

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



**Supplemental Determination and Findings
In Support of**

*Revisions to Modern Taximeter System
Rulemakings Pertaining to Digital Dispatch Services*

July 17, 2013

I. Introduction

The Commission now supplements its determination and findings issued in support of the original MTS rules, published in the *D.C. Register* on May 17, 2013. The original MTS rules amended Chapters 4, 6, and 8 of Title 31 of the D.C. Municipal Regulations, requiring the deployment of MTS units in all District taxicabs no later than September 1, 2013. The Commission today votes on modifications to the rules. If approved, these modifications will become part of the MTS rules and will *replace* the emergency rules that are now in effect.

On June 7, 2013, the Commission published a notice promulgating emergency and proposed rules for modifications to the MTS rules concerning digital dispatch services (DDSs), including the requirement for integration between DDSs and payment service providers (PSPs). The rules took effect as of May 31st, and the Commission received public comments, which it reviewed, but which it found did not require *any* substantial changes mandating re-publication. In fact, the changes that the Commission chose to make to Chapters 4 and 6 are minor, and no changes at all were made to Chapter 8. Please keep in mind that when we use the term “modification” in this paper, we are referring to the changes to the MTS rules that will be made if the Commission votes to approve the rules as final today; as explained, we do *not* mean that there have been *any* substantial changes since the proposed rules were published. What is presented today is essentially the same as what was first made public at least 54 days ago.¹

This supplement presents the Commission’s basis for the modifications to the MTS rules under consideration today and summarizes the Commission’s responses, if any, to the comments.² The modifications to the MTS rules will allow the Commission to accomplish a number of important regulatory goals, consistent with the Commission’s legal authority:

- Establishing a simple regulatory structure within which companies and independent owners that wish to work with digital dispatch services (DDSs) may continue to do so, without disrupting or delaying the deployment of MTS in all District taxicabs by the August 31, 2013 deadline;

¹ This does not include time of posting on the Commission’s website.

² The discussion herein is limited to significant modifications in the rules in Chapter 4, as well as significant comments. This discussion does not address modifications to Chapter 8 related to fares and receipts.

- Creating simple and flexible minimal rules for integration between DDSs and payment service providers (PSPs) that *fully incorporate the DDS business model*; under this arrangement the DDS processes the *entire* digital payment itself, and requires that it *either* compensates the PSP with a minimum payment of \$1.00 for the use of the MTS, *or* allows the DDS and the PSP to negotiate a different arrangement;
- Giving all PSPs and DDSs an option to negotiate different terms for integration, allowing these arrangements to reflect changing market conditions, new technologies, and evolving customer demands;
- Insuring that the Commission receives the statutorily-authorized 25 cent passenger surcharge for every taxicab trip based on whichever business is the one handling the money – the PSP or the DDS, a requirement which can also be re-allocated by agreement between the businesses;
- Insuring that passenger and driver safety and consumer protection are not compromised while making modifications that incorporate the DDS business model; and
- Making other necessary modifications to insure these goals are accomplished, as well as making necessary technical corrections.

II. Background and Procedural History

The original D & F contains an extensive and detailed background discussion that need not be repeated here. As noted, today’s final regulatory action would make modifications to the previously-published rules following the Commission’s receipt of comments from two industry stakeholders³ that did not require substantial changes from the notice that was published on June 7th.

The June 7th notice enacted on an emergency basis the requirements for PSP-DDS integration, the \$1 payment to drivers, the collection of the passenger surcharge, and related changes in Chapters 4, 6, and 8. The emergency rules also enacted Chapter 16 with respect to DDSs that choose to provide digital payment to owners whose vehicles have MTS units. This action was critical to prevent a legal incongruity that would have arisen by requiring integration and imposing other

³ As discussed below, comments have been provided by Uber and by Verifone (both dated July 8, 2013).

requirements related to digital payments without minimal regulations for DDS registration and operations to protect driver and passenger safety and guard against fraud.⁴ As mentioned, the emergency rules in Chapter 4, 6, and 8 would be replaced by today's final rules for those Chapters. The Commission will also vote today on a second emergency and proposed rulemaking for Chapter 16, reflecting further changes requiring re-publication of that Chapter.

