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State of Rhode Island  
Division of Public Utilities and Carriers  
Docket 13 MC 08  
Testimony  
Of  
Terrence E. Mercer  
Associate Administrator for Motor Carriers  
Division of Public Utilities and Carriers

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Q. **PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is Terrence Mercer and my business address is:  
Associate Administrator, Division of Public Utilities and Carriers  
("Division"), 89 Jefferson Boulevard, Warwick, RI 02888.

Q. **WHAT IS YOUR POSITION AT THE DIVISION?**

A. I am the Associate Administrator assigned to oversee the Motor  
Carriers Section.

Q. **HOW LONG HAVE YOU WORKED FOR THE DIVISION?**

A. I have been with the Division for 12 years, the past 10 years  
overseeing the Motor Carriers Section.

Q. **HAVE YOU PREVIOUSLY TESTIFIED IN DIVISION  
HEARINGS?**

A. Yes, I have testified in numerous Division hearings regarding  
Motor Carrier issues.

Q. **ARE YOU AWARE OF THE RATIONALE BEHIND THE RULES  
PROPOSED IN THIS DOCKET?**

A. Yes. The Motor Carriers Section initiated this rule-making  
proceeding to address many aspects of the Division's regulation of public  
motor vehicles in accordance with Title 39, Chapter 14.1 of Rhode Island  
General Law. Additionally, the recent passage of a bill in the General  
Assembly required the Division to establish a minimum allowable charge

1 for PMV service. That bill also required the Division to establish  
2 guidelines regarding the types of vehicles used in the industry.

3  
4 **Q. WHO DRAFTED THE PROPOSED RULES?**

5  
6 A. I drafted the majority of them myself after discussing many of the  
7 issues with members of my staff and other Division personnel over the  
8 past few years. I modeled much of the rules on similar sets of Division  
9 motor carrier rules, especially the generic portions of the Division's taxi  
10 rules that would apply to this type of passenger service.

11 These proposed rules went through a few different iterations as I  
12 asked members of my staff to review them and offer comments.

13 Also, I encouraged the New England Livery Association to weigh  
14 in on suggested rules, as well as the owners of some taxicab companies.

15  
16 **Q. YOU SAID "ESPECIALLY THE GENERIC PORTIONS OF THE**  
17 **DIVISION'S TAXI RULES." WHAT EXACTLY DO YOU MEAN BY**  
18 **THAT?**

19  
20 A. Well, I formatted them along the same lines as the taxi rules by  
21 first defining terms to be used in the rules and later proposing very  
22 straight-forward rules regarding how the Division would handle  
23 complaints (Rule J), providing appropriate notice (Rule K) and dealing  
24 with violations of the rules (Rule L).

25  
26 **Q. OTHER THAN THAT, THESE PROPOSED RULES DO NOT**  
27 **MIRROR THE DIVISION'S TAXICAB RULES, OR ANY OTHER**  
28 **DIVISION RULES?**

29  
30 A. Actually, much of Rule H comes directly from the Division's  
31 Taxi/LPMV/PMV driver licensing rules (known as the Blue Book) as it  
32 simply reiterates the licensing requirements and procedure for processing

1 Hackney License applications already codified in the “Blue Book.”  
2 Nothing changes; I just felt it beneficial to have them in this proposed set  
3 of rules so there is no question of their applicability and so PMV owners  
4 would be fully aware of the requirements.  
5

6 **Q. WHAT OTHER STEPS DID YOU TAKE IN DRAFTING THESE**  
7 **RULES?**

8  
9 A. Essentially, many of the rules are simply a re-stating of  
10 requirements set for in Title 39, Chapter 14.1, like the requirement to  
11 obtain a certificate from the Division and the requirement to maintain  
12 certain levels of insurance (both Rule B) and the treatment of vehicles  
13 (Rule C). Others, though, are extrapolations of statute or new rules  
14 altogether.  
15

16 **Q. OK, THEN, LET’S NOW TALK ABOUT EACH OF THE**  
17 **PROPOSED RULES INDIVIDUALLY, STARTING WITH RULE A**  
18 **– THE DEFINITIONS.**

