

**BEFORE THE COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT Mary Cheh,
Chair**

**Hearing on Bill 20-0753
Transportation Network Services Innovation Act of 2014
May 12, 2014**

Good morning Madam Chair and Members of the Committee on Transportation and the Environment. I am Ron M. Linton, Chairman of the D.C. Taxicab Commission.

I am here today to comment on Bill 20-0753, the Transportation Network Services Innovation Act of 2014, which would amend the District of Columbia Taxicab Commission Establishment Act. I do not appear today as an advocate for any stakeholder or to foster a specific public policy. Rather, based on my experience, I will offer you my opinion of what I think will be the consequences of the policies being proposed in the Bill.

I have spent nearly 50 hours a week for almost three years examining the District's public vehicle-for-hire industry, concentrating on issues of safety and consumer protection. As far as I know, I am the first head of this agency to take time to go to the street to meet and talk with the drivers and take taxicab rides. This has allowed me to personally observe and learn how the industry works. It is fair to say that I know the practical effects of the District's public vehicle-for-hire laws and regulations, and the real challenges faced by hack inspectors.

My testimony is also based on my 50-plus years in government and public administration, including more than 20 years in law enforcement. My concerns about enforcement are well-informed, and they are based on how policing actually works.

As the Committee is aware, - -the Commission has pending, proposed regulations to establish a new class of "private sedan" service - - which would allow the companies subject to the Bill to function based on their business models. The proposed regulations draw heavily from the detailed Report of the Commission's Panel on Industry, issued January 24th.

Consistent with the role I have described, I am not here to tell the Committee that the proposed regulations are right and the Bill is wrong. But I do hope the Committee will give careful consideration to my remarks, - - which give substantial deference to the Panel's recommendations for rulemaking. The Panel's recommendations were based on several months of investigation, extensive research, and meetings with stakeholders, including taxicab companies, driver associations, and the new private sedan companies.

Private Sedan Companies

The Bill tracks the companies' business models by allowing private sedan drivers to apply directly to the companies, which would then, in turn, secure driver screenings for criminal

background, driving history, and sex offender status, and vehicle safety inspection. The Bill would appear to prohibit the Commission from requiring anything more than a sworn statement from the company that the checks were done.

Allowing those companies to perform background checks on their own drivers poses a risk. The Commission has seen that when a vehicle owner pays an inspection service to inspect his vehicle, the service will tend to give the vehicle a passing score. We also have learned of experiences in other jurisdictions where drivers have applied to private sedan companies knowing they did not meet the publicized background requirements; some of these drivers have been engaged. This is not to say reputable companies will not follow the rules, but the fact that some might choose not to should be a warning against a rule that relies on the honor system.

Under the Bill, it is not clear how the Commission would know or be able to establish that a particular driver was not properly screened before being allowed to provide service to the public. The Commission's power to examine the company's records under the Bill does not appear to allow for anything more than an isolated inspection of documents selected by the Commission. Nor does the Bill appear to allow regulations requiring any specific type of documentation of what was done to comply with the law.

Thus, it is not clear how an inadequate screening would be detected in the first place, or, how, if it is detected, it would be documented. A sworn statement is simply not a substitute for even the most minimal licensing and regulation requiring companies to affirmatively show that they have met the specific legal requirements before putting a driver on the road.

The most effective way to ensure public safety is to require private sedan companies to screen drivers through third parties which the Commission has accredited as being impartial and able to meet the law's requirements for performing background checks. The Bill allows drivers to participate regardless of where they live, but it is questionable that the private sedan companies would know when a driver incurs an infraction in his home state, and there is nothing in the Bill requiring the company to stay current on driving records.

Under the Bill, the entire application process would be handled solely by the company, and, unlike all other classes of public vehicle-for-hire service, the drivers would receive no license from the Commission and the Commission would not receive any routine information as part of the application process. In essence, the public is being asked to take companies at their word.

Private Sedan Operators

As in all classes of public vehicle-for-hire service, the safety of passengers and members of the public affected by the service is the Commission's main concern. However, the Bill, as it is currently written, limits the Commission's ability to meaningfully address safety.

