

BEFORE THE STATE OF NEVADA TAXICAB AUTHORITY

IN THE MATTER OF THE
AMENDED APPLICATION OF
DESERT CAB CO. TO ADJUST
TAXICAB CHARGES TO INCLUDE
A PASS-THROUGH SOFTWARE
LICENSE CHARGE

) **CLOSING BRIEF OF INTERVENOR**
) **KAPTYN TECHNOLOGY, INC.**

) **PUBLIC HEARING DATE: OCTOBER**
) **15, 2025**

) **TIME: 1:00 p.m.**

) **PLACE: Nevada State Business Center**
) **3300 W. Sahara, 4th Floor**
) **Nevada Rm, Las Vegas, NV**

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Intervenor Kaptyn Technology, Inc. ('Kaptyn'), by and through its attorneys of record, hereby submits its Closing Brief in connection with the hearings that took place on September 17-19, 2025.

I. INTRODUCTION

Kaptyn submits this Closing Brief in support of its Amended Application for approval of a \$.50 per trip pass-through software license fee. The record in this proceeding establishes that: (1) the proposed fee is justified by the assertion of 5 issued patents owned by IVSC and the damages exposure and significant defense costs that patent litigation on those patents presents, (2) the proposed fee would allow continuing technology innovations and improvements to be provided to Nevada taxicab operators and avoid interruptions in service and a diminution in technology features and functionality without fear of incurring claims of patent infringement, (3) the proposed fee is just and reasonable under the applicable statutes, and (4) the fee is in the public interest in that it would ensure the high level of service provided to passengers at a reasonable cost and remain in compliance with Nevada's statutory requirements for computerized real-time data systems used by taxicab operators in the State.

II. PATENT ISSUES

Kaptyn is mindful of the admonition of the Board at the initial hearing on the Desert Cab Co. application in February 2025 that this is a rate proceeding, and not a patent case. All parties agree that the Board lacks jurisdiction to make findings on purely patent issues such as infringement and invalidity. However, Opposing Intervenor Curb Mobility, LLC and Taxi Management, LLC have at least raised limited questions on infringement and invalidity in an attempt to support an argument that the 111 claims in the 5 issued patents and the additional 40 claims in the pending patent applications do not justify the requested pass-through fee which provides releases of liability for past infringement claims and patent license protection on a going forward basis to Clark County operators and technology service providers. Those

1 arguments (and they are just that, conclusory arguments without evidentiary support) do require
2 a response in this submission.

3 As for the assertion of infringement, IVSC Chief Operating Officer, Noah Mesel,
4 submitted an exemplary claim chart as part of his Supplemental Pre-Filed Testimony comparing
5 each element of Claims 1, 2, 6, 7, 10, 11, 15, 20, 21, 22, 27, 33, and 35 of U.S. Pat. No.
6 9,037,852 against the statutory requirements of the computerized real time data system codified
7 in NRS 706.1516. Exhibit 8 and Exhibit A thereto. Mr. Mesel selected those claims in the '852
8 Patent that read on the eleven (11) separate minimum requirements for a code compliant
9 technology system set forth in NRS 706.1516(a)-(k). Exhibit 8, ¶¶ 2 and 8 and Exhibits A, C
10 and D thereto. His claim chart for those claims is consistent with the requirements of Nevada
11 District Court Local Patent Rule (LPR) 1-6(c) for Infringement Contentions, except that Mr.
12 Mesel used NRS 706.1516 instead of a specific Accused Instrumentality.¹

13 Mr. Mesel's claim chart indicates that any technology service company that provides a
14 computerized real-time data system to operators in Clark County is likely to at least infringe
15 thirteen (13) claims of the '852 Patent, and each operator which employs that technology would
16 also infringe those claims. Mr. Mesel's testimony on this issue and his claim chart were not
17 challenged at the hearing. His testimony and claim chart dispose of the complaint by Opposing
18 Intervenor that IVSC hasn't notified any other parties to this proceeding of potential action to
19 enforce its patents. As for patent assertions and licensing discussions, a patent owner can choose
20 which parties it chooses to contact first. Exhibit 8, Supplemental Mesel Pre-Filed Testimony,
21 Para. 6. Kaptyn is unaware of any authority in patent law which impacts that decision and no
22 authority to the contrary was cited by Opposing Intervenor. Moreover, Mr. Mesel's claim chart
23 analysis is corroborated by the deposition testimony of Gerald Bell .

