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March 9, 2018

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Application of Eagle Ride Taxi Cab, LLC  
Docket No. A-2017-2621976

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Eagle Ride Taxi Cab, LLC's Main Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww  
Enclosure

cc: Hon. David A. Salapa w/enc.  
Certificate of Service w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of Eagle Ride Taxi Cab LLC's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email and First Class Mail**

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Hon. David A. Salapa  
Administrative Law Judge  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265  
[dsalapa@pa.gov](mailto:dsalapa@pa.gov)

Dated: March 9, 2018



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Karen O. Moury, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Eagle Ride Taxi Cab	:	
Limited Liability Company for the right to	:	
begin to transport, by motor vehicle, persons	:	A-2017-2621976
in call or demand service, in the City of	:	
Lancaster and within an airline distance of 15	:	
statute miles of the limits of said city	:	

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**MAIN BRIEF OF EAGLE RIDE TAXI CAB LLC**

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Date: March 9, 2018

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## **I. INTRODUCTION**

Eagle Ride Taxi Cab LLC (“Eagle Ride”) respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) approve its application to provide call or demand service in the City of Lancaster, Pennsylvania and with an airline distance of 15 statute miles of the City of Lancaster. Eagle Ride’s owner/manager has six years of experience operating a taxicab company and has successfully run an accounting business for ten years. Based on the evidence in the record, Eagle Ride possesses the requisite technical and financial fitness to operate the proposed service. No evidence has been presented to the contrary.

Eagle Ride’s entry into the transportation market in Lancaster has already been significantly delayed by existing carriers’ protests that are aimed at quashing competition and protecting market share. Now that Eagle Ride has presented evidence of sufficient financial resources, adequate technical expertise, an appropriate plan for driver and vehicle safety, and an ability to maintain sufficient and continuous insurance coverage, its application should be granted without additional delay. Approval of Eagle Ride’s application would further the Commission’s goals of promoting competition in the transportation industry, thereby enhancing innovation and improving customer service.

## **II. PROCEDURAL HISTORY**

On August 30, 2017, Eagle Ride filed its application seeking authority to provide call or demand service in the City of Lancaster, Pennsylvania and within an airline distance of 15 statute miles of the City of Lancaster.<sup>1</sup> When the application was filed, no verified statement was supplied

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<sup>1</sup> By the original application submitted on June 26, 2017, Eagle Ride sought authority to provide call or demand service in the City of Lancaster and the surrounding area. However, the proposed area of service was subsequently narrowed by Eagle Ride’s response to staff’s for additional information. Applicant Exhibit No. 1.

by Eagle Ride, which was not represented by legal counsel at that time. Notice of the application was published in the *Pennsylvania Bulletin* on September 30, 2017, noting that protests were due by October 16, 2017.<sup>2</sup> Eagle Ride supplemented the application by filing its verified statement on October 31, 2017.

Autocab, Inc. filed a Protest on October 10, 2017, which was later withdrawn on November 20, 2017 upon review of Eagle Ride's late-filed verified statement. EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC, and Amigo Cab, LLC ("Joint Protestants") filed their Joint Protest on October 12, 2017. The Joint Protest contains no specific averments regarding any claims that Eagle Ride lacks technical or financial fitness, but rather notes on the absence of financial and technical information submitted with the application. Focusing on a desire to preclude entry of another call or demand carrier in the City of Lancaster, the Joint Protest alleges that Eagle Ride has not shown that approval of the application is necessary for service to the public and further that the entry of a new carrier would endanger or impair the operations of the Joint Protestants.<sup>3</sup>

Eagle Ride filed a Motion to Dismiss the Joint Protest, citing the Commission's recently-promulgated regulations, which eliminated the "public need" standard based on the fact that increased competition in the transportation industry "has enhanced customer choice and service."<sup>4</sup> Through easing its entry standards, the Commission recognized that over the last fifty years, existing carriers – like the Joint Protestants – have used the public need requirement to quash competition and protect market share.<sup>5</sup> In the *Order Eliminating Artificial Entry Barriers*, the

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<sup>2</sup> 47 Pa.B. 6155.

<sup>3</sup> Joint Protest ¶ 11.

<sup>4</sup> *Final Rulemaking Amending 52 Pa. Code Chapters 1, 3, 5, 23 and 29 To Reduce Barriers to Entry for Passenger Motor Carriers*, Docket No. L-2015-2507592 (Final Rulemaking Order entered October 27, 2016, at 18) ("*Order Eliminating Artificial Entry Barriers*"); 52 Pa. Code § 3.381.

<sup>5</sup> A review of Commission dockets shows that the one or more of the Joint Protestants have filed numerous protests seeking to avoid the entry of new carriers into the market. Notably, the applications have been approved,

Commission unequivocally stated that it does “not believe it is beneficial to exclude qualified new businesses from the market.”<sup>6</sup> Further, the Commission has found that insulating the transportation industry from competition is not in the public interest.<sup>7</sup> The Commission’s decisions to grant applications over the Joint Protestants’ objections are consistent with these policy determinations.<sup>8</sup>

By Order dated December 13, 2017, Administrative Law Judge David A. Salapa denied Eagle Ride’s Motion to Dismiss the Joint Protest. Analyzing the Motion to Dismiss under the standards that are applicable to preliminary objections, ALJ Salapa noted that the omission of the verified statement from the application meant that the Joint Protestants could not make an informed decision on whether to protest Eagle Ride’s application on the basis of technical or financial fitness.

