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Molly Parato

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# TRANSPORTATION NETWORK COMPANIES' ABILITY TO SUSTAIN SUCCESS AMID GROWING REGULATORY CONCERNS BY LOCAL GOVERNMENTS

Molly Parato\*

## I. INTRODUCTION

Imagine you are in a new city, or are enjoying a night out on the town. It is late, and you need to find a way home. As you walk out onto the street, what do you see? I would guess you see an empty street, with maybe a car or two passing by as you stand there idly. As you try to figure out how to get home, you must first consider your options. There is always public transit, such as the bus or subway. But for some, especially after a night of drinking, walking several blocks to the nearest bus stop or subway station is not the safest option. Another option is a taxicab. Although you may not see any waiting outside the bar, you can always call a dispatcher and have one sent to you. But that could take who knows how long. And,

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\* B.A., Miami University, 2015; J.D. Candidate, University of Missouri School of Law, 2018; Associate Member, *Business, Entrepreneurship & Tax Law Review*, 2016-2017. I am sincerely grateful to my advisor, Professor Thomas Lambert, for his insight and guidance on this article and to the editors of the *Business, Entrepreneurship & Tax Law Review* for their thoughtful feedback and suggestions throughout the review process.

if you have just walked out of a bar that is now closed, your only option is to wait for the taxi outside.

Another option is getting a “transportation network company” to pick you up. While you are still in the bar, you can just slip out your smartphone, send your address, and by the time you walk outside, your ride is waiting for you. You also have the added security that your ride will actually show up because you can watch it progress toward your pick-up spot in real time. And you know that this is your ride as opposed to another bar-goer’s ride because you were given your driver’s name and license plate ahead of time. This seems like the most obvious choice when you consider the disadvantages offered by the other options. There is speed, convenience, and a security that your ride will come when it says it will. Plus, if you are a frequent user of this transportation method, you likely did not even have to take out money because you have a credit card stored in your phone that automatically paid the travel fare.

These new on-demand transportation services, often referred to as Transportation Network Companies (“TNCs”), have greatly altered the

transportation industry.<sup>1</sup> Today, there are several companies that utilize this on-demand transportation throughout the United States and globally. Transportation experts refer to the services offered by TNCs as “ridesourcing,”<sup>2</sup> a concept that should be distinguished from the term “ridesharing.”<sup>3</sup> Uber Technologies, Inc. (“Uber”), a multinational organization that operates a mobile phone software application (“app”) used to connect passengers to drivers,<sup>4</sup> is the largest and so far the most successful of the on-demand transportation companies.<sup>5</sup> Uber’s main competitor and the next largest on-demand transportation service, Lyft, Inc. (“Lyft”), utilizes a similar business model to Uber that matches local drivers with riders.<sup>6</sup>

Companies like Uber and Lyft have irreparably disrupted the taxicab industry, but as the law catches up with these new TNCs, the

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<sup>1</sup> Lisa Rayle, et al., *App-Based, On-Demand Ride Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco*, UNIV. OF CAL. TRANSPORTATION CENTER (2014) 1  
[http://www.its.dot.gov/itspac/Dec2014/RidesourcingWhitePaper\\_Nov2014.pdf](http://www.its.dot.gov/itspac/Dec2014/RidesourcingWhitePaper_Nov2014.pdf).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* “Ridesharing” occurs when the driver and rider are going to the same or nearby destinations, whereas “ridesourcing” drivers are transporting the rider to a destination. *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Jennifer J. Kunz, *Transportation Network Companies (e.g. Uber, Lyft, etc.)*, BEST BEST & KRIEGER, <https://www.bbklaw.com/getmedia/e82420f3-cc71-4da2-b131-48235e608dbf/WONK-Breakfast-TNCs> (last visited June 19, 2017).

<sup>6</sup> *Id.*

companies will have to take into consideration the extensive legal fees required in order to either fight or reshape transportation regulations. This is most evident for Uber, the largest TNC, which is currently facing more litigation than any other startup in the world.<sup>7</sup>

Uber has a launch first, deal with logistics later approach.<sup>8</sup> Uber generally enters a new city and then confronts the regulatory concerns after it has established a presence in that city.<sup>9</sup> Once consumers form a reliance on the services that Uber offers, it is harder for local governments to exert leverage against Uber.<sup>10</sup> This model generally works for Uber; however, when it is unsuccessful, Uber faces high regulatory barriers that usually lead to costly settlements.<sup>11</sup>

Although Uber is one of the most successful businesses of its time, it faces numerous challenges to its sustainability over the long run because

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<sup>7</sup> Kristen Brown, *Uber is Facing a Staggering Number of Lawsuits*, FUSION (Jan. 25, 2016, 7:00 AM), <http://fusion.net/story/257423/everyone-is-suing-uber/>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> This is most apparent in Uber and Lyft's campaign to change an Austin, Texas ordinance, where it is estimated the companies spent \$8.6 million on the campaign. Nolan Hicks & Ben Wear, *Prop. 1 goes down as Activist Proclaims: 'Austin made Uber an Example'*, MY STATESMAN (May 7, 2016, 5:52 PM) <http://www.mystatesman.com/news/news/local-govt-politics/election-day-voting-light-so-far-on-austins-prop-1/nrJmG/>.

of the great number of lawsuits it is involved in. Much of Uber's future will be left to the courts, which is generally not where regulation should be decided. This is because Uber is a national firm, but different judges may apply different laws depending upon the jurisdiction in which the suit was brought. This would lead to inconsistent rules and a mess for anyone hoping to hop on the TNC bandwagon.

Uber in many respects eliminates the need for the regulations that have plagued the traditional taxicab industry for the past several decades. However, there are certain aspects of Uber, and all TNCs, that need to be determined by a regulatory body in order for TNCs to continue their growth.<sup>12</sup> Although Uber, as well as other TNCs, faces great costs due to litigation over a wide range of issues, Uber will be able to sustain its growth while also funding its litigation expenses because of the lasting effect Uber has had on the market.

This paper will first examine the pricing strategies of TNCs and how their entrance into the market has affected the taxicab industry. This

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<sup>12</sup> Specifically, there needs to be a decision regarding the status of TNC drivers. Whether they are classified as employees or independent contractors will determine much of the current litigation against Uber.

paper will then discuss Uber specifically to determine whether the larger litigation costs will impede Uber's ability to continue growing over time.

