

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DIVISION OF PUBLIC UTILITIES AND CARRIERS
89 JEFFERSON BOULEVARD
WARWICK, RHODE ISLAND 02888**

IN RE: Rules And Regulations Governing The :
Transportation Of Passengers Via : Docket No. 13-MC-121
Public Motor Vehicles :

REPORT AND ORDER

1. Introduction

On October 15, 2013, the Rhode Island Division of Public Utilities and Carriers (“Division”) adopted new Rules and Regulations Governing the Transportation of Passengers via Public Motor Vehicles (“PMV Rules”), which went into effect on November 11, 2013. This rulemaking was conducted in Division Docket 13-MC-08.¹

One of the provisions in the new PMV Rules, Rule D(1), establishes a “Minimum Allowable Charge” (“MAC”) for public motor vehicles (“PMV” or “PMVs”) of *“no less than forty dollars (\$40.00), regardless of the length of the trip. That is, any time a passenger or booking agent requests to be picked up by any public motor vehicle, the charge assessed shall not be less than forty dollars (\$40.00).”*² The Division adopted the MAC in accordance with the legislative mandate contained in R.I.G.L §39-14.1-6.

Subsequently, on November 14, 2013, the Division received a petition filing from L.C. Taxi, Inc. d/b/a L.C. Transportation, Rainbow Sedans, Inc., Corporate

¹ See Report and Order No. 21192, issued in Docket No. 13-MC-08.

² See Rule D(1) of PMV Rules.

Limousine Services, L.L.C. and Dewey's Transportation, Inc. (the "Petitioners") wherein the Petitioners requested that the Division amend the new \$40 MAC, prescribed under Rule D(1), to some reduced (but unspecified) amount. The Petitioners also requested that the Division stay enforcement of the new \$40 MAC pending a hearing and decision on the Petitioner's request for an amendment to Rule D(1). The Petitioners made the filing in accordance with Rule 13(b) of the Division's Rules of Practice and Procedure. Under Rule 13(b), the Division has the discretion to deny the Petitioners' filing or initiate rulemaking procedures in accordance with R.I.G.L. §42-35-3.

In the decision issued in response to the Petitioners' filing, the Division noted that it had recognized through its Report and Order issued in its PMV rulemaking docket that a number of existing PMV certificate holders were troubled by the regulatory imposition of the \$40 MAC. The Division further noted, however, that the record in that proceeding offered no alternative proposals from these opponents to the Division's proposed \$40 MAC, even though the Division was compelled to establish a MAC for PMV services under R.I.G.L §39-14.1-6, *supra*. In short, these opponents, including two of the four named Petitioners, simply urged the Division to ignore its legislative mandate to establish a MAC so that PMV companies could continue to compete directly with taxicabs.³

The Division additionally recognized that the Petitioners were requesting "an opportunity to present new evidence that would support a reduced... [MAC]." The Division presumed that the Petitioners would now offer a realistic and

³ See Order No. 21250, issued on November 15, 2013.

plausible minimum allowable charge that comports to and respects the legislative mandate contained in R.I.G.L §39-14.1-6; a legislative mandate which requires that the Division design and implement a MAC for PMVs in order to eliminate the destructive competition currently being witnessed between a small sector of Rhode Island's PMV service providers and the State's taxicab industry. The Division also expressed a conclusion that the legislative intent behind R.I.G.L §39-14.1-6 is to preserve the financial success and operational integrity of both of these most valuable local transportation industries in the interest of those passengers who rely on these services, and, moreover, that the General Assembly has determined that the establishment of a MAC for PMVs will accomplish this goal.

Based on the above, the Division found that an additional examination of the reasonableness of the \$40 MAC, now prescribed under Rule D(1) of the PMV Rules, would be in the public interest, and therefore granted the Petitioner's request for another opportunity to address this issue. The Division, however, limited the additional examination to the reasonableness of the currently effective \$40 MAC prescribed in Rule D(1). The Division made it clear that no other provision(s) of the Division's PMV Rules would be examined during this supplemental rulemaking proceeding. The Division also agreed that a temporary stay of enforcement of the \$40 MAC was warranted pending the outcome of the supplemental rulemaking proceeding.⁴ In furtherance of this decision to revisit the MAC issue, the Division established the instant docket.

⁴ See Order No. 21250, issued on November 15, 2013.

As an additional introductory note, on November 15, 2013, the Division received a petition filing from Uber Technologies, Inc. (“Uber”), wherein Uber requested, *inter alia*, that the Division “*withdraw the current Rule, or stay the Rule’s implementation, until such time the Division has had an opportunity to reconsider its decision that a \$40 minimum charge is reasonable in the context of the legislative amendment enacted in R.I. Gen. Laws §39-14.1-6...*” Uber’s November 15, 2013 petition was filed in accordance with Rule 31(b) (Relief from Order to take new evidence) and/or Rule 31(d) (Reconsideration) of the Division’s Rules of Practice and Procedure.

