

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



FINAL REPORT OF THE PANEL ON INDUSTRY:

**FINDINGS AND RECOMMENDATIONS
ON DCTC POLICY ON THE ISSUANCE OF
NEW VEHICLE LICENSES FOR TAXICABS**

THE H-TAG REPORT

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I. INTRODUCTION¹

At its January 14, 2015 General Meeting, the D.C. Taxicab Commission² instructed the Panel on Industry to study the Commission's policies relating to taxicab vehicle licenses. This occurred in response to frequent claims by rental drivers that they should be "issued new H-tags", so that they may have vehicles of their own, rather than continuing to participate in the industry as rental drivers. Both drivers and companies are currently restricted from obtaining new H-tags, due to the moratorium which has been in effect since 2009.

As instructed, the panel has looked closely at these important issues, accumulating the major arguments for and against issuing new DCTC vehicle licenses, where the events related to the argument occurred on or after January 1, 2006.³ The panel has evaluated these arguments in light of legal, policy, and fairness considerations, as a basis for its recommendations to the Commission.⁴ All of this was done with an effort to achieve the maximum input possible from the industry.

It is important to understand the agencies involved in licensing taxicabs, and the significance of the licenses they issue. The Commission, and its separate, administrative support agency, the D.C. Office of Taxicabs,⁵ are the legal entities charged with issuing public vehicle-for-hire licenses.⁶ The role of the Department of Motor Vehicles ("DMV") is ministerial, beginning and ending with the issuance of vehicle tags which include the letter "H" for identification purposes; these "H-tags" are intended to reflect that the vehicle has authority from DCTC to operate as a public vehicle-for-hire. That said, the Commission, DMV, industry members, and the general public frequently conflate the "H-tag" issued by DMV with the public vehicle-for-hire license issued by DCTC. This conflation is so common that the panel has decided to use the term "H-tag" to mean *both* a DCTC public vehicle-for-hire license *and* a DMV H-tag (except where otherwise stated). But we should be clear: an H-tag issued by DMV alone is *not* sufficient legal authority to operate a taxicab in the District. What matters *first* is whether or not DCTC has approved the vehicle through its licensing authority in D.C. Code § 47-2829. This authority is reflected in the Office of Taxicabs' sign-off on a "One Stop" form.

It is also important to understand that taxicab licenses are professional licenses, not personal licenses. Professional licenses are generally not freely distributed due to important public policy reasons like safety and consumer protection. But ensuring that consumers have an adequate level of service also requires an economic evaluation – a look at supply and demand. The Commission's 2014 Taxicab Study⁷ took these factors into account in order to determine the "appropriate" number of vehicles that should be in service.

[An] 'appropriate' number of taxis required to serve a measured demand [is measured] at an 'equilibrium' point.... Equilibrium relates to the economic concept of a balance between supply and demand, where demands for goods or services are satisfied to the extent that can be achieved commercially. Equilibrium does not imply perfect supply to all, but rather 'market' supply, which may be constrained by commercial/operational limitations, or those applied by a regulatory agency - either of which can be affected by external factors such as

changes in economic circumstance or competitor markets - both regulated and not regulated.... The measurement of a market relies on two elements, the supply of services and demand. In the case of the taxi industry this relates to the provision and availability of vehicles (supply side), and numbers of passengers seeking to use taxis (demand side).⁸

We believe the “appropriate” number of licenses is an important consideration. Accordingly, our recommendations about H-tags are based on the research and findings of the 2014 Taxicab Study. The study found that 6,141 active taxicabs are needed to meet the demand for taxicab service. Based on Commission trip data showing 5,950 taxicabs in active service, an additional 191 taxicab vehicles could be placed in service to meet current consumer demand. We conclude that this number of new DCTC vehicle licenses should be released, as explained in greater detail in our recommendations in part VI.

We direct the attention of our readers to part VII, which contains an opinion of the Chairman of the Panel, Commissioner Tapscott. The Chairman does not agree with certain parts of the panel’s recommendations. We also suggest that our readers review the notes at the end of the report, which contain short but important comments related to our discussion.

Finally, the panel notes that, although this report is not binding on the Commission, the report is likely to be used as the basis for vehicle licensing in the near future. We know this report very important to the industry, especially to drivers and their families. Not everyone will agree with what we say here, but we have done our best to listen to drivers and owners, to understand their views, to consider all the arguments, and to make findings and recommendations that will be of value to the Commission and make sense in light of the realities of the current industry. Our task was a difficult one, but we believe we have achieved the finality we were directed to bring to this important discussion.

II. SUMMARY OF FINDINGS AND RECOMMENDATIONS

The panel has thoroughly explored the major issues related to the H-tag moratorium. After careful consideration, the panel rejects the two extreme positions: returning to the open licensing policy which predated the moratorium – under which any licensed driver could receive an H-tag, and simply continuing the moratorium with no exceptions whatsoever for independent owners. These policies would not be responsive to the concerns we have heard from drivers, and also are not supported by the 2014 Taxicab Study, which found that 191 new DCTC vehicle licenses should be issued based on research about the “appropriate” number of taxicabs needed to provide service in the District. The panel recommends that a similar study be conducted every two years (the Chairman believes this type of study should be conducted every six months).

