

**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. 05-MC-06
Taxicabs and Limited Public Motor Vehicles :

REPORT AND ORDER

1. Introduction

On February 15, 2005, the Rhode Island Division of Public Utilities and Carriers' ("Division") published a "Notice Of Rulemaking And Public Hearing" in the Providence Journal, wherein interested persons were invited to submit data, views, or arguments, orally or in writing, and/or attend a public hearing in response to proposed amendments to the Division's *Rules and Regulations Governing the Transportation of Passengers via Taxicabs and Limited Public Motor Vehicles* ("Cab Rules").¹ The Division's Motor Carrier Section ("Motor Carrier Section") is sponsoring the proposed amendments to the Cab Rules.

The Motor Carrier Section submitted its proposed revisions to the Cab Rules to the Administrator of the Division for consideration and public comment. The proposed amended Cab Rules, in both the form proposed and in a redacted version specifying the proposed additions and deletions, were made available to members of the cab industry and to the general public. The Motor Carrier Section also submitted pre-filed direct testimony, from its Associate

¹ The notice was published in conformance with the requirements of R.I.G.L. §42-35-3.

Administrator, Mr. Terrence Mercer, which identified and explained the proposed revisions.²

Upon receipt of the proposed amendments to the Cab Rules, the Administrator appointed the undersigned hearing officer to conduct a rulemaking proceeding in accordance with the requirements and procedures delineated in R.I.G.L. §§42-35-3 and Rule 12(f)(1) of the Division's *Rules of Practice and Procedure*. The Division thereupon established the instant docket and scheduled and conducted a duly noticed public hearing on the Motor Carrier Section's proposed revisions to the Cab Rules. In keeping with the requirements of R.I.G.L. §42-35-3(a)(4), the Division also concluded that the proposed revisions to the Cable Rules would not, if adopted by the Division, have a significant adverse economic impact on any small business or on any city or town.

The Division conducted a public hearing on the proposed revisions to the Cab Rules on March 8, 2005. The hearing was conducted in the Division's hearing room, located at 89 Jefferson Boulevard in Warwick, Rhode Island. The following counsel entered appearances:

For the Motor Carrier Section³:

William K. Lueker, Esq.
Spec. Asst. Attorney General

For the Rhode Island Public Transit Authority ("RIPTA"):

Steven M. Richard, Esq.

² On February 10, 2005 the Motor Carrier Section mailed copies of the proposed amendments to the Cab Rules, in redacted form, along with a copy of Mr. Mercer's pre-filed testimony and a letter of explanation, to each certificated cab company doing business in Rhode Island.

³ The Motor Carrier Section is also referred to as the "Advocacy Section" in this docket.

In order to facilitate the Division’s discussions and findings relative to the suggested changes articulated by interested persons during this proceeding, the Division has attached a copy of the proposed Motor Carrier Section’s Cab Rules to this report and order as “Appendix 1.”

2. Motor Carrier Section’s Rationale For the Proposed Amendments

Mr. Terrence Mercer, the Motor Carrier Section’s Associate Administrator, testified in support of the proposed amendments to the Cab Rules. He also sponsored and authenticated four exhibits in this docket, specifically, (1) a redacted version of the proposed Cab Rules specifying the proposed additions and deletions;⁴ (2) a clean copy of the proposed Cab Rules, without redactions;⁵ (3) his pre-filed direct testimony;⁶ and (4) the notification package that was mailed to all certificated cab companies.⁷

Mr. Mercer testified that the Motor Carrier Section initiated this rule-making proceeding to address some technical inconsistencies in the existing rules, which he described as inconsistencies in “terminology, statutory cites, formatting inconsistencies, changes in regulatory responsibility and other minor changes that have arisen as a result of recent Division decisions.”⁸ Mr. Mercer further explained that the Motor Carrier Section also believes that some sections of the existing Cab Rules “needed more substantive clarifications, such as the provisions dealing with ‘call and demand’ services.”⁹

⁴ Advocacy Section Exhibit 1.

⁵ Advocacy Section Exhibit 2.

⁶ Advocacy Section Exhibit 3.

⁷ Advocacy Section Exhibit 4.

⁸ Advocacy Section Exhibit 3, p. 2.

⁹ Id.

