



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of Policy Planning  
Bureau of Competition  
Bureau of Consumer Protection  
Bureau of Economics

June 7, 2013

Mr. Jacques P. Lerner  
General Counsel  
District of Columbia Taxicab Commission  
2041 Martin Luther King, Jr., Ave., S.E.  
Suite 204  
Washington, D.C. 20020

Re: Second Proposed Rulemakings Regarding Chapters 12, 14, and 16 of Title 31

Dear Mr. Lerner:

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics appreciate this opportunity to provide comments to the District of Columbia Taxicab Commission ("DCTC") on three notices of second proposed rulemakings regarding Chapters 12, 14, and 16 of Title 31 of the D.C. Municipal Regulations, concerning taxicabs and public vehicles for hire.<sup>1</sup> These proposed rules follow enactment of the "Taxicab Service Improvement Amendment Act of 2012" and the "Public Vehicle-for-Hire Innovation Amendment Act of 2012," which appear intended to modernize Washington, D.C.'s regulatory framework for passenger motor vehicle transportation services.

Staff appreciates that these legislative updates to the framework appear designed to facilitate new forms of competition that are likely to benefit consumers, especially by providing for the legal recognition of new software applications ("applications") to arrange and pay for passenger motor vehicle transportation services. We are concerned, however, that certain of the proposed rules may unnecessarily impede competition in these services. We also comment on certain proposed rules that address disclosure and data security issues that applications may raise.

## **I. Interest and Experience of the Federal Trade Commission**

The FTC is an independent federal agency that enforces laws prohibiting unfair methods of competition and unfair and deceptive acts or practices in or affecting commerce.<sup>2</sup> The Commission has wide-ranging responsibilities concerning nearly all segments of the economy. Pursuant to this responsibility, the Commission seeks to

identify business practices and regulations that impede competition without offering countervailing benefits to consumers, and advocates for policies that promote competition and consumer protection.<sup>3</sup>

Competition and consumer protection naturally complement and mutually reinforce each other, to the benefit of consumers. Consumers benefit from market competition, which creates incentives for producers to be innovative and responsive to consumer preferences with respect to price, quality, and other product and service characteristics. As the U.S. Supreme Court has recognized, the benefits of competition go beyond lower prices: “The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain - quality, service, safety, and durability - and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.”<sup>4</sup> At the same time, consumer protections promote informed consumer decision-making by prohibiting firms from engaging in unfair and deceptive acts or practices, by requiring sellers to make truthful and non-deceptive representations about their offerings, and by protecting consumers’ privacy.

In carrying out its mission, the Commission has developed considerable expertise in analyzing issues relating to passenger vehicle transportation services. FTC staff previously has submitted a number of advocacy filings related to taxicabs with various local and state authorities, including recent comments regarding the regulation of new applications for obtaining passenger vehicle transportation services in Anchorage, Alaska and Colorado.<sup>5</sup> In addition, the FTC has brought enforcement actions against two cities relating to taxicab regulation,<sup>6</sup> and has issued two significant reports on taxi regulation.<sup>7</sup>

The Commission also has expertise in various aspects of competition and consumer protection that are relevant to new passenger motor vehicle transportation applications. The Commission has developed considerable expertise relating to the emergence of new technologies and innovation as a form of competition.<sup>8</sup> The FTC also has extensive consumer protection expertise in the advertising and marketing of products and services, including deception and disclosure issues.<sup>9</sup> Staff has recently updated guidance on how to make effective disclosures in the online context.<sup>10</sup> The Commission has also developed consumer protection expertise in data security, privacy, and identity theft issues that applications may raise.<sup>11</sup>

## **II. The Passenger Vehicle Transportation Marketplace**

Until recently, the marketplace for commercial passenger motor vehicle transportation services in the United States had remained largely unchanged since at least the early 1980s.<sup>12</sup> However, primarily in response to the introduction of smartphones around 2007, both incumbent passenger motor vehicle transportation service providers and other entrepreneurs have introduced new software applications, sometimes also called digital dispatch services, which allow consumers to arrange and pay for commercial passenger motor vehicle transportation services in a variety of ways.<sup>13</sup> These

software applications may make use of technologies such as mobile smartphone applications, Internet web pages, email messages, and text messages.

