"Apps in the City": Regulating TNC's in NYC

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New York City (NYC) has always been a bellwether for for-hire transportation regulation approaches around the country. Based upon recent escapades by Uber, the situation in NYC is somewhat comparable to the Iowa caucus and New Hampshire primary in U.S. Presidential elections. The grass roots campaigning and media, political and lobbying approach taken by Uber has been highly effective in many ways. While many supporters welcome it, just as many critics find it reprehensible or unethical. "Is it democracy or a disruption of democracy?" – is the true question. Regardless of where one stands, all of these issues have created legal headaches for municipal and government lawyers caught in the middle of the legislative and litigation fracas involving smartphone transportation applications.

This disruption and the spate of legislative activity around the nation have created quite a learning curve for lawyers who typically have not delved into the arcane world of taxicab and for-hire vehicle regulation. On top of that, add some sleek and sexy "Apps in the City" that do not quite fit into the regulatory structure, and add a generation of Millennial riders (who are social media viewers dissatisfied with traditional taxicab service, loving instant transportation gratification), and you now have quite a few dinner and cocktail party conversations and debates.

Recent events in NYC and the unique way that NYC has handled regulating apps (through legislation, litigation and new administrative agency regulations), provides a wealth of experience and experimentation that government lawyers and policy-makers everywhere can learn from as they attempt to wade through these ongoing and evolving issues. This article will provide an overview of recent events in NYC and track-from the beginning of the app phenomenon up to the present day-how NYC has approached dealing with this issue from a policy, legislative and rulemaking standpoint, and will also provide some predictions of developments to come.

1. The Regulatory Paradigm – Apps Required to Fit Within the Regulatory Framework, With a Few Tweaks

Companies that use apps to connect riders to for-hire vehicles have created regulatory headaches for many municipalities across the United States and the world. These companies add to the confusion by stating that they are not transportation companies, but technology companies that merely connect riders with people willing to provide rides in their own vehicles. There have generally been three models for the regulation of these "transportation network companies" (TNCs). (1) in a very few cases, municipalities have required them to observe the same licensing, insurance and other regulatory requirements as other for-hire vehicles; (2) others have created special laws for TNCs; and (3) some have allowed them to operate unfettered.

New York City requires TNCs to be licensed or operate with licensed drivers, vehicles and businesses. It has a robust on-demand transportation system that includes several classes of for-hire vehicles: (1) taxicabs,[1] which are motor vehicles carrying passengers for hire in the city, designed to carry a maximum of five passengers and which are the only vehicles authorized to accept street hails in Manhattan's Central Business District and nearby airports; (2) liveries,[2] also known as community cars, that provide for-hire vehicle services to the public through prearrangement and mostly accept cash payments; (3) black cars[3] which generally serve corporate clients on a prearranged basis and are mostly paid by credit card or company account; and (4) luxury limousines,[4] which serve the public on a prearranged flat rate, time or mileage.[5] State law, in 2012, created a new class of Street Hail Liveries which are allowed to pick up street hails in certain areas outside of Manhattan's Central Business District and at the airports.

In 2013, the International Association of Transportation Regulators (IATR)

issued model regulations designed to help municipalities address the proliferation of smartphone dispatch applications.[6] The essence of these model regulations is that apps can either be licensed on an even playing field with other sub-modes, or must contract with or only conduct business with licensed for-hire ground transportation companies (as a dispatch software company would). The New York City Taxi and Limousine Commission (TLC) adopted the approach recommended by a peer-reviewed panel of regulators and the federal government as part of the IATR's App Committee recommendations, which were formulated and finalized after an extensive international public hearing and comment period.[7] The NYC TLC's approach, overall, has been more successful than that of most jurisdictions around the world.

An inconvenient truth for many of these smartphone app companies that are claiming they should not be required to obtain driver and business licenses, or otherwise fit within existing for-hire ground transportation regulations, is that NYC required just that, and they willingly complied. The NYC TLC approach included early clarity, subsequent rulemaking and, most importantly, the deterrent effect of a comparatively sizeable number of TLC inspectors or law enforcement officers. While the TLC has not settled every issue to the satisfaction of all stakeholders on smartphone transportation apps, it has taken a bold, firm and very different approach than many other jurisdictions and legislatures around the country.

There are some remaining issues in NYC to ensure that taxicabs and for-hire vehicles (which predominantly use apps like Uber) operate on a level playing field. For instance: taxicabs, black cars and limousines must pay sales taxes, while liveries do not; public transit surcharges (the Metropolitan Transportation Authority) are paid by taxicabs but not by for-hire vehicles; surge pricing (or demand pricing several times ordinary rates) can be applied by for-hire vehicles and not taxicabs; there is no cap or limit to the number of vehicles to be added to Uber's fleet, while taxicabs and green borough taxicabs are limited in number and supply; and wheelchair accessibility obligations apply more rigorously for taxicabs than for for-hire vehicles. Despite the foregoing inconsistencies and uneven playing field that has developed in NYC in many respects, the overall approach has produced more of an even playing field than most cities.

