BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services	R.12-12-011

OPENING COMMENTS OF
SIDECAR TECHNOLOGIES, INC. AND SIDE.CR, LLC

In accordance with the schedule set forth in the Order Instituting Rulemaking (OIR) in this proceeding, issued December 27, 2012, SideCar Technologies and Side.cr, LLC (collectively, "SideCar") submit these opening comments on the issues raised in the OIR.

The OIR states that this rulemaking proceeding was initiated "to protect public safety and encourage innovators to use technology to improve the lives of Californians." OIR, at 1. SideCar unequivocally shares these goals with the Commission. However, in working towards these goals, the Commission must not simply rely upon existing regulatory schemes that were developed for traditional transportation services that bear little, if any resemblance to the technology-driven services provided by SideCar and others. Rather, the dual goals of protecting public safety and encouraging technological innovation in transportation can only be accomplished by adopting new regulations appropriate to the current societal realities, or by refraining from adopting regulations which could stifle or proscribe technology-driven solutions to modern-day transportation needs.

SUMMARY OF RECOMMENDATIONS

Peer-to-peer (P2P), real-time ridesharing platforms ("**P2P Rideshare**") like SideCar have the potential to transform transportation and offer a fundamentally different model for addressing critical environmental, economic and quality of life issues across California and our Nation.

Authentic P2P Rideshare platforms, like SideCar -- which match riders desiring transportation from a specific location to another specific location with drivers who are willing to provide such transportation – are fundamentally and intrinsically different than traditional charter party carriers or commercial transportation providers, and represent a fundamental paradigm shift in how services (and goods) are delivered and consumed. This Rulemaking proceeding marks a critical milestone for carpooling, ridesharing, and the "shared transportation" movement. California is the epicenter of technology and business innovation, and the Commission is uniquely positioned to either inhibit or foster real change. SideCar commends the CPUC's decision to initiate the process of considering whether existing transportation regulations or new ones – or none at all – are required to achieve the goals of protecting public safety and encouraging technological innovation in transportation. To this end, SideCar offers the following recommendations for Commission action:

- Clarify the definition of exempt rideshare, so vehicle owners can freely engage in permissible rideshare platforms/programs, provided they do not generate compensation that exceeds the annual total expenses of vehicle ownership, operation and participation in rideshare, or that exceeds some other bright-line definition of compensation appropriate for a noncommercial enterprise.
- Clarify and ensure reasonable and practical guidance and commercially reasonable interpretations of certain vague and undefined ridesharing terms and phrases under section 5353(f) and (h), including "non-commercial enterprise," "work-related" and "work locations." Such terms and phrases should not be construed narrowly based on outdated historical or traditional principles of an employer-employee relationship and a traditional "9-5" home-work commuting routine. Rather, the terms and phrases should be construed for the varied circumstances of the current California labor force and market.
- Abolish the current double standard of regulatory enforcement policy, under which private sector rideshare operators are subject to higher regulatory burdens and safety standards than those applicable to public or non-profit rideshare platforms or program operators

(unless the dual-standard can be demonstrated to be reasonably related to safety).

- Establish a bright-line, safe-harbor for qualifying P2P Rideshare platform operators and rideshare participants who "certify" and can demonstrate compliance with legal ridesharing standards through a rideshare platform that **requires passenger destination** (prior to the ride being requested), and **driver and passenger choice in the rideshare match** (as opposed to a dispatch or ride assignment arrangement).
- Distinguish between ordinary everyday Californians who own private vehicles and want to participate in an authentic P2P Rideshare platform or program, whether on a trial, intermittent, periodic, irregular or part-time basis,[1] from full-time, professional and commercial drivers who operate under contract or who are employed by transportation service providers that "dispatch" drivers and/or provide traditional charter party carrier and other non-technology based transportation services.

I. INTRODUCTION

A. The Importance of Transportation, Technology and Innovation.

Transportation is the lifeblood of our communities. Yet, despite its vital role in our community, economy and quality of life, the current transportation system is in many ways grossly inefficient and unreliable, and exacts a huge and growing cost on our communities. Traffic congestion, pollution and inadequate parking plague our cities and metropolitan areas. This situation will only escalate with accelerating urban growth. Lack of access to affordable, reliable and efficient means of transportation stifles economic growth and degrades the quality of our daily lives. Innovative technology companies, like SideCar, have the potential to significantly improve transportation, while also delivering clear and documented environmental, economic and

[1] These drivers may include those who may generate a modest annual profit on their automobile (*i.e.,* above its annual ownership, operating and rideshare costs), but are not generating compensation sufficient to provide a livelihood or become a professional occupation.

community benefits.[2] P2P Rideshare platforms and programs have the potential to transform empty seats in private vehicles into integrated, community-led and comprehensive transport systems that will improve our daily lives, while strengthening our economy and communities.

Despite these compelling benefits, private sector P2P Rideshare companies attempting to solve transportation problems with innovative solutions have run into a regulatory "buzz-saw" – the unilateral, specious and unsupported conclusion that they are unlicensed "Charter-Party Carriers." SideCar will demonstrate during this OIR proceeding that authentic P2P Rideshare platforms, like SideCar, [3] bear little, if any, resemblance to traditional charter-party carriers or commercial transportation providers. P2P rideshare programs represent a fundamental paradigm shift in how services (and goods) will be delivered and consumed. SideCar, for example, doesn't employ or contract with drivers and doesn't own or lease vehicles. (As such, under the current Charter-Party regulatory rules and licensing scheme, SideCar is technically and legally unable to qualify for a TCP license.) Authentic P2P rideshare companies are technology-forged square pegs that will never fit, nor should they be forced to fit, into the proverbial round hole of traditional charter-party carrier regulations.

SideCar understands that P2P rideshare platforms and programs must take all reasonable, necessary and effective steps to ensure public safety and accountability. Indeed, SideCar has already undertaken substantial steps and efforts to ensure driver, passenger and public safety. SideCar outlines below and is prepared to address questions and issues associated with its safety

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[2] Beyond reducing traffic and congestion, P2P Rideshare platforms and programs have the potential to advance critical California policy goals including transportation access, reducing vehicle miles traveled and greenhouse gas emissions. The California legislature found that the transportation sector contributes over 40 percent of the greenhouse gas emissions in California.

