TAXICAB, LIMOUSINE &
PARATRANSIT ASSOCIATION

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Rogue Transportation Apps:

A Continued and Increasing Threat to Public Safety

D ue to the explosive proliferation of smartphone apps involving taxicab and limousine transportation, it is more crucial than ever that members of the media be able to distinguish between legitimate app dispatch services that take pains to protect passengers and "rogue" app dispatch services that continue to threaten passenger safety. This media briefer addresses apps that provide immediate response service in more than one major North American city, and where both the driver and the app expect to be compensated from the passenger's payment.

To help reporters understand this rapidly shifting landscape, this media briefer has been created by the Taxicab, Limousine & Paratransit Association (TLPA), the oldest and largest transportation trade group of its kind in North America. This briefer offers four things:

1) A "traffic-light" color-coded overview and explanation of the main apps in use today;
2) A review of the difference between taxicab and limousine service and regulations;
3) A look at some of the legal actions against rogue apps;
4) Useful quotes from industry leaders on the dangers of rogue apps.

To put part of this issue in context, consider that in the 1970s and 1980s deregulation, including in the taxicab industry, swept across America. Most cities found it was the wrong direction (higher fares, increased trip refusals, significant overcharging of passengers, aggressive solicitation, deterioration of vehicles, other illegal activities, dramatic consumer complaints) and have since re-regulated taxicabs.

The taxicab industry believes in *limited regulation* that provides for the *safety of the public*; that sets fares to *avoid price gouging*; and that *serves all areas* of a community *at all times* in a *nondiscriminatory manner*. Rogue apps, meanwhile, refuse to characterize themselves as taxicab dispatching services and insist they do not need to comply with local laws governing all other taxicab dispatching services.

Contrary to what rogue app spokespersons would have the media believe, today's for-hire transportation services are innovative and technology-driven. They use computer dispatching, GPS technology, and yes, apps.

The media should also understand that the vast majority of legitimate taxicab services are small businesses—a far cry from the tens of millions of dollars, for example, that has been funneled toward Uber from Wall Street

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firms such as Goldman Sachs and celebrity investors that allow them to hire the nation's top lobbyists. Such influence is well out of reach of the taxicab industry.

This document provides factual information to the media as reporters seek to understand what constitutes a legitimate, responsible transportation app, and what defines a "rogue app." This updates a previous media briefer issued by TLPA on Sept. 7, 2012.

This media briefer is not intended to tell passengers which taxicab or limousine service to utilize, but to alert the public about safety and other concerns when using apps.

I. <u>Traffic-Light Overview:</u>

Below is a look at the major smartphone transportation-booking apps providing immediate response service currently in use in North American cities. Each is rated according to a simple traffic light system: a) **RED** for "rogue apps" that operate outside of the regulatory framework, thereby failing to protect the public, b) **GREEN** for responsible apps that operate within regulatory frameworks for maximum public safety, and c) **YELLOW** for apps that fall somewhere in the middle of the two, or for which we have limited information upon which to determine if they are "rogue."

Uber is an app based in San Francisco. Uber directly connects Uber passengers with Uber drivers in about 16 North American cities including Washington DC, San Francisco, and Denver. The Uber limousine service is being sued in several jurisdictions for illegally operating as a taxicab service. Uber charges its limousine customers based on the company's uncertified smartphone meter. The cost of an Uber fare fluctuates based on customer demand, resulting in complaints of excessive fares. Uber also has its taxicab dispatch service that directly connects Uber passengers with Uber taxicab drivers in about five North American cities, including Chicago. Uber circumvents regulated taxicab dispatch systems by contracting directly with taxicab drivers. Uber maintains a passenger/driver rating system that allows for either party to rate the trip and thus discriminate based on any number of subjective and possibly illegal factors (e.g., race, age, sex, neighborhood, use of service animals, or disability). To open an Uber account, one must have a smartphone, credit card, and one must indemnify and release Uber from liability. **Traffic Light: Red**

