

# Licence Application Decision

## (Transportation Network Services – New)

<b>Application No.</b>	<b>10336-20 TNS</b>	<b>Applicant</b>	Swiftsure Taxi Co. Ltd., Duncan Taxi Ltd., Comox Taxi Ltd., Oceanside Taxi Ltd.
<b>Trade Name</b>	VI Ride Hailing		
<b>Principals</b>	Jatinder Singh GILL Amarjit Kaur KANG	Tony Tajinder WAHLLA	
<b>Address</b>	1199 Braidwood Rd. Courtenay, BC V9N 3S1		
<b>Current Licence</b>	Passenger Directed Vehicle Authorizations TNSA-None		
<b>Publication of Application</b>	October 28, 2020		
<b>Application Summary</b>	New Special Authorization: Transportation Network Services Authorization (TNSA)		
<b>Primary areas of operation</b>	Originating Area Requested: Region 3 (Vancouver Island, excluding Capital Regional District)		
<b>Deadline for Submissions</b>	November 9, 2020 (original submissions) December 8, 2020 (second set of submissions) June 8, 2021 (COVID-19 Investigation submission) October 12, 2021 (Investigation Report submission)		
<b>Submitters</b>	AC Taxi Nanaimo		
<b>Board Decision</b>	<b>The special authorization is refused for the reasons set out below.</b>		
<b>Decision Date</b>	January 4, 2022		
<b>Panel Chair</b>	Carmela Allevato	<b>Panel Member</b>	William Bell

### 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 licence 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] In a decision, published May 13, 2020, the Board refused a previous application by Jatinder Singh Gill, Comox Taxi Ltd., Swiftsure Taxi Co. Ltd., and Duncan Taxi Ltd. doing business as VI Ride Hailing (“VIRH”) based on the shortfalls outlined in the Board’s [decision](#). VIRH subsequently filed this application for a passenger transportation licence with a special authorization in the form of a TNS authorization (“TNSA”) to provide ride-hailing services in Region 3 – Vancouver Island, excluding the Capital Regional District (“CRD”) (the “Application”). In accordance with section 26 of the Act, the Registrar of Passenger Transportation (the “Registrar”) forwarded VIRH’s Application to the Board for determination.

[4] VIRH is comprised of a group of taxi company operators each with a Special Authorization licence. VIRH does not currently hold a Special Authorization licence; as such, the Board is treating the Application as an application for a new licence. However, whether an application is processed as an application for a new licence or an amendment to a licence, the Board must nevertheless make a determination under section 28(1) of the Act.

[5] In the Application, VIRH notes the distinctions of its separate taxi operations with a Passenger Directed Vehicle Authorization (“PDVA”) and that of a TNSA, which it is now applying for. VIRH emphasizes that its taxi and TNSA operations, if approved, will be completely separate with a different set of operating procedures.

[6] 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 TNSA. 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.

[7] 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 sections 28(3) to (6) of the Act.

[8] For the reasons set out below, the Board refuses VIRH's Application.

## 2. Procedural History

[9] Section 26 of the Act required the Board to publish notice of the Application, which it did on October 28, 2020. 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.

[10] In relation to VIRH's Application, the Board received a submission from AC Taxi, Nanaimo, BC. (the "Submitter").

[11] This Application is one of over 40 applications made by various companies since the introduction of the TNS legislative amendments. To date, the Board has authorized 10 TNSA licenses in Region 3.

[12] 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 process 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 submitters and more transparency in its process.

[13] In accordance with the October 30, 2019 Industry Advisory, the Board sent an application package to the Submitter which included the documents provided by VIRH in support of its Application (TNS Declaration Form, TNS Information Sheet, Business Plan, Cash Flow Projections, Balance Sheets and Statement of Earnings, Resume, Criminal Record Check, Signing Authority, and Disclosure of Unlawful Activity and Bankruptcy Forms). Consistent with Rule 17 of the Board's *Rules of Practice and Procedure*, the application package and supporting documentation sent to the Submitter contained limited redactions which were necessary to protect the confidential business information of VIRH. The Submitter had 14 days to provide further written submissions on the Application. The Board then provided copies of the written submission received from Submitter to VIRH for response.

[14] The Submitter opposes the granting of a TNSA to VIRH due to, among other concerns, its concerns regarding the impact of COVID-19. The Submitter asserts there is no public need and insufficient business to grant another TNSA and that granting this Application will exacerbate the current negative earnings of their drivers.