19  
20 A. Sure. Many of the definitions can be found either in Title 39,  
21 Chapter 14.1 or in other properly-promulgated Division rules. Many of  
22 them are fairly innocuous, such as definitions of the term “Administrator,”  
23 “Business” and “Certificate.” Others, such as “Cab,” “Call and Demand”  
24 “Limited Public Motor Vehicle” and “Taxicab Stand,” are defined because  
25 the PMV industry, at times, is similar to other industries in that they  
26 transport passengers for hire. PMV service is supposed to be clearly  
27 distinguishable from those other industries, so that is why they’re in there.  
28 But, I’ll discuss that matter later in my testimony.

29 About the only definition that may elicit any questions is the  
30 definition of “Unmarked,” and, again, the majority of that definition is  
31 already found in state law. The statute defines it as “motor vehicles that do  
32 not display the transportation company’s name, address or telephone

1 number, or any advertisements or commercial information beyond that  
2 included by the vehicle’s manufacturer on the vehicle’s exterior surfaces.”

3 These proposed rules seek to better clarify that definition by  
4 spelling out that “advertisements” or “commercial information” essentially  
5 includes *any* markings, whether they’re actually affixed or painted on, or  
6 whether they’re on signs or placards displayed through the vehicle’s  
7 windows. I believe this is clearly in keeping with the intent of the statute  
8 in that any such markings – be they logos, a unique painting scheme like a  
9 checkerboard or mural, or some other inspirational quote or text – would  
10 only be in place to serve the purpose of distinguishing one company’s  
11 vehicles from another. Allowing such markings, to me, would simply fly  
12 in the face of the General Assembly’s clear intent to have vehicles  
13 unmarked. If you are operating a PMV under a Division certificate, clearly  
14 you are engaged in commerce and anything visible on or in that vehicle  
15 therefore would be commercial in nature.

16  
17 **Q. WHAT CAN YOU TELL US ABOUT RULE B?**

18  
19 A. Mostly it is a re-stating of statute, further spelling out that PMV  
20 companies must first obtain a certificate from this agency before providing  
21 such passengers transportation services and, also, that they maintain a  
22 minimum of \$1.5 million in liability insurance.

23  
24 **Q. WHAT CAN YOU TELL US ABOUT RULE C?**

25  
26 A. Rule C deals specifically with the vehicles to be operated as  
27 PMVs. The recent law changes adopted by the General Assembly in June  
28 2012 required the Division to exercise jurisdiction of the vehicles  
29 themselves. We’ve proposed a set of make/model/age/mileage criteria and  
30 mandated that vehicles be inspected at the DMV State Garage (already in  
31 state law). Moreover, we’ve required that certificate holders institute a  
32 policy to ensure regular safety and sanitary inspections of their vehicles.

1 Rule C-8 spells out the acceptable age of a vehicle to be first  
2 placed into service as a PMV and sets out a mileage cap. The limitations  
3 differ regarding types of vehicles, like sedans versus stretch limousines or  
4 multiple-passenger vans bigger than your typical minivan.

5 Also, it is plainly spelled out that there is no fee associated with the  
6 filing of vehicle information (unlike taxicabs, jitneys and property carriers  
7 which pay a \$20/vehicle registration fee). The filing of such information is  
8 simply a mechanism to provide us with the most up-to-date information on  
9 the vehicles being utilized in a regulated activity and to ensure that the  
10 vehicles comply with the rules.

11 I would add that this rule is proposed in accordance with R.I.G.L.  
12 39-3-14, which, to paraphrase, allows the Division to require Public  
13 Utilities (like PMV certificate holders) to keep certain records and make  
14 them available to the Division.

