

# Licence Application Decision

## (Transportation Network Services - New)

<b>Application #</b>	7441-19TNS	<b>Applicant</b>	Yallah Inc.
<b>Trade Name</b>	Yallah		
<b>Principal</b>	Mohamed Benini		
<b>Address</b>	Suite 1500, 701 West Georgia Vancouver, BC V7Y 1C6		
<b>Primary Areas of Operation</b>	<p>Originating Area:</p> <ul style="list-style-type: none"> <li>• Region 1 – Lower Mainland, Whistler</li> <li>• Region 2 – Capital Regional District (CRD)</li> <li>• Region 3 – Vancouver Island, excluding CRD</li> <li>• Region 4 – Okanagan – Kootenay-Boundary-Cariboo</li> <li>• Region 5 – B.C. North Central and Other Regions Outside B.C.</li> </ul> <p>Destination Area:</p> <ul style="list-style-type: none"> <li>• B.C. or outside B.C.</li> </ul>		
<b>Current Licence</b>	None		
<b>Publication of Application</b>	October 30, 2019		
<b>Application Summary</b>	New Special Authorization: Transportation Network Services Authorization (TNSA)		
<b>Deadline for Submissions</b>	November 12, 2019 December 10, 2019 (2 <sup>nd</sup> set of submissions)		
<b>Submitters (and representatives)</b>	<ul style="list-style-type: none"> <li>• BC Taxi Association (“BCTA”)</li> <li>• Bel-Air Taxi (1982) Limited, Kimber Cabs Ltd., Sunshine Cabs Ltd., Oceanside Taxi Ltd., Teco Taxi Ltd. (“Bel-Air <i>et al</i>”)</li> <li>• Kalum Kabs Ltd.</li> <li>• Prince George Taxi Ltd.</li> <li>• UFCW 1518 and UFCW Canada</li> <li>• Yellow Cab Company Ltd., North Shore Taxi (1966) Ltd., Richmond Cabs Ltd., Bonny’s Taxi Ltd., Burnaby Select Metrotown Taxi Ltd., Queen City Taxi Ltd., Black Top Cabs Ltd., Vancouver Taxi Ltd., Vancouver Taxi Ltd. dba Handicapped Cab, MacLure’s Cabs (1984) Ltd. (Vancouver Taxi Association (“VTA”))</li> </ul>		
<b>Board Decision</b>	<b>The special authorization is refused.</b>		
<b>Decision Date</b>	March 19, 2020		
<b>Panel Chair</b>	Catharine Read		

## 1. Introduction

[1] The *Passenger Transportation Act*, S.B.C. 2004, c. 39 (the “Act”) regulates the licensing and operation of commercial passenger transportation vehicles in British Columbia. The Passenger Transportation Board (the “Board”) is established under the Act and its powers, duties and functions are set out in section 7. In general terms, the Board has authority to make decisions on license applications for passenger directed vehicles (e.g. taxis, limousines, and other small shuttle and tour vehicle licences). With some exceptions, the Act defines passenger directed vehicles to mean commercial passenger vehicles that are being operated to or from locations determined by or on behalf of passengers.

[2] In September 2019, amendments to the Act and the *Passenger Transportation Regulation* (the “Regulation”) came into force which enable the Board to also make licensing decisions for transportation network services (“TNS”), commonly referred to as ride hailing. The Act defines TNS to mean, in part, services respecting the connection of drivers to passengers who hail and pay for the services using an online platform, commonly referred to as an “app”. A transportation network company (“TNC”) is a company that uses an app to provide TNS.

[3] This regulatory change followed extensive provincial consultation and deliberation which resulted in, among other reports, a February 2018 Select Standing Committee report entitled “Transportation Network Companies in British Columbia” (the “2018 TNC Report”), a June 2018 report entitled “Modernizing Taxi Regulation” by Hara Associates (the “2018 Hara Report”), and a March 2019 Select Standing Committee report entitled “Transportation Network Services: Boundaries, Supply, Fares and Drivers’ Licences” (the “2019 TNS Report”). The Board also carried out consultations with the taxi industry, TNCs, the Vancouver Airport Authority and the Vancouver Port Authority on TNS operating areas, fleet sizes and rates in July 2019. The Board published the results of its consultations online and developed an operational policy entitled “Introduction of Transportation Network Services, 2019” (the “Operational Policy”).

