of any of the terms thereof, or who fails or refuses to make any return or any report required by the commission, or who denies to the commission access to the books and records of such person, or who makes any false return commits a misdemeanor and, upon conviction thereof, shall be punished by a fine as provided in section [40-10-113](#).

Source: L. 27: p. 506, § 14. CSA: C. 16, § 313. CRS 53: § 115-9-17. C.R.S. 1963: § 115-9-8. L. 69: p. 955, § 54. L. 95: Entire section amended, p. 1205, § 9, effective May 31.

ANNOTATION

The failure of the commission to take action against one who exceeds the authority granted does not ripen into a grant of authority to carry on an illegal operation. McKenna v. Nigro, 150 Colo. 335, 372 P.2d 744 (1962).

40-10-109. Filing and issuance fees for certificates.

(1) Except as provided in subsection (3) of this section, the commission shall collect from all motor vehicle carriers the following fees: Filing fee for application for certificate of public convenience and necessity to operate in intrastate commerce, thirty-five dollars; filing fee for application to register interstate operating rights, fifteen dollars; filing fee for transfer or lease of a certificate of public convenience and necessity in intrastate commerce, thirty-five dollars; and filing fee for transfer of a registration of interstate operating rights, five dollars. In addition, the commission shall charge a fee of five dollars for issuing a certificate of public convenience and necessity in intrastate commerce or a registration in interstate commerce, or both. All fees collected under this section shall be transmitted to the state treasurer, who shall credit the same to the public utilities commission motor carrier fund.

(2) Notwithstanding the amount specified for any fee in subsection (1) of this section, the commission by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the commission by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(3) The fee for an application for a certificate of public convenience and necessity to provide taxi service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson shall be set administratively by the commission with approval of the executive director of the department of regulatory agencies.

Source: L. 27: p. 507, § 16. CSA: C. 16, § 315. L. 49: p. 272, § 1. CRS 53: § 115-9-18. C.R.S. 1963: § 115-9-9. L. 69: p. 956, § 55. L. 71: p. 1102 § 3. L. 77: Entire section amended, p. 1860, § 1, effective July 1. L. 83: Entire section amended, p. 1549, § 2, effective June 10. L. 98: Entire section amended, p. 1349, § 88, effective June 1. L. 2009: (1) amended and (3) added, (SB 09-294), ch. 438, p. 2428, § 2, effective July 1.

Editor's note: Section 3 of chapter 438, Session Laws of Colorado 2009, provides that the act adding subsection (3) and amending subsection (1) applies to applications submitted on or after July 1, 2009.

Cross references: For the creation of the public utilities commission motor carrier fund, see § 40-2-110.5 (6).

ANNOTATION

C.J.S. See 73B C.J.S., Public Utilities, §§ 153, 159, 160, 165, 180-192.

40-10-110. Carrier's liability insurance policy - filing.

Every motor vehicle carrier shall file with the commission a liability insurance policy issued by some insurance carrier or insurer, authorized to do business in the state of Colorado, or a surety bond issued by some company authorized to do a surety business in the state of Colorado, in such sum, for such protection, and in such form as the commission, by its rules and regulations, may deem necessary to adequately safeguard the public interest. Such policy or bond shall be kept continuously effective during the life of a certificate, and the commission shall require evidence of continued validity as it deems necessary.

Source: L. 27: p. 507, § 17. CSA: C. 16, § 316. CRS 53: § 115-9-19. C.R.S. 1963: § 115-9-10. L. 2006: Entire section amended, p. 1101, § 20, effective August 7.

ANNOTATION

Am. Jur.2d. See 13 Am. Jur.2d, Carriers, § 348.

C.J.S. See 13 C.J.S., Carriers, § 428.

40-10-111. Commission to make safety rule.

The commission shall supervise and regulate all motor vehicle carriers and shall promulgate such safety rules or regulations as it deems wise or necessary to govern and control the operation of motor vehicles by them and shall enforce the same as provided in this article.

Source: L. 27: p. 508, § 18. CSA: C. 16, § 317. CRS 53: § 115-9-20. C.R.S. 1963: § 115-9-11.

40-10-112. Commission may revoke certificate or impose civil penalty.

(1) The commission, at any time, by order duly entered, after hearing upon notice to the holder of any certificate of public convenience and necessity and when it is established to the satisfaction of the commission that such holder has violated any of the provisions of this article or violated or refused to observe any of the proper orders, rules, or regulations of the commission, may suspend, revoke, alter, or amend any such certificate issued under the provisions of this article or may impose a civil penalty as provided in sections 40-7-112 to 40-7-116, but the holder of such certificate shall have all the rights of hearing, review, and appeal as to such order or ruling of the commission as are now provided by articles 1 to 7 of this title. No appeal from or review of any order or ruling of the commission shall be construed to supersede or suspend such order or rulings unless upon order of the proper court.

(2) (Deleted by amendment, L. 2009, (SB 09-292), ch. 369, p. 1982, § 122, effective August 5, 2009.)

(3) Any person may file a complaint pursuant to section 40-6-108 against a motor vehicle carrier for a violation of this title or a rule adopted in furtherance of this title. The complainant may request any relief that the commission, in its authority, may grant, including, but not limited to, an order to cease and desist, suspension or revocation of the motor vehicle carrier's certificate of public convenience and necessity, or assessment of civil penalties. After hearing upon notice of the complaint to the motor vehicle carrier, and upon proof of violation, the commission may issue an order to cease and desist, suspend or revoke the motor carrier's certificate of public convenience and necessity, assess civil penalties as provided in article 7 of this title, or take any other action within its authority. In assessing civil penalties under this subsection (3), the commission shall not be constrained by the procedural requirements of section 40-7-116.

Source: L. 27: p. 508, § 19. CSA: C. 16, § 318. CRS 53: § 115-9-21. C.R.S. 1963: § 115-9-12. L. 71: p. 1102, § 4. L. 89: Entire section amended, p. 1542, § 2, effective April 12. L. 93: Entire section amended, p. 2072, § 36, effective 1. L. 2006: (3) added, p. 1098, § 12, effective August 7. L. 2009: (1) and (2) amended, (SB 09-292), ch. 369, p. 1982, § 122, effective August 5.

Editor's note: Subsections (1) and (2) were amended in a 2009 act that was passed without a safety clause. The act establishes an effective date of August 5, 2009, for these provisions. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

Cross references: For license revocation procedures, see article 4 of title 24.

ANNOTATION

Am. Jur.2d. See 14 Am. Jur.2d, Carriers, §§ 140-143, 155.

C.J.S. See 73B C.J.S., Public Utilities, § 180-192.

This section empowers the public utilities commission to order a revocation or to alter or to amend a certificate of public convenience and necessity for a violation of its rules and regulations. *Colo. Transf. & Storage, Inc. v. Pub. Utils. Comm'n*, 180 Colo. 327, 505 P.2d 370 (1973).

Cancellation of "occasional service" portion of carrier's certificate held no abuse of commission's discretion. *Colo. Transf. & Storage, Inc. v. Pub. Utils. Comm'n*, 180 Colo. 327, 505 P.2d 370 (1973).

The commission has no authority to impose a monetary fine as an alternative to revoking a permit or certificate. *Haney v. Pub. Utils. Comm'n*, 194 Colo. 481, 574 P.2d 863 (1978).

of review upon cancellation of certificate. The penalty ordered by the commission was that the carrier's certificate and permit be cancelled unless he elected to accept certain restrictions. The carrier had the right to have the propriety of the commission's decision, which includes findings and conclusions, as well as an order, reviewed by the courts and was not required to make an election until he has obtained such judicial review. *Pub. Utils. Comm'n v. Tucker*, 167 Colo. 130, 445 P.2d 901 (1968).

40-10-113. Penalty for violations of article.

Every motor vehicle carrier, and every officer, agent, or employee of any motor vehicle carrier, and every other person who violates or fails to comply with or who procures, aids, or abets in the violating of any provisions of this article, or who fails to obey, observe, or comply with any order, decision, rule, or regulation of the commission, or who procures, aids, or abets any person in such failure to obey or observe such order, decision, rule, or regulation commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S.

Source: L. 27: p. 508, § 20. L. 35: p. 864, § 4. CSA: C. 16, § 319. CRS 53: § 115-9-22. L. 55: p. 701, § 1. L. 59: p. 632, § 1. C.R.S. 1963: § 115-9-13. L. 69: p. 956, § 56. L. 93: Entire section amended, p. 2073, § 37, effective July 1. L. 95: Entire section amended, p. 1205, § 10, effective May 31. L. 2002: Entire section amended, p. 1559, § 357, effective October 1.

Cross references: (1) For general authority of a peace officer to make an arrest, see part 1 of article 3 of title 16.

(2) For the legislative declaration contained in the 2002 act amending this section, see section 1 of chapter 318, Session Laws of Colorado 2002.

ANNOTATION

Am. Jur.2d. See 13 Am. Jur.2d, Carriers, § 33.

C.J.S. See 73B C.J.S., Public Utilities, §§ 273, 274.

40-10-114. Jurisdiction of courts.

The district court or, within its jurisdiction, the county court of any county in or through which any motor vehicle carrier operates shall have jurisdiction in all matters arising under this article on account of the operation of such motor vehicle carrier, regardless of the place of residence of such motor vehicle carrier or the place of service of process upon such motor vehicle carrier.

Source: L. 27: p. 509, § 21. L. 31: p. 484, § 3. CSA: C. 16, § 320. CRS 53: § 115-9-23. L. 55: p. 703, § 1. C.R.S. 1963: § 115-9-14. L. 64: p. 302, § 260.

ANNOTATION

Am. Jur.2d. See 14 Am. Jur.2d, Carriers, §§ 41, 47.

C.J.S. See 73B C.J.S., Public Utilities, § 244.



40-10-115. Commission to notify local authorities - procedure.

(1) Whenever the commission is of the opinion that any motor vehicle carrier is failing or omitting to do anything required of it by law or by any order, decision, rule, direction, or requirement of the commission or is doing anything or about to do anything or permitting anything or about to permit anything to be done contrary to or in violation of the law or of any order, decision, rule, direction, or requirement of the commission, it shall request the attorney general of the state or the district attorney of any district to commence an action or proceeding in the district court in and for the county or city and county in which the cause or some part thereof arose or in which the person complained of maintains a principal place of business or resides. Such action or proceeding shall be conducted in accordance with section 40-7-104; except that references in said section 40-7-104 to the attorney general shall also include any district attorney bringing the action or proceeding.

(2) (Deleted by amendment, L. 93, p. 2073, § 38, effective July 1, 1993.)

(3) Appellate review may be obtained in the supreme court concerning such final judgment in the same manner and with the same effect, subject to the provisions of this article, as appellate review of judgments of the district court in other actions for mandamus or injunction.

(4) Any person injured by such noncompliance of any motor vehicle carrier with the provisions of this article or of any other provisions of the law or orders, decisions, rules, directions, or requirements of the commission, may apply to any court of competent jurisdiction for the enforcement thereof, and the court has jurisdiction to enforce obedience thereto by injunction or other proper process, mandatory or otherwise, and to restrain any such motor vehicle carrier and its officers, agents, employees, or representatives from further disobedience thereof, or to enjoin upon them obedience to the same, and any person so injured shall likewise have cause of action in damages and be privileged to pursue the usual and proper remedies to redress the same as in like cases provided by law.

Source: L. 27: p. 509, § 22. CSA: C. 16, § 321. CRS 53: § 115-9-24. C.R.S. 1963: § 115-9-15. L. 64: p. 303, § 261. L. 69: p. 956, § 57. L. 93: Entire section amended, p. 2073, § 38, effective July 1.

ANNOTATION

The public utilities commission has been granted legislative authority to invoke the aid of the attorney general and to resort to the courts to see to it that laws, rules, regulations, orders, and decisions dealing with public utilities are obeyed, enforced, and made effective. The public utilities commission can do this on its own volition and no doubt could and would do so at the request of an aggrieved party. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

Investigation and enforcement. The general assembly did not by these sections contemplate that every alleged violation of the terms of a certificate of public convenience and necessity had to be heard in a court of record. The commission has inherent power to investigate alleged violations and to make its orders, subject to review as provided by law. Enforcement of its orders may become a matter for judicial determination in which event this section applies. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955); *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

The public utilities commission is clothed with general powers to regulate and control carriers for hire within the state. *Hanseman v. Hamilton*, 176 F. Supp. 371 (D. Colo. 1959).

Section has no extraterritorial effect. It is generally presumed that a statute was not intended to have extraterritorial effect unless there is definite expression of such intent; there is no such definitive expression in this section. *Hanseman v. Hamilton*, 176 F. Supp. 371 (D. Colo. 1959).

Section prescribes procedure. When the commission seeks enforcement of its final orders, decisions, and rules relating to motor vehicle carriers, this section prescribes the procedure to be adopted and followed in the enforcement of said orders, decisions, and rules. *Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n*, 131 Colo. 172, 280 P.2d 442 (1955).

This section grants to an aggrieved party in plain and unequivocal language the right to institute and maintain an action to restrain a private carrier from violating its certificate to the damage of plaintiff--common carrier; and vest the court, if such be

necessary, with jurisdiction to hear and dispose of the matter. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

Administrative remedies need not be exhausted. The language of this section imposes no conditions to be met prior to invoking the aid of the district court, and the trial court in holding that the court was without jurisdiction until and unless the plaintiff had exhausted its administrative remedies, was in error. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

Trial court may enjoin improper activity. Where a certificated carrier filed an action in the district court seeking to enjoin another certificated carrier from transporting freight beyond the scope of the authority granted and to the injury of the plaintiff, the supreme court held that the trial court has power to enjoin the defendant from operating in violation of the terms of his permit and to punish him for contempt for violation of its order. *Don Ward, Inc. v. Miller*, 154 Colo. 370, 390 P.2d 812 (1964).

Applied in *McDill v. North E. Motor Freight, Inc.*, 92 Colo. 198, 19 P.2d 204 (1933).

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40-10-117. Rates - limitations.

It is unlawful for any motor vehicle carrier to carry or advertise that it will carry any persons at rates different from those it has on file with the commission for such carriage.

Source: L. 27: p. 511, § 24. CSA: C. 16, § 323. CRS 53: § 115-9-26. C.R.S. 1963: § 115-9-17. L. 95: Entire section amended, p. 1205, § 12, effective May 31.

ANNOTATION

Am. Jur.2d. See 13 Am. Jur.2d, Carriers, §§ 234-237, 243, 245, 251-253; 64 Am. Jur.2d, Public Utilities, §§ 75, 76.

40-10-118. Public utilities law applies.

All provisions of articles 1 to 7 of this title and all acts amendatory thereof or supplemental thereto shall, insofar as applicable, apply to all motor vehicle carriers subject to the provisions of this article.

Source: L. 27: p. 513, § 27. CSA: C. 16, § 326. CRS 53: § 115-9-29. C.R.S. 1963: § 115-9-20.

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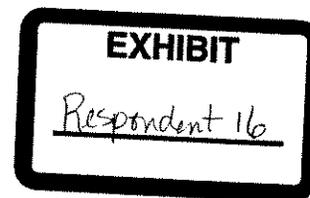
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DEPARTMENT OF REGULATORY AGENCIES

Public Utilities Commission

RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE

4 CCR 723-6

[Editor's Notes follow the text of the rules at the end of this CCR Document.]**BASIS, PURPOSE, AND STATUTORY AUTHORITY**

The basis for and purpose of these rules is to describe the manner of regulation over persons providing transportation services by motor vehicle in or through the State of Colorado. These rules address a wide variety of subject areas including, but not limited to, safety; civil penalties; the issuance, extension, transfer, and revocation of authority to operate as a transportation carrier; insurance and registration requirements; tariff and time schedule requirements; the identification, condition, and leasing of motor vehicles; record keeping; and service standards. These rules cover an array of carriers, including motor vehicle carriers (common carriers), contract carriers by motor vehicle, hazardous materials carriers, towing carriers, household goods movers, and motor vehicle carriers exempt from regulation as public utilities (charter or scenic buses, children's activity buses, luxury limousines, off-road scenic charters, and property carriers by motor vehicle). In addition, these rules cover motor carriers, motor private carries, freight forwarders, brokers, leasing companies, and other persons required to register under the Unified Carrier Registration Agreement, pursuant to 49 U.S.C. § 14504a.

The statutory authority for the promulgation of these rules can be found at § 540-2-108, 40-2-110.5(8), 40-2-116, 40-3-101(1), 40-3-102, 40-3-103, 40-3-110, 40-4-101, 40-5-105, 40-7-113(2), 40-10-105(1), 40-10-105(2)(c), 40-10-105.5(5), 40-10-107, 40-10-110, 40-10-111, 40-10-5-102(2), 40-11-103(1), 40-11-105, 40-11-106, 40-11-109, 40-13-104(1), 40-13-105, 40-13-107, 40-13-110(1), 40-14-103(2)(c), 40-14-104(2), 40-14-106(2)(a)(i), 40-14-108(1), 40-14-110, 40-16-103.6(1), 40-16-103.8, 40-16-104, 40-16-104.5(5), 40-16-105(1), 42-4-1809(2)(a), 42-4-2108(2)(a), and 42-20-202(1)(a), C.R.S.

GENERAL PROVISIONS**6000. Scope and Applicability.**

All rules in this Part 6, the "6000" series, shall apply to all Commission proceedings and operations concerning regulated entities providing transportation by motor vehicle, unless a specific statute or rule provides otherwise. Rules 6000 – 6099 apply to all common carriers, contract carriers, exempt intrastate carriers, towing carriers, household goods movers, and UCR registrants, as defined herein. Specific provisions regarding the applicability of this Part 6 can be found in rules 6100, 6200, 6250, 6300, 6400, 6500, and 6600.

Nothing in this Part 6, the "6000" series, shall be construed to apply to a secured creditor or assignee (principal), or reposessor (agent), or to the repossession of a motor vehicle by a secured creditor or assignee (principal), or reposessor (agent), when repossessing pursuant to § 4-9-629, C.R.S.

6001. Definitions.

The following definitions apply throughout this Part 6, except where a specific rule or statute provides otherwise:

- (a) "Advertise" means to advise, announce, give notice of, publish, or call attention to by use of any oral, written, or graphic statement made in a newspaper or other publication, on radio, television, or any electronic medium, or contained in any notice, handbill, sign (including signage on a vehicle), flyer, catalog, or letter, or printed on or contained in any tag or label attached to or accompanying any article of personal property.
- (b) "Authority" means a common carrier certificate, a contract carrier permit, or an emergency temporary authority or a temporary authority issued by the Commission to a regulated intrastate carrier.
- (c) "Common carrier certificate" means "certificate of public convenience and necessity" as that term is used in Article 10 of Title 40, C.R.S.
- (d) "C.F.R." means the Code of Federal Regulations.
- (e) "Common carrier" means "motor vehicle carrier" as that term is defined in § 40-10-101(4), C.R.S.
- (f) "Common and Contract Carrier Rules" means rules 6200 through 6299, inclusive.
- (g) "Contract carrier" means "contract carrier by motor vehicle" as that term is defined in § 40-11-101(3), C.R.S.
- (h) "Contract carrier permit" means a permit issued by the Commission pursuant to § 40-11-103, C.R.S.
- (i) "Duplicating or overlapping authority" means transportation in the same type of service between the same points under two or more separate common or contract carrier authorities which are held by the same regulated intrastate carrier.
- (j) "Driver" means any person driving a motor vehicle, including an independent contractor.
- (k) "Encumbrance" means any transaction that creates a security interest, mortgage, deed of trust, lien, or other similar right or interest, by act or deed or by operation of law.
- (l) "Enforcement official" means authorized personnel of the Commission, the Colorado Department of Revenue, the Colorado State Patrol, and any other law enforcement agency.
- (m) "Exempt intrastate carrier" means "motor vehicle carrier exempt from regulation as a public utility" as that term is defined in § 40-16-101(4), C.R.S.
- (n) "Exempt passenger carrier" means "motor vehicle carrier exempt from regulation as a public utility" as that term is defined in § 40-16-101(4), C.R.S., except property carriers by motor vehicle.
- (o) "Exempt passenger carrier registration" means the registration issued to an exempt passenger carrier pursuant to § 40-16-103, C.R.S.
- (p) "Exempt Passenger Carrier Rules" means rules 6300 through 6399, inclusive.
- (q) "FMCSA" means the Federal Motor Carrier Safety Administration and includes predecessor or successor agencies performing similar duties.
- (r) "Form E" means a Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, executed by a duly authorized agent of the insurer.

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- (s) "Form G" means a Form G Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond, executed by a duly authorized agent of the surety.
- (t) "Form H" means a Form H Uniform Motor Carrier Cargo Certificate of Insurance, executed by a duly authorized agent of the insurer.
- (u) "Form J" means a Form J Uniform Motor Carrier Cargo Surety Bond, executed by a duly authorized agent of the surety.
- (v) "Form K" means a Form K Uniform Notice of Cancellation of Motor Carrier Insurance Policies.
- (w) "Form L" means a Form L Uniform Notice of Cancellation of Motor Carrier Surety Bonds.
- (x) "GCWR" means gross combination weight rating, the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR is determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.
- (y) "GVWR" means gross vehicle weight rating, the value specified by the manufacturer as the loaded weight of a single motor vehicle. For purposes of the definition of "GVWR," "manufacturer" means the final person modifying the physical structure of a motor vehicle, such as when a motor vehicle's wheelbase is stretched in a luxury limousine.
- (z) "Hazardous materials carrier" a transportation carrier that transports hazardous materials as defined in § 42-20-103(3), C.R.S.
- (aa) "Holidays" means those days designated as legal holidays by the Colorado General Assembly.
- (bb) "Household goods" means "household goods" as that term is defined in § 40-14-102(7), C.R.S.
- (cc) "Household goods mover" means "mover" as that term is defined by § 40-14-102(9), C.R.S.
- (dd) "Household Goods Mover and Property Carrier Rules" means rules 6600 through 6699, inclusive.
- (ee) "Household goods mover registration" means the registration issued to a household goods mover pursuant to § 40-14-103, C.R.S.
- (ff) "Independent contractor" means "independent contractor" as that term is used in Article 11.5 of Title 40, C.R.S.
- (gg) "Letter of authority" means a document issued by the Commission to a common or contract carrier, which specifies the authorized type of service, the authorized geography of service, and the restrictions applied against the authorized service. Common or contract carriers authorized by Commission Order to operate under a temporary or emergency temporary authority are not issued a letter of authority. Letters of authority are deemed to provide proof of Commission-granted common or contract carrier authority.
- (hh) "Luxury limousine" means a motor vehicle, for hire to transport passengers in luxury limousine service.
- (ii) "Luxury limousine service" means a specialized, luxurious transportation service provided on a prearranged, charter basis as defined in rule 6301(a). "Luxury limousine service" does not include taxicab service or any service provided between fixed points over regular routes at regular intervals.
- (jj) "Multiple loading" means the sharing of a taxicab ride, or portion thereof, by individuals or parties who are not traveling together, who agree to share a cab to destinations in the same area or along the same route, and who depart from a common origin. When radio dispatched, multiple loading may be initiated from points other than those of common origin.
- (kk) "Nuclear materials carrier" means a transportation carrier that transports nuclear materials as defined in § 42-20-402(3), C.R.S.
- (ll) "Office and specialty goods" means:
 - (i) Furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; except that this subparagraph shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as incidental to moving of the establishment, or a portion thereof, from one location to another; and
 - (ii) Articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods; except that this subparagraph shall not be construed to include any article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods.
- (mm) "Operating right" means a towing carrier permit, a household goods registration, an exempt passenger carrier registration, or a property carrier registration.
- (nn) "Passenger," except as otherwise specifically defined or contextually required, means any person, other than a driver, occupying a motor vehicle.
- (oo) "Property carrier" means "property carrier by motor vehicle," as that term is defined in § 40-16-101(6.5), C.R.S.
- (pp) "Property carrier registration" means the registration issued to a property carrier pursuant to § 40-16-103, C.R.S.
- (qq) "Regulated intrastate carrier" means a common carrier and/or a contract carrier.
- (rr) "Safety Rules" means rules 6100 through 6199, inclusive.
- (ss) "Seating capacity"
 - (i) Except as otherwise specifically defined or contextually required, and in the absence of the manufacturer-rated number of seating positions in a motor vehicle, "seating capacity" means the greatest of the following:
 - (A) the total number of seat belts, including the driver's, in a motor vehicle; or
 - (B) the number generated by adding:
 - (i) for each bench or split-bench seat, the seat's width in inches, divided by 17 inches, rounded to the nearest whole number;
 - (ii) the number of single-occupancy seats, including the driver's seat if it is not part of a split-bench seat; and
 - (iii) for each curved seat, the seat's width in inches measured along the inside arc of the curve, divided by 17 inches, rounded down to the nearest whole number.
 - (ii) In all cases, any auxiliary seating positions such as folding jump seats shall be counted in determining seating capacity.
 - (iii) For purposes of the definition of "seating capacity," "manufacturer" means the final person modifying the physical structure of a motor vehicle, such as when a motor vehicle's wheelbase is stretched in a luxury limousine.
- (tt) "Taxicab Carrier Rules" means rules 6250 through 6259, inclusive.
- (uu) "Taxicab" means a passenger-carrying motor vehicle for public hire, with a maximum seating capacity of eight, operating on a call-and-demand basis, the first passenger therein having exclusive use of the motor vehicle unless such passenger agrees to multiple loading.
- (vv) "Towing carrier" means "towing carrier" as defined by § 40-13-101(3), C.R.S.
- (ww) "Towing carrier permit" means the permit issued by the Commission to a towing carrier pursuant to § 40-13-103(1), C.R.S.
- (xx) "Towing Carrier Rules" means rules 6500 through 6599, inclusive.