[3] As the first major P2P Rideshare Company, SideCar will outline the essential elements of an authentic P2P Rideshare Platform. The inspiration for SideCar's P2P Rideshare platform was government-sponsored casual carpooling. SideCar's P2P platform, requirements and operating practices are unique and differ materially from the other technology companies cited by the CPSD (now CPSD). SideCar urges the Commission to refrain from a broad-brush analysis of the different companies and models and consider each company's particular practices. SideCar will demonstrate support during this OIR that its uniquely distinguishing features are consistent both with the rideshare exemption and long-standing and fundamental principles of ridesharing (including requiring both rider trip destination and rider and driver choice in a rideshare match). These principles have been developed over decades with the support of various federal, state and regional governments and transportation agencies. *See e.g.,* Nelson D Chan and Susan Shaheen (2012), Ridesharing in North America: Past, Present, and Future, Transport Reviews, 32:1.

procedures in the OIR process. However, SideCar believes its safety program and processes have already resulted in safer and more reliable transportation than current industry norms. SideCar's safety features, programs and processes emphasize, *inter alia*, individual accountability, ratings and reviews that incorporate successful elements of a self-regulating online community. Many online communities, such as EBay, have implemented community self-regulation with features, processes and functionalities that are designed to deter/sanction bad actors and ensure trust and safety. In discussions with the Commission's Consumer Protection and Safety Division ("CPSD") over the last several months, SideCar has attempted to provide an understanding of how these processes can greatly improve safety and has also demonstrated its commitment to working with the CPSD to address any safety concerns, issues and gaps.

Notwithstanding its concern for public safety, SideCar objects to the heavy-handed and selective enforcement of the Public Utilities Code and CPUC regulations under a broad public safety banner. A closer look at the enforcement record reveals that an impermissible double standard is being applied to private sector rideshare platform operators compared to public, non-profit or small enterprise rideshare platform/program operators which are also currently operating. This selective enforcement of regulation -- based almost solely on a rideshare company's business form and operating model – is inconsistent with purported safety concerns. Most importantly, and contrary to the Commissions' stated goals in the OIR, such a policy of selective enforcement has the effect of stifling the most innovative players in the space who have the experience and resources to scale rideshare for broader public participation.

Rideshare and carpool programs or technology platforms operated by state, county and other transportation agencies or non-profit operators are subject to different regulatory and enforcement standards and allowed to operate without interference, citations, or fines. Commuters in the San Francisco East Bay (and Washington DC) every day participate in government-sponsored casual carpooling or "slug-lines"[4] transporting over 5000 Bay Area commuters every

[4] Slug lines are impromptu carpools created between strangers to share the cost of tolls and gas and to gain access to the faster carpool lanes.

business day. In other Bay Area counties, including Sonoma, Contra Costa and Marin, transportation agencies are operating P2P Real-time Rideshare platforms very similar to SideCar's.

In short, California state, county and regional transportation agencies have promoted and continue to promote carpooling, ridesharing and, increasingly, real-time rideshare platforms that are similar to (and that compete with) SideCar, without challenges from state regulators or unsubstantiated allegations of threats to public safety. This double standard is unsupported by public safety needs, or by laws or regulations. It not only conflicts with fundamental fairness and due process, but also interferes with the Commission's stated policy principles of encouraging innovators and not stifling innovation or new technologies.[5]

The facts show that private sector P2P rideshare platforms and technology-driven services pose no more of a public safety threat than government-sponsored or other ridesharing platforms and programs. Nor do they pose unfair competition to existing transportation systems and operators. Rather, authentic P2P rideshare platforms and technology providers, such as SideCar, enable safer, more efficient, more convenient, lower-cost and sustainable transportation options.

B. P2P Rideshare Represents the Most Innovative and Promising Solution in Decades For our Transportation Crisis.

[5] The CPSD enforcement policy should also not conflict with broader California state and federal policy support for ridesharing and carpooling. Examples of California policy support for rideshare are abundant. To illustrate one recent example, the Transportation Authority of Marin (TAM) joined Sonoma and Contra Costa Counties to announce recently a real-time ridesharing program aimed at improving air quality and reducing congestion in Marin County. According to TAM, "real-time ridesharing offers all the benefits of carpooling without any of the commitment. You can drive in the HOV lane on Highway 101 and park at close-in HOV parking at the Golden Gate Larkspur Ferry Terminal without needing to keep a consistent schedule or a commitment beyond a single shared ride." *See* http://www.wegomarin.com. Other California metro areas, like Santa Barbara have sponsored and managed federally funded real-time rideshare pilot programs. In addition to the state programs for on-demand or real-time rideshare referenced (see footnote 6), these policy initiatives include numerous other programs for carpooling and ridesharing, with dedicated HOV traffic lanes and reduced toll bridge access, and vanpooling and ridesharing, with dedicated pick-up, drop-off and parking locations, and an exemption from the payment of registration fees for vanpool vehicles. On-demand ridesharing also supports California's landmark greenhouse gas reduction law, AB 32, by reducing the number vehicle trips undertaken by single drivers.

The sharing economy is California's next wave of innovation. California is poised to become a global leader in the information technology-led sharing revolution of which shared transportation and P2P rideshare platforms are a subset. The sharing economy, in which companies enable everyday consumers to make better use of their unused resources, have the potential to create cascading social benefits by making Californians' consumption more efficient, both financially and environmentally, in everything from housing to transportation to parking. In spite of regulatory setbacks, "shared transportation" services and P2P rideshare platforms continue to gain momentum. Indeed, there is substantial evidence to suggest that private sector, P2P ridesharing platforms, like SideCar, have great potential to support policy initiatives and produce real and fundamental changes in behavior – and in doing so – produce lasting and beneficial change that will improve our daily quality of life in California and the world.