The Division considered Uber’s motion for Relief and/or Reconsideration and found that in view of the Division’s decision to establish Docket No. 13-MC-121, as discussed above, as well as Uber’s ability to participate in that docket, relief from and/or reconsideration of the new \$40 MAC in the context of Docket No. 13-MC-08 was unnecessary. Accordingly, Uber was invited to participate in the instant supplemental rulemaking docket.⁵

The Division thereafter conducted a duly noticed public hearing on the Petitioners’ and Uber’s requests that the Division amend the new \$40 MAC, prescribed under Rule D(1). The hearing was conducted in the Division’s hearing room, located at 89 Jefferson Boulevard in Warwick, Rhode Island on April 30, 2014. The following counsel entered appearances in this case:

For the Division’s Motor Carrier Section (“Advocacy Section”):

Christy L. Hetherington, Esq., Special Assistant Attorney General

⁵ See Order No. 21258, issued on November 19, 2013.

For the Petitioners:

Michael F. Horan, Esq.

For Uber:

Alan M. Shoer, Esq. and M. Hamza Chaudary, Esq.

For Orange Transportation, LLC (“Orange Transportation”):

J. Russell Jackson, Esq.

2. Summary of Rulemaking Authority

The Division notes that its authority to promulgate rules and regulations for PMV operations in Rhode Island is derived from the following statutory law:

- R.I.G.L. § 39-14.1-2, which in pertinent part provides:

Every person owning or operating a motor vehicle engaged as a public motor vehicle is declared a common carrier and subject to the jurisdiction of the division of public utilities and carriers. The division may prescribe any rules and regulations that it deems proper to assure adequate, economical, safe and efficient service....

- R.I.G.L. § 39-14.1-1(7), which in pertinent part provides:

“Public motor vehicle” means and includes every motor vehicle for hire, other than a jitney, as defined in §39-13-1, or a taxicab or limited public motor vehicle, as defined in §39-14-1, used for transporting members of the general public for compensation in unmarked vehicles at a predetermined or prearranged charge to such points as may be directed by the passenger. All vehicles operated under this chapter shall conform to specifications established by the division....

- R.I.G.L. § 39-14.1-6, which in pertinent part provides:

The division shall establish and set a minimum allowable charge for public motor vehicle services....

3. Rationale for the PMV Rules

As explained above, on October 15, 2013, the Division adopted PMV Rules, which went into effect on November 11, 2013. This rulemaking was conducted in Division Docket 13-MC-08. The Division fully explained the rationale for its PMV Rules in the final Report and Order issued in that docket, Order No. 21192, which included a thorough explanation for the Division's adoption of a \$40 MAC. In the interest of brevity, the Division will incorporate Order No. 21192 and the findings contained therein, by reference, into the record of this docket and this Report and Order.

To supplement that rationale for the Division's \$40 MAC, the Advocacy Section proffered two witnesses in the instant docket. The witnesses were identified as: Mr. Terrence Mercer, the Division's Associate Administrator for Motor Carriers; and Mr. Matthew Daus, Esq., who was qualified as an expert witness in taxicab and limousine regulatory matters.

Mr. Mercer provided a brief summary of the 2012 legislation that required the Division to establish a "minimum allowable charge" and the steps the Division took last year to arrive at the \$40 amount that was ultimately adopted in the PMV Rules. Mr. Mercer also emphasized that during the PMV rulemaking last year none of the opponents to the \$40 "price floor" offered an alternative for a lesser amount, unlike the proponents of a price floor who actually opined that the Division's proposal was not high enough. Mr. Mercer also explained that the

General Assembly enacted the MAC provision in order to curtail the destructive competition that has and continues to develop between taxicabs and public motor vehicles (PMVs). Mr. Mercer related that the Division has become concerned with the inordinate number of PMV application cases it has witnessed over the years and especially since the Division has suspended enforcement of the \$40 MAC adopted last November.⁶ Mr. Mercer also proffered an exhibit that graphically depicts the adverse effects that the growth in PMVs is having on the taxicab industry in Rhode Island, which has been in steady decline.⁷

The Advocacy Section's exhibit reflects that when PMVs were first authorized in 2001, there were 274 taxicabs operating in Rhode Island. Today, there are 192 taxicabs on the road, a 30% reduction. Conversely, the graph also shows that the number of PMVs on the road has been growing considerably since 2001, now "just over 400" at last count.⁸

Mr. Mercer argued that the General Assembly and the Division support a MAC to preserve taxicab service in response to the "skyrocketing" number of PMVs flooding the State's public roads providing services indistinguishable from taxicabs. Mr. Mercer defended the need for the price floor to ensure service separation between taxicabs and PMVs, emphasizing that PMVs are not supposed to be competing directly with taxicabs. Relying on the distinct statutory differences between the two services, Mr. Mercer contended that PMVs should not be offering short-trip, on-demand, transportation services in direct competition

⁶ Tr. 13-20.

⁷ Tr. 21; Advocacy Section Exhibit 1.