SideCar is an app based in San Francisco. SideCar operates in the San Francisco Bay Area, Seattle, Washington, DC, and Philadelphia. It has also announced plans to expand its service to Austin, Boston and New York. SideCar does not require its drivers to hold a taxicab or limousine license nor does it require its vehicles to be licensed or insured as for-hire vehicles. SideCar claims to vet drivers and vehicles through its own internal interview process and criminal background check. Passengers do not have to pay for SideCar trips and instead are prompted by the app to make a "voluntary donation." SideCar maintains a passenger/driver rating system that allows for either party to rate the trip based on any number of subjective and possibly illegal factors, and ensures that passengers who want to continue to use the service will pay the "donation." To open a SideCar account, one must have a smartphone, credit card, and one must indemnify and release SideCar from liability. SideCar argues that it is exempt from regulatory oversight as a result of its "ridesharing" business model that it claims is based on "voluntary donation" rather than a fare. In cities such as Philadelphia, where it has previously been ordered to stop operating, the dispatch service is keeping its brand and services functioning through a free ride program for passengers, which operates during designated hours on Fridays and Saturdays. **Traffic Light: Red**

Lyft is an app launched by a San Francisco-based company, Zimride. Lyft currently operates in the San Francisco Bay Area and has announced plans to expand its service to cover more cities in the U.S. Lyft directly connects Lyft passengers with Lyft drivers. Lyft does not require its drivers to hold either a taxicab or limousine license nor does it require its vehicles to be licensed or insured as for-hire vehicles. Lyft claims to vet drivers and vehicles through its own internal interview process and criminal background check. Passengers do not have to pay for Lyft trips and instead are prompted by the app to make a "voluntary donation." Lyft argues that it is exempt from regulatory oversight as a result of its "ridesharing" business model that it claims is based on "voluntary donation" rather than a fare. Lyft maintains a passenger/driver rating system that allows for either party to rate the trip based on any number of subjective and possibly illegal factors, and ensures that passengers who want to continue to use the service will pay the "donation." To open a Lyft account, one must have a smartphone and credit card, and one must indemnify and release Lyft from liability. Lyft states that it has a $1 million per occurrence excess auto liability policy. The policy applies once a driver has accepted a ride and when a driver has a passenger matched from the Lyft app in his or her car. It is designed to cover driver liability for property damage and/or bodily injury of passengers and/or third parties (up to a limit of $1 million). The policy coverage is limited to liability only and does not provide coverage for collision, comprehensive or wear and tear damage to a driver's vehicle. **Traffic Light: Red**

Tickengo is a technology company that was founded in 2011 and is based in Daly City, California, and represents that it is currently present in San Francisco, Los Angeles, Boston, Chicago, Houston, Austin, Seattle, Washington, DC and New York City. The company provides "ridesharing" dispatch services by matching registered drivers with passengers that downloaded its app. The Tickengo app allows passengers to send a ride request to a community of drivers using the app or on the web, specifying the location, time, quantity of seats wanted and amount the passenger is willing to pay. The app then requires the passenger to enter credit card billing information and the transaction will be completed once the ride takes place. The passenger will receive a notification when the ride request has been accepted, and will then be able to access the driver's profile and contact information. Tickengo drivers are not vetted in accordance with state standards and their insurance coverage does not meet the strict requirements expected from for-hire vehicles and drivers. Tickengo users must indemnify and release Tickengo from liability. They hold themselves out as a website/app that connects regular people to share rides. The price model of the dispatch service is based on a system whereby passengers will donate a dollar amount that they feel will be sufficient to cover the cost of their driver. There are approximately 10,000 drivers who have signed up with Tickengo throughout the U.S. **Traffic Light: Red**
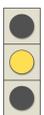
Hailo is a London-based app that connects Hailo passengers with Hailo taxicab drivers. It circumvents licensed taxicab dispatching operations. Hailo is currently present in Chicago and Toronto as well as farther afield in Tokyo, Barcelona and Madrid, with strategies to be significantly present in Washington, DC and New York City. In fact, posts on Hailo's driver blog suggests that it may pay New York City taxicab drivers directly for trips, which is in contravention of city regulations. Hailo has attempted to comply with local regulations in many places where it operates by only working with licensed taxicab drivers. However, its operation in Toronto would likely not meet the requirements of a regulated dispatch service in many U.S. cities because passengers are forced to order the service through a smartphone and must pay by credit card only, thereby discriminating against customers with no smartphone or credit card. To open a Hailo account, one must have a smartphone and credit card, and one must indemnify and release Hailo from liability. **Traffic Light: Yellow.**

Taxi Magic is an app launched by the Alexandria, Virginia-based company, RideCharge. In North America, Taxi Magic operates in about 45 cities including Washington, DC, San Francisco, Chicago and Denver. Taxi Magic integrates smartphone hailing through licensed taxicab computer dispatch systems. Therefore, the company positioned itself as an integral part of the taxicab fleet infrastructure and works

completely within the regulatory framework. Taxi Magic is the most widely used taxicab app in North America. To open a Taxi Magic account, one must have a smartphone and a credit card (although passengers are allowed the option of paying for trips in cash), and one must indemnify and release Taxi Magic from liability. By working through licensed taxicab fleets with licensed taxicab drivers, however, Taxi Magic preserves the public safety goals sought by local regulations. **Traffic Light: Green**

