

Testimony of Ashwini Chhabra, Deputy Commissioner, Policy & Planning

NYC Taxi and Limousine Commission

September 19, 2012

Good Morning, Chairman Vacca and Chairman Cabrera, and the members of the City Council Committees on Transportation and Technology. I am Ashwini Chhabra, Deputy Commissioner for Policy and Planning at the New York City Taxi and Limousine Commission.

Thank you for the opportunity to speak to you today regarding Intro 599, which would affect the Taxi Passenger Enhancement Program (TPEP) – this is the bundle of technology in taxis that includes the taxi TV screens, the credit card reader, GPS unit and driver messaging screen.

Increasing accessibility for all passengers is a primary goal of the Taxi and Limousine Commission. We know and understand that people with low or impaired vision often have difficulty using the TPEP systems to pay for their trips without requesting assistance from the driver. It is our goal to ensure that every passenger can pay for their trip confidently and independently, and we support what we understand to be the objectives of this proposed legislation:

- 1) That any payment technology equipped with a credit card reader installed in a vehicle should also have a payment option for visually impaired passengers to pay for the taxi trip on their own; and
- 2) That periodic audio announcements should inform the passenger of the current metered fare, accrued tolls and rate code used for the trip.

Earlier this year, at your urging Chairman Vacca, one of our two outside TPEP vendors – Creative Mobile Technology (CMT) – developed software that allows blind or visually impaired passengers to pay, unassisted, on some of their screens through the use of audio commands and screen touches. The TLC permitted and urged CMT to

begin testing this technology, with the goal of bringing this functionality to the entire taxi fleet. They currently have the technology installed in approximately 1,500 taxis. We have also urged Verifone, the other TPEP vendor, to develop the same functionality for their screens and they have indicated that they will. We think this is promising technology, and provided it can be done in a secure and user-friendly way, we agree with you that it should be mandatory in every taxi. As you may also know, the current TPEP contracts run through February 2013. We are in the process of drafting rules to succeed these contracts, and these rules will require this technology in every taxi.

However, the proposed bill, as it is currently written, does not allow for changes to the current TPEP technology, nor does it allow the flexibility to implement new innovations. Again, we agree with the goal of the proposed local law, but it should be revised to allow for technological improvements.

The proposed law also requires assistive features for the hearing impaired. Again, while the objective of this requirement is one the TLC supports, in fact, this is better accomplished not as part of adjustments to the TPEP system, but through the changes to the design of the vehicle itself. In fact, starting in November 2013, hearing loop technology will be standard in the Nissan NV200 – the Taxi of Tomorrow. This will allow hearing-impaired passengers to better hear not only what is broadcast from the taxi TV screens; but, more importantly, this technology, coupled with a passenger-to-driver intercom system, will allow passengers to better communicate with the driver and other passengers. This technology was brought to our attention by the Hearing Access Program at the Bell Association for the Deaf and Hard of Hearing and we worked with Nissan to ensure that it will be installed in each and every NV200 taxi.

In addition to the hearing loop, the NV200 will also include several other features that will greatly improve the passenger experience. The NV200 is equipped with a deployable step and a grab handle to help passengers get in and out of the taxi easily; and easy-to-open sliding doors (which require significantly less force to open than the sliding doors on the cabs today, and which should also reduce incidences of passengers swinging car doors into cyclists or other cars). There is floor lighting, and

high-contrast markings on the entry step and the seats, which will further assist visually-impaired passengers. The vehicle also features a wide entryway, more legroom than any of the taxis available today and a flat floor, which is great news for any passenger who has had trouble fitting into the current models, but especially good news for persons with service animals.

This concludes my testimony on Intro 599. To reiterate, the TLC supports the objectives of this proposed local law, and with the changes I have highlighted in my testimony, we will support the legislation.

I would now like to speak on the other topic on today's agenda – challenges and opportunities for technology in the taxi and for-hire vehicle industries.

New York City has always been at the forefront of technological innovation, and New York City government is no exception – whether in the form of innovation in government services like 311 and 311 Online, or in the form of support to tech startups to locate in Silicon Alley and elsewhere in the five boroughs.

Likewise, our taxi and for-hire vehicle industries are continually adapting to technological advances to provide better service to the riding public, and the TLC supports that innovation.

In 2004, Mayor Bloomberg advocated for fleetwide in-taxi technology to provide consumers with increased functionality and better service – in particular, the ability to pay for taxi rides with credit cards. These efforts led to the development of the TPEP system. Again, the core elements of the TPEP system are a credit card reader (with the capacity to process credit card transactions in real time) and a GPS tracker that records the pickup and drop-off time and location, distance traveled and fare for each taxi trip. Each of these features has provided significant, measurable benefits. The GPS data

has given the TLC a powerful tool to identify and enforce against rule violations, without requiring expensive field enforcement. GPS tracking has also proved invaluable in helping to locate items left in taxis, and it has brought economic transparency to an industry that was previously opaque to its regulators. In addition, the TPEP system includes a passenger-facing touch screen that provides information and entertainment to passengers and a dashboard text screen that enables the TLC to directly communicate with drivers.

Over the four years that it has been available in taxicabs, the TPEP system has improved industry efficiency, TLC effectiveness, and customer service for the City's iconic yellow taxis, and it has become the standard that other municipalities have sought to emulate in their for-hire vehicle industries.

Looking ahead to 2013, when the current, exclusive TPEP contracts will expire and we will need to provide specs for TPEP 2.0, the Commission recently approved a pilot program to test new TPEP technologies. Through this pilot, a company called Square is testing an "off-the-shelf" system that utilizes iPads in the back seat and iPhones in the front, to provide the same services as the existing TPEP systems. There are currently 13 vehicles that have this technology and it has received positive preliminary feedback. If the final results of this pilot program are similarly positive, we will allow similar solutions as part of the TPEP 2.0 offering.

Also this year, the TLC released a Request for Proposals for a fare payment smartphone application. The goal of the RFP is to contract with a technology company to create and release a smartphone application that allows consumers to use a smartphone to pay a fare in any yellow taxi, much as they currently do with credit cards. The goal of this RFP is not to replace current fare payment options but to expand them. I'm told nineteen companies submitted proposals – indicating a very healthy level of interest in this initiative – and we are reviewing these proposals.

In the same way that TPEP has changed the yellow taxi industry, technological improvements have also changed other for-hire vehicle services – namely, the black car

and livery segments. For years now, black cars and livery cars have used electronic dispatching technology, most recently in the form of smartphones, as a means of scheduling trips and allowing consumers to make credit card payments. Smartphone applications offer businesses opportunities to grow; and, in particular, they provide smaller bases, who may not have the resources to develop their own bespoke technology, an off-the-shelf solution that allows them to manage their affiliated vehicles and to offer passengers in-vehicle credit card payment options. Last year, in response to a proliferation of FHV-focused smartphone apps, the Commission provided industry guidance to FHV bases and drivers to help them adopt this new technology, while still ensuring that they comply with TLC rules and local law.

Now, we face a similar proliferation of apps that seek to facilitate “e-hailing” of yellow taxis, and payment of taxi fares by smartphone. There are various business models, but the basic premise is that a user requests a yellow taxi via smartphone app; a driver of a vacant, on-duty taxi accepts that e-hail fairly quickly (also by smartphone or other electronic communication device) and picks up the passenger; and the passenger is able to pay for the ride through the app.

This is a model that has had some traction in other markets, and app developers who have had success elsewhere are now seeking to bring their products to the New York yellow taxi market. New York, of course, is unique. Unlike Chicago or San Francisco, you don’t generally need a smartphone to hail a taxi here; at least not in the Manhattan Central Business District, which is where yellow taxis operate for the most part. All you need is to put your hand in the air and, as if out of nowhere, a taxi appears to take you where you want to go; that’s one of the beautiful things about living here. And outside the CBD, there are numerous black car and livery bases that provide a similar service, and there are already smartphone apps to help passengers request one of those cars.

That said, these apps can provide some benefit to passengers in some instances. They may assist passengers late at night when there are fewer taxis cruising, or may help passengers who are a few blocks away from a main thoroughfare

to extend the reach of their hail. They may also serve to reduce driver reluctance to take trips out of Manhattan, if drivers think these apps can provide them with a greater prospect of finding a passenger for the return trip. In fact, a recent survey conducted by the TLC on the backseat taxi TV screens indicated that almost 70% of taxi passengers own a smartphone, and 50-60% of passengers want the ability to use their smartphones to find available taxis and to pay for their taxi rides.

At the same time, data suggest that taxi drivers spend a significant portion of their shifts cruising for fares, which is an inefficient use of both time and fuel. Even if these apps result in only 1 or 2 more trips per shift for a driver, this could have a material positive impact on driver earnings and could increase the efficiency of the taxi fleet.

As such, the Commission is of the view that these services – if provided in a manner that does not result in distracted driving, if they do not adversely impact the street hail service which is the core function of the yellow taxi system, and if they provide the Commission with the same transparency into trip data as is currently available – should be permitted and we will pursue rulemaking to permit them. They have the potential to provide a benefit to passengers and drivers and are in keeping with this City's and this industry's striving for innovation.

At the same time, the new technology also raises some thorny issues. One question that has been raised is what impact the ability to e-hail will have on the supply of taxis for passengers who continue to use the traditional hand-in-the-air method. If these apps make it easier for smartphone users to get a taxi at the expense of those who don't have smartphones, then something valuable will have been lost. Again, given the nature of taxi service in New York, we don't think this is a present concern, but it is something we will need to remain vigilant against. (Though, where this might be particularly disruptive – for example, at taxi stands at transit hubs and at the airports – we will seek to prohibit the use of these apps.)

Another concern with this new technology is the possible increase in distracted driving. Any service that requires instant driver trip acceptance increases the likelihood of driver distraction. We believe this is amenable to a technological fix, however, and this is one of the key issues we will explore during the rulemaking process.

There has also been some concern voiced by our licensees in the black car and livery segments, that the availability of these apps will impact their businesses. Currently, passengers who cannot otherwise hail a taxi in Manhattan, can call a base to request a black car or livery car. Arguably, some of that business may be affected if we make it easier for these passengers to hail taxis. That is a consideration, but it cannot be our overriding consideration. (No doubt this was also a concern when the idea of requiring credit card readers in taxis was first considered. That passengers should be able to pay with credit cards no doubt has reduced some of the business that would otherwise have gone to black cars or liveries, but no one would suggest that credit card readers in taxis was a bad idea. Not least of all the 100 million plus passengers who pay for taxi trips with credit cards each year.) It is not the rightful function of government to protect one segment of an industry from competition from another segment. So long as passengers win and the industry overall wins, our goal should be to encourage innovation and forward movement.

Other issues – including passenger perception of refusal by drivers *en route* to pick up an e-hail passenger – are real concerns, but they are not insurmountable. We will seek to mitigate these concerns in the course of rulemaking which we will pursue, on an expedited basis, over the next few months. We will solicit the input of each of our regulated industries, passengers, technology providers and the Council in that process. And in the course of those conversations, no doubt, other concerns will come to the surface and we will address them together and in a constructive way. I welcome the continued dialogue with each of you on this topic.

This concludes my testimony regarding taxis and technology. I would like to thank you for the opportunity to testify on this topic, and on the subject of the proposed legislation. I'm now happy to answer any questions you may have on either topic.

Comments Submitted To The Int. No. 599 Hearing Of The Committee On Transportation And The Committee On Technology in relation to requiring that taxicab passenger enhancement systems be accessible to people with disabilities. Oversight: Challenges and Opportunities of Technology in the Taxi & FHV Industries.

Wednesday, September 19, 2012

Submitted by,
Richard Thaler, PhD
OmniMediaNetwork
OMN Gateway
OMN Mobile Network
866.466.1969 X 810

Council Members:

If the intent of this Bill, Int . No 599 is to require all passenger functions of the Taxi Technology Enhancements Program to be accessible to all passengers, then the stated requirement,

"iii. designed to be installed in a uniform location within all taxicabs",

must enable the TLC to consider that depending on the wheelchair restraint position in each accessible vehicle model, the location of T-PEP hardware for passenger access may need to change for each accessible vehicle or possibly may need to be portable.

More generally, if the Rules and Regulations Section 503 of Title 19, Chapter 5 require the TLC to implement the provisions of Chapter 5, the core T-PEP functions stated in Item 2 of Int. 599 should include standards of operation for the protection of taxi passengers and drivers,

"2. taxicab passenger enhancement system" shall mean the hardware and software that provides the following four core services:

- i. credit, debit, and prepaid card payment;
- ii. text messaging;
- iii. trip data collection and transmission; and
- iv. data transmission by means of the passenger information monitor."

In 2004 the TLC simply adopted the four core functions of the Taxi Technology Enhancements System created by a Certified Payment Gateway Company in partnership with Melrose Credit Union and First Data Corporation. However the standards of operation for the core functions were ignored. As a result, drivers have been overcharged by an estimated \$200 million , passengers have been overcharged due to the Systems' operating failures to prevent fare overcharges, whether intentional or unintentional by drivers , due to Rate 4 violations and more recent Toll charge violations ,and passengers' credit and debit cards have been exposed to transaction processing security risk. In fact a recent disclosure of a major security breach by a TLC approved T-PEP Merchant Acquirer Processor subcontractor revealed that the security breach took place in 2011, before the T-PEP contracts were renewed. In 2012 MasterCard and Visa delisted the TLC approved T-PEP Merchant Acquirer sub contractor for security

compliance violations which still has not been restored and the security issue has never been addressed by the TLC.

The rules for credit and debit card payment are regulated by the Federal Reserve Board and the Congress as distinct from the other three core functions of the T-PEP System. Accordingly the fare payment function should be separated from the three other functions in terms of identifying and approving eligible vendors certified for this purpose. Moreover, each independent contractor driver should have the right to select their Merchant Acquirer Financial Institution and Payment Gateway. It is standard payment industry practice to enable routing for payment transaction processing independent of installed Point Of Sale (POS) hardware. With the new lease cap rules, lease driver payment card processing charges are now "baked in" to the lease fee regardless of the actual number of card fare payment transactions processed during a driver's shift. It's astonishing that the driver organization did not object to this in spite of the likelihood that overcharging the lease drivers will continue.

Credit and debit card payment apps for shopper mobile phones have become a very hot development area for the largest retailers. Drivers should also have the right to receive fare payment from a more secure passenger app as long as it complies with the recent TLC notice requiring that the fare payment and trip record be recorded in the installed T-PEP system. The fare payment in cash could be transferred directly to an ATM for drivers' safety and convenience. However, if the app's processing fee must be charged to the driver, the TLC must permit the lease driver to deduct the processing fee from the lease payment under the new lease cap rules requiring the medallion owner to pay all the charges.

As the current T-PEP contracts are due to expire in February 2013, I hope the Council will engage in critical oversight and under 19.503 require the provision of Rigorous Standards Of Operation, and Open Payment Industry Competition in compliance with Payment Card Industry Transaction Processing Rules and Federal Law for the protection of taxi passengers and drivers.



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**New York City Council Committee on Transportation
jointly with the Committee on Technology
Wednesday, September 19, 2012**

Good morning, my name is Lester Marks and I am the Director of Government Affairs at Lighthouse International. Lighthouse International was founded in 1905 and is dedicated to helping people of all ages overcome the challenges of vision loss. I want to thank the Committee for its continued efforts on behalf of people with vision loss.

As you know introduction No. 599 requires that the taxicab passenger enhancement systems be accessible to people with disabilities. This mandate would make riding every taxicab in New York City a viable transportation option for someone with a visual impairment. Currently, thanks to the work of Chair Vacca and of Creative Mobile Technologies, approximately 10% of the fleet is accessible to people with a visual impairment. Lighthouse worked closely to develop and test this technology and we are grateful for these efforts. These are important steps that have helped to further highlight the accessibility needs of people with a visual impairment in New York City. It also proves that the technology is available and the cost associated with the technology is not a barrier to expansion to the entire taxi fleet.

Since CMT's rollout in the spring, the feedback on the software has been positive, and the overwhelming majority of people who have used the technology have called the functionality of the software, "simple to navigate and easy to understand". The one criticism I have heard, is finding a taxicab in NYC with this technology has been akin to finding a needle in a haystack. The reality is that 90% of New York City taxicabs remain inaccessible to someone with a visual impairment. This fact validates the need for passage of this important legislation.

In considering accessible options for people with a visual impairment, it is important that any adopted system keep the following things in mind:

- **Consistency-** each taxicab must have an identical system that appears in the same location in every cab.
- **Audible commands-** the screen display must allow for an audible description of the on-screen text.
- **Location Update-** a periodic audible location updated throughout the ride.
- **Announce the trip fare-** the total amount of the trip is audibly announced at the end of the ride

I would also add that the Committee might consider adding a dispatch component for people with a visual impairment. As you can imagine hailing a taxicab on a New York City street is not the easiest thing to do. The difficulty that many encounter in hailing can often discourage one from using taxicabs all together. A dispatch system combined with an accessible payment system might encourage more people with a visual impairment to ride in taxicabs.

Every New York City taxi-cab must have a system accessible to a person with a visual impairment. Doing so will provide riders a sense of independence that has long been absent when riding New York City taxicabs. I urge the committee to pass Intro 599 and stand ready to work towards implementation.

Lester Marks
Director of Government Affairs and Administration
111 East 59th Street
New York, NY 10022
212-821-9640
lmarks@lighthouse.org



"Solutions The Industry The Industry"

**Testimony of Jesse H. Davis, President of Creative Mobile Technologies
Before the New York City Council Transportation Committee
Regarding Intro 599**

September 19, 2012

Good morning Chairman Vacca and members of the Transportation and Technology Committees. My name is Jesse Davis, President of New York City-based Creative Mobile Technologies, which specializes in taxi and for hire vehicle payment, data and media solutions and operates in more than 60 cities throughout the country.

Thank you for the opportunity to testify today on Intro 599, a commendable piece of legislation that CMT fully supports. CMT has worked extensively on the development of what we call our VIP Mobile platform for the visually impaired and low vision passengers, an initiative we undertook with input from Chairman Vacca's office and Lighthouse International.

In just a few short months, and after gathering extensive feedback from advocates, on April 17, 2012, CMT announced VIP Mobile alongside Former Governor Paterson, Chairman Vacca, Lighthouse International and representatives from the TLC at a press conference in front of City Hall.

Since then, VIP Mobile has been installed in nearly 1,600 out of our 6,600 CMT taxicabs in New York. And VIP Mobile is operating in an additional 4,000 taxis in cities including Boston, Philadelphia and Chicago. Basically, whenever our Next Generation PIM is installed, so is VIP Mobile.

If it is alright with the Chair, in anticipation to what I imagine will be questions from Council Members, I would like to hold off on explaining the step-by-step process for the question and answer period:

[For Q & A]

Here is how it works:

Before the trip begins, a blind or visually impaired passenger signs up for a CMT VIP Mobile card by contacting Lighthouse International. CMT produces and distributes these activation cards. It is important to note that passengers are not required to have a VIP Mobile card for the system to be activated.

Upon entering the taxicab, an audio loop informs the passengers that he or she is riding in a VIP Mobile enabled CMT taxicab and instructs the rider to swipe their VIP Mobile card.

Upon swiping the card, a text-to-voice program is enabled, providing the rider with fare information as he or she continues along the journey.

At the conclusion of the ride, the media screen, which has turned into large print zones, really starts to interact with the text-to-voice program. The voice instructs the passenger to touch certain easy to find zones on the screen depending upon which mode of payment the passenger wishes to use – cash or card – and then permits the passenger to enter the desired tip. Throughout this process, the voice asserts the fare, the tip, the total and offers options of going back if necessary.

Basically, through a voice program and a customized media screen, VIP Mobile enables blind and visually impaired passengers to get the same level of autonomy and customer service as any other passenger.

While eventually, we plan to have VIP Mobile installed in all 6,600 CMT taxicabs in New York City, it will be a substantial challenge to install the VIP Mobile program in the first generation units due to the difference in technological platforms. However, we would like to work with Chairman Vacca on a program that facilitates as many installations as possible within a reasonable timetable.

Of course, we would look to work with the Council and advocates to develop a cost-effective solution for people with hearing impairments, just as we did with VIP Mobile.

TPEP has proven to be an unequivocal success on many levels. It is the gold standard of taxi technology across the country. As we look ahead to the next era of TPEP we must also look back to what has made TPEP so exceptional. And that is an unwavering commitment to safety and security of credit card data, the durability of the hardware, the capacity of the media screens and in-taxi technology and the powerful back-end network infrastructure – all standards that, in the end, only two companies were ultimately able to meet during the intensive TPEP RFP in 2006.

Innovations like VIP Mobile can only have emerged from companies that invest in TPEP and the City. Tech companies whose only interests are in profit margins and attracting venture capital must prove to the Council and to the TLC that they too can meet the strict standards of TPEP. As we move towards TPEP 2.0 we must continue to race to the top – not the bottom.