⁸ Tr. 22-24; Advocacy Section Exhibit 1.

with taxicabs. To demonstrate the need for the \$40 MAC, Mr. Mercer related that taxicab company audits performed by the Division reflect that the “average fare” for taxicabs is \$14.51.⁹ Mr. Mercer also stressed that this number is actually low in view of the fact that taxicabs have not been granted a rate increase since 2002. Mr. Mercer argued that PMVs are designed to provide “a premium service,” which should cost considerably more than an average taxi fare, and even more than \$40.¹⁰

Mr. Mercer related that he has witnessed “a disturbing trend” in the types of vehicles that PMV companies are using to provide their services. Instead of “providing premium service that would be envisioned with a town car service, or a Mercedes-Benz, or a limo... we’re seeing more and more... average-type vehicles in sedans with, truth be told, the intent of providing short-notice, short-distance, what I term short-money, low fare services.” Mr. Mercer called this “disturbing” as taxicabs are required “to service a territory... [they are] obligated to pick up passengers under all circumstances... [and] obligated to charge one rate, and only one rate.” In contrast, Mr. Mercer related that PMVs are not obligated to service a specific territory, “those carriers can go pretty much anywhere they want, and pretty much do anything they want.” Without a price floor of at least \$40 for PMVs, Mr. Mercer predicted that taxicab services will ultimately disappear from the Rhode Island landscape.¹¹

⁹ Advocacy Section Exhibit 2.

¹⁰ Tr. 24-33.

¹¹ Tr. 33-38.

Mr. Matthew Daus was presented by the Advocacy Section for his distinguished credentials as an expert witness in passenger transportation regulatory matters. Mr. Daus related that in addition to being a lawyer and partner at Windels Marx, a law firm which specializes in transportation law, he is also a lecturer at The City University of New York and at the US Department of Transportation Research Center for Region 2, where he teaches courses on “taxi and limo policy” and “transportation history.” Mr. Daus also related that he is the “pro bono president of the International Association of Transportation Regulators (“IATR”), which he described as a nonprofit organization “comprised of government, taxi, and limousine regulators in transportation departments, PUCs, including recently the State of Rhode Island.” Mr. Daus added that he was also “the taxi and limousine commissioner and chairman” at New York City’s Taxi and Limousine Commission (“TLC”) for nine years and, before that, the TLC’s general counsel and counsel for five years. Mr. Daus noted that the TLC is the largest Commission of its type in the country, regulating 100,000 drivers and 50,000 vehicles.¹²

When asked to comment on Rhode Island’s MAC, Mr. Daus related that the use of minimum price floors in the industry has been a “longstanding practice,” going back to the 1950s. He related that currently he is aware of at least 13 jurisdictions in the United States that have adopted minimum price floors as a

¹² Tr. 40.

regulatory tool. He also stated that despite a number of court appeals, “there hasn’t been a successful court challenge to this date.”¹³

Mr. Daus related that the other jurisdictions have adopted a price floor for the same reason that forms the basis of Rhode Island’s MAC. Mr. Daus thereupon proffered an exhibit that offered details regarding the “minimum fares” adopted and in use in the 13 jurisdictions cited.¹⁴ The chart reflects that many of these jurisdictions adopted a price floor specifically “to differentiate taxicabs from limousine services” or to “prevent poaching by limousines of taxicab business.” The minimum price floors ranged between \$25 and \$90, with the average floor at approximately \$50.¹⁵ Mr. Daus explained that the courts have given “wide discretion” to regulators to decide the types of services to be provided by taxicabs and limousines.¹⁶

Speaking on the Division’s \$40 MAC, Mr. Daus stated that what Rhode Island has done is “consistent” with what other jurisdictions have done to distinguish taxicabs from other livery services. Indeed, Mr. Daus questioned whether the \$40 MAC “is actually too low” in view of the “dramatic disparity” in the current numbers of taxicabs and PMVs in Rhode Island. Mr. Daus also opined that the average taxicab fare of \$14.50 in Rhode Island “is consistent with average fares around the country,” including the jurisdictions named in the chart

¹³ Tr. 41-42.

¹⁴ Advocacy Section Exhibit 3.

¹⁵ Tr. 44-46; Advocacy Section Exhibit 3.

¹⁶ Tr. 46-47.

he provided; he added, that for those jurisdictions, “the \$40 is actually below average.”¹⁷ Mr. Daus concluded: “I think what you have here is reasonable.”¹⁸

When asked about the purpose and efficacy of using price floors for regulatory purposes, Mr. Daus offered the following response:

No one ever complained about them the way they are now. And I think that’s because you have disruption in the market. You have companies that have hundreds of millions of dollars in investments that are basically going around the country looking to deregulate.... And there’s an effort to take the industry and brutally criticize it.... the minimum fare is the key to actually keeping some order in some of these industries.... you can’t discount the fact that there’s... a big increase around the country in interest because it’s served as a market barrier to some of these tech companies. The tech companies come in. They realize that it’s too expensive and too complicated for us to actually hire lawyers and lobbyists.... Instead, they take unlicensed apps, that the federal government has indicated has concerns with, that have time and distance calculations, just like a taximeter, hand them to drivers in the ride share world, people that have personal automobiles, with no commercial insurance, just handing it out to members of the public. Complete deregulation, that’s what it’s all about.¹⁹

The attacks on the minimum fare are not people recently waking up saying we just think this is wrong for the last 50 years. They’re doing it because they’re looking for a way to enter the market easier, with less standards, to get in to operate as taxis without going through the same process that everybody goes through.... They call the taxi industry a cartel. You could argue it’s a Silicon Valley cartel. You got hundreds of millions of dollars. Hiring the best lawyers, the best lobbyists, looking to tear down the system.... for the sake of them making money.²⁰

¹⁷ Tr. 49-50.

