

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
TAXICAB COMMISSION**



**REPORT OF THE
PANEL ON INDUSTRY**

**FINDINGS AND RECOMMENDATIONS
ON “RIDESHARING”**

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I. INTRODUCTION*

This Report of the D.C. Taxicab Commission’s Panel on Industry presents findings and recommendations on “ridesharing,”¹ a new public vehicle-for-hire service that allows a passenger to book a ride using digital dispatch. Digital dispatch connects a passenger to a vehicle using a smartphone app.² Prior to the debut of “ridesharing” in the District of Columbia in 2013, digital dispatch was used only for taxicabs and black cars,³ and the company that provided the dispatch did little more, acting essentially as a high-tech ride broker that might also process payments.⁴ “Ridesharing” service is different. In “ridesharing,” the company that provides the dispatch is also substantially involved in matters pertaining to the drivers and vehicles.⁵ A company that provides “ridesharing” has crossed the line from ride broker to provider of a public vehicle-for-hire service. Such a service is within the clear “authority, power, and duty” of the Commission to license and regulate⁶ for safety and consumer protection.

From the perspective of the riding public, “ridesharing” appears to operate in much the same way as black cars. Both services seamlessly integrate digital dispatch – and digital payment by credit card – into their operations. Marketing impels passengers to believe the only relevant difference between a trip by black car and a trip by a “ridesharing” vehicle is a higher payment for a more luxurious ride.⁷ But that is not true. “Ridesharing” vehicles are personal cars with non-commercial tags driven by untrained, amateur drivers; black cars and taxicabs are commercial vehicles operated by trained professionals. “Ridesharing” is a self-administered service in which the company conducts its own safety checks on drivers and vehicles and provides the only meaningful insurance; taxicabs and black cars are vetted through public agencies charged with protecting safety and are generally insured by the vehicle owner.⁸

The unique aspects of “ridesharing” set it apart from all existing public vehicle-for-hire services. Our charge was to make findings and recommendations, as a basis for proposed rulemaking to allow “ridesharing” to operate legally in the District, which we have done. But it is important to understand what we have *not* done. *First*, we have not endorsed “ridesharing.” Our charge required us to *assume* that “ridesharing” should be allowed to operate. In fact, the Panel disagrees with that assumption. Just a few months ago, California became the first jurisdiction in the country to enact regulations allowing “ridesharing.”⁹ Though we believe those regulations generally provide a good model for proposed rulemaking by the Commission, a fatal accident involving a “ridesharing” driver in San Francisco within the past few weeks tells us that the rulemaking process must proceed with caution. “Ridesharing” is new and the risks it presents are not yet entirely known.¹⁰ *Second*, we have not drafted regulations. What appears here are findings and recommendations which may be used to develop proposed rulemaking. And we have not addressed every issue and every detail.

* This Report reflects the views of the members of the Panel. It is not an official policy statement of the D.C. Taxicab Commission or the District of Columbia. The preliminary legal discussion herein is not a formal opinion of the Commission’s Office of General Counsel or the Office of the Attorney General for the District of Columbia.

II. SUMMARY OF FINDINGS AND RECOMMENDATIONS¹¹

Ridesharing is a community-spirited activity, such as carpooling and slug-lining, in which no person has a profit motive. Ridesharing is not a *for-hire* service. Therefore, by definition, the word “ridesharing” should not be used in this context. Proposed regulations should give an appropriate name to the service provided by Lyft, SideCar, and uberX.

Adequate liability insurance must be available to cover claims by passengers and members of the public injured when “ridesharing” vehicles are involved in accidents. Such claims do not fall within the coverage of the personal motor vehicle policies. We endorse the existing practice of “ridesharing” services to purchase coverage for their drivers and vehicles. Proposed regulations should require coverage when a driver is signed into the app or is otherwise providing service. A service’s terms and conditions must be accurate and not disclaim liability.

The use of non-professional drivers providing service with their own personal vehicles creates risks and regulatory challenges the contours of which are still developing. Drivers must be properly screened and their vehicles inspected for safety according to standards set by the Commission.¹² Proposed regulations should require drivers to receive basic training from the “ridesharing” service. Drivers should be limited to part-time consistent with the statements made to the Panel by all three services. In most respects, the business model for “ridesharing” vehicles fits the existing regulations for black cars (“sedans”) in Title 31, Chapter 14 of the D.C. Municipal Regulations. We recommend these rules be redrafted to fit both classes of service.

A “ridesharing” service would play a unique and untested role in the industry by participating in the licensing and supervision of their drivers. This role requires a high level of cooperation with the Commission. Proposed regulations should require that each “ridesharing” service maintain its existing zero tolerance policy for the use of alcohol and drugs, to which we recommend adding a requirement that new drivers be screened for drug use at the time of application. Each service must enforce a strict policy against street hails. If a “ridesharing” service loses its insurance coverage, its operating authority must be immediately suspended. Each service should collect and remit passenger surcharge payments to the District, and collect and report trip data; surcharge payments and trip data should be provided quarterly.

“Ridesharing” will pose challenges for preserving fair competition in the public vehicle-for-hire industry. Some taxicabs will find it difficult to fairly compete, which threatens the viability of the taxicab industry, the only legal source of street hail service. This is contrary to the interests of the District of Columbia. The Commission should consider lawful, non-protectionist means of leveling the competitive playing field. Proposed regulations should allow a digital dispatch service to set the entire fare when it books a trip for a taxicab, thereby allowing taxicab fares to fluctuate up and down in response to market demand, in the same way they now do for black cars and would for “ridesharing” vehicles. The challenges to the taxicab industry may also have the effect of reducing the number of wheelchair-accessible vehicles. The Commission should consider measures to continue increasing the availability of accessible vehicles if “ridesharing” becomes an approved service.

III. FACTUAL AND LEGAL BACKGROUND

A. Recent Developments in the Industry

There have been many positive changes in the public vehicle-for-hire industry in recent years, both nationally and locally. These include innovations in service and technology that have enhanced passenger choice in almost every way: types of vehicles, booking methods, payment options, and prices. Black car service propagated in the District in 2011, having grown rapidly in other major markets not long before then. The advent of smartphones and the ability to use an app to book a ride is among the better-known developments; apps are now frequently used in the District and other major cities to dispatch taxicabs and black cars. In the District, the businesses registered to provide digital dispatch service are DCYellowCab, Hailo, Taximagic, TaxiRadar, and MyTaxi. In-vehicle payment options have also improved, increasingly adding payment by credit card, a preferred choice of many passengers. Owners, operators, and the riding public have all benefitted from these enhancements.

While the foregoing changes were already under way in the industry, the Council enacted sweeping legislation to amend the Establishment Act:¹³ the Taxicab Service Improvement Act¹⁴ enhances, refines, and modernizes the Commission’s organization, jurisdiction, authority, and programs by allowing and requiring it to oversee major enhancements in the District’s public vehicle-for-hire industry in general and in its taxicabs in particular.¹⁵ More visible aspects of the modernization improvements are vehicle upgrades which include a uniform color design for taxicabs, a phase-out of older vehicles, additional resources for enforcement and compliance with safety regulations, uniform dome lights on all taxicabs,¹⁶ requirements to increase the availability of wheelchair service, and a mandate that every taxicab have a taximeter system that offers *in-vehicle* credit card payment.¹⁷

In the spring of 2013, Council passed the Innovation Act,¹⁸ which limits regulations on digital dispatch services to those “necessary for the safety of customers and drivers or consumer protection.”¹⁹ As we have explained, “ridesharing” is not synonymous with digital dispatch; it is a public vehicle-for-hire service that *uses* digital dispatch for booking. No matter how integrated the two services may be, they are legally and factually distinct. The Act does not disturb the Commission’s authority and duty to license and regulate a public vehicle-for-hire service.²⁰ And even where the Act applies – such as to the price of a “ridesharing” trip (if any) – it would not circumscribe regulations based on passenger safety or consumer protection, or on the Commission’s authority to collect a passenger surcharge.²¹

B. “Ridesharing” Services and the Creation of this Panel

In the spring of 2013, Lyft, SideCar, and uberX debuted in the District, in advance of any legal authority allowing them to operate, as they have done elsewhere.²² Nonetheless, recognizing interest in using and providing “ridesharing,” the Commission created this Panel to study it and make recommendations about how it could be licensed and regulated in a way that addresses safety concerns, and protects consumers, among other requirements. The services

were also given an administrative exemption to allow them to continue operating while our study was under way. In September 2013, Council enacted the Emergency Act,²³ which set specific criteria to allow the temporary operations and also enumerated specific issues for us to address in this Report, including the type of licensing and regulation appropriate for the “ridesharing” services themselves, in addition to those necessary for drivers and their vehicles:

[this Panel] shall consider rules and recommendations to further modify public vehicle for hire regulations, including the procedures for transmitting the passenger surcharge, data requirements, the licensure and registration process of digital dispatch services, driver inventory requirements, vehicle categories, and types and levels of service, including ride-sharing.²⁴

The Act established basic rules to allow “ridesharing” services to operate temporarily:²⁵

- Requiring the service to “[s]ubmit proof to the Commission that it is licensed to do business in the District, maintains a registered agent in the District, and maintains a website that provides a customer service telephone number or email address”[;] and
- Requiring the service to “[m]aintain an excess liability insurance policy that: ... [p]rovides a minimum of \$1 million per-incident coverage for accidents involving a ride-sharing vehicle and operator in transit to or during a ride-sharing trip.... [and has] been submitted to the Commission under seal.”²⁶

C. Proceedings of the Panel and Preparation of this Report

The Panel held 11 work sessions on: August 29, September 9, 16, 23, and 30, October 7, 16, and 22, November 4 and 12, and December 2 and 4, 2013. During these sessions, the Panel’s members discussed, analyzed, and deliberated on the issues addressed in this Report. An attorney from the Commission’s Office of General Counsel was also present at each meeting to advise us on legal matters. On November 12, 2013, the Panel met separately with Lyft, SideCar, and Uber. Each company’s representatives was asked questions about matters such as insurance, driver eligibility, vehicle requirements, and operating rules such as proscriptions against taking street hails. Each company also discussed aspects of its business model, which have been incorporated in part III.D. (“how ridesharing works”).

On December 4, 2013, the Panel met in a separate group session with representatives of (1) the D.C. Professional Taxicab Drivers Association, the Dominion of Cab Drivers, the Small Business Association of D.C. Taxicab Drivers, and the recently-formed Teamsters Local 922, Washington D.C. Taxi Operators Association, and (2) Diamond Cab, Grand Cab, Silver Cab, Transco, USA Cab, and D.C. Yellow Cab. Shortly after the meetings, written comments were submitted by the Teamsters and by the taxicab companies (through D.C. Yellow Cab); these comments are attached to this report. We agree with some of the union’s comments: that the 25-cent passenger surcharge now assessed to passengers for taxicab and black car service should be charged to “ridesharing” passengers, and that a “ridesharing” applicant cannot be licensed if an

inquiry under the Clean Hands Act, D.C. Official Code § 47-2829 (a), reveals he or she owes more than \$100 in unpaid fines or certain other liabilities to the District. The Panel also agrees with some of the comments from the companies, including a suggestion that the Commission make appropriate and lawful efforts to level the playing field between regulated taxicabs and “ridesharing” vehicles, and to require language on the vehicle decal to prevent street hails.

In addition to the information provided to the Panel and its attorneys at and after the meetings with the “ridesharing” businesses, taxicab drivers’ groups, and taxicab companies, the Panel conferred with the D.C. Department of Insurance, Securities, and Banking and attorneys in its Office of General Counsel on the critical issue of insurance. The Panel also considered the CPUC Decision and Rules from California, the only comprehensive regulations on “ridesharing.” The Panel relied upon a white paper from International Association of Transportation Regulators (“IATR”), *Ridesharing Applications: Illegal “Hitchhiking-For-Hire” Or Sustainable Group Riding? A Legal and Policy Primer for Ground Transportation Regulation* (“IATR white paper”) (May 2013). Finally, the Panel considered a Draft Ordinance of the Seattle City Council (Dec.12, 2013) (“Seattle Draft Ordinance”). These three documents, as well as the comments from the union and the taxicab companies, and a report of the Metropolitan Police Report are attachments to this Report. The Panel also discussed newspaper articles and other information available online; where relied upon by the Panel, this information has been referenced in a footnote.

D. How “Ridesharing” Works²⁷

An individual who wishes to be a “ridesharing” driver applies to a company either online at its website, or by downloading the company’s app at the Google Play Store (for Android) and the Apple App Store (for iOS). The applicant provides basic contact information and information about the vehicle he or she will use to provide service. The applicant must be at least 21 years old (Uber requires age 23). He or she may reside in any jurisdiction in the U.S., though most Lyft and SideCar drivers reside in the Washington Metropolitan Area.²⁸ The applicant must carry personal automobile insurance coverage that meets the requirements for the jurisdiction where he or she resides.

If the driver meets the basic eligibility requirements, the company will generally follow up with a short telephone call or in-person meeting, to ask a few follow up questions about driving history and criminal records, and to get to know the applicant, after which a background check is conducted by a third party screening service. Applicants typically must have no more than two moving violations within the prior three years, no major violations within the past three years (such as driving on suspended license or excessive speeding), no driving under the influence violations within the prior seven years, and no more than one serious infraction (such as hit-and-run or a felony involving a vehicle). Applicants typically must have no record of violent crimes, sexual offenses, theft, or any felony. Requirements for the vehicle are that it have four-doors, have a current safety inspection from the jurisdiction where it is registered, and be no older than model year 2000 (Uber requires 2003 or newer). Two of the companies also conduct safety inspections themselves; one does not. The entire application process is streamlined and

simplified to encourage as many people as possible to apply, in order to ensure a sufficient supply of vehicles on the road to meet demand.

Approved “ridesharing” drivers are not licensed and their cars have personal tags²⁹, so they do not receive legal documentation to distinguish them and their vehicles from others on the road. Instead, each company provides its own trade dress that the driver must keep on the vehicle while performing service, such as Lyft’s well-known pink moustache. A new driver is given little or no formal training before commencing service; a single trip with an established driver or a very brief orientation (one hour or less) is typical. Drivers receive some guidance on their operations from the companies, such as SideCar’s “Rules of the Road,”³⁰ which list, among other things misconduct for which a driver (or passenger) will be suspended from participating in the service, including: disruptive behavior; smoking or using alcohol or drugs in the vehicle, inappropriate language or cursing, sharing any personal information about other drivers or passengers, “[a]nything resembling a threat or violence,” weapons, or texting while driving. The company has a zero tolerance policy with respect to drug and alcohol use by drivers, and drivers have been suspended for violating it. Drivers are also told they are not permitted to accept street hails,³¹ though doing so would not be technically difficult, since apps are not connected to any vehicle equipment and cash can be exchanged without detection by the company.³² A driver could also cover a street hail by asking a passenger to turn on the app to generate an after-the-fact “dispatch” after the passenger gets into that vehicle; this would also not be detectable by the company.³³

A driver may be given a smartphone by the company to take dispatches, or use his or her own phone to run the app. Drivers can earn from \$30 to \$35 per hour to as much as \$80 or more per hour on weekends in areas with substantial nightlife, such as Dupont Circle or Adams Morgan. “Ridesharing” is a part-time occupation: drivers are generally individuals who want to make some extra money in their spare time, and they usually have other activities and employment.³⁴ But services do not require drivers to adhere to this practice, and do not even have rules to prevent operators from driving long hours and becoming fatigued. Drivers can sign in and out to fit their schedules, with no formal shifts. Drivers generally cruise in high-demand areas where there are also regulated taxicabs. While on the road, drivers must keep their apps running, with their smartphone’s GPS service turned “on.” During that time they are required to promptly respond to a request for service.

The app is the means by which a passenger books a ride from an available vehicle, a form of digital dispatch. A user must first register in order to obtain service. First, the user downloads the app onto his or her smartphone, and registers by entering personal information. Uber requires name, email address, password, date of birth, sex, telephone number, and the option to upload a personal photograph, for the putative purpose of informing *the driver* whom he or she is picking up. An Uber user is required to keep a payment card on file. A Lyft user registers using his or her Facebook username and password. A SideCar user enters his or her email address, password, and telephone number. Neither SideCar nor Lyft require their users to provide credit card information to register, though both require payment information before booking a ride.

