



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Competition
Bureau of Economics

November 3, 2008

The Honorable G. Harris Adams
Colorado Public Utilities Commission
1560 Broadway Suite 250
Denver, CO 80202

Re: Docket No. 08A-241CP

Dear Judge Adams,

We are pleased to submit these comments for your consideration in Docket No. 08A-241CP, pursuant to the Colorado Department of Regulatory Agencies Public Utilities Commission Rules of Practice and Procedure § 1504(b).¹ Specifically, we submit these comments in regard to the *Application of Union Taxi Cooperative for Permanent Authority to Operate a Taxi Service* to the extent that you are called upon to consider how new entry into the Denver taxicab market is likely to affect the public interest.² It is our understanding that if an applicant demonstrates its operational and financial fitness in such a proceeding, entry can then be denied only if an objecting party affirmatively proves that granting the application is not needed and also would be detrimental to the public interest. Based on the available empirical evidence and our experience in this area, we conclude that new entry is highly unlikely to harm the public interest and, in fact, may generate benefits for consumers.

I. Interest and Experience of the Federal Trade Commission

The FTC enforces laws prohibiting unfair methods of competition and unfair and deceptive acts or practices in or affecting commerce.³ The Commission has wide-ranging responsibilities concerning nearly all segments of the economy. Pursuant to this responsibility, the Commission seeks to identify business practices and regulations that impede competition

¹ Under §1504(b) “The Commission may accept comments from the public concerning any proceeding, which shall be included in the record.” 4 C.C.R. 723-1 § 1504(b).

² Docket No. 08A-241CP.

³ Federal Trade Commission Act, 15 U.S.C. § 45.

without offering countervailing benefits to consumers.⁴ In carrying out this mission, the Commission has developed considerable expertise in analyzing issues related to competition in markets for taxicab services. FTC staff have submitted numerous advocacy filings related to taxicabs with various local and state authorities.⁵ The Commission also has brought enforcement actions against two cities relating to taxicab regulation.⁶ Another major contribution in this area is an FTC staff report on taxicab regulation.⁷ Based on careful study of regulatory systems in cities throughout the country, staff found, among other things, that there is no persuasive economic rationale for restricting the number of taxicabs that may serve consumers in a given area. The report's conclusions are still generally applicable today.⁸

II. Application of Union Taxi Cooperative for Permanent Authority to Operate a Taxi Service

It is our understanding that Union Taxi Cooperative has submitted an application to the Colorado Public Utilities Commission (“CPUC”) for permanent authority to transport passengers and their baggage in taxicab service. According to Union Taxi’s application, it seeks permanent

⁴ Specific statutory authority for the FTC’s competition advocacy program is found in Sections 6(a) and (f) of the FTC Act, under which Congress authorized the FTC “[t]o gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce,” and “[t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest. . . .” 15 U.S.C. § 46(a), (f).

⁵ *E.g.*, FTC Staff Comments to the Hon. Geanne Faatz Concerning Colorado H.B. 1165 to Reform the Regulation of Taxicab Service (Feb. 7, 1985).

⁶ The FTC sued the cities of New Orleans and Minneapolis in 1984, charging both cities with unfair competition by combining with taxicab operators to impose regulations that limited the number of taxicab licenses, increased fares, and eliminated competition in violation of the federal antitrust laws. The complaint against Minneapolis was withdrawn after the city revised its ordinance to permit more competition. The complaint against New Orleans also was withdrawn after the state authorized the conduct in question by a new law. *See generally* FTC, 1985 ANNUAL REPORT 5 (1985), available at <http://www.ftc.gov/os/annualreports/ar1985.pdf>.

⁷ MARK W. FRANKENA & PAUL A. PAUTLER, AN ECONOMIC ANALYSIS OF TAXICAB REGULATION (1984) (FTC Bureau of Economics Staff Report), available at <http://www.ftc.gov/be/econrpt/233832.pdf> (“Staff Report”).

⁸ OECD, Directorate for Financial and Enterprise Affairs, Competition Committee Working Party No. 2 on Competition and Regulation, Taxi Services and Competition – United States 2 (Oct. 15, 2007), available at <http://www.ftc.gov/bc/international/docs/ustaxis.pdf> (“As of 2007, the general description of the taxicab industry and taxicab regulation in the United States remains much as it was when Frankena and Pautler described it in 1984. That is, nothing dramatic has happened to alter the U.S. industry in the interim.”).

authority from the CPUC to operate as a taxicab carrier service between all points within a twenty (20) mile radius of 16th and Champa Streets in Denver, Colorado and from said points, on the one hand to all points in the State of Colorado, on the other hand. This proposed geographic area includes Denver International Airport, among other areas.⁹ According to the application, it is restricted as follows: (1) to the use of vehicles with a seating capacity of seven (7) passengers or less, not including the driver and (2) to the use of a maximum of two-hundred sixty-two (262) cabs.¹⁰

