

**"ROGUE" SMARTPHONE APPLICATIONS
FOR TAXICABS AND LIMOUSINES:
INNOVATION OR UNFAIR COMPETITION?**

**A NATIONAL REGULATORY REVIEW OF SAFETY, ACCOUNTABILITY AND
CONSUMER PROTECTION LEGAL ISSUES**

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I. Executive Summary

As technology continues to innovate, more and more resources are available via smartphone applications – and hailing a taxicab or arranging for transportation via a for-hire vehicle is no exception. Hailing a taxicab or arranging for transportation no longer requires standing on a street corner or making a telephone call to a livery base; dispatching both taxicabs and other for-hire vehicles is now being done in growing numbers through smartphones and smartphone applications. Technology start-up and transportation companies have started to flood the market with applications which allow for, among other things, the “hailing” or “arranging” (a significant legal distinction to be discussed) of transportation and mobile payment.

Many regulatory agencies are struggling to understand the operation of these transportation applications while finding a regulatory place for them before they are “rolled-out” into such agencies’ jurisdictions. In large part, most of the major cities across the United States are already faced with the regulatory implications of transportation smartphone applications, such as those of TaxiMagic, Uber, Cabulous, Hailo and GetTaxi, to name just a few.¹ These applications are distinguishable from other mobile applications directly operated by licensed transportation companies such as GroundLink,² which utilizes mobile applications to facilitate its business. Issues are developing with many of the new smartphone applications, which are not operated by transportation companies, but rather by third-party entities that facilitate the transportation and communication between transportation companies and passengers, but do not provide transportation services themselves.

In most instances, these companies are not licensed by the transportation regulatory authority in the jurisdiction although, in a few instances, they are expressly regulated. In an attempt to understand the issues created in various regulatory schemes, below is an overview of the issues related to the influx of these smartphone applications and the concerns raised for regulators. Of concern is whether these smartphone applications operate as electronic street hails or as prearranged services; whether the operations create safety concerns for passengers; whether vehicles dispatched by applications are meeting the appropriate requirements; whether the fare structures protect the consumer and distinguish vehicle services in their respective markets; and whether the charges are based on measures that mirror the fares calculated via a taximeter without meeting the rigid technical requirements for a taximeter.

This report then sets forth the regulatory prohibitions and, in a separate section, the regulatory framework of the following jurisdictions: Seattle, San Francisco, the District of Columbia (“D.C.”), Chicago, New York and San Diego – all jurisdictions in which one or more applications are in use.

¹ More information about TaxiMagic is available on its website available at https://taximagic.com/en_US; More information about Uber is available on its website at <https://www.uber.com/#>; More information about Cabulous is available on its website available at <http://cabulous.com/>; More information about Hailo is available on its website available at <https://hailocab.com/>; More information about GetTaxi is available on its website available at <http://gettaxi.com/>.

² More information about GroundLink is available on its website available at <http://www.groundlink.com/adwords/gl04/carservice.html?c3=ground%20link,10839528409.e&gclid=COG6qdOI77ACFUfo4AodZDyxwA>

Despite decades of thoughtful responses to address public safety and consumer protection by establishing standards for equipment that meets quality levels for weights and measures, the regulators in local jurisdictions now find themselves with little guidance as to how to respond to the rapidly changing and expanding smartphone application technology. Moreover, if the subtle distinctions and methodology of these applications are not addressed, it leaves those licensed, traditional stakeholders in the ground transportation business at a disadvantage compared to the start-up technology companies. In sum, this creates an unlevel playing field.

There is no national or model response to this emerging market, and a “Wild West” environment is the current state of play. Local regulators would benefit from model legislation setting forth standards for the smartphone technology to co-exist within traditional taxicab and for-hire service.

Answering these questions may require regulators to obtain some technical assistance, but certainly regulators will need to address “how these apps work” as a fundamental question in order to decide whether these smartphone applications meet existing regulatory requirements. Hailo, which has announced plans to enter the United States market in Chicago and/or New York, has been established in London as a “matching service” for potential riders who use the application as an electronic street hail, with no additional charge to the passenger if a £5 minimum fare is met. In the United States, TaxiMagic (currently operating in many jurisdictions, including Chicago, San Diego, San Francisco, Seattle and the District of Columbia) and GoFastCab (in numerous cities, including Chicago and San Diego) also operate as electronic hails for taxicabs.³ Cabulous functions in the same manner in San Francisco. Limos.com and LimoAnywhere have smartphone applications that enable the users throughout the United States (and in each of the six jurisdictions discussed in this Report), to arrange for-hire service via their affiliates.⁴

The transportation industry and several jurisdictions have raised concerns that certain applications may be “rogue” and operating in an undefined territory between for-hire and taxicab regulations. Such applications may be labeled “rogue” because they neither operate as nor meet all the regulations set forth for taxicab or for-hire vehicle operators; rather these “rogue” applications operate as a hybrid of these two distinct sectors of the transportation industry. Indeed, there are concerns that such rogue applications circumvent the prearrangement requirement of for-hire vehicles (as required in many jurisdictions, including all six jurisdictions in this Report) and/or use an impermissible method of fare calculation based on the service provided. For example, some applications’ fare calculation leads the user to believe the vehicle is operating like a taxicab, but the vehicle is dispatched as a for-hire vehicle and not licensed as a taxicab, which results in consumer confusion. Further, certain “rogue” applications which calculate fares like a taxicab incorporate additional fares, which are not traditionally included in a taxicab fare. Many regulators are concerned that such “rogue” applications’ methods of calculating fares are without the uniformity and safeguards of a taximeter. As further discussed below, some jurisdictions prohibit licensees (taxicab drivers) from demanding any fare above what is displayed on the taximeter. Given such regulation, any application that incorporates any

³ More information about GoFastCab is available on its website available at <http://www.gofastcab.com/>

⁴ More information about Limos.com is available on its website available at http://www.limos.com/?gclid=CNqpi_KT77ACFYTd4AodtVoiwg; More information about LimoAnywhere is available on its website available at <http://www.limoanywhere.com/>.

additional service fees, fares, or gratuity cannot comply with such regulations. For example, Uber incorporates demand into its fares, creating what some have called “dynamic pricing.”⁵ On New Year’s Eve, such “surge pricing” caused passengers to pay triple digit fares for trips of short distances.⁶

Distinctions such as prearrangement and fare calculation may not resonate with the average passenger, but such distinctions play a critical role in the fundamental economics of the transportation market and specifically assist the regulators in distinguishing and ensuring adequate and appropriate transportation is available in each specific sector. Thus, after years of defining the distinctions between taxicabs and for-hire vehicles in rational regulations, the industry and regulators are concerned that “rogue” applications blur this distinction in comparison to the business practices of traditional ground transportation providers. Further, many regulations surrounding the transportation of the public exist to protect the public and hold those engaged in such activities accountable for providing the highest standards and quality service to ensure the safety of the public.

II. Regulatory Issues

A. Prearrangement or Electronic Street Hail?

Many applications distinguish their services between the for-hire and taxicab industries. For instance, applications such as Uber or Hailo are used to arrange service for black cars or for-hire vehicles, whereas, applications such as TaxiMagic or GetTaxi are used to arrange taxicab service. Because of the significant use of such applications, many jurisdictions have evaluated, or are starting to evaluate, the use and regulation of these applications. Specifically, New York City has gone as far as to request application development for an “official payment application” and others, such as D.C., have recently proposed new legislation, which will permit operations related to smartphone applications which were once deemed “illegal.” (Discussed in further detail below).

The ability to obtain transportation immediately attracts many users to the increasing number of transportation smartphone applications. But such service may potentially be running afoul of industry regulations. As discussed herein, in many jurisdictions, for-hire vehicles must be prearranged. Some jurisdictions, such as Seattle, specifically restrict the minimum time that the prearrangement must be in place to be a valid prearrangement. In the same light, some jurisdictions – like New York City – limit taxicab service to only include accepting street hails. Prearrangement is not permitted by taxicabs. So this begs the question, how is it that for-hire applications and taxicab applications legally operate with essentially the same function in markets with such distinctions? Is the typing-in of your location and summoning a vehicle, whether for-hire or a taxicab, considered an on-demand electronic street hail or a prearranged service? Most jurisdictions have yet to answer these questions.

⁵ <http://www.spruancegroup.com/blog/bid/50060/Dynamic-pricing-and-the-135-cab-fare>

⁶ See generally, http://dcist.com/2012/01/did_uber_overdo_it_on_new_years_eve.php;
<http://techcrunch.com/2012/01/01/ubers-new-years-eve-surcharges-demonstrate-the-harsh-reality-of-dynamic-pricing/>; <http://bits.blogs.nytimes.com/2012/01/08/disruptions-taxi-supply-and-demand-priced-by-the-mile/>

B. Safety and Accountability Concerns

One of the significant concerns is the policing of the regulatory framework, i.e.: how is the application provider held accountable for the safety of the passenger, if at all. A broad review indicates most applications are technology start-ups and are not associated with any specific livery or taxicab business license. As such, each application operates as a third party to the traditional business arrangement and, in most cases, is not expressly accounted for under the jurisdiction of the taxicab or for-hire vehicle regulators, allowing such applications to operate in a gray area. Certain application companies, including Uber, state they “carefully select fleet partners and work to ensure that they all have the proper licensing.”⁷ However, earlier this year, Uber was in the D.C. news for dispatching a vehicle without the proper insurance or vehicle license and the driver did not maintain a chauffeur’s license.⁸ The driver was cited for the violations, but there were no reports of liability being assessed directly to Uber. As further discussed herein, to ensure driver compliance, some jurisdictions currently implicate livery bases or owners for the liabilities of the driver to ensure a check on the system. However, because applications like Uber are not regulated *per se* by many jurisdictions, they seem to escape potential liability and accountability for the shortfalls of the drivers they dispatch, unlike livery bases and owners.

In New York City, the Taxi & Limousine Commission (the “TLC”) regulations provide that only a base may dispatch a vehicle associated with it, and the TLC issued an Industry Notice stating individual drivers may not directly negotiate with applications for dispatch, and livery bases must be involved. If drivers want to negotiate directly with an application for dispatching services, the application company is required to file and obtain a livery base permit in accordance with the regulations of the TLC in order to dispatch such vehicles. This regulation ensures, in part, the regulatory accountability of both parties.

Additionally, even while operating in a regulatory gray area, many application companies program their applications to include a heavily tilted “click-wrap” agreement, which must be accepted prior to installing the application. However, the concern with such an agreement is the company’s attempt to limit the company’s liability on various fronts, including such statements, as the company shall not “assess the suitability, legality, or ability of any third party transportation provider,”⁹ or obliteration of liability with respect to the quality of service provided. Similar limitations pertaining to liability or responsibility for “taxi[cabs] actions or inactions” are found in other applications terms and conditions.¹⁰ It should be noted that whether or not such provisions are legally enforceable against the user would have to be determined by each respective jurisdiction.

C. Use of “Taxi” or “Taxicab” in the Name

Many jurisdictions include restrictions on the use of the word “taxi” or “taxicab” in the for-hire industry to prevent consumer confusion and enforce the distinctions in the taxicab and for-hire industries. Specifically, the Washington Code (as defined herein) and the California

⁷ <http://support.uber.com/entries/311483-how-do-you-select-your-drivers>

⁸ http://www.washingtonpost.com/local/dc-politics/uber-car-service-busted-by-dc-authorities/2012/01/13/gIQAnL2DxP_story.html

⁹ <https://www.uber.com/legal/terms#>

¹⁰ <https://hailocab.com/terms>

Public Utilities Code (as defined herein), expressly prohibit limousine companies from holding themselves out as taxicab transportation providers and/or using the words “taxi” or “taxicab” in their name. Uber’s first public legal obstacle was a cease and desist letter from the San Francisco Municipal Transportation Agency and California Public Utilities Commission, citing, *inter alia*, improper use of the word “taxi” or “cab” in a livery or limousine company’s name, the use of which is prohibited by section 5386.5 of the California Public Utilities Code. Additionally, Uber was cited because it did not register a color scheme with the SFMTA (as defined herein), as required by S.F. Code sections 1105(a)(1) and 1106(a). Almost immediately, “Ubercab” dropped the “cab” and became just “Uber.” Again, this violation was because Uber dispatches livery and other for-hire vehicles and not taxicabs. On the other hand, applications such as “Taxi Magic” or “Cabulous” dispatch taxicabs and may lawfully include the word taxi or cab in their names.

