GOVERNMENT OF THE DISTRICT OF COLUMBIA
TAXICAB COMMISSION

Determination and Findings

Consideration for Publication as Final Rulemakings:
Expansion of Luxury Class Services to Include Sedans
and
Establishment of Rules for the Operation of Sedans

Title 31 of the DCMR, Chapters 12 and 14

August 19, 2013

I. Introduction

The District of Columbia Taxicab Commission presents these Determinations and Findings ("D and F") in support of two rulemakings under consideration today for publication as final rules in Title 31 of the D.C. Municipal Regulations: amending the existing Chapter 12, pertaining to limousine owners, operators, and organizations, to cover sedans, and adding a new Chapter 14, to cover the operation of sedan services. [1]

If approved, the regulations would create a basic legal framework that would both fully accommodate the current business model of existing companies that offer luxury service using sedans and fully comply with all existing legal requirements. This D & F summarizes the more significant aspects of the factual, policy, and legal bases of the Commission's rulemaking concerning sedan services. It includes information from some of the many sources that have contributed to the development of the rules since they were first introduced by public notice more than 10 months ago, through a notice of *intended* rulemaking and invitation for comment issued by the Commission in October 2012.[2]

The public vehicle-for-hire industry has benefited tremendously from recent advances in technology able to make obtaining service and paying for service far more convenient that traditional means. As technology continues to innovate, more and more resources are available via smartphone application, and arranging for transportation via a for-hire vehicle is no exception. The "app" allows the passenger to request a vehicle via digital dispatch,[3] which is generally paid for using the passenger's payment card on file. What results is a conveyance by a limousine-type vehicle, for which a charge is made using a time-and-distance-type rate, like a taxicab, but at a non-regulated price set by the digital dispatch service, or "DDS".

The sedan class of public vehicle-for-hire service appeared in the District in 2011. Within months of this new service entering the D.C. market, the Commission and the Council of the District of Columbia took notice and began to take action, with a number of important consequences for the rulemakings under consideration today.

The Council took a leading role, delineating the Commission's jurisdiction with respect to the digital dispatch of sedans, acting on public opinion that supported a temporary moratorium on the regulation of DDSs providing sedan service provided certain conditions were met, including requirements for an estimated fare, the disclosure of the DDS fare calculation method,

[1] A definition of "sedan" has been included in § 1299.1 but remained dormant for all practical purposes due to the lack of industry response.

[2] Because this D & F will be presented orally, it limits discussion of much of the information considered by the Commission, as well as the justifications upon which the final rules have been devised. For the same reason, section II, Background on Sedan Services, containing an extensive and detailed discussion of the experiences of several other jurisdictions, is set forth in the Addendum.

[3] Sedans service can only be obtained via digital dispatch; street hail and traditional telephone dispatch is not permitted.

the provision of a receipt, and the use of licensed sedans.[4] That moratorium, which expired on December 31, 2012, was contained in sweeping legislation which affects and enhances the Commission's jurisdiction, programs, and authority: the Taxicab Service Improvement Amendment Act of 2012. That Act, among many other things, authorizes the Commission to impose on all classes of public vehicles-for-hire a passenger surcharge of up to 50 cents per ride, which is now indispensable authority for the Commission's principal source of funding.

After the moratorium expired, Council passed the Public Vehicle-for-Hire Innovation Act,[5] replacing the prior *ban* on regulation of digital services in sedans with looser restrictions applicable to the digital dispatch of both taxicabs *and* sedans. These restrictions now allow regulations "necessary for the safety of customers and drivers or consumer protection."[6] Notably, while the Innovation Act makes these regulatory limitations permanent, it does *not* disturb the Commission's existing authority to license and regulate drivers or vehicle owners, and continues to allow the Commission to define classes of service and require collection of the passenger surcharge. It is within this public policy and legal framework developed by the Council that the rules under consideration today were developed by the Commission over the past 10 months.

Contemporaneously with the public policy debate at the legislative level, the Commission recognized the importance of a vigorous public discussion about the basic concepts relevant to the regulation of sedan service and the related matter of digital dispatch. As a result, months *before* passage of the Innovation Act, and before the start of the formal, rulemaking process that led to the rules under consideration today, the Commission published in the *D.C. Register* an advisory notice of *intended* rulemaking. The October 19, 2012 notice invited *advance* public comment on several concepts that appeared likely to – and, which, in fact, did – remain within the Commission's regulatory authority following the passage of the Innovation Act.

These concepts include such matters as the definition of a "sedan," rules for the licensing of drivers and owners, regulations for operating sedan vehicles –including a ban on the acceptance of street hails and provisions to ensure that any gratuities by passengers are voluntary rather than imposed by the DDS as a mandatory charge, as well as requirements that DDSs collect the passenger surcharge, report anonymized trip data to verify the accuracy of surcharge payments, and maintain with the Commission inventories of their authorized drivers and vehicles.

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[4] *See* District of Columbia Taxicab Service Improvement Amendment Act of 2012 ("Improvement Act"), D.C. Law 19-0184. The Improvement Act is expected to be effective and applicable on October 1, 2013. *See* Fiscal Year 2014 Budget Support Act of 2013 (B20-0199); Fiscal Year Budget Support Emergency Act of 2013 (B20-0337)).

[5] Public Vehicle for Hire Innovation Amendment Act of 2013, D.C. Law 19-0270, 60 DCR 1717. The Innovation Act is expected to be effective and applicable on October 1, 2013. *See* Fiscal Year 2014 Budget Support Act of 2013 (B20-0199); Fiscal Year Budget Support Emergency Act of 2013 (B20-0337)).

[6] More specifically, the Act restricts regulations to "rules and regulations that are necessary for the safety of customers and drivers or consumer protection," which "protect personal privacy rights of customers and drivers," which "[will] not result in the disclosure of confidential business information," and which "[will] allow providers to limit the geographic location of trip data to individual census tracts."

After the notice, the formal rulemaking process started. The first notices of proposed rulemaking for Chapters 12 and 14 were approved for publication by the Commission on February 13, 2013, and published in the *D.C. Register* on March 15, 2013. The rules drew substantial input from the public: in writing during revisions spanning three comment periods, the most recent ending on August 12, 2013, and orally and in writing at a public hearing held on March 29, 2013. At the same time, because sedan service is procured through digital dispatch – a *legal requirement* under the Innovation Act, the Commission has also undertaken development of rules to provide licensing and operating rules for dispatch services, which allow both traditional telephone dispatch and digital dispatch for taxicabs, and digital dispatch only for sedans. Chapter 16 is now in effect on an emergency basis for taxicab dispatch, and will be enforced concurrently with the rules for sedan operation when those rules go into effect on November 1, 2013.