It is also our understanding that Colorado House Bill 08-1227 became effective on July 1, 2008 and, thus, amended Colorado Revised Statutes § 40-10-105, concerning rules for issuance of certificates of public convenience and necessity to a motor vehicle carrier.¹¹ Under the amended statute, it appears that a two-step inquiry is to be applied in this case. First, “The applicant shall have the initial burden of proving that it is operationally and financially fit to provide the proposed service. The applicant shall not be required to prove the inadequacy of existing taxicab service, if any, within the applicant’s proposed geographic area of operation.”¹² Second, “If the applicant sustains its initial burden of proof . . . there shall be a rebuttable presumption of public need for the service, and the party or parties opposing the application shall bear the burden to prove that the public convenience and necessity does not require granting the application and that the issuance of the certificate would be detrimental to the public interest.”¹³

This letter does not address the merits of the application before the CPUC under the first step of this inquiry. Rather, in the event that Union Taxi Cooperative sustains its initial burden of proof and another party challenges the resulting rebuttable presumption of public need for its service under the second step, these comments are intended to aid the CPUC to the extent that it must consider the public interest factors specified therein. It is our understanding that if an applicant demonstrates its operational and financial fitness in such a proceeding, entry can then be denied only if an objecting party affirmatively proves that granting the application is not needed and also would be detrimental to the public interest. Based on the available empirical evidence and our experience in this area, we conclude that new entry is highly unlikely to harm the public interest because it is unlikely to harm consumers or competition and may generate benefits for consumers.

III. New Entry into Taxi Service is Unlikely to Harm Consumers or Competition and May Generate Consumer Benefits

Economic theory suggests that consumers of taxicab services, like all consumers, benefit

⁹ Application of Union Taxi Cooperative 1 (Docket No. 08A-241CP).

¹⁰ *Id.* at 2.

¹¹ H.B. 08-1227, 66th Gen. Assemb. (Colo. 2008).

¹² C.R.S. § 40-10-105(2)(b)(II)(A).

¹³ *Id.* at § 40-10-105(2)(b)(II)(B).

from competition.¹⁴ As the United States Supreme Court has stated:

The assumption that competition is the best method of allocating resources in a free market recognizes that *all elements of a bargain – quality, service, safety, and durability* – and not just the immediate cost, are favorably affected by the free opportunity to select among different alternative offers.¹⁵

In general, sound competition policy calls for competition to be restricted only when necessary to protect the public from significant demonstrated harm, and for the restriction to be narrowly drawn to minimize its anticompetitive impact. Thus, an inquiry into the public interest involves an assessment of the effects of new entry on consumers and competition and whether there are likely to be any significant countervailing impacts.

Studies show that deregulation of taxicab markets has not led to significant harm to consumers or competition and, in some instances, has generated consumer benefits.¹⁶ For example, studies suggest that open entry into taxicab service generally does not cause price increases and may lead to price reductions or other discounts for consumers where price competition is allowed.¹⁷ Similarly, new entry does not appear to diminish service.

¹⁴ See, e.g., *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 689 (1978); *Goldfarb v. Virginia State Bar*, 421 U.S. 773, 787 (1975); see also *United States v. Am. Bar Ass'n*, 934 F. Supp. 435 (D.D.C. 1996), *modified*, 135 F. Supp. 2d 28 (D.D.C. 2001).

¹⁵ *Prof'l Eng'rs*, U.S. at 695 (emphasis added); accord, *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 423 (1990).

¹⁶ See generally Staff Report, *supra* note 7, at 112-56; OECD, *supra* note 8, at 4-7.

¹⁷ See generally Staff Report, *supra* note 7, at 115-16, 156; OECD, *supra* note 8, at 4-7. Price declines of as much as 20% were reported in the 1990s in major New Zealand cities due to the deregulation of entry. *Id.* at 6 n.20. Indianapolis, Indiana deregulated taxicabs in 1994 and allowed jitney (transportation services for individuals along a semi-fixed route) and minivan operation. According to the city, new entrants cut fares by 7-10%. Others have questioned the overall, long-term effect of the Indianapolis deregulation, however. *Id.* at 5. Seattle, Washington opened entry and allowed fares to be set by individual taxicab firms in 1979. One study found that immediately after regulation, the fare for an average trip increased by 35%. Using a longer time frame, another study found that by 1984 these changes may have led to a 5% net reduction in fares, as radio-dispatch fares fell and taxicab stand fares rose. Another study found no net change in fares. Staff Report, *supra* note 7, at 125-31; OECD, *supra* note 8, at 4-5 (both summarizing the experience of Seattle after deregulation). Other studies have questioned whether regulated fares were, in fact, held artificially low prior to deregulation, as compared to general rates of price inflation. Craig Leisy, *Taxicab Deregulation and Reregulation in Seattle: Lessons Learned* 5 (2001).

It is our understanding that in Colorado retail rates charged by taxicab drivers are
(continued...)

