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March 16, 2018

**Via Electronic Filing**

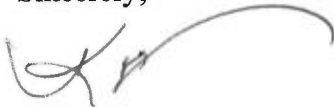
Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

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 Reply 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 Reply 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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PO Box 3265  
Harrisburg, PA 17105-3265  
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Dated: March 16, 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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**REPLY BRIEF OF EAGLE RIDE TAXI CAB LLC**

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## **I. INTRODUCTION**

In accordance with the briefing schedule established for this proceeding by Administrative Law Judge David A. Salapa, Main Briefs were filed on March 9, 2018 by Eagle Ride Taxi Cab LLC (“Eagle Ride”) and EZ Taxi LLC, Express Taxi LLC, Reading City Cab, LLC, and Amigo Cab, LLC (“Joint Protestants”). Eagle Ride is filing this Reply Brief to respond to the Joint Protestants’ Main Brief on the issues of: (i) Eagle Ride’s financial fitness, given its reliance on the personal financial assets of its lone member and its plan to utilize existing employees of its lone member’s accounting business to perform dispatch functions for the proposed taxicab service; and (ii) the effect, if any, of Eagle Ride’s plans to allow consumers to electronically request taxicab service on the determination of whether the requested authority should be granted.

Eagle Ride incorporates by reference its Main Brief which demonstrates that it has presented evidence of sufficient financial resources to offer the proposed taxicab services within the City of Lancaster, Pennsylvania, and within an airline distance of 15 statute miles of the City of Lancaster.<sup>1</sup> Additionally, Eagle Ride incorporates by reference its Main Brief addressing the fact that the record in this proceeding contains no evidence to suggest that authority should be withheld based on a lack of propensity to operate legally.<sup>2</sup>

## **II. SUMMARY OF ARGUMENT**

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

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<sup>1</sup> Eagle Ride Main Brief at 8-12.

<sup>2</sup> Eagle Ride Main Brief at 16-17.

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 advance the Commission's goals of promoting competition in the transportation industry, thereby enhancing innovation and improving customer service.

Neither of the issues raised by the Joint Protestants' Main Brief support dismissal of Eagle Ride's application. The Commission's regulations governing the consideration of passenger carrier applications are silent as to what constitutes sufficient financial resources to provide proposed service. Further, particularly for a start-up company, the regulations do not require that the entity applying for a certificate of public convenience have assets or prevent the applicant from relying on another source for funds. Having access to the personal financial assets of Mr. David A. Tenhwa, which he has pledged, is adequate. Also, Eagle Ride explained how it can cost-effectively utilize employees of its existing accounting business to perform dispatch functions for the taxicab business. In addition, Eagle Ride presented a cash flow projection, estimating that it will earn a profit in the second year of operation.

As to Eagle Ride's plans to allow customers to electronically request service, nothing in the Commission's regulations prohibits call and demand carriers from relying on such technology. Moreover, the Joint Protestants have incorrectly characterized the way in which transportation network companies ("TNCs") operate in contending that Eagle Ride plans to operate as a TNC

without the requisite license. Importantly, while TNCs rely on a digital network to connect drivers and passengers, Eagle Ride plans to use dispatchers while giving customers options beyond telephone or street hail to request service. Also, Eagle Ride intends to lease its vehicle to the drivers, whereas TNC drivers use personal vehicles to provide transportation service. Therefore, Eagle Ride does not need to apply for a TNC license, and its plan to allow customers to use convenient electronic methods for requesting service does not raise any concerns about a propensity to operate illegally.

### III. ARGUMENT

#### A. Eagle Ride Has Presented Substantial Evidence of Adequate Financial Resources to Offer the Proposed Service<sup>3</sup>

Eagle Ride presented substantial evidence of adequate financial resources to offer the proposed service. Specifically, with respect to available capital, Eagle Ride produced a Statement of Financial Position, as of December 31, 2017, showing that Mr. Tenhwa's net assets of \$74,500.<sup>4</sup> In addition, Mr. Tenhwa testified that he would use his personal assets to support Eagle Ride's operations.<sup>5</sup> As a start-up company, Eagle Ride would use existing space that is available at the facility that Mr. Tenhwa uses for his accounting business in Lancaster and utilize employees of the accounting business to perform dispatching functions for the taxicab business.<sup>6</sup>

Mr. Tenhwa also presented a cash flow projection for the first two years of operation, showing a slight net loss in the first year, followed by a net profit of \$22,450 in the second year.<sup>7</sup>

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<sup>3</sup> Eagle Ride Main Brief at 8-12.