The passenger must accept the “ridesharing” service’s terms and conditions (or terms of service) in order to receive service. Terms are posted on the website and may be viewed through the app. The terms disclaim legal responsibility, and, in some instances, contradict both the practice and policy of the company, as reported to us by the company. Lyft’s terms of service provide among other things that:

WE DO NOT SCREEN THE PARTICIPANTS USING THE SERVICES IN ANY WAY. AS A RESULT, WE WILL NOT BE LIABLE FOR ANY DAMAGES, DIRECT, INDIRECT, INCIDENTAL AND/OR CONSEQUENTIAL, ARISING OUT OF THE USE OF LYFT OR THE SERVICES.... SUCH DAMAGES INCLUDE, WITHOUT LIMITATION, PHYSICAL DAMAGES, BODILY INJURY, DEATH AND OR EMOTIONAL DISTRESS AND DISCOMFORT...LYFT HAS NO RESPONSIBILITY WHATSOEVER FOR THE ACTIONS OR CONDUCT OF DRIVERS OR RIDERS.... LYFT MAY BUT HAS NO RESPONSIBILITY TO SCREEN OR OTHERWISE EVALUATE POTENTIAL RIDERS OR USERS....³⁵

SideCar’s terms of service include the following:

Sidecar has taken commercially reasonable steps to collect information from its Drivers, including proof of automobile registration and insurance, and has used commercially reasonable efforts to conduct driver background checks. This however, is not to be deemed a warranty or guarantee, either express or implied, for the safety of a ride, the reliability of a driver, a ride or the driver’s vehicle, or for anything else, and Sidecar expressly disclaims all warranties as to its Drivers and Passengers. ... In no event will Sidecar be responsible for any damages (including personal injury, death, property damage, lost time or wages, etc.) resulting from or related to a ride facilitated by the Service, or for resolving any disputes between you and another user. You hereby agree that your use of the Service is at your sole risk.

... TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SIDECAR ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY ... PERSONAL INJURY, INCLUDING DEATH, OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE (INCLUDING RIDES FACILITATED BY THE SERVICE) [OR] ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS³⁶

Uber’s terms of service go even further: Uber does not merely attempt to limit its liability, it maintains only a *single* set of terms for *all* its services, in which it essentially states that its role is always limited to that of a booking service. Because Uber now has a “ridesharing” service, this representation is not accurate.

For the avoidance of doubt: Uber itself does **not** provide transportation services, and Uber is not a transportation carrier. ... *Uber only acts as intermediary between you and the Transportation Provider.* ... Uber shall never be a party to such agreement. ... The quality of the transportation services requested through the use of the Application or the Service is entirely the responsibility of the Transportation Provider who ultimately provides such transportation services to you. Uber under no circumstance accepts liability in connection with and/or arising from the transportation services provided by the Transportation Provider or any acts, action, behaviour, conduct, and/or negligence on the part of the Transportation Provider.³⁷

The terms of service are relevant to a number of things, including each service’s liability for accidents, which directly affects insurability.³⁸ The services consider their drivers to be independent contractors, rather than employees,³⁹ yet, at the same time, Lyft, SideCar, and Uber have each opted to purchase an excess liability insurance policy to cover claims.⁴⁰ The policy provides coverage that *legally* sits atop the driver’s personal coverage. *When* coverage is denied by the driver’s own insurer, however, as it inevitably will be when an accident occurs during the course of providing service, the umbrella policy drops down to the first dollar of claim exposure, as if it were the primary policy, and therefore covering an activity that the driver’s personal insurance does not cover. The policy provides at least \$1 million in liability coverage per accident. This coverage does not extend to drivers.

After the user registers and opens the app, the user can access various pages, including: a user profile, stored payment information (if any), promotional codes (coupons), sharing (rewards for referring others to the business), and general and legal (including information about the company, marketing information, copyright, privacy, and the company’s terms and conditions). To request a ride on the app, the user makes a request on the app which brings up a map. The map displays icons representing available vehicles and their current locations, together with a pin reflecting the user’s current location.⁴¹ The user can move the pin to indicate a different pick-up location. The user can select a vehicle, for which the app provides an estimate of the time required to respond to the user’s location. The user makes a final choice and the vehicle is then dispatched. At this point, Lyft and SideCar users must enter their credit card information if they have not already done so. Uber provides an estimated fare amount, and Lyft and Sidecar display recommended donation amounts. Finally, the app displays a photograph of the driver, and the make, model, and tag number of the vehicle that has been dispatched.

Pricing policies for “ridesharing” currently vary among the three companies. Passengers are not charged to download apps into their smartphones, although they may be required to enter credit card information in order to register as a passenger. Uber’s website provides fare information for uberX alongside its other services offered in the District.⁴² SideCar’s terms of service state how its “donations” are calculated. All three companies charge a cancellation fee of \$5. Uber frequently runs well-publicized promotions allowing passengers to use its uberX service for free or at substantially discounted rates. UberX also uses “demand” or “surge”

pricing which automatically raises fares during “peak” times in response to greater demand, the stated purpose of which is to entice drivers to sign on to the app.

IV. FINDINGS AND RECOMMENDATIONS

A. The Need for Accurate Terms and Definitions

1. Findings

The Panel believes that the use of the word “ridesharing” to describe the service provided by Lyft, SideCar, and uberX is not fair and accurate, and legally has no place describing a service that falls within the authority of the Commission.⁴³ This is an important issue and not merely a matter of semantics. Neither the D.C. Code nor the D.C. Municipal Regulations defines “ridesharing.” But the history of what might be termed “true ridesharing” shows it is a community-spirited, *not-for-profit* activity that does *not* raise the panoply of safety, insurance, consumer protection, and other concerns applicable to the paid transportation service which have made this Report necessary. IATR’s white paper explains that:

‘[r]idesharing’ is the term used to describe grouping travelers into common trips by car or van through “carpooling” or “vanpooling.” At its outset, ridesharing did not, and was not intended to result in financial gain for the driver. The purpose of ridesharing was based on common origin and/or destinations between drivers. Cab sharing, taxis and jitneys and other for profit transportation providers are therefore not typically considered a part of not-for-profit ridesharing schemes. Traditionally, there were three ways to classify ridesharing: (i) “acquaintance-based” or “fam-pools”, which typically form among family, friends and coworkers; (ii) “organizational based” which require participants to join an organization to receive access to rideshare service; and (iii) “ad hoc” or “casual carpooling”, which require little relationship between participants, does not require membership, and includes self-organization, incentives, notice boards and various computerized ride-matching products.

....

Ridesharing activities from 2004 to the present have been referred to as “technology enabled ride-matching.” This period is most notable for the widespread integration of the internet, mobile phones, and social networking into ridesharing services. The focus has been on reducing climate change, the growing dependence on foreign oil, and traffic congestion.⁴⁴

In contrast, the companies selling “ridesharing” in the District are offering a service in which both the company and the driver have an expectation of profit. As observed by the CPUC, “profit” in this context, “does not include the [mere] recovery of actual costs [such as that] incurred in owning and operating a vanpool vehicle.... [“Ridesharing” services therefore] do not fulfill the rideshare exemption [under California law] and actually are providing transportation

services for compensation.”⁴⁵ In sum, we believe the word “ridesharing” puts a spin on this service that is unacceptable. The Commission should address these issues by including proper definitions in any proposed rulemaking.⁴⁶

2. Recommendations

- Define “ridesharing”⁴⁷ as “an activity not subject to licensing or regulation by the Commission in which passengers are grouped for a non-commercial purpose, such as defraying costs, reducing road congestion, decreasing fuel use, protecting the environment, and increasing ridership, in which no person has a for-profit interest.”
- Define the service offered by Lyft, SideCar, and uberX as “a public vehicle-for-hire service that uses digital dispatch to connect passengers with non-professional drivers operating with their own personal vehicles” and state that the service “does not include ridesharing.” The Commission should chose an appropriate name for the new service.
- Prohibit the use of the name “ridesharing” for any public vehicle-for-hire service.

B. The Need for Liability Insurance

1. Findings

The availability of adequate insurance to compensate passengers and members of the public when an accident occurs is the issue of greatest concern to the Panel.⁴⁸ We have broken out insurance here as a separate matter because it is so important and has specialized requirements associated with it.⁴⁹ The challenges of insuring “ridesharing” begin with the fact that liability coverage for this activity is not within the scope of the driver’s ordinary, personal motor vehicle liability coverage, because “ridesharing” is a commercial use of the vehicle.⁵⁰ We find the observations of the CPUC to be instructive on this point.

[According to comments filed by the [Personal Insurance Federation of California or “PIFC”],] ... [its] members represent six of the nation’s largest insurance companies (State Farm, Farmers, Liberty Mutual Group, Progressive, Allstate and Mercury) which collectively write a majority of the personal lines of auto insurance in California.]

