

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 17,239

IN THE MATTER OF:

Served October 4, 2017

Application of TAXI NOW L.L.C. for )  
a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2017-090

Applicant seeks a certificate of authority to transport passengers for hire in irregular route operations under the Washington Metropolitan Area Transit Regulation Compact,<sup>1</sup> using vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed.

The Compact applies to: "the transportation for hire by any carrier of persons between any points in the Metropolitan District,"<sup>2</sup> excluding "transportation solely within the Commonwealth of Virginia."<sup>3</sup> A carrier is "a person who engages in the transportation of passengers by motor vehicle or other form or means of conveyance for hire."<sup>4</sup> "A person may not engage in transportation subject to [the Compact] unless there is in force a 'Certificate of Authority' issued by the Commission authorizing the person to engage in that transportation."<sup>5</sup>

Article XI, Section 7(a), of the Compact provides that the Commission shall issue a certificate of authority to any qualified applicant, authorizing all or any part of the transportation covered by the application, if the Commission finds that: (i) the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission; and (ii) the transportation is consistent with the public interest. If the applicant does not make the required showing, the application must be denied under Section 7(b).

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<sup>1</sup> Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

<sup>2</sup> Compact, tit. II, art. XI, § 1. The Metropolitan District includes: the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties . . . . Compact, tit. I, art. I.

<sup>3</sup> Compact, tit. II, art. XI, § 3(g).

<sup>4</sup> Compact, tit. II, art. XI, § 4(a).

<sup>5</sup> Compact, tit. II, art. XI, § 6(a).

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns, or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire.

In most applications, the foregoing verification provides a sufficient basis for issuing a conditional grant of WMATC operating authority. But in this case, applicant's CEO, Mr. Peter Lawson Sealy, has cast doubt on applicant's intent to operate as a passenger carrier. According to his statement,

Taxi Now LLC is a technology platform company that was registered on May 22, 2013 and is now seeking authority to operate as a ride-sharing Transportation Network Company (TNC) in the jurisdictions of Maryland, District of Columbia, and Virginia. Taxi Now LLC, utilizing its technology platform, connects riders in these jurisdictions with a variety of transportation resources, including but not limited to taxis, ride-sharing vehicles (cars and vans), wheelchair accessible vehicles, and limousines. Taxi Now LLC does not own or operate any vehicles or "taxis".

The non-carrier nature of Taxi Now's business model is apparent in Taxi Now's "Terms of Service," which are posted on Taxi Now's website<sup>6</sup> for the benefit of passengers using the Taxi Now technology platform, and which are appended to the Taxi Now driver agreement as Exhibit A. The first page of the Terms of Service states in upper case letters that "TAXI NOW LLC DOES NOT PROVIDE TRANSPORTATION SERVICES, AND TAXI NOW LLC IS NOT A TRANSPORTATION CARRIER." In addition, the "No Agency" clause declares that Taxi Now drivers are "independent contractors, and no agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship is intended or created by [the] Agreement." In the "Restricted Activities" section, drivers pledge that they will not cause Taxi Now LLC "to become subject to regulation as a transportation carrier or provider of taxi service."

The Commission is guided in this case "by the presumption that the entity providing both the vehicle and the driver is the carrier."<sup>7</sup> In this case, it would appear that the presumption attaches to each Taxi Now driver. Under the "Driver Representations and Warranties" section of Taxi Now's Terms of Service, drivers agree to operate only vehicles that they "own, or have the legal right to operate" and that

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<sup>6</sup> [www.taxinowllc.com](http://www.taxinowllc.com).

<sup>7</sup> In re *Easy Travel, Inc. v. Jet Tours USA, Inc.*, No. FC-94-01, Order No. 4649 at 4 (Aug. 22, 1995).

they "report" to Taxi Now. The presumption is rebuttable,<sup>8</sup> but in this case the Terms of Service tend to reinforce the presumption.

Under the "Disclaimers" section of Taxi Now's Terms of Service, riders and drivers alike are cautioned that Taxi Now LLC has "no control over the quality or safety" of transportation provided under its technology platform. This directly conflicts with the requirement under Article XI, Section 5, of the Compact that WMATC carriers shall "provide safe and adequate transportation service, equipment, and facilities." Under the Driver Representations and Warranties section, drivers "represent, warrant, and agree" that they "will be solely responsible for any and all liability that results from or is alleged as a result of [their] provision of Services, including, but not limited to personal injuries, death and property damages."