[4] On October 17, 2019, Yallah Inc., doing business as Yallah (“Yallah”), applied for a passenger transportation licence with a special authorization in the form of a TNS authorization (“TNSA”) to operate ride hailing services in Lower Mainland, Whistler (Region 1), the Capital Regional District (Region 2), Vancouver Island, excluding the Capital Regional District (Region 3), Okanagan – Kootenay-Boundary-Cariboo (Region 4) and B.C. North Central and Other Regions of B.C. (Region 5) (the “Application”). In accordance with s. 26 of the Act, the Registrar of Passenger Transportation forwarded Yallah’s Application to the Board for determination.

[5] Section 28 of the Act governs determinations by the Board about whether to approve, in whole or in part, licence applications for a special authorization such as a TSNA. Section 28 provides that such approval may be granted after the Board considers whether: (a) there is a public need for the services that the applicant proposes to provide under the special

authorization; (b) the applicant is a fit and proper person to provide, and is capable of providing, those services; and, (c) the application promotes sound economic conditions in the passenger transportation business in British Columbia. If approved, the Board is required to specify the special authorizations to be included in the licence and establish licence terms and conditions as provided for in ss. 28(3) to (6).

[6] For the reasons set out below, the Board has denied Yallah's Application on the basis that the Board is not satisfied it is capable of providing the proposed service for the purposes of s. 28(1)(b) of the Act.

## 2. Procedural Matters

[7] Section 26 of the Act requires the Board to publish notice of the Application, which it did on October 30, 2019. Section 27(2) provides that any person may (within the time period specified by the Board and on payment of the prescribed fee) make a written submission to the Board respecting the Application. In relation to Yallah's Application, the Board received submissions from:

- BCTA
  - Bel-Air *et al*
  - Kalum Kabs Ltd.
  - Prince George Taxi Ltd.
  - UFCW 1518 and UFCW Canada
  - VTA
- (collectively the "Submitters")

[8] Yallah's application is one of over 30 applications that have been made by various companies since the introduction of the TNS legislative amendments. Many of the Submitters responded to a number of these applications globally rather than individually, with a focus on two other applicants.

[9] Some of the Submitters also asked the Board to conduct oral hearings in respect of applications received by the Board, including this Application. The Act confers broad authority on the Board to control its own process when making decisions on licence applications. That authority includes discretion to conduct a written, electronic or oral hearing, or any combination of them, as the Board in its sole discretion considers appropriate. For the reasons set out in its decision of October 30, 2019, the Board determined to follow its usual process of conducting a written hearing for the Application.

[10] Section 27(5) of the Act provides that, unless the Board directs otherwise, a person making a submission respecting an application does not, merely because of that submission, become entitled to participate any further in the application or obtain further information or disclosure respecting the application. On October 30, 2019, the Board issued an Industry Advisory modifying its process for all ride hailing applications to provide greater disclosure to the Submitters and more transparency in its process.

[11] In accordance with the Industry Advisory, on December 5, 2019, the Board sent an application package to all Submitters which included Yallah's initial response to the Submitters' materials as well as the documents provided by Yallah in support of its Application (*i.e.* TNS Declaration Form, TNS Information Sheet, Business Plan, Cash Flow Projections, Statement of Assets and Liabilities, Resume, Criminal Record Check, Signing Authority, BC Registry Service Extraprovincial Company Status, and Disclosure of Unlawful Activity and Bankruptcy Form).

[12] Consistent with Rule 17 of the Board's Rules of Practice and Procedure, the application package and supporting documentation sent to the Submitters contained limited redactions which were necessary to protect the confidential business and personal information of Yallah. The Submitters had 14 days to provide further written submissions on the Application. The Board then provided copies of the written submissions received from the Submitters to Yallah. All Submitters opposed Yallah's Application.

### **3. Yallah's Application**

[13] Yallah was federally incorporated in October 2018 and registered as an extraprovincial company in B.C. in September 2019. Yallah's mission statement is "[w]orking together with entrepreneurs and individuals that care for their communities by involving themselves with positive solutions to everyday challenges". Yallah states its platform is innovative and it is meant to drive people, businesses, and communities.

[14] The Yallah Driver App is available for all approved drivers to operate the vehicles they plan on using. Driver and vehicle documents are stored in the company's system and alerts are sent when driver, vehicle or licencing expiry dates need to be addressed. Drivers' earnings will be monitored through data reporting and Yallah will work cooperatively with its drivers to grow sales and different revenue streams from innovative marketing. Yallah states that its platform will provide drivers, who are entrepreneurs, with tools for healthy work-life balance as they are able to work when they want.