After detailing the proposed “technical corrections” and “minor changes”¹⁰, Mr. Mercer turned his attention to a discussion regarding the proposed “substantive” changes. The first involved the definition of the term “Call and Demand”, as appearing in Sections A(5) and H(14) of the Cab Rules. Mr. Mercer related that over the last four years, the Motor Carrier Section “has consistently interpreted ‘Call and Demand’ to allow ‘round trips’ to destinations outside an authorized territory, including intermediate stops, so long as the taximeter operates continuously.”¹¹ However, Mr. Mercer testified that recently the Motor Carrier Section has discovered that a number of cab companies have historically interpreted the “Call and Demand” rule “to allow a ‘round trip’ under circumstances where the taximeter is not operated continuously.”¹² Mr. Mercer testified that the Motor Carrier Section is proposing amendments to Sections A (5) and H (14) of the Cab Rules, consistent with its interpretation of the Rule, in order to remove any ambiguity associated with the meaning of “Call and Demand”. He related that: “this should eliminate any inconsistency in the way ‘Call and Demand’ and ‘Round Trip’ are understood by the industry”.¹³

Notwithstanding the Motor Carrier Section’s decision to promote the codification of its interpretations of “Call and Demand” and “Round Trip” in the proposed revisions to the Cab Rules, Mr. Mercer did testify that the Division should still consider the pros and cons associated with both interpretations and

¹⁰ Id., pp. 3-8.

¹¹ Id., p. 8.

¹² Id.

¹³ Id., pp. 8-9.

determine which interpretation is more appropriate. Mr. Mercer thereupon discussed the pros and cons of each.

He began by citing the statutory language that Sections A (5) and H (14) of the Cab Rules are based upon. The statute in issue is Section 39-14-1(7) of the Rhode Island General Laws, which provides the State's definition of a "Taxicab." The law provides in pertinent part as follows:

"Taxicab" means and includes every motor vehicle for hire...equipped with a taximeter, used for transporting members of the general public for compensation to any place within the state as may be directed by a passenger on a call and demand basis, when the solicitation or acceptance of the passenger occurs within the location named in the certificate; provided, that the vehicle's driver may, if and when solicited on a public highway at any location at which he or she is discharging a passenger, which location is not shown in the certificate, provide transportation from the location only to a place named in the certificate.

Mr. Mercer explained that some cab companies "apparently have interpreted that language to mean that, if they pick up a passenger in their territory for a trip to some destination outside their territory, and that passenger asks the taxicab to come back and pick them up at some later time, the taxi can do so because the 'solicitation or acceptance' actually occurred within the taxicab's authorized territory" (sometimes referred to in this report and order as the "minority" view or interpretation).¹⁴

While the Motor Carrier Section disagrees with this interpretation, Mr. Mercer did acknowledge that the passenger derives "significant benefit" under this minority interpretation. He explained that this interpretation allows the

¹⁴ Id., pp. 9-10.

passenger to arrange for his or her return trip at the same time the initial trip is made. Mr. Mercer related that the passenger would not have to worry about whether or not he or she could find a taxi at a taxi stand when they were ready to return, or worry about whether or not they could find a phone book that would allow them to identify a taxi that actually had authority for the area they were in. Mr. Mercer added that the same types of benefits would apply to a passenger using a taxi to go to a doctor's appointment and back home again. He noted that the passenger "wouldn't have to pay the current \$25-per-hour waiting time as required under the current interpretation".¹⁵

Mr. Mercer also acknowledged the benefit to the taxi companies under this minority interpretation, particularly to the smaller independent operators. He testified that many taxi operations rely on repeat business and work very hard to cultivate a group of regular customers. Mr. Mercer observed that such an arrangement arguably promotes better service to ratepayers.

However, Mr. Mercer was also quick to identify the cons connected to this interpretation. He opined that the larger cab companies "could be given an unfair competitive advantage by this interpretation."¹⁶ Mr. Mercer cited Airport Taxi as an example of a large company that Mr. Mercer believes could be "able to monopolize most of the lucrative Providence-Airport business travel."¹⁷ Mr. Mercer also noted that if this interpretation were adopted by the Division, service

¹⁵ Id., p. 11.

¹⁶ Id.

¹⁷ Id., pp. 11-12.

in some areas could diminish as the larger companies force smaller local companies out of business.

Mr. Mercer testified that the Motor Carrier Section also disapproves of this interpretation due to the enforcement difficulties it presents. He related that it would become extremely burdensome to enforce operating certificate territorial restrictions under this interpretation. He explained: "...my Compliance Inspectors...would [not] know whether the driver is actually picking up out of territory (a violation) or simply doing a legitimate return-trip pick-up."¹⁸

In his final comments on this matter, Mr. Mercer urged the Division to adopt the Motor Carrier Section's view on this Rule, but indicated that the minority view could also be adopted by the Division "...by giving us all some language that can be easily understood and fairly enforced, without running the risk of allowing a few large companies to dominate the market".¹⁹ Mr. Mercer offered the following additional rule provisions, to be added to Section H (14), as a suggestion if the Division chose to adopt the minority view:

(b) When a passenger requests a pre-arranged return trip, the driver shall make a notation on his log sheet next to the record of that initial trip, indicating the passenger's name and the time at which the driver is to return to retrieve the passenger for the pre-arranged trip. The driver may only retrieve the passenger for such pre-arranged trip at the location at which the passenger was originally discharged.

(c) In the event that the original driver in such a pre-arranged return trip is unavailable to retrieve the passenger as arranged, the taxi certificate holder may dispatch a different driver/cab, but the subsequent driver/cab must carry, attached to the driver log, a written appointment slip

¹⁸ *Id.*, pp. 12-13.