D. Service Refusals

Most applications incorporate some mechanism for consumer feedback. However, some applications take it one step further and provide both the driver and the passenger with the opportunity to rate the other, thus, potentially creating a forum that drivers may utilize to distinguish passengers. For instance, if a passenger does not tip more than the included gratuity, requires additional assistance or travels to an underserved or remote location, drivers have the ability to log such “undesirable” passengers’ information when the fare is complete. Uber claims the dual-rating system is to ensure quality on both ends.¹¹ However, if the user has a poor rating, he or she may have a difficult time successfully using the application because, as the *Economist* indicates, a driver has the ability to reject a fare if the user has a poor score.¹² This is significant, again, because such application companies are potentially unaccountable for the driver’s behavior, including any illegal refusals of passengers, unlike licensed bases, which are directly responsible for many of its driver’s behaviors. Such applications are profiting from drivers without accepting responsibility or liability for such services. This forum generated by users and drivers may also implicate significant consumer privacy concerns beyond the scope of this Report.

Some jurisdictions, including Seattle and Chicago, have statutes which expressly prohibit the ability to decline potential fares.¹³ Many of these statutes were enacted to protect consumers from being refused service improperly by placing liability on offenders for any service denials. Therefore, a driver’s ability to accept or decline potential dispatch calls creates a whole host of additional regulatory concerns, even beyond claims made directly by consumers (see discussion below for a more detailed explanation of each jurisdiction’s specific restrictions).

E. Fair “fares” and Overcharging

As discussed herein, in many jurisdictions, a smartphone application does not meet the requirements of a taximeter, which is required for taxicabs to calculate fares based on the distance travelled and the time elapsed. For instance, applications are not “wired” into the

¹¹ <http://www.quora.com/Uber-1/Do-Uber-drivers-actually-rate-their-passengers>

¹² <http://www.economist.com/blogs/babbage/2012/06/technology-and-taxis>

¹³ <http://www.cityofchicago.org/dam/city/depts/bacp/publicvehicleinfo/taxiindustryntices/mccchapter9-112publicpassengervehicles.pdf>

vehicle transmission, but, instead, rely on GPS to calculate the fare.¹⁴ The most significant problem with the use of GPS is the lack of oversight regulation as to the calculation of distance and time, which are significant to the calculation of the fare charge. Additionally, taximeters are calibrated, tested, and sealed by a regulatory authority and require periodic inspections. However, there is no such regulation of GPS in this environment and the method by which a smartphone calculates fares. Because of the lack of weights and measures conformity, consumer protection concerns are raised that smartphone application companies may be charging consumers fares in excess of applicable regulatory limits. Further, some applications dispatch for-hire vehicles. In most jurisdictions, for-hire vehicles must charge fares based on a prearranged basis or in accordance with a filed fare schedule; however, some applications charge passengers like a taxicab, based on distance and mileage (and demand).

Additionally, many jurisdictions, including Seattle,¹⁵ New York,¹⁶ and Washington, D.C. require fares to be charged consistently with the rates either approved or published with the regulating body. For example, in New York, a livery base owner may not charge a fare that is more than the fare listed on the Rate Schedule filed with the New York City TLC.¹⁷

Fare regulation has at least two purposes: consumer protection and the ability to distinguish the services and the transportation markets. There is no transparency about certain smartphone application charges until the ride is complete. Further, the applications merge markets by charging fares for one service while delivering another. For example, when Uber first launched in the District of Columbia, the D.C. Commission targeted the application urging it to come into compliance with regulations.

A D.C. Council Committee recently passed new legislation, which would create a vehicle class for sedans that “shall operate exclusively through dispatch and shall not accept street hails” and shall “calculate fares exclusively using time and distance method.”¹⁸ This is significant because it creates a hybrid class of vehicles that may meet the business model of certain application companies.

F. Taximeter or Non-Taximeter

Taximeter regulation, although specifically enacted in each jurisdiction, generally tends to refer to the National Institute of Standards and Technology (“NIST”) and Handbook 44. Handbook 44 is the national standards of technology relating to weights and measures. Section 5.54 of Handbook 44 contains express provisions regarding the requirements of a taximeter. For consumer protection, taximeters are highly regulated and must meet the rigid specifications of Handbook 44, including such regulation as being directly “wired” into the taxicab to ensure accuracy of the fare calculation.

¹⁴ See, Uber uses GPS data from the ride and charges based on time or mileage, depending on how fast the vehicle is travelling, i.e.: when the vehicle is moving slower than 11 miles per hour, Uber charges based on time and when the vehicle is moving faster than 11 miles per hour, Uber charges based on mileage. See, Uber Support, Payment, Billing & Pricing. Available at <http://support.uber.com/entries/517159-how-does-uber-calculate-the-price-of-my-ride> (June 19, 2012).

¹⁵ SEATTLE, WA. MUNI. CODE § 6.310.320(I)

¹⁶ TLC REGULATION § 59B-23(a)

¹⁷ TLC REGULATION § 59B-23(a)

¹⁸ <http://transportationreviews.com/news/2012/05/uber-dc-proposed-bill-may-mandate-more-rules-for-car-service/>

Generally, all taxicabs must have a taximeter and only taxicabs may charge fares based on time and distance as calculated by a taximeter. However, certain applications operate in the seemingly gray area between the taxicab and for-hire industries, offering for-hire vehicles with fares calculated generally in the same manner as taxicabs. When an app user enters a dispatched for-hire vehicle, the application essentially acts as the taximeter, but in most jurisdictions, for-hire vehicles do not have taximeters. For-hire vehicles are not generally permitted to charge fares calculated in this manner, and as such, a taximeter is inappropriate. In Seattle, for example, for-hire vehicles are expressly defined as non-metered vehicles.

If a smartphone application is deemed a measuring device, it will likely have to meet the technical requirements of the NIST and Handbook 44. However, it is fairly clear from the jurisdictional regulations that the many applications cannot meet the rigid technical requirements of such jurisdictions, let alone Handbook 44, which contains the heart of the technical requirements.

III. National Regulatory Review

A. Jurisdictional Overview

Various approaches to distinguish the for-hire and taxicab industries exist across the jurisdictions of the United States. Two of the primary distinctions used are in (1) how fares are obtained, and (2) how fares are calculated. These distinctions play a significant role in how applications should legally operate; however, some applications fall short of the regulations and have created a potentially dangerous gray market in the transportation industry. The following is a general overview of the for-hire and taxicab vehicle regulations in Seattle, San Francisco, Washington D.C., Chicago, New York City and San Diego.

1. Seattle, Washington

a. *For-Hire Vehicles*

In Washington State, the regulations of for-hire limousines are under the jurisdiction of the State of Washington Department of Licensing (“DOL”) pursuant to the Washington Administrative Code (the “WAC”). The WAC sets forth the rulemaking guidelines in Washington State for the DOL. Recently, counties with large populations, such as Seattle’s King County, gained legislative authority to regulate limousine operations in their respective jurisdictions. Beginning New Year’s Day 2012, Washington State allowed counties with a population of over 500,000 to regulate privately operated limousine transportation services. Prior to this, DOL regulated, inspected and enforced its regulations of limousines exclusively in Washington State pursuant to the Revised Washington Code (the “Washington Code”).¹⁹ This new authority is particularly important for King County in Seattle. Previously, the City of Seattle had no enforcement mechanisms to enforce DOL regulations; however, Seattle was the operating area for approximately 80% of Washington State’s licensed limousines.²⁰

¹⁹ <http://clerk.seattle.gov/~scripts/nph-brs.exe?d=ORDF&s1=117358.cbn.&Sect6=HITOFF&l=20&p=1&u=/~public/cbory.htm&r=1&f=G>

²⁰ <http://transportationreviews.com/news/2011/05/sb-5502-to-allow-enforcement-authority-over-seattle-limousine-companies/>

After months of discussion and in response to requests from Seattle authorities, in December 2011, based on the new authority for localities to regulate limousine operations, Seattle enacted Ordinance Number 123783, which enables the Seattle Department of Finance and Administrative Services to (i) enforce the Washington State rules for limousines, (ii) adopt local laws regulating limousines consistent with state laws, (iii) authorize a cooperative agreement with the DOL for the enforcement of limousine laws and regulations, (iv) and create Chapter 6.320 of the Seattle Municipal Code (the “**Seattle Code**”).²¹ As set forth in this new ordinance, Seattle’s Consumer Affairs Unit (the “**CAU**”) within the Department of Finance and Administrative Services has the ability to inspect limousines operating within Seattle for compliance with insurance requirements, investigate service complaints, conduct limousine street enforcement, issue limousine carrier licenses, and issue business licenses to chauffeurs who are not limousine carriers and conduct business within Seattle.²² However, it should be noted that amendments to the Washington Code were incorporated in the authorizing bill, Senate Bill 5502.

The City of Seattle enacted its own definition of limousine in the Seattle Code. Pursuant to the Seattle Code, a limousine is “a category of for-hire, chauffeur driven, unmetered, unmarked luxury motor vehicle that meets one of the following definitions: stretch limousine, executive sedan, executive van, classic car, executive sport utility vehicle, or stretch sport utility vehicle,” each of which are respectively defined in the Seattle Code.²³ It should be noted that the Seattle Code regulations are consistent with the Washington Code’s limousine provisions.

A limousine operator must obtain a DOL limousine license to transport passengers on a prearranged basis to a specific destination in any of the following vehicles: a stretch limousine, an executive sedan, an executive van, a classic car, an executive sport utility vehicle or a stretch sport utility vehicle.²⁴ An applicant seeking to obtain a limousine carrier license must meet the criteria for licensure set forth in Chapter 46.72A of the Washington Code.²⁵ According to the Washington Code, no limousine may pick up a passenger in Washington State without first obtaining a limousine carrier license. In the event a limousine company from a neighboring state desires to pick-up passengers in Washington State, the Washington Code provides for a special non-resident license, which must be obtained before passengers are picked up.²⁶ This may present an issue for limousine companies that contract smartphone application companies as some applications do not disclose passenger destinations when the fare request is made.

Once the vehicle is licensed, in order to operate as a limousine, the driver must be properly licensed as a chauffer. The Washington Code requires the chauffer to have a passenger manifest in his or her possession to operate a limousine. The manifest may be electronic or paper, must be in English and include the following information: the full name and telephone number for the person who prearranged the service, the date, time and location of passenger pick-up, if payment is due or pre-paid.²⁷ If trips are not dispatched from the limousine carrier’s

²¹ SEATTLE ORDINANCE NO. 123783 (2011).

²² KING COUNTY, OR.CODE § 6.32.005 *et seq.* (2011).

²³ SEATTLE, WA. MUNI. CODE § 6.320.020(A) (2011)

²⁴ <http://www.dol.wa.gov/business/limousine/limolicense.html>

²⁵ WASH. ADMIN. CODE § 308-83-105.

²⁶ WASH. ADMIN. CODE § 308-83-105.

²⁷ WASH. ADMIN. CODE § 308-83-200(2).

office, the trip must be prearranged at least 15 minutes prior to pick up.²⁸ The specific prearrangement period is significant because some applications advertise or state their service alerts the closest vehicle available for immediate pick-up, which may or may not be “prearranged” by 15 minutes if a vehicle is close. Further, under no circumstances are limousine operators (i) permitted to accept street-hails,²⁹ (ii) ask persons on the street if they want to hire the limousine for immediate service³⁰ or (iii) use a third party to provide passengers for them as a substitute for prearranging the service.³¹ In light of these restrictions, there are questions raised as to the compliance of the smartphone applications and their operations. Most smartphone applications can easily meet the manifest requirements as it may be electronic. However, as stated above, most regulatory agencies have not specifically addressed whether the typing-in of your location and summoning a vehicle is considered an on-demand electronic street hail or a prearranged service. If such activity is considered an electronic street hail, the use of smartphone applications in connection with limousine service may be prohibited. Further, the prohibition on the use of a third party to provide passengers as a substitute for prearrangement, calls into question the relationship between some applications and chauffeurs. It begs the question, are chauffeurs who subscribe to smartphone applications using such applications as third parties to circumvent the prearrangement requirement, in direct contravention of the above regulations? To our knowledge, Seattle has yet to expressly answer this question.