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This article will describe the history of the TLC's regulatory approach and current or pending proposals, and compare New York City's treatment of smartphone apps to the posture adopted by other jurisdictions. While Uber and Lyft have been able to convince some jurisdictions that their operations warrant new regulations, the experience of New York City shows that a TNC can operate under existing regulations, if compelled to do so. As an example, Uber's entry into the New York City market caused the TLC to slightly tweak its rules to ensure that the TNC's vehicles are insured and the drivers safely licensed, like every other licensee. The TLC's approach, while not perfect, deserves the attention of regulators and municipal or government lawyers.

a. The Early Days - TLC Industry Notices, Enforcement and Clarification

On May 3, 2011, Uber announced its entry into the New York City market.[8] As in other jurisdictions, Uber's business model raised some issues and concerns about whether it was operating within the bounds of existing laws. In response to complaints that Uber was contacting for-hire vehicle owners and drivers directly, the TLC issued Industry Notices to clarify how smartphone applications should operate under the existing rules. TLC issued the first industry notice #11-15 on July 1, 2011.[9] In response to inquiries, TLC issued another more comprehensive Industry Notice #11-16 on July 18, 2011.[10] In addition to clarifying when a smartphone application would need a base station license, the Notice warned that bases using smartphone apps must ensure they do not violate laws governing TLC or TLC rules.[11] The TLC advised bases that because they are the licensed entity, they would be held accountable for the breach of any laws or rules. The notice also stated that a smartphone app that provides for-hire transportation directly and not through a base, is itself required to hold a TLC base license.

To ensure compliance, the TLC, when it becomes aware of a smartphone app that may be acting outside the rules, will request the app provider to submit: (1) a list of licensed bases that the smartphone app works with, including effective dates; (2) an attestation that it is not dispatching to any non-affiliated bases; and (3) copies of the agreements.[12] The TLC stated it will presume those smartphone apps that do not comply with its request are violating rules prohibiting unlicensed base stations.[13] The notice also stated the TLC may request trip sheet information from smartphone apps, and if it does not obtain such cooperation, it may decide to

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license smartphone apps directly.[14]

E-Hail Pilot Program for Yellow Taxicabs

While smartphone apps began to be used to dispatch for-hire vehicles, there were no provisions to allow them to hail taxicabs. NYC is the only regulator in the United States that reserves only for taxicabs the exclusive right to accept passenger street hails while prohibiting pre-arranged service in taxicabs (except for wheelchair accessible service). The TLC, citing customer demand, approved an e-hail pilot program for taxicabs in December 2012. The resolution approving the e-hail pilot was amended in February 2013[15] and provided, among other things, that:

- Taxi drivers participating in the e-hail pilot would be exempt from certain TLC rules;
- Participants would be required to enter into a memorandum of understanding with the TLC;
- The pilot would begin on the date the first participant's application is approved and would last for one year;
- Candidates would have to submit materials showing the e-hail app complied with technical standards; that it was tested by a qualified independent third party; and met TLC's security standards;
- E-hail apps would have certain blackout areas, such as airports;
- No information about the passenger, including destination, would be transmitted to the driver;
- No additional fees for use could be charged;
- The app would have to integrate with in-vehicle yellow taxicab credit card systems (the "T-PEP" or Taxicab Passenger Enhancement Program); and
- The Chair of the TLC would approve of the participants.

TLC approved Uber, Ridecharge (a/k/a formerly Taxi Magic, and now known as Curb), Mobile Knowledge Systems Inc. and Verifone, Inc. for the e-hail pilot program.[16] The TLC presented a final report on the findings of its e-hail program on January 28, 2015.[17] Among some of the findings of the final report were:

- There were an average of 7,947 e-hails per day (out of over a half million rides each day based on historical averages);
- E-hails accounted for .45% of all yellow cab pick-ups;
- 65.3% of all e-hailed trips took place outside of the central business district of Manhattan (only 6% of taxi pickups took place in these locations);
- The average farebox increased during the pilot;
- Passenger opinion on e-hail was split, with 25% reporting e-hail was more convenient, while 25% reported that street hails were more convenient and 35% reported convenience varied by trip;
- E-hail apps were evenly used by people between 20 and 34, 35 and 64, and 65 and older;
- Refusal complaints were at similar levels during the pilot; and
- Taxi drivers who participated in the e-hail pilot had a slightly lower rate of collisions (6.0% v. 8.4%).