Thank you. I will be happy to answer questions.



**Testimony of Peter Mazer, General Counsel
Metropolitan Taxicab Board of Trade Before the New York City Council
Transportation and Technology Committees
Oversight Hearing on Future of Technology in Taxi and Livery Industries
September 19, 2012**

Good morning Chairman Vacca, Chairman Cabrera and members of the Transportation and Technology Committees. My name is Peter Mazer. I am General Counsel to the Metropolitan Taxicab Board of Trade, a 60-year-old non-profit trade association that represents 37 taxi fleets comprised of more than 5,000 yellow medallion taxicabs. Our garages provide service to the riding public 24 hours a day, 7 days a week; lease taxis to more than 20,000 drivers and employ more than a thousand full-time mechanics, dispatchers, gas attendants, administrators and other personnel.

Our members have one principal goal – and that is to safely, comfortably and effectively transport our passengers from point A to point B. It has become harder and harder to do this. Our fleets, whose lease rates are regulated by the TLC, have been restricted by the TLC from meeting our rising operating costs which will likely result in less services for drivers. And our drivers are having a tougher time getting around the bike lanes and pedestrian plazas that have taken away precious space on city streets. And our passengers have complained about the newer vehicles, which have become smaller and smaller and less and less comfortable.

From an operational perspective, the bright spots over the last several years have mostly revolved around the use of new technology to enhance the taxi experience. For example credit card acceptance devices have increased passenger volume, increased driver tips and made it easier to manage the fleet business in many ways. There have been administrative burdens of being merchants with the credit card companies and other issues. But by and large, technology has helped the yellow taxi business grow even during the recession when many industries were failing. Most of all, it has made the experience better for our passengers.

In the case of TPEP, the City, the industry and the public entered a new phase of taxi technology together in a very structured way, understanding that the taxi industry is a complicated one whose prior technological advance was the meter – and that was nearly a hundred years ago. Today, the taxi industry, now more technologically advanced, is being met with dozens of app developers convinced that they have found the latest method to improve taxi service.

Apps may or may not be a useful tool for the yellow taxi rider. They may or may not end up violating longstanding TLC rules meant to protect yellow taxis, liveries and black cars. It could all be a lot of talk that may work in San Francisco or London but not in New York – or it may actually be a great new innovation. And there are so many different types of apps, maybe some will be good and some will be bad. Right now, we just don't know.

We look forward to the TLC's recently announced process of exploring the regulatory issues surrounding apps. However we would like to caution the TLC and the Council that the yellow taxi industry and the livery and black car industries perform vital services to New Yorkers and visitors. And these industries' models of operation must be respected – and not simply discarded just to accommodate an app – no matter how popular. There are tens of thousands of livelihoods that depend on the yellow, livery and black car industries and they matter to this City as much as any technological advance.

Thank you.

TESTIMONY OF VERIFONE INC. ON INTRO 599

September 19, 2012

Good Morning Chairman Vacca, Chairman Cabrera and members of the Committees. My name is John Mascialino, from Greenberg Traurig LLP and I serve as outside Counsel to VeriFone Inc. Unfortunately, staff from VeriFone could not be here today, so I am presenting this brief statement on their behalf. VeriFone will of course make themselves available for any follow up questions members of the Committees may have. As

you know, VeriFone is one of two current TPEP vendors under contract with the TLC. As you know, TPEP Systems include credit and debit card payment and processing, text messaging services, trip data collection through GPS and data transmission by means of the passenger information monitor including entertainment and advertising as well as TLC PSA's and other industry information.

VeriFone supports the goals of Intro 599, making the TPEP systems accessible to people with disabilities, in particular the visually and hearing impaired. VeriFone prides itself on being on the forefront of technology in the taxi and transportation industry.

VeriFone has been researching the proper way to make the TPEP system accessible to both the visually and hearing impaired, and has begun to seek input from advocates and professionals in the visually and hearing

impaired community. VeriFone believes it is crucially important to get input and assistance from the handicap advocacy community in order to make sure that any solution that is created, tested and eventually implemented meets the actual needs of people with visually and hearing impairments.

We also believe that there should be a standard solution among the systems in the taxi industry so that there is

consistency and uniformity in the workings of the system
from taxi to taxi.

VeriFone will also work with the TLC to test the system
once a solution is finalized. We are excited about the
continued opportunities in the NYC Taxi Industry,
including TPEP 2.0 and beyond, and will ensure that the
needs of people with disabilities are taken into account
when developing an improved system.

Lastly, if the City Council decides to pass this legislation, we ask the effective date be amended. The industry will need time to have the technology tested and approved by the TLC. VeriFone would be happy to meet Council staff to discuss this legislation further. Thank you.



Pasqualino Russo
(212) 237-1134
prusso@windelsmarx.com

156 West 56th Street | New York, NY 10019
T. 212.237.1000 | F. 212.262.1215

Testimony of September 19, 2012
Oversight Hearing
NYC Council Committee on Transportation and Committee on Technology

Good morning Chairpersons Vacca and Cabrera and the members of the Committee on Transportation and Committee on Technology.

My name is Pasqualino Russo and I am Special Counsel at Windels Marx Lane & Mittendorf, LLP. Previously, I had been the Chief Judge at the NYC Taxi & Limousine Commission.

Professor Matthew W. Daus, Esq. – former Chair and Commissioner of the NYC Taxi and Limousine Commission – is a Partner who chairs the Transportation Practice Group at Windels Marx. Professor Daus also serves as the President of the International Association of Transportation Regulators – the IATR – the leading group of government taxi and limousine regulators from around the world.

I am testifying at today's oversight hearing "Challenges and Opportunities in the Taxi and FHV Industries" on behalf of Professor Daus, who had intended to present testimony when this hearing was originally scheduled for September 20th, but who was unable to do so today because of a pre-existing conflict that required him to be out of town.

For some time, the IATR has recognized the emergence of the smartphone applications as one of the most exciting and innovative changes to the transportation industry. However, some of these "apps" operate in a manner that creates serious concerns for the public and regulators alike.

In response, our Firm provided its services on a pro bono basis to the IATR when it requested that we examine these concerns in light of the regulatory landscape in numerous major cities throughout the United States. As a result

of our research, Professor Daus and the Windels Marx Transportation Team have recently published a seminal piece of research on the status of the operations of these apps in a report entitled:

"Rogue" Smartphone Applications for Taxicabs and Limousines: Innovation or Unfair Competition?
A National Regulatory Review of Safety, Accountability and Consumer Protection Legal Issues

The Report is available to the public at
http://www.windelsmarx.com/news_detail.cfm?id=127

I have provided the Committees with the requisite number of copies of the Report and my prepared statement as part of my testimony today.

As a result of the research undertaken, here are two key "take-aways" from the Report:

- Right now it's the Wild West out there, with private equity backed start-ups and established industry companies alike scrambling to have the next app to hit it big and revolutionize for-hire transport internationally.
- All apps are not created equal. Some operate within the rules by identifying their own licensed transportation or affiliates for the consumer, and other 'rogue' apps do not operate on a level playing field by cutting established dispatch companies out of the picture to deal directly with drivers. These 'rogue' apps are under investigation by regulators in the U.S. for operating within legal loopholes, and may run afoul of laws designed to protect consumers from untested taxi meters, illegal refusals, and which require licensing to ensure vehicles are insured and drivers undergo drug testing and criminal background checks.

What are the Key Facts?

Technology start-ups have been issuing smartphone applications which allow for the hailing or arranging of a vehicle, removing the dispatch or taxi/limo company from identification where technology companies interact directly with drivers, sometimes without obtaining proper licenses. Many

jurisdictions are struggling to understand the operations of these apps while they roll-out into their communities.

Windels Marx has examined how these apps operate, reviewed the regulations within several cities across the nation, and the following legal issues have been identified as a result of this review:

- **Prearrangement or Electronic Street Hail?** There are jurisdictions that only allow for taxicabs to be "hailed" by passengers. Today, some apps allow users to request for-hire vehicles on demand. Although this may seem attractive to the riding public, such apps may potentially run afoul of industry regulations, since many communities have yet to answer whether on-demand service is an "electronic street hail" or prearranged service.
- **Safety Concerns.** Most apps are technology start-ups and many are not associated with a specific livery or taxicab business license. If apps continue to operate without regulations or are under-regulated, the public may be riding in vehicles that do not meet the vehicle license requirements or have a driver who has satisfied the licensing requirements for the community.
- **Use of "Taxi" or "Taxicab" in the App Name.** Communities will include restrictions on the use of the term "taxi" or "cab" to prevent consumer confusion and enforce the distinctions as to how taxicabs operate. In one instance, an app was required to remove "cab" from its name because the app functioned to dispatch livery vehicles, and those vehicles did not meet what the public expects from a "cab."
- **Illegal Service Refusals.** Many jurisdictions have local laws that expressly prohibit a licensed transportation service from refusing potential fares. Apps may allow a driver to accept or decline potential dispatches. In addition to the possible violation of driver rules, possible discrimination against consumers may occur by such actions.
- **"Fair" Fares.** Fare regulations can have two purposes: 1) consumer protection, and 2) the ability to easily distinguish different types of transportation services. Numerous cities will require the fares to be published and filed with a local agency. Yet, some apps operate by charging passengers at the end of the trip. The consumer has no assurance as to the final fare, or whether the charge is "fair."
- **Is it a taximeter?** Generally, taxicabs must have a taximeter, and only taxicabs may charge fares based on distance and time. Taximeter specifications are regulated by the National Institute of Standards and

Technology (NIST) and various state agencies. Among the requirements, the taximeters are calibrated, sealed, and inspected. Some apps may use their own technology, including GPS, to calculate the fare based on time, mileage and demand, which does not meet taximeter standards, and may or may not be consistent with the fare charged to each passenger using the same application, or passengers using any other application.

In his capacity as President of the IATR, and as a follow-up to the Report, Professor Daus has appointed a Special Committee to study the issue of "rogue" smartphone applications, and to draft model regulations for potential adoption internationally and in the U.S with the purpose "to develop a model regulation to ensure smartphone app technology can exist fairly, safely and with accountability to protect the consumer, while also protecting existing businesses against unfair competition." So far, the IATR App Committee in formation includes Taxi Commissioners and regulators from: New York City, Boston, Chicago, Washington, D.C., Philadelphia, San Diego, San Francisco, Seattle, Austin, Houston, Denver, Los Angeles, Montreal and Toronto in Canada, and Australia, and a representative from the NIST.

The IATR Committee will hold an international public hearing entitled "*There's an App for That!*" before these regulators on November 17th as part of the IATR's 25th Anniversary conference to be held in Washington D.C., from Nov. 15-17, 2012. We expect that the IATR Committee will foster international input and formulate best practices. The details on the conference may be found at the IATR website www.iatr.org.

We will provide the Committees' Briefing Paper and any draft legislation proposed by the City Council to the IATR Committee. In turn, we will provide the City Council with the IATR's final model regulations for your consideration and local implementation.

Moreover, as the IATR builds on the work of the Windels Marx Report, Professor Daus will continue to share these results with you, and he wanted me to let you all know that he will be available to answer any questions or provide any assistance that can be helpful in this fast-moving world of smartphone apps.

Thus far, the Report – and the preliminary work of the IATR App Committee – has engendered much discussion about these smartphone apps.

In the weeks ahead, much more will be done. On behalf of Professor Daus, I want to thank the Chairpersons and the members of the Committees for the opportunity to present this testimony. I am certainly available to answer any questions that you may have today.

Thank you for your time and attention.

- I am Victor Dizengoff and I am speaking on behalf of the Black Car Assistance Corporation to aid the Council in promulgating rules related to the use of electronic devices to acquire taxi services in New York City.
- Current New York City law provides that if an on-duty taxi is empty it must stop and pick up the person who is standing in the street and trying to hail a taxi. It is essential to New York City's for-hire transportation system that that law stays the same. The reasons why are quite simple:
 - When taxi drivers are permitted to accept passengers on any basis other than a street hail, the driver has the power to pick and choose which passengers to accept and the public has no ability to effectively monitor or control the driver's decision making.
 - History has proven that the result of that situation is that there is a shortage of taxis, particularly during rush hours, and people with certain racial and socio-economic profiles or who want to travel to certain boroughs have a difficult time hailing a taxi.
 - History has also established the solution: Clearly separate for-hire vehicles that operate based on street hail service from those that operate based on pre-arrangement.
 - That clear division, however, would be destroyed if taxis are permitted to reject a passenger standing in the street in favor of some real (or phantom) passenger who booked the taxi by electronic pre-arrangement.
- The harm that would be caused by creating two separate methods to access a taxi goes even deeper when one recognizes that there is a segment of the population that does not own a Smartphone or a credit card and those people will not have equal footing to access taxis.
- New York City has already tried to allow taxis to operate based on pre-arrangement. Back in 1981 almost one-third of New York's 11,787 taxis had two-way radios. E-hailing is simply the modern version of the two-way radio. The problems caused by the use of two-way radios as well as other

issues plaguing the taxi industry, caused Mayor Koch, in 1981, to appoint a 12-member committee headed by Richard Smith.

- In its Preliminary Issues Paper, the Smith Committee explained that whatever tension inherently exists from the fact that pre-arranged “hails” divert a fixed supply of taxis away from street hails, that effect “becomes especially noticeable to a person seeking to hail a cab who is frustrated by the presence of empty cabs with lit ‘on-radio-call’ signs either parked in line or passing on the street. Some members of radio groups may aggravate the problem by abusing the use of the radio call light. . . . It is observable that some radio cab operators park out of service in certain locations, with or without their radio call light turned on, in order to be free to respond to radio calls.” (Page 7 of the Smith Committee’s Preliminary Issues Paper, October 1981)
- The City and the TLC either considered or tried a variety of options to remedy the shortage of taxis to pick up street hails due to pre-arranged calls. In March of 1982 the Smith Committee recommended that taxis should not be permitted to be on radio call during the evening rush hour (from 4 to 6:30 pm) and in November of 1982 the TLC announced that 500 radio cabs were converted from radio duty to exclusive street hail service.
- None of these half measures, however, resolved the problems caused by allowing taxis to accept fares by pre-arrangement and in a Resolution dated February 13, 1985 the TLC mandated that all radios be removed from taxis by March 15, 1987. The TLC explained in the Resolution that the mandate was appropriate:
 - “WHEREAS, the problem of taxicab unavailability has been severely exacerbated by the growth of medallion taxicabs radio groups in recent years whose members service radio customers thereby making their taxicab unavailable for street hails; and

- WHEREAS, the services provided by taxicab radio groups can be adequately performed by other licensed non-medallion vehicles operating for hire in the City.”
- As a solution to this substantial problem, since March 15, 1987, New York City taxis have accepted passengers only by street hail. To now allow taxis to except fares by pre-arrangement via a Smartphone application would ignore the lessons of history.
- The first and most basic law affecting this issue is section 19-502 of New York City’s Administrative Code which defines taxis in relevant part as a vehicle “permitted to accept hails from passengers in the street.” While that definition does not preclude the Council from amending the law to permit taxis to accept passengers other than by street hail, as currently enacted, taxis are not permitted to do so and, for the reasons just explained, there are weighty policy reasons to expressly limit taxis to operating by street hail. Thus, if section 19-502 is amended at all, it should be amended to make clear that taxis may accept hails from passengers in the street only and not by pre-arrangement.
- The second law that prohibits e-hails is New York’s base station requirement. Under section 19-511 of the Code, any communication system used to dispatch or convey information to drivers must have a base station license and under section 19-502(t) of the Code that base station cannot dispatch any vehicle with which it is not affiliated. Because taxis are not affiliated with the Smartphone apps that would be connecting them to passengers, e-hails are illegal.
- Third and finally, allowing taxis to reject a street hail in favor of a pre-arranged electronic hail violates at best indirectly and at worst directly contravenes subdivisions (a)(1) and (a)(2) of section 19-507 of the Code which provides in relevant part that:
 - “No driver of a taxicab shall seek to ascertain, without justifiable grounds, the destination of a passenger before such passenger shall be seated in the vehicle”; and

- “No driver of a taxicab shall refuse, without justifiable grounds, to take any passenger or prospective passenger to any destination within the city.”
- All of the current Smartphone apps used to connect drivers and passengers allow the driver the option to accept or reject a job. They can do so for any number of reasons but it would be a safe assumption that the main grounds for declining a job opportunity would be based on the passengers’ current location, their destination, and the profitability of the trip. If drivers are given the right to hide behind a “I am reserved” shield, there is a real and immediate danger that drivers will cruise around with their light off or “Off Duty” light engaged, waiting for a pre-arranged booking. This creates an impossible enforcement situation and most assuredly opens the door to tremendous discrimination issues.
- While Smartphone apps may be new, the inevitable (and historically existent) issues that are created when taxis can pick and choose to accept passengers by pre-arrangement versus street hail are not. New York City made a decision twenty-five years ago that taxis should be reserved exclusively for street hail service. To disturb that hard fought and fully justified distinction based on the latest (but surely soon to be outdated) technology takes New York taxi service many steps back and none forward.
- I would like to request that the BCAC’s white paper entitled “Smartphone Apps: Nothing New in New York’s Taxi History” dated August 20, 2012 be made part of the public record. Thank you very much for giving me the opportunity to testify before you today on behalf of the Black Car Assistance Corp. I am happy to answer any questions from the Councilmembers.

Public Testimony

Submitted to

City Council

Committee on Transportation

September 19, 2012

Regarding

- **Oversight: Challenges and Opportunities of Technology in the Taxi & FHV Industries**

Good morning, my name is Carolyn Castro and I am the Executive Director of the Livery Roundtable. I'd like to thank City Council for providing this hearing and allowing members within the industry to speak and share our concerns. We are greatly appreciative.

The Livery Roundtable is an umbrella organization representing over 200 livery bases across the City. Comprised of four collective Livery Associations; the NY Fleet Owners Association, NYS Federation of Taxi Drivers, NYC Independent Livery Owners Corp, and United as One - TLC Base Owners Association. In addition our board includes two of the largest for hire vehicle livery base stations in the City, Carmel Car & Limousine Service and Dial 7.

I stand before you in representation of my board to express our concerns with the current flooding of the ground transportation market with smartphone applications. We at the Livery Roundtable have always acknowledged our support to incoming technology and have expressed this sentiment in countless meetings with City Council, the TLC, various media streams, members of our industry, and anyone who would listen. We have offered our assistance to the Taxi & Limousine Commission, with the hopes of working collaboratively in creating proper practices and guidelines to welcome technology in a format that works with our business models respectfully.

App companies have bullied their way into the ground transportation market simply for making profit and are masking their profit driven desires for public concern. When approaching the TLC with our concerns, we were met with lackadaisical attitudes, instead relying on outdated or non existing rules that allows Smartphone app companies to flood the current market, without inquiry, without insight, without knowledge of demand, and without respect for the models as they are currently structured.

We at the Livery Roundtable ask that when drafting legislation it consider welcoming technology in a manner that does not disrupt the ground transportation system, hurt riders, or marginalize business.

In order to do this we ask that Council please considers the following:

- Identify clear definitions for each segment of the industry
- Consider the impact on availability of street hail
- Address safety concerns

- To Identify clear definitions per industry

Smartphone applications further blur the distinction between the prearranged for-hire vehicles sector and the street hail medallion sector. Clear and concise delineations are needed before the implementation of a Smartphone application can be instituted. Smartphone application companies, foreign to New York City's unique ground transportation practices, take advantage of the loopholes in outdated rules that don't capture the technological advances we live in. Utilizing this lack of definition to their advantage the app companies are able to use new and catchy phrases to market to the public. Coined terms such as "digital street hail" or "electronic hail" sound like fancy new ways of identifying pre-arrangements, yet they are still pre-arrangements. With strong public relation campaign in an attempt to bully the TLC and New York City the pressure is now placed upon all of us to do something to adjust to this quickly dominating app frenzy.

Since the TLC has not been able to assert its control over NYC's ground transportation system with respect to this app bonanza, the LRT asks for the intervention of city council to provide proper guidance in the creation of legislation that is fair to small business, the riding public, and the pairing of the two in the technology climate. The definition for prearranged service must incorporate a sophisticated understanding of how new technologies work and not simply cater to a corporate public relations campaign. If a new technology is providing for prearranged service it must be defined accordingly. To do otherwise, simply revisits the practices we left some 30 years ago when radio's were removed from taxi's in the 1980's.

- Consider decreased availability

Allowing a Smartphone application to prearrange service in yellow taxis will decrease the availability of street hail yellow taxis in the public space. It will create a chaotic transportation market where phantom users logging on and hailing a cab via smart phone will now be competing for taxi service with live people, standing curbside, hailing a taxi. This action will end in one of two ways. Either the passenger in the street will get by-passed by the taxi that is in route to pick up the phantom passenger that placed a hold via the smart phone app or the reverse will occur where the phantom passenger is left stranded.