It should also be noted that the Seattle Code incorporates a statute parallel to the Washington Code sections discussed above.³² The Seattle Code states it is a civil infraction for a chauffeur to (i) solicit or assign customers either directly or through a third party for immediate, non-prearranged limousine service pick-up as described in § 6.320.020, requiring (as further discussed below in Seattle Prearrangement section of this Report) a predetermined fare and arrangement to be made in advance by the customer at a different time and place of the customer’s pick up³³ or (ii) offer payment to a third party to solicit customers for limousine service pickup without current copies of a written contract regarding such services on file at the third party’s place of business.³⁴ Also, this section of the Seattle Code states the written contract may not allow for immediate, non-prearranged limousine service pick up and the chauffeur must carry with him or her a certificate verifying the existence of the contract.³⁵ Because the Seattle Code incorporates much of the same requirements as the Washington Code, the issues and analysis are generally the same on the city level as on the state level. But, the Seattle Code incorporates the additional requirement of a predetermined fare. Therefore, in addition to requiring that the service be prearranged, the fare must also be predetermined in advance of the trip. As such, there are concerns as to whether smartphone applications are operating in contravention to this requirement.

Additionally, the Seattle Code goes one step further and includes a reciprocal enforcement against an individual (the third party) for the third-party’s infractions, making it a

²⁸ WASH. ADMIN. CODE § 308-83-200.

²⁹ WASH. ADMIN. CODE § 308-83-200(4)(a).

³⁰ WASH. ADMIN. CODE § 308-83-200(4)(c).

³¹ WASH. ADMIN. CODE § 308-83-200(4)(d).

³² See generally, SEATTLE, WA. MUNI. CODE § 6.320

³³ SEATTLE, WA. MUNI. CODE § 6.320.060(G)(1) (2011)

³⁴ SEATTLE, WA. MUNI. CODE § 6.320.060(G)(2) (2011).

³⁵ SEATTLE, WA. MUNI. CODE § 6.320.060(G)(2) (2011).

civil infraction to: (i) accept payment to solicit or assign customers on behalf of a chauffeur for immediate, non-prearranged limousine service pick up described in § 6.320.020³⁶ or (ii) to accept payment to solicit customers for limousine service pick up without current copies of a written contract regarding such services on file with the third party's business, also restricting the contract from providing immediate, non-prearranged limousine service pick up.³⁷ In light of these regulations and the civil penalties against both the chauffeur and any third party operators that defy such regulations, there are concerns raised by the operation of applications in Seattle which dispatch limousines (including all vehicle definitions) for "on-demand" service.

Additionally, for-hire drivers³⁸ shall not refuse to provide service to any passenger, except when: (a) the for-hire driver has been dispatched to another call, (b) the for-hire driver arrives at the place of pick up and upon the arrival the passenger is acting in a disorderly or threatening manner or in a way which a reasonable person would believe the driver's health or safety, or that of others may be endangered, (c) the passenger cannot, upon request, show ability to pay the fare, or (d) the passenger refuses to state a destination upon entering the vehicle.³⁹ These express regulations also call into question any application policies allowing chauffeurs to "accept" or not "accept" a dispatch from the application.

b. *Taxicabs*

The Washington Code delegates the regulation of privately operated taxicab transportation services to the political subdivisions of the state.⁴⁰ The Washington Code expressly states, "cities, towns, counties, and port districts may license, regulate, and control the licensing of privately operated taxicab transportation services operating within their specific jurisdictions."⁴¹ The power of the political subdivisions includes: regulating the entry of a business to provide taxicab transportation services, controlling the rates charged for providing taxicab transportation services and the manner in which fares are calculated and collected, regulation of routes of taxicabs, establishing safety, equipment, and insurance requirements, and any other requirements adopted to ensure safe and reliable taxicab service.⁴² Currently, Seattle regulates taxicabs pursuant to the rules and regulations set forth in the Seattle Code, as well as those regulations established under the inter-local agreement with King County.

The Seattle Code defines taxicab as "every motor vehicle: (a) that is held out to the public as providing transportation to passengers or articles for hire; (b) where the route travelled or destination is controlled by the passenger; (c) that carries signs or indicia of a taxicab, including the words "taxi," "taxicab," or "cab;" and (d) where the fare is based on an amount recorded and

³⁶ SEATTLE, WA. MUNI. CODE § 6.320.060(H)(1) (2011).

³⁷ SEATTLE, WA. MUNI. CODE § 6.320.060(G)(2) (2011).

³⁸ For-hire driver means "Any person in physical of a taxicab or for-hire vehicle, which is required to be licensed under this chapter. The term includes lease driver, owner/operator, or employee who drives a taxicab or for-hire vehicle." See, SEATTLE, WA. MUNI. CODE § 6.310.110(J) (2010). See also, SEATTLE, WA. MUNI. CODE § 6.310.110(K) for the definition of for-hire vehicle (excludes taxicabs, school buses and limousines, et al.)

³⁹ SEATTLE, WA. MUNI. CODE § 6.310.465(L) (2010).

⁴⁰ WASH. REV. CODE § 81.72.200 (1984). Note, Chapter 81, subsection 72 is entitled Taxicab Companies, but does not define taxicab or state whether or not liveries would be included under the provisions of this subsection. However, liveries or for-hire vehicles not operating on a fixed route or carrying less than 7 passengers appear to be unaccounted for in Chapter 81.

⁴¹ *Id.*

⁴² WASH. REV. CODE § 81.72.210 (1984).

indicated on a taximeter (as defined below) or by special contract rate permitted under this chapter.”⁴³ The Seattle Code goes even further and states, despite the foregoing, “taxicab” does not include the definition of those vehicles listed in Section 6.310.110 or *for-hire vehicles*, clearly delineating two separate industries (emphasis added).

Taxicabs shall charge fares based on time and distance, except for flat fares properly filed with the [CAU] Director on forms furnished by the Director, including flat fares to the airport as provided for in the Seattle Code.⁴⁴ In addition, the use of coupons not filed with the Director is strictly prohibited.⁴⁵

Additionally, taxicab associations must maintain a professionally staffed office which is open between the hours of 9 a.m. to 5 p.m. The office shall have a local Seattle phone number, listed in both the white and yellow pages, which must be answered during all hours in which the associated taxicabs are operating.⁴⁶ Every request for service must be satisfied as long as there are operating taxicabs not in use, subject to penalties by (a) the [CAU] Director in the case of the taxicab association or (b) the association in the case of the driver.⁴⁷

2. San Francisco, California

a. *For-Hire Vehicles*

The California State Public Utilities Commission (the “**California Commission**”) has regulatory and safety oversight over for-hire passenger carriers (i.e., limousines, airport shuttles, charter and scheduled bus operators). Authority over intrastate private carriers of passengers is limited to registration of operations and filing evidence of liability insurance.⁴⁸ On the other hand, the San Francisco Municipal Transportation Agency (“**SFMTA**”) is responsible for the regulation of taxicabs and livery vehicles. This bifurcation of livery and limousine service regulation creates a dynamic regulatory scheme for smartphone applications which dispatch liveries and limousines.

The City of San Francisco and the SFMTA allow livery service to be arranged through reservations and street hails. Under this regulatory structure, San Francisco permits for-hire vehicles to apply for and legally engage in both activities (“dual use”). In many jurisdictions, livery and limousine service are traditionally provided by the for-hire company. However, given the split in jurisdictions, each service must meet independent regulatory requirements and restrictions. Despite this, for several years, there have been media reports discussing that a number of limousine drivers engage in illegal street pickups, although they are not properly permitted as for-hire vehicles in San Francisco.⁴⁹ As such, it appears that for-hire vehicles of all types, which are attempting to pick-up street hails in addition to providing

⁴³ SEATTLE, WA. MUNI. CODE § 6.310.110(W) (2010).

⁴⁴ SEATTLE, WA. MUNI. CODE § 6.310.530 (2010).

⁴⁵ *Id.*

⁴⁶ SEATTLE, WA. MUNI. CODE § 6.310.230(A) (2010).

⁴⁷ SEATTLE, WA. MUNI. CODE § 6.310.230(A) (2010).

⁴⁸ <http://www.cpuc.ca.gov/puc/transportation/>

⁴⁹ See, e.g. <http://www.ktvu.com/news/news/authorities-crack-down-on-sf-limo-drivers-illegal/nKRRr/>. See also Joshua Sabatini, “More power may be on the way to crack down on illegal cabs in SF” (February 2011) available at <http://www.sfexaminer.com/local/transportation/2011/02/more-power-may-be-way-crack-down-illegal-cabs-sf#ixzz1dKkiBmJS>.

dispatched/prearranged service, must be permitted by the SFMTA, as well as maintaining the registration and insurance requirements outlined by the California Commission.

Pursuant to the California Public Utilities Code (the “**California Commission Regulations**”), the California Commission issues several types of for-hire permits, depending on the specific services provided by the entity. Depending on the permit issued, the licensed company must meet specific requirements in connection with the fares charged.⁵⁰ For instance, passenger stage corporations (“**PSC**”)⁵¹ must file a tariff with the California Commission setting forth its fares and all carriers must adhere to the fares filed.⁵² A PSC provides transportation services to the general public on an individual-basis with prearranged fixed route service with fixed termini.⁵³ On the other hand, a charter party carrier (“**TCP**”) may charge fares based on time, mileage, or a combination thereof. Additionally, TCPs must provide prearranged service, including the maintenance of a waybill, and may not have meters or roof lights, so as to distinguish the vehicle from a taxicab, which provides “on demand” street hail service.⁵⁴ There are six (6) types of TCP permits issued by the California Commission (depending on the type of service and vehicle) which subject each vehicle to additional regulations.⁵⁵

Here, the issue is again whether or not the typing-in of your location and summoning a vehicle is considered an on-demand electronic street hail or a prearranged service. TCP service must be prearranged to be in compliance with the aforementioned regulations. Further, TCPs may not have meters. Again, if smartphone applications are considered meters, their use in TCPs may run afoul of the prohibition of taximeters in TCPs. In fact, on the SFMTA website, the SFMTA includes a section on illegal operations, citing that limousines are required to prearrange all service and it is illegal to solicit passengers on the street.⁵⁶

To our knowledge, the California Commission has not addressed whether the use of a third party smartphone application would or would not be considered solicitation of a passenger on the street. For example, if a limousine chauffeur contracted with a smartphone application to receive fares when he or she was available, is the notification and indication to the smartphone application company that such vehicle is available considered a solicitation of passengers? Some regulatory agencies, such as in Seattle, have attempted to address this scenario stating a chauffeur may not use a third party to circumvent prearrangement. However, this remains an open issue in California.

⁵⁰ PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, General Order § 158-A, Part 8. Available at <http://162.15.7.24/Published/Graphics/610.pdf> (June 19, 2012).

⁵¹ CALIFORNIA PUBLIC UTILITIES CODE § 226

⁵² <http://www.cpuc.ca.gov/PUC/Templates/Default.aspx?NRMODE=Published&NRNODEGUID=%7b6523CC75-FEE1-4355-AC6B-BCCEA377AA4C%7d&NRORIGINALURL=%2fPUC%2ftransportation%2fFAQs%2fpgsfaq%2ehtm&NRCACHEHINT=Guest#how>

⁵³ CALIFORNIA PUBLIC UTILITIES CODE § 226; CALIFORNIA PUBLIC UTILITIES CODE §§ 1031-1045.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ <http://www.sfmta.com/cms/xcust/realtaxi.htm>

b. *Taxicabs*

The SFMTA has the power to regulate the taxi industry and other motor vehicles for-hire in San Francisco.⁵⁷ Taxicab regulations are set forth in Division II, Article 1100 of the San Francisco Transportation Code (the “**SF Code**”). In order to drive or operate a motor vehicle for-hire in the city of San Francisco one must obtain a permit.⁵⁸

It should be noted that the SF Code *does not apply* to the operation of a motor vehicle engaged in the business of, or used for, transporting passengers for-hire when the vehicle is operated under and by authority of public convenience and necessity or any other authority issued by the California Commission to the extent that the commercial operation of such for-hire vehicle is entirely within the scope of such certificate or authority.⁵⁹

Pursuant to the SF Code, a taxi shall mean a vehicle operated pursuant to a Taxi or Ramp Taxi Medallion (as defined in the SF Code) that is legally authorized to pick up passengers within the City with or without prearrangement, of a distinctive color or colors and which is operated at rates per mile or upon a waiting-time basis, or both, as measured by a Taximeter (as defined in the SF Code) and which is used for the transportation of passengers for hire over and along the public streets, not over a defined route but, as to the route and destination, in accordance with and under the direction of the passenger or person hiring such vehicle.⁶⁰

3. Washington, D.C.

a. *For-Hire Vehicles*

The District of Columbia Taxi Commission (the “**D.C. Commission**”) regulates taxicabs, for-hire vehicles, and limousines operating in the jurisdiction of the District of Columbia pursuant to Title 31 of the Municipal Regulations (the “**D.C. Regulations**”).

