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 Public Motor Vehicles	: : :	Docket No. 13-MC-121

ORDER

Whereas: The Rhode Island Division of Public Utilities and Carriers ("Division") previously issued four decisions (two "Reports and Orders" and two "Orders") (collectively, "R&O's") in the instant docket and in a related docket, Docket 13-MC-08, specifically, R&O No. 21192, issued on October 15, 2013 (in Docket 13-MC-08); R&O 21250, issued on November 15, 2013 (in Docket 13-MC-121); R&O No. 21258, issued on November 19, 2013 (in Docket 13-MC-08); and R&O No. 21494, issued on November 24, 2014 (in Docket 13-MC-121). These four previously issued R&O's are inextricably linked with this decision, and accordingly, shall be adopted as the introduction to this decision and, by necessity, incorporated by reference. As the travel of these two dockets (13-MC-08 and 13-MC-121) is long and complicated, the Division will skip all discussion of this travel in the instant decision, relying instead on the incorporation of the above-identified R&O's as a comprehensive prologue. By eliminating this introductory discussion, the Division has limited its focus to the motion it received on December 4, 2014 requesting that the Division "Reconsider and Stay enforcement of the Division's November 24, 2014 Report and Order… issued in

Docket 13-MC-121 that would implement a $40.00 minimum allowable charge ("MAC") rule for Public Motor Vehicles…." The motion was filed by Uber Technologies, Inc. ("Uber"), one of the participants in the instant rulemaking docket. The motion was filed pursuant to Rule 31(d) of the Division's Rules of Practice and Procedure ("Rule 31(d)").

Whereas: As asserted in previous comments filed in this docket, Uber argues that a $40 MAC "is arbitrary and capricious, contrary to the legislative intent of Rhode Island General Laws §39-14.1-6, beyond the scope of the Division's authority, contrary to state law, contrary to fundamental utility regulation principles that seek to encourage maximum customer benefits through deregulation in markets that exhibit competitive characteristics, and amounts to an illegal restraint on lawful trade in violation of both State and Federal law."

In addition to reiterating the above arguments, Uber now also asserts that because the General Assembly has created a "Joint Commission to Study R.I.G.L. 39-14.1, the Public Motor Vehicle Act, and the Impact of Innovative Technologies on the Market for Transportation Services" ("Study Commission") to review the propriety of the regulatory parameters contained in the Public Motor Vehicle Act (R.I.G.L. Chapter 39-14.1)[1] "the Division should allow the Study Commission to do its work and allow interested parties to focus their efforts on working with the Study Commission rather than litigating the Division's factually unsupported and legally defective 11/24/14 Order and any enforcement efforts by the Division."

[1] See H-8298 and S-3146, which were enacted after the Division conducted its April 30, 2014 public hearing in this docket.

As a final argument in support of its motion, Uber argues that the Division's adoption of a $40 MAC has been tainted by what Uber describes as "inappropriate coordinated efforts between Division staff and the limousine and taxi industry… with the stated goal of keeping Uber and other ridesharing technology platforms out of Rhode Island." Uber claims that "the Division's staff collusion with the taxi industry… is a violation of the Division's mission to ensure that transportation options in Rhode Island are 'adequate, economical, safe, and efficient' as required by R.I. Gen. Laws §39-14.1-2."

Whereas: The Division's Advocacy Section ("Advocacy Section") filed a response to Uber's motion on December 9, 2014. In its response, the Advocacy Section takes exception to Uber's argument that the creation of the Study Commission constitutes "newly discovered evidence" within the meaning of Rule 31(d). The Advocacy Section also rejects "the baseless accusations of Division staff 'collusion' on what amounts to nothing more than industry communication" as justification for the relief that Uber is requesting.