Based upon findings during the pilot, the TLC decided to make e-hail of taxis and street hail liveries permanent, adopting rules that became effective on March 12, 2015.[18] These rules:

- Create requirements which must be met by drivers who use e-hail apps;
- Require drivers and owners to only use TLC licensed and approved apps;
- Require that the fare be determined by the taximeter;
- Prohibit any additional fees above the TLC-approved rates for an e-hail trip;
- Require integration with T-PEP and L-PEP systems (a similar credit card system for Street Hail livery borough (or green) cabs that operate outside Manhattan's central business district);
- Require app companies to be able to dispatch a wheelchair-accessible vehicle;
- Create licensing standards for e-hail app providers; and
- Create technical and security specifications for e-hail apps.

The result of the process described above is that in New York City, which has some of the strictest and most thorough for-hire vehicle regulations in the world, the TNCs such as Uber and Lyft are required to comply with the TLC's rules governing for-hire vehicle companies.

For-Hire Vehicle Cross-Dispatching Rules

In addition to these e-hail rules, the TLC had also adopted rules in November 2014 which originally prohibited cross-dispatching among classes of for-hire vehicle bases.[19] These rules would have banned black car bases, luxury limousine bases and livery bases from dispatching vehicles from a different class of base. The rationale for these rules was to ensure that Workers' Compensation coverage for drivers is always in effect. The rules also require a dispatching base to reveal the base affiliation of the vehicle it dispatched and to provide dispatch records to the TLC. The TLC amended this rule just two months later in February 2015[20] to allow cross- dispatching between black car bases and luxury limousines. Because most black car and limousine drivers are covered by the same state-mandated insurance fund, known as the New York Black Car Operator's Injury Compensation Fund,[21] the Workers' Compensation issue is not implicated. Companies like Uber benefit from these changes because drivers can be deployed even though affiliated with other bases. These new rules do create challenges for other bases whose drivers are no longer as available to serve the public during peak hours as if they are also working for Uber, they would likely prefer to benefit from surge pricing during peak times to enhance their revenue.

There is No Such Thing as a Transportation Network Company (TNC) in New York City

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thorough for-hire vehicle regulations in the world, the TNCs such as Uber and Lyft are required to comply with the TLC's rules governing for-hire vehicle companies. This has meant that Uber and Lyft have had to open licensed base stations to dispatch vehicles. This inconvenient truth rebuts the rhetoric of so-called TNCs that have sought the passage of special laws with less stringent insurance and background check/vetting requirements than for taxicabs and limousines. What is interesting is that elsewhere in New York State, lobbyists for Lyft are already mobilizing to try and pass a TNC-oriented law to possibly preempt the TLC's approach.[22]

To ensure that the public is protected, the TLC has extensive rules requiring all for-hire vehicles to have adequate insurance.[23] Taxis, liveries and black cars must have liability coverage of $100,000 per person, $300,000 per occurrence, and $200,000 in no-fault or personal injury protection coverage to cover medical expenses and lost earnings, et al.[24] Luxury limousines must have liability coverage for $500,000 per person, $1,000,000 per occurrence, and $200,000 in personal injury protection.[25] This coverage is required at all times (24 hours per day and 7 hours per week), and vehicle owners are required to notify the TLC of any changes in coverage.[26] App-based dispatch companies like Uber and Lyft must dispatch vehicles that maintain for-hire levels of insurance coverage in order to operate in New York City. This is not always required where jurisdictions have promulgated separate TNC laws with less insurance coverage on the primary level than for taxicabs and limousines providing the same exact for-hire service as TNCs.

In New York City, an inconvenient truth for Uber and Lyft is that their affiliated vehicles and drivers have the same insurance as all other taxicabs and for-hire vehicles, despite their efforts to pass different and less stringent regulations for themselves in other cities. However, their legislative agenda around the United States seeks at the same time to keep the higher insurance and other standards in place for taxicabs and limousines (but not for TNCs), creating an uneven and possibly anti-competitive regulatory environment. Basically, TNCs provide the same exact service as taxicabs and limousines with a smartphone application, by using limousines and unlicensed cars to charge the equivalent of taxi type fares on meters that are part of the app, even though taxicabs and many limousines are doing the same exact thing (including using apps themselves). In NYC, that is not the case – and the uneven playing field that exists in NYC is different and less severe.