The Bill states that drivers shall only book rides through the company and shall not solicit or accept street-hails. It also requires drivers to use the company's trade dress or logo. The

Bill would not allow the Commission to require the company to maintain its inventory of vehicles with the Commission.

The Bill would also allow vehicles from any state to participate in providing service. While this is in part a public policy issue, it is also an important enforcement issue because vehicles from West Virginia, Pennsylvania, and most anywhere could be on our roads providing service. These vehicles would not have any uniform marking to set them apart from other vehicles on the street because the Bill appears to prohibit the Commission from requiring an official decal in addition to the company's trade dress.

These provisions in the Bill would undermine meaningful street enforcement. Our experience with private sedans, based on reports from our hack inspectors and police agencies, - - notwithstanding that the private sedan companies tell us they prohibit their drivers from taking street hails, - - in fact, do routinely take street hails, and also loiter around hotels and restaurants, and park in or near taxicab stands waiting for rides. These vehicles are functioning as nothing more than meter-less taxicabs.

The difficulties of enforcement are compounded by a problem we have seen in other classes of service: participation by rogue operators; this issue is not addressed by the Bill. At best, a rogue operator may simply provide bad service and cheat the District out of the passenger surcharge. But he or she could engage in credit card fraud or identity theft against the passenger. At worst, a passenger could get into one of these vehicles with a tragic result.

A driver who is not signed up with any private sedan company can easily display the same trade dress used by these companies. Such trade dress is available for purchase on the Internet. Unlike trade dress, an official decal in a fixed location tells a prospective passenger that the vehicle is legitimate. Without it or a catalogue of approved vehicles it becomes virtually impossible to enforce against the rogue operators.

In this new class of service, an inventory is a critical tool for a hack inspector to determine if a vehicle is signed up with one of these companies or is just a regular private car, possibly one driven by an operator with bad intentions. Without an inventory, the only way for a hack inspector to catch a cheater under the provisions of the Bill would be to follow a vehicle around town, watching for pickups and drop-offs, in the hope of acquiring the information needed to legally support a traffic stop. This is a highly impractical and time-consuming means of enforcement that could not be made effective without an order of magnitude increase in the number of hack inspectors.

Providing an inventory to the Commission imposes no operational burden or significant cost on private sedan companies, and it is currently provided by the companies that operate the MTS systems for taxicabs. Sidecar testified at the Commission's public hearing that it would have no objection to providing its inventory.

The Bill expressly forbids the Commission from requiring companies or drivers from collecting or transmitting data about a customer or a customer's trip. I am concerned that

this language also appears to bar the Commission from requiring drivers to keep an electronic manifest of the rides they provide to the public.

When a hack inspector or police officer stops a vehicle suspected of violating public vehicle-for-hire laws, standard law enforcement practice requires the official to ask for the manifest. The manifest shows which trips were booked through the company at particular times. This allows the official to determine whether or not passengers observed getting in or out of the vehicle did so in response to a lawful dispatch or an unlawful street hail.

In our experience, the driver, and often the passenger as well if they are still present, will both tell the hack inspector that the trip was legitimate. The hack inspector must therefore rely on the manifest to determine if there has been a violation of the law.

The Bill deprives hack inspectors and police officers of a vehicle inventory, and, as far as we can tell, both a uniform decal and a vehicle manifest. These three items are basic enforcement tools used to isolate vehicles that appear to be taking street hails, and to determine whether the information used to stop a suspected vehicle did in fact break the law. Enforcement officials cannot enforce the rules without the ability to sort the lawbreaker from the law-abiding.

Insurance

Appropriate Insurance coverage for private sedan service should be a critical concern. As the Commission's Panel on Industry observed in its Report, our lack of experience with the service makes it difficult for anyone to identify the risks involved, - - in order to adequately insure against them. As this service propagates, the risks will continue to reveal themselves, sometimes in tragic ways, as the events of this past New Year's Eve in San Francisco reminds us.

In the San Francisco case, both the driver's personal auto insurer and the private sedan company's umbrella insurer denied coverage. That is exactly the type of outcome that must be avoided. Testimony at the Commission's public hearing on April 30th echoed this concern.

