

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



**DECISION:
REVIEW OF RATE STRUCTURE
PURSUANT TO D.C. CODE § 50-317
AND
PETITION TO MODIFY RATE
STRUCTURE FILED JANUARY 31, 2014**

**October 20, 2014
Amended October 28, 2014**

I. INTRODUCTION

This decision of the District of Columbia Taxicab Commission (“Commission”) concerns two related matters: (1) the Commission’s findings and determinations pursuant to its statutorily-required 24-month review of the metered taxicab rate structure to determine whether or not an adjustment in the rate schedule is necessary;¹ and (2) the Commission’s response to the “Petition to Increase Passenger Fees and Luggage and Trunk Fees,” filed on January 31, 2014 by the Teamsters Local Union 922.² To fulfill its statutory obligation, the Commission conducted a public hearing on June 20, 2014, following notices in the *D.C. Register*,³ at which it heard testimony and received comments from stakeholders. As noted below, the metered rate structure was adjusted for the betterment of the taxicab drivers, companies, associations, and consumers in 2012. Following the June 2014 hearing, and based on all testimony and comments, and other information identified herein, the Commission has conducted the equitable balancing required by the statute, and for the reasons stated, declines to enact further changes to the metered taxicab rate structure at this time.⁴ Similarly, the Commission has carefully considered the rate changes urged by the Union and declines to enact the changes it seeks.

II. RATEMAKING AUTHORITY

Pursuant to the authority set forth in the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”) (eff. March 25, 1986) (codified at D.C. Code § 50-307 (c)(1)), the Commission “[has] the authority, power, and duty to...[e]stablish reasonable rates for taxicab service for the transportation of passengers and their property within the District, including all charges incidental and directly related to the provision of taxicab services[.]”

¹ § 50-317. Rate proceeding; standard for rate structure.

(a) Within 12 months of March 25, 1986, and at least once every 24 months thereafter, the Commission shall undertake a review of the taxicab rate structure. The review required by this section shall be undertaken by holding at least 1 public hearing, upon notice with opportunity to comment. Within 120 days of holding the public hearings, the [Commission] shall render a decision on whether a modification or adjustment in rate structure is warranted, and, if determined to be warranted, shall implement the modification or adjustment.

(b) The Commission, in the establishment and supervision of the taxicab rate structure, shall balance equitably the interest of owners and operators of taxicabs, taxicab companies and associations, and dispatch services in procuring a maximum rate of return on investment and labor against the public interest in maintaining a taxicab system affordable to a broad cross section of the public, and shall establish nondiscriminatory rates, charges, matrices, boundaries, and methodologies for the determination of taxicab fares which assure reasonable and adequate compensation and promote broad and nondiscriminatory public access to taxicab transportation facilities.

² Washington D.C. Taxi Operators Association (“Teamsters”).

³ These notices appeared on May 23rd, May 30th, June 6th, and June 13th of 2014.

⁴ As discussed below, the Commission now has pending a proposed rulemaking to drop the metered fare to zero dollars (\$0) exclusively when a taxicab is booked by digital dispatch, allowing digital dispatch services (DDSs) to set the entire fare for this type of trips only.

Parameters used for determining the reasonableness of a rate increase are found in the section of DCTC Regulations entitled, “Criteria and Procedures for Ratemaking for the Taximeter System:⁵

219.7 In determining under § 219.2 of this section whether a rate adjustment is warranted, and if so, the amount of such an adjustment, the Panel and the full Commission shall take the following actions:

(a) Consider the rates of taximeter systems in surrounding jurisdictions, the cost of operating a taximeter system, and the public use of the taximeter system in the District; and

(b) Balance equitably the interest of owners and operators of taxicabs, taxicab companies and associations, and dispatch services in procuring a reasonable rate of return on investment and adequate compensation for labor provided against the public interest in maintaining a taximeter system which is affordable and accessible to a broad cross section of the public.

The Commission has made every effort to comply with all these legal requirements and believes it has done so.

