

TESTIMONY BEFORE THE
Council of the District of Columbia
 COMMITTEE ON THE ENVIRONMENT, PUBLIC
 WORKS, AND TRANSPORTATION

PUBLIC OVERSIGHT HEARING ON
 INNOVATIONS IN THE PUBLIC VEHICLE-FOR-
 HIRE INDUSTRY

AND

THE IMPLEMENTATION OF THE
 TAXICAB SERVICE IMPROVEMENT
 AMENDMENT ACT OF 2012

AND A PUBLIC HEARING ON
 BILL 19-892, THE SEDAN CLASS AMENDMENT
 ACT OF 2012

SEPTEMBER 24, 2012

DAVID B. ALPERT
 Greater Greater Washington
 alpert@ggwash.org
 202-656-1449

The public vehicle for hire industry in the District of Columbia has been changing considerably, in the minds of many residents for the better, thanks in large part to new and innovative businesses such as Uber and Taxi Magic, with others set to launch in the future. It is imperative that District law encourage, rather than obstruct, such ventures.

There have now been at least three rounds of public battle this year between Uber and DC regulators or lawmakers. In the last two rounds, Uber has made some statements which were at times misinformed or misleading. But the Taxicab Commission also issued a set of regulations last week which we can, most charitably, consider to be well-meaning over-regulation.

The taxi market in DC needs to change. Residents are fed up with poor quality and fare scams. That's the sort of environment ripe for innovation, as long as regulations do not interfere with such innovation.

There are some real reasons for regulation. Riders want to know that if they board a vehicle for hire, the vehicle is safe and reasonably clean. They want to have a good idea of how much they will pay and not worry the driver will try to cheat. The city as a whole has a strong interest in ensuring that vehicles for hire serve all neighborhoods and persons with disabilities.

At the same time, it is very easy for regulations to go too far. They could prohibit practices which do not harm consumers, or require elements which, if absent, would not harm consumers. Such regulations create significant obstacles to new entrants or innovation among existing players, and diminish the customer experience or customer choice.

The regulations the Taxicab Commission recently proposed for sedan services contain some worthwhile regulations, but also many misguided and unnecessary regulations. If necessary, this Council should take action to ensure that the market in “sedan vehicle reservation services” and similar reservation services for classic taxicabs is an innovative one, only constrained by regulation as much as necessary.

I. STRICTER REGULATION CAN OFTEN HARM THE CUSTOMER EXPERIENCE RATHER THAN IMPROVE IT, ESPECIALLY IN INNOVATIVE MARKETS

Regulators often wish to “manage” the process of change. If things are changing, they want to know where the change will lead and want to ensure the endpoint is a desirable one. Change can be quite messy, and some people might lose out in some ways in a period of rapid and uncontrolled change.

Managing change through regulation could prevent service from getting worse for anyone very quickly. However, it also inevitably prevents service from getting better for anyone very quickly, either. In the taxi market in the District, we sorely need rapid improvement.

This is a big reason there has been such attention to the Uber fights. Uber is a more expensive service than the traditional taxi. People are not going to pay more for a service unless they feel it is worthwhile over the alternative. Residents have said, loud and clear, that they find the existing taxi service unacceptable. Vehicles operate in poor condition. Drivers try to pile on extra charges unacceptably. In many neighborhoods, it’s not possible to find taxis on the street, and they simply do not show up even when called through the dispatcher.

A. An Innovative Market Encourages Higher-Quality Services, Including In The District’s Vehicle For Hire Market

1. Uber provides a better experience for customers than traditional taxicabs do

I am not a regular Uber customer. I live in a neighborhood where one can find taxis on the street almost any time of day, and find the service generally adequate. Nevertheless, I have had standard taxi drivers refuse to take me to destinations, and often improperly add charges for luggage and extra passengers (even after the most recent round of changes, in a consumer-friendly move, simplified many of the extra charges over strident objections from the taxi industry).

Heading to the airport using a cab I requested through Taxi Magic, another dispatch service that works with standard cabs, one driver tried to get my wife and me to switch mid-trip to another taxi because he didn’t want to take a credit card.

Uber offers a smoother experience. A rider requests a car. Their smartphone application shows, on a map, where the car is located, or sends that information via text message. It includes a rating of one to five stars for every available driver. Presumably, if drivers get low enough ratings, Uber will drop them from its service. Uber does all of this, not because the DC Council or Taxicab Commission forces them to, but because it will build them a larger and more loyal customer base. In that, they have succeeded.

