

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on
Regulations Relating to Passenger
Carriers, Ridesharing, and New Online-
Enabled Transportation Services

**FILED
PUBLIC UTILITIES COMMISSION
DECEMBER 20, 2012
SAN FRANCISCO OFFICE
R.12-12-011**

ORDER INSTITUTING RULEMAKING

1. Summary

We initiate this proceeding to protect public safety and encourage innovators to use technology to improve the lives of Californians. New businesses have recently begun using mobile internet, social media, and location services to offer new ways of arranging transportation of passengers over public highways for compensation. Some connect passengers via smartphones with drivers and vehicles already regulated by the Commission as passenger carriers or by cities and counties as taxis; others connect passengers via smartphones with private drivers and vehicles that are not regulated as passenger carriers or taxis.

Businesses like Sidecar and Lyft have presented the Commission with a situation not encountered before: the use of mobile communications and social networks to connect individuals wishing to offer and receive low cost and convenient, sometimes shared, transportation. Uber likewise uses smartphones to present a different business model from traditional limousine service, by allowing passengers to use a GPS-enabled smartphone app to hail a limousine or other passenger carrier.

The implications of these new business models on public safety are unknown. The Commission has a responsibility for determining whether and how public safety might be

affected by these new businesses. The purpose of this Rulemaking is not to stifle innovation and the provision of new services that consumers want, but rather to assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of these new business models. The Commission invites all interested parties to participate in this proceeding to ensure that regulation is not a hindrance, but continues to be the safety net that the public can rely on for its protection.

2. Background

2.1 Commission Authority

The Commission regulates passenger carriers pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, PU Code § 5351 *et seq.* (the Act). Section 5360 states in part:

Subject to the exclusions of Section 5353, “charter-party carrier of passengers” means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state.

Section 5381 states in part:

...(t)he commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things...necessary and convenient in the exercise of such power and jurisdiction.

Charter-party carriers may operate only on a prearranged basis (which is not defined in terms of time either in statute or regulation).¹

Section 5353 exempts certain modes of transportation from regulation (and thus from the Commission's authority), e.g., publicly-owned transit systems. Taxicab regulation is specifically excluded from the Commission's jurisdiction pursuant to Government Code § 5353(g). Cities and counties regulate Taxicab service under Government Code § 53075.5. Some local jurisdictions limit the number of taxicab licenses they issue. They may also have more stringent requirements (e.g., criminal

¹ Section 5360.5 and General Order (GO) 157-D, Part 3.01

background checks of drivers) for obtaining and maintaining a license than state law provides for charter-party carriers.

Section 5353(h) also exempts work-related transportation for the purpose of “ride sharing” from the Act, as follows:

Transportation of persons between home and work locations or of persons having a common work-related trip in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver. This exemption also applies to a vehicle having a seating capacity of more than 15 passengers if the driver files with the commission evidence of liability insurance protection in the same amount and in the same manner as required for a passenger stage corporation, and the vehicle undergoes and passes an annual safety inspection by the Department of the California Highway Patrol. The insurance filing shall be accompanied by a one-time filing fee of seventy-five dollars (\$75). This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. “Profit,” as used in this subdivision does not include the recovery of actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

Due to the exemptions in § 5353(g) and § 5353(h), the Commission has focused on licensing of passenger carriers and enforcement of the regulations for carriers that do not comply with the law. Rules applicable to these passenger carriers include, *inter alia*: mandatory drug testing of employees; maintaining adequate levels of public liability, property damage, and workers compensation insurance; participating in the Department of Motor Vehicles “Pull Notice” program, and submitting to a California Highway Patrol safety inspection.

Commission enforcement staff works closely with other law enforcement and regulatory agencies such as the California Highway Patrol, local police, and airport authorities to impose sanctions against unlicensed carriers. These activities include unannounced joint agency inspections at locations where for-hire carriers frequently operate.

The Commission takes billing, service and safety complaints against passenger carriers and provides the public with valuable information in the form of consumer advisories, passenger information sheets on limousines, shuttles and buses, and lists of certified passenger carriers.