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recommended for approval or dismissed for failure to prosecute. The Joint Protestants have succeeded only in delaying or discouraging the entry of new transportation providers, and have not shown that any applicants lack the technical or financial fitness to provide transportation service. *See, e.g.* as follows:

- *Application of Unique Cab, LLC*, Docket No. A-2016-2532708 (Initial Decision served January 11, 2018; Order entered February 14, 2018) (application approved);
- *Application of La Mexicana Express Service, LLC*, Docket No. A-2017-2590784 (Initial Decision served November 16, 2017; Order entered December 20, 2017) (application approved);
- *Application of Ajay Catha Corporation*, Docket No. A-2017-2585692 (Initial Decision served July 5, 2017; Order entered August 11, 2017) (application dismissed for failure to prosecute)
- *Application of Rios Transportation and Business, LLC*, Docket No. A-2017-2584502 (Initial Decision served July 10, 2017; Order entered August 11, 2017) (application dismissed for failure to prosecute);
- *Application of Go Green Taxi, LLC*, Docket No. A-2015-2504430 (Order entered February 10, 2017) (application approved);
- *Application of Personal Care Transport, LLC*, Docket No. A-2015-2489318 (Order entered January 26, 2017) (application approved);
- *All Blue Taxi LLC*, Docket No. A-2016-2568401 (Initial Decision served September 18, 2017) (recommends approval of application)
- *Application of Discount Transportation, LLC*, Docket No. A-2016-2552116 (Initial Decision served April 27, 2017) (recommends approval of application);
- *Application of Central PA Cab LLC*, Docket No. A-2017-2606752 (Joint Protest filed June 13, 2017 (hearing held February 27, 2018);
- *Application of Lancaster Express*, Docket No. A-2017-2620846 (Joint Protest filed September 22, 2017) (hearing scheduled for May 10, 2018); and
- *Application of Metro Transportation, LLC*, Docket No. A-2017-2635017 (Joint Protest filed December 9, 2017) (hearing scheduled for March 30, 2018).

<sup>6</sup> *Order Eliminating Artificial Entry Barriers* at 12.

<sup>7</sup> *Id.* at 15.

<sup>8</sup> *See* footnote 5 above.

Despite the filing of the verified statement by Eagle Ride on October 31, 2017 and the service of discovery responses by Eagle Ride on the Joint Protestants on November 14, 2017, the Joint Protestants continued to pursue their Joint Protest of Eagle Ride's application. By notice dated December 5, 2017, the application was scheduled for a hearing on February 6, 2018 at 10:00 a.m.

Eagle Ride served discovery requests on the Joint Protestants on December 19, 2017, which were designed, *inter alia*, to ascertain the specific challenges the Joint Protestants intended to lodge against the Eagle Ride's technical and financial fitness, in preparation for the February 6, 2018 hearing. The Joint Protestants filed neither objections within ten days, as required by Section 5.342(e) of the Commission's regulations,<sup>9</sup> nor responses within twenty days of service as required by Section 5.342(d) of the regulations.<sup>10</sup> Eagle Ride's counsel contacted counsel for the Joint Protestants on January 12, 2018 regarding the status of the discovery responses and received no response to this communication. Thereafter, Eagle Ride filed a Motion to Compel on January 17, 2018. The Joint Protestants filed no response to the Motion to Compel. By Order dated January 24, 2018, ALJ Salapa granted Eagle Ride's Motion to Compel, directing the service of full and complete responses to Eagle Ride's discovery requests within three days. The Joint Protestants served responses on Eagle Ride on January 29, 2018.

The application proceeded to hearing, as scheduled, on February 6, 2018. Eagle Ride presented the testimony of Mr. David A. Tenhwa, Eagle Ride's owner and manager. During the hearing, Eagle Ride presented seven exhibits, marked as Applicant Exhibit Nos. 1-7, which were admitted into the record, as follows:

Applicant Exhibit No. 1 – Application  
Applicant Exhibit No. 2 – Verified Statement

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<sup>9</sup> 52 Pa. Code § 5.342(e).

<sup>10</sup> 52 Pa. Code § 5.342(d).

Applicant Exhibit No. 3 – Retail Installment Sale Contract  
Applicant Exhibit No. 4 – Insurance Quote  
Applicant Exhibit No. 5 – Bank Statements  
Applicant Exhibit No. 6 – Statement of Financial Position  
Applicant Exhibit No. 7 – Projected Cash Flow

The Joint Protestants presented no testimony and proffered no exhibits for the record.

Consistent with the agreement of the parties at the conclusion of the hearing, the ALJ issued an Order dated February 6, 2018, directing the filing of main briefs by March 9, 2018 and reply briefs by March 16, 2018. This main brief is filed in accordance with the February 6, 2018 Order.

### III. ARGUMENT

#### A. Introduction

Eagle Ride requests that the Commission approve its application to provide call or demand service within the City of Lancaster, Pennsylvania and within an airline distance of 15 statute miles of the City of Lancaster. As discussed below, Eagle Ride has carried its burden of proof to demonstrate that it possesses the technical expertise and financial fitness to provide the proposed service. The evidence shows that Eagle Ride's owner and manager, Mr. David A. Tenhwa, holds a Master's in Business Administration ("MBA") degree, has six years of experience operating a taxicab company and is in his tenth year of successfully running an accounting business with offices in Lancaster and Harrisburg, Pennsylvania. Further, the evidence demonstrates that as a start-up company, Eagle Ride has access to substantial personal assets of its lone member, Mr. Tenhwa, which are sufficient to sustain the business during a projected first year of a slight net loss. In addition, Eagle Ride has presented evidence showing that given the growth in population in Lancaster and the opening of multiple new shopping centers in the area immediately surrounding downtown Lancaster, significant opportunities exist for a new taxicab company entering this market, such that a profit is expected during the second year. Finally, Eagle Ride has

demonstrated that it will focus on innovation and customer service, and that its entry into the market will enhance competition in the City of Lancaster and the surrounding area, which will benefit the public.