Driver Background Checks and Drug Testing

All NYC for-hire vehicle drivers must undergo a vigorous criminal background check and pass a drug test.[27] Under the rules, all applicants for a for-hire vehicle license must take and pass a drug test administered by an entity approved by the TLC. If the applicant fails the test, the TLC will deny the applicant's license, which is a final agency decision. Applicants must also be fingerprinted for the purposes of checking the records of the New York State Division of Criminal Justice Services (DCJS). The applicant is required to pay $75[28] for the fingerprinting and, following a conviction for a criminal offense, may be subjected to a licensing fitness hearing to determine whether being licensed is appropriate after the application of New York State laws and standards.[29]

Fingerprint checks are conducted through an outsourced digital system and are administered by and through the TLC and other government entities. These fingerprint results are returned in a few days and the TLC is very quickly informed of all driver convictions. This storage component improves efficiency of fingerprint processing and saves drivers time by not requiring them to resubmit fingerprints.[30] Many other new TNC state laws require only that the TNC driver undergo a non-biometric company (non-governmental) administered criminal background check that is not as accurate as fingerprinting. This form of self-regulation is not the regulatory standard in NYC, where the TLC (and not the TNC) is required to take action and make decisions as to which applicants should be licensed, or whether current drivers should be removed from the road for potentially endangering the public.

The John Jay College of Criminal Justice's Masters of Public Administration Program released a report in May 2015, "One Standard for All: Criminal Background Checks for Taxicab, For-Hire, and Transportation Network Company ("TNC") Drivers"[31] that compared common TNC name-only background checks versus fingerprint-based biometric background checks. This report, examining nine jurisdictions, found that fingerprint-based background checks conducted by government regulatory agencies are more accurate than the name-based background checks used by TNC companies. The report also found that having a different set of background checks for TNCs than the standard for taxis and limousines is likely unconstitutional.[32]

Accessibility Requirements

The TLC requires its licensed for-hire vehicle base stations to provide equivalent accessible service, whether by using their own accessible vehicles or contracting with another base that has accessible vehicles.[33] "Equivalent service" under U.S. Department of Transportation regulations implementing the Americans with Disabilities Act (ADA), means that the service provided to people with disabilities must be equivalent in terms of response time, fares charged, hours and days of service, ability to accept reservations, restrictions based on trip purpose and other limitations on capacity or service ability. App-based dispatch companies are required to provide this equivalent accessible service. A recent study by the TLC found that 90% of livery and black car bases were unable to provide accessible service.[34]

Under a settlement, 50% of the taxicab fleet is to become accessible by 2020. The TLC has said it will be exploring ways to ensure the other for-hire vehicle sectors can do their share to provide accessible service, which include a new mandate (discussed herein) for apps to comply with "equivalent service" requirements. Also, the legislation creating street hail liveries requires 20% of the 18,000 permits to be issued to accessible vehicles. How these other sectors provide accessible service is critical because Uber and Lyft,[35]

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combined, operate more vehicles than there are taxicabs. Other states have similar issues because TNCs are not required to provide accessible service across the board like taxicabs and limousines. The accessibility issue for apps is very much in flux at this time, but is on a path to resolution.

Data Collection, Privacy and Security Safeguards

The TLC has demonstrated that it will not treat Uber differently than any other licensed base. TLC adopted rules last year creating a requirement for for-hire vehicle bases to provide trip records. The TLC requested Uber's trip records, but Uber refused to provide them, claiming they were proprietary.[36] At an administrative hearing, the judge suspended five out of six of Uber's bases for not providing the requested data. Uber would eventually provide the data, which would show, among other things, that it dispatched 34,000 rides per day.[37]

Earlier this year, Uber revealed that it had suffered a major data breach in May 2014 affecting 50,000 of its drivers across the United States. This breach was not discovered for four months[38] and highlights the importance of regulators requiring Uber to have security measures to protect sensitive information. In New York City, the TLC currently has security protocols in effect for the information generated by the Taxi Passenger Enhancement Program (TPEP)[39] systems required in all taxis. These security procedures include requiring employee security training, requirements for third-party access, data encryption requirements and access policies, among many other security measures.[40] The protocols also set standards for protecting personal information and protect the driver's privacy by not allowing the dissemination of any information about a taxicab when it is off duty.[41] As discussed more fully below, new TLC rules effective July 29, 2015 will address some of the data compliance and privacy protection issues.

Current Developments – New Proposed Regulations and Legislation

Traffic and Environmental Study and Cap on For-Hire Vehicles

The New York City Council held a hearing on June 30, 2015 regarding two bills affecting Uber. The bills were introduced at the Council a few days before this hearing. One bill would institute a cap on the number of newly licensed for-hire vehicles that can affiliate with a base, depending on the size of the base.[42] The second bill would require a study analyzing the impact of the growth of taxis and for-hire vehicles on traffic and the environment.[43]

There was no doubt about the importance of this legislation to Mayor De Blasio because his office sent two commissioners and the Director of his Office of Sustainability to testify in support of the bills.[44] The panel testified about why a study was needed to examine the increase in traffic and pollution because of the addition of thousands of new for-hire vehicles, and that a cap was needed to keep variables constant. They also testified about the increase in pollution.