These software applications are an innovative form of competition that may enable consumers to more easily arrange and pay for commercial passenger motor vehicle transportation services, as compared to traditional methods such as street hails or prearrangement by telephone through traditional service dispatchers.<sup>14</sup> For example, some applications use the Global Positioning System (“GPS”) technology incorporated into smartphones to enable consumers to locate nearby vehicles and track their arrival on an electronic map, thus facilitating matching between customers and service.<sup>15</sup> Some applications also utilize the GPS and computing capabilities of smartphones to enable new fare calculation methods based on one or more factors, such as distance, time, per trip fees, demand, additional services, or gratuities, which the application can then charge to a credit card.<sup>16</sup> Such applications may also use third-party credit card processing and electronic receipts, in lieu of traditional payment methods and paper receipts.<sup>17</sup>

These technologies and methods may be more responsive to consumer demand, may promote a more efficient allocation of resources (e.g., vehicles and drivers) to consumers, may expand demand for passenger vehicle transportation services, and may reduce consumers’ transaction costs in paying for such services. At the very least, these technologies and methods provide new alternatives for consumers. They may also raise novel consumer protection issues, for example, relating to consumers’ understanding of information communicated via an application regarding fares, safety and liability, and other terms of use, and the privacy and security of information collected.

### **III. A Regulatory Framework Should be Responsive to New Methods of Competition, While Maintaining Appropriate, Reasonably Tailored Consumer Protections**

A forward-looking regulatory framework should allow new and innovative forms of competition to enter the marketplace unless regulation is necessary to achieve some countervailing pro-competitive or other benefit, such as protecting the public from significant harm. Consumers benefit from competition between traditional and new products and services, and from new methods of delivering services. Regulations therefore need to be reviewed and revised periodically to facilitate and encourage the emergence of new forms of competition.

In the case of passenger motor vehicle transportation services, competition takes place on a variety of dimensions, including price, availability, timeliness, convenience, quality, vehicle type, payment mechanism, and other amenities. A regulatory framework should enable these various kinds of competition and not directly or indirectly restrict the introduction or use of new types of applications, or the novel features they may provide, absent some significant evidence of public harm. Regulation of passenger motor vehicle transportation services should focus primarily on ensuring qualified drivers, safe and clean vehicles, sufficient liability insurance, transparency of fare information, and compliance with other applicable laws. Regulation of new computer and phone-based

applications, therefore, should focus primarily on ensuring the safety of customers and drivers, deterring deceptive practices relating to fares, safety and liability, and other terms of use, and addressing other consumer protection issues, especially privacy, data security, and the prevention of identity theft. Regulation should not in purpose or effect favor one group of competitors over another.

As discussed in further detail below in regard to the revised proposed rules, staff respectfully suggests that DCTC carefully consider the potential direct and indirect impact of its proposed regulations on competition. We believe that unwarranted restrictions on competition should be avoided, and any restrictions on competition that are implemented should be no broader than necessary to address legitimate subjects of regulation, such as safety and consumer protection, and narrowly crafted to minimize any potential anticompetitive impact.

#### **IV. The Proposed Rules and Enabling Legislation**

DCTC has issued three notices of second proposed rulemakings regarding Title 31 of the D.C. Municipal Regulations, concerning taxicabs and other public vehicles for hire. The proposed rules would amend Chapter 12 to establish requirements for luxury class services, composed of limousines and sedans, establish substantive rules governing sedans in a new Chapter 14, and establish substantive rules governing traditional and digital dispatch services in a new Chapter 16.