¹⁹ *Id.* p. 13.

containing the following: passenger name, time and location of pre-arranged retrieval, name of original driver as well as time, date and cab number of original pick-up.

(d) Failure to comply with subsections b. and c. above will be viewed as evidence that a pick-up occurred outside of the authorized territory, was not properly pre-arranged and, therefore, is a violation of this rule.

(e) Nothing in this section shall prohibit any trip in which the beginning point occurs within the location named in the certificate, regardless of location of any intermediate stops, so long as the taximeter is operated continuously throughout the trip.

Mr. Mercer additionally asked the Division to consider the possibility of prohibiting fleet operations from performing pre-arranged return trips in order to prevent large cab companies from obtaining a competitive advantage over the smaller cab companies. On this point, Mr. Mercer testified that the Division may have to amend the current definition of a “fleet” operation, which according to Mr. Mercer, is currently defined as “six (6) or more vehicles” because Mr. Mercer doesn’t believe the Cab Rules make it clear whether the definition applies only to a single certificate or a single owner with multiple certificates.²⁰ Mr. Mercer also asked the Division to consider whether a “time limitation” should be applied for pre-arranged return trips. He suggested a 24-hour retrieval period.²¹

Mr. Mercer next discussed some of the other substantive changes being proposed by the Motor Carrier Section. He testified that Section A(11) of the proposed Cab Rules is new. He explained that this Rule, which defines “Hackney

²⁰ *Id.*, pp. 15-16.

²¹ *Id.*, p. 16.

Operator’s License” was added due to a recent change in the State’s cab-related statutory law.²²

Mr. Mercer testified that Section A(15) “spells out the statutory definition of ‘Paratransit Services’.” He explained that although the statutory law defining paratransit services has not changed, the Motor Carrier Section felt that it was important to emphasize “that cabs cannot provide paratransit services.”²³ He noted that the rule was added because “we have heard over the years that some cab companies mistakenly believe they can do so.”²⁴

Mr. Mercer testified that another substantive change is the inclusion of the term “Taxicab Stand” in the definitions section of the Cab Rules and some related provisions associated with conduct at taxicab stands. He explained: “while it is clear that the Division does not establish taxicab stands, it is equally clear that we have the authority to regulate the conduct of drivers in and around such stands”. He explained that Section I(3)(c) was added to make it clear that a passenger is free to select any taxi they wish regardless of its position in the taxi stand queue. He related that Section I(3)(f) was added “to make it clear that we will regulate the behavior of taxi drivers at a taxi stand regardless of whether or not the entity that established the taxi stand has any independent authority to also regulate their behavior.”²⁵

²² Id., p. 17 (referring to changes to R.I.G.L. §39-14.1-8).

²³ Id., p. 17. The definition of “paratransit services” is contained in R.I.G.L. §39-13-1. The distinction between a paratransit service provider (a type of jitney-related service) and a cab is important in that paratransit services are not subject to Division regulation.

²⁴ Id.

²⁵ Id., pp. 17-18.

Mr. Mercer identified Section D(4) as another substantive change. He explained that the rule is based on a recent statutory change that requires the Division to implement a gasoline price emergency surcharge program.²⁶

Mr. Mercer identified Section G(18) as another substantive change. He explained that the rule “provides the Division the ability to conduct training sessions to help certificate holders and/or ‘blue card’ holders familiarize or re-familiarize themselves with our rules.” He related that the new rule “would also allow the requirement of such training in lieu of or in addition to other sanctions for any rules violations.”²⁷

Mr. Mercer identified an amendment to Section J(2) as the final substantive change. He explained that this change “merely makes explicit a long-standing interpretation by the Division of the statute governing the leasing of cabs.” Mr. Mercer related that the Motor Carrier Section has long held the position that a “replacement vehicle may be leased out at once so long as the vehicle it is replacing was already eligible to be leased out.” He testified that the language now added to Section J(2) “finally makes this clear.”²⁸

3. Submitted Data, Views and Arguments (Public Comments)

Fourteen individuals offered comments on the proposed Cab Rules. These individuals were identified as follows: Steven Richard, Esq., General Counsel, RIPTA; Mr. Douglas Wood, Ride Program Manager, RIPTA; Mr. Michael Tartaglione, General Manager, Corporate Taxi and Corporate Transportation; Mr.

²⁶ Id., p. 18 (referring to a recent amendment to R.I.G.L. §39-14-2.2).

²⁷ Id., p. 19.

²⁸ Id.

Paul Desrosiers, representing Big Daddy Taxi Company; Mr. Arthur Soben, representing City Cab Company; Mr. Paul Miller, representing Cozy Cab; Mr. Robert Ferguson, representing Quality Cab and Royal Cab; Mr. Ramon Perez, representing Apolo Taxi; Mr. John Petrarca, representing Economy Cab Company; Mr. John Bandoni, Jr., representing Alexander Taxi; Ms. Ramona Gomez, representing Family Taxi; Mr. Victor Johnson, a driver for Airport Taxi; Ms. Kim Derensis; and Mr. Jack Walsh, representing Walsh Cab.