- That does not discriminate with applying a two tier system of service

Another area needing close consideration will be the passengers that are placed at the greatest disadvantage, those passengers that do not own smartphones. These passengers are doubly disadvantaged since they must now compete against passengers hailing on the street AND digitally hailing from their Smartphone.

The outcome will be nothing other than a chaotic transportation system with increased frustration to awaiting passengers.

- Address safety concerns

Utilizing a Smartphone application to prearrange a yellow taxi creates customer service and safety issues. How will complaints be monitored if the apps do not have some contractual agreement with the city? How will complaints be identified if passengers are placing complaints against taxicabs if the only marker they have to use is their smart phone device? Will the city be aware of and monitor all the app companies that provide this “service?” Or will the summons be issued to the owner/driver of the vehicle?

How will drivers utilize these phones that are being provided to them, will the devices be mounted? If so, placing additional devices on the dashboard of the taxicab will only further distract the medallion drivers that must currently monitor the meter and the driver information monitor, also known as the (DIM) under the current TPEP contracts. Where will we draw the line in the amount of devices to be mounted on a vehicle that is operating to transport passengers?

I ask Council to consider the notion that thoughtful regulation should not only clarify but reinforce the separation between street hail and prearrangement while still incorporating the interest of technology. There are ways that this can be achieved if we are simply asked and included in the dialog. The use of legal Smartphone applications to augment the availability and reliability of the prearranged service will result in maintaining the current street hail supply while increasing the supply of prearranged vehicle availability. The end result will be the improvement of the current and praised New York City ground transportation system through the utilization of technology.

With this final statement I conclude my testimony. Thank you for allowing me the opportunity to speak before you. I'd also like to ask the council to allow me to submit the Livery Roundtable's white paper that was drafted and submitted to the TLC titled "Smartphone Application Memorandum: *The Wrong Approach to the Right Solution*" into public record.

I am happy to answer any questions from the Councilmembers at this time.



Livery RoundTable

Smartphone Application Memorandum:

“The Wrong Approach to the Right Solution”

The integration of technology into the ground transportation system has the capacity to enhance the customer experience, improve reliability and performance, and increase the public’s ability to access the transportation system. However, if implemented poorly, technology may prove highly disruptive, creating instability to ground transportation providers and frustrating the customer experience. Thus, it is critical that transportation regulators, public policy makers, and elected officials take a thoughtful approach to the integration of new technologies to the ground transportation system and incorporate the lessons from history that led to the establishment of New York City’s world renowned transportation system.

Recently, the New York City Taxi and Limousine Commission (TLC) issued a Request for Proposals (RFP) for a Smartphone application. The RFP requires any Smartphone application to allow passengers to pay fares with their Smartphone through the existing medallion payment system. While this is the only required feature for a potential Smartphone application, the RFP allows for developers to add additional features for passengers, including location-based services for yellow taxis. In addition, there have been recent reports about Smartphone applications that provide location based services on their own. We applaud the efforts to utilize technology to improve the experience for passengers. However, the incorporation of Smartphone application into the current ground transportation model in New York City must include safeguards that guarantee the continued separation of street hail and prearranged vehicle services. We believe that any location-based technology that blurs the distinction between street hail and prearranged vehicle services forgets historical precedents that created such separation and will lead to a negative impact on both transportation professionals and passengers.

As an initial premise, in evaluating the best use of new technologies, the TLC must not rush forward without conducting a thorough and proper analysis. Additionally, the TLC should be weary of private Smartphone application companies seeking City contracts. The primary objective of the TLC should be to introduce technology in a fashion that minimizes chaos and maximizes the service to the consumer. Unfortunately, there appears to be a rush by the regulatory body to incorporate a Smartphone application into the New York City ground transportation system that, if implemented, will most certainly result in a multitude of adverse and unintended consequences. It is vital that when developing its regulatory scheme for Smartphone applications, the TLC not forget the historical separation of street hail service from

pre-arranged for-hire vehicle service, the effect that new technology will have on the availability of transportation service, and how best to harmonize new technology with the agency's purpose to serve the public interest.

The Livery Roundtable's primary concerns regarding the Smartphone application include:

- A Smartphone application further blurs the distinction between the for-hire vehicles and street hail. Clear concise delineations are needed before the implementation of a Smartphone application.
- Allowing a Smartphone application to prearrange a yellow taxi will decrease the availability of street hail yellow taxis in the public space.
- Utilizing a Smartphone application to prearrange a yellow taxi creates customer service and safety issues.

Distinguishing For-Hire and Street Hail Service:

The intent of the TLC rules regarding prearranged trips is clearly laid out on the TLC's official website page under "Passenger Information / Frequently Asked Questions". Under the question "How can I pre-arrange a trip in a Yellow Cab?", the TLC answers:

Only For Hire Vehicles (FHV) may have a pre-arranged agreement with clients. This means that the client may request to be picked up and dropped off at a specific location and know the amount of fare ahead of time. This system does not apply to yellow taxicabs. Generally, you cannot pre-arrange taxicabs, which have the sole right to pick up non-prearranged "street hails" and may not engage in pre-arranged service; they can be only hailed individually.

Through regulations and existing practice, the TLC does not allow for prearrangement of yellow taxi vehicles and individuals are not allowed to place a phone call to reserve a yellow taxi ride. The removal of radio dispatch from yellow taxi vehicles increased the availability and reliability of yellow taxi service. Smartphone apps should have the same prohibition as regular phone dispatch. However, because the Smartphone is using a different technology than radio dispatch, the TLC appears to be unsure of where such communications fit within existing definitions related to prearrangement. There should not be any uncertainty. Smartphone prearrangement of a yellow taxi is a prearranged trip, which should be clarified in the definition of "prearrange".

Smartphone application companies, foreign to the unique New York City ground transportation regulatory scheme, are seeking to take advantage of the absence of specific definitional language for the new technology by falsely classifying an arranged passenger fare that utilizes the Smartphone app with the euphemism "digital street hail" when such arrangement is clearly a new form of prearrangement. To bolster their euphemism, Smartphone application companies have developed a savvy public relations campaign in an attempt to bully the TLC and New York City into making wrongheaded decisions. The TLC must assert its control over NYC's ground transportation system by moving with the times. The definition for prearranged service must incorporate a sophisticated understanding of how new technologies work and not simply cater to

a corporate public relations campaign. If a new technology is providing for prearranged service it must be defined accordingly. To do otherwise, will delve the system back to the chaos of the 1980s.

While the taxi and for-hire vehicle industries serve different needs, the purpose of both is to provide available and reliable means of transportation. The residents and visitors of New York City have long come to understand that the primary difference between taxis and for-hire vehicles is not just a matter of the color of the vehicle. For the past 30 years, it is an accepted fact to all who seek transportation in New York City that in order to obtain transportation via taxi one must go to the street and find an available taxi within their field of vision. It is also an accepted fact of life in New York City that taxis are in short supply, available predominantly in Manhattan. The for-hire vehicle industry was created in part to increase the availability of the transportation services available to the public. Taking the radios out of the taxis essentially created the for-hire vehicle industry. This served to increase the availability of transportation services available to the public while also satisfying the need of the public to arrange for transportation in advance without having to go on the street to seek an available taxi. For the past 30 years, the only way that both the taxi and for-hire vehicle industry has been able to flourish and peacefully co-exist is by maintaining a clear separation between the two types of service. From its inception, one of the purposes of the TLC has been to enforce the clear separation between the taxi and for-hire vehicle industry. This is the means by which the TLC has been able to maintain the availability of the transportation services that are available to the public.

Mankind has always tried to make life easier through mechanization and automation. History is replete with the means by which technology has enabled us to work faster and more efficiently. Technology is something that we all must continue to embrace, but we must tread lightly in its implementation into the New York City transportation industry. Otherwise we risk blurring the lines between hail service of taxis and the for-hire vehicle pre-arranged service, re-creating a system that did not work 30 years ago.

While the LRT supports the use of technology, it does so only to the extent that emerging technology is met with the proper regulatory response that maintains the clear separation between the taxi and for-hire vehicle industry. The creation of the radio allowed for the easy transmission of speech. The creation of the cellular telephone permitted an even easier and cost effective means by which to transmit speech. Modern Smartphones are no different than the radios and cellular telephones of the past. Modern Smartphones have created the means to automatically and pervasively transmit data communications. In essence, the Smartphone of today is no different than the radio of the past. Radios were taken out of the taxis 30 years ago not because the technology was ineffective, but because the radios blurred the lines between street hail service and pre-arranged service. Taking the radios out of the taxis created a beneficial separation and increased the transportation services available for the public. Permitting taxis to use Smartphones to locate persons seeking transportation or to enable a prospective customer to contact an available taxi will only serve to blur the lines once again. If technology is to be used, it must be done so within the current regulatory scheme that maintains the unambiguous separation between the hail service of taxis and the pre-arranged service of the for-hire vehicle industry. To do otherwise will cause a return to the system that did not work 30 years ago, resulting in decreased availability of yellow taxis and a less reliable transportation network.

Since its inception, the for-hire vehicle industry has been the means by which New York City has increased its ground transportation vehicle availability both geographically and hours of the day when yellow taxis are not available or in very high demand. Although the TLC is responsible for both the non-medallion for-hire ground transportation of New York City, and the yellow medallion taxis, the TLC seems to have forgotten this fact when seeking to implement Smartphone applications upon the New York City ground transportation system. Smartphone applications present technology that may also be used to increase availability and reliability of the for-hire prearranged sector of New York City's ground transportation. It is respectfully requested that the TLC explore all possible ways of facilitating the legal implementation of Smartphone application into the for-hire prearranged services.

Decreased Availability of Street Hail

To be clear, the TLC's stated mission is to improve the availability and reliability of ground transportation for New York City's residents as well as visitors. This mission was thwarted in the 1980s when yellow taxis were permitted to use radios to engage in prearrange service. Many have commented that radios were removed from yellow taxis due to their contribution to discriminatory practices. In fact, the radios were ultimately removed from the yellow taxis due to the way this technology impacted the availability of yellow taxi service. What the TLC learned in the 1980s, and what is still true today, is that when yellow taxis were engaged in prearranged service (the aforementioned radio service) the number of yellow taxis available for street hail service was drastically diminished. The TLC removed radios from yellow taxis to remedy this "availability" issue. However, rather than completely banishing radios from New York City's transportation services, the TLC mandated that radios be transferred to a different type of a vehicle -- the for-hire vehicle. By doing such, the TLC addressed the refusal issue AND added a significant number of available vehicles to the New York City's ground transportation system: the for-hire non-medallion sector. This is an important lesson in New York City's ground transportation history: allowing yellow taxis to engage in prearrange service will reduce the availability of street hailing yellow taxis.

Additionally, if the TLC had simply removed the radios from the yellow taxis, but not authorized the use of radios by non-medallion for-hire vehicles, the TLC would have increased the availability of yellow taxis for street hail service while significantly decreasing the availability of prearranged ground transportation. This represents another important lesson from that era.

Permitting any form of prearrangement through the yellow taxis use of Smartphone applications is the present day equivalent of the use of radios by the yellow taxis in the 1980s. Like with that experience, yellow taxi prearrangement by use of Smartphone application will inevitably lead to a significant decrease in street hail availability. Allowing yellow taxis to use Smartphone applications is nothing more than a fancy modern day means by which a consumer will contact a third party to pre-arrange taxi service. Whether the third-party is contacted via telephone or via Smartphone application, the result will be a greater decrease of yellow taxi street hail availability. Today's TLC would do well to remember the sordid history of such communication to yellow taxis.

While in most of the cities around the world, the problems taxis are facing evolve from not having enough street hail demand: New York City is blessed with high street hail demand and is actually suffering from low yellow taxi supply. The last thing the TLC needs to do is take actions that will dramatically reduce the street hail availability of yellow taxis.

Accountability and Safety

Regarding the ambiguity of a yellow taxi claiming a prearranged fare and therefore bypassing street hailers (refusals are often based on race, sex or other reasons), the TLC may respond that today's technology will allow for a confirmatory audit that the yellow taxi driver had accepted a prearranged fare and therefore did not engage in a refusal. While technology cannot identify street hail refusals, i.e. discrimination, allowing for a legal prearrangement by yellow taxi drivers will have a devastating ripple effect on both street hailers and the yellow taxi driver that accepted a prearranged call and is indeed on his/her way to pick up that customer. To demonstrate the effect on the street hailers and the legally prearranged yellow taxi driver, three examples will need to be examined.

Example 1:

A yellow taxi driver on 56th Street and Park Avenue accepts a prearrangement from a passenger on 56th Street and Madison Avenue. While driving from Park Avenue to Madison Avenue, the driver will be passing by passengers that will be attempting to hail him. As the driver passes these potential fares, many will choose (and there can and will be more than one) to record the yellow taxi identification number and file a refusal of service complaint with the TLC. Each prearrangement of a yellow taxi has the potential of resulting in several public complaints ending with several summonses to the innocent driver that has lawfully accepted a pre-arranged trip. The numerous complaints will also have an effect on an understaffed TLC.

Example Two:

Three people standing on the same street holding their hands up trying to hail a taxi when suddenly a yellow taxi slows down next to the curb. Instead of one of them entering the taxi, a passenger that prearranged the taxi while in his office comes out of an office building and enters the yellow taxi. Similar to the first example, the passengers will launch a complaint against that taxi driver resulting again in several public complaints ending with summonses to the driver and/or complaints overloading the TLC's administration. This is in addition to the angst and frustration with taxi service that will be experienced by the three people on the street who feel that the person who pre-arranged the taxi actually "stole their street hail".

Example Three:

Same as the second example, but in this case one of the street hailers on the curb enters the yellow taxi and the driver either refuses to take him, resulting in friction, or agrees to take him resulting in the prearranged passenger launching a complaint.

In all three of the examples above, the ultimate result will be the decreased availability of yellow taxi service and the belief by the public that taxi service is unreliable. Assuming the TLC's solution to the issues brought up by the examples above will be to allow for the prearranged yellow taxi to start the meter the moment the yellow taxi has accepted the prearrangement, this

act will simply mean that the TLC has increased the fleet of prearranged vehicles while dramatically decreasing the number of yellow taxis available for a street hail. Although this outcome alone should deter the TLC from allowing for the prearrangement of a yellow taxi, there are many other complications from allowing the yellow taxi to start the meter the moment the driver accepts the prearrangement such as a no-show, cancellation, and so forth.

An additional issue concerns vehicular/passenger safety. Yellow taxi drivers engaging in prearranged service will often be reading their Smartphones seeking fares and therefore will be distracted by the process of prearranging while cruising the streets, thus elevating the risks of an accident. Regulations prohibiting the use of the application while the taxi is in motion will not prevent it, just as laws against driving above the speed limit does not prevent it from occurring.

Conclusion

In summary, the New York City ground transportation system is comprised of both the street hail and the prearranged services. Allowing for the Smartphone prearrangement of a yellow taxi will decrease street hail supply, create serious safety issues, increase public complaints while resulting in legal yellow taxi drivers' suffering hardship due to continuous customer complaints. On the other hand, thoughtful regulation should clarify and reinforce the separation between street hail and prearrangement. The use of legal Smartphone applications to augment the availability and reliability of the prearranged service will result in maintaining the current street hail supply while increasing the supply of prearranged vehicle availability. The end result will be the improvement of the current and praised New York City ground transportation system through the utilization of technology.

Our fascination with technology, and its endless opportunities to improve almost all areas of life, can give rise to a feeling that unless one joins the trend of applying technology he/she will be left behind. Such fears of "missing out" often lead to hasty and reactionary policies that do not properly utilize technology. The Livery Roundtable embraces technology, however, there exists a right and wrong way for regulatory bodies such as the TLC to facilitate integrating Smartphone applications into New York City's ground transportation industry. We respectfully request that the TLC consider the lessons of history and take caution before implementing the use of new technology.



**City Council Committee on Transportation, Jointly with the Committee on
Technology**

**T2012-5236 Oversight Hearing: Challenges & Opportunities of Technology in the
Taxi & FHV Industries**

**Int 0599-2011 Requiring that taxicab passenger enhancement systems be accessible
to people with disabilities**

September 19th, 2012

Good morning, I'm Edith Prentiss the Chair of the Taxis For All Campaign, President of the 504 Democratic Club, Vice President of Disabled In Action for Legislative Affairs and a Board Member of the Disabilities Network of NYC. I'd like to thank the Speaker of the Council and Chairs of the Transportation and Technology Committees for inviting me to speak on this topic of great importance to New York City's Disability community.

The road to even only the slight percent of accessible taxis (1.74%) and FHV (.06%) has been long. In 1995, when Mayor Rudolph Giuliani sought to auction 400 new medallions, members of NYC disability groups (including 504 Democrats, DIA and EPVA) requested a reasonable percentage be set aside for wheelchair-accessible cabs but none were. In 1997, Council Member Tom Duane proposed a reso urging the TLC to undertake an accessible taxi and FHV pilot. 1999-2005, Symphony, a black car company (charging about three times the cost of a taxi or car service with four vehicles attempted to serve the entire city. In 2000,

the TLC proposed that taxis purchased after July 1, 2001 would need to be wheelchair-accessible, and FHV would have to provide "equivalent" accessible service. After 9-11, the TLC postponed FHV enforcement, and began enforcing the in the black car industry. In 2003, the TLC began to enforce it in the livery industry. In 2003 only 9% (81) of the 900 medallions to be sold over the next few years would be restricted for accessible taxis. From 2003-2006, A Ride for All attempted to serve the City with between 3-5 vehicles. In 2004 CM Lopez's Int 84 had 38 sponsors (veto proof) but the Int never had a hearing. In May 2005 it was agreed that 150 access restricted medallion would be sold. In June 2006, the last 54 of the 150 were sold bring the number of accessible taxis to 231.

The FHV industry percent is so bad it make the yellows look good! From Symphony's 5 cars in 1999 to its 3 in 2006, plus A Ride For All's 3-5 vehicles (ARFA was eventually bought by Carmel) to a 9/11 high of 23 (out of approximately 35,000 vehicles). The TLC's enforcement of the FHV Rule was never particularly vigorous. I live in Wash Hgts, day and night liveries freely pick up street hails. I was very surprised to learn that the TLC had abandoned enforcing the FHV Rule, as it was about the only solace we had. Since 1995, the disability community has become mighty unconvinced that the TLC might do anything to support us. About the only good thing about the Central Dispatch program the TLC rolled out last week for taxis was the Central Dispatch data and statistical capabilities. Those of us who live who live where taxis rarely roam were excited and interested to see how a Central Dispatch would work in the livery industry only to have that piece dropped forcing us to call numerous bases as we search for an accessible vehicle.

We strongly support Int 0599-2011, as we believe that taxicab passenger enhancement systems must be accessible to people with disabilities. Technological enhancements and assistive technology (AT) has played a large role in the ability of many people with

disabilities to function independently. AT promotes greater independence by enabling people to perform tasks that they were formerly unable to accomplish, or had great difficulty accomplishing, by providing enhancements to, or changing methods of interacting with, the technology needed to accomplish such tasks.

In March 2004, the TLC's Board of Commissioners mandated specific technology based service improvements be implemented in all medallion taxicabs. Passenger enhancements include the installation of an information monitor, incorporating electronic message transmission capability into the taxicab, and, the addition of equipment to enable the acceptance of credit/debit cards. The TLC web site states T-PEP "represents a rare opportunity to significantly improve the riding experience of countless New Yorkers and visitors, as well as for drivers. It greatly improves communication between the TLC and its constituents. The ability to communicate with taxi drivers on a real time basis has enabled the TLC to increase the level of service available to the riding public in groundbreaking ways. "It further state "Text messaging services offer many benefits to drivers and passengers: communication with taxis in the event of a citywide emergency; streamlining the process for lost property claims.

Strange as it may seem, I'm proposing extremely low tech enhancements.

1. Mount lights by the wheelchair casters in the vehicle so the driver can clearly see they are securing the chair correctly. About a month ago, a driver erred when he attempted to secured my chair by inserting the securement S hook into the metal loops welded to my chair's frame. Except instead, he attached the S hook on an electrical cable between the motor and the controller killing my chair!
2. Mount the wired or wireless point of sale terminals (card swipe) on cables so that it can come to the wheelchair user rather than forcing the passenger with a disability to depend on

the driver to read the charges, enter their personal identification number or PIN or sign on their behalf to authorize the transaction. . A few weeks ago, I was at a crafts fair, almost every vendor had a wireless point of sale terminal some even attached to their cell phone. Interestingly enough, there is currently a federal lawsuit against Wal-Mart in California for having point of sales terminals that cannot be reached by wheelchair users and customers of short stature

3. Slightly higher tech would electronically enforce the FHV Rule by keeping drivers from picking up illegal street hails. (The Central Dispatch programs lock down might be utilized.)