## II. WHAT ARE TRANSPORTATION NETWORK COMPANIES?

A Transportation Network Company ("TNC") uses smartphone apps to connect potential passengers to drivers who offer rides in their own personal vehicles.<sup>13</sup> In 2013, the California Public Utilities Commission defined a TNC as an organization "that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles."<sup>14</sup>

Uber, originally founded as UberCab in March of 2009,<sup>15</sup> was the first of its kind, offering a respite from the frustration of trying to find a

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<sup>13</sup> Rayle, *supra* note 1, at 2.

<sup>14</sup> Commissioner Peavey, *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*, CAL. PUBL. UTIL. COMM'N, 3 (Sept. 19, 2013), <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K112/77112285.PDF>.

<sup>15</sup> Nathan McAlone, *Here's how Uber got its start and grew to become the most valuable startup in the world*, BUSINESS INSIDER (Sept. 13, 2015, 8:00 AM) <http://www.businessinsider.com/history-of-uber-and-its-rise-to-become-the-most-valuable-startup-in-the-world-2015-9/#september-2015-ubers-china-arm-raises-12-billion-to-aid-in-its-fight-in-the-china-market-ubers-biggest-competitor-didi-kuaidi-responds-by-raising-about-3-billion-26>.

cab during peak travel hours or dealing with the expense of a car service.<sup>16</sup> The service was priced between a typical cab fare and a car service fee,<sup>17</sup> but the main attraction was the better quality service and higher end vehicles used for transportation.<sup>18</sup> This original service is the equivalent to today's UberBLACK.<sup>19</sup> By 2010, UberCab went live for the first time in the San Francisco Bay Area<sup>20</sup> and changed its name to just "Uber."<sup>21</sup> Shortly after, Uber began its national expansion and later began expanding on an international scale in 2011.<sup>22</sup>

When it launched in San Francisco in 2010,<sup>23</sup> Uber originally offered only one service, UberBLACK.<sup>24</sup> But Uber has since expanded its offered services to include other transportation classifications at varied

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<sup>16</sup> Leena Rao, *UberCab Takes the Hassle Out of Booking A Car Service*, TECHCRUNCH (July 5, 2010), <https://techcrunch.com/2010/07/05/ubercab-takes-the-hassle-out-of-booking-a-car-service/>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* UberBLACK is discussed *infra* Part IV.

<sup>20</sup> McAloon, *supra* note 15.

<sup>21</sup> *Id.*

<sup>22</sup> Avery Hartmans & Nathan McAloon, *The Story of how Travis Kalanick Built Uber into the most Feared and Valuable Startup in the World*, BUSINESS INSIDER (Aug. 1, 2016, 11:30 AM), <http://www.businessinsider.com/ubers-history/#june-1998-scour-a-peer-to-peer-search-engine-startup-that-kalanick-had-dropped-out-of-ucla-to-join-snags-its-first-investment-from-former-disney-president-michael-ovitz-and-ron-burkle-of-yucaipa-companies-1>.

<sup>23</sup> McAloon, *supra* note 15.

<sup>24</sup> *Id.*



prices as well as services beyond transportation, such as food delivery.<sup>25</sup> It also currently offers ride-sharing services in San Francisco.<sup>26</sup>

Uber has subsequently added more services.<sup>27</sup> In late 2012, Uber announced UberX, a cheaper alternative to UberBLACK that allows drivers to use their own vehicles.<sup>28</sup> By 2014, Uber began testing a new courier service called UberRUSH in Manhattan,<sup>29</sup> and it added UberPOOL, a service available only in a few cities.<sup>30</sup>

Uber has been the subject of several lawsuits from drivers, taxi companies, and governments on a global scale. Currently, Uber is involved in over 50 lawsuits around the world.<sup>31</sup>

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<sup>25</sup> See Eric Auchard, *Uber Launches Global Assault on Takeaway Meals Market*, REUTERS (Sept. 28, 2016, 7:22 AM) <http://www.reuters.com/article/us-food-delivery-idUSKCN11W2LX>; Joshua Brustein, *Uber Expands Into Courier Service With Manhattan-Only Pilot*, BLOOMBERG (Apr. 7, 2014, 4:56 PM), <http://www.bloomberg.com/news/articles/2014-04-07/with-uber-rush-the-car-service-tests-manchattan-only-courier-service>.

<sup>26</sup> *UberPOOL San Francisco: Everybody's In!*, UBER NEWSROOM (Sept. 2, 2014), <https://newsroom.uber.com/us-california/uberpool-san-francisco-everybodys-in/>.

<sup>27</sup> John P. Pullen, *Everything You Need to Know About Uber*, TIME (Nov. 4, 2014), <http://time.com/3556741/uber/>.

<sup>28</sup> *Id.*

<sup>29</sup> Brustein, *supra* note 25.

<sup>30</sup> See UBER, *Ride with Uber*, <https://www.uber.com/ride/> (last visited June 19, 2017); Jenn Harris, *Uber Launches \$3 Food Delivery Service UberFresh*, LOS ANGELES TIMES (Dec. 8, 2014, 12:44 PM), <http://www.latimes.com/food/dailydish/la-dd-uber-launches-food-delivery-service-uberfresh-20141208-story.html>.

<sup>31</sup> Brown, *supra* note 7.

### III. THE TAXICAB INDUSTRY PRIOR TO THE INTRODUCTION OF TNC'S

The taxicab industry has historically been a monopoly with extremely high barriers to entry due to the need for medallions, essentially a license to own a taxi, in order to operate a taxi. Ridesourcing services, such as the on-demand transportation services offered by companies like Uber and Lyft, have become a subset of the taxicab and limousine industry.<sup>32</sup> With industry revenue anticipated to grow to \$18.9 billion by 2016,<sup>33</sup> the taxicab industry is an appealing marketplace for ridesourcing firms that are able to gain entry. With that, however, taxicab operators are incentivized to delay disruption to the market.

The taxicab industry is highly regulated by local governments restricting entry into the markets, fares, and services.<sup>34</sup> The taxicab industry is so highly regulated because there is a need for the regulation. Proponents of taxicab regulation argue that the market imperfections may create market failures or lead to an inefficient allocation of resources in

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<sup>32</sup> Brian Sayler, *Taxi & Limousine Services in the US*, IBISWORLD (Jan. 2017), <http://clients1.ibisworld.com/reports/us/industry/default.aspx?entid=1951>.

<sup>33</sup> Brian Sayler, *Industry at a Glance*, IBISWORLD (Jan. 2017), <http://clients1.ibisworld.com/reports/us/industry/atagance.aspx?entid=1951>.