Many of these shared transportation and P2P rideshare platforms and programs are being facilitated, sponsored or operated by government entities. This should not be surprising as the Federal government as well as California state, county and municipal agencies have long recognized the importance of promoting and encouraging carpooling and ridesharing. Indeed, private sector P2P Rideshare platforms such as SideCar should be viewed as only the latest incarnation of ridesharing and carpooling that has evolved over the last six decades. From cork-boards, to phone lines, to Internet message boards, and now to smartphones, the media and technology have evolved, but the principles of promoting efficiency and community through shared consumption are consistent and timeless.[6]

The last decade has seen a renaissance in ridesharing activity. With the recent introduction of smartphone technology, with its geo-location and real-time matching capabilities, there is a

[6] 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, to conserve resources for the war, riders and drivers were matched up via workplace bulletin boards. Casual car pools, in which drivers pick up passengers at designated locations to benefit from reduced commute time in HOV (high occupancy vehicle) lanes, arose in the 1970s after the Middle East Oil Embargo and as a result of President Nixon's signing of the Emergency Highway Energy Conservation Act. More recently, companies have begun using social networking to arrange rides among members of affinity groups. In addition, the online bulletin board Craigslist has a board dedicated to people wanting to share rides. For a short history of rideshare, *see Shareable: The History of Carpooling from Jitneys to Ridesharing*.

historic opportunity to accelerate the adoption of ridesharing beyond a small segment to a broader base of the population, thereby producing large scale public benefits for California and our nation. Regulation should support, not hinder, this opportunity.

C. Challenges of Updating Regulations Amid Torrid Technology & Industry Change: A Historic Opportunity for California and the CPUC.

This Rulemaking proceeding marks a critical milestone for carpooling, ridesharing, and the "shared transportation" movement of the last sixty years. As the epicenter of technology and business innovation that is the envy of the world, California is uniquely positioned to either inhibit or foster real change and innovation not only for Californians but for the rest of the world as well.

Historically, innovations in the private sector and new technologies have blurred the boundaries in which regulators operate.[7] For example, some have summarily concluded that SideCar and others are just another form of transportation service, while others intuitively grasp the important differences between a technology-based and peer-to-peer platform operator and traditional for-hire carriers and transportation service providers that employ or contract with professional drivers, own or lease branded and uniform fleets of vehicles, and assign shifts and/or dispatch drivers to passengers.

The tension between traditional regulatory paradigms and how they should apply or be modified to apply to new interactive media, Internet and mobile technologies has been playing out ever since mainstream adoption of the Internet began in the mid-1990s. For almost two decades, Federal and state governments, courts and agencies have grappled with whether, and if so, how to regulate the Internet and so-called "Internet Intermediaries." In the 1990's, services like AOL, Prodigy and CompuServe ran up against major impediments, with courts and regulators labeling

[7] This blurring creates confusion and an environment where regulations risk being misapplied, until they are updated to be consistent with modern commercial activity. When regulators are slow to adapt to advancements in commercial activity, regardless of the benefits they may offer our communities, it casts doubt on that activity's economic viability, discouraging investors and consumers, and ultimately slowing innovation.

and attempting to regulate them as newspapers, broadcasters or common carriers for purposes of addressing harms such as defamation, copyright infringement and harmful content and conduct.[8]

Despite these difficult regulatory issues and competing policy tensions, there is no question that a largely unfettered Internet has become a transformative tool in modern life over the last 15-20 years. Just last year, the California Legislature passed, and the Governor signed, SB1161, which prohibits the Commission or any other department, agency, commission or political subdivision of the state from regulating Voice over Internet Protocol ("VoIP") or Internet Protocol-enabled services ("IP-enabled service"). The impetus for this bill presumably was to prevent any stifling by regulation of innovation in the development of VoIP and IP-enabled services. Because the cycle of innovation outpacing regulation will only accelerate, governments and regulatory agencies should approach new technologies and associated services with a restrained and "light" regulatory touch – or completely forebear from regulating – before reflexively shoehorning them into a traditional regulatory category or licensing scheme.

II. SIDECAR REPLIES TO THE OIR ISSUES

A. Jurisdiction: The CPUC's Jurisdiction Does Not Extend to Exempt Ridesharing or to P2P Technology Operators, such as SideCar.

SideCar is neither a charter-party carrier nor a transportation service, but rather a technology platform that facilitates exempt rideshare and, to that extent, should be exempt from CPUC jurisdiction under §5353(f) and (h). SideCar was founded as a software company to develop and license fleet management software for commercial transportation enterprises.[9] SideCar's mission as the first and leading private sector P2P rideshare platform operator is to allow drivers

[8] *See* Discussion of Court Cases against CompuServe, Prodigy and AOL and their liability as online service providers. Conflicting judicial rulings led to the passage of the Communications Decency Act, which enacted a "safe harbor" for online providers. 47 U.S.C. § 223

[9] SideCar was originally founded as Shepherd Intelligent Systems, an Ann Arbor, Michigan, fleet-management software and transportation information technology startup, first incubated out of the University of Michigan. Since inception, SideCar has operated as a software developer and technology firm, and has never intended to act, nor acted, as a "provider" or "dispatcher" of transportation services.

and passengers to connect with one another under the safe harbor of the ridesharing provisions of the law.

SideCar does not own or operate cars. SideCar does not employ or contract drivers, nor does it dictate hours, schedules or shifts to drivers, or dispatch drivers to passengers. Rather, SideCar is a communications platform that allows people to give rides in a more convenient and safer way than casual carpools, web bulletin board services like Craigslist, and more traditional ride-matching services. Like eBay is to goods, Travelocity is to flights, and Hotel Tonight is to rooms**,** SideCar has developed, and continually improves upon, a communications platform for ride-sharing, allowing drivers and passengers a better way to find each other and share rides.