¹⁸ Tr. 51-52.

¹⁹ Tr. 53-54.

²⁰ Tr. 54-55.

Mr. Daus was also asked to comment on whether it would be in the public interest to “just let free-market competition” replace the current system of regulation. He quickly responded that “it doesn’t work.” Mr. Daus declared:

It doesn’t work. I’ve been studying and doing this for 20 years. I’ve been all around the world. I just came back from Australia. I’ve been to the Middle East. I’ve been to Russia. I’ve been to Europe. I’ve been all over the place. Canada. It doesn’t work. In every instance of history of deregulation in this market, it has failed.²¹

4. Public Comments, Views and Arguments²²

At the conclusion of the Advocacy Section’s presentation, the Petitioners, Uber and Orange Transportation all declined to offer their comments until after all the other individuals who appeared at the hearing to offer public comment were afforded an opportunity to speak. The hearing officer granted this request.²³

The Division received written comments, views and arguments from eleven (11) individuals and entities in this matter. Four of the written comments were from individuals or entities that also appeared and offered comments during the April 30, 2014 public hearing. Uber and Orange Transportation (Daniel Moriarty)

²¹ Tr. 56.

²² The Division received eleven (11) **written** comments from members of the PMV and Taxicab industries and from interested persons/entities in response to the instant supplemental rulemaking. Included in these written comments were views and arguments from: GrowSmartRI; Thomas D. Shevlin; Sierra R. Barter; Rachel Carvalho; Priscilla Karageh; Angus Davis; The New England Livery Association; Cara Cromwell; Uber Technologies, Inc.; Daniel Moriarty (Orange Transportation); a petition, signed by 135 taxi drivers, ostensibly supporting the Division’s \$40 Minimum Allowable Charge.

During the April 30, 2014 public hearing, the Division received **verbal** comments, views and arguments from thirty-four (34) individuals. These individuals were identified as: The Honorable Senator Juan Pichardo; The Honorable Representative Grace Diaz; Priscilla Karageh; Dennison Padilla; Meghan Joyce; Ken Breen; Dan McCrystal; John Olinger; David Santana; Rick Szilagyi; Laurie White; Rodney Allen; Chuck O’Koomian; Mahmoud Elsharkamy (phonetic); Michael Targaglione; Betsy Wylie; Daniel Moriarty; Edward Raso; Ramona Gomez; Douglas Watt; Jose Severino; Evelyn Gonzalez; Mody Diop; Mathew Adedive; Freylin Rodriguez; Kay Adesina; Raul Reynoso; Luis Pimentel; Julian Martinez; Manelik Vallejo; Mataro Seidi; James Oisamaiyie; William Legare and Ramon Perez.

²³ Tr. 64-65.

were two of the four included in this group. Nine (9) of the written comments received by the Division cited an interest in promoting open-market competition as the basis for urging the Division to abandon the notion of a MAC for PMVs; eight (8) of these letters were from Uber partners or customers. Two (2) of the written comments supported the current \$40 MAC.

The Division received verbal comments, views and arguments from thirty-four (34) individuals during the duly-noticed public hearing conducted on April 30, 2014. With the exception of two elected officials and the president of a local chamber of commerce, all of those offering comment were connected to Rhode Island's taxicab and PMV industries. By broad comparison, the record reflects that 15 of the speakers were opposed to the current \$40 MAC and that 19 of the speakers favored the new Rule or suggested that the MAC be higher than \$40.

For the most part, those offering comments were in one of two camps, as they were during the original rulemaking hearings conducted last year in Docket No. 13-MC-08, *supra*. Predictably, if you are in the taxicab and/or limousine business, you strongly support the \$40 MAC currently provided in Rule (D)(1) of the Division's PMV Rules. On the other hand, if you are providing PMV services in a fashion indistinguishable from taxicab service, you strongly oppose the \$40 MAC. The Division acknowledged and vetted these differing comments and opinions in Docket No. 13-MC-08 and recorded its findings in Order No. 21192. There is no need to duplicate that lengthy administrative process here.

