

ORDINANCES

Free Ride? Municipalities Flag Uber and Lyft

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Who among us has not endured a journey in the well-worn backseat of an aging taxi, watching the meter whir unstoppably as a humorless cabbie meanders along an indefinite route through an unfamiliar city? This, after waiting for ten minutes or more in an airport queue while a harried dispatcher tries to conjure up drivers from the far horizon, relying only on luck and coincidence.

What if there was a way to contact available cab drivers immediately, determine the exact fare for a given itinerary--and even learn a bit about the individual behind the wheel?

The next generation in cyber-enabled public transport is here. Hail Uber, Lyft, Sidecar and a number of other fledging "transportation network companies" (or TNC's). Using proprietary smartphone applications, TNC's speedily connect riders with drivers. Proximity, wait time, fare—even the driver's identity and safety/satisfaction rating--are all quickly revealed. Passengers can select the least expensive, most highly rated chauffeurs. And people who never before considered driving a "taxi" can pilot their own personal vehicles to earn income during spare hours.

Little wonder then, that the TNC's are growing exponentially—and their vehicles are already being spotted in many cities around the country. Lyft cars sport an unmistakable large pink moustache on their grilles, while Side-car drivers hang a logo from their rear-view mirrors. Uber's cars so far do not carry signage, but it is by far the leader in the TNC industry, already boasting many thousands of drivers nationwide. The sky seems to be the limit for the upstart San Francisco-based company. Uber's ultimate growth potential has recently been the subject of a spirited debate in the media. In response to one estimate of a $5 billion valuation maximum—in itself a stratospheric figure—one Uber director (who was an early funder of the company and admittedly has a "horse in the race") has argued for a far higher number.

Pointing to AT&T's comically narrow-minded view of the potential cellphone market in the 1980's (Ma Bell initially thought that cell phone penetration would only be a subset the installed landline market, and projected a total of about 900 million cellphones worldwide), he argues that TNC's are a complete shift in the public transportation paradyme. The question is not "How many people who currently use generic taxicabs will switch to Uber?" The question is, "Given the ability to know the price in advance, to pay via a smartphone app without any cash, know the driver, his/her safety and service record, the make of the vehicle, the waiting time—and have a money back guarantee—how many people will leave their cars at home or in the parking garage for a trip across town?" He sees an expanding number of territories (suburbs and exurbs which are not economical for a city-center cab fleet may be attractive to retirees or students who live in the area and want extra income), expanding categories of passengers (people who expect to consume alcohol at a social event, school-age children, disabled and senior citizens, potential car rental customers who don't want the shuttle bus or time-consuming contract process) a shift away from car ownership among younger consumers generally and huge opportunities overseas. His global TNC revenue projection? Upwards of $1 trillion.

At its core, Uber is about the bottom line—unless it offered a competitive price, the TNC alternative would appeal to a small cohort. Here, the Uber proponent provides a telling illustration: he estimates that a trip from West Hollywood to LAX would cost as little as $27 on Uber, while a cab would charge over $50.

Irrespective of their ultimate growth trajectory, it is clear that TNC's are here and are not going away. There are too many winners in the new paradyme: customers, who have quicker service, more choice and competitive pricing; drivers, who merely require a vehicle, spare time and a willingness to ferry their fellow men and women around town; and the TNC's themselves, who reap license fees from drivers in exchange for providing access to TNC apps and maintaining the central database of driver and customer information. The losers are the old-school taxi companies and taxi regulators, who cap the number of medallions or licenses, and authorize limitless pay-as-you-go pricing, uncertain waiting times and unknown drivers.

As TNC's have gained popularity, the established taxi firms have pushed for regulation. They—and many local governments reviewing the issue—have identified other aspects of the TNC trade which may not be so admirable, such as a lack of driver training, insufficient (or absent) insurance coverage, under-maintained, old or unsafe vehicles and a "surge-based" pricing dynamic which imposes dramatic fare spikes under various conditions.

Legislatures and city councils around the country are rushing to fill the void. Initially, some are cautious and even inhospitable to the smartphone-enabled

newcomers. Houston, for example, has issued more than 650 citations to illegal ridesharing drivers since March of this year[1]—but the city is now actively considering an ordinance that may allow TNC's. Many more jurisdictions already accept the inevitable penetration of TNC's into the local public transportation matrix. As Washington D.C.'s Taxicab Commission public information officer puts it, "There is a marketplace for [TNC's] and it doesn't serve anyone's best interest in trying to stop them."[2]

The result is a vigorous behind-the-scenes turf war. Chicago is emblematic of the internecine brawling. Cabbies who pay upwards of $300,000 to own a taxi medallion and often drive full-time to make a living are not welcoming a swarm of part-time hobbyists who pay little to get into the game. But Mayor Rahm Emanuel (whose brother is a major investor in Uber, the old school taxi proponents point out) and the Chicago City Council have promulgated a new TNC ordinance allowing coexistence. As outlined in a press release issued by the City,[3] the Chicago ordinance categorizes TNC's based on the amount of time their drivers are logged onto the ride sharing program:

"Class A" fleets average less than 20 hours per week logged into the application. Class A fleets must obtain city approval of their background check, driver training, vehicle inspection and zero tolerance drug policies. A $10,000 annual fee is required. Drivers do not need a chauffeur's license.