15  
16 **Q. WHAT CAN YOU TELL ME ABOUT RULE D?**

17  
18 A. Rule D establishes the minimum allowable charge now mandated  
19 by statute. Ultimately, the rule contemplates a minimum price of \$40.00.  
20

21 **Q. WHY IS IT YOU SETTLED ON \$40.00 FOR THE MINIMUM**  
22 **ALLOWABLE CHARGE?**

23  
24 A. First, we took our cue from the General Assembly's clear intent  
25 that the service should be easily distinguishable from a taxicab and that the  
26 service rendered in a PMV is expected to be a "premium" service, for lack  
27 of a better description. We spoke with representative of the New England  
28 Livery Association at length about this pricing issue and they were very  
29 clear on the issue. They said their members operating true "premium"  
30 livery services do not send their car out for jobs for less than roughly  
31 \$60.00. That's regardless of the distance to be driven or length of time of

1 the trip. Ultimately, they suggested a price floor of \$45.00 or \$50.00  
2 would be appropriate.

3  
4 **Q. WHAT ELSE WENT INTO YOUR REASONING IN SUGGESTING**  
5 **\$40.00?**

6 Well, short, call-and-demand trips at cut-rate prices designed to  
7 mirror taxicab rates were precisely the reason the General Assembly  
8 required the Division to establish the “price floor.” I believe the “floor”  
9 proposed in these rules will eliminate the rogue, gray-area sedan services  
10 that are really acting like taxicabs and, truth be told, stealing the work of  
11 taxicabs. And, I might add, the original version of the bill before the  
12 General Assembly required that the floor be no lower than \$35.00. That  
13 was eventually stripped from the version of the bill that passed, but it was  
14 a clear indication that such a rate was in the ballpark of the legislature’s  
15 intent.

16 I also looked into what happened in other states – such as Florida  
17 (Miami specifically) and Oregon – where a “price floor” was established.  
18 And, generally, those states, counties and municipalities established “price  
19 floors” for exactly the same reason the General Assembly did here.

20 We felt this price was the best way to distinguish the two types of  
21 service. It allows PMVs to provide the premium service envisioned  
22 without leaving them the ability to steal taxi work.

23  
24 **Q. HOW IS IT THAT PMVs, AT LEAST UNTIL THE ADVENT OF**  
25 **THIS RULEMAKING, ARE SUITED TO “STEAL THE WORK OF**  
26 **TAXICABS,” AS YOU PUT IT?**

27  
28 **A.** Taxicabs are much more heavily regulated and are bound by  
29 territory restrictions that limit where they can pick up passengers and how  
30 many taxicabs they may operate. Additionally, they are required by law to  
31 charge only fares approved by the Division and calculated by a  
32 functioning taximeter.

1                   Conversely, public motor vehicles are awarded authority to pick up  
2 passengers anywhere in the state, in any number of vehicles, and may  
3 charge whatever rate they wish – as long as the passenger agrees in  
4 advance to pay that rate, of course. Presently, that rate could be higher  
5 than taxi rates; it also could be the same or even lower, thereby giving the  
6 PMVs a big advantage – if they were allowed to service call-and-demand  
7 requests. Also, taxicab vehicles also are subjected to vehicle age and/or  
8 mileage limitations that before the recent statutory change were not  
9 applicable to PMV fleets.

10  
11       **Q.           IS THERE ANYTHING ELSE YOU CAN TELL US ABOUT RULE**  
12       **D?**

13  
14       A.           Not really; it’s pretty self-explanatory. It’s really a rule designed to  
15 capture the intent of the legislature on this issue and spell out exactly what  
16 PMVs can and cannot do, relative to pricing. The next rule takes it a step  
17 further and discusses the solicitation and acceptance of passengers or  
18 clients – again, building on statutory intent.

19  
20       **Q.           OK. WHAT THEN ARE THE BIG POINTS OF RULE E?**

21  
22       A.           Very briefly, Rule E spells out what PMVs can and cannot do  
23 relative to accepting solicitations. Most of the rules come directly from  
24 statute. They are prohibited from acting like taxis and responding to  
25 “street hails” and also must provide to the prospective client appropriate  
26 vehicle and pricing information.