SideCar's proprietary technology is deployed via a mobile smartphone application, which is available for both iPhone and Android smartphones. People needing rides who have downloaded the application to their smartphones input their pick-up location and their desired destination and are connected with pre-screened drivers in the area who have also downloaded the SideCar application and who, at that particular time, are available to give rides to people who need them. The person requesting a ride is able to see which pre-screened drivers are available, the identity of those drivers and the types of cars they drive, and request a ride from a specific available driver. The riders and the drivers connect directly with each other without SideCar being involved in the connection and without SideCar "dispatching" a driver to a rider. A rider may, but is not obligated to, pay a suggested donation to the driver, which is based on a "community average" of donations for similar rides of similar length and duration. Most riders do pay something for their rides, but it is a completely voluntary donation.

After a comprehensive driver screening process that focuses on safety and accountability, drivers become eligible to make themselves available through the SideCar platform to people who need rides.[10] However, drivers are not employed by or contracted to SideCar, nor are they

[10] SideCar developed the technology that makes the ride-sharing arrangements possible. It pre-screens drivers who wish to provide rides, does background checks on them for criminal, DUI or reckless driving convictions, keeps photos of drivers and their cars, and ensures that the drivers are insured at levels required by the State of California and that their vehicles are properly registered. SideCar does not own any vehicles.

obligated to provide rides at any particular time. They provide rides only when, in their sole discretion, it is convenient for them to do so.

As noted above, SideCar's facilitation of these ride-sharing arrangements is significant, but as an operator of a peer-to-peer platform, it plays no role in the transportation provided by drivers to riders.[11] SideCar does not accept requests from riders, and does not dispatch drivers to riders. Drivers and riders connect directly using SideCar's mobile app. Given this direct interaction between driver and rider, without any direct involvement by SideCar, it is difficult to understand how SideCar can be a company "engaged in the transportation of persons by motor vehicle for compensation," as Public Utilities ("P.U.") Code §5360 defines a "charter-party carrier of passengers." P.U. Code §5360.5 requires charter-party carriers of passengers to "operate on a prearranged basis," and then goes on to define "prearranged basis" as meaning that "the transportation of the prospective passenger was arranged with the carrier by the passenger . . ." SideCar is not involved in prearranging the prospective passenger's transportation with "the carrier."[12]

B. The Current Ridesharing Exemption Is a Vague and Impractical Standard that Requires Clarification and Guidance; The CPUC should establish a "Safe Harbor" for Rideshare Participants and P2P Platform Operators.

SideCar urges the CPUC to clarify the rideshare exemption in P.U. Code 5353(h) and establish a bright line "safe harbor" for ridesharing drivers and authentic P2P rideshare technology providers. While the Public Utilities Code currently has no provision for the recovery of the costs incurred in owning and operating a vehicle, except a vanpool vehicle, SideCar believes that a

[11] For clarification, it must be noted that Side.Cr, LLC is the entity that facilitates ridesharing between passengers and drivers. Side.Cr, LLC's parent company SideCar Technologies, Inc., develops and licenses technology applications and is not involved in Side.Cr's ridesharing operations.

[12] The OIR describes CPSD's view that "these companies set or suggest the fare, collect payment, are the recognizable brand that the passenger identifies with . . . and are the entity that contracts with the driver and the passenger. These companies are also the entity that the public would turn to if there was a problem." OIR, at 4. SideCar disagrees with this view in that it does not "contract with the passenger and driver," or collect any fares (a payment clearinghouse is utilized for distributing amounts to drivers). The ridesharing transaction is between the rider and the driver. As SideCar's Terms of Service clearly state, "Passenger understands that Driver (not SideCar) bears sole and absolute responsibility for all aspects of a ride [and] Passenger agrees to look to Driver, and not to SideCar, for any complaint, claim, injury or other issue that Passenger may have with a ride." SideCar Terms of Service, Section 12-1. Similar terms apply to Drivers, who also agree to look to a Passenger, not SideCar "for any complaint, claim, injury or other issue Driver may have in connection with a ride." SideCar Terms of Service, Section 13-1.

similar standard or one analogous to AB 1871[13] should be adopted for ridesharing in regular passenger vehicles. Since Section 5353(h) exempts from regulation work-related rides "in a vehicle having a seating capacity of 15 passengers or less would be appropriate for cost recovery to be set at the maximum costs of operating a 15 passenger vehicle for ridesharing. Such a bright-line standard is necessary because the rideshare exemption language of section 5353(h) is vague and subject to a variety of different interpretations. This is undesirable from a policy perspective and gives rise to arbitrary and selective enforcement standards and regulatory uncertainty.

The current rideshare definition and standard under Section 5353(h) is impracticable and unenforceable, because it requires rideshare platform operators, participants and regulators to ascertain each individual's specific and trip-related purpose and intent. For instance, the rideshare definition under Section 5353(h) requires the ride to be "incidental" to the purpose of the trip. To ascertain each participant's "incidental purpose" would be impractical and would require an examination of personal data and transportation patterns that, *inter alia*, would raise serious personal privacy concerns in addition to being administratively burdensome. It is also contrary to the established role and responsibility of a network operator and over a decade of established Internet regulatory precedent, both in California and nationally.

Beyond trip and participant intent, the rideshare exemption language also requires a common "work-related" trip purpose or transportation between home and "work" locations."[14] The CPSD has narrowly defined these terms through its enforcement policies and actions in a manner that is impracticable and unwarranted (*i.e.,* suggesting that a driver or passenger must be an "employee" of an entity, thereby disqualifying independent contractors, freelancers, or full time moms/caregivers from the "work-related" element of the rideshare exemption).

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[13] AB 1871 or 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.

[14] "Transportation of persons between home and work locations, or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing…when the ridesharing is incidental to another purpose of the driver." Section 5353(h).

Regardless of the CPSD's interpretation, it is clear that the language of section 5353(h) was constructed in the context of a very different concept of work and labor than exists in the 21st century, where seismic shifts in the economy have undermined traditional employer based 9-5 office work, locations and commute routines. The urban and metropolitan labor force and working conditions of today for many (if not most) Californians is a complicated and shifting dynamic where Californians of all ages are having a much harder time finding and maintaining regular and long term employment and frequently must string together free lance, project based, and odd jobs to make ends meet. Shared economy and transportation technology services (including both carsharing and ridesharing) have been a lifeline for many vehicle owners in California who are struggling to make ends meet, or who have lost a job in our recent economic recession. SideCar believes these ordinary citizens and property owners should be able to participate in ridesharing to the point of offsetting their total out-of-pocket vehicle ownership and rideshare expenses.