24 Mr. Bell and his family companies have been longstanding operators in Clark County,
25 and he has substantial experience in using and working with both technology providers Kaptyn
26

27 ¹ Nevada District Court Local Patent Rule (LPR) 1-6(c) states: "A chart identifying specifically where each
28 limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that
such party contends is governed by 35 U.S.C. § 112(6) (pre-AIA) or 35 U.S.C. § 112(f) (post-AIA), the identity
of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function."

1 and Curb Mobility. Mr. Bell testified that the two companies' base systems functioned the same
2 and performed the same processes. (Bell Deposition, 42:16-43:5). The combination of Noah
3 Mesel's testimony and claim charts and JJ Bell's testimony support the conclusion that an
4 operator who did not use the allegedly infringing technology would be out of compliance with
5 NRS 706.1516.3, and the factual finding that it did not matter whether the particular technology
6 used by an operator was provided by Kaptyn, Curb Mobility or some other technology provider.
7 No witness challenged or rebutted Mr. Bell's testimony on these points at the hearing and that
8 includes Curb Mobility Chief Technology Officer, Vishal Dhawan.

9 If Mr. Dhawan had wanted to provide support for his one sentence conclusory statement
10 of supposed non-infringement, he should have submitted a chart or analysis consistent with the
11 requirements for Non-Infringement Contentions set forth in Nevada District Court Local Patent
12 Rule 1-8(a) which require a "detailed description of the factual and legal grounds for contentions
13 of non-infringement, if any, including a clear identification of each limitation of each asserted
14 claim [in each of the 5, now 6, issued IVSC Patents] alleged not to be present in the Accused
15 Instrumentality [Curb Mobility technology system]." Mr. Dhawan did nothing of the kind and he
16 didn't even provide a written technical description of the operation and functionality of the Curb
17 Mobility technology system in this proceeding. Neither one of these would have involved a
18 waiver of the attorney-client privilege. In addition, Mr. Dhawan admitted that he hadn't even
19 read the IVSC pending patent applications during his review of the IVSC patents. (HT, Day 3,
20 Dhawan Testimony at 45:18-24. One of those applications became an issued patent during the
21 hearings. HT, Day 2, Mesel Testimony at 122:11-126:9).

22 Intervenor witnesses William George (zTrip), Jonathan Schwartz (Taxi Management)
23 and Michael Bailin (Taxi Management) included similar unsupported statements in their Pre-
24 Filed testimonies indicating their beliefs that there were other technology systems which did not
25 infringe IVSC patents. However, none of the witnesses even identified these other providers let
26 alone produced documents about the operations and functionalities of these unidentified
27 technology providers along with their Pre-Filed Testimonies. Their statements are conclusory
28 and based on inadmissible hearsay. Tellingly, these witnesses declined to answer questions at

1 their depositions about the technologies offered by other providers claiming that they were
2 precluded from doing so by virtue of provisions in non-disclosure agreements to which they
3 were parties. (Bailin Deposition at 23:25-24:25) For all of these reasons, the Opposing
4 Intervenor's argument of supposed non-infringement of other technologies is devoid of any
5 supporting evidentiary findings and legal analysis, and should be disregarded.

6 In their Pre-Hearing Brief, Opposing Intervenor's Curb Mobility, LLC and Taxi
7 Management, LLC included an argument entitled "There is Substantial Doubt About the
8 Validity of the IVSC Patents." Curb Mobility and Taxi Management Pre-Hearing Brief at 11:
9 12-27. This argument is also without merit.

10 Intervenor's did not submit an expert report on invalidity of any asserted patent, and this
11 section of their Opening Brief is unsupported and no more than conclusory argument of counsel.
12 The section does not even mention any particular patent, let alone any claim of even one
13 asserted patent. It is not in proper form and does not address each claim (and each element of
14 each claim) of at least the 5 issued patents, which is what a properly conducted patent invalidity
15 opinion analysis is required to do. See Disclosure of Non-Infringement, Invalidity and
16 Unenforceability Contentions set forth in Nevada District Court Local Patent Rule 1-8(b).²
17 Intervenor's do not even mention, let alone consider, the myriad prior art cited and considered by
18 the USPTO Examiner in allowing the issuance of these patents as shown in the chart below.

19

20 Patent (US No.)	21 U.S. Patent Documents	22 Foreign Patent Documents	23 Other publications	24 Total/Source (USPTO PDF)
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25 ² Nevada District Court Local Patent Rule (LPR) 1-8(b) states in pertinent part: "A detailed description of the
26 factual and legal grounds for contentions of invalidity, if any, including an identification of the prior art relied
27 upon and where in the prior art each element of each asserted claim is found. Each prior-art patent must be
28 identified by its number, country of origin, and date of issue. Each prior-art publication must be identified by its
title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) (pre-AIA)
or 35 U.S.C. § 102(a) (post-AIA) must be identified by specifying the item offered for sale or publicly used or
known, the date the offer or use took place or the information became known, and the identity of the person or
entity who made the use or made and received the offer, or the person or entity who made the information known
or to whom it was made known."

