NetChoice *Promoting Convenience, Choice, and Commerce on The Net*
Carl Szabo, Senior Policy Counsel
1401 K St NW, Suite 502
Washington, DC 20005
202-420-7485
www.netchoice.org

City of Seattle
Department of Finance and Administrative Services
Attention: Matthew Eng
P.O. Box 94689
Seattle, WA 98124-4689

December 6, 2016

RE: Opposition to Seattle Rideshare Collective Bargaining Ordinance

Dear Department of Finance and Administrative Services:

We ask you to not adopt the proposed Seattle Rideshare Collective Bargaining Ordinance (Ordinance).

We understand your approach to try treat the peer-to-peer economy in the same way you treat your legacy employment. Unfortunately, the Ordinance is merely shoehorning old rules into a new system – rules that would undermine the benefits that new entrepreneurs and consumers enjoy from transportation network companies (TNCs).

Ridesharing enables your citizens to become entrepreneurs

Historically we were self-employed entrepreneurs. But with the Industrial Revolution we began working for others and not ourselves.

The gig-economy has opened the door for us to return to being our own bosses and becoming entrepreneurs once again. We can decide when, where, and how we want to work.

Some of us may only drive once a month while others choose to drive every day. Some may choose to drive only during “peak hours.” Some drivers may give rides after work and others after dropping off children at school.

This flexibility is the core benefit of the ridesharing model. For example, I am a driver for Lyft. I also have a fulltime job and two children. Being forced into a model where I must drive a set number of hours each week doesn’t work for me. I need the flexibility to set my own hours, and many TNC drivers take the same position.

In addition to the flexibility, drivers enjoy the freedom to work for other TNCs, like Uber and Sidecar. It’s common to see many drivers with apps for both Lyft and Uber and by making these drivers more available helps the drivers and the people needing rides. And we’ve seen these results first-hand.

Ride-Sharing is working for your constituents

The On-Demand Economy Survey reports that "75 percent of [gig workers] . . . say working in the industry has been a *positive experience*; their main motivations include extra income (33 percent), a need for additional income (26 percent), flexibility (25 percent) and independence (25 percent).[1]

Fifty-one percent of gig workers "say their financial situation has **improved** over the past year, compared to 34 percent of the general population; 64 percent of offerors also expect their financial situations to improve in the next year, compared to 47 percent of the general population.

52 percent say the On-Demand Economy is creating more opportunities for workers by bringing more wage-earning opportunities to more people. Similarly, per the earlier *On Demand Economy Survey,* 62 percent of On-Demand Economy workers say it is a completely different way of doing business and 57 percent say it is creating more opportunities for workers by bringing more wage-earning opportunities to more people.[2]

The Gig-Economy doesn't fall into existing employment architypes

The premise of the Ordinance centers on the assumption of an employer-employee relationship between ride-sharing platform and driver. But this isn't the way the gig-economy works – neither are employer nor employee. In fact, the lack of the mandates of an employer-employee is one of the most appealing traits of the gig-economy.

In June 2016, the Department of Commerce published a report and found these digital matching firms exhibit four characteristics:

1. They use information technology (IT systems), typically available via web-based platforms, such as mobile "apps" on internet- enabled devices, to facilitate peer-to-peer transactions.
2. They rely on user-based rating systems for quality control, ensuring a level of trust between consumers and service providers who have not previously met.
3. They offer the workers who provide services via digital matching platforms flexibility in deciding their typical working hours.
4. To the extent that tools and assets are necessary to provide a service, digital matching firms rely on the workers using their own.[3]

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[1] Burson-Marsteller, The Aspen Institute &Time, On-Demand Economy Survey 4,10 (2016), http://www.burson-marsteller.com/ondemand-survey/; *Press Release, The On-Demand Economy Survey*, **B**urson-Marsteller (Jan. 6, 2016), http://www.burson-marsteller.com/what-we-do/our-thinking/on-demand/ondemand/press-release/.

[2] *Press Release, Workforce of the Future Survey*, **B**urson-Marsteller (Jun. 30, 2016), http://www.burson-marsteller.com/what-we-do/the-future-workforce-survey/press-release

[3] Econ. & Stat. Admin., U.S. Dep't of Com., ESA Issue Brief No. 01-16, Digital Matching Firms: A New Definition in the "Sharing Economy", p2-4 (2016) http://www.esa.gov/sites/default/files/digital-matching-firms-new-definition-sharing-economy-space.pdf ("Increasingly, consumers and independent service providers are engaging in transactions facilitated by an Internet-based platform. The digital firms that provide the platforms are often collectively referred to as belonging to the 'sharing' or 'collaborative' economies, among other descriptors.").

As you can see, and as explained in the attached, it requires a tortured approach to fit these core characteristics of Ride-Sharing into existing employment laws.

Ordinance could force-out part-time drivers

The proposed Ordinance could result in drivers abandoning the market. Many of us do not have the time to drive a minimum number of hours each week. Nor does the stay-at-home parent looking to make some extra money. TNC drivers require the flexibility of being our own entrepreneur when we must work late, or pick up children from school.

However, the scope of the proposed collective bargaining ordinance could undermine this flexibility by establishing weekly minimum hours to work. This could force drivers looking to earn extra income out of the market.

Ordinance ignores the 2-Sided Market

As discussed above, the gig-economy is not the legacy employment model. Drivers do not work for the platforms, and the platforms are not the employers. Note that if such a relationship existed, the platforms could dictate to drivers when and where they work.