The panel has also carefully evaluated the other arguments about the Commission’s vehicle licensing policy and finds as follows. *First*, drivers who surrendered their H-tags for a *bona fide* reason during the two years prior to the moratorium should be the first to be considered for any new DCTC vehicle licenses. *Second*, drivers who took the training course previously offered at the University of the District of Columbia (“UDC”) during the two years prior to the

moratorium should be given the next level of priority for any new vehicle licenses. *Third*, the panel finds that while new DCTC vehicle licenses *can* be issued to driver/owners with vehicles co-owned with taxicab companies, and faced with the loss of licensing due to the Commission's vehicle retirement rules in 31 DCMR § 609, those drivers in most instances would be unable to obtain H-tags due to DMV's residency requirements. The panel finds, however, that where a driver with a co-owned vehicle is able to negotiate the release of the taxicab company's interest in the vehicle and *is* eligible for registration, the driver should be allowed to maintain the *existing* DCTC vehicle license and corresponding H-tags.

III. BACKGROUND

Until about 15 years ago, DCTC maintained a so-called "open" licensing system, allowing any interested individual to start working as a new driver, operating his or her own taxicab. After passing the training course at UDC, new drivers were permitted to concurrently obtain a new DCTC operator's license (or "Face card") and a new H-tag (again, the H-tag followed from DCTC's licensing authority, not DMV's).⁹ Further, for more than 75 years, drivers residing in the Washington Metropolitan Area (the counties immediately surrounding the District) were permitted to register their vehicles in the District without regard to residency. Eventually, UDC training was discontinued. As discussed in part V, the last owners who took the UDC training have presented one of the most common arguments related to H-tag policy. Other drivers (former owners), state that they surrendered their H-tags in the final period before the moratorium, in reliance on the open system; they also present one of the common arguments we address in part V.

Circumstances began to change about 15 years ago. In December 2001, the Council of the District of Columbia passed the Motor Vehicle and Safe Driving Amendment Act of 2000 ("2001 Motor Vehicle Act").¹⁰ This law, which took effect on April 27, 2001, changed the existing laws applicable to DMV so that *no* motor vehicle (not merely a taxicab) could be registered in the District unless a business or a District resident appeared on the title as owner or co-owner.¹¹ Council created no exception for taxicabs in the 2001 Motor Vehicle Act. The Act was "in keeping with the standard practice for motor vehicle registration in the United States" and was intended to align District law with that of surrounding jurisdictions, which required the owner to reside in the jurisdiction where the vehicle is registered.¹²

Although the 2001 Motor Vehicle Act was not directly applicable to DCTC, the Act *should have* effectively limited DCTC's authority to issue new vehicle licenses to non-residents because a vehicle cannot be operated without tags from DMV. We say "should have" because, despite the Act, DMV continued for about five years to allow non-resident, independent taxicab owners¹³ to register their vehicles, on the assumption that an independent owner is a "business" within the meaning of the Act, and, therefore, that residency was not required.

Eventually, however, DMV reversed its policy, finding that an independent taxicab owner was *not* a "business" within the meaning of the 2001 Motor Vehicle Act, with the effect that Maryland and Virginia owners were no longer exempt from the residency requirement.¹⁴ Recognizing that its policy change would have profound impacts, DMV grandfathered non-resident owners with existing District registrations, allowing these owners to continue to register

their vehicles in the District, and applying the policy change prospectively only.¹⁵ This grandfathering was ultimately determined to lack a legal basis.¹⁶ When that occurred, a change in the law was the only option available to allow non-residents to continue registering their vehicles in the District.

Concerned that the taxicab industry would be unduly harmed by the loss of *all* non-resident vehicle owners, former Councilmember Jim Graham in February 2007 introduced the Non-Resident Taxicab Drivers Registration Amendment Act of 2007 (“2007 Non-Resident Act”).¹⁷ The Committee Report accompanying the Act concluded that there were not enough resident drivers to “take up the slack that would be created by the departure of as much as 80 percent of the District’s taxicab drivers over the period of just a few years.”¹⁸

As introduced, the bill for the 2007 Non-Resident Act required the Director of the DMV to establish a mechanism “through which out-of-state drivers who were permitted by the DMV to register a vehicle in the District of Columbia prior to March 1, 2006, would be permitted to do so for so long as these drivers are otherwise eligible to register a vehicle within the District.”¹⁹ The bill ultimately passed by the Council can be viewed as a compromise measure in that it recognized that while “over the short and medium term, it is in the interest of the residents of the District of Columbia to keep non-resident taxicab drivers on the street, it is in their long-term interest to create new job opportunities for District residents and to reduce the usage of taxpayer-paid services by non-residents.”²⁰ The 2007 Non-Resident Act became effective on March 26, 2008,²¹ reflecting Council’s determination that those who are licensed to provide taxicab service should reside or do business in the District.

