YCS Position Statement in Opposition to SB 439 and SB 440

To: Senate Committee on Commerce, Labor and Energy
From: Yellow Checker Star Transportation ("YCS")
Submitted By: A. Jonathan Schwartz, Director
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Date: March 25, 2015
Re: The Facts Behind the Uber “TNC” Bills

INTRODUCTION: THE UBER “NOT SO FAQ” SHEET

As the Committee considers SB 439 and SB 440, it must understand the true facts behind the Uber “TNC” bills, not the Uber rhetoric. As a general statement, SB 439/440 are completely unnecessary because of the existence of NRS Chapter 706, NAC Chapter 706, the Nevada Transportation Authority and the Nevada Taxicab Authority. The regulated common carrier industry (which includes the taxis that Uber wishes to operate) has always maintained that if a TNC (like Uber) wants to operate, it can simply apply with existing regulatory agencies pursuant to NRS 706, which hundreds of Nevada common carrier licensees have successfully done over the years.

Instead, SB 439/440 provides a special “deal” for Uber, which avoids the safety precautions, legal accountability and other public benefits that the taxi industry provides every day. Uber wants SB 439 because it does not want to be subject to the laws, rules and regulations that properly apply to the taxi industry.

To try and accomplish this, SB 439 proposes to enact a new, costly, and untested regulatory structure under the auspices of the Nevada Public Utility Commission. To enact a redundant and duplicative regulatory structure to replace existing regulatory agencies that have been in place for decades, to accomplish the same regulatory purposes, is folly. Moreover, it can only be accomplished at a tremendous fiscal cost to the State of Nevada and its taxpayers.
LET’S CHECK THE FACTS:

Uber and Public Safety under SB 439:

- No liability for driver behavior
- No drug screening
- No FBI background check
- No driver training
- No vehicle inspections
- No full-time commercial insurance

Uber’s Financial Commitment to Our Community:

- No business taxes
- No property taxes
- No sales and use taxes
- No support for education
- No airport fees
- No support for essential services and infrastructure

Uber and Job Creation: Uber offers part-time driver jobs with

- No health benefits
- No retirement benefits
- No sick pay
- No workers compensation protection
- No vacation pay
- No minimum wage
- No advancement and no future

Another fact for the Committee to consider: Los Angeles and San Francisco counties went to court against Uber and Lyft for violating TNC regulations identical to SB 439, and to force compliance. Lawsuits were filed against Uber and Lyft by the county district attorneys, asserting that Uber and Lyft were not complying with the TNC rules, and were misleading consumers with deceptive trade practices. Uber and Lyft continue to fight regulators over enforcement of the same TNC legislation upon which SB 439 is modeled. Even when Uber and Lyft got the rules they wanted, they still violated them.

TNCs pose a substantial risk to public safety. This memo will highlight the innumerable safety and consumer protection characteristics that the public has come to take for granted with the Las Vegas taxi industry. The public safety characteristics that flow from Nevada’s Driver Employee model do not meet Uber’s Independent Contractor business plan. To be abundantly clear, Uber is trying to get the Nevada legislature to lower Nevada’s standards of public safety in the transportation business. Uber wishes to create a special set of rules that will lower its operating expenses. Nevada’s regulated...
taxi companies have a business model that can best be characterized as ACCEPTANCE OF DUTY, while Uber has a business model that should be characterized as AVOIDANCE OF DUTY.

THE NEVADA DRIVER EMPLOYEE MODEL DEMANDS CUSTOMER SAFETY FOCUS

In Las Vegas, all taxi drivers are required to be employees which creates respondeat superior liability on the part of regulated taxi companies for the negligence of employee drivers. One simply cannot underestimate the massive importance of the employee model and the duty it creates on behalf of licensed and regulated taxi companies in Nevada. The fact that taxi drivers are required to be employees in Las Vegas was instituted to better protect the riding public. By making licensed taxi companies responsible for the negligence of drivers, licensed taxi companies are forced to maintain high primary commercial insurance policy limits, to institute unparalleled training programs, and to institute state of the art technology that has created a best in class customer safety model. Uber institutes none of these safety precautions. Nevada’s driver employee model makes it different from every other major US city where drivers are allowed to be independent contractors. Companies such as Uber try to maintain drivers as “independent contractors” instead of employees in order to avoid respondeat superior liability for driver’s negligence and to reduce/eliminate expenses such as adequate insurance, minimum wage, health insurance and other benefits. Uber’s practice of maintaining “independent contractors” poses a serious risk to the riding public because it endangers the very model that makes Nevada’s transportation companies go the extra mile to protect the public.

