

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application	)	Application No. B-1971
of WHC NE, LLC, d/b/a Happy Cab	)	
and Z Trip, Lincoln, seeking to	)	
acquire, through sale or	)	ORDER GRANTING TRANSFER OF
transfer, the authority held by	)	AUTHORITY AND CANCELLING
Happy Cab Company d/b/a Happy	)	CERTIFICATE NO. B-1971
Cab in Application No. B-1215.	)	
	)	Entered: June 12, 2018

BY THE COMMISSION:

By application filed March 28, 2018, WHC NE, LLC d/b/a Happy Cab and Z Trip, ("Applicant"), Lincoln, seeks approval of the acquisition of the operating rights and authority granted to Happy Cab Company d/b/a Happy Cab in Application No. B-1215, which authorizes:

SERVICE AND TERRITORY AUTHORIZED:

**Common:** (A) Operate taxicabs in Omaha and vicinity. (B) Transportation by taxicab of articles weighing 100 pounds or less between Omaha, on the one hand, and on the other, between points in Nebraska over irregular routes. RESTRICTION: Restricted to an unscheduled service performed at the same rate as passenger service with both pickup and delivery made in the same vehicle. **Supplement 3:** Passengers and baggage in taxicabs over irregular routes between points in Washington, Dodge, Saunders, Sarpy, and Cass Counties, and between points in said counties on the one hand, and, on the other hand, points in Nebraska. **Supplement 4: Common:** Transportation of passengers by taxi in Lancaster County, and between points in Lancaster County on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not allowed. HHS Designation is yes.

Notice of the Application was published in The Daily Record, Omaha, Nebraska, on April 6, 2018, pursuant to the rules of the Commission. On April 17, 2018, the Commission entered an Order granting Applicant temporary authority to operate under Safeway's Certificate of Authority for ninety (90) days. No protests were filed.

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On April 12, 2018, Applicant requested allowance for deviations from Commission Motor Carrier Rules and Regulations 10.10(E) and 10.02(H) regarding trip logs and meters and 10.02(G)(ii) regarding top lights.

In addition to the above-captioned Application, Applicant is seeking approval of the acquisition of the operating rights and authority granted to Airport Transportation Company d/b/a Van Go and My Sedan in Application No. B-1123 (Application No. B-1969), DonMark, Inc. d/b/a Cornhusker Cab Company in Application No. B-1410 (Application No. B-1970), Happy Cab Company d/b/a Checker Cab Company in Application No. B-1121 (Application No. B-1972), Happy Cab Company d/b/a Yellow Cab Company in Application No. B-1122 (Application No. B-1973), and Valor Transportation Company d/b/a Safeway Cabs in Application No. B-1744 (Application No. B-1974). These six authorities have operated together as the Happy Cab Companies for several years in eastern Nebraska, including Omaha and Lincoln.

Although no protests were filed, the Commission determined that a hearing was necessary because the application involves the largest taxicab carrier in the state. Said hearing was held May 22, 2018, at the Commission's Hearing Room in Lincoln, Nebraska, in conjunction with hearing on Application Nos. B-1969, B-1970, B-1972, B-1973, and B-1974.

#### E V I D E N C E

Applicant first called Lori Mitchell, one of the owners of the Happy Cab Companies, who testified about the history of the companies and supported the applications. Ms. Mitchell stated that her family has owned the Happy Cab Companies for 18 years.<sup>1</sup> Ms. Mitchell testified that the companies have carried liability and property insurance in compliance with the Commission's Motor Carrier Rules and Regulations and evidence of that insurance coverage is on file with the Commission.<sup>2</sup> She testified that Happy Cab has continuously and actively solicited and provided passenger transportation services consistent with its certificate of authority throughout its service territory.<sup>3</sup>

Ms. Mitchell testified that Happy Cab made the decision to transfer its authorities to Applicant after careful

<sup>1</sup> Hrg. Transcr. at 13:3-13 (May 22, 2018).

<sup>2</sup> Id. at 11:20-24.