With the 2007 Non-Resident Act in effect, many Maryland and Virginia owners not eligible to be grandfathered scrambled for a means to avoid the effect of the law. Some owners transferred *all* interest in their vehicles to taxicab companies and continued to drive as renters of their own taxicabs (thereby in reality becoming *former* owners). Other owners co-titled their vehicles with taxicab companies, who then joined them on the registrations, which allowed them to continue driving as part-owner, part-rental driver. Both of these arrangements successfully allowed non-District owners to skirt the law. But this was not a permanent arrangement.

The next significant occurrence was the imposition of the so-called H-tag moratorium, which occurred on July 6, 2009. The panel has determined that the suspension of new independent taxicab numbers on that day²² was intended to and functioned as a moratorium on new DCTC taxicab vehicle licenses. This is because a new vehicle would require an independent taxicab number if, as is generally the case, the driver was seeking a new DCTC vehicle license and a new H-tag in order to become a fully independent owner (as opposed to an owner in the fleet of a taxicab company or in a taxicab association). With the imposition of the moratorium, the stage was set for the events that have brought this matter to our attention.

By 2014, after continuing to drive their company-titled or co-titled taxicabs for years, Maryland and Virginia drivers came face-to-face with the Commission’s vehicle retirement rules, which for safety and consumer service purposes require the replacement of a vehicle when it reaches a certain age.²³ According to drivers, the taxicab companies involved in the

arrangements have been largely unsympathetic and unresponsive to their situations. Those who transferred *all* rights in their vehicles to taxicab companies have no recourse because they are no longer owners. And those who co-own are in many instances prevented from replacing their vehicles because they cannot obtain financing without the companies' credit and agreement to the liens. These drivers seek to remain in the industry as owners, and have presented one of the more common arguments related to H-tag policy, which we address in part V.

The H-tag moratorium continues at this time; the Commission currently has no program in place for the general issuance of new DCTC vehicle licenses and new H-tags.²⁴

IV. PREPARATION OF THIS REPORT

The panel started its investigation by casting a very wide net. An "H-Tag Information Form" was created by the panel and made publicly available on the DCTC website during the period of May 4 to June 2, 2015, in order to collect as much information as possible from as many drivers as possible.²⁵ The Panel received 1,095 legible forms,²⁶ which fell roughly into five distinct categories of arguments for and against the issuance of new H-tags, as reflected in Table 1.

TABLE 1: RESULTS OF H-TAG INFORMATION FORM	
Policy Argument	Forms
1. Return to Open Licensing	778
2. Issue H-Tags to Drivers Who Surrendered Tags	232
3. Issue H-Tags to Drivers Who Trained at U.D.C.	69
4. Issue H-Tags to Drivers with Co-Titled Vehicles	13
5. Maintain the Moratorium	1 ²⁷

The panel carefully evaluated all 1,093 forms to distill drivers' views about the issuance of H-tags, which in most cases were strongly held and unequivocally articulated. The most common argument came from drivers who have never had H-tags; these drivers favor a return to the open system, in which any individual who wants to drive a taxicab will be issued a new DCTC license and H-tag after getting a Face card. Notably, many of these drivers supported issuing H-tags *only* for new, fuel efficient, wheelchair accessible vehicles. The least common argument was in favor of maintaining the H-tag moratorium without any exceptions. The five major arguments are explored in detail in Section V.

In addition to using the H-Tag Information Forms, the panel heard from interested stakeholders at two public hearings, held July 16 and July 30, 2015.²⁸ Over 50 individuals, groups, and taxicab companies testified at the first hearing, and more than 35 individuals testified at the second hearing. Also, some drivers submitted written comments at and following the hearings.²⁹ Testimony at the hearings was cumulative of the arguments received in the H-Tag Information Forms, with one exception – a large number of independent owners submitted petitions at the hearings in opposition to releasing new H-tags.³⁰ Many of these drivers argued that the market is already oversaturated and that an open system would take fares from existing

drivers. One petitioner, Arthur Lennon stated that “The effect of adding more H-Tags to the present system will be completely devastating to the lives and income of a lot of cab drivers... there are already too many taxis in Washington, DC, the industry is over-saturated, in my opinion, as it is”.

Finally, this report was placed on the DCTC website on August 28, 2015 to solicit public feedback.

V. THE FIVE MAJOR ARGUMENTS ABOUT VEHICLE LICENSING POLICY

A. RETURN TO OPEN LICENSING

1. Summary

A total of 778 drivers submitted H-Tag Information Forms reporting that they have never been issued H-tags. These drivers are mostly new to the industry and want an opportunity to become independent operators and have their own businesses. They advocate for a return to open licensing. Most of these drivers obtained Face cards after the moratorium was imposed in 2009.