Finally and perhaps most importantly, the rideshare exemption does not apply if the "primary purpose of those persons is to make a 'profit,'" but there is no definition or any guidance on how to interpret the term "profit." By its enforcement actions and policy, the CPSD has apparently chosen to interpret essential and undefined terms such as "profit" as narrowly as possible. The CPSD's position is that only "incremental" or "variable" profit (*i.e.,* on a per-trip basis) should be considered; however, any economist or small business owner would agree that a reasonable and practical construction of profit and a commercial enterprise is the total expenses of operation (*i.e.,* the fixed and variable or aggregate costs). Simply put, there's no profit where total costs exceed income. Since AAA has reported average annual vehicle ownership expenses to $8,775 annually[15] (and higher in California and it's metropolitan areas) one bright line standard for profit would be the actual and documented total annual cost of operating a 15 passenger vehicle, the maximum-sized vehicle permitted by Section 5353(h) for rideshare participation.

[15] It must be noted that AAA's figure is an *average* figure that does not take into account the differences in operating costs of different vehicles. Some vehicles such as large SUVs are inherently more expensive to maintain than smaller, more fuel-efficient vehicles such as Priuses.

It is neither possible nor desirable for a P2P Rideshare operator or a regulator to ascertain individual and particular circumstances of every rideshare event. SideCar's technology platform and conditions of access require that all participants – drivers and passengers alike -- adhere to certain minimum requirements and procedures in the rideshare match. These requirements are both coded into the platform *(i.e.,* software rules) and into our conditions of service (*i.e.,* terms of service rules).[16] These are minimum and foundational principles of ridesharing that could be incorporated into a safe harbor standard clarifying the rideshare exemption. Appendix A provides an illustration of how these standards could be incorporated. By way of illustration, and not with the intention of being exhaustive, SideCar passengers using its platform MUST indicate the pickup AND drop off location of their trip in order to request a ride. In addition, SideCar drivers MUST also see passenger pickup and drop off location PRIOR to accepting/agreeing to provide a ride and have complete choice as to whether or not they pick up the passenger, consistent with ridesharing legal requirements. Appendix A is a table that compares the features and requirements of various rideshare platforms and other technology enabled transportation services and ride-match services.

C. Non-exempt For-Profit Rideshare Drivers: Drivers Whose Rideshare Activity Produces Profit But Who Are Not Engaged in Driving for a Living or as a Full-Time Profession Should Be Lightly Regulated Absent Evidence of a Threat to Public Safety.

The Commission maintains that the current definition of ridesharing does not permit transportation performed for profit.[17] It also suggests that any compensation including mere recovery of vehicle operating costs could trigger jurisdiction. SideCar urges the Commission to

[16] In addition to these hard-coded platform requirements, drivers authorized by SideCar to use the Platform and mobile app must certify that their use of the platform complies with the legal requirements of ridesharing and that the rideshare platform cannot be used for commercial purposes. *See SideCar Terms Of Service*.

[17] It appropriately maintains that the current standard allowing 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.

apply common-sense notions of profit that have been applied to other “shared transportation” models including Vanpool ridesharing and Carsharing.[18]

The principle that owners of private property and assets should be encouraged and allowed to recoup ownership and operating costs is a central tenant of the shared economy and a necessary foundation if we are to realize the environmental and economic benefits of P2P ridesharing. SideCar understands, but does not necessarily endorse the position that drivers who are regularly earning a profit -- which it believes, should be construed as earnings exceeding vehicle ownership, operating and rideshare costs on an annual basis -- might be subject to additional operational safety requirements. However, real-time ridesharing depends on encouraging first time, sporadic and part-time rideshare drivers who wish to offset vehicle-operating costs through rideshare donations. These types of drivers are all-together different than full-time professional and commercially licensed drivers who earn their living by engaging in for-hire transportation services. Imposing the same regulatory burdens on these part time rideshare drivers is unnecessary, unjustified and will stifle innovation and undermine the potential of real-time ridesharing to provide to broad benefits to Californians and the rest of the world. The provisions of P.U. Code 5353(f) – which exempts from regulation as a charter party carrier “[p]assenger vehicles carrying passengers on a noncommercial enterprise basis – should also be noted. Such casual rideshare drivers – while perhaps receiving amounts in excess of the costs of maintaining and operating a motor vehicle – should not be subjected to the same regulations as drivers who are engaged in a commercial enterprise.

SideCar believes that the Commission should seek to distinguish and draw sensible lines between individuals that might be earning a modest profit on their automobile (*i.e.,* above its total annual costs) from rideshare platforms and those that are driving full time (or near full-time) and

[18] For example, California Insurance Code Section 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.

earning a living as a professional driver under contract with a transportation service that dispatches a driver to a paid passenger of the company.

In applying the Public Utilities Code, we urge the Commission to take a light regulatory approach that is driven by safety and consumer protection concerns, rather than by the form of entity or business model of the rideshare platform operator. As just one example, to apply for a charter party carrier license, the statutes require that drivers be employed by a licensed transportation service that owns or leases vehicles. That prescription has nothing to do with safety. Requiring all drivers be employed by a centralized service is a non-safety related regulation that would practically lock out of the market all P2P rideshare models, where platform operators do not employ or contract with drivers, who supply their own vehicles and directly connect with riders via the P2P platform. SideCar urges the Commission to eliminate such Catch-22 licensing requirements and selective regulatory enforcement that is unrelated to safety considerations. To enable the current regulatory and charter party carrier licensing requirements to be enforced without fundamental modification would have the effect of completely undermining P2P rideshare models that are designed to "share" private assets and enable peer to peer matching (as opposed to a "dispatch" scenario where driver and passenger are assigned and routed by a central operator).

D. Safety: There is No Evidence that Shared Transportation or P2P Rideshare Present Safety Issues; Operators like SideCar Promote Trust and Safety in Highly Innovative and Effective Ways That Will be Shown to Meet or Exceed Industry Standards and Norms.