Thus, the rules under consideration today have been under review and consideration in the formal rulemaking process for *more than six months.* And, including the *informal* notice which preceded the rulemaking process, the concepts in these rules have been under review for *over 10 months.* We believe this history puts the Commission on very solid ground for making an informed regulatory decision on rules for sedan services.

We will review in greater details some of the major aspects of the rules, but the Commission notes at the outset that it has determined the rulemakings no longer provide a reasonable period for compliance, as the original implementation date in § 1401.1 – requiring compliance with the sedan operating rules beginning on September 1, 2013 – is now too close. Accordingly, the Commission has extended the date to November 1, 2013. This change does not restrict the substantial rights of any stakeholder and is in response to a request from stakeholders; it therefore does not mandate a further period of notice and comment.[7]

II. Background: Regulation of "Black Cars" in Other Jurisdictions – *See* Addendum

III. Findings

A. Procedural History of the Rulemakings

Proposed rules amending Chapter 12 of Title 31 of the D.C. Municipal Regulations to include the licensing of sedan operators, vehicles, and organizations, and adding a new Chapter 14 to cover the operation of sedans, were originally approved by the Commission on February 13, 2013, and published in the *D.C. Register* on March 15, 2013. The Commission held a public hearing on the proposed rules on March 29, 2013, to receive oral comments on the proposed rules. The Commission received valuable comments from the public at the hearing and throughout the first comment period, which expired on April 13, 2013. The Commission revised the rules substantially in response to these comments. As a result, second proposed rulemakings for Chapters 12 and 14 were approved by the Commission on May 1, 2013, and published in the

[7] As explained below, the only other change in the proposed rules is in the definition of "sedan" in § 1299.1. This change is also not substantial.

D.C. Register on May 10, 2013. Once again, the Commission received valuable comments from the public, and therefore made further changes to the proposed rules. Thereafter, a third proposed rulemaking was approved by the Commission on June 25, 2013, and published in the D.C. Register on July 12, 2013.

As discussed in greater detail below, the Commission again received public comments during the most recent comment period, but, upon review of the comments, has not found a basis for – and has not made – further substantial changes. Nor has the Commission made any substantial changes for any other reason. The Commission has made two *non-substantial* changes. *First*, it has corrected a drafting error that would have excluded SUVs from the vehicle definitions in Chapter 12.[8] This correction is consistent with the intent of the Commission, which does not mean to exclude larger SUVs from use as sedans, . *Second*, the Commission has determined that it is necessary to allow additional time for owners, operators, and DDSs to come into compliance with the rules for the operation of sedans. As a result, the implementation date in § 1401.1 has been changed from September 1st to November 1st, requiring a number of parallel changes in Chapter 12. Neither of these modifications restricts the substantial rights of impacted stakeholders, and, therefore, neither is a "substantial change."[9] For these reasons, the proposed rulemakings published in the *D.C. Register* on July 12, 2013 do not require a further period of notice and comment, and are now ready for consideration as final.

The Commission wishes to emphasize that the extension of the implementation date for the sedan operating requirements is *not* an extension of the other provisions of the new rules applicable to sedans, including the vehicle definitions of "luxury class" and "sedan" vehicles. Owners are specifically informed that if the rules are approved, the new definitions will go into effect on the date of publication in the *D.C. Register*, and non-conforming vehicles used to provide luxury class service, including sedan service, will be subject to impoundment and other civil penalties.

[8] The exclusion of SUVs does not appear in the notice of intended rulemaking nor in the first or second notices of proposed rulemaking. The change also includes the addition of the Chrysler 300, a model already in use in the industry, which is consistent with the Commission's intent that the regulations fit the existing business model of individuals and businesses that currently provide sedan service in the District.

[9] The changes were requested by stakeholders, actually lessen the burden of complying with the administrative requirements, and clarify the intent and purpose of the rules.

B. Compliance with Statutory Law

As we have discussed, the Innovation Act expresses public policy and places legal limitations on the Commission's regulatory authority, neither of which is questioned by the Commission. This is because the Commission is a regulatory body that acts within the sphere of authority given to it by the legislature. But it is important for the public and all stakeholders to understand that, within this sphere, the Commission, like any regulatory body, is responsible for determining the appropriate balance of interests among all affected parties, in this case sedan and limousine organizations, independent vehicle owners, luxury vehicle drivers, passengers, dispatch services, and even the general public. Council did *not* use the Innovation Act to divest the Commission of this important, central role as a regulator. Council also did not disturb or limit its prior grant of authority in the Improvement Act, allowing the Commission to require the appropriate party to collect and remit to the District a passenger surcharge for each trip in a public vehicle-for-hire, which is now the principal source of funding for the Commission.

C. Review and Consideration of Public Comments

During the third comment period, which closed on August 12, 2013, the Commission received comments from two DDSs: Veolia Transportation on Demand and Uber D.C.; from one limousine organization, Carey International, and from one anonymous source. As always, the Commission and its legal counsel have carefully reviewed the comments. As noted, the Commission has made two changes to the rulemakings, one in response to a comment by Uber regarding the definition of "sedan," and the other concerning the implementation date of the sedan operating requirements, now November 1, 2013; neither of these changes is substantial. The Commission has determined that the remaining comments do not provide a basis for further changes. We address some aspects of the comments in greater detail below.[10]

IV. Determinations

A. Broad But Clear Definitions of "Luxury Class Vehicle" and "Sedan" Using a National Source of Vehicle Classification

As in each aspect of the rulemakings under consideration today, the Commission has carefully balanced competing demands and interests to arrive at final definitions of the vehicles that would be used to provide luxury services. To begin with, the rulemaking for Chapter 12 would adopt a broad definition of "luxury class vehicle" to cover both limousines and sedans, based on EPA categories of "Luxury Sedan," "Upscale Sedan," and larger "Sport Utility Vehicle." The definitions have been progressively refined from earlier versions. While originally using criteria such as engine size, curb weight, and luxury features – criteria questioned by commenters – the vehicle definitions are now based on industry-accepted classifications from EPA, a widely recognized source for this type of information.

[10] As Carey notes in its comments, its concerns about the rulemakings relate to matters that do not apply to its licensing or operations as a limousine service. Accordingly, we see no basis for further discussion of these comments and certainly no basis for changes to the rules.

The LCS vehicle definition includes thousands of models over recent years, and over 500 just within the past three.[11] The rulemaking would also adopt a definition of "sedan" that would include the vast majority of luxury class vehicles, limited primarily to those that are not stretched and are dark in color. This combination of definitions meets the letter and spirit of both the Improvement Act and the Innovation Act, properly exercising the Commission's authority to define classes of vehicles while enhancing opportunities for owners and operators who would be allowed to use most limousines as sedans, subject only to the operating requirements in Chapter 14. We now address three of the more significant concerns about the vehicle definitions reflected in the comments.