The focal point for these drivers is that rental rates charged by the District’s taxicab companies are “too high”. Drivers report that weekly rates range from \$225 to \$275, plus an “operator’s fee” of \$50. According to driver Y.G., who testified at the first public hearing held on July 16, 2015, he “pays between \$200 and \$300 per week for a taxicab rental and spends between \$30 and \$40 per day on gas”. The drivers indicated that they are responsible for the maintenance of the vehicles which, according to drivers, often need repairs and are out of order for a significant amount of time and that these vehicles are old, outdated and burn a considerable amount of gas, all of which adds to the drivers’ costs. Drivers indicated that leasing does not provide them with the opportunity to purchase more modern, fuel efficient vehicles because they do not own the vehicles. According to some drivers, the taxicab companies often do not invest in a more modern fleet and give drivers older, outdated vehicles that have poor fuel economy and suffer from major mechanical problems, both of which fall on drivers to pay.

Many drivers also expressed a desire to be in business for themselves. And many also stated their willingness to purchase new vehicles as a condition for new H-tags, to limit emissions and provide wheelchair accessibility. Some drivers stated that the rental rates are so high that, they could easily take less than half the amount they are paying in rental costs, and put that toward financing a vehicle that meets the Commission’s accessibility and fuel efficiency goals. Driver R.R. stated that, “If tags are issued for those using rented cars, we will certainly buy fuel economy and hybrid cars”.

2. Analysis

The panel obtained weekly rental charges for the following 32 companies: Bay, Classic, Columbia, Empire, Executive, Fairway, Federal, Midway, People, Pleasant, Rapid, Riteway, Silver, Transco’s 19 companies.³¹ This survey yielded an average rental fee of \$190, and an

average insurance cost of \$33.³² The 2014 Taxicab Study assumed \$180 and \$35 per week for average rental fee and insurance, respectively.³³

3. Findings

The members of the panel have thought carefully about the question *are rental costs too high?* It seems impossible to us to answer this question without asking *too high compared to what?* With this in mind, the panel has reluctantly evaluated rental costs in light of their impact on what rental drivers are able to earn. Using the figures mentioned above, the 2014 Taxicab Study found that drivers currently earn an average of \$13.76 per hour.³⁴ These earnings are very low and have certainly declined during the past several years. That said, \$13.76 is 30% higher than the District's minimum wage of \$10.50 per hour³⁵ and almost the same as the District's so-called living wage of \$13.80 per hour.³⁶ Based on these figures, if a driver works 48 weeks per year, he or she will earn from \$26,419 to \$39,628, based on a range of 40 to 60 hours worked per week. While the panel members agree that this range of earnings is disappointingly low, a dedicated driver can earn a basic income notwithstanding typical rental charges.

In addition, we cannot overlook the realities of the current industry: private sedans now compete legally with taxicabs for dispatched rides.³⁷ Drivers who believe they are not earning a sufficient income are permitted to work in other classes of service in addition to or as an alternative to taxicabs.³⁸ This not only gives drivers an alternative to paying rental rates, it does put some economic pressure on companies to hold down their rates if they wish to retain their best drivers.

In sum, we do not agree with the arguments advanced for returning to an open system, in which vehicle licenses would again be given out to anyone with a Face card. While we are very sympathetic to the costs associated with renting, we cannot agree that rental rates are too high, since drivers can earn a low but basic income depending on the number of hours they choose to drive. Similarly, the panel finds very admirable the desire of many drivers to be independent business owners, given the added flexibility for drivers, and its historical importance in the economy in general. But the realities of the industry today do not lend themselves to openly issuing tags based on this reason. Further, most of the drivers in this group entered the industry *after* the moratorium was in place; these drivers made a decision to work in an industry where rental costs were likely to continue to be a factor. While the panel appreciates that many drivers advocating for open licensing are willing to purchase new, efficient, wheelchair accessible vehicles, the question of *which* vehicles should be added to the fleet is distinct from *whether* vehicles should be added to the fleet. Finally, an open system flatly ignores best practices of the vehicle-for-hire industry, which, as we have explained, should be the basis for the Commission's policy decisions about the number of vehicle licenses. For all these reasons, the panel finds there is no basis to return to open licensing at this time.

B. ISSUE TAGS TO FORMER OWNERS WHO SURRENDERED THEM

1. Summary

Those who had H-tags – but for some reason surrendered them – comprised the second most common argument advocated in H-Tag Information Forms. These 232 former owners – now rental drivers – argued either to have their old H-tag “returned” to them³⁹ or to be issued a new H-tag. They stated that they were victims of two related policy changes. *First*, they stated that DMV had an established practice of “holding” tags *temporarily* as a courtesy to drivers when they were not able to use their vehicles. Many drivers stated they needed to withdraw their vehicles from service for reasons such as health, family, vehicle failures, vehicle accidents, and travel abroad. The drivers stated that they had no desire to withdraw permanently from the industry. *Second*, even if tags were not given to DMV to hold during a brief absence, it made no difference, since, prior to the imposition of the moratorium, drivers could always get new H-tags. Typical of statements by these drivers was that of M.G. who said, “I surrendered my tags to DMV because I was overseas for 18 months for work”. This all changed when the moratorium was imposed. The change in vehicle licensing policy led to the discontinuance of DMV’s practice of “holding” tags and also precluded the issuance of new tags to those who had surrendered them.