However, unlike the comments received in Docket No. 13-MC-08, four of the individuals opposed to the \$40 MAC, all PMV operators, and the Petitioners

as a group, offered recommendations for an alternative MAC. Specifically, one individual suggested that it be set between \$10 and \$15;²⁴ another individual also recommended \$15;²⁵ another, suggested a MAC between \$10-20;²⁶ and still another recommended that the MAC be less than \$40 but higher than \$25.²⁷ The Petitioners recommended that the MAC be reduced to some amount between \$15 and \$20, *infra*. However, it is abundantly obvious from the record that the rationale for these alternative MAC recommendations is linked directly to the typical fares being charged by these PMV companies for the taxicab-like services they provide their respective customers. Clearly, these suggestions were offered in furtherance of promoting and maintaining the status quo rather than as a serious effort toward achieving an adequate regulatory demarcation between taxicab and PMV services.

One PMV company owner, who also possesses a taxicab certificate, came up with a novel recommendation to establish a MAC for PMVs based on a percentage amount above the mileage rate for taxicabs. The suggestion was that the Division adopt a percentage amount between 25% and 50% above the current taxicab mileage rate and use that calculation as the basis for a MAC. In the example offered, if taxicabs are charging \$3 per mile, PMVs should have to charge at least \$4 per mile for the same service. One other PMV company expressed support for this proposal.²⁸ With respect to this recommendation, the Division

²⁴ Tr. 67.

²⁵ Tr. 88.

²⁶ Tr. 140.

²⁷ Tr. 217.

²⁸ Tr. 108-109 and 132.

must agree with the Advocacy Section's assessment that this alternative proposal evidences "an apparent intent to continue to operate PMVs in a manner indistinguishable from taxicabs" but at a "slightly higher" rate.²⁹ The Division finds that although the proponent of this alternative was sincere and well-intentioned, the Division cannot agree that this alternative would provide sufficient separation between PMV and taxicab services to reverse the growing degradation of taxicab services in Rhode Island.

When the Division opened this docket, it did so in response to a petition filing from L.C. Taxi, Inc. d/b/a L.C. Transportation, Rainbow Sedans, Inc., Corporate Limousine Services, L.L.C. and Dewey's Transportation, Inc. (Petitioners)³⁰ for the limited purpose of affording the Petitioners "an opportunity to present **new evidence** that would support a reduced minimum allowable charge" (emphasis supplied). As Uber was seeking a similar opportunity, the Division invited Uber to participate in the instant docket as well. The Division made it clear that it was limiting the additional examination to the reasonableness of the currently effective \$40 MAC prescribed in Rule D(1). No other provision(s) of the Division's PMV Rules would be examined during this supplemental rulemaking proceeding.

²⁹ Advocacy Section's Post-Hearing Brief, p. 5 and 10.

³⁰ The record reflects that the composition of the Petitioners may have changed from the original November 14, 2013 petition filing. In his verbal address to the Division, Attorney Horan indicated that he was representing L.C. Transportation, Rainbow Sedans, Corporate Limousine Services and "Providence Coach," who was not named in the November 14, 2013 petition. "Dewey's Transportation, Inc.," which was included in the November 14, 2013 petition filing was not mentioned during the hearing.

The Division also notes that the owners of two of the Petitioner-companies also offered individual comments during the hearing. Michael Tartaglione and Edward Raso, owners of Corporate Limousine Services, L.L.C. and Providence Coach, respectively, supplemented their attorney's comments with independent observations and recommendations.

However, the record in this supplemental rulemaking proceeding offered no new evidence that would dissuade the Division from its initial adoption of a \$40 MAC. Notwithstanding the legislative mandate requiring the Division to “establish and set a minimum allowable charge for public motor vehicle services,” the theme of opposition in this docket, like in 13-MC-08, rested primarily on urging the Division to ignore the law and allow the destructive competition to persist.

Uber, which invested much time and expense in the preparation and presentation of its comments, unabashedly recommends that the Division simply ignore the legislative charge contained in R.I.G.L. §39-14.1-6 and instead direct its efforts at “encourage[ing] the General Assembly to repeal [the law]....”³¹ In support of this advice, Uber offers a panoply of arguments against the adoption of a MAC, such as: that price controls in a competitive market deny customers the freedom of choice for the services they are demanding; and that the Division’s selection of \$40 is antithetical to the intent of the legislation, beyond the Division’s authority, contrary to state law, contrary to fundamental utility regulation principles, an illegal restraint on trade, and an impediment to economic growth within Rhode Island.

But Uber refuses to recommend an alternative MAC. It just expects the Division to declare the R.I.G.L. §39-14.1-6 mandate to be illegal, unconstitutional, and contrary to the wishes of Uber’s biggest fans; in effect, they ask the Division to walk away from its regulatory obligations to enforce the law

³¹ Uber written comments, p. 17.

and foster a comprehensive array of statewide passenger transportation choices. Accepting that there are a good number of loyal Uber users in the City of Providence, and that the President of the Providence Chamber of Commerce supports “new market” “technology-enabled” transportation services³², the Division, nonetheless, has a responsibility to look beyond the borders of Providence in order to safeguard the availability of adequate taxicab and PMV services throughout the entire state. Of note, no Providence City officials offered any comments in this docket.