Uber's testimony framed the proposed cap as a job destroyer. The company testified that a cap would immediately cause 700 drivers to lose their jobs and eliminate another 10,000 jobs they were planning to add in the next year.[45] Uber also questioned the motives for the study and said that the methodology was flawed and biased. A panel of technology and business advocacy groups testified against the bills stating that they would harm small businesses and stifle innovation. A few companies that lease vehicles to the for-hire vehicle industry also testified against the bills, citing the potential negative effects on their businesses.

A panel of disability advocates testified in support of the bills, stating that for-hire vehicles do not have the same accessibility requirements as taxis and that their explosive growth threatened the City's mandate to require half of all taxicabs become accessible by 2020. Taxi industry advocates also testified in support of the bills, citing the negative effect of uncontrolled growth on taxi driver income.

The Council was expected to vote on both bills on July 23, but late on July 22, the Mayor announced that there would be no cap.[46] Instead the Council just voted to require the study, which would be due by April 1, 2016.[47] The decision to drop the cap came after Uber conducted a multi-million campaign against the Mayor and Council Members, with mailers, ads and the recruitment of allies in the minority community.[48]

b. Surge Pricing

Although it is required to follow all rules and laws governing for-hire vehicle bases, Uber's business practice of "surge pricing," where higher fares are charged during times of high demand and low supply of vehicles (including during natural catastrophes and citywide emergencies such as Hurricane Sandy several years ago), caught the attention of the New York City Council. The Council held a hearing on proposed legislation that would limit the amount that Uber can charge during surge pricing.[49] At the public hearing on the proposed bill, the TLC testified it was not prepared to support the bill as written because of some technical issues, including that the bill may penalize drivers, when it is the base that sets fares. The TLC also testified it was difficult for it to determine what the "normal" fare is unless it has fare data, which it may request from Uber in the future. The sponsor of the bill did indicate a willingness to revise the bill to address the TLC's concerns.

Surge pricing has also caught the attention of the New York State Attorney General and State Legislators. Last July, the New York State Attorney General Eric Schneiderman entered into an agreement with Uber[50] to limit its price increases during emergencies after it raised its prices by up to 800% during a snow storm in 2013. New York State Assembly Member Felix Ortiz has introduced a bill that would penalize Uber $250 for each instance of surge pricing.[51] Neither the City Council bill nor the State bill has passed yet.

The Licensing of Smartphone Apps?

On February 12, the Taxi and Limousine Commission held a fact-finding hearing on licensing dispatch apps.[52] Uber, Lyft and other stakeholders testified and the TLC, using the information it obtained from this hearing, drafted a series of new rules to address the use of for-hire vehicle dispatch apps. The proposed rules distinguish between a dispatch app used by a base and those apps that are sold, leased or otherwise made available to a TLC-licensed

base.[53] The rules create different regulatory structures for the two types of dispatch apps.

The TLC heard public testimony on the proposed rules on May 28 but did not hold a vote. Stakeholders from all segments of the industry testified, including elected officials, base owners, technology advocacy groups, taxi associations, a taxi riders' advocacy group and Uber drivers. Showing how divisive this issue can be, the testimony from the elected officials ranged from opposition to the proposed rules, to not taking a position, to supporting them. Generally, the technology advocacy groups, and Uber and Lyft, testified against the proposed rules stating that they placed too many restrictions on the applications and would hamper innovation. Some groups also stated that TLC should be regulating for-hire vehicles and not technology.

Many of the for-hire and taxi industry groups testified in support of the rules, with some stating that the rules did not go far enough in regulating dispatch apps. The representative for a taxi riders' advocacy group also testified in support of the rules, stating that they improve transparency for the passengers. A few representatives from the taxi industry and base owners did testify against the rules because they do not believe they went far enough to create a level playing field, and would not prevent an app from communicating directly with a driver, eliminating a base's role in ensuring customer safety.

After making some amendments to the rules based upon testimony from its May 28 meeting, the TLC unanimously adopted the new rules on June 22. Under the newly adopted rules, Dispatch Service Provider is defined as an entity licensed by the TLC to provide Dispatch Services for licensed FHV Bases. Dispatch Service is defined as dispatching, reserving, or referring trips to drivers on behalf of TLC-licensed bases through a publicly available, Passenger-facing booking tool.[54] E-Dispatch is a Dispatch arranged through a licensed Dispatch Service Provider. Dispatch is a request made from a base station to a TLC-licensed driver, directing the driver to provide transportation to a passenger who has previously arranged for such transportation.