2. An innovation-driven approach rewards higher quality, while a regulatory approach seeks to punish lower quality

The intrinsic motivation to improve is the essence of the difference between the regulatory approach and the innovation-driven approach. Each approach has merit in the appropriate context, but in this market, the latter would bring more consumer value.

The regulatory approach seeks to solve problems by setting a minimum floor and bringing enforcement actions against drivers who break rules. Legislation mandates a standard set of technology in all cabs. Inspections ensure minimum safety standards, but don't push for cleaner or even better-maintained interiors.

Meanwhile, the innovation-driven system tends to create oases of very high quality that compete with the status quo. That might be a fleet of sedans, as Uber is doing, or a service that helps people pick among existing taxi companies, like Taxi Magic does.

3. Customers can regulate the quality of services without recourse to regulators and enforcement

Competition-driven pressure toward higher quality puts more power into the hands of individuals. They can pick a dispatch service or taxi fleet that provides quality service. If they aren't happy with the ride, they can pick a different company in the future.

This power makes it less necessary for the Commission to specify detailed operating procedures or monitor performance. With the traditional taxicab model,

riders are not repeat customers of individual cabs, so drivers have little disincentive to cheating a rider except the threat of enforcement action from the Commission.

A reservation service, by contrast, relies on repeat customers and on its reputation, so it will take action on its own against misbehaving drivers, to persuade them to act properly and drop drivers from its service when needed.

II. A LEVEL OF REGULATION WHICH MAY BE APPROPRIATE FOR STREET HAILS OVERREACHES WHEN APPLIED TO DISPATCH TRIPS AND RESERVATION SERVICES, AS WITH THE PROPOSED REGULATIONS

A. Dispatched Trips Require, And Deserve, Less Stringent Regulation Than Street Hails

There is a role for both regulation and deregulation. There are effectively two taxi markets: street hails and dispatches. We need rate regulation for street hails because people cannot effectively comparison shop and negotiate for these trips.

We do not need the same regulation for dispatch cab trips. A café needs to undergo regular health inspections to ensure that it does not poison its customers, but not regulation to specify the color of the counters, or the format of the receipts, or approval for every new dish on the menu.

Each regulation may have some legitimate interest motivating it, but each regulation also has a cost. It creates more obstacles for each new entrant, who must fill out more paperwork, get more licenses, have more devices approved by DCTC, and so forth. It does not take much

burden to deter new entrants, and each new entrant deterred means fewer opportunities to improve the customer experience with taxis.

B. Sedan Regulations Should Narrowly Serve Compelling Public Interests Such As Safety, Accessibility, And Transparency

When seeking to limit regulations to the minimum necessary, each can be evaluated on two criteria: How compelling is the specific interest which they try to advance, and how narrowly each one achieves that goal. If a less restrictive means is available, these regulations should seek to employ it rather than an alternative.

Uber CEO Travis Kalanick himself gave a persuasive list of compelling interests from regulation in a phone interview. He listed three: “safety, accessibility, and transparency.”

Certainly, DCTC should ensure safety. It is also important to ensure that a taxi service is available all people, including people in less affluent parts of the city, those with disabilities, and other groups. And transparency is fundamental to the concept of allowing people to comparison shop. If consumers can know information such as fares and expected wait times, they can easily choose among potential operators.

In measuring the proposed sedan regulations by this yardstick, some stand up, but many do not.

C. Many Of The Proposed Regulations Should Be Deleted

1. A minimum of 20 vehicles for sedan companies is inappropriate

The Taxicab Commission’s proposed rules (section 1401.5) require a minimum of 20 vehicles in any “sedan company or association.” According to Chairman Ron Linton, this does not apply to an individual operator, allowing in effect an association of one, but nothing in between.

Chairman Linton has stated that his objective with this regulation is to manage the workload of the Commission. This is not an appropriate reason to impose a regulation. The District should not force small business owners to conform their businesses to the convenience of the government. We do not require that a restaurant owner have four restaurants in order to operate more than one. Nor should we require the same here.

The simple administrative burden of setting up a sedan company or association is already a deterrent to having companies with fewer vehicles. Each company or association has to comply with a large number of regulations, most of which are not ten times as onerous for a 20-vehicle operation than a 2-vehicle one.

If the Commission is unable to manage a larger number of small businesses, it should request additional resources from this Council in its budget, and/or reduce the amount of work necessary for each one, in order to ensure it can license any small business which an individual wishes to establish.