RIPTA offered both written and verbal comments on the record.²⁹ However, none of the comments were directed specifically at the proposed amendments to the Cab Rules. Instead, RIPTA indicated that it relies on cab services daily to supplement the transportation services provided by its “Ride Program” vans. RIPTA’s representatives related that RIPTA has been unable to secure as much cab service as it requires in some locations in the State and has serious concerns regarding this matter.³⁰

The comments received from those members of the taxicab industry who appeared at the hearing almost exclusively addressed the “call and demand” and “round trip” revisions proposed in Sections A (5) and H (14). These provisions clarify the legal parameters for authorized “round trips”, and would, if adopted by the Division, eliminate the practice by some cab companies of providing pre-arranged round trips to a location authorized in their certificates from locations not authorized in their certificates without continuity of meter operation.

²⁹ Public Comment Exhibit 1.

³⁰ Tr. 17-31.

Mr. Paul Miller responded to Mr. Mercer's suggestion that the Division consider the possibility of prohibiting fleet operations from performing pre-arranged return trips in order to prevent large cab companies from obtaining a competitive advantage over smaller cab companies. Mr. Miller rejected this limitation due to his belief that the proposal "would give independents an unfair advantage" over "fleet" operations like his. Mr. Miller thereupon suggested, "that we leave these things alone." He opined that the current statutory definition of a "taxicab" is sufficient to address the matter in issue.³¹

Mr. Robert Ferguson supported the minority interpretation of a "round trip." He cited the example of an elderly woman who his company routinely transports to Providence from his authorized area in Pawtucket. He related that he transports the woman to her doctor, whose office is just "over the line" in Providence. Mr. Ferguson stated that the woman "...requests the same driver all the time. She feels comfortable with that driver."³² Mr. Ferguson asserted that his customers derive a benefit from this type of personal and familiar cab service.

Mr. Ramon Perez commented in opposition to the minority interpretation of "Call and Demand" cab service. He related that he paid \$30,000 for his certificate and is "losing money" when unauthorized cab companies pick up passengers in his service area. Mr. Perez related that his company does not provide return trips to customers from areas not authorized in his certificate. He related that he services his customers on these return trips by calling authorized cab companies in those areas to arrange the return services for his customers. Mr. Perez opined

³¹ Tr. 44-48.

³² Tr. 49.

that all cab companies should do the same, which would eliminate the need for return trips into unauthorized service areas.³³

Mr. Michael Tartaglione supported the minority view regarding the round trip issue. Mr. Tartaglione admitted that he has elderly customers like those Mr. Ferguson described who require round trips to their doctors. He related that these customers are “not going to get priority from another cab company”.³⁴ Mr. Tartaglione also implied that the minority view practice is common in the industry, suggesting that drivers regularly provide return services from locations outside their operating territories during slow times.³⁵ Mr. Tartaglione additionally supported the minority view based on his belief that it promotes continued cab services to an area at times when local authorized taxicabs are out of service or already engaged.³⁶

Mr. John Petrarca echoed the sentiments of Messrs. Ferguson and Tartaglione in support of the minority interpretation. Mr. Petrarca related that the Division’s adoption of the minority view would allow him to maintain his customer base and advance the continued customer convenience associated with this type of return service. Mr. Petrarca added that if the Division does not wholly adopt the minority view, he would support Mr. Mercer’s “24-hour” proposal.³⁷

Mr. Paul Desrosiers proffered comments in opposition to the minority view. He supported the Motor Carrier Section’s proposal to completely outlaw the

³³ Tr. 51.

³⁴ Tr. 52.

³⁵ Tr. 53-54.

³⁶ Tr. 91-93.

³⁷ Tr. 55-57.

practice. Mr. Desrosiers maintained that there is “no evidence...anyone has ever complained... that they can’t get a taxi.” He argued that under the law, taxicab companies must “prove there’s a necessity to pick up in that territory” and then be issued a certificate from the Division.³⁸

Mr. Desrosiers related that cab companies who continue to believe in the minority view do so because they are improperly following a twenty-year-old Division rule that no longer exists. Mr. Desrosiers thereupon produced an outdated Division Rule, which he claimed was in effect in the 1980s. He opined that after the Rule was changed, he claimed in the late 1980s, many cab companies failed to abide by the change, and instead continued to provide service under the now obsolete minority view practice.³⁹ Mr. Desrosiers also requested that the Division investigate the taxicab companies that have been following the old rule. Mr. Desrosiers urged the Division to reject the minority view completely. He argued that there should also be no exceptions, as he believes that the exceptions would result in unfair regulatory treatment between competing “fleet” and “independent” operators.⁴⁰

Mr. Desrosiers also offered comments regarding newly proposed Rule I (3)(c), which permits a passenger to “select any taxicab at a taxi stand, regardless of that taxicab’s position in line”. Mr. Desrosiers called this rule “ambiguous.” Mr. Desrosiers agreed that if a customer has a particular “preference” for a taxi, the customer should be permitted to select that particular taxicab at the taxi

³⁸ Tr. 57-58.