Some of the key provisions in the rules that apply to FHV Dispatch Apps include the following: [55]

- Smartphone app licensees may be an individual or business and must demonstrate they are fit to hold a license;
- Applicants must hold all rights or licenses to all intellectual property associated with the dispatch app;
- The TLC must approve all dispatch apps;
- Privacy and security policies must be put into place;
- A working customer service phone number or email address must be provided;
- Providers must notify the TLC if it modifies its dispatch app;
- Proof of Insurance – Professional liability insurance at a minimum of $1,000,000 per claim must be in place if professional services will be provided;
- A $5,000 bond to ensure compliance with all laws and rules and payment of fines must be posted;
- A fee of $1,000 for each license for a term of three years or less will be charged;
- The DSP must notify the TLC of any material changes and any suspension or revocation of needed licenses;
- The DSP must notify the TLC of any security breaches if notice is required under State or Federal law;
- Security – DSPs must meet applicable Payment Card Industry (PCI) standards[56] and its security standards must be filed with the TLC;
- The app must be able to collect and transmit trip data to TLC; and
- DSPs must provide a wheelchair accessible option that meets "equivalent service" requirements under the Americans with Disabilities Act.

The rules went into effect on July 29, 2015.

V. What Is In Store for the Regulation of Smartphone Transportation Apps in NYC in the Immediate Future (and for TNCs beyond NYC)?

The recent political, lobbying and media showdown that took place at the end of July 2015 in NYC between the Mayor, the Governor and the NYC Council made national and international news and developed into a major public spectacle. This "spectacle" included celebrity tweets from Ashton Kutscher, Kate Upton, Neil Patrick Harris and others, endorsements and objections by interest groups and elected officials, involved political campaign style direct mail and television advertisements, and a massive "Uber-style" grass roots political campaign not seen in NYC since the showdown between Mayor Bloomberg and Madison Square Garden on the failed NY Jets' West Side stadium proposal several years ago.

Certainly the debate and the fight are far from over. There is still a major environmental and traffic study that may ultimately propose a cap or limitation on for-hire vehicle growth in NYC, with possibly exemptions for ride-sharing, wheelchair accessible vehicles and alternative fuel vehicles as mitigating factors. Most cities around the country do not technically impose absolute caps on the number of taxicabs, and actually have a legal standard for growth and a process for transportation companies to apply for and receive new permits. The standards look at supply and demand, traffic congestion and environmental issues, and it is very possible new legislation may put such standards into place to allow for "checked" ~ instead of "unchecked" ~ growth. The political face saving, retribution, personalities, political supporters and stakeholders will all be mobilizing once again after December 2015 or early in January 2016 after the report is issued, as the report is likely to be a blueprint for proposed legislation by the NYC Mayor's office and NYC Council. It is also possible that Uber may lobby the Governor and the State Legislature intensely to pass a state law preempting any such new laws proposing a cap, moratorium or "growth-check" process for for-hire vehicles.

On other issues, the TLC regulations and the data that may be collected under the alleged "Uber deal" to table the legislation will become part of the study and the TLC will obtain a much better picture of the economic impact Uber is really having on its competitors, traffic and the environment. It is very possible that the "surge pricing" bill could be resuscitated at the local level and that the insurance legislation (making it easier for TNCs to operate in NY State and possibly NYC) could receive new

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life with the Governor looking into the issue following the recent "NYC Uber Spectacle." Also, there are pending lawsuits from the industry[57] that could cause the entire focus to shift, and both the incumbent industry and Uber could bring lawsuits following the passage of any new laws as well.

The battle is actually just beginning in NYC, but it may have a ripple effect on other states. Similarly, due to insurance, accessibility and criminal background check controversies, Texas, Connecticut and Florida all recently tabled and did not pass new TNC statewide laws. The attention focused on NYC may not be good for Uber in some ways as legislators, the riding public and the media around the country now may become more aware of the fact that Uber is licensed like everyone else (taxicabs and black cars) in NYC, dominates the market with more than 18,000 vehicles, and is still fighting to take a further share by adding thousands of more vehicles. Many jurisdictions around the United States (and the world) may follow and replicate what is done in NYC from a transportation regulation standpoint, and despite the unique nature of the NYC market, the recent NYC battle could very well change the debate, direction and the legislative dynamic of what happens in 2016 around the nation. The disruption continues like a hydra, and shows no sign yet of settling down. In fact, the Uber issue may continue to be a major issue in the 2016 Presidential race and debate as part of worker rights and protections for part-time workers in the sharing economy.[58]

"Apps in the City" are alive and well, and getting friskier by the day – and this regulatory television series will likely continue for many more seasons and episodes as a true cultural, media, political and legal phenomenon.