Albeit Uber’s extreme recommendation is a non-starter in this supplemental rulemaking, the Division also finds no validity to Uber’s legal arguments. The Division finds that its adoption of a \$40 MAC for PMVs is based on sufficient record evidence and authorized under the Division’s plenary regulatory powers. The Division is satisfied that its rationale for adopting a \$40 MAC for PMVs is based on substantial evidence, sound regulatory principles and practices and is consistent with state law. The Division also observes that the two members of the General Assembly who appeared and offered comment in this docket, Senator Juan Pichardo and Representative Grace Diaz, both supported the Division’s \$40 MAC as well as the Division’s efforts to secure the viability of the taxicab industry in Rhode Island.³³

As noted in the Introduction, the instant docket was opened at the behest of the Petitioners. However, the Petitioners’ offered nothing substantive in this supplemental rulemaking that would dissuade the Division from adopting the \$40

³² Tr. 93-95.

³³ Tr. 100-101 and 102-106.

MAC. The Petitioners did not proffer any witnesses, expert or otherwise, or any documentary evidence to support their assertion that the Division's \$40 MAC was arbitrary and unreasonable. Instead, at the conclusion of the public hearing, after everyone had spoken, the Petitioners offered a brief statement and recommendation through counsel.

Referencing the comments heard in opposition to the \$40 MAC, the Petitioners suggested a MAC "in the 15 to \$20 range."³⁴ However, as the Advocacy Section points out, the Petitioners had a burden to prove (1) why the \$40 is too high, (2) what amount is reasonable, and (3) why this lesser amount is reasonable.³⁵ As the Advocacy Section observes, the Petitioners failed to "present any solid, empirical data or statistics to back up their assertions." The Division agrees with the Advocacy Section's arguments that "mere statements of believed-truths do not provide a hearing officer with sufficient basis to support changing the price floor to a lesser amount;" and that the "Petitioners have not convincingly demonstrated that the \$40 amount is implausible or that the... [Division's] decision in Docket 13-MC-08 ran counter to the evidence before the agency."³⁶

On the other side of the argument, Orange Transportation, a PMV company, proffered a study, prepared by an expert in Operations Research and Finance who has appeared before the Division in taxicab licensing cases.³⁷ The study specifically addressed the issue of how best to calculate an appropriate

³⁴ Tr. 225.

³⁵ Advocacy Section's Post-Hearing Brief, p. 7-8.

³⁶ Id, p. 8.

³⁷ The study, dated April 25, 2014, was prepared by Mr. John S. Reed, P.E., M.B.A.

MAC for PMVs.³⁸ In his analysis, Orange Transportation’s expert studied trip data from Go Orange, LLC, Orange Transportation’s affiliated taxicab company. The study reflects that the trip data used “is representative of each trip completed within the sample period of one month in a peak season (summer) and one month in an off-peak season (winter).” Based on over 1,000 lines of data extracted from individual driver time sheets, the study indicated that the average fares for Go Orange, LLC were approximately \$17.50 and \$25.00 for a winter and summer month, respectively. The expert then used the “upper bound of 90% of trip fares of the representative sample” and determined that the “sample set fell between \$85 and \$90 for both seasons.” The study further indicates that the “upper bound was chosen to represent the minimum allowable charge that ensures 90% of the ridership is not redirected towards public motor vehicles that operate in less regulated markets.”³⁹ In his conclusion, Orange Transportation’s expert recommended a MAC of \$90, “so that at least 90% of the revenue is protected from unfair competition.”⁴⁰

Mr. Daniel Moriarty, Orange Transportation’s and Go Orange, LLC’s owner, acknowledged that he commissioned the study performed by his Company’s expert witness and that he provided the expert with all the necessary data from his Company’s records. Mr. Moriarty supported the findings and conclusions of his expert.⁴¹ Mr. Moriarty additionally echoed the concerns of the other taxi companies. He related that in his primary market, Newport, “we have PMVs that

³⁸ Orange Transportation Exhibit 1.

³⁹ Id., p. 7.

⁴⁰ Id., p. 8.

⁴¹ Tr. 119-129.

that operate like taxis.” He added that “their average fare is between 5 and \$10, and they directly compete with the taxis.”⁴² Mr. Moriarty also provided a detailed description of the regulatory requirements that taxicab companies must comply with, in comparison to PMVs, and how much more capital intensive it is to operate a taxicab company, as evidenced by the capital investments he has made in his business.

Finally, one PMV company’s comments were especially enlightening and encouraging. Mr. Manelik Vallejo, who owns MV Transportation, LLC, which is authorized to provide both PMV and taxicab services, related that he has been charging his PMV customers the \$40 MAC since the new PMV Rules, and Rule (D)(1), went into effect on November 11, 2013. He related that he did not know that enforcement of the new MAC had been stayed by the Division. Mr. Vallejo also stated that the adoption of a \$40 minimum fare has not adversely affected his business.⁴³

Mr. Vallejo also stated that he understands that it is “wrong” to use a PMV to provide “call-on-demand” service. He agreed that taxicabs [and limited public motor vehicles] alone should be providing such service. He also stressed how important it is for the industry “to follow the rules and the regulations.” He opined that the best competition comes from a level playing field.⁴⁴

In conclusion, after carefully considering the alternative MAC proposals identified and discussed herein, the Division finds that none of the alternative

⁴² Tr. 118.