³⁹ Tr. 60-63.

⁴⁰ Tr. 64-65.

stand. However, in cases where the customer does not have a particular preference, he contends that the customer should be required to select the first taxicab in line. Mr. Desrosiers argued that if a customer selects a taxicab in the middle of the line, because it happens to be the closest taxicab to the customer at the time, the driver of that taxicab should be required to refuse the fare and send the customer to the first taxicab in line. In cases where the customer expresses a preference, Mr. Desrosiers would require the driver of the preferred taxicab to have the customer personally indicate his/her preference to the driver of the first taxicab in line before getting into the preferred taxicab.⁴¹

Mr. John Bandoni commented that the type of short-trip service that Mr. Ferguson provides to some of his customers between Pawtucket and Providence ought to be allowed. He opined that Providence-based cabs would not want to provide these short trips on a regular basis. He related that these small fares do not justify the related wear-and-tear on the taxicabs. Mr. Bandoni also supported the 24-hour exception described in Mr. Mercer's testimony.⁴²

Ms. Ramona Gomez was surprised to hear that there were so many cab companies actively practicing the minority view. She supported the Motor Carrier Section's proposal to abolish the practice completely.⁴³

Mr. Victor Johnson supported the minority interpretation with the conditions suggested by Mr. Mercer.⁴⁴

⁴¹ Tr. 102-110.

⁴² Tr. 77-79.

⁴³ Tr. 79-81.

⁴⁴ Tr. 81-83.

Ms. Kim Derensis would support any change that would allow unauthorized taxicabs to be utilized during peak service periods when authorized cabs are unable to satisfy the local demand.⁴⁵

Mr. Jack Walsh commented in support of the minority view in cases where “fleet” operations are servicing “corporate accounts.” Mr. Walsh related: “all the [cab] companies have them, and all of them do this. They’re out of territory, they’re operating out of territory.”⁴⁶

4. Findings

The Division appreciates the data, views and arguments that were offered by the cab industry members and the other interested persons who participated in this rulemaking proceeding. The Division has considered the many suggestions and recommendations offered by the participants and has reached a number of related findings, as described below:

a. Rules A (5) and H (14) Concerns

The Motor Carrier Section has asked the Administrator to revise Rules A (5) and H (14) in order to eliminate any confusion with respect to the definition of a legal “round trip.” Relying on the definition of “taxicab” provided in R.I.G.L. §39-14-1(7), the Motor Carrier Section asserts that a round trip can only be legal in cases where the taximeter operates continuously. However, recognizing the potential for degradation in cab services under the strict interpretation proposed, the Motor Carrier Section also offered an alternative compromise position on the issue, supra.

⁴⁵ Tr. 89-90.

⁴⁶ Tr. 112-113.

In view of the two presently diverse interpretations connected to the meaning of “round trip” the Division believed it necessary to briefly explore the history behind this issue and hopefully get to the root of the confusion. To start, the Division examined the Cab Rules produced by Mr. Desrosiers,⁴⁷ which he asserted dated back to the 1980s. However, the compilation of obsolete Cab Rules proffered by Mr. Desrosiers was undated and devoid of a docket number designation, which prompted additional research by the Division.

The Cab Rules compilation submitted by Mr. Desrosiers contains the following provision, which the Division will refer to, in this report and order, as the “outside territory pick-up” provision:

*A certificate shall not be construed to prevent a certificate holder from accepting and filling an order or contract received by telephone at the principal office of the certificate holder, to take on a passenger or passengers outside of its certificated territory, to be dispatched at some point within its certificated territory, or to carry a passenger originating within its certificated territory to a point outside of such territory.*⁴⁸

The Division was able to trace Mr. Desrosiers’ copy of purported Cab Rules to a 1995 Division rulemaking docket, designated “95-MC-55”. Mr. Desrosiers’ compilation of Cab Rules turns out to be a copy of the draft Cab Rules that were initially proposed by the Division at the outset of the 1995 rulemaking process. The Division, however, never adopted the version in Mr. Desrosiers’ possession. The Cab Rules that ultimately were adopted in that docket, after taking comments at a duly noticed public hearing on the initially proposed Cab Rules

⁴⁷ Public Comment Exhibit 3.

⁴⁸ Contained in Section I (10) of the Cab Rules proffered by Mr. Desrosiers.

(Mr. Desrosiers' copy of the Cab Rules), did not contain the aforementioned "outside territory pick-up" provision or any other provision that defined or addressed outside territory pick-up or "round trip" cab services. The final Cab Rules adopted in that rulemaking docket went into effect on February 11, 1996.