The instant case is reminiscent of the application of Ecological Transportation Group, LLC. In that case, as here, the applicant proposed using vehicles owned by drivers who were acting as independent contractors. On the first of several motions to waive WMATC Regulation No. 62-08, which prohibits carriers from leasing a vehicle and driver from the same source, the Commission held that applicant's drivers were carriers, not applicant, in large measure because applicant's operating agreement placed all liability on the drivers and failed to acknowledge applicant's responsibilities under Article XI, Section 5, of the Compact.<sup>9</sup> The parallels between the operating agreement in that case and the Terms of Service in this case are striking. And in this case, applicant's Terms of Service are not merely silent with respect to applicant's responsibilities under Article XI, Section 5, of the Compact. Taxi Now's Terms of Service repudiate those responsibilities.

On this record, we cannot say that Taxi Now LLC has manifested an intent to assume "control over, and responsibility to patrons and the public for, the operation of the equipment"<sup>10</sup> used to provide transportation arranged through the Taxi Now technology platform. The presumption that each driver is a carrier, and not applicant, therefore holds on these facts.

Finally, even if applicant intended to operate as a passenger carrier, it appears that much of the proposed transportation service would be beyond the reach of any WMATC certificate of authority as "bona fide taxicab service," a type of service excluded from Commission licensing requirements.<sup>11</sup> As noted above, applicant's CEO has stated that applicant is "seeking authority to operate as a ride-sharing Transportation Network Company (TNC) in the jurisdictions of Maryland, District of Columbia, and Virginia." Under WMATC Regulation No. 51-09(b),

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<sup>8</sup> *In re Ecological Transp. Group, LLC*, No. AP-11-112, Order No. 13,179 (Feb. 29, 2012).

<sup>9</sup> *Id.*

<sup>10</sup> Order No. 4649 at 5.

<sup>11</sup> *In re Rulemaking to Amend Regulation Nos. 51-09 and 58-02(b)*, No. MP-15-198, Order No. 16,416 (June 9, 2016).

vehicles with a seating capacity of nine persons or less, including the driver, are performing a bona fide taxicab service when they are used in affiliation with a transportation network company as defined by and duly authorized by Maryland or Virginia, or a private-vehicle-for-hire company as defined by and duly authorized by the District of Columbia.

According to applicant's CEO, most vehicles operated under the Taxi Now platform would have a seating capacity of fewer than seven passengers each, in addition to the driver. This is consistent with The Driver Representations and Warranties section of Taxi Now's Terms of Service which currently prohibits Taxi Now drivers from transporting more than seven passengers at a time. Taxi Now is admonished, however, that the bona fide taxicab service exclusion would not apply to any vehicle with a seating capacity of more than eight passengers, in addition to the driver, even if used to transport fewer than nine passengers at a time.<sup>12</sup> The 9- to 10-passenger limousines that applicant's CEO says one day might operate under the Taxi Now platform would not be excluded from WMATC licensing requirements.

Inasmuch as applicant has manifested an intent not to conduct operations as a passenger carrier subject to WMATC licensing requirements, we find that approving this application would not be consistent with the public interest.<sup>13</sup>

THEREFORE, IT IS ORDERED that the application of Taxi Now L.L.C. for a certificate of authority, irregular route operations, is hereby denied without prejudice to applicant's option to submit an application at such time as it forms an intent to conduct operations as a passenger carrier subject to WMATC licensing requirements.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS HOLCOMB, RICHARD, AND MAROOTIAN:



William S. Morrow, Jr.  
Executive Director

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<sup>12</sup> *In re David E. Klingaman & Banner Sightseeing Co.*, No. MP-82-11, Order No. 2387 at 2-3 (Dec. 22, 1982).

<sup>13</sup> See *In re Yordanos Tesfaye*, No. AP-15-183, Order No. 15,915 (Oct. 20, 2015) (denying application by sole proprietor intending to conduct operations through recently formed LLC); *In re Rafiu Olayiwola, t/a Auto Pilot Transp. Co.*, No. AP-12-263, Order No. 13,693 (Jan. 23, 2013) (same); *In re Khaled Ismael, t/a Black Beauty Limo Servs., Inc*, No. AP-12-072, Order No. 13,360 (July 25, 2012) (same as to recently formed corporation); *In re Januarius J. Asongu*, No. AP-05-095, Order No. 9377 (Mar. 6, 2006) (same).