These proposed rules follow enactment of the “Taxicab Service Improvement Amendment Act of 2012” and the “Public Vehicle-for-Hire Innovation Amendment Act of 2012.”<sup>18</sup> The Public Vehicle-for-Hire Innovation Amendment Act of 2012 provides for legal recognition of applications in Washington, D.C. It defines “digital dispatch service” as “a business that provides a service that connects a passenger to a public vehicle-for-hire through advanced reservation, including by computer, mobile phone application, text, email, or web-based reservations, or by other means as the Commission may define by rule.”<sup>19</sup> Under the Act, “A digital dispatch service shall be exempt from regulation by the Commission, *other than rules and regulations that are necessary for the safety of customers and drivers or consumer protection.*”<sup>20</sup> Further, “Any rules and regulations shall protect personal privacy rights of customers and drivers, shall not result in the disclosure of confidential business information, and shall allow providers to limit the geographic location of trip data to individual census tracts” subject to certain conditions.<sup>21</sup> These bills also require that a “sedan-class vehicle” operate “exclusively through digital dispatch” and charge on the basis of time and distance, except for certain well-traveled routes, like trips to airports, or event-related trips, which may be charged using flat fees.<sup>22</sup>

## **A. Proposed Rules That Raise Potential Competition Issues**

### **1. Proposed 1299.1**

Proposed 1299.1 would define a “Luxury class vehicle” as a limousine or sedan that meets specific requirements. Among other things, a luxury class vehicle must: be an Environmental Protection Agency-designated Large Car, Mid-size Car, Passenger Van, or Sport Utility Vehicle; have three or more passenger doors; carry four to eight passengers; and have manufacturer-installed luxury features, such as a premium sound system, reading lights, aluminum wheels, and noise-dampening materials. Proposed 1299.1’s definition of a “Sedan” would further require, among other things, that sedan vehicles: not be an EPA-designated Passenger Van; not be stretched; have a curb weight of at least 3,200 pounds; and be black or blue-black in color.

Staff recommends that DCTC consider the extent to which the above requirements may impede competition, or are necessary to ensure safety or some other important consumer benefit. Proposed 1299.1 facially restricts the types of vehicles that can be operated as limousines or sedans, which may be an important consideration for some consumers and a valuable component of competition. For example, the 3,200 pound weight requirement for sedans might exclude certain lighter-weight, more fuel efficient, and more environmentally friendly vehicles from being used for sedan services, including lighter-weight alternative fuel vehicles, that are currently available or that may become more widely available and popular in the future. The use of fuel efficient vehicles may be an important component of consumer demand for sedan services and the proposed rule would impede sedan operators from competing with regard to this feature. In addition, there is no evident rationale for requiring that sedans be either black or blue-black, particularly as this limitation is not applied to other vehicle classes like limousines. Such a provision could restrict the use of available vehicles as sedans, and, thereby, also restrict the use of available vehicles that can be arranged through applications. It would also restrict the ways that sedan services might compete using distinctive branding based on color. Finally, we note that vehicle requirements should also be clear and understandable, and the requirements for luxury features are not precise, are subject to interpretation, and therefore could create uncertainty as to whether certain vehicles would comply with this provision. This uncertainty alone might inhibit competition unnecessarily.

### **2. Proposed 1605.6**

Proposed 1605.6 would prohibit a digital dispatch service from associating with a taxicab operator in a branded taxicab fleet or association unless the fleet or association agrees to permit the association, provided that the fleet or association currently provides dispatch services for its own vehicles or has filed or received registration to operate a digital dispatch service for its own vehicles.

Staff recommends that DCTC allow for flexibility and experimentation in the ways that applications can affiliate with all types of passenger transportation vehicle

operators and organizations. We note that this restriction does not appear to be related to any evident concern with safety or consumer protection and that its rationale is not obvious, especially given that it would apply only to taxicab operators and not to other types of vehicle operators, like sedans. Moreover, this provision might have the effect of promoting the standardization of restrictive fleet and association policies regarding the affiliation of vehicle operators with applications, which would decrease the incentives and abilities of fleets and associations to compete with one another for operators by offering more flexible policies to operators. Absent evidence of some particular harm, staff recommends against restricting the ways that applications and operators can associate with each other, which harms the public by limiting the ways that they can obtain taxi service.

### **3. Proposed 1604.4**

Proposed 1604.4 would prohibit a digital dispatch service from making a “substantial change” to its dispatch or payment solution for taxicabs or digital payment system for sedans, without DCTC’s written approval during the twenty-four month period for which its certificate of operating authority is effective.<sup>23</sup>

Staff recommends that DCTC consider whether this provision would unnecessarily burden, and thereby restrict, the ability of digital dispatch services to update their software in a regular, timely manner, and whether there are other less burdensome alternatives. By their nature, applications are very likely to seek to update and upgrade their software on a periodic or sometimes more frequent basis, as, for example, by adding additional features and services, improving data security, or otherwise improving the software. If substantial software updates warrant regulatory review, DCTC should adopt a flexible, streamlined framework to avoid unnecessarily inhibiting the prompt deployment of innovative features that consumers might benefit from or demand.

