

**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.

Rulemaking 12-12-011

**COMMENTS OF LYFT, INC. REGARDING PROPOSED DECISION OF  
COMMISSIONER PEEVEY MODIFYING DECISION 13-09-045**

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In accordance with Rule 14.3 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, Lyft, Inc. submits the following comments on the Proposed Decision of Commissioner Peevey Modifying Decision 13-09-045 (hereafter “Proposed Decision” or “PD”), served on the parties on June 10, 2014.

**1. Introduction**

The Proposed Decision would modify Decision 13-09-045 in two significant ways. It would adopt an expansive and unworkable definition of “Transportation Network Company (TNC) services” as including “whenever the TNC driver has the application open.” It would impose arbitrary and unreasonable levels of insurance on TNCs which would far exceed those imposed on other passenger carriers, including TCPs and taxis, and significantly beyond current insurance requirements for individuals.<sup>1</sup>

Taken together, these amendments would seriously undermine California’s leading role in establishment of a regulatory framework for the ridesharing industry that other states can follow. Lyft urges the Commission to refrain from adopting any changes to insurance requirements until the Legislature, which is currently considering legislation addressing these very same issues, has had the opportunity to act and the Commission has had the opportunity to develop a complete evidentiary record, either in the context of the upcoming Phase II proceedings or the joint study on TNC insurance issues contemplated by proposed legislation. It is only with the analysis of a

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<sup>1</sup> See Vehicle Code § 16056 (\$15,000 bodily injury per person/\$30,000 all persons/\$5,000 property).

complete evidentiary record and the benefit of experience that regulators can understand the impact of these substantial changes before adopting them.

Lyft fully understands and agrees with the Commission's concerns on safety. The future of peer-to-peer ridesharing depends on ensuring that drivers, passengers and community members are protected in the event of an accident. This is why, from inception, Lyft built its mobile application working *with* the insurance industry and regulators to develop new insurance products and solutions to make such protections available. In 2012, Lyft developed the first of its kind \$1,000,000 per occurrence liability insurance policy to address the unique needs presented by the new "sharing economy." In February of this year, Lyft launched the P2P Rideshare Insurance Coalition to bring together representatives of the TNC industry, insurance carriers, regulators and other interested parties to develop insurance best practices and new and innovative insurance products to address these needs.<sup>2</sup> In April, Lyft announced that it would voluntarily begin providing, in addition to its \$1 million excess liability coverage, excess uninsured/underinsured motorist coverage and contingent collision and comprehensive coverage for the period after a match is accepted, and contingent liability coverage for bodily injury and property damage for the period in which a user is logged into the app in driver mode and available to accept a ride request.<sup>3</sup> And just last month, Lyft announced that it was working with highly respected carrier MetLife to develop additional insurance solutions to protect Lyft drivers and passengers. Insurance coverage takes time to develop and come to market, but Lyft and other TNCs have answered the call for solutions and are working hard to refine and broaden insurance coverage to meet a rapidly growing market. *In short, the market is responding exactly as the Commission intended.*

The Proposed Decision, as drafted, would undermine those efforts in one stroke. First, by adopting a definition of TNC services that is so broad and ambiguous it would be open to varying interpretations depending upon the type of smart phone a user owns and which TNC application is being used. Second, by mandating insurance requirements that place TNCs on par with transporters of hazardous waste and other hazardous materials,<sup>4</sup> an arbitrarily determined level that

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<sup>2</sup> See <http://blog.lyft.com/posts/p2p-rideshare-insurance-coalition-update>;  
<http://blog.lyft.com/posts/introducing-the-p2p-rideshare-insurance-coalition>.

<sup>3</sup> <http://blog.lyft.com/posts/2014/4/11/lyft-insurance-overview>.

<sup>4</sup> See Health & Safety Code § 25117 and 49 C.F.R. 172.101 (\$1,000,000 combined single limit).

far exceeds coverage required of other charter party carriers, most taxis, and individual drivers, regardless of any comparable risk, the Proposed Decision would freeze the insurance industry in its tracks from developing new products for this rapidly growing market until the risks inherent in the ambiguous language are better known.

Importantly, the California Legislature is currently considering legislation that would adopt a definition of TNC services and impose new insurance and other requirements on TNCs. *See* AB 2293- Bonilla.<sup>5</sup> The Bill was amended on June 19, 2014<sup>6</sup> and would adopt a definition of TNC services which is different from that proposed in the Proposed Decision and also a tiered approach to insurance requirements for different periods.<sup>7</sup> The current bill would also direct the Commission and the Insurance Commissioner to conduct a joint study on TNC insurance issues “in order to promote data-driven decisions on insurance requirements.”<sup>8</sup>

Regulatory and legislative uncertainty directly undermine TNC efforts to develop sustainable new insurance products in a dynamic, technology-driven market. The Commission’s ground-breaking decision in D.13-09-045 provided a critically important, nationally-recognized regulatory framework that has allowed the peer-to-peer transportation industry to grow, and at the same time, has provided the stability which is a necessary foundation for the creation of new insurance products. Lyft is extremely concerned that the modifications proposed in this PD, less than a year after issuance of the original decision, will short-circuit efforts to develop new insurance products and undermine the Decision’s utility as a model for other states to follow. Rather than reducing uncertainty and protecting the public, the Proposed Decision would have the opposite impact, reducing insurance coverage available to TNCs and freezing efforts to develop additional insurance products for millions of individual users nationwide. By adopting arbitrary insurance coverage requirements that go far beyond those required of other California passenger carriers, without the benefit of a complete evidentiary record or data-driven findings supporting the

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<sup>5</sup> <http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml>

<sup>6</sup> *Id.*

<sup>7</sup> *See*

<http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml;jsessionid=d7676d6f1f5ec5a8250eaa1c07b7>  
(last accessed June 30, 2014 at 8:49 am).