**B. Applicable Legal Standards**

Section 1102(a) of the Public Utility Code (“Code”), states that “it shall be lawful to provide service as a public utility only after applying for and obtaining a certificate of public convenience from the Commission.<sup>11</sup> Code Section 1103 provides that the application should be approved if the Commission finds that granting a certificate is necessary or proper for the service, accommodation, convenience or safety of the public.<sup>12</sup>

As the applicant, Eagle Ride has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking.<sup>13</sup> Eagle Ride must establish its case by a preponderance of the evidence.<sup>14</sup> To meet its burden of proof, Eagle Ride was required to present evidence more convincing, by even the smallest amount, than that presented by any opposing party.<sup>15</sup>

In addition, any Commission order granting an application, in whole or in part, must be based on substantial evidence.<sup>16</sup> Likewise, any finding of fact necessary to support the Commission’s adjudication must be based on substantial evidence.<sup>17</sup> The term “substantial

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<sup>11</sup> 66 Pa.C.S. § 1102(a).

<sup>12</sup> 66 Pa.C.S. § 1103.

<sup>13</sup> 66 Pa.C.S. § 332(a).

<sup>14</sup> *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

<sup>15</sup> *Se-Ling Hosiery v. Marguiles*, 70 A.2d 854 (Pa. 1950).

<sup>16</sup> *Dutchland Tours, Inc. v. Pa. Pub. Util. Comm’n*, 337 A.2d 922, 925 (Pa.Cmwlth. 1975).

<sup>17</sup> *Mill v. Pa. Pub. Util. Comm’n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

evidence” has been defined by Pennsylvania courts as being such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>18</sup>

Traditionally, motor common carrier applications have been evaluated based on the evidentiary criteria set forth in a Commission policy statement, which consider public demand or need for the proposed service and the impact on the operations of existing common carriers, as well as the technical and financial fitness of the applicant and the applicant’s propensity to operate legally and safely.<sup>19</sup> However, under the *Order Eliminating Artificial Entry Barriers*, the Commission reduced the barriers to entry for qualified passenger motor carrier applicants by eliminating the requirement that an applicant for passenger motor carrier authority establish that approval of the application will serve a useful public purpose, responsive to a public demand or need.<sup>20</sup>

Rather, the Commission determined that passenger carrier applicants will only be required to establish that they have the technical and financial ability to provide the proposed service safely, reliably and legally, and that they are fully insured in accordance with the requirements of state law and Commission regulations. Commensurate with the *Order Eliminating Artificial Entry Barriers*, the Commission adopted a final policy statement on December 7, 2017 to remove the language regarding public need and the effect of a new entrant on the operations of existing carriers.<sup>21</sup>

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<sup>18</sup> *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

<sup>19</sup> 52 Pa. Code § 41.14.

<sup>20</sup> 52 Pa. Code § 3.381.

<sup>21</sup> Policy Statement Revision of 52 Pa. Code § 41.14, Docket No. M-2017-2628722 (Order entered December 7, 2017). The final policy statement will go into effect upon publication in the *Pennsylvania Bulletin*. See also

In evaluating whether Eagle Ride possesses the technical and financial ability to provide the proposed service, the policy statement provides guidance for the Commission to examine: 1) whether Eagle Ride has sufficient capital, equipment, facilities and other resources necessary to serve the territory requested; 2) whether Eagle Ride and its employees have sufficient technical expertise and experience to serve the territory requested; 3) whether Eagle Ride has or is able to secure sufficient and continuous insurance coverage for all vehicles to be used or useful in the provision of service to the public; 4) whether Eagle Ride has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards; 5) Eagle Ride's record, if any, of compliance with the Public Utility Code, Commission regulations and the Commission's orders; and 6) whether Eagle Ride or its drivers have been convicted of a felony or crime of moral turpitude and remain subject to supervision by a court or correctional institution.<sup>22</sup>

**C. Technical and Financial Fitness**

*1. Sufficient Capital, Equipment, Facilities and Other Resources*

a. Facilities

Eagle Ride presented sufficient evidence regarding the facilities and equipment that it proposes to use for the proposed service. Specifically, Mr. Tenhwa explained that Eagle Ride intends to operate the taxicab business from an office facility at 439 North Duke Street, Lancaster, Pennsylvania, which is currently used for his accounting business. He testified that he has plenty of extra space that can be made available for operation of the taxicab business. The space is already

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*Application of La Mexicana Express Service, LLC*, Docket No. A-2017-2590784 (Initial Decision Served November 16, 2017, at 12; Order entered December 20, 2017) (where the hearing was held after the regulations went into effect pursuant to the *Order Eliminating Artificial Entry Barriers*, the Commission did not require the applicant to show public need or demand for the proposed service; here, the application was filed after Section 3.381 of the regulations was revised).

<sup>22</sup> See *Application of Go Green Taxi, LLC*, Docket No. A-2015-2504430 (Initial Decision Served July 8, 2016, at 20, and Order Entered February 10, 2017).

equipped with two telephone landlines, a facsimile machine, security cameras, office furniture, computers, printer, filing cabinets, coffee machine, refrigerator, microwave and a customer's waiting area. In addition, six parking spaces are available at this location.<sup>23</sup>

Mr. Tenhwa further testified that Eagle Ride will use various means of communication both with customers and drivers. As for customer requests for service, he explained that Eagle Ride will use the method that is the most convenient for the customer. Among the choices for the customer will be telephone (landline and mobile), electronic mail, social media (Facebook and Twitter), Eagle Ride's website and WhatsApp Messenger ("WhatsApp"), a mobile application that allows for cross-platform instant messaging and Voice over IP service.<sup>24</sup> A similar communications network will be used for drivers through mobile phones, text messages, radio communications and the website, which can be accessed through their mobile phones. Eagle Ride will install WhatsApp on each driver's mobile phone, which will transmit messages with Google maps of a particular location within seconds to everyone in the network.<sup>25</sup>

Mr. Tenhwa also described his record maintenance plan. Specifically, Eagle Ride will maintain all records of the business, including logs, complaints, driver records and maintenance records in the office at 439 North Duke Street, using an up-to-date filing system. Records will be maintained physically in the office and electronically on the Cloud. All records will be retained as long as required by the Commission's regulations.<sup>26</sup>

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<sup>23</sup> Applicant Exhibit No. 2, Section 3; N.T. 13.