<sup>4</sup> Applicant Exhibit No. 6.

<sup>5</sup> N.T. 38-39, 60.

<sup>6</sup> N.T. 13, 15-17. Eagle Ride notes that its Main Brief refers to 9-hour shifts for dispatchers and 8-hour shifts for drivers (Eagle Ride Main Brief at 11). As the intended hours of operation are from 6:00 a.m. to 10:00 p.m., it appears that 8-hour shifts are anticipated for both dispatchers and drivers. N.T. 15, 41. It is of little consequence, however, since Mr. Tenhwa has indicated that he will perform dispatching functions as necessary and will remain open longer if needed to meet the demands of the public. N.T. 34, 42.

<sup>7</sup> Applicant Exhibit No. 7.

Explaining why he believes that the proposed taxicab business will be successful, Mr. Tenhwa referred to the importance of downtown Lancaster as an employment center, described the recent growth in population and pointed to four new shopping centers recently opening or soon opening within the proposed service territory.<sup>8</sup> Further, as a businessman who holds an MBA, Mr. Tenhwa described his accounting business that is in its tenth year, with offices in Harrisburg and Lancaster, as successful and profitable.<sup>9</sup> Mr. Tenhwa also expects Eagle Ride's proposed taxicab business to succeed because of the focus on customer service and innovation.<sup>10</sup>

Challenging Eagle Ride's financial fitness, the Joint Protestants note that the Statement of Financial Position only reflects the financial assets of Mr. Tenhwa, and not of Eagle Ride. They also argue that Eagle Ride should have presented evidence of the financial fitness of Mr. Tenhwa's accounting business because he intends to utilize its employees to support the taxicab operations.<sup>11</sup> The Joint Protestants further dispute Eagle Ride's projected revenues and expenses for the taxicab operation. Specifically, they question the \$600 projected monthly wage expenses on Applicant Exhibit No. 7 and how that amount will support two full-time dispatchers.<sup>12</sup> On these bases, the Joint Protestants maintain that Eagle Ride had not demonstrated that it has sufficient financial resources to sustain the taxicab operation.<sup>13</sup>

The Joint Protestants have not cited any Commission regulations, policy statements or decisions that set forth any requirement imposing a minimum capital requirement on applicants for call and demand service. They have also not cited any Commission regulations, policy

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<sup>8</sup> N.T. 28-30.

<sup>9</sup> N.T. 12.

<sup>10</sup> N.T. 29-30.

<sup>11</sup> Joint Protestants Main Brief at 4-5.

<sup>12</sup> Joint Protestants Main Brief at 5-6.

<sup>13</sup> Joint Protestants Main Brief at 6.

statements or decisions that prevent an applicant for call and demand service from relying on the personal financial assets of its lone member to support the proposed operations of a start-up company. In addition, they have not referred to any regulatory requirement obligating an applicant to submit financial documentation for its other businesses, even when the applicant intends to use employees to perform functions for the new business. Further, the Joint Protestants have not presented any evidence to rebut Eagle Ride's evidence of its financial resources.

In *Application of Go Green Taxi, LLC*,<sup>14</sup> the Commission held that in the absence of any minimal capital requirements on applicants for call and demand service, the applicant's capital resources must only be adequate to serve the territory requested. In *Go Green Taxi*, the Commission found that given the limited size of the territory and the limited size of the proposed business, the applicant's proposal to borrow money in order to fund its start-up would be adequate to commence service.<sup>15</sup>

Similarly, here, with Mr. Tenhwa pledging to make his personal assets available to support the start-up operations of Eagle Ride, of which he is the sole member, the Commission should find that this proposal is sufficient. This conclusion is supported by the limited size of Eagle Ride's proposed start-up operations to include two drivers and one vehicle, which has already been purchased. Further, Eagle Ride is not seeking statewide or even county-wide authority but rather is proposing to only serve the City of Lancaster and the surrounding area within 15 miles of the City. Eagle Ride's plans to use existing space and employees currently utilized by Mr. Tenhwa's

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<sup>14</sup> Docket No. A-2015-2504430 (Initial Decision served July 8, 2016 at 24; Order entered February 10, 2017 at 14) ("*Go Green Taxi*").