[15] The COVID-19 pandemic has been impacting all facets of the Province since March 2020. On March 18, 2020, the Province of British Columbia declared a state of emergency. Regulations and orders issued under the *Emergency Program Act*, RSBC 1996, c. 111, together with orders and guidance from the Provincial Health Officer curtailed social and economic activities that affected the provincial economy, including the passenger transportation industry. The state of emergency officially ended on June 30, 2021 and provincial health orders were lifted or modified as the Province entered a phased recovery and restrictions were eased.

[16] On April 20, 2021, the Board issued a preliminary decision in which it decided to conduct an investigation on the impact of the COVID-19 pandemic on the passenger transportation industry in the context of an application brought by Uber Canada Inc. to expand to all regions of the Province, including Region 3 (10268-20 TNS). The Board adjourned the Uber Canada Inc. application as well as another TNSA-application brought by Facedrive Inc. pending conclusion of the Board's investigation (the "Main Applications"). The Board's decision was published in its Weekly Bulletin on April 21, 2021.

[17] The Board decided to conduct the investigation because it was concerned that it did not have sufficient empirical data to properly consider whether there is a public need

for the service applied for and whether granting the application would promote sound economic conditions. The Board is required by section 28 of the Act to consider these factors in arriving at a decision.

[18] Subsequently, the Board sought submissions from the Applicant and the Submitter as to whether the Board should adjourn the Application pursuant to section 14(1)(d) of the Act pending the determination in the Main Applications. After considering the submission received, on August 9, 2021 the Board adjourned the Application so that the Board would have the benefit of the investigation and the analysis in the Main Applications.

[19] The Board retained Dr. Dan Hara of Hara Associates, a professional economist, to assist the Board in conducting its investigation in the Main Applications. Dr. Hara's report on the "Economic Effects of Covid-19 on the BC Passenger Transportation Industry" (the "Report") was released on September 17, 2021. A copy of the Report was provided to the Applicant and to the Submitter and both were provided the opportunity to comment on the Report. It was also publicly posted on the Board's [website](#).

[20] On October 12, 2021, VIRH provided a response to the Report for the Board's consideration. The Submitter did not.

[21] The Main Applications were decided on December 14, 2021 and published in the Board's Weekly Bulletin on [December 15, 2021](#). The Board refused to grant the licenses sought in the Main Applications.

### **3. VIRH's Application**

[22] VIRH is a partnership that was registered July 9, 2020 and is comprised of Swiftsure Taxi Co. Ltd., Comox Taxi Ltd., Duncan Taxi Ltd., and Oceanside Taxi Ltd. The four companies are located, respectively, in Courtenay, BC, Nanaimo, BC and Duncan, BC and offer local taxi transportation services. VIRH will establish a main office in Courtenay, BC as well as offices in Nanaimo, BC and Duncan, BC.

[23] VIRH's management structure includes the President and CEO with a Managing Director and a Human Resources/Driver Relations position who reports to the Managing Director. Under this reporting structure is also an Operations Manager and Customer Service representative and an IT/Social Media Manager. The role and responsibilities of each were detailed in the Application.

[24] VIRH's goal is to supplement the current taxi services it provides within the proposed operating area. The area would span the geography between the Cowichan Valley and the Comox Valley on Vancouver Island. It wants to expand the current capacity of passenger transportation especially during peak hours when taxi service cannot keep up with demand such as at bar close, during holidays such as New Year's Eve, Halloween and during tourist-centred festivals. VIRH proposes a TNS that will complement the taxi business and fill gaps in the taxi industry by providing greater choice and giving passengers more options. Its target audiences include university students, tourists and under-served or rural communities where service availability is a problem, such as Lake Cowichan, Black Creek and Mount Washington. The rest of its focus will be on residents that own a smartphone.

[25] VIRH'S overall marketing strategy includes both traditional mainstream media coverage such as news, radio, online articles and social media advertising. It believes the maintenance of an online presence is critical and that digital marketing will have the greatest impact on the younger demographic. Post COVID-19, it plans to set up advertising at local universities, hotels and ports of entry such as airports and ferry terminals. Marketing will also include shopping centres, restaurants, and drinking establishments. VIRH also intends to promote its brand through various items, such as t-shirts, signage, etc.

[26] VIRH will use ride-hailing software created by Wunder Mobility based in Germany (the "VIRH app" or "App"). The VIRH app will include a driver interface that will allow the driver to allow or decline rides, record pickup and drop-off locations of passengers, allow in-app calling and texting to passengers, and allow for pre-booking requests and driver ratings. When using the App, the customer is provided the following features: geo-location and routing, multi-stop trips, app payment and tip integration, and an estimated fare calculation. The App also sends the customer the driver's photo and first name as well as the colour, make and model of vehicle. The App also provides the emailing of receipts and allows for complaint processing.