12,105,864 B2 (Oct 1, 2024)	566	69	52	687
11,200,755 B2 (Dec 14, 2021)	283	53	37	373

Importantly, the Opposing Intervenor could have submitted an invalidity analysis in the form of these Invalidity Contentions without waiving attorney-client privilege and in lieu of an expert report if they wanted to reduce expenses. Certainly, someone as experienced in patent monetization as Curb Mobility Chief Technical Officer Vishal Dhawan would be familiar with the requirements of a proper invalidity analysis as specified in invalidity contentions adopted by federal district courts throughout the country. Hearing Transcript (“HT”), Day 3, Dhawan Testimony at 17:23-18:18.

At the hearing, counsel for Intervenor questioned Mr. Mesel about software called Ride Integrity that had been developed, offered and used by a predecessor entity to IVSC. (HT, Day 2, Mesel Testimony at 99:14-19). Mr. Mesel pointed out that there is a difference between the technology software of Ride Integrity and the patented inventions. *Id.* He proceeded to testify that the claims of the ‘852 Patent, for example, focused on taximeter functionality and particularly the encryption and decryption of communications and signals which were not present in Ride Integrity software at the time of the filing of the patent application that resulted in the issuance of the ‘852 Patent. (HT, Day 2, Mesel Testimony at 122:11-126:9).

Intervenor’s argument on the supposed invalidity of the IVSC patents is without merit and should also be disregarded.

The record therefore establishes that the Applicant has satisfied its burden of proof with respect to the following findings:

- (1) there is no difference in the basic system functionalities of the Kaptyn and Curb Mobility systems and those systems perform the same processes;
- (2) the Kaptyn and Curb Mobility systems are required to comply with the provisions of the computerized real-time data systems specified in NRS 705.1516.3.

- 1 (3) The systems' compliance with that statute implicates potential infringement
2 liability to IVSC under at least the '852 Patent.
- 3 (4) The IVSC Patents are presumed valid and enforceable, and the Opposing
4 Intervenor have submitted no admissible evidence of non-infringement or
5 invalidity of any claim of any IVSC Patent by a competing technology service
6 provider.
- 7 (5) Kaptyn and Curb Mobility and the operating companies that they serve are at risk
8 of being named as defendants in multiple serious patent infringement lawsuits in
9 federal district courts.

10 **III. THE EVIDENCE ESTABLISHES JUSTIFICATION** 11 **FOR THE PASS-THROUGH FEE**

12 While the issue of whether the requested pass-through fee is justified is a key factual
13 issue to be considered by the Board, the Pre-Filed Testimonies, other Exhibits and the testimony
14 of witnesses during the hearing have greatly simplified the determination of this issue. Many of
15 the arguments submitted by the Opposing Intervenor and some by the Administrator are no
16 longer viable.

17 **A. The Negotiations Between Kaptyn and IVSC Were Conducted in Good Faith** 18 **and at Arm's Length**

19 Mr. Bell explained the arm's length negotiations that he had with Mark James of IVSC
20 at length in his deposition and at the hearing and the facts and reasoning resulting in the
21 proposed agreement on a fare increase of \$.50 per ride. (HT, Day 2, Bell Testimony at 41:11-
22 45:2; Bell Deposition, 19:1-23:21 and 38:24-39:25). Mr. Bell testified that his opening offer to
23 Mr. James was \$.10 per ride as he tried to reach agreement on the lowest possible fee for Kaptyn
24 and the taxicab operators. (Bell Deposition, 20:14-21:24).

25 Mr. Bell testified that Mark James provided him with statistical data relating to industry-
26 based patent lawsuits that settled and the settlement ranges. By looking at the average trip and
27 multiplying by those ranges, possible per fare rates ranged from over \$2 to around \$.56 per ride.
28 (Bell Deposition, 38:24-39:25). This data and its analysis was identified and summarized in
Sections 4 and 5 of the Pre-Filed Testimony of Noah Mesel. Mr. Bell also noted that

1 infringement claims could result in potential owed royalties dating back six (6) years. *Id.* No
2 witness at the hearing challenged or rebutted Mr. Bell's testimony.