Flywheel (formerly Cabulous) is an app based in San Francisco. Flywheel operates in the following North American cities: San Diego, Miami, Houston, San Antonio, Seattle, and Cleveland. It currently has plans to expand to other major U.S. taxicab markets, including New York City. The service, which has about 50,000 active users, has also expanded to Barcelona. Flywheel integrates smartphone hailing through licensed taxicab computer dispatch systems. The company positions itself as an integral part of a taxicab fleet infrastructure and works completely within the regulatory framework. The company charges users $0.60 for its services and drivers take the total fare amount including tips. To open a Flywheel account, one must have a smartphone and credit card (although passengers are given the option to pay in cash), and one must indemnify and release Flywheel from liability. By working through licensed taxicab fleets with licensed taxicab drivers, however, Flywheel preserves the public safety goals sought by local regulations. **Traffic Light: Green**

GoFastCab is an app based in San Diego. GoFastCab operates in about 15 North American cities, including Chicago and Cleveland, as well as in Alexandria (Virginia), and Charlotte (North Carolina). The app works with existing licensed and regulated dispatching operations. GoFastCab integrates smartphone hailing through licensed taxicab computer dispatch systems. The app also allows taxicab dispatch services to use and brand the app as their own for "private label" marketing purposes. To open a GoFastCab account, one must have a smartphone (though a credit card is not required and without a card passengers may pay the driver directly), and one must indemnify and release GoFastCab from liability. By working through licensed taxicab fleets with licensed taxicab drivers, however, GoFastCab preserves the public safety goals sought by local regulations. **Traffic Light: Green**

II. Rogue Apps: Taxicabs in Disguise

Rogue apps would have regulators and the public believe they are not taxicab services. ***They are.***

Taxicabs provide immediate response transportation service. A passenger calls the taxicab dispatch service and orders immediate service or can get immediate service at a taxicab stand—such as at a hotel or airport. In larger cities one can also hail a taxicab on the street.

For the right to provide immediate response service, the taxicab driver, taxicab vehicle and taxicab dispatch service are held to a much more rigorous regulatory standard because the passenger has no way to vet the driver, vehicle and dispatch service in advance of the trip. For that reason, **taxicab drivers must clear a criminal background check** and a driving history review that is **conducted by a regulatory agency**. The taxicab vehicle must also pass the regulator's safety inspection and have unique colorful **markings to clearly distinguish it as a taxicab.** The taxicab dispatch service must show **proof of commercial transportation liability insurance**, use a regulator-inspected **meter that charges a rate set by the public regulatory agency**, and **provide community-wide, nondiscriminatory service** 24 hours a day, seven days a week, 365 days a year. Taxicabs are typically regulated at the city level of government to assure strict enforcement of extensive taxicab regulations.

Limousines, with rare exception, are required to charter their trips in advance (prearrangement) and have a very different regulatory structure. Drivers may not be required to pass a regulatory criminal background

check or a driver history review. Limousine vehicles are often required to be a luxury vehicle and are prohibited from looking like a taxicab. Limousine companies do have to carry commercial liability insurance, but they are not allowed to use a meter—instead, limousine companies are required to inform the passenger of the price for the chartered trip *before* the trip begins. Limousine companies do not have to provide community-wide service and are not required to be open at any time of the day or year. Limousines are often regulated at the state level of government, as there are fewer regulations and less regulatory enforcement.

Simply put, taxicabs are highly regulated because they provide immediate response service. Limousines must be pre-arranged so they do not need to be as highly regulated because the public has time to research various companies and to shop for quality, reputation and price.

If rogue apps are allowed to swoop in and provide taxicab service—service they are not licensed to provide—then they will take only the most affluent customers, leaving taxicabs with the least profitable, and even unprofitable, trips. In other words, allowing taxicabs to be the only service allowed to accept on-demand customers offsets the extra costs of operating 24/7 and servicing low-income neighborhoods, the elderly and the disabled.

If SideCar, Lyft, Uber and other rogue apps are allowed to act like taxicab dispatch services and are not held accountable to meet the taxicab safety and community-wide service regulations, ***this creates unfair competition that will ultimately harm passengers who are low-income, elderly, disabled, or are otherwise not served by rogue app dispatch services***.