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

accounting business also avoids the need for substantial expenditures to fund the start-up of the operations.<sup>16</sup>

In *Application of Personal Care Transport, LLC*,<sup>17</sup> the Commission approved a passenger application over protests regarding financial fitness, on the basis that the evidence presented was commensurate with a new business starting out. The applicant's prior business experience was taken into consideration, as were cash flow projections and the minimal overhead expenses with the sole member of the limited liability company as the only employee. Given the similarities between the applicant in *Personal Care Transport* and Eagle Ride in this proceeding, the Commission should likewise find that Eagle Ride has presented sufficient evidence of its financial fitness.

As to Eagle Ride not presenting financial documentation of the other businesses Mr. Tenhwa operates, an applicant is not required to present documents relating to the financial assets and liabilities of other ventures of its sole member, particularly when it is not directly relying on those resources to fund the proposed service. Here, Mr. Tenhwa has pledged to make his personal assets available to support the operations of Eagle Ride and presented supporting documentation of those assets.<sup>18</sup> These assets are sufficient to establish that Eagle Ride has adequate financial resources to sustain the proposed taxicab business, particularly given the projection for a net profit in the second year. The fact that Eagle Ride intends to use employees of Mr. Tenhwa's accounting business to perform dispatch duties for the taxicab business does not call into question the financial

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<sup>16</sup> See *Application of Blue Taxi LLC*, Docket No. A-2016-2568401 (Recommended Decision served September 18, 2017) (ALJ recommended approval of application based on a similar business plan).

<sup>17</sup> Docket No. A-2015-2489318 (Initial Decision served July 1, 2016 at 27; Order entered January 26, 2017 at 19-20) ("*Personal Care Transport*").

<sup>18</sup> N.T. 60; Applicant Exhibit Nos. 5 and 6. See *Application of Unique Cab, LLC*, Docket No. A-2016-2532708 (Initial Decision served January 11, 2018; Order entered February 14, 2018) (application approved where members of limited liability company pledged personal assets to the taxicab operation).

fitness of that business, which is successful and profitable according to the unrefuted evidence in this proceeding.<sup>19</sup> To the contrary, sharing employees between the businesses is a way to realize the synergies of having employees that are available to perform other functions.<sup>20</sup>

With respect to the Joint Protestants' claims regarding Eagle Ride's estimated expenses for employees to perform dispatch functions, they contend that Eagle Ride has understated the anticipated expenses by \$3,720 over the course of a year. They base this assertion on an assumption that Eagle Ride would need pay two employees at the rate of \$2.50 per hour more than the employees are currently earning from the accounting business to cover the costs of two full-time equivalent dispatchers.<sup>21</sup>

The Joint Protestants' calculations are not based on the evidence that is in the record. While Mr. Tenhwa testified that Eagle Ride would pay affected employees \$2.50 per hour more to "cover the extra work they do for Eagle,"<sup>22</sup> he made it clear that the \$600 monthly expense he estimated on Applicant Exhibit No. 7 for dispatchers would be the incremental costs over his current costs to pay the employees who work for the accounting business.<sup>23</sup> Therefore, he does not plan to pay two employees \$2.50 per hour more than their base wages over the course of an eight-hour shift, as the Joint Protestants' calculations assume. Rather, Mr. Tenhwa explained that he would assign his existing employees more hours to cover the period of operation for the taxicab service.<sup>24</sup> He also noted that he would handle dispatching duties himself as necessary.<sup>25</sup> Finally, Mr. Tenhwa pointed to a miscellaneous entry on Applicant Exhibit No. 7 in the amount of \$3,400 that is

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<sup>19</sup> N.T. 12.

<sup>20</sup> N.T. 16-17.

<sup>21</sup> Joint Protestants Main Brief at 5-6.

<sup>22</sup> N.T. 42.

<sup>23</sup> N.T. 58.

<sup>24</sup> N.T. 58-59.