[15] Passengers can hire drivers using one of the following: (1) the Yallah Passenger App; (2) the Yallah Partner App; or, (3) the Yallah Kiosk App. The Yallah Passenger App can be used to book a four-door sedan, a mini van, a luxury vehicle, a female only operated vehicle, or a wheelchair accessible vehicle (WAV). The Yallah Partner App allows passengers to book vehicles for themselves, friends, employees, clients or the general public. The goal of this second App is to create partnerships with organizations and entrepreneurs; this would include offering services to passengers with disabilities or an inability to operate a smart phone. The CEO of Yallah has over 15 years experience in transporting people with disabilities and he will train and coach drivers of accessible vehicles. In the short term, Yallah will rely on drivers who currently operate commercial WAVs. Visually impaired users will be able to hear the notifications about their bookings on their smart phones. The Yallah Kiosk App will enable passengers to book a trip using a tablet which will be made available in strategic public areas.

[16] Yallah Owner is a program that helps with marketing, recruiting, and coaching entrepreneurs. These owners will work with the CEO to promote the Yallah brand, earn money and contribute to Yallah Help. The latter organization receives a percentage of sales revenues which is then used to positively affect individuals and communities.

[17] Yallah will manage drivers as follows. Drivers must download the Yallah Driver App and upload all required documents on their mobile device. The validity of the documents will be reviewed, and the documents and their expiry dates will be stored within the company's computer system. Alerts will be programmed for all expiry dates. Applications by drivers are screened and if the driver's documents are in order, he or she will receive information on training sessions. All training will be done online. Once a driver passes training, the driver's account is activated and he or she can start taking trips. Yallah plans to provide drivers with tips to successfully operate within the organization. E-learning courses and proactive coaching will be used to enhance service.

[18] The organizational structure for managing Yallah's B.C. operations is headed by the CEO who will obtain assistance on the oversight of day-to-day operations from partners and owners. The business plan states that "innovative systems ... to train, manage and develop drivers to achieve a level of service expected by the company" will be used. Yallah states that a driver can expect a verification inquiry any time the Yallah Driver's App is open. This is a video chat to confirm the specifics of the vehicle being used and the driver operating the app.

[19] Yallah states there is a plan in place to manage issues such as unhappy clients or drivers, lost items or accidents should these issues occur.

[20] Yallah states that all its Apps are programmed to meet the Board's TNS App Rule and can geofence defined areas as required.

[21] Yallah plans to start operations in Metro Vancouver with a fleet size of 1 to 1,000 drivers. Upon receiving Board approval, Yallah intends to send out a press release identifying the steps for drivers to take to join Yallah. After launching in Metro Vancouver, Yallah plans to start operating in Victoria, Comox, and Kelowna with anticipated fleet sizes of 1 to 100 in each location. Yallah will then expand to Fort St. John with an anticipated fleet size of 1 to 50. The business plan notes that start up will depend on driver recruitment success.

[22] Yallah provides a 36-month pro forma outlining start-up costs covered by the owner, fare revenues, booking fee revenues and advertising revenues. Expenses are outlined including advertising expenses, driver expenses, office and administration expenses, and taxes, among other categories. A statement of assets and liabilities is provided.

#### **4. Analysis and Findings**

[23] Section 28(1) of the Act sets out the three factors which must be considered by the Board on this Application. While the Board does not recite all of the information filed by Yallah, it has carefully considered that information in making its determination.

**(a) Is the applicant a fit and proper person to provide the service and is the applicant capable of providing the service (s. 28(1)(b))?**

[24] Section 28(1)(b) requires the Board to consider whether an applicant is: (i) a fit and proper person to provide the service; and (ii) capable of providing that service.

[25] Fit and proper person is not a defined phrase. The Oxford English Dictionary defines “fit” in part to mean “well adapted or suited to the conditions or circumstances of the case, answering the purpose, proper or appropriate ... possessing the necessary qualifications, properly qualified, competent, deserving”. “Proper” is defined to mean “suitable for a specified or implicit purpose or requirement; appropriate to the circumstances or conditions; of the requisite standard of type; apt, fitting; correct, right”. The context for what is fit and proper is the passenger transportation industry in B.C.

[26] When considering whether an applicant is fit and proper, the Board considers factors such as the applicant’s past conduct and the potential risk of harm to the public and the integrity of the passenger transportation industry if a licence is granted to the applicant. Where, as here, the applicant is a corporate entity, the Board will consider any relevant information concerning the conduct of the directors and key management staff in order to assess how the business is likely to be run in this jurisdiction.