3 The negotiations were conducted at arm's length and over a considerable amount of time.
4 Moreover, it is absolutely the contractual right of Kaptyn to negotiate a license on behalf of its
5 operator customers in full satisfaction of its indemnification obligations under Section 8.1 of the
6 Master Software License and Services Agreement with its operators. Exhibit 14, Section 8.1.
7 (Supp. Meyers Pre-filed Testimony, Para. 5). These negotiations were anything but an avoidance
8 of its indemnification obligations. Andrew Meyers specifically stated that patent counsel was
9 retained to evaluate the asserted patents as well as pending IVSC patent applications and he
10 relied on their analysis in conducting license negotiations with IVSC. (HT, Day 1, Meyers
11 Testimony at 62:4-65:20 ;Meyers Deposition at 29:7-24).

12 The only revenue from the proposed \$.50 per ride fare that Kaptyn will receive is the
13 \$.125 share of that fare. There are no side deals or undisclosed arrangements with IVSC that
14 would allow Kaptyn further participation in the per ride fare as some of the Opposing
15 Intervenor have intimated in their discovery requests. (HT, Day 1, Meyers Testimony, 77:23-
16 78:5).

17
18 **B. The Structure of the Proposed Settlement and License Agreement Does Not**
19 **Give Kaptyn an Unfair Advantage Over Technology Providers**

20 If approved, the proposed fare increase of \$.50 per ride would be allocated as follows:
21 \$.125 to any technology services company that provides the same or similar technology as
22 Kaptyn to a taxicab fleet operator in Clark County with the remainder (\$.375) to IVSC. (Meyers
23 Pre-Filed Testimony, Para. 15, Supplemental Meyers Pre-Filed Testimony, Para. 2,
24 Supplemental Balaban Pre-Filed Testimony, Paras. 5 and 6, Supplemental Mesel Pre-Filed
25 Testimony, Para. 3, Bell Deposition, 23:3-21, Meyers Deposition, 55:17-56:22). This allows
26 other eligible technology service providers to participate in the fee, and grants certificate holders
27 the autonomy and freedom of choice in selecting technology providers. *Id.* Contrary to what
28 Intervenor witnesses Schwartz and Bailin assert in their Pre-Filed Testimonies, the structure of
the proposed pass-through fee does not solely benefit Kaptyn, but applies equally to all eligible

1 technology service providers. *Id.* This concern on the part of the Opposing Intervenor is no
2 longer a disputed issue.

3
4 **C. The Technology Encompassed by the Patent Claims is Being Used by All**
5 **Certificate Holders in Clark County**

6 As discussed in Section II hereinabove, the evidence shows the commonality of the
7 technology offered and provided by Kaptyn and Curb Mobility to operators in Clark County and
8 the manner in which the claims of at least the '852 Patent are impacted by technology
9 compliance with NRS 706.1516.3. The Opposing Intervenor offered no admissible evidence
10 that would challenge or rebut the Pre-Filed Testimonies of Messrs. Bell and Mesel, Mr. Mesel's
11 claim charts or the testimony of both gentlemen. Both technology providers and their operator
12 customers must confront the same potential for patent infringement liability created by the IVSC
13 Patents on the same grounds. This factual issue should be determined in favor of the Applicant,
14 Desert Cab Co.

15
16 **IV. THE PROPOSED FARE INCREASE IS JUSTIFIED, FAIR and**
17 **REASONABLE**

18
19 **A. Gerald (JJ) Bell's Negotiations Were Based on Objective Factual Criteria and**
20 **Legitimate Concerns About the Effects of Patent Litigation Threatened Against**
Kaptyn and the Operators

21 Mr. Bell testified in his deposition and at the hearing that the \$.50 per ride figure
22 represented a very fair rate because it was the slightly below the lowest rate of the possible
23 patent damage ranges, and eliminated the potential of liability for back royalties, and that this
24 rate was a home run according to Mr. Bell. (Bell Deposition. 39:5-25, HT, Day 2, Bell
25 Testimony at 41:16-45:2). The industry wide reported royalty data provided by IVSC for patent
26 infringement action settlements showed settlement ranges equivalent to numbers much greater
27 than \$2 per ride and \$.56 per ride. (Bell Deposition, 38:24-39:25). The opening asking royalty
28 from IVSC was in excess of \$2 per ride. \$1.20. (HT, Day 2, Bell Testimony, at 45:15-46:9).
The negotiations between Mr. Bell and Mark James of IVSC were lengthy and involved the

1 consideration of a number of factors specifically including whether the requested fare increase
2 was fair to the riding public and that it would not place operators in an uncompetitive pricing
3 position. (Bell Deposition. 42:7–43:5; HT, Day 2, Bell Testimony at 41:16-45:2). More
4 specifically, Mr. Bell was very clear that he did not see the requested fare increase as providing
5 a competitive price advantage to TNCs such as Uber and Lyft given their highly varying fares
6 for similar trips and ever changing premium pricing. (HT, Day 2, Bell Testimony at 46:14-48:3).
7 Importantly, all of these factors were being considered in the context of a licensing negotiation,
8 rather than a patent infringement action in a federal court where a complex damages analysis by
9 qualified experts would be expected. The reliance by Messrs. Bell and James on publicly
10 available royalty information and agreeing on a royalty rate below the lowest reported royalty
11 rate is a commonly used way to arrive at a fair compromise royalty. No witness testified
12 otherwise.