Under the Limousine Operators and Vehicles section of the D.C. Regulations, a “sedan” is a “for-hire vehicle designated to carry fewer than six (6) passengers, excluding the driver, which charge for services on the basis of time and mileage.”⁶¹ A “limousine” is “a motor vehicle carrying passengers for-hire in the District, designated to carry fewer than nine (9) passengers, excluding the driver, with three (3) or more doors, other than a taxicab, coach, or wheelchair accessible van, not permitted to accept street hails from prospective passengers in the street, and required to be licensed by the Commission.”⁶² The District of Columbia City Council Committee on Environment, Public Works and Transportation has recently introduced legislation that would incorporate the definition of a “limousine” in the D.C. Official Code. Introduced in December 2011, the “District of Columbia Taxicab Commission Service Improvement

⁵⁷ See section 1075.1 of the San Francisco Police Code

⁵⁸ See S.F. TRANS. CODE § 1105(a)(1).

⁵⁹ See S.F. TRANS. CODE §1101 (a)(2).

⁶⁰ S.F. TRANS. CODE §1102(fff)

⁶¹ WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1

⁶² WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1. Under the same, “District” means the District of Columbia and “Commission” means the District of Columbia Taxicab Commission, established pursuant to the “District of Columbia Taxicab Commission Establishment Act of 1985” as amended. DC Law 6-97; DC Official Code §§50-301 *et seq.* Available at <http://dctaxi.dc.gov/dctaxi/frames.asp?doc=/dctaxi/lib/dctaxi/pdf/dcmr/Chap12Up.pdf> (June 12, 2012).

Amendment Act of 2011” passed the Environment, Public Works and Transportation Committee on June 5, 2012. If passed by the D.C. Council, this legislation will define a limousine as a “public passenger vehicle used exclusively for contract livery services for which the rate is fixed solely by the hour.”⁶³

In light of the foregoing, a sedan may be licensed as a taxicab if it picks up street hails and its fares are based on time and mileage.⁶⁴ The D.C. Regulations state that when a taxicab accepts hourly service, it must charge \$25.00 for the first hour and may charge a fraction of an hour thereafter.⁶⁵ A sedan may also be licensed as a limousine if it does not pick up street hails. It should be noted the D.C. Regulations are unclear as to how a limousine must calculate and charge fares, but the new legislation pending in the D.C. Council and the proposed definition of limousine, if adopted, clearly states that limousines must charge rates fixed by the hour.

As it currently stands, sedans may be licensed as taxicabs, charge at a rate based on time and mileage and accept street hails. Alternatively, sedans can be licensed as limousines, would not be permitted to pick-up street hails, and could charge fares consistent with limousines - yet, the required limousine fares are unclear. The distinction as to whether the summoning of a vehicle through the use of a smartphone application is considered prearranged or electronic street hail is an issue. Also, the method of fare calculation is of importance in the smartphone application context here. The proposed legislation will clarify limousine fare requirements, mandating limousines to charge fixed hourly rates. This is important for smartphone applications which dispatch limousines, as such smartphone applications would be required to charge fares as fixed rates. Currently, most applications charge fares based on time and mileage, *inter alia*, calculated through the smartphone application. If the DC Commission answers the prearranged or electronic street hail question, it may likely permit only one class of sedans to participate in the use of smartphone applications.

In addition to regulating fares, the D.C. Regulations specify that each for-hire vehicle must be properly licensed to accept fares in the District of Columbia.⁶⁶ To accommodate the geography of the greater D.C. area, limousines must be licensed as either a D.C. limousine or have an inter-jurisdictional limousine operation-permit.⁶⁷ There are several criteria to qualify for an inter-jurisdictional limousine operation-permit, but, once qualified, an inter-jurisdictional limousine operation-permit will allow the permittee to transport passengers into D.C. as well as accept passengers in D.C. on a prearranged basis for transport out of D.C.⁶⁸ This is a unique issue to smartphone applications as some applications do not disclose a user’s destination. As such, the driver may not know if he or she can lawfully accept the fare. Further, as discussed above, some applications seek to limit liability as to the transportation services provided.

⁶³ B19-630 “District of Columbia Taxicab Commission Service Improvement Amendment Act of 2011”

⁶⁴ WASH., DC MUNI CODE, Definitions, Title 31, Section 899.1; WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1

⁶⁵ WASH., DC MUNI CODE, Definitions, Title 31, Section 801.6(k)

⁶⁶ *See generally*, WASH., DC MUNI CODE, Title 31

⁶⁷ WASH., DC MUNI CODE, Inter-jurisdictional limousine permit, Title 31, Section 1216

⁶⁸ *Id.*

b. *Taxicabs*

The D.C. Regulations define “taxicab” to mean “any passenger vehicle for hire having a seating capacity of eight (8) or fewer passengers, exclusive of the driver, and operated as a vehicle for passenger transportation for hire by taxicab.”⁶⁹ Each taxicab must be licensed by the D.C. Commission and shall be a sedan, station wagon or minivan⁷⁰ and shall charge a metered rate based upon the calculation of time and mileage.⁷¹ In addition to accepting street hails,⁷² taxicabs may also make prearranged agreements with clients in which the client may request to be picked up or dropped off at a specific location and know the amount of fare in advance.⁷³ The distinction in prearrangement or street hail and fare calculation plays a significant role in smart phone application use in connection with taxicabs. Again, if the D.C. Commission answers whether summoning a vehicle via smartphone application is an electronic street hail or is a prearranged service, this will impact how fares must be calculated, but not whether taxicabs may participate (as taxicabs have “dual use” rights). In January 2012, Uber was alleged by the D.C. Commission to have been operating as a taxicab when Uber charged passengers based on distance and time without its service and vehicles meeting the taxicab requirements. However, as discussed, in May 2012, the D.C. Council proposed new legislation creating a new class of for-hire vehicle license called a “sedan class” license. The new license would allow a for-hire vehicle to be dispatched and allows passengers to be charged fares based on distance and time.

4. Chicago, Illinois

a. *For-Hire Vehicles*

For-hire sedans and limousines in the City of Chicago are regulated by the Department of Business Affairs and Consumer Protection (the “BACP”).⁷⁴ In January 2012, the Municipal Code of Chicago (“MCC”) was amended dividing the current section regulating both taxicabs and for-hire vehicles into two sections, MCC § 9-112 and MCC § 9-114, applicable exclusively to taxicabs and generally to “Public Passenger Vehicles Other Than Taxicabs,” respectively.⁷⁵ The amended ordinances will go into effect on July 1, 2012.⁷⁶ Until that time, MCC § 9-112 contains the controlling ordinances applicable to all public passenger vehicles.⁷⁷ As the period for public comment on this legislation is closed, below includes references to the MCC § 9-114.

⁶⁹ WASH., DC MUNI CODE, Definitions, Title 31, Section 899.1

⁷⁰ WASH., DC MUNI CODE, Parts and Equipment, Title 31, Section 601.1

⁷¹ WASH., DC MUNI CODE, Passenger Rates & Charges, Title 31, Section 801.3

⁷² It should be noted that neither street-hail or prearranged service are defined in the Title 31 of the WASH., DC MUNI CODE.

⁷³ D.C. Commission, FAQ. Can you prearrange a trip in a taxicab? Available at http://dctaxi.dc.gov/dctaxi/cwp/view,A_3,Q_487826,dctaxiNav,%7C30625%7C.asp#46 (last visited June 27, 2012).

⁷⁴ THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, http://www.cityofchicago.org/content/city/en/depts/bacp/supp_info/bacppublicvehicles.html

⁷⁵ THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, <http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/taxiordinance2011.pdf>.

⁷⁶ THE CITY OF CHICAGO, BUSINESS AFFAIRS AND CONSUMER PROTECTION, Public Vehicle Industry Notice, <http://www.cityofchicago.org/content/dam/city/depts/bacp/publicvehicleinfo/taxiindustryntices/taxiindustrynotice12-004newtaxipublicvehicleord.pdf>.

⁷⁷ The Chicago ordinances cited herein are derived from the new ordinances, MCC § 9-112 and MCC § 9-114, which will take effect later this year. A copy of the current code can be found here:

The Chicago Municipal Code defines a livery vehicle as a “public passenger vehicle for hire only at a charge or fare for each passenger per trip or for each vehicle per trip fixed by agreement in advance.”⁷⁸ Additionally, the MCC provides that public passenger vehicles, which include livery vehicles,⁷⁹ may not be “equipped with a meter which registers a charge of any kind.”⁸⁰ The MCC further sets forth that:

It shall be unlawful for any livery vehicle not licensed as such by the City to solicit or accept business within the corporate boundaries of the City of Chicago, except where the passengers are destined to the community in which such livery vehicle is licensed and then only when such transportation has been arranged in advance.⁸¹

Such regulations require livery service to charge fares fixed in advance and prohibit the use of meters. This regulation points to the question of whether or not a smartphone application is considered a meter, and as such its use would be prohibited in livery vehicles. Regardless of whether a smartphone application is deemed a meter, livery vehicles must charge fares based on vehicle or passenger number arranged in advance. If smartphone application companies charge fares for livery service calculated on time, distance and such other services fees and/or gratuity as calculated via the smartphone application, these applications may run afoul of the regulation requiring fixed agreement in advance as calculated per passenger or per vehicle.

The regulations discussed above are in addition to provisions delineating public passenger vehicle specifications, public passenger vehicle licensing, the display of such information, and insurance requirements, among other provisions. All of which are provided in greater detail in Article I of MCC § 9-114.

b. *Taxicabs*

The MCC defines taxicab as “a vehicle licensed under this chapter for hire at rates of fare set forth in this chapter, which are or should be recorded by a taximeter.”⁸² A taximeter is required in all licensed taxicabs, as discussed below.⁸³

Pursuant to MCC § 9-112-320, each licensee and taxicab affiliation has an affirmative duty to respond to a dispatch request for taxicab service in underserved areas, and to ensure compliance, will assume liability for its drivers.⁸⁴ All licensees have an affirmative duty to respond to requests for service and are responsible for the actions of its employees, chauffer, lessee, taxicab affiliation, two-way dispatch service, or other manager that reports to the licensee, for any failure to respond.⁸⁵ Further, each taxicab which is in service and leased by a public chauffer, must, at all times, have a two-way dispatch system activated to a level which is audible

<http://www.cityofchicago.org/content/dam/city/depts/bacp/publicvehicleinfo/taxiindustry/mccchapter9-112publicpassengervehicles.pdf>

⁷⁸ CHICAGO, IL. MUNI. CODE § 9-114-010.

⁷⁹ CHICAGO, IL. MUNI. CODE § 9-114-010.

⁸⁰ CHICAGO, IL. MUNI. CODE § 9-114-060.

⁸¹ *Id.*

⁸² CHICAGO, IL. MUNI. CODE § 9-112-010.

⁸³ CHICAGO, IL. MUNI. CODE § 9-112-010.

⁸⁴ CHICAGO, IL. MUNI. CODE § 9-112-320.

⁸⁵ CHICAGO, IL. MUNI. CODE § 9-112-320.

to the driver and must timely respond to requests for service within the city's jurisdictional limits.⁸⁶ A two-way dispatch system is "a method of communicating by which a dispatcher may communicate simultaneously or individually with the drivers of all vehicles in an organization (taxicab affiliation and all its affiliates) and for each driver to communicate with the dispatcher, so long as the manner of usage of such device in a taxicab does not violate the city, state or federal regulations."⁸⁷

Uber has posted on its website a description of its latest program, "Uber TAXI," which is now operating and testing its use in Chicago taxicabs under the name "Uber." Uber describes the program as currently subject to select Uber users (with the number of users available to increase in the coming weeks). The user arranges for a taxicab just as he or she would otherwise use the Uber application to arrange for a for-hire vehicle. Once the fare is complete, the driver inputs the metered rate of fare into the application and Uber automatically adds a 20% gratuity and service fee and the user pays through the application, just as he or she would when traditionally using the Uber application.