<sup>24</sup> Applicant Exhibit No. 2, Section 3; N.T. 15-16; <https://www.whatsapp.com/>.

<sup>25</sup> *Id.*

<sup>26</sup> Applicant Exhibit No. 2, Section 3; N.T. 13-15.

b. Vehicles, Drivers and Other Employees

With respect to vehicles and the number of drivers and other employees, Eagle Ride has shown that its plans are sufficient for the expected immediate needs of the public. In particular, Mr. Tenhwa has acquired a 2017 Toyota Highlander, which has a seating capacity for 8 people and has less than 30,000 miles. Mr. Tehnwa paid \$20,000 down on the vehicle, and as necessary to meet the demands of the public, he testified that Eagle Ride is prepared to purchase additional vehicles.<sup>27</sup>

As for the number of employees, Mr. Tenhwa explained that Eagle Ride will utilize employees currently used for the accounting business but would hire additional employees as needed to ensure the availability of the equivalent of two full-time dispatchers each working a 9-hour shift to cover his intended hours of operation from 6:00 a.m. until 10:00 p.m., six days per week, or seven days per week, depending on the needs of the public. Dispatchers will answer calls from customers, dispatch drivers, handle requests submitted through electronic mail, social media, the website and WhatsApp, and fulfill requests in a timely manner. He also indicated that Eagle Ride would hire additional employees if business reasons require.<sup>28</sup>

With respect to drivers, Eagle Ride intends to use two drivers for the start-up of the business, including Mr. Tenhwa, based on his knowledge about the need for an additional taxicab company in the City of Lancaster. As needed to meet the demands of the public, Eagle Ride will utilize additional drivers. Eagle Ride plans to have drivers work eight-hour shifts and pay \$75 per day to lease the vehicle.<sup>29</sup>

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<sup>27</sup> Applicant Exhibit No. 2, Section 5; N.T. 21-23; Applicant Exhibit No. 3.

<sup>28</sup> Applicant Exhibit No. 2, Section 3; N.T. 15-17, 34, 41, 58-59.

<sup>29</sup> Applicant Exhibit No. 2, Section 4; N.T. 17-18, 60-61.

c. Capital Assets

Eagle Ride also presented evidence of sufficient capital assets. Specifically, Mr. Tenhwa referred to two personal savings accounts, which together show a balance of approximately \$15,000.<sup>30</sup> In addition, Mr. Tenhwa produced a Statement of Financial Position, as of December 31, 2017, which updated information that had been previously submitted with the verified statement.<sup>31</sup> As shown by this Statement of Financial Position, Eagle Ride – as a start-up company – has access to net assets of \$74,500 as may be needed to provide financial support for the taxicab business.<sup>32</sup> Further, Mr. Tenhwa sponsored an exhibit showing a projected cash flow for Year 1 and Year 2.<sup>33</sup> As shown by this exhibit, although Eagle Ride expects a slight net loss in Year 1, it projects a net profit of \$22,450 in Year 2.

Mr. Tenhwa expects to operate a successful business by Year 2 because Lancaster has been attracting new businesses and residents from other areas, with the population growing by 3.7 percent since 2010.<sup>34</sup> He also noted the importance of downtown Lancaster as an employment center, with over 15,000 employees, and described shopping centers that have recently opened or will open soon in the Lancaster area. Specifically, he pointed to four new shopping centers, including Shoppes at Belmont on Fruitville Pike, Lime Spring Square Shopping Center on Rohrerstown Road, Crossings at Conestoga Creek on Harrisburg Pike and another one on Willow

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<sup>30</sup> Applicant Exhibit No. 5; N.T. 25-26.

<sup>31</sup> Applicant Exhibit No. 6; N.T. 26-27.

<sup>32</sup> N.T. 38-40, 46, 60.

<sup>33</sup> Applicant Exhibit No. 7; N.T. 27-28.

<sup>34</sup> N.T. 28.

Street.<sup>35</sup> Mr. Tehnwa testified that all of these facts and developments suggest that if he creates a solid business model, as he has planned, he will be successful.<sup>36</sup>

2. Technical Expertise and Experience

As the owner and manager of Eagle Ride, and the lone member of the limited liability company, Mr. Tehnwa obtained a Bachelor of Arts degree from Makerere University in Kampala, Uganda and earned a Master's in Business Administration ("MBA") from Millersville University in Millersville, Pennsylvania in 2007.<sup>37</sup> Prior to coming to the United States, Mr. Tehnwa operated a taxicab business in Kampala, Uganda for six years, from 1994 to 2000. As a taxicab operator in Uganda, Mr. Tehnwa used six cars and was regulated by city government, which imposed safety requirements, insurance obligations and driver standards. During that time, Mr. Tehnwa also gained experience with customer service.<sup>38</sup>

After earning his MBA from Millersville University in 2007, Mr. Tehnwa opened an accounting business in 2009, which has offices in Harrisburg and Lancaster, Pennsylvania. His business, Business Support and Development Services, LLC ("BS and DS"), employs six people. In its tenth year of business, BS and DS is successful and profitable.<sup>39</sup>

Eagle Ride will require all potential drivers to complete an employment application; be at least 21 years of age; present a valid and current driver's license; present a valid and current driver's license; present another form of government identification; and provide evidence of five

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<sup>35</sup> N.T. 29-30.