⁴³ Tr. 194-197.

⁴⁴ Id.

proposals would satisfy the Division's regulatory obligation under R.I.G.L §39-14.1-1(7) and R.I.G.L §39-14.1-6 to prevent an obscuring of the definitional service lines between PMVs and taxicabs (and limited public motor vehicles). The Division has concluded that \$40 constitutes an efficacious MAC that would reasonably inhibit PMVs from unfairly competing against taxicabs. None of the suggestions or recommendations voiced during this supplemental rulemaking process has altered that conclusion.

Now, therefore, it is

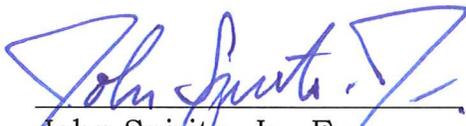
(21494) ORDERED:

1. That Order No. 21192, issued in Docket No. 13-MC-08 on October 15, 2013, is hereby incorporated by reference into this Report and Order.
2. That Order No. 21250, issued in the instant Docket on November 15, 2013, is hereby incorporated by reference into this Report and Order.
3. That predicated upon the findings contained herein, the Division hereby reaffirms its adoption of Rule D(1) in the new PMV Rules, which establishes a "Minimum Allowable Charge" for public motor vehicles of "*no less than forty dollars (\$40.00), regardless of the length of the trip. That is, any time a passenger or booking agent requests to be picked up by any public motor vehicle, the charge assessed shall not be less than forty dollars (\$40.00).*"⁴⁵
4. That the Petitioners' November 14, 2013 request that the Division amend the new \$40 MAC, prescribed under Rule D(1), (to some reduced amount between \$15 and \$20), is hereby denied.

⁴⁵ See Rule D(1) of PMV Rules.

5. That Uber's recommendation that the Division ignore the legislative mandate contained in R.I.G.L §39-14.1-6 and eliminate the new \$40 MAC, prescribed under Rule D(1), is hereby denied.
6. That the stay of enforcement of Rule (D)(1) that was entered through Order No. 21250, issued on November 15, 2013, is hereby vacated.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON NOVEMBER 24, 2014.



John Spirito, Jr., Esq.
Hearing Officer

ADMINISTRATOR'S COMMENTS AND APPROVAL

The instant price-floor issue has been long and contentious here in Rhode Island. Indeed, the problem was a decade in the making and this solution almost two years in the offing.

The statutory mandate for the Division to establish (and ultimately enforce) a "minimum allowable charge" for PMV service was devised by the General Assembly as a regulatory tool to keep lightly-regulated PMVs from competing unfairly with much more heavily-regulated taxicabs in our state, to the detriment of both industries and the riding public. To be sure, such unchecked, unfair competition had led to a 20-percent reduction in the state taxicab fleet since the 2002 enactment of Title 39, Chapter 14.1 (the PMV statutes).

To curtail the questionable actions from an ever-growing number of PMV companies, the General Assembly in 2012 passed a law, signed by Governor

Chafee, which required the Division to establish a comprehensive set of PMV rules to clearly distinguish PMV service from taxicab service; those rules were to include specific vehicle age/mileage standards, a requirement that PMVs quote an “actual charge” (not some taxi-like rate formula) at the time of the service request, and the establishment of a minimum allowable charge (“price floor”).

Following the passage of the bill, the Division in the summer of 2013 endeavored to fulfill that mandate by conducting two public hearings before adopting a set of rules that included a \$40.00 price floor for PMV service. I concluded last autumn that \$40.00 was an appropriate amount and signed the order making the entire set of rules effective November 11, 2013. Shortly thereafter, in response to a petition filed by a number of companies holding authority to operate both taxicabs and PMVs, I agreed to voluntarily “stay” enforcement of the price floor rule in order to revisit the propriety of the dollar amount already established. The Division provided the petitioners ample opportunity in the instant docket to convince the Division that some lower dollar amount was more appropriate. By the close of the hearing in the matter, however, neither the petitioners nor any other opponents had offered any substantive evidence to support a lower price floor amount. On the other hand, the Division’s Advocacy Section presented a nationally renowned transportation regulatory expert to confirm that \$40.00 was indeed reasonable, and, perhaps even a little too low. Indeed, another expert, offered by a taxicab company that participated in this rulemaking, submitted a study reflecting that \$90 would represent a more reasonable price floor.

In opening the instant docket to revisit the dollar amount, the Division encountered a “new wrinkle” in the decade-old problem – the emergence of smartphone-app transportation services like those offered by Uber and Lyft. In fact, Uber, which had only recently begun operation in Rhode Island, elected to participate in the April 30, 2014 hearing. At that hearing, Uber’s attorneys also failed to provide any support for a number lower than \$40.00. Instead, the company offered the suggestion that I, as the Administrator, simply ignore the law passed by the legislature and signed by the Governor, and refuse to establish a minimum of any sort.