Due to the fact that the initially proposed Cab Rules in the 1995 rulemaking actually contained a provision allowing certificate holders to "take on a passenger or passengers outside of [the certificate holder's] certificated territory," the Division examined its pre-1996 Cab Rule records to see if it could locate the source of the "outside territory pick-up" provision. The resulting search led to a compilation of Cab Rules that were adopted by the Division, for effect beginning on September 15, 1987. The 1987 Cab Rules contained a provision identical to the "outside territory pick-up" provision contained in Mr. Desrosiers' copy of the initially proposed 1995 Cab Rules.⁴⁹ In short, albeit the exhibit that Mr. Desrosiers' proffered to substantiate his claim that the outdated "outside territory pick-up" provision dated back to the 1980s was flawed, the validity of his claim that the Rule dated back to the 1980s has been proven to be correct. Conversely, the Division notes that Mr. Desrosiers' claim that the "outside territory pick-up" provision was also abandoned in the 1980s was incorrect. In fact, the "outside territory pick-up" provision identified by Mr. Desrosiers remained the law of the State (from at least 1987) until abandoned by the Division in the 1996 Cab Rules.

⁴⁹ Contained in Section XIII (BB) of the 1987 Cab Rules.

The Cab Rules that were placed into effect by the Division on February 11, 1996 remained in effect until September 21, 2000, after which the Division adopted further amended Cab Rules. Through this next rulemaking, the Division added a new definition to the Cab Rules, entitled “Call and Demand”, which appears to provide a first reference to authorized “round trip” cab services. In reviewing that rulemaking record, the Division finds no definitive explanation for the new “Call and Demand” definition or the “round trip” language contained therein. Instead, the Advocacy Section’s attorney at the time described the need for the new definition as follows:

“Call and Demand” is consistent with 39-14-1.7. This is included in the Rhode Island General Laws as part of the definition of taxicab. It is included as part of the definition of taxicab in the rules currently in effect. We set it out here because I think it makes clearer as to what a call and demand is.⁵⁰

The definition of “Call and Demand”, as first introduced in the rulemaking proceeding that resulted in the promulgation of the 2000 Cab Rules, and which remains in effect today, is reflected below:

CALL AND DEMAND: Means the solicitation or acceptance of a fare occurring only within the location specified in the certificate. This section shall not prohibit a round trip requested by the passenger so long as the solicitation or acceptance of said pre-requested round trip occurs in the location identified in the certificate.⁵¹

While the Division could not determine the intent behind the inclusion of a “Call and Demand” definition in the Cab Rules that were promulgated in 2000, it

⁵⁰ Docket No. 99-MC-46, Tr. 12 (6/29/00).

⁵¹ Contained in Section A of the current Cab Rules.

is obvious that the provision was added for a reason. Mr. Mercer, who had no role in the promulgation of the Division's Cab Rules in 2000, testified that the Motor Carrier Section "has consistently interpreted 'Call and Demand' to allow 'round trips' to destinations outside an authorized territory, including intermediate stops, so long as the taximeter operates continuously", supra. However, based on the definition of "Call and Demand" as reflected above, the Division cannot agree with the Motor Carrier Section's current interpretation. Relying on the plain meaning of the words contained in the definition, the Division finds no requirement that the meter operate "continuously" during the time necessary to complete the round trip. Instead, the definition provides that round trips are authorized if "pre-requested" in the "location identified in the certificate". Interestingly, the use of the term "pre-requested" in the definition suggests that the passenger has requested that the cab return at a later time to complete the second leg of the round trip. To accept the Motor Carrier Section's interpretation of "Call and Demand" logically raises the questions of why the words "round trip" are needed at all in the definition and further, how "waiting time" would factor into the cab services being provided. The Division additionally has difficulties imagining who would use the cab services contemplated in the interpretation offered by the Motor Carrier Section. Why would anyone request a cab ride to a location and then either (1) immediately request a return trip without exiting the cab or (2) request that the cab wait for an extended period, incurring costly waiting time charges, before completing the round trip?

At this juncture, based on the history behind “outside territory pick-up” and “round trip” provisions contained in the Division’s past and current Cab Rules, the Division can appreciate the need for clarification on the definition of a proper “round trip”. The administrative travel outlined above reflects that in recent times certificate holders were permitted to transport passengers from locations outside the certificate holder’s authorized operating territory to a location authorized in the operating certificate so long as the request for service was communicated by telephone. This authority clearly facilitated the provision of round trip services by cab companies, and notably round trip services that did not require that the cab’s meter run continuously. This authority existed for almost 9 years between 1987 and 1996. Later in 2000, specific authority for performing “round trip” services was added to the Cab Rules, debatably, a provision with similar elements to the “outside territory pick-up” rule that existed between 1987 and 1996. In the final analysis, with the exception of the brief period between 1996 and 2000, the Division has authorized outside territory pick-up-type round trips, in some fashion, since at least 1987. Moreover, it’s worth mentioning, that in its cursory review of its historical Cab Rules records, the Division could not locate a copy of the Cab Rules that were in effect prior to 1987. Therefore, it is unknown at this time whether the “outside territory pick-up” provision contained in the 1987 Cab Rules actually pre-dates the 1987 Cab Rules.