<sup>36</sup> N.T. 29.

<sup>37</sup> N.T. 10.

<sup>38</sup> N.T. 11

<sup>39</sup> N.T. 12.

years of driving experience.<sup>40</sup> Drivers will also be required to undergo a training program, which will be provided over a period of two to four days, as required for each driver. The program will cover safety tips, map reading, passenger safety, vehicle safety, vehicle maintenance, inspections, clearness checks and customer services, including guidelines for assisting disabled customers and elderly passengers.<sup>41</sup>

Through Mr. Tenhwa's experience operating a taxicab company for six years and his successful operation of an accounting business for nearly ten years, Eagle Ride has shown that it has sufficient technical expertise and experience to serve the territory requested. When that expertise and experience is coupled with Eagle Ride's plans to hire qualified drivers and require them to undergo a training program, Eagle Ride has demonstrated technical fitness to support an approval of the application.

### 3. Sufficient and Continuous Insurance Coverage

Eagle Ride has adequate taken steps and determined that it can obtain sufficient insurance and pay the required insurance premiums. Specifically, Mr. Tenhwa contacted several insurance companies for a quote, including Travelers and Nationwide. He was quoted \$600 per month for two vehicles to be used for the proposed taxicab services. Eagle Ride also presented a written quote from National Indemnity Company of approximately \$7,000 per year. With over \$40,000 in current assets, Mr. Tenhwa testified that he is confident that Eagle Ride will be able to obtain sufficient and continuous insurance for all vehicles.<sup>42</sup> Particularly since a certificate of public convenience would not be issued until such time as Eagle Ride would have acceptable evidence of insurance filed with the Commission, the evidence of the measures taken by Eagle Ride to

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<sup>40</sup> Applicant Exhibit No. 2, Section 4; N.T. 17-18.

<sup>41</sup> Applicant Exhibit No. 2, Section 4; N.T. 19.

<sup>42</sup> Applicant Exhibit No. 2, Section 7; Applicant Exhibit No. 4; N.T. 24-25.

ensure its ability to maintain sufficient and continuous insurance coverage support approval of the application.

4. *Driver and Vehicle Safety Standards*

Eagle Ride has presented evidence of an appropriate plan for ensuring adherence to driver and vehicle safety standards. Before permitting an individual to operate a vehicle in call or demand service, Eagle Ride will conduct or have background checks performed that meet the requirements of the Commission's regulations by including multistate or multijurisdictional criminal records or other similar commercial nationwide data base, including a review of the United States Department of Justice national sex offender public website. Further, Eagle Ride will disqualify individuals convicted of certain crimes, in accordance with the Commission's regulations, including specified felony convictions, crimes of violence, particular sexual offenses and acts of terror.<sup>43</sup> Additionally, Eagle Ride will conduct another review of a driver's criminal background one year after engaging a driver and every second year thereafter.<sup>44</sup>

As to driver history checks, Eagle Ride will have them performed for the preceding three years and require them to be obtained from the Pennsylvania Department of Transportation within 60 days prior to submitting the driver application. Individuals will be disqualified from driving if they have any convictions for extreme violations, including driving under the influence of drugs or alcohol, severe driving infractions, violations involving property damage, violations involving fatal accidents and more than three minor moving violations. Eagle Ride also plans to conduct an annual review of driving records, which will include a review to ensure that the drivers' licenses

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<sup>43</sup> 52 Pa. Code § 29.505.

<sup>44</sup> Applicant Exhibit No. 2, Section 4; N.T. 18-19.

remain valid. Eagle Ride will also require drivers to report any changes in the status of the driver's licenses.<sup>45</sup>

In addition, Eagle Ride will have a zero tolerance policy for alcohol and drug use by all employees, including drivers, while on duty. Any suspicion of the use of drugs or alcohol will be cause for immediate suspension for investigation. If the use of drugs or alcohol is confirmed, the driver will be immediately and permanently dismissed.<sup>46</sup>

Recognizing the importance of the safety of a vehicle used in taxicab operations, Mr. Tenhwa explained that all vehicles will be checked pre-trip and post-trip for any potential problems. In addition, a routine maintenance schedule will be established for each vehicle, which includes oil changes and a review of the breaks, tires and other safety-related components of each vehicle. This system will ensure that windows are functioning and that doors are opening without resistance and closing security. Records will be maintained so that all periodic vehicle maintenance is performed according to manufacturer recommendations. All maintenance work and necessary repairs will be performed by certified mechanics. Eagle Ride's mechanic is Tesfalem Sultan, Steve's Automotive Technology, LLC, 1027 Dillerville Road, Lancaster, Pennsylvania, and his hourly rate is \$70.<sup>47</sup>

To ensure continuous compliance with vehicle equipment standards, Eagle Ride will require all vehicles to pass annual inspections. When coupled with the purchase of new vehicles, routine maintenance and the timely completion of repairs, Eagle Ride will ensure that the vehicles continuously comply with the applicable Pennsylvania equipment standards. To comply with the Commission's vehicle age/mileage requirements, Eagle Ride will monitor the age and mileage of

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<sup>45</sup> Applicant Exhibit No. 2, Section 4; N.T. 19-20.

<sup>46</sup> Applicant Exhibit No. 2, Section 4; N.T. 19-21.

