

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Happy Cab Company, Checker Cab) APPLICATION NO. TR-182
Company, Yellow Cab Company and)
DonMark, Inc., d/b/a Cornhusker)
Cab Company, Omaha, Nebraska,) ORDER
seeking authority to amend the) DISMISSING APPLICATION
Omaha area taxi rates by)
permitting the use of the)
TaxiPass QuikPay service in)
taxicabs in the Omaha area.) Entered: AUGUST 23, 2011

BY THE COMMISSION:

On March 2, 2011, Happy Cab Company, Checker Cab Company, DonMark, Inc., d/b/a Cornhusker Cab, and Yellow Cab Company ("Applicant") filed an application with the Nebraska Public Service Commission ("Commission") seeking authority to utilize a payment system called TaxiPass in taxicabs in service in the Omaha market. Notice of the Application was published in The Daily Record, Omaha, Nebraska on April 18, 2011. The Application was not protested.

A hearing on this matter was held on May 26, 2011, in the State Office Building in Omaha, Nebraska.

E V I D E N C E

The Applicant offered two witnesses in support of its application, Mr. John Davis, Operations Manager for the Applicant, and Ms. Lori Mitchell, the Applicant's Vice President.

Mr. Davis testified the Applicant desires to utilize a payment system called TaxiPass QuickPay ("TaxiPass") in its operations in Omaha.¹ The TaxiPass system allows a passenger to use a credit card to pay for the taxi service with an additional \$3.00 fee charged by TaxiPass for use of its payment system.² Mr. Davis testified that cash and the manual credit card system that is currently being used by the Applicant for no extra charge to the customer will still be used by the Applicant and available to customers.³

Mr. Davis offered testimony regarding his observations of an increase in the number of passengers utilizing credit cards instead of cash for payment.⁴ Mr. Davis further testified to

¹ Hearing Transcript ("TR") 5:1-8.

² TR 6:19-24.

³ TR 5:3-8; 10:13-16.

⁴ TR 3:21 - 4:2.

what he characterized as the benefits of the TaxiPass system. The TaxiPass system will be located in the customer area of the vehicle, giving the passenger the option of swiping their own credit card without the necessity of involving the driver.⁵ TaxiPass also offers immediate feedback regarding whether the transaction was completed whereby the driver and passenger know if the charge has been approved avoiding the possibility of a denied charge.⁶ Finally, TaxiPass also allows for the capability of GPS tracking of the taxicabs with the TaxiPass system in the vehicle.⁷

Upon questioning by Commissioner Landis regarding customer notice of the extra \$3.00 fee, Mr. Davis explained that the device will advise customers of the \$3.00 charge for use of TaxiPass.⁸

Commissioner Vap questioned Mr. Davis regarding the use of the manual credit card machines in the taxicab. Mr. Davis stated that the drivers will continue to use the manual credit card system at no extra charge to the customer; however, the Applicant is charged a fee based on the percentage of the amount charged each time the manual machines are used.⁹ Upon further questioning by Commissioner Vap, Mr. Davis testified the \$3.00 fee assessed to the customer for the use of TaxiPass goes to TaxiPass and the Applicant does not receive any portion of the \$3.00 fee for the service.¹⁰

On examination by Commissioner Boyle, Mr. Davis stated that there is no charge to the taxi driver for the TaxiPass system. TaxiPass provides the equipment, installation and maintenance of the equipment.¹¹

Lori Mitchell testified next for the Applicant. Ms. Mitchell again testified to the potential benefits of TaxiPass in what she termed as an "upgrade to our current system."¹²

On examination by Commissioner Schram, Ms. Mitchell stated that the \$3.00 TaxiPass fee will not be included in the amount that the passenger uses to determine a percentage for gratuity.¹³

⁵ TR 5:1-8.

⁶ TR 5:14-18.

⁷ TR 6:3-5.

⁸ TR 10:4-12.

⁹ TR 12:22 - 13:5.

¹⁰ TR 14:10-14.

¹¹ TR 21:16 - 22:4.

¹² TR 40:13-17.

¹³ TR 44:19-24.

Commissioner Boyle questioned Ms. Mitchell regarding whether the TaxiPass system would benefit the Applicant by alleviating some of the Applicant's costs. Ms. Mitchell testified that the use of the TaxiPass system will reduce the costs to the Applicant for processing customer credit cards on the manual system, which costs the Applicant, not the customer.¹⁴

According to documentation supplied to the Commission, TaxiPass systems are currently utilized for the same \$3.00 transaction fee in Milwaukee, Wisconsin, New Orleans, Louisiana, Salt Lake City, Utah, Reno, Nevada, Charlotte, North Carolina, West Palm Beach, Florida, Las Vegas, Nevada, and Newark, New Jersey.

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

In the application before the Commission, the Applicant seeks Commission approval to make a payment system known as TaxiPass QuickPay available to passengers in its taxicabs in Omaha. In a taxicab where TaxiPass is available, customers may use a machine installed and maintained by TaxiPass in the passenger area of the taxicab to pay via credit card the charges for the cab service. TaxiPass charges the amount of the taxicab service to the customer's credit card, processes the payment and remits the payment to the taxi driver. TaxiPass charges the customer a \$3.00 fee for the use of its system. There is no charge to the Applicant or to the driver for use of the TaxiPass system. Further, neither the Applicant nor the driver receives any portion of the \$3.00 fee collected by TaxiPass from the customer for use of its system.