Consistent with its Panel's advice, the Commission worked closely with DISB to develop the insurance requirements that appear in the proposed regulations. The Bill has somewhat similar provisions, also addressing the scope and levels of coverage that the private sedan company would be required to provide.

Despite the pendency of the proposed regulations, I have now come to the conclusion that the issue of insurance for private sedan service is sufficiently complex and specialized that it should be treated as a public policy matter addressed by legislation. I agree that Council should set the public policy requirements for private sedan service. But I urge the Council to seek the advice from DISB on its scope. I also urge that requirements capture all parties to supplying the ride service be covered by the insurance.

Regardless of the particular insurance requirements set by Council, it is critical that the companies comply with them. As insurance industry representatives testified, ordinary personal auto insurance is unlikely to cover private sedan service; the company's policy is the only reliable source of coverage.

Once Council sets the public policy, the Commission would continue to work with DISB to develop appropriate regulations for compliance, which the Bill appears to allow. But given the importance of insurance, and the Commission's apparent inability to require licensing of the private sedan companies, the Commission's enforcement power should be clarified.

The Commission's Panel on Industry noted that the private sedan companies were not fully cooperative with the Commission in providing proof of their insurance during the brief period in late 2013 when emergency legislation authorized the service under minimal requirements. The Bill should require that the complete, original policy come directly from the insurer.

The Bill should also expressly allow regulations to timely detect situations where a company's coverage has lapsed and to enable the Commission to take action to immediately shut down that company until its coverage is restored. If the Commission cannot suspend or revoke a private sedan company's license, it is unclear how it would be able to stop a company from conducting business without filing a civil action in court.

Disparities Between Classes of Service

The private sedan service is in direct competition with metered taxicabs. If a local competitive playing field is not provided the economic viability of the metered cab will be affected. This is not in the interest of the District, as taxicabs are the only legitimate source of street hail service and the only realistic source of service for passengers in wheelchairs. The number of drivers providing taxicab service is being eroded, and this trend is likely to continue under the Bill.

Private sedan drivers already enjoy the benefit of operating without the cost of equipment required to legally take street hails. The costs of uniform dome lights, modern taximeter systems, and the uniform color do not apply to private sedans.

Private sedan companies also work with auto dealers and leasing companies to facilitate the availability of new cars which drivers can purchase primarily for use as private sedans, and not as personal vehicles. This activity is contrary to what the private sedan companies told the Commission's Panel is essentially a service provided by part-time drivers looking to supplement their income while helping their neighbors.

While the Bill follows the recommendation of the Panel on Industry to deregulate taxicab fares for dispatched rides, allowing them to be set by the digital dispatch services as in other classes of service, this alone is unlikely to keep an adequate supply of metered taxicabs on the streets without additional measures to level the playing field.

The Bill contains no limit on the number of hours a private sedan driver who does not have a commercial license can provide service. Taxicab and black car drivers have shift limits under the Commission's rules.

And the Bill would allow vehicles in any amount and from any state to come to the District and provide service. The owners of these vehicles, which constitute the vast majority of private sedans on our roads, do not pay taxes to the city and are unlikely to have a basic business license. The bill's approach would encourage the spawning of an industry to provide prospective private sedan drivers with vehicles other than their own essentially creating a taxi type service.

Taxicab and black car drivers are subject to the reciprocity rules which allow limited participation in the District's market, but only by those who live in the surrounding jurisdictions. And owners must have a basic business license, except where grandfathered in for older vehicles.

The Bill's long-term consequences for the District's public vehicle-for-hire industry are dire, and contrary to the city's interests. There is expected to be a shortage of street hail metered vehicles because we know that about 70 percent of taxicab rides are still booked through street hail.