<sup>34</sup> Mark W. Frankena & Paul A. Pautler, *An Economic Analysis of Taxicab Regulation*, 1 (F.T.C. 1984).

certain segments.<sup>35</sup> Aspects of the taxi industry that contribute to the efficiency, or lack thereof, of the market include wait-time, cost, and consumer welfare.<sup>36</sup> The potential inefficient resource allocations include “over- or under-production of various taxicab services, production of service at too low a quality level, or unnecessarily high costs of producing a given output.”<sup>37</sup> There are several areas of regulation to protect against these market failures such as price controls, restrictions on entry, and regulations on quality, “which concern vehicle safety, driver qualifications, and liability insurance coverage.”<sup>38</sup>

Price controls are likely the most conspicuous of taxicab industry regulations because they affect both consumers and drivers. There are situations in which price regulation may be necessary in an unregulated market because of inefficiently high fares.<sup>39</sup> However, fare regulation in

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<sup>35</sup> *Id.* at 1-6. Market failures are the inefficient allocation of resources. *Id.* A market outcome is considered efficient only when there is no conceivable change in the allocation of resources that would make one individual better off without harming another individual. LYNNE PEPALL, ET AL., *INDUSTRIAL ORGANIZATION*, 28 (Wiley 5th ed. 2014). Thus, if there is some way in which to improve the position of one individual without taking from another, then the market is not efficient. *Id.*

<sup>36</sup> Sean McBride, *Ridesourcing and the Taxi Marketplace* (May 2015) (unpublished Senior Honors Economic Thesis) (on file with Boston College University Libraries).

<sup>37</sup> Frankena, *supra* note 34.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 3. The first situation is cruising taxis or taxis waiting at airports; the cab fare would be inefficiently high because of the high transaction costs to consumers of finding

itself may pose as a market imperfection because, depending on the type of trip, the regulated price may be too low and firms would operate at a loss.<sup>40</sup>

The justifications for restrictions on entry are based on the idea that if fare rates are set inefficiently high for the service offered, then an inefficiently large number of drivers will enter the market.<sup>41</sup> However, this is only true if fares are too high—in which case, the argument would support deregulation of taxi fares rather than entry regulations.<sup>42</sup> Legislators created restrictions on entry by use of medallions. A medallion is essentially a license to operate a taxi,<sup>43</sup> there are only so many medallions available in the city and few are issued each year.<sup>44</sup> In 2013,

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the cheapest taxi. *Id.* The second situation is cruising taxi drivers, who could potentially charge higher rates to consumers who are unable to find another taxi. *Id.* The third situation is where taxi firms could charge higher fares for radio-dispatch and contracted cabs because of the taxi firms' benefits from economies of scale. *Id.* Economies of scale occur “[w]hen average cost falls as output increases, it means that the cost per unit of output declines as the scale of operations rises.” Pepall, *supra* note 35, at 69. Economies of scale can pose as a barrier to entry to smaller firms, thus enabling the established taxi firms to take advantage and charge higher fares. Frankena, *supra* note 34, at 3.

<sup>40</sup> Frankena, *supra* note 34, at 4.

<sup>41</sup> *Id.* at 41.

<sup>42</sup> *Id.* at 4. Entry restrictions are also argued to increase efficiency because taxis cause congestion and pollution. *Id.* This argument was rejected by Frankena and Pautler based on the evidence of congestion and pollution externalities from taxicabs. *Id.* at 5.

<sup>43</sup> *Id.* at 26.

<sup>44</sup> ANNA BARLETT & YESIM YILMAZ, TAXICAB MEDALLIONS - A REVIEW OF EXPERIENCES IN OTHER CITIES, 1 (2011).

the average sale price of a medallion in New York City was approximately \$967,000.<sup>45</sup>

A third market failure in the taxicab industry that regulations attempt to fix is information asymmetry.<sup>46</sup> Information asymmetry supports regulations on quality.<sup>47</sup> Regulations on the quality of service regard “vehicle design, condition, age, and safety, driver qualifications, and liability insurance coverage.”<sup>48</sup> Before actually getting into the taxicab, the rider cannot determine the quality he or she is about to receive.<sup>49</sup> It is not until the rider has already made the choice to get into the cab that he or she could decide if the cab is clean, the vehicle is safe,

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<sup>45</sup> MICHAEL R. BLOOMBERG & DAVID YASSKY, 2014 TAXICAB FACTBOOK, 12 (New York City Taxi & Limousine Comm’n 2014).

<sup>46</sup> Information asymmetry occurs when the parties to a transaction have different levels of information. THOMAS LAMBERT, HOW TO REGULATE, 168, CAMBRIDGE UNIV. PRESS (Forthcoming 2017) (on file with author). A result of information asymmetry is under-production of goods or services that consumers want, called the “lemons problem.” *Id.* at 169. Essentially, when consumers are unsure of the quality they are going to receive from a good or service, they will only pay the average of the lowest potential value of the good or service and the highest potential value—because there is a 50% chance they will get a good deal, and a 50% chance they will be overpaying. *Id.* at 168-169. If consumers are only paying the average, then high-quality producers are not going to sell on the market because their good is being under-valued. *Id.* Then, without those high-quality products, consumers will lower the amount they are willing to pay, because the average price of that good has now gone down, which then results in the slightly-above-average producers pulling out. *Id.* This cycle repeats itself until there are only low-quality producers left in the market. *Id.*

<sup>47</sup> Frankena, *supra* note 34, at 4.

<sup>48</sup> *Id.* at 27-28.

<sup>49</sup> *Id.* at 4.

or even if the driver is qualified.<sup>50</sup> Further, the rider has no way of knowing whether the driver has liability insurance.<sup>51</sup> Riders would respond to this information inequality by paying for the average valued quality.<sup>52</sup>

Without minimum standards for service quality, drivers who would otherwise offer high-quality services will cease offering such services because riders, who do not know which drivers offer high or low quality service, will only want to pay the up to the value for average services.<sup>53</sup>

This pushes drivers offering the highest quality out of the market, either by leaving the market altogether,<sup>54</sup> or by lowering their quality of service to match what they would be paid. If there are minimum fare regulations in place, then drivers will only offer service quality to match that fare minimum—there is no incentive for those drivers to offer high-quality services.