Although it is clear in the text of this Report and Order that the hearing officer, based on the evidence presented, was unconvinced that the price floor should be lowered, I decided to take some additional time to review the issue, in light of the new transportation developments, before affirming the Order. I set out to research what other regulatory bodies nationwide have been doing to try to ensure that customers continue to have transportation choices available to them, choices that – first and foremost – protect the physical and financial safety of those passengers, while also ensuring that the various passenger transportation industry segments are allowed to compete within their respective sectors on a level playing field. I am convinced that there is no developing national consensus, and that every state and municipal transportation regulatory body must find its own solution based on the economic and legal environment in which each such regulatory body operates. In Rhode Island, I believe that the rule approved by

this Report and Order is, at present, the best solution for Rhode Island given our economic and legal environment.

As I began my personal review of the issues presented in this docket, I was surprised to learn how many jurisdictions nationwide are in the same predicament of determining how to maintain the viability of differing modes/levels of transportation services to ensure the riding public continues to have appropriate choices. While every jurisdiction I reviewed has similar laws, and thus similar challenges, there has been no one “best approach” identified. I did conclude, however, that a number of jurisdictions have had some success in addressing these issues by adopting a price floor for PMV-type services, just as our legislature had intended here. In some of those jurisdictions, the minimum charge is significantly higher than the \$40.00 amount I have approved today in this Order.

Unfortunately, my careful consideration of the matter took me longer than I ever intended. As a result, one Rhode Island transportation company recently was moved to file a *Writ of Mandamus* in Superior Court seeking to compel me to issue this decision. Although I had just concluded my review and (again) determined the \$40.00 price floor to be appropriate, the filing of the *Writ* served to remind me that any further delay in issuing this decision has practical (and not just theoretical) consequences for our Rhode Island transportation companies and the passengers they service.

Moreover, I remain unclear why Uber (or similar services presently operating in Rhode Island, for that matter) should be concerned about the

proposed price floor rule – at \$40.00 or any other amount, higher or lower. As written, the rule approved by the Order in this docket will not have any impact on Uber-X and Uber-XL, the only business models presently offered in Rhode Island by Uber.⁴⁶ Those services do not utilize PMVs to provide the transportation services they arrange; instead, those business models utilize private-passenger cars without proper commercial insurance and operated by drivers without appropriate commercial driver’s licenses to provide the for-hire transportation service Uber coordinates – service that appears to be inconsistent with current state law. Indeed, under Rhode Island law, all drivers transporting passengers for-hire must first obtain an appropriate chauffeur’s license from the Division of Motor Vehicles issued under R.I.G.L. Chapter 10 of Title 31, and then must obtain a Hackney Operator’s Permit issued by this agency under Chapters 14 and 14.1 of Title 39. Moreover, under Rhode Island law, all vehicles being used to transport passengers for-hire in the state must be appropriately licensed as “motor vehicles for hire” by the Division of Motor Vehicles under Chapters 1 and 3 of Title 31 of the Rhode Island General Laws, and as jitneys, taxicabs, limited public motor vehicles, or public motor vehicles by the RIDPUC under Chapters 13, 14 or 14.1 of Title 39. Additionally, under Chapter 44-18, for-hire carriers are

⁴⁶ In other jurisdictions, Uber offers different service models that could very well be offered in this state in a manner consistent with existing law and the PMV regulations. In fact, the Division was assured by Uber’s regional manager upon the company’s initial appearance in this state that it would comport with applicable laws and “partner” only with properly licensed PMVs and drivers. Any attempt to live up to those assurances was short-lived, however. Indeed, as of today, Uber’s own website makes it clear that the company offers only its private-passenger Uber-X and Uber-XL service models in Rhode Island. As such, those service are not licensed PMVs and, thus, are wholly unaffected by this instant rulemaking.

required to collect and remit Rhode Island sales tax on the transportation services they provide to their passengers.

I have determined that following Uber's recommendation that I willfully ignore the statutory requirement that I establish a price floor must be rejected. Simply put, I cannot ignore the General Assembly's mandate and the legitimate regulatory rationale for the establishment of a price floor; similarly, I cannot, countenance willful violations of our laws by unlicensed and unregistered companies and drivers.

After receiving numerous complaints regarding questionable transportation providers, the Division has reached out to the state's Division of Taxation, Division of Business Regulation, the Rhode Island State Police, a number of Rhode Island municipal police departments, and the Office of the Attorney General in an attempt to coordinate enforcement of all pertinent statutes and regulations regarding for-hire passenger transportation in the state.

Lastly, the Division stands ready and looks forward to working with the General Assembly and its Special Joint Commission (established by the 2014 passage of H-8298 and S-3146) charged with studying emerging for-hire passenger issues in Rhode Island.

APPROVED: 
Thomas F. Ahern
Administrator