

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 15,986

IN THE MATTER OF:

Served November 19, 2015

Rulemaking to Amend Rules of )  
Practice and Procedure and )  
Regulations, Regulation Nos. 51-09 )  
and 58-02(b) )

Case No. MP-2015-198

The Washington Metropolitan Area Transit Commission, (Commission or WMATC), hereby initiates a rulemaking pursuant to Article XIII, Section 3, of the Washington Metropolitan Area Transit Regulation Compact,<sup>1</sup> and Rule No. 30 of the Commission's Rules of Practice and Procedure, for the purpose of proposing amendments to Commission Regulation No. 51-09 defining bona fide taxicab service, a class of service that is excluded from Commission licensing requirements and partially excluded from Commission regulation. The Commission also is proposing amendments to Commission Regulation No. 58-02(b), governing minimum interstate insurance requirements for such service.

**I. BONA FIDE TAXICAB SERVICE**

The Commission licenses and regulates private-sector motor carriers transporting passengers for hire between points in the Washington Metropolitan Area Transit District (Metropolitan District).<sup>2</sup> Under Article XI, Section 1(b), of the Compact, the Commission's regulatory jurisdiction encompasses, among other things:

the rates, charges, regulations, and minimum insurance requirements for taxicabs and other vehicles that perform a bona fide taxicab service, where the taxicab or other vehicle

- (i) has a seating capacity of 9 persons or less, including the driver; and

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<sup>1</sup> Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990) (codified at D.C. CODE § 9-1103.01 (2009); MD. TRANSP. CODE § 10-203 (2009); & VA. CODE §§ 56-529, 530 (2009)).

<sup>2</sup> The Metropolitan District includes: "the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties."

- (ii) provides transportation from one signatory to another within the Metropolitan District.

Article XI, Section 3(f), of the Compact excludes bona fide taxicab service from the Commission's licensing jurisdiction and otherwise excludes bona fide taxicab service from the Commission's regulatory jurisdiction except with respect to "rates, charges, regulations, and minimum insurance requirements."

Commission Regulation No. 51-09 defines bona fide taxicab service as follows:

Other vehicles that perform a bona fide taxicab service means vehicles other than taxicabs used to perform a service that is:

- a) transportation intended in good faith to be provided only between points selected at will by the person or persons hiring the vehicle in which such transportation is provided;
- b) conducted in a vehicle subject to the exclusive use of the passenger or single party of passengers hiring the vehicle for the entire time such vehicle is under hire;
- c) priced at rates based on the duration and/or distance of the transportation rendered;
- d) conducted in a vehicle engaged solely in rendering or performing transportation as described in subparagraphs (a), (b), and (c) above; and
- e) conducted in a vehicle having a seating capacity of eight passengers or less in addition to the driver.

Whether a particular service meets the bona fide taxicab service definition currently is determined on an after-the-fact, case-by-case basis.

## **II. TRANSPORTATION NETWORK SERVICE**

The recent advent of transportation network companies (TNCs) has caused the Commission to revisit its definition of bona fide taxicab service. In many respects, TNCs operate similarly to a traditionally regulated taxicab. A prospective passenger, using an app on a smartphone, can request that a vehicle be dispatched to the passenger's location to transport the passenger to a destination of

the passenger's choice. Payment processing and other services are typically integrated into the app.

In a relatively short period of time, transportation network services have transformed the transportation industry. For example, Uber, a market leader in this new industry was first founded in 2009 and was not active in the District of Columbia until 2012.<sup>3</sup> By February 2015, Uber had over 10,000 drivers in the Washington area.<sup>4</sup> By comparison, there are approximately 11,000 licensed taxicabs in the entire Washington Metropolitan Area.

In 2015, the District of Columbia, the State of Maryland, and the Commonwealth of Virginia joined the growing list of states and localities that authorize this brand of for-hire passenger transportation, whereby passengers are connected with vehicles displaying non-for hire license plates via a digital dispatch service.<sup>5</sup> Such service is known as private-vehicle-for-hire service in the District of Columbia and as transportation network service in Maryland and Virginia. Such service hereinafter shall be referred to as transportation network service.

Common to all three signatories is the requirement that the company operating the digital dispatch platform obtain a transportation network license, perform background checks on drivers, and ensure that a specified minimum amount of commercial auto insurance is in place during network operations. For-hire operation of transportation network vehicles is not allowed outside the network.

Based on Commission staff discussions with transportation network companies in the Washington Metropolitan Area and on a review of transportation network company websites, it would appear that most, if not all, transportation network service in the Metropolitan Area currently meets the definition of bona fide taxicab service in that the service is provided between points selected by the passenger, subject to the passenger's exclusive use, priced by distance, and performed in a vehicle that seats eight passengers or less in addition to the driver and is not used for other types of for-hire transportation.

