Taxi & Limousine Commission

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New York City Taxi & Limousine Commission Public Comment

The New York City Taxi and Limousine Commission (TLC) welcomes the opportunity to provide public comments on some of the questions posed before the *"Sharing" Economy, Issues Facing Platforms, Participants, and Regulators* workshop. As the regulator of the largest for-hire transportation system in the United States, the TLC has extensive experience with many of the major corporate participants in the transportation sector of the so-called "sharing" economy. Recognizing that the "sharing" economy affects different industries in different manners, we limit our comments strictly to the types of platforms within the "sharing" economy that arrange trips for a fare between passengers and drivers, often driving their own, personal vehicles. With that, the most important question posed by the Federal Trade Commission in regards to these types of platforms is the following:

What features distinguish these sharing platforms from other internet platforms?

Simply put, there are no distinguishing features. Transporting passengers for money, regardless of how the driver and passenger are connected, is for-hire transportation. There is no difference between the services these "sharing platforms" provide and the services that other platforms, internet or otherwise, provide in the for-hire industry. While the introduction of technological innovations has generated greater competition, consumer demand, and broader adoption of technology in the for-hire industry, the service is still functionally the same: providing dispatched, for-hire transportation.

Companies that offer peer-to-peer transportation services argue that they are just a matching tool and don't actually operate the for-hire service that is solicited and offered via their platforms, thus should not be subject to important regulations that exist governing for-hire service and can operate using drivers and vehicles that are not commercially licensed. At the TLC, we recognize that this is a fallacy – these companies set the prices for trips, set standards for service, allocate rides according to proprietary algorithms which may include or exclude certain drivers based on past performance, vet and monitor driver and passenger performance, and even remove participants from the system. These are all functions of for-hire businesses, and in New York City we recognize and regulate them as such, requiring that their drivers and vehicles be vetted by our agency for basic safety and insurance standards before they can even enroll with one of these companies to offer service. Simply put, we believe that all companies offering for-hire service, regardless of whether they use an app or other internet platform or even a traditional telephone, should fall under government regulation of for-hire service, without special exemptions or status to work outside of existing safety, accessibility, and insurance rules.

This is not to negate true instances of ride-sharing, such as carpooling to a shared destination where passengers legitimately share costs borne by the driver related to the ride, such as gas. But a person offering to drive strangers around in his or her car to a destination of the passenger's choice for a fee, most often set by the driver or the passenger, does not constitute "sharing" a ride. The Associated Press Stylebook notes this distinction, instructing, "Ride-hailing services such as Uber and Lyft let people use smartphone apps to book and pay for a private car service or in some cases, a taxi. They may also be called ride-booking services. Do not use ride-sharing." The FTC should not mistake companies doing for-hire service for true ride-sharing. We disagree that for-hire service using a smartphone app is part of the sharing economy – it is for-hire service and this practice should be regulated as such.

How have sharing economy platforms affected competition, existing suppliers, innovation, and consumer choice in sectors in which they operate? How might they do so in the future?

In New York City, the addition of these companies to the existing for-hire transportation economy has resulted in more choices for consumers and the labor supply. The popularity of these new platforms has forced existing suppliers of for-hire transportation to improve their services and adopt newer technologies to proffer their services. Recently, 134 for-hire service companies, many of which are traditional bases, reported to the TLC that they use one of 76 apps to allow passengers to request a for-hire vehicle. In addition to increased service availability locally, consumers can also use the same platform across many cities, easing their traveling experience.

By operating on equipment readily available to most drivers, such as smartphones, these companies have increased job opportunities for drivers. Traditionally, a for-hire vehicle driver only received dispatch trip requests from one base through the two-way radio installed in his or her vehicle. Now that these new providers are dispatching through apps downloaded onto smartphones, drivers have a greater access to available trips from multiple bases, potentially decreasing downtime between trips and increasing their earning potential.

However, some platforms require drivers to buy new cars and specific models, compelling drivers to take on high-interest loans if they want to use that platform. If drivers aren't successful at getting enough fares, they're at risk of defaulting on these loans. Furthermore many financing arrangements are predicated on automatic car payments from drivers' earnings from dispatch app trips, and drivers who are unhappy with working for these companies are often forced to continue in order to meet their loan payments. Drivers are also required to pay for all expenses incurred during service, including gasoline and maintenance. The companies providing the dispatching platform take on none of the expenses and risk, only the reward.