- (yy) "Transportation carrier" means common carrier, contract carrier, towing carrier, household goods mover, or exempt intrastate carrier.
- (zz) "Type of service" means any one of the following services: charter, limousine, sightseeing, taxicab, or scheduled, as those terms are defined by rule 6201.
- (aaa) "UCR Agreement" means the Unified Carrier Registration Agreement authorized by section 4305 of the federal "Unified Carrier Registration Act of 2005," and found in 49 U.S.C. § 14504a.
- (bbb) "UCR registrant" means a motor carrier, motor private carrier, freight forwarder, broker, leasing company, or other person required to register under the UCR Agreement.
- (ccc) "Unified Carrier Registration Agreement Rules" means rules 6400 through 6499, inclusive.
- (ddd) "Voluntary suspension" means a suspension sought by a transportation carrier.

6002. Applications.

Transportation carriers may seek Commission action regarding any of the following matters through the filing of an appropriate application:

- (a) For the grant or extension of authority to operate as a regulated intrastate carrier, as provided in rule 6203.
- (b) To abandon or voluntarily suspend an authority to operate as a regulated intrastate carrier, as provided in paragraph 6204(b).
- (c) To encumber or transfer any authority to operate as a regulated intrastate carrier, to acquire control of any regulated intrastate carrier, or to merge or consolidate a regulated intrastate carrier with any other entity, as provided in rule 6205.
- (d) To amend a tariff on less than statutory notice, as provided in paragraph 6207(j).
- (e) For a permit to operate as a towing carrier, as provided in rule 6503.
- (f) For any other matter provided by statute or rule but not specifically described in this rule.

6003. Petitions. [Reserved].

6004. Registrations.

Transportation carriers may seek Commission action regarding any of the following matters through the filing of an appropriate registration:

- (a) For registration as an exempt passenger carrier, as provided in rule 6303.
- (b) For registration in the UCR Agreement, as provided in rule 6405.
- (c) For registration as a property carrier or household goods mover, as provided in rule 6603.

6005. Records.

- (a) Unless a period of record retention is specified in a rule,
 - (I) transportation carriers shall maintain the records required by these rules for a period of three years; and
 - (II) a UCR registrant shall maintain the records upon which the annual registration in the UCR Agreement are based for a period of three years.
- (b) The records may be kept in either a written or electronic format.
- (c) Upon receipt of a records request by an enforcement official, except as otherwise required by these rules or an order of the Commission, the records must be made available to such enforcement official pursuant to the following timelines:
 - (I) Immediately for any records required to be maintained in a motor vehicle or with the driver, towing authorizations, household goods mover contracts for service, or any records related to insurance or safety;
 - (II) Within two days for any records related to a complaint investigation; or
 - (III) Within ten days for all other records.
- (d) When a request under paragraph (c) of this rule meets multiple standards under subparagraphs (c)(I) through (III), the strictest standard shall apply.

6006. Reports, Name Changes, Address Changes, and Address Additions.

- (a) Each common carrier and contract carrier shall submit its annual report, as prescribed by rule 6212.
- (b) Within two days of receipt of all supporting documentation required by this paragraph, each transportation carrier shall file a signed report with the Commission detailing, as applicable, any change of name, mailing address, physical address, telephone number, agent for service of process on file with the Commission. Such a filing shall indicate all the affected transportation carrier's common carrier certificate, contract carrier permit, towing carrier permit, or registration numbers. Name change filings, including trade name changes or trade name additions, shall include supporting documentation from the Colorado Secretary of State.
 - (I) In the event of a name change or an address change, the transportation carrier shall comply with all other applicable Commission rules, including but not limited to, rules regarding financial responsibility filings.
 - (II) No name change shall be effective until proper proof of financial responsibility in the transportation carrier's new name has been filed with the Commission.
- (c) If a towing carrier wishes to begin providing storage for towed motor vehicles at a new or additional storage facility, the towing carrier shall, prior to using the new or additional storage facility, file with the Commission the storage facility's address and, if one exists, telephone number.

6007. Financial Responsibility.

- (a) Financial responsibility requirements:
 - (I) Motor vehicle liability coverage. Every transportation carrier shall obtain and keep in force at all times motor vehicle liability insurance coverage or a surety bond providing coverage that conforms with the requirements of this rule. Motor vehicle liability means liability for bodily injury and property damage.
 - (II) Cargo liability coverage. Every household goods mover, property carrier, and towing carrier shall obtain and keep in force at all times cargo liability insurance coverage or a surety bond providing coverage that conforms with the requirements of this rule. Cargo liability coverage for a towing carrier shall include coverage of physical damage to the motor vehicle in tow (on hook) and loss of its contents.
 - (III) Garage keeper's liability coverage. Towing carriers providing storage, directly or through an agent, shall obtain and keep in force at all times garage keeper's liability insurance coverage that conforms with the requirements of this rule.
 - (IV) General liability coverage. Every household goods mover shall obtain and keep in force at all times general liability insurance

coverage or a surety bond providing coverage that conforms with the requirements of this rule. For purposes of this subparagraph, "general liability" means liability for bodily injury and property damage.

(b) Financial responsibility, minimum levels. The minimum levels of financial responsibility are prescribed as follows:

(i) Motor vehicle liability coverage.

(A) Motor vehicle liability coverage shall be combined single limit liability.

(B) Schedule of limits:

Type of Carrier	Vehicle Seating Capacity or GVWR	Minimum Level
Common and Contract Carriers	8 or less	\$ 500,000
	9 through 15	\$1,000,000
	16 through 32	\$1,500,000
	33 or more	\$5,000,000
Exempt Passenger Carriers:	15 or less	\$1,000,000
	16 through 32	\$1,500,000
	33 or more	\$5,000,000 or, for public entities, the maximum amount per § 24-10-114(1) C.R.S.
Property Carrier or Household Goods Mover	10,000 pounds or more GVWR	\$ 750,000
	Less than 10,000 pounds GVWR	\$ 300,000
Towing Carriers	Any GVWR	\$ 750,000

(C) Transportation carriers may obtain a certificate of self-insurance issued pursuant to § § 10-4-624 and 42-7-501, C.R.S., or Part 387 of 49 C.F.R.

(ii) Cargo liability coverage.

(A) For towing carriers the cargo liability coverage shall provide coverage to the extent of the towing carrier's legal liability for loss or damage to the property of any person or persons, other than the insured, which is carried in, upon, or attached to the towing vehicle and/or its trailers or dollies operated by, or for, or under the control of the towing carrier.

(B) Except as provided in subparagraphs (ii)(B)(i) or (ii), for property carriers, the minimum level of cargo liability coverage shall be \$10,000.00 for loss of or damage to property carried on any one motor vehicle, or an amount adequate to cover the value of the property being transported, whichever is less, unless the shipper and the property carrier otherwise agree by written contract to a lesser amount.

(i) A property carrier transporting commodities other than office and specialty goods is exempt from subparagraph (ii)(B) if the property carrier submits to the Commission a signed statement reading as follows:

I swear that the only commodities transported by [name of company] either:

have an aggregate value of \$500.00 or less, or

are not subject to appreciable loss or damage due to their physical characteristics.

(ii) For a property carrier transporting office and specialty goods the minimum level of cargo liability coverage shall be \$10,000.00 for loss of or damage to office or specialty goods carried on any one motor vehicle, or sixty cents (\$.60) per pound per article, whichever is greater. By way of example, "article" means a desk, but not each individual drawer of the desk.

(C) For household goods carriers, the minimum level of cargo liability coverage shall be \$10,000.00 for loss of or damage to household goods carried on any one motor vehicle, or sixty cents (\$.60) per pound per article, whichever is greater. By way of example, "article" means a desk, but not each individual drawer of the desk.

(iii) Garage keeper's liability coverage shall provide coverage to the extent of the towing carrier's legal liability for loss or damage to the property of any person or persons, other than the insured, which is stored by the towing carrier directly or through an agent.

(iv) For household goods movers, the minimum general liability coverage shall be \$500,000.00.

(c) Except as provided in paragraph (d), the transportation carrier shall ensure that insurance or surety bond coverage:

(i) is provided only by insurance or surety companies authorized to provide such coverage in the State of Colorado; or, for self-insurance, is provided in accordance with § § 10-4-624 and 42-7-501, C.R.S.;

(ii) is not less than the minimum limits set forth under paragraph (b) of this rule;

(iii) covers all motor vehicles which may be operated by or for the transportation carrier, or which may be under the control of the transportation carrier, regardless of whether such motor vehicles are specifically described in the policy or amendments or endorsements thereto;

(iv) provides for the payment of benefits by the insurance or surety bond company directly to parties damaged by the transportation carrier on a "first dollar"/"dollar one" basis;

(v) if the coverage contains a retained risk provision, such provision shall obligate the insurance or surety company to pay the party damaged by the transportation carrier regardless of the level of funds in the retained risk pool; and

(vi) does not permit a transportation carrier to pay insurance or surety benefits directly to a party damaged by said transportation carrier; except that nothing in this subparagraph shall preclude a damaged party from settling a claim for loss or damage prior to making a claim against the transportation carrier's insurance or surety policy.

(d) The provisions of subparagraphs (iv) through (vi) of paragraph (c) shall not apply to transportation carriers with regard to proof of self-insurance pursuant to 49 C.F.R. Part 387, if applicable, and § § 10-4-624 and 42-7-501, C.R.S.

(e) The transportation carrier shall retain each original insurance or surety policy for required coverage, make such policies available for inspection by authorized personnel of the Commission, and keep a copy of its proof of motor vehicle liability coverage in each motor vehicle that it operates.

- (f) The transportation carrier shall cause to be filed with the Commission the appropriate form in lieu of the original policy as follows:
- (I) Motor vehicle liability coverage.
 - (A) For all common carriers, contract carriers, exempt intrastate carriers, household goods movers, and towing carriers, a Form E or G.
 - (B) For common carriers, contract carriers, exempt intrastate carriers, household goods movers, and towing carriers obtaining a certificate of self-insurance under the provisions of §§ 10-4-624 and 42-7-501, C.R.S., or Part 387 of 49 C.F.R., a copy of said certificate of self-insurance. Upon renewal of the certificate of self-insurance, the common carrier, contract carrier, exempt intrastate carrier, household goods mover, or towing carrier shall file a copy of the most current version of such certificate of self-insurance.
 - (II) Cargo liability coverage. For all property carriers, household goods movers, or towing carriers, a Form H or J. For a towing carrier, a Colorado Form 12-INS may be used in lieu of the Form H.
 - (III) Garage keeper's liability coverage. For all towing carriers, a Colorado Form 14-INS.
 - (IV) General liability coverage. For all household goods movers, a Colorado Form GL.
- (g) The transportation carrier's failure to file proof of liability coverage, as required by this rule, shall constitute a rebuttable presumption that the carrier is not properly covered under the requirements of this rule.
- (h) All forms referred to in this rule are available from the Commission.
- (i) The transportation carrier shall ensure that the policy and the forms noted in this rule contain the transportation carrier's exact name, trade name (if any), and address as shown in the records of the Commission; and
- (j) Any subsequent changes of name, address, or policy number shall be reflected by the filing of an appropriate endorsement or amendment with the Commission.
- (k) The proof of minimum levels of financial responsibility required by this rule is public information and may be obtained from the Commission.
- (l) Except as provided in paragraph (m) of this rule, each certificate of insurance and/or surety bond required by and filed with the Commission shall be kept in full force and effect unless and until canceled or not renewed upon 30-days advance written notice, on Form K, Form L, Form BMC 35, or Form BMC 36, as applicable, from the insurer or surety to the Commission. The 30-day cancellation or non-renewal notice period shall commence on the date the notice is received by the Commission. In lieu of the prescribed form, the insurer or surety may cancel or not renew a certificate of insurance and/or surety bond by letter to the Commission containing the same information as required by such form.
- (m) Administrative cancellation of certificates of insurance and/or surety bond.
- (I) When a new certificate of insurance and/or surety bond is received by the Commission, all certificates of insurance and/or surety bond for the same type and category of coverage with an older effective date shall be administratively cancelled. For purposes of this paragraph, type of coverage means those listed in paragraph (f) of this rule, and category of coverage means primary coverage or excess coverage.
 - (II) When the Commission receives notice from a transportation carrier to cancel all of its authorities and operating rights, all certificates of insurance and/or surety bond for the transportation carrier shall be administratively cancelled.
- (n) Common and contract carriers operating under a waiver or variance of the insurance limits shall:
- (I) Post the following notice in each of its passenger motor vehicles affected by the waiver or variance, disclosing the appropriate amounts in the blanks of said notice:

NOTICE

The Public Utilities Commission's rules generally require \$ _____ amount of insurance on a motor vehicle of this size. However, the Commission has authorized this company to operate with \$ _____ of combined single limit liability insurance. This limit may not cover the total amount of a claim in the event of a serious accident.

- (II) Print such notice in letters of not less than 14-point size and posted in a manner that makes it readily visible to each passenger.

6008. Revocation, Suspension, Alteration, or Amendment.

- (a) Summary suspension and/or revocation for lack of financial responsibility of common carriers, contract carriers, household goods movers, exempt intrastate carriers, hazardous materials carriers, nuclear materials carriers, or towing carriers.
- (I) Summary suspension.
 - (A) Whenever Commission records indicate that a common carrier's, contract carrier's, household goods mover's, exempt intrastate carrier's, hazardous materials carrier's, nuclear materials carrier's, or towing carrier's required insurance or surety coverage, except for garage keeper's coverage, is or will be canceled, and the Commission has no proof on file indicating replacement coverage, the Commission shall, pursuant to §24-4-104(3) and (4), C.R.S., summarily suspend such common carrier, contract carrier, household goods mover, exempt intrastate carrier, or towing carrier's authority or operating right, or hazardous materials carrier or nuclear materials carrier's permit.
 - (B) For purposes of this paragraph, failure on the part of an insurance company to respond to a Commission inquiry for verification of insurance coverage within 60 days shall be treated as a cancellation of insurance.
 - (C) The summary suspension shall be effective on the date of coverage cancellation.
 - (II) The Commission shall advise the common carrier, contract carrier, household goods mover, exempt intrastate carrier, hazardous materials carrier, nuclear materials carrier, or towing carrier:
 - (A) that the Commission is in receipt of insurance or surety cancellation, and the effective date of such cancellation;
 - (B) that its authority or operating right is summarily suspended as of the coverage cancellation date;
 - (C) that it shall not conduct operations under any of its authorities, operating rights or permits after the coverage cancellation date;
 - (D) that the Commission has initiated complaint proceedings to revoke its authorities, operating rights, or permits;
 - (E) that it may submit, at a hearing convened to determine whether its authorities, operating rights, or permits should be revoked, written data, views, and arguments showing why such authorities, operating rights, or permits should not be revoked;
 - (F) the date, time, and place set for such hearing.
 - (III) Until proper proof of insurance or surety coverage is filed with the Commission, a common carrier, contract carrier, household goods mover, exempt intrastate carrier, hazardous materials carrier, nuclear materials carrier, or towing carrier receiving notice of summary suspension shall not, under any of its authorities, operating rights, or permits, conduct operations after the effective date of such

summary suspension.

- (IV) If the Commission receives proper proof of coverage prior to the hearing, the summary suspension and complaint will be dismissed without further order of the Commission, even if there is a lapse in coverage. However, operations performed during lapses in coverage are subject to civil penalty assessments.
- (V) If the Commission receives proper proof of coverage prior to revocation, the Commission shall dismiss the summary suspension and complaint, even if there is a lapse in coverage. However, operations performed during lapses in coverage are subject to civil penalty assessments.
- (b) If, due to an administrative error or omission of the Commission staff, an authority or operating right is suspended or revoked for lack of financial responsibility coverage, such authority or operating right shall, without a hearing, be retroactively reinstated as of the effective date of the proof of coverage. Staff shall document in its files the correction of such administrative error or omission.
- (c) After a hearing upon at least ten days' notice to the regulated intrastate carrier, exempt passenger carrier, towing carrier, household goods mover, or property carrier affected, the Commission may:
- (I) revoke, suspend, alter, or amend said regulated intrastate carrier's authority(ies) or towing carrier's permit(s) for any of the following reasons:
 - (A) Violation of, or failure to comply with, any statute or regulation concerning regulated intrastate carriers or towing carriers;
 - (B) Violation of, or failure to comply with, any statute or regulation concerning the towing, storage, or disposal of towed motor vehicles by a towing carrier. This subparagraph includes, but is not limited to, a violation of part 18 and part 21 of article 4 of title 42, C.R.S.;
 - (C) Violation of, or failure to comply with, the terms and conditions of, or exceeding the authority granted in, the regulated intrastate carrier's common carrier certificate or contract carrier permit, or the towing carrier's towing carrier permit; or
 - (D) Violation of, or failure to comply with, any order, rule, or regulation of the Commission.
 - (II) revoke the registration of said exempt passenger carrier, household goods mover, or property carrier for any of the following reasons:
 - (A) Violation of, or failure to comply with, any statute or regulation concerning exempt passenger carriers, household goods movers, or property carriers;
 - (B) Violation of, or failure to comply with, the terms and conditions of, or exceeding the authority granted in, the exempt passenger carrier's, household goods mover's, or property carrier's registration; or
 - (C) Violation of, or failure to comply with, any order, rule, or regulation of the Commission.
- (d) Period of ineligibility.
- (I) Except as provided in paragraph (e), an exempt passenger carrier, household goods mover, property carrier, or towing carrier whose operating right(s) is revoked shall be ineligible to be issued another operating right for at least one year from the date of such revocation or for such additional period of time as the Commission may in its discretion determine to be appropriate.
 - (II) Except as provided in paragraph (e), an exempt passenger carrier, household goods mover, property carrier, or towing carrier whose operating right(s) is revoked more than twice shall be ineligible to be issued another operating right for at least two years from the date of such revocation or for such additional period of time as the Commission may in its discretion determine to be appropriate.
 - (III) In the case of an entity other than an individual, such period of ineligibility shall also apply to all principals (including members of a limited liability company), officers, and directors of the entity, whether or not such principal, officer, or director applies individually or as a principal, officer, or director of the same or a different entity for an operating right during the period of ineligibility.
- (e) Subparagraphs (d)(I) and (II) shall not apply to revocations that are solely the result of failure to maintain the financial responsibility required by rule 6007, unless the transportation carrier knowingly operated without the required financial responsibility.

6009. Annual Motor Vehicle Identification Fees.

- (a) Except as provided in paragraph (h), every transportation carrier shall pay to the Commission an annual identification fee before the first day of January of each calendar year, for each motor vehicle that such transportation carrier owns, controls, operates, or manages within the State of Colorado as set forth in § 40-2-110.5, C.R.S.
- (b) Notice of the annual identification fee provided on the Commission's website at least 60 days prior to the effective date of such fee, transportation carrier registration and application forms, and annual identification fee renewal notices, shall constitute sufficient public notice of the applicable annual identification fee.
- (c) A transportation carrier that obtains an authority or operating right during the calendar year shall, unless the Commission orders otherwise, pay the annual identification fees at the time of obtaining the authority or operating right.
- (d) A transportation carrier that acquires one or more additional motor vehicles during the calendar year shall pay the annual identification fees prior to placing the additional vehicle(s) into service.
- (e) Annual identification fees shall be valid only for the calendar year for which they are purchased.
- (f) Proof of payment of each annual identification fee shall be in the form of a vehicle identification stamp issued by the Commission.
- (g) A transportation carrier shall not operate a motor vehicle unless it has affixed a valid vehicle identification stamp to the inside lower right-hand corner of the motor vehicle's windshield. In the alternative, the vehicle identification stamp may be affixed to the right front side window of the motor vehicle so long as the stamp does not interfere with the driver's use of the right-hand outside mirror.
- (h) Exception for a UCR registrant.
 - (I) Except as provided in subparagraph (II), a transportation carrier that is also a UCR registrant for the same calendar year is exempt from paragraph (a) of this rule.
 - (II) A transportation carrier that is also a UCR registrant is subject to the annual identification fee for any motor vehicle used only in intrastate commerce if:
 - (A) the motor vehicle was not included in the calculation of fees paid under the UCR Agreement, and
 - (B) the motor vehicle is used to provide:
 - (i) transportation of waste or recyclable materials;
 - (ii) transportation of household goods;
 - (iii) non-consensual tows; or
 - (iv) passenger transportation that is not subject to the preemption provisions of 49 U.S.C. section 14501(a).

6010. Letter of Authority, Permit, and Registration.

- (a) Every transportation carrier shall maintain a copy of the following in each motor vehicle it owns, controls, operates, or manages under an authority or operating right:
 - (I) For every common and contract carrier a copy of its current letter of authority or a copy of the letter from the Commission advising service may be initiated under an emergency temporary authority or a temporary authority;
 - (II) For every exempt intrastate carrier a copy of its letter of registration;
 - (III) For every towing carrier a copy of its towing carrier permit;
 - (IV) For every household goods mover a copy of its letter of registration;
- (b) The transportation carrier shall, upon request, present the copy of its letter of authority, letter of registration, or towing carrier permit to any enforcement official.

6011. Designation of Agent.

- (a) Except for a sole proprietorship or partnership, each transportation carrier shall file in writing with the Commission, and shall maintain on file, its designation of the name and address of a person upon whom service may be made of any lawful notice, order, process, or demand. The named person is the transportation carrier's designated agent. A transportation carrier shall not designate the Secretary of State of the State of Colorado. The person designated, if a natural person, shall be at least 18 years of age. The address of the person designated shall be in the State of Colorado. The transportation carrier shall provide a signed statement by the designated agent indicating that person has approved the designation.
- (b) Each transportation carrier shall notify the Commission of any changes in the designated agent's identity, name, or address by filing a new designation within two days of receiving the information related to such change.
- (c) Service upon a transportation carrier's named designated agent, as filed with the Commission, shall be deemed to be service upon the transportation carrier.

6012. Leasing of Motor Vehicles.

- (a) For purposes of this rule, "lessee" means a common carrier, contract carrier, or towing carrier, and "lessor" means the motor vehicle owner.
- (b) Subject to the requirements of this rule, a lessee may lease one or more motor vehicles for use in the lessee's fleet. Nothing in this rule shall be construed to:
 - (I) make an independent contractor an employee of the lessee; or
 - (II) prohibit the leasing or re-leasing of motor vehicles pursuant to Article 11.5 of Title 40, C.R.S.
- (c) The lessee shall ensure that leases are in writing on a form supplied by the Commission. The lease shall contain: the name and signature of the lessor; the name and signature of the lessee; the date of the agreement; for each motor vehicle subject to the lease, the motor vehicle's make, model, year, and identification number; the period covered by the lease; and the consideration to be paid by the lessee. Nothing in this rule precludes the use of a more comprehensive lease supplementing the Commission's lease form. The lessee shall ensure that any supplemental lease provisions do not conflict with the required information of the Commission's lease form.
- (d) The lessee shall ensure that a copy of the lease is carried in each leased motor vehicle during the time that the lease is effective.
- (e) The lessee shall ensure that a copy of the lease is kept in the lessee's files during the time that the lease is effective and for six months after the date on which the last motor vehicle covered by the lease leaves the lessee's control.
- (f) During the existence of the lease, the lessee shall have full discretion and complete control of the leased motor vehicle and shall be fully responsible for its operation in accordance with applicable law. This responsibility includes, but is not limited to, compliance with marking requirements, safety of the motor vehicle and its equipment and accessories, and all financial responsibility.
- (g) Unless the type of notice is specified in the lease, either the lessee or the lessor may cancel the lease at any time by giving either written or oral notice to the other party to the lease.