Whereas: After carefully considering the arguments of both Uber and the Advocacy Section, the Division has concluded that Uber has proffered insufficient justification for further delaying the implementation and enforcement of the $40 MAC, which went into effect and became law over thirteen (13) months ago.[2]

Before reaching this conclusion, the Division closely studied Uber's arguments as well as the supporting documentation contained with Uber's

[2] Rule D(1) of the Division's Rules and Regulations Governing the Transportation of Passengers via Public Motor Vehicles ("PMV Rules"), which establishes the $40 MAC, went into effect on November 11, 2013.

motion. As the basis for its request for "reconsideration," Uber offers the same arguments that it offered as comments at the public hearing that was conducted in this docket on April 30, 2014. To wit, that the Division's $40 MAC "is arbitrary and capricious, contrary to the legislative intent of Rhode Island General Laws §39-14.1-6, beyond the scope of the Division's authority, contrary to state law, contrary to fundamental utility regulation principles that seek to encourage maximum customer benefits through deregulation in markets that exhibit competitive characteristics, and amounts to an illegal restraint on lawful trade in violation of both State and Federal law." These arguments were previously rejected by the Division in R&O No. 21494, *supra*, and will not be re-entertained as a fresh argument against the propriety of the $40 MAC now.[3]

Uber supports its motion for a "stay" by emphasizing that the General Assembly passed legislation during the 2014 legislative session that created a Study Commission whose goal is to study the implications of Uber-like "ride-sharing" services in Rhode Island, and, in that context, to decide whether R.I.G.L. Chapter 39-14.1 (referred to as the Public Motor Vehicle Act) needs to be amended or repealed. As the Advocacy Section points out in its objection to Uber's motion, the creation of this Study Commission is not "new evidence" that was unknown to the Division at the time it issued R&O No. 21494 on November 24, 2014. The Division learned of the creation of the Study Commission shortly after its concomitant House and Senate bills became law on July 1, 2014.

[3] See Report and Order No. 21494, pp. 16-17.

Indeed, the "Administrator's Comments" contained at the end of R&O No. 21494 includes the following statement:

> 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.[4]

Clearly, the Study Commission and its legislative mission was known to the Division many months before it issued R&O No. 21494. Therefore, it would be inaccurate to characterize this legislative development as "new evidence."

Moreover, the Division fails to understand the underlying rationale in Uber's argument that the Division should further delay the implementation and enforcement of a $40 MAC based on the creation of the Study Commission. The Joint Resolution creating the Study Commission does not include a directive to the Division that it suspend its regulatory enforcement of the legal requirements contained in the Public Motor Vehicle Act. There is no specific reference in the Joint Resolution to the existing mandate in R.I.G.L. §39-14.1-6 that requires the Division to establish a MAC. Therefore, to accept Uber's argument would be to broadly accept that the General Assembly has cryptically directed the Division to cease and desist from regulating public motor vehicles in Rhode Island, in effect, instructing the Division to "stand down" on enforcing the PMV laws currently on the books. While it is abundantly clear that this theme, of urging the Division to just ignore the law, has pervaded the many assertions and demands that Uber has made before the Division during this rulemaking endeavor, the Division has

[4] See Report and Order No 21494, p. 27.

repeatedly avowed that it does not possess the discretion to choose which laws to enforce and which laws to ignore.

Lastly, on the accusation of "collusion" between the Advocacy Section and the taxicab and livery industries, the Division must point out that if the instant proceeding was an adjudication of a contested case, which it is not, Mr. Mercer and the Advocacy Section would have been participating as an indispensable party. The adjudicative function in such cases would exclusively be the duty of a hearing officer, with ultimate approval by the Administrator.[5] In such cases, the Advocacy Section would be free to discuss its positions on any issues with any and all parties, as it deems appropriate and in the interest of ratepayers; the prohibition against *ex parte* communications would not apply to the Advocacy Section is such cases.

In contrast, the proceedings attached to the instant docket, and Docket No. 13-MC-08, represent rulemaking actions by the Division. The Division derives this rulemaking authority through statutory powers conferred under R.I.G.L. §§ 39-14.1-1(7), 39-14.1-2, 39-14.1-6 and 39-3-33. There is a fundamental distinction between adjudicatory proceedings and rulemaking proceedings.[6] An adjudication is party-specific and is concerned with the determination of past and present rights and liabilities; in contrast, rulemaking is not party-specific but rather, tends to focus on policy considerations and results in orders that are, by

[5] See R.I.G.L. §39-1-15.
[6] See San Juan Cable LLC v. Puerto Rico Telephone Co., 612 F.3d 25 (U.S. Court of Appeals, First Circuit (2010)).

definition, orders of future effect.[7] A rulemaking is also not considered a "contested case" within the context of the Rhode Island Administrative Procedures Act ("APA").[8] As rulemaking proceedings are not adjudicatory in nature and therefore not "contested" cases within the meaning provided under the APA, the Division finds that the Advocacy Section's ability to freely discuss common carrier issues with members of the taxicab and public motor vehicle industries is unassailable.