In its comments, PIFC asserts that it surveyed its member insurance companies, finding that ‘the industry standard for personal auto insurance policy contracts is to exempt from insurance coverage claims involving vehicles used for transporting passengers for a charge.’ PIFC goes on to say that in situations where a vehicle is insured as a private vehicle and is used to transport passengers for a fee, no insurance coverage would exist. The [CPUC] also inquired about the sufficiency of the minimum liability coverage required under California [law]. PIFC asserts that since there would be no coverage for the type of situations at

issue, the minimum amount of coverage would be irrelevant. ... The PIFC notes that the issue before the [CPUC] is not ridesharing, but instead it is one of using a private passenger vehicle in a livery service. This is clearly not covered under a standard policy; if an incident occurs, coverage would not exist.⁵¹

Accordingly, “ridesharing” does not fall within the scope of coverage in an ordinary, personal motor vehicle liability policy.⁵²

The required coverage could be provided by a number of sources. For example, each driver/owner could be required to purchase the *additional* coverage from his or her insurer at a cost over and above the usual premium. We did not investigate this option because the marginally high cost of such coverage when purchased by an individual (as opposed to the cost of group coverage), and the time and inconvenience such an arrangement would impose on drivers, would create barriers to participation in “ridesharing” incompatible with its business model, which uses part-time drivers merely looking to supplement their income. More importantly, such an arrangement would be infeasible for licensing and regulation, because, as we explain below, each policy must be separately evaluated by DISB. In any event, “ridesharing” services have anticipated these and other problems with having drivers obtain their own coverage, and have taken it upon themselves to acquire this coverage themselves.⁵³ We believe that, on balance, this is the best arrangement, and it is the one reflected in California’s rules.

If the “ridesharing” service chooses to be the party securing the insurance coverage, the service cannot attempt to limit or avoid liability. As the CPUC observed,

No Term & Condition in a [“rideshare” service’s] Terms of Service or elsewhere, can be inconsistent with [the] commercial liability insurance requirements for [the service]. Nor can any Term & Condition in ... be used or relied on by the [business] to deny insurance coverage, or otherwise evade ... insurance requirements [mandated by law]. Moreover, the Terms of Service [do] not absolve the [service] of its responsibilities to comply with ... stated regulations ... to ensure safety of the public.⁵⁴

As we noted in our discussion of “how ridesharing works,” part III.D., Lyft, SideCar, and Uber all make an effort to avoid liability through the terms and conditions that must be accepted by passengers prior to service.⁵⁵ This practice is incompatible with our recommendations for insurance, as it increases the likelihood of a denial of coverage.⁵⁶ Any proposed regulations must end this practice.

On the subject of strict compliance with insurance requirements, we would be remiss if we did not point out that not one of the “ridesharing” services now operating in the District of Columbia both *fully* and *timely* complied with the simple filing requirements in the Emergency Act, which were administered by the Commission’s Office of General Counsel. The Act was effective on September 27th, requiring a simple informational filing with the Commission and the

submission of the insurance policy. Lyft provided an incomplete filing in October; even after numerous emails from the General Counsel’s office, the additional information and missing documents were never received by the Commission. Sidecar provided a complete filing on November 13, 2013, well after the effective date of the Act. Uber provided an insurance policy that was *both* missing pages *and* redacted to obscure the review of certain information, most notably the identity of its insurer. The name of the insurer is essential for grading purposes.⁵⁷ After several emails from the General Counsel’s office, Uber removed most of the significant redactions and allowed the Assistant General Counsel to inspect the remaining information in December 2013, but it never submitted a complete copy of its policy. Such conduct by a “ridesharing” service should be proscribed in any proposed rulemaking.

Given the critical need for adequate coverage, proposed regulations should allow the Commission to work with DISB in reviewing each policy for regulatory compliance, and require that a service be suspended at any time when its policy is not in full force and effect.

2. Recommendations

- Require the owner of the vehicle⁵⁸ to maintain insurance in compliance with private motor vehicle insurance requirements.
- Require that a “ridesharing” service cannot be approved and cannot operate unless it has procured and thereafter maintains an umbrella policy with a minimum of \$1 million per-incident coverage for accidents, which is available to cover claims regardless of whether the driver maintains insurance adequate to cover any portion of the claim.
- Require that the umbrella policy cover the vehicle and driver while in transit, while the driver is signed into the app, *or while the driver is otherwise providing service* (this should also be an operating requirement for the “ridesharing” service).⁵⁹
- Require that the insurance company issuing the umbrella policy be graded by the credit rating agency A.M. Best,⁶⁰ and receive a rating of “A+” or “A-”.
- Require that the insurance company issuing the umbrella policy be authorized to do business in the District and possesses a certificate of approval from DISB.⁶¹
- Require that the umbrella policy cannot be canceled without 20 days’ notice to the insured (the “ridesharing” service”) and to the Commission.⁶²
- Require the “ridesharing” service report any claims made against the umbrella policy.
- Immediately suspend the “ridesharing” service’s operating authority upon termination or cancellation of the umbrella policy *for any reason*,⁶³ and not allow it to be reinstated without satisfactory proof that the service is once again properly insured.⁶⁴

- Require the “ridesharing” service to conform its terms and conditions to the circumstances that must be covered by the umbrella policy, and make no other effort to disclaim the liability that must be covered.
- Require the “ridesharing” service to file its umbrella policy at the time of application, with no redactions and with all attachments.
- Allow umbrella policy to be filed under seal, and thereafter be protected from public release, provided it is accompanied by an affidavit to support withholding under FOIA.
- Allow the umbrella policy to be evaluated by the Commission in consultation with DISB.

C. The Use of Non-Commercial Operators and Vehicles

1. Findings

The combined use of amateur drivers and private vehicles raises significant safety, consumer protection, and other issues. Safety is our first concern because “ridesharing” drivers are part-time amateurs who – even if our recommendations are followed – would not receive training comparable to professional drivers.⁶⁵ Two of the three services have a minimum age for drivers of 23 years. We believe this is appropriate since more years behind the wheel might compensate somewhat for no experience as a professional driver. We believe each applicant must agree in writing as the *owner* that he or she will maintain ordinary motor vehicle insurance on the vehicle and as the *driver* that he or she has reviewed the Commission’s regulations and will abide by them.⁶⁶ These agreements should be submitted with applications.

We were surprised to discover two serious omissions in the current practices of “ridesharing” services. *First*, they give their drivers little or no training. In our view, particularly in light of recent incidents involving “ridesharing” vehicles, drivers must receive some basic training from the service. The service should have leeway to design a program that meets minimal requirements. *Second*, “ridesharing” services do not currently drug test their applicants. Each service has a “zero-tolerance” policy on the use of drugs and alcohol while operating. This is commendable and necessary, but insufficient. A zero-tolerance policy is effective only *after* the use of drugs has been detected through an accident or otherwise reported. Individuals who drive while under the influence of drugs should not have a single opportunity to provide service; drug screening will go further to prevent this possibility.⁶⁷ We have fewer concerns about professionally-licensed drivers who choose to sign up for “ridesharing.”⁶⁸ It makes sense to us that these drivers be subject to fewer restrictions than amateur drivers, but we see no reason “ridesharing” services should not screen *all* drivers at the time of application.

Safety and enforcement concerns warrant some basic requirements for vehicles, largely consistent with the practices of the “ridesharing” services. We recommend basic rules for vehicle age and type, as in other classes of service.⁶⁹ Vehicles should be required to carry a current safety inspection from the jurisdiction where they are registered,⁷⁰ and should be

inspected at that time and every six months thereafter by the service or a third party for compliance with basic safety criteria.⁷¹ The Commission should consider the need to regulate the size and placement on the vehicle of trade dress,⁷² but regardless of whether it includes rules for this purpose, proposed regulations must require that a Commission decal be displayed on the vehicle at all times to make it more identifiable to passengers and inspectors. We see no alternative because “ridesharing” vehicles do not have commercial tags. A vehicle should not be permitted to operate unless it displays a license decal issued by the Commission.

An issue for every class of public vehicle-for-hire service in the District is one with geographic implications: where should the driver/owner reside (and the vehicle be registered) in order to be allowed to provide service here? By law, not everyone in the United States can simply take his or her non-District taxicab to Washington and begin providing service. Concerns about lawful and proper limits have long been reflected in the Commission’s regulations incorporating agreements with surrounding jurisdictions in the Washington Metropolitan Area, *i.e.* the reciprocity rules.⁷³ Limited participation by residents within the Area is permitted provided it complies with these rules. The rules are necessary for many reasons: in addition to enforcement, safety, and consumer protection concerns, the rules prevent the District from being overrun with public vehicles-for-hire from other jurisdictions in addition to those licensed here.⁷⁴ Under the rules, a public vehicle-for-hire may provide point-to-point service (pick up and drop off) within the District only if it has a commercial-class “H” or “L” tag issued by the District’s DMV,⁷⁵ though a driver is eligible for a commercial operator’s license from the Commission if he or she lives in the broader Area. We believe there should be similar rules for “ridesharing,” keeping in mind the fact that “ridesharing” vehicles would not receive commercial tags from DMV.