[27] According to its Application, the VIRH App will also maintain the necessary records to comply with safety requirements set by the statutory regime. It also allows for the protection of personal customer and driver information as Wunder Mobility uses the latest encryption software. VIRH states that its App has geofencing capability and generally meets other aspects of the Board's Rule regarding apps. VIRH plans to add a

ride-hailing or carpooling functionality to the App depending on the popularity of ride-hailing and the demand for such an option.

[28] VIRH also outlined its recruitment and hiring process for drivers. It notes there are some 350 taxi drivers in Region 3 with a class 4 drivers' licence and that it has a direct connection with at least 150 of them. It recognizes the potential shortage of drivers with a class 4 licence and will address this by leveraging their current network and accepting applications from non-taxi drivers with a class 4 drivers' licence. They will advertise in social media, local papers and radio stations and set up kiosks at local malls. Candidates must hold and show proof of a class 1, 2 or 4 commercial licence. VIRH will provide in-house training for knowledge and driving tests to assist potential new employees without these credentials to allow it to grow its pool of drivers. For drivers hired and who continue working for VIRH for at least 2 months, VIRH will reimburse their class 4 licence costs. VIRH predicts that local taxi drivers may switch to take advantage of the flexibility and driver commissions. It plans to run an online poll with current taxi drivers to determine their willingness to join VIRH, which will allow it to more accurately forecast the supply of drivers and the level of driver recruitment effort required.

[29] VIRH drivers will require vehicles be a maximum of 10 years old and require them to pass a commercial inspection. With its current taxi operations, drivers can be provided options regarding VIRH inspection facilities at a lowered cost. Drivers that work for VIRH will have their vehicle inspection costs fully reimbursed if they continue driving for at least 2 months. With respect to driver retention and rewards, drivers will earn a 75% commission on the total fare excluding GST of each trip. Further, VIRH plans to reward top drivers with a scaling driver bonus plan based on service performance.

[30] Any driver candidate must have a minimum of 3 years driving history in BC and provide a driver's abstract. VIRH will also require a criminal record and vulnerable sectors check. Applicants must provide a clean record without major convictions. The criminal record and vulnerable sectors check will be required yearly to continue driving with VIRH.

[31] VIRH's Business Plan outlines its steps to ensure driver onboarding completion. This includes a detailed Driver Training Procedures provided to each driver involving such matters as safety, defensive and distracted driving, accident reporting, customer service, misconduct and grounds for refusing rides etc. All drivers will also be provided a Driver and Employee Code of Conduct, Harassment Procedures and Policy and National Safety Code (NSC) and guidelines that they must acknowledge and sign. According to the

Application, these guidelines will detail such matters as driver and customer interaction, workplace environment, gifts, dress code, the protection of personal information, harassment, complaint procedures and related decision-making processes.

[32] With respect to NSC the guidelines included obligations regarding pre- and post-trip vehicle inspection, the reporting of accidents and violations, general vehicle safety and upkeep, hours of service and maximum driving time that will be monitored by the VIRH App.

[33] Regarding insurance, drivers operating their vehicle on the VIRH platform will have their vehicle and passengers insured by their owner's basic policy and by ICBC's blanket insurance that VIRH will purchase. This policy offers basic insurance during ride-hailing use and this blanket basic coverage is mandatory providing coverage for Accident Benefits and up to \$1,000,000 third party liability. This means the driver and passengers are covered by VIRH's blanket basic policy insurance once they have accepted a trip via the App, when they are en route to pick up passengers, or when they are currently transporting the passengers. Drivers will have the option to purchase additional coverage if they want.

[34] Other onboarding steps include driver training that will include in-person training sessions required for all drivers that will be in compliance with NSC and provincial regulations. The training sessions will be offered twice a week at each of VIRH's 3 offices with a duration of 4 hours. The training record will be stored online and can be viewed on the VIRH App.

[35] VIRH detailed its Record Keeping and Documentation Storage plans as required by legislation and state it will be readily accessible for inspection and audit purposes. According to the Application, these will be kept at its head office in Courtenay and individualized by driver. All the documents, records of daily logs, and maintenance records will be scanned and stored on its servers.

[36] VIRH's Business Plan provided a comprehensive table summarizing what information will be automatically collected via the App and what information will be manually vetted/tracked, including such information as: documentation, driver hours, driver licence expiry, criminal record check, drivers abstract and driving infractions. It also included vehicle information such as: pre-trip and post-trip reports, vehicle mileage, vehicle inspection, vehicle repair, recall and maintenance information and vehicle details (i.e., make, model, year, colour, licence plate). VIRH also provided a detailed list of its



responsibilities regarding vehicle record management involving such matters as recall notices, required and scheduled maintenance, records of repairs, commercial vehicle inspection reports, keeping track of inspection records, etc.