<sup>47</sup> Applicant Exhibit No. 2, Section 6; N.T. 23-24.

each vehicle used in the business on a monthly basis. When a vehicle is 9 years of age or reaches 300,000 miles, Eagle Ride will take steps to replace them prior to them reaching 10 years of age or 350,000 miles.<sup>48</sup>

Through this evidence, Eagle Ride has demonstrated that it has an appropriate plan to comply with the Commission's driver and vehicle safety regulations and service standards. Therefore, this prong of the analysis also supports approval of the application.

5. *Propensity to Operate Legally and Safely*

Even if an applicant has the technical and financial capability to provide the proposed service, the Commission may withhold authority to operate if it concludes that the applicant lacks the propensity to operate safely and legally. The policy statement provides that the Commission will consider the applicant's record of compliance with the Public Utility Code, Commission regulations and Commission orders and whether the applicant or its drivers have been convicted of a crime of moral turpitude or a felony and remain under the supervision of a court or correctional institution.<sup>49</sup>

In this proceeding, no evidence has been presented to suggest that authority should be withheld based on a lack of propensity to operate safely and legally. Specifically, neither Eagle Ride nor Mr. Tenhwa have any record of non-compliance with the Public Utility Code, Commission regulations and Commission orders. Further, the record contains no evidence of the conviction of a crime of moral turpitude or a felony, for which the applicant or a driver remain under the supervision of a court or correctional institution.<sup>50</sup>

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<sup>48</sup> Applicant Exhibit No. 2, Section 6; N.T. 24-25.

<sup>49</sup> 52 Pa. Code § 41.14(b)(5)-(6).

<sup>50</sup> Applicant Exhibit No. 2, Section 8; N.T. 12.

6. Summary

When the record is reviewed in its totality, it is clear that Eagle Ride possesses the technical and financial capability to offer proposed service and that no reason exists to withhold authority or further delay Eagle Ride's entry into the Lancaster taxicab market. As Mr. Tenhwa testified, Eagle Ride intends to focus on providing innovation and good customer service. Using technology to improve services provided to consumers, Eagle Ride expects to succeed. Mr. Tenhwa also emphasized the importance of competition in creating better services and lower costs.<sup>51</sup> Given Mr. Tenhwa's experience with operating a taxicab in Uganda and running a successful accounting business for almost ten years in Pennsylvania, he will be able to leverage that experience to provide a level of taxicab service that is demanded by the public in the City of Lancaster and areas within 15 miles of Lancaster.

Through easing its entry standards, the Commission recognized that over the last fifty years, existing carriers – like the Joint Protestants – have used the public need requirement to quash competition and protect market share. In the *Order Eliminating Artificial Entry Barriers*, the Commission unequivocally stated that it does “not believe it is beneficial to exclude qualified new businesses from the market.”<sup>52</sup> Further, the Commission found that insulating the transportation industry from competition is not in the public interest.<sup>53</sup>

Approval of Eagle Ride's application would further the Commission's expressly-stated goals of promoting competition in the transportation industry. Through permitting Eagle Ride to enter the transportation market in Lancaster without further delay, the Commission would be providing another alternative to the traveling public from a company that is focused on innovation

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<sup>51</sup> N.T. 30-31.

<sup>52</sup> *Order Eliminating Artificial Entry Barriers* at 12.

<sup>53</sup> *Id.* at 15.

and customer service. It is in the public interest to make Eagle Ride's services available to the public.

#### IV. CONCLUSION

WHEREFORE, Eagle Ride Taxi Cab LLC respectfully requests that the Commission approve its application to provide call or demand service application to provide call or demand service in the City of Lancaster, Pennsylvania and with an airline distance of 15 statute miles of the City of Lancaster.

Respectfully submitted,



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Date: March 9, 2018

# Appendix A

## Proposed Findings of Fact

**Application of Eagle Ride Taxi Cab LLC**  
**Docket No. A-2017-2621976**  
**APPENDIX A – Proposed Findings of Fact**

1. On August 30, 2017, Eagle Ride Taxi Cab LLC filed its application requesting authority to provide call or demand service in the City of Lancaster, Pennsylvania and within an airline distance of 15 statute miles of the City of Lancaster. Applicant Exhibit No. 1.

2. The Commission caused notice of this application to be published in the Pennsylvania Bulletin dated September 30, 2017, at 47 Pa.B. 6155.

3. The notice stated that the deadline for filing protests was October 16, 2017.

4. On October 10, 2017, Autocab, Inc. filed a protest, which was withdrawn on November 20, 2017.

5. On October 12, 2017, EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC, and Amigo Cab, LLC filed their joint protest.

6. On October 31, 2017, Eagle Ride filed a verified statement. Applicant Exhibit No. 2.

7. Eagle Ride is a domestic limited liability company created on June 15, 2017 and registered with the Pennsylvania Department of State at Entity No. 6568708. N.T. 9.

8. Mr. David A. Tenhwa is the owner and manager of Eagle Ride. N.T. 10.

9. Mr. Tenhwa is the sole member of Eagle Ride. N.T. 10.

10. Mr. Tenhwa obtained a Bachelor of Arts degree in environmental management from Makerere University in Kampala, Uganda. N.T. 10.

11. In 2007, Mr. Tenhwa earned a Master's in Business Administration from Millersville University in Millersville, Pennsylvania. N.T. 10.

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12. From 1994 through 2000, Mr. Tenhwa operated a taxicab company in Kampala, Uganda. He used six cars in that business and was regulated by city government for safety, insurance and driver standards. He also gained experience with customer service. N.T. 10-11.

13. Mr. Tenhwa is an accountant. N.T. 11.

14. In 2009, Mr. Tenhwa started his own accounting business, Business Support and Development Services, LLC (“BS and DS”), with offices in Harrisburg and Lancaster, Pennsylvania. N.T. 11-12.