13 Mr. Bell testified that the \$.50 increase was reasonable in that it represented a fair
14 balance of all factors and would not adversely impact operators. *Id.* He was quite concerned
15 about the potential loss of unique Kaptyn technology features and functionalities if agreement
16 could not be reached on a fare increase that the Board would approve. (Bell Deposition, 42:16-
17 43:5; HT, Day 2, Bell Testimony at 50:21-52:8). If there is no approval by the Board, Kaptyn,
18 Curb Mobility and the operators might have to consider paring back features that might
19 implicate multiple claims across the 5 issued IVSC patents in order to at least partially remediate
20 the infringement risk on the stronger claims in the asserted patents. which could subject
21 operators and technology providers to greater damages. . Such a Hobson’s choice of these two
22 more or less equally objectionable alternatives is one of the primary reasons why the Amended
23 Application should be approved.

24 Mr. Bell’s testimony is in accord with Paragraphs 8-16 of the Pre-Filed Testimony of
25 Andrew Meyers, Mr. Meyers’ Deposition, and his testimony at the hearing. Mr. Meyers testified
26 that the \$.50 increase would cover current and ongoing passenger information, protection and
27 security of the platform, and continued evolvments of over-the-air updates to the Kaptyn’s DT
28 5 smart metering system. (Meyers Deposition. 54:4–55:16; HT, Day 1, Meyers Testimony at

1 138:13-142:16). Mr. Meyers explained that he wanted to ensure that Kaptyn could continue to
2 provide the market with the best-in-class software and technologies, fare metering, fare
3 collection, fare security, and dispatch solutions, and that Kaptyn currently serves a supermajority
4 of the Las Vegas market. (Meyers Deposition, 54:4-55:16; Meyers Pre-Filed Testimony,
5 Paragraphs 2 to 5 and Exhibit 13 (customer list)). Mr. Meyers testified in his deposition and at
6 the hearing that the proposed \$.50 rate increase was fair and reasonable and that the proposed
7 \$.125 share of that increase for past and continuing technology improvements and enhancements
8 was similarly justified, . *Id.* (Meyers Pre-Filed Testimony, Paragraphs 15 and 16; HT, Day 1,
9 Meyers Testimony 139:25- 142:16 and 145:1-146:4).

10 **B. Opposing Intervenors' Arguments Against Justification Miss the Mark**

11 In the Opening Brief of the Opposing Intervenors, they submit a number of arguments on
12 the issue of justification of the proposed rate increase that Kaptyn wishes to address. One
13 argument is that the Applicant has yet to incur costs because of the threat of patent claims by
14 IVSC other than the fees and costs of this proceeding. Taxi Management/Curb Mobility
15 Opening Brief at 7:8-13. There are 2 responses to this argument. *First*, under patent law, a
16 justiciable controversy exists where a patent owner, as here, threatens an action for patent
17 infringement against a third party (which is clearly an action arising under federal law), thereby
18 entitling the threatened party to file an action seeking patent declaratory judgment. *Medtronic,*
19 *Inc. v. Mirowski Family Ventures, LLC*, 134 S. Ct. 842 (2014) There is no legal requirement that
20 the threatened party first incur costs before filing such a lawsuit for declaratory relief. *Id.*
21 *Second*, Kaptyn has negotiated a Conditional Release and Settlement Agreement with IVSC
22 (Exhibit 20) which releases operators from patent infringement claims, avoids substantial
23 defense costs and fees, and provides operators with a going forward patent license. Exhibit 20,
24 Paragraphs 3 -8 and Exhibit B thereto. Kaptyn undertook those negotiations consistent with its
25 contractual right to seek license protection for its operator customers to avoid multiple patent
26 infringement actions being brought against them. This argument by Opposing Intervenors fails
27 as a matter of law.
28

1 Opposing Intervenor then argue that “there is no definitive evidence of future costs that
2 the Applicant or any other certificated taxicab operator will occur.” Taxi Management/Curb
3 Mobility Opening Brief at 7:18-20. That statement is flatly untrue. Kaptyn submitted statistical
4 evidence of the nearly \$4 million average defense cost of a single patent infringement action of
5 the type that IVSC could file and an additional \$350,000 per *inter partes* review (IPR)
6 proceeding for each asserted patent. (Meyers Pre-Filed Testimony, Para. 11 and Exhibit 15 –
7 2023 AIPLA Report of the Economic Study).

