



**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 )  
\_\_\_\_\_ )

Docket No. R.12-12-011

**COMMENTS TO ORDER INSTITUTING RULEMAKING  
FILED ON BEHALF OF UNITED TAXICAB WORKERS  
BY MARK GRUBERG**

**I. INTRODUCTION**

United Taxicab Workers is a voluntary association of San Francisco taxi drivers dedicated to improving income, working conditions and opportunities for the city's 7,000-plus cab drivers. We have joined this proceeding because the public is being placed at risk and the livelihood of many thousands of low-income workers put in jeopardy by the emergence of unlicensed and unaccountable companies unlawfully providing taxi services in all but name. These services should not be licensed and legalized under any circumstances because their business models are premised on an anti-regulatory philosophy that is openly hostile to any form of responsibility or accountability for the services provided under their auspices.

**II. BACKGROUND**

Illegal operators have been a plague upon the taxi industry for many years. In San Francisco, CPUC-licensed charter party carriers and other vehicles, some unlicensed in any jurisdiction, prowl the streets for riders, many of whom do not suspect that the transportation being offered is illegal, the charges often exorbitant, the driver's background and competency questionable at best, and insurance coverage improper, inadequate or non-existent. The absence of all but token enforcement allows this lawbreaking to take place with virtual impunity.

Recently developed technology has provided new avenues for lawbreaking. The companies here under scrutiny use cell phone applications ("apps") to connect transportation seekers to drivers of vehicles for hire. In doing so, they perform the same function as taxi

dispatch services. The technology they employ is also widely in use in the taxi industry. Companies like Taxi Magic and Flywheel (formerly Cabulous) work through licensed taxi dispatch services to link riders and drivers through the use of apps that are functionally the same as those used by the unlicensed services. Indeed, some taxi apps (including the two mentioned above) predate the operations of any of the three companies under scrutiny.

### **III. CLASSIFICATION OF THE PROCEEDING**

Public Utilities Code Section 5353(g) excludes taxi services from the Commission's regulatory jurisdiction. Government Code Section 53075.5 requires every city or county to "protect the public health, safety, and welfare by adopting an ordinance or resolution in regard to taxicab transportation service . . ." These provisions, read together, evidence a clear legislative intent to allow localities to reasonably determine what qualifies as taxi service and whom to license to provide that service.

SideCar and Lyft are using unpermitted vehicles to provide the same services as taxis. Uber (which originally called itself (UberCab) dispatches CPUC-licensed charter party carriers and has recently begun dispatching taxis as well. The Commission has fined all three companies for unlawful operations.

We believe the classification of the proceeding as purely quasi-legislative is in error and that adjudicative hearings should be held to determine whether and to what extent the companies in question are providing taxi services that come under the exclusive jurisdiction of cities or counties to regulate.

### **IV. FALSE CLAIMS**

SideCar and Lyft pretend they provide ride-sharing services exempt from regulation. But these services don't fit the criteria for the ride-sharing exemption contained in the Public Utilities Code. As the Order Instituting Rulemaking ("OIR") for this proceeding points out, the exemption contained in PUC Section 5353(h) applies to "persons having a common work-related trip . . . when the ridesharing is incidental to another purpose of the driver." The section goes on to state that "(t)his exemption does not apply if the primary purpose for the transportation . . . is making a profit."

These services rest their claims for exemption on a transparent fiction. Lyft says it "provides a means to enable persons who seek transportation to certain destinations ('Riders') to be matched with persons driving to or through those Destinations ('Drivers')." (Lyft, Terms of Service, <http://www.lyft.me/terms>.) The Driver Representations and Warranties portion

states "Such driver will not . . . offer or provide transportation service for profit." SideCar similarly claims that its services are not for profit and states in its Terms of Service that it "provides a forum to introduce people needing transportation with those already en route to the same or similar location". The driver agrees to "only give rides to passengers when the ride is incidental to the purpose of their trip (i.e., rideshare is not the primary purpose)." (SideCar, Terms of Service, <http://www.side.cr/terms>.) These assertions are laughable. The Lyft website confirms that drivers get 80 percent of the proceeds of their rides.