We see no alternatives to statutory requirements that each driver (1) have a business license from the Department of Consumer and Regulatory Affairs (“DCRA”), a requirement that would appear to apply to *all* drivers who participate in “ridesharing,” regardless of whether he or she already has a DCTC commercial operator’s license, and (2) pass a check prior to licensing for compliance with the Clean Hands Act.⁷⁶ There is no question that an approved driver should receive a Commission operator’s license limited to “ridesharing” vehicles.⁷⁷

Because the business model for the operation of “ridesharing” vehicles is so similar to that of black cars, we believe “ridesharing” can be folded into the existing regulations in Chapter 14 of Title 31 of the D.C. Municipal Regulations (Operation of Sedans). We anticipate the need for changes to ensure clarity and to account for the issues raised in this Report, among other things. None of the “ridesharing” services places a weekly time limit on its drivers’ use of its app. Even professional drivers cannot drive however many hours they prefer.⁷⁸ One service admitted to us that its drivers could “theoretically” fall asleep behind the wheel due the lack of rules to prevent such an outcome. This is unacceptable. We believe safety requires holding drivers to the “part-time” model that all three “ridesharing” services told us is typical of their drivers.⁷⁹

2. Recommendations

a. Eligibility Requirements

- Require that an applicant permanently resides in the Washington Metropolitan Area.
- Require that an applicant’s vehicle be registered and tagged in the applicant’s name as an owner or co-owner at his or her place of residence.
- Require that an applicant be at least 23 years of age unless he or she holds a professional operator’s license.
- Require that the applicant’s vehicle be no older than 10 model years of age, have at least four side doors, and not be a taxicab, sedan (black car), or limousine.
- Require that if the applicant does not possess a professional operator’s license, he or she must be screened by a third party business to verify that the applicant has a clear driving history and criminal background, and is not on a child abuse registry.⁸⁰
- Require the applicant to pass a drug screening administered by a third party business.
- Require the applicant to execute an owner/driver agreement providing that he or she will (1) maintain ordinary private motor vehicle insurance and (2) abide by all regulations, including submitting to inspections by hack inspectors.
- Require that the applicant be signed up with no more than one “ridesharing” service.
- Require the applicant to have a DCRA business license.
- Require that the vehicle have a current safety inspection from the jurisdiction where it is registered, and that it pass a basic safety inspection by the service or a third party every six months.
- Require that the applicant has completed a basic training program designed by the “ridesharing” service.

b. Licensing Process

- Require applications to be filed with the Commission by a licensed service, consistent with the proposed regulations applicable to services (discussed below).⁸¹
- Require the Commission to verify that the Clean Hands Act allows it to issue a license to the applicant.⁸²

- Require the Commission to promptly review and issue a decision on licensing, returning to the service a “ridesharing” license decal for each approved vehicle⁸³ and a “ridesharing” operator’s license for each approved driver.⁸⁴

c. Operating Requirements

- Require drivers to complete the “ridesharing” service’s training course before starting to provide service.
- Require drivers to comply generally with the same operating rules already established for sedans (black cars) in Title 31, Chapter 14, of the D.C. Municipal Regulations including the prohibition on taking street hails, and the requirement to maintain an electronic manifest of all rides.⁸⁵
- Require that a driver who takes a street hail be suspended or revoked.
- Require that a driver who violates a zero tolerance policy on drug or alcohol use be suspended or revoked.
- Require that the vehicle license decal to be displayed at all times on the vehicle.
- Require that each vehicle pass a basic safety inspection by the “ridesharing” service or a third party business every six months.
- Require the driver to carry evidence of his or her professional or “ridesharing” operator’s license with him in the vehicle at all times.⁸⁶
- Require that each driver be held to the existing practice of part-time work, by limiting the ability to sign into the app to 20 hours per week, unless the driver holds a professional operator’s license.⁸⁷
- Require that each vehicle be removed from service before it is 11 model years of age.

D. The Role of the “Ridesharing” Service

1. Findings

Eligibility for licensure of a “ridesharing” service should first and foremost require compliance with our insurance recommendations in part IV.B. In applying for licensure, the service should provide its policy up front, to allow a careful review by the Commission in consultation with DISB. We believe many of the current practices of the “ridesharing” services are adequate to address concerns about safety and consumer protection, and should be included in eligibility requirements, including the use of a third party business to screen drivers, the use of

a third party to inspect vehicles (if the inspections are not conducted by the service itself), and the passenger’s ability to use the app to see vehicle information and a photograph of the driver following booking of a ride. To the services’ existing practices, we suggest the Commission consider regulations on the size and placement of trade dress. The recent arrest of an uberX driver in the District for operating on a suspended license and his citation for driving with obstructed vision – with his uberX trade dress blocking his view – suggests these practices may be inadequate (in addition to raising questions about the adequacy of background checks and ongoing monitoring of driver histories).⁸⁸

The requirements mentioned in our discussion of drivers and vehicles in part IV.C. should be reflected in eligibility and operating requirements for the services. Each service should maintain a basic training program for new drivers and should screen all drivers for drug use at the time of application. Each service must also take meaningful steps to prevent street hails, which may require that it make reasonable changes to its app to prevent street hails. “Ridesharing” vehicles operate in much the same way as black cars, so the service should certify in its application that its drivers maintain electronic manifests and otherwise comply with the operating rules we have suggested above. “Ridesharing” services would be uniquely involved in the screening and supervision of its drivers and vehicles, a role without precedent in the public vehicle-for-hire industry. As a result, proposed regulations should require each service to post a bond to secure its performance and compliance with the regulations applicable to its operations.⁸⁹ Each “ridesharing” service must indemnify the District to protect the public fisc from lawsuits that will be filed as a result of accidents we are already seeing in this new class of service.

The unique role that “ridesharing” services would play must also be taken into account for operating requirements. Meaningful enforcement and compliance by the Commission will be impossible without the full cooperation of the “ridesharing” service. Each service must timely report the cancellation or other loss of its insurance coverage, regardless of the cause, and any claim made against the policy. Reporting should also include any accidents or infractions involving a “ridesharing” vehicle. Each service should comply with operating requirements applicable to other classes of service, including maintaining accurate and separate inventories of its drivers and vehicles, and collecting passenger surcharges and matching trip data, though we see no need for “ridesharing” services to pay the surcharges they have collected to the District, or to report trip data, more frequently than on a quarterly basis. In drafting proposed regulations, we suggest the Commission give further thought as to how it would be interacting with the “ridesharing” services on a regular basis, including the burdens that would be imposed on its staff, including its hack inspectors.

2. Recommendations

a. Eligibility Requirements

- Require the applicant to certify that it complies and will maintain compliance with all regulations related to insurance.

- Require the applicant to identify the third party that conduct background check on its drivers.
- Require the applicant to identify the third party that screens new drivers for drug use.
- Require the applicant to identify the third party that inspects its vehicles, if any.
- Require the applicant to certify that it will not knowingly submit an application for the licensing of a driver or vehicle not in compliance with the regulations.
- Require the applicant to certify that it maintains a zero tolerance policy for the use of drugs and alcohol, which is disclosed on its app and website.
- Require the applicant to certify that it maintains a strict policy against street hails, which is disclosed on its app and website.
- Require the applicant to certify that it maintains a basic training program for drivers that includes information for the safe and legal operation of the vehicle, instruction on its zero tolerance policy on the use of drugs and alcohol, and its policy prohibiting street hails.
- Require the applicant to certify that its app allows the passenger to view a photograph of the driver and a description of the vehicle after booking.⁹⁰
- Require the applicant to provide a demonstration to the Commission of its app and website with its technical staff present to answer questions.
- Require the applicant to post a performance bond for compliance with regulations other than those pertaining to the passenger surcharge.
- Require the applicant to submit photographs of its trade dress, showing that it is positioned on the vehicle so as not to violate DMV regulations.
- Require the applicant to submit a copy of all information provided to or made available to drivers.⁹¹
- Require the applicant to agree it will hold harmless, defend, and indemnify the District in the event of any claim against the District involving its drivers or vehicles.

b. Application Process

- Require the applicant to submit an umbrella policy that complies with the insurance requirements.

- Require the Commission to determine that the applicant may be issued a license under the Clean Hands Act.
- Require the Commission to first review and approve the umbrella policy in consultation with DISB, and then promptly review and issue a decision on the remaining requirements for licensing, and to provide a certificate of operating authority to each approved service.

c. Operating Requirements

- Require the service to strictly comply with operating requirements for insurance, including reporting all claims and any cancellation or loss of coverage.
- Require the service to fully cooperate with enforcement and compliance actions by the Commission and law enforcement agencies, including providing information when it is requested, and complying with orders of suspension to its drivers.
- Require the service to submit applications for the licensing of eligible drivers and vehicles with a certification that all eligibility requirements have been met.
- Require the service to report all accidents involving its vehicles.
- Require the service to report all tort claims filed against it or its drivers.
- Require the service to maintain accurate and separate inventories of its associated drivers and vehicles, including promptly removing suspended drivers and vehicles.
- Require the service to maintain its records of driver screening and vehicle inspections.