The Division has chronicled the evolution of this “round trip” issue since at least 1987. The Division finds that the “outside territory pick-up” provision was

included in the 1987 Cab Rules to, in part, facilitate round trips and thereby provide more flexible and convenient cab services to the public. The Division further finds that the “round trip” language was included in the definition of “Call and Demand” in 2000 for the same reason, to facilitate round trips and bolster cab services to the public. Even Mr. Mercer acknowledged that the passenger derives “significant benefit” under the minority interpretation of the definition of “Call and Demand,” and in fact identified many of these benefits in his testimony, supra.

Mr. Mercer’s concerns regarding the minority view on the subject were limited to perceived enforcement difficulties and the likelihood of a competitive advantage that would attach to the State’s larger fleet operations. While concerns of this nature may have precipitated the abrogation of the “outside territory pick-up” provision from the Cab Rules adopted in 1996, the Division finds that providing robust cab services to the public is the paramount interest and outweighs those concerns articulated by Mr. Mercer. Indeed, this realization may have compelled the Division to reconsider the matter and add a provision in the Cab Rules adopted in 2000 re-authorizing “round trip” cab services.

Predicated on this conclusion, the Division finds that some round trip services should be permitted. Toward this end, the Division shall adopt a round trip provision for inclusion in the current Cab Rules that will facilitate personalized round trip cab services under restrictions that will (1) provide Mr. Mercer and the Motor Carrier Section with the enforcement tools they require for effective regulatory supervision of the cab industry, and (2) minimize the potential

for unfair or destructive competition. The new round trip rule, which will be incorporated into Rules A (5) and H (14), shall provide as follows:

This [definition/rule] shall not [exclude/prohibit] a pre-arranged round trip requested by the passenger so long as all the following conditions are satisfied:

- (1) The round trip must begin in the certificate holder's authorized territory,*
- (2) The round trip must be completed within a 24-hour period,*
- (3) When a passenger requests a round trip, the driver shall make a notation on his log sheet next to the record of that initial trip, indicating the passenger's name and the time at which the driver is to return to retrieve the passenger for the pre-arranged return leg of the round trip,*
- (4) The driver must give a passenger requesting a round trip a receipt, to be called a "round trip confirmation receipt", at the completion of the first leg of the round trip that clearly contains the following information: (a) the date, time and location of initial drop off, (b) the cab number, (c) the passenger's name, (d) the name and telephone number of the certificated cab company, (e) the driver's name, and (f) the time the cab is scheduled to return to complete the round trip service. The driver must retain a copy of this receipt.⁵²*
- (5) The driver may only retrieve the passenger for such pre-arranged round trip at the location at which the passenger was originally discharged.*
- (6) In the event that the original driver in such a pre-arranged round trip is unavailable to retrieve the passenger as arranged, the certificate holder may*

⁵² The Division suggests that cab companies have form receipts professionally printed that will provide the required "boilerplate" information already pre-printed on the receipts, and that will provide "fill-in-the-blanks" for the additional required information. The receipt booklets could also contain an "original" receipt for the passenger and a "copy" receipt for retention by the driver.

dispatch a different driver/cab, but the subsequent driver/cab must carry, attached to the driver log, a copy of the "round trip confirmation receipt" described in paragraph (4) above.

Certificate holders are not mandated to provide round trip services to their customers/passengers. However, if a certificate holder and/or driver agrees to provide a round trip cab service, as evidenced by the issuance of a "round trip confirmation receipt," that certificate holder shall be required to complete the round trip service, unless unable to complete the service for good cause.

The Division believes that the conditions established herein for the provision of round trip services are unambiguous and enforceable. The Division will even offer a sample "round trip confirmation receipt" for possible adoption by the cab industry with this report and order. Principally, the Division has concluded that round trip service is in the public interest. In order to be attractive and successful as a provider of regular round trip cab services, certificate holders and drivers will need to offer personalized and exemplary service that will attract repeat and loyal business. Many cab companies already endeavor to conduct their businesses this way. The Division must acknowledge these efforts, and encourage cab companies to keep their cabs clean and in good repair, require their drivers to dress neatly and conduct themselves in a courteous and professional manner, and to provide punctual and reliable service. This is the level of service that attracts devoted round trip customers; a level of service that the Division believes must be preserved, not abandoned.