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<sup>3</sup> Bill Turque, *Washington Post*, *Montgomery County tells Uber not to skirt taxi rules*, WASH. POST (Sept. 4, 2014), [http://www.washingtonpost.com/local/montgomery-county-wants-answers-from-uber/2014/09/04/01707448-3449-11e4-9e92-0899b306bbee\\_story.html](http://www.washingtonpost.com/local/montgomery-county-wants-answers-from-uber/2014/09/04/01707448-3449-11e4-9e92-0899b306bbee_story.html).

<sup>4</sup> Perry Stein, *D.C. is the best place for Uber and Lyft drivers, study says*, WASH. POST (Feb. 3, 2015), <http://www.washingtonpost.com/news/local/wp/2015/02/03/d-c-is-the-best-place-for-uber-and-lyft-drivers-study-says/>.

<sup>5</sup> Vehicle-for-Hire Innovation Amendment Act of 2014, D.C. Law 20-197, 62 D.C. Reg. 3826 (Apr. 3, 2015); Public Utilities - Transportation Services and For-Hire Transportation, ch. 204, 2015 Md. Laws 975; Act of Feb. 16, 2015, ch. 2, 2015 Va. Acts \_\_\_\_ (transportation network companies; licensing process by DMV).

Although transportation network service did not exist when the partial exclusion for bona fide taxicab service was inserted into the Compact in 1962, the legislative history of the Compact supports a determination that transportation network service should be regarded as falling within the exclusion.

The term "bona fide taxicab service" did not appear in the original 1960 Compact, but the original Compact did contain the following antecedent:

[T]his Act shall apply to taxicabs and other vehicles having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rates or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.<sup>6</sup>

Because the statutory definition of taxicab in the 1960 Compact did not include "a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules", the Commission took the position in enforcement litigation that: "The operation of any motor vehicle, regardless of size, operated between fixed termini on schedule must have the approval (i.e., a certificate of public convenience and necessity) of the Commission."<sup>7</sup> While the litigation was pending, the Commission proposed that the signatories and Congress amend the Compact to more explicitly support the Commission's interpretation, as follows:

[T]his Act shall apply to taxicabs and other vehicles *used in performing a bona fide taxicab service* having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.<sup>8</sup>

In his testimony before Congress, WMATC Executive Director Delmer Ison explained that "it was intended for this Commission to give its approval for the operations of vehicles of eight passengers or less when operating between fixed termini on regular schedules.

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<sup>6</sup> Pub. L. No. 86-794, § 1, tit. II, art. XII, §1(c), 74 Stat. 1031, 1036 (1960).

<sup>7</sup> *Montgomery Charter Serv. v. WMATC*, 325 F.2d 230, 233 (D.C. Cir. 1963) (per curiam).

<sup>8</sup> Pub. L. No. 87-767, 76 Stat. 764, 765 (1962) (emphasis added) (amending tit. II, art. XII, §1(c)).

This is the precise point we are attempting to clarify by amending [the Compact]."<sup>9</sup>

Imagine for a moment, if you will, what the situation would be if anyone could without restriction operate vehicles seating up to eight passengers along the routes of the existing common carriers in the area. Not being subject to regulatory controls, such operators would be in the enviable position of operating helter-skelter, taking only the cream, leaving the unprofitable business to the common carriers, who owe a duty to serve. In my humble opinion, such a situation would undermine and destroy the common carrier operations in the area. The mass transportation system in the National Capital region could not withstand such unregulated competition.<sup>10</sup>

Transportation network service does not raise these concerns. Transportation network service presents a fundamentally different profile. Unlike the mass transit service described in Delmer Ison's testimony, transportation network service is not tied to fixed route structures and time schedules to which groups of riders must conform their travel habits in order to receive service. Like taxicab service, transportation network service provides individual passengers with the means to summon a ride from any location in the dispatch area and be transported to any other location in the dispatch area, at any time. And as noted above, drivers are not free to deviate from the network model.