We have learned that there is likely to be an increase in demand for taxicab service through street hails. Data provided to us by Downtown D.C. now shows the following:

- The Trump Hotel at the Old Post Office Pavilion will be breaking ground this year;
- A new 400,000 square foot office building at 600 Massachusetts Ave NW will be breaking ground this year;
- An additional 4.2 million square foot in new projects is expected over the next five years;
- The Marriott Marquis has opened with 1,175 guest rooms and five restaurants;
- Six new, smaller hotels opening with 2,200 rooms, and there are another 20 hotel properties in the planning stages to add another 4,000 rooms;
- There is currently 700,000 square feet of destination retail shopping;
- 10 new restaurants opened in 2013, with 13 new restaurants to open this year, yielding 140 total restaurants in downtown D.C.;
- 9.5 million visitors to downtown D.C. (trending up with an increase of 2.5 percent from 2012 to 2013); and
- 13,775 new residents projected in D.C. per year.

The impact and implication of this information is that there is likely to be an increase in demand for all for-hire transportation services, of which a large portion will be for street hail rides. If the Bill is enacted as currently written, this increase in demand will be met with a decrease in supply. The natural consequence of that occurrence will be an incentive to all drivers to chase existing revenue, and further inducement to private sedan drivers to solicit and accept illegal street hails.

As I have mentioned, metered taxicabs are the only realistic source of service for passengers in wheelchairs. While the Commission looks to implement this year new fleet requirements applicable to taxicab companies under recent legislation, there is no question that these requirements do not go far enough. Additional steps are being studied and will be implemented to make further meaningful increases in the number of wheelchair accessible vehicles.

The Bill does nothing to stem the erosion of our efforts to increase the availability of wheelchair accessible vehicles. The fact that a passenger can request an accessible vehicle is meaningless if the vehicle does not exist, and few if any private sedans are wheelchair accessible because so few private cars are wheelchair accessible. The Commission's efforts to increase availability are therefore limited to taxicabs, and, with that segment of the industry declining, wheelchair-bound passengers are increasingly likely in years ahead to find themselves without a ride.

Conclusion

In closing, it is unclear to me how Council expects the Commission to achieve meaningful enforcement with the regulations it would allow, where the Commission's licensing and regulatory powers would be so circumscribed. Among other things, the Bill would further reduce the Commission's existing, limited ability to regulate one of the existing sources for booking a ride: the digital dispatch services. These services work with or are part of the private sedan companies, electronically matching passengers with the drivers who are signed up with the companies.

The Bill would nullify the Commission's existing regulations in Chapter 16 of Title 31 of the DCMR requiring a digital dispatch service to come in to the Office of Taxicabs to tell us about its service, and demonstrate its app, so we can see it is legitimate and not able to steal credit card numbers.

This proposed further limit on regulation addresses the practices of respectable companies with national reputations, but it opens the door to services with different intentions to come to the District and engage in the misconduct our regulations are designed to prevent. The app demonstration takes under 30 minutes and registration has been granted to every service that has applied. Five of the six digital dispatch services operating in the District have complied with our regulations and are now registered under Chapter 16. I strongly urge the Committee to reconsider this portion of the Bill.

The Bill also appears to leave the Commission unable to require licensing of private sedan companies and drivers. Commission lawyers say that civil fines and cease and desist orders would be the only remaining tools available for enforcement. An exclusive choice between a civil fine and a cease and desist order would leave the Commission with a legal process that in many instances is either too gentle or too harsh, and, in almost every case is too slow to secure immediate compliance.

The proposed legislation appears to divide the industry into two components: one that is tightly regulated with District-based tax paying companies that are required to have meters, dome lights,

specific colors and accept street hails; and another that is comprised of non-residents using private vehicles who do not contribute revenue to the District and are lightly regulated through enforcement on an honor system. Without meaningful regulatory enforcement mechanisms against those who participate in providing private sedan service, violations by both companies and drivers are likely to go undetected, and, when detected, they are likely to be improvable. Under the Bill, the Commission cannot ensure passenger or public safety.

Given these concerns, I urge the Committee to give DCTC, its expert agency for the for-hire industry, the opportunity for its regulations to proceed before any legislation is enacted. Council tasked the Commission's Panel with taking a hard look at this new service, and that's what it did. The Commission is now carefully developing its proposed regulations based on the Panel's recommendations. I suggest you allow the Commission to complete the regulatory process, during which it is listening to stakeholders, and to allow a test period of six or seven months and then determine what public policy changes you find are necessary.

Thank you.