First, despite the expansive definitions, which were substantially modified in response to *prior* comments, both Veolia and Uber complain that the rule would improperly exclude energy efficient vehicles, and both suggest that compact vehicles like the Toyota Prius should be included. We strongly disagree. *First*, the sedan definition would include more than 40 hybrids and alternative fuel vehicles, just among the EPA sedans, and not including any qualifying SUVs, nor any vehicles able to use alternative fuels. Therefore, although it would not be appropriate to add in the Prius or other basic, economy cars here, it is also patently untrue that no hybrids could be operated as sedans under the new rules. Thus, the definitions, as written, directly serve the need to conserve fuel and protect the environment, without compromising other important interests at stake in the definitions.

Second, concerns about the allowable colors for sedans, which are essentially *any* dark shade, are not well founded and do not require changes in the rulemakings. Street enforcement of the sedan operating rules by the Office of Taxicab's hack inspectors requires that sedan vehicles be readily identifiable across public streets and in moving traffic. The Commission is aware of substantial abuse and violation of the reciprocity agreements by drivers who enter the city from surrounding jurisdictions to pick up from Point A in the District and deliver to Point B in the District; such trips are illegal and unfair to the District's public vehicle-for-hire owners and operators. Similarly, the Commission is aware that sedans routinely take street hails, which is absolutely prohibited by the Innovation Act and will be reinforced by the rules. As explained, sedan service in the United States has developed as a "black car" service, which the Commission has taken through iterations initially consisting of black as the only color in the first proposed rulemaking, to black or dark blue in the second proposed rulemaking, and now to the owner's choice of over 110 dark colors. Further changes are not necessary or appropriate at this time based on the comments received.

Third, nothing makes the need for clear vehicle definitions more apparent than what the comments reveal about the intentions of some of the DDSs: that they may be positioning themselves to compete directly with taxicabs by using taxi-style vehicles in an unregulated operation and/or competing with the newer service entry known as rideshare. Taxicabs currently are the only class of public-vehicle-for-hire permitted to accept street hails; their rates are regulated. Sedan services are not regulated. If some component of sedan services is permitted to use a taxi style vehicle at a rate less than a taxi, the likelihood is a diminishing of the number of

[11] These numbers are based on EPA search results, publicly available at the website referenced in § 1299.1, which count each model separately for each year it is produced, and which do not account for similar corporate products.

taxis available for street hail and incursion by unregulated competitors who will begin to take street hails illegally. Enforcement will be difficult if not impossible. Further, as the demand rises, and taxicab service diminishes, the alternative vehicles will raise prices. The result is that passengers will be left with higher-priced services; visitors without smartphone could not use a street hail to obtain service and residents who do not use or cannot afford smartphones – including those in under-served areas of the city and the elderly – would be left with nothing. The Commission is charged with maintaining healthy competition in the public vehicles-for-hire industry, with preventing the destruction of a class of service long in business in the city, and for ensuring that *all* District residents have reasonable access to affordable public vehicle-for-hire service, not only individuals who can afford smartphones. While street hails eventually may disappear, customers must be dealt with on a real time basis.

We note that, like all provisions of the Commission's rulemakings, the vehicle definitions are open to modification based on input from stakeholders. Businesses and individuals that believe the rules are too broad, or too narrow, or should include a particular model are invited to bring their concerns to our attention, keeping in mind the importance of ensuring that only true *luxury vehicles* should be allowed to be used in these classes of service.

B. Inventories, Data Reporting, and the Passenger Surcharge

Uber seeks to have DDSs be free from *any* requirements to report to the Office of Taxicabs anonymized trip data, to maintain accurate of inventories of the drivers and vehicles with which they are associated, and to collect from each passenger and pay to the District the 25-cent surcharge, all of which Uber asserts should be placed on the individual owners and operators. We disagree.

The rules have been carefully developed over the past 10 months and are well within the Commission's authority under both the Improvement Act and the Innovation Act. Based on this history and on the Acts, the Commission firmly believes these obligations are appropriately placed on DDSs, not on drivers or owners. *First,* inventory requirements cannot meaningfully protect passenger safety or the rights of consumers if they depend on self-reporting by drivers and the vehicles they operate. Drivers and owners do not have the same incentives to keep their records up to date, if even to reveal in the first place that they are conducting business in the District. Enforcement of the rules, however, requires access to *accurate* information about who is driving for a DDS and what vehicle he or she is using, for everything from knowing that a particular vehicle is not associated with *any* DDS and is therefore operating illegally, to lost and found, to tracking down a passenger last seen getting into a dark colored late model luxury sedan. Further, DDSs are obviously best positioned to provide this information through efficient, electronic means. Since the information is critical for driver and passenger safety, DDSs must provide it to the Commission.

Second, as reflected in the initial, informal notice of intended rulemaking more than 10 months ago, DDSs, rather than individual owners, must be charged with collecting and remitting the 25-cent passenger surcharge. The Commission thereafter considered placing this burden on individual owners in the first proposed rulemaking, but, through successive versions of the

proposed rules, it became apparent that this obligation is properly placed on the DDS, as these businesses process the transactions and can ensure prompt, reliable payment of the Commission's primary source of revenue to fund its operations. As noted, without the surcharge, and the concomitant obligation on stakeholders to collect it, the Commission would be unable to carry out its legal responsibilities. And the Innovation Act does not disturb the Commission's authority to impose and require remission of the surcharge. We note that Uber does not dispute that requiring DDSs to collect the surcharge would be more efficient and or more reliable than requiring thousands of owners to set up individual accounts and make regular payments, a somewhat obvious point on which Uber's silence suggests agreement.

Third, the Commission must collect the anonymized trip data authorized by the Innovation Act, something that cannot readily or reliably obtained from any source other than the DDS. This information must be paired with surcharge payments to ensure they are accurate, regardless of who collects the surcharge. Moreover, the Innovation Act allows trip data to be collected pursuant to regulation, provided trips are generalized to census tract level. This is precisely what the rule would provide.