This supplemental D & F, together with the original D & F, provides the factual, policy, and legal basis of the Commission's rulemaking concerning MTS. The Commission anticipates issuing a separate D & F in conjunction with its consideration of final rules for luxury class vehicles, including rules for the operation of sedans, expected later this summer, depending on the necessity for re-publication. Chapter 16, which also provides a legal context for sedan dispatch, will be considered for final adoption last, most likely in September 2013, again depending on the necessity for re-publication. At that time, the Commission will present its final D & F relating to the modernization of public vehicle-for-hire operations in the District of Columbia, incorporating the D & Fs for MTS and for sedans, and explaining how all these major rulemakings – Chapters 4, 6, and 8 for taxicabs and Chapters 12 and 14 for sedans – relate legally and functionally to create a cohesive, predictable, and rational framework within which:

- DDSs may operate under minimal regulations, limited to the concerns for passenger and driver safety, and consumer protection;
- DDSs will process the entire charge for each digital payment, a service that will be available to those vehicle owners that choose to work with these businesses;
- Rogue businesses will find it harder to defraud passengers by assessing charges not authorized by passengers, or even stealing credit card information, as all DDSs will be registered with the Office and integrated with the PSPs
- PSPs will process the entire charge for cashless payment inside the vehicle, which will be available to every taxicab passenger, with no minimum charge; and

⁴ Public Vehicle for Hire Innovation Amendment Act of 2013, D.C. Law 19-0270, 60 DCR 1717. The Innovation Act is expected to be effective and applicable on October 1, 2013. *See* Fiscal Year 2014 Budget Support Act of 2013 (B20-0199); Fiscal Year Budget Support Emergency Act of 2013 (B20-0337)).

- The passenger surcharge will be collected from the passenger and paid to the Commission for every taxicab and sedan trip, as required by the Improvement Act.

III. Statutory Authority for Modifications to the MTS Rules

The original D&F contains an extensive and detailed discussion of the statutory authority for the Commission’s rulemakings concerning MTS. In sum, the enabling statute, the District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97), and related enactments, empower the Commission to implement the MTS rules and collect the passenger surcharge.⁵ The same authority extends to the modifications submitted for approval today, which require integration between PSPs and DDSs, payment of a minimal amount to drivers, reporting of information to the Office of Taxicabs (“Office”), and collection of the passenger surcharge by the DDS where it is processing a digital payment, among other changes.

Although a full discussion of the statutory authority for the minimal regulation of DDSs in the proposed rules for Chapter 16 will be presented in the Final D & F, it is important for the public vehicle-for-hire industry and members of the public who choose to use their services to understand at this time what the Innovation Act does *and what it does not do*. The relevant portions of the Innovation Act concern *digital dispatch services*; they do not limit the Commission’s authority over any other participant in the public vehicle-for-hire industry, including PSPs, companies, independent owners, drivers, or vehicles.

In the Innovation Act, the Council made a public policy determination to limit the rulemaking authority of this Commission *concerning DDSs* to “rules and regulations that are necessary for the safety of customers and drivers or consumer protection,” which “protect personal privacy rights of customers and drivers,” which “[will] not result in the disclosure of confidential business information,” and which “[will] allow providers to limit the geographic location of trip data to individual census tracts”.

⁵ D.C. Official Code § 50-307 (2012). *See also* Mayor’s Order 2011-116 (July 11, 2011); D.C. Official Code § 50-305 (a) and (d). As noted, the pending Taxicab Service Improvement Amendment Act of 2012 (“Improvement Act”) specifically empowers the Commission to collect a passenger surcharge.” D.C. Law 19-0184, Sec. 4(16).

The Commission is fully cognizant of the limits imposed by the Innovation Act regarding DDSs and it does not question them. The Commission is a regulatory body that acts within a sphere of legal authority given to it by the legislature. Within this sphere, the Commission, like any regulatory body, is responsible for determining the appropriate balancing of interests among its stakeholders, including companies, independent owners, drivers, passengers, PSPs, dispatch services, and the general public. Council did not use the Innovation Act to divest the Commission of this important, central role as a regulator. Rather, it limited the *nature* of the rules the Commission is permitted to promulgate concerning DDSs to those “necessary for the safety of customers and drivers or consumer protection.”

The Council also did not disturb or limit its prior grant of authority in the Improvement Act allowing the Commission to collect a passenger surcharge for each trip in a public vehicle-for-hire, which is now the principal source of funding for the Commission. The original and emergency MTS rules now in effect, and the final rulemaking under consideration for approval today have been carefully drafted and reviewed by the Commission’s attorneys, including counsel at the Office of the Attorney General, to fully comply with the Act’s legal requirement.

Further, the MTS regulations being considered today, like the previously-published MTS rules, again reflect the Commission’s careful consideration of comments from industry stakeholders. In analyzing the comments, and deciding on appropriate changes, the Commission has again considered the legal requirements for the MTS, the financial impacts on passengers, owners, drivers, PSPs, and DDSs, and the technical considerations relevant to integration and the other changes that will be made. The Commission believes integration among all PSPs and all DDSs is a lawful, reasonable, and fair approach that properly balances the needs and interests of industry stakeholders, consistent with all applicable laws, including the Innovation Act. Integration under today’s rules, including the option for PSPs and DDSs to negotiate their own agreements, will allow for growth, competition, and innovation, consistent with the letter and spirit of the Innovation Act.