<sup>8</sup> *Id.*

need, feasibility or appropriateness of such requirements, the California regulations would be legally weakened, undermining their use as a model for other states and cities.

## **2. Defining TNC Services As Whenever An App Is Open Will Actually Lead To Greater Uncertainty, Harming Both Consumers And Industry**

The Proposed Decision would adopt an expansive new definition of the term TNC Services as “whenever a driver has an app open” and would use that broad definition as a basis for imposing prohibitively expensive and/or unattainable new insurance requirements on any activity falling within it. There are a number of very serious problems with this approach.

First, by defining TNC services based on an untested and inherently ambiguous concept such as whether an app is open or closed, the Proposed Decision would actually lead to *greater uncertainty*, rather than eliminating uncertainty, as the Commission intends. Apps and the operating systems on which they run vary significantly; there is no universal set of standards for determining when an app is “open” or “closed.” For that reason, the status of an app as open or closed is singularly ill-suited for use as a point of demarcation. A mobile application running on the Apple iOS or Android operating systems does not close simply because the user moves onto a different app. The app is minimized, but in many cases remains open and may or may not continue running in the background unless forced to close. On an iOS device, for example, to close an app one must typically double click on the “Home” button and then “swipe” the preview image for the application upward. A similar, and slightly more involved, process is employed on an Android device.<sup>9</sup> Confusion on this issue is well documented. Uncertainty among smartphone consumers concerning how to close an app is a leading topic of discussion on user websites for Apple, Android and other devices.<sup>10</sup> In fact, there is so much uncertainty on this issue that developers have actually released apps that are designed to do nothing more than close open apps.<sup>11</sup> As a result, many app users commonly have numerous apps open at a given time without even knowing it. Therefore, an individual may have a TNC app or multiple TNC apps open though they are not in any way providing TNC services and may not even be aware that they are open. Under the framework proposed in the Proposed Decision, the individual would nevertheless

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<sup>9</sup> See, e.g., <http://blog.laptopmag.com/how-to-close-android-apps>; <http://support.apple.com/kb/ht5137>.

<sup>10</sup> <https://discussions.apple.com/message/17482823#17482823>;  
<https://discussions.apple.com/message/23201475#23201475>.

<sup>11</sup> See, e.g., <https://play.google.com/store/apps/details?id=br.com.artefatos> (“Close All Apps” app).

be deemed to be providing TNC services, potentially implicating the insurance coverage of one or more TNCs. In the event an accident were to occur while one or more apps is open but the driver has not accepted a ride request and is not transporting a passenger, the injured parties, the carriers and the courts will be left to litigate the meaning of the term “open” in the context of the particular apps, devices and operating systems at issue in an effort to determine which party’s (or parties’) insurance is ultimately responsible for coverage.

Furthermore, because the opening or closing of an app does not bear any necessary or verifiable connection to providing TNC services, and is easily manipulated by the user of the app, the important issue of what insurance coverage is primary at any given time could also be easily manipulated. The simple act of opening a TNC app does not by itself correlate to a driver providing transportation for compensation, which is the legal basis for the Commission’s assumption of jurisdiction over TNCs.<sup>12</sup> Nor does opening an app even correlate to a driver making himself or herself available to provide TNC services. In order to use the Lyft app as a driver, a user must go through a series of background checks, inspections and other requirements, must have a Lyft account authorized for use in driver mode, and most critically here, must log into the app using his or her account and respond to ride requests. A driver may open a TNC app and be neither providing transportation for compensation nor offering to provide transportation. A driver could decide to open an app while running errands or commuting in order to avail himself or herself of TNC insurance coverage. Or the driver could, upon the occurrence of an accident, “create” coverage by simply opening the app. In such a circumstance, it is unlikely that the TNC would be able determine whether the app was opened before or after an accident; the effect of which would be to transform insurance coverage – intended as a hedge against *unanticipated* risks – into blanket, after-the-fact indemnity and an open invitation to commit fraud.<sup>13</sup>

Although the Department of Insurance in its April 7, 2014 letter to Commissioner Peavey<sup>14</sup> dismisses concerns regarding the potential for fraud by contending that TNCs are “best positioned

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<sup>12</sup> Publ. Util. Code 5360 (“charter-party carrier of passengers” means every person engaged in the transportation of persons by motor vehicle for compensation . . .”).

