Passenger Transportation Board
MOVING FORWARD, TOGETHER

Systemic decision - credit card surcharges

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Credit Card Surcharges

I. Jurisdiction

The Passenger Transportation Act (the Act) regulates the licensing and operation of commercial passenger transportation vehicles and services in BC. Section 6 of the Act establishes the Passenger Transportation Board (Board), and section 7 of the Act sets out the powers, functions, and duties of the Board. The Board's mandate goes beyond licensing decisions on individual applications and encompasses the role of regulating certain aspects of the passenger transportation industry on a systems level.

One of the areas under the Board's jurisdiction involves the establishment of rates rules that govern the passenger transportation industry as a whole or component sectors.

Under section 7(1)(f) of the Act, the Board has the authority to: "approve, or set, for the purpose of establishing just and uniform charges, rates to be charged by a licensee in respect of passenger directed vehicles operated under a licence… and approve any rule, practice or tariff of the licensee relating to those rates."

Under section 7(1)(g) of the Act, the Board has the authority to: "make rules respecting (i) rates that are or may be charged by a licensee, (ii) any rules or practice of a licensee relating to those rates, and (iii) any tariff of those rates."

Under section 1 of the Act (the Definition section), the term “rates” includes the following: “(a) discount fares; (b) round-trip fares; (c) point-to-point fares; (d) deadhead charges; (e) minimum and maximum charges; (f) any other fares, fees or charges.”

II. Introduction

The Board has authority under the Act to create, amend, or repeal rates rules on its own motion. Rates rules under section 7(1)(g) are similar to regulations enacted by Cabinet and have the force of law. The Board undertook a process to elicit submissions and after considering the information is providing written reasons for its decision.

In terms of process, the Board considered the topic of credit card surcharges in its December 2022 and January 2023 Board meetings. Following a motion approved by the Board, the Board directed staff to invite submissions from industry on the topic.
An Industry Advisory was posted on the Board’s website on January 18, 2023. After providing background information in the Industry Advisory, the Board invited submissions from the industry, as follows:

To improve uniformity and clarity on credit card surcharges, the Board is seeking to amend its rates rules across the passenger transportation industry.

Specifically, the Board is considering enacting a rule under section 7(1)(g) of the Act prohibiting the charging of credit card surcharges by all Passenger Directed Vehicle Authorizations (PDVAs) and Transportation Network Service Authorizations (TNSAs).

The Board is seeking submissions from industry on this matter. Any submissions must be provided to the Board by February 8, 2023. Please send your submissions with the subject line “credit card surcharge” to: ptboard@gov.bc.ca

Six submissions were received. A Panel was appointed to make the final rates rule decision on behalf of the Board.

III. Background

Credit Card Surcharge

The Financial Consumer Agency of Canada (FCAC) oversees federal bank and credit card regulations and supervises payment card network operators (PCNOs). The FCAC determines whether PCNOs, such as Mastercard and Visa, are in compliance with the provisions of the *Payment Card Networks Act* and elements of the Code of Conduct for Credit and Debit Card Industry in Canada.

PCNOs generally charge a transaction fee of 2.5 percent to 3.5 percent to businesses that accept credit cards as payment for the business's goods or services. PCNOs used to prohibit businesses from passing those costs on to the consumer as credit card surcharges, but to settle a class action lawsuit, Mastercard and Visa agreed to permit credit card surcharges up to 2.4 percent, subject to applicable provincial and federal laws. As a result, most PCNOs now permit businesses to charge credit card surcharges if they wish to. However, PCNO rules require businesses to provide disclosure of credit card surcharges at the points of entry into the business and at the point of transaction.

Current Board Rules

Current Board rules regulate credit card surcharges for some sectors. However, for other sectors, the rule is silent.

With respect to the taxi sector, section 18 of the Board Standard Rules for Taxicab Rates indicates that licensees may not charge or collect from passengers credit card fees imposed by credit or financial companies on businesses, or fees for booking a fare through a mobile app. Therefore, under the current rules, the taxi sector is not permitted to add credit card surcharges to the Board-approved rates that licensees advertise and charge to customers.

With respect to the TNS sector, the Board's TNS Minimum Rates Rule(475 KB) prohibits the use of coupons or discounts that reduce a fare below the TNS minimum rate. There is no reference to credit card surcharges. Therefore, the Board neither permits nor prohibits adding credit card surcharges to the rates advertised and charged to customers by TNS—the rule is silent on the subject.

With respect to the limousine sector, the Board's Min-Max Rates and Standard Rules for Limousines (540 KB) allows licensees to charge customers for certain tolls, public fees, and other service charges if the licensee informs a customer at the time of the agreement. However, similar to TNS, the rule is silent on credit card surcharges.

With respect to other PDVAs, credit card surcharges are not permitted to be added to the Board-approved rates advertised and charged for shuttles or other passenger-directed vehicles (e.g., small vans or non-limousine service).

There are no Board rules or other laws which prevent a licensee from building amounts to recover credit card-related costs into the rates that licensees advertise and charge to customers as long as those rates are approved by the Board, as required by the *Act*.

IV. Analysis and Findings

Submissions

Submissions were received from six submitters following publication of the Industry Advisory on January 18, 2023:

- Skeena Taxi Ltd.
- Yellow Cab Victoria
- BC Taxi Association
- Vancouver Taxi Association
- Taxi Drivers Association of BC
- James Cooper

Skeena Taxi Ltd. states that it does not add a surcharge but otherwise it takes no position.

Yellow Cab Victoria, representing three Victoria taxi services, opposes a surcharge but gives no reasons for this.

