

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MARYLAND

ORDER NO. 16,416

IN THE MATTER OF:

Served June 9, 2016

Rulemaking to Amend Rules of)
Practice and Procedure and) Case No. MP-2015-198
Regulations, Regulation Nos. 51-09)
and 58-02(b))

This rulemaking was announced in Order No. 15,986, served November 19, 2015, pursuant to Title II of the Washington Metropolitan Area Transit Regulation Compact¹ (Compact), Article XIII, Section 3, and Commission Rule No. 30, for the purpose of soliciting comments on a proposed amendment to Commission Regulation No. 51-09 defining bona fide taxicab service - a class of service that is partially excluded from Commission regulation and completely excluded from Commission licensing requirements - and a proposed amendment to Commission Regulation No. 58-02(b), governing minimum interstate insurance requirements for such service.²

I. SUMMARY

The amendment to Regulation No. 51-09 expands the definition of "bona fide taxicab service" to expressly include transportation network service conducted under the auspices of a transportation network company (TNC), or private-vehicle-for-hire company as it is termed in the District of Columbia, to the extent duly authorized under statutes enacted into law by the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. The effect of the amendment is to exclude such service from the Commission's licensing requirements, and from the full panoply of regulations pertaining to WMATC-licensed operations, but not exclude such service from the Commission's jurisdiction over interstate rates and insurance.

The amendment to Regulation No. 58-02(b) clarifies the interstate insurance requirements for all bona fide taxicab service, but especially with respect to interstate operations conducted by operators authorized to perform intrastate trips in more than one jurisdiction.

Order No. 15,986 was posted to the Commission's website on November 19, 2015, and has remained there ever since. The order

¹ Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990) (codified at D.C. CODE § 9-1103.01 (2012); MD. TRANSP. CODE § 10-203 (2012); & VA. CODE §§ 56-529, 530 (2012)).

² The Commission's Rules and Regulations are available at <http://www.wmatc.gov/index.php/compact-regulations>.

established a 45-day period for filing comments. Comments were received from Rasier, LLC, a subsidiary of Uber Technologies, Inc.; Lyft, Inc.; and Mr. Robert Werth. Their comments are discussed below.

By this order, the Commission adopts the amendments proposed in Order No. 15,986, for the reasons stated therein, as amplified by the discussion below of the comments received in this proceeding.

II. AMENDMENT TO COMMISSION REGULATION NO. 51-09

Under the Compact, the Commission licenses and regulates private-sector motor carriers transporting passengers for hire between points in the Washington Metropolitan Area Transit District (Metropolitan District).³

Article XI, Section 3(f), of the Compact, in conjunction with Article XI, Section 1(b), of the Compact, excludes from the Commission's licensing jurisdiction "taxicabs and other vehicles that perform a bona fide taxicab service." Existing 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

³ 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."

- e) conducted in a vehicle having a seating capacity of eight passengers or less in addition to the driver.

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 a brand of for-hire passenger transportation service whereby passengers are connected via a digital dispatch service with drivers operating vehicles without for-hire license plates.⁴ 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 a network.

As noted in Order No. 15,986, most transportation network service meets the preexisting definition of bona fide taxicab service in Regulation No. 51-09 and does not appear likely to systematically siphon passengers from existing regular-route carriers operating in the Metropolitan District to any significant degree, if at all.⁵ Transportation network service is distinguishable from service not performed under TNC statutes by virtue of the separate regulatory regimes enacted by the Compact's member jurisdictions. Transportation network service appears to be the kind of service the drafters had in mind when enacting the Compact in 1960 and amending it in 1962.

The amendment to Regulation No. 51-09, as proposed in Order No. 15,986 and adopted herein, consists of recasting existing Regulation No. 51-09(a)-(e) as Regulation No. 51-09(a)(i)-(v) and adding new Regulation No. 51-09(b):

(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.

⁴ 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; 2015 Va. Acts, chs. 2 & 3 (transportation network companies).

⁵ See Order No. 15,986 at 4-5 (discussing same).