However, considering minimum fare regulations, some consumers may simply choose not to utilize a taxicab if they are concerned that the

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> LAMBERT, *supra* note 46, at 169.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

minimum fare value is above the expected quality of the taxi. Therefore, in regards to consumer protection, regulations on quality of service may be justified.<sup>55</sup>

Economic analysts have determined that restricting entry by use of medallions and creating fare minimums is a waste of resources and imposes burdens on consumers.<sup>56</sup> However, regulations concerning vehicle safety, insurance coverage, and requirements that fares must be posted may be justified given the market imperfections they are trying to correct.<sup>57</sup>

Some government agencies that create taxi regulations may not promulgate regulations to correct overall market failures.<sup>58</sup> Rather, the regulations are in place generally to protect taxi firm incumbents and public transportation systems.<sup>59</sup> The medallion system is an example of a regulation that, in reality, does little more than give incumbent firms greater market power.<sup>60</sup> Up until the 1970s,<sup>61</sup> the taxicab industry has seen

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<sup>55</sup> Frankena, *supra* note 34, at 57.

<sup>56</sup> *Id.* at 1.

<sup>57</sup> *Id.* at 37-38.

<sup>58</sup> *Id.* at 6.

<sup>59</sup> *Id.* at 6-7.

<sup>60</sup> *Id.* at 7.

<sup>61</sup> SCHALLER CONSULTING, THE NEW YORK CITY TAXICAB FACT BOOK, 25 (2006).

little change since the creation of the medallion system in the 1930s prior to the introduction of TNCs.<sup>62</sup> By restricting the supply of taxicabs in the market, the medallion system has created barriers to entry that are nearly impossible to overcome.

The structure of the taxicab industry changed drastically when medallion owners started leasing medallions to drivers.<sup>63</sup> The medallion owners provided the vehicle and insurance, as well as marketing, and the leasing driver paid a flat fee to the medallion owner.<sup>64</sup> Drivers could lease a taxicab on a daily or weekly basis, and shifts lasted 12 hours.<sup>65</sup> This new system effectively shifted drivers from employees of the medallion holders to independent contractors.<sup>66</sup> The ability to lease their medallions allowed owners “to drop employee benefits which drivers had previously enjoyed, including health and pension benefits, employer contributions to

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Medallion owners began leasing their medallions to drivers. *Id.*

<sup>62</sup> BLOOMBERG & YASSKY, *supra* note 45, at 12. New York City responded to over-supply of taxicabs by passing the Haas Act in 1937 which established the medallion system still used today. *Id.*

<sup>63</sup> McBride, *supra* note 36.

<sup>64</sup> *Id.* at 14.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*



Social Security, scholarships, legal services, unemployment insurance and disability insurance.”<sup>67</sup>

Taxicab drivers also saw a drop in income due to the leasing of medallions.<sup>68</sup> With the current leasing schemes, drivers are paid after accounting for vehicle costs and the leasing fee, rather than commission.<sup>69</sup> As of 2005, 57 cents for every dollar generated by fares and tips went to drivers, 24 cents went to vehicle maintenance, 4 cents went to other expenses, and 15 cents went to medallion owners.<sup>70</sup>

#### IV. HOW DID TNCs CHANGE THE MARKETPLACE?

The entry by TNCs has changed the market place—many would argue for the better. TNCs offer a similar but still different service than taxicabs; the biggest difference from the two is that TNCs operate via a smartphone app. Proponents of TNCs argue that they serve previously unmet demands for faster and convenient transportation.<sup>71</sup> In a 2014 survey, consumers said they chose TNCs over other transportation

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<sup>67</sup> SCHALLER CONSULTING, *supra* note 61, at 27.

<sup>68</sup> *Id.* at 36.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 35.

<sup>71</sup> Rayle, *supra* note 1, at 1.

services like taxicabs and public transit mostly because of convenience.<sup>72</sup> 35% of respondents said they chose a TNC for the ease of payment, and 30% said short wait time.<sup>73</sup> Notably, only 2% said that they chose a TNC because they could not get a taxicab.<sup>74</sup> This indicates that consumers are often going straight to their preferred TNC's app rather than using a TNC as only an alternative to taxicabs.

As the data suggests, TNCs have filled a large gap in the marketplace because they are reaching consumers that prefer aspects such as speed and convenience that taxicabs simply cannot offer. It is in this way that TNCs are sustainable innovators;<sup>75</sup> they are giving consumers something that they want, but the new technology is better than the old technology.<sup>76</sup> The strategies of companies like Uber are sustainable because they have taken an already existing service and simply made it better in ways that respond to the flaws of the old system.<sup>77</sup> There are several market failures within the taxicab industry that TNCs directly

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<sup>72</sup> *Id.* at 14-15.

<sup>73</sup> *Id.* at 15.

<sup>74</sup> *Id.*

<sup>75</sup> Joseph L. Bower & Clayton M. Christensen, *Disruptive Technologies: Catching the Wave*, HARV. BUS. REV. (Jan. 1995).

<sup>76</sup> *Id.*

<sup>77</sup> Clayton M. Christensen, et. al, *What is Disruptive Innovation?*, HARV. BUS. REV. (Dec. 2015).

effect,<sup>78</sup> such as information asymmetry, but there are also several negative effects TNCs have had on various stakeholders.<sup>79</sup>

The smartphone apps create better exchanges of information between drivers and riders by instantaneously pairing available and nearby drivers to riders in need.<sup>80</sup> The immediate connection between drivers and riders fixes the problems consumers face when trying to hail a cab or when calling a dispatcher.<sup>81</sup>

Notably, Uber has obviated the need for regulations concerning information asymmetry and the inefficiencies created therefrom by utilizing a ranking system.<sup>82</sup> Riders are able to provide anonymous feedback and rate drivers on a five-star system that future riders are able to see.<sup>83</sup> Then, when riders request a ride via the smartphone app, in addition to the driver's name and photo, they can see how many stars the driver has been given by other riders.<sup>84</sup> Riders are given most of the information they

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<sup>78</sup> Rayle, *supra* note 1, at 3.

<sup>79</sup> Katie Biber Chen, *Disruption: Innovation vs. Incumbents*, THE FEDERALIST SOCIETY (Oct. 26, 2016).

<sup>80</sup> McBride, *supra* note 36, at 35.

<sup>81</sup> *Id.*

<sup>82</sup> UBER, *Ride with Uber*, <https://www.uber.com/ride/> (last visited June 19, 2017).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* Riders can also see the driver's car make and model, and their license plate, as well as how much the trip will cost and how long it will take. *Id.*

need to make an informed decision about whether to use Uber—they know the likely quality of service their driver will give them, and how much the ride will cost. These are two aspects of information-related market failures regulations are meant to protect, but they are not necessary under Uber's current system.