We also note that the term “substantial change” is undefined, and may create uncertainty as to whether certain updates require written approval. For example, it is unclear whether an application that wants to provide additional features to its customers would be considered to be introducing a “substantial change” to its service, and therefore, subject to compliance with this provision. A framework for introducing and updating digital dispatch services should be clear and understandable to avoid inhibiting and raising the cost of innovation.

### **4. Proposed 1404.3**

Proposed 1404.3 would require a digital dispatch service, using data from each digital payment system unit, to transmit several pieces of detailed trip information to DCTC every twenty-four hours via a single data feed consistent in structure across all digital payment systems.<sup>24</sup>

Staff recommends that DCTC consider the extent to which these requirements are necessary to ensure safety or protect consumers, or may unnecessarily impede competition. In particular, staff recommends that DCTC consider the technical implications of this provision. Any data collection requirements should be carefully tailored to avoid inadvertently creating technical barriers to entry that may inhibit competitive entry and operation by applications. Requiring applications to transmit such detailed trip data to a third party, such as DCTC, also may raise data security issues, as further discussed below.<sup>25</sup> Before implementing this provision, DCTC should consider the totality of the circumstances relating to the prospective transmission of such information. In addition to considering possible benefits from collecting such data, DCTC should also carefully consider the types of information involved, the associated risks and vulnerabilities of collecting, handling, and storing such information, and the monetary and other compliance costs. DCTC also should consider whether there are less burdensome means of achieving the same ends.

If DCTC does collect detailed trip information, staff further cautions against publicly disclosing or otherwise sharing it among competitors involved in facilitating or supplying passenger vehicle transportation services, including digital dispatch services, vehicle operators, and vehicle fleets or associations. If shared, this sort of data might facilitate tacit or explicit collusion among competitors. Such collusion would harm consumers through, for example, higher prices, decreased output, decreased quality, or reduced innovation.<sup>26</sup> Any detailed trip information that DCTC collects, therefore, should be treated as confidential business information.

## **B. Proposed Rules That Raise Potential Consumer Protection Issues**

### **1. Proposed 1402.1 and 1404.2(b)**

Proposed 1402.1 would require that passenger rates and charges for sedan service arranged through a digital dispatch service comply with certain disclosure requirements and not exceed an estimated fare by more than twenty percent or twenty-five dollars, whichever is less, unless due to factors beyond operator control.<sup>27</sup> Proposed 1404.2(b) would require each digital payment system unit used with a digital dispatch service to provide passengers a written or electronic receipt containing certain fare information, other trip information, and information about the service.<sup>28</sup>

Truthful and non-deceptive information about passenger vehicle transportation services is necessary for the marketplace to function efficiently and effectively. Requiring certain advance disclosures or the provision of certain information in a receipt may be efficient ways to promote pricing transparency and protect consumers from misleading “drip pricing” practices, and to help avoid or resolve other instances of significant consumer confusion.<sup>29</sup> Any such requirements, however, should be reasonably tailored to avoid unnecessarily inhibiting the entry and operation of applications.

Staff appreciates that these proposed requirements appear designed to promote the dissemination of truthful and non-deceptive information to consumers. Staff takes no position on these particular requirements, but recommends that DCTC consider evaluating the effectiveness of the proposed requirements before implementation and monitoring their effectiveness, such as through conducting surveys or evaluating consumer complaints, to ensure that disclosures are made in a clear and conspicuous manner and the requirements are otherwise achieving the underlying consumer protection objectives. DCTC may also wish to consider the principles and examples for mobile and other online advertising disclosures provided in FTC staff's recently updated guidance document, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising*.<sup>30</sup> Among other things, it emphasizes that advertisers should ensure that disclosures are clear and conspicuous on all devices and platforms consumers may use.