Lyft proposes an amendment to existing Regulation No. 51-09(b), which pursuant to this order is now designated Regulation No. 51-09(a)(ii). Lyft would delete the phrase "single party of" so as not to exclude "car-pooling" service from the definition of bona fide taxicab service as it pertains to transportation network service.

We believe the amendment sought by Lyft is outside the scope of this proceeding. The amendment proposed by Lyft would alter the definition of bona fide taxicab service as it pertains to non-transportation network service. The Commission did not propose such an amendment and did not seek comments on such an amendment.

In any event, new Regulation No. 51-09(b) should not be read to exclude shared-ride service, such as "car-pooling", from the definition of bona fide taxicab service as it pertains to transportation network service. New Regulation No. 51-09(b) operates independently of new Regulation No. 51-09(a). Service meeting the definition in new Regulation No. 51-09(b) qualifies as bona fide taxicab service even if it does not meet the definition in new Regulation No. 51-09(a).

III. AMENDMENT TO COMMISSION REGULATION NO. 58-02(B)

Existing 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.

New Regulation No. 58-02(b) clarifies the minimum interstate insurance requirements for operations meeting the definitions of bona fide taxicab service in Regulation No. 51-09 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.

With respect to interstate operations conducted in a vehicle subject to licensing by multiple Compact jurisdictions, Rasier has expressed concern that "it may not always be possible or reasonable to comply fully with all aspects of all of these laws simultaneously in every instance." To address this concern, Rasier recommends that the

second sentence in proposed Regulation No. 51-09(b) be replaced by the following:

If the vehicle is operated for hire pursuant to authority granted by more than one jurisdiction, insurance requirements for interstate operations in the Metropolitan District shall be either (i) the insurance requirements established by the jurisdiction where the trip originates, or (ii) the insurance requirements established by the jurisdiction where the vehicle is registered.

First, it should be remembered that Regulation No. 58-02(b) applies to all bona fide taxicab service within WMATC's interstate jurisdiction, not only transportation network service. Second, the minimum insurance requirements in Regulation No. 58-02(b) are drawn solely from the jurisdiction(s) under whose authority a bona fide taxicab service vehicle operates. Rasier does not explain why under those circumstances it "may" not be possible or reasonable to comply simultaneously with more than one Compact member's minimum insurance requirements at a time. The alternatives proposed by Rasier are not acceptable alternatives, in any event.

The Commission is concerned that adopting Rasier's pick-up-jurisdiction alternative will open the door to greater levels of noncompliance unless operators are restricted to picking up interstate passengers only in jurisdictions where they are authorized to perform intrastate trips. Full compliance under this option, including compliance with jurisdictional filing requirements, would be certain only with respect to operators licensed in a pick-up jurisdiction. Such a restriction, on the other hand, would reduce consumer choice and lead to deadheading (traveling without passengers before the pickup or after a drop off) and its attendant consequences: increased road congestion, greater vehicle emissions, and higher energy consumption on a region-wide basis.

The alternative of following the minimum insurance requirements of the jurisdiction where the vehicle is registered, appears to assume that the jurisdiction of registration is a jurisdiction in which the vehicle is authorized for use in commercial operations. This is anything but a foregone conclusion with respect to TNC vehicles and may not be certain in the case of non-TNC vehicles meeting the definition under new Regulation No. 51-09(a). In situations where a vehicle is authorized to conduct commercial operations in the Metropolitan District but not in the jurisdiction of registration, the commercial insurance requirements of the registration jurisdiction would not apply on interstate trips under Regulation No. 58-02(b). In that scenario, the WMATC-prescribed interstate insurance minimums would be tied to the registration jurisdiction's non-commercial vehicle insurance code, an unacceptable outcome.

We thus find that the potential negative consequences for passengers and the public from adopting the interstate insurance alternatives proposed by Rasier outweigh the potential benefits to the industry.

IV. OTHER ISSUES

Rasier is concerned that adoption of the proposed definitions might lead to TNCs and/or TNC operators being required to comply with WMATC Regulation Nos. 55, 59, 62, 63, and 64, regarding tariffs, recordkeeping, vehicle leases, advertising, and safety, respectively. Regulation Nos. 55, 62, and 64 apply to WMATC-certificated carriers only, and the amendments to Regulation Nos. 59 and 63 proposed by Rasier are beyond the scope of this proceeding and should not come into play in any event provided that TNC operators confine their for-hire operations to transportation network service authorized by one or more Compact signatory.

