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Taxi and Limousine Commission
Office of Legal Affairs
33 Beaver St. 22nd Floor
New York, N.Y. 10004

Dear Commissioners,

My name is R.J. Lehmann. I am editor-in-chief, a senior fellow and a co-founder of the R Street Institute, a nonprofit public-policy research organization headquartered in Washington. I write in response to the commission's solicitation of public comments regarding new rules governing the licensing of for-hire vehicle dispatch applications and proposed amendments to existing rules governing how for-hire vehicle bases may use smartphones to dispatch vehicles.

R Street has been engaged actively in evaluating the emerging ridesharing industry and recommending appropriate regulatory structures to accommodate an open, equitable and competitive market in for-hire transportation options. In the past year, we have produced the white papers "Five principles for regulating the peer-production economy," "Blurred Lines: Insurance challenges in the ride-sharing market," and our flagship study, "RideScore 2014: Hired driver rules in U.S. cities." That last report, which evaluated for-hire rules in 50 of the largest U.S. cities, graded New York City a "D" in its regulation of transportation network companies; a "D" in its regulation of taxicabs; and a "B" in its regulation of limousines and livery services, for an overall grade of "D+."

Our concerns with New York's system include its requirement that even casual ride-sharing drivers must submit to commercial licensure; its prohibition of price experimentation; and the artificial supply restrictions created by its medallion requirement. We understand such concerns are beyond the scope of the rule-making immediately at-hand, but remain hopeful that state and city lawmakers will come to understand how such rules harm the availability and affordability of transportation services from which New York consumers may choose.

With respect to the proposed rules, while we share the commission's goal to create "uniform standards on all current and future apps used by FHVs," we are concerned that these regulations would have the effect of locking out new entrants and reducing the competitive vibrancy of the for-hire transportation market overall. Our most significant concerns include:

- **One platform per driver:** Section 8(f) of the proposed rules calls for "No Unauthorized Equipment," while Section 9(e) provides that "In addition to the dispatch equipment required by the Vehicle's affiliated Base pursuant to §59B-15(d)(1) of these Rules, a For-Hire Vehicle may be

equipped with one electronic device that is used to accept dispatches from a Base or FHV Dispatch Application." The effect of permitting only "one electronic device" would be to prohibit drivers from working with multiple licensed third-party application platforms. This is a common arrangement across the country for TNC drivers, both those operating as part of a formal livery service and those who act as sole proprietors. We see no justification for restricting drivers and services from choosing an arrangement that is normal and appropriate for an industry whose workers commonly function as independent contractors.

- **Technology fee:** Section 13(b) provides that the "Commission will charge an additional fee of \$1000, due at the beginning of each Base License term, to any Base that lists a smartphone application in its contact information." In effect, this rule would slow significantly or halt altogether the roll-out of new dispatch application options, by requiring each new potential customer to pay an exorbitant fee to make use of the service. This represents an unreasonable barrier to entry that will have the effect of blocking app developers from introducing new and better products that licensed FHV bases may wish to adopt.

- **Policing TNC source code:** In addition to requiring that FHV dispatch applications must be licensed, Section 77-03(i) grants the commission authority to review virtually any modification to licensed apps, including their "functionality, performance characteristics, security measures or technical environment," as well as the "interfaces to the Software, Hardware, network, or other FHV Dispatch Application components." Such requirements not only go far beyond what's necessary for the commission to uphold the stated goal of ensuring app-enabled bases comply with existing safety, accessibility and rate regulations, but they arguably exceed even the commission's own technical competence.

- **Infringement indemnification:** While insisting that TNCs must provide copies of their code and receive clearance for modifications to that code, the commission simultaneously insists in Section 77-11(a) that those same TNCs "must defend, indemnify and hold the City harmless from any and all third-party claims" related to that duty, including "any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party in the conduct of the licensed activities." On this point, there can be no debate. If the commission is to subject dispatch applications to unique and unprecedented regulatory review, it must be held responsible for the consequences of that choice.

The commission notes in the introduction to its proposed rules that roughly 42 percent of New York's for-hire vehicles currently can be booked through smartphone app, with as many as 75 different apps currently operating in the New York market. We see these developments as positive for New York consumers, although much more significant reforms are needed to open the market to competition even further. In the meantime, it is essential that the commission not take steps that discourage new entrants and new business models from providing New Yorkers the transportation services they need.

Sincerely,

R.J. Lehmann
R Street Institute