27  
28       **Q.           LET’S MOVE ON TO RULE F. WHAT CAN YOU TELL US**  
29       **ABOUT THIS RULE?**

30  
31       A.           Rule F is very simple. It requires PMV companies to keep a  
32 written document detailing the service being provided that lists certain

1 things, like the date and time the solicitation was made and accepted, the  
2 date and time the service is rendered, what length of service is to be  
3 rendered and the agreed-upon rate (so long as it is not lower than the  
4 “price floor” of course). It also requires that the a copy be furnished to the  
5 client at the end of the trip, so it’s envisioned to be a duplicate type of  
6 document where the top copy is retained by the driver for the company’s  
7 records and the bottom copy is handed to the client.

8 It also requires that the Division’s contact information be printed  
9 along the bottom of the receipt.

10  
11 **Q. HOW ABOUT RULE G?**

12  
13 A. As I stated earlier, Rule G is one of the “generic” rules dealing  
14 with “Conduct of Business” of PMV companies regarding their dealings  
15 with this regulator agency. It spells out that they must adhere to certain  
16 requirements such as having a business (and mailing) address on file with  
17 the Division, and, ultimately, to boil it down, make sure they keep us  
18 appraised of any changes in their regulated business. It also prohibits  
19 smoking by drivers at all times in PMVs, although PMV companies would  
20 be free to allow (or prohibit) passengers to smoke as they see fit. Most of  
21 that language has been lifted from the taxicab industry rules.

22  
23 **Q. HOW IS IT THAT THE DIVISION SUGGESTS A RULE THAT**  
24 **COMPANIES KEEP SUCH RECORDS AND, MOREOVER, THAT**  
25 **THEY’RE MADE AVAILABLE TO DIVISION INSPECTION?**

26  
27 A. First, R.I.G.L 39-14.1-2, the PMV statutes, specifically gives the  
28 Division the authority to “prescribe any rules and regulations that it deems  
29 proper to assure adequate, economical, safe and efficient service.”

30 Additionally, the authority for Rule G-5 requiring companies to  
31 maintain certain business documents comes from R.I.G.L. 39-3-14. And  
32 the authority for Rule G-6 which mandates that business offices,

1 equipment and records be readily available for Division inspection comes  
2 from R.I.G.L. 39-1-21.

3  
4 **Q. IS THERE ANYTHING WE SHOULD KNOW ABOUT RULE H?**

5  
6 **A.** There is nothing extraordinary in this proposed rule. In fact, the  
7 entire rule is lifted almost verbatim from the Division's "Driver Rules,"  
8 which were properly promulgated in 2006. Those rules govern drivers of  
9 both taxicabs and PMVs. The only difference in Rule H is that the  
10 acronym "PMV" has been substituted for the word "cab" where  
11 appropriate.

12 Additionally, there is one added aspect of the rule contained in the  
13 last sentence of H-5. It provides for the possibility of an immediate  
14 suspension of a driver's "Blue Card" if there is a "public safety" concern.  
15 That provision also provides for an expedited hearing on the  
16 appropriateness of continuing the suspension to safeguard the driver's  
17 rights.

18  
19 **Q. HOW ABOUT RULE I?**

20  
21 **A.** Again, as I testified at the outset, Rule I is lifted directly from the  
22 taxi industry rules and simply puts PMV certificate holders on notice that  
23 they will be held accountable for violations committed by their drivers and  
24 that they shall make copies of all applicable rules (these rules and the Blue  
25 Book) available to their drivers.