<sup>25</sup> N.T. 42.

available to cover any unexpected costs.<sup>26</sup> As Mr. Tenhwa explained, Eagle Ride is a start-up company, which has to find ways to earn profits, and as the company grows, it will acquire more clients, increase income, and add employees.<sup>27</sup>

The information set forth in Applicant Exhibit Nos. 6 and 7, together with the testimony presented during the proceeding, is sufficient for the Commission to find that Eagle Ride has access to adequate financial resources to sustain the proposed taxicab operations. Particularly given the availability of existing space to run the taxicab business and the availability of existing employees to provide support, including dispatch functions, for the taxicab business, the personal funds that Mr. Tenhwa has pledged to Eagle Ride will sufficiently support the limited size and scope of the proposed operations.

**B. Eagle Ride's Plans to Allow Customers to Request Service by Electronic Means Do Not Suggest a Propensity to Operate Illegally**

In its Main Brief, Eagle Ride noted that 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>28</sup>

The Joint Protestants presented no evidence to suggest a propensity to operate illegally, and at no time, despite being asked during discovery to identify any challenges they planned to lodge against the application, revealed any concerns with Eagle Ride's plans to allow customers to electronically request service. For the first time in their Main Brief, the Joint Protestants argue

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<sup>26</sup> N.T. 59.

<sup>27</sup> N.T. 46.

<sup>28</sup> Eagle Ride Main Brief at 16.

that Eagle Ride has shown a propensity to operate illegally through its plans to give customers the options of requesting service through electronic mail, social media and the WhatsApp Messenger application (“WhatsApp”) while not seeking concurrent authority to operate as a “dual motor carrier” as both a call and demand carrier and a transportation network company (“TNC”).<sup>29</sup>

A review of the relevant provisions of the Public Utility Code (“Code”)<sup>30</sup> demonstrates that Eagle Ride’s plans to accept electronic requests for service from customers does not transform it into a TNC. In short, Eagle Ride does not propose to operate as a TNC and does not need to request dual motor carrier authority.

Under Section 102 of the Public Utility Code (“Code”), a “dual motor carrier” is a call and demand carrier operating under a certificate of public convenience and providing transportation network services pursuant to a license from the Commission. As further set forth in Code Section 102, only certificated call and demand carriers may file an application with the Commission requesting a license to operate a transportation network service as a dual motor carrier.<sup>31</sup> Consistent with Code Section 2604.4, a dual carrier may dispatch either a call and demand vehicle or a personal vehicle driven by a dual motor carrier driver to provide service in its authorized service territory.<sup>32</sup>

Based on Code Section 102, Eagle Ride may not even request authority to operate as a dual motor carrier until such time as it receives a certificate of public convenience from the Commission to provide call or demand service. Therefore, it is absurd to argue that Eagle Ride shows a propensity to operate illegally on the basis that it has not yet sought dual motor carrier authority.

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<sup>29</sup> Joint Protestants Main Brief at 6-7.

<sup>30</sup> 66 Pa.C.S. §§ 101 *et seq.*

<sup>31</sup> 66 Pa.C.S. § 102 (relating to definitions).

<sup>32</sup> 66 Pa.C.S. § 2604.4 (relating to dual motor carrier authority).

In any event, giving customers the choices of electronic mail, social media or WhatsApp for requesting service does not equate to providing TNC services. Specifically, Eagle Ride is simply offering these options to customers as ways they may contact the company to request a ride, and dispatchers will still be involved in actually arranging the transportation.<sup>33</sup> Also, Eagle Ride's drivers will not use their own personal vehicles but rather will lease the vehicle from Eagle Ride.<sup>34</sup>

Eagle Ride's proposal to offer a variety of communications methods for consumers to use as a way to contact the company is consistent with the description of call or demand service in the Commission's regulations. In describing the different schemes of classifications of types of services furnished by common carriers of passengers, Section 29.13 of the Commission's regulations explain that call and demand service is "characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or by both."<sup>35</sup> This description is offered to show how call and demand service differs from other types of passenger service, including scheduled route service, which is offered according to a schedule along designated routes, and limousine service, which is arranged for in advance.<sup>36</sup>

However, nothing in this regulation limits a call or demand carrier to only accepting requests for service by telephone call or by hail. Indeed, the Commission's recent pronouncements in the transportation industry are supportive of giving customers choices.<sup>37</sup> Here, the choice is to make a written request through electronic mail, social media or WhatsApp, rather than using a telephone to verbally request service. It is still call and demand service; it is simply requested

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<sup>33</sup> N.T. 17.