(<http://www.lyft.me/drivers#works>.) Lyft ads on Craigslist state that driver compensation is \$18-28 an hour. (Exhibit A.) The SideCar web page for driver applicants starts with the heading "Make money with Your Car." ([https://drive.side.cr/apply/view/site\\_home](https://drive.side.cr/apply/view/site_home).)

The claim that the service is not for profit rests in part on the supposed "voluntary" nature of the payment. (In order not to pay, the passenger has to override an automatic charge.) But what does it matter if the passenger theoretically doesn't have to pay, if in fact the vast majority of them do? Profit is profit whether derived from a compulsory or voluntary source. Tips are also a voluntary form of payment, but they are a source of income and profit for those who receive them. And these payments are not truly voluntary. These services use ratings systems for both drivers and passengers. That is a virtual assurance that a passenger who refuses to pay will soon find him or herself unable to get a ride.

The companies themselves potentially stand to make substantial profits, as evidenced by the millions of dollars in venture capital that investors have reportedly poured in. .

We maintain that company claims that the service provided is incidental to another purpose and not for profit are false; that the companies know they are false; that they are therefore perpetrating a fraud upon the public; and that an investigation of their operations would quickly confirm the truth of these allegations. Rather than bringing these companies under regulation, they should be criminally prosecuted and put out of business for their fraudulent representations.

Uber employs a different model, using CPUC-licensed vehicles and, more recently, taxis to provide service. Uber in San Francisco now offers several types of service: town car, SUV, "Uber-X", which relies on the same types of vehicles in use as taxis, and taxi service through individual drivers who have signed up with the company.

(<https://www.uber.com/cities/san-francisco#>.)

In deciding whether Uber should be licensed as a charter party carrier, the Commission should consider its business model. A company that claims that it's not in the transportation business and has no accountability to the public – that is hostile to the very notion of regulation -- has no right to a permit.

To the extent Uber is dispatching taxis, it has gone beyond the Commission's authority. Both taxi service and the other services Uber provides are accessible on the same app. That cannot be allowed, as it encroaches into territory reserved for taxi regulation. If the Commission does decide to license Uber, a bright line must be drawn between its taxi services and those it offers as a charter party carrier. Taxi regulators have the exclusive authority to decide whether and in what form Uber or similar companies (and this applies as well to SideCar and Lyft) can perform taxi services.

There are other reasons for drawing a clear line between taxi service and state-regulated services. It is highly prejudicial to taxi drivers and the taxi industry to have the same types of vehicles as taxis, providing essentially the same service, co-existing on an uneven playing field with vastly different regulatory requirements. A coherent, compatible regulatory scheme requires firm distinctions between the types of service each regulatory agency oversees.

Charter party carriers used to be distinguished from taxis through the use of luxury vehicles providing a higher-end, higher-priced service. The Commission has allowed the erosion of that distinction, to the extent that there is now no difference at all between the vehicles providing taxi service and the Uber-X vehicles now employed as charter party carriers. Whether through this proceeding or another, that distinction must be re-established if the spirit of the law is to be honored, localities are to be given their due as exclusive regulators of taxi service, and cab drivers and the taxi industry are to be spared from unfair competition.

## **V . PUBLIC SAFETY**

Companies like Lyft and SideCar provide service through non-professional drivers of private vehicles. As they are regulated neither by state nor local authorities, the public can only take the word of the company – which claims not to be in the business of transporting passengers – on vital matters such as the quality and condition of the vehicle, the background and competence of the driver, and the validity and extent of insurance coverage in case of an accident.