2. Analysis

For more than 25 years, the Commission has maintained a rule that if a vehicle is to be removed from service, it must be decommissioned and its tags must be surrendered to DMV.⁴⁰ Few drivers in this group denied knowledge of this rule, but many drivers insisted that they complied with it without knowing they would be unable to get their tags back (or get new ones). We do not address the unofficial *practice* of DMV of holding tags as that has no bearing on our findings. But drivers who surrendered their H-tags shortly before the moratorium was imposed *may* reasonably have believed at that time that they would not be prejudiced by surrendering the tags. This turned out to be incorrect.

3. Findings

The panel finds that the former owners in this group should be given priority consideration for the issuance of new H-tags. We believe that, in fairness, these drivers – as former owners making important business decisions – should have been allowed to rely on the Commission’s vehicle licensing policy in effect at the time they surrendered their tags, provided they did so for *bona fide* reasons and *actually* relied upon the prior policy.

C. ISSUE TAGS TO THE LAST DRIVERS WHO TRAINED AT U.D.C.

1. Summary

The third most common argument about H-tags (69 H-Tag Information Forms) came from drivers who identified themselves as having taken and passed the UDC driver training

course in the months prior to the imposition of the moratorium. As explained earlier, drivers who fell into this category would be issued a Face card after passing the training and taking the test, and were then eligible for their own H-tag. But when the moratorium was imposed in 2009, H-tags were no longer “automatically” issued in this fashion. UDC training ended in 2010. These drivers stated that it was not fair for them to take the training, or the training and the test, and then not allow them to receive an H-tag. After the moratorium was imposed, some drivers were not even permitted to sit for the operator’s exam, though the Office corrected this oversight in 2014 by allowing these individuals to sit for the current exam. Driver D.L. stated that he took the training on the belief that he would be able to get his own H-tags.

2. Analysis

While the panel understands the practice allowing drivers to take the UDC training and then obtain an H-tag, at no time did the laws or regulations applicable to the Commission *guarantee* any individual a DCTC vehicle license in conjunction with the issuance of a DCTC operator’s license (a Face card). In fact, the statutory authority for *operator* licensing and *vehicle* licensing, though related, remain expressly separate to this day.⁴¹ This makes sense since the policy and legal issues related to driver licensing and vehicle licensing are not the same.

3. Findings

While no one who took the UDC training had a *right* to an H-tag, the panel is sympathetic to some of the drivers in this group. Those who paid for and passed the UDC training prior to the moratorium were making a business decision to join the industry based on an expectation that H-tags would be available. The panel finds that those drivers who have since passed the current exam and have current Face cards should be given some priority if new H-tags are issued.

D. ISSUE TAGS TO DRIVER/OWNERS WITH CO-TITLED VEHICLES

1. Summary

Thirteen H-Tag Information Forms were submitted by driver/owners who share title to their vehicles with taxicab companies. These drivers largely advocate for a return to an open licensing system in which they believe they should be included.⁴² Putting aside whether the Commission should return to an open system in general, which we have already addressed, the primary argument for issuing new H-tags to *these* drivers is that many of their vehicles will soon be forced off the road by the retirement rules in 31 DCMR § 609 (which requires all 2007 and older vehicles to be removed from service by the end of 2016). These drivers, however, chose to co-title their vehicles, which allowed them to continue as owners in the District’s taxicab industry despite the change in public policy in the 2007 Non-Resident Act.⁴³ We note that drivers in this group complained of unfair treatment by their company/co-owners, including being required to pay “rental fees”.⁴⁴ Many drivers in this group voiced their willingness to purchase a new fuel efficient and wheelchair accessible vehicle if given the opportunity to receive a new H-tag. Driver A.Y., who jointly owns his vehicle with a company, stated that

“many drivers in my situation are unable to put a newer model and fuel efficient car on the road because of the taxicab companies biased requirements of a clean title/no lien, even for a brand new car”.

2. Analysis

With mandatory vehicle replacement bearing down on them, these drivers – and the taxicab companies who share title with them – must voluntarily reach an agreement to acquire a new vehicle and provide suitable credit, or else face the loss of the H-tag and the DCTC vehicle license that authorizes it. Where companies do not agree or do not provide suitable credit, there is nothing to prevent these drivers from being forced off the road as their vehicles become due for replacement under § 609. Many older vehicles will be lost from the fleet by the end of 2016, as all vehicles manufactured before 2007 must be replaced during the calendar year.

3. Findings

While the panel recognizes the severe economic impact that the loss of vehicles has on drivers in this group, the panel cannot ignore the fact that co-titling has successfully allowed these drivers to continue as full participants in the District’s taxicab industry for many years, despite the change in public policy expressed in the 2007 Non-Resident Act. Consistent with the Commission’s recent repeal of the rules for “modern taxicab associations” or “MTAs”,⁴⁵ we do not believe it is proper for DCTC to assist in the avoidance of District law and public policy. The panel does find, however, that a driver who currently co-owns a vehicle subject to retirement by the end of 2016 should be allowed to keep the *existing* H-tags and continue registering the vehicle if the driver can negotiate the company’s release of its interest in the vehicle and the driver is now eligible to register a vehicle in the District.⁴⁶ We see no basis, however, to release *new* DCTC vehicle licenses to these drivers, as they made a business decision years ago that was contrary to the District’s law and public policy, recently reaffirmed by Council in the Vehicle-for-Hire Act of 2014. In the Act, Council expanded eligibility for DCTC operator and vehicle licenses to include all of Maryland and Virginia, but did *not* expand DMV’s registration rules.⁴⁷ For these reasons, the panel finds there is nothing for the Commission to do for these drivers in the context of *new* H-tags.