Notes

1. N.Y. Admin Code §19-502(l).
2. TLC Rules §§59A-03(j) & (k).
3. *Id.* at §§59A-03(b) & (c).
4. *Id.* at §§59A-03(l) & (m).
5. Under TLC rules, a Black car is defined as a Vehicle that affiliates with a Black Car Base. Black Car Base is defined as a "central dispatch facility" (as the term is defined in New York Executive Law, §160-cc) and For-Hire Base that operates as follows: (1) All Black Car Vehicles are dispatched on a pre-arranged basis; (2) All Black Car Vehicles are owned by franchisees of the Base or are members of a cooperative that operates the Base; and (3) More than ninety percent (90%) of the Base's business is on a payment basis other than direct cash payment by a Passenger. Luxury Limousine is defined as a For-Hire Vehicle that is affiliated with a Luxury Limousine Base. A Luxury Limousine Base is a For-Hire Base that operates as follows: (1) All Luxury Limousines are dispatched from the Base by pre-arrangement; (2) Luxury Limousine Vehicles have a seating capacity of 20 or fewer Passengers; (3) More than ninety percent (90%) of its business is on a payment basis other than direct cash payment by a Passenger. (4) Passengers are charged "garage to garage" service on the basis of a flat rate, time or mileage.
6. The model regulations can be accessed at: http://www.windelsmarx.com/resources/documents/IATR%20Model%20Regulations%20(10890808).pdf
7. *Id.* Regulators from the following municipalities and countries served on the IATR Smartphone Apps Committee: Austin, TX; Boston, MA; Los Angeles, CA; Denver, CO; San Francisco, CA; City of Montreal, Canada; Chicago, IL; Seattle, WA; Washington DC; Australia; Toronto, Canada; Philadelphia, PA; Houston, TX; and San Diego, CA.
8. http://blog.uber.com/2011/05/03/uber-nyc-launches-service/
9. http://www.nyc.gov/html/tlc/downloads/pdf/industry_notice_11_15.pdf. The notice acknowledged the growing use of smartphone apps to request and dispatch for-hire vehicle trips, but advised that the use must be in compliance with TLC rules. The notice advised that for-hire vehicle owners and drivers must obtain the approval of their "bases" (their existing dispatching company) before contracting directly with a smartphone app provider. The notice further explained that it violated TLC rules if a for-hire vehicle owner or driver was accepting dispatches through a smartphone app that is not authorized by his or her base. The notice also warned taxi drivers that they are prohibited from using smartphone apps and could only pick-up passengers that hail them.
10. http://www.nyc.gov/html/tlc/downloads/pdf/industry_notice_11_16.pdf. This notice clarifies when a smartphone app is required to have a for-hire base vehicle license as required by local law and rules, and to remind licensees of rules that apply when a licensed base contracts with a smartphone app. The notice states that any smartphone app that functions solely as a referral, reservation or advertising service for a licensed base, will not need to be licensed.
11. Among some of the requirements that bases must comply with are; no base using a smartphone app can advertise using the term "taxi", taxicab" "cab", "hack" or "coach," TLC Rules §59B-25(b); bases must file their smartphone app fares with TLC if those fares are different than their existing rates, Id. at §59B-21((a); bases must ensure that trip sheets of trips dispatched through a smartphone app are maintained and available for at least six months after the trip, Id. at §59B-19(b)(2); bases must be able to handle customer complaints, including through a smartphone app, Id. at §59B-17(a); and bases must ensure they are dispatching calls within the hours of operation filed with TLC, Id. at §59B-21(b).
12. http://www.nyc.gov/html/tlc/downloads/pdf/industry_notice_11_16.pdf
13. TLC Rule §59B-11.
14. http://www.nyc.gov/html/tlc/downloads/pdf/industry_notice_11_16.pdf
15. New York City Taxi and Limousine Commission Resolution Approving a Pilot Program to Evaluate Electronic Hail Applications, December 13, 2012, as amended on February 21, 2013.
16. http://www.nyc.gov/html/tlc/html/industry/current_licensees.shtml
17. http://www.nyc.gov/html/tlc/downloads/pdf/ehail_q5_report_final.pdf
18. http://www.nyc.gov/html/tlc/downloads/pdf/newly_passed_rules_ehail.pdf
19. http://www.nyc.gov/html/tlc/downloads/pdf/fhv_dispatch_rule_final_11_20_14.pdf
20. http://www.nyc.gov/html/tlc/downloads/pdf/proposed_rule_fhv_