In the event that a TNC began offering transportation service "along the routes of the existing common carriers", the Commission has sufficient authority to address that situation under Article XI, Section 9(c), of the Compact which provides:

A carrier subject to this Act may not provide any passenger transportation for hire on an individual fare paying basis in competition with an existing, scheduled, regular-route, passenger transportation service performed by, or under a contract with, the Federal Government, a signatory to the Compact, a political subdivision of a

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<sup>9</sup> *Washington Area Transit Compact Amendments: Hearing on H.J. Res. 693 and H.J. Res. 694 Before Subcomm. No. 3 of the House Comm. on the Judiciary, 87th Cong., 2d Sess. 8 (1962) (statement of Delmer Ison, Exec. Dir., WMATC). See also H.R. REP. NO. 87-1979, at 4-6 (1962) (same); S. REP. NO. 87-2156, at 4-6 (1962) (same).*

<sup>10</sup> Ison Statement at 10. See also H.R. REP. NO. 87-1979, at 6 (1962) (same); S. REP. NO. 87-2156, at 6 (1962) (same). It would appear the Commission was wise in seeking the amendment inasmuch as the triggering litigation resulted in a post-amendment court ruling that the Commission's interpretation while correct after the amendment had been incorrect before the amendment. *Montgomery Charter Serv.*, 325 F.2d at 234-35.

signatory, or the Washington Metropolitan Area Transit Authority, notwithstanding any Certificate of Authority.

Finally, it is no secret that the taxicab industry has opposed the legalization of transportation network service at every turn. Media coverage of the appearance and growth of transportation network service is replete with stories of a decline in taxicab patronage and taxicab medallion values that the industry attributes to the emergence of this new service. While anecdotal in nature, these reports are too widespread to ignore and further support the proposed amendment to Regulation No. 51-09.

### **III. MINIMUM INSURANCE**

Commission Regulation No. 58-02(b) prescribes the following minimum interstate insurance requirements for bona fide taxicab service:

An operator of a vehicle meeting the definition in Regulation No. 51-09 shall maintain the minimum insurance coverage required by the operator's licensing authority for that vehicle when engaged in interstate operations subject to this Commission's jurisdiction.

The Commission proposes amending Regulation No. 58-02(b) to clarify the minimum interstate insurance requirements for operations meeting the new, additional definition in Regulation No. 51-09 as proposed herein.

### **IV. PROPOSED AMENDMENTS**

The Commission invites comments on the following proposed amendments.

#### **A. Regulation No. 51-09**

The Commission proposes recasting the current definition of bona fide taxicab service as Regulation No. 51-09(a) - current subsections (a)-(e) would be recast as (i)-(v) - and adding new Regulation No. 51-09(b). In addition, the 8-and-under-plus-driver wording of the vehicle size restriction in existing 51-09(e) would be amended to conform with the 9-and-under-including-driver formulation in the Compact. As amended, Regulation No. 51-09 would read as follows:

51-09. (a) Other vehicles that perform a bona fide taxicab service means vehicles other than taxicabs used to perform a service that is:

- (i) transportation intended in good faith to be provided only between points selected at will by the person or persons hiring the vehicle in which such transportation is provided;

- (ii) conducted in a vehicle subject to the exclusive use of the passenger or single party of passengers hiring the vehicle for the entire time such vehicle is under hire;
- (iii) priced at rates based on the duration and/or distance of the transportation rendered;
- (iv) conducted in a vehicle engaged solely in rendering or performing transportation as described in subparagraphs (i), (ii), and (iii) above; and
- (v) conducted in a vehicle that has a seating capacity of nine persons or less, including the driver.

(b) Notwithstanding subsection (a), vehicles with a seating capacity of nine persons or less, including the driver, are performing a bona fide taxicab service when they are used in affiliation with a transportation network company as defined by and duly authorized by Maryland or Virginia, or a private-vehicle-for-hire company as defined by and duly authorized by the District of Columbia.

**B. Regulation No. 58-02(b)**

The Commission proposes adding text to Regulation No. 58-02(b), such that amended Regulation No. 58-02 (b) would read as follows:

- (b) Vehicles defined in Regulation No. 51-09:  
Insurance requirements for interstate operations in the Metropolitan District of vehicles meeting the definition in Regulation No. 51-09(a), 51-09(b), or both, shall be the insurance requirements established by the jurisdiction under whose authority the vehicle is operated for hire. Any such operation in connection with authorities granted by multiple member jurisdictions must meet the insurance requirements imposed by all those jurisdictions.

THEREFORE, IT IS ORDERED:

1. That a rulemaking is hereby initiated for the purpose of proposing amendments to the Commission's Rules of Practice and Procedure and Regulations, Regulation Nos. 51-09 and 58-02(b).
2. That Commission staff shall publish notice of this proceeding on the Commission's website beginning on the date of issuance and continuing through the deadline for comments.

3. That written comments must be submitted within 45 days of the date of this notice by faxing them to (301) 588-5262, emailing them to [rulemaking@wmatc.gov](mailto:rulemaking@wmatc.gov), or mailing or hand delivering them to 8701 Georgia Avenue, Suite 808, Silver Spring, MD 20910-3700.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND DORMSJO:

A handwritten signature in black ink, appearing to read "W. Morrow, Jr.", written in a cursive style.

William S. Morrow, Jr.  
Executive Director