



May 26, 2015

*Submitted online @ <https://ftcpublic.commentworks.com/ftc/sharingeconomyworkshop/>*

Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**RE: TLPA Comments – Fair Competition and Consumer Protection Concerns  
The “Sharing” Economy: Issues Facing Platforms, Participants, and  
Regulators A Federal Trade Commission Workshop:**

Dear FTC Commissioners and Staff:

The Taxicab, Limousine & Paratransit Association (TLPA), on behalf of its member companies, submits the following comment letter urging the FTC to carefully consider the fair competition and consumer protection issues raised by online and mobile peer-to-peer companies connecting passengers with drivers in the “Sharing” economy.

TLPA is a non-profit trade association representing companies in the passenger transportation industry. Our membership includes owners and managers of taxicabs, sedans and limousines, airport shuttles, non-emergency medical transport, and paratransit services. Our 1,100 member companies operate more than 100,000 passenger vehicles; transporting well over 2 million passengers each day – more than 900 million passengers annually. For hire passenger transportation is an essential part of public transportation that is vital to this country’s economy and mobility, to the relief of traffic congestion, and improving the environment.

The FTC has requested public comment on the following questions, both in advance of and following its June 9, 2015 public workshop on the “Sharing” economy:

- 1. How can state and local regulators meet legitimate regulatory goals (such as protecting consumers, and promoting public health and safety) in connection with their oversight of sharing economy platforms and business models, without also restraining competition or hindering innovation?*

**TLPA Comment:** If regulators or elected officials wish to establish a looser or more flexible set of standards for TNCs/peer-to-peer apps, then all passenger vehicle transportation providers should be allowed to follow these new looser or more flexible rules in order to be able to fairly compete in a level playing field. Companies that get to operate without regulations or with different, less onerous regulations have a competitive advantage. Typically, less regulation

means lower prices which in turn increases the demand for the cheaper less regulated service and decreases the demand for the more expensive regulated service. Companies that are forced to incur higher costs than other business models are at a competitive disadvantage. Simply put, old and new companies should play by the same rules. As such, all companies in the passenger vehicle transportation space should meet the same legitimate regulatory goals of public safety and consumer protection otherwise it gives one type of company or business model an unfair competitive advantage over the other group.

Companies providing a ride service to consumers whether through a mobile app, peer-to-peer platform, or some other business model (sometimes referred to herein as transportation network companies (TNCs)), are just like many other companies used by consumers to arrange for hire passenger vehicle service. All companies recruit drivers, market for passengers who need immediate transportation service, dispatch drivers to pick up passengers, and charge passengers for rides so the driver and the dispatch company can earn a profit.

New platforms, technologies, and payment methods offer consumers expanded choices, but this comes with new challenges related to unfair competition and consumer protection. There are many ways to arrange and pay for passenger vehicle transportation and more options will continue to grow as payment methods and technology continues to evolve (*i.e.*, Apple Pay, Google Wallet, Bluebird). A TNC/peer-to-peer app typically only accepts a pre-stored credit card for payment. Thousands of other passenger transportation providers accept multiple methods of payment – pre-stored credit card, in-vehicle credit card, cash or voucher. The method of arrangement or payment for passenger transportation service does not put a company (TNC/app) into a separate business class outside of the regulatory framework in place to protect consumers and the public.

Regulations that ensure driver and customer safety, deter deceptive practices related to fares, address vehicle safety and liability, and address other consumer protection issues like data security and privacy, all can serve legitimate public interest goals. These legitimate goals; however, translate to a higher cost of doing business. Regulations should not favor one group of competitors over another. Moreover, if regulators or elected officials wish to revisit the merits of deregulation of the passenger transportation industry, then TLPA recommends reviewing the numerous studies<sup>1</sup> discussing the negative effects of past deregulation on both drivers and passengers. A detailed discussion of deregulation is beyond the scope of these comments; however, the bottom line being that in most cities that deregulated, the negatives affects, such as, deceptive pricing, more trip refusals, higher fares, and aggressive solicitation of customers far outweighed the nominal positive affects, such as, more drivers in the market and a modest

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<sup>1</sup> For example, see Price Waterhouse (1993) Analysis of Taxicab Deregulation and Re-Regulation, available at <http://members.tlpa.org/scripts/4disapi.dll/store/analysis-of-taxicab-deregulation-and-re-regulation/32/>; Frankena, M. W. and P. A. Pautler (1984) An Economic Analysis of Taxicab Regulation, Bureau of Economics, Federal Trade Commission, FTC Bureau of Economic, available at <http://www.ftc.gov/be/econrpt/233832.pdf>; and Dempsey, Paul Stephen, Taxi Industry Regulation, Deregulation & Regulation: The Paradox of Market Failure, Transportation Law Journal, University of Denver, College of Law, Denver, Colorado, Volume 24, #1, Summer 1996, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2241306](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2241306)

reduction in passenger wait time. As a result, most cities that de-regulated have since re-regulated.

