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RIDESHARING & REGULATION: HOW RIDESHARING APPS ARE REGULATED AND HOW THEY SHOULD BE REGULATED

❖ NOTE ❖

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I. INTRODUCTION

Taking a taxi in 2019 feels so archaic. Ever since apps like Uber became commonplace, the way we are transported has radically changed; tasks like hailing a taxi seem like stories our grandparents told us about the “good old days.” However, every time we request an Uber, it has been allowed to take advantage of lenient regulations that the taxi industry could only dream of. Apps like Uber consider themselves “technology companies,” which frees them from the strict regulations they might face if they were considered a “taxi company.”

This note will discuss the question of whether Uber should be legally classified as a technology company or a private taxi company. Uber should be classified as a taxi company because although they consider themselves merely a technological intermediary between passenger and driver, their practice is more similar to a taxi company. Like a taxi company, transportation is its main supply and without it, the service would not exist. In addition, classifying Uber as a taxi company protects consumers.

Part II of this note will provide more background into this question and how courts have grappled with it in the past. Part III of this note will analyze the way ride-sharing apps like Uber have been regulated since they first came into existence. Part IV recommends that other states follow the example of one particularly innovative state who found a solution to the question of how to regulate ride-sharing apps.

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II. BACKGROUND

Perhaps the biggest development in the transportation industry of the last decade has been the growth of ridesharing apps such as Uber and Lyft.¹ Hailed as a revolutionary innovation to mobility,² these apps have changed the lifestyles of those living in major cities throughout America by making transportation quicker, cheaper, and more convenient than ever. In 2017 alone, Uber gave over 4 billion rides,³ and is available in at least 460 cities.⁴

In the beginning of Uber's service, ridesharing apps were entirely unregulated by local governments.⁵ However, in 2014, Colorado became the first state to enact legislation regulating ridesharing companies (called "Transportation Network Companies," or "TNC's").⁶ Since then, every state except for Oregon has enacted some form of statewide regulation over TNCs like Uber and Lyft.⁷

However, TNCs are not regulated in the same way as taxi companies.⁸ For instance, the Colorado legislation is viewed as more TNC-friendly, as it allows the TNCs to self-regulate their own background checks (as opposed to taxi companies, who have to perform fingerprint background checks).⁹ TNCs and taxi companies, then, are allowed to compete in the same industry, but while following different rules. It raises a fascinating question: are TNCs like Uber or Lyft distinct technology companies, subject to more specialized regulation, or are they simply a new form of taxi company (and should thus be regulated like one)?

Significant differences exist between rules for taxis and rules for TNC's. Thus, it is easy to see why TNC's have been able to flourish so quickly. Some examples of rules and regulations governing taxi companies include standards of vehicle maintenance, requirement for accessible vehicles,¹⁰ specific licensing for all drivers,¹¹ the use of taxi medallions to control the number of taxi drivers,¹² and predictable rates for passengers.¹³

TNC regulations are much less coherent, with a lack of consensus across regulations. However, they typically require the drivers to have service, be a licensed driver in the state in

1. Brad Stone, *Uber: The App That Changed How the World Hails a Taxi*, THE GUARDIAN (Jan. 29, 2017) <https://www.theguardian.com/technology/2017/jan/29/uber-app-changed-how-world-hails-a-taxi-brad-stone>.

2. Katy Stenimetz, *Lyft and Uber Are 'Allies' in the Transit Revolution*, TIME (Mar. 15, 2006), <http://time.com/4259615/lyft-uber-apta-mobility-study/>.

3. Johana Bhuiyan, *Uber Powered Four Billion Rides in 2017. It Wants to Do More — and Cheaper — in 2018*. RECODE (Jan. 5, 2018) (<https://www.recode.net/2018/1/5/16854714/uber-four-billion-rides-coo-barney-harford-2018-cut-costs-customer-service>).

4. Kirsten Korosec, *Watch Out Uber, Lyft is Now in 300 U.S. Cities*, FORTUNE (Mar. 9, 2017) <http://fortune.com/2017/03/09/lyft-300-cities/>.