C. Summary of the Regulatory Action

In sum, the rules under consideration today would accomplish the following:

- Broaden and clarify the rules in existing Chapter 12 to cover the licensing of *all* luxury class vehicles, extending the existing rules for limousine vehicles, owners, and operators to cover sedans;

- Incorporate the Innovation Act's requirements that sedan fleets of 20 or more vehicles have an escalating minimum of wheelchair-accessible vehicles, beginning with six percent by December 31, 2014;

- Adopt a broad definition of "luxury class vehicle" to cover both limousines and sedans, based on EPA categories of "Luxury Sedan," "Upscale Sedan," and larger "Sport Utility Vehicle," which includes hundreds of models;

- Adopt a definition of "sedan" that would include the vast majority of luxury class vehicles, excluding those which are not dark or are stretched, leaving more than 40 hybrid models and alternative fuel vehicles;

- Require that only DDSs in compliance with the requirements of Chapter 16, now in effect on an emergency basis, will be allowed to dispatch sedans once the sedan operating rules go into effect on November 1st;

- Require that all sedan rides be booked electronically and prohibit street hails, as mandated by the Innovation Act;

- Require that sedan trips be based on time and distance rates disclosed to the passenger in a statement of the DDS's fare calculation method, together with an offer of an estimate fare, as required by the Innovation Act;

- Prohibit a gratuity that does not meet the definition of a "gratuity," meaning that it is *voluntary* and not imposed by the DDS;

- Require each DDS collect from each passenger and pay to the District the 25 cent surcharge, as provided by the Improvement Act;

- Require each DDS to maintain an accurate inventory of its drivers and vehicles to ensure passenger and driver safety, and to provide the Commission with necessary information for enforcement;

- Require that each passenger be given either an electronic or a paper receipt, in compliance with the Innovation Act;

- Allow each DDS to use its existing handheld meter system following an inspection by the Commission to ensure compliance with the foregoing requirements and the other rules for safety and consumer protection; and

- Establish civil penalties to maintain compliance with the new regulations.

All of these matters fall squarely within the Commission's legal authority and all relate to passenger or driver safety, to consumer protection, or to collection of the passenger surcharge. Moreover, the rules will incorporate the existing business models of DDSs already operating in the District.

V. Conclusion

The Commission finds no merit in comments that merely perpetuate earlier claims that major elements of the sedan rules would violate the Innovation Act or make the DDS business model all but unworkable, or both. As already explained, there is no question the rules would not run afoul of the law. But the accuracy of claims that the sedan rules "go too far," are "heavy handed," or would not fit the DDS business model are hollow, a fact belied by four DDSs, who have already applied for and been approved under Chapter 16 to provide digital dispatch for *taxicab* service. These businesses are now licensed to operate under the taxicab rules in Chapter 4 which place additional requirements on DDSs, mandating them to integrate with the payment system providers that operate the taxicab meter systems. Despite these additional requirements, not one of these DDSs has voiced a concern that it *cannot* operate successfully under the dispatch rules. Moreover, because these DDS have obtained operating authority, they need only apply to add sedan service to their authority when the rules go into effect.

The Commission is committed to innovation and competition in the public vehicle-for-hire industry, as well as to compliance with the law. The Commission has, over more than six months, substantially revised its original, proposed rules for sedan class service, and taken meaningful public input during the comment periods and at the public hearing. We believe the sedan rules will strike the appropriate balance for *all* stakeholders. Like all of the Commission's regulations, however, these rules, if approved, are always subject to reconsideration based on input from stakeholders. DDSs, owners, operators, passengers and the general public are invited to continue the dialogue to refine the rules for all luxury class services and to propose further refinement to ensure the Commission is doing its job properly. Interested parties should send us their ideas for further developments they would like to see included in the rules.

ADDENDUM

Background: Regulation of "Black Cars" in Other Jurisdictions

Many regulatory agencies across the country are struggling to understand the operation of "app" dispatch services, while finding a regulatory place for them before they are "rolled-out" into such agencies' jurisdictions. In large part, most of the major cities across the United States are already faced with the regulatory implications of transportation smartphone applications. In an attempt to understand the issues created in various regulatory schemes, below is an overview of the issues related to the influx of these smartphone applications and the concerns raised for regulators with respect to the limousine/sedan industry (or "black car" services) specifically. Of particular concern is whether these smartphone applications operate as electronic street hails or as prearranged services (a question resolved in the District by the Innovation Act, which requires that sedan service be obtained through "digital dispatch"). We examine the approaches of Seattle, Washington; San Francisco, California; Chicago, Illinois and New York City.

A. "Black Car" Services and Dispatch via "App"

Many applications distinguish their services between the for-hire and taxicab industries. Because of the significant use of such applications, many jurisdictions have evaluated, or are starting to evaluate, the use and regulation of these applications. The ability to obtain transportation immediately attracts many users to the increasing number of transportation smartphone applications. But such service may potentially be running afoul of industry regulations. As discussed herein, in many jurisdictions, for-hire vehicles must be prearranged. Some jurisdictions, such as Seattle, specifically restrict the minimum time that the prearrangement must be in place to be a valid prearrangement. In the same light, some jurisdictions – like New York City – limit taxicab service to only include accepting street hails. Prearrangement is not permitted by taxicabs. So this begs the question, how is it that for-hire applications and taxicab applications legally operate with essentially the same function in markets with such distinctions? Is the typing-in of your location and summoning a vehicle, whether for-hire or a taxicab, considered an on-demand electronic street hail or a prearranged service? Most jurisdictions are still in the process of deliberating on these issues.

B. Selected Jurisdictions

1. Seattle, Washington

In Washington State, the regulations of for-hire limousines are under the jurisdiction of the State of Washington Department of Licensing ("DOL") pursuant to the Washington Administrative Code (the "WAC"). The City of Seattle enacted its own definition of limousine in the Seattle Code. Pursuant to the Seattle Code, a limousine is "a category of for-hire, chauffeur driven, unmetered, unmarked luxury motor vehicle that meets one of the following definitions: stretch limousine, executive sedan, executive van, classic car, executive sport utility vehicle, or stretch sport utility vehicle," each of which are respectively defined in the Seattle

Code.[12] It should be noted that the Seattle Code regulations are consistent with the Washington Code's limousine provisions.

A limousine operator must obtain a DOL limousine license to transport passengers on a prearranged basis to a specific destination in any of the following vehicles: a stretch limousine, an executive sedan, an executive van, a classic car, an executive sport utility vehicle or a stretch sport utility vehicle.[13] An applicant seeking to obtain a limousine carrier license must meet the criteria for licensure set forth in Chapter 46.72A of the Washington Code.[14] According to the Washington Code, no limousine may pick up a passenger in Washington State without first obtaining a limousine carrier license. In the event a limousine company from a neighboring state desires to pick-up passengers in Washington State, the Washington Code provides for a special non-resident license, which must be obtained before passengers are picked up.[15] This may present an issue for limousine companies that contract smartphone application companies as some applications do not disclose passenger destinations when the fare request is made.