III. PUBLIC HEARING PURSUANT TO D.C. CODE § 50-317

Prior to the public hearing, four notices were published in the *D.C. Register*, appearing on May 23, May 30, June 6, and June 13, 2014. The hearing was held at 10:00 a.m. on Friday, June 20, 2014 at 441-4th Street, N.W., in the Old Council Chambers. The purposes of the hearing were to comply with the statutory mandate, to elicit factual information concerning a possible rate increase, and to allow the Commission to arrive at an evidentiary decision on the question of whether there should be an adjustment in the metered taxicab rate structure (and, if so, what kind and amount of adjustment).

The hearing consisted of two phases. The first phase included group presentations from parties seeking a fare increase and other parties with a vested interest in the decision – consumer group and hospitality industry representatives. The second phase allowed individuals to express their thoughts on the presentations and also raised other issues. The panelists appeared as follows:

Panel One

1. Roy Spooner – representing Yellow Cab
2. Jeff Schaeffer – representing District Cab

Panel Two

1. Royale Simms
2. Mr. Gebreselassi
3. Ziena Abraha
4. Eartha Clark
5. Larry Frankel

⁵ 31 DCMR 219.7

A. Summary of Stakeholders Concerns – Loss of Income and Opportunity

Representatives from Yellow Cab and District Cab, Messrs. Spooner and Schaeffer, testified that their drivers have suffered a decline in overnight (dusk to dawn) income. They described this problem as having two main contributing factors: no measures in place to ensure proper payment and the increased presence in the District of “ridesharing” businesses like uberX, Lyft, and Sidecar. As a result, two solutions were proposed: a five dollar (\$5) additional “overnight” charge during the hours of 9 p.m. to 3 a.m., as well as allowing drivers to preauthorize a charge to the meter.

Mr. Spooner advocated for the \$5 additional charge in order to correct supply-side problems in the market during the specific, non-peak hours of 9 p.m. to 3 a.m. His argument was that during normal business hours, typically 10% of Yellow Cab’s dispatches are unable to be fulfilled – meaning that the demand outweighs the supply. During the “overnight” hours, this figure jumps to 30%, thus identifying an even deeper problem regarding the number of taxicabs on the road during these hours. Mr. Spooner’s proposal was to incentivize drivers, similar to the “surge” pricing used by “ridesharing” companies when the demand for service in a certain geographic area outweighs supply. Surge pricing is essentially a multiple applied to the fare in the event of the aforementioned deficiency in taxicab supply. To illustrate how surge pricing works, if a customer is being transported during a time period designated as a 1.75x surge, a \$10 fare would become a \$17.50 fare.

As to the second issue, Messrs. Spooner and Schaeffer were in agreement that the ability to preauthorize a transaction would backstop losses attributed to customer wrongdoing. According to them, such a rule allowing drivers to request \$20 for local trips and \$35 for trips outside of the District would ensure that drivers are guaranteed payment and do not fall victim to passengers who exit the vehicle without paying after a lengthy evening trip. In their reasoning, drivers relied on a previous rule, in place prior to the June 1, 2008 change from the zone fare system to the time and distance meter-based system now in place. This rule allowed drivers to require some payment up front if they were operating during the overnight hours. Further, Messrs. Spooner and Schaeffer suggested that because “ridesharing” businesses have a customer’s credit card information on file, they are impervious to such a situation. Chairman Linton requested additional data on the number of fares they deemed “uncollectible,” but no data in addition to the oral testimony was subsequently provided by Mr. Spooner or Mr. Schaeffer.

B. Summary of Drivers Concerns – Loss of Profit and Opportunity

At the hearing, drivers Gebreselassi, Abraha, Clark, and Frankel testified alongside Mr. Royale Simms, a representative from the Teamsters. Mr. Simms’ testimony called for several rate changes, including mainly increased luggage and additional passenger fees (see discussion below). In addition, Mr. Simms advocated for eliminating the manifest requirement, as well as clarifying 31 DCRM § 803 to require that receipts contain the taxicab number, the name on the door, and the phone number associated with the vehicle. His rationale for eliminating the manifest requirement was that it was outdated and caused drivers to be ticketed by the Metropolitan Police Department for “idling” while they attempt to fill it out.⁶

⁶ Notably, Mr. Simms did not advocate for surge pricing, as discussed above.