E. Effects on the District’s Public Vehicle-for-Hire Industry

1. Findings

The Panel is concerned about preserving fair and healthy competition in the public vehicle-for-hire industry with the addition of “ridesharing” vehicles. In particular, we note that taxicabs have credit card taximeter systems, dome lights, and other equipment which they *must* have to address safety and consumer protection concerns connected with taking street hails.⁹² For similar reasons, the Commission has long regulated taximeter rates for every trip,⁹³ regardless of whether the taxicab trip is booked by street hail or dispatch; a dispatch service can add a booking fee, but only *on top* of the taximeter fare. As a result, digitally dispatched rides in taxicabs can only be *higher* than the metered fare, whereas the “ridesharing” business model would allow fares to fluctuate up or down as determined by the digital dispatch service, just as they do now for black cars. Further, we have no doubt that “ridesharing” drivers will illegally take street hails.⁹⁴ The Panel finds that this situation imperils the availability of taxicab service,

contrary to the interests of the District of Columbia.⁹⁵ We therefore recommend that the Commission consider lawful, non-protectionist measures to allow taxicabs to compete on a level playing field with “ridesharing” vehicles. One way to accomplish this would be to let a digital dispatch service set the *entire* fare when dispatching a taxicab, which would allow the fare to fluctuate up or down in the same way it now does for black cars and would for “ridesharing” vehicles, if approved.⁹⁶

A secondary effect of the reduced availability of taxicabs is a reduction in the number of wheelchair-accessible vehicles in the public vehicle-for-hire industry. This is a matter of great concern to us. The Service Improvement Act establishes a schedule for increasing the number of wheelchair accessible taxicabs in company-owned fleets with 20 or more vehicles beginning December 1, 2014.⁹⁷ A similar schedule in the Innovation Act for black cars is ineffective because the luxury vehicle industry does not have fleets large enough to trigger the law’s requirements.⁹⁸ The Commission is looking at other ways of increasing the number of wheelchair-accessible taxicabs. We see little room for effective measures *within* “ridesharing” because the new service uses private vehicles, and very few of which will be wheelchair accessible. And if taxicab service is affected as we believe it may be, the number of accessible vehicles is likely to decrease. Further, given these facts, allowing a passenger to *request* a wheelchair-accessible vehicle is likely to be *less* meaningful in the context of “ridesharing” than it already is in the context of black car service.⁹⁹ We did not have an ample opportunity to study this important issue and encourage the Commission to give it further consideration.

2. Recommendations

- Modify the existing regulations for taxicab operations and fares, and for digital dispatch, to allow a digital dispatch service to set the entire fare for a dispatched taxicab ride.
- Consider additional measures to continue efforts to increase the availability of wheelchair accessible vehicles in the industry if “ridesharing” becomes an approved service.

V. CONCLUSION

The Panel questions the wisdom of creating a regulatory framework to allow a public vehicle-for-hire service provided by non-professional operators driving their own personal cars. We also believe it is inappropriate to rely on the business that provides the service for the screening of drivers and the inspection of vehicles. Unlike a private business, the Commission is charged by law with protecting safety and it has no pecuniary interest in increasing the number of available vehicles. We agree that:

there is nothing about the ‘new business model’ of offering for-hire transportation services through the mechanism of a smartphone application that justifies abandoning the fundamental regulatory infrastructure of the transportation for-hire industry, or that changes the level of regulatory concern. The underlying

principal continues to be ensuring public safety. Regulation is the safety net that the public should rely on for its protection....¹⁰⁰

“Ridesharing” raises unresolved safety and insurance issues which are continuing to develop even as this Report is being finalized. We fear regulations for the new service – no matter how carefully drafted – may prove inadequate to protect the safety of passengers and the public. For all these reasons, we believe that “ridesharing” may be an innovation, but it is not an improvement. If regulations are ultimately approved by the Commission, we hope our concerns are proven wrong.

We thank the Commission and the Council for this opportunity to serve the residents of the District of Columbia. We also thank General Counsel Jacques Lerner and Assistant General Counsel Amarita Singh for their excellent advice and counsel over the past several months, and DISB General Counsel Dena Reed and DISB Assistant General Counsel Stephanie Schmelz for their expert advice on issues pertaining to insurance. We also thank our Secretary, Juanda Mixon, for keeping us organized and on track to complete our charge within the time prescribed.

Respectfully submitted,

PANEL ON INDUSTRY

PAUL COHN
Chairman

ATTACHMENTS

1. California Public Utility Commission, Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry (approved 9-18-13) (“CPUC Decision and Rules”).
2. Comments from Jerrod Skelton for Teamsters Union (12-12-13).¹⁰¹
3. Comments from Roy Spooner for District of Columbia Taxicab Companies (12-13-13).
4. Draft Ordinance of the Seattle City Council (Dec. 12, 2013) (“Seattle Draft Ordinance”).
5. International Association of Transportation Regulators (“IATR”), *Ridesharing Applications: Illegal “Hitchhiking-For-Hire” Or Sustainable Group Riding? A Legal and Policy Primer for Ground Transportation Regulation* (May 2013) (“IATR white paper”).

6. Metropolitan Police Department, Event-Based Incident Report #14006656 (1-14-14) (“MPD report”).¹⁰²

ENDNOTES

¹ We use the term “ridesharing service” throughout this report to mean a “public vehicle-for-hire service that uses digital dispatch to connect passengers with non-professional drivers operating with their own personal vehicles.” We include quotation marks based on our finding that a “ridesharing” service is a *for profit* business. See part IV.A.

² See D.C. OFFICIAL CODE § 50-329.02; 31 DCMR § 1699.5 (defining “digital dispatch” as booking through computer, mobile phone application, text, email, or Web-based reservation). Other forms of booking include central or radio dispatch, which begins with a telephone call from the passenger, and street hails. “Ridesharing” is provided in the District by three companies: Lyft, SideCar, and Uber (under the name “uberX”).

³ Throughout this Report, we use the more common industry term “black cars” to refer to “sedans,” the term used in District of Columbia law. See 31 DCMR Ch. 12 and 14.

⁴ Not all companies that offer digital dispatch also offer digital payment. Hence, nothing in the Commission’s regulations prohibits a taxicab ride booked by dispatch from being paid for by an in-vehicle payment such as cash.

⁵ Though “ridesharing” could have been developed by other industries, it is no coincidence that this new service has been developed by companies that offer digital dispatch for public vehicles-for-hire: “ridesharing” makes extensive use of mobile technology, the same technology used for digital dispatch, digital payment, signing up drivers, and even connecting users to other types of services. See <http://skift.com/2013/12/03/uber-brings-its-puppy-delivering-marketing-stunt-to-taiwan/> (accessed Jan. 17, 2014 at 1:33 p.m.).

⁶ See D.C. OFFICIAL CODE § 50-307 (c) (19) (“[The Commission shall have the authority, power, and duty to]...[e]stablish any rule relating to the regulation and supervision of the public vehicle-for-hire industry not specifically delineated in this act, so long as the rule is consistent with this act and related to the furtherance and protection of the public interest in public vehicle-for-hire transportation.”); § 50-319 (a)(1) (“No person, corporation, partnership, or association shall operate ... any public vehicle-for-hire service ... within the District without procuring applicable licenses required by the Commission....”).

⁷ Uber’s website promotes uberX in a spectrum of services that does not make any other distinction between uberX and other public vehicle-for-hire services. See <https://www.uber.com/> (accessed Jan. 15, 2014 at 11:20 a.m.).

⁸ The D.C. Department of Motor Vehicles (“DMV”) conducts safety inspections of public vehicles-for-hire; the Commission conducts criminal background and driver record screenings on operators. Specifically, the latter function is carried out by the Office of Taxicabs, which provides enforcement and administrative support for the Commission. For simplicity, our references to the “Commission” include the Office of Taxicabs.

⁹ See California Public Utility Commission, Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry (approved 9-18-13) (“CPUC Decision and Rules”).

¹⁰ It was reported that an uberX driver killed a child and injured members of her family in a San Francisco crosswalk on January 1st. See <http://www.bizjournals.com/sanfrancisco/blog/2014/01/family-of-dead-girl-wants-uber-to-pay.html?page=all> (accessed Jan. 18, 2014 at 10:50 p.m.). Uber has terminated the driver who was apparently cruising at the time, but not carrying a passenger or responding to a dispatch. Both the driver’s insurer and Uber’s “excess liability” insurer have denied coverage, leaving the survivors with no recourse. The driver has since been charged with manslaughter. <http://www.bizjournals.com/sanjose/news/2014/01/14/uberx-driver-arrested-in-girls->

[death.html?page=3](#) (accessed Jan. 18, 2014 at 10:54 p m.). He apparently had a prior conviction for reckless driving, which the screening service was not required to report under California’s new regulations, due to its age.