Two commenters have expressed doubt about the feasibility and “burdens” of integration, but we find that the concerns, which are presented with few if any facts to support them, lack merit.⁶ The Commission can say this with rare near-certainty because PSP-DDS integration is not merely *predicted* to be technologically viable

⁶ See Verifone and Uber comments *passim*.

in the future, it *is* technologically viable *now*. On July 3, 2013, Hailo and Taxi Radar performed a public demonstration of their integrated systems, allowing passengers to make digital payments, and DDSs and PSPs to work together, exactly as today's rules require.⁷ The Commission does not consider relevant that the precise requirements of integration in the modification are "new," with little or no precedent in other jurisdictions. We disagree with this conclusion, since integration is already in place in New York City. But, in any event, the District is unique: among other things, most every aspect of its public vehicle-for-hire industry – including everything from service providers to dispatch technology to the law itself – has changed substantially within just the past two years. Integration is not merely a fair and legal solution for the District, it is one that keeps pace with innovation. It works.

IV. Proposed Action

The MTS rules under consideration for approval today are based on the rulemaking published on June 7th, following approval at the May 24th special meeting, and a period of public comment ending on July 8th. The Commission carefully considered the comments it received, and addresses them in detail here. The most significant aspects of the rules under consideration today are as follows:

(1) Owners who choose to work with DDSs will have the benefit of integration with their PSP.

Each DDS that processes a digital payment under an agreement with a company or independent owner must comply with the modifications to the rules requiring integration with the PSP that has been selected by the company or independent owner. Integration is not a requirement for businesses under common ownership (such as a company that has its own PSP and DDS).

(§ 401.4)

This important modification to the MTS rules will allow vehicle owners who choose to work with DDSs that provide digital payment services to continue to do so as the industry approaches the September 1st deadline for MTS deployment. These owners can choose their PSPs, and also choose their DDSs, and can do so knowing that all legal requirements will be met, and the full panoply of payment

⁷ See http://wamu.org/news/13/07/03/dc_taxicab_commission_making_strides_on_new_payment_systems.

options will be available to the passenger without interruption. This modification is key to advancing competition throughout the marketplace, protecting the interests of owners and drivers, and insuring that innovation continues to move forward in technology and payment methods.

(2) DDSs will process the entire charge whenever a passenger chooses digital payment

Each DDS that processes a digital payment must collect the surcharge from the passenger and pay it to the Commission, pursuant to the same rules applicable to each PSP for the processing of a cash or cashless payment inside the vehicle. Other requirements for posting a security bond to insure the Commission's receipt of these surcharges also apply.

(§ 408.15)

This modification will fully accommodate the DDS business model, allowing each business to continue processing digital payments, with no other charges to the passenger.

(3) Each DDS and each PSP will be integrated according to minimal requirements, or in any reasonable manner they choose to negotiate

Each PSP and each DDS shall integrate and remain integrated in one of two ways: by meeting minimum requirements established by the Commission for integration, or by negotiating an integration agreement that replaces the regulatory requirements.

(§ 408.16 (a))

This modification ensures that vehicle owners who choose to work with DDSs will not be limited in their choice by a DDS or PSP that do not wish to work together.

(4) Minimal integration will require that the DDS pay the PSP \$1.00 each time it uses the MTS for a digital payment

The minimal regulatory requirements for integration include a mandate that the PSP allow the DDS to process each digital payment, by transmitting to the DDS the amount of the fare and any gratuity, together with the trip data required to be reported by the PSP under Chapter 6. The DDS then processes the total charge, collects the surcharge, pays a \$1.00 fee to the PSP

for the use of the MTS, and passes the trip data along to the Office.⁸ Additionally, the DDS may charge its customer a booking or dispatch fee. (§ 408.16 (b) (3))

This modification is the key to PSP-DDS integration, fulfilling several vital requirements. It protects PSPs by ensuring they receive at least \$1.00 every time their MTSs are used for digital payments. It allows each PSP and DDS to negotiate different terms acceptable to all participants. It ensures the passenger surcharge is collected from the passenger and paid to the Office. And it mandates that the same trip data is transmitted to the Office, which will allow reconciliation with the PSP's data.

One commentator has opined that the Innovation Act bars data reporting by the DDS. This is simply not true; such language appears nowhere in the law.⁹ Moreover, it is critical that the Office receive the data from the DDS to reconcile that information with the data from the PSP. Otherwise, unscrupulous DDSs could exploit digital payment as a means to defraud consumers and/or avoid collection of the passenger surcharge.

The same commentator suggests that the Commission should wait until it has evidence that there is a “systematic problem of overcharging” before it may exercise its authority to require data reporting by DDSs.¹⁰ We disagree. A regulatory agency has discretion to use real-world knowledge and experience – including information from other jurisdictions and predictable behaviors observed throughout its industry – to guide and inform its decisions, in order to *prevent* bad results *before they occur*.¹¹

⁸ Consistent with the Innovation Act, DDSs alone are permitted to generalize location information to census tract level; this limitation does not apply to PSPs.