Instead, the platforms are more like the yellow pages than they are an employer. Entrepreneurs sell their services, and the consumers buy the service.

Accordingly, gig platforms are merely digital matching firms that facilitate transactions between entrepreneurs and consumers.

This means that the Ordinance doesn't make sense in a 2-sided market like this one. You wouldn't grant collective bargaining to ever plumber in the Yellow Pages much in the same way you shouldn't grant collective bargaining to every entrepreneur on a TNC platform.

Adding artificial rules onto platforms just because they are online is the wrong approach for Seattle.

We ask that you not deny your citizens the ability to become entrepreneurs by adopting the Ordinance. We ask that you not shoehorn in legacy rules into a different market.

We ask that if you want to adopt reasonable rules and regulations regarding TNCs you do so through a thorough legal and economic impact analysis.

We appreciate your consideration of these concerns and urge you not adopt this Ordinance.

Sincerely,

Carl Szabo
Senior Policy Counsel, NetChoice
www.netchoice.org

IRS Evaluation

Employee vs. Independent Contractor

(A) Behavioral Control Factors	*EMPLOYEE*	*INDEPENDENT CONTRACTOR*	*TNC DRIVERS*
Type of Instructions Given	Employees must follow the instructions of the employer as to when, where, and how to perform the work.	Independent contractors can set their own hours and decide how to perform the job or complete the project. The company will review the finished project.	Drivers choose when to work and whom to pick-up. There are no set hours in which to work nor quotas to meet.
Degree of Instruction	Degree of Instruction means that the more detailed the instructions, the more control the business exercises over the worker and the closer the worker is to an employee.	Less detailed instructions reflect less control, indicating that the worker is more likely an independent contractor.	Drivers are required to: be over 21 with an active U.S. driver's license for at least 1 year, pass a driving record and background check, meet TNC and local governments' vehicle standards, have a license, valid plates, insurance in driver's name, and a current smart phone. Drivers must have signage on car when driving.
Evaluation	If an evaluation system measures the details of how the work is performed, then these factors would indicate that you are an employee.	If the evaluation system measures just the end result, then you could be either an independent contractor or an employee.	Evaluations are based on quality of service at the time of completion of ride and evaluations are made by customer not employer.
Training	The employer may hold classes, meetings or closely supervise on-the-job to train employees.	Independent contractors can perform the work as they choose.	Some TNCs include a mentor training before becoming a driver. This includes advice on maximizing services and efficiency. Additional training is typically only when a driver is showing lower than acceptable reviews.

(B) Financial Control Factors	*EMPLOYEE*	*INDEPENDENT CONTRACTOR*	*TNC DRIVERS*
Significant Investment	Employees do not invest in the facility and do not buy equipment.	Independent contractors must invest in their own workplace and equipment.	Drivers provide their own vehicle, insurance, gas, and mobile device. TNC provides additional insurance in the event of an accident.
Unreimbursed Expenses		Independent contractors are more likely to have unreimbursed expenses than employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services that they perform for their business.	Drivers are responsible for car payments, gas, insurance, and cleanings. Some insurance TNC riders are flat rate and some are variable rate based on when the vehicle is being used for TNC purposes.
Opportunity for Profit or Loss	The profit or loss of the company does not change the pay that employees earn.	Independent contractors can profit or lose money based on good or bad results and time spent working on the project.	Payment is based on rate at time of the ride, length of ride, and tips from the customer. Payment is not dependent on the profit or loss of the company.
Services Available to the Market	Employees generally serve one employer.	Independent contractors can provide services to the general public, advertise services, and recruit new customers--all while working for one or more other companies.	Drivers may drive for multiple TNC companies. Many of drivers have other jobs.
Method of Payment	Employees are paid on specific dates in regular amounts, and may be reimbursed for travel and business expenses.	The contract between the company and the independent contractor determines how payment is to be made. Independent contractors may include expenses as part of the contract, or may pay expenses independently.	Payments based on services rendered and not a flat rate salary.

(C) Type of Relationship Factors:	*EMPLOYEE*	*INDEPENDENT CONTRACTOR*	*TNC DRIVERS*
Written Contract	A contract that states that the worker is an employee is not sufficient to determine the worker's status. How the parties work together determines whether the worker is an employee.	A contract that states that the worker is an independent contractor is not sufficient to determine the worker's status. The IRS is not required to follow a contract stating that the worker is an independent contractor, responsible for paying his own self-employment tax. How the parties work together determines whether the worker is an independent contractor.	Some TNCs expressly define drivers as "contractors" in the partner agreement.
Employee Benefits	Employee benefits include things like insurance, pension plans, paid vacation, sick days, and disability insurance.	Businesses generally do not grant these benefits to independent contractors. However, the lack of these types of benefits does not necessarily mean the worker is an independent contractor.	TNCs may offer discounts on drivers insurance or gas.
Permanency of the Relationship	Employees have an ongoing relationship with the employer.	Independent contractors are hired for a specific job. When that job is finished, the work relationship ends.	Drivers are only working when the TNC app is set to the driver mode.
Services Provided as Key Activity of the Business	If a worker provides services that are a key aspect of the business, it is more likely that the business will have the right to direct and control his or her activities.		Drivers are given equal treatment. However those with higher ratings made receive priority in being selected for a ride offering.