Of course, there are numerous (higher tech) technology enhancements: for example a loop communicate with t-coil hearing aid users, cochlear implant wearers and induction receivers passengers and drivers; CART (Communication Access Real Time Translation) system would translate audible speech to written text for passengers; conversely, written text can be translated into audible speech not just for individuals who are blind or have low vision but also some passengers with TBI or with certain other disabilities. Google translate would help non – English speakers and readers. It is interesting to note how many assistive technology products make the leap to the mass market usually at Hammacher Schlemmer or other high tech gadget marketers.

Just about any taxicab passenger enhancement systems would contribute to the passenger experience of a passenger with a disability must be accessible. It is the responsibility of the TLC and product developers to ensure they would be accessible to passengers with disabilities.

Public Testimony
Submitted to City Council Committee on Transportation
September 19, 2012
Regarding

▪ **Oversight: Challenges and Opportunities of Technology in the Taxi & FHV Industries**

Good morning and thank you very much for allowing me to speak before you today. My name is Avik Kabessa and I am the CEO of Carmel.

My testimony today is to focus on those Application Companies that break current laws and are bullying their way into NYC.

To set the record straight, not all Smartphone application companies are law breakers. In fact, many of them comply with current TLC rules and are doing very well. The problem starts when companies disregard existing laws, placing the legal applications at a disadvantage and the public at risk.

I don't know how many times I heard the argument that "we do not want to appear like we are against technology". To those I say. Look around you, NYC is using many legal Smartphone applications already and as much as you can and should be proud of them, it is your duty to protect them from the illegal ones.

NYC is not like any other city in America. Whereas in any other cities, taxis suffer from lack of demand, NYC yellow taxi is blessed with a very high demand. Why do we think yellow taxi medallion sales for over \$800K?

Let's take a city like San Francisco. San Francisco taxis are dual use taxis that can perform street hail as well as prearranged trips so an application like Uber can work there. On the other hand, and I have attached a letter from the San Francisco equivalent to our TLC Commissioner that confirms my statement, due to its dual use system, San Francisco rate of taxis not showing to a prearranged pick-up is 32%.

On the other hand, let's look at our single use NYC system. Using a very conservative number, the for-hire prearranged sector of NYC performs over 200,000 prearranged trips per day or 73,000,000 trips per year. When we checked the TLC records for no-show complaints, we found no more than 700 no-show

complaints per year. Honorable committee, this means that under NYC's single use system, our no-show rate is 0.001%. Why should we ever consider copying San Francisco or any other city in the world?

The use of a device, any device, a radio, a telephone, a cell phone, a pager, or a Smartphone application, to pair a specific passenger with a specific yellow taxi, is a prearrangement of that taxi and nothing else. I urge this committee put a stop to all the semantic games we are being dragged into by the law breakers Smartphone application companies.

I would like to make four recommendations to the committee.

1. The use of a Smartphone application to pair a specific vehicle to a specific passenger is an act of prearrangement and it should not be allowed with yellow taxis.
2. To create accountability and allow muscle of enforcement, a Smartphone application must be part of a licensed base and its right to operate must be attached to the base's compliance with current laws.
3. The only way a Smartphone application can exist without being licensed is if it acts as the engine behind a licensed brand and not acts as the brand itself.
4. Please don't make us into San Francisco

Dr. Avik Kabessa
Livery Round Table
36-31 10th Street
Long Island, NY 11106

November 3, 2011

Dear Dr. Kabessa:

You inquired about the dispatch success for our San Francisco taxis. As we discussed, San Francisco has what you in New York would call "dual use" taxis, that are authorized to pick up both fares that are pre-arranged through a dispatch service and people hailing taxis from the street.

The reality in San Francisco, as it is in most cities, is that the taxis stay in the northwest quarter of the City and are rarely willing to 'deadhead' to the location of a dispatch request anywhere outside of that downtown core. And this is a city of less than 48 square miles.

A comprehensive study conducted in 2005 by San Francisco's Q2 Research Group concluded that once a successful dispatch request had been made to a company and the company successfully dispatched a taxi, "there is a 65% likelihood that the cab will arrive."

In 2007 that figure was re-evaluated by the Goldman School of Public Policy at U.C. Berkeley in its study "San Francisco's Taxi Dispatch Service: Improving Reliability and Response", that reached a slightly better but still unacceptable figure of only 72% dispatch success.

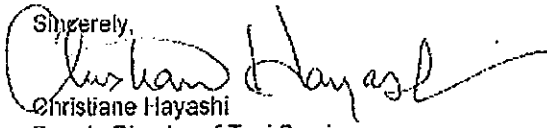
Those numbers vary, of course, depending on many factors: the time of day, the day of the week (in 2007 it was recorded that only 5% of dispatch calls were serviced on Friday and Saturday between 6 and 10 p.m.), the quality of the taxi company, and the neighborhood from which the requests for service originate. Obviously, the more remote the pick-up location, the less likely it is that a taxi will respond to a dispatch order. In one outer neighborhood we recorded a 5% dispatch success rate in 2007. That survey involved making a dispatch request and then waiting to see if it arrived. The surveyors reported that whenever a taxi arrived to take the dispatch call, people wanting a taxi would pile into the vehicle as soon as it pulled over, and in only one instance did the driver make the hopeful passengers get out so that he could service the dispatch call.

You also asked whether drivers sometimes use the excuse of having accepted a dispatch call to justify refusing a fare. A recent case that of which I am aware involved a blind man with a service dog who asked a person on the street to hail him a cab. When a taxi pulled up and opened the door the blind man advanced, whereupon the driver shut the door and turned around the corner to avoid the fare, scattering the pedestrians in the crosswalk in his haste. When a complaint was filed the driver's excuse was that he had accepted a dispatch call, and yet he had clearly pulled over to pick up the person who hailed him. Thus, the person waiting for a dispatched cab was disadvantaged because the driver was willing to take another fare before getting around to picking up the dispatch passenger, and the person in the street was disadvantaged because the cab driver was able to use the dispatch call as an excuse to refuse service.

We don't have more recent reliable data, but suffice it to say that, anecdotally, the residents of our outer neighborhoods are very unhappy about the unavailability of taxi service.

Please let me know if there is any further information that I can provide.

Sincerely,



Christiane Hayashi

Deputy Director of Taxi Services
San Francisco Municipal Transportation Agency

**"ROGUE" SMARTPHONE APPLICATIONS
FOR TAXICABS AND LIMOUSINES:
INNOVATION OR UNFAIR COMPETITION?**

**A NATIONAL REGULATORY REVIEW OF SAFETY, ACCOUNTABILITY AND
CONSUMER PROTECTION LEGAL ISSUES**

JUNE 29, 2012

Matthew W. Daus, Esq.
Partner & Chairman,
Transportation Practice Group
Windels Marx Lane & Mittendorf, LLP
156 West 56th Street
New York, NY 10019

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I. Executive Summary

As technology continues to innovate, more and more resources are available via smartphone applications – and hailing a taxicab or arranging for transportation via a for-hire vehicle is no exception. Hailing a taxicab or arranging for transportation no longer requires standing on a street corner or making a telephone call to a livery base; dispatching both taxicabs and other for-hire vehicles is now being done in growing numbers through smartphones and smartphone applications. Technology start-up and transportation companies have started to flood the market with applications which allow for, among other things, the “hailing” or “arranging” (a significant legal distinction to be discussed) of transportation and mobile payment.

Many regulatory agencies are struggling to understand the operation of these transportation applications 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, such as those of TaxiMagic, Uber, Cabulous, Hailo and GetTaxi, to name just a few.¹ These applications are distinguishable from other mobile applications directly operated by licensed transportation companies such as GroundLink,² which utilizes mobile applications to facilitate its business. Issues are developing with many of the new smartphone applications, which are not operated by transportation companies, but rather by third-party entities that facilitate the transportation and communication between transportation companies and passengers, but do not provide transportation services themselves.

In most instances, these companies are not licensed by the transportation regulatory authority in the jurisdiction although, in a few instances, they are expressly regulated. 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. Of concern is whether these smartphone applications operate as electronic street hails or as prearranged services; whether the operations create safety concerns for passengers; whether vehicles dispatched by applications are meeting the appropriate requirements; whether the fare structures protect the consumer and distinguish vehicle services in their respective markets; and whether the charges are based on measures that mirror the fares calculated via a taximeter without meeting the rigid technical requirements for a taximeter.

This report then sets forth the regulatory prohibitions and, in a separate section, the regulatory framework of the following jurisdictions: Seattle, San Francisco, the District of Columbia (“D.C.”), Chicago, New York and San Diego – all jurisdictions in which one or more applications are in use.

¹ More information about TaxiMagic is available on its website available at https://taximagic.com/en_US; More information about Uber is available on its website at <https://www.uber.com/#>; More information about Cabulous is available on its website available at <http://cabulous.com/>; More information about Hailo is available on its website available at <https://hailocab.com/>; More information about GetTaxi is available on its website available at <http://gettaxi.com/>.

² More information about GroundLink is available on its website available at <http://www.groundlink.com/adwords/g104/carservice.html?c3=ground%20link,10839528409,e&gclid=COG6qdoI77ACFUfo4AodZDyxwA>

Despite decades of thoughtful responses to address public safety and consumer protection by establishing standards for equipment that meets quality levels for weights and measures, the regulators in local jurisdictions now find themselves with little guidance as to how to respond to the rapidly changing and expanding smartphone application technology. Moreover, if the subtle distinctions and methodology of these applications are not addressed, it leaves those licensed, traditional stakeholders in the ground transportation business at a disadvantage compared to the start-up technology companies. In sum, this creates an unlevel playing field.

There is no national or model response to this emerging market, and a “Wild West” environment is the current state of play. Local regulators would benefit from model legislation setting forth standards for the smartphone technology to co-exist within traditional taxicab and for-hire service.

Answering these questions may require regulators to obtain some technical assistance, but certainly regulators will need to address “how these apps work” as a fundamental question in order to decide whether these smartphone applications meet existing regulatory requirements. Hailo, which has announced plans to enter the United States market in Chicago and/or New York, has been established in London as a “matching service” for potential riders who use the application as an electronic street hail, with no additional charge to the passenger if a £5 minimum fare is met. In the United States, TaxiMagic (currently operating in many jurisdictions, including Chicago, San Diego, San Francisco, Seattle and the District of Columbia) and GoFastCab (in numerous cities, including Chicago and San Diego) also operate as electronic hails for taxicabs.³ Cabulous functions in the same manner in San Francisco. Limos.com and LimoAnywhere have smartphone applications that enable the users throughout the United States (and in each of the six jurisdictions discussed in this Report), to arrange for-hire service via their affiliates.⁴

The transportation industry and several jurisdictions have raised concerns that certain applications may be “rogue” and operating in an undefined territory between for-hire and taxicab regulations. Such applications may be labeled “rogue” because they neither operate as nor meet all the regulations set forth for taxicab or for-hire vehicle operators; rather these “rogue” applications operate as a hybrid of these two distinct sectors of the transportation industry. Indeed, there are concerns that such rogue applications circumvent the prearrangement requirement of for-hire vehicles (as required in many jurisdictions, including all six jurisdictions in this Report) and/or use an impermissible method of fare calculation based on the service provided. For example, some applications’ fare calculation leads the user to believe the vehicle is operating like a taxicab, but the vehicle is dispatched as a for-hire vehicle and not licensed as a taxicab, which results in consumer confusion. Further, certain “rogue” applications which calculate fares like a taxicab incorporate additional fares, which are not traditionally included in a taxicab fare. Many regulators are concerned that such “rogue” applications’ methods of calculating fares are without the uniformity and safeguards of a taximeter. As further discussed below, some jurisdictions prohibit licensees (taxicab drivers) from demanding any fare above what is displayed on the taximeter. Given such regulation, any application that incorporates any

³ More information about GoFastCab is available on its website available at <http://www.gofastcab.com/>

⁴ More information about Limos.com is available on its website available at http://www.limos.com/?gclid=CNqpi_KT77ACFYTd4AodtVoigw; More information about LimoAnywhere is available on its website available at <http://www.limoanywhere.com/>.

additional service fees, fares, or gratuity cannot comply with such regulations. For example, Uber incorporates demand into its fares, creating what some have called “dynamic pricing.”⁵ On New Year’s Eve, such “surge pricing” caused passengers to pay triple digit fares for trips of short distances.⁶

Distinctions such as prearrangement and fare calculation may not resonate with the average passenger, but such distinctions play a critical role in the fundamental economics of the transportation market and specifically assist the regulators in distinguishing and ensuring adequate and appropriate transportation is available in each specific sector. Thus, after years of defining the distinctions between taxicabs and for-hire vehicles in rational regulations, the industry and regulators are concerned that “rogue” applications blur this distinction in comparison to the business practices of traditional ground transportation providers. Further, many regulations surrounding the transportation of the public exist to protect the public and hold those engaged in such activities accountable for providing the highest standards and quality service to ensure the safety of the public.

II. Regulatory Issues

A. Prearrangement or Electronic Street Hail?

Many applications distinguish their services between the for-hire and taxicab industries. For instance, applications such as Uber or Hailo are used to arrange service for black cars or for-hire vehicles, whereas, applications such as TaxiMagic or GetTaxi are used to arrange taxicab service. Because of the significant use of such applications, many jurisdictions have evaluated, or are starting to evaluate, the use and regulation of these applications. Specifically, New York City has gone as far as to request application development for an “official payment application” and others, such as D.C., have recently proposed new legislation, which will permit operations related to smartphone applications which were once deemed “illegal.” (Discussed in further detail below).

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 have yet to answer these questions.

⁵ <http://www.spruancegroup.com/blog/bid/50060/Dynamic-pricing-and-the-135-cab-fare>

⁶ See generally, http://dcist.com/2012/01/did_uber_overdo_it_on_new_years_eve.php; <http://techcrunch.com/2012/01/01/ubers-new-years-eve-surcharges-demonstrate-the-harsh-reality-of-dynamic-pricing/>; <http://bits.blogs.nytimes.com/2012/01/08/disruptions-taxi-supply-and-demand-priced-by-the-mile/>

B. Safety and Accountability Concerns

One of the significant concerns is the policing of the regulatory framework, i.e.: how is the application provider held accountable for the safety of the passenger, if at all. A broad review indicates most applications are technology start-ups and are not associated with any specific livery or taxicab business license. As such, each application operates as a third party to the traditional business arrangement and, in most cases, is not expressly accounted for under the jurisdiction of the taxicab or for-hire vehicle regulators, allowing such applications to operate in a gray area. Certain application companies, including Uber, state they “carefully select fleet partners and work to ensure that they all have the proper licensing.”⁷ However, earlier this year, Uber was in the D.C. news for dispatching a vehicle without the proper insurance or vehicle license and the driver did not maintain a chauffeur’s license.⁸ The driver was cited for the violations, but there were no reports of liability being assessed directly to Uber. As further discussed herein, to ensure driver compliance, some jurisdictions currently implicate livery bases or owners for the liabilities of the driver to ensure a check on the system. However, because applications like Uber are not regulated *per se* by many jurisdictions, they seem to escape potential liability and accountability for the shortfalls of the drivers they dispatch, unlike livery bases and owners.

In New York City, the Taxi & Limousine Commission (the “TLC”) regulations provide that only a base may dispatch a vehicle associated with it, and the TLC issued an Industry Notice stating individual drivers may not directly negotiate with applications for dispatch, and livery bases must be involved. If drivers want to negotiate directly with an application for dispatching services, the application company is required to file and obtain a livery base permit in accordance with the regulations of the TLC in order to dispatch such vehicles. This regulation ensures, in part, the regulatory accountability of both parties.

Additionally, even while operating in a regulatory gray area, many application companies program their applications to include a heavily tilted “click-wrap” agreement, which must be accepted prior to installing the application. However, the concern with such an agreement is the company’s attempt to limit the company’s liability on various fronts, including such statements, as the company shall not “assess the suitability, legality, or ability of any third party transportation provider,”⁹ or obliteration of liability with respect to the quality of service provided. Similar limitations pertaining to liability or responsibility for “taxi[cabs] actions or inactions” are found in other applications terms and conditions.¹⁰ It should be noted that whether or not such provisions are legally enforceable against the user would have to be determined by each respective jurisdiction.

C. Use of “Taxi” or “Taxicab” in the Name

Many jurisdictions include restrictions on the use of the word “taxi” or “taxicab” in the for-hire industry to prevent consumer confusion and enforce the distinctions in the taxicab and for-hire industries. Specifically, the Washington Code (as defined herein) and the California

⁷ <http://support.uber.com/entries/311483-how-do-you-select-your-drivers>

⁸ http://www.washingtonpost.com/local/dc-politics/uber-car-service-busted-by-dc-authorities/2012/01/13/gIQAAnL2DxP_story.html

⁹ <https://www.uber.com/legal/terms#>

¹⁰ <https://hailocab.com/terms>

Public Utilities Code (as defined herein), expressly prohibit limousine companies from holding themselves out as taxicab transportation providers and/or using the words “taxi” or “taxicab” in their name. Uber’s first public legal obstacle was a cease and desist letter from the San Francisco Municipal Transportation Agency and California Public Utilities Commission, citing, *inter alia*, improper use of the word “taxi” or “cab” in a livery or limousine company’s name, the use of which is prohibited by section 5386.5 of the California Public Utilities Code. Additionally, Uber was cited because it did not register a color scheme with the SFMTA (as defined herein), as required by S.F. Code sections 1105(a)(1) and 1106(a). Almost immediately, “Ubercab” dropped the “cab” and became just “Uber.” Again, this violation was because Uber dispatches livery and other for-hire vehicles and not taxicabs. On the other hand, applications such as “Taxi Magic” or “Cabulous” dispatch taxicabs and may lawfully include the word taxi or cab in their names.

D. Service Refusals

Most applications incorporate some mechanism for consumer feedback. However, some applications take it one step further and provide both the driver and the passenger with the opportunity to rate the other, thus, potentially creating a forum that drivers may utilize to distinguish passengers. For instance, if a passenger does not tip more than the included gratuity, requires additional assistance or travels to an underserved or remote location, drivers have the ability to log such “undesirable” passengers’ information when the fare is complete. Uber claims the dual-rating system is to ensure quality on both ends.¹¹ However, if the user has a poor rating, he or she may have a difficult time successfully using the application because, as the *Economist* indicates, a driver has the ability to reject a fare if the user has a poor score.¹² This is significant, again, because such application companies are potentially unaccountable for the driver’s behavior, including any illegal refusals of passengers, unlike licensed bases, which are directly responsible for many of its driver’s behaviors. Such applications are profiting from drivers without accepting responsibility or liability for such services. This forum generated by users and drivers may also implicate significant consumer privacy concerns beyond the scope of this Report.

Some jurisdictions, including Seattle and Chicago, have statutes which expressly prohibit the ability to decline potential fares.¹³ Many of these statutes were enacted to protect consumers from being refused service improperly by placing liability on offenders for any service denials. Therefore, a driver’s ability to accept or decline potential dispatch calls creates a whole host of additional regulatory concerns, even beyond claims made directly by consumers (see discussion below for a more detailed explanation of each jurisdiction’s specific restrictions).

E. Fair “fares” and Overcharging

As discussed herein, in many jurisdictions, a smartphone application does not meet the requirements of a taximeter, which is required for taxicabs to calculate fares based on the distance travelled and the time elapsed. For instance, applications are not “wired” into the

¹¹ <http://www.quora.com/Uber-1/Do-Uber-drivers-actually-rate-their-passengers>

¹² <http://www.economist.com/blogs/babbage/2012/06/technology-and-taxis>

¹³ <http://www.cityofchicago.org/dam/city/depts/bacp/publicvehicleinfo/taxiindustryntices/mccchapter9-112publicpassengervehicles.pdf>

vehicle transmission, but, instead, rely on GPS to calculate the fare.¹⁴ The most significant problem with the use of GPS is the lack of oversight regulation as to the calculation of distance and time, which are significant to the calculation of the fare charge. Additionally, taximeters are calibrated, tested, and sealed by a regulatory authority and require periodic inspections. However, there is no such regulation of GPS in this environment and the method by which a smartphone calculates fares. Because of the lack of weights and measures conformity, consumer protection concerns are raised that smartphone application companies may be charging consumers fares in excess of applicable regulatory limits. Further, some applications dispatch for-hire vehicles. In most jurisdictions, for-hire vehicles must charge fares based on a prearranged basis or in accordance with a filed fare schedule; however, some applications charge passengers like a taxicab, based on distance and mileage (and demand).

Additionally, many jurisdictions, including Seattle,¹⁵ New York,¹⁶ and Washington, D.C. require fares to be charged consistently with the rates either approved or published with the regulating body. For example, in New York, a livery base owner may not charge a fare that is more than the fare listed on the Rate Schedule filed with the New York City TLC.¹⁷

Fare regulation has at least two purposes: consumer protection and the ability to distinguish the services and the transportation markets. There is no transparency about certain smartphone application charges until the ride is complete. Further, the applications merge markets by charging fares for one service while delivering another. For example, when Uber first launched in the District of Columbia, the D.C. Commission targeted the application urging it to come into compliance with regulations.