⁹ The amendment to which Uber refers does not appear in the Act.

¹⁰ Uber comments at 10.

¹¹ Uber's comments about “increased costs” lack merit, as the DDS's transmission to the Office of the *same* trip data it has received from the PSP obviously imposes little cost. Similarly, the DDS is not required to provide “confidential and sensitive business information”, and is, in fact, allowed to transmit *less* information than the PSP, as it may generalize all location information to census tract level (a requirement of the Innovation Act). Uber comments at 10.

The same commentator complains about the minimal burdens of surcharge collection by DDSs. These burdens are surely minimal as they are the *same* ones imposed on PSPs where the passenger chooses to make an in-vehicle payment.¹² But, even if this were not the case, the Commission is now required to get most of its funding from the passenger surcharge and the balance from administrative fees. Without the surcharge, and the concomitant obligation on stakeholders to collect it, the Commission would be unable to carry out its responsibilities. Accordingly, the MTS rules impose the surcharge on *every* taxicab trip and the Commission has determined that the most reasonable, verifiable, enforceable, and *efficient* means of insuring that it receives the payment is to require that *the business handling the money will collect and remit the surcharge*. Once approved, the sedan rules will do the same in that class of service.¹³ Finally, we note that this commentator does *not* complain that requiring DDSs to collect the surcharge is *inefficient*, a silence which suggests agreement on this point.

Each DDS and each PSP may negotiate an agreement for different terms

Alternatively, if a PSP and DDS wish to do so, they may negotiate a proposed integration agreement to fully replace the minimal requirements in the regulations. Each proposed agreement must insure the passenger surcharge is paid to the Commission, but may otherwise allocate the costs and legal obligations related to integration in any reasonable manner. Each agreement is subject to the approval of the Office.

(§ 408 (b) (3))

The Commission does not believe the Improvement Act or the Innovation Act obligate it to allow PSPs and DDSs to negotiate their own arrangements for integration. Nonetheless, the Commission is committed to promoting competition, innovation, and market-based allocation of legal obligations, consistent with the need to protect passengers and drivers, and guard against consumer fraud. This

¹² Uber comments at 11.

¹³ The Commission rejects Uber's suggestion that the "Commission" made a "commitment" to require PSPs or drivers to collect the surcharge. The statement, made in an November 2012 email from the Chairman to the Council months before any proposed rulemaking, before any comments were received, and before any substantial consideration was given to the issue, reflected the initial position of the Chairman, and was obviously subject to revision as the rulemaking process proceeded as required by law. Moreover, the Chairman cannot bind the *outcome* of the rulemaking process in this manner. Finally, we note that the requirement for the DDS to collect and remit the surcharge is the most reasonable and efficient solution, and therefore the one that will impose the lowest costs.

modification allows for these important goals, and fails to see how legitimate concerns can be raised about giving stakeholders *more* options, rather than *fewer*.¹⁴

V. Conclusion

While one commentator has offered extensive, unsupported *commentary* largely alleging that the modifications are uncompetitive,¹⁵ and the other has provided a single page claiming the rules impose a “substantial burden”¹⁶ that will likely drive it out of the market, the Commission believes the modifications clearly demonstrate that the opposite is true. Not only have PSPs and DDSs already shown through a public demonstration that *integration works*. Further, the Commission has already approved seven PSPs and two DDSs that meet the integration requirements, whose names are available on the Commission’s website *now*.

The Commission is committed to innovation and competition in the public vehicle-for-hire industry, as well as compliance with the law. The Commission has, over many months, substantially revised its proposed rules from their original form, and taken meaningful public input during the comment periods and at the public hearings. We believe the MTS rules, with today’s modifications, will strike the appropriate balance for *all* stakeholders. The same approach will be taken as the Commission moves forward to finalize, first, the rules for sedan vehicles, later this summer, and, then, the operating rules for dispatch services.

¹⁴ Verifone suggests PSPs lack sufficient bargaining power to negotiate integration agreements with DDSs. We disagree. First, PSPs are key market participants whose business relationships with owners will extend to the *entire* taxicab industry (since all owners must have MTS units). DDSs, on the other hand, only participate when the owners *choose* to use their services. Further, the market includes more participants than merely these two businesses; passengers, companies, owners, and drivers play an important role as well and their preferences will not be ignored. So, while we recognize there are many variables relevant to this analysis, we believe that if a DDS simply refuses to negotiate “a better deal” with PSPs, when other DDSs are doing so, the market is likely to respond in a way that places that DDS at a competitive disadvantage.

¹⁵ See Uber comments *passim*.

¹⁶ See Verifone comments.