The ubiquity of these companies currently presents great benefits for both drivers and consumers, but this very ubiquity may pose challenges to both in the future. While these platforms have resulted in an increased number of trip opportunities for existing drivers, the ease of on-boarding onto the platforms has also led to an increase in new drivers and vehicles in the for-hire transportation economy. As these companies look decrease wait times for passengers, growth in driver supply must outpace growth in passenger demand. An increase in the number of drivers without a corresponding increase in demand for services may lead to more drivers but with each doing fewer trips. Conversely, growth in passenger demand without a corresponding growth in driver supply may lead to increases in prices and occurrences of “surge pricing” to meet said demand. Growth in both the consumer pool and labor pool have enormous benefits for the citizens of New York City, those looking for a ride and those looking for a job, but without proper regulation, unbridled growth in either supply or demand may present negative consequences for drivers and passengers alike.

What particular concerns or issues for protecting platform participants are raised in the context of sharing economy transactions? How can state and local regulators meet legitimate regulatory goals (such as protecting consumers, public health and safety) while also promoting competition and innovation?

The concerns for protecting platform participants, both drivers and passengers, are the same as the concerns for all participants in the for-hire transportation industry: safety, transparency, and availability. In the for-hire industry, where lives are in the hands of the person behind the wheel and for-hire vehicles are part of a city’s critical transportation infrastructure, the regulator must play an important role in ensuring safe and equitable service. By acknowledging that these platforms are providing a service already regulated by the TLC, just using a newer technology, the TLC has been able to address these concerns by subjecting platform providers and platform drivers to licensure, as we do for all for-hire drivers and entities that dispatch for-hire vehicles, and enacting regulations that protect the interests of the public while encouraging innovation, competition, and entrepreneurship.

Public Safety: One of our greatest public safety concerns regarding these platforms is that there is no way to remove a bad actor from the industry – only from the platform – if drivers are not licensed by a public regulator. As we’ve seen in New York City, drivers often use multiple platforms. When removed from one platform, a dangerous driver can continue to drive for-hire simply by switching platforms. By licensing drivers that use these platforms, the TLC has the capability to remove unsafe drivers from the entire industry, not just a specific platform.

Leaving these platforms unregulated can lead to lax standards for eligibility and ongoing oversight of drivers. ”Sharing economy” platforms operating in jurisdictions where they are not subject to regulation typically use third-party background checks with a limited scope and do not require fingerprinting. Fingerprint background checks are more comprehensive and ensure that the applicant is actually who he or she says she is. Additionally, these companies are not notified by local law enforcement entities or DMVs when drivers are arrested or ticketed for driving infractions. Vehicles on these platforms in other jurisdictions are typically subjected to an initial inspection performed by a platform employee and then are not inspected again to ensure they meet safety and emissions criteria. Again, licensing drivers and vehicles allows the TLC to address these concerns. As a condition of licensure, in New York City, all for-hire drivers are subject to initial and regular criminal background checks, drug testing, and DMV license checks. The TLC is notified when drivers are arrested or receive points on their DMV licenses. Vehicles are inspected three times per year by a legitimate, state-certified inspection facility to ensure they are safe. These standards help ensure the public is protected and the driver is accountable when they trust a stranger to drive them in a for-hire vehicle.

Much of TLC's concerns regarding public safety involve vehicles carrying the proper insurance. Drivers in jurisdictions where these platforms remain unregulated often carry just their own personal vehicle insurance and do not carry any type of commercial insurance. Many personal insurance policies will not pay out if a driver crashes a vehicle while operating for-hire. This leaves both passengers and drivers in a precarious position should a crash occur during a trip arranged by the platform. In response, the TLC requires all vehicles operating on these platforms to carry the same, 24/7 commercial insurance that all for-hire vehicles in New York City are required to carry, ensuring that passengers and drivers are protected should a crash occur, regardless of which phase of a trip that crash occurs (app on but cruising for fares, ride accepted and driver en route, during a trip, driver returning home from servicing trips, etc.).

Transparency: A chief concern for regulators is consumer protection and ensuring that all consumers have all of the information needed when making a financial transaction. In the for-hire transportation sector, that means providing passengers with as much price transparency as possible. As these platforms set their own rates, and often engage in dynamic or "surge" pricing, consumers need to understand exactly how much they will be charged. Licensing all entities that dispatch vehicles for-hire, including traditional bases and these new platforms, allows the TLC to set standards for price transparency such as requiring all dispatching entities to provide accurate rates to customers, have customers affirmatively accept any dynamic pricing, and provide itemized receipts to all passengers.