26 It also requires that certificate holders report to the Division any  
27 serious (as spelled out therein) accidents.

28  
29 **Q. AND RULES J, K and L?**

30  
31 **A.** Again, as I testified at the outset, these, too, have been pulled from  
32 existing rules. They simply spell out the process the Motor Carrier Section

1 will take to entertain/investigate complaints and what notice will be given  
2 to the parties if any complaint ultimately results in a hearing. Finally, Rule  
3 L indicates that the penalties spelled out in Title 39 would apply to a  
4 substantiated violation and that, according to R.I.G.L. 39-3-13.1, the  
5 Division can order refunds to aggrieved parties.  
6

7 **Q. MR. MERCER, HAVE YOU CONSIDERED THE IMPACT OF**  
8 **ANY OF THESE AMENDMENTS ON SMALL BUSINESSES?**  
9

10 A. First of all, as I am sure the Hearing Officer and parties know,  
11 under Rhode Island General Statutes §42-35-3.3, “all utilities, water  
12 companies, and power transmission companies, except electrical power  
13 generating companies providing less than four and one-half kilowatts” are  
14 exempt from being treated as small businesses for regulatory purposes.  
15 Utilities are defined under Rhode Island General Statutes § 39-1-2(20) to  
16 include common carriers. And, under Rhode Island General Statutes § 39-  
17 14-1.1, public motor vehicles are defined as common carriers. Therefore,  
18 public motor vehicle companies are not considered small businesses for  
19 the purpose of promulgating regulations under Title 42, and the Division  
20 need not consider the financial impact on them of any such regulations.  
21 Having said that, however, the fiscal impact of these rules was taken into  
22 consideration at all junctures during this rulemaking, from the first  
23 drafting to any subsequent changes in response to industry input.  
24

25 **Q. MR. MERCER, IS THE DIVISION REQUIRED TO HOLD A**  
26 **HEARING ON THESE PROPOSED RULES?**  
27

28 A. No. In fact, in a previous Division rule-making case, Superior  
29 Court Justice Michael Silverstein made it clear that there is no statutory  
30 requirement to conduct public hearings on proposed rules. However, as a  
31 matter of public policy and in the interest of providing maximum  
32 opportunity to the industry and members of the public to offer comment,

1 we have decided to hold a hearing on the proposed rules. Moreover, we  
2 took the initiative to provide advance copies of draft rules – and this  
3 testimony – to all PMV certificate holders so that they may develop a  
4 more reasoned position on any or all of the proposals.  
5

6 **Q. YOU STATED THAT YOU PROVIDED THE DRAFT RULES TO**  
7 **THE INDUSTRY IN HOPES OF GETTING THEIR INPUT. DID**  
8 **YOU GET ANY INPUT?**  
9

10 A. Yes. I sent them out about two months ago and received a number  
11 of telephone calls from individuals offering comment and a handful of  
12 written correspondences from PMV operators. In fact, I date-stamped each  
13 written set of comments I received and had the clerk place them  
14 collectively into a folder and place that folder in the docket folder,  
15 marked as “Public Comment No. 1” for identification.  
16

17 **Q. WHAT TYPES OF COMMENTS DID YOU RECEIVE? WERE**  
18 **THERE COMMENTS BOTH IN FAVOR AND IN OPPOSITION**  
19 **TO SOME OF THE RULES?**  
20

21 A. Yes. As expected, there was some opposition to some of the more,  
22 let’s say, “controversial” proposals and there was some input that  
23 expressed a view that the rules were, indeed, needed and, moreover, that  
24 for the most part, the writers were in agreement with the rules. The same  
25 could be said for the telephone calls I received.  
26

27 **Q. YOU SAID SOME OF THE “CONTROVERSIAL” PROPOSALS.**  
28 **WHAT PROPOSED RULES SEEMED TO FIT THAT**  
29 **DESCRIPTION?**  
30

31 A. I would say certain vehicle requirements in Rule C and, to a lesser  
32 extent, the “price floor” in Rule D elicited the most written comment. Still,

1 there were some other comments regarding, for example, the definition of  
2 “unmarked vehicle” and the requirement that the solicitation for service be  
3 accepted in the company’s office. Both of those requirements are statutory  
4 in nature and cannot be mitigated in these rules.