6013. Notice.

Notice sent by any person to the transportation carrier's address on file with the Commission shall constitute prima facie evidence that the transportation carrier received the notice.

6014. Waivers.

A transportation carrier that has obtained a waiver of any rule in this Part 6 shall:

- (a) If the waiver pertains to a motor vehicle: maintain a copy of the waiver in (1) the affected motor vehicle, and (2) the transportation carrier's motor vehicle maintenance files.
- (b) If the waiver pertains to a driver: ensure that a copy of the waiver is (1) carried on the affected driver's person whenever the driver is operating a motor vehicle over which the Commission has jurisdiction, and (2) maintained in the affected driver's qualification file.
- (c) If the waiver pertains to any matter not listed in paragraphs (a) or (b) of this rule: maintain a copy of the waiver at the transportation carrier's primary place of business.

6015. Fingerprint-Based Criminal History Background Checks.

- (a) For purposes of this rule only:
 - (I) [Reserved].
 - (II) "CBI" means the Colorado Bureau of Investigation.
 - (III) "Driver" means a person who drives or wishes to drive a taxicab for a taxicab carrier or who drives or wishes to drive for an exempt passenger carrier, regardless of whether such person drives or wishes to drive as an employee or independent contractor.
 - (IV) "Passenger carrier" means an exempt passenger carrier, except for fire crew transport, and a taxicab carrier, but only to the extent the taxicab carrier uses or wishes to use drivers to drive taxicabs.
 - (V) "Record check" means a state and national fingerprint-based criminal history record check.
- (b) This rule applies to passenger carriers and drivers.
- (c) Within ten days of contracting or being employed to drive for passenger carrier, a driver shall submit to the Commission a set of the driver's fingerprints and payment of the actual cost to conduct a record check.

- (d) A driver shall re-submit to the Commission a set of the driver's fingerprints and payment of the actual cost to conduct a record check within two years after the Commission provides him/her with the qualification notice required by subparagraph (j)(III) of this rule.
- (e) The driver may obtain information regarding the actual cost of the record check from the Commission or its website. The driver shall submit his or her fingerprints on an official form (FD-258). The Commission will only accept official forms completed in accordance with the instructions available from the Commission or its website.
- (f) Disqualification.
- (I) A driver is not of good moral character, and shall be disqualified and prohibited from driving, if the driver has been convicted of a felony or misdemeanor involving moral turpitude.
- (II) For purposes of Commission Staff's initial qualification determination under paragraph (j) of this rule, a felony or misdemeanor involving moral turpitude means:
- (A) a conviction in the State of Colorado at any time of any class 1 or 2 felony under Title 18, C.R.S.;
- (B) a conviction in the State of Colorado at any time of any unlawful sexual offense against a child, as defined in § 18-3-411, C.R.S.;
- (C) a conviction in the State of Colorado, within the ten years preceding the date the criminal history record check is completed, of a crime of violence, as defined in § 18-1.3-406(2), C.R.S.;
- (D) a conviction in the State of Colorado, within the eight years preceding the date the criminal history record check is completed, of any class 3 felony under Title 18, C.R.S.;
- (E) a conviction in the State of Colorado, within the four years preceding the date the criminal history record check is completed, of any class 4 felony under Articles 2, 3, 3.5, 4, 5, 6, 6.5, 8, 9, 12, or 15 of Title 18, C.R.S.; or
- (F) an offense in any other state or in the United States that is comparable to any offense listed in subparagraphs (II)(A) through (E).
- (III) A driver shall be disqualified and prohibited from driving if, within the two years preceding the date the criminal history record check is completed, the driver was:
- (A) convicted in this state of driving under the influence, as defined in § 42-4-1301 (1) (f), C.R.S.; driving with excessive alcoholic content, as described in § 42-4-1301 (2) (a), C.R.S.; driving while ability impaired, as defined in § 42-4-1301 (1) (g), C.R.S.; or driving while an habitual user of a controlled substance, as described in § 42-4-1301 (1) (c), C.R.S.; or
- (B) convicted of a comparable offense in any other state or in the United States.
- (IV) For purposes of this rule, a deferred judgment and sentence pursuant to § 18-1.3-102, C.R.S., shall be deemed to be a conviction during the period of the deferred judgment and sentence.
- (g) A passenger carrier shall not permit a driver to drive for the passenger carrier if:
- (I) the driver has not complied with this rule and § 40-16-104.5 or § 40-10-105.5, C.R.S., as applicable; or
- (II) the driver is disqualified and prohibited from driving under paragraph (j) of this rule.
- (h) Passenger carriers are authorized to contact the Commission regarding whether a particular driver has been disqualified and prohibited from driving.
- (i) A passenger carrier shall, as a condition of continued contract or employment, require a driver to submit his or her fingerprints to the Commission for a record check:
- (I) at least once every five years; and/or
- (II) within ten days of becoming aware that the driver has been convicted of the offenses listed in paragraph (f) of this rule.
- (j) Driver qualification determinations.
- (I) Upon the Commission's receipt of a completed record check, Staff of the Commission (Staff) shall make the initial qualification determination regarding the driver's qualification status under paragraph (f) of this rule.
- (II) In making its initial qualification determination, Staff is authorized to request from the driver, and the driver shall provide, additional information that will assist Staff in making the initial determination regarding the driver's qualification status. If, within 15 days of Staff's request, a driver does not provide such additional information or a reason explaining why it is unavailable, Staff may disqualify the driver.
- (III) Staff shall give to the driver written notice of its initial qualification determination. If Staff initially determines that the driver is disqualified and prohibited from driving, the driver may, within 60 days of Staff's written disqualification notice, petition the Commission for an order reversing Staff's initial determination.
- Upon the filing of a petition to reverse Staff's initial determination:
- (A) Staff shall be an indispensable party and shall bear the burden of going forward to demonstrate the reasons for its initial determination;
- (B) the driver shall bear the burden of proving that Staff's initial determination is not supported by fact or law; and
- (C) the Commission will consider the petition using the standards set forth in § 24-5-101(2), C.R.S.
- (V) Staff's initial qualification determination may be relied upon by all persons, unless and until the Commission reverses Staff's initial qualification determination.
- (k) The Commission and its Staff may consult and use any commercially or governmentally available information source in conducting criminal history record checks. The Commission may require a name-based criminal history record check of a driver who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unreadable or unclassifiable.
- (l) Nothing in this rule shall be construed to make an independent contractor driver an employee driver of a passenger carrier.
- (m) At any time, Staff shall disqualify a previously qualified driver whose subsequent conviction meets the criteria of subparagraph (f)(II) of this rule. The provisions of paragraph (j) shall apply as if the subsequent qualification determination were an initial qualification determination.

6016. Advertising.

- (a) No regulated intrastate carrier, exempt passenger carrier, towing carrier, and household goods mover, or any officer, agent, employee, or representative of said carrier or mover, shall advertise a transportation service in a name other than that in which said carrier's or mover's authority or operating right is held.
- (I) If a regulated intrastate carrier, exempt passenger carrier, or household goods mover holds an authority or operating right under a trade name, nothing in this paragraph shall be construed to require advertising under the name of said carrier's or mover's parent company.
- (II) If a regulated intrastate carrier, exempt passenger carrier, or household goods mover holds an authority or operating right under more

- than one trade name, nothing in this paragraph shall be construed to require said carrier or mover to advertise under all the trade names.
- (b) Each advertisement of a household goods mover shall include the phrase "CO PUC Mover Reg. No. [HHG registration number]" and the physical address of the household goods mover.
- (c) Roof lights.
- (I) For purposes of this section, roof light means equipment attached to the roof of a vehicle, or extending above the roofline of a vehicle, for the purpose of displaying any information.
- (II) Except as provided in subparagraph (III), a regulated intrastate carrier or exempt passenger carrier shall not have a roof light, whether or not it displays any information, located on any motor vehicle operated under the regulated intrastate carrier's authority or exempt passenger carrier's registration.
- (III) Nothing in subparagraph (II) shall prohibit the following:
- (A) any light otherwise required by law, or
- (B) a roof light to identify a taxicab operated by a common carrier under an authority to provide taxicab service, or any advertising on the roof of a taxicab operated by a common carrier under an authority to provide taxicab service.

6017. Violations, Civil Enforcement, and Enhancement of Civil Penalties.

- (a) A violation of subparagraph (a)(I) or (b)(I)(B) of rule 6007 may result in the assessment of a civil penalty of up to \$11,000.00 for each violation.
- (b) Any person subject to § 40-2-110.5, C.R.S., who operates a motor vehicle without having paid the annual identification fee, or who violates any provision of rule 6009, may be assessed a civil penalty of up to \$400.00 for each violation.
- (c) Except as provided for in paragraph (a) or (b) of this rule, a person who violates any provision of rules 6000 through 6016 may be assessed a civil penalty of up to \$275.00 for each violation.
- (d) Pursuant to § 40-7-114, C.R.S., a person, whose driver operates a motor vehicle in violation of applicable statutes or these Rules Regulating Transportation by Motor Vehicle, may be assessed a civil penalty for such violation.
- (e) Notwithstanding any provision in these rules to the contrary, the Commission may assess double or triple civil penalties against any person, as provided by statute and this rule.
- (f) The Commission may assess any person a civil penalty containing doubled penalties if:
- (I) the person engaged in prior conduct which resulted in the issuance of a prior civil penalty assessment notice;
- (II) the conduct for which doubled penalties are sought is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notice;
- (III) the conduct for which doubled penalties are sought occurred within one year after the conduct which resulted in the issuance of a civil penalty assessment notice; and
- (IV) the conduct for which doubled penalties are sought occurred after the person's receipt of the prior civil penalty assessment notice.
- (g) The Commission may assess any person a civil penalty containing tripled penalties if:
- (I) the person engaged in two or more instances of prior conduct which resulted in the issuance of two or more prior civil penalty assessment notices;
- (II) the conduct for which tripled penalties are sought is of the same or narrower character as the conduct that was cited in the prior civil penalty assessment notices;
- (III) the conduct for which tripled penalties are sought occurred within one year after the two most recent prior instances of conduct cited in the prior civil penalty assessment notices; and
- (IV) the conduct for which tripled penalties are sought occurred after the person's receipt of two or more prior civil penalty assessment notices.
- (h) When more than two instances of prior conduct exist, the Commission shall only consider those instances occurring within one year prior to the conduct for which triple penalties are sought.
- (i) Nothing in this rule shall preclude the assessment of triple penalties when double and triple penalties are sought on the same civil penalty assessment notice.
- (j) The Commission shall not issue a decision on double or triple penalties until after the effective date of the Commission decision upon which the double or triple penalties are based.
- (k) If the respondent pays the double or triple penalties prior to the effective date of the Commission decision upon which the double or triple penalties are based, and such Commission decision finds the respondent not liable for the violation(s), on its own motion the Commission shall refund the appropriate amount of any over payment. By way of example, if the respondent pays a double penalty and is later found not liable for the first violation upon which the double penalty is based, the Commission shall retain one half of the double penalty amount and refund the other half to the respondent. Likewise, for payment of the reduced amount provided in paragraph (l) of this rule, the Commission shall make an appropriate proportional refund.
- (l) The civil penalty assessment notice shall contain the maximum penalty amount provided by rule for each individual violation noted, the amount of the penalty surcharge pursuant to § 24-34-108(2), with a separate provision for a reduced penalty of 50% of the maximum penalty amount if paid within ten days of receipt of the civil penalty assessment notice.

6018. – 6099. [Reserved].

SAFETY RULES

6100. Applicability of Safety Rules.

- (a) Except as set forth in paragraphs (b) and (c) of this rule, Rules 6100 through 6199 apply to:
- (I) common carriers, contract carriers, and exempt passenger carriers;
- (II) household goods movers and property carriers operating motor vehicles with a GVWR of less than 26,001 pounds; and
- (III) the employees and commercial motor vehicles of the transportation carriers listed in (a)(I) and (II) above.
- (b) In addition to the other applicability provisions of this rule, paragraph (a) of rule 6103 shall also apply to towing carriers.
- (c) Unless otherwise specifically provided, these Safety Rules do not apply to transportation performed by the federal government, a state, or an agency established under a compact between states that has been approved by the Congress of the United States.

- (d) Certain transportation carriers may be subject to the rules of the Colorado Department of Public Safety. Said rules may be applicable either in addition to or in lieu of the Commission's Safety Rules. In order to determine the applicability of the rules of the Colorado Department of Public Safety, please consult 8 CCR 1507-1.

6101. Definitions.

In addition to the generally applicable definitions in rule 6001, and those incorporated from federal law in rule 6102, the following definitions apply only in the context of these Safety Rules:

- (a) "Commission" means the Public Utilities Commission of the State of Colorado. Any reference to the United States Department of Transportation, the FMCSA, or any other federal agency in any provision of the Code of Federal Regulations adopted by reference in these Safety Rules shall be construed to refer to the Commission.
- (b) "Commercial motor vehicle", for purposes of those rules incorporated by reference, means a motor vehicle operated by a transportation carrier. Notwithstanding the foregoing, for purposes of the incorporated rules found in 49 C.F.R. Part 382 (concerning drug and alcohol testing), the definition of commercial motor vehicle shall be as found in 49 C.F.R. § 382.107; and for purposes of the incorporated rules found in 49 C.F.R. Part 383 (concerning commercial driver's licenses) the definition of commercial motor vehicle shall be as found in 49 C.F.R. § 383.5.
- (c) "Employer", in addition to the definition found in 49 C.F.R. § 390.5, means a transportation carrier.
- (d) "Motor vehicle" is synonymous with the term "commercial motor vehicle" as defined in this rule.
- (e) "Motorcycle" means "motorcycle" as that term is defined in § 42-1-102(55), C.R.S.
- (f) "Motor-driven cycle" means "motor-driven cycle" as that term is defined in § 42-1-102(56), C.R.S.

6102. Regulations Incorporated by Reference.

- (a) Except as provided in rule 6103 or paragraph (c) of this rule, the Commission incorporates by reference the regulations published in:
- (I) 49 C.F.R. Parts 40, 382, 383, 390, 391, 392, 393, 395, 396, and 399, as revised on October 1, 2007.
 - (II) 49 C.F.R. Appendix G to Subchapter B of Chapter III, as revised on October 1, 2007.
- (b) No later amendments to or editions of the C.F.R. are incorporated into these rules.
- (c) The following provisions of 49 C.F.R. are not incorporated by reference:
- (I) §§ 382.507, 383.53, 390.3(a), 390.3(c), 390.3(f)(2), 390.21(a), 390.21(b), 390.21(e), 390.21(f), 390.37, 391.47, 391.49, 391.67, 391.68, 391.69, 395.1(h), 395.1(i), 395.8(e), and 396.9; and
 - (II) The definition of "commercial motor vehicle" in § 390.5.
- (d) Persons interested in information concerning how the material incorporated by reference may be obtained or examined should contact:
- Transportation Section Chief
Colorado Public Utilities Commission
1560 Broadway, Suite 250,
Denver, Colorado 80202
Telephone: (303) 894-2850
- (e) The material incorporated by reference may be examined at the offices of the Commission, 1560 Broadway, Suite 250, Denver, Colorado 80202, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except when such days are state holidays. The material incorporated by reference may also be examined at any state publications library.

6103. Modification of Regulations Incorporated by Reference.

- (a) With regard to the external markings of motor vehicles:
- (I) All markings shall be in accordance with 49 C.F.R. § 390.21(c) and (d) as it pertains to size, shape, location, color, construction, and durability.
 - (II) The markings shall contain all of the following information, as applicable:
 - (A) The name or a trade name as set forth in the common carrier certificate(s), the contract carrier permit(s), the towing carrier permit(s), and the household goods mover registration(s), as applicable.
 - (B) The letter and/or number designation of the common carrier certificate(s), the contract carrier permit(s), the exempt passenger carrier registration(s), the towing carrier permit(s), and the household goods mover registration(s), as applicable, preceded by the letters "CO PUC" or "PUC."
 - (C) The letter and number designation of the property carrier registration, except that the property carrier may meet this requirement by marking its USDOT number in compliance with 49 C.F.R. 390.21(b).
 - (III) Motor vehicles operated by a regulated intrastate carrier or an exempt passenger carrier having a seating capacity of fifteen or less may meet all of the requirements of subparagraphs (I) and (II) of this paragraph if the carrier affixes the marking required by subparagraph (II)(B) so as to be readily visible to both the front and rear of the motor vehicle.
 - (IV) A transportation carrier shall remove all markings required by this rule from a motor vehicle that the transportation carrier is permanently withdrawing from service.
 - (V) The words "operated by" shall precede the markings required by subparagraph (II) of this paragraph if the name of any transportation carrier other than the transportation carrier operating the motor vehicle appears on the motor vehicle.
 - (VI) In addition to the provisions of this paragraph, persons operating a luxury limousine must comply with rule 6304.
- (b) With regard to qualification and examination of drivers:
- (I) 49 C.F.R. Part 391 shall not apply to household goods movers or property carriers, or to their drivers; but this exclusion applies only to the extent that the motor vehicles used:
 - (A) do not transport passengers,
 - (B) have a GVWR or GCWR of less than 10,001 pounds, and
 - (C) do not require a commercial driver's license to operate.
 - (II) Subpart E of 49 C.F.R. Part 391, relating to physical qualifications and examinations, shall not apply to household goods movers or property carriers, or to their drivers; but this exclusion applies only to the extent that the motor vehicles used:
 - (A) do not transport passengers,

- (B) have a GVWR or GCWR of less than 26,001 pounds, and
- (C) do not require a commercial driver's license to operate.
- (III) 49 C.F.R. § 391.11(b)(1), relating to age of drivers, shall not apply to drivers operating solely in intrastate commerce; such drivers shall be at least eighteen years of age. This subparagraph (III) shall not apply to drivers operating motor vehicles used in transporting hazardous materials of a type and quantity that would require the motor vehicle to be marked or placarded under 49 C.F.R. § 177.823.
- (IV) In addition to the requirements found in 49 C.F.R. § 391.45, any person whose medical examiner's certificate has expired must be medically examined and certified as being physically qualified to operate a commercial motor vehicle.
- (c) With regard to motor vehicle parts and accessories necessary for safe operation:
 - (I) The provisions of 49 C.F.R. § 393.55 shall only apply to a bus with a seating capacity of 16 or more and to a truck, and truck tractor as those terms are defined in 390.5.
 - (II) The provisions of 49 C.F.R. § 393.83(c) and (d) shall not apply to any bus with a seating capacity of 15 or less and having a GVWR of less than 10,001 pounds, which is manufactured with a side discharge exhaust.
 - (III) The provisions of 49 C.F.R. § 393.89, relating to driveshaft protection, and 393.95, relating to emergency equipment, shall not apply to any bus with a seating capacity of 15 or less and having a GVWR of less than 10,001 pounds.
 - (IV) The following provisions of 49 C.F.R. Part 393 shall not apply to motorcycles or to motor-driven cycles:
 - (A) Sections 393.11 and 393.24(a) requiring at least two headlamps. Motorcycles and motor-driven cycles shall have at least one headlamp.
 - (B) Section 393.41 requiring parking brakes. Motorcycles and motor-driven cycles shall carry sufficient chocking blocks to prevent movement when parked.
 - (C) Section 393.51 requiring service brake system warning devices and gauges.
 - (D) That part of § 393.65(d) prohibiting gravity feed to supply fuel to the carburetor or injector.
- (d) With regard to hours of service of drivers:
 - (I) 49 C.F.R. Part 395 shall not apply to household goods movers or property carriers, or to their drivers; but this exclusion applies only to the extent that the motor vehicles used:
 - (A) do not transport passengers,
 - (B) have a GVWR or GCWR of less than 10,001 pounds, and
 - (C) do not require a commercial driver's license to operate.
 - (II) A driver for a transportation carrier of passengers is exempt from the requirements of 49 C.F.R. § § 395.5(a)(2) and 395.8 if all of the following conditions are met:
 - (A) The driver operates a motor vehicle having a GVWR or GCWR of less than 10,001 pounds and has a seating capacity of 15 or less;
 - (B) The driver operates within a 100 air-mile radius of the normal work reporting location;
 - (C) The driver, except a driver salesperson, returns to the work reporting location and is released from duty within 16 consecutive hours;
 - (D) At least eight consecutive hours off duty separate each 16-hour period referenced in subparagraph (II)(C) of this paragraph;
 - (E) The driver does not exceed 10 hours maximum driving time following eight consecutive hours off duty; and
 - (F) The transportation carrier that employs or retains the driver maintains and retains accurate and true time records, and all supporting documents verifying such time records, for a period of six months showing:
 - (i) The time(s) the driver reports for duty each day;
 - (ii) The time(s) the driver is released from duty each day;
 - (iii) The total number of hours the driver is on duty each day;
 - (iv) For a driver who is off duty for an entire day, an indication to that effect; and
 - (v) The total time for the preceding seven days in accordance with 49 C.F.R. § 395.8(j)(2) for drivers used for the first time or intermittently. For purposes of this subparagraph (v), first time or intermittently means a driver who has not been on duty for the transportation carrier during the immediately preceding seven days.
 - (III) With regard to subparagraph (II) of this paragraph, drivers may go off duty for any period of time during the 16-hour period, but the 16-hour period shall only be restarted after eight consecutive hours off duty.
 - (IV) Maximum driving time.
 - (A) In lieu of 49 C.F.R. § 395.5(b), a transportation carrier of passengers may apply subparagraph (IV)(B) to drivers who, in any eight consecutive days, operate only motor vehicles having:
 - (i) a GVWR or GCWR of less than 10,001 pounds; and
 - (ii) a seating capacity of 15 or less.
 - (B) A transportation carrier shall neither permit nor require a driver to drive, nor shall any such driver drive, regardless of the number of motor carriers or transportation carriers using the driver's services, for any period after:
 - (i) Having been on duty 70 hours in any seven consecutive days if the employing transportation carrier does not operate motor vehicles every day of the week; or
 - (ii) Having been on duty 80 hours in any eight consecutive days if the employing transportation carrier operates motor vehicles every day of the week.
- (e) With regard to inspection of drivers and/or motor vehicles:
 - (I) Commission investigators shall record the results of driver and/or motor vehicle inspections on a form titled "Driver/Vehicle Compliance Report" ("DVCR"). The investigator shall provide the driver and/or the transportation carrier with a copy of the completed DVCR.
 - (II) The driver receiving a DVCR shall deliver the DVCR to the transportation carrier operating the motor vehicle upon the driver's next arrival at any of the transportation carrier's terminals or facilities. If the driver is not scheduled to arrive at a terminal or facility within 24 hours, the driver shall immediately mail the report to the transportation carrier operating the motor vehicle.
 - (III) Transportation carriers shall examine the DVCR and correct all violations or defects noted thereon. Within 15 days following the date of the inspection, the transportation carrier shall:

- (A) by completing the "Carrier Official's Signature, Title, and Date" portions of the DVCR, certify that all violations noted on the DVCR have been corrected;
 - (B) return the completed DVCR to the Commission at the address shown on the DVCR; and
 - (C) retain a copy of the DVCR for 12 months from the date of the inspection at the transportation carrier's principal place of business or where the motor vehicle is housed.
- (IV) Enforcement officials shall declare and order out-of-service any motor vehicle that, by reason of its mechanical condition or loading, would likely cause an accident or a breakdown. Enforcement officials shall declare and order out-of-service any driver who by reason of the driver's lack of qualification, sickness or fatigue, violation of hours of service provisions, or violation of drug or alcohol provisions, would likely cause an accident. In determining whether a specific condition constitutes an out-of-service condition, enforcement officials shall use as guidance the current out-of-service criteria set forth by the Commercial Vehicle Safety Alliance. A DVCR declaring a motor vehicle and/or a motor vehicle driver out-of-service shall constitute an out-of-service order giving notice to the driver and the transportation carrier regarding the out-of-service condition.
- (V) No transportation carrier shall require or permit any person to operate, nor shall any person operate, any motor vehicle declared and ordered out-of-service until all repairs required by the out-of-service order have been satisfactorily completed. No transportation carrier shall require or permit any person declared and ordered out-of-service to operate, nor shall any person operate, any motor vehicle until the person's out-of-service condition has been corrected. The term "operate" as used in this rule shall include towing the motor vehicle, except that motor vehicles declared and ordered out-of-service may be towed away by means of a motor vehicle using a crane, hoist, or rollback. A motor vehicle combination consisting of an emergency towing vehicle and an out-of-service motor vehicle shall not be operated unless such combination meets the performance requirements of these Safety Rules except for those conditions noted on the DVCR.
- (f) The provisions for periodic inspections, inspector qualifications, periodic inspection record keeping, and equivalent to periodic inspections contained in 49 C.F.R. § 396.17, 396.19, 396.21, and 396.23 shall apply only to motor vehicles that:
- (I) have a GVWR or GCWR of 10,001 pounds or more and are operated by a household goods mover or property carrier;
 - (II) are designed to transport passengers; or
 - (III) are used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued under the Hazardous Material Transportation Act, 49 U.S.C. § 5101 et seq.
- (g) Transportation carriers filing reports required by 49 C.F.R. Parts 40, 382, 383, 390, 391, 392, 393, 395, 396, or 399 shall file such reports with the Commission at its business address: 1560 Broadway, Suite 250, Denver, Colorado 80202.
- (h) Transportation carriers and drivers shall, upon request by an enforcement official, make available for inspection all records required to be made by these Safety Rules and all motor vehicles subject to these Safety Rules.