dispatch_amendment.pdf
21. New York State Executive Law §§160-cc, *et seq*.
22. State Senator James Seward introduced a bill that would create TNC group insurance. The Senate insurance committee considered the bill, but the State legislature did not vote on it. http://www.crainsnewyork.com/article/20150629/BLOGS04/150629887/in-albany-uber-hits-a-roadblock
23. TLC Rules §59A-12.
24. *Id*. at §59A-12(c)(1).
25. *Id.* at §59A-12(c)(3).
26. *Id.* at §59A-12(b).
27. *Id.* at §55-04.
28. http://www.nyc.gov/html/tlc/downloads/pdf/new_driver_checklist_partb.pdf
29. New York State Correction Law §752 prohibits denial of any license to any individual by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless: (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or (2) the issuance or continuation of the license would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.
30. http://www.criminaljustice.ny.gov/advtech/policy.htm
31. The report is available at the UTRC's link at http://www.utrc2.org/publications/one-standard-for-all , or the John Jay College of Criminal Justice Master in Public Administration (MPA) Program's link at www.mpa.jjconline.net**.** The study was authored by one of the authors of this article, Professor Matthew W. Daus of The City College of New York and Professor Pasqualino "Pat" Russo of John Jay College of Criminal Justice. It was peer-reviewed by the Hon. Michael A. L. Balboni, former New York State Deputy Secretary for Public Safety; Professor William J. DiVello of John Jay College of Criminal Justice; Professor Lawrence Kobilinsky of John Jay College of Criminal Justice; and Professor Philip Zisman of the Association of Inspectors General.
32. *Id.*
33. TLC Rules §59B-17(c).
34. https://www1.nyc.gov/html/tlc/downloads/pdf/testimony_03_05_15.pdf
35. As of March 11, 2015, Uber had 13,946 affiliated cars versus 13, 605 taxicabs.
36. http://media.bizj.us/view/img/4764911/final-decision.pdf
37. http://www.nydailynews.com/new-york/data-uber-driving-competitors-nyc-article-1.2137714
38. http://www.forbes.com/sites/davelewis/2015/02/28/uber-suffers-data-breach-affecting-50000/
39. TPEP is an integrated system of hardware and software that provides credit/debit card processing, text messaging, trip data collection and transmission, data transmission by means of a passenger information monitor and automatic vehicle location system and location services to taxicabs. TLC Rule §51-03.
40. TLC Rules §§76-01, et seq.
41. *Id.* at §75-23.
42. http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2364032&GUID=38613BB6-5A68-416E-9C27-9F43E3C60372&Options=ID|Text|&Search=int+842
43. http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2364031&GUID=87C7D249-891A-43BC-8127-6617FB856429&Options=ID|Text|&Search=int+847.
44. Commissioner Polly Trottenberg of the New York City Department of Transportation, Commissioner Meera Joshi of the New York City Taxi and Limousine Commission and the Director of the Mayor's Office of Sustainability, Nilda Mesa, testified on behalf of the Mayor.
45. http://nypost.com/2015/07/12/700-uber-drivers-to-be-fired-under-new-bill/
46. http://www.nytimes.com/2015/07/23/nyregion/de-blasio-administration-dropping-plan-for-uber-cap-for-now.html?_r=0
47. http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2364031&GUID=87C7D249-891A-43BC-8127-6617FB856429&Options=ID|Text|&Search=int+847.
48. http://www.nydailynews.com/new-york/uber-meets-minority-workers-fight-proposed-car-cap-article-1.2292479
49. http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=2073899&GUID=0C1C4C28-9D46-4021-BAA6-EAC0D95D5F09&Options=ID|Text|&Search=556.
50. http://ag.ny.gov/press-release/ag-schneiderman-announces-agreement-uber-cap-pricing-during-emergencies-and-natural
51. http://www.capitalnewyork.com/article/albany/2015/02/8562248/bill-would-ban-surge-pricing-uber-rideshare-services
52. http://www.nyc.gov/html/tlc/downloads/pdf/fhv_app_rules_hearing_notice.pdf
53. http://www.nyc.gov/html/tlc/downloads/pdf/proposed_rules_fhv_app_cert.pdf
54. Under the rules, dispatch Service does not include a base dispatching through a Passenger-facing booking tool that uses the same public-facing name in its branding, operations, promotions, or advertisements as the trade, business, or operating name the Base has on file with the TLC. Dispatch Service does not include a Base dispatching or managing its fleet under the trade, business, or operating name the Base has on file with the TLC using commercial dispatching software. http://www.nyc.gov/html/tlc/downloads/pdf/proposed_rules_final_fhv_dispatch.pdf.
55. *Id.*
56. https://www.pcisecuritystandards.org/security_standards/index.php
57. See http://www.crainsnewyork.com/article/20150527/BLOGS04/150529893/taxi-interests-sue-city-predicting-collapse-of-their-industry and http://www.nydailynews.com/new-york/cabbies-claim-tlc-uber-customers-article-1.2169132.
58. Democratic Presidential Candidate Hillary Clinton recently stated she would crack down on companies that misclassify their workers as independent contractors, which many have interpreted as being directed towards Uber and other sharing economy type companies. Republican candidates were quick to criticize her remarks as anti-innovation. http://www.businessinsider.com/grover-norquist-hillary-clinton-uber-2015-7