2.2 New Methods of Arranging Transportation Services

Recently, new transportation carriers have begun using mobile internet, social media, and location services to offer new ways of arranging transportation services. Some of these carriers connect passengers via smartphones with drivers and vehicles already regulated by the Commission as passenger carriers or already regulated by cities and counties as taxis; others connect passengers via smartphones with private drivers and vehicles not licensed as passenger carriers or taxis.

Some of these businesses calculate the applicable fare by using GPS to measure time, distance, and vehicle speed much like a taxi meter; others present passengers with a suggested appropriate “donation” for the ride. Some businesses give passengers and drivers the opportunity to publicly rate each other, building reputations that may influence their ability to obtain rides or passengers in the future. These new businesses generally claim that they are not providing a transportation service, but are merely providing the platform by which passengers and drivers may connect and pay for the transportation; in the alternative, some businesses claim that they are providing ridesharing services exempt from the Commission’s jurisdiction under § 5353(h).

The Consumer Protection & Safety Division (CPSD) has a different view of these services. CPSD maintains that most of these companies set or suggest the fare, collect payment, are the recognizable brand that the passenger identifies with (rather than with the driver), and are the entity that contracts with the driver and the passenger. These companies are also the entity the public would turn to if there was a problem.

2.3 Commission Enforcement Activity

In October 2010, CPSD issued a cease and desist letter to UberCab, Inc. (Uber), instructing Uber to cease advertising and operating as a passenger carrier for hire without Commission authorization. In August 2012, the Commission issued cease and desist

letters to Zimride, Inc. (Lyft) and Side.cr LLC and Sidecar Technologies, Inc. (Sidecar), instructing them to cease advertising and operating as passenger carriers without Commission authorization.

In November 2012, CPSD issued \$20,000 citations to Uber, Lyft, and Sidecar, citing them all for violations of the Public Utilities Code including (but not limited to) operating as a passenger carrier without authorization.²

In this Rulemaking, the Commission seeks comments on issues raised by the growth of businesses like Uber, Lyft, and Sidecar, as discussed below.

3. Issues

Businesses like Sidecar and Lyft have presented the Commission with a situation not encountered before: the use of mobile communications and social networks to connect individuals wishing to offer and receive low cost and convenient, sometimes shared, transportation. Uber similarly uses smartphone technology to present a different business model from traditional limousine service, by using a smartphone as a taxi meter-like device to provide immediate short distance trips similar to taxis. It allows passengers to use a GPS-enabled smart phone app to electronically hail a limousine or other passenger carrier.

The effects of this new business model and level of activity on public safety are unknown. The Commission has an obligation to determine whether and how public safety might be affected by this new business model. The Commission seeks comment on all of the issues discussed below.

3.1 Jurisdiction

As a threshold matter, the Commission's jurisdiction over charter-party carriers is clear. Nevertheless, new technology and innovation requires that the Commission continually review its regulations and policies. This review is to ensure that the law and the Commission's safety oversight reflect the current state of the industry and these regulations are just and fair for all passenger carriers.

² The citations are available at:
<http://www.cpuc.ca.gov/PUC/transportation/Passengers/CarrierInvestigations/>

The Commission seeks comment on how the Commission’s existing jurisdiction pursuant to the California Constitution and the Public Utilities Code should be applied to businesses like Uber, Sidecar, and Lyft and the drivers employed by or utilized by these entities. The Commission also seeks comment on whether any changes to the law are appropriate.

Therefore, in addition to the issues identified above, the Commission seeks comment on the following issues.

3.2 Safety

In order to provide appropriate regulatory oversight over these new methods for arranging transportation services, the Commission will need data to ascertain whether the new transportation business model is having a positive, negative, or non-effect on public safety. What data currently exists, and what data sets should be developed to inform the Commission’s risk assessment?

Are there any aspects of these new methods of arranging for transportation services that have the potential to increase or decrease public safety? To the extent that drivers and passengers in these new transportation models are allowed to publicly rate each other, should the presence, absence, and detail of those reviews be part of the Commission’s risk assessment? Is public safety enhanced when drivers and passengers can rely on reviews to avoid “bad apples?”