6104. Motor Vehicle Weight.

An enforcement official may require a transportation carrier to have a motor vehicle weighed, if such motor vehicle's structural components, suspension components, wheels, tires, or loading may, in the enforcement official's judgment, create potentially unsafe operations.

6105. Safety Violations, Civil Enforcement, and Civil Penalties.

- (a) A person who violates the following provisions may be assessed a civil penalty of up to \$10,000.00 for each violation:

Citation	Violation Description
49 C.F.R. § 392.4(b)	Requiring or permitting a driver to drive while under the influence of, or in possession of, a narcotic drug, amphetamine, or any other substance capable of rendering the driver incapable of safely operating a motor vehicle, per §392.4(a).
49 C.F.R. § 392.5(b)(1)	Requiring or permitting a driver to operate a commercial motor vehicle within 4 hours of using, while under the influence of, or having in his/her possession, alcohol, per §392.5(a).
49 C.F.R. § 392.5(b)(2)	Requiring or permitting a driver to operate a commercial motor vehicle who shows evidence of, or the general appearance and conduct of, having consumed alcohol within the preceding 4 hours.
49 C.F.R. § 396.11(c)	Failing to correct out-of-service defects listed by the driver in a driver vehicle inspection report before the vehicle is operated again.
Rule 6103(e)(V)	Requiring or permitting a driver to operate a motor vehicle during the period the driver was placed out of service.
Rule 6103(e)(V)	Requiring or permitting the operation of a motor vehicle placed out of service before the required repairs are made but after the transportation carrier has received notice of the defect.

- (b) A person who violates the following provisions may be assessed a civil penalty of up to \$2,500.00 for each violation:

Citation	Violation Description
49 C.F.R. § 390.35	Making, or causing to make fraudulent or intentionally false statements or records and/or reproducing fraudulent records if such action misrepresents a fact that constitutes a violation other than a reporting or recordkeeping violation.
49 C.F.R. § 391.11(a)	Requiring or permitting a driver who is not qualified to drive [§ 391.11(b)(4), (5), and (7)].
49 C.F.R. § 391.15(a)	Using a disqualified driver.
49 C.F.R. § 392.2	Operating a motor vehicle not in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated.
49 C.F.R. § 392.9(a)(1)	Requiring or permitting a driver to drive without the vehicle's cargo being properly distributed and adequately secured.



49 C.F.R. § 395.3(a)(1)	Requiring or permitting a driver to drive 11 cumulative hours.
49 C.F.R. § 395.3(a)(2)	Requiring or permitting a driver to drive after having been on duty 14 hours.
49 C.F.R. § § 395.3(b)(1) or 395.5(b)(1)	Requiring or permitting a driver to drive after having been on duty 60 hours in 7 consecutive days.
49 C.F.R. § § 395.3(b)(2) or 395.5(b)(2)	Requiring or permitting a driver to drive after having been on duty 70 hours in 8 consecutive days.
49 C.F.R. § 395.5(a)(1)	Requiring or permitting a driver to drive more than 10 hours.
49 C.F.R. § 395.5(a)(2)	Requiring or permitting a driver to drive after having been on duty 15 hours.
Rule 6103(d)(IV)(B)(i)	Requiring or permitting a driver to drive after having been on duty 70 hours in 7 consecutive days.
Rule 6103(d)(IV)(B)(ii)	Requiring or permitting a driver to drive after having been on duty 80 hours in 8 consecutive days.
49 C.F.R. § 396.17(g)	Failing to promptly repair parts and accessories not meeting minimum periodic inspection standards.

(c) A person who violates the following provisions may be assessed a civil penalty of up to \$1,100.00 for each violation:

Citation	Violation Description
49 C.F.R. § 382.115(a)	Failing to implement an alcohol and/or controlled substances testing program.
49 C.F.R. § 382.201	Using a driver known to have an alcohol concentration of 0.04 or greater.
49 C.F.R. § 382.211	Using a driver who has refused to submit to an alcohol or controlled substances test required under Part 382.
49 C.F.R. § 382.213(b)	Using a driver known to have used a controlled substance.
49 C.F.R. § 382.215	Using a driver known to have tested positive for a controlled substance.
49 C.F.R. § 382.301(a)	Using a driver before the motor carrier has received a negative pre-employment controlled substance test result.
49 C.F.R. § 382.303(a)	Failing to conduct post accident testing on driver for alcohol and/or controlled substances.
49 C.F.R. § 382.305	Failing to implement a random controlled substances and/or an alcohol testing program.
49 C.F.R. § 382.305(b)(1)	Failing to conduct random alcohol testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
49 C.F.R. § 382.305(b)(2)	Failing to conduct random controlled substances testing at an annual rate of not less than the applicable annual rate of the average number of driver positions.
49 C.F.R. § 382.309(a)	Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
49 C.F.R. § 382.309(b)	Using a driver who has not undergone a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances.
49 C.F.R. § 382.503	Allowing a driver to perform safety sensitive function, after engaging in conduct prohibited by subpart B, without being evaluated by substance abuse professional, as required by §382.605.
49 C.F.R. § 382.505(a)	Using a driver within 24 hours after being found to have an alcohol concentration of 0.02 or greater but less than 0.04.
49 C.F.R. § 382.605(c)(1)	Using a driver who has not undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than .02 or with verified negative test result, after engaging in conduct prohibited by part 382 subpart B.
49 C.F.R. § 382.605(c)(2)(ii)	Failing to subject a driver who has been identified as needing assistance to at least six unannounced follow-up alcohol and/or controlled substance tests in the first 12 months following the driver's return to duty.
49 C.F.R. § 391.45(a)	Allowing a driver to drive who has not been medically examined and certified.
49 C.F.R. § 391.45(b)(1)	Allowing a driver to drive who has not been medically examined and certified every 24 months.
Rule 6103(b)(4)	Allowing a driver to drive who has not been medically examined and certified upon expiration of the medical examiner's certificate.
49 C.F.R. § 396.17(a)	Using a commercial motor vehicle not periodically inspected.

(d) A driver placed out of service for 24 hours for violating the alcohol prohibitions of 49 C.F.R. § 392.5(a) or (b) who drives during that period may be assessed a civil penalty of up to \$2,750.00 for each violation.

(e) A driver who violates the following provisions may be assessed a civil penalty of up to \$1,100.00 for each violation:

Citation	Violation Description
Rule 6103(e)(V)	Operating a motor vehicle during a period the driver was placed out of service.
Rule 6103(e)(V)	Operating a motor vehicle after the vehicle was placed out of service and before the required repairs are made.

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(f) A person who violates the following recordkeeping provisions may be assessed a civil penalty of up to \$500.00 for each violation up to a cumulative maximum of \$5,000.00:

Citation	Violation Description
49 C.F.R. § 392.6	Scheduling a run that would necessitate the vehicle being operated at speeds in excess of those prescribed.
Rule 6103(e)(III)	Failing to return the written certification of correction as required by the out-of-service order.
49 C.F.R. § 395.8(a)	Failing to require driver to make a record of duty status.
49 C.F.R. § 395.8(i)	Failing to require driver to forward within 13 days of completion, the original of the record of duty status.
49 C.F.R. § 395.8(k)(1)	Failing to preserve driver's record of duty status and supporting documents for 6 months.
49 C.F.R. § 396.3(b)	Failing to keep minimum records of inspection and vehicle maintenance.
49 C.F.R. § 396.11(a)	Failing to require driver to prepare driver vehicle inspection report.

- (g) A person who violates 49 C.F.R. Part 383, Subparts B, C, E, F, G, or H may be assessed a civil penalty of \$2,750.00 for each violation.
- (h) Except as provided in paragraphs (a) through (g) of this rule, a person who violates any other rule may be assessed a civil penalty of up to \$250.00 for each violation up to a cumulative maximum of \$5,000.00 for each type of recordkeeping violation.
- (i) The provisions relating to the doubling and tripling of civil penalty assessments, found in § 40-7-113(3) and (4), and in paragraphs (f) through (k) of rule 6016, shall not apply to the assessment of civil penalties for safety rule violations.

6106. – 6199. [Reserved].

COMMON AND CONTRACT CARRIER RULES

Rules Generally Applicable to Common and Contract Carriers

6200. Applicability of Common and Contract Carrier Rules.

Rules 6200 through 6299 apply to all common carriers and all contract carriers. Rules 6250 through 6259 are specifically applicable only to taxicab carriers. Nothing in these Common and Contract Carrier Rules shall alter, amend, modify, suspend, or otherwise affect specific provisions, limitations, or requirements in any authority issued to any regulated intrastate carrier prior to the adoption of these rules.

6201. Definitions.

In addition to the generally applicable definitions in rule 6001, the following definitions apply only in the context of these Common and Contract Carrier Rules:

- (a) "Auto livery" or "auto livery service" means the transportation of passengers by common carrier, including the transportation of passengers in scheduled and/or call-and-demand service.
- (b) "Capable," as used in § 40-6-120(1), C.R.S., means ready, willing, and able to provide services under the terms of the common carrier's authority. Capability may be evidenced by, among other things, ongoing transportation operations or good faith efforts to conduct such operations under such authority.
- (c) "Call-and-demand," "on call-and-demand," or "call-and-demand service" means the transportation of passengers not on schedule. Call-and-demand service includes charter service, limousine service, sightseeing service, and taxicab service.
- (d) "Charter party" means a person or group of persons who are traveling together pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle, having acquired the exclusive use of the motor vehicle.
- (e) "Charter service" means transportation of a charter party.
- (f) "Dual-use vehicle" means a specific motor vehicle used to provide luxury limousine service, on the one hand, and either common carrier service, contract carrier service, or both, on the other hand.
- (g) "Flag stop" means a point of service designated by a scheduled common carrier on its filed schedule, which point is located between two scheduled points on the scheduled route. Typically, the common carrier does not designate a specific time for service to the flag stop; if the common carrier does designate a specific time for service, the time is considered to be an approximation.
- (h) "Limousine service" means the transportation of passengers charged at a per person rate, and the use of the motor vehicle is not exclusive to any individual or group. The term "limousine service" is distinguished from the term "luxury limousine service" as used in Article 16 of Title 40, C.R.S.
- (i) "Outstanding authority" means an existing authority, or any portion thereof, which is not under suspension.
- (j) "Schedule," "on schedule," or "scheduled service" means the transportation of passengers between fixed points and over designated routes at established times as specified in the common carrier's time schedule as filed with and approved by the Commission.
- (k) "Sightseeing service" means the transportation of passengers for the sole purpose of viewing or visiting places of natural, historic, or scenic interest, such that the transportation originates and terminates at the same point.
- (l) "Special bus," "special bus transportation," or "special bus service" means the transportation of passengers by common carrier:
 - (I) not including ordinary and continuous scheduled service;
 - (II) rendered generally on weekends, holidays, or other special occasions;
 - (III) with a fixed termination date; and
 - (IV) to a number of passengers whom the carrier on its own initiative has assembled into a travel group, through its own promotion and sale of individual tickets, for a trip or tour planned by the carrier.
- (m) "Tacking" means the joinder of two or more separate authorities or two or more separate parts thereof at a common service point for the purpose of providing a through service.
- (n) "Taxicab service" means passenger transportation by taxicab.

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6202. Prohibitions.

- (a) Without specific approval by the Commission, no regulated intrastate carrier shall:
- (I) combine or tack two or more separate authorities or two or more separate parts of an authority in order to render a transportation service not authorized by any individual authority or part thereof;
 - (II) extend, enlarge, diminish, change, alter, or vary the territory, route, or service authorized by its authority;
 - (III) serve any point not included in its authority;
 - (IV) abandon or suspend operations under its authority; or
 - (V) file a tariff or time schedule whose applicability or scope violates this rule.
- (b) Except as specifically provided by Commission Order, rule 6012, rule 6205, or Article 11.5 of Title 40, C.R.S., no regulated intrastate carrier shall by any means, directly or indirectly, sell, lease, merge, consolidate, assign, license, encumber, or otherwise transfer any right or interest in any portion of said regulated intrastate carrier's authorities. Every such transaction, unless excepted, shall be void. This prohibition applies, without limitation, to a regulated intrastate carrier permitting a person to operate under said regulated intrastate carrier's contract carrier permit or common carrier certificate pursuant to a motor vehicle lease.
- (c) Except as approved by the Commission, no transfer of any authority by means of foreclosure of an encumbrance or by means of an execution in satisfaction of any judgment or claim shall be effective. The fact that the Commission has approved an encumbrance is not an indication that a transfer has been authorized.

6203. Applications to Operate as a Common or Contract Carrier.

- (a) Any person seeking permanent authority to operate as a common or contract carrier, or permanent authority to extend a common carrier certificate or contract carrier permit, shall file an application with the Commission. The application shall contain the following information:
- (I) The name, including trade name if applicable, physical address, mailing address, and telephone number of the applicant.
 - (II) The name, mailing address, and telephone number of the applicant's representative to whom the Commission may direct inquiries regarding the application.
 - (III) The name and address of the applicant's Colorado agent for service of process, if required by rule 6011.
 - (IV) A statement describing the applicant's business structure (corporation, limited liability company, partnership, sole proprietorship, etc.).
 - (V) If the applicant is a corporation: the name of the state in which it is incorporated; the location of its principal office, if any, in Colorado; the names of its directors and officers; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.
 - (VI) If the applicant is a limited liability company: the name of the state in which it is organized; the complete mailing address and physical address of its principal office; the name of its managers; and a certified copy of its certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.
 - (VII) If the applicant is a partnership: the names, titles, and addresses of all general and limited partners; and a copy of the partnership agreement establishing the partnership and all subsequent amendments.
 - (VIII) A complete description of the authority sought, which shall indicate:
 - (A) whether the applicant proposes to operate as a common or contract carrier;
 - (B) the proposed type of service (i.e., charter, limousine, sightseeing, taxicab, or scheduled, but not auto livery or special bus), if the applicant proposes to operate as a common carrier;
 - (C) the proposed geographic area of service or the proposed points or routes of service;
 - (D) any proposed restrictions to the authority sought; and
 - (E) a description of the make, model, and year of the motor vehicles proposed to be operated, or if unknown, then a summary of the number and types of motor vehicles proposed to be operated.
 - (IX) A map or diagram showing the proposed geographic area of service, or the proposed points or routes of service, if and in the form requested by the Commission or Commission staff.
 - (X) If the applicant seeks common carrier authority, the applicant shall attach (for an application to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, the applicant may attach) signed letters of support indicating a public need for the proposed service. A letter from the applicant shall be considered a letter of public support. A letter of support:
 - (A) shall contain the author's name, address, and phone number;
 - (B) should explain the public need;
 - (C) should specifically support the applicant's particular request for authority;
 - (D) should describe whether and how existing service is inadequate; and
 - (E) shall contain a statement, signed by the author, stating that the letter contains only information that is true and correct to the best of the author's knowledge and belief.
 - (XI) If the applicant seeks contract carrier authority, the applicant shall attach a letter signed by each proposed customer. Such a letter:
 - (A) shall contain the proposed customer's name, address, and phone number;
 - (B) should indicate the proposed customer's special or distinctive transportation needs and whether those needs can be met by existing service;
 - (C) should specifically support the applicant's particular request for authority;
 - (D) should describe whether and how existing service is inadequate; and
 - (E) shall contain a statement, signed by the proposed customer, stating that the letter contains only information that is true and correct to the best of the proposed customer's knowledge and belief.
 - (XII) A statement of the facts upon which the applicant relies to establish that the application should be granted. Except for an application to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, if the application seeks common carrier authority, the statement should establish how granting the application is in the public interest. If the application seeks contract carrier authority, the statement should establish the superior, special, or distinctive nature of the transportation service, or how the transportation service will be specifically tailored to meet the customer's needs.
 - (XIII) Except as provided in subparagraph (a)(XIV), a statement setting forth the qualifications of the applicant, including managerial,

operational, and financial fitness, to conduct the proposed operations.

- (XIV) For an applicant applying to provide taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, a statement setting forth the qualifications of the applicant, including operational and financial fitness, to conduct the proposed operations.
 - (XV) A statement describing the extent to which the applicant, or any person affiliated with the applicant, holds or is applying for authority duplicating or overlapping in any respect the authority at issue in the application.
 - (XVI) If applicable, current copies of any authority, issued by either a state or federal agency, authorizing the applicant to provide for-hire transportation of passengers in the State of Colorado.
 - (XVII) If applicable, current copies of any authority, issued by either a state or federal agency, authorizing any affiliate of the applicant to provide for-hire transportation of passengers in the State of Colorado.
 - (XVIII) If applicable, a statement that the applicant understands the Commission will, in its discretion, cancel any duplicating or overlapping authorities created by granting the application.
 - (XIX) A statement indicating the town or city where the applicant prefers any hearing to be held.
 - (XX) A statement, signed by the applicant, that the application contains only information that is true and correct to the best of the applicant's knowledge and belief.
- (b) Any person seeking temporary authority to operate as a common or contract carrier, or temporary authority to extend a common carrier certificate or contract carrier permit, shall file an application with the Commission. The application shall contain the following information:
- (I) All the information specified by paragraph (a) of this rule, except that:
 - (A) Any support letters shall contain the following additional information: an explanation of the immediate and urgent need for the proposed service; whether there is any other transportation service available; if such service is available, a detailed description of the author's efforts to use it and whether it is capable of meeting the author's needs; and the extent to which available transportation services have refused to provide service.
 - (B) The statements in subparagraph (a)(XVII) are unnecessary.
 - (II) A statement indicating whether the Commission has previously granted to the applicant authority to render all or any part of the proposed service. If this statement is answered in the affirmative, a copy of the decision granting the authority shall be attached to the application.
 - (III) A statement of facts establishing an immediate and urgent need for the proposed service and further establishing that no existing regulated intrastate carrier is capable of providing the proposed service.
 - (IV) A statement of the period of time which applicant requests the temporary authority to cover, not to exceed 180 days.
- (c) Any person seeking emergency temporary authority to operate as a common or contract carrier, or emergency temporary authority to extend a common carrier certificate or contract carrier permit, shall file an application with the Commission. The application shall contain all the information required by paragraph (b) of this rule, except that the period of time identified in subparagraph (b)(IV) shall not exceed 30 days. The application shall include a statement of facts establishing the basis and nature of the emergency need for the proposed service. Support letters shall explain the basis and nature of the emergency.
- (d) The granting of emergency temporary authority creates no presumption that temporary or permanent authority will be granted. The granting of temporary authority creates no presumption that permanent authority will be granted.
- (e) Burden of proof for contract carrier applicants.
- (I) A contract carrier applicant shall bear the burden of proving that the service it proposes is specialized and tailored to the potential customer's distinct need.
 - (II) Such a showing is overcome by an intervenor's showing that the intervenor has the ability and willingness to meet the potential customer's distinct need.
 - (III) If the intervenor makes such a showing, the applicant shall bear the burden of proving that the applicant is better suited than the intervenor to meet the distinct needs of the potential customer.
 - (IV) The intervenor may overcome such a demonstration by establishing that the applicant's proposed operation will impair the efficient public service of any common carrier then adequately serving the same geographic area.
 - (V) Nothing in this paragraph shall be construed to direct the sequence of evidence presented by the parties.

6204. Abandonment or Voluntary Suspension of Authorities.

- (a) A regulated intrastate carrier wishing to abandon or voluntarily suspend its authority(ies), or any portion thereof, shall file an application to do so. The application shall contain information fully explaining why the abandonment or suspension is sought and how the abandonment or suspension will affect the public. The application must also contain a statement, signed by the applicant, that the application contains only information that is true and correct to the best of the applicant's knowledge and belief. The Commission, in its discretion, may either grant such an application without a hearing after ten day's notice or set it for hearing.
- (b) Except as specified in paragraph (c) of this rule, a regulated intrastate carrier may not request and the Commission shall not grant a voluntary suspension persisting for longer than:
 - (I) twelve consecutive months;
 - (II) twelve months in any 24-month period; or
 - (III) two consecutive seasons, for a regulated intrastate carrier operating seasonally.
- (c) A regulated intrastate carrier requesting a voluntary suspension for a longer period than authorized by this rule shall be required to prove that the suspension is in the public interest and that alternative service will be available during the period of suspension.

6205. Encumbrances, Transfers, Mergers, Consolidations, and Acquisitions of Control.

- (a) For purposes of this rule:
 - (I) "Encumbrancer" means a person seeking or holding an encumbrance (e.g., lien or mortgage) against the authority of a common or contract carrier.
 - (II) "Transfer" means, without limitation, any sale, lease, assignment, license, change in ownership, foreclosure of an encumbrance, execution in satisfaction of any judgment or claim, merger, consolidation, or similar transaction in which control of any authority or portion thereof changes from one entity to another, whether voluntarily, by court order, or otherwise.
 - (III) "Transferee" means any entity newly acquiring control of any authority from a transferor.