The BC Taxi Association, which predominantly represents taxi companies outside of Metro Vancouver, supports a surcharge on the basis that this will level the playing field with ride-hailing services that can pass on these costs to customers.

The Vancouver Taxi Association (VTA), primarily representing taxi companies in Metro Vancouver, supports the surcharge. It argues that the current language of the Board's *Standard Rules for Taxicab Rates* does not actually preclude the collection of credit card surcharges from customers, and in any case these surcharges are necessary for taxi companies to manage their business needs, especially for small business operators faced with rising costs. The VTA states that 75 percent of customers pay by credit card and renting a point-of-sale card machine costs $25 to $35 per month, while credit card companies charge a transaction fee of 2.5 percent to 3.5 percent. Collecting a surcharge of up to 2.4 percent from customers would compensate taxi businesses for a portion of this cost.

The Taxi Drivers Association of BC (TDABC) supports the surcharge. The Board is unfamiliar with the TDABC, and it is unclear how many taxi drivers belong to it. As of the date of this decision, it did not respond to a request for information from the Board. It submits that taxi companies currently pass on credit card and debit card transaction fees (averaging 3 percent) to drivers, not passengers. It did not provide evidence of this in its submission or in response to the letter of inquiry noted above. It points out that passengers benefit from using credit cards that provide money back, or points for using the cards, the implication being that passengers should bear the cost.

James Cooper wrote to the Board as an independent individual objecting to the surcharge. His objections include the increased cost for consumers, possible unfair competition in giving taxi companies an advantage over other forms of transportation that cannot charge a surcharge, and possible lack of clarity for consumers regarding what they will be charged.

As there is no federal law regarding credit card surcharges, and no provincial prohibition of this practice (as in Quebec), the Board has authority to establish rates rules it deems appropriate.

The Panel disagrees with the VTA's assertion that the Board's rules do not preclude the collection of credit card surcharges from customers. The Board has the authority, under section 7(1)(g) of the Act, to set rates rules and the Board interprets its current rule to preclude taxis from adding a credit card surcharge to the Board-approved rates.

The VTA says that the rules only prohibit licensees from charging passengers "credit card fees imposed by credit or financial companies on businesses." It says what the VTA seeks approval to charge is not the interchange fee that PCNOs are imposing on merchants but a discretionary amount up to 2.4 percent that the merchant would implement to recover some or all of their costs. The Board rejects this reasoning. The only logical way to interpret the rule is that it prohibits licensees from passing on to passengers some or all of the credit card fees imposed on licensees by credit or financial companies. Nevertheless, if there is some confusion about the rule, this decision presents an opportunity to provide consistency and clarity to the industry as a whole.

The Board is required under section 7(1)(f) of the Act to determine whether proposed charges are "just and uniform."

If the Board allows transportation firms to pass credit card surcharges to customers by adding them to their advertised rates, it would need to determine which sectors can charge it, whether charging it will be optional or mandatory, how much can be charged, and how and when firms will notify passengers about the surcharge. The Panel must also consider that some credit card companies do not allow businesses to pass surcharges to customers. This adds a layer of inconsistency.

If the Board amends its rules to allow passenger transportation firms to pass surcharges to customers by adding them to their advertised rates, it will allow licensees to recover additional variable costs in a more targeted way (i.e., only from customers who are creating the cost).

However, credit card fees have been in place for many decades and should, therefore, already be incorporated into the cost of doing business. Also, it may be challenging to monitor and enforce this rule. In addition, there may be a lack of clarity for customers regarding what they will be charged, and this may make it more difficult for customers to compare rates before hailing or booking their trip,

especially if PCNOs only require businesses to disclose the surcharges at the point of entry into the vehicle.

A surcharge prohibition would provide clarity and harmonization across industry—the same rules would apply to all sectors, not just taxis. It would protect passengers from unexpected surcharges on fares, and since TNS firms and limousines would also be prohibited from adding the surcharge to their advertised rates, a prohibition would level the playing field with taxis on this matter.

Therefore, on balance, including after consideration of the submissions, the Panel has determined that prohibiting the surcharge on top of advertised rates across the board is the best course of action.

If licensees would like to recover this cost of doing business, the Panel thinks the better way to do this would be for licensees to build an amount for it into their advertised rate. Licensees may apply to the Board anytime to change their rates under section 35 of the Act, if necessary. While this may not allow licensees to recover credit card costs in as targeted a way, the Panel thinks, on balance, it will not lead to significant unfairness, it will be clearer and more transparent for customers and enforcement staff, and will bring more consistency across the passenger transportation industry.

Finally, the Panel acknowledges that taxi licensees are currently more likely to make a rate change application to the Board to build in the additional cost of credit card surcharges, as most limousines can change their rates within a Board-approved rate band, and TNS firms can charge variable rates above a Board-approved minimum. However, this difference is something that the Board is currently considering [see March 29, 2023 Notice to licensees RE: potential changes to taxi and TNS rates regulation | Passenger Transportation Board (ptboard.bc.ca)] and through this process there is an opportunity to address taxi rate structures and cost of living indexing on a more systemic basis.

V. Conclusion

For the reasons above, the Board has decided to enact the following rules under section 7(1)(g) of the Act:

Licensees operating under all Passenger Directed Vehicle Authorizations (PDVAs) and Transportation Network Service Authorizations (TNSAs) may not charge or collect compensation from passengers in addition to their advertised rates in order to recover or offset transaction fees or any other fees or charges imposed on licensees by credit or financial companies (i.e., credit card surcharges).