TNCs are also better able to fix many market failures of the taxicab industry by offering different transportation options and dynamic pricing. For example, Uber offers two classes of ride services, economy and premium, which allow users to pick the type of car they will ride in, economy or luxury, based on the price they are willing to pay for the ride.<sup>85</sup> Economy Ubers offer the lowest fares whereas Premium Ubers cost significantly more.<sup>86</sup>

The Premium Ubers are UberBLACK, UberSUV, and UberLUX. Premium Ubers still utilize the basic on-demand transportation system that

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* The Economy Ubers are UberX, UberXL, and UberSELECT. *Id.* As Uber's single purchaser transportation service, UberX allows drivers to drive up to four passengers in their own vehicles. *Id.* UberXL is essentially the same concept as UberX, but in a larger vehicle. *Id.* UberXL drivers drive vans or SUVs to allow for more passengers. *Id.* UberSELECT is the most expensive of the Economy Ubers because it only offers highly-rated drivers that also drive upscale sedans. *Id.*

Uber is known for, but do so in high-end vehicles.<sup>87</sup> This ultimately leads to a premium paid for by the passenger.<sup>88</sup>

Uber has many other services available in select cities, such as Uber Access and UberPOOL.<sup>89</sup> Uber Access offers rides in handicap accessible vehicles in certain cities.<sup>90</sup> UberPOOL, an on-demand ride-sharing service, is Uber's lowest priced service offered.<sup>91</sup> This service allows passengers to share their UberX ride and split the fare with other Uber users who are going along the same route.<sup>92</sup>

In addition to personal transportation, Uber provides delivery services: UberEATS and UberRUSH.<sup>93</sup> These services share the same

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<sup>87</sup> *Id.*

<sup>88</sup> *Id.* UberBLACK, the first service offered by Uber, is the lower end of the Premium Ubers. UBER, *What is UberBLACK?*, <https://www.uber.com/ride/uberblack/> (last visited June 19, 2017). Like the similarity between UberX and UberXL, UberSUV offers the same experience as UberBLACK, but with a higher capacity. *See* UBER, *What is UberSUV?*, <https://www.uber.com/ride/ubersuv/> (last visited June 19, 2017). The most expensive of all the Uber options is UberLUX which offers professional drivers in luxury vehicles, such as a Porsche or a Range rover. UBER, *What is UberLUX?* <https://www.uber.com/ride/uberlux/> (last visited June 19, 2017).

<sup>89</sup> UBER, *supra* note 88.

<sup>90</sup> *Id.*

<sup>91</sup> UBER, *Share your ride and save with uberPOOL*, <https://www.uber.com/ride/uberpool/> (last visited June 19, 2017).

<sup>92</sup> *Id.*

<sup>93</sup> UBER, *Deliver With Uber*, <https://www.uber.com/drive/delivery/> (last visited June 19, 2017).

concept as Uber's transportation services, except that instead of passengers these services deliver food and packages.<sup>94</sup>

These services allow Uber to appeal to a larger consumer base and capture market share in other industries. Thus, more consumers are able to utilize their service which benefits both the consumers and drivers who are earning an income from these different services.

TNCs also offer different prices depending on the current demand, called "surges."<sup>95</sup> Surge pricing is simply an upcharge, or increased fare, that is calculated as a multiple of the standard fee associated with Uber's services conditioned on real-time demand.<sup>96</sup> Surge pricing is based off the

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<sup>94</sup> *Id.* UberEATS delivers food and UberRUSH delivers packages for businesses. UBER DEVELOPERS, *Introduction to Deliveries*, <https://developer.uber.com/docs/deliveries/introduction> (last visited June 19, 2017). In certain cities, Uber has set up a network of local restaurants that it delivers food from. UBER, *What is UberEATS?*, <https://help.uber.com/h/d0a9d8d7-8066-42d7-a266-4e6367158294> (last visited June 19, 2017). A user can either order an Uber to pick up and deliver food from one of those restaurants or select from a "Instant Delivery" menu to get food delivered in a shorter time period. *Id.* UberRUSH is an on-demand delivery system that works very similar to the regular Uber services. UBER DEVELOPERS, *Introduction to Deliveries*, <https://developer.uber.com/docs/deliveries/introduction> (last visited June 19, 2017). Businesses can order an Uber, hand off the package to be delivered, and then track the package as it is being delivered by the UberRUSH driver. *Id.*

<sup>95</sup> McBride, *supra* note 36, at 48.

<sup>96</sup> UBER, *What is Surge?*, <https://help.uber.com/h/e9375d5e-917b-4bc5-8142-23b89a440eec> (last visited June 19, 2017).

rider's location, not the driver's.<sup>97</sup> When demand is especially high during peak transportation hours, riders will see a price increase when they attempt to summon a TNC.<sup>98</sup> Ultimately, surge pricing reduces the overall demand for rides and, as a result, increases the availability of drivers for those willing to pay a higher rate.<sup>99</sup> The surge pricing also incentivizes drivers who otherwise would not be working without an increase in pay.<sup>100</sup> Therefore, the surge pricing system, which is temporary and lasts only until demand is back to a normal level, helps ensure that both supply and demand will remain at consistent levels.<sup>101</sup>

There are also potential negative externalities posed by the entry of TNCs into the marketplace. As TNCs enter the marketplace, local governments are slowly reacting to their presence. Some cities have outright banned companies such as Uber, whereas others have set up regulatory schemes that make it infeasible for TNCs to operate under their

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> McBride, *supra* note 36, at 48.

<sup>101</sup> UBER, *supra* note 98.

current business model.<sup>102</sup> These concerns are discussed in the following section.

## V. HOW TNCs DEAL WITH REGULATION

TNCs are under regulatory pressure to either comply with current regulations imposed on the taxicab industry, or to cease operations.<sup>103</sup> All TNCs face similar legal concerns, but Uber has faced more opposition than any other TNC.<sup>104</sup>

Uber is the only on-demand transportation service that has ventured outside the United States,<sup>105</sup> and has expanded into more cities than any other company within the U.S.<sup>106</sup> Uber is generally very successful when expanding to new cities.<sup>107</sup> As of November 2016, Uber

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<sup>102</sup> See Ilene Aleshire, *City's Regulations Drive Uber out of town — for now*, THE REGISTER-GUARD (Apr. 4, 2015), <http://projects.registerguard.com/rg/news/local/32941203-75/uber-pulls-out-of-eugene-after-hearings-official-finds-it-in-violation-of-city-codes.html.csp>; see Andy Jechow & Kylie McGivern, *Prop 1 Fails, Marking Defeat for Uber and Lyft in Austin*, KXAN (May 7, 2016, 9:03 PM), <http://kxan.com/2016/05/07/prop-1-fails-marking-defeat-for-uber-and-lyft-in-austin/>.