- (IV) "Transferor" means any entity transferring control of any authority to a transferee.
- (b) Except with regard to foreclosures of encumbrances, executions in satisfaction of a judgment or claim, or transfers pursuant to a court order, only the owners of an authority as shown in the official records of the Commission may transfer the authority.
- (c) An application to encumber any authority, transfer any authority, acquire control of any regulated intrastate carrier, or permit a merger or consolidation of a regulated intrastate carrier with any other entity, shall, if possible, take the form of a joint application submitted by all parties to the transaction. Such an application shall contain all the following information. If an applicant is unable to supply the required information, the applicant shall explain the reason for the lack of information.
- (I) All applicants shall provide the information required by subparagraphs 6203(a)(I), (II), and (XIX).
 - (II) Transferees and encumbrancers shall provide the information required by subparagraphs 6203(a)(III) - (VII), and (XV) - (XVII).
 - (III) If a transferee or encumbrancer is an executor, trustee, receiver, or other similar representative of the real party in interest: a copy of the court order evidencing the representative's appointment, or other evidence of authority if not under court order.
 - (IV) If the transaction covers only portions of an authority: a statement fully explaining which portions are covered by the transaction and which are not.
 - (V) A complete description of the type of transaction for which the applicants seek Commission approval, together with a statement describing each applicant's role in the transaction.
 - (VI) If the transaction involves an acquisition of stock: a statement of the transferor's total number of outstanding capital stock shares, by class; and the number of shares of each class to be acquired by transferee.
 - (VII) A copy of all agreements concerning the transaction, including a copy of all documents creating a security interest, if any, and a statement of the consideration paid in the transaction.
 - (VIII) A statement explaining how the transferee proposes to meet the financial requirements of the transaction, including, if a loan is involved, the amount, maturity, interest rate, and other terms and conditions.
 - (IX) A statement setting forth the nature, extent, and proposed disposition of any existing encumbrances against the affected authorities.
 - (X) A current copy of each of the letters of authority encompassing the authorities at issue in the application.
 - (XI) If the transaction involves the lease of an authority: a copy of the proposed lease and a statement of the lease's effective date and termination date.
 - (XII) If a transferor or encumbrancer seeks foreclosure of an encumbrance or execution in satisfaction of any judgment or claim: the transferee's written consent to transfer, or in lieu thereof, a judicial order authorizing unilateral action by the transferor or encumbrancer.
 - (XIII) Except in the case of an application involving only the creation of an encumbrance or as provided in subparagraph (c)(XIV), a statement setting forth the qualifications of the transferee, including managerial, operational, and financial fitness, to conduct the proposed operations.
 - (XIV) For an application involving only taxicab service within and between the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, and Jefferson, a statement setting forth the qualifications of the transferee, including operational and financial fitness, to conduct the proposed operations.
 - (XV) A statement that the applicants understand the Commission will, in its discretion, cancel any duplicating or overlapping authority created by the transaction.
 - (XVI) A statement setting forth whether the transferor has been and is conducting active, bona fide operations under the authorities at issue in the transaction.
 - (XVII) A statement of the facts upon which the applicants rely to show that the application should be granted. In this regard, the applicants should consult paragraph (e) of this rule.
 - (XVIII) A statement, signed by the applicant, that the application contains only information that is true and correct to the best of the applicant's knowledge and belief.
- (d) An application filed under § 40-6-120(2) or (4), C.R.S., seeking temporary or emergency temporary approval to operate the regulated intrastate carrier or regulated intrastate carrier properties, shall be filed concurrently with the permanent application filed under paragraph (c) of this rule. A temporary and/or emergency temporary application shall contain a statement of the facts establishing that failure to grant temporary or emergency temporary approval may result in destruction of or injury to the utility's properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public. In the case of an emergency temporary application, the application shall contain a statement explaining the nature and extent of the emergency.
- (e) Applicants seeking temporary or emergency temporary approval to transfer control of any authority have the burden of proving the elements prescribed by § 40-6-120(2) or (4), C.R.S., as applicable. Applicants seeking approval to permanently transfer any authority have the burden of proving:
- (I) that the transferor has not abandoned the authority and has not allowed the authority to become dormant;
 - (II) that the transferor has been and is engaged in bona fide operations under its authority, or the extent to which bona fide operations have been excused because of a Commission-approved suspension;
 - (III) that the transfer is not contrary to the public interest;
 - (IV) that the transfer will not result in the common control or ownership of duplicating or overlapping authorities; and
 - (V) except in transfers involving foreclosures of encumbrances, executions in satisfaction of a judgment or claim, or transfers pursuant to a court order, that the transferee will engage in bona fide regulated intrastate carrier operations and is fit to do so.
- (f) A transferor shall not cancel its insurance, surety bond, or tariffs until the Commission has approved the transfer, the transferee has filed all required documents in the transferee's own name, and the Commission has advised the transferee that it is authorized to begin operations. This paragraph (f) applies regardless of the type of transfer, whether permanent, temporary, or emergency temporary.
- (g) Upon approval of a transfer application (permanent, temporary, or emergency temporary) the transferee shall, in accordance with the timelines set forth by the Commission's order:
- (I) file with the Commission an adoption notice, in a form available from the Commission, whereby the tariff and/or time schedule of the transferor shall become those of the transferee until changed in accordance with Commission rules;
 - (II) cause to be filed with the Commission certificates of insurance as required by Commission rules; and
 - (III) pay the issuance fee and annual motor vehicle identification fee.
- (h) Upon approval of a permanent transfer application, the transferor and transferee shall file an acceptance of transfer form, which form shall

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be provided by the Commission. The form shall be signed by both parties, indicating acceptance of the terms and conditions of the Order authorizing the transfer. The acceptance of transfer shall contain a statement indicating that the transferee has complied with all provisions of the agreement of sale, lease, or other transfer.

- (i) A transferee shall not begin operations until after the Commission has advised the transferee that it is in compliance with all requirements and is authorized to begin operations.
- (j) The granting of emergency temporary authority creates no presumption that temporary or permanent authority will be granted. The granting of temporary authority creates no presumption that permanent authority will be granted.

6206. Duplicating or Overlapping Authorities.

The Commission shall not grant, extend, or otherwise modify a common carrier certificate or contract carrier permit, if the regulated intrastate carrier would thereby obtain duplicating or overlapping authorities. Nothing in this rule shall be construed to prohibit Commission cancellation of duplicating or overlapping language that arises as a result of any such grant, extension, or other modification.

6207. Tariffs.

- (a) A regulated intrastate carrier shall keep on file with the Commission, at all times, approved tariffs clearly revealing the rates and charges to be assessed for all transportation and accessorial services and clearly revealing all rules and conditions relating to rates or service.
- (b) Tariff compliance.
 - (I) No regulated intrastate carrier may operate its motor vehicles without having approved tariffs on file with the Commission.
 - (II) No regulated intrastate carrier shall disseminate to any person information contrary to the information contained in its approved tariff.
 - (III) No regulated intrastate carrier shall operate in conflict with its approved tariff.
- (c) A common carrier shall ensure that a copy of its approved tariff is available for public inspection, at all reasonable times, in each of the common carrier's offices or terminals transacting business with the public.
- (d) Every taxicab carrier shall publish, in its tariffs, reduced fares that are applicable to passengers riding under a multiple loading arrangement.
- (e) A contract carrier shall ensure that:
 - (I) Its tariff complies with the requirements of rule 6209.
 - (II) It is paid in accordance with its approved tariff.
 - (A) The tariff shall provide for payment to the contract carrier only:
 - (i) by the Commission-approved entity with whom the contract carrier has directly contracted; or
 - (ii) by such entity's legal agent for distribution of payment.
 - (B) The tariff shall not provide for payment from an individual passenger, unless:
 - (i) such passenger is the Commission-approved entity specifically named in the contract carrier's permit; or
 - (ii) the Commission specifically so approves.
 - (III) It mails notice of its tariff filings to the affected entity with whom the contract carrier has contracted for transportation services.
 - (A) Such notice shall be mailed concurrently with the tariff filing.
 - (B) Such notice shall contain: a copy of the initial tariff, or the proposed changes thereto, as applicable; the effective date; a statement that the Commission may suspend the effective date and hold a hearing regarding the filing; a statement that a written objection to the filing may be filed with the Commission; the date for filing such an objection; a statement that the filing of an objection by itself will not allow a person to participate in the hearing, unless such person has also filed a written intervention and received leave of the Commission to intervene; and the Commission's address where objections or interventions may be filed.
 - (C) The contract carrier shall file an affidavit of mailing with the Commission prior to the filing's effective date. A copy of the notice shall be attached to the affidavit.
- (f) Unless this rule specifies otherwise, the provisions of rule 1210 govern the tariffs and advice letters of regulated intrastate carriers. In addition to the requirements of rule 1210(b)(1)(A), the tariff's title page shall contain the regulated intrastate carrier's common carrier certificate or contract carrier permit numbers to which the tariff applies.
- (g) Except as otherwise ordered by the Commission, a regulated intrastate carrier filing a tariff for newly granted or extended authority shall do so on no less than:
 - (I) five days notice for emergency temporary authority;
 - (II) ten days notice for temporary authority; and
 - (III) fifteen days notice for permanent authority.
- (h) A regulated intrastate carrier proposing a tariff amendment shall file, upon the request of Commission Staff, a statement justifying the amendment. The justification shall include an explanation of the circumstances and data relied upon in requesting approval of the proposed amendment.
- (i) In addition to the notice required by § 40-3-104, C.R.S., and the notice requirements of the rules of practice and procedure, a common carrier proposing an amended tariff, other than an amended tariff applied for under paragraph (j) of this rule, shall give notice as follows:
 - (I) The common carrier shall, concurrently with the filing of the proposed amendment with the Commission, post in a prominent public place in each terminal facility and office of the common carrier and in the passenger compartment of each motor vehicle used in the transportation of passengers affected by the proposed amendment, for a duration equal to the objection or intervention period, whichever is longer, a printed notice of the proposed tariff amendment.
 - (II) The common carrier shall include in such notice: the proposed changes; the effective date; a statement that the Commission may suspend the effective date and hold a hearing regarding the proposed amendment; a statement that a written objection may be filed with the Commission; the date for filing such an objection; a statement that the filing of an objection by itself will not allow a person to participate in the hearing, unless the party has also filed a written intervention and received leave of the Commission to intervene; and the Commission's address where objections or interventions may be filed.
 - (III) If a proposed tariff amendment results in an increase in rates, fares, or charges for call-and-demand limousine, scheduled, special bus, or taxicab service, a common carrier shall also publish notice in one or more newspapers. The form of notice shall be available from the Commission. The common carrier shall ensure that the newspapers' circulations cover the localities or areas of the state where people affected by the proposed tariff reside. A common carrier having a choice under this rule between a local newspaper and

a newspaper of general statewide circulation shall place the notice in the local newspaper and may place the notice in the newspaper of general statewide circulation. The notice shall appear in the newspaper at least 20 days prior to the proposed tariff amendment's effective date. Notwithstanding rule 1206(h) of the Commission's Rules of Practice and Procedure, the common carrier shall file with the Commission, at least 7 days prior to the proposed tariff amendment's effective date, an affidavit of publication prepared by the newspaper or a copy of the publication itself.

- (j) An application to amend a tariff on less than 30 days notice shall only be granted for good cause. The application shall contain information fully explaining why the tariff amendment is sought, why it is sought on less than 30 days notice, and how the tariff change will affect the public if approved. If the Commission approves the application, it shall do so by written order. A common carrier proposing an amended tariff pursuant to this paragraph shall give notice as follows:
 - (I) The common carrier shall, concurrently with the filing of the proposed amendment with the Commission, post in a prominent public place in each terminal facility and office of the common carrier and in the passenger compartment of each motor vehicle used in the transportation of passengers affected by the proposed amendment a printed notice of the proposed tariff amendment. The notice shall remain posted until the Commission approves or rejects the application.
 - (II) The common carrier shall include in such notice: the proposed changes; the date the application was filed with the Commission; a statement that the Commission may grant or deny the application; a statement that a written objection may be filed with the Commission; the Commission's address where objections may be filed; and a statement that an objection may only be filed prior to the date that the Commission grants or denies the application.
- (k) Any person affected by a tariff amendment proposed under this rule may submit a written objection to the proposed amendment. Unless otherwise ordered by the Commission, an objection shall not be considered unless it is filed with the Commission at least 10 days before the effective date of the proposed tariff.
- (l) If the Commission suspends and sets any tariff for hearing:
 - (I) Any entity desiring to participate as a party shall intervene in the proceeding.
 - (II) The Commission shall send the order suspending the tariff to the regulated intrastate carrier and any person who has filed an objection. The order shall specify when the matter is set for hearing, that an objection without an intervention is insufficient to participate as a party in the hearing, and the due date for interventions.
- (m) If the Commission suspends a proposed tariff amendment, the regulated intrastate carrier shall file with the Commission a suspension supplement. The suspension supplement shall be on a form deemed proper by the Commission or its staff.
- (n) If the Commission rejects a tariff or amendment, the tariff number contained in it shall not be used again. The tariff or amendment shall not be referred to afterwards as canceled, amended, or otherwise.
- (o) If the Commission issues a decision prescribing any tariff change, the affected regulated intrastate carrier shall file, within 10 days of the effective date of the Commission decision, a revised tariff or revised tariff sheets, as applicable, reflecting the prescribed change.

6208. Time Schedules.

- (a) No scheduled common carrier may operate its motor vehicles without having approved time schedules on file with the Commission. No such common carrier shall operate in conflict with its approved time schedules.
- (b) No scheduled common carrier shall disseminate to any person information contrary to the information contained in its approved time schedules.
- (c) A common carrier shall promptly report in writing to the Commission and shall communicate to the affected public any interruption of regular service for 24 continuous hours or more, explaining in detail the cause and anticipated length of the service interruption.
- (d) A scheduled common carrier shall designate its flag stops on its schedule. Such a common carrier shall drive by each flag stop in such close proximity and speed as to be able to reasonably assess whether passengers are waiting for service. Failure to stop for a waiting passenger constitutes prima facie evidence of a violation of subparagraph 6202(a)(II).
- (e) A scheduled common carrier shall ensure that a copy of its approved time schedule is available for public inspection, at all reasonable times, in each of the common carrier's offices or terminals transacting business with the public. The common carrier shall carry copies of its time schedules in its scheduled motor vehicles, and shall furnish them to passengers upon request.
- (f) Time schedules shall be filed with the Commission as part of the scheduled common carrier's tariff, in accordance with applicable provisions of rule 6207.
 - (I) At a minimum, time schedules shall contain the following:
 - (A) A statement of the scope of the time schedule, describing the route or points to which the time schedule applies.
 - (B) An explanation of the symbols, reference marks, and abbreviations used.
 - (C) One or more lists of all scheduled stops and all flag stops, in geographical order, designating the departure and/or arrival times for the scheduled stops, as appropriate.
 - (D) A statement whether service is daily or otherwise, and if otherwise a statement describing the other service.
 - (E) The address of each scheduled stop, if such address exists, otherwise a description sufficient to notify the Commission and the public regarding the location of the scheduled stop.
 - (F) Any other appropriate information regarding the service the common carrier desires to perform.

6209. Contract Carrier Contracts.

- (a) Except as otherwise permitted by law, a contract carrier shall not enter into a contract for transportation with any person not named in the contract carrier's permit.
- (b) Except as otherwise permitted by law, a contract carrier shall not engage in any act of transportation for hire except in compliance with the contract between the contract carrier and the person named in the contract carrier's permit.
- (c) Contracts may be oral or written.
- (d) At a minimum, all contracts, whether oral or written, shall specify the following:
 - (I) the names of the parties to the contract;
 - (II) the provisions regarding the scope and terms of transportation and accessorial services to be provided; and
 - (III) the date and term of the contract.
- (e) A contract carrier shall ensure that its contracts do not conflict with provisions in the contract carrier's permit or tariff.
- (f) A contract carrier shall include in its tariff the provisions required under paragraph (d) of this rule.

- (I) In lieu of including said provisions in its tariff, a contract carrier may incorporate its written contract into its tariff by attaching a copy of the contract to the tariff.
- (II) A contract carrier amending a contract shall immediately file an amended tariff as prescribed by rule 6207.
- (g) The Commission is empowered, at any time, to investigate any contract and to require copies of written contracts from any contract carrier. The Commission is empowered to approve, or to disapprove for cause, any operations under any contract.

6210. Driver Courtesy.

Every regulated intrastate carrier shall ensure that its drivers provide its passengers with courteous service promoting the passengers' comfort and convenience. Drivers shall not behave discourteously. Discourteous service by a driver includes, but is not limited to, instances involving profanity, obscenity, assault, or the making of derogatory sexual or racial remarks towards passengers or other persons. Passenger or other person conduct, especially if it is unlawful, disorderly, or endangers others, is a factor to consider in determining whether a driver behaves discourteously.

6211. Use of Motor Vehicles Qualified as Luxury Limousines.

- (a) No regulated intrastate carrier may use a dual-use vehicle to provide luxury limousine service unless it has provided the Commission advance written notice of its intent to do so.
- (b) The notice shall not be effective until received by the Commission. Notice may be accomplished by U.S. Mail, hand delivery, facsimile transmission, or email. Notices transmitted by facsimile will be deemed received on the date and time imprinted on the notice by the sender's facsimile equipment. In the event the sender's facsimile equipment does not imprint a date and time on the notice, or if the date and time of receipt shown by the Commission's facsimile equipment is different than that shown on by the sender's facsimile equipment, the date and time of receipt shown by the Commission's facsimile equipment shall be conclusive. Notices transmitted by email will be deemed received on the date and time shown on the email received by the Commission.
- (c) Regulated intrastate carriers should use the form of notice available from the Commission. In lieu of such form, however, the regulated intrastate carrier shall give notice under this rule by identifying:
 - (I) the regulated intrastate carrier and the relevant common carrier certificate or contract carrier permit numbers;
 - (II) the luxury limousine registration number;
 - (III) the make, model, license number, and vehicle identification number of the dual-use vehicle;
 - (IV) the date(s) and time(s) of day the dual-use vehicle will be operated as a luxury limousine;
 - (V) the customer's name for each specified date and time;
 - (VI) the date prearrangement for the dual use vehicle was made;
 - (VII) the manner in which prearrangement was made; and
 - (VIII) the total number of passengers in the chartering party.
- (d) The regulated intrastate carrier shall keep a copy of the notice in the dual-use vehicle during the time such dual-use vehicle is operated as a luxury limousine.
- (e) The regulated intrastate carrier may file an amended notice if necessary, but only if such amendment is received by the Commission before the regulated intrastate carrier implements the changes listed in the amendment.
- (f) Dual-use vehicle transportation services conducted in the absence of or prior to Commission receipt of the notice required by this rule shall be deemed to be regulated intrastate carrier services. Dual-use vehicle transportation services conducted as specified in the notice required by this rule shall be deemed to be luxury limousine service. Any operation other than as designated in the notice shall be deemed to be regulated intrastate carrier services.

6212. Annual Reports.

Each regulated intrastate carrier shall file with the Commission an annual report on a Commission-supplied form on or before April 30 of each year. The regulated intrastate carrier shall complete all sections of the annual report applicable to said regulated intrastate carrier for the 12-month period ending on December 31 of the previous calendar year. When the Commission grants a permanent transfer of authority, the transferor shall complete a terminating annual report on a Commission-supplied form, which report shall cover the period from January 1 to the date the transfer is effective. The regulated intrastate carrier's owner, authorized partner, or authorized officer, as applicable, shall sign the certification of the annual report or terminating annual report. In all annual report filings, the regulated intrastate carrier shall comply with rule 1204(a)(IV).

6213. Regulated Intrastate Carrier Violations, Civil Enforcement, and Civil Penalties.

- (a) A person who violates any of the following provisions may be assessed a civil penalty of up to \$1,100.00 for each violation:
 - (I) § 40-10-104(1), C.R.S.; or § 40 11-103(1), C.R.S.
 - (II) § 40-10-106, C.R.S.; § 40-11-104, C.R.S.; paragraph 6202(b); or paragraph 6205(f).
 - (III) subparagraph (I), (II), (III), or (IV) of paragraph 6202(a).
 - (IV) § 40-10-117, C.R.S.; subparagraph 6207(b)(I); or paragraph 6208(a).
- (b) A violation of subparagraph 6207(b)(II), paragraph 6209(a) or 6211(a), or rule 6212 regarding filing an annual report may result in the assessment of a civil penalty of up to \$550.00 for each violation.
- (c) A violation of subparagraph 6207(b)(III) may result in the assessment of a civil penalty as follows for each violation:
 - (I) Up to \$275.00 for an overcharge of \$25.00 or less.
 - (II) Up to \$550.00 for an overcharge greater than \$25.00 but less than or equal to \$50.00.
 - (III) Up to \$1,100.00 for an overcharge greater than \$50.00.
- (d) Except as provided for in paragraphs (a), (b), and (c) of this rule, a person who violates any provision of Articles 10 or 11 of Title 40, C.R.S., or any provision of these Common and Contract Carrier Rules may be assessed a civil penalty of up to \$275.00 for each violation.

6214. – 6249. [Reserved].

Rules Specifically Applicable to Taxicab Carriers

6250. Applicability of Taxicab Carrier Rules.

Rules 6250 through 6257 apply to all common carriers providing taxicab service. Nothing in these Taxicab Carrier Rules shall alter, amend, modify, suspend, or otherwise affect specific provisions, limitations, or requirements in any authority issued to any common carrier prior to the adoption of these rules.

6251. Definitions.

In addition to the generally applicable definitions in rule 6001, and the definitions applicable to common and contract carriers in rule 6201, the following definitions apply only in the context of these Taxicab Carrier Rules:

- (a) "Base area" means any geographic area in which a taxicab carrier is authorized to provide point-to-point service.
- (b) "DIA" means Denver International Airport.
- (c) "Flat rate" means a fixed charge for the use of a taxicab traveling between DIA and one of the zones described in these taxicab carrier rules, regardless of the number of passengers being transported, and regardless of whether the passengers are traveling together.
- (d) "Live meter" means any taxicab meter that, without intervention from the driver, automatically calculates changes in rates due to waiting time, traffic delay, or changes in the taxicab's speed.
- (e) "Taxicab carrier" means a common carrier with common carrier certificate authorizing service by taxicab.

6252. Notices.

Each taxicab carrier shall post the following notices, as applicable, on the inside of the left window immediately behind the driver's window or on the back of the front seat of each taxicab it operates. Except as provided in subparagraph (f), the font size of such notice shall be at least 14 and the font size of the cab number shall be at least 24. The taxicab carrier shall complete all blanks in the notices.

- (a) The following notice shall be placed in all taxicabs:

NOTICE:

This is Cab No. _____

The driver of this taxicab shall not load other passengers without the permission of the first passenger. If the first passenger agrees to multiple loading, all passengers are entitled to a reduced fare.

Additional charges may apply for additional passengers, passenger drop offs, baggage and packages, waiting time, pets, and toll or gate charges.

Report any problems to the Public Utilities Commission at (303) 894-2001.

- (b) If the taxicab carrier uses meters only, the notice shall also state:

Fares are calculated by use of a meter. The meter fares are _____ for the first _____ mile plus _____ for each additional _____ mile.

- (c) If the taxicab carrier uses a live meter, the notice shall also state:

The meter will automatically change to a time charge of _____ per minute when the taxicab's speed is less than _____ miles per hour.

- (d) If the taxicab carrier uses odometers only, the notice shall, in lieu of paragraphs (b) and (c), state:

Fares are calculated by use of the odometer. The fares are _____ for the first _____ mile, plus _____ for each additional _____ mile.

- (e) If the taxicab carrier uses both meters and odometers, such notice shall contain the information specified by paragraphs (b), (c), and (d), as applicable.
- (f) If the taxicab carrier serves DIA subject to the flat rate provided for in rule 6256 the notice shall contain a zone map showing the zones and, except for airport gate fees and drop charges, the applicable flat rate in each zone. The font size may be less than 14, but shall be as large as practicable.

6253. Service: Multiple Loading; Routing; Refusals; Quality.

- (a) No taxicab carrier or taxicab driver shall engage in multiple loading unless the first passenger occupying the taxicab agrees to multiple loading.
- (b) A taxicab carrier shall ensure that passenger transportation shall be by the shortest possible route between the origin and destination; provided, however, that a passenger may agree to an alternate route or designate the route he or she wishes to travel, if the taxicab carrier has first advised the passenger regarding the extent of deviation from the shortest possible route.
- (c) No taxicab carrier or driver may refuse to transport any passenger unless: the passenger is acting in an unlawful, disorderly, or endangering manner; there is a previous commitment of the taxicab equipment; or the passenger is unable to care for himself or herself, if not in the charge of a responsible companion or attendant. Except where there is a previous commitment of the taxicab equipment, a taxicab driver shall immediately report to the dispatcher any refusal to transport a passenger.
- (d) When a customer calls a taxicab carrier for service, the taxicab carrier shall request a phone number from the passenger and give an estimated time of pickup. If a customer's pickup location is within a 10-mile radius of the taxicab carrier's terminal from which a call is or would be dispatched, the taxicab carrier shall arrive at the pickup location within 45 minutes from the time the customer first requested service. If a customer's pickup location is outside a 10-mile radius of the taxicab carrier's terminal from which a call is or would be dispatched, the taxicab carrier shall have 4 additional minutes under this rule for each additional mile outside the 10-mile radius. A delay under this rule of more than 10 minutes shall be excused if:
 - (I) the customer has left a telephone number with the taxicab carrier;
 - (II) the taxicab carrier notifies the customer regarding the delay; and
 - (III) such delay is caused by inclement weather, traffic congestion, or other circumstances beyond the control of the taxicab carrier.

6254. Additional Service Requirements for Taxicab Carriers Operating Within and Between Counties with a Population of Sixty Thousand or Greater.

Taxicab carriers operating within and between counties with a population of sixty thousand or greater based on the federal census conducted in 1990 shall be subject to the additional requirements of this rule.

- (a) Communications and Dispatch. Taxicab carriers subject to this rule shall obtain and advertise a central telephone number by which the public may call and request service. Taxicab carriers shall employ a communications system capable of contacting each of its taxicabs in service. The communications system shall have the ability to "broadcast" to all motor vehicles in the fleet at the same time. For good cause shown, taxicab carriers shall have 12 months from the time the Commission issues the taxicab carrier's common carrier certificate to comply with this paragraph (a). To qualify for the 12-month delay, the taxicab carrier shall file with the Commission a Plan for Compliance within 30 days after the common carrier certificate has been issued. Said plan shall include time frames and the details explaining how the taxicab carrier intends to comply with the requirements of this paragraph (a).
- (b) Hours of Operation. Taxicab carriers subject to this rule shall be available to provide service 24 hours per day, every day of the year.
- (c) Age of Motor Vehicles. Taxicab carriers subject to this rule shall not use taxicabs older than ten model years as of July 1st of each year. For purposes of this rule, the counting of model years shall begin with the present calendar year. By way of example, between July 1, 2004, and June 30, 2005, counting backwards, 2004 is the first model year, 2003 is the second model year, and so forth.
- (d) A taxicab subject to this rule that is equipped with ramps, lifts, or other special devices to facilitate the loading, unloading, or transportation of individuals with disabilities is exempt from the requirements of paragraph (c) of this rule.
- (e) A taxicab subject to this rule shall be in good physical condition, excluding consideration of defects covered by the Commission's safety rules. The Commission's enforcement officials shall use the following general guidelines in determining if a taxicab is in good physical condition:
 - (I) The body of the taxicab has a good, unfaded paint job; is devoid of major dents and rust, broken trim, and cracked windows other than the windshield; and
 - (II) Except for problems caused by current weather conditions, the interior of the taxicab is clean, free of offensive odors, and has no major tears, cracks, or stains upon the upholstery, headliner, and carpeting.
- (f) Size of Fleet. Taxicab carriers subject to this rule that are also authorized to serve a base area with a population of at least 250,000 shall, at all times, employ a fleet of motor vehicles large enough to ensure the taxicab carrier's ability, at any given time, to deploy at least 15 taxicabs providing service to the public.