New real-time ride-sharing technology providers such as SideCar are mission-driven and have acute incentives to protect the trust and safety of their communities and the public. Many of these companies, such as SideCar, have implemented a variety of safety measures that exceed current norms in the transportation industry. SideCar's mission is to achieve an unparalleled trust and safety program so every user of the SideCar's P2P Rideshare platform has access to safe, trustworthy and reliable transportation.[19]

SideCar's safety program and rules aim to reduce and prevent accidents or other incidents. To this end, SideCar has implemented a comprehensive and effective set of trust and safety best practices, including its industry-leading 10-point safety program described below, to create a safe experience for drivers and riders alike. Under this safety program, all drivers are required to undergo thorough background checks and safety training, including:

- All drivers undergo a criminal background check.
- SideCar verifies and keeps on file every driver's insurance, registration, and driver's license.
- SideCar maintains a standard vehicle quality level.
- SideCar meets every driver in person before they engage in ride-sharing. Drivers attend an orientation session and participate in an ongoing evaluation program.
- SideCar verifies every rider's identity via credit card and billing address. SideCar also requires a valid phone number and email address.
- Drivers and riders rate one another and people with low ratings are removed from the SideCar community. (For added safety and convenience, the entire experience is cashless.)
- All donations are made through the application (*i.e.*, there is no cash exchanged between rider and driver) and are based on a suggested donation.
- Every ride is GPS tracked. SideCar records trip location details and our support team monitors rides as they happen.

[19] Indeed, SideCar believes its incentives are completely aligned with the CPSD on safety issues, even if we have fundamental disagreements on application of the code to rideshare and on the efficacy of the current idiosyncratic patchwork of safety regulations that apply to for-hire transportation services.

- SideCar's unique "Share My ETA" feature allows riders to share their current location with their friends, family and social networks.
- SideCar's support line within the application is always just a tap away. SideCar staff is available by phone for urgent issues and via email for feedback and general assistance.

Government hindrance of the development and implementation of technology-enabled transportation solutions under the guise of safety concerns falsely implies that current shared transportation options are unsafe. In fact, we believe that future data will demonstrate that ridesharing, like other sharing economy platforms, offer a superior safety record and loss history in comparison to traditional transportation providers.[20]

California regulators have a duty to ensure that SideCar and other similar actors are providing a peer transportation network that is at least as safe as government-sponsored and non-profit ride-sharing and carpooling facilitators. But CPUC regulators cannot hold P2P Rideshare platforms to a higher standard or presumptively deem them unsafe solely because SideCar and others are for-profit companies. Clearly, a transportation facilitator's profit or non-profit status has no influence on public safety or consumer protection. To halt or delay innovative transportation solutions in the name of consumer safety and protection is a misnomer and smacks of government overreach and protection of an entrenched traditional industry and incumbent operators.

Above applying a consistent and even-handed standard to all P2P ridshare operators, SideCar urges the CPUC to look at the broader transportation regulatory structure and safety regulations for inconsistencies and gaps. As one example, under the current for-hire transportation regulatory framework, limo drivers are required to undergo drug testing, while there is no criminal

[20] SideCar will Believes and Should Be Allowed to Demonstrate Through Data that "Shared Transportation" Community Accountability Will Reduce Risk and Improve Safety. A large component of the sharing economy is promoting a reputation that positions and ranks each user as a trustworthy and reliable participant. As open data, personal profiles and transaction transparency become part of our everyday lives technology providers such as SideCar will be able to better build stronger and connected communities that will increase personal accountability and reduce risk and loss. SideCar looks forward to the opportunity to collaborate on this issue.

background check. For taxi drivers, the opposite is true -- these drivers are subject to comprehensive criminal background checks, but no drug or alcohol testing.

The CPUC Code is replete with provisions that have nothing to do with safety but proscribe business form and operations. The Code was also drafted and designed for a communications age that has become obsolete and that enforces irrelevant and outdated standards. As just one example, current CPUC code and CPSD enforcement policy requires all TCP licensed drivers to maintain a written waybill.[21] Conflicting safety standards set forth by different regulatory agencies based on divisions in services are inconsistent and defy common sense. For example, why should limo drivers be required to undergo drug testing, but no criminal background check, while taxi drivers are subject to comprehensive criminal background checks, but no drug or alcohol testing?

SideCar looks forward to working constructively with the CPUC to address particular safety concerns and issues arising from private P2P rideshare programs. SideCar urges the CPUC to use this OIR as an opportunity to re-examine the efficacy of its safety regulations and apply safety concerns and regulations to rideshare and carpool programs evenhandedly and without regard to the platform operators' business form or model. SideCar welcomes the opportunity to demonstrate through its data and loss history that P2P rideshare, consistent with other peer-based and sharing economy platforms, offer superior safety and accountability metrics resulting in higher standards of public safety and consumer protection.

E. Transportation Access: Peer to Peer and Real-time Ridesharing Platforms and Models Have the Potential to Greatly Improve Transportation Access Including as a Compliment to existing Public and Private Transport Systems.

Real time ridesharing has the potential to connect private peer-to-peer services with public transportation services, including buses, trains and even planes. While the model for this level of connectivity is still early and developing, the potential of ridesharing to exist in cooperation rather

[21] *See,* G.O. 157-D, Section 3.01. See also CPUC Charter-Party Application: "All transportation performed by charter-party carriers must be arranged beforehand, and the driver must have a *completed waybill* in his or her possession at all times during the trip, showing, among other things, the name and address of the person requesting or arranging the transportation (the chartering party), the time and date when the charter was arranged, ***and whether it was arranged by telephone or written contract***, the number of persons in the charter group, the name of at least one passenger, and the points of origin and destination." Emphasis added.

than competition with other transportation modalities and options will represent the future of travel. According to UC Berkley Shared Transportation Researchers, over the next decade, North American ridesharing is likely to include greater inter-operability among services, technology integration, and policy support. There is significant evidence that emerging P2P Rideshare will be an efficient complement to public and private transport systems -- transforming wasteful empty seats in private vehicles into an integrated and comprehensive transport network.