8 Although the logic of their next argument is somewhat difficult to discern, Opposing
9 Intervenor seem to argue that it is unfair for IVSC “to claim royalties directly from operators,
10 rather than from the technology providers who have allegedly infringed the IVSC Patents with
11 the software they have developed,” and for that reason, the rate increase should not be approved.
12 Taxi Management/Curb Mobility Opening Brief at 7:24 to 8:2. That reasoning reflects a serious
13 misreading of patent law which states that “a person directly infringes a patent by making, *using*,
14 offering to sell, selling or importing into the US any patented invention, without authority,
15 during the term of the patent.” 35 U.S.C. § 271 (emphasis supplied). When an operator uses
16 technology from a service provider, and that technology infringes one or more claims of a
17 patent, that operator faces liability for direct patent infringement. The primary goals of the
18 proposed agreement with IVSC are to relieve operators from these very claims of direct
19 infringement which are real and financially substantial and to permit the operators to use and
20 benefit from Kaptyn’s leading technology system without interruption or the removal of certain
21 importance features and functionality. This argument is also unavailing.

22 23 **C. Kaptyn Acted Diligently in Response to IVSC’s Claims**

24 At the hearing, Andrew Meyers was questioned about whether he considered
25 alternatives other than supporting the present application in response to IVSC’s allegations of
26 patent infringement. Mr. Meyers testified that he brought the allegations to the Kaptyn Board,
27 solicited and obtained advice from patent counsel, assessed the estimates of defense costs and
28 fees in defending multiple actions against its operator customers, met with the certificate

1 holders, relayed information to them about damage exposure and litigation expenses and asked
2 for their input and advice and had discussions with Kaptyn competitors. (HT, Day 1, Meyers
3 Testimony at 115:4 to 119:18). He also inquired about possible non-infringing technology
4 design arounds, but did not locate viable alternatives taking into account the expense that would
5 be involved and the length of time for a transition even if that were technically feasible given the
6 scope and coverage of the IVSC patents. *Id.* at 119: 19 to 120:7). Mr. Meyers also checked on
7 the availability of insurance coverage with Kaptyn's insurance broker and counsel and learned
8 that there was no coverage for claims of patent infringement. (HT, Day 3, Meyers Testimony at
9 120:13 to 122:2). This is hardly surprising since business comprehensive general liability (CGL)
10 insurance policies contain express exclusions for claims of patent infringement and Kaptyn's
11 policy was no exception. Filing a claim for IVSC's notice of alleged infringement at any time
12 with an express insurance exclusion for patent infringement would have served no purpose.

13 Accordingly, the September 20, 2021 letter from IVSC counsel to Kaptyn (Exhibit 18)
14 giving notice that IVSC considered unidentified Kaptyn technology to be infringing did not
15 trigger any duty on the part of Kaptyn to file a claim because there was never any insurance
16 coverage for a claim of patent infringement. Importantly, Kaptyn did not ignore the letter and its
17 counsel engaged with IVSC counsel to obtain claim charts or some similar type of alleged
18 infringement analysis so that Kaptyn would know exactly what IVSC's allegations of patent
19 infringement were, yet no further responses were forthcoming from IVSC or its counsel. (HT,
20 Day 1, Meyers Testimony, 63:10-64:8, 69:2-13, 70:7-14, 71:14-72:5). Nothing else needed to be
21 done and the September 20, 2021 letter is of no factual consequence in this proceeding. Kaptyn
22 never heard from IVSC about its patents for nearly 3 years.

23 Mr. Meyers convened a meeting to which all Kaptyn operator customers were
24 invited at the end of October, 2024. (Meyers Deposition, 24:17-25:10; HT, Day 1, Meyers
25 Testimony, 80:7-9). In that lengthy meeting, the patents that were being asserted were identified
26 as was the existence of additional pending applications, the damages exposure faced by all
27 parties was discussed, the potential for interruption of service to the operators and the negative
28 effect that litigation might have on future improvements and enhancements to Kaptyn

1 technology was explained, estimated defense costs and fees were provided and the difficulty in
2 defending against multiple claims across 5 issued patents with additional conditional
3 applications pending was disclosed. (Balaban Deposition, 15:19-16:25). Attendees were asked
4 for their input and questions were posed, and the seriousness of the matter was conveyed to all.
5 Id. Negotiations with IVSC continued after this October meeting and Mr. Meyers held a second
6 meeting on December 16, 2024 when the outline of the licensing agreement conditioned upon
7 the Board's approval of a fare increase was provided. At that meeting and thereafter, the only
8 operator objections to the licensing proposal received by Kaptyn came from Intervenor Taxi
9 Management and zTrip.