In order for the Commission to authorize or approve the use of TaxiPass we must first determine if we have proper jurisdiction. The Commission regulates the rates charged by taxicab companies in Nebraska pursuant to Neb. Rev. Stat. §75-118 and §75-126. Section 75-118 states that the Commission shall, "fix all necessary rates, charges and regulations governing and regulating the transportation . . . of . . . passengers by any common carrier in Nebraska intrastate commerce."¹⁵ Section 75-126 states, "no common carrier shall charge, demand, collect or receive from any person a greater or lesser compensation for any services rendered than it charges, demands, collects or receives from any other person. . ."¹⁶

¹⁴ TR 45:23 - 46:3.

¹⁵ See Neb. Rev. Stat. § 75-118(1) (Reissue of 2009).

¹⁶ See Neb. Rev. Stat. § 75-126(1) (a) (Reissue of 2009).

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After analysis of the application and testimony, the TaxiPass system \$3.00 usage fee is not a rate or charge being billed to the customer by the cab company. The use of the TaxiPass system is strictly discretionary upon the part of the passenger and its use is not required by the cab companies. Customers will be notified of the additional \$3.00 fee for use of the TaxiPass system. Additionally, the Applicant will still accept cash payment and credit cards utilizing a manual credit card system for no extra fee to customers. Finally, the Applicant will not receive any compensation in the event a customer utilizes the TaxiPass system.

We find the use of the TaxiPass system does not fall within the purview of the Commission over the rates charged by taxicab companies in Nebraska, but is merely a payment option available to customers. Therefore, we find the Commission does not have jurisdiction and the above-captioned application should be dismissed.




O R D E R

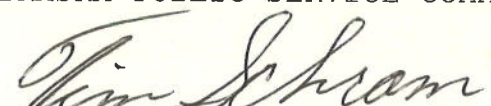
IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application No. TR-182 be, and is hereby, dismissed.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of August, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chairman

ATTEST:


Deputy Director

//s//Frank Landis
//s//Tim Schram

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COMMISSIONER ANNE BOYLE AND COMMISSION CHAIR TIM SCHRAM, CONCURRING:

We concur with the opinion of the majority and are in agreement that the Commission's jurisdiction over rates and charges of taxicab service does not include methods of payment. However, we include the following comments to address our concerns regarding implementation of the TaxiPass system.

In the event the Applicant introduces the Taxi Pass system in its taxicabs, customers will have three payments options available: cash, use the existing manual credit card system, or use of a credit card with TaxiPass, for which TaxiPass will impose a \$3.00 fee. The Applicant obviously felt the implementation of the TaxiPass system was significant enough to seek Commission approval. We find it would also be an event of equal significance if, in the future, the Applicant were to decide to eliminate any of the three payment options. Of special concern would be the decision to no longer offer the manual credit card system, resulting in any customer using a credit card being forced to pay a \$3.00 fee to TaxiPass for the privilege. Further, the decision to only offer TaxiPass and not the manual credit card system could significantly benefit the Applicant. Credit card companies also impose fees, however, those fees are imposed on the company rather than directly to the customer. Therefore, in the interests of keeping the Commission informed on any changes that will directly affect customers, we would request the Applicant notify the Commission in the event it makes any changes regarding payment options for customers.

Next, we are concerned that the use of TaxiPass may result in the taxi drivers receiving less money in tips or no tips at all, due to the additional fee for TaxiPass. We are troubled by the detrimental impacts to the cab drivers especially in the current business model utilized by the Applicant. Under the Applicant's current business model, the drivers are independent contractors, not employees of the Applicant. In such a system, the drivers keep the fares and tips they receive, however, they must pay a portion of everything they earn to the Applicant for the use of the taxicab and fuel, among other charges. Therefore, the risk of reduced gratuity income due to TaxiPass will be born entirely by the drivers, with no risk to the Applicant.

Finally, the cities cited in the order where the TaxiPass system is currently utilized with similar fee structure differ significantly from the Omaha area. Most of the cities have a competitive taxi market, unlike Omaha where the taxi cab market is closed. In addition, the cities have metropolitan statistical area (MSA) populations that are larger than Omaha's population of 787,000. Specifically, Newark, New Jersey, which is included in the New York City MSA, has a population of 19 million; Milwaukee, a population of 1.7 million; New Orleans, 1.17 million; Salt Lake City, 1.1 million; West Palm Beach, 5.5 million; and Las Vegas, a population of 1.9 million. Of the cities cited in the majority opinion, Reno alone is smaller than

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Omaha, with a population reported at 342,000. Based on the considerable size difference, we find the comparison of these cities to Omaha less than persuasive as justification for use of the TaxiPass system in Omaha.

MADE AND ENTERED at Lincoln, Nebraska this 23rd day of August, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

BY:


Commissioner Anne Boyle

BY:


Commission Chair Tim Schram