"Class B" fleets average 20 hours or more per week logged into the TNC application. For this group, the City itself conducts background checks and drug tests. Auto's must pass a third-party 21-point vehicle inspection and cannot be more than six years old. The City must approve driver training programs and a public chauffeur license is required. The Class B license fee is $25,000 per year.

All drivers must be 21 years of age or older, and in the last 12 months cannot have had a conviction for reckless driving, for two moving violations, or for license suspension/revocation. In the last five years, drivers must not have been convicted of a felony, DUI, any crime of moral turpitude or the sale/possession of a controlled substance.

Personal vehicles cannot be used for more than 10 hours per day in the TNC business and no TNC driver can work more than 10 hours per day. Furthermore, all TNC trips must generate a ground transportation tax.

Companies must announce in advance that a surge policy is in effect, and must disclose heightened pricing to passengers (or get waiver of disclosure from passenger); the City may place a cap on surge pricing if abused.[4]

Chicago's proposed addition to Title 9 of the Municipal Code of Chicago, a new Chapter 9-115 entitled "Transportation Network Providers" runs a total of 19 pages. In addition to the above provisions, Chapter 9-115 also covers insurance (commercial general comprehensive liability insurance and automobile driver's insurance, each with minimum coverages of $1,000,000 per occurrence), fingerprinting of drivers, signage (must be visible at least 50 feet away), collection of taxes (if transportation network owners do not pay the tax, the City can collect directly from drivers), and so on.

The proposed Chicago TNC ordinance does provide a few protections to "old-school" taxi operators: TNC's may not solicit riders or be hailed by passengers except via the smartphone system, and may not pick up or discharge passengers at O'Hare or Midway airports or at designated taxi stands; vehicles two years old or less now require only annual inspections, not semi-annual; and vehicle age limits were increased by one year for wheelchair-assisted vehicles (to seven years) and for "green" vehicles (to six years).

The Chicago ordinance was adopted by the City Council on May 28 and will take effect in 90 days. The TNC's Chicago momentum is being paralleled in cities around the country. In July, the Seattle City Council voted 6-3 to repeal an earlier ordinance limiting Uber, Lyft and Sidecar licenses to 150 each, removing caps entirely—not only on TNC's but on taxi's in general.

The net result will be a marked increase in the number of vehicles plying the streets for potential passengers. As the aforementioned Uber director has argued, there is probably room for growth in many cities. The Institute for Justice, a public interest law firm that successfully sued Milwaukee over a cap limit, noted last fall that the city had one cab for every 1,420 residents after the cap was raised by 100. While that figure was an improvement over Milwaukee's former ratio of one to 1,850 residents, the Institute pointed out that many major American cities have far higher numbers. For example, Seattle has about one cab for every 940 residents, Denver one for every 480 and Washington, D.C., one for every 90, according to the Institute.[5]

Taxi industry proponents are seeing their traditional market power slip away. Understandably, some now put a put a David-and-Golaith face on the conflict: "A $17 billion multinational corporation is moving in and putting small transportation businesses out of business. This is nothing different than what what Wal-Mart has done, and how Amazon has taken out independent bookstores."[6]

Despite legal maneuvering and public relations posturing by industry groups, and efforts in some state legislatures to assert preemption over local TNC regulations, the odds are that Uber, Lyft, and their ilk will be offering rides on your streets sometime soon—and municipal attorneys will be asked to get on board.

1. http://www.bizjournals.com/houston/blog/2014/07/houston-city-council-delays-vote-around-uber-and.html (last accessed August 4, 2014)
2. http://www.buzzfeed.com/annmariealcantara/heres-how-major-cities-are-grappling-with-rise-of-rideshare (last accessed August 3, 2014)
3. http://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2014/May/05.28.14AppRideshare.pdf (last accessed August 1, 2014)
4. http://www.chicagotribune.com/news/local/politics/chi-chicago-rideshare-regulations-approved-20140528-story.html (last accessed July 26, 2014)
5. http://www.jsonline.com/news/opinion/milwaukee-common-council-gets-uber-lyft-ordinance-half-right-b99316980z1-268600762.html (Milwaukee Journal Sentinel, July 25, 2014)
6. http://www.geekwire.com/2014/seattle-city-council-repeal/ (Tylor Soper, GeekWire July 7, 2014) (last accessed August 4, 2014) M