<sup>3</sup> Id. at 12:1-7.

consideration, stating that Applicant's innovative approach to the market will benefit the Omaha and Lincoln transportation needs. Ms. Mitchell also stated that Applicant had decided to retain John Davis as the Director of Operations, commenting that the decision should give the Commission confidence that the transition will be smooth and virtually seamless from the public's point of view.<sup>4</sup>

Ms. Mitchell concluded her testimony by requesting that the Commission approve the transfer in time for the company to provide service during the College World Series, which begins June 16.<sup>5</sup>

Applicant next called Bill George, sole owner of Applicant zTrip. Mr. George testified that has been in the taxicab business for 33 years. Mr. George stated that he intends to keep longstanding Happy Cab staff in place, and bring to the Nebraska operations additional resources, including new technology and better marketing.<sup>6</sup> Mr. George discussed his operations in the Kansas City area, where he operates a fleet of 700 vehicles and has 1,000 persons involved in the operations. For the past five years, Mr. George has overseen the cab operations for TransDev in 19 different cities and created the zTrip brand.<sup>7</sup>

In regards to zTrip, Mr. George described it as a hybrid service offering the flexibility of transportation network companies and the safety, security, and predictability of taxicab service.<sup>8</sup> Mr. George stated that passengers would be able to use an app to book a trip, choose a favorite driver, track a trip, or share the trip with friends. Trips can be paid by cash, credit, or charge account. Mr. George also plans to eliminate the \$3.00 credit card service fee that Happy Cab has charged in the past.<sup>9</sup>

Mr. George stated that Applicant purchases one-year-old vehicles from rental car companies. These vehicles operate for two years, and then Applicant sells the vehicles, allowing him

<sup>4</sup> *Id.* at 12:8-17.

<sup>5</sup> *Id.* at 12:18-25.

<sup>6</sup> *Id.* at 15:15-21.

<sup>7</sup> *Id.* at 16:10-18.

<sup>8</sup> *Id.* at 17:16-22.

<sup>9</sup> *Id.* at 18:2-17.

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to keep newer vehicles on the streets.<sup>10</sup> Mr. George plans to replace existing vehicles and add new vehicles over time.<sup>11</sup>

Mr. George then testified about the rule deviation requests. In regards to the top light rule deviation, Mr. George stated that Applicant utilizes LED lighting that goes in the front and back windshields. The light identifies the vehicle as providing for hire service, and is visible day or night.<sup>12</sup>

With regard to the taximeter rule deviation request, Mr. George testified that Applicant's software-based GPS metering system ("Soft Meter") has been approved in other jurisdictions. The Soft Meter includes an electronic tablet mounted on a stand in the front compartment and visible to passengers in either the front seat or rear seat. Mr. George stated that the Soft Meter incorporates driver logs, fares, and works as a driver's dispatch and computer system in one.<sup>13</sup>

Mr. George testified that Applicant plans to immediately put 10 brand new wheelchair accessible vans on the streets in Omaha and five in Lincoln. Applicant will charge no more for wheelchair service than it does for service for ambulatory persons. Wheelchair service can be requested by telephone, online, or through the app.<sup>14</sup>

Mr. George also stated that Applicant has retained John Davis, who was Happy Cab's Director of Operations, and has been elevated to the role of General Manager after the Commission granted temporary approval of the application. Mr. George also plans to expand staff and retain headquarters in both Lincoln and Omaha.<sup>15</sup>

In response to questions from Commissioners, Mr. George gave details about their marketing plans and stated that Applicant will work to provide service to underserved communities and meet needs during high demand times.<sup>16</sup> Mr. George also answered questions in regards to drivers' hours of service. Mr. George testified that the Soft Meter is programmed with

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<sup>10</sup> *Id.* at 18:18-25.

<sup>11</sup> *Id.* at 29:24-30:8.

<sup>12</sup> *Id.* at 19:9-21.

<sup>13</sup> *Id.* at 19:22-20:13.

<sup>14</sup> *Id.* at 20:22-21:7.

<sup>15</sup> *Id.* at 22:10-22.

<sup>16</sup> *Id.* at 23:22-25:16.

hours of service compliance rules, and will send a warning to a driver when the driver hits the hours of service. Once a driver hits the hours of service limit, the computer requires the driver to acknowledge the warning and will not provide any more trips.<sup>17</sup> Mr. George also testified that there are no enforcement actions pending against the companies he operates in other states.<sup>18</sup> Additionally, Mr. George stated that he is the sole owner of Applicant and is not an employ of TransDev, but does consult for the company.<sup>19</sup> Mr. George also clarified that there is no connection between Applicant and IntelliRide.<sup>20</sup> Mr. George stated that Applicant plans to provide services for the Department of Health and Human Service ("DHHS") pursuant to Happy Cab's existing DHHS designations.<sup>21</sup>

In response to questions from Commission staff, Mr. George explained Applicant's process for handling customer complaints. Mr. George stated that a local representative would handle all complaints. Finally, Mr. George also testified that Applicant conducts fingerprinting and background check for potential drivers.