5. Owain James, *Uber and Lyft Are Lobbying States to Prohibit Local Regulation*, MOBILITY LAB (July 24, 2018), <https://mobilitylab.org/2018/07/24/uber-and-lyft-are-lobbying-states-to-prohibit-local-regulation/> [hereinafter James].

6. Colo. Rev. Stat. § 40-10.1-603

7. James, *supra* note 3.

8. David Kemp, *Don't Regulate Uber, Deregulate Regular Taxis*, NEWSWEEK (Sept. 28, 2017) <https://www.newsweek.com/dont-regulate-uber-deregulate-regular-taxis-673548>.

9. Patrick Hoge, *Colorado Becomes First State to Pass Law Embracing Uber, Lyft et al*, SAN FRANCISCO BUSINESS TIMES (June 6, 2014, 10:47 AM), http://www.bizjournals.com/sanfrancisco/morning_call/2014/06/colorado-uber-lyft.html?page=all.

10. 35 RCNY 53-02.

11. 35 RCNY 55-04.

12. 35 RCNY 58-04.

13. 35 RCNY 80-17.

which they are operating, and their vehicle must be approved by a local mechanic.¹⁴ However, most of these statutes only require that TNCs have these policies in place; they do not have to follow any guidelines established by the state or city, as a taxi company would.¹⁵

In 2017, the European Court of Justice grappled with how to categorize TNCs. Elite Taxi, a group of taxi companies in Spain, brought a case against Uber for failing to attain the proper “licenses and authorizations required under the Regulation on taxi services in the metropolitan area of Barcelona.”¹⁶ Before the court could determine if Uber did not have the necessary licenses, they needed to establish that Uber needed those licenses in the first place; in other words, whether Uber was a “transportation company” or a technology company.¹⁷ If Uber was a transportation company, they were in violation of the law and would need to conform to the same regulations as taxi companies.¹⁸ On the other hand, if Uber were determined to be a technology company, then they would only need to follow regulations governing electronic commerce, and the lack of licenses as alleged by Elite Taxi would be irrelevant.¹⁹

The court ruled that Uber would be legally considered a “transportation company” throughout the European Union.²⁰ The court reasoned that a company is considered a technological service if the supply which is not made by technological means is independent from the service provided (such as technological platforms for purchasing hotel rooms or booking flights).²¹ Because the supply of Uber’s business (transportation) is inextricably linked to the service, the court held Uber should be regulated according to regulations of other transportation companies.²² While this ruling was a major blow to TNCs overseas, U.S. courts have not yet been confronted with the issue.

III. ANALYSIS

Uber positions itself as a technological intermediary connecting passengers and independent drivers, and denied in a recent lawsuit that it “offer[s] a taxi service.”²³ However, Uber’s ex-CEO once wrote that Uber’s goal was to “make transportation as reliable as running water, everywhere and for everyone,”²⁴ signifying that Uber is at least somewhat aware of its position as a major player in the current mass transportation landscape. If Uber’s entire service is designed around transporting people (in lieu of services like taxis, no less), it stands to reason that they anticipated this legal problem and have prepared for it.

Regulating TNCs with other taxi regulations only protects taxi companies from competition, potentially stifling innovation.²⁵ Self-regulation, along with the general state-wide

14. Colo. Rev. Stat. § 40-10.1-605.

15. *Id.*

16. Case C-434/15, *Asociación Profesional Elite Taxi v Uber Systems Spain*, SL, ECLI:EU:C:2017:981.

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Nat'l Fedn. of the Blind of Cal. v. Uber Techs., Inc.*, 103 F. Supp. 3d 1073, 1082 (N.D.Cal. 2015).