2. *How have sharing economy platforms affected competition, innovation, consumer choice, and platform participants in the sectors in which they operate? How might they in the future?*

**TLPA Comment:** As discussed above, TLPA has serious concerns about the developing two-tier regulatory framework for passenger transportation service and its anti-competitive effects. Consumers benefit from competition among passenger transportation services, both new and old, by offering greater choices. Most economists would agree that regulations increase the cost of doing business which typically means a higher price for goods and services. Regulators or elected officials should not be allowed to pick winners and losers in an industry by allowing “new” companies and business models to play by no rules or different rules. Regulations that treat traditional taxi service providers differently from newer TNCs/peer-to-peer apps creates an unlevel playing field among competitors.

In addition, TLPA supports the principal that license fees should not be a barrier to entry and operation, but should be relatively equal for all companies/providers of passenger transportation service (taxicab/TNC/peer-to-peer app) so as not to favor any one type of public transportation service company or provider over any other company or provider in order for all to fairly compete in a level playing field. For example, companies and drivers typically pay license and inspection fees that cover the costs incurred by the public sector in carrying out the registration/licensing process, inspections, and background checks that enhance public safety. These fees are typically viewed as necessary to cover the costs of administering regulations that cover passenger transportation services.

3. *What consumer protection issues—including privacy and data security, online reviews and disclosures, and claims about earnings and costs—do these platforms raise, and who is responsible for addressing these issues?*

**TLPA Comment:** TLPA has serious consumer protection concerns for passengers using peer-to-peer platforms or TNCs, including: customer privacy, data security, fare transparency and surge pricing during an emergency, service hours and areas, driver screening and vehicle safety (addressed below in response to Question 4), and insurance coverage (addressed below in response to Question 5).

### **Privacy:**

The abuse of private information by TNCs/peer-to-peer apps has resulted in a Congressional inquiry (<http://www.franken.senate.gov/files/letter/141119UberLetter.pdf>) and serious concern by consumers. All companies handling passenger data must be held to strict standards to safeguard passenger privacy. Privacy requirements imposed on transportation services are typically as follows:

- In limousines and taxicabs in which a technology system, such as a credit/debit card payment system has been installed, vendors must (i) be authorized by the jurisdiction to install the technology systems (i.e., the credit card machines, screens, monitors and/or GPS systems); (ii) adhere to strict security and privacy protocols that require, amongst other things, that vendors have an established information security policy, prior to developing a system design, and (iii) any data categorized as private or confidential must not be transitioned to removable media without regulatory approval.

Articles have reported that Uber is misusing and possibly exploiting private passenger data. Uber Senior Vice President Emil Michael suggested that his company could spend \$1 million on digging up dirt about unfavorable reporters and threatened the misuse of passenger data in this regard (<http://www.buzzfeed.com/bensmith/uber-executive-suggests-digging-up-dirt-on-journalists>). A day later, a senior editor at San Francisco Magazine wrote that she was warned by sources at Uber that executives could be spying on her via her Uber usage (<http://www.modernluxury.com/san-francisco/story/uber-employees-warned-san-francisco-magazine-writer-executives-might-snoop-her>).

The editor was cautious to say that she did not know whether her information was accessed or whether her sources were just being overzealous in warning her, but the general sense is that accessing users' private data is fairly easy at Uber, and that "the company stokes paranoia in its employees about talking to the press." Uber has a function that it refers to as "God View," which allows employees to track and share the whereabouts of any user who has ordered a car.

Thus, to the extent privacy measures are currently in place for technology utilized in taxicabs and/or limousines, TLPA supports holding all TNCs, apps, and platforms accountable to the same privacy standards. However, if the advent of mobile applications in the transportation space has not yet been contemplated by a jurisdiction, then TLPA urges the FTC (and elected officials) to conduct an audit/investigation of TNC privacy policies to determine whether they are sufficient to protect the public. It is completely within the power and authority of the FTC (and elected officials) to require, as a condition of operation, that companies keep their privacy promises. Privacy requirements have been developed and imposed in local jurisdictions (e.g., New York City's TPEP regulations) and are being contemplated on a national level.