Once the vehicle is licensed, in order to operate as a limousine, the driver must be properly licensed as a chauffer. The Washington Code requires the chauffer to have a passenger manifest in his or her possession to operate a limousine. The manifest may be electronic or paper, must be in English and include the following information: the full name and telephone number for the person who prearranged the service, the date, time and location of passenger pick-up, if payment is due or pre-paid.[16] If trips are not dispatched from the limousine carrier's office, the trip must be prearranged at least 15 minutes prior to pick up.[17] The specific prearrangement period is significant because some applications advertise or state their service alerts the closest vehicle available for immediate pick-up, which may or may not be "prearranged" by 15 minutes if a vehicle is close. Further, under no circumstances are limousine operators (i) permitted to accept street-hails,[18] (ii) ask persons on the street if they want to hire the limousine for immediate service[19] or (iii) use a third party to provide passengers for them as a substitute for prearranging the service.[20]

As mentioned, pursuant to the WAC, for-hire vehicles must be prearranged at least 15 minutes before the passenger is scheduled to be picked up, unless dispatched from the limousines carrier's business office.[21] Additionally, a limousine carrier must ensure the chauffeur does not (i) pick up passengers without prearranged service, (ii) load passengers or their luggage into the vehicle without having a passenger manifest for such passengers, (iii) ask persons on the street if they want to hire the limousine or try to attract customers for immediate services, (iv) use a third-party to provide passengers for them as a substitute for prearranging services, (v) stand near

[12] SEATTLE, WA. MUNI. CODE § 6.320.020(A) (2011)
[13] http://www.dol.wa.gov/business/limousine/limolicense.html
[14] WASH. ADMIN. CODE § 308-83-105.
[15] WASH. ADMIN. CODE § 308-83-105.
[16] WASH. ADMIN. CODE § 308-83-200(2).
[17] WASH. ADMIN. CODE § 308-83-200.
[18] WASH. ADMIN. CODE § 308-83-200(4)(a).
[19] WASH. ADMIN. CODE § 308-83-200(4)(c).
[20] WASH. ADMIN. CODE § 308-83-200(4)(d).
[21] WASH. REV. CODE § 308-83-200

doors or walkways to business or transportation centers in a manner such that persons must walk around them, (vi) touch members of the public or their luggage without consent, (vii) park and leave the limousine in a passenger loading zone or (viii) overstay the time limit in a passenger loading zone.[22] A chauffeur must have the passenger manifest on his or her person at all times. The passenger manifest may be electronic or paper form, provided that it confirms the prearrangement of limousine services.[23]

Additionally, in accordance with the newly enacted limousine section of the Seattle Code, Seattle requires that limousines (as defined by the Seattle Code above) engage only in prearranged services. Limousine service must: (i) be prearranged by a customer or a customer's agent at a time and place different from the customer's time and place of departure, (ii) charge a fare agreed upon in advance of departure, (iii) under no circumstances be immediately engaged for services, even if the chauffeur is the limousine owner or officer of a company with a single exception of a stand-hail limousine operated at a facility owned and operated by a port district with more than 1 million or more.[24] The Seattle Code creates additional penalties for the enforcement of the regulation requiring limousine chauffeurs to maintain and have on their persons written or electronic record of the prearrangement, as required by the DOL.[25]

In light of these restrictions, there are questions raised as to the compliance of the smartphone applications and their operations. Most smartphone applications can easily meet the manifest requirements as it may be electronic. However, as stated above, most regulatory agencies have not specifically addressed whether the typing-in of your location and summoning a vehicle is considered an on-demand electronic street hail or a prearranged service. If such activity is considered an electronic street hail, the use of smartphone applications in connection with limousine service may be prohibited. Further, the prohibition on the use of a third party to provide passengers as a substitute for prearrangement, calls into question the relationship between some applications and chauffeurs. It begs the question, are chauffeurs who subscribe to smartphone applications using such applications as third parties to circumvent the prearrangement requirement, in direct contravention of the above regulations? To our knowledge, Seattle has yet to expressly answer this question.

The Seattle City Council and other elected officials in the city are currently in the process of trying to formulate policy with respect to the use of apps to book transportation services. A Special Committee on Taxicabs, For-Hire Vehicles and Limousines, chaired by City Council President Sally Clark, has been conducting a series of public hearings to listen to the concerns of all stakeholders. They are also awaiting the final report of consultants who are performing a demand study. The study will look at operating statistics and customer satisfaction surveys study and make recommendations as to potential changes that should be made to the City of Seattle's for-hire transportation industry. The study was expected to be completed on August 8, but was delayed until a later undisclosed date. Also, staffs for the Mayor's Office and City Council

[22] *Id.*
[23] *Id.*
[24] Seattle Muni Code § 6.320.020(A) (2011)
[25] Seattle Muni Code § 6.320.020(D) (2011)

members have been following developments in other cities that are dealing with the same issues.

2. San Francisco, California

The California State Public Utilities Commission (the "CPUC") has regulatory and safety oversight over for-hire passenger carriers (i.e., limousines, airport shuttles, charter and scheduled bus operators). Authority over intrastate private carriers of passengers is limited to registration of operations and filing evidence of liability insurance.[26] On the other hand, the San Francisco Municipal Transportation Agency ("SFMTA") is responsible for the regulation of taxicabs, as well as for-hire vehicle service operated wholly within the City of San Francisco. Although California law affords the SFMTA the authority to regulate intracity prearranged service, the SFMTA has no process in place at present. This bifurcation of livery and limousine service regulation creates a dynamic regulatory scheme for smartphone applications which dispatch liveries and limousines.

Pursuant to the California Public Utilities Code (the "CPUC Regulations"), the CPUC issues several types of for-hire permits, depending on the specific services provided by the entity. Depending on the permit issued, the licensed company must meet specific requirements in connection with the fares charged.[27] Limousines are considered a charter party carrier ("TCP") may charge fares based on time, mileage, or a combination thereof. Additionally, TCPs must provide prearranged service, including the maintenance of a waybill, and may not have meters or roof lights, so as to distinguish the vehicle from a taxicab, which provides "on demand" street hail service.[28] There are six (6) types of TCP permits issued by the California Commission (depending on the type of service and vehicle) which subject each vehicle to additional regulations.[29]

The relevant rules regarding "prearrangement" for San Francisco are found in the CPUC Regulations. These regulations require that Class A and Class B charter-party carriers shall provide transportation "only on a prearranged basis."[30] The rule further states that the party arranging the transportation shall have exclusive use of the vehicle, and the driver shall possess a waybill.[31] The waybill will include the following information: name of carrier and TCP[32] number; vehicle license plate number; driver's name; name and address of person requesting or arranging the charter; time and date when charter was arranged; information as to whether the transportation was arranged by telephone or written contract; number of persons in the charter group; name of at least one passenger in the traveling party, or identifying information of the

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[26] http://www.cpuc.ca.gov/puc/transportation/

[27] PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, General Order § 158-A, Part 8. Available at http://162.15.7.24/Published/Graphics/610.pdf (June 19, 2012).