Furthermore, some cities have reported that service has improved, for example, through reductions in vehicle age, increases in fleet maintenance, reductions in waiting times for radio dispatched cabs, and increases in hours of service.¹⁸ Certain consumer populations, such as the poor, who generally spend a larger portion of their income on taxicab rides than do other segments of the population would be expected to benefit the most from such prospective benefits.¹⁹

The principal beneficiaries of entry restrictions on taxicab service are incumbent taxicab operators.²⁰ Incumbent operators in many instances have a strong incentive to try to restrict entry to maintain artificially high prices and profits.²¹ Indeed, studies indicate the value of licenses to operate taxicabs in various cities to be substantial.²² In a market open to free entry, however, the value of such licenses would be zero. The fact that such licenses are valued at a premium is evidence that prices are higher and the number of trips lower than would be the case in an effectively operating freely competitive market.²³

¹⁷(...continued)

generally set through a tariff application filed by a taxicab operator and approved by the CPUC, and that these rates may change from time to time, subject to the approval of the CPUC. 4 C.C.R. 723-6 § 6207. However, a flat-rate schedule for service to and from Denver International Airport, on the one hand, and the Downtown Denver area, the Denver Tech Center, and the City of Boulder, on the other hand, is established by 4 C.C.R. 723-6 § 6256.

¹⁸ Staff Report, *supra* note 7, at 116-20, 156. *See also generally* Office of Fair Trading, *The Regulation of Licensed Taxi and PHV Services in the UK (2003)*, available at http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft676.pdf. The report finds, among other things, that quantity controls on taxicab service result in: fewer taxis per capita; longer wait times for service; and the use of less suitable alternative transportation by consumers. Therefore, the report recommends that such quantity controls be removed. *Id.* at 2-6, 23-44.

¹⁹ *See generally* Staff Report, *supra* note 7, at 102-03.

²⁰ Typically, the operator of a taxicab service, as an overall business, is distinct from an individual taxicab driver (“cabbie”) who physically transports passengers via automobile. *Compare* Application of Union Taxi Cooperative, *supra* note 9, at 6-7 (describing a cooperative owner-driver business plan).

²¹ Staff Report, *supra* note 7, at 68, 74-79, 105-11.

²² *Id.* at 106-07 (collecting taxicab license values in various cities); OECD, *supra* note 8, at 10-12 (appendix collecting taxicab license values in various cities).

²³ Certain authors, however, have argued that these substantial license values serve as a deterrent mechanism that ensures good behavior by cab drivers who fear the loss of the license in the event of inappropriate behavior. Staff Report, *supra* note 7, at 71-72; OECD, *supra* note 8, at 3.

Special issues have sometimes arisen following regulatory reform, however, as in the case of first-in first-out taxicab lines at airport, rail station, or downtown taxicab stand areas. Such queues may complicate consumer efforts to find the lowest fares.²⁴ But these problems do not provide an argument that new entry will harm consumers or competition, generally. Instead, consumers appear to be better off when regulators pursue alternatives for such locations that are less restrictive than wholesale bans on new entry, such as: redesigning taxicab stands, increasing fare transparency and fare competition, imposing lower fare ceilings, increasing taxicab line user fees, or entering into contracts with operators.²⁵

There seems to be little reason to expect that unnecessary empty cabs might clog the applicant's covered area if they are permitted to enter. Economic theory suggests that, generally, there will be more cabs only if people actually want to ride in them. Also, taxicabs can potentially reduce traffic congestion, because more cabs can mean fewer private automobiles, especially in downtown and other dense areas. There is no sound economic reason why the number of taxicabs on the street should be limited in a manner different from private cars, trucks, or other commercial vehicles. Limiting taxicab entry does not serve the purpose of minimizing congestion.²⁶

IV. Conclusion

Economic theory suggests that consumers of taxicab services, like all consumers, benefit from competition. In general, sound competition policy calls for competition to be restricted only when necessary to protect the public from significant demonstrated harm, and for the restriction to be narrowly drawn to minimize its anticompetitive impact. Thus, an inquiry into the public interest involves an assessment of the effects of new entry on consumers and competition and whether there are likely to be any significant countervailing impacts.

To the extent you are called upon to consider how new entry into the Denver taxicab market is likely to affect the public interest, we conclude that new entry is highly unlikely to harm the public interest because it is unlikely to harm consumers or competition and may generate benefits for consumers. Although narrow regulation may help reduce certain adverse effects from entry in some special circumstances, such as airport taxicab stands, these problems

²⁴ Staff Report, *supra* note 7, at 1, 50-51, 123-24, 156; OECD, *supra* note 8, at 2; Leisy, *supra* note 17, at 6. It appears in some cases that first-in first-out taxicab queues have inhibited price competition, that drivers sometimes bickered over their places in line as queues of waiting cabs lengthened, and drivers also sometimes refused service to passengers wanting only a short trip.

²⁵ Staff Report, *supra* note 7, at 1, 50-51, 123-24, 156; OECD, *supra* note 8, at 6-7.

²⁶ Staff Report, *supra* note 7, at 38-43, 121. Concerns about congestion may be more real in very dense urban areas such as Manhattan, New York or Singapore. However, even in such areas, broad entry restraints may not necessarily be the best approach to solving congestion problems. Rather, pricing mechanisms for entry into the congested area may be more efficient.

do not provide an argument that new entry will harm consumers or competition, generally. We hope you will find these comments useful. FTC staff is pleased to have this opportunity to express these views and would be happy to address any questions you may have regarding competition policy in this area.

Respectfully submitted,

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