

# Agenda Item# 79

**Revision to initial request  
provided after initial posting of  
supporting material but prior to  
meeting.**

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21-03003

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FILE NO.

**KIMBERLY MAXSON-RUSHTON**  
EMAIL: krushton@cooperlevenson.com

April 6, 2021

Liz Babcock, Applications Manager  
Nevada Transportation Authority  
3300 West Sahara Avenue  
Suite 200  
Las Vegas, NV 89102

Re: 21-03003 –Kaptyn/Uber Pilot Program

Dear Ms. Babcock:

Please find enclosed herein a revised Request to Conduct a Pilot Program in response to the letter received by the NTA on April 1, 2021 from the Dept. of Aviation (“DOA”). Specifically, Uber and Kaptyn (“Parties”) acknowledge the concerns raised by the DOA relative to McCarran’s need to formulate a tracking and monitoring system for operations such as those proposed in the subject Request. Furthermore, the Parties acknowledge that the County Ordinance relative to a TNC’s ability to operate at McCarran requires modification should the Pilot Program be authorized. Thus, until the monitoring system is implemented and the ordinance changed the Parties agree to not load passengers seeking Uber Premiere Electric services.

Additionally, I’d note that the DOA may not prohibit a commercial operator from dropping off passengers at McCarran. Therefore, Kaptyn/Uber, like other certificated carriers and TNC’s may transport *Uber Premiere Electric* passengers to the airport.

Lastly, I’d note that the amount of insurance coverage currently maintained by Kaptyn/Uber far exceeds the amount of coverage a TNC must have in order to operate at the airport<sup>1</sup>.

<sup>1</sup> Kaptyn/Uber maintain \$5m in insurance coverage whereas TNC’s at McCarran are required to maintain \$1.5m in insurance coverage.

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COOPER LEVENSON, P.A.

Liz Babcock, Applications Manager  
April 6, 2021  
Page 2

As always, my clients and I appreciate your consideration of this request. Should you have any questions, please do not hesitate to contact me

Warmly,

*/s/ Kimberly Maxson-Rushton*

Kimberly Maxson-Rushton



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**BEFORE THE NEVADA TRANSPORTATION AUTHORITY**

Request by Kaptyn Nevada, LLC to Provide  
Fleet Management Services to Uber Technologies,  
Inc.

) Docket No.  
21-03003  
Revised JB

**PETITION TO CONDUCT PILOT PROGRAM**  
**REQUEST FOR INTERIM AUTHORITY**

COMES NOW, Petitioner Kaptyn Nevada, LLC ("Kaptyn") by and through their counsel of record, Kimberly Maxson-Rushton, Esq. of the law firm COOPER LEVENSON, P.A. ATTORNEYS AT LAW and hereby submits the following Petition to Conduct a Pilot Program in conjunction with Uber Technologies, Inc. ("Uber") (collectively referred to as the "Parties"). In addition, the Parties request Interim Authority to initiate the service on April 1, 2021. This Petition and Request for Interim Authority are submitted pursuant to Nevada Revised Statutes ("NRS") 706A, Nevada Administrative Code ("NAC") 706A.390 as well as NAC 706.3957 and 706.3998.

All notices, pleading documents and correspondence pertaining to this proceeding should be directed to the following individual:

Kimberly Maxson-Rushton, Esq.  
Cooper Levenson, Attorneys at Law  
3016 W. Charleston Blvd., Ste. 195  
Las Vegas, Nevada 89102  
krushton@cooperlevenson.com

**I. INTRODUCTION**

Kaptyn is currently a certificated common motor carrier authorized to provide passenger transportation services in Nevada pursuant to Certificates of Public Convenience and Necessity ("CPCN") 1040, 1070, 2063 and 2119. Similarly, Uber holds a transportation network company ("TNC") permit in Nevada.

1 Kaptyn and Uber have entered into a Fleet Management Agreement whereby, if authorized  
2 by the Nevada Transportation Authority ("NTA"), Kaptyn will provide electric vehicles and  
3 drivers to TNC passengers in Las Vegas seeking *Uber Premier Electric* service. More  
4 specifically, consistent with Uber's authority under NRS 706A the Parties request authorization to  
5 conduct a pilot program in order to initiate the first ever *Uber Premier Electric* service and to  
6 determine the feasibility of the Fleet Management Agreement. In support of said request, the  
7 Parties mutually submit that the proposed pilot program is not prohibited by Nevada law and is  
8 clearly in the public interest.

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10 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

11 **A. Public Interest**

12 Pursuant to NRS 706.151, the NTA is to use impartial regulation to promote safe, adequate,  
13 economical and efficient transportation services, foster sound economic conditions in the motor  
14 transportation industry, and encourage the establishment of reasonable charges. Similarly, as  
15 applicable to TNC's the NTA is to ensure the safety, reliability and cost-effectiveness of the  
16 transportation services provided by permitted TNC's. NRS 706A.010. Collectively these  
17 respective Legislative directives provide the NTA the ability to ensure that their actions and the  
18 corresponding transportation services provided under their authority serve the public interest.