### **Fare Transparency and Surge Pricing:**

Requirements imposed on companies that provide transportation services for hire to the public are typically as follows:

- For limousines and livery services, the rates of fare are established by each transportation service provider based on the amount of time for which the vehicle is hired or are flat rates and are to be provided to the public before the vehicle is reserved so that the public can make an informed decision.
- For taxicabs, the rates of fare are to be posted for the public to view, and either the rates are set by a public agency based on time engaged and distance traveled as calculated by a certified meter or they are flat rates.

The current rates of fare policies are reasonable and distinguish between the consumer's ability to shop price when reserving a service in advance (limousine) versus the consumer's inability to shop price for service when the consumer needs immediate service at a stand, from vehicles cruising for service, or from a mobile order for immediate service (taxicab/TNC). Should any of the existing public sector imposed flat-rate requirements be amended for any one segment of the passenger transportation service (TNC/app), then the requirements for all segments of the industry (taxicab and limousine) should be reevaluated and most probably amended to ensure equal or very similar fare-setting flexibility or inflexibility with equal levels of administrative burdens and costs.

For example, if a TNC can implement demand pricing on a moment's notice and use an uncertified meter that is built into its dispatch device (cell phone) to calculate the fare based on time engaged and distance traveled, then other providers of the same type of immediate-response service (taxicabs) should have that same flexibility in structuring pricing. (This allowance for taxicabs to impose surge pricing was incorporated into the Illinois State TNC bill that passed in January 2015.) In all cases, we recommend that public authorities limit fare surcharges to no more than 150% or 200% above the regular fare or establish a flat fee surcharge per trip and allow all types of service providers the flexibility to adopt this type of fare structure to encourage their affiliated drivers to deliver service during surge price times.

### **Service Hours and Areas:**

Requirements imposed on companies that provide transportation services for hire to the public are typically as follows:

- For limousines and liveries, which provide advance reservation service to the public, there is typically no need for service-hour and service-area requirements as all the trips are prearranged to meet the customers' needs.
- For taxicabs, which provide an immediate response for passenger service there is typically a requirement in larger communities (whether explicitly required by regulation or understood in practice/implicitly enforced through penalties for trip refusals) that service be available 24-hours per day in all areas of the city since the trips are not prearranged and the entire city needs access to immediate-response public transportation service.

Most communities, for public safety and other reasons, want the public transportation service providers (taxicab/TNC/app) to ensure service is available 24-hours per day in all areas of the community. This responsibility and cost burden has focused on taxicabs. TLPA supports this customer service requirement, but should a community deem this requirement no longer needed for any one immediate-response transportation provider, then all such providers should no longer be mandated to bear the cost of providing around-the-clock service in all areas of the community.

4. *What particular concerns or issues do sharing economy transactions raise regarding the protection of platform participants? What responsibility does a sharing economy platform bear for consumer injury arising from transactions undertaken through the platform?*

**TLPA Comment:** TLPA has serious consumer safety concerns for passengers using TNCs/peer-to-peer apps, including: driver screening and vehicle safety, customer privacy (addressed above in response to Question 3), and insurance coverage (addressed below in response to Question 5).

### **Driver Screening:**

Existing driver licensing and background check requirements imposed on drivers providing passenger transportation services for hire to the public include the following:

- Registration/Licensure as a commercial driver in recognition of the extra responsibility the driver has when transporting the public. This better enables the public sector to hold drivers accountable.
- Pass a biometric (fingerprint) based national background check through state or local authorities from the FBI. There is no other background check available that comes close to the thoroughness and accuracy of the FBI check.

It is our understanding that the major TNCs/peer-to-peer apps and quite possibly others use low-cost, third-party background checks on driver applicant names and social security numbers that are not thorough enough. All drivers providing passenger transportation services (taxicab/limousine/TNC) should meet the public safety requirements outlined above because drivers are very often alone with a passenger when no one else is around.

To allow for a self-administered background check allows for three points of failure: 1) the searching of less comprehensive databases than those accessed by public systems, 2) whether or not the background check is performed at all, or whether a driver who fails the standard is excluded, and 3) whether or not the name is actually that of the driver being checked.

TLPA recommends against altering these time-tested biometric safety requirements. However, should any or all of these driver safety requirements be deemed no longer needed or safety levels amended by public officials, then those provisions should be deleted or amended for all providers of passenger transportation services. This will promote a level playing field ensuring equal access to the labor pool of drivers where the cost and speed of processing are equal so that drivers have equally quick access to begin their careers as for-profit drivers for any portion of the passenger transportation industry.