<sup>34</sup> N.T. 60-61.

<sup>35</sup> 52 Pa. Code § 29.13(2).

<sup>36</sup> 52 Pa. Code § 29.13(1) and (4).

<sup>37</sup> See generally *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).

through “text” rather than by voice. With WhatsApp, the drivers will enjoy the added feature, which will also benefit customers, of having directions to the customer’s location provided through the mobile application.

By contrast, TNC services provide a unique and innovative way for passengers and drivers to be connected without a dispatcher. In creating this category of transportation service as “experimental service,”<sup>38</sup> the Commission described a TNC as using a digital platform to connect passengers to independent drivers using their own personal cars to provide transportation services. The TNC does not own the vehicles, employ drivers or transport passengers. Rather, both drivers and riders use a mobile application to be automatically connected without human intervention, i.e. a dispatcher. Once a driver accepts a trip request, the rider receives the vehicle type and a photo of the driver, along with an indication of the driver’s current location and estimated time of arrival. Drivers are not permitted to solicit or accept street hails.<sup>39</sup> The Commission has observed that the key features distinguishing transportation network services from call and demand services are that TNCs’ drivers use their own personal vehicles and TNCs rely on application-based technology to arrange transportation service.<sup>40</sup>

By Act 164 of 2016, the General Assembly amended the Code to establish a statutory framework for the operations of TNCs. Several key definitions in Code Section 102 show the unique features of transportation network services, which distinguish them from call and demand services that may be requested by electronic mail, social media or WhatsApp, as follows:<sup>41</sup>

- “Transportation network service” is defined as a service that: 1) matches a passenger and the TNC driver using a digital network in advance of a prearranged ride; 2) is characterized

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<sup>38</sup> 52 Pa. Code § 29.352.

<sup>39</sup> *Application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc. for Emergency Temporary Authority*, Docket No. A-2014-2429993 (Order entered July 24, 2014).

<sup>40</sup> Id. at 4-5.

<sup>41</sup> 66 Pa.C.S. § 102 (relating to definitions).

by a TNC driver offering or providing a prearranged ride to a passenger; and 3) is rendered on an exclusive basis;

- “Transportation network company is defined as a person or entity licensed by the Commission to operate transportation network services and that uses a digital network to facilitate prearranged rides;
- “Digital network” is defined as any online-enabled application, software, website or system offered or utilized by a transportation network company that enable the prearrangement of rides with transportation network company drivers; and
- “Transportation network company driver” is an individual who receives connections to potential passengers through a digital network controlled by a transportation network and uses a personal vehicle to provide transportation.

A review of these definitions, together, shows that allowing a customer to use alternatives other than telephone or street hail to request a taxicab does not make the service like Uber.<sup>42</sup>

In summary, it is clear that nothing about Eagle Ride’s plans to offer customers a variety of communications methods for requesting service transform its proposed call and demand service into transportation network services. Under Eagle Ride’s proposal, drivers and passengers will not be automatically connected via a digital network, but rather will still require the assistance of a dispatcher. Also, drivers will not use personal vehicles but rather will lease the vehicle from Eagle Ride. Nothing in the Commission’s regulations precludes a call or demand carrier from using 21<sup>st</sup> (or 20<sup>th</sup>) century technology to receive requests from consumers for passenger service.

Since Eagle Ride’s plans to permit customers choices in the way they request passenger service would not amount to the provision of TNC services and are consistent with the Commission’s description of call or demand service, no basis exists for withholding authority on the grounds that Eagle Ride lacks the propensity to operate legally. Even to the extent that a carrier would describe plans in its application to eventually offer TNC service, it would be required to

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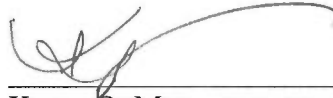
<sup>42</sup> <https://www.phillymag.com/news/2014/06/20/philadelphia-taxi-app-cabs-uber-philly/> (last accessed on March 13, 2018).

wait until after it receives a certificate of public convenience as a call or demand carrier to even seek a license to do so. In the interim, denial of the application would not be warranted. At most, the Commission might caution the carrier not to launch TNC services until such time as a license is obtained.

#### 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 16, 2018