Rogue apps such as Uber, Sidecar and Lyft provide on-demand service just like a taxicab service, yet have the ability to choose to not serve certain neighborhoods (because they are low-income), the elderly (because they may not have smartphones) or the disabled (because rogue apps do not have wheelchair accessible vehicles).

The practice by rogue apps that allows drivers to rate passengers also opens up the enormous possibility of discrimination. ***Secret ratings of passengers fosters and institutionalizes unlawful denial of service based on a passenger's race, age, sex, neighborhood, use of service animals, or mobility requirements.***

III. <u>Legal Actions Against Rogue Apps</u>

Following is an update on the potential threats involved in using rogue apps, as well as real-world examples of the pitfalls involved in doing so.

New Breed of Rogue Apps Further Increases Risk to Passengers
In its original media briefer, the TLPA detailed how rogue apps operate as unregulated taxicab dispatch services and place passengers at-risk by dispatching trips directly to self-certified drivers, rather than through licensed dispatch systems. Licensed dispatch operations take pains to assure passengers are transported in a properly insured, inspected vehicle operated by a driver who has cleared a criminal background check conducted by the public regulator. **Rogue apps—which sidestep taxicab regulation and, thus, oversight— place passengers at-risk for personal safety, uninsured accident claims, fare gouging and other illegal activity.**

For example, in the fine print of its contract Uber requires its passengers to agree to the following:

> "THE QUALITY OF THE TRANSPORTATION SERVICES SCHEDULED THROUGH
> THE USE OF THE SERVICE OR APPLICATION IS ENTIRELY THE
> RESPONSIBILITY OF THE THIRD PARTY PROVIDER WHO ULTIMATELY

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PROVIDES SUCH TRANSPORTATION SERVICES TO YOU. YOU UNDERSTAND, THEREFORE, THAT BY USING THE APPLICATION AND THE SERVICE, **YOU MAY BE EXPOSED TO TRANSPORTATION THAT IS POTENTIALLY DANGEROUS, OFFENSIVE, HARMFUL TO MINORS, UNSAFE OR OTHERWISE OBJECTIONABLE**, AND THAT YOU USE THE APPLICATION AND THE SERVICE AT YOUR OWN RISK." *(emphasis added)*

A new model of rogue app now multiplies the risk level to passengers. SideCar, Lyft and Tickengo bill themselves as on-demand ridesharing apps for cheaper transportation. Riders plug in their location via smartphone and a private individual driver who does not hold a taxicab or limousine license and who drives a private automobile that is not licensed or insured to provide commercial transportation service picks them up for a ride. After the ride is completed, riders make a "donation" as payment. The potential pitfalls involved in these new "peer-to-peer" apps are numerous: arguments involving compensation that could turn violent or the potential for these apps to be targeted for usage by sexual predators in a manner similar to the flirting app, "Skout" (http://bits.blogs.nytimes.com/2012/06/12/after-rapes-involving-children-skout-a-flirting-app-faces-crisis/) are but two dire possible outcomes.

Both SideCar and Lyft assert they provide drivers with background checks. ***However, these background checks are not taxicab or limousine regulator-conducted checks, increasing the chances that convicted rapists, murderers or felons could possibly get behind the wheel of their for-hire vehicles to perpetrate crime in the vehicle or later, once the driver knows where the passenger lives, works or frequents***.

Uber Driver Accused of Rape in Washington, DC
In its first media briefer, the TLPA posed the question: "Just how safe are Uber drivers?" We noted that at that time Uber did not have the more rigorous public sector criminal background checks run on its drivers (**https://partners.uber.com/#!/terms**). Within days of the Washington, DC Council ruling in December, 2012 to create a separate class of service allowing Uber to operate in the city (http://transportationnation.org/2012/12/05/uber-finally-gets-d-c-city-council-blessing/) an Uber driver was accused of raping a teenage passenger. While initial charges were dropped, media reports say the case is still under investigation (http://www.nbcwashington.com/news/local/Uber-Car-Driver-Charged-With-Sexually-Assault-of-Passenger-197983871.html). More recently, an Uber passenger has filed a lawsuit against Uber and the Uber driver for assault (http://www.huffingtonpost.com/2013/03/12/dc-uber-lawsuit_n_2861451.html).