Rasier also disputes the notion that Rasier is a carrier within the meaning of Article XI, Section 4(a), of the Compact. That issue is not before the Commission at this time. This proceeding is concerned with updating the definition of bona fide taxicab service in the wake of statutory changes at the member jurisdiction level in 2015 authorizing transportation network service, and with clarifying the minimum interstate insurance requirements applying to such service, without regard to who may or may not be a carrier under the Compact. On the other hand, it is clear from a plain reading of the Compact that a vehicle falls within WMATC jurisdiction when it is operated for hire between points in the Metropolitan District, albeit a jurisdiction that is limited in accordance with this rulemaking when such operations are conducted in affiliation with an authorized TNC.

Robert Werth points out that not all TNC service meets the current definition of bona fide taxicab service in Regulation No. 51-09. The Commission acknowledged this in Order No. 15,986.

Mr. Werth expresses concern that some TNC operators operate "outside the network" and that WMATC should "intercede on this matter . . . [to] bring some sort of order to the streets of Washington." The Commission is bringing order to the Metropolitan District by conducting this rulemaking defining the status of transportation network service under the Compact. And if TNC operators stray outside the scope of their authorized operations, they will be subject to WMATC sanctions to the extent such operations implicate WMATC's jurisdiction.

Mr. Werth requests that the Commission "consider a separate licensing type for Transportation Network Companies." In the alternative, he suggests that the Commission prescribe the same insurance requirements for WMATC certificated carriers as those for bona fide taxicab service. Whether transportation network service should be subject to WMATC licensing requirements is the essence of this proceeding, and by determining that such service should be

"considered" bona fide taxicab service, we necessarily have determined that such service shall be exempt from licensing by WMATC, just as taxicab service is. The question of whether the Commission's insurance requirements for WMATC certificated carriers should be lowered to levels determined appropriate for bona fide taxicab service is beyond the scope of this proceeding.

Mr. Werth argues that in San Francisco and Seattle "Uber and others operate like bus services." He does not assert that any such service is being offered by TNCs in the Metropolitan District. The Commission has ample authority to prohibit "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 signatory, or the Washington Metropolitan Area Transit Authority,"⁶ in any event, should a TNC propose such service in the Metropolitan District in the future.⁷

Ultimately, Mr. Werth advocates a "level playing field" for all carriers. The question of whether WMATC should relax certain regulatory requirements for WMATC certificated carriers in pursuit of parity with the corresponding regulatory frameworks in place at the local level for TNCs and TNC operators is beyond the scope of this proceeding.

Finally, on a procedural note, Mr. Werth questions whether the Commission's process of gathering information on the TNC industry prior to commencement of this proceeding was fully inclusive of the various stakeholder groups or tilted in favor of the TNC industry. Prior to this rulemaking, Commission staff met with representatives of TNCs, members of the taxicab industry, local taxicab regulators, state officials, and others knowledgeable about the issues created by passage of TNC statutes in Maryland, Virginia, and the District of Columbia. These contacts were necessary so that the Commission might have sufficient information to formulate a rulemaking in the first place. No single entity or group enjoyed preferential access.

V. ADOPTION OF PROPOSED AMENDMENTS

Consistent with the foregoing, the Commission adopts the amendments proposed in Order No. 15,986. Regulation Nos. 51-09 and 58-02(b) shall appear as follows, effective 45 days after the date of this order.

⁶ Compact, tit. II, art. XI, §9(c).

⁷ See Compact, tit. II, art. XIII, §1(d)(i) (upon finding violation of Compact, Commission shall issue an order compelling compliance).

A. Regulation No. 51-09

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)

(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: that the foregoing amendments to the Commission's Rules of Practice and Procedure and Regulations,

Regulation Nos. 51-09 and 58-02(b), are hereby adopted, effective 45 days after the date of this order.

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

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

William S. Morrow, Jr.
Executive Director