

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Hon. A. Borrok

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TRI-CITY, LLC; ENDOR CAR AND DRIVER, LLC; ZEHN-NY,
LLC; ZWEI-NY, LLC; ABATAR, LLC; and FLATIRON
TRANSIT, LLC,

Index No. 153369/2018

Petitioners,

- against -

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION and MEERA JOSHI, in her
official capacity as Chair, Commissioner and Chief Executive Officers of the New York City
Taxi and Limousine Commission,

Respondents.

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OWNERS TRANSPORT COMMUNICATION, INC.,

Petitioner,

Index No. 153424/2018

- against -

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION and MEERA JOSHI, in her
official capacity as Chair, Commissioner and Chief Executive Officers of the New York City
Taxi and Limousine Commission,

Respondents.

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STIPULATION TO STAY AND [PROPOSED] ORDER

WHEREAS, on December 13, 2017, Respondent New York City Taxi and Limousine
Commission ("TLC") amended Section 59B-17 of Title 35 of the Rules of the City of New York
("Section 59B-17") to require for-hire vehicles ("FHV's"), beginning on July 1, 2018, to dispatch
a certain percentage of trips in wheelchair-accessible vehicles ("WAVs") each year (the "TLC
Rule");

WHEREAS, on December 13, 2017, Respondents also approved a WAV dispatch pilot program
(the "Pilot") affording FHV bases accepted into the Pilot a temporary exemption from the TLC
Rule under certain conditions;

WHEREAS, implementation of the TLC Rule and the Pilot is currently scheduled to commence
on July 1, 2018;

WHEREAS, on April 13, 2018, Petitioners filed this Article 78 action seeking, among other
things, to annul and vacate the TLC Rule;

WHEREAS, the parties have engaged in extensive settlement negotiations, including before the Honorable Andrew Borrok;

WHEREAS, the parties have agreed to settle the cases at Index Nos. 153369/2018 and 153424/2018, expressly subject to the terms set forth below:

1. IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that at the earliest possible opportunity permitted by the City Administrative Procedures Act, the TLC will, in accordance with applicable requirements for TLC rulemaking, prepare and publish ~~as~~ a proposed rule creating an exception to Section 59B-17(c)(1) as set forth in Appendix A in order to make performance of the approach and service standards embodied in the Pilot a formal rule and permanent exception to the TLC Rule (the "Exception"); and
2. IT IS FURTHER STIPULATED AND AGREED that enforcement of Section 59B-17(c)(1) of Title 35 of the Rules of the City of New York will be stayed until thirty days following the Exception being adopted or rejected by the TLC; and
3. IT IS FURTHER STIPULATED AND AGREED that if the language of the Exception is altered prior to promulgation, Petitioners may move the Court to vacate this Stipulation; and
4. IT IS FURTHER STIPULATED AND AGREED that, throughout the stay, Petitioners' motion for a preliminary injunction and petition for Article 78 relief (the "Pending Motions") shall be held in abeyance by the Court; and
5. IT IS FURTHER STIPULATED AND AGREED that, upon full execution of this Stipulation, the Clerk of the Court will mark this Article 78 action settled, subject to revival under the terms of this Stipulation; and
6. IT IS FURTHER STIPULATED AND AGREED, as an express condition of settlement, that Petitioners may revive and proceed in this Article 78 action, including by seeking decisions on the Pending Motions if:
 - a. the TLC votes to reject the Exception; or
 - b. the Exception (in either its proposed or its adopted form) is annulled, vacated, or otherwise invalidated by a court of competent jurisdiction, for any reason, and the TLC Rule is not also annulled, vacated, invalidated, or repealed; and
7. IT IS FURTHER STIPULATED AND AGREED that, if any person brings any action or proceeding seeking to annul, vacate, or otherwise invalidate the Exception, in either its proposed or its enacted form, Respondents will not oppose any Petitioner's motion to intervene as of right or by leave of court in said action or proceeding; and
8. IT IS FURTHER STIPULATED AND AGREED that all future participant application and program commencement deadlines under the Pilot will be stayed until 45 days after the TLC votes to approve, or decides not to vote to approve, the Exception, provided, however, that the exemptions from the TLC Rule that are currently provided to Pilot applicants and participants

under the Pilot will remain in effect; and

9. IT IS FURTHER STIPULATED AND AGREED that, if the Exception is adopted, any Memoranda of Understanding entered into by Petitioners pursuant to the Pilot shall be of no force and effect; and