[27] When considering capability, the Board considers whether the applicant has demonstrated knowledge and understanding of the relevant regulatory requirements and policies governing passenger transportation in B.C., the applicant’s ability to comply with those regulatory requirements, and the applicant’s capability to provide the proposed service in a proper and lawful manner. The Board will also consider whether the applicant has the business knowledge to operate the service. This will include consideration of the business knowledge and experience demonstrated by management and the applicant’s business plan and financial statements.

[28] Yallah’s principal is Mohamed Benini. He will be involved in the day-to-day management of all operations for Yallah. Mr. Benini has owned and managed a taxi company with a fleet of 10 taxis since 2008. He has also managed a second taxi company since 2012. Both taxi companies are located in Airdrie, Alberta. Mr. Benini’s responsibilities for those companies include hiring, training and managing drivers, customer service agents and supervisors. He is responsible for growing and maintaining corporate accounts, accounting, marketing and IT.

[29] Yallah holds a valid *National Safety Code* (“NSC”) safety certificate issued on September 25, 2019. Mr. Benini signed a Declaration on behalf of Yallah under the *Liquor Control and Licensing Act* and the *Cannabis Control and Licensing Act* declaring that Yallah will operate its vehicles in accordance with this legislation. The Board’s Supplementary Terms and Conditions Respecting Apps was completed as required. The Disclosure of Unlawful Activity & Bankruptcy form and Criminal Records Check were completed to the satisfaction of the Board.

[30] Based on this information, the Board is satisfied that Yallah is fit and proper for the purposes of s. 28(1)(b).

[31] The Board has significant concerns with Yallah's capability, however, as the Application does not explain how Yallah will comply with the regulatory framework in B.C. Yallah's business plan is vague regarding its proposed operations and on most aspects of regulatory compliance.

[32] Yallah's business plan states that it expects to start operating in Metro Vancouver with 1 to 1,000 drivers. Similarly vague statements are made for the other locations in which Yallah plans to operate. The business plan does not address the requirement for a class 4 or higher driver's licence and other required driver documents. Rather, it states Yallah will recruit drivers by sending out a press release. Due to the high degree of competition for commercial drivers in B.C., the Board considers this to be inadequate. Information on driver training is also vague and does not provide specifics on the substantive elements of the training. Yallah only references that training will be provided online, tips on successful operation will be provided and e-learning and coaching will be made available. No evidence was given regarding retaining a record of all training programs provided to drivers. There is no mention of providing a record check certificate or other requirements drivers must carry.

[33] There is also no reference to vehicle requirements as set out under the Regulation. There is only vague reference to a "plan in place" regarding how potential incidents with a client, driver or an accident will be addressed.

[34] Of particular concern to the Board is the lack of sufficient information in Yallah's business plan to show how it will provide ongoing active management of the vehicles and drivers operating in B.C. as required under ss. 6 and 7 of the Regulation.

[35] Although Yallah has obtained an NSC certificate, the business plan contains no specific reference to the NSC requirements which must be followed by TNS drivers and which are in place for TNS vehicles in this province. NSC obligations require the NSC safety certificate holder to be responsible for all vehicles and drivers that operate under the NSC safety certificate. No company safety plan is mentioned. The NSC certificate holder is also responsible for keeping records for each of its vehicles and drivers to enable traceability. Yallah does not outline whether pre-trip or post-trip vehicle inspections will be conducted or how NSC requirements for drivers will be monitored and enforced. Yallah has also failed to provide evidence of monitoring NSC inspection dates, vehicle mileage, and service records.

[36] For these reasons, the Board has determined Yallah is not a capable entity within the meaning of s. 28(1)(b) of the Act.

[37] The Board carefully reviewed the materials filed by the Submitters. The Submitters largely focussed on whether there is a public need for TNS in their respective areas of operation and whether the Application would, if granted, promote sound economic

conditions in the passenger transportation business in this province. Given its conclusion on Yallah's capability to provide the service under s. 28(1)(b), the Board found it unnecessary to consider whether there is a public need for the proposed services or whether the service would promote sound economic conditions in the passenger transportation business in B.C.. Capability is an essential requirement for any special authorization and that essential requirement has not been demonstrated on this Application.

## **5. Conclusion**

[38] For the reasons set out above, Yallah's Application is refused.