3.3 Ridesharing

According to UC Berkeley researchers, ridesharing (defined by the researchers as the grouping of travelers into common trips by car or van, without the expectation of financial gain on the driver’s part) in the United States dates back at least to World War II when, in order to conserve resources for the war, riders and drivers were matched up via workplace bulletin boards.³ Casual car pools, in which drivers pick up passengers at designated locations in order to benefit from reduced commute time in HOV (high occupancy vehicle) lanes, arose in the 1970s, and more recently companies have begun

³ Nelson D Chan and Susan Shaheen (2012): Ridesharing in North America: Past, Present, and Future, *Transport Reviews*, 32:1, at 97.

using social networking to arrange rides among members of affinity groups.⁴ In addition, the online bulletin board Craigslist has a board dedicated to people wanting to share rides.

As discussed in Section 2.1, *supra*, § 5353(h) exempts certain providers of “ridesharing” from the application of the Act and from the Commission’s authority. Section 5353(h) refers back to the definition of ridesharing in § 522 of the California Vehicle Code, which states:

"Ridesharing" means two or more persons traveling by any mode, including, but not limited to, carpooling, vanpooling, buspooling, taxipooling, jitney, and public transit.

PU Code § 5353(h) exempts:

Transportation of persons between home and work locations or of persons having a common work-related trip in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver.

The section also states:

This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. “Profit,” as used in this subdivision does not include the recovery of actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

This definition of ridesharing does not permit transportation performed for profit. Recovery of actual costs incurred only applies to vanpool vehicles, which is defined by the Vehicle Code as seating more than 10 passengers, but less than 15 passengers, including the driver.

The Commission seeks comment on whether the new transportation business models qualify as ridesharing for the purpose of the § 5353(h) exemption. With respect to its passenger carrier regulation, should the Commission recommend a broader or

⁴ *Id.*, at 101, 106.

narrower definition of ridesharing than that contained in the California Vehicle Code? Although § 5360 refers to the “transportation of persons by motor vehicle for compensation” in its definition of passenger carriers, the Act does not suggest that there is a minimum amount of compensation necessary to trigger the Act’s application.

For the purpose of the Commission’s jurisdiction, is there a difference between a driver who transports passengers by motor vehicle for *de minimis* compensation, and a driver who transports passengers by motor vehicle for a living? Does legitimate ridesharing include the transportation of a passenger on a trip the driver was not otherwise planning to take? Should the Commission set a minimum level of compensation before regulating these new transportation business models as passenger carriers whether for the drivers or the carriers? If so, how should the Commission determine the appropriate level of compensation?

3.4 Transportation Access

The Commission’s authority over passenger carriers is grounded in the need to protect the public’s safe and reliable access to California’s roadways. Section 5352 of the Act states:

The use of the public highways for the transportation of passengers for compensation is a business affected with a public interest. It is the purpose of this chapter to preserve for the public full benefit and use of public highways consistent with the needs of commerce without unnecessary congestion or wear and tear upon the highways; to secure to the people adequate and dependable transportation by carriers operating upon the highways; to secure full and unrestricted flow of traffic by motor carriers over the highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to accident indemnity so that adequate and dependable service by all necessary transportation agencies shall be maintained and the full use of the highways preserved to the public; and to promote carrier and public safety through its safety enforcement regulations.

Section 5352 positions public safety as a key goal in ensuring that the public enjoys full access to the roadways. Therefore, the Commission seeks comment on the ways that safety regulations may enhance or impede public access to the roadways.

3.5 Insurance

Automobile insurance protects not only the covered party, but also the other motorist(s) and any other parties or property (such as pedestrians or nearby structures) involved in a vehicle accident; therefore the Commission seeks comment on the insurance aspects of this new transportation model. If a vehicle is insured as a private vehicle, but involved in an accident while transporting passengers for compensation, what type of coverage would the insurance offer for injuries/damage to the driver, the paying passenger, and any other people involved in the accident and/or the vehicles involved? Has the insurance industry expressed an opinion on covering private vehicles used to transport passengers for compensation? Are these vehicles covered when providing transportation of passengers for hire? Have there been accidents involving drivers from these new businesses, and what was the final disposition of any insurance claims filed?