[28] *Id.*

[29] *Id.*

[30] CAL. PUB. UTILITIES COMMISSION REGULATIONS §3.01.

[31] *Id.* Waybills will also assist in proving, if challenged, that transportation services are provided between more than one local jurisdiction, and that such transportation services are under the jurisdiction of the California Commission.

[32] "TCP" refers to charter-party carrier.

traveling party's affiliation; and points of origination and destination.[33] The inclusion of a passenger's destination in the waybill may present complex issues for smartphone application companies beyond the scope of this memo. For example, some smartphone applications do not require the passenger to log his or his destination for a variety of reasons, some of which may include: passenger convenience, inclusion of multiple destination and potential service refusals. Given these facts, some smartphone applications may run afoul of this regulation, as it does not include destination information.

As set forth in the California Commission brochure entitled "Basic Information for Passenger Carriers and Applicants," the California Commission states that the primary difference between a taxicab and a TCP is that that the latter must be prearranged.[34] Furthermore, "[a]ll transportation performed by charter-party carriers must be arranged beforehand, and the driver must have a *completed waybill* in his or her possession at all times during the trip . . ."[35] Again, in addition to the electronic street hail or prearranged service issue, there is a potential for smartphone applications to create incomplete waybills.

Here, the issue is again whether or not the typing-in of your location and summoning a vehicle is considered an on-demand electronic street hail or a prearranged service. TCP service must be prearranged to be in compliance with the aforementioned regulations. Further. TCPs may not have meters. Again, if smartphone applications are considered meters, their use in TCPs may run afoul of the prohibition of taximeters in TCPs. In fact, on the SFMTA website, the SFMTA includes a section on illegal operations, citing that limousines are required to prearrange all service and it is illegal to solicit passengers on the street.[36]

On July 30, 2013, the CPUC released its a proposed decision with respect to the CPUC's "quasi-legislative proceeding" to institute rulemaking on regulations relating to passenger carriers, ridesharing, and new online-enabled transportation services (the "rulemaking"); a proceeding which began in December 2013. The smartphone applications at issue were previously referred to throughout the rulemaking as new online-enabled transportation services, or "NOETS", however the proposed decision replaces that term with "Transportation Network Companies" ("TNC(s)") for ease of use. (See proposed decision pg. 2, fn. 1). A TNC is defined as "a company or organization, operating in California that provides transportation services using an online-enabled platform to connect passengers with drivers using their personal, non-commercial vehicles." (See pg. 2).

In short, the proposed decision creates the category of a TNC to accompany the existing category of a TCP in the CPUC rules, and requires a company or individual wishing to provide transportation, or facilitate the transportation of passengers, to choose to apply for either a TCP license or a TNC license. (See pg. 21, 52). Once a TNC license is obtained, the TNC is accountable to the CPUC in several ways. A TNC must:

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[33] CAL. PUB. UTILITIES COMMISSION REGULATIONS §3.01

[34] The information packet can be found at: http://www.cpuc.ca.gov/NR/rdonlyres/42294D2B-412E-466E-A74B-F1862BFC6924/0/PassengerCarriersBasicInfoandApplicantsRev012811.pdf

[35] *Id*. (Emphasis added).

[36] http://www.sfmta.com/cms/xcust/realtaxi.htm

(i) conduct criminal background checks on all of its drivers; (ii) establish a driver training program to be filed with the CPUC; (iii) maintain a zero-tolerance drug and alcohol policy; (iv) register in the Department of Motor Vehicle Pull Notice program, which allows a transportation company to monitor driver's license records of employees/affiliated workers; (v) conduct a 19-point car inspection of TNC-affiliated vehicles, (vi) require a one-year driving history from TNC drivers; (vii) submit reports to the CPUC's Safety and Enforcement Division ("SED") detailing (a) the number and percentage of TNC customers who requested accessible vehicles, and how often the TNC was able to comply with such requests and (b) the number of rides that were requested, but not accepted by TNC drivers; (viii) TNCs must endeavor to provide equal access to all consumers and will be required to submit a plan within 90 days of the effective date of the CPUC final decision to inform the CPUC of how they plan to avoid creating a divide between able and disabled communities[37]; (ix) TNCs are prohibited from operating at any airport unless such operations are authorized by the airport authority involved; (x) ¼ of 1% of the TNC revenues shall be collected by the CPUC on a quarterly basis as part of overall fees; and (xi) TNCs must maintain excess liability insurance policies providing a minimum of $1,000,000 per-incident coverage[38] and TNC drivers are required to provide proof of both their personal insurance and excess liability insurance in the case of an accident. (See pgs. 23-27, 43, 45).[39]

In addition to the above, the proposed decision also makes several findings of fact and conclusions of law with respect to the TNCs. These include the findings that TNCs do not qualify for the rideshare exemption under California Public Utilities Code ("PU Code") § 5353(h), which requires that rideshare transportation must have a common work-related purpose; or must be incidental to another purpose of the driver. (See pgs. 37-38). Also, the CPUC found that TNCs are designed to provide a service similar to taxis and TCPs, and that such service is for compensation. (See pg. 40). It is therefore reasonable to conclude that TNCs are providing passenger transportation for hire. (See pgs. 16-17, 54).

Although noting that prearrangement is not defined in the PU Code, or elsewhere in the California regulations, the CPUC finds that TNC's operate on a prearranged basis because (i) before a passenger can request a ride, the passenger must download the app and agree to the TNC service agreement, (ii) for a particular trip, the passenger must input information regarding current location and trip destination, and (iii) a TNC driver cannot be hailed on the street similar

[37] The plans must also discuss how TNCs plan to provide incentives to individuals with accessible vehicles to become TNC drivers and how they will ensure accessibility accommodations for their apps and websites. (See pg. 45).

[38] Each TNC must file their insurance policies under seal with the CPUC as part of applying for a license. Furthermore, the license for the TNC will automatically expire upon expiration of the insurance policy. (See pg. 48).

[39] Many of these requirements comport with the terms of the CPUC settlement agreements between SideCar, Lyft and Uber, which were entered into in May 2013, and January 2013, respectively for each.

to a taxicab where no information is shared until the passenger enters the vehicle. (See pgs. 17-19, 54).