2. Regulations should not require a local place of business for vehicle reservation services

The requirement that each “sedan vehicle reservation service” must maintain a local place of business (section 1403) could do considerable damage to innovation. Imagine if, for a District resident to order a product by mail order on the Internet, the company providing the service had to have a business license in the District and maintain a “bona fide” office here. That would severely limit shopping options for our residents. What if, to book a flight, a resident could only use comparison shopping engines owned by companies with District offices?

A “sedan vehicle reservation service” is an online and/or telephone-based service which connects individuals with licensed operators in the District, and is thus analogous to other online services. There is no reason that this service needs to have a physical office. Taxi Magic, one such service, is located in Alexandria. Others might have their headquarters in more distant places. Residents benefit from having access to the greatest number of such services, not arbitrary limits.

It is reasonable to ask sedan companies and associations to base their business in the District, but some of the regulations are still unnecessary and, in some cases, so specific as to verge on the ridiculous. Such a place of business must have “standard office furniture,” a person on site during “normal business hours,” a physical sign, and more. Why? If a few residents want to pool resources, buy a few sedans, apply for appropriate licenses, and use them to transport passengers upon request through Uber or another reservation service, they

will not be serving walk-in customers. It is not necessary for them to have a sign and receptionist at any location.

Imagine if analogous regulations applied to my Web site, Greater Greater Washington. But not for the First Amendment, we could imagine a regulator, before blogs existed, setting out just such a regulation for “media information service.” It would require each media organization to have a sign, a staffer during business hours, maybe a physical mailbox to send letters, a requirement to file forms listing the number of printing presses in use, and so forth.

This would greatly impede the creation of new blogs, and so too could requirements such as this impede taxi reservation services.

3. Regulations mandating specific equipment and capabilities, such as printed receipts, are unnecessary

The requirements for hand-held devices, printed receipts, audible announcements and more (1404.7 and 1405.3) are unnecessarily specific. While a printed receipt is a nice amenity to offer, Uber has been operating without printed receipts with generally very high customer satisfaction.

Chairman Linton says that this is necessary to ensure drivers do not defraud riders, but there are many other ways to ensure this. Uber, for example, shows each customer a specific GPS track at the end of the ride on its mobile application. The rider can ensure that the track matches the actual trip. And if riders start to believe the drivers of Uber or any other reservation service are defrauding them, they have a far better recourse than to

complain to the Commission and show printed receipts: they can stop patronizing that reservation service. They can ask for refunds from the service. If they don't get satisfaction, they can complain online, and spread the word to others and thereby harm the reputation and business of that service.

4. Regulations requiring website accounts are unnecessary, but regulations requiring reservation services to post their rates are appropriate and even should be expanded to mandate computer-readable fare information

Section 1405.6 (“Each sedan vehicle reservation service shall establish an account with each person, organization or entity that intends to utilize the sedan services provided by an owner/operator under contract with the sedan vehicle reservation service.”) is unclear and poorly written. It's not evident whether they mean that each reservation service must “establish an account” with each end customer, and if so, why this has to be codified in regulations. It would be very difficult for such a service to bill customers without this, and this seems to be an area which works fine in the absence of regulation.

Section 1405.7 appears to require reservation services to post their rates online, though the actual text is also poorly written. This, at least in intent, is a valuable element of the regulations which should stay. Further, I would encourage the commission to add a provision that these rates must be also posted in a computer-readable format, ideally one which an industry association could create. Such a format would allow people to create “comparison shopping” applications and tools letting a

rider predict his or her fare on one of several reservation services.

5. The proposed ban on demand pricing is inappropriate

1405.8 prohibits demand pricing, which Uber refers to as “surge” pricing (1405.8). There is a legitimate purpose to such pricing. Rather than prohibit it, the commission should require that, if using such pricing, the reservation service immediately post this fact on its web site in a human-readable and the aforementioned computer-readable formats, and notify any riders that the demand pricing is in effect before they take a trip.

As with the printed receipts, this sort of business practice will be self-regulating. If riders are sufficiently unhappy with such a policy, they will stop patronizing the reservation service. If they continue patronage, then they must not be unhappy enough to warrant commission action.

Creating an innovative marketplace is not about supporting Uber or not supporting them. It's about creating an environment for many independent dispatch services. If Uber simply supplants traditional taxis, riders will not necessarily be better off. They might have higher quality rides, but at a higher price, and without much more choice.

However, if DC ultimately has 5 or 10 separate, competing dispatch services, there will be every incentive to improve service and keep prices low. That is the end toward which our public policy must aim. If the Taxicab Commission is not willing to create regulations in this spirit, this Council should step in.