6255. Record Keeping.

- (a) A taxicab carrier shall maintain in its files, for a minimum of one year from the date a customer requested service, the following data for each trip:
 - (I) the taxicab number;
 - (II) the driver's name;
 - (III) the date and time of the customer's request for service;
 - (IV) the address, date, and time of the customer's pickup; and
 - (V) the address of the customer's destination.
- (b) If multiple loading is applicable for a given trip, then the data shall reflect the requirements of this rule for each party involved in the multiple loading trip.

6256. Flat Rates to and from Denver International Airport.

Taxicab carriers authorized to provide service to or from any portion of the zones listed in this rule shall be subject to all the provisions of this rule.

- (a) Flat rate service shall be the only authorized taxicab service between points in the zones described by this rule, on the one hand, and DIA, on the other hand. The flat rates established under this rule shall be the flat rates in effect for every taxicab carrier subject to this rule.
- (b) Flat rate charges.
 - (I) To the extent a taxicab carrier is subject to this rule, such taxicab carrier shall not charge meter rates for service between DIA and the zones listed in this rule, but shall instead charge the flat rates permitted under this rule.
 - (II) Taxicab drivers shall inform passengers of the total charge prior to commencing the trip.
 - (III) Except as specifically authorized by this rule, taxicab carriers providing service between DIA and the zones listed in this rule shall not additionally charge for waiting time, traffic delay, or airport fees.
 - (IV) Provided that the taxicab carrier so specifies in its approved tariff, the flat rate from DIA may be increased by \$5.00 for each additional drop within a zone.
- (c) Taxicab fares for service from DIA in which two or more parties have agreed to share a taxicab to their respective destinations shall comply with the following requirements. The taxicab driver shall inform the parties of the total charge prior to departing from DIA and advise the parties they must determine how much of the total fare each party is obligated to pay. The total charge may be approximated for taxicab service provided under subparagraphs (II), (III), or (IV) of this paragraph. Taxicab service provided under this paragraph is subject, without limitation, to the multiple loading provisions of paragraphs 6253(a) and 6255(b), and to the tariff provisions in paragraph 6207(d).
 - (I) If the first party is dropped at a point in Zone A, B, or C and the second party is dropped at a different point in the same zone, the total fare shall be the appropriate flat rate fare for the zone plus a \$5.00 charge for each additional drop within the zone.
 - (II) If the first party is dropped at a point in Zone A, B, or C and the second party is dropped at a point in a different zone, the fare for the first party shall be the appropriate flat rate fare for that zone. The fare for the second party shall be the lesser of the meter fare from the drop point in the first zone to the drop point in the second zone or the appropriate flat rate fare from DIA to the zone.
 - (III) If the first party is dropped at a point in Zone A, B, or C and the second party is dropped at a point not in Zone A, B, or C, the fare for the first party shall be the appropriate flat rate fare for that zone. The fare for the second party shall be the meter fare from the drop point in Zone A, B, or C to the drop point that is not in Zone A, B, or C.
 - (IV) If the first party is dropped at point that is not in Zone A, B, or C and the second party is dropped at a point that is in Zone A, B, or C, the fare for the first party shall be the meter fare from DIA to the drop point that is not in Zone A, B, or C. The fare for the second party shall be the appropriate flat rate for that zone.
- (d) The zones established in this rule include the following:
 - (I) Zone A (Downtown Denver): Beginning at the intersection of Clarkson Street and Park Avenue West, then northwest on Park Avenue West to Interstate 25, then south on Interstate 25 to 13th Avenue, then east on 13th Avenue to Clarkson Street, then north on Clarkson Street to the point of beginning.
 - (II) Zone B (Denver Technological Center): Beginning at the intersection of Dayton Street and Arapahoe Road, then north on Dayton

Street to Belleview Avenue, then west on Belleview Avenue to Yosemite Street, then north on Yosemite Street to Quincy Avenue, then west on Quincy Avenue to Monaco Street, then south on Monaco Street to Belleview Avenue, then east on Belleview Avenue to Quebec Street, then south on Quebec Street to Arapahoe Road, then east on Arapahoe Road to the point of beginning.

- (III) Zone C (Boulder): The area within the city limits of the City of Boulder, Colorado, as such city limits exist on the day these Transportation by Motor Vehicle Rules become effective.
- (e) The distances between DIA and the zones shall be measured by the Commission along the following routes:
- (I) Zone A: Beginning at the taxi loading zone on the west side of level 5 at DIA, then exiting DIA by proceeding west and then south on Pena Boulevard to its intersection with Interstate 70, then west on Interstate 70 to its intersection with Brighton Boulevard, then southwest on Brighton Boulevard to its intersection with Broadway, then south on Broadway to its intersection with Tremont Street, then right on Tremont Street to the Brown Palace Hotel for a total distance of 24.2 miles.
- (II) Zone B: Beginning at the taxi loading zone on the west side of level 5 at DIA, then exiting DIA by proceeding west and then south on Pena Boulevard to its intersection with Interstate 70, then west on Interstate 70 to its intersection with Interstate 225, then south on Interstate 225 to its intersection with Yosemite Street, then south on Yosemite Street to its intersection with Orchard Road for a total distance of 26.3 miles.
- (III) Zone C: Beginning at the taxi loading zone on the west side of level 5 at DIA, then exiting DIA by proceeding west and then south on Pena Boulevard to its intersection with Interstate 70, then west on Interstate 70 to its intersection with Interstate 270, then northwest on Interstate 270 to its intersection with U. S. Highway 36, then northwest on U. S. Highway 36 to its intersection with Arapahoe Avenue in Boulder for a total distance of 44 miles.
- (f) The flat rates shall be as set forth in the following provisions:
- (I) Zone A: The flat rate between DIA and any point in Zone A shall be \$51.00, plus any applicable airport gate fee divided evenly among the parties, plus any applicable per drop charge of \$5.00.
- (II) Zone B: The flat rate between DIA and any point in Zone B shall be \$57.00, plus any applicable airport gate fee divided evenly among the parties, plus any applicable per drop charge of \$5.00.
- (III) Zone C: The flat rate between DIA and any point in Zone C shall be \$84.00, plus any applicable airport gate fee divided evenly among the parties, plus any applicable per drop charge of \$5.00.
- (g) Two or more taxicab carriers subject to this rule may file a joint application proposing new flat rates. Such a joint application shall include the following information:
- (I) The cost of fuel for a trip between DIA and Zone A, B, or C, as applicable.
- (II) The average number of trips per day between DIA and Zone A, B, or C, as applicable.
- (III) The difference between the existing mileage fare and the existing flat rate fare between DIA and Zone A, B, or C, as applicable.
- (IV) The difference in lease rates referenced in § 40-3-103, C.R.S., between drivers who only provide transportation to and from DIA and drivers who accept dispatched calls.
- (V) Any other pertinent information.
- (h) The Commission may, on its own motion, open a docket to change existing flat rates. New flat rates approved by the Commission shall apply to any other taxicab carrier affected by this rule. Any such taxicab carrier shall file an amended tariff reflecting the new flat rates within 10 days of the mailed date of the Commission decision approving the new flat rates.

6257. Taxicab Violations, Civil Enforcement, and Civil Penalties.

- (a) A person who violates subparagraph (b)(I) of rule 6256 may be assessed a civil penalty as follows for each violation:
- (I) Up to \$275.00 for an overcharge of \$25.00 or less.
- (II) Up to \$550.00 for an overcharge greater than \$25.00 but less than or equal to \$50.00.
- (III) Up to \$1,100.00 for an overcharge greater than \$50.00.
- (b) A violation of paragraph (b) or (c) of rule 6253 may result in the assessment of a civil penalty of up to \$550.00 for each violation.
- (c) A violation of paragraphs (c) and (e) of rule 6254 may result in the assessment of a civil penalty of up to \$100.00 for each violation.
- (d) Except as provided for in paragraphs (a), (b), and (c) of this rule, a person who violates any provision of these Taxicab Carrier Rules may be assessed a civil penalty of up to \$275.00 for each violation.

6258. - 6299. [Reserved].

EXEMPT PASSENGER CARRIER RULES

6300. Applicability of Exempt Passenger Carrier Rules.

Rules 6300 through 6399 apply to all exempt passenger carriers.

6301. Definitions.

In addition to the generally applicable definitions in rule 6001, the following definitions apply only in the context of these Exempt Passenger Carrier Rules:

- (a) "Charter basis" means on the basis of a contract for transportation whereby a person agrees to provide exclusive use of a motor vehicle to a single chartering party for a specific period of time during which the chartering party shall have the exclusive right to direct the operation of the vehicle, including, but not limited to, selection of the origin, destination, route, and intermediate stops.
- (b) "Chartering party" means a person or group of persons who share a personal or professional relationship whereby all such persons are members of the same affiliated group, including, without limitation, a family, business, religious group, social organization or professional organization. "Chartering party" does not include groups of unrelated persons brought together by a carrier, transportation broker, or other third party.

6302. Registration Requirement.

No person shall offer services as an exempt passenger carrier without a valid registration issued by the Commission.

6303. Registration.

- (a) Any person seeking to register as an exempt passenger carrier shall provide the following information, as applicable:
- (I) The name of the registrant and the trade name under which operations will be conducted.
 - (II) A copy of the registrant's certificate of assumed trade name or trade name registration.
 - (III) The registrant's telephone number, complete physical address, and complete mailing address. A post office box is only acceptable if a physical address is also provided.
 - (IV) The name and address of the registrant's Colorado agent for service of process, if required by rule 6011.
 - (V) A statement describing the registrant's business structure (corporation, limited liability company, partnership, or sole proprietorship).
 - (VI) If a registrant is a corporation:
 - (A) The name of the state in which the registrant is incorporated.
 - (B) The location of the registrant's principal office, if any, in Colorado.
 - (C) The name and title of each director and officer.
 - (D) A certified copy of the registrant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the registration.
 - (VII) If the registrant is a limited liability company:
 - (A) The state in which the company is organized.
 - (B) The location of the registrant's principal office, if any, in Colorado.
 - (C) The name and title of each member.
 - (D) A certified copy of the registrant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the registration.
 - (VIII) If the registrant is a partnership:
 - (A) The name and business address of all general and limited partners.
 - (B) The location of the registrant's principal office, if any, in Colorado.
 - (IX) If the registrant is a sole proprietorship:
 - (A) The name and business address of the sole proprietor.
 - (B) The location of the sole proprietor's principal office, if any, in Colorado.
 - (X) A statement setting out the seating capacity of the vehicle with the largest seating capacity in the fleet of vehicles to be used by the registrant under its registration.
 - (XI) Copies of any authority, issued by either a state or a federal agency, under which the registrant contends that it may provide for-hire transportation of passengers in the State of Colorado.
 - (XII) A statement that the registrant is familiar with the Exempt Passenger Carrier Rules and all applicable safety rules and that the registrant will comply with them.
 - (XIII) A statement that the registrant understands that the filing of a registration does not constitute authority to operate.
 - (XIV) A verification made under penalty of perjury and signed by an authorized officer, partner, owner, employee, or manager of the registrant, as appropriate, verifying that the contents of the registration form and all attachments are true, accurate, and correct. The registration form shall contain the complete address of the affiant.
- (b) In addition to the information required by paragraph (a), a person registering as an exempt passenger carrier under this rule shall cause to be filed both the required proof of financial responsibility and the required annual identification fees.
- (c) The Commission will not register any person as an exempt passenger carrier until the Commission has received all information and documentation required by paragraphs (a) and (b) of this rule.

6304. Exterior Signs or Graphics.

- (a) Except as otherwise provided in these rules, no person shall place, or permit to be placed, on a luxury limousine any exterior signs or graphics that provide:
- (I) an identification of the name, address, internet address, phone number, or any other contact information of the person offering luxury limousine service; or
 - (II) any identification of a type of passenger transportation service including, but not limited to, bus, limousine, shuttle, or taxi.
- (b) Signs or graphics located inside the luxury limousine that are readily legible from the outside shall be deemed to be exterior signs and graphics.
- (c) Nothing in this rule shall prohibit the following:
- (I) markings, signs, or graphics otherwise required by law, including those required by any rule of the Commission, the Colorado Department of Public Safety, the FMCSA, or an airport authority;
 - (II) markings, signs, or graphics attached by any law enforcement agency; or
 - (III) signs or graphics attached by the motor vehicle manufacturer or dealership for the purpose of identifying the manufacturer, dealership, or the motor vehicle's make or model.

6305. Luxury Limousine Features.

- (a) Features. Each luxury limousine carrier shall ensure that its motor vehicles are in good physical condition, excluding consideration of defects covered by the Commission's safety rules. The Commission shall use the following general guidelines in determining if a vehicle is in good physical condition:
- (I) The body of the luxury limousine has a good, unfaded paint job; is devoid of major dents and rust, broken trim, and cracked windows other than the windshield; and
 - (II) Except for problems caused by current weather conditions, the interior of the luxury limousine is clean, free of offensive odors, and has no major tears, cracks, or stains upon the upholstery, headliner, and carpeting.
- (b) Age of Motor Vehicles. Except for luxury limousines covered under rule 6308(a)(IV) and/or vehicles covered by rule 6309, luxury limousine carriers shall not use vehicles older than ten model years as of July 1st of each year. For purposes of this rule, the counting of model years shall begin with the present calendar year. By way of example, from July 1, 2004, and June 30, 2005, counting backwards, 2004 is the first model year, 2003 is the second model year, and so forth.

6306. [Reserved].

6307. Regulations Incorporated by Reference. [Reserved].

6308. Luxury Limousine Categories.

- (a) A luxury limousine shall fit one or more of the following categories:
- (I) Stretched limousine, which is a motor vehicle whose wheelbase has been lengthened beyond the manufacturer's original specifications whether at the manufacturer's factory or otherwise.
 - (II) Executive car, which is a motor vehicle that has four doors and is:
 - (A) a sedan including Acura RL, Audi A8 Series, Audi A6 Series, Audi S8 Series, Bentley Continental Flying Spur, Bentley Arnage, BMW 7 Series, BMW 5 Series, BMW Alpina, BMW M5, Cadillac DTS, Chrysler 300, Ferrari 612, Infiniti M Series, Jaguar S-Type, Jaguar Vdp Lwb, Jaguar XJ Series, Jaguar X-Type Series, Jaguar Super, Lexus LS Series, Lexus G Series, Lexus E Series, Lincoln Town Car, Maserati Quattroporte, Maybach 57 Series, Maybach 62 Series, Mercedes-Benz S Class Series, Mercedes-Benz E Class Series, or Rolls Royce Phantom; or
 - (B) a sport utility vehicle including Audi Q7, Cadillac Escalade, Chevrolet Suburban, Chevrolet Tahoe, Ford Excursion, Ford Expedition, GMC Yukon, Hummer (all models, excluding sport utility truck version), Infiniti QX, Lexus LX, Lincoln Navigator, Mercedes-Benz M Class Series, Mercedes-Benz G Class Series, or Mercury Mariner Hybrid with livery package.
 - (III) Executive van, which is a motor vehicle built on a cutaway chassis, a motor coach, or a van (but not a mini van as classified by the manufacturer) whose interior has been enhanced by the installation of either:
 - (A) Captain's chairs, couch seats, or similar seating in place of standard bench seating; or
 - (B) Both of the following:
 - (i) An electronic video media system such as television, DVD, or VHS that is securely attached to the motor vehicle in a professional manner. The screen shall have a diagonal measurement of at least three inches, be viewable by passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88.
 - (ii) Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature.
 - (IV) Other limousine, which is a classic, antique, or specially built motor vehicle that has or had a retail value of fifty thousand dollars or more.
- (b) A luxury limousine carrier operating a motor vehicle pursuant to subparagraph (a)(IV) of this rule shall, upon request by an enforcement official, produce evidence that the motor vehicle meets the requirements of subparagraph (a)(IV) of this rule.

6309. Luxury Limousines – Previously Qualified Vehicles.

Notwithstanding anything in rules 6305(b) and 6308 to the contrary, any vehicle qualified as a luxury limousine on or before July 30, 2008, shall maintain its qualification status so long as it is operated under the exempt passenger carrier registration under which it was so qualified.

6310. Luxury Limousines – Operational Requirements, Prearrangement Required.

- (a) No person shall provide luxury limousine service except on a prearranged basis. For purposes of this rule, "prearranged basis" means that the luxury limousine service has been arranged or reserved before the luxury limousine service, or ancillary service thereto, is provided. No person shall provide luxury limousine service, or a service ancillary to luxury limousine service, if that person arranges provision of the service with the chartering party at or near the point of departure.
- (b) A luxury limousine carrier shall, at all times when providing luxury limousine service, carry in each vehicle a charter order containing the name, telephone number, pickup time, and pickup address of the chartering party who has arranged for use of the vehicle.
- (c) A luxury limousine carrier shall not station a luxury limousine in front of or across the street from a hotel or motel, or within one hundred feet of a recognized taxicab stand or a designated passenger pickup point at an airport without the completed charter order in the vehicle. The stationing of the luxury limousine shall be within a reasonable period of the pickup time noted on the charter order.
- (d) A luxury limousine carrier shall provide the charter order immediately upon request by any enforcement official or airport authority.

6311. Luxury Limousine Service – Presumptions.

- (a) A person shall be presumed to have provided luxury limousine service in violation of rule 6310(a) if, without prearrangement, such person:
 - (I) accepts payment for the transportation from the chartering party at the point of departure;
 - (II) makes the luxury limousine available to the chartering party at the point of departure;
 - (III) negotiates the immediate availability of, or the price for immediate use of, the luxury limousine at or near the point of departure;
 - (IV) loads the chartering party or its baggage into the luxury limousine; or
 - (V) transports the chartering party in the luxury limousine.
- (b) A luxury limousine carrier that charges or offers to charge for transportation services on a per person basis shall be presumed to be providing or offering to provide services as a common carrier.
- (c) A luxury limousine carrier may rebut the presumptions created in this rule by competent evidence.

6312. Exempt Passenger Carrier Violations, Civil Enforcement, and Civil Penalties.

- (a) A person who violates § 40-16-103, C.R.S., with regard to offering service without being registered, or rule 6302, may be assessed a civil penalty of up to \$1,100.00 for each violation.
- (b) A person who violates rule 6310 may be assessed a civil penalty of up to \$500.00 for each violation.
- (c) Except as provided in paragraphs (a) and (b) of this rule, a person who violates any provision of Article 16 of Title 40, C.R.S., or any provision of these Exempt Passenger Carrier Rules may be assessed a civil penalty of up to \$275.00 for each violation.

6313. – 6399. Reserved].

UNIFIED CARRIER REGISTRATION AGREEMENT RULES

6400. Applicability of Unified Carrier Registration Agreement Rules.

Rules 6400 through 6499 apply to all motor carriers, motor private carriers, freight forwarders, brokers, leasing companies, or other persons required to register under the UCR Agreement.

6401. Unified Carrier Registration Agreement.

- (a) A UCR registrant that designates or that is required to designate the State of Colorado as its base state under the UCR Agreement, shall register with the Commission. No UCR registrant may operate without registering for the applicable registration year. Each calendar year is a different registration year.
- (b) A UCR registrant shall register using the on-line registration system available at a website designated by the Commission. In lieu of registering on-line, a UCR registrant may register by submitting to the Commission a fully completed UCR Agreement registration form, the required fees, and any other required documents.
- (c) A UCR registrant must register in the proper category pursuant to the rules established under 49 U.S.C. § 14504a.
- (d) Information regarding the federally set fees is available from the Commission or its website.

6402. Interstate Carrier Violations, Civil Enforcement, and Civil Penalties.

- (a) A person who violates § 40-10.5-102(1)(a), C.R.S., or rule 6401(a) with regard to operating without a registration, may be assessed a civil penalty of up to \$1,100.00 for each violation.
- (b) Except as provided in paragraph (a) of this rule, a person who violates any provision of § 40-10.5-102, C.R.S., or any provision of the Unified Carrier Registration Agreement Rules may be assessed a civil penalty of up to \$275.00 for each violation.

6403. - 6499. [Reserved].**TOWING CARRIER RULES****6500. Applicability of Towing Carrier Rules.**

- (a) Rules 6500 through 6599 apply to all towing carriers.
- (b) Nothing in these towing carrier rules shall be construed to prohibit a county or municipality, to the extent permitted by law, from adopting and enforcing additional or more stringent requirements relating to towing carrier operations.

6501. Definitions.

In addition to the generally applicable definitions in rule 6001, the following definitions apply only in the context of these Towing Carrier Rules:

- (a) "Abandoned motor vehicle" means an "abandoned motor vehicle" as defined by §§ 42-4-1802 and 42-4-2102, C.R.S.
- (b) "Authorized agent" means a person, including a towing carrier, who has been given written or oral permission by the owner or lessee of a motor vehicle to act as agent for the disposition of said motor vehicle.
- (c) "Authorized operator" means a person who has been given written or oral permission to drive a motor vehicle by the owner or lessee of said motor vehicle.
- (d) "Law enforcement officer" means any sheriff, police officer, Colorado state patrol officer, municipal code enforcement officer, or other such person acting in his or her official capacity for enforcement of motor vehicle laws.
- (e) "Legal disability" means the condition of a trailer or semi-trailer that, due to its weight, height, or other size characteristics, is unable to be transported when attached to the vehicle that was pulling it.
- (f) "Motor vehicle" means any vehicle that is propelled or drawn by mechanical power on the public ways of the State of Colorado. The term also includes any trailer or semi-trailer attached to the vehicle, or any trailer or semi-trailer which, due to collision, mechanical disablement, legal disability, order of a law enforcement officer or property owner, must be towed or transported separately from the vehicle from which it was detached.
- (g) "Mountain area" means that part of the State of Colorado west of a line drawn ten air miles west of, and parallel to, Interstate Highway 25.
- (h) "Non-consensual tow" means:
 - (I) a tow authorized or directed by a person other than the owner, authorized operator, or authorized agent of the owner;
 - (II) any tow performed contrary to the specific direction of the owner, authorized operator, or authorized agent of the owner;
 - (III) except for a tow authorized by the property owner or a tow ordered by a law enforcement officer, any tow performed without disclosure of the rates and charges to be assessed as set forth in rule 6510;
 - (IV) a tow directed or authorized by a law enforcement officer, either orally or in writing, in any circumstance when the owner, authorized operator, or authorized agent of the owner is unavailable, unable, or unwilling to direct the tow; or
 - (V) any other tow performed without prior consent or authorization of the owner, authorized operator, or authorized agent of the owner of the motor vehicle.
- (i) "Normal business hours" means 8:00 AM to 5:00 PM, Monday through Friday, excluding holidays, and any additional hours and days the towing carrier may designate.
- (j) "Private property" means any real property that is not public property.
- (k) "Property owner" means:
 - (I) the owner or lessee of the private property or public property;
 - (II) a person who has been authorized in writing to act as agent for the owner or lessee of the private property or public property (see rule 6508(a)); or
 - (III) a federal, state, county, municipal, or other government entity that is the owner or lessee of the private property or public property, or such entity's employees responsible for such property.
- (l) "Public property" means any real property having its title, ownership, use, or possession held by the federal government; this state; or any county, municipality, or other governmental entity of this state.
- (m) "Towing vehicle" means "towing vehicle" as defined by § 40-13-101(4), C.R.S.

6502. Permit Requirement.

Unless exempted by §40-13-103(2), C.R.S., no person shall operate as a towing carrier without a valid towing carrier permit issued by the Commission.