10. IT IS FURTHER STIPULATED AND AGREED that, subject to the foregoing limitations, Petitioners reserve all rights to challenge any future actions by the TLC, including but not limited to actions amending the TLC Rule or the Exception and actions seeking to revise the requirements of the Exception after initial adoption or enforce the TLC Rule's penalty or adjustment provisions, provided, however, that Petitioners will not challenge the validity of the Exception if it is adopted by the TLC in the form set forth in ~~Exhibit~~ *Appendix* A; and

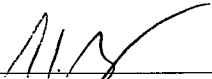
11. IT IS FURTHER STIPULATED AND AGREED, for the avoidance of doubt, that settlement of this Article 78 action does not in any way waive Petitioners' right to file subsequent Article 78 petitions with respect to future rules or amendments to the Exception;

12. IT IS FURTHER STIPULATED AND AGREED that nothing in the foregoing shall serve to constrain the TLC from taking any action in the future to amend, repeal, or otherwise modify rules relating to accessible FHV service; and .

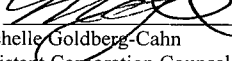
13. IT IS FURTHER STIPULATED AND AGREED that this Stipulation supersedes the previous Stipulation entered on June 8, 2018.

Dated: New York, New York
June 13, 2018

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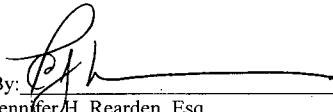
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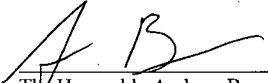
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SO ORDERED:


The Honorable Andrew Borrok

Hon. Andrew Borrok

APPENDIX A

Section 1. Section 59B-17 is amended to add a new subdivision (f) to read as follows:

- (f) Exception to the Percentage of all Dispatched Trips Serviced by an Accessible Vehicle Requirement. A Base currently licensed on the effective date of this subdivision (f) may opt to meet a response time requirement for requests for Accessible Vehicles, in lieu of the requirements contained in section 59B-17(c)(1) of these rules, if the Base meets the following requirements:
- (1) A Base will be exempt from the requirements contained in section 59B-17(c)(1) if it either:
 - (i) Is approved by the Commission as an Accessible Vehicle dispatcher, responsible for receiving requests for Accessible Vehicles from associated Bases with which it has entered into an agreement and dispatching Accessible Vehicles on behalf of itself and its associated Bases in accordance with the response time requirements contained in paragraph (3) below, or
 - (ii) Associates with an approved Accessible Vehicle dispatcher by entering into an agreement with an approved Accessible Vehicle dispatcher and sending its requests for Accessible Vehicles to its associated Accessible Vehicle dispatcher.
 - (2) Application Requirements to be an Approved Accessible Vehicle Dispatcher. A Base applying to be approved as Accessible Vehicle dispatcher must:
 - (i) Submit a list of at least ten (10) Bases, owned by an entity or entities other than the owner(s) of the applicant Base, that have demonstrated an intent to associate with the applicant Base.
 - (ii) Submit an outreach and marketing plan outlining the ways it will inform passengers who use wheelchairs about its associated Bases' wheelchair accessible offerings, subject to the approval of the Commission, and
 - (iii) Submit a statement outlining the number of Accessible Vehicles it will be able to dispatch in the first three (3) and six (6) months following its approval as an Accessible Vehicle dispatcher, subject to the approval of the Commission.
 - (3) Response Time Requirement for Requests for Accessible Vehicles for Accessible Vehicle Dispatchers

- (i) Between June 1, 2019, and June 30, 2019, the Accessible Vehicle dispatcher must service at least sixty percent (60%) of all the requests for Accessible Vehicles it receives in under fifteen (15) minutes and ninety percent (90%) of those requests in under thirty (30) minutes.
 - (ii) Between June 1, 2020, and June 30, 2020, the Accessible Vehicle dispatcher must service at least eighty percent (80%) of all the requests for Accessible Vehicles it receives in under fifteen (15) minutes and ninety percent (90%) of those requests in under thirty (30) minutes.
 - (iii) Between June 1, 2021 and June 30, 2021, and continuing each quarter thereafter, the Accessible Vehicle dispatcher must service at least eighty percent (80%) of all the requests for Accessible Vehicles it receives in under ten (10) minutes and ninety percent (90%) of those requests in under fifteen (15) minutes.
 - (iv) Between the effective date of subdivision (f) and June 30, 2020, the percentage of trips that meet the applicable responsible time criteria must improve each quarter, measured from the effective date of subdivision (f) for purposes of (i) above and measured from the beginning of the compliance periods for (ii) and (iii) above, until such time as the Accessible Vehicle dispatcher meets the response time requirements contained in (i), (ii), and (iii) above.
 - (v) For purposes of (i) and (ii), "requests" will not include requests for Accessible Vehicles that were cancelled by the passenger within fifteen (15) minutes of the requests and for purposes of (iii), "requests" will not include requests for Accessible Vehicles that were cancelled by the passenger within ten (10) minutes of the requests.
 - (vi) If an Accessible Vehicle dispatcher fails to meet the requirements contained in (i), (ii), (iii), and (iv) above, the Commission will notify the Accessible Vehicle dispatcher and provide the Accessible Vehicle dispatcher thirty (30) days to come into compliance with the stated response time requirement. Failure to come into compliance within thirty (30) days of notification may result in termination of the Accessible Vehicle dispatcher's approval, immediately subjecting the Accessible Vehicle dispatcher to the requirements contained in section 59B-17(c)(1), pro-rated for the duration of the compliance period.
- (4) Calculating Response Time For purposes of paragraph (3) above, response time will be calculated in the following manner:

- (i) For trips arranged at least one hour in advance, response time will be calculated from the time at which the vehicle was scheduled to arrive at the passenger's pick-up location until the vehicle arrives at the passenger's pick-up location.
 - (ii) For all other trip requests, response time will be calculated from when the Accessible Vehicle dispatcher received the request until the vehicle arrived at the passenger's pick-up location.
- (5) Record Collection and Reporting Requirements for Accessible Vehicle Dispatcher. In addition to the trip records an Accessible Vehicle dispatcher must submit pursuant to its licensure as an FHV Base, an approved Accessible Vehicle dispatcher must collect and transmit to the Commission within one week of the end of each calendar month, in a format, layout, and procedure prescribed by the Commission, the following records for each request for an Accessible Vehicle the Accessible Vehicle dispatcher receives:
- (i) the Base License Number of the Base that sent the request to the Accessible Vehicle dispatcher,
 - (ii) the date and time that the request was received by the Accessible Vehicle dispatcher,
 - (iii) the manner in which the request was received (e.g., via phone call, smartphone app, website),
 - (iv) an indicator as to whether each request resulted in a completed trip,
 - (v) if the request was fulfilled,
 - A. the TLC License number of the vehicle that fulfilled the request, the Base to which the vehicle is affiliated, and the driver who fulfilled the request
 - B. the pickup and drop off locations of the trip
 - C. the date and time the vehicle arrived at the pickup location, and
 - D. the total passenger wait time, calculated pursuant to paragraph (4) above.
 - (vi) if the request was not fulfilled,
 - A. the date, time, and location of the requested pickup
 - B. the location of the requested drop off (if provided), and

- C. an indicator as to the reason the request was not fulfilled, such as passenger cancellation (including time of cancellation), passenger no-show, driver cancellation, or no vehicles available.

Failure to timely provide trip records may result in termination of the Accessible Vehicle dispatcher's approval, immediately subjecting the Accessible Vehicle dispatcher to the requirements contained in section 59B-17(c)(1), pro-rated for the duration of the compliance period.

- (6) Fares Charged to Passengers. An Accessible Vehicle dispatcher and an associated Base cannot charge a passenger more for a trip request received from an associated Base than that associated Base would charge a passenger requesting a non-Accessible Vehicle for the same trip. Overcharging a passenger may result in an Accessible Vehicle dispatcher or an associated Base being immediately subject to the requirements contained in section 59B-17(c)(1), pro-rated for the duration of the compliance period.
- (7) Passenger Feedback. Each Accessible Vehicle dispatcher and associated Base must collect and transmit to the Commission within one week of the end of each calendar month, in a format, layout, and procedure prescribed by the Commission, all complaints and compliments the Base and Accessible Vehicle dispatcher received from passengers in the preceding calendar month concerning its provision of wheelchair accessible service, including all driver ratings, where applicable.
- (8) Bases opting to associate with an approved Accessible Vehicle dispatcher must be able to accept requests from passengers for Accessible Vehicles in the same manner(s) in which they accept requests from passengers for non-Accessible Vehicles. Failure to accept requests from passengers for Accessible Vehicles in the same manner(s) in which a base accepts requests from passengers for non-Accessible Vehicles may result in the associated Base being immediately subject to the requirements contained in section 59B-17(c)(1), pro-rated for the duration of the compliance period.
- (9) In addition to submitting trip records pursuant to 59B-19, a Base opting to associate with an approved Accessible Vehicle dispatcher, and Accessible Vehicle dispatchers in their capacity as a Base which accepts trip requests, must submit to the Commission within one week of the end of each calendar month, in a format, layout, and procedure approved by the Commission, records containing the following information:

- (i) For each request for an Accessible Vehicle received by the Base:

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A the date and time the Base received the request

- B. the date and time the Base forwarded the request to its Accessible Vehicle dispatcher, and
- (ii) For each request for a non-Accessible Vehicle that results in a completed trip
 - A. the date and time that the request was received by the Base,
 - B. an indicator corresponding to the trip record for the completed trip provided pursuant to 59B-19,
- (iii) All complaints and compliments received from passengers concerning its provision of wheelchair accessible service, including all driver ratings, where applicable.

Failure to timely provide trip records may result in termination of the Accessible Vehicle dispatcher's approval, immediately subjecting the base to the requirements contained in section 59B-17(c)(1), pro-rated for the duration of the compliance period.

- (10) Good Standing of Associated Bases. An associated Base must remain in good standing with its Accessible Vehicle dispatcher. To remain in good standing with its Accessible Vehicle dispatcher, an associated Base must adhere to the terms of the agreement it entered into with its Accessible Vehicle dispatcher. Failure to remain in good standing with its Accessible Vehicle dispatcher may result in the associated Base being immediately subject to the requirements contained in section 59B-17(c)(1), pro-rated for the duration of the compliance period, subject to the conditions of paragraph (12) below.
- (11) Evaluation by the Commission. Every year, beginning July 1, 2019, the Commission will review Base compliance levels, service levels, feedback received pursuant to paragraph (6) of this subdivision, and any other information it deems relevant to determine if adjustments need to be made to the response time requirements set forth in paragraph (3) of this subdivision or any other requirement contained in this subdivision (f). Any changes made to the provisions of 59B-17(f), resulting from an annual review performed pursuant to this paragraph (11), will be subject to the City Administrative Procedure Act, Section 1041-1047 of the Charter of the City of New York.
- (12) Consequences of Termination of Approval. If the Commission terminates a Base's associated Accessible Vehicle dispatcher's approval, or if an Accessible Vehicle dispatcher terminates a Base's association, a Base associated with the Accessible Vehicle dispatcher must:

- (i) Associate with a different Accessible Vehicle dispatcher within thirty (30) days following Commission provided notification of the Accessible Vehicle dispatcher's approval termination, or
- (ii) Submit an application to be approved as an Accessible Vehicle dispatcher within thirty (30) days following the Commission provided notification of the Accessible Vehicle dispatcher's termination.

If a Base that is no longer associated with an Accessible Vehicle dispatcher does not associate with a different approved Accessible Vehicle dispatcher or submit an application to be approved as an Accessible Vehicle dispatcher within thirty (30) days following notification of the termination, the Base may be subject to the requirements contained in section 59B-17(c)(1) on the thirty-first (31st) day following the notification.

(13) Base Accessible Service Selection Date.

- (i) A Base currently licensed on the effective date of subdivision (f) of these Rules must inform in the Commission, as provided below, whether it is opting into the exception to section 59B-17(c)(1) provided by this section 59B-17(f).
 - A. A Base opting into the exception provided by this section 59B-17(f) as an Accessible Vehicle dispatcher must submit an application to be approved as an Accessible Vehicle dispatcher within thirty (30) days of the effective date of subdivision (f).
 - B. A Base opting into the exception provided by section 59B-17(f) must apply with an Accessible Vehicle dispatcher at the time the Base exercises this option and must do so within sixty (60) days of the effective of subdivision (f).
 - C. A Base that does not opt into the exception to section 59B-17(c)(1) provided by this section 59B-17(f), either as an approved Accessible Vehicle dispatcher or a Base affiliating with an Accessible Vehicle dispatcher, within the timeframes provided by this subdivision may not apply to opt into such exception until the Base's next renewal License application.
- (ii) A renewing Base Applicant that had previously opted into the exception to section 59B-17(c)(1) provided by this section 59B-17(f) must indicate at the time of its renewal application whether it is continuing to opt into the exception to section 59B-17(c)(1) provided by this section 59B-17(f).
- (iii) A Base that previously opted into the exception to section 59B-17(c)(1) of Tl C's Rules provided by this section 59B-17(f), but failed to comply with

the requirements of section 59B-17(f) and is now subject to the requirements in section 59B-17(c)(1) may not reapply to opt into the exception provided by section 59B-17(f) except for good cause shown.