15. BS and DS, which employs six people and is in its tenth year of operation, is successful and profitable. N.T. 12.

16. Eagle Ride intends to operate the taxicab business from an office facility at 439 North Duke Street, Lancaster, Pennsylvania, which is currently used for his accounting business. Plenty of space is available to also use it for operation of the taxicab business. N.T. 13.

17. The space at 439 North Duke Street space is already equipped with two telephone landlines, a facsimile machine, security cameras, office furniture, computers, printer, filing cabinets, coffee machine, refrigerator, microwave and a customer’s waiting area. In addition, six parking spaces are available at this location. N.T. 13; Applicant Exhibit No. 2, Section 4.

18. Eagle Ride will maintain all records of the business, including logs, complaints, driver records and maintenance records in the office at 439 North Duke Street, using an up-to-date filing system. Records will be maintained physically in the office and electronically on the Cloud. All records will be retained as long as required by the Commission’s regulations. N.T. 14-15; Applicant Exhibit No. 2, Section 4.

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19. Eagle Ride intends to operate from 6:00 a.m. until 10:00 p.m., at least six days per week. It will operate seven days per week if necessary to meet the demands of the public. N.T. 15, 34, 41.

20. Eagle Ride will offer a variety of means for customers to request service, depending on the method that is most convenient for the customer. Among the choices for the customer will be telephone (landline and mobile), electronic mail, social media (Facebook and Twitter), Eagle Ride’s website and WhatsApp Messenger (“WhatsApp”), a mobile application that allows for cross-platform instant messaging and Voice over IP service. N.T. 15-16; Applicant Exhibit No. 2, Section 3.

21. Eagle Ride will use a communications network for drivers that includes mobile phones, text messages, radio communications and the website, which can be accessed through their mobile phones. Eagle Ride will install WhatsApp on each driver’s mobile phone, which will transmit messages with Google maps of a particular location within seconds to everyone in the network. N.T. 15-16; Applicant Exhibit No. 2, Section 3.

22. Mr. Tenhwa has acquired a 2017 Toyota Highlander, which has a seating capacity for 8 people and has less than 30,000 miles. Mr. Tenhwa paid \$20,000 down on the vehicle. N.T. 21-23; Applicant Exhibit No. 2, Section 3.

23. As necessary to meet the demands of the public, Eagle Ride is prepared to purchase additional vehicles. N.T. 23; Applicant Exhibit No. 2, Section 3.

24. Eagle Ride will utilize employees currently employed by the accounting business but would hire additional employees as needed to ensure the availability of the equivalent of two

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full-time dispatchers each working a 9-hour shift. Eagle Ride would hire other additional employees as necessary. N.T. 15-17, 34, 41, 58-59; Applicant Exhibit No. 2, Section 3.

25. Dispatchers will answer calls from customers, dispatch drivers, handle requests submitted through electronic mail, social media, the website and WhatsApp, and fulfill requests in a timely manner. N.T. 15-17; Applicant Exhibit No. 2, Section 3.

26. Eagle Ride intends to use two drivers for the start-up of the business, including Mr. Tenhwa, based on his knowledge about the need for an additional taxicab company in the City of Lancaster. As needed to meet the demands of the public, Eagle Ride will utilize additional drivers. N.T. 17-18; Applicant Exhibit No. 2, Section 4.

27. Eagle Ride plans to have drivers work eight-hour shifts and pay \$75 per day to lease the vehicle. N.T. 60-61.

28. As the sole member of Eagle Ride, Mr. Tenhwa will make his personal assets available to the start-up company, as needed. NT. 38-40, 46, 60.

29. Mr. Tenhwa has two personal savings accounts, which together show a balance of approximately \$15,000. N.T. 25-26; Applicant Exhibit No. 5.

30. Mr. Tenhwa presented a Statement of Financial Position, showing net assets of \$74,000. N.T. 26-27; Applicant Exhibit No. 6.

31. Mr. Tenhwa sponsored an exhibit showing a projected cash flow for Year 1 and Year 2. Although Eagle Ride expects a slight net loss in Year 1, it projects a net profit of \$22,450 in Year 2. N.T. 27-28; Applicant Exhibit No. 7.

32. Lancaster has been attracting new businesses and residents from other areas, with the population growing by 3.7 percent since 2010. N.T. 28.

**Application of Eagle Ride Taxi Cab LLC**  
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**APPENDIX A – Proposed Findings of Fact**

33. Downtown Lancaster is an important employment center, with over 15,000 employees. N.T. 29-30.

34. Four new shopping centers have recently opened or will open soon in the Lancaster area, including Shoppes at Belmont on Fruitville Pike, Lime Spring Square Shopping Center on Rohrerstown Road, Crossings at Conestoga Creek on Harrisburg Pike and another one on Willow Street. N.T. 29-30.

35. Eagle Ride will require all potential drivers to complete an employment application; be at least 21 years of age; present a valid and current driver's license; present a valid and current driver's license; present another form of government identification; and provide evidence of five years of driving experience. N.T. 17-18; Applicant Exhibit No. 2, Section 4.

36. Drivers will also be required to undergo a training program, which will be provided over a period of two to four days, as required for each driver. The program will cover safety tips, map reading, passenger safety, vehicle safety, vehicle maintenance, inspections, clearness checks and customer services, including guidelines for assisting disabled customers and elderly passengers. N.T. 19; Applicant Exhibit No. 2, Section 4.

37. Eagle Ride has contacted several insurance companies, including Travelers and Nationwide, and received quotes of \$600 per month for two vehicles to be used for the proposed taxicab services. N.T. 24-25.

38. Eagle Ride obtained a written quote from National Indemnity Company of approximately \$7,000 per year. N.T. 24-25; Applicant Exhibit No. 2, Section 7.