24. Travis Kalanick, *Celebrating Cities: A New Look and Feel for Uber*, UBER (February 3, 2016) <https://www.uber.com/newsroom/celebrating-cities-a-new-look-and-feel-for-uber-7/>

25. Deanna Dupuy, *The Regulation of Transportation Network Companies*, *The Agora Journal of Urban Planning and Design* 114, 116 (2017).

regulations (like the Colorado statute) is an adequate way to protect consumers while allowing for innovation.²⁶ On the other hand, it might be too naïve to expect TNCs--typically massive Silicon Valley ventures--to self-regulate in a way that is safe for consumers.²⁷ Additionally, the services TNCs provide are most similar to a taxi company, and therefore taxi regulations are the most fair way to regulate TNCs.²⁸

A. TNCs and the Americans With Disabilities Act

TNCs should not be allowed to self-regulate. When TNCs self-regulate, minority groups within the community are negatively affected. For instance, one regulatory standard imposed on taxi companies is the requirement to follow the Americans With Disabilities Act (“ADA”).²⁹ Although the ADA does not specifically require taxi companies to be accessible to be licensed,³⁰ most city taxi regulations have some form of requirement pertaining to accessibility.³¹ TNCs are generally not required to follow these regulations, though this issue has become relevant in courts in recent years.

In 2014, plaintiffs Dan Ramos, Laura Posados, and Tina Williams filed suit against Uber Technologies, Inc. and Lyft Inc.³² The plaintiffs alleged Uber was in violation of both the ADA and specific regulations regarding private entities offering taxi service by “not provid[ing] vehicles for-hire services to mobility impaired consumers such as Plaintiffs who require wheelchair accessible transportation vehicles or other accommodating services,” and that the defendants “allow their vehicles-for-hire to deny service to the disabled.”³³

Uber filed a motion to dismiss and argued that Title III of the ADA only applies to public accommodations, a category they argue they did not belong to.³⁴ The court, however, pointed out that “Title III expressly applies to public accommodations and certain services operated by private entities.”³⁵ Further, the court ruled this statute applies not only to public organizations who provide transportation, but also to private entities who provide public transportation.³⁶ Because the statute does not apply only to public accommodations, Uber’s motion to dismiss was denied.³⁷

Because taxi companies are included in that distinction of “private companies who provide public transportation,” their obligation to follow the ADA is clear. Since the settlement of the *Ramos* case, TNCs have added services to accommodate passengers with disabilities.³⁸

26. *Id.*

27. *Id.*

28. *Id.*

29. AMERICANS WITH DISABILITIES ACT OF 1990, 1990 Enacted S. 933, 101 Enacted S. 933, 104 Stat. 327

30. *Noel v. N.Y.C. Taxi & Limousine Comm’n*, 687 F.3d 63, 73 (2d Cir. 2012).

31. *Supra* note 6. James.

32. *Ramos v. Uber Techs., Inc.*, Civil Action No. SA-14-CA-502-XR, 2015 U.S. Dist. LEXIS 20914 (W.D. Tex. Feb. 20, 2015)

33. *Id.* at 2.

34. *Id.* at 12.

35. *Id.* at 14.

36. *Id.*

37. *Id.* at 17.

38. Mary Wisniewski, *Uber App Now Allows Wheelchair Users To Summon Rides*, CHICAGO TRIBUNE (July 20, 2017, 11:01 a.m.) <https://www.chicagotribune.com/news/local/breaking/ct-uber-handicapped-accessibility-0720-20170719-story.html>.

However, there have been several issues in major American cities like San Francisco³⁹ and New York City⁴⁰ involving passengers with disabilities unable to receive the same service as able-bodied passengers. The lack of regulation of TNCs has led to a major blind spot causing harm to disabled passengers.

B. TNCs Self-Regulation Track Record

Ignoring the track record of TNC's and their past failures to ensure safety for consumers demonstrates the need for stricter regulations like the ones taxi companies face. In 2014 alone, there were at least three instances where a driver of a TNC was alleged to have kidnapped a passenger.⁴¹ Passengers have also alleged physical abuse by drivers.⁴² As mentioned above, TNCs generally do not conduct fingerprint background checks, which all taxi companies must do before hiring a new driver. Consumers who get into an Uber or Lyft have no way of knowing that their driver has been through a rigorous background check to ensure their safety. Uber and Lyft's refusal to conduct fingerprint background checks has led major American cities like Austin to remove them from the city.⁴³ TNCs have determined the externalities for self-regulation are too high, and they have benefitted by not being regulated by the same standard as taxi companies.

