

ATTN: Commissioner Meera Joshi
Taxi and Limousine Commission
33 Beaver Street
New York, N.Y. 10004

Submitted: March 20, 2018

I, the undersigned, hereby petition the Taxi and Limousine Commission to grant, consider, and adopt the following rule to be included in the appropriate section of the Rules Governing the Taxi and Limousine Commission, as it is written and in its entirety.

Proposed Language of the Rule

The Commission shall establish a definition for any corporation, partnership, sole proprietorship, or other entity that is operating under the jurisdiction of the Taxi and Limousine Commission (TLC) and uses a digital network, interface or application for smartphones, tablets, laptops, notebooks used to arrange and pay for For-Hire Vehicle (FHV) rides to the general public. These entities shall be required to adhere to the definitions and minimum pay requirements as established below:

Definitions.

Passenger Fare shall be defined as what a passenger pays at the end of each trip, excluding government-mandated surcharges or taxes.

Driver Pay shall be defined as the total of what a Driver is paid per trip, mile, and minute for a trip dispatched through a Base not including any gratuity, fee, fine, surcharge, toll, sales tax, commission, or any other charges.

Group Ride is the practice whereas a Base combines the trips of multiple passengers along a route in one For-Hire Vehicle.

Minimum Pay Requirements.

Passenger Fare. The Passenger Fare may not exceed 20% of Driver Pay.

Receipts. A Base shall provide a trip receipt for both Customer and Driver. In addition to the current requirements for passenger receipts, the receipt must contain all of the following information: Total amount due or paid by customer; Itemized fees charged (if any) including any price multiplier or variable pricing policy in effect for the trip, total Driver Pay, and any gratuity if applicable.

Dispatch Class. The Taxi and Limousine Commission shall biannually choose which vehicles are eligible for the following common classes of dispatch. Dispatch Classes shall be defined as follows:

- 1) *Standard Class* are dispatches for vehicles that facilitate a trip more affordable in nature.
- 2) *Van Class* are dispatches for vehicles seating six or more passengers but not qualifying as SUV Class.
- 3) *Luxury Class* are dispatches for vehicles that seat five or less but are more luxurious in nature.
- 4) *SUV Class* are dispatches for vehicles both luxurious in nature and providing seating for six or more passengers.

Maintenance of Current Rate Schedule and Driver Pay Schedule. A Base Owner must file a Rate and Driver Pay Schedule with the Commission, in a form approved by the Chairperson. This Rate Schedule must include any lawful price multipliers or variable pricing policies, any and all fees associated with E-Dispatching Vehicles, and the Base's rates for rides dispatched by the Base for Pre-Arranged Trips provided by Street Hail Liveries, if the Base dispatches Street Hail Liveries.

If the Base a Driver is affiliated with is a Partner Base with an E-Dispatch Service Provider, the Rate Schedule as described above must provide a Driver Pay schedule for each Dispatch Class. Each class of dispatch shall also have a Wheelchair Accessible Vehicle option. Driver Pay for operators of Wheelchair Accessible Vehicles shall be 110% of Driver Pay for non-wheelchair accessible vehicles within the same Dispatch Class. Minimum Driver Pay within each Dispatch Class shall be as follows:

- 1) *Standard Class*: Driver Pay for Standard Class dispatches shall be no less than: \$2.4044 Base Fare, \$0.3300 per 1/5 mile, \$0.3300 per minute.
- 2) *Van Class*: Driver Pay for Van Class dispatches shall be no less than: \$3.4848 Base Fare, \$0.5159 per 1/5 mile, \$0.4525 per minute.
- 3) *Luxury Class*: Driver Pay for Luxury Class dispatches shall be no less than: \$6.5947 Base Fare, \$0.7073 per 1/5 mile, \$0.6128 per minute.
- 4) *SUV Class*: Driver Pay for SUV Class dispatches shall be no less than: \$12.6720 Base Fare, \$0.8146 per 1/5 mile, \$0.7242 per minute.

The dollar amounts reflected in the above section are in 2018 dollars and shall be adjusted annually based on increase in the Consumer Pricing Index or as a result of a biennial meeting of this Commission ensuring the financial stability of TLC Licensees.

Hourly or Daily Pay. If the Driver Pay is instead based on time worked, the Driver Pay must exceed the Driver Pay mile, minute and per-trip rates set forth herein.

Trips with Destinations outside of New York City. When a trip takes a Driver outside of New York City, the Base Owner must provide an out-of-town Driver Pay schedule that (1) ensures that Drivers are covered by the Black Car Fund on return trips and (2) reimburses Drivers for their time and expenses to return to New York City.

Subscription Fee. If an E-Dispatch or Base charges the Driver a subscription fee for use of the app instead of per-trip fees, the Driver Pay for trips must be equal to the fare as permitted in §58-26 and §82-26 of TLC Rules. The subscription fee may not exceed \$30 per week.

No Required Group Ride for Drivers. A Driver has the right to opt-out of receiving any requests for a Group Ride dispatched by the Base by contacting the For-Hire Base Owner.

Statement of the TLC's Authority to Promulgate the Rule and its Purpose

The Commission has the authority to promulgate such a rule under Chapter 52 of the New York City Administrative Code, including but not limited to §52-04 Specific Powers and Duties of the Commission (a) Powers and Duties with Respect to Regulating (1) Formulate and adopt rules reasonably designed to carry out the purposes of the Commission. (2) Set and enforce standards and conditions of service. (3) Establish and enforce standards of safety, comfort, convenience, operational efficiency, and compliance with good public policy in the design of vehicles and auxiliary equipment. (4) Establish and enforce standards to ensure all Licensees are and remain financially stable. (5) Establish and enforce standards for insurance and minimum coverage. (6) Establish and enforce standards for record-keeping and reporting. (7) Develop and implement a broad public policy of transportation as it pertains to the forms of public transportation regulated by the Commission. (8) Encourage and provide procedures to encourage innovation and experimentation relating to type and design of equipment, modes of service and manner of operation. (9) Provide assistance to the public transportation businesses and industries regulated by the Commission to continually develop and improve public service, safety, and convenience, including assistance in securing federal and state grants. In short, the purpose of this proposed rule is to ensure TLC Licensees remain financially stable.