## **2. Proposed 1603.17 and 1603.6(d)**

Proposed 1603.17 would require a dispatch service, traditional or digital, to store its business records in compliance with industry best practices and all applicable laws. The latter requirement would seem to include compliance with the FTC Act.<sup>31</sup>

In contemplating the collection, handling, and use of customer data, such as personal information, trip information, and credit card information by applications, DCTC may wish to consider the flexible approach that the FTC has taken regarding data security in its consumer protection law enforcement actions, consumer and business education, and policy activities relating to data security. The FTC's approach requires that businesses implement security practices that are reasonable and appropriate in light of the types of information they collect and the risks and vulnerabilities they face, and also takes into account the costs associated with implementation of these practices.<sup>32</sup> The FTC has brought law enforcement actions against a variety of commercial entities, such as retailers, data brokers, and social networking web sites, which have failed to implement reasonable and appropriate security measures to protect consumer data. In these cases, the FTC has required businesses to establish, implement, and maintain a data security program.<sup>33</sup>

Proposed 1603.6(d) would further require each digital dispatch service that processes digital payments to meet certain standards of the Open Web Application Security Project, PCI Security Standards Council for payment card data security, and the National Automated Clearing House Association for direct debit transactions.

Staff appreciates that these proposed requirements appear intended to address data security issues that may arise relating to payment processing. Staff takes no position on these particular standards, but emphasizes that the collection, use, and retention of consumer information, such as payment information, should be reasonable and appropriate for the totality of the circumstances at issue.

### **3. Proposed 1603.15**

Proposed 1603.15 would prohibit dispatch services, both traditional and digital, from releasing information that would result in a violation of the personal privacy of the passenger or person requesting service or threaten passenger or operator safety, or permit a person not authorized by the dispatch service to access real-time information about the location, apparent gender, or number of passengers awaiting pick up. However, the provision does not elaborate on these prohibitions, their enforcement, or possible remedies.

As suggested above, DCTC may wish to consider the FTC's approach to data security. In particular, DCTC may wish to consider the remedy and monitoring provisions that the FTC has secured in settlement orders, as means to addressing any security breaches that occur.<sup>34</sup>

### **V. Conclusion**

FTC staff appreciates this opportunity to provide views in regard to this matter and would be happy to address any questions you may have regarding competition and consumer protection policy in the passenger motor vehicle transportation marketplace.

Respectfully submitted,

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Bureau of Competition

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<sup>1</sup> This staff letter expresses the views of the Federal Trade Commission’s Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission (“FTC” or “Commission”) or of any individual Commissioner. The Commission has, however, voted to authorize staff to submit these comments.

<sup>2</sup> Federal Trade Commission Act, 15 U.S.C. § 45.

<sup>3</sup> Specific statutory authority for the FTC’s competition advocacy program is found in Sections 6(a) and (f) of the FTC Act, under which Congress authorized the FTC “[t]o gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce,” and “[t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest . . . .” 15 U.S.C. § 46(a), (f).

<sup>4</sup> Nat’l Soc’y of Prof’l Eng’rs v. United States, 435 U.S. 679, 695 (1978); *accord* FTC v. Superior Court Trial Lawyers Ass’n, 493 U.S. 411, 423 (1990).

<sup>5</sup> FTC Staff Comments to the Honorable Debbie Ossiander Concerning AO NO. 2013-36 Regarding the Regulatory Framework for the Licensing and Permitting of Taxicabs, Limousines, and Other Vehicles for Hire in Anchorage, Alaska (Apr. 19, 2013), *available at* <http://www.ftc.gov/os/2013/04/130426anchoragecomment.pdf>; FTC Staff Comments Before the Colorado Public Utilities Commission *In The Matter of The Proposed Rules Regulating Transportation By Motor Vehicle*, 4 Code of Colorado Regulations 723-6 (Mar. 6, 2013), *available at* <http://ftc.gov/os/2013/03/130703coloradopublicutilities.pdf>.