In contrast, safety is the paramount concern in taxi regulation. San Francisco taxis are inspected regularly and are subject to age and mileage requirements. Drivers receive a week of training, including safety training, and are background checked before being licensed to drive a cab. Taxis are also equipped with safety features that benefit and help to protect both the passenger and driver. These include two-way radios for dispatch purposes and emergency communications (in addition to any electronic dispatching system the company may employ) and cameras that record video both inside and outside the cab. Of equal importance, there are several layers of accountability for operations. The driver is responsible for the safe operation of the vehicle, but the company and the holder of the vehicle's operating permit ("medallion") also bear responsibility for the vehicle's condition and equipment. The San Francisco Municipal Transportation Agency ("SFMTA"), which operates the city's public transportation system and regulates taxis, provides oversight and enforcement of regulations designed to ensure the safety of passengers and drivers alike.

A perusal of tweets between Lyft users and company management graphically illustrates the dangers of an absence of regulation. Among the numerous complaints over a period of less than two months were sexual misconduct, assault, vehicle breakdown, driver incompetence, gross overcharging, etc. (Exhibit B.) Among the more mundane complaints, one user tweeted "I was encouraged to give even more to get a better rating to be picked up faster in the future". Should it be left to the company alone to resolve these complaints – especially a company that claims it bears no responsibility for anything that might happen in the course of the ride?

These tweets also put the lie to the company's claim that it is merely providing a contact mechanism between passenger and driver. The company is actively involved in resolving disputes. The problem is that it is the only arbiter of these disputes, and the passenger and driver alike have signed away all rights against the company for any wrongdoing. The only real recourse for a dissatisfied passenger is the driver rating system, a pathetically poor substitute for a regulatory system with oversight and enforcement and real consequences for rules violations.

All three of the companies in question seek to operate in a regulatory vacuum, free not only from government oversight, but from any responsibility to the public or drivers for the services provided. Their business models, similar in all three instances, claim they are not

transportation services at all. This is completely antithetical to the long-enshrined, nearly universal policy of regulation of public transportation services in the public interest.

## **VI. LIABILITY AND INSURANCE**

Lyft and SideCar drivers, as owners of private vehicles, are only required to have the minimum liability insurance coverage of \$15,000-30,000 per accident. Whether an insurer would honor these policies where the driver is transporting passengers for profit is highly dubious. But even if private coverage applies, the required minimum is woefully inadequate. In response to this concern, SideCar and Lyft claim to have obtained \$1million excess liability policies. But according to the terms of their contracts, they are in no way liable for any occurrence, whether or not due to negligence, stemming from the service provided or the use of the app.

The Lyft contract states: “So long as Drivers are in compliance with this Agreement (including but not limited to the Driver Representations and Warranties provided below), Lyft procures insurance that provides Drivers with excess automobile liability insurance of up to \$1,000,000 per occurrence through an A++ rated insurer.” (Lyft, Terms of Service, Insurance, <http://www.lyft.me/terms>; emphasis added.) The driver warranties include, among other things, having a valid policy of liability insurance, complying with reporting requirements in case of accidents and obeying all local laws. In other words, if the private insurance carrier can disclaim liability (perhaps on the ground that the policy doesn't cover the transportation provided) or if the driver breaks a law that leads to an accident (e.g., running a red light), the insurance doesn't apply.

The voluminous contracts these companies make riders and drivers sign contain a mind-numbing litany of disclaimers of liability or responsibility for any and all things that may go wrong through the use of the service. (See the Terms of Service, *supra*.) These disclaimers are so broad and inclusive that even if the company has a backup insurance policy to protect it against third party claims, it and its insurer could potentially deny liability to a user of the service based on the terms of the contract.

## **VII. LOST PROPERTY, ETC.**

Company accountability is lacking in other respects as well. A transportation company that claims it is not responsible to anyone for anything that happens during the ride is incapable of dealing with everyday situations that regularly occur in the course of providing public transportation. If an item is lost in a cab, the passenger has recourse to

the taxi company providing the service or the city. If there is a dispute between a taxi passenger and driver (let's say the passenger felt the driver was rude or overcharged for the trip), the passenger can similarly complain to the cab company or the regulator, which frequently disciplines drivers found culpable in such situations. None of these protections exist in the Lyft/SideCar model.