The proposed decision also holds that TNCs are not IP-enabled services under the Federal Telecommunications Act of 1996 (the "Telecom Act"). (See pgs. 12 –15, 56). Throughout the rulemaking, the TNCs have asserted that they are "information service providers" under the Telecom Act, and as such, are immune from regulation. However, the CPUC, through the proposed decision, stated that the Telecom Act and recently adopted California legislation (Senate Bill 1161, which also addresses IP service providers) does not prevent the CPUC from regulating TNCs. (See pgs. 12 –15, 56).

Opening comments in response to the proposed decision are due no later than August 19, 2013. Reply comments, are due five (5) days after the last day for filing opening comments. (See Article 14 of the Commission's Rules of Practice and Procedure).

The proposed decision orders a second phase to this proceeding to review the CPUC's existing regulations over limousines and other charter party carriers in order to ensure that these rules have kept pace with the needs of today's transportation market, and that public safety rules are up-to-date. (See pgs. 3, 58).

The CPUC's final vote on the decision is scheduled for September 5, 2013.

3. Chicago, Illinois

For-hire sedans and limousines in the City of Chicago are regulated by the Department of Business Affairs and Consumer Protection (the "BACP").[40] In January 2012, the Municipal Code of Chicago ("MCC") was amended dividing the current section regulating both taxicabs and for-hire vehicles into two sections, MCC § 9-112 and MCC § 9-114, applicable exclusively to taxicabs and generally to "Public Passenger Vehicles Other Than Taxicabs," respectively.[41] The amended ordinances went into effect on July 1, 2012.[42]

The Chicago Municipal Code defines a livery vehicle as a "public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance."[43] Additionally, the MCC provides that public passenger vehicles, which include livery vehicles,[44] may not be "equipped with a meter which registers a charge of any kind."[45] The MCC further sets forth that:

[40] THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, http://www.cityofchicago.org/content/city/en/depts/bacp/supp_info/bacppublicvehicles.html
[41] THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/taxiordinance2011.pdf.
[42] THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, Public Vehicle Industry Notice, http://www.cityofchicago.org/content/dam/city/depts/bacp/publicvehicleinfo/taxiindustrynotices/taxiindustrynotice12-004newtaxipublicvehicleord.pdf.
[43] CHICAGO, IL. MUNI. CODE § 9-114-010.
[44] CHICAGO, IL. MUNI. CODE § 9-114-010.
[45] CHICAGO, IL. MUNI. CODE § 9-114-060.

> It shall be unlawful for any livery vehicle not licensed as such by the City to solicit or accept business within the corporate boundaries of the City of Chicago, except where the passengers are destined to the community in which such livery vehicle is licensed and then only when such transportation has been arranged in advance.[46]

Such regulations require livery service to charge fares fixed in advance and prohibit the use of meters. This regulation points to the question of whether or nor a smartphone application is considered a meter, and as such its use would be prohibited in livery vehicles. Regardless of whether a smartphone application is deemed a meter, livery vehicles must charge fares based on vehicle or passenger number arranged in advance. If smartphone application companies charge fares for livery service calculated on time, distance and such other services fees and/or gratuity as calculated via the smartphone application, these applications may run afoul of the regulation requiring fixed agreement in advance as calculated per passenger or per vehicle.

Further, the MCC requires that livery vehicles prearrange service; "livery vehicle" means a public passenger vehicle for hire only at a charge for fare for each passenger per trip or each vehicle per fixed trip by agreement in advance.[47] Therefore, if the summoning of a vehicle via a smartphone application is deemed to be an electronic street hail, smartphone use in the livery vehicles may be prohibited. However, the BACP has yet to prohibit the use of smartphones in livery vehicles. Instead, industry stakeholders have initiated litigation to prompt enforcement and/or regulatory rulemaking.

On October 4, 2012, the Yellow Group LLC; Yellow Cab Affiliation Inc.; Taxi Affiliation Services LLC; Yc1 LLC; 5 Star Flash, Inc.; Chicago Medallion, One, Inc.; and Your Private Limousine, Inc. collectively filed a class action lawsuit against Uber in the federal court sitting in the Northern District of Illinois, Eastern Division (the "Chicago Complaint"). The Chicago Complaint, among other things, alleges that Uber violates city, state and federal law designed to protect public safety and welfare through the use of deceptive business methods.

Uber markets itself in Chicago as providing both taxi and livery transportation services to customers. According to the Chicago Complaint, Uber's business model is in direct violation of numerous business, public safety and transportation laws. Further, the Chicago Complaint alleges that Uber, whose business model in Chicago is built upon the use of drivers and vehicles from other licensed transportation companies, (1) misrepresents its vetting of "fleet partners", (2) presents a false association with "fleet partners", (3) uses deceptive payment practices, (4) fraudulently acquired a City of Chicago dispatch license, (5) requires drivers to violate city and state law prohibiting use of cellular phones while driving and (6) causes it's drivers to violate federal and state regulations that require that taxi services are equally available to members of the disabled community.

[46] *Id.*
[47] CHICAGO, IL. MUNI. CODE § 9-112-010

The Chicago Complaint also alleges that Uber prohibits the Chicago Plaintiffs from complying with current regulations regarding data collection, including mandated reporting of all payments collected (including fares and extra charges) and whether the fare was dispatched or hailed. The Plaintiffs argue that when an affiliated driver does not inform the affiliation of its relationship with Uber, Uber places the affiliation at risk because the licensed affiliation is now unable to ensure that its drivers are in compliance with applicable laws.

The Plaintiffs had filed an unsuccessful motion for a preliminary injunction seeking to enjoin Uber from calculating fares for livery vehicles through the use of any device to measure distance and time; providing livery services for which the fares are not fixed in advance; and charging a mandatory fee for taxicab rides that exceeds the maximum fare rates set by law. The lawsuit is ongoing.

4. New York City

The New York City Taxi and Limousine Commission ("TLC") is responsible for licensing and regulating taxicabs, for-hire liveries, and limousines. The TLC promulgated regulations governing the operations of for-hire vehicles, including taxis and limousines (the "TLC Regulations").

TLC Regulation 59B-11 requires for-hire vehicle service to be prearranged through a TLC licensed for-hire base (or business) of a luxury limousine, black car, or livery vehicle. TLC regulations require that limousine and black car businesses transact not more than 10% of their business in cash or credit card (as opposed to contractual voucher work).[48] Further, New York State laws require that limousine passengers be assessed a surcharge for a state-authorized Workers' Compensation Fund to benefit drivers and a transportation sales tax.[49]

The TLC first attempted to address some of the regulatory concerns associated with smartphone applications in 2011 when it issued an industry notice on the subject matter. In TLC Industry Notification #11-16, dated July 18, 2011 (the "Industry Notice"), the TLC went as far as to notify all drivers of their responsibility of compliance, stating that no for-hire vehicle owners and drivers may contact a smartphone application developer without the approval of their for-hire base and that accepting fares from this application would not only put the application at risk, but also the for-hire base. The Industry Notice further noted that under no circumstances may a medallion taxicab use a smartphone application for dispatch services.[50] For-hire vehicle bases would be held accountable by the TLC for any violations that may exist as a result of its use of a smartphone application.