5 One individual also suggested that drivers be allowed to operate  
6 for 16 hours, instead of the 12-hour limitation in the proposed rules. That  
7 individual suggested that there are times a driver may have to take  
8 passengers on a long trip (to New York or New Jersey, for example) and it  
9 may require more than 12 hours to complete the trip. That example,  
10 however, constitutes an interstate service subject to any USDOT rules that  
11 may exist, not our intrastate PMV rules. Thus, I stand by a 12-hour rule  
12 and emphasize here that crossing state lines for *some* point in time during  
13 that 12-hour shift would not mean “all bets were off” regarding the limit.  
14 Certainly a 13- or 14-hour trip to New York would be allowable, but one  
15 two-hour round trip to Logan Airport in the middle of a 12-hour shift as an  
16 intrastate PMV driver would not negate the purpose of the rule. It’s purely  
17 a passenger safety issue.

18  
19 **Q. WHAT WERE THE BIGGEST CONCERNS EXPRESSED**  
20 **REGARDING RULE C?**

21  
22 A. The biggest concern, by far, had to do with the provisions – or in  
23 some cases the misunderstanding – of Rule C-8. Specifically, many of  
24 those who commented were opposed to the rule requiring a vehicle to be  
25 no older than 3 model years to be placed into service.

26 A number of those who commented, however, either in writing or  
27 on the phone, believed the rule required a vehicle to be pulled off the road  
28 when it hit three years old. They apparently had failed to read that  
29 sentence in concert with the one that made it clear the age provision dealt  
30 ONLY with putting a car into service. Once I explained that to some of  
31 these folks, their concerns were allayed.

1                   There were, however, some people who understood the rule  
2 correctly and expressed a concern about not being able to place what they  
3 suggested could be a “pristine” and “appropriate” 4-year-old or 5-year-old  
4 low-mileage vehicle into service for the first time.  
5

6                   **Q.           WHAT WAS YOUR RESPONSE TO THESE PEOPLE?**  
7

8                   A.                   First, I telephoned some of the folks who, it seemed, had misread  
9 or misunderstood the rule. I explained the overriding intent of the rule and  
10 assured them that the rule was simply being *proposed* as it was, and that  
11 there was no certainty it would be adopted that way. Moreover, I told them  
12 they would have an opportunity to explain their concerns to a hearing  
13 officer if they wished.

14                   I also explained that such rules are not uncommon in passenger  
15 transportation regulation and that a similar rule (Rule G-8) exists in the  
16 taxicab rules. I also pointed out that vehicles under the jurisdiction of the  
17 New York City Taxi and Livery Commission were required to be current  
18 model year and no more than 500 miles to be placed into service and  
19 similar requirements exist in Boston. That was to indicate that such rules  
20 are not unusual in passenger transportation regulation and that many  
21 jurisdictions impose much stricter requirements.  
22

23                   **Q.           YOU TELEPHONED A NUMBER OF THE FOLKS THAT**  
24 **COMMENTED IN WRITING AND FIELDDED A NUMBER OF**  
25 **PHONE CALLS. ONCE YOU EXPLAINED WHAT YOU JUST**  
26 **DISCUSSED, WHAT WAS THE GENERAL RESPONSE?**  
27

28                   A.                   Explaining the true meaning and intent of the rule generally  
29 allayed much of their concern. Still, others persisted on raising  
30 hypothetical examples of what they suggested could be “pristine 4- or 5-  
31 year-old vehicles” being kept from being used as a PMV, or an equally  
32 “pristine” vehicle with 300,000-plus miles being forced from the road.”

1       **Q.           WHAT WAS YOUR RESPONSE TO THAT RESPONSE?**

2

3       A.               Essentially, it was sort of: “We’ll have to agree to disagree.” Still, I  
4       understood their concerns and told them I was not “married” to the 3-  
5       model-year requirement. I could see the argument for, say 4 model years,  
6       but I was firm in my belief that at any model year, there would always be  
7       some “hypothetically pristine non-compliant vehicle” that would be “left  
8       out in the cold” and that a line had to be drawn in the sand.

9

10      **Q.           MR. MERCER, DOES THIS CONCLUDE YOUR TESTIMONY IN**  
11      **THIS MATTER?**

12

13      A.               Yes, it does. However, I remain available to answer any questions  
14      or clarify any answers/stances during the hearing as needed.