### **VIII . UNFAIR COMPETITION**

Taxis are an integral component of public transportation. They are a necessity for many people with disabilities or infirmities of age that make it difficult or impossible to use mass transportation. They serve all neighborhoods and accommodate all orderly persons who seek their service. They receive payment in a variety of ways: through cash, credit cards (which all San Francisco cabs are required to take), cab company vouchers and special debit cards issued by the city to paratransit users. They are required to have electronic credit processing equipment, security cameras, meters and two-way radios, they undergo regular inspections of vehicles and meters and are subject to other requirements designed to protect the public and improve service. Wheelchair users have access to cabs customized to accommodate them. All this comes at a cost. There are further costs associated with the requirement to serve all comers -- burdens the companies under scrutiny, by the nature of their service, don't have to bear.

The service these companies furnish is limited in other ways. Riders only have one means of payment, through the use of a smart phone and a pre-registered credit card. That allows these companies to skim lucrative rides, while ignoring more difficult, less remunerative (and sometimes money losing) trips the taxi fleet must provide. Legalizing these services and allowing them to feast on the high end of the business without any obligation to serve the rest will have ominous consequences for the taxi industry and thousands of hard-working drivers.

Taxi drivers are now largely an immigrant workforce. They struggle hard to support themselves and their families. The driver's ability to earn a decent living is vital for maintaining a dedicated and experienced workforce and a prerequisite for safe, efficient and reliable service. When the driver's livelihood is compromised, the quality of service goes down, accidents go up, and the service becomes more expensive on account of increased insurance and other costs. Taxi regulation – which is almost universal in large cities here and abroad – must seek to maintain a high level of service without destroying the ability of drivers to earn a living. But that balance is upset beyond repair if unlimited numbers of vehicles are allowed to

enter into direct competition with taxis in what is essentially an open-entry system. The new entrants may well be able to survive on account of their access to a higher-end clientele, but taxi drivers will suffer dearly and painfully, and the industry as a whole will be severely impacted. The other victims in this situation will be the public that is still dependent on taxi services.

## **IX. CONCLUSION**

For the reasons stated above, the Commission should treat this proceeding as quasi-judicial, and initiate hearings to determine whether or to what extent it has jurisdiction over the subject matter of the proceeding. Should it proceed to consider whether to regulate the services under scrutiny, it should refuse to legalize them and bring them under its regulatory control, but instead insist that they comply with existing requirements if they wish to provide services under Commission auspices.

Companies providing taxi services, under whatever name they choose to call it, should be left to local regulators to deal with. The regulators are attuned to local conditions and are best suited to take the steps necessary to achieve safe and reliable service. In San Francisco, the SFMTA is moving along a number of paths toward that end. Since assuming regulatory authority over taxis in 2009, they have approved hundreds more cabs. They have created an additional class of taxis ("S" medallions) with limitations on the hours they serve the public, in order to provide service at times they are needed while protecting driver income when they are not. They have barred certain cabs from using the airport, reserving them for full-time service within the city. They have established rules for the use of credit cards and are moving towards creating a means for smart phone users to have access to the entire taxi fleet through a single application. They are also implementing an enhanced system of electronic data collection that will help them identify and rectify service deficiencies. Not all these steps have been popular -- and they come at a significant cost -- but they are the kinds of things localities can do to address local problems and conditions. All that effort is in danger if a competing fleet of private vehicles is allowed to serve the same public under unfair conditions that put hard-working professional drivers at an enormous disadvantage. Having two competing fleets vying for the same customers under vastly different rules is incoherent public policy and a profound disservice to cab drivers, the taxi industry and the users of its services alike.



Dated: January 28, 2013 at San Francisco, California

/s/ Ruach Graffis

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