The Division also believes that round trip service is in the public interest to ensure that cab services are available from locations where there are few or no local cab companies doing business, or in cases where small local cab

businesses may be closed for the evening or operating at full capacity. A current example is the town of Bristol, where there is no originating cab service available. Presently, if an individual living in Providence needed to visit a doctor or attend a meeting in the town of Bristol, after the Providence-based cab company transported that individual to Bristol, that individual would not be able to find a Bristol-based cab company for the return trip home to Providence. Allowing round trip cab service into and out of the town of Bristol clearly is in the public interest. Under the round trip rule adopted herein, the Providence-based cab could return to Bristol to provide the necessary transportation service back to Providence.

b. Rule I (3)(c) Concerns

Mr. Desrosiers was the only individual to question the reasonableness of proposed Rule I (3)(c). The Division has considered Mr. Desrosiers' suggested revisions to the proposed Rule and finds that the Rule proposed by the Motor Carrier Section is consumer friendly and represents the more reasonable approach to regulating the conduct of drivers at taxicab stands. The Division finds that it is not in the public interest to require taxicab passengers to walk to, and confront, drivers at the front of the taxicab stand to inform them of their taxicab company preferences. The Rule proposed by the Motor Carrier Section prohibits drivers from soliciting passengers at a taxicab stand; in the opinion of the Division, this prohibition adequately protects the other drivers in line.

5. RIPTA's Concerns

The Division understands RIPTA's dilemma in finding sufficient cab services to supplement the transportation needs of those individuals who rely on RIPTA's Ride Program. The Division believes that the round trip services authorized herein will benefit RIPTA's Ride Program patrons by allowing for broader and more flexible cab services. Additionally, the Division suggests that RIPTA also examine the transportation services available through the State's regulated "Public Motor Vehicle" companies as a way of augmenting its transportation options. The Division is always available to fully describe and explain the types of, and differences between, the various regulated intrastate passenger transportation services operating in Rhode Island.

6. Conclusion

The Division has responded to the data, views and arguments offered by those members of the cab industry and other interested persons who participated in the instant rulemaking. Based on the comments offered regarding the proposed amendments to Rules A (5) and H (14), the Division has decided to modify the related proposals being recommended by the Motor Carrier Section. However, with respect to the other rule revisions being proposed by the Motor Carrier Section, the Division finds those proposed revisions to the Cab Rules reasonable and in the public interest.⁵³

⁵³ The Division notes that while it adopted the Cab Rules proffered by the Motor Carrier Section, with the modifications described herein, the actual Division Cab Rules being issued by the Division (Appendix 2) reflect non-substantive formatting and wording changes.

Further, the Division has become mindful through the instant rulemaking proceeding that other facets of cab service inadequacy exist in the State and ought to be considered by the Division in future rulemakings. As examples, RIPTA indicated in this docket that it has discovered that cab services are not readily available in the city of Woonsocket before 7:00 a.m.⁵⁴ Ms. Derensis related that during peak cab demand hours, “people are waiting two or three hours for a cab.”⁵⁵ The Division acknowledges these deficiencies and believes that some regulatory relief is possible to mitigate the impact caused by these deficit services. While beyond the scope of this rulemaking, the Division might consider authorizing limited cab services into some locales to provide a narrow augmentation of cab services in cases where “special need circumstances” are demonstrated. The Division would be amenable to addressing this issue in a future rulemaking or on a case-by-case basis as precipitated by individual petition filings. The Division requests that the Motor Carrier Section staff consider this matter for purposes of deciding whether an additional rulemaking would be in the public interest.

Now, Accordingly, it is

(18262) ORDERED:

1. That predicated upon and modified by the findings contained herein, the Division hereby adopts the “Rules and Regulations Governing the Transportation of Passengers via Taxicabs and Limited Public Motor Vehicles,” as reflected in “Appendix 2” to this report and order.

⁵⁴ Tr. 22.

⁵⁵ Tr. 89.

2. That cab certificate holders are instructed to substantially adopt the “Round Trip Confirmation Receipt” design reflected in “Appendix 3” to this report and order.
3. That “Appendix 1”, “Appendix 2” and Appendix 3” are hereby incorporated by reference.
4. That the Division’s Rules Coordinator is hereby instructed to file a certified copy of the attached “Rules and Regulations Governing the Transportation of Passengers via Taxicabs and Limited Public Motor Vehicles” (Appendix 2) with the Rhode Island Secretary of State as soon as practicable, and also to fully comply with the filing requirements contained in R.I.G.L. §42-35-3.1 and §42-35-4. The Division will endeavor to file the instant Rules with the Rhode Island Secretary of State on or before June 15, 2005 in order to facilitate an effective date of July 5, 2005.
5. That the newly amended “Rules and Regulations Governing the Transportation of Passengers via Taxicabs and Limited Public Motor Vehicles” shall take effect on July 5, 2005.

DATED AND EFFECTIVE AT WARWICK, RHODE ISLAND ON JUNE 3, 2005.

John Spirito, Jr., Esq.
Hearing Officer

Thomas F. Ahern
Administrator