6503. Permit Application.

- (a) Any person seeking a permit to operate as a towing carrier shall submit an application for a towing carrier permit to the Commission and shall cause to be filed the information identified in paragraph (c) of this rule.
- (b) The application shall contain the following, as applicable:
 - (I) The name of the applicant and the trade name under which operations will be conducted.
 - (II) A copy of the applicant's certificate of assumed trade name or trade name registration.
 - (III) The applicant's telephone number, complete physical address, and complete mailing address. A post office box is only acceptable if a physical address is also provided.
 - (IV) The name and address of the applicant's Colorado agent for service of process, if required by rule 6011.
 - (V) A statement describing the applicant's business structure (corporation, limited liability company, partnership, or sole proprietorship).
 - (VI) If the applicant is a corporation:
 - (A) The name of the state in which it is incorporated.
 - (B) The location of its principal office in the State of Colorado.
 - (C) The names of its directors and officers.
 - (D) A certified copy of the applicant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.
 - (VII) If the applicant is a limited liability company:
 - (A) The state in which the company is organized.
 - (B) The location of the company's principal office in the State of Colorado.
 - (C) The name, title, and business address of each member.
 - (D) A certified copy of the applicant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the application.
 - (VIII) If the applicant is a partnership, the name, title, and business address of each partner.
 - (IX) A statement that applicant is familiar with the Towing Carrier Rules and all applicable safety rules and that applicant will comply with them.
 - (X) A statement that applicant understands that the filing of an application does not constitute authority to operate.
 - (XI) A statement whether or not the towing carrier will provide storage for towed motor vehicles. If storage is provided, the application shall contain the storage facility's address and, if one exists, telephone number.
 - (XII) A statement made under penalty of perjury and signed by an officer, a partner, an owner, or an employee of the applicant, as appropriate, who is authorized to act on behalf of the applicant and which states that the contents of the application are true, accurate, and correct. The application shall contain the complete address of the affiant.
 - (XIII) An application fee of \$150.00.
- (c) In addition to the application, a person seeking a permit to operate as a towing carrier shall cause to be filed both the required proof of financial responsibility and the required annual identification fees.
- (d) The Commission will not issue a permit to operate as a towing carrier until the Commission has received a complete application, the required proof of financial responsibility, and the required annual identification fees.

6504. [Reserved].

6505. [Reserved].

6506. Equipment and Accessories.

In addition to complying with all applicable safety regulations, all towing vehicles shall meet the following minimum requirements:

- (a) Basic towing vehicle requirements.
 - (I) A towing carrier shall equip its towing vehicles with engines, transmissions, differentials, driveline components, brake systems, frames, steering components, and suspensions of sufficiently heavy construction to safely winch, lift, tow, load, and transport the towed motor vehicle.
 - (II) A towing carrier shall maintain its towing vehicles in a manner ensuring the safe winching, lifting, towing, loading, and transporting of the towed motor vehicle.
 - (III) A towing carrier shall ensure that all its towing vehicles have each of the following:
 - (A) a GVWR of at least 10,000 pounds;
 - (B) fender coverings for front and rear wheels;
 - (C) the following operational electric lights:
 - (i) one spotlight, mounted behind the cab, capable of lighting the scene of disability and the motor vehicle to be moved (reverse/back-up lights of the towing vehicle shall not be used in lieu of the spotlight); and
 - (ii) one portable, combination light system capable of being securely attached on the rear of the towed motor vehicle; consisting of (with an equal number on each side) two tail lamps, two stop lamps, and two turn signals; and operated in conjunction with analogous lights on the towing vehicle;
 - (D) one steering wheel tying device free from cracks, fraying, or deterioration; and
 - (E) the following accessories for any towing carrier that performs tows from accident scenes:
 - (i) one shovel; and
 - (ii) one broom.
- (b) Winching, lifting, towing, and carrying equipment shall be maintained in a manner to ensure the safe winching, lifting, towing, loading, and transporting of the towed motor vehicle, and shall include at least one of the following:

- (l) Winch and crane: A power-driven winch and crane with a capacity of not less than 6,000 pounds with a winch cable capable of withstanding a test of not less than 10,000 pounds at breaking point or hydraulic system vehicle lift and a cradle, with a tow plate or sling, equipped with safety chains and chains with J-hooks of sufficiently heavy construction to ensure the safe lifting of the motor vehicle;
 - (ll) Wheel-lift system: A wheel-lift system with a stinger, L arm brackets, safety chains and tie-down straps, or a mechanical wheel retainer device forming an integral part of the L-arm bracket, of sufficiently heavy construction to secure the motor vehicle to the wheel-lift unit and to ensure the safe lifting and towing of the motor vehicle; or
 - (lll) Rollback system: A rollback system with a winch and cable as described in subparagraph (l) of this paragraph, safety chains, tie-down equipment, and truck bed of sufficiently heavy construction to ensure the safe loading and transporting of the motor vehicle.
- (c) A towing carrier shall not tow a motor vehicle that is so extensively damaged as to be unmovable on its own wheels, unless the towing vehicle is equipped with dollies, a wheel-lift system, or a rollback system of sufficiently heavy construction to ensure the safe loading and towing of the damaged motor vehicle.
- (d) Rescue and recovery equipment.
- (l) For purposes of this paragraph (d), rescue and recovery operation means that a motor vehicle must first be moved by means of the mechanical devices described in subparagraph (d)(ll) before it is capable of being towed by the towing vehicle.
 - (ll) The following equipment is required only if the towing carrier performs rescue and recovery operations:
 - (A) Dead-man blocks/scotch blocks and other tie-down equipment that are sufficient to hold the towing vehicle in place while performing the rescue or recovery operation;
 - (B) Web straps or slings that are free of cuts or fraying across 50 percent of the width of their surface;
 - (C) Snatch blocks that are free of any cracks and excessive wear, and are lubricated sufficiently to allow free movement of the sheave and other swivel points; and
 - (D) Chains that are capable of withstanding a test of not less than 10,000 pounds at breaking point, with links that are free of cracks and of wear that exceeds 15 percent of the original stock diameter.

6507. Storage Facilities.

- (a) Disclosure of facility location. For non-consensual tows of other than an abandoned motor vehicle as provided for under paragraph (b) of this rule, within one hour of placing a motor vehicle in a storage facility, or such lesser time as may be required by law, a towing carrier shall disclose the location of the storage facility by notifying the responsible law enforcement agency having jurisdiction over the place from which the motor vehicle was towed. However, if notification of the law enforcement agency is not possible, then by notifying either:
- (l) the owner, the authorized operator, or the authorized agent of the owner of the towed motor vehicle; or
 - (ll) the owner of the property from which the motor vehicle was towed.
- Compliance with this paragraph will be considered accomplished if the location of the storage facility was provided to the property owner or the law enforcement agency in conjunction with obtaining authorization for the tow.
- (b) Disclosure for abandoned motor vehicles. A towing carrier which places an abandoned motor vehicle in a storage facility shall disclose the location of the storage facility by complying with the procedure for abandoned motor vehicles in Parts 18 and 21 of Article 4 of Title 42, C.R.S.
- (c) Noncompliance with disclosure requirements. A towing carrier that fails to comply with the disclosure requirements of this rule shall not charge, collect, or retain any fees or charges for storage of the stored motor vehicle.
- (d) Release of motor vehicles from storage shall be in accordance with rule 6512.

6508. Authorization for Towing of Motor Vehicles.

- (a) Towing carrier not an agent.
- (l) Notwithstanding rule 6501(k), a towing carrier, its employees, partners, officers, directors, stockholders, or independent contractors working for or with the towing carrier shall not act as an agent for the property owner except that, when the property is vacant (i.e. not being used as a residence or as a business), the towing carrier may act as the agent for the property owner under a written contract to that effect. Such written contract shall be maintained as provided in rule 6005.
 - (ll) Nothing in this paragraph shall preclude a towing carrier, which towing carrier has been paid for the tow by the property owner at rates in accordance with rule 6511(d), from collecting the towing charges from the motor vehicle owner and reimbursing said charges to the property owner.
- (b) Authorization.
- (l) A towing carrier shall not tow any motor vehicle unless one of the following conditions is met:
 - (A) The towing carrier is directed to perform a tow by a law enforcement officer;
 - (B) The towing carrier is requested to perform a tow by the owner, authorized operator, or authorized agent of the owner of a motor vehicle; or
 - (C) The towing carrier is requested to perform a tow upon the authorization of the property owner.
 - (ll) Property owner authorization. The authorization from the property owner shall be in writing; shall identify, by make and license plate number (or in lieu thereof, by vehicle identification number), the motor vehicle to be towed; and shall include the date, time, and place of removal.
 - (A) The authorization shall be filled out in full, signed by the property owner, and given to the towing carrier before the motor vehicle is removed from the property. The property owner may sign using a verifiable employee identification number or code name in lieu of the person's proper name.
 - (B) A towing carrier shall not accept or use blank authorizations pre-signed by the property owner.
 - (C) A towing carrier shall make the written authorization available for inspection by the owner of the towed motor vehicle or his or her authorized representative.
 - (D) The written authorization may be incorporated with the tow record/invoice required by Rule 6509.
- (c) Noncompliance. If a tow is performed in violation of this rule, or in violation of § 42-4-2103, C.R.S., the towing carrier shall not charge, collect, or retain any fees or charges for the unauthorized services it performs. Any motor vehicle that is held in storage and that was towed without proper authorization shall be released immediately to the owner, lienholder, or agent of the owner or lienholder without charge.

6509. Tow Record/Invoice.

- (a) Towing carriers shall use and complete all applicable portions of a tow record/invoice form for all non-consensual tows. The tow record/invoice form shall contain the following information:
- (I) the serial number of the tow record/invoice;
 - (II) the name, address, permit number, and telephone number of towing carrier;
 - (III) the address of the storage facility used by the towing carrier, including the telephone number for that storage facility if the number is different than the telephone number of the towing carrier;
 - (IV) the date and time of tow commencement and completion, the time of arrival on the scene if different from the time of commencement, the time the towed motor vehicle is placed in storage, and all other times necessary for the purpose of calculation of hourly charges;
 - (V) the make, model, year, vehicle identification number, and, if available, license plate number of the motor vehicle towed;
 - (VI) the origin address of the tow, the destination address of the tow, and the one-way mileage between such addresses;
 - (VII) unless incorporated into the authorization in rule 6508(b)(II),
 - (A) the name, address, and telephone number of the person authorizing the tow; and
 - (B) the signature of the property owner authorizing a tow;
 - (VIII) if the towed motor vehicle is unlocked, a list of its contents;
 - (IX) the unit number or license number of the towing vehicle;
 - (X) the signature of the towing vehicle operator;
 - (XI) an itemized invoice of all towing charges assessed; and
 - (XII) the signature of the owner, authorized operator, or other authorized person to whom the motor vehicle is released.
 - (XIII) within six months of the effective date of these rules and on at least the customer's copy, the following notice in a font size of at least 10: Report problems to the Public Utilities Commission at (303) 894-2070.
- (b) The tow record/invoice shall be a multiple copy form. The copies shall be distributed as follows:
- (I) The towing carrier shall retain the copy bearing all required original signatures for authorization and release.
 - (II) The towing carrier shall deliver a copy to the owner, authorized operator, or authorized agent of the owner at the time of payment of towing charges and release of the towed motor vehicle.

6510. Disclosure of Rates and Charges.

- (a) Except as provided in paragraph (c) of this rule, prior to performing any tow, a towing carrier shall disclose to the owner, authorized operator, or authorized agent of the owner of the motor vehicle all rates and charges to be assessed.
- (b) This disclosure may either be written or oral and shall include, but is not limited to, the following information:
- (I) any extra charges made necessary because, at the time of the tow, the towing carrier would be unable to deliver the motor vehicle to a repair or body shop during the normal working hours of such repair or body shop;
 - (II) any extra charges made necessary because, at the time of the tow, the towing carrier would be unable to deliver the motor vehicle to a location and at a time agreed upon by the owner, authorized operator, or authorized agent of the owner to take delivery of the vehicle and pay the tow charges; and
 - (III) estimated charges for mileage and storage.
- (c) This rule does not apply to non-consensual tows authorized by the property owner or tows ordered by law enforcement officers.

6511. Rates and Charges.

- (a) The rates and charges in this rule 6511 shall not apply to:
- (I) a tow of an abandoned motor vehicle weighing in excess of 10,000 pounds GVWR for which the charges are determined by negotiated agreement between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(2)(a), C.R.S.;
 - (II) a tow of an abandoned motor vehicle performed under a contract between the towing carrier and the responsible law enforcement agency as provided in § 42-4-1809(3), C.R.S.; or
 - (III) a tow of a motor vehicle authorized by a law enforcement officer, unless otherwise provided.
- (b) Charge if retrieved before removal (commonly known as "drop charge").
- (I) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle with a GVWR of less than 10,000 pounds that is parked without the authorization of the property owner attempts to retrieve the motor vehicle before its removal from the property, the maximum drop charge (whether motor vehicle is hooked up or not) is \$70.00.
 - (II) In such circumstances, the towing carrier shall advise the owner, authorized operator, or authorized agent of the owner of a motor vehicle that he or she may offer payment of the towing carrier's drop charge.
 - (III) Release of the motor vehicle shall be in accordance with rule 6512.
- (c) Rates for recovery, which includes waiting time, associated with a non-consensual tow.
- (I) Except as provided in § 42-4-1809(2)(a) regarding abandoned motor vehicles, this paragraph shall apply to the recovery of any size vehicle.
 - (II) When accompanied by documentation showing starting and ending times of the recovery, which documentation may include law enforcement incident reports and verification, a towing carrier may charge for recovery at its hourly rates, a record of which is maintained in compliance with rule 6005.
 - (III) Hourly rates for recovery shall be calculated from the time the towing carrier arrives at the scene and the law enforcement officer approves the recovery to the time the towing carrier has completed the recovery and may include time to load and to secure recovery equipment and the cleanup of the scene. Recovery time shall not include loading and securing the recovered motor vehicle to, or onto, the towing vehicle. Recovery time may include documented post-towing maintenance of recovery equipment directly attributable to the recovery.
 - (IV) The cost of additional equipment used may be recovered from the motor vehicle owner at the towing carrier's actual costs incurred plus a reasonable administrative fee of not more than twenty-five percent of those actual costs, provided that the actual costs are reasonable by industry standards.
- (d) Rates and charges for non-consensual tows. Subject to the provisions of this paragraph, the maximum rate that a towing carrier may

charge for a non-consensual tow of a motor vehicle with a GVWR of less than 10,000 pounds performed upon the authorization of the property owner is \$154.00. Except as provided in paragraphs (b), (c), (e), (f), (g), (h), (i), and (j) of this rule, this maximum rate shall include, but not be limited to, charges for the following:

- (I) all towing services rendered;
 - (II) hookup;
 - (III) use of dollies or go-jacks;
 - (IV) access to or release of the motor vehicle from storage;
 - (V) except for an abandoned motor vehicle, removal of personal property that is not attached to or a part of the equipment of the motor vehicle;
 - (VI) all commissions paid; and
 - (VII) all other services rendered in performing such non-consensual tow.
- (e) The maximum rates for a non-consensual tow from storage (i.e., directed by a law enforcement officer who is performing an accident reconstruction or stolen vehicle investigation) are as follows:
- (I) \$91.00 for one additional hookup;
 - (II) \$91.00 per hour waiting time; and
 - (III) mileage charges as provided in paragraph (f).
- (f) Mileage.
- (I) The maximum mileage charge that may be assessed for a non-consensual tow of a motor vehicle with a GVWR of less than 10,000 pounds is \$3.80 per laden mile. For purposes of this paragraph, laden mile means a mile when the towed motor vehicle is being transported.
 - (II) Fuel surcharge. Beginning on July 30, 2008, the maximum mileage charge shall be adjusted monthly by the Public Utilities Commission by setting a fuel surcharge. The surcharge shall be based on the United States Department of Energy "weekly retail on-highway diesel prices" for the Rocky Mountain region using the price per gallon of \$2.60 as the base rate. The adjustment shall provide a one-percent increase in the mileage rate for every ten-cent increase in fuel cost, or a one-percent decrease in the mileage rate for every ten-cent decrease in fuel cost, but in no event decreasing below the base rate.
- (g) Storage for non-consensual tows.
- (I) Generally.
 - (A) Storage charges shall not exceed the following rates based on a 24-hour period or any portion of a 24-hour period:
 - (i) \$30.00 for motor vehicles having a GVWR of less than 10,000 pounds;
 - (ii) \$37.00 for motor vehicles having a GVWR of 10,000 pounds or more;
 - (iii) in lieu of subparagraphs (A)(i) and (ii), and at the option of the towing carrier, storage may be charged according to the motor vehicle's length, including the tongue of a trailer, at \$1.50 per foot or portion thereof.
 - (B) Storage charges shall not be charged, collected, or retained for any day in which garage keeper's liability insurance coverage is not kept in force.
 - (II) Storage charges for a non-consensual tow may commence upon placing the motor vehicle in storage.
 - (III) Maximum accumulated charges for abandoned motor vehicles. Unless a hold order has been placed on the motor vehicle by a court, district attorney, or law enforcement agency, or unless extenuating circumstances have prevented a towing carrier from complying with the notice requirements of § 42-4-2103, C.R.S., storage charges after the tow and storage of an abandoned motor vehicle shall not be accumulated beyond 60 days after the mailing date of the report required by § 42-4-2103(4), C.R.S.
 - (IV) Exemption for municipal or county contracts. Notwithstanding any other provision of these rules, this paragraph shall not apply to any storage of a towed motor vehicle performed under a contract with a municipal, county, state, or federal agency.
- (h) For a non-consensual tow, the maximum charge for release of a motor vehicle from storage or access to a motor vehicle in storage at any time other than normal business hours is \$66.00.
- (i) Additional charges in mountain areas for non-consensual tows and storage.
- (I) When a motor vehicle is towed between points in the mountain area, the towing carrier may add an additional amount not to exceed 12 percent of the towing charges provided in paragraphs (b), (d), (e), and (f).
 - (II) When a motor vehicle is towed into or out of the mountain area, the towing carrier may add an additional amount not to exceed 12 percent of the towing charges, provided that the mileage charge is prorated for, and applied only to, mileage actually traveled within the mountain area.
 - (III) The towing carrier may add an additional amount not to exceed 12 percent of the storage charges provided in subparagraph (I)(A) of paragraph (g).
- (j) Abandoned motor vehicles.
- (I) Notifications. The charges for notification(s) to the owner and the lien holder(s) of the motor vehicle held in storage shall be in accordance with § 42-4-1804(6)(a) and 42-4-2103(3)(c)(I), C.R.S., and the rules of the Colorado Department of Revenue.
 - (II) Consequences of failure to notify. A towing carrier holding a motor vehicle in storage who cannot demonstrate that it has made a good faith effort, as set forth in §§ 42-4-1804(6)(b) and 42-4-2103(3)(c)(II), C.R.S., to comply with the notification requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S., shall release the motor vehicle immediately to the owner, lien holder, or their agents without charging, collecting, or retaining storage fees.
 - (III) Sale of an abandoned motor vehicle to cover the outstanding towing and storage charges must be done in accordance with the notice and procedural requirements of Parts 18 and 21 of Article 4 of Title 42, C.R.S., and § 42-5-109, C.R.S.
 - (IV) Additional costs that may be charged when a stored motor vehicle is sold.
 - (A) When a stored motor vehicle is sold, a towing carrier may charge the costs of maintaining that motor vehicle while in storage in accordance with § 38-20-109, C.R.S.
 - (B) When a stored motor vehicle that does not come within the provisions of § 38-20-109, C.R.S., is sold, a towing carrier may charge the costs of maintaining that motor vehicle, to a maximum of \$90.00.
 - (C) "Cost of maintaining a motor vehicle" means a documented cost that is incurred by the towing carrier and that keeps a motor vehicle in safe or operable condition.

- (D) Certified VIN verification procedure. When an abandoned motor vehicle that is less than five model years old and that the Colorado Department of Revenue cannot find in its records must be sold, the maximum rates that may be charged for a certified vehicle identification number (VIN) verification are as follows:
- (i) Rates as provided in paragraph (e); and
 - (ii) In addition, the towing carrier may charge for all other documented expenses of obtaining the VIN verification.

6512. Release of Motor Vehicle.

- (a) Except as provided in subparagraph (c) of this rule, if payment of the drop charge is offered in either cash or a valid credit card (specified by the towing carrier), or if payment of the towing, storage, and release charges is offered in cash or another form of payment accepted by the towing carrier, the towing carrier shall immediately accept payment and release the motor vehicle to:
- (I) the motor vehicle owner, authorized operator, or authorized agent of the owner of the motor vehicle;
 - (II) the lienholder or agent of the lienholder of the motor vehicle; or
 - (III) the insurance company or agent of the insurance company providing coverage on the motor vehicle, if released to the insurance company by the owner.
- (b) A towing carrier that accepts for storage a motor vehicle that has been towed as a non-consensual tow upon the authorization of the property owner shall be available within the first 24 hours of storage to provide access to or release of the motor vehicle as provided in paragraph (a) to the owner, authorized operator, or authorized agent of the owner of the motor vehicle either:
- (I) With one hour's notice during all times other than normal business hours; or
 - (II) Upon demand during normal business hours.
- (c) The towing carrier, at its discretion, need not comply with paragraph (a) if:
- (I) the towing carrier is reasonably certain that, at the time the motor vehicle is to be released from storage, the driver of the motor vehicle is not capable of safely driving the motor vehicle due to the influence of drugs or alcohol;
 - (II) the towing carrier that is to remove the motor vehicle from storage does not have a valid towing carrier permit or proof of motor vehicle liability coverage;
 - (III) a hold order is in place on the motor vehicle by a court, district attorney, law enforcement agency, or law enforcement officer; or
 - (IV) the release of the motor vehicle does not comply with the release procedures agreed to between the towing carrier and the applicable law enforcement agency.
 - (V) the towing carrier, upon notification for the release of or access to a motor vehicle at other than normal business hours, has immediately contacted an appropriate law enforcement agency and, in the interest of public order, has requested a law enforcement officer's presence during the release of the motor vehicle. This exception is applicable when the towing carrier has reason to believe that the motor vehicle's owner, authorized operator, or authorized agent of the owner of the motor vehicle may disrupt the public order.
- (d) Upon payment of the charges the towing carrier shall make the property owner's written authorization available for inspection by the owner of the towed motor vehicle or his or her authorized representative.
- (e) The towing carrier may require either written or oral notification from the owner or lienholder of a motor vehicle that the person to whom it is to be released is authorized to take possession of the motor vehicle.

6513. Inspection of Records, Facilities, and Towing Vehicles.

- (a) Upon request of any enforcement official and during normal business hours, a towing carrier shall make available for inspection its storage facilities.
- (b) Upon request by any enforcement official, the towing carrier shall make available for inspection its towing vehicles.

6514. Towing Violations and Civil Penalty Assessments.

- (a) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$1,100.00 for each violation:
- (I) § 40-13-103(1), C.R.S.; or rule 6502.
 - (II) subparagraph (b)(I) or (II)(B) of rule 6508.
 - (III) paragraph (c) of rule 6508.
- (b) A violation of paragraph (d), (e), (f), (h), (i), or subparagraphs (b)(1) or (g)(I)(A) of rule 6511 may result in the assessment of a civil penalty as follows for each violation:
- (I) Up to \$275.00 for an overcharge \$25.00 or less.
 - (II) Up to \$550.00 for an overcharge greater than \$25.00 but less than or equal to \$50.00.
 - (III) Up to \$1,100.00 for an overcharge greater than \$50.00.
- (c) A violation of any of the following provisions may result in the assessment of a civil penalty of up to \$550.00 for each violation:
- (I) paragraph (a), (b), or (c) of rule 6507.
 - (II) paragraph (a) of rule 6510.
- (d) A violation of rule 6506 may result in the assessment of a civil penalty of up to \$100.00 for each violation
- (e) Except as provided in paragraph (a), (b), (c), and (d) of this rule, a violation of any provision of Title 40, C.R.S., pertaining to towing carriers, or any provision of rules 6500 through 6513, may result in the assessment of a civil penalty of up to \$275.00 for each violation.

6515. - 6599. [Reserved].

HOUSEHOLD GOODS MOVER AND PROPERTY CARRIER RULES

6600. Applicability of Household Goods Mover and Property Carrier Rules.

Rules 6600 through 6699 apply to all household goods movers and property carriers.

6601. Definitions.

In addition to the generally applicable definitions in rule 6001, the following definitions apply only in the context of these Household Goods Mover and Property Carrier Rules:

- (a) "Accessorial service" means "accessorial service" as that term is defined in § 40-14-102(1), C.R.S.

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(b) [Reserved].

(c) "Contract" means "document" as that term is defined in § 40-14-102(5), C.R.S.

(d) "Estimate" means "estimate" as that term is defined in § 40-14-102(6), C.R.S. An estimate is not a contract.

(e) "Shipper" means "shipper" as that term is defined in § 40-14-102(12), C.R.S.