IV. RECOMMENDATIONS

Massachusetts' TNC regulation has attempted to find common ground between TNCs and taxi companies. After contentious debate, Massachusetts passed legislation in August 2016 allowing the Massachusetts Department of Public Utilities the ability to conduct background checks and permanently expel drivers that they deem as unsuitable.⁴⁴ In addition, drivers were forced to pass minimum standards of insurance.⁴⁵ Most strikingly, the bill gave a 20-cent surcharge for every ride given by a TNC.⁴⁶ This bill was met with warm reception from both TNCs and taxi companies, as TNCs were no longer banned from working in busy parts of the city, such as the airport.⁴⁷ TNCs also were not required to conduct fingerprint background checks.⁴⁸

39. Complaint for Plaintiff, *Smith v. Uber Technologies, Inc.* (Cal. Sup. Ct. 2018), No. RG18894507.

40. *Ramos v. Uber Techs., Inc.*, 2018 77 N.Y.S.3d 296, 297 (S. Ct. 2018)

41. Sam Frizell, *7 Dead-Serious Uber Controversies That Somehow Didn't Sink the Company*, TIME (Nov. 18, 2014) <http://time.com/3592098/uber-controversy/>.

42. Mark Matthews, *Uber Passenger Says Driver Struck Him with Hammer After He Told Him He Was Going the Wrong Way*, NBC BAY AREA (Oct. 8, 2014) <https://www.nbcbayarea.com/news/local/Passenger-Hit-with-Hammer-by-Uber-Driver-278596821.html>

43. Andy Jechow, *Prop 1 Fails, Marking Defeat for Uber and Lyft in Austin*, KXAN AUSTIN (May 7, 2016) <https://www.kxan.com/news/local/austin/prop-1-fails-marking-defeat-for-uber-and-lyft-in-austin/1049801267>

44. 2016 Mass. ALS 187, §2(m)

45. *Id.*

46. *Id.*

47. Shira Schoenberg, *Gov. Charlie Baker signs law regulating Uber and Lyft in Mass.*, MASSLIVE (Oct. 25, 2018) https://www.masslive.com/politics/index.ssf/2016/08/gov_charlie_baker_signsLaw_regulating_uber_and_lyft_in_massachusetts.html.

48. *Id.*

However, the bill was scaled back in 2017 due to complaints about the severity of the background checks.⁴⁹ This move was a win for TNCs, who now only need to pay the surcharge to taxi companies and can go forward with self-regulation. This essentially puts Massachusetts, who appeared to be on the forefront of TNC regulation in the country, right at square one with the rest of the country in regard to TNC regulations. These scale-backs are another example of states caving to demands by TNCs and allowing for self-regulation policies that ultimately hurt consumers. Massachusetts' first bill was forward-thinking and a major step in the right direction; their second bill came from the same way of thinking that has led to many of the drawbacks discussed in this note, including unfair competitive balance between taxi companies and TNCs, lack of protections for consumers, and a lack of accessible transportation for passengers with disabilities.

Other states should proceed with the legislation Massachusetts originally put into place. The emerging ridesharing industry should be allowed to innovate and adapt to consumers' preferences. However, the way TNCs have been able to actively participate in the transportation industry with taxi companies virtually regulation free is harmful both to the industries already in place as well as consumers because of unfair competitive balance between TNCs and taxi companies, TNCs track record of lenient self-regulation practices, and TNCs reluctance to make transportation more accessible for passengers with disabilities.

V. CONCLUSION

TNCs are, by their nature, taxi companies: like taxi companies, TNCs are inextricably linked to the transportation of individuals in urban areas, and TNCs are entirely dependent on the transportation industry to remain in existence. They have been able to grow in part because of relaxed regulatory standards. In order to protect consumers and the taxi industry already in place, states should pass legislation that regulate TNCs similarly to the strict regulatory standards taxi companies are currently held to. This will decrease unfair competition in the transportation industry, offer more protections for consumers, and make transportation more accessible for passengers with disabilities.

49. Shannon Larson, *Massachusetts Relaxes Ride-Hailing Regulations, Affecting Uber, Lyft Drivers*, DAILY FREE PRESS (Sept. 13, 2017) <https://dailyfreepress.com/blog/2017/09/13/massachusetts-could-relax-ride-hailing-regulations-affecting-uber-lyft-drivers/>.