Requiring taxi companies to maintain DRIVER EMPLOYEES was one of the most critical demands of the legislature that originally enacted NRS 706. Uber would have Nevada resurrect an independent contractor model that the Nevada legislature said was insufficient to protect Nevada’s tourists. The legislature wanted to make certain that companies with sufficient resources would be held responsible for the actions of drivers. Does Nevada want to go backwards just to permit a company trying to reduce its expenses and avoid liability to operate here? If Nevada were to dissolve the requirement for driver employees, Uber would be successful in causing a death blow to Nevada’s unparalleled customer safety model.

The Nevada legislature’s creation of the DRIVER EMPLOYEE environment is what compels Las Vegas’ taxi companies to do everything within their power to protect passengers, drivers and the driving public at large. Because taxi companies are responsible for the negligence of their DRIVER EMPLOYEES, taxi companies have invested tens of millions of dollars in, in-cab surveillance systems (DRIVE-CAM) which continually records all “events” within taxi cabs. Because taxi companies foot the bill for accidents, taxi companies have invested tens of millions of dollars in accident avoidance systems such as Mobile Eye. Because of DRIVER EMPLOYEES, companies such as YCS invested millions in driving simulators to train drivers for the dangers that they will experience on the road. Uber has no surveillance, accident avoidance or driving simulator systems associated with their model because they believe that they can avoid liability through independent contractors. The Nevada legislature should exercise extreme caution when contemplating any notion of altering Nevada’s DRIVER EMPLOYEE model. The DRIVER EMPLOYEE model is ultimately what protects the riding public through both direct legislation and indirect business necessity flowing from the fact that the taxi companies know that they will be held responsible for driver negligence.
The additional goal of Uber’s independent contractor model is simply to avoid responsibility for minimum wage, workers comp, health insurance, and the myriad of other benefits Las Vegas taxi companies provide their driver employees. Further, if Uber’s model is permitted, it will have the effect of diluting the earnings of every taxi driver in Las Vegas as it will reduce the amount of available trips. The effect of Uber’s independent contractor model will be that approximately 9,000 taxi drivers in Las Vegas will have the value of their jobs financially impaired by a company that is simply a poor corporate citizen. Uber and companies like it will not bring one well paying, high benefit job to Nevada.

**INSURANCE**

With regard to insurance, YCS has never failed to pay a claim when its drivers were found negligent, no matter the cost. Taxi companies accept their duty as common carriers. TNCs argue that they are not in the transportation business and cannot be found liable for accidents. Accidents happen in the transportation business and sometimes cost several million dollars per occurrence.

Ride hailing companies seek to avoid liability as purported TNCs. TNCs argue that they are simply connecting the public with private individuals willing to transport them so they should not be held responsible. The argument that TNCs are not transportation companies when their revenues are derived solely from transportation is a ridiculous attempt to avoid responsibility for accident victim’s injuries. Washoe County District Judge Freeman’s findings included the fact that Uber performs as a taxi company so there should be no debating this in Nevada.

YCS carries several million dollars of primary coverage and has a state requirement to maintain 20% equity on its balance sheet to make certain accident claims get paid. During the November hearing before Judge Freeman that imposed a preliminary injunction against Uber in Nevada, testimony by a representative from Nevada’s Division of Insurance unearthed the fact that Uber’s policy is ineffective more than 60% of the time. This is because Uber’s policy only applies when there is an actual Uber passenger in the vehicle. Trolling for trips is part and parcel of the transportation business and Uber must accept responsibility for 100% of the time its vehicles are on the road, not the 40% of the time a passenger may be present.

The danger posed by Uber’s insurance policy was made clear by an Uber driver who struck and killed 6-year-old Sophia Liu in San Francisco while the driver was trolling for fares with no passenger in the vehicle. Uber has maintained that it is not responsible for Sophia’s death because no passenger was in the Uber vehicle. To be clear, Uber cars are traveling Nevada’s roads looking for fares while 60% of the time, their insurance policy is ineffective. Uber is simply trying to avoid liability for accidents with their “APP On/App Off” policy and to reduce insurance expense.