Petitioner's Argument in Support of Adopting the Rule

As the app-based for-hire vehicle industry has grown in New York City, the city and the Taxi and Limousine Commission have held app-based drivers accountable for abiding by the city's standards in a number of areas, from insurance requirements and safe driving classes to fatigued driving rules which limit hours behind the wheel. The TLC also acted on our 2017 petition to require an in-app tipping option, which soon benefited Drivers in New York City and across the nation when a few months later Uber

finally added a tipping option to its app. In that petition¹ we noted that further protections were needed to ensure Drivers could maintain a dignified living. While the Commission enforces certain protections for Driver pay and to prevent consumer price gouging in the taxi industry, there have been no such protections in the app-based for hire vehicle industry. We were pleased that the Commission responded² in agreement, stating “we agree with your position that rules governing tipping are not a substitute for a regulatory scheme that ensures that Drivers earn a livable wage and we look forward to your membership’s input on this issue.” We have appreciated the ongoing discussion with the Commission that began shortly after the Guild’s launch in 2016 regarding the need for pay regulations; this dialogue continued to be productive in the months that followed, from providing the commission with Driver interviews and input on surveys to providing testimony at hearings and a detailed proposal³ in November 2017. After many months of discussion and upon garnering more than 15,000⁴ signatures in favor of the Guild’s pay protection proposal, this rulemaking petition marks the next step in that process.

After offering seemingly attractive rates at the outset to entice Drivers, ride-hail companies made big changes once they dominated the market. Uber and Lyft repeatedly reduced Driver pay and hiked their cut of each fare, violating and voiding rider and Driver agreements again and again. They have slashed the earning potential for Drivers dramatically and redirected the profits from New Yorkers’ labor out of our community and into the coffers of privately held multinational corporations. Drivers who already invested their savings and took out loans to join the industry have been left with little choice but to work longer and longer hours to make ends meet. There is an urgent need for action. Workers are in financial crisis, which is leading to mounting safety hazards.

A 2017 Independent Drivers Guild (IDG) survey of New York City Drivers found that:

- 73% of workers who had been in the industry for at least a year reported their financial well being was worse now than had been previously.
- 73% of Drivers worked more than 10 hours on their most recent shift, with Drivers reporting a median shift of 11 hours and a mean shift of 11.5 hours.
- 85% of Drivers work at least 30 hours per week and nearly two thirds drive at least 45 hours per week.
- 56% reported being paid less than \$150 before business expenses on their most recent shift.
- Workers who lease or rent their vehicle report mean annual expenses of \$35,464, and a median of \$31,200.
- Workers who own their vehicle or have a loan had a mean annual cost of \$30,056, and a median of \$21,424.
- 89% reported that being a For-Hire Vehicle (FHV) worker was their main source of income.
- 57% identified their household income as less than \$50,000/year. 22% of respondents reported household earnings of less than \$30,000 per year.

¹ <https://drivingguild.org/2017/02/15/tipping-petition/>

² <https://drivingguild.org/wp-content/uploads/2017/04/Ltr.-James-Conigliaro-Jr.-Esq.-4.17.17.pdf>

³ <https://drivingguild.org/2017/11/30/8000-nyc-drivers-demand-pay-raise/>

⁴ <https://actionnetwork.org/petitions/stop-the-deception-tell-the-tlc-to-protect-drivers-pay>

- 56% indicated they care for a dependent under the age of 18.

Recently, MIT researchers found that a significant portion of Uber and Lyft Drivers make less than minimum wage after expenses. Even in New York City, where nine in ten Drivers drive as their household's main source of income, our survey data shows that most Drivers make less than minimum wage after expenses.

New Yorkers who use Uber and Lyft to get around are being taken advantage of too. We regularly see receipts of trips where a customer was charged more than double what the worker was paid for a trip. Right now, these companies are arbitrarily increasing the price and pocketing all the profit. We can end gouging and encourage workers to provide reliable, affordable, high-quality service by ensuring the company cannot charge more than 20% of what a Driver is paid for a trip. These are the maximum commission rates that riders and Drivers originally signed up for, and these are the rates the Taxi and Limousine Commission should hold the industry to.

When an industry fails to self-police to the harm of workers and consumers, it is incumbent upon regulators to act. We must send a clear signal that New York City will not allow opportunistic companies a minimum wage loophole, while working families pay the price. New York has a sacred history of protecting the working class, and our city must act now to ensure that thousands of workers who keep our city moving are not left unprotected. By charting a more responsible and sustainable path for the for-hire vehicle industry, New York can serve as a model for other states and the world.

Period of Time the Rule Should be in Effect

This rule shall immediately take effect and continue indefinitely.

Conclusion and Petitioner Information

To encourage public safety, a fair economy, and maintaining the standard of living for For-Hire Vehicle Drivers, we ask the Taxi and Limousine Commission to enforce the above regulatory approach for TLC Licensees throughout New York City and under the jurisdiction of the Taxi and Limousine Commission.



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Independent Drivers Guild, *an affiliate of District 15 of the International Association of Machinists and Aerospace Workers, AFL-CIO*

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Dated: March 20, 2018