[37] VIRH provided Balance Sheets and Income Statements for the each of the taxi companies that make up VIRH. It also included cash flow projections for 36 months for the proposed operation and detailed assumptions on which these are based.

#### **4. The Board's Investigation**

[38] As noted above, the Board commenced an investigation in accordance with section 27(3)(b) of the Act. The Board retained Dr. Dan Hara to prepare a report on the impact of COVID-19 on the passenger transportation business.

[39] The Report investigated the impact of COVID-19 on monthly trip volumes for taxis and TNCs as well as consequences for operating costs and market share for both types of licences. The impact of COVID-19 on key economic factors such as employment, airport volumes, and tourism was also considered in the Report. These indicators are primary drivers of business for taxis and TNCs.

[40] The Report provides the Board with trip data for taxis and TNCs in each of the regions of the Province starting in May 2019 and ending in May 2021. This is comparative data as no TNSAs were approved until January 2020. While trip data for TNCs was readily available through the Data Warehouse, a program operated by the Ministry of Transportation and Infrastructure that gathers data on behalf of the Board, taxi data was not as easily available. The Report explains the issues Dr. Hara identified with the data and then explains how the final estimates were arrived at in the Report.

[41] The Board accepts the data provided in the Report as evidence in this proceeding.

[42] The first TNSAs were issued at the end of January 2020, approximately two months prior to the commencement of the COVID-19 pandemic. TNS activity since January 2020 has been primarily in Region 1 with a small amount of activity in Region 2. There has been no TNS activity in other regions. As the Report indicates, although the Board has issued TNSAs to TNCs in other regions, COVID-19 has affected the start up of those services.

[43] The Report analyzes local and provincial data from a number of sources and concludes that, overall, there was a strong decline in trip volumes in the Province at the

commencement of the COVID-19 pandemic followed by a partial recovery to still depressed levels in the months that followed.

[44] The Report compares regional total trips as of May 2021 to total trips in May 2019. Total trips in May 2021 included trips by taxis and TNCs both in Regions 1 and 2. TNCs did not operate in the other regions so the reference to “total trips” means taxi trips. The estimates are as follows:

Region 1 - Total trips declined by 8.8% (taxi trips declined by an estimated 66.3%)

Region 2 - Total trips declined 24.5% (taxi trips declined by an estimated 26.6%)

Region 3 - Total trips declined by 32.7%<sup>1</sup>

Region 4 - Total trips increased by 3.6%<sup>2</sup>

Region 5 - Total trips declined by 23.5%

[45] As to Region 4, the Report notes that although there is an increase in the number of taxi trips from May 2019, the May 2021 number is still at 84% of the December 2019 number of trips immediately prior to the pandemic.

[46] The Report also provides data on airport passenger volumes, hotel occupancy, and general unemployment levels on both a provincial and regional level. Generally, as with the trend for total trips, regional numbers, including for Region 3, indicate there was an initial dramatic decrease in activity with a slow recovery, but still not to levels observed before the COVID-19 pandemic. The sole exception was Prince George, which saw an increase in hotel occupancy.

[47] With respect to Region 3, the Report showed that airport passenger volumes had declined significantly and had made very little recovery. For example, in May 2019 the Nanaimo Airport recorded 39,000 passengers. In May 2020 the number was down to 2000. There was an increase to a high of 17,000 in August 2020 and by May 2021 the number of passengers was at 7,000.

---

<sup>1</sup> There is an inconsistency in the Report for the total trips declined percentage for Region 3, as it references 32.7% in the Executive Summary and 32.8% on page 28. The Board views the inconsistency as minor and for the purpose of this decision will use 32.7%.

<sup>2</sup> The Report did not provide a total trip percentage for Region 4 and the Board mirrored the Report's calculation  $[9460 \text{ (Increase)} / 2626100 \text{ (May 2019 total)} = 0.036 \times 100]$  to derive an increase of 3.6%. Note: even though the numbers are up from May 2019 they are still 84% of the number of trips in December 2019 immediately prior to the pandemic.

[48] As to hotel occupancy in Region 3, the Report notes that although there was indication of a strong resurgence in June and July 2021, as this was not reflected in air passenger volumes the conclusion is that hotel visitors were primarily from within BC and used their own vehicles.