These cases are awaiting further developments and clarification. Sadly, both provide vivid real-world examples of the potential pitfalls of using rogue apps that operate outside of taxicab regulatory oversight. Should the teenaged girl's family decide to bring a lawsuit against Uber, what legal recourse will they possess? In its original media briefer, the TLPA noted the danger in using Uber is located "in the fine print." Uber will not accept a fare until the passenger agrees to onerous terms and conditions that attempt to absolve the dispatch service of any and all legal recourse (https://www.uber.com/legal/terms#). Thus, if a driver commits a crime against the passenger or causes an accident, Uber asserts that the passenger has no legal right to sue Uber for damages.

Cities Use Lawsuits and Fines to Grapple with Rogue Apps
Even after taking the actions needed to operate legally in New York and Washington, DC, Uber is involved in numerous legal disputes in other cities. As of this writing, Uber faces a class-action lawsuit from taxicab drivers in San Francisco http://www.sfexaminer.com/local/transportation/2012/11/cabdrivers-file-class-action-lawsuit-against-uber-ride-service). Uber is being sued by taxicab and livery dispatch services in Chicago for consumer fraud (http://techcrunch.com/2012/10/05/uber-sued-by-taxi-and-livery-companies-in-chicago-for-consumer-fraud-and-more/). The company is now facing fines and charges in Toronto, Canada (http://techcrunch.com/2012/12/05/after-a-win-in-d-c-uber-now-faces-up-to-25-charges-in-toronto-will-go-to-court-in-january/) continues to be named in a lawsuit from Cambridge, Massachusetts

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(http://www.cambridgeday.com/2012/11/15/lawsuits-against-uber-car-service-grow/), and is now being sued by taxicab dispatch services in Boston (http://www.xconomy.com/boston/2013/03/12/uber-sued-in-boston-case-could-wind-up-in-federal-court/).

SideCar is also is facing legal challenges almost everywhere it operates. The California PUC issued a $20,000 fine and a cease-and-desist order in November 2012. That was followed by Philadelphia issuing its own cease-and-desist order and fines in February 2013 (http://www.bizjournals.com/sanfrancisco/blog/2013/02/sidecar-drivers-cited-in-philly.html?page=all).

In February 2013, the city of Austin, Texas, issued its own fines and a cease-and-desist order against SideCar. That was followed by SideCar suing the city in early March. (http://www.bizjournals.com/austin/blog/at-the-watercooler/2013/03/sidecar-sues-austin-over-ridesharing.html?page=all).

IV. <u>What the Experts Say</u>:

"If we pretend that apps don't need to adhere to local taxi and limousine regulations, we're going to regret the consequences. People may forget, but we've been here before. In the 1970s and 80s, lots of cities tried deregulating their taxicabs. It didn't work: Safety and service to our vulnerable citizens were compromised and passengers complained about price-gouging. It caused a lot of regret and was a complete failure."

—Dr. Ray Mundy, Director of the Center for Transportation Studies, University of Missouri

"The advent of transportation apps is exciting and something the industry embraces. However, we must insist on full compliance with the law to protect the people who ride in for-hire vehicles."

—William Rouse, General Manager, Los Angeles Yellow Cab Co-Op
and President of the Taxicab, Limousine & Paratransit Association

"On behalf of the international community of government regulators, rogue apps present a very real and present danger to public safety and consumer protection. Rogue app companies violate the law wherever and whenever they can, and sometimes use unlicensed drivers who do not undergo criminal background checks, drug testing and who may not have vehicle liability insurance to protect injured passengers. Some rogue apps function as an illegal and unapproved taximeter inside a smartphone, with software that operates with inaccurate GPS navigation software that leads to passengers being overcharged. Rogue app companies want total deregulation, which has never worked in the history of the taxi industry and which will lead to people being hurt and customers being ripped off."

—Professor Matthew W. Daus, Esq., President of the International
Association of Transportation Regulators

"The laws pertaining to taxicabs and limousines aren't there as suggestions. But in nearly every market where SideCar, Lyft and Uber operate, they act as if the rules don't apply to them. These rogue app dispatch services are a threat to public safety, and community governments across North America are responding to the threat."

—Alfred LaGasse, CEO of the Taxicab, Limousine & Paratransit Association

Established in 1917, the Taxicab, Limousine & Paratransit Association (TLPA) is a non-profit trade association of and for the private passenger transportation industry. Its extensive membership spans the globe to include 1,100 taxicab services, executive sedan and limousine services, airport shuttle services, non-emergency medical transportation services, and paratransit services.

*For more information, please visit **www.tlpa.org***