¹¹ This section summarizes our findings and recommendations in part IV.

¹² We leave the details of these regulations for further development by the Commission.

¹³ District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), D.C. Law 6-97 (eff. March 25, 1986).

¹⁴ Taxicab Service Improvement Amendment Act of 2012 (“Service Improvement Act”), D.C. Law 19-184, 59 DCR 9431 (eff. Oct. 1, 2013).

¹⁵ The Improvement Act also authorizes the Commission to impose a passenger surcharge which is now the Commission’s principal source of revenue. The surcharge is currently set at 25 cents per trip, though the Act allows the Commission to charge as much as 50 cents.

¹⁶ Because taxicabs are allowed to take street hails – unlike other public vehicles-for-hire – a dome light is necessary to show the vehicle is available “for hire” to a hailing pedestrian. If the taxicab passes the pedestrian, a number on the light allows the Commission to track down the driver if the incident is reported. This helps increase ridership and reduce discrimination in street hails.

¹⁷ A vehicle owner may also choose to offer passengers digital dispatch and digital payment.

¹⁸ Public Vehicle for Hire Innovation Amendment Act of 2013 (“Innovation Act”), D.C. Law 19-0270, 60 DCR 1717 (eff. Oct. 1, 2013).

¹⁹ The Act also prevents the Commission from requiring a digital dispatch service to be *licensed*, though, as we discuss later, the Commission may require it to *register* for enforcement purposes, and does so in 31 DCMR Ch. 16.

²⁰ If this were not so, any public vehicle-for-hire service subject to ordinary regulation by the Commission would gain the protection of the Innovation Act upon acquisition by a company like Lyft, SideCar, or Uber, each of which also operates a digital dispatch service. For example, any of them could purchase a taxicab company and then claim the Innovation Act limits the licensing and regulation of that company. The law does not intend such a result. Rather, as we have explained, a public vehicle-for-hire service falls within the Commission’s clear authority to license and regulate. *See* D.C. OFFICIAL CODE §§ 50-307 (c) (19); 50-319 (a)(1).

²¹ We do not see the need for statutory amendments, as we believe well-drafted regulations can be tailored to respect the limits of the Innovation Act wherever it applies. If subsequent analysis proves otherwise, we urge the Council to make such statutory changes as may be needed to allow rulemaking consistent with our recommendations.

²² To be clear, the operations of all three “ridesharing” services debuted in violation of the District of Columbia law. This is a common business practice for “ridesharing” services and it is one we do not condone. Such conduct led to cease and desist orders in California and the arrest of a driver and impoundment of his vehicle in New York City.

²³ Livery Class Regulation and Ride-Sharing Emergency Amendment Act of 2013 (“Emergency Act”), D.C. Act No. 20-0169 (eff. 9-27-13).

²⁴ We believe we have complied fully with Council’s mandate. We do not see the need to permanently modify the definitions of black cars as Council did in the Emergency Act (amending the definitions of “luxury class vehicle” and “sedan” in 31 DCMR § 1299.1).

²⁵ We see no advantage to creating a definition of a “ride-sharing network” like the one in the Emergency Act and California’s regulations. That term appears duplicative of the term “digital dispatch service” except for its reference to “ride-sharing operators.” The definition of “ridesharing service” that we propose in part IV.A. should be sufficient for regulatory purposes.

²⁶ As discussed in our findings, all three services failed to fully and timely comply with these minimal requirements.

²⁷ This discussion is intended to summarize common elements in the business models of the three “ridesharing” companies based on our meetings with them and on our review of information available online; not every detail is reflected here. Lyft and SideCar are marketed as “peer-to-peer” services, connecting “neighbors” and “friends” who seek “donations” rather than required fares for their rides. This aspect of their services is not material to our discussion. We also note that both companies are now charging fares in California following the promulgation of that state’s regulations. See <http://articles.latimes.com/2013/nov/15/business/la-fi-tn-lyft-minimum-fares-california-20131115> (accessed Jan. 18, 2014 at 4:45 p.m.); <http://articles.latimes.com/2013/nov/15/business/la-fi-tn-sidecar-california-pay-minimum-fares-20131115> (accessed Jan. 18, 2014 at 4:45 p.m.).

²⁸ Under the Commission’s regulations, this is “the area encompassed by the District; Montgomery County, Prince Georges County, and Frederick County in Maryland; Arlington County, Fairfax County, Loudon County, and Prince William County and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park in Virginia.” 31 DCMR § 499.1.

²⁹ District taxicabs have “H” tags; District luxury vehicles (black cars and limousines) have “L” tags.

³⁰ See <https://www.side.cr/rules-road> (accessed Jan. 18, 2014 at 9:01 p.m.).

³¹ All three companies told us they *would* suspend a driver who takes a street hail, though none stated this has actually occurred.

³² In comparison, a taxicab’s dome light indicates the vehicle’s status as available “for hire;” a hired taxicab operator engages the meter, which turns off that message.

³³ The app would need to be downloaded at that point if the passenger did not already have it on his or her phone.

³⁴ This is what the Panel was told by all three companies. We find it difficult to reconcile these representations with recent advertisements, such as one claiming a driver can earn as much as \$70,000 per year driving for uberX. See <http://www.quora.com/Uber-Drivers-Driving-for-Uber/How-many-UberX-drivers-actually-make-70k-a-year> (accessed Jan. 19, 2014 at 12:20 a.m.). We think it reasonable to hold the services to their statements to us.

³⁵ See <http://www.lyft.me/terms> (accessed Dec. 29, 2013 at 4:30 p.m.) (emphasis supplied).

³⁶ See <http://www.side.cr/terms> (accessed Dec. 29, 2013 at 4:15 p.m.).

³⁷ The bold, underlined emphasis is Uber’s; the italicized emphasis is ours. See Uber, “Terms and Conditions”, <https://www.uber.com/legal> (accessed Dec. 29, 2013 at 7:00 a.m.).

³⁸ As we note in part IV.B., the terms and conditions of all three companies are clearly unacceptable for insurance purposes. We do not consider here whether Uber’s failure to distinguish its role in uberX from the role it plays in its other services raises consumer protection issues that also should be addressed by the Commission.

³⁹ This is an issue we do not explore in this Report, though it may require consideration by the Commission in conjunction with any proposed rulemaking.

⁴⁰ As we discuss in part IV.B., the type of policy that should be required is more accurately termed an “umbrella” policy, and there is no legal requirement that the service be the party that secures the coverage.

⁴¹ Location information is provided by the GPS components of the driver’s and user’s smartphones; it is not available if the component is not turned on.

⁴² Uber, “uberX,” <https://www.uber.com/cities/washington-dcm> (accessed Dec. 29, 2013 at 4:00 p m.).

⁴³ The Commission could not license or regulate “ridesharing” if it were *for hire* service.

⁴⁴ IATR white paper at 3-4. IATR also discusses the role of government ridesharing programs.

⁴⁵ CPUC Decision and Rules at 71-72.

⁴⁶ The Commission has authority to define new classes of public vehicle-for-hire service. *See* D.C. OFFICIAL CODE § 50-329.

⁴⁷ We emphasize that this recommendation would create a definition of “ridesharing” for the Commission’s regulations only, not one of general applicability in the District.

⁴⁸ *See* <http://blogs.kqed.org/newsfix/2014/01/20/ride-sharing-insurance-lyft-uberx-sidecar/> (accessed Jan. 22, 2014 at 2:12 p.m.).

⁴⁹ Insurance relates to our discussions of drivers and vehicles in part IV.C. and the companies that provide “ridesharing” services in part IV.D.

⁵⁰ Though one of the services told us “some” major insurers would not exclude this service from coverage, we found no evidence that any highly graded insurer operating in the District would do so.

⁵¹ CPUC decision at 58-59.

⁵² We note that ordinary, personal motor vehicle policies generally do not even extend to pizza delivery, where no passengers are involved.

⁵³ We use the term “umbrella” rather than the term “excess liability.” Excess liability policies provide coverage above the limits of the underlying coverage. It offers no broader protection than that provided by the underlying policy. In fact, excess liability coverage may be more restrictive than the underlying coverage. Umbrella policies are a type of excess liability that not only provides additional limits (as excess liability policies do) but also provides coverage not available in the underlying coverage.

⁵⁴ CPUC Decision and Rules at 35.

⁵⁵ Uber’s terms and conditions are particularly

⁵⁶ The practice is already prohibited for all registered dispatch services. *See* 31 DCMR § 1605.4 (“No dispatch service may alter or attempt to alter its legal obligations under this title or to impose an obligation on any person or limit the rights of any person in a manner that is contrary to public policy or that threatens passenger or operator safety or consumer protection.”).