### **Vehicle Safety:**

Vehicles that provide passenger transportation services for hire to the public are typically required to:

- Have external markings to help the public recognize legitimate vehicles for hire and to aid the authorities in policing providers of for-hire services.
- Pass an independent mechanical safety inspection by a qualified mechanic, which also includes a general vehicle condition and appearance inspection to ensure vehicle safety and appearance.

- Be registered/licensed as commercial vehicles to give the public sector accountability for the number and types of vehicles offering public transportation services and to collect a fee for extra road wear, service policing, and administrative costs involved in public oversight of for-profit transportation services. Additionally, injured parties need to be able to use tag numbers to track liable parties and gain access to their commercial insurance information.

TLPA strongly recommends that all vehicles being used to provide public transportation for hire to the public should meet the public safety requirements outlined above. If, however, the community and regulators believe that any or all of these safety requirements be deemed no longer needed or safety levels amended, then those provisions should be deleted or amended for all vehicles (whether personal or commercial) providing passenger transportation service to the public. This will promote a level playing field for all service providers.

5. *How effective are reputation systems and other trust mechanisms, such as the vetting of sellers, insurance coverage, or complaint procedures, in encouraging consumers and suppliers to do business on sharing economy platforms?*

**TLPA Comment:** TLPA has serious consumer protection concerns for passengers using TNCs/peer-to-peer apps, including, waivers of liability, lack of customer complaint procedures, and gaps in insurance coverage. Passengers should not be required to waive liability in order to use a TNC or peer-to-peer app. Passengers should also have a transparent means to report service complaints, billing disputes, crimes and injuries.

### **Insurance Coverage:**

Insurance requirements imposed on passenger transportation services available for hire to the public call for the licensed industry to do the following:

- Carry a commercial auto liability policy on any vehicle that is used to provide public transportation service for profit. This public safety requirement ensures that any vehicle used to transport a passenger for profit has proper insurance to compensate those who suffer any type of injury or property damage caused by the for-hire vehicle.
- Have one primary insurance company be responsible for receiving and resolving all bodily injury and/or property damage claims. This public safety requirement holds providers of passenger transportation services accountable and prevents them from dodging and delaying compensation payments to injured parties.
- The amount of primary auto liability insurance coverage should be the same at all times. There is no justifiable reason for the family of a person injured by the negligent act of a driver cruising for a passenger to receive less compensation than the family of a person injured by a driver in-route to pick up a passenger or who has a passenger in his/her vehicle. In all three cases, the family is irreparably harmed and should be afforded the same limits of insurance coverage.

TLPA recommends that each vehicle used to transport passengers for hire must be covered by a primary layer of insurance on the vehicle itself. It is the only way to properly protect the public and eliminate coverage gaps. New and untested hybrid insurance policies are being introduced which for the first time combine commercial and personal coverage with limits to when the commercial coverage is in force, even though commercial coverage availability at all times at applicable commercial limits has been relied upon for years to provide maximum coverage for accident victims.

Personal injury and wrongful death suits are currently being litigated in state courts around the country that will test the limits of the existing policies of TNCs/peer-to-peer apps. TLPA supports the longstanding rule eliminating coverage gaps and properly protecting the public by ensuring that “the vehicle” being used to offer for-hire services is covered by a primary layer of commercial insurance coverage at all times. If, however, the community and regulators determine that effective insurance requirements without coverage gaps are no longer needed, then all providers of passenger transportation services should be eligible to employ the same level of insurance to reduce their cost of operation, limit their liability, and provide for a level playing field for all.

## **Conclusion**

TLPA strongly supports and encourages new technology and innovation in the marketplace that provides consumers with greater choices. TNCs, peer-to-peer platforms, ride-sharing apps, or any other name you want to give them, all operate and compete for passengers in the transportation space. All companies that connect drivers with passengers should follow the same legitimate regulatory goals of fair competition, consumer protection, and public safety. TLPA supports a regulatory framework that is fair and flexible, while still maintaining appropriate consumer and public safety protections. If regulators wish to adopt a more flexible or looser set of standards for TNCs or other technologies and platforms, then all providers should be allowed to follow these more flexible or looser rules in order to fairly compete in a level playing field.

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Please contact TLPA at 301-984-5700 or [alagasse@tlpa.org](mailto:alagasse@tlpa.org) if you have questions or would like to set up a meeting to discuss our comments.

Yours very truly,



Mike Fogarty, President  
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