A D.C. Council Committee recently passed new legislation, which would create a vehicle class for sedans that “shall operate exclusively through dispatch and shall not accept street hails” and shall “calculate fares exclusively using time and distance method.”¹⁸ This is significant because it creates a hybrid class of vehicles that may meet the business model of certain application companies.

F. Taximeter or Non-Taximeter

Taximeter regulation, although specifically enacted in each jurisdiction, generally tends to refer to the National Institute of Standards and Technology (“NIST”) and Handbook 44. Handbook 44 is the national standards of technology relating to weights and measures. Section 5.54 of Handbook 44 contains express provisions regarding the requirements of a taximeter. For consumer protection, taximeters are highly regulated and must meet the rigid specifications of Handbook 44, including such regulation as being directly “wired” into the taxicab to ensure accuracy of the fare calculation.

¹⁴ See, Uber uses GPS data from the ride and charges based on time or mileage, depending on how fast the vehicle is travelling, i.e.: when the vehicle is moving slower than 11 miles per hour, Uber charges based on time and when the vehicle is moving faster than 11 miles per hour, Uber charges based on mileage. See, Uber Support, Payment, Billing & Pricing. Available at <http://support.uber.com/entries/517159-how-does-uber-calculate-the-price-of-my-ride> (June 19, 2012).

¹⁵ SEATTLE, WA. MUNI. CODE § 6.310.320(I)

¹⁶ TLC REGULATION § 59B-23(a)

¹⁷ TLC REGULATION § 59B-23(a)

¹⁸ <http://transportationreviews.com/news/2012/05/uber-dc-proposed-bill-may-mandate-more-rules-for-car-service/>

Generally, all taxicabs must have a taximeter and only taxicabs may charge fares based on time and distance as calculated by a taximeter. However, certain applications operate in the seemingly gray area between the taxicab and for-hire industries, offering for-hire vehicles with fares calculated generally in the same manner as taxicabs. When an app user enters a dispatched for-hire vehicle, the application essentially acts as the taximeter, but in most jurisdictions, for-hire vehicles do not have taximeters. For-hire vehicles are not generally permitted to charge fares calculated in this manner, and as such, a taximeter is inappropriate. In Seattle, for example, for-hire vehicles are expressly defined as non-metered vehicles.

If a smartphone application is deemed a measuring device, it will likely have to meet the technical requirements of the NIST and Handbook 44. However, it is fairly clear from the jurisdictional regulations that the many applications cannot meet the rigid technical requirements of such jurisdictions, let alone Handbook 44, which contains the heart of the technical requirements.

III. National Regulatory Review

A. Jurisdictional Overview

Various approaches to distinguish the for-hire and taxicab industries exist across the jurisdictions of the United States. Two of the primary distinctions used are in (1) how fares are obtained, and (2) how fares are calculated. These distinctions play a significant role in how applications should legally operate; however, some applications fall short of the regulations and have created a potentially dangerous gray market in the transportation industry. The following is a general overview of the for-hire and taxicab vehicle regulations in Seattle, San Francisco, Washington D.C., Chicago, New York City and San Diego.

1. Seattle, Washington
 - a. *For-Hire Vehicles*

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 WAC sets forth the rulemaking guidelines in Washington State for the DOL. Recently, counties with large populations, such as Seattle’s King County, gained legislative authority to regulate limousine operations in their respective jurisdictions. Beginning New Year’s Day 2012, Washington State allowed counties with a population of over 500,000 to regulate privately operated limousine transportation services. Prior to this, DOL regulated, inspected and enforced its regulations of limousines exclusively in Washington State pursuant to the Revised Washington Code (the “Washington Code”).¹⁹ This new authority is particularly important for King County in Seattle. Previously, the City of Seattle had no enforcement mechanisms to enforce DOL regulations; however, Seattle was the operating area for approximately 80% of Washington State’s licensed limousines.²⁰

¹⁹ <http://clerk.seattle.gov/~scripts/nph-brs.exe?d=ORDF&s1=117358.cbn.&Sect6=HITOFF&l=20&p=1&u=/~public/cbory.htm&r=1&f=G>

²⁰ <http://transportationreviews.com/news/2011/05/sb-5502-to-allow-enforcement-authority-over-seattle-limousine-companies/>

After months of discussion and in response to requests from Seattle authorities, in December 2011, based on the new authority for localities to regulate limousine operations, Seattle enacted Ordinance Number 123783, which enables the Seattle Department of Finance and Administrative Services to (i) enforce the Washington State rules for limousines, (ii) adopt local laws regulating limousines consistent with state laws, (iii) authorize a cooperative agreement with the DOL for the enforcement of limousine laws and regulations, (iv) and create Chapter 6.320 of the Seattle Municipal Code (the “Seattle Code”).²¹ As set forth in this new ordinance, Seattle’s Consumer Affairs Unit (the “CAU”) within the Department of Finance and Administrative Services has the ability to inspect limousines operating within Seattle for compliance with insurance requirements, investigate service complaints, conduct limousine street enforcement, issue limousine carrier licenses, and issue business licenses to chauffeurs who are not limousine carriers and conduct business within Seattle.²² However, it should be noted that amendments to the Washington Code were incorporated in the authorizing bill, Senate Bill 5502.

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.²³ 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.²⁴ 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.²⁵ 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.²⁶ 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 chauffeur. The Washington Code requires the chauffeur 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.²⁷ If trips are not dispatched from the limousine carrier’s

²¹ SEATTLE ORDINANCE NO. 123783 (2011).

²² KING COUNTY, OR. CODE § 6.32.005 *et seq.* (2011).

²³ SEATTLE, WA. MUNI. CODE § 6.320.020(A) (2011)

²⁴ <http://www.dol.wa.gov/business/limousine/limolicense.html>

²⁵ WASH. ADMIN. CODE § 308-83-105.

²⁶ WASH. ADMIN. CODE § 308-83-105.

²⁷ WASH. ADMIN. CODE § 308-83-200(2).

office, the trip must be prearranged at least 15 minutes prior to pick up.²⁸ 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,²⁹ (ii) ask persons on the street if they want to hire the limousine for immediate service³⁰ or (iii) use a third party to provide passengers for them as a substitute for prearranging the service.³¹ 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.

It should also be noted that the Seattle Code incorporates a statute parallel to the Washington Code sections discussed above.³² The Seattle Code states it is a civil infraction for a chauffeur to (i) solicit or assign customers either directly or through a third party for immediate, non-prearranged limousine service pick-up as described in § 6.320.020, requiring (as further discussed below in Seattle Prearrangement section of this Report) a predetermined fare and arrangement to be made in advance by the customer at a different time and place of the customer’s pick up³³ or (ii) offer payment to a third party to solicit customers for limousine service pickup without current copies of a written contract regarding such services on file at the third party’s place of business.³⁴ Also, this section of the Seattle Code states the written contract may not allow for immediate, non-prearranged limousine service pick up and the chauffeur must carry with him or her a certificate verifying the existence of the contract.³⁵ Because the Seattle Code incorporates much of the same requirements as the Washington Code, the issues and analysis are generally the same on the city level as on the state level. But, the Seattle Code incorporates the additional requirement of a predetermined fare. Therefore, in addition to requiring that the service be prearranged, the fare must also be predetermined in advance of the trip. As such, there are concerns as to whether smartphone applications are operating in contravention to this requirement.

Additionally, the Seattle Code goes one step further and includes a reciprocal enforcement against an individual (the third party) for the third-party’s infractions, making it a

²⁸ WASH. ADMIN. CODE § 308-83-200.

²⁹ WASH. ADMIN. CODE § 308-83-200(4)(a).

³⁰ WASH. ADMIN. CODE § 308-83-200(4)(c).

³¹ WASH. ADMIN. CODE § 308-83-200(4)(d).

³² See generally, SEATTLE, WA. MUNI. CODE § 6.320

³³ SEATTLE, WA. MUNI. CODE § 6.320.060(G)(1) (2011)

³⁴ SEATTLE, WA. MUNI. CODE § 6.320.060(G)(2) (2011).

³⁵ SEATTLE, WA. MUNI. CODE § 6.320.060(G)(2) (2011).

civil infraction to: (i) accept payment to solicit or assign customers on behalf of a chauffeur for immediate, non-prearranged limousine service pick up described in § 6.320.020³⁶ or (ii) to accept payment to solicit customers for limousine service pick up without current copies of a written contract regarding such services on file with the third party's business, also restricting the contract from providing immediate, non-prearranged limousine service pick up.³⁷ In light of these regulations and the civil penalties against both the chauffeur and any third party operators that defy such regulations, there are concerns raised by the operation of applications in Seattle which dispatch limousines (including all vehicle definitions) for "on-demand" service.

Additionally, for-hire drivers³⁸ shall not refuse to provide service to any passenger, except when: (a) the for-hire driver has been dispatched to another call, (b) the for-hire driver arrives at the place of pick up and upon the arrival the passenger is acting in a disorderly or threatening manner or in a way which a reasonable person would believe the driver's health or safety, or that of others may be endangered, (c) the passenger cannot, upon request, show ability to pay the fare, or (d) the passenger refuses to state a destination upon entering the vehicle.³⁹ These express regulations also call into question any application policies allowing chauffeurs to "accept" or not "accept" a dispatch from the application.

b. *Taxicabs*

The Washington Code delegates the regulation of privately operated taxicab transportation services to the political subdivisions of the state.⁴⁰ The Washington Code expressly states, "cities, towns, counties, and port districts may license, regulate, and control the licensing of privately operated taxicab transportation services operating within their specific jurisdictions."⁴¹ The power of the political subdivisions includes: regulating the entry of a business to provide taxicab transportation services, controlling the rates charged for providing taxicab transportation services and the manner in which fares are calculated and collected, regulation of routes of taxicabs, establishing safety, equipment, and insurance requirements, and any other requirements adopted to ensure safe and reliable taxicab service.⁴² Currently, Seattle regulates taxicabs pursuant to the rules and regulations set forth in the Seattle Code, as well as those regulations established under the inter-local agreement with King County.

The Seattle Code defines taxicab as "every motor vehicle: (a) that is held out to the public as providing transportation to passengers or articles for hire; (b) where the route travelled or destination is controlled by the passenger; (c) that carries signs or indicia of a taxicab, including the words "taxi," "taxicab," or "cab;" and (d) where the fare is based on an amount recorded and

³⁶ SEATTLE, WA. MUNI. CODE § 6.320.060(H)(1) (2011).

³⁷ SEATTLE, WA. MUNI. CODE § 6.320.060(G)(2) (2011).

³⁸ For-hire driver means "Any person in physical of a taxicab or for-hire vehicle, which is required to be licensed under this chapter. The term includes lease driver, owner/operator, or employee who drives a taxicab or for-hire vehicle." See, SEATTLE, WA. MUNI. CODE § 6.310.110(J) (2010). See also, SEATTLE, WA. MUNI. CODE § 6.310.110(K) for the definition of for-hire vehicle (excludes taxicabs, school buses and limousines, et al.)

³⁹ SEATTLE, WA. MUNI. CODE § 6.310.465(L) (2010).

⁴⁰ WASH. REV. CODE § 81.72.200 (1984). Note, Chapter 81, subsection 72 is entitled Taxicab Companies, but does not define taxicab or state whether or not liveries would be included under the provisions of this subsection.

However, liveries or for-hire vehicles not operating on a fixed route or carrying less than 7 passengers appear to be unaccounted for in Chapter 81.

⁴¹ *Id.*

⁴² WASH. REV. CODE § 81.72.210 (1984).

indicated on a taximeter (as defined below) or by special contract rate permitted under this chapter.”⁴³ The Seattle Code goes even further and states, despite the foregoing, “taxicab” does not include the definition of those vehicles listed in Section 6.310.110 or *for-hire vehicles*, clearly delineating two separate industries (emphasis added).

Taxicabs shall charge fares based on time and distance, except for flat fares properly filed with the [CAU] Director on forms furnished by the Director, including flat fares to the airport as provided for in the Seattle Code.⁴⁴ In addition, the use of coupons not filed with the Director is strictly prohibited.⁴⁵

Additionally, taxicab associations must maintain a professionally staffed office which is open between the hours of 9 a.m. to 5 p.m. The office shall have a local Seattle phone number, listed in both the white and yellow pages, which must be answered during all hours in which the associated taxicabs are operating.⁴⁶ Every request for service must be satisfied as long as there are operating taxicabs not in use, subject to penalties by (a) the [CAU] Director in the case of the taxicab association or (b) the association in the case of the driver.⁴⁷

2. San Francisco, California

a. *For-Hire Vehicles*

The California State Public Utilities Commission (the “**California Commission**”) 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.⁴⁸ 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.

The City of San Francisco and the SFMTA allow livery service to be arranged through reservations and street hails. Under this regulatory structure, San Francisco permits for-hire vehicles to apply for and legally engage in both activities (“dual use”). In many jurisdictions, livery and limousine service are traditionally provided by the for-hire company. However, given the split in jurisdictions, each service must meet independent regulatory requirements and restrictions. Despite this, for several years, there have been media reports discussing that a number of limousine drivers engage in illegal street pickups, although they are not properly permitted as for-hire vehicles in San Francisco.⁴⁹ As such, it appears that for-hire vehicles of all

⁴³ SEATTLE, WA. MUNI. CODE § 6.310.110(W) (2010).

⁴⁴ SEATTLE, WA. MUNI. CODE § 6.310.530 (2010).

⁴⁵ *Id.*

⁴⁶ SEATTLE, WA. MUNI. CODE § 6.310.230(A) (2010).

⁴⁷ SEATTLE, WA. MUNI. CODE § 6.310.230(A) (2010).

⁴⁸ <http://www.cpuc.ca.gov/puc/transportation/>

⁴⁹ See, e.g. <http://www.ktvu.com/news/news/authorities-crack-down-on-sf-limo-drivers-illegal/nKRRr/>. See also Joshua Sabatini, “More power may be on the way to crack down on illegal cabs in SF” (February 2011) available at

types, which are attempting to pick-up street hails in addition to providing dispatched/prearranged service, must be permitted by the SFMTA, as well as maintaining the registration and insurance requirements outlined by the California Commission.

Pursuant to the California Public Utilities Code (the “**California Commission Regulations**”), the California Commission 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.⁵⁰ For instance, passenger stage corporations (“**PSC**”)⁵¹ must file a tariff with the California Commission setting forth its fares and all carriers must adhere to the fares filed.⁵² A PSC provides transportation services to the general public on an individual-basis with prearranged fixed route service with fixed termini.⁵³ On the other hand, 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.⁵⁴ 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.⁵⁵

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.⁵⁶

To our knowledge, the California Commission has not addressed whether the use of a third party smartphone application would or would not be considered solicitation of a passenger on the street. For example, if a limousine chauffeur contracted with a smartphone application to receive fares when he or she was available, is the notification and indication to the smartphone application company that such vehicle is available considered a solicitation of passengers? Some regulatory agencies, such as in Seattle, have attempted to address this scenario stating a chauffeur may not use a third party to circumvent prearrangement. However, this remains an open issue in California.

<http://www.sfexaminer.com/local/transportation/2011/02/more-power-may-be-way-crack-down-illegal-cabs-sf#ixzz1dKkiBmJS>.

⁵⁰ 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).

⁵¹ CALIFORNIA PUBLIC UTILITIES CODE § 226.

⁵² <http://www.cpuc.ca.gov/PUC/Templates/Default.aspx?NRMODE=Published&NRNODEGUID=%7b6523CC75-FEE1-4355-AC6B>

BCCEA377AA4C%7d&NRORIGINALURL=%2fPUC%2ftransportation%2fFAQs%2fsgfaqs%2ehtm&NRCACHEHINT=Guest#how

⁵³ CALIFORNIA PUBLIC UTILITIES CODE § 226; CALIFORNIA PUBLIC UTILITIES CODE §§ 1031-1045.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ <http://www.sfmta.com/cms/xcust/realtaxi.htm>

"ROGUE" SMARTPHONE APPLICATIONS FOR TAXICABS AND LIMOUSINES: INNOVATION OR UNFAIR COMPETITION?

b. *Taxicabs*

The SFMTA has the power to regulate the taxi industry and other motor vehicles for-hire in San Francisco.⁵⁷ Taxicab regulations are set forth in Division II, Article 1100 of the San Francisco Transportation Code (the “SF Code”). In order to drive or operate a motor vehicle for-hire in the city of San Francisco one must obtain a permit.⁵⁸

It should be noted that the SF Code *does not apply* to the operation of a motor vehicle engaged in the business of, or used for, transporting passengers for-hire when the vehicle is operated under and by authority of public convenience and necessity or any other authority issued by the California Commission to the extent that the commercial operation of such for-hire vehicle is entirely within the scope of such certificate or authority.⁵⁹

Pursuant to the SF Code, a taxi shall mean a vehicle operated pursuant to a Taxi or Ramp Taxi Medallion (as defined in the SF Code) that is legally authorized to pick up passengers within the City with or without prearrangement, of a distinctive color or colors and which is operated at rates per mile or upon a waiting-time basis, or both, as measured by a Taximeter (as defined in the SF Code) and which is used for the transportation of passengers for hire over and along the public streets, not over a defined route but, as to the route and destination, in accordance with and under the direction of the passenger or person hiring such vehicle.⁶⁰

3. Washington, D.C.

a. *For-Hire Vehicles*

The District of Columbia Taxi Commission (the “D.C. Commission”) regulates taxicabs, for-hire vehicles, and limousines operating in the jurisdiction of the District of Columbia pursuant to Title 31 of the Municipal Regulations (the “D.C. Regulations”).

Under the Limousine Operators and Vehicles section of the D.C. Regulations, a “sedan” is a “for-hire vehicle designated to carry fewer than six (6) passengers, excluding the driver, which charge for services on the basis of time and mileage.”⁶¹ A “limousine” is “a motor vehicle carrying passengers for-hire in the District, designated to carry fewer than nine (9) passengers, excluding the driver, with three (3) or more doors, other than a taxicab, coach, or wheelchair accessible van, not permitted to accept street hails from prospective passengers in the street, and required to be licensed by the Commission.”⁶² The District of Columbia City Council Committee on Environment, Public Works and Transportation has recently introduced legislation that would incorporate the definition of a “limousine” in the D.C. Official Code. Introduced in December 2011, the “District of Columbia Taxicab Commission Service Improvement

⁵⁷ See section 1075.1 of the San Francisco Police Code

⁵⁸ See S.F. TRANS. CODE § 1105(a)(1).

⁵⁹ See S.F. TRANS. CODE §1101 (a)(2).

⁶⁰ S.F. TRANS. CODE §1102(fff)

⁶¹ WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1

⁶² WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1. Under the same, “District” means the District of Columbia and “Commission” means the District of Columbia Taxicab Commission, established pursuant to the “District of Columbia Taxicab Commission Establishment Act of 1985” as amended. DC Law 6-97; DC Official Code §§50-301 *et seq.* Available at <http://dctaxi.dc.gov/dctaxi/frames.asp?doc=/dctaxi/lib/dctaxi/pdf/dcmr/Chap12Up.pdf> (June 12, 2012).

Amendment Act of 2011” passed the Environment, Public Works and Transportation Committee on June 5, 2012. If passed by the D.C. Council, this legislation will define a limousine as a “public passenger vehicle used exclusively for contract livery services for which the rate is fixed solely by the hour.”⁶³

In light of the foregoing, a sedan may be licensed as a taxicab if it picks up street hails and its fares are based on time and mileage.⁶⁴ The D.C. Regulations state that when a taxicab accepts hourly service, it must charge \$25.00 for the first hour and may charge a fraction of an hour thereafter.⁶⁵ A sedan may also be licensed as a limousine if it does not pick up street hails. It should be noted the D.C. Regulations are unclear as to how a limousine must calculate and charge fares, but the new legislation pending in the D.C. Council and the proposed definition of limousine, if adopted, clearly states that limousines must charge rates fixed by the hour.

As it currently stands, sedans may be licensed as taxicabs, charge at a rate based on time and mileage and accept street hails. Alternatively, sedans can be licensed as limousines, would not be permitted to pick-up street hails, and could charge fares consistent with limousines - yet, the required limousine fares are unclear. The distinction as to whether the summoning of a vehicle through the use of a smartphone application is considered prearranged or electronic street hail is an issue. Also, the method of fare calculation is of importance in the smartphone application context here. The proposed legislation will clarify limousine fare requirements, mandating limousines to charge fixed hourly rates. This is important for smartphone applications which dispatch limousines, as such smartphone applications would be required to charge fares as fixed rates. Currently, most applications charge fares based on time and mileage, *inter alia*, calculated through the smartphone application. If the DC Commission answers the prearranged or electronic street hail question, it may likely permit only one class of sedans to participate in the use of smartphone applications.