F. Insurance: The CPUC is in the Position to Encourage the Introduction of New Insurance Products that Will Protect Rideshare Participants and the Public.

The issue of ensuring adequate insurance for real-time ridesharing participants and the public is a dense and layered issue. It is related to the issues of the current outdated and vague ridesharing standards and exemptions, and uncertainty about the line between protected rideshare and commercial activity. CPUC's premature and heavy-handed enforcement action in ridesharing cases has chilled potential rideshare insurance underwriters from wishing to enter or double down on this evolving sector of the shared transportation market while there is regulatory and liability uncertainty.[22]

Although SideCar believes that the overwhelming majority of rideshare participants are covered by their personal insurance policy, it recognizes that there are uncertain areas of the law and application of insurance coverage that have yet to be tested. For this reason, SideCar has been seeking an excess and contingent insurance policy to cover its rideshare participants since prior to commencing its operations. In addition, as an interim measure of protection and on a voluntary basis, SideCar has established a one million dollar ($1,000,000) driver guarantee program that protects its users and the public. SideCar's guarantee program exceeds current

[22] SideCar has been repeatedly told by several insurance brokers who are in discussions with various insurance underwriters that recent CPUC enforcement has made them cautious to enter into this new P2P Rideshare market while there are significant regulatory risks and political uncertainty.

commercial requirements and is fully consistent with the indemnification provisions established by G.O. 115-F.[23]

III. CONCLUSION

Our Federal and state governments have long recognized the importance of ridesharing and have historically encouraged it because of the economic, environmental and community benefits it presents.[24] SideCar did not invent the ride-share model, which has over sixty years of history and US government support. SideCar simply created a superior mobile and real-time communications platform that makes ride-sharing more efficient and scalable. California regional transportation authorities are offering grants and initiating similar real time ridesharing platforms that will compete with private sector, for profit entities such as SideCar. SideCar welcomes these government initiatives in the real-time rideshare space. Without taking away from the potential of these government and transportation authority initiatives, SideCar believes that the history of technology and interactive services, including the current explosion in mobile applications, shows that private, for profit companies have the capability of scaling adoption much quicker than public-sector technology initiatives. SideCar believes that it is legally unsupported, anti-competitive and against the public's interest for the CPUC to turn a blind eye to transportation agency, government and non-profit carpooling, ridesharing and similar initiatives while putting out of business private sector firms under the guise of protecting the public's safety.

Californians are looking for new solutions to address the inadequate state of our transportation system.[25] Authentic P2P Ride-sharing must be protected because of the economic,

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[23] 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 but allows for a variety of alternative schemes for indemnification.

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

[25] In San Francisco, disgruntled passengers registered 1,733 complaints with the city's 311 complaint line from July 1, 2011, to June 30, 2012, a 13 percent increase from the previous fiscal year. The number was almost double the 900-complaint goal set forth by the San Francisco Municipal Transportation Agency. Taxis infested with bed bugs, drivers falling asleep at the wheel, rude behavior of drivers and the difficulty getting a cab also were among the complaints.

environmental and community benefits it offers and its potential to solve a number of transportation problems. To realize these benefits, the ridesharing definition must be clarified for a 21st century world. While the line between ridesharing and commercial, for profit transportation services may not yet be clear or self-executing, SideCar believes that many of the basic elements that are fundamental to exempt ridesharing are self-evident and should be applied to distinguish between the current operators. Simply put, ride-sharing is not ride-sharing if the driver does not first know where he or she is going and ride-sharing is not about filling excess commercial vehicle capacity. Ride-sharing also does not allow for company owned vehicles, dispatch systems, prearranged rides, shifts or hourly employees, metered rides and undetermined destination at start of ride. For the reasons discussed above, SideCar respectfully urges the CPUC to clarify the current vague definition of exempt rideshare and the inappropriate application of charter party regulations to enable operation and innovation of new ride-sharing technologies while ensuring public safety and accountability.

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Respectfully submitted,

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APPENDICES

Appendix A – For General Reference and Discussion Only

	Rideshare (Exempt)	Livery[26] (Pre-arranged)	Taxi[27] (E-hail)
Companies			
SideCar[28]	→ *YES*	→ *NO*	→ *NO*
Uber	→ *NO*	→ *NO*	→ *YES*
Craigslist	→ *?*	→ *?*	→ *NO*

Distinguishing Elements of Services/Platforms and Transportation Regulatory Categories

1) Rideshare: casual transit, prearranged, with (1) a predetermined, agreed upon destination and (2) the ability of participants to choose, request, or refuse specific drivers and/or passengers, and (3) compensation may be offered, but entirely voluntary and only insofar as to recoup costs.
2) Livery: (1) Prearranged transit with (2) a predetermined, agreed upon destination and price (3) for profit.
3) For Hire: (1) Spontaneously arranged transit (2) without predetermined destination, (3) purpose is to generate profit and operate a commercially profitable enterprise.

[26] All transportation performed by charter-party carriers must be arranged beforehand, and the driver must have a *completed waybill* in his or her possession at all times during the trip, showing, among other things, the name and address of the person requesting or arranging the transportation (the chartering party), the time and date when the charter was arranged, and whether it was arranged by telephone or written contract, the number of persons in the charter group, the name of at least one passenger, and the points of origin and destination. See CPUC Charter-Party Application.

[27] Taxis may provide transportation "at the curb", that is, a customer may "arrange" taxi transportation by simply hailing a cab from the sidewalk. See CPUC Charter-Party Application.

[28] What distinguishes SideCar as a transportation option for both drivers and riders are destination and choice. SideCar allows users the choice of when to ride and drive, choice of with whom they share a ride (option to select driver, choose who to pick up), choice of where they want to go (driver knows destination, has ability to choose/accept most efficient routes) and payment choice. An everyday driver cannot make an informed decision or choice about whether it makes sense to share a ride, unless they first know their fellow riders destination.