<sup>6</sup> The FTC sued the cities of New Orleans and Minneapolis in 1984, charging both cities with unfair competition by combining with taxicab operators to impose regulations that limited the number of taxicab licenses, increased fares, and eliminated competition in violation of the federal antitrust laws. The complaint against Minneapolis was withdrawn after the city revised its ordinance to permit more competition. The complaint against New Orleans also was withdrawn after the state authorized the conduct in question by a new law. *See generally* FTC, 1985 ANNUAL REPORT 5 (1985), *available at* <http://www.ftc.gov/os/annualreports/ar1985.pdf>.

<sup>7</sup> Organisation for Economic Co-operation and Development (“OECD”), Directorate for Financial and Enterprise Affairs, Competition Committee Working Party No. 2 on Competition and Regulation, Taxi Services Regulation and Competition 199-210 (Sept. 11, 2008) (submission of the United States), *available at* <http://www.oecd.org/regreform/sectors/41472612.pdf>; MARK W. FRANKENA & PAUL A. PAUTLER, AN ECONOMIC ANALYSIS OF TAXICAB REGULATION (1984) (FTC Bureau of Economics Staff Report), *available at* <http://www.ftc.gov/be/econrpt/233832.pdf>.

<sup>8</sup> *See generally* U.S. DEP’T OF JUSTICE & FTC, ANTITRUST ENFORCEMENT AND INTELLECTUAL PROPERTY RIGHTS: PROMOTING INNOVATION AND COMPETITION (2007), *available at* <http://www.ftc.gov/reports/innovation/P040101PromotingInnovationandCompetitionrpt0704.pdf>; FTC, TO PROMOTE INNOVATION: THE PROPER BALANCE OF COMPETITION AND PATENT LAW AND POLICY (2003), *available at* <http://www.ftc.gov/os/2003/10/innovationrpt.pdf>; FTC STAFF, ANTICIPATING THE 21<sup>ST</sup> CENTURY: COMPETITION POLICY IN THE NEW HIGH-TECH, GLOBAL MARKETPLACE (1996), *available at* [http://www.ftc.gov/opp/global/report/gc\\_v1.pdf](http://www.ftc.gov/opp/global/report/gc_v1.pdf) and FTC STAFF,

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ANTICIPATING THE 21<sup>ST</sup> CENTURY: CONSUMER PROTECTION POLICY IN THE NEW HIGH-TECH, GLOBAL MARKETPLACE (1996), available at [http://www.ftc.gov/opp/global/report/gc\\_v2.pdf](http://www.ftc.gov/opp/global/report/gc_v2.pdf).

<sup>9</sup> For example, the FTC designs numerous energy cost disclosures, including the EnergyGuide label for appliances and light bulbs, and has done consumer research in support of those label designs. *See, e.g.*, FTC Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (“Appliance Labeling Rule”), 16 C.F.R. Part 305; *see also* FTC, News Release, FTC Amends Appliance Labeling Rule to Ease Burdens on Businesses (Dec. 31, 2012), available at <http://www.ftc.gov/opa/2012/12/energylabel.shtm>. FTC staff has also conducted research regarding consumer understanding of disclosures relating to mortgages. *See, e.g.*, JAMES M. LACKO & JANIS K. PAPPALARDO, IMPROVING CONSUMER MORTGAGE DISCLOSURES: AN EMPIRICAL ASSESSMENT OF CURRENT AND PROTOTYPE DISCLOSURE FORMS (2007) (FTC Bureau of Economics Staff Report), available at <http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf>; JAMES M. LACKO & JANIS K. PAPPALARDO, THE EFFECT OF MORTGAGE BROKER COMPENSATION DISCLOSURES ON CONSUMERS AND COMPETITION: A CONTROLLED EXPERIMENT (2004) (FTC Bureau of Economics Staff Report), available at <http://www.ftc.gov/os/2004/01/030123mortgagefullrpt.pdf>.

<sup>10</sup> FTC Staff, .com Disclosures: How to Make Effective Disclosures in Digital Advertising (2013), available at <http://ftc.gov/os/2013/03/130312dotcomdisclosures.pdf>.

<sup>11</sup> *See* FTC Staff, Mobile Privacy Disclosures: Building Trust Through Transparency (2013), available at <http://www.ftc.gov/os/2013/02/130201mobileprivacyreport.pdf>. *See also infra* Sections IV. B. 2.-3. (discussing the FTC’s approach to data security).