The four drivers testified as to how increasing the luggage and passenger fees would make up for the increased stress on the vehicles and the increased costs to maintain and operate the vehicle. They stated that there is no incentive for independent owner-operators to purchase larger vehicles to accommodate more passengers and luggage if they are not being compensated. Chairman Linton requested additional data, studies, etcetera to help bolster claims on this issue, however, no subsequent information outside of the participants' testimony was ever provided.

Ms. Clark introduced an issue with the drop rate, noting that 25 cents of the \$3.25 collected is collected by the Commission for the passenger surcharge. Her view is that, in paying the credit card company based on the entire fare (including the 25 cents), she is essentially paying an apportioned percentage of the 25 cents.

Mr. Frankel, in his testimony, brought to the Commission's attention a problem involving private sedan vehicles like uberX taking illegal street hails and pocketing the cash. He also proposed increasing the number of taxi stands in the D.C. metropolitan area to allow drivers to wait in underserved areas, as well as decreasing the number of tickets issued to drivers who are engaged in the practice of waiting for passengers.

IV. DISCUSSION

A. Five-Dollar Overnight Charge

Notwithstanding the lack of empirical data bolstering the claims of the participants who testified on this issue, the unwillingness of drivers to operate during the so-called "overnight hours" cannot be abated by the levying of an additional fee upon passengers. The first issue that this raises is whether such a fee would apply to all rides during this period, or to only digitally dispatched trips (as opposed to street hails). Given that many vehicles are not equipped for digital dispatch, the additional charge is likely to result in an excess of drivers for the existing demand; an additional source of riders would then be needed, but this is unlikely given the current fractionalized state of the industry. This fractionalization is one of the main reasons the taxicab industry has found it difficult to compete with the "ridesharing" companies. The industry, as currently constituted, is ill-equipped to attract more customers.

Secondly, and far more compelling, is the wrongful comparison of the proposed \$5 charge to the "surge pricing" model that companies like Uber have introduced into the marketplace. Uber's model is based on an algorithm that specifically addresses a discrepancy between supply and demand, and attempts to rectify the discrepancy by requiring users to pay more for the service during such a period of hyper-demand. Given its inelasticity, a blanket \$5 charge for individuals wishing to obtain a ride during this time period would only work to decrease demand for taxicab service during those time periods between 9:00 p.m. and 3:00 a.m. when no surge pricing is in effect. Given the fluctuating nature of surge pricing, such a surcharge may increase the number of taxicab drivers on the road while decreasing the demand for service, resulting in an oversupply of taxicabs and more customers flocking to alternative transportation services.

Above all, the Commission's position is that the consumer, not the vehicle owner, is ultimately the one who will determine the service to be provided. While Mr. Spooner's testimony is certainly helpful in assessing the economic factors affecting Yellow Cab, his testimony is hardly representative of the entire market. The Commission believes that if it were to pursue the

requested course of action to counteract the supply discrepancy, the result would be to send the consumer out of the regulated market. Given that Mr. Spooner’s apparent problem can be rectified through “working agreements” and not solely through a surcharge, the Commission sees no compelling reason to pursue this policy.

B. Allowing Drivers to Require Up-Front Payment During “Overnight” Hours

While the Commission certainly understands the argument that drivers were permitted to require up-front payment prior to 2008, there can be no disagreement that the public vehicle-for-hire landscape has changed drastically in the past six years, particularly with the inception of private for-hire companies like Uber. A consumer can now summon a vehicle from a smartphone, typing the destination into the app prior to pick up, enter the vehicle precisely when it arrives (due to notification via app), pay nothing to the driver, and exit the vehicle, with the payment processed at the end of the ride via credit card.⁷ This is now how a typical digitally-dispatched public vehicle-for-hire ride now occurs.

The scenario offered by the hearing participants would be much different: a consumer must wait by the street corner or call a dispatch service, wait for the driver to call to alert the consumer that the vehicle has arrived, enter the vehicle, provide a preauthorization payment to the driver, travel to the destination, wait while the driver reconciles the actual fare with the pre-authorized amount, and then exit vehicle. There are differences in the burdens on the consumer imposed by this manner of providing service.