<sup>103</sup> Rayle, *supra* note 1, at 4.

<sup>104</sup> Brown, *supra* note 7.

<sup>105</sup> Natasha Stokes, *Uber vs. Via, Lyft & Sidecar: Who's the Best Car Service?*, TECHLICIOUS (Aug. 5, 2015) <http://www.techlicious.com/tip/uber-via-lyft-sidecar-best-car-service/>.

<sup>106</sup> *Id.*

<sup>107</sup> See generally *id.*



operated in 242 cities in the U.S. and 522 cities across the world.<sup>108</sup> The startup giant has enough resources to be able to penetrate into nearly any market with ease and deal with the aftermath as it comes. Nonetheless, regulatory and legal concerns, such as passenger safety and local transportation laws, have made it difficult for Uber to operate.<sup>109</sup> In these situations, Uber tends to fight rather than give in to the demands of its opponents.<sup>110</sup> This creates tension in areas where Uber is not immediately met with great reception, such as what occurred in Portland, Oregon; and Austin, Texas, both discussed below.

A. *Problems TNCs Have Faced During Expansion in the U.S.*

Uber has participated in legal and regulatory battles throughout the United States over claims in various legal areas, ranging from price fixing claims to flaws in its marketing scheme to employment law disputes.<sup>111</sup> Lyft, Uber's greatest ride-hailing rival, was only sued a fraction of the

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<sup>108</sup>UBER, *Uber Cities Across the Globe*, <https://www.uber.com/cities/> (last visited June 19, 2017).

<sup>109</sup> Kristen Brown, *Here's What's Going on with all of Those Uber Lawsuits*, FUSION (June 16, 2016, 5:18 PM), <http://fusion.net/story/315350/uber-class-action-lawsuit-settlement/>.

<sup>110</sup> *Id.*

<sup>111</sup> *See infra* Section A.

amount Uber has been sued.<sup>112</sup> A significant amount of the lawsuits against Uber resulted from Uber's classification of drivers as independent contractors.<sup>113</sup>

In 2014, when TNCs began launching in several cities throughout the U.S., local governments did not always react positively.<sup>114</sup> Seattle passed a city ordinance to limit the number of ridesourcing vehicles, whereas Philadelphia, New York City and Washington D.C. issued citations and impounded vehicles.<sup>115</sup> The Taxi and Limousine Commission in New York City also issued a temporary restraining order against Lyft which prevented its initial launch.<sup>116</sup> St. Louis, Missouri issued a temporary restraining order in 2014 as well.<sup>117</sup>

Uber and its competitor Lyft have seen great difficulty in their endeavors to expand services specifically to Austin, Texas, due to local regulations.<sup>118</sup> Shortly after Uber entered the Austin market, Austin passed

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<sup>112</sup> Brown, *supra* note 7.

<sup>113</sup> See *infra* Section A.

<sup>114</sup> See Rayle, *supra* note 1, at 4.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> See Alicia Inns, et. al, *Rideshare Drivers will have to Undergo Fingerprint Checks, but not Until 2017*, KXAN (Dec. 17, 2015, 5:54 AM), <http://kxan.com/2015/12/17/mayor-offers-11th-hour-compromise-to-rideshare->

a new law that required drivers for companies like Uber to be fingerprinted in addition to the background checks undergone when hired.<sup>119</sup> In 2015, Austin Mayor Steve Adler announced that TNCs would have until February 2017 to have their drivers fingerprinted in order to comply with a city ordinance that requires fingerprinting as a part of background checks.<sup>120</sup> Supporters of the law argued that fingerprinting would make services like Uber safer for passengers, whereas the transportation companies see fingerprinting as a barrier to casual drivers from signing up.<sup>121</sup>

In May of 2016, Austin voters rejected Proposition 1, a plan to ban mandatory fingerprinting for two years.<sup>122</sup> As a result of the election, both Uber and Lyft left Austin immediately.<sup>123</sup> This left a gap in the supply for

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companies/. Uber has also had trouble establishing itself in Portland, Oregon. *See* Aleshire, *supra* note 102. Uber left the city when city officials imposed a \$1,500 a day penalty for non-compliance with local ordinances. *Id.*

<sup>119</sup> Inns et al., *supra* note 118.

<sup>120</sup> *Id.*

<sup>121</sup> *See generally id.*

<sup>122</sup> Phil Prazan & Kate Weidaw, *Fingerprints for Uber, Lyft Drivers in the Hands of Voters*, KXAN (Feb. 11, 2016, 8:10 PM), <http://kxan.com/2016/02/11/crunch-time-for-a-city-council-decision-on-rideshare/>. This effectively forced Uber to either comply by having all 10,000 of its drivers fingerprinted or to cease operations in Austin. *See* Jechow & McGivern, *supra* note 102.

<sup>123</sup> Joshua Brustein, *Austin's Mayor Is Keeping Ridesharing Weird*, BLOOMBERG TECHNOLOGY (June 6, 2016), <http://www.bloomberg.com/features/2016-austin-ridesharing/>.

on-demand transportation that consumers had grown accustomed to, which was readily filled by several different platforms.<sup>124</sup> Thus, with the departure of Uber and Lyft came services such as Arcade City, the antithesis to the safety concern that the fingerprinting was meant to rectify, and Ride Austin.<sup>125</sup>

Arcade City is essentially a very large Facebook group that allows passengers in need of a ride to directly connect with drivers.<sup>126</sup> With over 30,000 members, Arcade City is the biggest forum of its kind, where members post in the Facebook group asking for or offering rides.<sup>127</sup> As it is, Arcade City is not the most efficient platform to connect passengers with drivers. Because the group allows anyone to respond to passengers requests, a driver may call dibs on a passenger but be inconveniently far away, to the detriment of the passenger.<sup>128</sup> The founder of Arcade City, Christopher David, believes that Arcade City will not have to comply with the mandatory fingerprinting that ultimately drove Uber and Lyft out of Austin because Arcade City is merely a platform for drivers and