In addition to regulating fares, the D.C. Regulations specify that each for-hire vehicle must be properly licensed to accept fares in the District of Columbia.⁶⁶ To accommodate the geography of the greater D.C. area, limousines must be licensed as either a D.C. limousine or have an inter-jurisdictional limousine operation-permit.⁶⁷ There are several criteria to qualify for an inter-jurisdictional limousine operation-permit, but, once qualified, an inter-jurisdictional limousine operation-permit will allow the permittee to transport passengers into D.C. as well as accept passengers in D.C. on a prearranged basis for transport out of D.C.⁶⁸ This is a unique issue to smartphone applications as some applications do not disclose a user’s destination. As such, the driver may not know if he or she can lawfully accept the fare. Further, as discussed above, some applications seek to limit liability as to the transportation services provided.

⁶³ B19-630 “District of Columbia Taxicab Commission Service Improvement Amendment Act of 2011”

⁶⁴ WASH., DC MUNI CODE, Definitions, Title 31, Section 899.1; WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1

⁶⁵ WASH., DC MUNI CODE, Definitions, Title 31, Section 801.6(k)

⁶⁶ See generally, WASH., DC MUNI CODE, Title 31

⁶⁷ WASH., DC MUNI CODE, Inter-jurisdictional limousine permit, Title 31, Section 1216

⁶⁸ *Id.*

b. *Taxicabs*

The D.C. Regulations define “taxicab” to mean “any passenger vehicle for hire having a seating capacity of eight (8) or fewer passengers, exclusive of the driver, and operated as a vehicle for passenger transportation for hire by taxicab.”⁶⁹ Each taxicab must be licensed by the D.C. Commission and shall be a sedan, station wagon or minivan⁷⁰ and shall charge a metered rate based upon the calculation of time and mileage.⁷¹ In addition to accepting street hails,⁷² taxicabs may also make prearranged agreements with clients in which the client may request to be picked up or dropped off at a specific location and know the amount of fare in advance.⁷³ The distinction in prearrangement or street hail and fare calculation plays a significant role in smart phone application use in connection with taxicabs. Again, if the D.C. Commission answers whether summoning a vehicle via smartphone application is an electronic street hail or is a prearranged service, this will impact how fares must be calculated, but not whether taxicabs may participate (as taxicabs have “dual use” rights). In January 2012, Uber was alleged by the D.C. Commission to have been operating as a taxicab when Uber charged passengers based on distance and time without its service and vehicles meeting the taxicab requirements. However, as discussed, in May 2012, the D.C. Council proposed new legislation creating a new class of for-hire vehicle license called a “sedan class” license. The new license would allow a for-hire vehicle to be dispatched and allows passengers to be charged fares based on distance and time.

4. Chicago, Illinois

a. *For-Hire Vehicles*

For-hire sedans and limousines in the City of Chicago are regulated by the Department of Business Affairs and Consumer Protection (the “BACP”).⁷⁴ 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.⁷⁵ The amended ordinances will go into effect on July 1, 2012.⁷⁶ Until that time, MCC § 9-112 contains the controlling ordinances applicable to all public passenger vehicles.⁷⁷ As the period for public comment on this legislation is closed, below includes references to the MCC § 9-114.

⁶⁹ WASH., DC MUNI CODE, Definitions, Title 31, Section 899.1

⁷⁰ WASH., DC MUNI CODE, Parts and Equipment, Title 31, Section 601.1

⁷¹ WASH., DC MUNI CODE, Passenger Rates & Charges, Title 31, Section 801.3

⁷² It should be noted that neither street-hail or prearranged service are defined in the Title 31 of the WASH., DC MUNI CODE.

⁷³ D.C. Commission, FAQ. Can you prearrange a trip in a taxicab? Available at <http://dctaxi.dc.gov/dctaxi/cwp/view.A.3.Q.487826.dctaxiNav.%7C30625%7C.asp#46> (last visited June 27, 2012).

⁷⁴ THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, http://www.cityofchicago.org/content/city/en/depts/bacp/supp_info/bacppublicvehicles.html

⁷⁵ THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, <http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/taxiordinance2011.pdf>.

⁷⁶ THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, Public Vehicle Industry Notice, <http://www.cityofchicago.org/content/dam/city/depts/bacp/publicvehicleinfo/taxiindustryntices/taxiindustryntice12-004newtaxipublicvehicleord.pdf>.

⁷⁷ The Chicago ordinances cited herein are derived from the new ordinances, MCC § 9-112 and MCC § 9-114, which will take effect later this year. A copy of the current code can be found here:

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.”⁷⁸ Additionally, the MCC provides that public passenger vehicles, which include livery vehicles,⁷⁹ may not be “equipped with a meter which registers a charge of any kind.”⁸⁰ The MCC further sets forth that:

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.⁸¹

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 not 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.

The regulations discussed above are in addition to provisions delineating public passenger vehicle specifications, public passenger vehicle licensing, the display of such information, and insurance requirements, among other provisions. All of which are provided in greater detail in Article I of MCC § 9-114.

b. *Taxicabs*

The MCC defines taxicab as “a vehicle licensed under this chapter for hire at rates of fare set forth in this chapter, which are or should be recorded by a taximeter.”⁸² A taximeter is required in all licensed taxicabs, as discussed below.⁸³

Pursuant to MCC § 9-112-320, each licensee and taxicab affiliation has an affirmative duty to respond to a dispatch request for taxicab service in underserved areas, and to ensure compliance, will assume liability for its drivers.⁸⁴ All licensees have an affirmative duty to respond to requests for service and are responsible for the actions of its employees, chauffeur, lessee, taxicab affiliation, two-way dispatch service, or other manager that reports to the licensee, for any failure to respond.⁸⁵ Further, each taxicab which is in service and leased by a public chauffeur, must, at all times, have a two-way dispatch system activated to a level which is audible

<http://www.cityofchicago.org/content/dam/city/depts/bacp/publicvehicleinfo/taxiindustryntices/mccchapter9-112publicpassengervehicles.pdf>

⁷⁸ CHICAGO, IL. MUNI. CODE § 9-114-010.

⁷⁹ CHICAGO, IL. MUNI. CODE § 9-114-010.

⁸⁰ CHICAGO, IL. MUNI. CODE § 9-114-060.

⁸¹ *Id.*

⁸² CHICAGO, IL. MUNI. CODE § 9-112-010.

⁸³ CHICAGO, IL. MUNI. CODE § 9-112-010.

⁸⁴ CHICAGO, IL. MUNI. CODE § 9-112-320.

⁸⁵ CHICAGO, IL. MUNI. CODE § 9-112-320.

to the driver and must timely respond to requests for service within the city's jurisdictional limits.⁸⁶ A two-way dispatch system is "a method of communicating by which a dispatcher may communicate simultaneously or individually with the drivers of all vehicles in an organization (taxicab affiliation and all its affiliates) and for each driver to communicate with the dispatcher, so long as the manner of usage of such device in a taxicab does not violate the city, state or federal regulations."⁸⁷

Uber has posted on its website a description of its latest program, "Uber TAXI," which is now operating and testing its use in Chicago taxicabs under the name "Uber." Uber describes the program as currently subject to select Uber users (with the number of users available to increase in the coming weeks). The user arranges for a taxicab just as he or she would otherwise use the Uber application to arrange for a for-hire vehicle. Once the fare is complete, the driver inputs the metered rate of fare into the application and Uber automatically adds a 20% gratuity and service fee and the user pays through the application, just as he or she would when traditionally using the Uber application.

Uber TAXI's business model with Chicago taxicabs raises the question of whether it is following the Chicago regulation requiring taxicab drivers to respond to two-dispatch calls, i.e.: dispatched service calls may not be declined. Additionally, the MCC states, "no person shall operate or provide a taxicab two-way dispatch system without first obtaining a license from the Commissioner."⁸⁸ It should also be noted that an application for a license to operate a two-way dispatch system requires a principal place of business in Chicago.⁸⁹

Further, as a promotion, Uber TAXI indicates that it is or will begin offering free fares for the first \$20, including gratuity for a limited time. To take part in Uber TAXI's free fares, the passenger will need to download the application, including storing credit card information, to request a ride. After the first \$20 of fare and automatic gratuity, standard fare and gratuities will apply. The current (and the proposed new Rules and Regulations to take effect starting July 1, 2012) state that *Licenses* may issue coupons or vouchers which may be used in lieu of cash payment for taxicab fares.⁹⁰ Pursuant to this regulation, a "'Licensee' is the holder of a Taxicab Medallion License issued by the City of Chicago pursuant to the provision of Chapter 9-112 of the MCC, as amended."⁹¹ It would not be illegal for a Licensee to issue coupons or vouchers in lieu of cash payment; however, it is unclear: (a) whether Uber is a Licensee under the Rules and Regulations; or (b) whether Uber is permitted to market such coupons or vouchers issued by a Licensee (i.e. if Uber were to require each of the Licensees it contracts with to independently issue the coupons with the understanding that Uber would advertise the coupons or reimburse the Licensee for each coupon redeemed).

⁸⁶ CHICAGO, IL. MUNI. CODE § 9-112-320(c).

⁸⁷ CHICAGO, IL. MUNI. CODE § 9-112-010.

⁸⁸ CHICAGO, IL. MUNI. CODE § 9-112-550

⁸⁹ *Id.*

⁹⁰ CHICAGO RULES AND REGULATIONS FOR TAXICAB MEDALLION LICENSE HOLDERS, Rule 16.02 (Note, the current Rules and Regulations require those taxicab medallion licensees who issue such coupons to offer an additional 10% discount for purchasers over 65 years of age. This requirement is removed from the proposed Rules and Regulations.)

⁹¹ CHICAGO RULES AND REGULATIONS FOR TAXICAB MEDALLION LICENSE HOLDERS, Definitions.

5. New York, New York

a. *For-Hire Vehicles*

The New York City 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”).

In December 2011, New York State passed legislation, which was amended in February 2012, known as the “Street Hail Livery Law.” The TLC passed rules to implement the Street Hail Livery Law on April 19, 2012. In sum, the law calls for the issuance of 18,000 licenses for street hail livery vehicle licenses that would be allowed to accept street hails in New York City, except within the Manhattan central business district and the airports. At this time, only taxicabs may legally accept street hails within New York City. In order to address accessibility needs, the law mandates that twenty percent (20%) of the street hail livery vehicles be wheelchair accessible, and also allows New York City to issue 2,000 medallions for accessible taxicabs. The Street Hail Livery Law has not been implemented as a result of some recent litigation.⁹²

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).⁹³ Further, New York

⁹² The Street Hail Livery Law is on hold, however, because of litigation initiated by taxicab medallion owners, medallion owner groups, financial institutions, and credit unions challenging the law. Three lawsuits were filed in the New York State Supreme Court in New York County and consolidated and heard before Justice Arthur Engoron. The plaintiffs have sued New York State, New York City and the TLC. Recently, two different livery owner groups have joined the litigation as well. On June 1, 2012, Justice Engoron issued a temporary restraining order (“TRO”) based on his review of the initial briefs and the oral argument on May 31, 2012. Although there were several causes of action brought by the plaintiffs, the judge based his order on the argument that New York State passed this law with a “home rule” message from the New York City Council as to a local matter – namely, the regulation of taxicab service. As part of his TRO, Justice Engoron has ordered that the New York City may not implement any part of the law. As a result, the Street Hail Livery Law is on hold. A decision on the merits is expected shortly.

In addition to the Street Hail Livery Law litigation, there has been a federal class action initiated by disable persons and advocacy groups against the TLC based on alleged violations of the Americans with Disabilities Act (“ADA”). On December 23, 2011, a New York federal court, in Noel v. New York City Taxi and Limousine Commission, found that, as a result of its policies and regulations, the TLC denied disabled passengers meaningful access to the New York City taxicab service in violation of the ADA. Currently, there are approximately 232 taxicabs that are wheelchair accessible in the fleet of approximately 13,237 taxicabs.

To remedy the lack of accessible vehicles in the New York City taxi fleet, the court ordered that “all new taxi medallions sold or new street hail livery licenses or permits issued by the TLC must be for wheelchair accessible vehicles,” until the TLC provides an acceptable plan for providing meaningful access to disabled passengers to the court. On April 19, 2012, the TLC appealed the decision to the Second Circuit Court of Appeals, and, on that date, the Second Circuit issued a temporary injunction that stayed the district court’s decision.

On June 28, 2012, the Second Circuit issued its decision on the merits in Noel v TLC, and found that the ADA does not obligate the TLC to use its licensing and regulatory authority over the New York City taxi industry to require that taxi owners provide meaningful access to taxis for disabled persons. The Second Circuit found that the federal district court judge erred, and that summary judgment should be granted for the TLC. The federal ruling has no bearing on the Street Hail Livery Law case in the New York State Supreme Court.

⁹³ TLC REGULATION § 59B-03(c)(3); TLC REGULATION § 59B-03(p)(3); and TLC REGULATION § 59B-03(m)(3)

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.⁹⁴

The TLC has attempted to address some of the regulatory concerns associated with smartphone applications and 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.⁹⁵ 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, 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.

As discussed above, the TLC has also issued a request for proposal ("**RFP**") for smartphone application. According to the smartphone application RFP, the features of a fare payment application must include, at a minimum, (i) the ability for passengers to pay fares using a smartphone; (ii) the trip information would have to be quickly and easily transferred between the Taxicab Passenger Enhancements Program ("**TPEP**")/meter system⁹⁶ and the smartphone; (iii) passengers must be able to view their specific trip and fare information on their smart phones to be able to "approve" the amount and add a gratuity (iv) drivers must be able to receive quick confirmation via the TPEP system (prior to the passenger exiting the vehicle) that the fare has been paid; (v) the ability for two or more passengers to split the fare on two or more smartphones/accounts; (vi) the option for a passenger to pre-set the smartphone to automatically

⁹⁴ TLC REGULATION § 59B-12(b)(3)

⁹⁵ The TLC may change its position on this issue in the near future. See discussion of Square technology on pg. 8 *infra*.

⁹⁶ TPEP refers to the TLC's in-taxi technology system. TPEP systems have a passenger information monitor, hard mounted in the passenger area of the vehicle, and a taxicab driver information monitor, which interface with the taximeter and aids the taxicab driver in performing his or her duties while the systems are recording trip data. TPEP systems record and store trip sheet data, process credit card payments, and enable communication between the TLC and taxicab driver and between the medallion owner and taxicab driver. The TLC currently has two (2) TPEP vendors: Creative Mobile Technologies ("**CMT**") and VeriFone.

The TLC had intended for the street hail livery vehicles to include similar technology and enacted rules for the Livery Passenger Enhancements Program ("**LPEP**") at its public meeting on May 31, 2012. One distinction from the TPEP rules, however, is that the TLC will not award a contract for LPEP vendors. Instead, the TLC adopted rules that the LPEP vendors would be approved through licensing. Since the LPEP rules are a component of the Street Hail Livery Law, the LPEP rules are also "on hold" pursuant to the litigation discussed in this Report.

pay the fare and gratuity when the fare ends; and (vii) the option to automatically add a pre-set gratuity amount.⁹⁷ The RFP responses were due on June 14, 2012, and the TLC expects to issue its award in November 2012.

Additionally, the TLC was approached by Square, Inc. (“Square”) with a proposal for a mobile in-taxi technology system. The TLC authorized a pilot program to test Square’s system, and also invited the two currently authorized TPEP providers of in-taxi technology systems (CMT and Verifone) to submit proposals for alternative in-taxi technology systems. Like TPEP, the Mobile Technology System will have a passenger information monitor, hard mounted in the passenger area of the vehicle, and a taxicab driver information monitor, which will interface with the meter and aid the taxicab driver in performing his duties while the systems are recording trip data. The test of Square’s Mobile Technology System will allow the TLC to determine whether or not it is feasible to use an iPad, employing applications in lieu of the current passenger information monitors, to use an iPhone in lieu of the current driver information monitor to interface with the meter and to evaluate the cost savings, if any, to be had by using the mobile technology system. The pilot program is expected to be completed in February 2013.⁹⁸

b. *Taxicabs*

A “taxicab” under TLC Regulations is a “motor vehicle, yellow in color, bearing a Medallion (as defined in the TLC Regulations) indicating that it is licensed by the TLC to carry up to 5 passengers for hire and authorized to accept hails from persons in the street.”⁹⁹ Taxicabs in New York are not authorized to accept prearranged service. Therefore, if the TLC deems summoning a taxicab via a smartphone application to be prearrangement, taxicabs would not be permitted to participate in smartphone applications. If the Street Hail Livery Law is ultimately deemed valid after the legal challenges, it appears livery vehicles operating in the “outer boroughs” of New York could participate with smartphone application companies, regardless of whether or not the TLC states the use of smartphone applications is prearranged service or an electronic street hail.

6. San Diego, California

a. *For-Hire Vehicles*

In San Diego, all for-hire vehicles such as sedans and limousines are regulated on the state level by the California Commission. Please refer to the sections of this Report on San Francisco, California, for discussion of the California Commission and its regulations on for-hire vehicles and limousines in California.

b. *Taxicabs*

In San Diego, the Board of the Metropolitan Transit System (the “MTS”) oversees the Taxicab Administration Department.¹⁰⁰ The Taxicab Administration Department is responsible

⁹⁷ http://www.nyc.gov/html/tlc/downloads/pdf/notice_of_solicitation_smart_phone_app.pdf

⁹⁸ http://www.nyc.gov/html/tlc/downloads/pdf/pilot_program_resolution.pdf

⁹⁹ TLC REGULATION § 51-01

¹⁰⁰ SAN DIEGO, CAL. METRO. TRANSP. SYS., <http://www.sdmts.com/Taxi/taxiHome.asp> (last visited June 27, 2012).

for monitoring compliance with administrative and operational regulations, *inter alia*.¹⁰¹ Together the MTS and the Taxi Administration Department promulgate the rules for regulation on the local level. San Diego taxicab rules are set forth in the San Diego Code of Regulatory Ordinances (the “**San Diego Ordinance**”).¹⁰² A “taxicab” is every vehicle other than a vehicle-for-charter, a jitney, a nonemergency medical vehicle, a sightseeing vehicle, or LSV which: (a) transports passengers or parcels or both over public streets and (b) is made available for hire on call or demand through “cruising” at taxi stand or by telephone to destinations specified by the hiring passenger.¹⁰³ Each permit holder shall file with the Chief Executive Officer the rates that he/she will charge, which shall not exceed the maximum amount set by the Chief Executive Officer.¹⁰⁴ This presents an interesting issue for taxicabs that contract with smartphone application companies. For one, all parties must charge the same rates for a specific vehicle, i.e.: if a permit holder files a set of rates, he or she must have the taximeter calibrated to charge those specific rates and must charge in accordance with the rates filed. Therefore, if a taxicab accepts a fare via smartphone application, he or she must still charge rates consistent with his or her filed rates, which may not be in excess of the limits set by the Chief Executive Officer. However, it is unlikely that the taxicab driver or permit holder would be permitted to charge his or her fares via the smartphone, unless the smartphone is aware of how to calculate such fare. It is clear that smartphone applications incorporate a mechanism to calculate fares just as a taximeter, but the issue is what fare is the smartphone application calculating? Would such calculation coincide with the filed fares for each specific permit holder? This may be solved by requiring all permit holders who contract with such application companies to file the fares as calculated and charged by the smartphone application, and charge such fares at all times, regardless of whether the smartphone application is used. Nevertheless, it may present an added wrinkle in the use of smartphone applications.

B. Pre-arrangement

1. Seattle

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.¹⁰⁵ 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 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.¹⁰⁶ A chauffeur must have the passenger manifest on his or her person at all times.

¹⁰¹ SAN DIEGO, CAL. METRO. TRANSP. SYS., http://www.sdmts.com/Taxi/documents/TaxiFS_4_2011.pdf (last visited June 27, 2012).

¹⁰² SAN DIEGO ORDINANCE §§ 21.301 *et seq.*

¹⁰³ SAN DIEGO ORDINANCE NO. 11 § 1.1(gg)

¹⁰⁴ SAN DIEGO ORDINANCE NO. 11 § 2.2(c)

¹⁰⁵ WASH. REV. CODE § 308-83-200

¹⁰⁶ *Id.*

The passenger manifest may be electronic or paper form, provided that it confirms the prearrangement of limousine services.¹⁰⁷

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.¹⁰⁸ The Seattle Code also 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.¹⁰⁹ Note, the Seattle Code allows for a "customer's agent" to be responsible for the booking of the vehicle. Generally, an agency relationship may arise when one engages another to perform a task for the former's benefit.¹¹⁰ Although legal analysis of this potential relationship is not reviewed here, based on traditional notions of agency, a review of the smartphone application-passenger (user) relationship may find an application to be a customer's agent. Key elements such as consent and control are essential to successfully evidencing an agency relationship.¹¹¹ If an application is not deemed a customer's agent, then use of the smartphone application with the limousine service may violate this regulation and penalties may be assessed.