<sup>12</sup> OECD Submission, *supra* note 7, at 200 (“As of 2007, the general description of the taxicab industry and taxicab regulation in the United States remains much as it was when Frankena and Pautler described it in 1984. That is, nothing dramatic has happened to alter the U.S. industry in the interim.”).

<sup>13</sup> *See generally* Lauren Goode, *Worth It? An App to Get a Cab*, WALL STREET J. (June 17, 2011), available at <http://blogs.wsj.com/digits/2011/06/17/worth-it-an-app-to-get-a-cab/>.

<sup>14</sup> *See generally id.*

<sup>15</sup> *See generally id.*

<sup>16</sup> *See generally* Brian X. Chen, *Uber, an App That Summons a Car, Plans a Cheaper Service Using Hybrids*, N.Y. TIMES, July 1, 2012, available at <http://www.nytimes.com> (discussing charging by time, distance, consumer demand, and gratuities); Michael B. Farrell, *Taxi app Hailo to expand service*, BOSTON GLOBE, Feb. 5, 2013, available at <http://www.bostonglobe.com> (discussing booking fees, service fees, and gratuities).

<sup>17</sup> *See generally* Goode, *supra* note 13.

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<sup>18</sup> L19-270, 19<sup>th</sup> Council Sess. (D.C. 2012) (enacted Jan. 18, 2013) (Public Vehicle-for-Hire Innovation Amendment Act of 2012); L19-184, 19<sup>th</sup> Council Sess. (D.C. 2012) (enacted Aug. 2, 2012) (Taxicab Service Improvement Amendment Act of 2012).

<sup>19</sup> L19-270, *supra* note 18 (amending D.C. Official Code § 50-329.02).

<sup>20</sup> *Id.* (emphasis added).

<sup>21</sup> Among these conditions are that: if a digital dispatch service connects a consumer with a vehicle other than a taxicab, before booking the vehicle the digital dispatch service shall disclose to the customer the applicable fare calculation method, applicable rates, and the option for an estimated fare; upon completion of the trip, the customer shall receive a paper or electronic receipt that lists the origination and destination of the trip, the total distance and time of the trip, and a breakdown of the total fare paid, including any fees and gratuity; and the digital dispatch service provides service throughout the entire District of Columbia. *Id.*

<sup>22</sup> *Id.* (amending D.C. Official Code § 50-303(20)). The bills further provide that DCTC may create and regulate classes of vehicles independent of taxicabs and limousines, including sedans, “provided, that the rules and regulations are necessary for the safety of customers and drivers, consumer protection, or the collection of non-personal trip data information.” *Id.* (amending D.C. Official Code § 50-329).

<sup>23</sup> This provision would further require that a digital dispatch service inform DCTC of a proposed substantial change to its dispatch or payment solution or digital payment system for sedans that would require written approval at least thirty days prior to the change, and notify DCTC of any other change in the information contained in the certification or its supporting documentation, such as contact information, within seven days of the change.

<sup>24</sup> This provision would require that a digital dispatch service transmit the following data: the date; operator and vehicle identifiers in an anonymous format established by DCTC; the time at the beginning of each tour of duty; the distance of each trip; the time of pickup and drop-off of each trip; the geospatially-recorded place of pickup of each trip; the geospatially-recorded place of drop-off of each trip, which may be generalized to census tract level; a unique trip number assigned by the digital dispatch service to each trip; the total fare and a breakdown of the fare including all rates and charges and any gratuity; and the time at the end of the tour of duty.

<sup>25</sup> *See infra* Sections IV. B. 2.-3. (discussing the FTC’s approach to data security).

<sup>26</sup> *See generally* FTC Comments Before the Environmental Protection Agency Concerning Proposed Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Proposed Amendment to Special Rules Governing Certain Information Obtained Under the Clean Air Act (Sept. 30, 2010), *available at* <http://www.ftc.gov/os/2010/09/100930epagreenhouse.pdf> (discussing a proposed EPA rule concerning the confidentiality of data submitted under EPA’s Greenhouse Gas Reporting Rule).