Uber TAXI's business model with Chicago taxicabs raises the question of whether it is following the Chicago regulation requiring taxicab drivers to respond to two-dispatch calls, i.e.: dispatched service calls may not be declined. Additionally, the MCC states, "no person shall operate or provide a taxicab two-way dispatch system without first obtaining a license from the Commissioner."⁸⁸ It should also be noted that an application for a license to operate a two-way dispatch system requires a principal place of business in Chicago.⁸⁹

Further, as a promotion, Uber TAXI indicates that it is or will begin offering free fares for the first \$20, including gratuity for a limited time. To take part in Uber TAXI's free fares, the passenger will need to download the application, including storing credit card information, to request a ride. After the first \$20 of fare and automatic gratuity, standard fare and gratuities will apply. The current (and the proposed new Rules and Regulations to take effect starting July 1, 2012) state that *Licensees* may issue coupons or vouchers which may be used in lieu of cash payment for taxicab fares.⁹⁰ Pursuant to this regulation, a "'Licensee' is the holder of a Taxicab Medallion License issued by the City of Chicago pursuant to the provision of Chapter 9-112 of the MCC, as amended."⁹¹ It would not be illegal for a Licensee to issue coupons or vouchers in lieu of cash payment; however, it is unclear: (a) whether Uber is a Licensee under the Rules and Regulations; or (b) whether Uber is permitted to market such coupons or vouchers issued by a Licensee (i.e. if Uber were to require each of the Licensees it contracts with to independently issue the coupons with the understanding that Uber would advertise the coupons or reimburse the Licensee for each coupon redeemed).

⁸⁶ CHICAGO, IL. MUNI. CODE § 9-112-320(c).

⁸⁷ CHICAGO, IL. MUNI. CODE § 9-112-010.

⁸⁸ CHICAGO, IL. MUNI. CODE § 9-112-550

⁸⁹ *Id.*

⁹⁰ CHICAGO RULES AND REGULATIONS FOR TAXICAB MEDALLION LICENSE HOLDERS, Rule 16.02 (Note, the current Rules and Regulations require those taxicab medallion licensees who issue such coupons to offer an additional 10% discount for purchasers over 65 years of age. This requirement is removed from the proposed Rules and Regulations.)

⁹¹ CHICAGO RULES AND REGULATIONS FOR TAXICAB MEDALLION LICENSE HOLDERS, Definitions.

5. New York, New York
 - a. *For-Hire Vehicles*

The New York City TLC is responsible for licensing and regulating taxicabs, for-hire liveries, and limousines. The TLC promulgated regulations governing the operations of for-hire vehicles, including taxis and limousines (the “**TLC Regulations**”).

In December 2011, New York State passed legislation, which was amended in February 2012, known as the “Street Hail Livery Law.” The TLC passed rules to implement the Street Hail Livery Law on April 19, 2012. In sum, the law calls for the issuance of 18,000 licenses for street hail livery vehicle licenses that would be allowed to accept street hails in New York City, except within the Manhattan central business district and the airports. At this time, only taxicabs may legally accept street hails within New York City. In order to address accessibility needs, the law mandates that twenty percent (20%) of the street hail livery vehicles be wheelchair accessible, and also allows New York City to issue 2,000 medallions for accessible taxicabs. The Street Hail Livery Law has not been implemented as a result of some recent litigation.⁹²

TLC Regulation 59B-11 requires for-hire vehicle service to be prearranged through a TLC licensed for-hire base (or business) of a luxury limousine, black car, or livery vehicle. TLC regulations require that limousine and black car businesses transact not more than 10% of their business in cash or credit card (as opposed to contractual voucher work).⁹³ Further, New York

⁹² The Street Hail Livery Law is on hold, however, because of litigation initiated by taxicab medallion owners, medallion owner groups, financial institutions, and credit unions challenging the law. Three lawsuits were filed in the New York State Supreme Court in New York County and consolidated and heard before Justice Arthur Engoron. The plaintiffs have sued New York State, New York City and the TLC. Recently, two different livery owner groups have joined the litigation as well. On June 1, 2012, Justice Engoron issued a temporary restraining order (“TRO”) based on his review of the initial briefs and the oral argument on May 31, 2012. Although there were several causes of action brought by the plaintiffs, the judge based his order on the argument that New York State passed this law with a “home rule” message from the New York City Council as to a local matter – namely, the regulation of taxicab service. As part of his TRO, Justice Engoron has ordered that the New York City may not implement any part of the law. As a result, the Street Hail Livery Law is on hold. A decision on the merits is expected shortly.

In addition to the Street Hail Livery Law litigation, there has been a federal class action initiated by disable persons and advocacy groups against the TLC based on alleged violations of the Americans with Disabilities Act (“ADA”). On December 23, 2011, a New York federal court, in Noel v. New York City Taxi and Limousine Commission, found that, as a result of its policies and regulations, the TLC denied disabled passengers meaningful access to the New York City taxicab service in violation of the ADA. Currently, there are approximately 232 taxicabs that are wheelchair accessible in the fleet of approximately 13,237 taxicabs.

To remedy the lack of accessible vehicles in the New York City taxi fleet, the court ordered that “all new taxi medallions sold or new street hail livery licenses or permits issued by the TLC must be for wheelchair accessible vehicles,” until the TLC provides an acceptable plan for providing meaningful access to disabled passengers to the court. On April 19, 2012, the TLC appealed the decision to the Second Circuit Court of Appeals, and, on that date, the Second Circuit issued a temporary injunction that stayed the district court’s decision.

On June 28, 2012, the Second Circuit issued its decision on the merits in Noel v TLC, and found that the ADA does not obligate the TLC to use its licensing and regulatory authority over the New York City taxi industry to require that taxi owners provide meaningful access to taxis for disabled persons. The Second Circuit found that the federal district court judge erred, and that summary judgment should be granted for the TLC. The federal ruling has no bearing on the Street Hail Livery Law case in the New York State Supreme Court.

⁹³ TLC REGULATION § 59B-03(c)(3); TLC REGULATION § 59B-03(p)(3); and TLC REGULATION § 59B-03(m)(3)

State laws require that limousine passengers be assessed a surcharge for a state-authorized Workers' Compensation Fund to benefit drivers and a transportation sales tax.⁹⁴

The TLC has attempted to address some of the regulatory concerns associated with smartphone applications and issued an industry notice on the subject matter. In TLC Industry Notification #11-16, dated July 18, 2011 (the "**Industry Notice**"), the TLC went as far as to notify all drivers of their responsibility of compliance, stating that no for-hire vehicle owners and drivers may contact a smartphone application developer without the approval of their for-hire base and that accepting fares from this application would not only put the application at risk, but also the for-hire base. The Industry Notice further noted that under no circumstances may a medallion taxicab use a smartphone application for dispatch services.⁹⁵ For-hire vehicle bases would be held accountable by the TLC for any violations that may exist as a result of its use of a smartphone application.

The TLC also declared in the Industry Notice, that a smartphone application that provides for-hire services directly through the use of a smartphone application and not through an agreement with one or more licensed for-hire bases will be charged with full TLC compliance, including registration as a for-hire base. The TLC may request evidence that the TLC will review to determine whether or not the smartphone application complies with all TLC and other regulations or if it must be licensed as a for-hire base. Lastly, the TLC reinforced its obligation and responsibility to ensure the safety and security of passengers and as a result investigate any complaints arising from any transportation of passengers. As such, the TLC may request information from any party involved, including the smartphone application developers or owners, such as the details of trips, vehicles, drivers, affiliated bases, and so forth.

As discussed above, the TLC has also issued a request for proposal ("**RFP**") for smartphone application. According to the smartphone application RFP, the features of a fare payment application must include, at a minimum, (i) the ability for passengers to pay fares using a smartphone; (ii) the trip information would have to be quickly and easily transferred between the Taxicab Passenger Enhancements Program ("**TPEP**")/meter system⁹⁶ and the smartphone; (iii) passengers must be able to view their specific trip and fare information on their smart phones to be able to "approve" the amount and add a gratuity (iv) drivers must be able to receive quick confirmation via the TPEP system (prior to the passenger exiting the vehicle) that the fare has been paid; (v) the ability for two or more passengers to split the fare on two or more smartphones/accounts; (vi) the option for a passenger to pre-set the smartphone to automatically

⁹⁴ TLC REGULATION § 59B-12(b)(3)

⁹⁵ The TLC may change its position on this issue in the near future. See discussion of Square technology on pg. 8 *infra*.

⁹⁶ TPEP refers to the TLC's in-taxi technology system. TPEP systems have a passenger information monitor, hard mounted in the passenger area of the vehicle, and a taxicab driver information monitor, which interface with the taximeter and aids the taxicab driver in performing his or her duties while the systems are recording trip data. TPEP systems record and store trip sheet data, process credit card payments, and enable communication between the TLC and taxicab driver and between the medallion owner and taxicab driver. The TLC currently has two (2) TPEP vendors: Creative Mobile Technologies ("**CMT**") and VeriFone.

The TLC had intended for the street hail livery vehicles to include similar technology and enacted rules for the Livery Passenger Enhancements Program ("**LPEP**") at its public meeting on May 31, 2012. One distinction from the TPEP rules, however, is that the TLC will not award a contract for LPEP vendors. Instead, the TLC adopted rules that the LPEP vendors would be approved through licensing. Since the LPEP rules are a component of the Street Hail Livery Law, the LPEP rules are also "on hold" pursuant to the litigation discussed in this Report.

pay the fare and gratuity when the fare ends; and (vii) the option to automatically add a pre-set gratuity amount.⁹⁷ The RFP responses were due on June 14, 2012, and the TLC expects to issue its award in November 2012.

Additionally, the TLC was approached by Square, Inc. (“Square”) with a proposal for a mobile in-taxi technology system. The TLC authorized a pilot program to test Square’s system, and also invited the two currently authorized TPEP providers of in-taxi technology systems (CMT and Verifone) to submit proposals for alternative in-taxi technology systems. Like TPEP, the Mobile Technology System will have a passenger information monitor, hard mounted in the passenger area of the vehicle, and a taxicab driver information monitor, which will interface with the meter and aid the taxicab driver in performing his duties while the systems are recording trip data. The test of Square’s Mobile Technology System will allow the TLC to determine whether or not it is feasible to use an iPad, employing applications in lieu of the current passenger information monitors, to use an iPhone in lieu of the current driver information monitor to interface with the meter and to evaluate the cost savings, if any, to be had by using the mobile technology system. The pilot program is expected to be completed in February 2013.⁹⁸

b. *Taxicabs*

A “taxicab” under TLC Regulations is a “motor vehicle, yellow in color, bearing a Medallion (as defined in the TLC Regulations) indicating that it is licensed by the TLC to carry up to 5 passengers for hire and authorized to accept hails from persons in the street.”⁹⁹ Taxicabs in New York are not authorized to accept prearranged service. Therefore, if the TLC deems summoning a taxicab via a smartphone application to be prearrangement, taxicabs would not be permitted to participate in smartphone applications. If the Street Hail Livery Law is ultimately deemed valid after the legal challenges, it appears livery vehicles operating in the “outer boroughs” of New York could participate with smartphone application companies, regardless of whether or not the TLC states the use of smartphone applications is prearranged service or an electronic street hail.