2. San Francisco and San Diego

The relevant rules regarding "prearrangement" for both San Diego and San Francisco are found in the California Commission Regulations. These regulations require that Class A and Class B charter-party carriers shall provide transportation "only on a prearranged basis."¹¹² The rule further states that the party arranging the transportation shall have exclusive use of the vehicle, and the driver shall possess a waybill.¹¹³ The waybill will include the following information: name of carrier and TCP¹¹⁴ 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 traveling party's affiliation; and points of origination and destination.¹¹⁵ 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

¹⁰⁷ *Id.*

¹⁰⁸ Seattle Muni Code § 6.320.020(A) (2011)

¹⁰⁹ Seattle Muni Code § 6.320.020(D) (2011)

¹¹⁰ Ferguson v. King County, WL 2012 899249, 3 (Wash. App. Div. 1 2012) (citing O'Brien v. Hafer, 122 Wn.App 279, 281 (2004)).

¹¹¹ Ferguson at 3.

¹¹² CAL. PUB. UTILITIES COMMISSION REGULATIONS §3.01.

¹¹³ *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.

¹¹⁴ "TCP" refers to charter-party carrier.

¹¹⁵ CAL. PUB. UTILITIES COMMISSION REGULATIONS §3.01

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 the latter must be prearranged.¹¹⁶ 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 . . .”¹¹⁷ Again, in addition to the electronic street hail or prearranged service issue, there is a potential for smartphone applications to create incomplete waybills.

3. Washington, D.C.

Under the Limousine Operators and Vehicles section of the D.C. Regulations, a “sedan” is a “for-hire vehicle designated to carry fewer than six (6) passengers, excluding the driver, which charge for services on the basis of time and mileage.”¹¹⁸ A “limousine” is “a motor vehicle carrying passengers for-hire in the District, designated to carry fewer than nine (9) passengers, excluding the driver, with three (3) or more doors, other than a taxicab, coach, or wheelchair accessible van, not permitted to accept street hails from prospective passengers in the street, and required to be licensed by the D.C. Commission.”¹¹⁹

In light of the foregoing, a sedan may be licensed as a taxicab if it picks up street hails and its fares are based on time and mileage.¹²⁰ The D.C. Regulations state that when a taxicab accepts hourly service, it must charge \$25.00 for the first hour and may charge a fraction of an hour thereafter.¹²¹ A sedan may also be licensed as a limousine if it does not pick up street hails. It should be noted that the D.C. Regulations are unclear as to how a limousine must calculate and charge fares, and the recently-proposed changes to the D.C. Code do the following: (i) clarifies that the vehicles in the “limousines class” must charge fares by the hour and (ii) creates a “sedan class” license which would allow for-hire vehicles to be dispatched and charge fares based on distance and time.

In addition to regulating fares, the D.C. Regulations specify each for-hire vehicle must be properly licensed to accept fares in the District.¹²² To accommodate the geography of the greater D.C. area, limousines must be licensed as either D.C. limousines or have an inter-jurisdictional

¹¹⁶ The information packet can be found at: <http://www.cpuc.ca.gov/NR/rdonlyres/42294D2B-412E-466E-A74B-F1862BFC6924/0/PassengerCarriersBasicInfoandApplicantsRev012811.pdf>

¹¹⁷ *Id.* (Emphasis added).

¹¹⁸ WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1

¹¹⁹ WASH., DC MUNI CODE, Definitions Title 31, Section 1299.1. Under the same, “District” means the District of Columbia and “Commission” means the District of Columbia Taxicab Commission, established pursuant to the “District of Columbia Taxicab Commission Establishment Act of 1985” as amended. DC Law 6-97; DC Official Code §§50-301 *et seq.* Available at <http://dctaxi.dc.gov/dctaxi/frames.asp?doc=/dctaxi/lib/dctaxi/pdf/dcmr/Chap12Up.pdf> (June 19, 2012).

¹²⁰ WASH., DC MUNI CODE, Definitions, Title 31, Section 899.1; WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1.

¹²¹ WASH., DC MUNI CODE, Definitions, Title 31, Section 801.6(k)

¹²² *See generally*, of the DC Muni Code, Title 31.

limousine operation-permit.¹²³ There are several criteria to qualify for an inter-jurisdictional limousine operation-permit, but once qualified, an inter-jurisdictional limousine operation-permit will allow the permittee to transport passengers into D.C. as well as accept passengers in D.C. on a prearranged basis for transport out of D.C.¹²⁴

4. Chicago

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.¹²⁵ 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.

5. New York City

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).¹²⁶ 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.¹²⁷

As smartphone application companies entered the New York City market, the TLC issued two Industry Notices to make clear the relevant TLC Regulations applicable to such companies.¹²⁸ Industry Notice #11-15, dated July 1, 2011, stated that the use of smartphone applications is permitted, provided the base complies with TLC regulations. Industry Notice #11-16, dated July 18, 2011, stated that a “smartphone application that functions solely as a referral, reservation or advertising service for a licensed base will generally not require a licensure.”

C. Taximeters

1. NIST and Weights and Measures Standards

a. Seattle

The Washington Code adopts the definitions of basic units as established by the NIST and such definitions govern weighing and measuring devices used in commercial activities and other transactions involving weights and measures within the state, such as the taximeter.¹²⁹ The Washington Code allows the state to use an official seal of approval for each weighing and measuring instrument or device that has been tested, inspected, and found to be correct.¹³⁰ The

¹²³ WASH., DC MUNI CODE, Inter-jurisdictional limousine permit, Title 31, Section 1216

¹²⁴ *Id.*

¹²⁵ CHICAGO, IL. MUNI. CODE § 9-112-010

¹²⁶ TLC REGULATION § 59B-03(c)(3); TLC REGULATION § 59B-03(p)(3); and TLC REGULATION § 59B-03(m)(3)

¹²⁷ TLC REGULATION § 59B-12(b)(3)

¹²⁸ See Industry Notice # 11-15 on July 1, 2011; see also Industry Notice #11-16 on July 18, 2011

¹²⁹ WASH. REV. CODE § 19.94.150 (1991)

¹³⁰ WASH. REV. CODE § 19.94.163 (1995)

Washington Code allows each city to select to have, or not to have, a city sealer.¹³¹ If a city selects to have a city sealer, the city may do so by the adoption of rules to govern the city sealer through local ordinances.¹³² If a city selects to have a city sealer, the state will biennially inspect the city sealer for compliance with state regulation standards on weights and measures.¹³³ It is unnecessary to seek or obtain the state seal of approval if a city seal of approval is obtained, because the state directly regulates the city's seal of approval through biennial inspection and, therefore, any city seal of approval must have previously obtained a state seal of approval.¹³⁴

Under the Seattle Code, a "taximeter" is any instrument or device by which the charge for hire of a passenger-carrying vehicle is measured or calculated either for the distance traveled by such vehicle or for waiting time, or for both, and upon which such calculated charges shall be indicated by means of figures.¹³⁵ According to the Director's rules, the taximeter must be sealed by a city taxicab inspector, be capable of issuing a receipt and receipt paper must be installed in order to pass a safety inspection.¹³⁶

In Seattle, weights and measures inspections are conducted by the CAU under the Department of Finance and Administrative Services.¹³⁷ The CAU operates a Testing Station at which "taximeter tests" are conducted.¹³⁸ As defined in the Seattle Code, a taximeter test is "the test of a taximeter conducted by the Director using procedures and specifications contained in Handbook 44 Specifications, Tolerances, and Other Technical Requirements for Weights and Measuring Devices, published by the NIST."¹³⁹

Further, all taximeters placed into service after July 6, 1997 shall have a Certificate of Conformance issued by the National Conference on Weights and Measures showing compliance with the National Type Evaluation Program.¹⁴⁰ The taximeter test is conducted on a simulated distance device, which includes roller equipment that is turned by the taxicab's driver wheels.¹⁴¹ To function properly, a taximeter must have receipt paper, automatically print a receipt at the end of each trip, and the receipt must include the following information: taxicab name and number, date, start and end of trip time, distance traveled, fare, additional charges, total fare, and the taxicab complaint hotline phone number.¹⁴²

Under the current form of the statute, it is not likely a "taximeter" only capable of an e-mail or text message receipt would satisfy the requirements of a properly functioning taximeter

¹³¹ WASH. REV. CODE § 19.94.280 (1995)

¹³² WASH. REV. CODE § 19.94.280 (1995)

¹³³ WASH. REV. CODE § 19.94.216 (1995)

¹³⁴ WASH. REV. CODE § 19.94.310 (1995)

¹³⁵ SEATTLE, WA. MUNI. CODE § 6.310.110 (2010)

¹³⁶ CITY OF SEATTLE TAXICAB & FOR-HIRE VEHICLE RULES, DIR. RULES, DEFINITIONS R-6.310.320G(dd) (2001).

¹³⁷ FIN. & ADMIN. SVCS., CONSUMER AFFAIRS, CITY OF SEATTLE WEIGHTS & MEASURES, <http://www.seattle.gov/consumeraffairs/wmdefault.htm> (last visited June 16, 2012).

¹³⁸ *Id.*

¹³⁹ CITY OF SEATTLE TAXICAB & FOR-HIRE VEHICLE RULES, DIR. RULES, DEFINITIONS R-6.310.110 (2001)

¹⁴⁰ *Id.* See National Conference on Weights & Measures, available at <http://www.ncwm.net/content/org-ntep> (NTEP provides final review and approval of recommendations to amend NCWM Publication 14, Checklists, and Test Procedures and makes recommendations to the NCWM Board Administrative Policy).

¹⁴¹ FIN. & ADMIN. SVCS., CONSUMER AFFAIRS, CITY OF SEATTLE WEIGHTS & MEASURES, <http://www.seattle.gov/consumeraffairs/taxiInsp.htm> (last visited June 27, 2012).

¹⁴² *Id.* See, SEATTLE, WA. MUNI. CODE § 6.310.320 (2010)

because the statute states the taximeter shall have paper and automatically print a receipt. However, the argument may be made that the statute is out-dated and that providing an e-mail or text message receipt with the mandatory information would satisfy the statute in light of advancing technologies. After June 30, 2010, all taximeters shall: disable when there is no receipt paper, automatically print a receipt at the end of each trip, be password protected for statistical data and the password shall be issued by the Director to each taximeter technician, and include a receipt with the phone number for the taxicab passenger complaint hotline (206-296-TAXI).¹⁴³

Further, due to the inter-local agreement between Seattle and King County, taxicabs must also conform with and obtain a taxicab license from King County, Washington.¹⁴⁴ However, many of the requirements of the City of Seattle and King County are duplicative. The King County vehicle standards require the taximeter “to be sealed and functioning per the ordinances.”¹⁴⁵ Before each shift, the driver must check the taximeter seal to determine whether the equipment is functioning properly,¹⁴⁶ and a taxi driver may not operate a taxicab with an unsealed, improperly functioning, or inaccurate taximeter.¹⁴⁷ In King County, the taximeter, as also required by the City of Seattle, must be capable of issuing receipts.¹⁴⁸ The King County Code also proscribes upon satisfactorily passing the meter inspection, a written notice shall be plainly posted and a security seal attached to the taximeter as proscribed by the director.¹⁴⁹ Finally, if the security seal on the taximeter is missing, broken, or tampered with, it shall be grounds for immediate suspension of the vehicle owner’s license, as required by King County Code § 6.64.300 for operation of a taxicab or for-hire vehicle.¹⁵⁰

In October 2011, the CAU submitted a request for a proposed amendment to the NIST Handbook 44 to the National Conference on Weights and Measures (the “NCWM”), whose Specifications and Tolerance Committee develops the specifications and tolerances and other technical requirements for weighing and measuring devices as published in the NIST Handbook 44. In this request, the CAU states there are GPS system applications designed to compute fares based on distance and/or time measurements that are actively being introduced into the for-hire and taxicab industries across the United States and without the NCWM input and regulation, consumers are increasingly vulnerable to inconsistent and inflated fares. Additionally, the CAU recognizes that the current regulation of “black box taximeters” and Section 5.54 Taximeters of Handbook 44 would have to be completely redrafted to account for the use of the “virtual taximeters.” However, as further discussed below, this request was made a few months after the NIST formed a working group on the operation of taximeters, and the NCWM has not yet made changes to Handbook 44 to so reflect the CAU’s request as of this date.

¹⁴³ *Id.*

¹⁴⁴ KING COUNTY, OR.CODE § 6.64.007 (2009)

¹⁴⁵ KING COUNTY, OR.CODE § 6.64.370 (2009)

¹⁴⁶ KING COUNTY, OR.CODE § 6.64.650 (2009)

¹⁴⁷ KING COUNTY, OR.CODE § 6.64.670 (2009)

¹⁴⁸ KING COUNTY, OR.CODE § 6.64.720 (2009)

¹⁴⁹ KING COUNTY, OR.CODE § 6.64.400 (2009)

¹⁵⁰ KING COUNTY, OR.CODE § 6.64.440(a)(2) (2009)

b. *San Francisco*

Taximeters are not required in for-hire vehicles, nor would they be sufficient to calculate livery fares. Although such fares will vary depending on circumstances, “no charter-party carrier of passengers shall, directly or through an agent or otherwise, nor shall any broker, contract, agree, or arrange to charge, or demand or receive compensation, for the transportation offered or afforded that shall be computed, charged, or assessed on an individual-fare basis.”¹⁵¹

The California Department of Food and Agriculture includes a Division for Measurement Standards, which establishes the standards in California for weights and measures.¹⁵² The Division of Measurement Standards has adopted, and incorporated by reference, the national standard as stated and amended in Handbook 44. The Administrative Code of California officially adopts the national standard by its express terms stating, “all commercial weighing and measuring devices shall conform to the latest requirements set forth in the National Institute of Standards and Technology Handbook 44 ‘Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.’”¹⁵³

Based on these definitions, smartphone applications operating in San Francisco for charter party carriers of passengers – TCPs – would raise questions if the applications are based on fares in the same manner as a taximeter, since taximeters are prohibited in TCPs. Additionally, if the smartphone applications operated in connection with a taxicab and based the fares on data other than the measurements from a taximeter, such use would raise questions with those applications’ compliance with the rules of the SFMTA. In light of the lack of weights and measures conformity, consumer protection concerns are raised that smartphone application companies may be charging consumers in San Francisco fares in excess of applicable regulatory limits.

c. *Washington, D.C.*

In the District of Columbia, taximeters are required for each licensed taxicab. According to the District’s Municipal Code, the taximeter can only be installed by a taximeter shop.¹⁵⁴ The taximeters must meet the specific requirements and specifications as established by Handbook 44.¹⁵⁵ In addition to meeting the specifications of Handbook 44, taximeters must meet the specifications promulgated in the D.C. Municipal Code, Chapter 31, Subsection 602. For example, the taximeter must allow for the calculation of the (i) flag drop rate, (ii) distance rate, (iii) luggage rate, (iv) radio dispatch rate, (v) fuel surcharge, (vi) snow emergency and (vii) wait time charges.¹⁵⁶ Additionally, the taximeter shall be fully electronic, maintain shift statistics, year-end statistics and be capable of printing receipts.¹⁵⁷ Taximeters shall be constructed of hard impenetrable plastic or metal and sealed by a licensed taximeter business.¹⁵⁸

¹⁵¹ *Id.*

¹⁵² CAL. DEP’T OF FOOD & AGRIC., REGS., available at <http://www.cdfa.ca.gov/dms/regulations.html>.

¹⁵³ CAL. CODE REGS. Title. 4 § 4000

¹⁵⁴ See WASH., DC MUNI CODE § 13

¹⁵⁵ WASH., DC MUNI CODE § 31-602.3(z)

¹⁵⁶ WASH., DC MUNI CODE § 31-602.1

¹⁵⁷ WASH., DC MUNI CODE § 31-602

¹⁵⁸ WASH., DC MUNI CODE § 31-602.3

The taximeters have a numbered seal press with an official inscription issued by the D.C. Commission.¹⁵⁹ Licensed taximeter shops place a sticker on the taximeter that includes the name and signature of the sealer, the date the meter was sealed, the name of the authorized sealer and license number of the taximeter shop on the surface of the seals.¹⁶⁰ Much like the regulations found in other jurisdictions, these taximeter seals in the taxicabs in the District of Columbia serve as security measures to prevent consumer fraud through alteration or tampering with the taximeter.

If smartphone applications operating in the District of Columbia do not operate with a vehicle equipped with a taximeter, but nonetheless base a fare in the same manner applicable for a taxicab, then the applications may be operating contrary to the rigid requirements to meet the definition of an appropriate taximeter under Handbook 44. Of additional concern, Washington, D.C. requires fares to be charged consistently with the rates either approved or published by the D.C. Commission. Any smartphone applications not meeting this requirement may also run afoul of the D.C. regulations.

d. *Chicago*

Chapter 9-112 of the Code defines “taximeter” as “any mechanical or electronic device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.”¹⁶¹ The Rules and Regulations for Taxicab Medallion License Holders, as promulgated by the Chicago Department of Consumer Services – Public Vehicle Operation Division, state, “all taximeters shall be calibrated, tested and sealed pursuant to the most current edition of the National Institute of Standards and Technology (NIST) Handbook 44.”¹⁶²

With respect to the use of taximeters in licensed taxicabs in Chicago, the Code requires, in relevant part, that “[e]very taxicab... be equipped with a taximeter connected with and operated from the transmission of the taxicab to which it is attached.”¹⁶³ In this manner, it is clear that the City did not have in mind the “electronic hail” concept when it promulgated its taximeter rules. Additionally, the City of Chicago just completed – on June 7, 2012 – its period for public comment of additional taxicab regulations, including regulations on taximeters.

The proposed rules state taximeters must: (i) accurately register rates and charges authorized by the MCC, (ii) meet the technical specifications as follows: (a) taximeters must be capable of full integration with the dispatch system, vehicle transmission, electronic payment equipment, and GPS, (b) taximeters shall be calibrated, tested and sealed pursuant to the most current edition of the NIST Handbook 44, (c) taximeters must be capable of locking out or shutting off remotely, (d) taximeters must be capable of only activating upon public chauffer entering their personal identification number or swiping of a personal identification card (identifiable in real-time), (e) taximeters must be capable of tracking any single public chauffeurs hours of operation in real-time, and (f) taximeters must be capable of issuing or dispensing a printed meter receipt.

¹⁵⁹ WASH., DC MUNI CODE § 31-602.6

¹⁶⁰ WASH., DC MUNI CODE § 31-602.6

¹⁶¹ CHICAGO, IL. MUNI. CODE § 9-112-010(u)

¹⁶² CITY OF CHICAGO DEP’T OF CONSUMER SERVICES,

<http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/rulesfortaxicabmedallionholders.pdf>

¹⁶³ CHICAGO, IL. MUNI. CODE § 9-112-410

One potential issue with Uber TAXI's business operation is automatic gratuity and service fees. Pursuant to current Chicago regulations, a taxicab charges "rates of fare set forth in this chapter, which are or should be recorded and indicated by a taximeter."¹⁶⁴ Additionally, it is unlawful for any person to demand or collect any fare for taxicab service which exceeds the rates established by ordinance.¹⁶⁵

Also, smartphone applications that act as an electronic hail could raise concerns in Chicago if they generated a fare based on distance travelled, waiting time, or number of passengers, and that vehicle did not have a taximeter meeting both the NIST and Chicago Code requirements.

e. *New York City*

In New York, the rules and requirements for taximeters are under the jurisdiction of the Bureau of Weights and Measures of the New York State Department of Agriculture and Markets ("**NY Department of Agriculture**"). The taximeter requirements are set forth in the New York State Weights and Measures Law.¹⁶⁶ According to the regulations, the NY Department of Agriculture has adopted the standards found in Handbook 44 for taximeters, with additional requirements for printers used in conjunction with taximeters.¹⁶⁷ In New York City, the Taxi and Limousine Commission ("**TLC**") is responsible for licensing and regulating taxicabs.

At this time, New York City has approximately 13,237 taxicabs, although there was recent legislation passed in New York State that was to add 2,000 accessible taxicabs to the New York City fleet. This plan is part of the Street Hail Livery Law that was passed in December 2011, and amended in February 2012, to create a new class of for-hire vehicles that could accept street hails outside of the Manhattan business district.

Since this new class of for-hire vehicle will accept street hails in the same manner as taxicabs, the TLC adopted rules at its May 31, 2012 public meeting which set forth an LPEP system. The LPEP rules include specifications that mirror the TPEP rules for taxicabs. As such, the street hail livery vehicles will be required to have a taximeter to calculate the fare based on distance travelled and time of the fare. The Street Hail Livery Law, however, is "on hold" due to federal and state litigation challenging the legislation. Taximeters are not required in livery vehicles, which provide prearranged service.