Finally, Applicant called John Davis, who has been Happy Cab's Director of Operations for the past 12 years.<sup>22</sup> Mr. Davis will continue with Applicant as General Manager.<sup>23</sup> He testified that Applicant would devote adequate time to the operation of its passenger service business to serve the public.<sup>24</sup> Mr. Davis stated that if the Commission approves the application, and should demand for service increase, Applicant will add vehicles and drivers to the streets to meet the increased demand.<sup>25</sup> Mr. Davis also testified that he is familiar with the statutes and regulations that govern passenger service, as well as the tariffs on file for Happy Cab. Mr. Davis stated that Applicant would comply with the requirements of all laws, rules, and its tariff. Mr. Davis testified that if Applicant does not follow

<sup>17</sup> *Id.* at 25:17-26:3; 27:21-28:7.

<sup>18</sup> *Id.* at 32:15-25.

<sup>19</sup> *Id.* at 33:6-15.

<sup>20</sup> *Id.* at 36:16-37:11.

<sup>21</sup> *Id.* at 22:23-23:17.

<sup>22</sup> *Id.* at 54:21-22

<sup>23</sup> *Id.* at 22:10-14

<sup>24</sup> *Id.* at 55:5-7

<sup>25</sup> *Id.* at 55:13-17

the applicable laws, rules, and tariff, he understands that the authority might be suspended or even revoked by the Commission.<sup>26</sup>

Mr. Davis also testified about a change in Applicant's Drop Charge it had made with its application.<sup>27</sup> After the hearing, however, Applicant's legal counsel notified the Commission that it would not pursue that change because its soft meters can be programmed to assess the correct Drop Charge.

In regards to drivers' hours of service, Mr. Davis testified that Applicant's Soft Meters would be locked in the vehicles, making it more difficult for drivers to exceed hours of service restrictions.<sup>28</sup> Further, the Soft Meters will shut down after 12 hours of use.<sup>29</sup> Applicant will continue to ensure that hours of service rules are followed and that drivers are getting adequate time off and rest.

In response to questions from Commissioners, Mr. Davis provided more information about the wheelchair-accessible vehicles they will deploy.<sup>30</sup> Mr. Davis testified that Applicant has made a \$500,000 investment in new vehicles, which are now sitting in Applicant's lot in Omaha waiting to be deployed.<sup>31</sup> Mr. Davis testified that he has been coordinating with the City of Omaha with regard to deployment of those vehicles.<sup>32</sup>

The Hearing Officer, Commissioner Tim Schram, asked if there was any comment from members of the public, but no one from the public was present at the hearing.

#### O P I N I O N   A N D   F I N D I N G S

##### *Transfer of Authority*

In the present case, WHC NE, LLC is seeking authority to acquire, through sale and transfer, the authority held by Happy Cab Company d/b/a Happy Cab in Certificate No. B-1215. Applications for transfer by sale is governed by Neb. Rev. Stat. § 75-318, which states that the Commission may enter an Order authorizing the purchase of properties or certificates if the

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<sup>26</sup> *Id.* at 56:4-10

<sup>27</sup> *Id.* at 56:19-57:2

<sup>28</sup> *Id.* at 57:17-22

<sup>29</sup> *Id.* at 58:9-13

<sup>30</sup> *Id.* at 61:1-9

<sup>31</sup> *Id.* at 61:13-17

<sup>32</sup> *Id.* at 60:12-25

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Commission finds that the transaction proposed will be consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service.<sup>33</sup>

The Commission finds that Applicant has met the fitness test of § 75-318. Applicant has been in the taxicab business for 33 years and is well versed in the taxicab industry. Applicant, through its Application, presented evidence of its financial capabilities. Mr. George testified to Applicant's ability to properly perform the services currently provided by the Happy Cab Companies, as well as provided testimony to the Commission regarding Applicant's ability to meet future needs of the Omaha and Lincoln markets.

The Commission also finds that the proposed transfer is consistent with the public interest and does not unduly restrict competition. The Happy Cab Companies have been providing services for the Omaha and Lincoln areas for many years, and Applicant is committed to continue those operations. Applicant is not seeking to amend the service areas currently served by the Happy Cab companies, and no authority holders protested the proposed transfers. As the Commission was presented no evidence that the transfer of authority would impair the operations of any existing carriers or that the transfer would not be in the public interest, the transfer should be granted.

After due consideration of the evidence, the Commission finds that the application of WHC NE, LLC, d/b/a Happy Cab and zTrip, Lincoln, should be granted. A certificate should be issued in B-1971, authorizing the following operations:

CERTIFICATE AUTHORIZED

COMMON: (A) Operation of taxicabs within Omaha and vicinity. (B) Transportation by taxicab, of articles weighing 100 pounds or less between Omaha, on the one hand, and, on the other, between points in Nebraska over irregular routes. RESTRICTION: Restricted to an unscheduled service performed at the same rate as passenger service with both pickup and delivery made in the same vehicle. SUPP. 3: Passengers and baggage in taxicabs over irregular routes between points in Washington, Dodge, Saunders, Douglas, Sarpy and Cass

<sup>33</sup> Neb. Rev. Stat. § 75-318(3) (Cum. Supp. 2016).