E. MAINTAIN THE EXISTING H-TAG MORATORIUM

1. Summary

The panel received one H-Tag Information Form from a driver, one letter from a taxicab company, and one letter from a business which owns several taxicab companies, advocating that the existing moratorium should be maintained, and no new tags should be issued. In addition, the panel received several petitions from independent owners advocating for this policy⁴⁸

This argument in this instance is essentially that there are more than enough taxicabs in the District and that issuing more H-tags would oversaturate and flood the market. Grand Cab stated that, in the alternative, if the moratorium is not maintained, “priority [for the release of any new H-tags] should be given to [those owners who would serve] high demand areas” and

“geographic locations which are under served”. United Ventures Consortium, Inc., which owns several taxicab companies, stated that “DCTC [should] not issue new H-tags but rather [should] strongly enforce existing [rules requiring] taxi companies to replace their old cabs and poorly maintained cars with fuel efficient or newer cars to counter [drivers’] claims or excuse[s] to get [H-Tags].”

2. Analysis

The effect of maintaining the moratorium with no exceptions would limit the number of vehicles to their current levels, subject to natural attrition and compliance with the vehicle retirement rules.⁴⁹

3. Findings

Continuing the moratorium with no exceptions does not address any of the findings we have made above, and implies that the concerns of drivers that we were specifically instructed to look at should simply be ignored. Further, as in the case of a completely open system, continuing the moratorium with no exceptions is an extreme position that ignores not only the issues we were tasked to consider, but also the “appropriate” number of licenses warranted by best practices, and more detailed questions of passenger, driver, and public safety; consumer protection; wheelchair accessibility; and fuel efficiency and environment impacts. Simply continuing the moratorium with no exceptions would surely *seem* like a quota to those who are currently excluded from becoming new independent owners.⁵⁰ Accordingly, the panel finds that the moratorium should not be continued in its present form; *some* new DCTC vehicle licenses should be issued by the Commission.

VI. RECOMMENDATIONS

Consistent with the findings in part V., the members of the panel recommend that the Commission take the following actions.

1. The Commission should issue new DCTC taxicab vehicle licenses to eligible individuals who possess current Face cards and are in good standing with the Commission, according to the following priority:

a. New DCTC licenses should be issued first to drivers who surrendered their H-tags (and DCTC licenses) during the twenty-four (24) month period ending on July 6, 2009 (when the moratorium was imposed), and who did so for *bona fide* reasons and actually relied upon the prior policy of open licensing when they surrendered their H-tags. A driver in this category who is approved for a new license should have twelve (12) months to make any adjustments in circumstances (residency, financing, etc.) in order to comply with all DCTC and DMV regulations and other applicable laws.

b. After all drivers who surrendered their licenses have received their new DCTC licenses, licenses should next be issued to drivers who trained at UDC during the

twenty-four (24) month period ending on July 6, 2009. A driver in this category who is approved for a new license should have twelve (12) months to make any adjustments in circumstances (residency, financing, etc.) in order to comply with all DCTC and DMV regulations and other applicable laws.

c. After drivers who trained at UDC have received their new DCTC licenses, licenses should then be issued to any other eligible owners (individuals or companies) who apply for them.

2. All new DCTC taxicab vehicle licenses issued pursuant to part 1 should be distributed by lottery.

3. The Commission should first issue 191 new DCTC vehicle licenses, based on the findings of the 2014 Taxicab Study. In the future, additional licenses should be issued only if the release of new licenses is supported by a new market study.

4. A new market study – equivalent to the 2014 Taxicab Study – should be conducted every two years to determine the appropriate number of taxicabs needed to serve the District. If a study does not support the need for more taxicabs, new DCTC vehicle licenses should not be issued.

5. Where a vehicle is co-titled by a driver/co-owner and a taxicab company, and the vehicle is subject to retirement under 31 DCMR § 609 by the end of 2016, the driver should be allowed to keep the *existing* DCTC vehicle license and continue registering the vehicle with DMV, provided the driver is able to negotiate the company's release of its interest in the vehicle, and the driver is also eligible to register the vehicle in the District.

VII. OPINION OF THE CHAIRMAN

The Chairman of the Panel on Industry agrees with the findings and recommendations of the panel, except as follows. DCTC should return to the open licensing policy which existed prior to the moratorium. By limiting the number of H-tags, drivers are put in an unfair competitive position relative to the new private sedans. The only meaningful way to level the competitive playing field relative to the new vehicles is to allow *any* eligible person to obtain an H-tag, after which the market will eventually eliminate those who cannot compete. Private sedans are not subject to any limits on the number of vehicles, and this treatment should be the same for public vehicles-for-hire. If the Commission decides to continue limits on H-tags, District residents should have first priority. Finally, rather than conducting a market study every two years, the Chairman believes such a study should be conducted every six months.