The TLC has set forth its rules regarding taximeters in two chapters of its rules (the "**NY TLC Rules**"). TLC Rules Chapter 58 is entitled "Medallion Taxicab Service" and TLC Rules Chapter 64 is entitled "Licensing & Rules for Taximeter Businesses & Manufacturers." According to Chapter 58, the taximeter must be of "a make and type acceptable to the Commission," and accurately compute the rate of fare currently established by the TLC. Additionally, Chapter 58 requires that taximeters must be repaired, tested and certified by a licensed taximeter business. Further, Chapter 58 defines the responsibilities for the taximeter seals and security and the penalties for tampering with taximeters.

¹⁶⁴ CHICAGO, IL. MUNI. CODE § 9-112-010

¹⁶⁵ CHICAGO, IL. MUNI. CODE § 9-112-590

¹⁶⁶ See ARTICLE 16 OF THE AGRIC. & MARKETS LAW

¹⁶⁷ NYS WEIGHTS & MEASURES REG., 1 NYCRR § 220.2(c)

The procedures for licensing and supervision of businesses (“taximeter shops”) that manufacture, sell, repair and install taximeters in taxicabs are found in TLC Rules Chapter 64. According to these rules, these taximeter shops, must maintain requirements for installations and sealing taximeters and are required to maintain business records for all their installations, repairs and seals of taximeters.

If any smartphone applications operate by charging passengers and fares based on distance travelled or in a manner that appears to operate as a taximeter in generating a fare, then those vehicles should be operating consistently with TLC Rules Chapters 58 and 64. If not, then pursuant to its statements in Industry Notice #11-16, the TLC might investigate complaints of any smartphone applications, and 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.

f. *San Diego*

A taximeter is any instrument, appliance, device, or machine by which the charge for hire of a passenger-carrying vehicle is calculated, either for distance traveled or time consumed, or a combination of both, and upon which such charge is indicated by figures.¹⁶⁸ Under San Diego Ordinance 11 (“**Ordinance 11**”) § 2.2 Rate of Fare, it shall be unlawful for a permit holder to operate any taxicab in the city, unless the vehicle is equipped with a taximeter that meets the requirements of the State of California.¹⁶⁹ Ordinance 11 specifies seven (7) criteria to which the taximeter must adhere.

The taximeter shall be a style and design approved by the General Manager,¹⁷⁰ it shall calculate fares upon the basis of a combination of mileage traveled and time elapsed, and the fare-indicating mechanism shall be actuated by the mileage or time mechanism based on the speed of the vehicle whenever the vehicle is hired. The taximeter shall be at all times subject to inspection by an MTDB inspector or any peace officer and any device repairperson who places into service, repairs, or recalibrates a taximeter shall record the tire size and pressure of the wheels of that vehicle on the repair person’s sticker.¹⁷¹ It shall be the duty of every permit holder operating a taxicab to keep the taximeter in proper condition.¹⁷²

Ordinance 11 continues with several criteria drivers must adhere to in relation to the taximeter, but which do not relate to the operation or mechanical criteria of the taximeter; they can be found in subsection (f)-(j) of § 2.2 of Ordinance 11.¹⁷³ Ordinance 11 also requires an inspection, test, approval, and seal by a mechanic authorized by the State of California before the operation of a taxicab and thereafter, so maintained in a manner satisfactory to the General Manager.¹⁷⁴ Lastly, Ordinance 11 specifies each taxicab shall be equipped with a device, which

¹⁶⁸ SAN DIEGO ORDINANCE NO. 11, as amended October 16, 2003, (last visited June 27, 2012), <http://www.sdmts.com/MTS/documents/OrdinanceNo.11.pdf>

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* (The General Manager, as defined by the Ordinance, shall mean the General Manager of the San Diego Metropolitan Transit Development Board or his or her designated representative.)

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at § 2.2. For example (g) regulates the placement of the taximeter so that “the reading dial showing the amount of fare to be charged shall be well-lighted and easily readable by the passenger.”

¹⁷⁴ *Id.* at § 2.3(a)

shall plainly indicate to a person outside the cab whether the taximeter is in operation or is not in operation.¹⁷⁵

The San Diego Ordinance states that every taxicab shall be equipped with a taximeter that has been registered, inspected, and sealed by the Sealer of Weights and Measures before a taxicab is placed in service for the first time and the taximeter shall be submitted annually for re-inspection.¹⁷⁶ Further, it shall be unlawful to transport any passenger in a taxicab without a taximeter, in a taxicab without a current registration certificate from the Sealer of Weights and Measures, or to knowingly charge a passenger a fee that has been inaccurately calculated by the taximeter.¹⁷⁷

Based on the language in Ordinance 11, a vehicle charging a fare based on distance travelled or the time consumed in the ride would require a taximeter to operate. Further, if the taximeter does not meet the seven criteria listed within Ordinance 11, that taximeter appears to fall short of the San Diego regulations. Any smartphone application used to produce a fare that is based on the distance travelled or the calculation of the time of the ride would also appear to operate as a taxicab without meeting the San Diego requirements.

2. NIST on GPS and Smartphone Applications as Taximeters

In August 2011, the NIST formed an initial work group to address inquiries and requests received from weights and measures officials and others for support and guidance in evaluating the function and operation of taximeters that incorporate emerging technologies, which are not addressed in current standards. Current standards and examination procedures were developed prior to the wide scale appearance of these technologies, which include: Global Positioning Satellite Systems; Mobile Data Terminals; and Point of Sale Systems interfaced with taximeters.¹⁷⁸ Additionally, manufacturers and taxi industry officials who develop, design and market taximeters and associated products that incorporate these emerging technologies had expressed the need for uniform policies and practices used during field and type evaluations of their products. The weights and measures community recognized that existing standards and test procedures must be updated to keep pace with technological advances used to measure and assess charges based on time and/or distance measurements. The group also concluded that addressing GPS systems within the scope of the taximeters code may be problematic at this time.¹⁷⁹ The perceived difficulty involved to include GPS systems in the taximeters code is based largely on a lack of information and expertise within the group regarding this type of technology. The NIST concluded that this technology is to be included within the objectives of the group. Any necessary changes to the Taximeter code will need to be addressed by a larger work group that would include expertise in this area.¹⁸⁰

Last month, the NIST initiated steps to form a United States Work Group on Taximeters ("USNWG") to further address the work started by its initial work group. The USNWG will address these needs by analyzing current practices and by developing proposals to ensure that

¹⁷⁵ *Id.* at § 2.3(b)

¹⁷⁶ SAN DIEGO ORDINANCE § 21.314

¹⁷⁷ *Id.*

¹⁷⁸ NIST Handbook 44 Taximeter Code Initial Meeting August 17-18, 2011, Meeting Summary.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 3.

current methodologies and standards are updated to facilitate measurements that are traceable to the International System of Units (SI). More specifically, the USNWG will review existing requirements and test procedures currently referenced in NIST Handbook 44 Section 5.54, Taximeters Code and propose changes as needed. The work will include: identification of gaps between the Code and technology currently in use in taxicab applications; development and presentation of proposals through the National Conference on Weights and Measures (NCWM) to modify NIST Handbook 44, as needed; and identification and development of proposed changes for inspection procedures used by regulatory weights and measures officials.¹⁸¹ The NIST is still in the process of formulating the membership of the USNWG. The scope of its work and the timetable for these efforts is expected in the near future. In the interim, the NIST has circulated for comments proposed amendments to the NIST Handbook 44 Taximeters Code and asked for comments to be returned to the NIST by June 30, 2012. Of interest is the proposed amended definition for taximeters in Section 5.54, with new language underlined and highlighted, as follows:

A.1. General. – This code applies to taximeters; that is, to devices that automatically calculates at a predetermined rate or rates and indicate the charge for hire of a vehicle. These calculations are based on time and distance measuring devices located on or in the vehicle. (emphasis added).¹⁸²

IV. Conclusion

Transportation smartphone applications are not *per se* dangerous to the regulation of taxicabs and for-hire vehicles; however, applications without oversight are dangerous to the riding public and to the confidence the public has in the regulators responsible for these services. Jurisdictions must be prepared for the evolution of technology and, when properly regulated, these new developments can be a safe and productive addition to the transportation industry, and whose efficiency may potentially increase ridership. At this time, there are some “rogue” apps that may simply not be legal.

In order for applications not to be “rogue,” regulators should be proactive in understanding smartphone application operations and take steps to ensure the regulatory scheme in each jurisdiction accounts for third-party transportation applications. This may require the proposal of model regulations by noted trade and regulatory associations to provide regulators with some needed guidance. Additionally, NIST will need to specifically address the use of GPS as a substitute for a taximeter in terms of charging passengers according to distance or time. Absent such actions, regulated transportation service providers that continue to do business within the regulatory framework remain at a distinct disadvantage to the unregulated smartphone applications. Undoubtedly, smartphone applications will continue to be introduced into the marketplace. At this point, there is little if any objective public acceptance data on whether these applications are welcomed by consumers, transportation providers, or regulators.

Windels, Marx has provided this information to assist those stakeholders in formulating the next steps to address the concerns raised by smartphone applications and to level the playing field and ensure compliance with the goals of sensible regulations that have been in place for

¹⁸¹ *Id.*

¹⁸² *Id.*, Addendum I: NIST Handbook 44, Taximeter Code, Draft Amendments at i.

decades. The Firm stands ready to assist in the resolution of these important issues. This Report is for general information purposes only and does not constitute, and should not be relied upon as legal advice or opinion.

Matthew W. Daus
Partner

Matthew W. Daus' practice focuses on transportation law, counseling clients on a broad range of matters including regulatory compliance, strategic planning, procurement, litigation, administrative law and public policy. Within this area Mr. Daus coordinates representation on a wide array of legal needs and services representing ground transportation and related businesses. Mr. Daus also practices in the area of employment law, advising employers concerning the hiring and discharge of employees, employment discrimination laws and general personnel and policy matters.

Before joining Windels Marx to lead its Transportation practice, Mr. Daus served as Commissioner and Chairman of the New York City Taxi and Limousine Commission ("TLC") for eight and one half years, appointed by Mayors Giuliani, Bloomberg and the New York City Council. Prior to his tenure as the TLC's longest serving Chief Executive Officer, Mr. Daus served as General Counsel to the Commission and Deputy Commissioner for Legal Affairs since 1998, and before that, as Special Counsel to the TLC Chair - supervising over 75 lawyers and Administrative Law Judges. Mr. Daus also served as General Counsel to the New York City Community Development Agency (now the Department of Youth and Community Development), Special Counsel to the New York City Trade Waste Commission (now the Business Integrity Commission), and as a Prosecutor for the New York City Commission on Human Rights.

In 2010, Mayor Bloomberg and the New York City Council appointed Mr. Daus as a Commissioner of the New York City Civil Service Commission, an independent quasi-judicial agency that hears and decides employee candidate, disciplinary, and involuntary medical leave appeals under the New York State Civil Service Law. Additionally, the President of the New York State Bar Association appointed Mr. Daus to serve on its Committee on Civil Rights.

Mr. Daus serves as a Distinguished Lecturer with the City University of New York's ("CUNY's") Transportation Research Center ("UTRC") at The City College of New York. In addition to lecturing at CUNY on sustainable transportation, transportation policy, and business law. Mr. Daus speaks internationally on a broad range of transportation topics. He also is currently the President of the International Association of Transportation Regulators ("IATR").

Mr. Daus is a member of several non-profit boards serving as



MATTHEW W. DAUS
New York, NY
T. 212.237.1106
F. 212.262.1215

PRACTICES

- TRANSPORTATION
- EMPLOYMENT & EMPLOYEE BENEFITS
- CORPORATE & SECURITIES
- CORPORATE FORMATION & FINANCE
- LITIGATION & ALTERNATIVE DISPUTE RESOLUTION

EDUCATION

- LL.M., employment law, New York University School of Law, 1997
- J.D., cum laude, Touro College Jacob D. Fuchsberg Law Center, 1992
- B.A., political science, magna cum laude, Brooklyn College, 1989

ADMISSIONS

- New York
- New Jersey
- District of Columbia
- United States District Court for the Southern District of New York
- United States District Court for the Eastern District of New York

President of Community Understanding for Racial and Ethnic Equality ("CURE"), as Co-Chairman of the Brooklyn Economic Development Corporation and board member of Big Apple Greeter and the 2011 World Police and Fire Games. He also served for over eight years on the Board of NYC & Co. (the City's tourism, marketing, convention and visitors bureau) and for several years on the Board of Brooklyn Dreams Charter School.

Transportation

Our **Transportation Practice Group** is dedicated to serving ground transportation and related businesses. We counsel companies of all sizes on a broad range of transportation matters, including regulatory compliance, strategic planning, administrative law, and public policy throughout the United States and internationally.

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- drafting driver affiliation and base affiliation agreements;
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- advising clients on worker classification (such as classifying drivers as independent contractors) and related issues, including the structuring of agreements, policies, and codes of conduct;
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TRANSPORTATION LAWYERS

Partners

ANTONIO J. CASAS
973.966.3203

MATTHEW W. DAUS
212.237.1106

MICHAEL M. MORIARTY
212.237.1132

CHARLES E. SIMPSON
212.237.1070

Counsel

MEL P. BARKAN
212.237.1013

KRIS KOLLURI
732.448.2525

ALAN J. LANDZBERG
212.237.1192

DAVID ORLIN
212.237.1174

EDWARD E. SHEA
212.237.1140

Special Counsel

LEONARD A. LABARBIERA
732.448.2550

PASQUALINO RUSSO
212.237.1134

JULIE R. TATTONI
732.448.2559

Associates

JULIANNE E. BEFELER
212.237.1039

JULIAN B. BUCHBINDER
212.237.1165

CHRISTOPHER E. DEAN
212.237.1084

GARY J. FINIGUERRA
212.237.1220

GREGORY J. KERR

In addition to transportation companies and trade organizations, we represent a wide range of related businesses, including credit and debit card transaction providers, advertising and media content providers, financial institutions that specialize in medallion and ground transportation business lending, manufacturers and distributors of environmental products and alternative fuels, automobile manufacturers and inspection companies, and in-vehicle security camera manufacturers and distributors.

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- one of the largest U.S. financial institutions, in connection with medallion financing in various cities;
- international and domestic credit and debit card processing and technology companies, on the use of global positioning systems (GPS) and transaction processing equipment installation in taxi and other ground transportation vehicles in US cities and airports around the world;
- one of the country's oldest and largest automobile manufacturers, on ground transportation vehicle and environmental regulations in U.S. cities;
- a multinational company that conducts automobile safety and emissions inspections and provides technology solutions to both private and public entities, in connection with a government privatization initiative in New Jersey and on related government procurement matters;
- an international motor coach company, in connection with a bus franchise and concession bid and agreement with the NYC Department of Transportation (DOT);
- a toy distributor, in connection with trademark logo licensing rights and other issues in connection with toy taxis and NYC Police, Fire and Sanitation Department vehicles;
- a distributor of biodegradable motor oil, in connection with the NYC Taxi & Limousine Commission (TLC) approval process;
- a software technology company that provides smart phone applications for hailing taxis and other for-hire vehicles, in connection with various licensing and approval issues;
- elected officials as litigation counsel and in settlement negotiations with the NY Metropolitan Transportation Authority and NYC Transit Authority concerning civil rights claims arising from budget-related reductions in NYC mass transit bus service; and
- domestic and international ground transportation industry trade

212.237.1034

JASMINE K. LE VEAUX
212.237.1112

KAYLIE S. LOTZOF
212.237.1110

TAILA L. MARTIN
212.237.1063

CHRISTOPHER D. MEHNO
212.237.1072

JAMES P. TRACY
212.237.1180

organizations and foreign governments, on policy issues involving rate increases, medallion permit systems, regulatory structure and reform, credit card acceptance, tax, and related issues.

Useful Resources

- "Rogue" Smartphone Applications for Taxicabs and Limousines: Innovation or Unfair Competition? (June 29, 2012)
- Livery Street Hail Litigation: Analysis & Predictions (June 14, 2012)
- Overview of New Street Hail Laws and Proposed TLC Rules (March 19, 2012)
- Hailing the Wrong Taxi (*The New York Times*, Op-Ed, January 5, 2012)
- Overview and Highlights of Chapter Amendment to S.5825, A.8496 (January 5, 2012)
- Windels Marx Announces Formation of, and Leadership Role in, COTA (November 7, 2011)
- Important Medallion and Outer-Borough Street Hail Permit Updates (August 9, 2011)
- Important Worker Classification Tips for Transportation Businesses (August 9, 2011)

Attorneys in the Transportation Practice Group work closely with colleagues in the Firm's other Practice Groups, including Employment and Employee Benefits; Corporate & Securities; Environmental Law; Financial Transactions; Governmental Relations; Insurance; Intellectual Property, Technology & E-Commerce; Litigation & Alternative Dispute Resolution; and Tax, providing clients with comprehensive representation.

Please call
up with
Bill Lindauer

THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Bhairavi Desai

Address: _____

I represent: NY Taxi Workers Alliance

Address: _____

THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Peter M. Mazer

Address: 24-16 Queens Plaza S-5031 LIC NY

I represent: MTBOT

Address: Same

THE COUNCIL THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition (Discussion)

Date: _____

(PLEASE PRINT)

Name: Victor D. Zengov (The Black

Address: _____ Car Assistance Corporation

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 571 Res. No. _____

in favor in opposition

Date: 1/19/12

(PLEASE PRINT)

Name: ADRIANI CHARRA

Address: 3 PAVER ST NY NY 10004

I represent: TLC

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Edna Prentiss

Address: 720 W 18th St

I represent: Talk for All

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Edna Prentiss Res. No. _____

in favor in opposition

Date: 9/19

(PLEASE PRINT)

Name: Jennie Lee

Address: 411 East 57th St Apt 11F

I represent: Hallo

Address: 1 Little West 12th St

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Technology Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ORLANDO MENDEZ

Address: 125 Parker Ave Apt 4

I represent: Hailo

Address: 1 Little W 12 street NY NY 10014

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Technology Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Melissa Plaut

Address: 275 Devoe St., 1L, Brooklyn, NY

I represent: Hailo

Address: 1 Little W. 12th St., NY, NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Technology Res. No. _____
 in favor in opposition

Date: 9/19/12

(PLEASE PRINT)

Name: Jahangir Khan

Address: 6 Cherokee St - Staten Island NY 10314

I represent: Hailo

Address: 1 Little W 12 St NY NY 10014

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Martin Heikel

Address: 85 5th Ave NY NY

I represent: Flatiron Apps

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)

Name: William Lindauer

Address: NY TAXI WORKERS ALLIANCE

I represent: _____

Address: 250 5th Ave Suite 310

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. 44th Res. No. _____
 in favor in opposition

Date: 09-19-2012

(PLEASE PRINT)

Name: Delamare Giori

Address: 245-26 147 Ave Rosedale NY 11422

I represent: Hailo

Address: 1 little W 12 st

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Jesse DAN

Address: _____

I represent: CMT

Address: 42-50 24th St LIC 14

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: KAREN Gougeon

Address: _____

I represent: Baruch college

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

OVERSIGHT T2012-5236 Date: 9-19-2012

(PLEASE PRINT)

Name: PASQUALINO RUSSO, ESQ NY

Address: ~~156 W 56th St~~ WINDELS MARY 156 W 56th NY

I represent: INTERNATIONAL ASSOC. OF TRANSPORTATION REGULATORS 10019

Address: PO BOX 844, LEWISTON, NY 14092 WWW.IATR.ORG

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: DERRI PUGH

Address: _____

I represent: Lighthouse International

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Carolyn Castro

Address: _____

I represent: Lively Roundtable

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Avik Kabessy

Address: _____

I represent: Lively Roundtable

Address: _____

▶ Please complete this card and return to the Sergeant-at-Arms ◀

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/18

(PLEASE PRINT)

Name: JAY FREEMAN

Address: 343 West 16th St Apt 4

I represent: Hailo

Address: 3 Little West 12th

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JING WANG HERMAN

Address: 149 Fifth Ave 40th Fl

I represent: Get Taxi

Address: same

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 599 Res. No. _____

in favor in opposition

Date: 9/19

(PLEASE PRINT)

Name: JOHN MASCIALNO

Address: 200 Park Ave

I represent: VERIFONE INC.

Address: 37-03 21st LIC, NY

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 599 Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)
Name: Richard Thaler
Address: 799 MacLean Avenue, Vero Beach, NY 10709
I represent: OmniMedia Network / OMN Gateway
Address: Same as above

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: _____

(PLEASE PRINT)
Name: RON SCREBR O
Address: 149 5th Ave
I represent: GET TAXI
Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Carolynn Castro

Address: 4323 35th St

I represent: Livery Boardtable

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Avik Kalbessa

Address: 43-23 35th St

I represent: Livery Boardtable / Carmel

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