The Commission believes that the main issue during this time of increased competition in the public vehicle-for-hire industry is whether the losses that occur by not permitting up-front payment are sufficient to outweigh the inability of the driver to conclude the ride in a speedy manner? If Chairman Linton’s request for additional information on this subject had been fulfilled, then the Commission might have a basis to look into this matter further. But since no such information was provided, the Commission finds that anecdotal evidence is insufficient to compel undertaking the course of action requested, and, indeed weighs against it, given that it goes against the increasingly popular model of service which relies on digital dispatch. The Commission notes that Chairman Linton, during Mr. Schaeffer’s testimony, raised various civil rights issues that could potentially arise as a result of a driver’s being allowed to subjectively determine the criteria upon which they may request payment up front.

C. Elimination of the Manifest Requirement

The contention by Mr. Simms that the manifest requirement⁸ should be eliminated is puzzling to the Commission. The crux of the argument is that drivers can, and have been, ticketed for idling

⁷ This is the ordinary sequence of events for digital dispatch and digital payment under the Commission’s rules in 31 DCMR Ch. 16.

⁸ 31 DCMR § 823.2.

by the Metropolitan Police Department as a result of the time spent filling out the manifest after the passenger exits the vehicle. Chairman Linton responded to this by pointing out that the matter should be brought before the Council or to MPD directly. Manifests must be accurately and timely maintained to prevent instances when a consumer complains about being a victim of a refused to haul, where the driver responds that he was off-duty at the time. The manifest is the only same-day data available to hack inspectors because the trip data reported by the Modern Taxi Systems (MTSs) is on a 24-hour delay,⁹ preventing its use on the street by hack inspectors for enforcement purposes.

D. Teamsters Petition Regarding Additional Luggage and Passenger Fees

As noted, on January 31, 2014, the Commission received from the Teamsters a “Petition to Increase Passenger Fees and Luggage and Trunk Fees.” Given the overlap of the issues presented on the statutory matter, and the substantive testimony proffered by participants at the hearing, the issues of increasing passenger, and luggage and trunk fees, will be analyzed in this section.

1. The Union’s request for the District’s metered fares to be in line with those of the six surrounding jurisdictions

First, the data contained in the Union’s petition regarding the rates in “surrounding jurisdictions” is quite unhelpful in assessing the impact of such an increase in surcharges on the supply and demand for taxicab service in the District. The Commission concludes that comparing issues affecting the District with those of the surrounding areas is not appropriate, as revealed by a statistical analysis using population density.

Population density is an important metric for assessing a locale’s transportation needs. Here, an analysis based on population density shows that comparing the District with the surrounding jurisdictions for assessing transportation needs is like comparing apples and oranges; it shows that that District falls outside of the accepted statistical range within which a comparison might otherwise be appropriate.

⁹ See 31 DCMR § 603.

Population Density¹⁰	District of Columbia 10,528	Fairfax County 2,700	Arlington County 8,300	City of Alexandria 3,600	Prince George's County 1,789	Montgomery County 1,978
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Standard Deviation 3,364.9732

Statistical Range (SD1) 1,452-8,180¹¹

The above table and analysis reflect that the District's population density (10,528) is significantly outside of the statistical range (SD1), showing that District should not be included in a sample which includes the surrounding jurisdictions. Such an unreasonable juxtaposition would be tantamount to using the taxicab fare structure of Westchester County, N.Y. and Sussex County, N.J. to establish taxicab rates in New York City. Given the negative correlation between an area's population density and the average length of trips in that area, it is logical that a less dense area would set higher fares and surcharges than a denser metropolitan area, to compensate for the less frequent, longer trips these drivers generally provide.

A fairer comparison would be to look at the rate schedules of other similarly-situated metropolises, such as Boston, Philadelphia, and New York City. The conceivable reason these jurisdictions were absent from the petition appears to be that none allow for luggage or additional passenger surcharges. The Commission concludes that, for these reasons, no weight should be given to the proposal given that the only evidence provided (under subheading A of the Petition) to justify additional surcharges is based on data that purports to group the District with other jurisdictions that have little to no correlative significance aside from geographic proximity.

¹⁰ Population densities from Wikipedia articles on each jurisdiction.