⁵⁷ The Emergency Act allowed the policies to be filed under seal, which is also allowed under California’s regulations. We believe this protection can be accomplished without statutory amendment if the service files its

policy with an accompanying affidavit to properly support withholding in the public interest under the D.C. Freedom of Information Act. *See* D.C. OFFICIAL CODE § 2-534 (a)(1).

⁵⁸ In “ridesharing,” unlike in the taxicab and black car industries, the owner and driver are one and the same. For insurance purposes, and to address enforcement and compliance concerns, this practice should be reflected in any proposed rulemaking. If the Commission chooses to allow an arrangement in which the vehicle is leased, the owner must sign the driver/owner agreement we recommend in part IV.C. to ensure the insurance obligation will be met

⁵⁹ The italicized language is intended to address the issues raised by the January 1, 2014 incident in San Francisco. Broader terms may be necessary to prevent a lack of insurance coverage, which is unacceptable.

⁶⁰ This is the credit rating agency currently used by DISB.

⁶¹ This requirement applies to all companies in the District that provide insurance for public vehicles-for-hire. *See* 31 DCMR § 905.1; D.C. OFFICIAL CODE § 50-314(e).

⁶² *See* D.C. OFFICIAL CODE § 50-314(h) (2013).

⁶³ Immediate suspension is required because the service cannot operate even momentarily without proper insurance.

⁶⁴ California included this requirement in its regulations. *See* CPUC decision at 59.

⁶⁵ Professional drivers are required to complete a 15-hour course at an approved educational facility and pass an examination administered by the Commission.

⁶⁶ Obviously, only the owner of the vehicle can provide such consent; if the driver is not the owner, a separate authorization from the owner may be required. This would not apply if the driver is limited to a vehicle registered in his or her name. We believe the part-time nature of “ridesharing” weighs strongly against allowing a driver to use a vehicle other than one registered in his or her name, as the owner or co-owner, at his or her place of residence; leasing or borrowing a vehicle for part-time use in “ridesharing” is not appropriate.

⁶⁷ We discuss both these requirements in part IV.D., as they must be reflected in eligibility and operating requirements for the “ridesharing” services themselves.

⁶⁸ We note that justifiable differences in the rules for professional and amateur drivers would have the salient effect of encouraging “ridesharing” drivers to become professionals. As noted, the Commission is now actively licensing new professional drivers.

⁶⁹ *See* the “age of taxicabs” rule in 31 DCMR Ch. 8 and the definition of black car (“sedan”) in 31 DCMR § 1299.1.

⁷⁰ A non-commercial state inspection is necessary but not sufficient for safety, and may be legally compliant and yet still several months old.

⁷¹ *See* CPUC Decision and Rules at 73 (requiring a 19-point safety inspection).

⁷² As we note in our discussion of the “ridesharing” services in part IV.D., an uberX driver recently arrested for driving with a suspended license was also cited for driving with his Uber trade dress blocking his vision.

⁷³ *See* 31 DCMR Ch. 8 and 14.

⁷⁴ We find it untenable to have no geographical limits on who may be participate in “ridesharing,” which would create an exception not applicable to any other public vehicle-for-hire service. We believe a fair and balanced

approach is reflected in the practices of Lyft and Sidecar, which generally use drivers from the Washington Metropolitan Area. We reject Uber’s position, which would allow a driver with a Montana driver’s license, whose vehicle carries Montana tags, to live temporary in the District while working for uberX.

⁷⁵ The Commission is now actively licensing new black cars and new professional operators.

⁷⁶ Council would need to amend existing statutory law to change these requirements.

⁷⁷ We see no obstacle to this “light” license in D.C. Official Code § 47-2829(j)(4), which provides that “[t]he Commission shall create a single public vehicle-for-hire driver’s license that entitles the holder to operate any public vehicle-for-hire...” The Commission now offers a professional license allowing its bearing to operate any existing class of vehicle, which we recommend extend to “ridesharing.” That said, the foregoing provision does not prohibit the Commission from also offering a lesser “light” license, limited to a single class of service.

⁷⁸ Professional drivers must comply with the limits in Title 31 DCMR § 822.12 (“No person shall drive or be in physical control of any taxicab for the purpose of carrying passengers or parcels for a period in excess of twelve (12) hours in any twenty-four (24) hour period, unless the driving time is broken by a period of eight (8) continuous hours of rest. No taxicab shall be operated during a twenty-four (24) hour period for more than sixteen (16) hours.”) and § 822.13 (“No person shall drive a taxicab for any period of time which, when added to the period of time they have driven any vehicle other than a taxicab, totals more than twelve (12) hours in any twenty-four (24) hour period, unless the driving time is broken by a period of eight (8) continuous hours of rest.”).

⁷⁹ A 16-hour per week part-time limit has been proposed by Seattle. Seattle Draft Ordinance at 19.

⁸⁰ We do not provide detailed recommendations about the scope of the background checks that should be reflected in proposed rulemaking. The criteria in the CPUC’s Decision and Rules at 27-33 may provide for sufficient screening, but we now see them as *minimum* requirements that warrant careful consideration in light of the recent incidents involving “ridesharing” drivers in California and here in the District, which we have mentioned.

⁸¹ D.C. OFFICIAL CODE § 47-2829 (d) and (e). An operator’s licensing fee obviously would not be required for an existing professional operator, but the fee should still be required for the vehicle decal.

⁸² D.C. OFFICIAL CODE § 47-2829 (a). This is mandated by District law prior to the issuance of any license.

⁸³ The Panel suggests that each decal have a unique Public Vehicle Identification Number (“PVIN”) issued by the Commission, DCTC contact information, a code that can be scanned by smartphone to verify it is a licensed vehicle, a statement that the decal is the property of the Commission and may be removed without notice by a public vehicle inspector, and language such as “THIS VEHICLE IS NOT PERMITTED TO ACCEPT A STREET HAIL.”

⁸⁴ This would not be necessary for an applicant with a professional operator’s license.

⁸⁵ The manifest is required for street enforcement. For example, if a vehicle is stopped by an inspector who believes the driver has taken an unlawful street hail, and the driver insists the passenger was picked up in response to a dispatch, the manifest would resolve the matter. We recognize that many aspects of Chapter 14 will need to be redrafted to accomplish our recommendation.

⁸⁶ The Commission may wish to allow evidence of a driver’s “ridesharing” license and personal insurance to be maintained on the app for enforcement purposes.

⁸⁷ Professional drivers should be limited to the regulations that apply to drivers in existing classes of service.

⁸⁸ See MPD Report #14006656 (driver arrested Jan. 14, 2014).

⁸⁹ Each digital dispatch service is required to post a separate bond, for surcharge collection, under Chapter 16.

⁹⁰ Other changes to the app may be necessary for passenger safety and to prevent discrimination. Uber’s practice of allowing a passenger to upload a photograph to the app to allow the *driver* to see whom he or she is picking up is a concern in this regard.

⁹¹ We believe the service should be allowed to provide these documents under seal if it wishes to do so.

⁹² We understand that street hails still constitute approximately 75-80 percent of taxicab trips.

⁹³ *See* 31 DCMR Ch. 8.

⁹⁴ Street hails are more difficult to detect when the vehicle used to provide service does not noticeably stand out from other cars. Black cars, for example, are generally dark-colored luxury sedans. *See* 31 DCMR § 1299.1.

⁹⁵ In enacting the Establishment Act, Council intended: (1) To promote the public interest in taxicab transportation by insuring that ... adequate and high quality taxi passenger service be provided to all quadrants and neighborhoods of the District; (2) To promote and maintain a healthy and viable taxicab industry; [and] (3) To maintain a taxicab transportation system which provides owners and operators of taxicabs with reasonable and just compensation for their services, and which is reasonably priced and readily accessible in cost to a broad cross section of the public....”). D.C. OFFICIAL CODE § 50-302 (a).

⁹⁶ The metered rates could be set very low or at zero for digitally-booked rides.

⁹⁷ *See* D.C. OFFICIAL CODE § 50-320(c)(1) (“(A) At least 6% of each taxicab fleet shall be wheelchair-accessible by December 31, 2014.”).

⁹⁸ *See* D.C. OFFICIAL CODE § 50-329(d). Black cars are generally not owned in fleets of 20 or more vehicles.

⁹⁹ The Innovation Act contains such a provision for digital dispatch, regardless of the type of service sought. *See* D.C. OFFICIAL CODE § 50-329.02(b)(6). California included such a provision in its “ridesharing” regulations. CPUC Decision and Rules at 30.

¹⁰⁰ CPUC Decision and Rules at 45.

¹⁰¹ Personal information has been redacted from this document to protect privacy.

¹⁰² Personal information has been redacted from this document to protect privacy.