



Office of Policy Planning
Bureau of Competition
Bureau of Consumer Protection
Bureau of Economics

March 6, 2013

State of Colorado
Public Utilities Commission
1560 Broadway Suite 250
Denver, CO 80202

Re: Docket No. 13R-0009TR

The staffs of the Federal Trade Commission’s Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics¹ appreciate this opportunity to provide comments to the Colorado Public Utilities Commission (“CPUC”) on three proposed changes to the Code of Colorado Regulations, contained in its Notice of Proposed Rulemaking *In The Matter of The Proposed Rules Regulating Transportation By Motor Vehicle*, 4 Code of Colorado Regulations 723-6.² Proposed Rule 6001(ff) would equate the advertisement or offering of the provision of transportation with being a “motor carrier.” Proposed Rule 6301(a) would require charter contract transportation, which includes transportation provided by luxury limousines, including stretched limousines and executive cars and vans, to operate using a specific

for passenger vehicle transportation services, CPUC may wish to consider whether there

These applications represent an innovativ

Truthful, non-deceptive information about passenger vehicle transportation services is necessary for the passenger vehicle transportation marketplace to function

demand for goods and services, while price declines can signal the opposite.²¹ Demand-based pricing, therefore, can be more responsive to consumer preferences than some traditional flat-rate models.

FTC staff believes that, absent some specific compelling evidence that pricing models other than a “specific fixed price” will harm consumers, this change should not be adopted. To the extent that CPUC does receive evidence of such harm, any restriction designed to address that harm should be narrowly crafted to minimize its anticompetitive impact. For example, CPUC may wish to consider requiring applications to disclose certain price information to consumers before purchase,²² expressly allowing or requiring applications to provide an electronic receipt to customers for verification purposes, or requiring applications to maintain a trip log or manifest for verification purposes.²³ Otherwise, CPUC should allow for flexibility and experimentation in charter contract pricing in order to facilitate innovative forms of pricing that may benefit consumers.

C. Proposed Rule 6309(d)

Proposed Rule 6309(d) would prohibit luxury limousines from stationing within

V. Conclusion

FTC staff appreciates this opportunity to provide views in regard to this matter and would be happy to address any questions you may have regarding competition and consumer protection policy in the passenger vehicle transportation marketplace.

Respectfully submitted,

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¹ This staff letter expresses the views of the Federal Trade Commission's Office of Policy

¹² *See generally id.*

¹³ *See generally id.*

¹⁴ *See generally* Brian X. Chen, *Uber, an App That Summons a Car, Plans a Cheaper Service Using Hybrids*, N.Y. TIMES, July 1, 2012, available at <http://www.nytimes.com> (discussing charging by time, distance, consumer demand, and gratuities); Michael B. Farrell, *Taxi App Hailo to Expand Service*, BOSTON GLOBE, Feb. 5, 2013, available at <http://www.bostonglobe.com> (discussing booking fees, service fees, and gratuities).

¹⁵ *See generally* Staff Report, *supra* note 8, at 1-2.

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¹⁸ Drip pricing is a pricing technique whereby firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process. The additional charges can be mandatory charges, such as hotel resort fees, or fees for optional upgrades and add-ons. Drip pricing is used by many types of firms, including internet sellers, automobile dealers, financial institutions, and rental car companies. *See generally* Fed. Trade Comm'n Conference on the Economics of Drip Pricing (May 21, 2012), available at <http://www.ftc.gov/be/workshops/drippricing/index.shtml>.

¹⁹ In addition, if Proposed Rule 6001(ff) were adopted, a software application would, apparently, then also be covered by Proposed Rule 6010(a), (c) (concerning motor carrier authority and permit applications and motor carrier use of trade names). CPUC may wish to consider whether, in this scenario, a software application might be unnecessarily restricted from using certain words, due to it being subjected to existing traditional motor carrier classifications. For example, CPUC may wish to consider whether, pursuant to Proposed Rule 6010(a), (c), a software application covered as a motor carrier might be unnecessarily restricted from using the phrase "limousine taxi" to describe a luxury limousine service. Staff further recommends that CPUC also more generally evaluate the use of such terms regarding motor carrier service based on a totality of the circumstances approach, as described above, and consider whether there is evidence of consumer confusion regarding different types of motor carrier services that warrants adopting Proposed Rule 6010(a), (c). CPUC may also wish to consider whether there are specific ways to clarify or update existing motor carrier classifications, so as to avoid unnecessarily inhibiting the use of applications that might facilitate passenger vehicle transportation service across different traditional classifications.

Because Proposed Rule 6010(a), (c) would implement certain restrictions on commercial speech, it may also raise First Amendment issues. *See generally* Central Hudson Gas & Elec.

²⁵ It appears that in some cases 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 that drivers also sometimes refused service to passengers wanting only a short trip. Staff Report, *supra* note 8, at 1, 50-51, 123-24, 156; OECD, *supra* note 9, at 2.