10 The lack of objections by all but 2 Kaptyn operator customers is important for two
11 reasons. As a group, they were provided with relevant information and the scope of the problems
12 presented by IVSC's claims of patent infringement, and they had ample time to decide whether
13 they would object to the current fare proposal, yet only Taxi Management filed a petition to
14 intervene and zTrip executive Bill George submitted an objection in his written testimony. The
15 lack of objections is an important factor for the Board to consider. The second reason involves
16 the language in the indemnification provision (Section 8.1) of Exhibit 14, the Kaptyn Master
17 Software License and Service Agreement with its operator customers. That provision reads,
18 impertinent part, that:

19
20 In the event any claims arise pursuant to which Kaptyn may be required to indemnify
21 Customer, or Kaptyn believes such a claim may arise, Kaptyn may, at its option: (i)
22 secure the necessary rights and licenses for Customer to continue using the Software or
23 Service, or (ii) notify the third-party service provider that it is non-infringing. This
24 section sets forth Customer's sole and exclusive remedy with respect to claims related to
25 the infringement or violation of third-party intellectual property rights.

26
27 It allows Kaptyn to completely fulfill its indemnification obligations to its operator
28 customers by securing the necessary rights and licenses for its Customers, which is exactly what

1 will occur if the Amended Application is approved. Since the provisions of Section 8.1 set forth
2 the sole and exclusive remedy of an operator, Taxi Management's intentional opposition to the
3 Amended Application likely operates as a waiver of its indemnification rights.

4 The end result of this extensive due diligence by Kaptyn was the conditional agreement
5 with IVSC to support a \$.50 fare increase which was the best available course of action. Desert
6 Cab Co. has accordingly established adequate justification for the requested fare increase in this
7 proceeding.

8 **D. The 25% Percent of the Requested Pass-Through Fee Allocated to Technology**
9 **Providers is Justifiable in the Context of this Proceeding**

10 On Day 1 of the Hearing, Mr. Meyers was questioned by Chairman Reaser and Member
11 Decker about the decision of Kaptyn to support Desert Cab Co.'s Amended Application for a
12 pass-through fee as opposed to the usual case where certificate holders incur increased expenses
13 (in this case, defense costs initially), and then seek rate increases to cover such expenses and
14 allow the certificate holders to earn a fair return on their invested capital. (HT, Day 1, Meyers
15 Testimony, 138:8-139:12 and 142:18-144:22). Mr. Meyers gave some examples of the increased
16 costs incurred by Kaptyn during the last 8 years, including continuous and increasing
17 expenditures for improvements to safeguard passenger information and provide a secure
18 technology platform, the development and implementation of a truly integrated taximeter with
19 applied software, metering efficiency, advanced fleet management technology, added
20 functionality for increased regulatory reporting, the development of new and alternative payment
21 platforms designed in response to requests from global travelers to Las Vegas, and substantially
22 increased engineering costs in the present post-COVID environment. (HT, Day 1, Meyers
23 Testimony, 139:16-142:16 and 144:23-146:4).

24 Kaptyn recognizes the unusual nature of including a percentage of the fare increase
25 for technology providers, but the present situation is anything but typical. Importantly,
26 comparing the 2 alternatives (the present passthrough fee request and having operators regularly
27 request fare increases to keep up with increased expenses) requires other factors to be taken into
28 consideration. The first factor involves the cost of fare collection, reconciliation of fares reported

1 for each operator, the allocation and payment of fare revenue and regulatory reporting of the
2 revenue from the fare increase. These expenses will come out of the technology provider share
3 of the fare at no additional expense to the operators, Second, Kaptyn will continue to develop
4 and implement new improvements, functionality and enhancements to its software, again at no
5 additional expense to the operators.

6 Third, the operators will encounter no interruptions or reductions in services resulting
7 from the possible issuance of preliminary injunctions by the federal courts or decisions that
8 might be made to support legal strategies in defending against certain claims across the 5 issued
9 IVSC patents in multiple lawsuits. Fourth, Kaptyn and other technology providers will not be
10 forced to forego or at least delay the implementation of new functionalities and efficiencies that
11 might implicate certain patent claims. This concern is particularly problematic here where IVSC
12 has pending continuation patent applications which can be amended to include additional claims
13 at almost any time until shortly prior to a notice of allowance of claims.