6. San Diego, California

a. *For-Hire Vehicles*

In San Diego, all for-hire vehicles such as sedans and limousines are regulated on the state level by the California Commission. Please refer to the sections of this Report on San Francisco, California, for discussion of the California Commission and its regulations on for-hire vehicles and limousines in California.

b. *Taxicabs*

In San Diego, the Board of the Metropolitan Transit System (the “MTS”) oversees the Taxicab Administration Department.¹⁰⁰ The Taxicab Administration Department is responsible

⁹⁷ http://www.nyc.gov/html/tlc/downloads/pdf/notice_of_solicitation_smart_phone_app.pdf

⁹⁸ http://www.nyc.gov/html/tlc/downloads/pdf/pilot_program_resolution.pdf

⁹⁹ TLC REGULATION § 51-01

¹⁰⁰ SAN DIEGO, CAL. METRO. TRANSP. SYS., <http://www.sdmts.com/Taxi/taxiHome.asp> (last visited June 27, 2012).

for monitoring compliance with administrative and operational regulations, *inter alia*.¹⁰¹ Together the MTS and the Taxi Administration Department promulgate the rules for regulation on the local level. San Diego taxicab rules are set forth in the San Diego Code of Regulatory Ordinances (the “**San Diego Ordinance**”).¹⁰² A “taxicab” is every vehicle other than a vehicle-for-charter, a jitney, a nonemergency medical vehicle, a sightseeing vehicle, or LSV which: (a) transports passengers or parcels or both over public streets and (b) is made available for hire on call or demand through “cruising” at taxi stand or by telephone to destinations specified by the hiring passenger.¹⁰³ Each permit holder shall file with the Chief Executive Officer the rates that he/she will charge, which shall not exceed the maximum amount set by the Chief Executive Officer.¹⁰⁴ This presents an interesting issue for taxicabs that contract with smartphone application companies. For one, all parties must charge the same rates for a specific vehicle, i.e.: if a permit holder files a set of rates, he or she must have the taximeter calibrated to charge those specific rates and must charge in accordance with the rates filed. Therefore, if a taxicab accepts a fare via smartphone application, he or she must still charge rates consistent with his or her filed rates, which may not be in excess of the limits set by the Chief Executive Officer. However, it is unlikely that the taxicab driver or permit holder would be permitted to charge his or her fares via the smartphone, unless the smartphone is aware of how to calculate such fare. It is clear that smartphone applications incorporate a mechanism to calculate fares just as a taximeter, but the issue is what fare is the smartphone application calculating? Would such calculation coincide with the filed fares for each specific permit holder? This may be solved by requiring all permit holders who contract with such application companies to file the fares as calculated and charged by the smartphone application, and charge such fares at all times, regardless of whether the smartphone application is used. Nevertheless, it may present an added wrinkle in the use of smartphone applications.

B. Pre-arrangement

1. Seattle

As mentioned, pursuant to the WAC, for-hire vehicles must be prearranged at least 15 minutes before the passenger is scheduled to be picked up, unless dispatched from the limousines carrier’s business office.¹⁰⁵ Additionally, a limousine carrier must ensure the chauffeur does not (i) pick up passengers without prearranged service, (ii) load passengers or their luggage into the vehicle without having a passenger manifest for such passengers, (iii) ask persons on the street if they want to hire the limousine or try to attract customers for immediate services, (iv) use a third-party to provide passengers for them as a substitute for prearranging services, (v) stand near doors or walkways to business or transportation centers in a manner such that persons must walk around them, (vi) touch members of the public or their luggage without consent, (vii) park and leave the limousine in a passenger loading zone or (viii) overstay the time limit in a passenger loading zone.¹⁰⁶ A chauffeur must have the passenger manifest on his or her person at all times.

¹⁰¹ SAN DIEGO, CAL. METRO. TRANSP. SYS., http://www.sdmts.com/Taxi/documents/TaxiFS_4_2011.pdf (last visited June 27, 2012).

¹⁰² SAN DIEGO ORDINANCE §§ 21.301 *et seq.*

¹⁰³ SAN DIEGO ORDINANCE NO. 11 § 1.1(gg)

¹⁰⁴ SAN DIEGO ORDINANCE NO. 11 § 2.2(C)

¹⁰⁵ WASH. REV. CODE § 308-83-200

¹⁰⁶ *Id.*

The passenger manifest may be electronic or paper form, provided that it confirms the prearrangement of limousine services.¹⁰⁷

Additionally, in accordance with the newly enacted limousine section of the Seattle Code, Seattle requires that limousines (as defined by the Seattle Code above) engage only in prearranged services. Limousine service must: (i) be prearranged by a customer or a customer's agent at a time and place different from the customer's time and place of departure, (ii) charge a fare agreed upon in advance of departure, (iii) under no circumstances be immediately engaged for services, even if the chauffeur is the limousine owner or officer of a company with a single exception of a stand-hail limousine operated at a facility owned and operated by a port district with more than 1 million or more.¹⁰⁸ The Seattle Code also creates additional penalties for the enforcement of the regulation requiring limousine chauffeurs to maintain and have on their persons written or electronic record of the prearrangement, as required by the DOL.¹⁰⁹ Note, the Seattle Code allows for a "customer's agent" to be responsible for the booking of the vehicle. Generally, an agency relationship may arise when one engages another to perform a task for the former's benefit.¹¹⁰ Although legal analysis of this potential relationship is not reviewed here, based on traditional notions of agency, a review of the smartphone application-passenger (user) relationship may find an application to be a customer's agent. Key elements such as consent and control are essential to successfully evidencing an agency relationship.¹¹¹ If an application is not deemed a customer's agent, then use of the smartphone application with the limousine service may violate this regulation and penalties may be assessed.

2. San Francisco and San Diego

The relevant rules regarding "prearrangement" for both San Diego and San Francisco are found in the California Commission Regulations. These regulations require that Class A and Class B charter-party carriers shall provide transportation "only on a prearranged basis."¹¹² The rule further states that the party arranging the transportation shall have exclusive use of the vehicle, and the driver shall possess a waybill.¹¹³ The waybill will include the following information: name of carrier and TCP¹¹⁴ number; vehicle license plate number; driver's name; name and address of person requesting or arranging the charter; time and date when charter was arranged; information as to whether the transportation was arranged by telephone or written contract; number of persons in the charter group; name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation; and points of origination and destination.¹¹⁵ The inclusion of a passenger's destination in the waybill may present complex issues for smartphone application companies beyond the scope of this memo. For example, some

¹⁰⁷ *Id.*

¹⁰⁸ Seattle Muni Code § 6.320.020(A) (2011)

¹⁰⁹ Seattle Muni Code § 6.320.020(D) (2011)

¹¹⁰ Ferguson v. King County, WL 2012 899249, 3 (Wash. App. Div. 1 2012) (citing O'Brien v. Hafer, 122 Wn.App 279, 281 (2004)).

¹¹¹ Ferguson at 3.

¹¹² CAL. PUB. UTILITIES COMMISSION REGULATIONS §3.01.

¹¹³ *Id.* Waybills will also assist in proving, if challenged, that transportation services are provided between more than one local jurisdiction, and that such transportation services are under the jurisdiction of the California Commission.

¹¹⁴ "TCP" refers to charter-party carrier.

¹¹⁵ CAL. PUB. UTILITIES COMMISSION REGULATIONS §3.01

smartphone applications do not require the passenger to log his or his destination for a variety of reasons, some of which may include: passenger convenience, inclusion of multiple destination and potential service refusals. Given these facts, some smartphone applications may run afoul of this regulation, as it does not include destination information.

As set forth in the California Commission brochure entitled “Basic Information for Passenger Carriers and Applicants,” the California Commission states that the primary difference between a taxicab and a TCP is that the latter must be prearranged.¹¹⁶ Furthermore, “[a]ll transportation performed by charter-party carriers must be arranged beforehand, and the driver must have a *completed waybill* in his or her possession at all times during the trip . . .”¹¹⁷ Again, in addition to the electronic street hail or prearranged service issue, there is a potential for smartphone applications to create incomplete waybills.

3. Washington, D.C.

Under the Limousine Operators and Vehicles section of the D.C. Regulations, a “sedan” is a “for-hire vehicle designated to carry fewer than six (6) passengers, excluding the driver, which charge for services on the basis of time and mileage.”¹¹⁸ A “limousine” is “a motor vehicle carrying passengers for-hire in the District, designated to carry fewer than nine (9) passengers, excluding the driver, with three (3) or more doors, other than a taxicab, coach, or wheelchair accessible van, not permitted to accept street hails from prospective passengers in the street, and required to be licensed by the D.C. Commission.”¹¹⁹

In light of the foregoing, a sedan may be licensed as a taxicab if it picks up street hails and its fares are based on time and mileage.¹²⁰ The D.C. Regulations state that when a taxicab accepts hourly service, it must charge \$25.00 for the first hour and may charge a fraction of an hour thereafter.¹²¹ A sedan may also be licensed as a limousine if it does not pick up street hails. It should be noted that the D.C. Regulations are unclear as to how a limousine must calculate and charge fares, and the recently-proposed changes to the D.C. Code do the following: (i) clarifies that the vehicles in the “limousines class” must charge fares by the hour and (ii) creates a “sedan class” license which would allow for-hire vehicles to be dispatched and charge fares based on distance and time.

In addition to regulating fares, the D.C. Regulations specify each for-hire vehicle must be properly licensed to accept fares in the District.¹²² To accommodate the geography of the greater D.C. area, limousines must be licensed as either D.C. limousines or have an inter-jurisdictional

¹¹⁶ The information packet can be found at: <http://www.cpuc.ca.gov/NR/rdonlyres/42294D2B-412E-466E-A74B-F1862BFC6924/0/PassengerCarriersBasicInfoandApplicantsRev012811.pdf>

¹¹⁷ *Id.* (Emphasis added).

¹¹⁸ WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1

¹¹⁹ WASH., DC MUNI CODE, Definitions Title 31, Section 1299.1. Under the same, “District” means the District of Columbia and “Commission” means the District of Columbia Taxicab Commission, established pursuant to the “District of Columbia Taxicab Commission Establishment Act of 1985” as amended. DC Law 6-97; DC Official Code §§50-301 *et seq.* Available at <http://dctaxi.dc.gov/dctaxi/frames.asp?doc=/dctaxi/lib/dctaxi/pdf/dcmr/Chap12Up.pdf> (June 19, 2012).

¹²⁰ WASH., DC MUNI CODE, Definitions, Title 31, Section 899.1; WASH., DC MUNI CODE, Definitions, Title 31, Section 1299.1.

¹²¹ WASH., DC MUNI CODE, Definitions, Title 31, Section 801.6(k)

¹²² *See generally*, of the DC Muni Code, Title 31.

limousine operation-permit.¹²³ There are several criteria to qualify for an inter-jurisdictional limousine operation-permit, but once qualified, an inter-jurisdictional limousine operation-permit will allow the permittee to transport passengers into D.C. as well as accept passengers in D.C. on a prearranged basis for transport out of D.C.¹²⁴

4. Chicago

The MCC requires that livery vehicles prearrange service; “livery vehicle” means a public passenger vehicle for hire only at a charge for fare for each passenger per trip or each vehicle per fixed trip by agreement in advance.¹²⁵ Therefore, if the summoning of a vehicle via a smartphone application is deemed to be an electronic street hail, smartphone use in the livery vehicles may be prohibited.

5. New York City

TLC Regulation 59B-11 requires for-hire vehicle service to be prearranged through a TLC licensed base (or business) of either a luxury limousine, black car or livery vehicle. TLC regulations require that limousine and black car businesses transact not more than 10% of their business in cash or credit card (as opposed to contractual voucher work).¹²⁶ Further, New York State laws require that limousine passengers be assessed a surcharge for a state-authorized Workers’ Compensation Fund to benefit drivers and a transportation sales tax.¹²⁷

As smartphone application companies entered the New York City market, the TLC issued two Industry Notices to make clear the relevant TLC Regulations applicable to such companies.¹²⁸ Industry Notice #11-15, dated July 1, 2011, stated that the use of smartphone applications is permitted, provided the base complies with TLC regulations. Industry Notice #11-16, dated July 18, 2011, stated that a “smartphone application that functions solely as a referral, reservation or advertising service for a licensed base will generally not require a licensure.”