[49] The Report suggests that the lower rate of decline in total trips in Region 1 as compared to Region 2 may be due to the “vigorous” presence of TNS services in Region 1. That is, the Report theorizes that more people took passenger directed trips than they normally would have because of the availability of the TNS option, and this led to a greater increase in trip volumes than would have been the case without the TNS. According to the Report, this observation would be consistent with the experiences of other jurisdictions prior to the pandemic where the introduction of TNS led to an overall increase in trips.

[50] However, the Report also states the experience in Region 1 shows that the introduction of TNS has led to a significant loss of market share on the part of taxis. See for example, the analysis of Region 1 in Section 4 of the Report at pages 22-23:

Combined trips for TNS and taxis declined 8.8% over the May 2019 to May 2020 period (1,749 thousand to 1,595 thousand). TNS trips rose rapidly to roughly one million trips in May 2021, significantly higher than the 589 thousand taxi trips. By themselves, taxi trips fell an estimated 66.3%, or two-thirds.

As discussed earlier, this rapid growth in TNS trips only occurred in Region 1, where international TNS companies like Uber and Lyft had been licensed to operate and led this expansion. The net result is that total trips have recovered to a little over 90% of previous levels, with more recent data on hotel occupancy and trip volumes suggesting further recovery. Taxi companies, however, have lost significant market share as a large proportion of passengers chose the TNS. TNS trips now exceed taxi trips in the region.

[51] The Report also describes vigorous TNS activity in Region 1 that was, in part, at the expense of taxi companies. This resulted in a lower recovery for taxi companies in Region 1 where taxi trips fell an estimated 66.3%, a rate significantly higher than other Regions. At pages 4 and 5 of the Report, Dr. Hara writes:

All taxi company reports from both data sources showed the same pattern of a strong decline in trip volume in March/April 2020 when Covid and associated

government restrictions on movement and economic activity began. This was followed by a partial recovery to still depressed levels in the months that followed. The common pattern lends credibility to submissions by each company, and the net results recorded.

The same decline in March/April 2020 is also reported by TNS companies, although they had just launched operations at that time. In the case of TNS companies, their later expansion in the Lower Mainland was more aggressive, occurring in part at the expense of market share of taxi companies in that area. As a result, the partial recovery of Lower Mainland taxi companies from the initial shock of Covid has been much lower than for taxi companies in other regions.

[52] The Report also analyzes the impact of COVID-19 on the start up of TNCs. According to the TNS business model, new companies must have a sufficient number of drivers and vehicles and must advertise so as to gain a market share quickly. The number of vehicles will ensure that customers do not have to wait long and gaining market share will give drivers enough business. The Report states at page 15:

The requirement to enter at a large enough scale imposes natural entry barriers to new companies. Not only must they have enough drivers and vehicles from the beginning to cover the area efficiently, they must also advertise and gain market share quickly to give their drivers enough business.

Covid added to this barrier. The decline in customers meant less passenger volume, especially at peak weekend times when restaurant and entertainment travel would normally produce a shortage of taxis and an opportunity for new TNS entrants. There is also a shortage of drivers, at first because of the risks, and later because of the general shortage of labour in service occupations as the economy began to revive. BC's requirement for a commercial level driver's licence also adds to the difficulties since upgrading one's BC driver license require an in-person driver test. Covid has meant cancelled tests and a large backlog and long waiting time.

It is apparent from the data that large international companies with good access to long-term capital were able to overcome the additional cost and scale barriers imposed by Covid and launch their services while smaller companies were not. The TNS growth to date is driven by Uber and Lyft in Region 1. Their licenses are restricted to Region 1. Other licensees who employ the TNS/app-based business

model have restricted their offering and entry. BC companies like Kuber[sic] and Lucky to Go have full rights to operate across the province but have limited their operations to small scale operations in Region 1 and Region 2.<sup>3</sup> Canadian companies with active and fully functional TNS operations in other provinces, have delayed entry into the BC market (e.g., TappCar, Uride, ReRyde).

[53] The Report expects TNS operations to eventually emerge in all regions of BC from current licensees either because the pandemic comes to an end or COVID-19 becomes endemic and TNCs will stop postponing entry at scale in BC markets.

[54] The Report also notes that COVID-19 has had an impact on the availability of class 4 drivers which are required for both taxis and TNS. As noted in the Report, there is a labour shortage of drivers for both TNCs and taxi companies. Some taxi companies have been required to suspend operations. The Report notes:

In addition, respondents reported a taxi driver shortage which increased costs and contributed to the decision to suspend operations. This is consistent with media stories from other parts of Canada, and with general reports of labour shortages in the service industry, even though average unemployment rates are still high. (page iii)

[55] The Report elaborates on the impact of driver shortage on taxi companies during the current economic conditions at page 40:

Another feature of the driver shortage is the relative advantage of the TNS business model over the taxi business model with fixed and regulated meter rates.