¹ This report reflects the views of the Panel on Industry; it does not constitute official policy of the Commission or the District of Columbia. See D.C. OFFICIAL CODE § 50-306. ("The Commission may organize task-specific panels as its needs dictate. All acts and orders issued by a panel shall be ratified by a majority of the appointed members of the Commission before taking effect."). This report was approved by the Chairman of Panel and by

Panel Member Charles Lindsay. The content of part VI (recommendations) was approved by all the Panel Members.

² Hereinafter “Commission” or “DCTC”.

³ This date was selected to exclude the stalest arguments about H-tag policy.

⁴ The report does not provide a legal opinion concerning about any purported “claim” to a DCTC taxicab vehicle license. Any legal discussion is not a legal opinion of the Commission or of the D.C. Office of the Attorney General.

⁵ For simplicity, our references to the “Commission” and “DCTC” include the Office of Taxicabs unless otherwise indicated. District of Columbia Taxicab Commission Establishment Act of 1985 (“Establishment Act”), effective March 25, 1986 (D.C. Law 6-97; D.C. OFFICIAL CODE §§ 50-301 *et seq.*). The Office of Taxicabs is a legally separate agency under this Act established by Council.

⁶ *See* D.C. OFFICIAL CODE § 47-2829; 31 DCMR § 1010.

⁷ November 2014 Taxi Research Partners, DCTC Taxicab License Quota Study (“2014 Taxicab Study”) (Attachment A). Although the study was prepared in support of a proposed vehicle *quota* which ultimately was not pursued by the Commission, the study’s research, analysis, and conclusions appear sound, and we have used them where indicated in this report.

⁸ *Id.* at 1-2.

⁹ The UDC training program ended in 2010 and the statutory authorization for it was abolished in the Taxicab Service Improvement Amendment Act of 2012, effective October 22, 2012 (D.C. Law 19-184; 59 DCR 9431) (“Service Improvement Act”). A significant number of those drivers who took the UDC training program before it ended argue that H-tags should be issued to them. Part V.C. reflects our analysis of what this group of drivers wants.

¹⁰ D.C. Law 13-289.

¹¹ Report of the Committee on Public Works and the Environment on Bill 17-113, the Non-Resident Taxi Drivers Registration Amendment Act of 2007 at 2 (“Committee Report”).

¹² *Id.*

¹³ All taxicab companies are based in the District. *See* 31 DCMR § 502.1 (“Each taxicab company, association, [and] fleet shall maintain a bona fide administrative office in the District of Columbia.”).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Committee Report at 3.

¹⁷ Bill 17-113.

¹⁸ Committee Report at 7.

¹⁹ *Id.* at 1.

²⁰ *Id.* at 7.

²¹ D.C. Law 17-130; D.C. Official Code § 5-1501.02 (c).

²² See July 1, 2009 Memorandum from Chairman Leon J. Swain, Jr. (imposing suspension of independent taxicab vehicle numbers for 120 days, effective July 6, 2009); November 1, 2009 Memorandum from Chairman Swain (extending July 16, 2009 suspension of independent numbers “until further notice”, effective November 6, 2009); July 2, 2012 Memorandum from Chairman Ron M. Linton (continuing the suspension of independent numbers indefinitely, effective November 23, 2012 (document misdated “2010”)) (Attachment B). The suspension of independent numbers also appears in the Commission’s regulations. 31 DCMR § 505.1 (“The Office shall not issue independent taxicab numbers.”). While it is unclear exactly when the moratorium became applicable to companies, when that occurred has no bearing on our findings and recommendations. Therefore, for purposes of this report, we use July 6, 2009 as the date the moratorium was imposed for all owners.

²³ See 31 DCMR § 609.

²⁴ The Commission currently has one program through which a *conditional* new license may be issued: Transport DC (formerly “CAPS-DC”). See 31 DCMR Ch. 18. All licenses issued through the program must participate in the program, which provides wheelchair accessible transportation to customers eligible to participate in MetroAccess at a lower cost. Since the program’s inception in October 2014, the Office of Taxicabs has issued new H-tags for the mandatory acquisition of 33 used vans to kick-off the program, and 31 new H-tags for new, wheelchair accessible taxicabs, including vehicles required to be purchased in exchange for the opportunity to participate in the program.

²⁵ Sample H-Tag Information Form is provided as Attachment C.

²⁶ Due to the volume of completed H-Tag Information Forms, they have not been made an attachment to this report, but will be available at the Office of Taxicabs, consistent with the D.C. Freedom of Information Act (“FOIA”). Persons interested in reviewing the forms should contact Charles Lindsay, Program Director, at (202) 645-4433.

²⁷ As explained in part V., the panel also received two letters from taxicab companies in favor of maintaining the moratorium.