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Counties, and between points in Nebraska. SUPP. 4:  
SERVICE AND TERRITORY AUTHORIZED: COMMON:  
Transportation of passengers by taxi in Lancaster  
County, and between points in Lancaster County, on the  
one hand, and, on the other hand, points in Nebraska  
over irregular routes. RESTRICTION: The transportation  
of railroad train crews and their baggage is not  
authorized. HHS Designation: Yes.

The Commission also finds that Certificate No. B-1215 held by  
Happy Cab Company d/b/a Happy Cab should be simultaneously  
cancelled.

#### *Rule Deviation Requests*

On April 13, 2018, Applicant submitted a request for  
certain deviations from Commission Rules for consideration in  
conjunction with its Applications for transfer of authority.  
Specifically, Applicant is seeking the following: authority to  
use electronic trip logging equipment pursuant to Rule  
010.01(E); use electronic software-based metering system instead  
of the mechanical meter required by Rule 010.02(H); and a  
deviation from the top light requirement of Rule 010.02(G) (ii).

Rule 010.01(E) requires that all carriers maintain a trip  
log that contains certain information required by the rule. A  
carrier may request that the Commission allow the carrier to  
electronically file and store the information required under the  
rule.<sup>34</sup> Rule 010.02(H) requires a carrier operating in a  
municipality of fifteen-thousand (15,000) persons or more to  
equip its vehicles with taximeters installed per the  
requirements set forth in the rule.<sup>35</sup>

As described in its request and hearing testimony,  
Applicant stated that the electronic software-based GPS meter  
system, or Soft Meter, is an electronic tablet mounted on a  
stand in the front compartment of the vehicle visible to  
passengers in either the front or rear. It does not store credit  
card information and will provide receipts. The tablet will  
electronically file and store all information required by Rule  
010.01(E). Additionally, Commission staff can inspect the  
software calibrations and the passenger is aware of the rate  
charged for the trip.

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<sup>34</sup> See NAC Title 291, Ch. 3, § 010.01(E) (Effective Nov. 23, 2016).

<sup>35</sup> See NAC Title 291, Ch. 3, § 010.01(H).



Rule 010.02(G)(ii) requires that each vehicle be equipped with an identity light attached to the top of the vehicle.<sup>36</sup> In its request and hearing testimony, Applicant states that its identity lights are mounted at the top of the windshield inside the vehicle to show that the vehicle is providing for-hire service. Applicant also stated during the hearing that the interior identity light allows Applicant to avoid irreparable damage to vehicles that will potentially be resold.

Upon consideration of the requests, the Commission is of the opinion and finds that WHC NE, LLC's requests are reasonable and should be granted. WHC NE, LLC may use its electronic system to file and store all information required by Commission Rule 010.01(E). WHC NE, LLC may also use the same electronic system to act as its taximeter system in deviation from the requirements of Commission Rule 010.02(H), as it will serve the same purpose as a mechanical meter described in the rule. Finally, WHC NE, LLC may deviate from Commission Rule 010.02(G)(ii) and install its identity light inside the vehicle. Applicant must ensure that the identity light is clearly visible at all times and complies with the all other rule requirements.

# O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1971 be, and is hereby, granted; and that upon compliance with the terms and conditions set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to WHC NE, LLC d/b/a Happy Cab and zTrip, Lincoln, in Application No. B-1971, authorizing the operations set forth in the foregoing findings; and that to avoid a lapse of authority, the Certificate of Public Convenience and Necessity issued in Application No. B-1215 shall be revoked and cancelled simultaneously with the issuance of a Certificate of Public Convenience and Necessity in Application B-1971.

IT IS FURTHER ORDERED that Applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until Applicant has fully complied, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the

<sup>36</sup> See NAC Title 291, Ch. 3, § 010.02(G)(ii).

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Commission, and if upon expiration of such time Applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to Applicant, be of no further force and effect.

IT IS FURTHER ORDERED that Applicant shall not conduct operations until a Certificate of Public Convenience and Necessity is issued.

IT IS FINALLY ORDERED that Applicant's request for certain rule deviations be, and is hereby, granted as described above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 12<sup>th</sup> day of June, 2018.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Cystal Swader*

*Ed Johnson*

*Tim Schram*

//s//Frank E. Landis

//s//Mary Ridder

*Mary Ridder*

Chair

ATTEST:

*Michelle L. L.*

Executive Director