Within boundaries, the TNS business model allows flexible fares. Fares rise when there is a shortage of vehicles and drivers, attracting more drivers and deterring some customers who will wait for a less busy time. This is an advantage for customers in that it allows reliable supply in peak period, at least for those willing to pay. It is also a disadvantage to customers in that the rate is not fixed, and those

---

<sup>3</sup> The Report references a BC-based TNC named “Kuber”. The Board has reviewed its records and observes that “Kuber” is not a licensee authorized to provide TNS in BC; however, Kabu is a BC-based TNC that is authorized to provide TNS in all Regions in the Province but currently only operates in Regions 1 and 2. As such, the Board has concluded that the reference to “Kuber” in the Report is a spelling error and that the reference is in fact to Kabu.

wishing to return home on a Saturday night may face a higher fare than they planned for. For fixed rate fares – taxis are the alternative offered by the system.

...

*However, in the face of an ongoing driver shortage, taxis can be put under a rate-squeeze.*

During a driver (and therefore vehicle) shortage, passenger demand can exceed supply. This will drive up TNS rates, a mixed blessing since the higher rates mean fewer customers, but the higher rates also retain drivers and attract more of them. Since taxi companies have fixed fares, their ability to raise returns to drivers is more limited. During a shortage, taxis will be busier. However, at a given meter rate there is a limit to how many fares can be carried and to the amount that can be earned at a fixed meter rate.

*In normal conditions an equilibrium will be reached. But, during an ongoing driver shortage, it is possible that taxi company margins will be squeezed by fixed meter rates to the point where they cannot retain drivers even though taxi demand justifies it. The drivers will then tend to move to TNS where the hourly earnings are higher because of the higher average rates and the high customer demand.*

(emphasis in the original)

## 5. Analysis and Findings

[56] Section 28(1) of the Act sets out the three factors which must be considered by the Board. While the Board does not recite all of the information filed by VIRH and the Submitter, it has carefully considered it when making its determination. In addition, the Board has considered the Report discussed above and the Applicant's submission in response to the Report.

### (a) Is there a public need for the service VIRH proposes to provide under the special authorization (section 28(1)(a))?

[57] The first consideration is whether there is a public need for the service that VIRH proposes to provide. This requires an applicant to demonstrate that there are people who would use VIRH's proposed service. In its Application, VIRH relies on the following materials to demonstrate public need:

- [\*Transportation Network Companies in BC\*](#)(the 2018 TNC Report).

- [\*Modernizing Taxi Regulation\*](#) (the 2018 Hara Report).
- [\*Transportation Network Services: Boundaries, Supply, Fares, and Driver's Licences\*](#) (the 2019 TNS Report).

(collectively the “Background Materials”)

[58] In addition to the Background Materials, VIRH has provided information and statistics regarding its proposed Region 3 market for ride-hailing. This included population growth statistics that projects an increase of approximately 4.6% by 2025 for its targeted age group of people between the ages of 18 and 64. VIRH also cited factors such as seasonal Vancouver Island tourism statistics and related major attractions or annual events that will be targeted. It also notes low population and underserved communities that are distant from taxi services and reliable public transportation where a small supply of VIRH drivers would improve services. Examples included the Black Creek, Mount Washington, Lake Cowichan and Ladysmith areas. It also outlines the taxi industry consistently expects long wait times during major holidays and that its ride-hailing option will alleviate some of this pressure as well as reduce the risks of impaired driving.

[59] AC Taxi submits VIRH has not established public need and that its fleet service in Nanaimo has good response times. The Submitter also states that it, along with other companies such as Yellow Cab and shuttle services, are currently meeting the needs of customers in the Region.

[60] The Submitter further argues there is no public need due to a loss of ridership from the COVID-19 pandemic. In this respect, it states the pandemic “resulted in a lower ride count of approximately 30-40% for October 2020 in comparison to October 2019.” In support, it included comparative 1-day customer service reports for the same day in December 2020 with that of December 2019, which shows a 51% decrease in trip volumes. The Board notes that this information is generally consistent with the monthly trip information at page 29 of the Report. Finally, it argues that competition from an added ride-hailing company during and after COVID-19 will reduce trip volumes and driver earnings.

[61] VIRH acknowledges that COVID-19 has had an adverse effect on the Submitter’s business, however, it notes that the pandemic is a temporary situation and that ride counts will increase significantly once the economy opens up. According to VIRH, this will be due to increased tourism, students returning to university, and restaurants, bars

and night clubs reverting to more typical closing hours. It also cited previous applications to the Board made by the Submitter in 2018 and 2020 for additional taxi vehicles and related amendments that showed shortages of taxis and response time issues that indicated public need. VIRH states the Submitter's previous analyses of demand will apply once the temporary effects of the pandemic have subsided.