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *See generally id.*

passengers to find one another as opposed to companies like Uber that are regulated by the city. However, David intends to create an app similar in concept to Uber and Lyft, rendering any distinguishable difference between Arcade City and Uber moot.<sup>129</sup>

On the other end of the spectrum of entities rushing to fill the gap left behind by Uber and Lyft is RideAustin.<sup>130</sup> RideAustin is a nonprofit funded by local investors that have thus far complied with mandatory fingerprinting.<sup>131</sup>

In contrast to Uber's legal confrontation in Austin, Uber saw mild success when it settled a lawsuit for \$10 million in 2016 that was filed by Los Angeles and San Francisco.<sup>132</sup> The suit alleged that by suggesting that its background checks on drivers were more intensive than those of taxicab companies, Uber was misleading consumers.<sup>133</sup> The main contention was that taxicab drivers are fingerprinted whereas Uber drivers

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<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Alex Hern, *Uber's 'safe ride fee' Becomes 'Booking fee' After \$25m Settlement over rider Safety*, THE GUARDIAN (Apr. 7, 2016, 7:36 PM), <https://www.theguardian.com/technology/2016/apr/07/uber-driver-background-check-lawsuit-passenger-safety-california>.

<sup>133</sup> *Id.*

are not.<sup>134</sup> Uber also changed its “Safe Rides Fee” to a “Booking Fee” in order to lessen the potential for consumer reliance on the safety of its rides.<sup>135</sup> Earlier that year, Uber settled a similar lawsuit brought by consumers for \$28.5 million.<sup>136</sup> California also sued Lyft for similar reasons,<sup>137</sup> but rather than contest the charges, Lyft instead settled in 2014 for \$250,000.<sup>138</sup>

What seems to be the most important legal issue for Uber right now, in addition to its regulatory battles, is whether its drivers are employees or independent contractors. This issue alone will determine the outcomes of several lawsuits against Uber.<sup>139</sup> The employee-independent contractor issue has arisen in several suits by Uber drivers claiming that they are in fact employees of Uber and thus should be reimbursed for

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Ellen Huet, *SF, LA District Attorneys Sue Uber, Settle With Lyft Over ‘Misleading’ Business Violations*, FORBES (Dec. 9, 2014, 6:44 PM), <https://www.forbes.com/sites/ellenhuet/2014/12/09/sf-la-district-attorneys-sue-uber-and-lyft-over-misleading-business-violations/#2c29754ef82f>.

<sup>139</sup> *See Doe v. Uber Techs., Inc.*, 184 F. Supp. 3d 774 (N.D. Cal. 2016) (explaining that courts need a determination of whether Uber’s drivers are employees or independent contractors in order to determine if Uber has not complied with Texas state laws regarding notification of mass layoffs, for example; see federal employment violation case).

business expenses and should receive a higher percentage of gratuities charged to passengers.<sup>140</sup>

The Restatement (Second) of Agency defines an employee as “a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control.”<sup>141</sup> The pertinent factors in determining whether an individual is an employee or an independent contractor are:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work; (b) whether or not the one employed is engaged in a distinct occupation or business; (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) the skill required in the particular occupation; (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) the length of time for which the person is employed; (g) the method of payment, whether by the time or by the job; (h) whether or not the work is a part of the regular business of the employer; (i) whether or not the parties believe they are creating the relation of master and servant; and (j) whether the principal is or is not in business.<sup>142</sup>

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<sup>140</sup> See *infra* Section A.

<sup>141</sup> RESTATEMENT (SECOND) OF AGENCY § 220(1) (1958) (Am. Law Inst. 2010).

<sup>142</sup> *Id.*

Most recently, the district court denied a preliminary approval of the proposed \$100 million settlement between Uber and its drivers.<sup>143</sup> In *O'Connor v. Uber*, the court denied the preliminary approval of the proposed settlement because the settlement was not “fair, adequate, and reasonable.”<sup>144</sup> The court determined that a close review of the settlement agreement, even at the preliminary approval stage, was warranted because new claims and uncertified drivers would be covered by the settlement agreements, and the settlement agreement would effectively settle several claims in other pending lawsuits.<sup>145</sup> Applicable approval factors that the court must balance include:

“[T]he strength of the plaintiff’s case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a government participant; and the reaction of the class members to the proposed settlement.”<sup>146</sup>

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<sup>143</sup> *O'Connor v. Uber Techs., Inc.*, No. 13-cv-03826-EMC, 2016 WL 4398271, at \*5, \*19 (N.D. Cal. Oct. 11, 2016).

<sup>144</sup> *Id.* at \*18.

<sup>145</sup> *Id.* at \*8.

<sup>146</sup> *Id.* at \*7.



The court then noted that an important factor in determining whether the proposed settlement is reasonable or not is the value of the settlement agreement compared to what the plaintiffs expect to recover.<sup>147</sup> This is an ongoing case.

The employee-independent contractor dispute is pertinent in several other lawsuits.<sup>148</sup> Drivers in Texas filed suits against Uber and Lyft alleging that these companies violated federal labor laws by not giving proper notice of their departure from Austin.<sup>149</sup> This case ultimately depends on whether drivers for TNCs are classified as employees or independent contractors.<sup>150</sup> Uber customers who were allegedly sexually assaulted by drivers filed suit against Uber for negligence, fraud, battery, assault, false imprisonment, and intentional infliction of emotional distress.<sup>151</sup> In this case, the court said that in California, “an employer may be held vicariously liable for torts committed by an employee within the

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<sup>147</sup> *Id.*

<sup>148</sup> Nolan Hicks, *Lawsuits: Uber, Lyft Violated Labor law in Austin Shutdown*, MY STATESMAN (June 9, 2016, 2:52 PM)

<http://www.mystatesman.com/news/news/transportation/lawsuit-uber-lyft-violated-labor-law-in-austin-shu/nrc8y/>.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* There would have been no violation of federal labor laws if the drivers are classified as independent contractors. *Id.*

<sup>151</sup> *Doe v. Uber Techs., Inc.*, 184 F. Supp. 3d 774, 779 (N.D. Cal. 2016).

scope of employment.”<sup>152</sup> The issue was whether or not drivers were considered employees; the plaintiffs argued the drivers were employees and thus Uber was liable for their conduct.<sup>153</sup> However, Uber claimed their drivers were instead independent contractors.<sup>154</sup>

Uber is also facing legal action for its pricing strategies.<sup>155</sup> In *Meyer v. Kalanick*, the Southern District of New York denied Uber’s motion to dismiss an antitrust class action against Travis Kalanick, CEO of Uber, alleging the CEO engaged in illegal price-fixing in violation of both federal antitrust law and New York state law.<sup>156</sup> Plaintiff’s main allegations are that Kalanick “conspired with Uber drivers to use Uber’s pricing algorithm to set the prices charged to Uber riders, thereby restricting price competition among drivers to the detriment of Uber riders.”<sup>157</sup> This case essentially pertains to the validity of Uber’s price surging during times where demand is especially high.<sup>158</sup> The court noted that the classification of an individual as an employee or independent

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<sup>152</sup> *Id.* at 781.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Meyer v. Kalanick*, 174 F. Supp. 3d 817, 819-20 (S.D.N.Y. Mar. 31, 2016).