<sup>27</sup> Under this provision, sedan rates and charges must: be disclosed to the passenger in a statement of the digital dispatch service’s fare calculation method; be used to calculate an estimated fare that shall be offered to the passenger prior to accepting service, including the effect of any applicable demand pricing; be consistent with fare calculation information posted on the digital dispatch service’s website; and not exceed the fare estimate by more than twenty percent

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or twenty-five dollars, whichever is less, unless due to factors beyond operator control. *See also* Proposed 1603.11 (requiring each dispatch service, traditional or digital, to maintain a website with certain current information, including information about the dispatch service, a statement of how the fare is calculated for each class of offered service, whether the dispatch service uses demand pricing, and, if so, how such pricing affects its rates).

<sup>28</sup> This provision would require that each digital payment system provide the passenger with a written or electronic receipt before the passenger exits the vehicle, containing: the date and time of the trip; trip distance; the vehicle's tag number; the name and customer service telephone number of the digital dispatch service; information sufficient to allow the passenger to reference the passenger's digital dispatch service account or payment card number used to pay the fare; the total fare and a breakdown of the fare including all rates and charges and any gratuity; and a statement that sedan service in Washington, D.C. is regulated by DCTC.

<sup>29</sup> Drip pricing is a pricing technique whereby firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process. The additional charges can be mandatory, such as hotel resort fees, or fees for optional upgrades and add-ons. Drip pricing is used by many types of firms, including internet sellers, automobile dealers, financial institutions, and rental car businesses. *See generally* FTC, A Conference on the Economics of Drip Pricing (May 21, 2012), <http://www.ftc.gov/be/workshops/drippricing/index.shtml>.

<sup>30</sup> *See supra* note 10.

<sup>31</sup> *See supra* note 2.

<sup>32</sup> Staff recognizes that there is no "one size fits all" information security plan. Increased levels of information sensitivity may require increased protection. Different technologies may present different risks and vulnerabilities. Different types of businesses, business methods, and customers may require businesses to address security in regard to different aspects of their operations. The costs associated with implementation of security practices are also relevant to a reasonableness and appropriateness inquiry. Particular security measures that may be reasonable for the data of one business in light of all the costs and benefits may or may not be reasonable for another business. Because businesses may grow over time, security measures should be scalable to accommodate potential changes in the security threats they might face as a consequence of expansion.

<sup>33</sup> *See generally* FTC, Data Security, <http://business.ftc.gov/privacy-and-security/data-security>. Under resulting settlement orders, the FTC has required businesses to establish, implement, and maintain a comprehensive security program reasonably and appropriately designed to protect the security, confidentiality, and integrity of personal information that they collect from or about consumers. Businesses are required to have independent, third-party audits of their security procedures to ensure compliance. Auditors must document the specific administrative, technical, and physical safeguards that the business has implemented and maintained; explain how these safeguards are appropriate to the business's size and complexity, the nature and scope of its activities, and the sensitivity of personal information collected from or about consumers; explain how the safeguards address the specific security deficiencies; and certify that the program is operating effectively. For examples of this type of settlement order, see, e.g., *In re HTC America*, FTC File No. 122 3049 (Feb. 22, 2013) (proposed consent order regarding alleged failures to reasonably and appropriately secure software developed for

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smartphones and tablet computers, introducing security flaws that placed sensitive consumer information at risk), available at <http://www.ftc.gov/os/caselist/1223049/130222htcorder.pdf>; *In re Dave & Buster's*, FTC Dkt. No. C-4291 (May 20, 2010) (consent order regarding alleged failures to reasonably and appropriately secure credit card payment information on computer networks), available at <http://www.ftc.gov/os/caselist/0823153/100608davebustersdo.pdf>; *In re The TJX Cos.*, FTC Dkt. No. C-4227 (July 29, 2008) (consent order regarding alleged failures to use reasonable and appropriate security measures to prevent unauthorized access to personal information on computer networks), available at <http://www.ftc.gov/os/caselist/0723055/080801tjxdo.pdf>; *In re BJ's Wholesale Club*, FTC Dkt. No. C-4148 (Sept. 20, 2005) (consent order regarding alleged failures to reasonably and appropriately secure personal information collected at stores), available at <http://www.ftc.gov/os/caselist/0423160/092305do0423160.pdf>.

<sup>34</sup> See *supra* note 33.