Another troubling issue is that during the time a passenger is absent from an Uber car, only the driver’s underlying policy is available for claims. The issue with driver’s policies is that much of the time, Uber drivers fail to inform their carriers that the car is being used for commercial purposes, so those claims get denied. To make matters worse, when the Uber driver is driving his or her car for personal reasons and gets into an accident, their personal policy is voidable because the driver breached his or her policy conditions as an unreported Uber driver. Nevada’s regulated taxis have
primary coverage that is effective 100% of the time and Uber should not be permitted to operate otherwise. Again, the Uber policy on insurance puts the public at risk in favor of reducing expenses for Uber. TNCs have little care for public safety if it threatens profits.

Only when transportation companies accept their duty as “common carriers” will they truly focus on public safety. Should TNCs gain a foothold in Las Vegas, their presence will pose a serious liability to casinos where they will attempt to ply their trade. When casino patrons or the public are injured in, or by TNC vehicles, or the TNC policy fails to pay off, or the independent contractor driver is found to have no coverage, claimants will look to casinos or the State to make them whole. As it stands, Uber is focused on an avoidance of duty model that endangers every Nevadan or tourist that shares the road with an Uber vehicle.

SURGE PRICING

Taxi rates are regulated by the Nevada Taxicab Authority (“TA”) in Las Vegas, where the riding public is uniformly charged pursuant to a calibrated meter for distance and time. TNCs, on the other hand, jack up prices with no regulatory oversight during foul weather or busy times, according to a secret algorithm. What the TNC charges is a mystery until the end of the ride, whereas taxis have a meter displaying pricing at all times. TNC surge pricing sometimes increases fares several times the normal rate. In fact, surge pricing is the reason TNCs were recently graded with an “F” by the Better Business Bureau. TNCs justify surge pricing by arguing that "market forces" dictated the price. In a 2013 article titled, “The Weekend Uber Tried To Rip Everyone Off,” Uber CEO Travis Kalanick suggested that his company’s gouging practices are not going to change anytime soon. The riding public in Las Vegas must have regulated fares pursuant to taxi meters they can see or the public (and tourists) will be victims of constant price gouging.

REFUSAL TO BE REGULATED

The taxi industry in Las Vegas has one of the most stringent set of regulations of any jurisdiction in the United States. It is exactly because of such stringent regulation and constant oversight by the TA that Las Vegas is continually rated the number one or number two taxi industry in the world. TNCs insist that they should be regulated by market forces only. Without the regulation and constant oversight that TNCs reject, service to Las Vegas’ tourists would decline dramatically.

In front of District Judge Freeman in November of 2014, Uber once again made its thinking clear on the issue of regulation. TNCs believe that the law should not apply to them. Counsel for Uber argued that Uber failed to apply for licensure with the TA or NTA because Uber did not believe that the law applied to it. Uber operates above the law in an industry that demands regulatory observance to protect public safety.

Regulation and compliance cost money. For this reason, TNCs argue against regulation or argue that the bar should be lowered for them with a different set of rules. Regulation is always necessary in those industries that affect public safety: aviation, auto manufacturing, oil production, transportation, banking, etc.. TNC’s anti-regulation game plan is really all about TNCs trying to reduce expenses. In reality, the only difference between a TNC and a taxi company is the TNC’s...
method of dispatch. That is rapidly changing as more and more taxi companies are developing and adopting their own electronic ride hailing Apps. Where tourism is the lifeblood of the Las Vegas economy and protection of public safety is the overriding concern, TNCs present a serious hazard should they successfully avoid existing regulations.

Regulation of any kind is anathema to disruptive internet companies such as TNCs, who argue that there should be no regulation. In countless jurisdictions in the U.S. and around the world, TNCs have started to operate without obtaining licenses or permits because they think that they can get away with it by overwhelming the regulator. TNCs believe they can “negotiate” a better deal for themselves than the current set of rules.

By operating without a license, TNCs hope to create a market for themselves with drivers and customers. After creating this illegal market, when regulators come knocking to bring them into compliance with the law, the TNCs argue that they are “different” and that the regulator has to create a “carve out” set of rules for them because the public “wants” them. Again, this is all about driving expenses down. There is nothing different about Uber and their like other than the fact that they use a cell phone APP to dispatch trips vs. a standard telephone. More precisely, Uber and other TNCs offer a “distinction” without a real difference by dispatching via an APP. The regulator, city council, or state does not want to look like they are allowing illegal companies to operate within their jurisdiction, so they cave in by creating a separate set of rules for the TNC. This is really just a very sophisticated form of blackmail by the TNC:

“Make a new set of rules for us that will allow us to operate the way we want to or we will make Government look incompetent by operating outside the law.”