As a final observation regarding Uber's feigned outrage over Mr. Mercer's communications with certain taxicab and public motor vehicle certificate holders, while the documentation proffered by Uber shows that communications took place, no fair-minded person could connect those discussions to any conspiracy against Uber or any so-called ride-sharing company. The aggregate record contained in Docket Nos. 13-MC-08 and 13-MC-121 unambiguously demonstrates that the Division's efforts to establish a MAC long pre-date Uber's entry into the Rhode Island market; and that the regulatory purpose for a MAC was always to preserve separation between taxicab and public motor vehicle services -- in the interest of safeguarding customer choice and ensuring the economic viability of both services. Indeed, as Uber reminds us, R.I.G.L. §39-14.1-2 compels the Division to ensure that transportation options in Rhode Island are "adequate, economical, safe, and efficient;" the $40 MAC is designed to achieve this desired goal.

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[7] Id.

[8] See Interstate Navigation Company v. R.I. Division of Public Utilities, 2002 WL 1804072 (R.I. Superior Ct. (2002)); Property Advisory Group, Inc. v. Rylant, 636 A.2d 317 (R.I. 1994); and Malachowski v. State, 877 A.2d 649 (R.I. 2005).

In conclusion, the Division must interpret Uber's arguments for reconsideration and a stay in this matter as yet another attempt by Uber to urge the Division to condemn and ignore the General Assembly's charge in R.I.G.L. §39-14.1-6 that the Division establish a MAC. As abundantly explained in R&O's 21192 and 21494, the Division has determined that the record fully supports a $40 MAC and that opponents to the establishment of a MAC cannot expect the Division to ignore the law, or the facts.

Now, therefore, it is

(21776) ORDERED:

1. That R&O No. 21192, issued on October 15, 2013 (in Docket 13-MC-08); R&O 21250, issued on November 15, 2013 (in Docket 13-MC-121); R&O No. 21258, issued on November 19, 2013 (in Docket 13-MC-08); and R&O No. 21494, issued on November 24, 2014 (in Docket 13-MC-121), are hereby incorporated by reference into this Order.
2. 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).*"[9]

[9] See Rule D(1) of PMV Rules.

3. That Uber Technologies, Inc.'s December 4, 2014 request that the Division reconsider and stay enforcement of Division Report and Order No. 21494, is hereby denied.
4. That Uber's continued 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.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON DECEMBER 17, 2014.

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John Spirito, Jr., Esq.
Hearing Officer

ADMINISTRATOR'S COMMENTS

As the hearing officer's decision(s) reflects, the Division's efforts to establish and implement a proper and efficacious MAC, as mandated by the General Assembly in 2012, have clearly followed a thorough and judicious examination of this important issue. Accordingly, I agree with the hearing officer's assessment that the current request to further delay the implementation of the $40 MAC lacks sufficient justification; as a matter of fact, I have already delayed its implementation since November 11, 2013.

I have been informed that the Division's November 24, 2014 Report and Order issued in his docket, which, among other things, lifted a Division self-imposed stay of enforcement of the $40 MAC, has been appealed to the Superior Court. With this appeal comes a new chapter and independent evaluation of the

Division's regulatory treatment of this issue. The Court now has jurisdiction over this issue and shall ultimately determine whether the Division has performed its statutory responsibilities in a reasonable manner. Moreover, as this judicial review may be lengthy, it is entirely possible that the findings and recommendations from the legislature's Study Commission will be available for consideration by the General Assembly, which, may, in the end, prove dispositive of the MAC issue before the Court.

APPROVED: _____
Thomas F. Ahern
Administrator