39. Before permitting an individual to operate a vehicle in call or demand service, Eagle Ride will conduct or have background checks performed that meet the requirements of the

**Application of Eagle Ride Taxi Cab LLC**  
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Commission's regulations by including multistate or multijurisdictional criminal records or other similar commercial nationwide data base, including a review of the United States Department of Justice national sex offender public website. N.T. 18-19; Applicant Exhibit No. 2, Section 4.

40. Eagle Ride will disqualify individuals convicted of certain crimes, in accordance with the Commission's regulations, including specified felony convictions, crimes of violence, particular sexual offenses and acts of terror. Additionally, Eagle Ride will conduct another review of a driver's criminal background one year after engaging a driver and every second year thereafter. N.T. 18-19; Applicant Exhibit No. 2, Section 4.

41. Eagle Ride will have driver history checks performed for the preceding three years and require them to be obtained from the Pennsylvania Department of Transportation within 60 days prior to submitting the driver application. N.T. 19-20; Applicant Exhibit No. 2, Section 4.

42. Individuals will be disqualified from driving if they have any convictions for extreme violations, including driving under the influence of drugs or alcohol, severe driving infractions, violations involving property damage, violations involving fatal accidents and more than three minor moving violations. N.T. 19-20; Applicant Exhibit No. 2, Section 4.

43. Eagle Ride plans to conduct an annual review of driving records, which will include a review to ensure that the drivers' licenses remain valid. Eagle Ride will also require drivers to report any changes in the status of the driver's licenses. N.T. 19-20; Applicant Exhibit No. 2, Section 4.

44. Eagle Ride will have a zero tolerance policy for alcohol and drug use by all employees, including drivers, while on duty. Any suspicion of the use of drugs or alcohol will be cause for immediate suspension for investigation. If the use of drugs or alcohol is confirmed, the

**Application of Eagle Ride Taxi Cab LLC**  
**Docket No. A-2017-2621976**  
**APPENDIX A – Proposed Findings of Fact**

driver will be immediately and permanently dismissed. N.T. 19-21; Applicant Exhibit No. 2, Section 4.

45. All vehicles will be checked pre-trip and post-trip for any potential problems. N.T. 23-24; Applicant Exhibit No. 2, Section 6.

46. A routine maintenance schedule will be established for each vehicle, which includes oil changes and a review of the breaks, tires and other safety-related components of each vehicle. This system will ensure that windows are functioning and that doors are opening without resistance and closing security. N.T. 23-24; Applicant Exhibit No. 2, Section 6.

47. Records will be maintained so that all periodic vehicle maintenance is performed according to manufacturer recommendations. N.T. 23-24; Applicant Exhibit No. 2, Section 6.

48. All maintenance work and necessary repairs will be performed by certified mechanics. N.T. 23-24; Applicant Exhibit No. 2, Section 6.

49. Eagle Ride's mechanic is Tesfalem Sultan, Steve's Automotive Technology, LLC, 1027 Dillerville Road, Lancaster, Pennsylvania, and his hourly rate is \$70. N.T. 23-24.

50. Eagle Ride will require all vehicles to pass annual inspections. N.T. 23-24; Applicant Exhibit No. 2, Section 6.

51. To comply with the Commission's vehicle age/mileage requirements, Eagle Ride will monitor the age and mileage of each vehicle used in the business on a monthly basis. When a vehicle is 9 years of age or reaches 300,000 miles, Eagle Ride will take steps to replace them prior to them reaching 10 years of age or 350,000 miles. N.T. 24-25; Applicant Exhibit No. 2, Section 6.

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52. Mr. Tenhwa has not been convicted of a crime of moral turpitude or a felony, and is not under the supervision of a court or correctional institution. N.T. 12; Applicant Exhibit No. 2, Section 8.

53. No evidence was presented of a record of non-compliance by Eagle Ride or Mr. Tenhwa with the Public Utility Code, Commission regulations and Commission orders.

# Appendix B

## Proposed Conclusions of Law

**Application of Eagle Ride Taxi Cab LLC**  
**Docket No. A-2017-2621976**  
**APPENDIX B – Proposed Conclusions of Law**

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding. 66 Pa.C.S § 1102, 52 Pa. Code § 29.31.

2. Eagle Ride has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa.C.S. § 332(a).

3. Eagle Ride has established that it is entitled to the relief it is seeking by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

4. The evidence of record establishes that Eagle Ride possesses the requisite financial and technical fitness to provide the proposed service. 52 Pa. Code § 41.14.

5. The evidence of record fails to establish that Eagle Ride lacks the propensity to operate legally. 52 Pa. Code § 41.14.

# Appendix C

## Proposed Ordering Paragraphs

**Application of Eagle Ride Taxi Cab LLC**  
**Docket No. A-2017-2621976**  
**APPENDIX C – Proposed Ordering Paragraphs**

1. That the application of Eagle Ride Taxi Cab LLC for the right to begin to transport, by motor vehicle, persons in call or demand service, in the City of Lancaster and within an airline distance of 15 statute miles of the limits of said city be approved.

2. That Eagle Ride shall not engage in any transportation granted herein until the following is submitted to the Commission:

(a) Form E evidence of insurance.

(b) A tariff establishing just and reasonable rates.

3. That upon compliance with the requirements herein, a certificate of public convenience be issued evidencing the Commission's approval of the right to operate as above determined.

4. That the protests of EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC, and Amigo Cab, LLC are dismissed.

5. That in the event Eagle Ride has not, on or before sixty (60) days from the date of service of this Order, complied with the requirements set forth above, the application shall be dismissed without further proceedings, unless otherwise permitted to remain open by the Commission for good cause shown.