APPENDIX B: Key Ridesharing Terms and Categories

Ridesharing Term	Description
Car-Sharing Clubs	The first organized ridesharing schemes, which were sponsored by the U.S. government during WWII. They were used to promote ridesharing as a way to conserve resources for the war effort.
High-Occupancy Vehicle (HOV) Lanes	These are special lanes reserved for use by buses and automobiles with typically two or more (sometimes three or more) occupants. They are built to encourage and facilitate public transit and ridesharing, including vanpools and casual carpools.
Casual Carpooling (also known as "Slugging")	Casual carpools are a user-run, informal form of ad-hoc ridesharing. This involves the formation of impromptu carpools of typically three or more commuters per vehicle: one driver ("bodysnatcher") and two or more passengers ("slugs"). Carpools form during morning commute hours at park-and-ride facilities or public transit centers and take advantage of existing HOV lanes to get to a common employment center. Carpools also form during the evening commute but usually on a smaller scale.
Park-and-Ride Facilities (also known as Carpool Parking Lots)	These are parking lots for commuters to park personal vehicles and then use public transit or ridesharing for the remainder of the journey to work. There are two types in North America: 1) lots situated at suburban commuter rail stations to encourage public transit use and 2) lots located by freeway entrances in suburban areas ("fringe" or "remote park-and-ride facilities") to encourage ridesharing and bus use. The authors focus on the latter type.
Vanpooling	Vanpooling is ridesharing on a larger scale than carpooling, which occurs in a large van. Vanpools are used by commuters traveling to a common employment center and are almost always prearranged. There are currently no known dynamic vanpooling programs (*10*). Participants share operating costs. Often, vanpools are partially subsidized by employers or public agencies, further lowering commuting costs.
Transportation Management Associations (TMAs)	TMAs are voluntary organizations formed by large employers, developers, and local politicians to address local transportation and air quality issues. They are typically nonprofit and represent the private sector's involvement in transportation demand management (TDM) strategies. TMAs promote a wide range of transportation options as an alternative to solo driving and often manage the region's carpooling and vanpooling programs.
Employer-Based Trip Reduction (EBTR) Programs	An EBTR program is a type of trip reduction ordinance (TRO) requiring employers to reduce the number of employees driving to work alone. Ridesharing programs are often used to comply with such an ordinance. They are also implemented to mitigate traffic congestion, air quality concerns, or both (*12*).
Telephone-Based Ridematching	This is the earliest form of "dynamic ridesharing." This approach allows users to request rides, offer rides, and receive ridematching information in real-time over the telephone. Either human operators or an automated interface communicates with users. "Enhanced" telephone-based ridematching adds Internet, e-mail, mobile phone, personal digital assistants (PDAs), and geographic information system (GIS) capabilities.
Online Ridematching Programs and Platforms	This approach entails Internet-based computerized ridematching, which employs GIS technology to match potential users traveling to and from similar places. Some software companies have developed ridematching "platforms"—a suite of services that a public agency or employer could purchase for a monthly fee.
Traveler Information Services ("511")	These are telephone hotlines (with telephone code "511") for traveler information dissemination. The traveler information provided differs by region; it may include traffic and weather conditions, road construction and closures, public transit schedules, and ridesharing information.
Real-Time Ridesharing	These services use GIS and global positioning system (GPS) technologies on Internet-enabled "smartphones" to organize ridesharing in real-time, just minutes before the trip takes place. Drivers post their trip as they drive, and potential riders request rides right before their desired departure time. Ridematching software automatically matches riders to drivers with similar trips and notifies each party's smartphone.

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

APPENDIX C:

Four Key Developments in Recent Rideshare Technology and Models

Development	Description
Partnerships between ridematching software companies and regions and large employers	From 2004 to the present, a new generation of ridematching platforms has been developed for regions and employers to use. Moreover, there has been significant growth and overall success with this strategy. Partnerships between ridematching software companies and its large-scale clients take advantage of existing common destinations and large numbers of potential members. These firms sell their ridematching software "platforms" to public agencies and employers, which are sometimes used as standalone websites for each group. While this partnership strategy has gained more users than previous ridesharing phases, it is most suited for commuters with regular schedules.
Financial incentives for "green trips" through sponsors	Many public agencies and companies promote ridesharing by providing its members with incentives. One example is NuRide↓ an online ridesharing club with over 48,000 members in seven U.S. metropolitan areas (*54*). NuRide rewards points when members carpool, vanpool, take public transit, bike, walk, or telecommute for both work and personal trips. These points can be used for restaurant coupons, shopping discounts, and attraction tickets. NuRide partners with public agencies, employers, and businesses to sponsor the incentives. Similarly, RideSpring works with employer commute programs and participating employees can enter monthly drawings for prizes from over 100 retailers (*55*).
Social networking platforms that target youth	The rise of social networking platforms, such as Facebook, has enabled ridesharing companies to use this interface to match potential rides between friends or acquaintances more easily. These companies hope that social networking will build trust among participants, addressing safety considerations. One example is Zimride, which has partnered with 50 U.S. colleges, universities, and companies that each has their own "network" of members (*56*). In addition to each network's website, Zimride also uses the Facebook platform to attract public users. Another service is PickupPal, with over 148,000 members in 116 countries (*57*). It allows members to create their own groups based on common area, company, school, and shared interests. However, social networking may limit itself by relying on more isolated groups and excluding less tech-savvy users. Currently, there are four major North American ridesharing programs focused on social networking: GoLoco™, Gtrot, PickupPal, and Zimride.
Real-time ridesharing services	In North America, two companies are beginning to offer real-time ridesharing services: Avego™ and Carticipate. Real-time ridesharing uses Internet-enabled "smartphones" and automated ridematching software to organize rides in real time. This enables participants to be organized either minutes before the trip takes place or while the trip is occurring, with passengers picked up and dropped off along the way. These programs attempt to address the inconvenience of traditional carpooling and vanpooling. As in most ridesharing services, a high subscriber base is required.

Source: Nelson D Chan and Susan Shaheen (2012): Ridesharing in North America: Past, Present, and Future, Transport Reviews.