¹¹ The table is a statistical assessment of the comparative population densities of the six surrounding jurisdictions geographic areas contained in the petition. The analysis starts with the mean of the density information (equivalent to an average for this purpose), which is 4,816. Next, the variance is calculated to determine how spread out the data points are from the mean; a high variance indicates that the data points tend to be more spread out, while a variance of zero demonstrates that all of the data points are identical. The variance here is calculated as 13,587,656. Finally, the square root of the variance is calculated in order to show the standard deviation (SD1), and more importantly, the statistical range; this is found by adding and subtracting the standard deviation to and from the mean.

2. The Union’s request for increased luggage and trunk fees which “will improve affordability and accessibility of taxi service to the public while adequately compensating taxicab drivers for transport[ing] additional passengers and handling luggage.”

The first and more obvious fault in the proposal is that it contains no justification for how the requested fees would “improve accessibility.” Secondly, it is against common sense to contend that increasing fees will have the overall effect of “improving affordability.” That line of reasoning is akin to opening up deer hunting season in the District for the purpose of increasing the deer population. The Commission believes that if more surcharges are added to the drop rate, consumers will have reasons to switch to the such as uberX, Sidecar, and Lyft. Nickle-and-diming consumers, while potentially beneficial for owners in the short-term, will have lasting and detrimental effects on the taxicab industry. Such piecemeal charges would only increase the disparity between metered taxicab rates and the rates of the private sedan vehicles, which is not in the interests of owners, drivers, or the riding public.

E. Elimination of Metered Rates for Trips Booked by Digital Dispatch

The above analysis examines the arguments and data relevant to the consideration of adjustments to the metered rates, but does not address the additional issues raised in the context of taxicabs trips booked by digital dispatch, which are, by definition, advance bookings. Advance bookings give the consumer an opportunity to accept or reject fares before agreeing to the ride, which, in the case of trips booked by digital dispatch services (DDSs), means the rates and charges appear in the smartphone app marketed by the DDS. As a result, there are fewer consumer protection concerns regarding fares in the context of taxicab trips booked by digital dispatch than in the context of trips booked by street hail. Recognizing this important distinction, and consistent with statutory requirements, the Commission’s existing rules for DDS trips in Chapter 16 do not regulate the portion of a digital dispatch fare that is added by the DDS to the base taximeter fare.

The innovation of digital booking by smartphone app not only provides advantages to consumers, it also gives DDSs the flexibility to set competitive rates and charges which respond quickly to changes in market demand in ways that the metered rate structure historically cannot. At the same time, however, larger DDSs now directly or through subsidiaries dispatch so-called private vehicles-for-hire (also known as commercial “ridesharing” vehicles) which are largely unregulated and without geographic limitations on who may participate, which unfairly disadvantages the taxicab industry in ways that threaten its long-term viability. Taxicabs are the only meaningful source of wheelchair accessible vehicles and the only vehicles legally permitted to take street hails. To help restore some balance to the competitive arena, a proposed amendment to Chapter 8 adopted by the Commission in April of this year¹² would go beyond the existing regulations to allow each DDS to set the *entire* fare when digitally dispatching a taxicab, without the use of the metered rates, by setting the metered rate at zero dollars for these trips.¹³

¹² Adopted at the April 9, 2014 General Meeting and published in the *D.C. Register* on May 9, 2014.

¹³ This was accomplished in the proposed rules by dropping the metered fare to zero dollars (\$0) exclusively when a taxicab is booked by digital dispatch (as opposed to trips where the taximeter must be used to calculate the fare (street hail trips)). The proposed rules would still require operators to use the modern taximeter systems (MTSs) to ensure that payment service providers (PSPs) report the trip data for these dispatched trips. These proposed rules

This is the only change in the taxicab rate structure which the Commission supports at this time and it is limited to digitally dispatched rides.

V. CONCLUSION

The taxicab rate structure was adjusted by the Commission in 2012 for the betterment of the taxicab drivers, companies, and associations, and most importantly, consumers. Given the lack of substantive analysis of the MTS data to justify raising rates a mere two years later, and given the reasons enumerated above which weigh against current increases, the Commission will not make any changes to the taxicab rate structure at this time, with the exception of trips booked in advance through digital dispatch.

D.C. TAXICAB COMMISSION

By: _____
RON M. LINTON
Chairman

will have completed two comment periods by November 2, 2014. A notice of second proposed rulemaking was adopted by the Commission on August 6, 2014, and published in the *D.C. Register* on October 3, 2014.