[62] In past decisions the Board has found that the Background Materials by themselves form an appropriate evidentiary basis for establishing public need for TNS in the Province generally. The Board addressed the role of the Background Materials in the present circumstances in the Main Applications, see for example in Uber:

[59] The Board acknowledges that the Background Materials were preceded by extensive public consultations, submissions, and studies regarding the experience in other jurisdictions. Under normal circumstances the Board would not deviate from its prior decisions that the Background Materials by themselves establish public need. However, while the Background Materials make a general case for the introduction of TNS, they do not address the specific circumstances in a specific Region at a specific time. Additionally, the Background Materials do not contemplate the wide-ranging and significant impact of COVID-19 on the economy and in particular on the passenger transportation industry and its key business drivers.

[63] The Board adopts this reasoning in this decision.

[64] According to the Report, trip volume data in Region 3 indicates a decline of over 30%. Trip volumes in May 2019 were 151,529 and in May 2021 the number was at 101,982. Airport passenger volumes also showed that the number of passengers arriving in the region by air was well below pre-COVID-19 levels. While hotel occupancy had shown a strong resurgence in June and July 2021, this was not reflected in air passenger volumes suggesting that many hotel visitors were from within BC and using their own vehicles. This is generally consistent with the Submitter's information. The Board assigns considerable and more weight to the Report over the additional and general information submitted by the applicant concerning population statistics, seasonal tourism, underserved communities and holiday wait times. The Board finds the Report of more probative value in showing and demonstrating the current economic negative state of both taxi and TNS service in the province.



[65] The Board is of the view that there has been an overall decline in demand for passenger transportation in the Region. To date the Board has approved 10 TNCs to operate in Region 3. The fact that they have not started up operations indicates to the Board that there is insufficient demand in Region 3 at this time to allow existing TNC licensees to become operational let alone a new entrant.

[66] The Board agrees with VIRH that the pandemic is temporary and that there will come a time when trip counts will return to normal as the economy continues with its recovery. How long it will take for the economy to recover such that demand for passenger transportation services will return to normal is unknown. However, in the current circumstances the Board considers that at this time the public need factor is not present in this Application.

**(b) Is VIRH a fit and proper person to provide the proposed service and is the applicant capable of providing it (section 28(1)(b))?**

[67] The second consideration is whether VIRH is a fit and proper person and has the capability to provide the proposed service. The Submitter did not make any submissions on this issue. For reasons which follow, the Board finds that VIRH is a fit and proper person and is capable of providing the proposed service.

[68] 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 or type; apt, fitting; correct, right”. The context for what is fit and proper is the passenger transportation business in BC. This reflects that a licensee has a responsibility to exercise the obligations conferred by the granting of a licence with regard to proper standards of conduct.

[69] 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 business if a licence is granted to the applicant.

[70] When considering capability, the Board considers whether the applicant has demonstrated knowledge and understanding of the relevant regulatory requirements and

policies governing passenger transportation, 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 capability 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.

[71] VIRH was registered as a general partnership in BC on December 4, 2019. VIRH's principals, Mr. Gill, Ms. Kang and Mr. Wahlla all have extensive taxi industry experience in ownership and/or management roles.

[72] VIRH holds a valid NSC safety certificate issued and its current NSC Safety Rating is "Satisfactory-Unaudited". All three partners of VIRH signed a Declaration under the *Liquor Control and Licensing Act* and the *Cannabis Control and Licensing Act* declaring that VIRH 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 Checks were also completed to the satisfaction of the Board.

[73] The Submitter states it is not in the public interest to approve the Application. In support, it cites that one of the VIRH parties is a shareholder within its company and is in violation of the company articles. It further notes that the same party also dispatches for 3 of the 4 companies in this Application and all of this points to a conflict of interest. The Board agrees with the response of VIRH's legal counsel that this is a private matter between the parties and is not relevant to the VIRH application.

[74] The Board has reviewed VIRH's Application in an effort to understand how it will comply with the regulatory framework in BC. VIRH's Business Plan addresses the Board's expectations regarding the acquisition and retention of drivers, onboarding them, and providing driver training for Region 3 in which it intends to provide service.

[75] The Board has also reviewed VIRH's Business Plan to understand how it will provide ongoing active management of the vehicles and drivers operating in BC, as required under sections 6 and 7 of the Regulation. The Board observes that:

- The Business Plan outlines a multi-company structure serving a targeted community of residents on Vancouver Island in Region 3 aged 16-64 that according to BC Stats amounts to approximately 394,000 people in 2020. The

management team, apart from the President and CEO includes management and oversight through several reporting/functional channels.