²⁸ Transcript of July 16, 2015 Public Hearing, and Transcript of July 30, 2015 Public Hearing (Attachment D).

²⁹ The written testimony submitted at the hearings and the additional comments received after the hearings are provided as Attachment E.

³⁰ The petitions are provided as Attachment F.

³¹ These fees did not include digital dispatch, available at extra cost from some companies. The 32 companies were those which reported complete information to the Office in connection with the December 2014 renewal of their certificates of operating authority; the remaining companies did not provide more.

³² The panel did not consider rental and insurance rates in surrounding jurisdictions, which are generally not proper sources of comparison to the District’s market due to differences in population density and patterns of service. See *generally* 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, as amended October 28, 2014), at 8, available at http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/release_content/attachments/Decision%20on%20Review%20of%20Rate%20Structure%20Pursuant%20to%20D%20C%20Code%20C2%A7%2050-317%20and%20on%20Petition%20to%20Modify%20Rate%20Structure%20Filed%20January%2031%2C2014%20%2810-27-14%29.pdf.

³³ 2014 Taxicab Study at 15.

³⁴ *Id.*

³⁵ Effective July 1, 2015, the minimum wage in the District is \$10.50 per hour. *See* Minimum Wage Amendment Act of 2013, D.C. Act 20-265, D.C. Law 20-91, effective March 11, 2014.

³⁶ *See* Living Wage Act of 2006, D.C. Law 16-118, effective June 9, 2006, D.C. OFFICIAL CODE §§ 2-220.01, *et seq.* (applicable to the District government and its major contractors).

³⁷ *See* Vehicle-for-Hire Innovation Amendment Act of 2014, effective March 10, 2015 (D.C. Law 6-97) (“Vehicle-for-Hire Act of 2014”).

³⁸ For safety reasons, public vehicle-for-hire drivers must comply with the hour limits in 31 DCMR §§ 822.12-822.14.

³⁹ These drivers, of course, do not seek the literal “return” of their H-tags, but some kind of re-issuance of their DCTC vehicle license and corresponding H-tags. At this point, years after the tags were turned in, there is no practical distinction between this argument and one explicitly seeking a “new” H-tag.

⁴⁰ 31 DCMR § 506.1 (a) (“Immediately upon withdrawing a vehicle from use as a taxicab, the owner shall remove any design, insignia, logo, term, symbol, lettering, or other exterior object or trade, association, company or owner’s name, and vehicle number and remove the dome light and H-tag.”).

⁴¹ *See* D.C. OFFICIAL CODE § 47-2829.

⁴² Many of these drivers expressly stated that they wish to be independent owner-operators.

⁴³ Some drivers told us that DMV is no longer issuing new vehicle titles or registrations to new drivers that would like to hold vehicle title jointly with a taxicab company. DMV has, however, been honoring previous jointly held ownership, if requested. While we do not see anything incongruous about these practices, we note that they may need to be addressed if the Commission adopts our recommendations. *See* part VI.

⁴⁴ Drivers and companies with interests in co-titled vehicles have the same legal rights, so it is not clear to us how a company can charge a driver/owner a “rental fee” for the use of the vehicle or impose any other condition or fee without the driver/owner’s consent. We do not address the merits of these arguments, however, which raise legal and equitable issues outside the scope of this report and the jurisdiction of the Commission.

⁴⁵ These regulations would have allowed any group of 100 or more owners to form an MTA. An MTA would have been a D.C.-based business, which would have allowed the owners to register their vehicles in the District. In return for having only wheelchair accessible, fuel efficient vehicles within five years, all owners associated with an MTA would have been granted new DCTC vehicle licenses and corresponding H-tags. The rulemaking became effective on January 1, 2015. Notice of Final Rulemaking, published January 1, 2015 (62 DCR 000119). No one applied to form an MTA, however, and the regulations were recently repealed. Notice of Final Rulemaking, published July 10, 2015 (62 DCR 009484).

⁴⁶ Grand Cab Company stated by letter to the panel its belief that *new* H-tags should not be authorized based on existing co-titled vehicles. Duplication or “splitting” of co-titled H-tags was part of the MTA rules, which have been repealed. *See* note 44. We do not recommend that the issues raised by co-titling be resolved in this manner.

⁴⁷ *See* Vehicle-for-Hire Act of 2014, Sec. 4. (“Section 47-2829 of the District of Columbia Official Code is amended by adding new subsections (k) and (l) to read as follows: “(k) A person who resides in the District of Columbia, the State of Maryland, or the Commonwealth of Virginia shall be eligible to apply for an operator and vehicle license to operate a public vehicle-for-hire.”).

⁴⁸ See Attachment F.

⁴⁹ Many vehicles are expected to be removed from service in 2016 as a result of the vehicle retirement rules in § 609. Where a vehicle is not timely replaced as required, its H-tags and DCTC vehicle license will be forfeited.

⁵⁰ A license moratorium is not equivalent to a vehicle quota because a moratorium does not account for natural attrition or compliance with regulations, most especially vehicle retirement rules. The panel was not instructed to consider a quota.