C. Taximeters

1. NIST and Weights and Measures Standards

a. *Seattle*

The Washington Code adopts the definitions of basic units as established by the NIST and such definitions govern weighing and measuring devices used in commercial activities and other transactions involving weights and measures within the state, such as the taximeter.¹²⁹ The Washington Code allows the state to use an official seal of approval for each weighing and measuring instrument or device that has been tested, inspected, and found to be correct.¹³⁰ The

¹²³ WASH., DC MUNI CODE, Inter-jurisdictional limousine permit, Title 31, Section 1216

¹²⁴ *Id.*

¹²⁵ CHICAGO, IL. MUNI. CODE § 9-112-010

¹²⁶ TLC REGULATION § 59B-03(c)(3); TLC REGULATION § 59B-03(p)(3); and TLC REGULATION § 59B-03(m)(3)

¹²⁷ TLC REGULATION § 59B-12(b)(3)

¹²⁸ See Industry Notice # 11-15 on July 1, 2011; see also Industry Notice #11-16 on July 18, 2011

¹²⁹ WASH. REV. CODE § 19.94.150 (1991)

¹³⁰ WASH. REV. CODE § 19.94.163 (1995)

Washington Code allows each city to select to have, or not to have, a city sealer.¹³¹ If a city selects to have a city sealer, the city may do so by the adoption of rules to govern the city sealer through local ordinances.¹³² If a city selects to have a city sealer, the state will biennially inspect the city sealer for compliance with state regulation standards on weights and measures.¹³³ It is unnecessary to seek or obtain the state seal of approval if a city seal of approval is obtained, because the state directly regulates the city's seal of approval through biennial inspection and, therefore, any city seal of approval must have previously obtained a state seal of approval.¹³⁴

Under the Seattle Code, a "taximeter" is any instrument or device by which the charge for hire of a passenger-carrying vehicle is measured or calculated either for the distance traveled by such vehicle or for waiting time, or for both, and upon which such calculated charges shall be indicated by means of figures.¹³⁵ According to the Director's rules, the taximeter must be sealed by a city taxicab inspector, be capable of issuing a receipt and receipt paper must be installed in order to pass a safety inspection.¹³⁶

In Seattle, weights and measures inspections are conducted by the CAU under the Department of Finance and Administrative Services.¹³⁷ The CAU operates a Testing Station at which "taximeter tests" are conducted.¹³⁸ As defined in the Seattle Code, a taximeter test is "the test of a taximeter conducted by the Director using procedures and specifications contained in Handbook 44 Specifications, Tolerances, and Other Technical Requirements for Weights and Measuring Devices, published by the NIST."¹³⁹

Further, all taximeters placed into service after July 6, 1997 shall have a Certificate of Conformance issued by the National Conference on Weights and Measures showing compliance with the National Type Evaluation Program.¹⁴⁰ The taximeter test is conducted on a simulated distance device, which includes roller equipment that is turned by the taxicab's driver wheels.¹⁴¹ To function properly, a taximeter must have receipt paper, automatically print a receipt at the end of each trip, and the receipt must include the following information: taxicab name and number, date, start and end of trip time, distance traveled, fare, additional charges, total fare, and the taxicab complaint hotline phone number.¹⁴²

Under the current form of the statute, it is not likely a "taximeter" only capable of an e-mail or text message receipt would satisfy the requirements of a properly functioning taximeter

¹³¹ WASH. REV. CODE § 19.94.280 (1995)

¹³² WASH. REV. CODE § 19.94.280 (1995)

¹³³ WASH. REV. CODE § 19.94.216 (1995)

¹³⁴ WASH. REV. CODE § 19.94.310 (1995)

¹³⁵ SEATTLE, WA. MUNI. CODE § 6.310.110 (2010)

¹³⁶ CITY OF SEATTLE TAXICAB & FOR-HIRE VEHICLE RULES, DIR. RULES, DEFINITIONS R-6.310.320G(dd) (2001).

¹³⁷ FIN. & ADMIN. SVCS., CONSUMER AFFAIRS, CITY OF SEATTLE WEIGHTS & MEASURES, <http://www.seattle.gov/consumeraffairs/wmdefault.htm> (last visited June 16, 2012).

¹³⁸ *Id.*

¹³⁹ CITY OF SEATTLE TAXICAB & FOR-HIRE VEHICLE RULES, DIR. RULES, DEFINITIONS R-6.310.110 (2001)

¹⁴⁰ *Id.* See National Conference on Weights & Measures, available at <http://www.ncwm.net/content/org-ntep> (NTEP provides final review and approval of recommendations to amend NCWM Publication 14, Checklists, and Test Procedures and makes recommendations to the NCWM Board Administrative Policy).

¹⁴¹ FIN. & ADMIN. SVCS., CONSUMER AFFAIRS, CITY OF SEATTLE WEIGHTS & MEASURES, <http://www.seattle.gov/consumeraffairs/taxiInsp.htm> (last visited June 27, 2012).

¹⁴² *Id.* See, SEATTLE, WA. MUNI. CODE § 6.310.320 (2010)

because the statute states the taximeter shall have paper and automatically print a receipt. However, the argument may be made that the statute is out-dated and that providing an e-mail or text message receipt with the mandatory information would satisfy the statute in light of advancing technologies. After June 30, 2010, all taximeters shall: disable when there is no receipt paper, automatically print a receipt at the end of each trip, be password protected for statistical data and the password shall be issued by the Director to each taximeter technician, and include a receipt with the phone number for the taxicab passenger complaint hotline (206-296-TAXI).¹⁴³

Further, due to the inter-local agreement between Seattle and King County, taxicabs must also conform with and obtain a taxicab license from King County, Washington.¹⁴⁴ However, many of the requirements of the City of Seattle and King County are duplicative. The King County vehicle standards require the taximeter “to be sealed and functioning per the ordinances.”¹⁴⁵ Before each shift, the driver must check the taximeter seal to determine whether the equipment is functioning properly,¹⁴⁶ and a taxi driver may not operate a taxicab with an unsealed, improperly functioning, or inaccurate taximeter.¹⁴⁷ In King County, the taximeter, as also required by the City of Seattle, must be capable of issuing receipts.¹⁴⁸ The King County Code also proscribes upon satisfactorily passing the meter inspection, a written notice shall be plainly posted and a security seal attached to the taximeter as proscribed by the director.¹⁴⁹ Finally, if the security seal on the taximeter is missing, broken, or tampered with, it shall be grounds for immediate suspension of the vehicle owner’s license, as required by King County Code § 6.64.300 for operation of a taxicab or for-hire vehicle.¹⁵⁰

In October 2011, the CAU submitted a request for a proposed amendment to the NIST Handbook 44 to the National Conference on Weights and Measures (the “NCWM”), whose Specifications and Tolerance Committee develops the specifications and tolerances and other technical requirements for weighing and measuring devices as published in the NIST Handbook 44. In this request, the CAU states there are GPS system applications designed to compute fares based on distance and/or time measurements that are actively being introduced into the for-hire and taxicab industries across the United States and without the NCWM input and regulation, consumers are increasingly vulnerable to inconsistent and inflated fares. Additionally, the CAU recognizes that the current regulation of “black box taximeters” and Section 5.54 Taximeters of Handbook 44 would have to be completely redrafted to account for the use of the “virtual taximeters.” However, as further discussed below, this request was made a few months after the NIST formed a working group on the operation of taximeters, and the NCWM has not yet made changes to Handbook 44 to so reflect the CAU’s request as of this date.

¹⁴³ *Id.*

¹⁴⁴ KING COUNTY, OR.CODE § 6.64.007 (2009)

¹⁴⁵ KING COUNTY, OR.CODE § 6.64.370 (2009)

¹⁴⁶ KING COUNTY, OR.CODE § 6.64.650 (2009)

¹⁴⁷ KING COUNTY, OR.CODE § 6.64.670 (2009)

¹⁴⁸ KING COUNTY, OR.CODE § 6.64.720 (2009)

¹⁴⁹ KING COUNTY, OR.CODE § 6.64.400 (2009)

¹⁵⁰ KING COUNTY, OR.CODE § 6.64.440(a)(2) (2009)

b. *San Francisco*

Taximeters are not required in for-hire vehicles, nor would they be sufficient to calculate livery fares. Although such fares will vary depending on circumstances, “no charter-party carrier of passengers shall, directly or through an agent or otherwise, nor shall any broker, contract, agree, or arrange to charge, or demand or receive compensation, for the transportation offered or afforded that shall be computed, charged, or assessed on an individual-fare basis.”¹⁵¹

The California Department of Food and Agriculture includes a Division for Measurement Standards, which establishes the standards in California for weights and measures.¹⁵² The Division of Measurement Standards has adopted, and incorporated by reference, the national standard as stated and amended in Handbook 44. The Administrative Code of California officially adopts the national standard by its express terms stating, “all commercial weighing and measuring devices shall conform to the latest requirements set forth in the National Institute of Standards and Technology Handbook 44 ‘Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices.’”¹⁵³

Based on these definitions, smartphone applications operating in San Francisco for charter party carriers of passengers – TCPs – would raise questions if the applications are based on fares in the same manner as a taximeter, since taximeters are prohibited in TCPs. Additionally, if the smartphone applications operated in connection with a taxicab and based the fares on data other than the measurements from a taximeter, such use would raise questions with those applications’ compliance with the rules of the SFMTA. In light of the lack of weights and measures conformity, consumer protection concerns are raised that smartphone application companies may be charging consumers in San Francisco fares in excess of applicable regulatory limits.

c. *Washington, D.C.*

In the District of Columbia, taximeters are required for each licensed taxicab. According to the District’s Municipal Code, the taximeter can only be installed by a taximeter shop.¹⁵⁴ The taximeters must meet the specific requirements and specifications as established by Handbook 44.¹⁵⁵ In addition to meeting the specifications of Handbook 44, taximeters must meet the specifications promulgated in the D.C. Municipal Code, Chapter 31, Subsection 602. For example, the taximeter must allow for the calculation of the (i) flag drop rate, (ii) distance rate, (iii) luggage rate, (iv) radio dispatch rate, (v) fuel surcharge, (vi) snow emergency and (vii) wait time charges.¹⁵⁶ Additionally, the taximeter shall be fully electronic, maintain shift statistics, year-end statistics and be capable of printing receipts.¹⁵⁷ Taximeters shall be constructed of hard impenetrable plastic or metal and sealed by a licensed taximeter business.¹⁵⁸

¹⁵¹ *Id.*

¹⁵² CAL. DEP’T OF FOOD & AGRIC., REGS., available at <http://www.cdfa.ca.gov/dms/regulations.html>.

¹⁵³ CAL. CODE REGS. Title. 4 § 4000

¹⁵⁴ See WASH., DC MUNI CODE § 13

¹⁵⁵ WASH., DC MUNI CODE § 31-602.3(z)

¹⁵⁶ WASH., DC MUNI CODE § 31-602.1

¹⁵⁷ WASH., DC MUNI CODE § 31-602

¹⁵⁸ WASH., DC MUNI CODE § 31-602.3

The taximeters have a numbered seal press with an official inscription issued by the D.C. Commission.¹⁵⁹ Licensed taximeter shops place a sticker on the taximeter that includes the name and signature of the sealer, the date the meter was sealed, the name of the authorized sealer and license number of the taximeter shop on the surface of the seals.¹⁶⁰ Much like the regulations found in other jurisdictions, these taximeter seals in the taxicabs in the District of Columbia serve as security measures to prevent consumer fraud through alteration or tampering with the taximeter.

If smartphone applications operating in the District of Columbia do not operate with a vehicle equipped with a taximeter, but nonetheless base a fare in the same manner applicable for a taxicab, then the applications may be operating contrary to the rigid requirements to meet the definition of an appropriate taximeter under Handbook 44. Of additional concern, Washington, D.C. requires fares to be charged consistently with the rates either approved or published by the D.C. Commission. Any smartphone applications not meeting this requirement may also run afoul of the D.C. regulations.

d. *Chicago*

Chapter 9-112 of the Code defines “taximeter” as “any mechanical or electronic device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers.”¹⁶¹ The Rules and Regulations for Taxicab Medallion License Holders, as promulgated by the Chicago Department of Consumer Services – Public Vehicle Operation Division, state, “all taximeters shall be calibrated, tested and sealed pursuant to the most current edition of the National Institute of Standards and Technology (NIST) Handbook 44.”¹⁶²

With respect to the use of taximeters in licensed taxicabs in Chicago, the Code requires, in relevant part, that “[e]very taxicab... be equipped with a taximeter connected with and operated from the transmission of the taxicab to which it is attached.”¹⁶³ In this manner, it is clear that the City did not have in mind the “electronic hail” concept when it promulgated its taximeter rules. Additionally, the City of Chicago just completed – on June 7, 2012 – its period for public comment of additional taxicab regulations, including regulations on taximeters.

The proposed rules state taximeters must: (i) accurately register rates and charges authorized by the MCC, (ii) meet the technical specifications as follows: (a) taximeters must be capable of full integration with the dispatch system, vehicle transmission, electronic payment equipment, and GPS, (b) taximeters shall be calibrated, tested and sealed pursuant to the most current edition of the NIST Handbook 44, (c) taximeters must be capable of locking out or shutting off remotely, (d) taximeters must be capable of only activating upon public chauffer entering their personal identification number or swiping of a personal identification card (identifiable in real-time), (e) taximeters must be capable of tracking any single public chauffeurs hours of operation in real-time, and (f) taximeters must be capable of issuing or dispensing a printed meter receipt.