Availability: As a key component of New York City's transportation infrastructure, it is vital that for-hire service be available for all passengers. Primarily, for-hire transportation needs to be available those in need of accessible vehicles and it needs to be available in all parts of the city, not just the Central Business District. We've seen that without explicit accessibility provisions, the number of wheelchair-accessible vehicles on the road is determined by profitability. The same is true for locations to which platforms dispatch vehicles, as for-hire vehicles tend to congregate in more profitable areas. Consumers may be forced to endure extensive waits for a limited number of accessible vehicles or for any vehicles to enter their neighborhood at all. Expanding the availability of for-hire service should apply to all communities and consumers. Similarly to addressing the consumer protection concerns, licensing and regulating all entities that dispatch vehicles for-hire allows the TLC to set criteria for wheelchair accessibility and prohibitions on service refusals.

Balancing the TLC's regulatory goals and encouraging innovation and competition remains a priority for the TLC. We have done this by establishing a multitude of ways in which a platform can enter the for-hire vehicle industry. Traditionally, in order to provide for-hire service in New York City, a company had to obtain a base license, which entailed affiliating a required number of vehicles, paying into Workers' Compensation funds, maintaining parking spaces, and a host of other expenses. Many of the new platforms, including the two largest companies, fit neatly within these confines and had the capital and resources to enter the market through the traditional base route. However, in order to allow smaller technology companies and entrepreneurs a chance to enter the market, the TLC created a new class of license, a Dispatch Service Provider (DSP) License, that allows companies that had a platform to dispatch vehicles to enter the market and dispatch vehicles on behalf of licensed bases on the companies' own platforms. A DSP License allows new entrants to work in the for-hire transportation industry without the expenses of base ownership by working in conjunction with licensed bases to dispatch vehicles on behalf of the bases, bases which may not have their own, modern platform passengers can use to request service. Additionally, the same price transparency and accessibility requirements apply equally regardless of the platform used to request service. These rules give technology companies an easier entry point to the New York City for-hire vehicle market than the traditional base-ownership route while ensuring customers receive the same high standards of public safety, transparency, and availability.

To what extent should sharing economy platforms be able to monitor participants, *e.g.*, by collecting locational data? If they do monitor participants, how can they do so while adequately protecting the privacy of participants?

Where use of technology has raised new concerns for the industry, we've promulgated new rules, such as requiring companies that are collecting vast amounts of passenger data like credit card numbers and geo-location information to have security and privacy policies in place. But the underlying service requirements remain the same, and will apply whether the passenger booked their trip using their hand, their telephone, a website, a smartphone app, or whatever technology comes next.

In what areas of commerce are reputation-based systems adequate? In what areas are reputation-based or self-reporting/self-regulating systems inadequate? How susceptible are reputation systems to bias? How can platforms *and regulators* moderate this bias?

Reputation-based systems provide customers with a venue to suggest improvements to a service-provider creating a feedback loop that many businesses put into action, which can result in improvements to customer service. With significant usage of reviews and criticisms taken seriously by businesses, customer service can improve greatly. With the ease of reviewing on online platforms and access to reviews, businesses have more access to useful information to improve their operations than ever before. Because of this feedback loop, reputation-based systems are useful for customer service.

While reputation-based systems can help business owners with customer service issues, they are *not* a substitute for regulatory oversight. A reputation-based system will not ensure a vehicle's insurance meets required liability standards or has undergone safety and emissions inspections. Nor are reputation-based systems adequate to address dangerous drivers simply switching platforms. An isolated reputation-based system may result in a driver being kicked off one platform, but as reputation scores or ratings are not transferred from platform to platform, the driver may switch platforms when kicked off of one platform due to poor ratings. Since there is rarely just one company in an emerging industry, it is important to have minimum standards set and enforced by public regulators. Simply removing a bad driver from one network does not take the driver out of the industry.

Additionally, reputation-based systems may be susceptible to bias in a way that unfairly discriminates against both drivers and passengers. Limited-feedback reputation-based systems can allow bias-based discrimination against a driver based on his or her race, gender, sexuality, age, immigration status, or disability and hurt a driver's ratings and ability to continue using a certain platform. Similarly, reputation-based systems may subject passengers to destination-based discrimination by allowing drivers to negatively rate passengers based on their destinations. Regulatory oversight ensures that passengers that have been discriminated against can have their claims investigated and prosecuted.