California Insurance Code §11580.1b requires that non-commercial vehicles have a minimum liability coverage of \$15,000 for injury/death to one person, \$30,000 for injury/death to more than one person, and \$5,000 for damage to property, whereas the Commission's General Order (G.O.) 115-F requires that any vehicle with a seating capacity of 7 passengers or fewer have a minimum coverage of \$750,000. Is the public adequately protected when drivers arranged through these new companies may only be covered at the state's minimum levels?

California Insurance Code § 11580.24 prohibits insurance carriers from classifying a private vehicle as a commercial or livery vehicle just because the vehicle is used in a car sharing program (i.e., renting out one's personal vehicle to another driver), as long as the vehicle owner does not earn more than the annual cost of owning the vehicle from the car sharing program. Is this an appropriate criterion for determining whether vehicles used in businesses like Uber, Lyft, and Sidecar have an effect on public safety or transportation access? Would it be advisable or inadvisable for any other reason?

4. Preliminary Scoping Memo

This rulemaking will be conducted in accordance with Article 6 of the Commission's Rules of Practice and Procedure. As required by Rule 7.3, this order includes a preliminary scoping memo as set forth below.

4.1 Issues

The issues to be considered in this proceeding, as discussed earlier in this Order Implementing Rulemaking, concern the Commission's regulations relating to passenger carriers, ridesharing, and online-enabled transportation services. The Commission seeks comment on the questions raised in Section 3 including: exercise of its jurisdiction; the consumer protection and safety implications of the new methods for arranging transportation services; whether and how the new transportation business models differ from longstanding forms of ridesharing; and the new transportation business models' potential impact on insurance and transportation access.

4.2 Category of Proceeding and Need for Hearing

Rule 7.1(d) requires that an Order Instituting Rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is a "quasi-legislative" proceeding, as that term is defined in the Commission's Rules of Practice and Procedure, Rule 1.3(d). It is contemplated that this proceeding shall be conducted through written comments and workshops, without the need for evidentiary hearings.

Anyone who objects to the preliminary categorization of this rulemaking as "quasi-legislative," or to the preliminary hearing determination, must state the objections in opening comments to this rulemaking. If the person believes hearings are necessary, the comments must state: (a) the specific disputed fact for which hearing is sought; (b) justification for the hearing (e.g., why the fact is material); (c) what the party would seek to demonstrate through a hearing; and (d) anything else necessary for the purpose of making an informed ruling on the request for hearing. After considering any comments on the preliminary scoping memo, the assigned Commissioner will issue a Scoping

Memo that, among other things, will make a final category determination; this determination is subject to appeal as specified in Rule 7.6(a).

4.3 Schedule

For purposes of meeting the scoping memo requirements and to expedite the proceeding, we establish the following preliminary schedule:

DATE	EVENT
(20 days from mailing of this OIR)	Deadline for requests to be on service list
30 days from mailing	Initial Comments filed and served
45 days from mailing	Reply Comments filed and served
TBD	Prehearing Conference
TBD	Workshop on insurance issues
TBD	Workshop on the other issues TBD
(6 months from issuance of this OIR)	Proposed Decision

The assigned Commissioner through his/her ruling on the scoping memo and subsequent rulings, and the assigned ALJ by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary during the course of the proceeding. We anticipate this proceeding will be resolved within 6 months from the issuance of this Order Instituting Rulemaking.

5. Service List and Subscription Service

Within 20 days of the date of mailing of this order, any person or representative of an entity seeking to become a party to this rulemaking (i.e., actively participate in the proceeding by filing comments or appearing at workshops) should send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or Process_Office@cpuc.ca.gov) to be placed on the official service list. Individuals seeking only to monitor the proceeding (i.e., but not participate as an active party) may request to be added to the service list as "Information Only." Include the following information:

- Docket Number of the OIR;
- Name and party represented, if applicable;
- Postal Address;
- Telephone Number;
- E-mail Address; and
- Desired Status (Party or Information Only).

The service list will be posted on the Commission's website, www.cpuc.ca.gov soon thereafter.