(f) "Storage" means "storage" as that term is defined in § 40-14-102(13), C.R.S.

6602. Registration Requirement and Limitation.

(a) Registration required.

(I) No person shall offer service, operate, or advertise as a household goods mover without a valid registration issued by the Commission or a temporary household goods mover registration issued through the Colorado Ports of Entry.

(II) No person shall offer service or operate as a property carrier without a valid registration issued by the Commission.

(b) Registration as a household goods mover is not a substitute for registration as a property carrier. Registration as a property carrier is not a substitute for registration as a household goods mover.

6603. Registration.

(a) Any person seeking to register as a household goods mover or property carrier shall provide the following information, as applicable:

(I) The name of the registrant and the trade name under which operations will be conducted.

(II) A copy of the registrant's certificate of assumed trade name or trade name registration.

(III) The registrant's telephone number, complete physical address, and complete mailing address. A post office box is only acceptable if a physical address is also provided.

(IV) The name and address of the registrant's Colorado agent for service of process, if required by rule 6011.

(V) A statement describing the registrant's business structure (corporation, limited liability company, partnership, or sole proprietorship).

(VI) If a registrant is a corporation:

(A) The name of the state in which the registrant is incorporated.

(B) The location of the registrant's principal office, if any, in Colorado.

(C) The name and title of each director and officer.

(D) A certified copy of the registrant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the registration.

(VII) If the registrant is a limited liability company:

(A) The state in which the company is organized.

(B) The location of the registrant's principal office, if any, in Colorado.

(C) The name and title of each member.

(D) A certified copy of the registrant's certificate of good standing authorizing it to do business in Colorado, certified within 14 days prior to the filing of the registration.

(VIII) If the registrant is a partnership:

(A) The name and business address of all general and limited partners.

(B) The location of the registrant's principal office, if any, in Colorado.

(IX) If the registrant is a sole proprietorship:

(A) The name and business address of the sole proprietor.

(B) The location of the sole proprietor's principal office, if any, in Colorado.

(X) A statement that the registrant is familiar with the Household Goods Mover and Property Carrier Rules and all applicable safety rules and that the registrant will comply with them.

(XI) A statement that the registrant understands that the filing of a registration does not constitute authority to operate.

(XII) A statement indicating whether any of the motor vehicles to be used have a GVWR of 10,000 or more pounds.

(XIII) A verification made under penalty of perjury and signed by an authorized officer, partner, owner, employee, or manager of the registrant, as appropriate, verifying that the contents of the registration form and all attachments are true, accurate, and correct. The registration form shall contain the complete address of the affiant.

(b) In addition to the information required by paragraph (a):

(I) A person registering as a household goods mover or property carrier under this rule shall cause to be filed both the required proof of financial responsibility and the required annual identification fees.

(II) Household goods movers shall pay an annual filing fee of \$300.00.

(III) Property carriers shall pay a registration filing fee of \$50.00; except that a person that simultaneously registers as a property carrier and as a household goods mover shall be exempt from the \$50.00 registration filing fee and need only pay the \$300.00 annual filing fee for a household goods mover.

(c) The Commission will not register any person as a household goods mover or property carrier until the Commission has received all information, documentation, and payments required by paragraphs (a) and (b) of this rule.

(d) Household goods mover registration.

(I) The Commission may deny or refuse to renew the registration of a household goods mover pursuant to § 40-14-103(3), C.R.S.

(II) For a household goods mover that submitted registration materials during the effectiveness of House Bill 07-1249 and whose registration remains pending, the Commission waives all fingerprint-based criminal history record check rule requirements derived under House Bill 07-1249 that preclude the immediate issuance of said registration.

(e) The Colorado Department of Revenue, Motor Carrier Services Division, through its Port of Entry weigh stations:

(I) may issue a non-renewable temporary household goods mover registration, valid for 15 consecutive days, to a person who:

(A) completes the temporary household goods mover registration form provided by the Commission;

(B) provides evidence of motor vehicle liability insurance as required by § 40-14-104, C.R.S.;

(C) signs a verification, under penalty of perjury as specified in § 24-4-104(13)(a), C.R.S., that the applicant is insured as required by

§ 40-14-104, C.R.S.;

(D) pays a fee of one hundred fifty dollars; and

(E) pays the annual identification fee required by § 40-2-110.5, C.R.S.

(II) may issue a temporary registration for the seasonal transportation of unprocessed agricultural produce to market or to places of storage, valid for 90 consecutive days, to a person who:

(A) provides evidence of motor vehicle liability insurance as required by § 40-16-104, C.R.S., or

(B) signs a verification, under penalty of perjury as specified in § 24-4-104(13)(a), C.R.S., that the applicant is insured as required by § 40-16-104, C.R.S.; and

(C) pays a fee of twenty dollars per vehicle.

(III) may issue the temporary registrations provided for in subparagraph (II) upon notification by the Commission identifying the specific counties, crops, and time periods for which the registrations are required, as identified by the Colorado Department of Agriculture.

6604. [Reserved].

6605. Household Goods Movers — Annual Filing Fee.

(a) Every household goods mover shall pay to the Commission an annual registration filing fee of \$300.00, as set forth in § 40-14-103(2)(a), C.R.S.

(b) For initial registrants, the annual registration filing fee shall be valid for one year from the date the registration is issued. For renewal registrants, the annual registration filing fee shall be valid for one year after expiration of the prior registration. For purposes of this paragraph, "initial registrant" includes any person re-registering after cancellation or revocation of a prior registration.

6606. [Reserved].

6607. Forms of Payment.

A household goods mover shall accept at least two of the following four forms of payment:

(a) Cash;

(b) Cashier's check, money order, traveler's check, or other form of certified funds;

(c) A valid personal check, showing upon its face the name and address of the shipper or authorized representative; or

(d) A valid credit card.

6608. Estimates and Contracts.

(a) Estimates. A household goods mover may provide an estimate of the total costs, and the basis for such costs, to be incurred by the shipper. Estimates need not be binding. Notwithstanding this paragraph, a household goods mover shall comply with paragraph (b) of this rule.

(b) Contracts. Prior to providing any transportation or accessorial services, a household goods mover shall leave a document (the contract) with the prospective shipper, which shall be in substantial compliance with the form available from the Commission or its website. Such document shall be signed and dated by the shipper and the household goods mover, and shall clearly and conspicuously include:

(I) The name, telephone number, and physical address where the household goods mover's employees are available during normal business hours;

(II) The household goods mover's mailing address on file with the Commission;

(III) The phrase "[name of household goods mover] is registered with the Public Utilities Commission of the State of Colorado as a household goods mover. Registration No. [household goods mover's registration number]."

(IV) The date the document is prepared and any proposed date of the move;

(V) The name and address of the shipper;

(VI) The addresses where the household goods are to be picked up and, if known, delivered;

(VII) A telephone number where the shipper may be reached, if available;

(VIII) A mailing address where the shipper can receive notices from the household goods mover, if available;

(IX) The name, telephone number, and physical address of a location where the household goods will be held pending further transportation, including situations where the household goods mover retains possession of household goods pending resolution of a fee or non-payment dispute with the shipper;

(X) An itemized breakdown and description of (i) all costs and/or rates including, if applicable, an explanation of the hourly amounts charged and/or amounts charged based on the weight of the load, (ii) services for transportation, and (iii) accessorial services to be provided during a move or during the storage of household goods; and

(XI) The forms of payment the household goods mover accepts pursuant to rule 6607.

(XII) The cargo valuation options available to the shipper, including at least the following two options:

(A) Released Value Option. This option shall allow the calculation of the value of loss or damage to household goods shipments to the lesser of: (1) a value equal to sixty cents (\$.60) per pound per lost or damaged article; or (2) the value of the lost or damaged article, less depreciation for age and wear.

(B) Full Replacement Cost Option. This option shall allow the shipper to recover the full replacement cost for loss or damage to household goods shipments. This option shall: (1) require the shipper to declare the value of the shipment; (2) permit the shipper to specify a deductible; (3) provide that the mover will be liable for the full replacement cost of each lost or damaged article up to the declared value of the shipment; (4) permit the shipper to purchase additional insurance coverage from the household goods mover's insurance company; and (5) explain that, without the purchase of additional coverage, the shipper will be liable for any declared amount not covered by the household goods mover's insurance or surety company. However, if the shipper declares a value that is less than the value of the shipment, the mover's liability for each lost or damaged article will not exceed the proportional value of the article when compared to the declared value of the entire shipment.

(c) More comprehensive contract. Nothing in this rule shall be construed to preclude the household goods mover and the shipper from entering into a more comprehensive contract. However, the household goods mover shall not enter into any more comprehensive contract containing provisions that conflict with the provisions of this rule.

- (d) Amendment. The contract may be amended at any time upon mutual agreement of the household goods mover and the shipper. An amendment of the contract shall not be valid or enforceable unless, without duress or coercion as per Colorado law, both the household goods mover and the shipper sign such amendment. A household goods mover shall not charge, collect, or retain any increased costs and/or rates contained in an amendment if the amendment is not signed by both parties or is obtained by duress or coercion. The mover shall leave with the shipper a copy of the amendment.
- (e) Effect. The terms of an executed contract shall be binding on both the household goods mover and the shipper unless a court of competent jurisdiction determines otherwise.
- (f) Upon completion of the move, the mover shall provide the shipper with a copy of the completed contract, including any amendments, with a breakdown of all charges.

6609. Consumer Advisement and Binding Arbitration

- (a) A mover shall provide the shipper with a consumer advisement at or before the commencement of the move or any accessorial services rendered. The consumer advisement shall be in substantially the following form and language:

CONSUMER ADVISEMENT

Intrastate movers in Colorado are regulated by the Colorado Public Utilities Commission (PUC). Each mover should have a PUC registration number. You are encouraged to contact the PUC to confirm that the mover you are using is indeed registered in Colorado.

A mover that is not registered may not withhold any of your property to enforce payment of money due under the contract ('carrier's lien').

A mover must include its PUC registration number, true name, and physical (street) address in all advertisements.

You should be aware that the total price of any household move can change, based on a number of factors that may include, but are not limited to:

Additional services you request at the time of the move;

Additional items to be moved that were not included in the mover's original estimate;

Changes to the location or accessibility of building entrances, at either end of the move, that were not included in the mover's original estimate; and

Changes to the previously agreed date of pickup or delivery.

You should also be aware that, in case of a dispute between you and the mover, Colorado has an arbitration process available to resolve the dispute without going to court.

If you have any questions, you are encouraged to call the PUC at (303) 894-2070 for guidance on your rights and obligations.

I acknowledge that I have been given a copy of this consumer advisement to keep for my records.

Signed _____ (shipper). Date _____

- (b) In the event of a dispute between the shipper and the mover regarding the amount charged for services or concerning lost or damaged goods, the mover shall offer the shipper the opportunity to participate in binding arbitration per the requirements of §40-14-114, C.R.S.

6610. Delivery and Storage of Household Goods.

- (a) Pursuant to § 40-14-109(1), C.R.S., a household goods mover shall not refuse to relinquish prescription medicines, medical equipment, medical devices, or goods for use by children, including children's furniture, clothing, or toys under any circumstances. The household goods mover shall relinquish such items as expeditiously as possible under the circumstances.
- (b) A household goods mover shall relinquish household goods to a shipper and shall place the goods inside a shipper's dwelling unless:
- (i) the shipper has not tendered payment in the amount and in the acceptable form specified in the contract; or
 - (ii) the shipper or the shipper's agent is not available to accept delivery of the household goods at the agreed upon date, time, and location.
- (c) If, pursuant to paragraph (b) of this rule, a household goods mover maintains possession of a shipper's household goods, such household goods mover may place the household goods in storage until payment is tendered. Such storage shall only be at the location specified in the contract unless, for good cause and in good faith, the mover is required to store the household goods at a location other than that specified in the contract. If the household goods mover stores the household goods at such an alternate location, the household goods mover:
- (i) Shall mail to the shipper a notice of such alternate storage location within two business days. For purposes of this subparagraph, "business day" means Monday through Friday, excluding legal holidays designated by the Colorado General Assembly.
 - (ii) May only charge additional fees for such alternate storage (i.e., in excess of those set forth in the contract) unloading services, and reloading services, if:
 - (A) Such additional fees are reasonable; and
 - (B) Storage at the alternate storage location is necessitated by some act or omission of the shipper, or is necessitated by circumstances beyond the control of the mover.
- (d) Notwithstanding any other provision of this rule, upon written request from the shipper, the household goods mover shall notify the shipper of the storage location and the amount due. Such notice shall be given within five days of receipt of the written request.
- (e) If a household goods mover opts not to place the shipper's household goods in storage pursuant to paragraph (c) of this rule, the household goods mover shall take reasonable care to ensure the safekeeping of such household goods.
- (f) A household goods mover shall not require a shipper to waive any rights or requirements under this rule.

6611. Violations, Civil Enforcement, and Civil Penalties.

- (a) A person who violates any of the following provisions may be assessed a civil penalty of up to \$1,100.00 for each violation:
- (i) § 40-14-103(1), C.R.S., with regard to operating, offering service, or advertising without being registered; § 40-16-103, C.R.S., with regard to offering service without being registered; or rule 6602(a).
 - (ii) § 40-14-108(1), C.R.S., or paragraph 6608(b), with regard to providing the shipper with a contract prior to providing transportation or

accessorial services.

(III) paragraph 6608(d).

(IV) § 40-14-109(1) or (2), C.R.S.; or paragraph (a) or (b) of rule 6610.

(b) A person who violates any of the following provisions may be assessed a civil penalty of up to \$550.00 for each violation:

(I) paragraph (c), (d), (e), or (f) of rule 6610.

(c) Except as provided for in paragraph (a) and (b) of this rule, a person who violates any provision of Title 40, C.R.S., pertaining to household goods movers, or any provision of rules 6600 through 6610 may be assessed a civil penalty of up to \$275.00.

6612. – 6699. [Reserved].

Editor's Notes

History

Sections 6008, 6101, 6103, 6105, 6501, 6507, 6508, 6509, 6510, 6511, 6513 eff. 05/28/2007.

Sections B&P; 6016; 6603 eff. 07/01/2007.

Sections 6000 - 6015, 6100 - 6602, 6604 - 6699 eff. 08/01/2007.

Sections B&P; 6001; 6304 – 6305; 6307 – 6312 Emer. Rule eff. 07/18/2007.

Sections B&P; 6016; 6603 Emer. Rule eff. 08/17/2007.

Emer. Rule Sections 6000; 6001; 6004; 6005; 6007; 6008; 6009; 6011; 6400 – 6499 eff. 09/11/2007; expired 04/08/2008.

Emer. Rule Sections 6001; 6304 - 6305; 6307 – 6312 eff. 02/13/2008.

Emer. Rule Sections 6016; 6603 eff. 03/14/2008.

Sections B&P, 6000, 6001, 6004, 6005, 6007, 6008, 6009, 6011, 6400 – 6499 eff. 06/30/2008.

Emer. Rule Sections 6009, 6016, 6203, 6205, 6603 eff. 07/01/2008.

Sections 6000, 6001, 6002, 6006, 6007, 6015 – 6016, 6105, 6201, 6203, 6205, 6301, 6304 - 6305, 6307-6312, 6603 eff. 07/30/2008.

Emer. Rule Sections B&P, 6015, 6603 eff. 07/30/2008.

Emer. Rule Sections 6103, 6308 eff. 08/15/2008; expired 09/05/2008, 12:01 AM.

Emer. Rule Section 6009 expired 01/16/2009.

Emer. Rule Sections B&P; 6015; 6603 eff. 02/25/2009.

Entire Rule eff. 07/30/2009.

[Show/Hide IDs](#)

Block 1 of 1

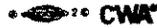
Exhibit 31
(Bate Stamp)

**COMMUNICATIONS WORKERS OF AMERICA
TEMPORARY MEMBERSHIP CARD AND INITIATION FEE RECEIPT**

This certifies that the person whose name appears below has applied for membership and authorized dues deductions. This temporary membership card is valid for a period of 60 days from date of application.

Name _____ Date _____ 20__
 Initiation fee paid, Yes No Date _____ 20__

APPLICANT'S COPY
A-



 (Signature of Local Union Representative) H-5

LAST NAME (Print) _____ FIRST (Print) _____ MIDDLE INITIAL _____ SOC. SEC.# _____
 STREET (Print) _____ CITY (Print) _____ STATE _____ ZIP CODE _____

**APPLICATION FOR MEMBERSHIP
Communications Workers of America**

I hereby request and accept membership in the COMMUNICATIONS WORKERS OF AMERICA and when accepted by the Local agree to be bound by the Constitution of the Union and Amendments thereto and Rules and Regulations now in effect or subsequently enacted by the Union and/or the Local to which I am assigned.

DATE _____ SIGNATURE _____

COMPANY _____ SINCE _____ DATE _____ DEPT. _____

JOB TITLE _____ JOB LOCATION _____

BIRTH DATE _____ HOME TEL _____ WORK TEL _____

INITIATION FEE _____ DIST. # _____ LOCAL # _____ REGISTERED VOTER / /

INITIATION DATE _____
 RETAIN IN LOCAL _____



 Local Secretary H-5

UNION DUES ARE NOT DEDUCTIBLE FOR INCOME TAX PURPOSES AS CHARITABLE CONTRIBUTIONS, ALTHOUGH THEY MAY BE DEDUCTIBLE AS BUSINESS EXPENSES IN ACCORDANCE WITH APPROPRIATE PROVISIONS OF THE INTERNAL REVENUE CODE.

SOURCE OF MEMBERSHIP

NEW MEMBER _____ DATE _____

REINSTATED _____ DATE _____

RECEIVED BY TRANSFER _____ DATE _____

MEMBERSHIP TERMINATED DATE _____

COMMUNICATIONS WORKERS OF AMERICA
 LOCAL 7777
 2840 S VALLEJO ST
 ENGLEWOOD, CO 80110

Invoice No. D-6

INVOICE

Customer

Name Union Taxi Co-op
 Address 2840 S Vallejo St
 City Englewood State CO ZIP 80110
 Phone 303 789-9000

Misc

Date 11/13/2009
 Order No. _____
 Rep _____
 FOB _____

Qty	Description	Unit Price	TOTAL
261	Dues for October 2009	\$ 28.00	\$ 7,308.00

SubTotal	\$ 7,308.00
Shipping	
TOTAL	\$ 7,308.00

Payment _____

Comments _____
 Name _____

Tax Rate(s) _____

UNION TAXI COOPERATIVE
 2840 S VALLEJO ST
 ENGLEWOOD, CO 80110
 (303) 922-2222

2040

DATE 11/19/09 23-2-1020

PAY TO THE ORDER OF CWA local 7777 \$ 7308.00
Seven thousand three hundred eight DOLLARS



FOR CWA dues October Lucretia Barasso

14.0000
for 2006
9/11/09

COMMUNICATIONS WORKERS OF AMERICA
LOCAL 7777
2840 S VALLEJO ST
ENGLEWOOD, CO 80110

Invoice No. D-4

INVOICE

Customer: Union Taxi Co-op
Name: 2840 S Vallejo St
Address: Englewood
City: Englewood
Phone: 303 788-9000
State CO ZIP 80110

Misc: Date 9/14/2009
Order No.
Rep
FOB

City	Description	Unit Price	TOTAL
281	Dues for August 2009	\$ 28.00	\$ 7,308.00

SubTotal \$ 7,308.00
Shipping
Tax Rate(s)
TOTAL \$ 7,308.00

Payment Selected One...
Comments * 2006
Name 10/22/09
CC # 814,616.00 (7,308.00)
Expire

COMMUNICATIONS WORKERS OF AMERICA
LOCAL 7777
2840 S VALLEJO ST
ENGLEWOOD, CO 80110

Invoice No. D-3

INVOICE

Customer: Union Taxi Co-op
Name: 2840 S Vallejo St
Address: Englewood
City: Englewood
Phone: 303 788-9000
State CO ZIP 80110

Misc: Date 10/22/2009
Order No.
Rep
FOB

City	Description	Unit Price	TOTAL
281	Dues for September 2009	\$ 28.00	\$ 7,308.00

SubTotal \$ 7,308.00
Shipping
Tax Rate(s)
TOTAL \$ 7,308.00

Payment Selected One...
Comments * 2006
Name 10/22/09
CC # 814,616.00 (7,308.00)
Expire

2006
UNION TAXI COOPERATIVE
2840 S VALLEJO ST
ENGLEWOOD, CO 80110
(800) 922-2522

DATE: 10/22/09 23-2-1000
\$ 14616.00
fourteen thousand six hundred sixteen
dollars

CWA LOCAL 7777
usbank
for September August
Sandra Bernaso

COMMUNICATIONS WORKERS OF AMERICA
 LOCAL 7777
 2840 S VALLEJO ST
 ENGLEWOOD, CO 80110

Invoice No. D-3

INVOICE

Customer

Name Union Taxi Co-op
 Address 2840 S Vallejo St
 City Englewood State CO ZIP 80110
 Phone 303 789-9000

Misc

Date 8/18/2009
 Order No.
 Rep
 FOB

Qty	Description	Unit Price	TOTAL
261	Dues for July 2009	\$ 28.00	\$ 7,308.00
		SubTotal	\$ 7,308.00
		Shipping	
		TOTAL	\$ 7,308.00

Payment

Comments
 Name

Tax Rate(s)

SubTotal	\$ 7,308.00
Shipping	
TOTAL	\$ 7,308.00

UNION TAXI COOPERATIVE

2840 S. VALLEJO STREET
 ENGLEWOOD, CO 80110
 PH. (303) 260-8237

3136

PAY TO THE ORDER OF

CWA Local 7777

DATE 9/11/09

23-2-1020

\$ 7,308.00

Seven thousand three hundred eight

DOLLARS



Five Star Service Guaranteed

usbank.com

FOR

CWA July dues

Andela Barasso

COMMUNICATIONS WORKERS OF AMERICA

COMMUNICATIONS WORKERS OF AMERICA
LOCAL 7777
2840 S VALLEJO ST
ENGLEWOOD, CO 80110

Invoice No. D-2

INVOICE

Customer

Name Union Taxi Co-op
 Address 2840 S Vallejo St
 City Englewood State CO ZIP 80110
 Phone 303 789-9000

Misc

Date 8/18/2009
 Order No. _____
 Rep _____
 FOB _____

Qty	Description	Unit Price	TOTAL
261	Dues for June 2009	\$ 28.00	\$ 7,308.00
		SubTotal	\$ 7,308.00
		Shipping	
		TOTAL	\$ 7,308.00

Payment

Comments _____
 Name _____
 CC # _____

Tax Rate(s)

Office Use Only

UNION TAXI COOPERATIVE
2840 S. VALLEJO STREET
ENGLEWOOD, CO 80110
PH. (303) 260-8237

3135

DATE 9/11/09 23-2-1020

PAY TO THE ORDER OF

CWA local 7777

\$ 7308.00

Seven thousand three hundred eight

DOLLARS

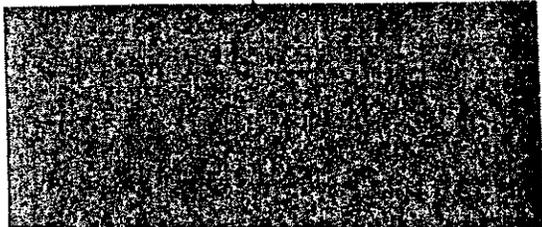


usb.com

FOR CWA June dues

Marta Burasso

May



COMMUNICATIONS WORKERS OF AMERICA
LOCAL 7777
2840 S VALLEJO ST
ENGLEWOOD, CO 80110

Invoice No. D-1

INVOICE

Customer

Name Union Taxi Co-op
Address 2840 S Vallejo St
City Englewood State CO ZIP 80110
Phone 303 789-9000

Misc

Date 7/2/2009
Order No. _____
Rep _____
FOB _____

Qty	Description	Unit Price	TOTAL
261	Dues for May, 2009	\$ 30.00	\$ 7,830.00

SubTotal	\$ 7,830.00
Shipping	
TOTAL	\$ 7,830.00

Payment Select One...

Tax Rate(s)

Comments

Name _____
AC # 1253 7/2/09
Expires _____

Office Use Only

1253

UNION TAXI COOPERATIVE
2840 S VALLEJO ST
ENGLEWOOD, CO 80110
(303) 922-2222

DATE 7/2/09

23-2-1020

PAY TO THE ORDER OF

CWA Local 7777

\$ 7830.00

Seven thousand eight hundred thirty and 00/100

DOLLARS



Five Star Service Guaranteed

usbank.com

FOR

May Dues 261

Benedict Lind