- VIRH has prepared various detailed policies and procedures that outline and provide guidance on safe driving and on NSC requirements to ensure statutory and regulatory compliance. The policies outline in detail the monitoring and reporting of accidents, driving violations and other incidents, routine vehicle maintenance and record keeping, compliance with laws, the monitoring of driving time by drivers and pre- and post-trip inspections.

[76] VIRH's Business Plan demonstrates to the Board's satisfaction that it will provide care and control of its drivers and vehicles and that it has the management resources to provide ride-hailing services. It has also demonstrated knowledge and understanding of the governing passenger transportation regulatory regime and its obligations as a result of this regime.

[77] The Board accepts that VIRH has the necessary understanding of the regulatory requirements in BC and is satisfied by the evidence that there will be appropriate monitoring of drivers' records, vetting and storage of driving and criminal record check documents, and annual updates of drivers' records and regular vehicle inspections.

[78] The Board has reviewed VIRH's Business Plan and financial statements as part of its assessment of VIRH's capability to provide the proposed service. The assumptions for the cash flow projections were outlined in detail. VIRH accounted for such factors as population, current taxi ridership and related pricing data, seasonal variations as well as driver supply and average trips per day, revenues against fixed expenses (e.g., insurance, fees, inflation, etc.) and the injection of start-up capital. The Board finds the cash flow analysis realistic and conservative and demonstrates the financial benefits of VIRH's proposal. The VIRH Business Plan and financial statements confirm that it has the organization and wherewithal to capably provide the services it proposes to provide.

[79] The Board is satisfied that VIRH's Application demonstrates that it is fit, proper and capable for the purposes of section 28(1)(b) of the Act.

**(c) Would the application, if granted, promote sound economic conditions in the passenger transportation business in British Columbia (section 28(1)(c))?**

[80] The remaining consideration is whether granting the Application would promote sound economic conditions in the passenger transportation business in this province.

[81] In considering section 28(1)(c), the Board strives to balance public need for available, accessible and reliable commercial passenger transportation services with overall industry viability and competitiveness. The Board considers this issue from a wide-ranging perspective, which includes consideration of harm to other industry participants such as taxi companies. It is the Board's view that, generally speaking, the economic interests of the passenger transportation business overall weigh more heavily than the economic and financial interests of any particular applicant or submitter.

[82] The Submitter argued that granting the Application would not promote sound economic conditions because competition from an added ride-hailing company will reduce trip volumes and driver earnings. While the Board acknowledges that VIRH will also be competing with the taxi businesses of its component companies, the Board is of the view that taxi companies provide a vital service to British Columbians. For example, to date, only taxi companies have been required to provide wheelchair accessible vehicles. The Board is reluctant to make decisions that may harm this service. During these economic times, the Board must be mindful that competition that would ordinarily be considered healthy may instead be harmful.

[83] The Report shows that in the two Regions where there was TNS activity taxi trips fell by a greater rate than trips overall. In Region 1, where there was a greater amount of TNS activity, taxi trips fell by 66.8% while trips overall by 8.8%. The Report found that taxis had lost significant market share to TNS. In Region 2, overall decline was 24.2% and taxis 26.2%. While there are differences between those two Regions and other factors may have affected the different numbers, the Report supports the conclusion that TNCs were not only tapping into a previously untapped market but also taking market share from taxis.

[84] In normal economic times, and based on the experience in other jurisdictions, the Board has accepted that declines and increases in the taxi share of the passenger transportation business will occur both before and after the introduction of TNS. However, the Board now has evidence before it from which it infers that, during this unusual period of recovery from the pandemic, the presence of TNS operations negatively affects the recovery of the taxi industry and delays the start up of operations of other licensed ride-hailing companies. As noted in the Report, while a number of TNCs have been granted licenses to operate in Region 3 they have not started up. The Board

concludes that this is due to the impact of COVID-19 on passenger demand as well as on the reduced availability of qualified drivers.

[85] The Board's Operational Policy states that TNS operators should be provided with the opportunity to be viable and meet the public need for the service and that negative impacts on taxi stakeholders with the introduction of TNS be minimized where possible. At this time the Board considers there to be no public need for the service applied for in Region 3. With the lack of public need the Board is of the view that granting this Application would be harmful to existing licensees. In the current circumstances, the Board finds that granting the Application would not promote sound economic conditions in the passenger transportation business in British Columbia.

## **6. Conclusion**

[86] For the reasons stated above, the Application is refused.