The TLC also declared in the Industry Notice, that a smartphone application that provides for-hire services directly through the use of a smartphone application and not through an agreement with one or more licensed for-hire bases will be charged with full TLC compliance,

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[48] TLC REGULATION § 59B-03(c)(3); TLC REGULATION § 59B-03(p)(3); and TLC REGULATION § 59B-03(m)(3)
[49] TLC REGULATION § 59B-12(b)(3)
[50] The TLC may change its position on this issue in the near future. *See* discussion of Square technology on pg. 8 *infra*.

including registration as a for-hire base. The TLC may request evidence that the TLC will review to determine whether or not the smartphone application complies with all TLC and other regulations or if it must be licensed as a for-hire base. Lastly, the TLC reinforced its obligation and responsibility to ensure the safety and security of passengers and as a result investigate any complaints arising from any transportation of passengers. As such, the TLC may request information from any party involved, including the smartphone application developers or owners, such as the details of trips, vehicles, drivers, affiliated bases, and so forth.

TLC Regulation 59B-11 requires for-hire vehicle service to be prearranged through a TLC licensed base (or business) of either a luxury limousine, black car or livery vehicle. TLC regulations require that limousine and black car businesses transact not more than 10% of their business in cash or credit card (as opposed to contractual voucher work).[51] Further, New York State laws require that limousine passengers be assessed a surcharge for a state-authorized Workers' Compensation Fund to benefit drivers and a transportation sales tax.[52]

As smartphone application companies entered the New York City market, the TLC's two Industry Notices attempted to make clear the relevant TLC Regulations applicable to such companies.[53] However, on or about February 2012, the TLC sought to begin an e-hail pilot program (the "E-Hail Pilot Program") which attempted to grant app makers permission to test their mobile taxi booking and payment systems in TLC-licensed taxicabs.[54] In response, on February 14, 2013, the Black Car Assistance Corporation, et al. (the "Petitioners") filed an Article 78 Petition against the New York City, Michael Bloomberg, New York City Taxicab & Limousine Commission (the "TLC") and David Yassky (the "Respondents") to stop the implementation of what is more commonly known as the E-Hail Pilot Program.

After numerous procedural motions, the case was ultimately assigned to Justice Carol E. Huff of the Supreme Court in New York County (Manhattan). On March 7, 2013, Justice Huff issued a temporary restraining order ("TRO") enjoining the implementation of the pilot program. On April 23, 2013, Justice Huff issued her final decision denying all seven of the Petitioners' claims and lifting the temporary injunction against the TLC that she had issued on March 7th.

On May 01, 2013, the Petitioners filed an application for an emergency injunction enjoining the Respondents from implementing the TLC's E-Hail Pilot Program pending disposition of the Petitioners' appeal from each and every part of the Decision and Order of Justice Huff's final order dismissing the Petitioners' Article 78 Verified Petition.

On May 01, 2013, Justice Helen Freedman of the Appellate Division of the New York State Supreme Court (New York State's intermediate appellate court) granted the Petitioners' application for an interim stay pending determination of motion by the full bench to grant the interim relief for the pendency of the appeal. The Appellate Division's Order provided for an expedited submission date of May 13, 2013 with the Respondents' papers due by May 8, 2013 and the Petitioners' responses by said submission date and a decision to be rendered by May 20,

[51] TLC REGULATION§ 59B-03(c)(3); TLC REGULATION § 59B-03(p)(3); and TLC REGULATION § 59B-03(m)(3)
[52] TLC REGULATION § 59B-12(b)(3)
[53] *See* Industry Notice # 11-15 on July 1, 2011; *see also* Industry Notice #11-16 on July 18, 2011
[54] http://www.nyc.gov/html/tlc/html/industry/licenses_ehail.shtml

2013. On July 2, 2013, the Petitioner filed a perfected appeal on the merits with the Appellate Division, First Department. The nature of the Petitioners' case and basis for appeal can be summarized as follows:

(1) The trial court erred in dismissing the claims that the "E-Hail" program is inconsistent with the TLC's statutory obligations because the TLC (a) purported to exempt taxi drivers from the Administrative Code's communications systems licensing requirements though the Code mandates that the TLC "shall require" such licenses; and (b) purported to give taxi drivers discretion to refuse electronic ride requests, though the Administrative Code mandates that the TLC "shall fine, suspend, or revoke the license of any driver who refuses a ride request."

(2) The trial court erred in dismissing the claims that the E-Hail Pilot Program is procedurally invalid because it was forced through without providing public notice and comment, though it materially affects the rights of all cab drivers equally; and without conducting any environmental review, though it will likely have significant environmental impacts.

(3) The trial court erred in dismissing the claim that the TLC exceeded its narrow "experimentation" authority under the New York City Charter in passing a "so-called" pilot program that is available to every New York City taxi driver and passenger has virtually no geographic restrictions, and upends the decades-only industry structure.

The City of New York will file its appellate reply within the next week, and the full panel of appellate judges will be expected to hear oral argument in September, 2013. In the interim, the E-Hail Pilot Program will continue to operate, and will do so absent a final decision on the appeal. At bottom, Plaintiffs believe that, by allowing taxicabs to accept "e-hails", the city is essentially permitting them to accept street hails and prearranged service. This "dual use" is considered to be a threat to the black car industry, which for decades, has had exclusive rights to dispatched/ prearranged serviced.

As one can see, the issues presented by the use of apps in the for-hire vehicle market are varied, and the approaches that jurisdictions take to address such issues are largely dependent on their existing regulatory structure. New York City is relying on existing regulations, and the enforcement thereof to prohibit rogue operations of unlicensed on-demand apps, but also carefully considering how to allow apps to legal operate by first launching and evaluating the E-Hail Pilot Program. Alternatively, California is considering whether new regulations must be passed in order to properly address the advent of such apps, prohibit unlicensed operations, and to ensure that apps are captured under the jurisdiction of the local transportation authority. Industry stakeholders seem to be fighting back against the spread of apps through litigation; such as the Chicago Complaint. Indeed, the regulatory landscape for on-demand transportation varies by jurisdiction and at present, is a moving target when it comes to apps. The national debate with respect to which approach will prevail is ongoing.