TNCs could lawfully gain access to the Las Vegas market by applying with the NTA or the TA for licensure, but the TNCs simply do not want to follow this procedure. There are more than 300 companies licensed by the TA and NTA so there is certainly precedent for companies applying and becoming licensed. Large companies such as SuperShuttle were recently licensed, so why is Uber unwilling to apply and go through the legal licensing process? Again, Uber thinks they can create a more favorable set of rules by breaking the law or trying to change it.

In Las Vegas, can one imagine a casino seeking to open on the Strip and arguing:

“Gaming Control Board? That’s not for us.”

Well, that’s exactly what Uber seeks right now.

THE ROLE OF GOVERNMENT IS TO PROTECT THE PUBLIC

The role of government is to protect the public from risks that they fail to appreciate. The Nevada Legislature, the TA and NTA have done a tremendous job creating a unique transportation environment in Las Vegas, which does the best job of any jurisdiction in the United States in terms of public safety. The issue with TNCs is that the public sees a car and a driver and believes that they
are the same as a licensed taxi, but they fail to appreciate the risk of jumping into a TNC:

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<th>TNCs</th>
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**BACKGROUND CHECKS**

The TA in Las Vegas performs FBI background checks. That means that the TA obtains prospective driver’s fingerprints and makes certain that they do not have a state or federal criminal background that would present a risk to the riding public. TNCs reportedly perform cursory background checks through the internet utilizing only a prospective driver’s name or social security number.

A background check that does not take a fingerprint and analyze all available criminal databases is simply unreliable. There are reports in San Francisco of TNC drivers who were later found to be felons committing atrocious crimes against passengers. Indeed, there are countless stories around the United States where Uber drivers have been discovered to be felons. Irresponsible and ineffective background checks are the cause of Uber putting numerous felons behind the wheel. This kind of black eye cannot occur in Las Vegas where tourism is our lifeblood. The TNC’s dismissive attitude toward public safety with regard to background checks should shock any consumer, regulator, executive, or traveler in Las Vegas. A thorough FBI background check of a potential hire is mandatory. The fact that TNCs look to save money by endangering public safety through cursory internet searches of potential hires is yet another shameful example of why Uber is not ready to participate in the Las Vegas market.
**DRUG SCREENING**

In Las Vegas, every licensed taxi company performs drug testing on every potential hire. If they don’t pass the test, they don’t get hired. We in the taxi industry know drug use to be a major concern because more than 30% of the pre-hire drug screens we perform come up positive for either illegal drugs or prescription drugs that would make the candidate unfit to drive. Further, licensed taxi companies drug test drivers for cause during employment. Many TNCs never drug screen their drivers. The fact that TNCs try to save money by not drug testing their drivers is yet another shocking example of a total lack of concern for public safety.

In front of District Judge Freeman, Uber’s witness testified that passenger reviews were as effective as actual drug screening. The Uber witness testified that Uber passengers could report an “impaired driver”, after the fact, through the Uber APP. Judge Freeman seemed so alarmed that he started to interrupt the State’s Attorney General to ask his own questions. Upon repeated questioning where the Uber witness appeared evasive, Uber finally admitted that they do not drug screen drivers. Uber’s policy of failing to drug screen is yet another blaring oversight.

Beyond actual drug screening, each Las Vegas taxi driver must come to the taxi company lot each day and have multiple interactions with management staff before they are permitted to drive a taxi. These interactions with drivers present opportunities for management to assess driver’s alertness and sobriety. The fact that TNCs think it is safe to let independent contractor drivers get into a vehicle to transport the public with no daily management oversight is a shocking risk to public safety. One simply cannot safely manage a taxi business via the internet with no physical oversight of drivers. Safe management requires daily interaction with drivers by trained management staff. The TNC, by its AVOIDANCE OF DUTY, independent contractor business model, is a risk to the riding public. The taxi industry implements countless safeguards because its DUTY ACCEPTANCE business model requires it to, both directly and indirectly.

**VEHICLE INSPECTIONS & CONDITION**

One of the key duties of the TA is to inspect taxis for proper operation and safety. The TA makes regular inspections of each vehicle numerous times per year. There are TA officers at McCarran Airport that review vehicles every day and “redline” them should they not meet the TA’s strict guidelines. Uber permits vehicles as old as the 2005 model year while a taxi’s lifespan is almost half that old. Taxis return to their lots each day to be serviced by company mechanics and to be inspected by management. TNCs on the other hand would allow individuals to drive their private vehicles with no actual inspection on a daily basis and a once a year inspection that does not come close to the legal standard required by Nevada law. The fact that TNCs think it is acceptable for the public to ride in a vehicle without daily inspections is yet another hazard to the public.