The Commission has adopted rules for the electronic service of documents related to its proceedings, Commission Rule 1.10, available on our website at http://www.cpuc.ca.gov/PUBLISHED/RULES_PRAC_PROC/44887.htm. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 for all documents, whether formally filed or just served.

This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, concurrent e-mail service to all persons on the service list for whom an e-mail address is available will be required, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this Order Instituting Rulemaking (OIR) proceeding should include, at a minimum, the following information on the subject line of the e-mail: *R. [xx-xx-xxx] – OIR on Passenger Carrier Regulations*. In addition, the party sending the e-mail should briefly describe the attached communication; for example, "Comments." Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

This rulemaking can also be monitored through the Commission's document subscription service; subscribers will receive electronic copies of documents in this rulemaking that are published on the Commission's website. There is no need to be on

the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at

<http://subscribecpuc.cpuc.ca.gov/>.

6. Public Advisor

Any person or entity interested in participating in this OIR who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail public.advisor@cpuc.ca.gov; or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail public.advisor.la@cpuc.ca.gov. The TTY number is (866) 836-7825.

7. Intervenor Compensation

Any party that expects to request intervenor compensation for its participation in this OIR shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure within 30 days of the filing of reply comments or of the prehearing conference, whichever is later.

8. Ex Parte Communications

Ex parte communications in this proceeding are subject to Article 8 of the Commission's Rules of Practice and Procedure.

Therefore **IT IS ORDERED** that:

1. An Order Instituting Rulemaking is instituted on the Commission's own motion for the purpose of examining the Commission's regulations relating to passenger carriers, ridesharing, and new online-enabled transportation services.

2. This rulemaking is preliminarily determined to be a quasi-legislative proceeding, as that term is defined in the Commission's Rules of Practice and Procedure, Rule 1.3(d), and it is preliminarily determined that no hearings are necessary.

3. The outcome of this rulemaking will be applicable to all parties determined to fall under the Commission's passenger carrier jurisdiction.

4. The Executive Director shall cause this OIR to be served on those listed in Attachment A.

5. The preliminary schedule for this proceeding is as set forth in the body of this Order Instituting Rulemaking. The assigned Commissioner through his/her scoping memo and subsequent rulings, and the assigned Administrative Law Judge by ruling with the assigned Commissioner's concurrence, may modify the schedule as necessary.

6. The issues to be considered in this Order Instituting Rulemaking (OIR) are those set forth in the body of this OIR.

7. Comments and reply comments must be filed 30 and 45 days respectively from the mailing of this Order Instituting Rulemaking, unless the assigned Commissioner or Administrative Law Judge modify the schedule. Comments and reply comments shall conform to the requirements of the Commission's Rules of Practice and Procedure.

8. Any persons objecting to the preliminary categorization of this Order Instituting Rulemaking (OIR) as "quasi-legislative" or to the preliminary determination on the need for hearings, issues to be considered, or schedule shall state their objections in their opening comments of this OIR.

9. Within 20 days of the date of issuance of this order, any person or representative of an entity seeking to become a party to this Order Instituting Rulemaking must send a request to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102 (or Process_Office@cpuc.ca.gov) to be placed on the official service list for this proceeding. Individuals seeking only to monitor the proceeding, but not participate as an active party may request to be added to the service list as "Information Only."

10. After initial service of this order, a new service list for the proceeding shall be established following procedures set forth in this order. The Commission's Process Office will publish the official service list on the Commission's website (www.cpuc.ca.gov) as soon as practical. The assigned Commissioner, and the assigned Administrative Law Judge acting with the assigned Commissioner's concurrence, shall have ongoing oversight of the service list and may institute changes to the list or the procedures governing it as necessary.

11. Any party that expects to claim intervenor compensation for its participation in this Order Instituting Rulemaking shall file its notice of intent to claim intervenor compensation in accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, within 30 days of the filing of reply comments or of the prehearing conference, whichever is later.

This order is effective today.

Dated December 20, 2012 at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
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ATTACHMENT A
******* SERVICE LIST *******
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ATTACHMENT A
******* SERVICE LIST *******

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ATTACHMENT A
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