14 Fifth, the prosecution of multiple patent infringement actions which IVSC is likely to
15 file will most certainly require the allocation of considerable time on the part of management of
16 operators in such matters as responding to and propounding written discovery, preparation for
17 and participation in depositions and court hearings, and endless meetings and conferences with
18 counsel and that is before even a single case proceeds to trial. The engagement of management
19 in these activities takes away from their ability to operate their businesses properly and
20 efficiently.

21 The foregoing analysis establishes the fairness and justification of the \$.125 share of the
22 proposed pass-through fee allocated to technology providers.

23 24 **V. THE REQUESTED PASS-THROUGH FEE IS IN THE PUBLIC INTEREST**

25 Kaptyn provided several reasons why the request pass-through fee is in the public
26 interest on pages 13-15 of its Opening Brief. Notably, the \$.50 increase would benefit the public
27 by ensuring current, continuous and future security of metering, fair collection, data collection,
28 secured processing, reporting, distribution and reconciliation of collected fares and fees to the

1 intended recipients. (Meyers Pre-Filed Testimony, Paragraphs 14 and 15, Meyers Deposition,
2 54:4-56:15 and 142:1-143:3). Also included on an ongoing basis without additional expense to
3 operators would be future software enhancements and improvements, increased security for
4 riders and their personal information and compliance with additional new regulatory reporting
5 requirements. (Meyers Deposition, 142:1-143:3; Supplemental Meyers Pre-Filed Testimony,
6 Paragraph 4)). While Messrs. Schwartz, Bailin and George assert that the \$.50 proposed fare
7 increase is too high, none of them offered or suggested a fare increase that he would consider
8 reasonable. Thus, the only admissible evidence in the record of the fairness and justification of
9 the amount of the rate increase is the testimony of Mr. Meyers and Mr. Bell. The proposed fare
10 increase therefore complies with NRS 706.151(1)(c) in that it promotes safe, adequate,
11 economical and efficient service and foster sound economic conditions (riders and operators).

12 As discussed in detail in Section II above, the evidence in the record proves that all
13 technology providers and all Clark County operators are subject to the same patent infringement
14 risks because the service providers' systems must comply with NRS 706.1516.3 and in so doing,
15 their technology systems implicate the apparatus and method claims of the IVSC Patents, and
16 particularly the asserted claims of at least the '852 Patent. The Clark County operators are
17 similarly subject to claims of direct patent infringement for their use of technology systems that
18 may infringe the same asserted patent claims. 35 U.S.C. § 274. Those risks involve incurring
19 over \$4 million in defense fees and expenses for a single infringement case with operators facing
20 up to \$40 million in past damages dating back 6 years. There is a significant likelihood that
21 IVSC would pursue separate actions against each individual operator in a commonly used divide
22 and conquer strategy. Moreover, IVSC can choose which operators it wishes to sue and in which
23 order, and could strategically decide to initially pursue the smallest taxicab operators first. These
24 factors combine to present a rather daunting challenge to Kaptyn (and Curb Mobility) and their
25 Clark County operator customers which this rate proceeding is designed to address.

26 If the Amended Application is approved, the public (including operators and drivers)
27 directly benefits because the technology providers can continue to provide innovations and
28 improvements to the software that allow riders to obtain a taxi ride on a moment's notice, avoid

1 waiting time, and arrive at their chosen destination as quickly as possible. Riders can do this
2 with the knowledge that their personal information (including payment information) is handled
3 safely and securely. Operators and their drivers benefit from increased efficiencies that
4 technology innovation and improvements will provide. Riders and operators both benefit from
5 enjoying a quicker, safer and more efficient riding experience without having to adjust to
6 frequent fare increases to pay for and accommodate such innovation and improvements. The
7 reasoning behind the Amended Application as demonstrated in the factual record supports the
8 conclusion that its approval represents sound public policy and is in the public interest.

9
10 **VI. CONCLUSION**

11 Based on the evidence and facts and relevant law set forth above, Kaptyn requests that
12 the Amended Application of Desert Cab Co. for approval of a \$.50 per trip pass-through fee be
13 granted and that the Board adopt the findings and conclusions set forth in the Proposed Order.
14

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16
17 DATED this 8th day of October, 2025

18 CARR & FERRELL LLP

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20 

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28

CERTIFICATE OF MAILING

I, Carleson Jones, do hereby certify that on October 8, 2025, I deposited in the U.S. mail, postage prepaid, via First Class Mail, and email, a true and correct copy of the foregoing **CLOSING BRIEF OF INTERVENOR KAPTYN TECHNOLOGY, INC.** to the following:

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Dated this 8th day of October 2025.

/s/ Carleson Jones
Employee of Carr & Ferrell LLP