19 Kaptyn and Uber submit that high-end (premium, premier, etc.) TNC services are a  
20 common practice within the transportation industry with proven success however, *Uber Premier*  
21 *Electric* service is a new concept that's yet to launch. Should the NTA allow this pilot program  
22 Nevada will be the first jurisdiction to offer *Uber Premier Electric* service. What does this mean  
23 for Nevada? In addition to a passenger's ability to connect seamlessly to their preferred TNC, at  
24 rates currently on file with the NTA, said passenger will be provided premium service in a NTA  
25 inspected vehicle, with five million (\$5m) commercial insurance coverage provided by Bell  
26 United. Said TNC passengers will have drivers who have undergone extensive training in safe  
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1 driving and compliance as an NTA permitted driver<sup>1</sup>. The public interest will also be served by the  
2 Parties intent to reduce the amount of traffic and congestion at Nevada's airports and resort  
3 properties through better coordination of services. Finally, the use of electric vehicles provides a  
4 significant public service through minimizing the carbon footprint.

5 Clearly, the Parties proposal – the first ever *Uber Premier Electric* service using Kaptyn's  
6 premier electric vehicles and permitted drivers - evidences the public interest in authorizing this  
7 request. Equally important is the clear evidence of the NTA's recognition of the respective  
8 Declarations of Purpose and its forward thinking relative to innovations in transportation in  
9 consideration of this Petition.

10 **B. A Pilot Program Is Not Prohibited Under Nevada Law.**

11 Neither NRS 706 or 706A prohibit a NTA permitted driver from providing Uber service in  
12 a Kaptyn electric vehicle. Specifically, the provision of said TNC services as proposed herein will  
13 not violate NRS 706A.040, 706A.090 nor NAC 706A.320<sup>2</sup>.

14 As it applies to NAC 706A.320, which precludes TNC drivers from being paid by anyone  
15 other than the TNC, the Parties submit that the terms of the Fleet Agreement are consistent with  
16 the regulatory intent behind NAC 706A.320. Under the terms of the Agreement, Uber will pay a  
17 fee for Kaptyn's electric vehicle and driver and thereafter, remit the driver's gratuity to Kaptyn to  
18 be paid directly to the driver. As the intent behind NAC 706A.320 is to prevent drivers from  
19 performing off-app, cash rides the Parties respectfully submit that approval of this Petition will not  
20 conflict with nor lesson the prohibited acts intended by NAC 706A.320. Additionally, if approved  
21 to conduct the proposed pilot program, Uber will add the Kaptyn drivers to the company's list of  
22 active drivers. See, NAC 706A.180.

23 Similarly, approval of this request will not conflict with NRS 706A.310(2) relative to the  
24 Parties ability to provide services at McCarran Airport. There is no question that Kaptyn and Uber

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26 <sup>1</sup> All of the information required pursuant to NRS 706A.160 is currently on file with the NTA.

27 <sup>2</sup> The Parties refer to NRS/NAC 706A as applicable to this matter based on the fact that the proposed services are TNC  
28 services.

1 may drop off passengers at McCarran however, due to the two tracking systems (AVI and geo-  
2 fence) used by Dept. of Aviation's ("DOA") *Uber Premier Electric* passengers will not be  
3 permitted to load at Zero Level until the DOA determines, which monitoring system to use.  
4 Additionally, as the NTA is aware, Clark County Code 20.04.010 relative to a TNC's operation at  
5 McCarran will need to be amended in order to allow *Uber Premier Electric* passengers to be  
6 loaded at McCarran. The DOA has agreed to request that the applicable County Code be amended  
7 in order to accommodate the requested Pilot Program. Accordingly, all applicable airport fees will  
8 be remitted by the Parties consistent with the operating terms set forth by McCarran and no  
9 loading of *Uber Premier Electric* passengers will occur until the DOA authorizes it.

10 Equally compelling to the NTA's consideration of this proposal is NAC 706A.370 and  
11 Uber's interest in providing "reliable and cost-effective" transportation with a level of service that  
12 is not readily and consistently available from its driver-partners. The uniqueness of the proposed  
13 TNC service, the fact that it will be the first of its kind, evidences the creation of a new method of  
14 operation as intended by the regulation. Thereby, providing further demonstration of how the  
15 public interest will be served should the pilot program be successful.

16 **C. Request for Interim Authority**

17 Due to the fact that the next regularly scheduled NTA General Session Meeting isn't until  
18 April 8, 2021, the Parties respectfully request interim authority to initiate the pilot program  
19 described herein on April 1, 2021. In consideration of the proposed launch date, and to ensure  
20 adequate time for the Parties to meet all compliance related requirements and/or inspections the  
21 Authority deems necessary prior to the initiation of services, Kaptyn and Uber request interim  
22 authority.

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1 **III. CONCLUSION**

2 Based on the arguments set forth herein, the papers and pleadings on file with the NTA  
3 coupled with the information contained in the Authority's files and records, the Parties respectfully  
4 request approval to conduct a pilot program consistent with the specifics set forth herein and  
5 interim authority to initiate operations prior to the next regularly scheduled NTA General Session  
6 Meeting (scheduled for April 8, 2021).

7 DATED this 6th day of April, 2021.

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9 COOPER LEVENSON, P.A.

10 */s/ Kimberly Maxson-Rushton*

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16 Email: krushton@cooperlevenson.com  
17 *Counsel for Kaptyn Nevada*  
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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of COOPER LEVENSON, P.A. ATTORNEYS  
AT LAW and on this 6<sup>th</sup> day of April, 2021, served the foregoing **PETITION TO CONDUCT  
PILOT PROGRAM and REQUEST FOR INTERIM AUTHORITY** via U.S. Mail First

Class Postage and via email to the following:

Louis Csoka, Sr. Deputy Attorney General  
Office of the Attorney General  
555 E. Washington Ave., Suite 390  
Las Vegas, NV 89101  
LCsoka@ag.nv.gov

*/s/Christiane Smith*

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An employee of COOPER LEVENSON