One certainly understands that it is a cost savings not to inspect and maintain vehicles, but again, the Las Vegas taxi industry instituted a set of rules for vehicle inspection to guarantee the best running fleet in the United States. We cannot allow a fleet of poorly maintained private vehicles to blemish the transportation industry’s sterling condition.
TRAINED & ACCIDENT AVOIDANCE TECHNOLOGY

Licensed taxi companies require extensive training before drivers are permitted on the road. TNCs on the other hand approve drivers over the internet and let them loose on the road. YCS uses the highly regarded Smith System for driver training just like Fed Ex and UPS. YCS has just invested $1,000,000 + in a driving simulator system to ensure the best trained drivers in the industry. Our driving simulators allow drivers to experience potential dangerous driving conditions in a controlled lab where they can safely be taught to deal with those conditions. Having driving simulators means a driver will actually experience conditions rather than just have them explained to him or her.

Taxi companies in Las Vegas also utilize “Mobile Eye,” which is a sophisticated accident avoidance system. This system alerts the driver to dangerous lane changes, pedestrians, unsafe acceleration, unsafe vehicle merging, following too closely, and a host of other conditions. Front end collisions have declined more than 50% due to the implementation of this system. TNCs, on the other hand, have no such system.

Lastly, Las Vegas’ licensed taxi companies were among the first fleets in the country to install cameras in every vehicle (“DriveCam”). DriveCam records events both inside and outside of the vehicle so that dangerous conditions are reported to management. These events act as training tools for drivers. Driver supervisors at licensed taxi companies spend numerous hours each day training drivers on the basis of DriveCam events. TNCs have no such systems.

ELECTRONIC DISPATCH

Nevada passed legislation at the 2013 session that will implement universal dispatch and "ehailing" of taxis within Las Vegas. For this reason, there is no need for an additional electronic hailing system such as that used by TNCs since they refuse to comply with Nevada’s laws. As a result, licensed and regulated taxi companies will soon be utilizing this technology so that the public will enjoy all of the protections of our regulatory system while enjoying the benefits of “ehailing.” Indeed, it makes little sense to sacrifice everything that the TNC’s business model requires, when the consumer can get the same benefits, but with the protections of a regulated taxicab.

CONCLUSION

It is amazing how profitable a transportation company could be if it:

- did not have to pay for adequate insurance
- did not have to buy vehicles
- did not have to pay for fuel
- did not have to have to perform drug tests on drivers
- did not have to FBI background check drivers
- did not have to inspect vehicles
• did not have to perform physicals on drivers
• did not have to maintain vehicles
• did not have to train drivers
• did not have to pay drivers
• did not have to pay workers comp or minimum wage
• did not have to buy health insurance for drivers
• did not have to pay vacation benefits
• did not have to pay retirement benefits for drivers
• did not have to outfit its vehicles with accident avoidance systems; and
• did not have compliance costs associated with regulation

Due to their reported billions of dollars in market capitalization, Uber and other TNCs should have no problem complying with Nevada’s transportation regulations. TNCs can certainly afford it and the system permits a pathway for them to be licensed if they comply with the law.

Legislators must not be fooled by this thinly veiled attempt to create a less costly set of rules for Uber. Nevada should not change its rules for TNCs. If Uber and other TNCs want to participate in the Las Vegas market, let them comply with the law like every other licensed transportation provider. We all believe that competition is a good thing, but a level playing field with a uniform set of laws should apply equally to all competitors.

Upon just a little digging and a few questions that go beyond the basics, legislators will find that what Uber really wants is a set of laws drawn up to support its low expense, low safety business model. Uber only wants to operate in Nevada if it can do so on its own terms. Nevada must not cave in to Uber’s PR blitz. Nevada should not permit Uber to dictate or water down how Nevada protects the public’s safety. What Nevada has now is a model that will permit technology like Uber’s, but with all of the public safety precautions compelled by Nevada’s driver employee model. Uber’s business model poses a serious risk to the riding public that cannot be permitted to blemish Las Vegas’ tourism industry. Uber must be given a copy of NRS 706, as is, and be made to comply with it, as is, or Nevada will risk its tourism industry with serious consequences for all of Nevada.