



TESTIMONY ON BEHALF OF THE LIVERY ROUND TABLE
TO THE JOINT ASSEMBLY AND SENATE WORKFORCE BUDGET HEARING
FEBRUARY 5, 2020

Good morning, Chairwoman Krueger, Chairwoman Weinstein, and distinguished members of the New York State Senate Finance Committee and the Assembly Ways and Means Committee. I am Dr. Avik Kabessa, CEO of Carmel Car Service and founder of the Livery Round Table, which advocates on behalf of the “traditional” Livery for-hire vehicle (“FHV”) sector.

Livery, also known as Community Car Service, largely operates out of local bases in the outer borough, minority, and immigrant communities of New York City. I have prepared this testimony to detail our sector’s concerns in response to Part GGG of the Governor’s proposed Executive TED Budget, which would define “digital marketplace company” and establish a task force to ultimately provide recommendations to the Labor Department to regulate worker classification in this area. The Livery Round Table is highly concerned that, if this proposal (or any proposal addressing what is colloquially referred to as the “Gig Economy”) is to include the traditional livery, it will drive NYC’s livery sector out of business and create “super monopolies” for app-based corporations such as Uber and Lyft.

We understand that the goal of Gig Economy legislation is to combat the exploitation of workers through the legal reclassification of certain independent contractors as employees. When

it comes to the for-hire vehicle industry, such legislative need never existed prior to the arrival of the international, highly capitalized entities such as Uber and Lyft dispatching trips to hundreds of thousands of drivers in New York on a daily basis. To capture the traditional Livery sector in Gig Economy legislation would undoubtedly wipe hundreds of NYC Livery bases, which are mostly minority-owned small businesses, out of existence.

By way of background, the business model determining the relationship between drivers and the traditional livery bases has been one of drivers as independent owner/operators for the last forty years. Only 5% of the traditional livery bases (primarily located in Staten Island and at the Queens/Long Island border) own the for-hire vehicles and employ the drivers. The remaining majority (95%) of the traditional livery drivers own their vehicles and only affiliate with the livery base under complete independent owner/operators status. It was only after the arrival of Wall Street-backed brands such as Uber and Lyft (bringing with them a gig economy business model), that drivers' status as independent operators has come into question.

Traditional livery drivers affiliated with one livery base accept dispatches from as many local bases as they wish to maximize opportunity for fares in the conduct of their personal business; and drivers can affiliate and disaffiliate at-will from bases for the nominal fee of \$25 dollars. The livery base does not have, nor ever had, the means/method to exert leverage over the driver. The base has no way to influence when or where the driver will go on the road or which call to accept. And most importantly, the traditional livery driver – not the livery base – is the one collecting payments for the livery trips (most of which are transacted in cash) from the passenger.

In contrast, the gig economy business model allows the high-volume FHV services (such as Uber and Lyft) overwhelming leverage over a driver's business activities and leads to worker abuses. Payment for high-volume FHV services trips are non-cash transactions between the high-volume base and the passenger directly via their electronic app; the service subsequently remits payment to the driver. Additionally, these companies leverage their business model in ways livery bases never did, nor could ever do. Just as examples, they have offered guaranteed monetary compensation to drivers for simply being available a minimum number of hours per week; or offered large conditional bonuses for drivers accepting over 90% of trips dispatched only from that high-volume service. Under this kind of leverage, the driver has no discretion and no agency. None of these methods to exert control over drivers have been a part of the traditional livery sector business model, nor was it ever economically feasible for local livery bases to attempt.

In addition to the high-volume services leverage "advantage" over the traditional livery services, the multi-million dollar technology platforms of the high-volume services allows the tracking and implementation of leverage over their drivers, and also allows for split-second surge pricing implementation to further attract drivers to remain on standby with their app open, hoping for a surged price trip to come their way. Implementing a very complex concept of treating all FHV drivers' sectors as employees will require highly advanced technology. Thus, the same multi-million dollar technology advantage will provide high-volume services the ability to comply with the proposed legislation; technology no traditional livery base has, nor can afford.

While action against these major app-based FHV services may be justified, a universally applied Gig Economy law will result in the collapse and closure of the remaining bases making up

the traditional livery sector livery and the final consolidation of the FHV market into the very high-volume FHV services necessitating this legislation. Local livery can never duplicate these high-volume companies' methods of exerting direction and control over drivers, nor can local livery purchasing the multi-million technology necessary to implement them or comply with the proposed law.

These and other differences between the high-volume and local livery business models quickly manifested themselves as disadvantageous to the traditional livery sector. It is no longer speculations as the livery sector had already contracted by 65% (shrinking from 28,000 to approximately 9,000 FHV's), leading the New York City Council to realize these significant distinctions merited classifying high-volume app-based FHV companies under a separate legal regulatory category with its own unique obligations tailored to more appropriately address the relationship between these business models and their drivers. The classification of "high-volume for-hire service" under Local Law 149-2018 captures only those entities that dispatch over 10,000 rides in a day. In NYC alone, Uber may dispatch 450,000 or more rides in a single day, whereas the largest traditional livery will at best dispatch approximately 4,000 rides. The scale distinguishing high-volume apps from traditional livery is a canyon in which public policy must distinguish or the traditional livery will be put out of business.

It is the established policy of New York to promote and preserve the viability of small businesses. Section 130 of Article 4-B of the Economic Development Law declares, in part, that "the state has a responsibility to assist in small business development in furtherance of the general welfare." The State has recognized that certain industry employers, due to scale, are not financially

able or modeled in a fashion that allows for the workers to be mandated the same benefits as larger businesses. For example, the Governor has also proposed in his Executive Budget to mandate sick leave for workers. Businesses that employ 100 or more employees would be required to provide seven days of paid sick leave. This obligation scales down, and businesses with less than five employees would be required to provide only five days of unpaid sick leave. Similarly, as the traditional NYC livery dispatches a fraction of the rides in comparison to that of the high-volume FHV services, and this distinction greatly impacts the relationship between the base and the driver, livery bases should be provided a public policy consideration that exempts them from worker reclassification mandates. Such a protection would allow this niche sector of small business, dispatching local, independent community cars, to service outer boroughs neighborhoods as they have done so for the past forty 40 years.

Thank you for the opportunity to submit this testimony on behalf of the Livery Round Table. We are available to supplement this testimony to answer any questions you may have.