¹⁵⁹ WASH., DC MUNI CODE § 31-602.6

¹⁶⁰ WASH., DC MUNI CODE § 31-602.6

¹⁶¹ CHICAGO, IL. MUNI. CODE § 9-112-010(u)

¹⁶² CITY OF CHICAGO DEP’T OF CONSUMER SERVICES,

<http://www.cityofchicago.org/content/dam/city/depts/bacp/rulesandregs/rulesfortaxicabmedallionholders.pdf>

¹⁶³ CHICAGO, IL. MUNI. CODE § 9-112-410

One potential issue with Uber TAXI's business operation is automatic gratuity and service fees. Pursuant to current Chicago regulations, a taxicab charges "rates of fare set forth in this chapter, which are or should be recorded and indicated by a taximeter."¹⁶⁴ Additionally, it is unlawful for any person to demand or collect any fare for taxicab service which exceeds the rates established by ordinance.¹⁶⁵

Also, smartphone applications that act as an electronic hail could raise concerns in Chicago if they generated a fare based on distance travelled, waiting time, or number of passengers, and that vehicle did not have a taximeter meeting both the NIST and Chicago Code requirements.

e. *New York City*

In New York, the rules and requirements for taximeters are under the jurisdiction of the Bureau of Weights and Measures of the New York State Department of Agriculture and Markets ("**NY Department of Agriculture**"). The taximeter requirements are set forth in the New York State Weights and Measures Law.¹⁶⁶ According to the regulations, the NY Department of Agriculture has adopted the standards found in Handbook 44 for taximeters, with additional requirements for printers used in conjunction with taximeters.¹⁶⁷ In New York City, the Taxi and Limousine Commission ("**TLC**") is responsible for licensing and regulating taxicabs.

At this time, New York City has approximately 13,237 taxicabs, although there was recent legislation passed in New York State that was to add 2,000 accessible taxicabs to the New York City fleet. This plan is part of the Street Hail Livery Law that was passed in December 2011, and amended in February 2012, to create a new class of for-hire vehicles that could accept street hails outside of the Manhattan business district.

Since this new class of for-hire vehicle will accept street hails in the same manner as taxicabs, the TLC adopted rules at its May 31, 2012 public meeting which set forth an LPEP system. The LPEP rules include specifications that mirror the TPEP rules for taxicabs. As such, the street hail livery vehicles will be required to have a taximeter to calculate the fare based on distance travelled and time of the fare. The Street Hail Livery Law, however, is "on hold" due to federal and state litigation challenging the legislation. Taximeters are not required in livery vehicles, which provide prearranged service.

The TLC has set forth its rules regarding taximeters in two chapters of its rules (the "**NY TLC Rules**"). TLC Rules Chapter 58 is entitled "Medallion Taxicab Service" and TLC Rules Chapter 64 is entitled "Licensing & Rules for Taximeter Businesses & Manufacturers." According to Chapter 58, the taximeter must be of "a make and type acceptable to the Commission," and accurately compute the rate of fare currently established by the TLC. Additionally, Chapter 58 requires that taximeters must be repaired, tested and certified by a licensed taximeter business. Further, Chapter 58 defines the responsibilities for the taximeter seals and security and the penalties for tampering with taximeters.

¹⁶⁴ CHICAGO, IL. MUNI. CODE § 9-112-010

¹⁶⁵ CHICAGO, IL. MUNI. CODE § 9-112-590

¹⁶⁶ See ARTICLE 16 OF THE AGRIC. & MARKETS LAW

¹⁶⁷ NYS WEIGHTS & MEASURES REG., 1 NYCRR § 220.2(c)

The procedures for licensing and supervision of businesses (“taximeter shops”) that manufacture, sell, repair and install taximeters in taxicabs are found in TLC Rules Chapter 64. According to these rules, these taximeter shops, must maintain requirements for installations and sealing taximeters and are required to maintain business records for all their installations, repairs and seals of taximeters.

If any smartphone applications operate by charging passengers and fares based on distance travelled or in a manner that appears to operate as a taximeter in generating a fare, then those vehicles should be operating consistently with TLC Rules Chapters 58 and 64. If not, then pursuant to its statements in Industry Notice #11-16, the TLC might investigate complaints of any smartphone applications, and may request information from any party involved, including the smartphone application developers or owners, such as the details of trips, vehicles, drivers, affiliated bases, and so forth.

f. *San Diego*

A taximeter is any instrument, appliance, device, or machine by which the charge for hire of a passenger-carrying vehicle is calculated, either for distance traveled or time consumed, or a combination of both, and upon which such charge is indicated by figures.¹⁶⁸ Under San Diego Ordinance 11 (“**Ordinance 11**”) § 2.2 Rate of Fare, it shall be unlawful for a permit holder to operate any taxicab in the city, unless the vehicle is equipped with a taximeter that meets the requirements of the State of California.¹⁶⁹ Ordinance 11 specifies seven (7) criteria to which the taximeter must adhere.

The taximeter shall be a style and design approved by the General Manager,¹⁷⁰ it shall calculate fares upon the basis of a combination of mileage traveled and time elapsed, and the fare-indicating mechanism shall be actuated by the mileage or time mechanism based on the speed of the vehicle whenever the vehicle is hired. The taximeter shall be at all times subject to inspection by an MTDB inspector or any peace officer and any device repairperson who places into service, repairs, or recalibrates a taximeter shall record the tire size and pressure of the wheels of that vehicle on the repair person’s sticker.¹⁷¹ It shall be the duty of every permit holder operating a taxicab to keep the taximeter in proper condition.¹⁷²

Ordinance 11 continues with several criteria drivers must adhere to in relation to the taximeter, but which do not relate to the operation or mechanical criteria of the taximeter; they can be found in subsection (f)-(j) of § 2.2 of Ordinance 11.¹⁷³ Ordinance 11 also requires an inspection, test, approval, and seal by a mechanic authorized by the State of California before the operation of a taxicab and thereafter, so maintained in a manner satisfactory to the General Manager.¹⁷⁴ Lastly, Ordinance 11 specifies each taxicab shall be equipped with a device, which

¹⁶⁸ SAN DIEGO ORDINANCE NO. 11, as amended October 16, 2003, (last visited June 27, 2012), <http://www.sdmts.com/MTS/documents/OrdinanceNo.11.pdf>

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* (The General Manager, as defined by the Ordinance, shall mean the General Manager of the San Diego Metropolitan Transit Development Board or his or her designated representative.)

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.* at § 2.2. For example (g) regulates the placement of the taximeter so that “the reading dial showing the amount of fare to be charged shall be well-lighted and easily readable by the passenger.”

¹⁷⁴ *Id.* at § 2.3(a)

shall plainly indicate to a person outside the cab whether the taximeter is in operation or is not in operation.¹⁷⁵

The San Diego Ordinance states that every taxicab shall be equipped with a taximeter that has been registered, inspected, and sealed by the Sealer of Weights and Measures before a taxicab is placed in service for the first time and the taximeter shall be submitted annually for re-inspection.¹⁷⁶ Further, it shall be unlawful to transport any passenger in a taxicab without a taximeter, in a taxicab without a current registration certificate from the Sealer of Weights and Measures, or to knowingly charge a passenger a fee that has been inaccurately calculated by the taximeter.¹⁷⁷

Based on the language in Ordinance 11, a vehicle charging a fare based on distance travelled or the time consumed in the ride would require a taximeter to operate. Further, if the taximeter does not meet the seven criteria listed within Ordinance 11, that taximeter appears to fall short of the San Diego regulations. Any smartphone application used to produce a fare that is based on the distance travelled or the calculation of the time of the ride would also appear to operate as a taxicab without meeting the San Diego requirements.

2. NIST on GPS and Smartphone Applications as Taximeters

In August 2011, the NIST formed an initial work group to address inquiries and requests received from weights and measures officials and others for support and guidance in evaluating the function and operation of taximeters that incorporate emerging technologies, which are not addressed in current standards. Current standards and examination procedures were developed prior to the wide scale appearance of these technologies, which include: Global Positioning Satellite Systems; Mobile Data Terminals; and Point of Sale Systems interfaced with taximeters.¹⁷⁸ Additionally, manufacturers and taxi industry officials who develop, design and market taximeters and associated products that incorporate these emerging technologies had expressed the need for uniform policies and practices used during field and type evaluations of their products. The weights and measures community recognized that existing standards and test procedures must be updated to keep pace with technological advances used to measure and assess charges based on time and/or distance measurements. The group also concluded that addressing GPS systems within the scope of the taximeters code may be problematic at this time.¹⁷⁹ The perceived difficulty involved to include GPS systems in the taximeters code is based largely on a lack of information and expertise within the group regarding this type of technology. The NIST concluded that this technology is to be included within the objectives of the group. Any necessary changes to the Taximeter code will need to be addressed by a larger work group that would include expertise in this area.¹⁸⁰

Last month, the NIST initiated steps to form a United States Work Group on Taximeters (“USNWG”) to further address the work started by its initial work group. The USNWG will address these needs by analyzing current practices and by developing proposals to ensure that

¹⁷⁵ *Id.* at § 2.3(b)

¹⁷⁶ SAN DIEGO ORDINANCE § 21.314

¹⁷⁷ *Id.*

¹⁷⁸ NIST Handbook 44 Taximeter Code Initial Meeting August 17-18, 2011, Meeting Summary.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 3.

current methodologies and standards are updated to facilitate measurements that are traceable to the International System of Units (SI). More specifically, the USNWG will review existing requirements and test procedures currently referenced in NIST Handbook 44 Section 5.54, Taximeters Code and propose changes as needed. The work will include: identification of gaps between the Code and technology currently in use in taxicab applications; development and presentation of proposals through the National Conference on Weights and Measures (NCWM) to modify NIST Handbook 44, as needed; and identification and development of proposed changes for inspection procedures used by regulatory weights and measures officials.¹⁸¹ The NIST is still in the process of formulating the membership of the USNWG. The scope of its work and the timetable for these efforts is expected in the near future. In the interim, the NIST has circulated for comments proposed amendments to the NIST Handbook 44 Taximeters Code and asked for comments to be returned to the NIST by June 30, 2012. Of interest is the proposed amended definition for taximeters in Section 5.54, with new language underlined and highlighted, as follows:

A.1. General. – This code applies to taximeters; that is, to devices that automatically calculates at a predetermined rate or rates and indicate the charge for hire of a vehicle. These calculations are based on time and distance measuring devices located on or in the vehicle. (emphasis added).¹⁸²

IV. Conclusion

Transportation smartphone applications are not *per se* dangerous to the regulation of taxicabs and for-hire vehicles; however, applications without oversight are dangerous to the riding public and to the confidence the public has in the regulators responsible for these services. Jurisdictions must be prepared for the evolution of technology and, when properly regulated, these new developments can be a safe and productive addition to the transportation industry, and whose efficiency may potentially increase ridership. At this time, there are some “rogue” apps that may simply not be legal.

In order for applications not to be “rogue,” regulators should be proactive in understanding smartphone application operations and take steps to ensure the regulatory scheme in each jurisdiction accounts for third-party transportation applications. This may require the proposal of model regulations by noted trade and regulatory associations to provide regulators with some needed guidance. Additionally, NIST will need to specifically address the use of GPS as a substitute for a taximeter in terms of charging passengers according to distance or time. Absent such actions, regulated transportation service providers that continue to do business within the regulatory framework remain at a distinct disadvantage to the unregulated smartphone applications. Undoubtedly, smartphone applications will continue to be introduced into the marketplace. At this point, there is little if any objective public acceptance data on whether these applications are welcomed by consumers, transportation providers, or regulators.

Windels, Marx has provided this information to assist those stakeholders in formulating the next steps to address the concerns raised by smartphone applications and to level the playing field and ensure compliance with the goals of sensible regulations that have been in place for

¹⁸¹ *Id.*

¹⁸² *Id.*, Addendum I: NIST Handbook 44, Taximeter Code, Draft Amendments at i.

decades. The Firm stands ready to assist in the resolution of these important issues. This Report is for general information purposes only and does not constitute, and should not be relied upon as legal advice or opinion.