<sup>156</sup> *Id.* at 820.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* at 821.

contractor depended on “whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired.”<sup>159</sup> Additionally, the court stated that the § 220 Restatement (Second) of Agency factors were also relevant.<sup>160</sup> Ultimately, the court held that plaintiffs had alleged sufficient facts to claim an employee-employer relationship existed.<sup>161</sup>

B. *Why TNCs Will Succeed Despite Regulatory Pushback*

The pertinent issue regarding TNCs is whether legislatures or the TNCs will shape regulations for TNCs. Currently, the law surrounding TNCs is being created in the courts, which is not the best way to set policy because of muddled decisions and variations by jurisdiction.<sup>162</sup> Looking at the negative effects posed by TNCs will help form better policy.<sup>163</sup> Thus, identifying which stakeholders are harmed by TNCs is just as vital as identifying who benefits.<sup>164</sup>

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<sup>159</sup> Doe v. Uber Techs., Inc., 184 F. Supp. 3d 774, 781 (N.D. Cal. 2016) (quoting S.G. Borello & Sons, Inc. v. Dep't of Indus. Relations, 769 P.2d 399 (1989)).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 782.

<sup>162</sup> Biber Chen, *supra* note 79.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

Overall, drivers have both benefitted the most from TNCs and have been harmed the most. Prior to the addition of TNCs into the market, drivers' only options were to lease medallions on a short term basis. Under this scheme, drivers were independent contractors; they received no benefits that an employee would as required by law. Drivers worked long shifts and only earned a fraction of every dollar received from fares.<sup>165</sup> With TNCs operating in cities that utilize medallion systems, drivers are able to drive for both. In particular, Uber allows drivers the flexibility to make their own work schedule. This allows taxicab drivers, or anyone for that matter, to offer rides through a TNC while they are not working in another capacity. Taxicab drivers are not granted this flexibility in scheduling unless the drivers split the lease among themselves. There are also costs to drivers as well.<sup>166</sup> Drivers are still independent contractors, and thus still do not receive employee benefits.<sup>167</sup>

Consumers also benefit from the entry of TNCs. In a survey of 40 economic experts, all 40 either strongly agreed or agreed with the

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<sup>165</sup> SCHALLER CONSULTING, *supra* note 60, at 27.

<sup>166</sup> Tim Worstall, *The Economics Of Uber: Who Loses From The Company's Existence?*, FORBES (June 7, 2016, 3:48 AM), <http://www.forbes.com/sites/timworstall/2016/06/07/the-economics-of-uber-who-loses-from-the-companys-existence/#41decca91362>.

<sup>167</sup> *Id.*

statement that “letting car services such as Uber or Lyft compete with taxi firms on equal footing regarding genuine safety and insurance requirements, but without restriction on prices or routes, raises consumer welfare.”<sup>168</sup> Specifically, increased competition improves consumer welfare.<sup>169</sup>

Although those who benefit from TNCs benefit greatly, there are also losers involved. And to make good policy, policy makers should consider the losers and whether they need protection.<sup>170</sup> Taxi medallion sales have collapsed in what some call the “Uber effect.”<sup>171</sup> Not only is the number of sales declining, but the price of each medallion is as well.<sup>172</sup> TNCs have effectively destroyed the medallion system.<sup>173</sup> Prior to the entry of TNCs, medallion owners could rent out their rights to operate a taxicab for \$40,000 a year.<sup>174</sup> The rents from the system went to the

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<sup>168</sup> Justin Wolfers, *Uber Improves Life, Economists Agree*, THE NEW YORK TIMES (Sept. 30, 2014), [http://www.nytimes.com/2014/10/01/upshot/uber-improves-life-economists-agree.html?\\_r=0](http://www.nytimes.com/2014/10/01/upshot/uber-improves-life-economists-agree.html?_r=0).

<sup>169</sup> *Id.*

<sup>170</sup> Biber Chen, *supra* note 79.

<sup>171</sup> Worstall, *supra* note 166.

<sup>172</sup> *Id.* In May of 2016, there were just three medallions sales, each bringing in \$400,000 to \$500,000. *Id.* In May of 2013, there were eight medallions sold, all for roughly \$1 million. *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

medallion owners; but with the advent of Uber and the like, medallion owners no longer see such large profits as in prior years.<sup>175</sup>

## VI. CONCLUSION

In the end, there are both winners and losers when it comes to stakeholders involved in TNCs. Overall, consumers seem to benefit the most. Drivers are both benefitted and harmed, depending on what the driver wants out of the TNC. For those desiring flexible scheduling, TNCs are a great option because TNC drivers can work in between other jobs to supplement their income. But for those looking for higher pay or employee benefits, TNCs show no benefits.

The biggest losers are those holding taxi medallions. They no longer have their rent-extracting ability they enjoyed prior to the entry of TNCs. But, the question is: do consumers care? Consumers were harmed in the pre-TNCs medallion system, which was a highly regulated, essentially artificial monopoly where only a few gained almost all the profit from the industry. TNCs have given consumers what was lacking: speed, convenience, and easy payment methods, to name a few. From a

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<sup>175</sup> *Id.*

public policy standpoint, the medallion owners hardly seem like a group that needs regulatory protection.

In addition to future regulations, TNCs, especially Uber, are facing current litigation on several fronts. This litigation will shape what becomes the rules TNCs will have to follow. Litigation before regulation is a bad method of governing TNCs because it leads to inconsistent and tentative rulings. The rulings are tentative because so much of the pending litigation depends on the outcome of other pending cases. For example, many of the lawsuits against Uber hinge on whether drivers are classified as employees or independent contractors.

In spite of the adversity TNCs face, they will likely stay market leaders. Their innovations cannot be ignored; now that consumers are able to utilize a greatly improved transportation service, they are not likely to let it go away.