<sup>13</sup> In contrast, if TNC insurance coverage were to commence upon the acceptance of a ride request by a TNC driver, a criterion objectively verifiable by reference to electronic data, the insured would not have the ability the create coverage where it would otherwise be lacking.

<sup>14</sup> April 7, 2014 Letter from Dave Jones to Michael Peevey (“CDI Letter”), at <http://www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140407.pdf>.



to address most or all” of these issues, no solution to these issues is apparent (or in evidence). Equally important, the practical impact of defining TNC services in such a way as to make it vulnerable to fraud will be to discourage commercial lines carriers who might otherwise be receptive to developing new products for TNCs from venturing into that minefield. Triggering the application of insurance coverage on whether and when a user knows an app is open on their smart phone would make evaluating and pricing of the associated risk difficult or impossible for any insurance carrier willing to underwrite it. For all of the above reasons, attempting to define the scope of TNC insurance coverage based upon the ambiguous, unverifiable, and easily manipulated status of an app as “open” or “on” will actually *create an insurance gap* which does not currently exist and which can be resolved only with costly and time-consuming litigation.

### **3. Issuing New Requirements Prior To Allowing The Legislature The Opportunity To Act Would Simply Create Additional Conflict and Uncertainty**

The California Legislature is currently considering new legislation that would establish insurance and other standards for TNCs; which legislation was amended June 19, 2014. *See* AB 2293- Bonilla.<sup>15</sup> As currently proposed, it would adopt a definition of TNC services which is different from that proposed in the Proposed Decision and implement a tiered approach to insurance requirements, applying lower coverage amounts for the period between when a driver logs into their driver account and prior to accepting a ride request.<sup>16</sup> The current bill would also direct the Commission and the Insurance Commissioner to conduct a joint study on TNC insurance issues “in order to promote data-driven decisions on insurance requirements.”<sup>17</sup> In the May 12, 2014 Assigned Commissioner’s Ruling, the Commission declined to act on certain other issues, taking note of ongoing legislative efforts aimed at addressing them and stating that “it would be prudent to defer addressing this rehearing issue until the Legislature has had an opportunity to act.”<sup>18</sup> In light of the Legislature’s recent amendment of AB 2293 and ongoing efforts to develop legislation addressing the very issues that are the subject of the Proposed Decision, it would

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<sup>15</sup> <http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml>

<sup>16</sup> *See* <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml;jsessionid=d7676d6f1f5ec5a8250eaa1c07b7> (last accessed June 30, 2014 at 8:49 am).

<sup>17</sup> *Id.*

<sup>18</sup> May 12 ACR, p. 5 (drug testing), 6 (license plates).

equally prudent to defer imposing sweeping new insurance requirements while legislation is pending.

Lyft urges the Commission to postpone the Proposed Decision, work within the Legislative process to move forward, and address the need for further refinements in the context of the upcoming Phase II proceedings on a complete evidentiary record, or in the context of the joint study with the Insurance Commissioner contemplated by AB 2293.

**4. The Proposed Decision Lacks Sufficient Findings To Support The Imposition Of Sweeping And Uniquely Burdensome New Insurance Requirements On TNCs**

The Proposed Decision would impose sweeping new insurance requirements on TNCs, adding to the existing \$1 million liability requirement new requirements to obtain \$1 million in uninsured/underinsured motorist coverage, \$50,000 in comprehensive coverage, \$50,000 in collision coverage and \$5,000 in medical payments coverage. Proposed Decision, p. 20, p. 30, Ordering Para. 3. These coverages would apply across-the-board to all three “periods,” without distinction.; in contrast to the tiered approach currently being considered by the California Legislature. *Id.* The Proposed Decision offers no explanation as to how the Commission determined that the specified coverage types were “appropriate” to impose upon TNCs, though they are required neither for limousines, taxis nor individuals, or how it arrived at the specified coverage amounts. Nor does the PD include any analysis of the financial or competitive impact on TNCs or the transportation industry as a whole of the imposition of these requirements. Further, the PD lacks any findings that the mandated coverages are or will be available and are not cost-prohibitive. Lyft respectfully submits that in the absence of such findings and a complete evidentiary record upon which to base them, it would be inappropriate and unwise to proceed as proposed in the Proposed Decision, and would be particularly inappropriate where, as here, the Legislature is in the process of developing legislation on these very same issues.

**4.1 The Proposed Decision Provides No Legal Or Evidentiary Basis For Imposing Insurance Requirements On TNCs Which Exceed Those Applied To Limousines, Taxis, or Individuals**

In enacting the California Financial Responsibility Law, the Legislature determined that an individual operating a private passenger vehicle should be required to obtain coverage of \$15,000 per person, \$30,000 per accident, and \$5,000 for property damage. Vehicle Code 16056; Ins. Code

§ 11580.1(b)(1). It further determined that coverage for Collision, Comprehensive and Medical Payments is *not* required and is instead left to the discretion of the individual. *Id.* Furthermore, although Uninsured/Underinsured Motorist coverage must be made available in individual policies, an individual may choose not to obtain such coverage. Ins. Code § 11580.2(a)(2), (3).

The Legislature separately determined that Charter Party Carriers with a seating capacity of 7 passengers or fewer whose primary occupation is to engage in transportation for compensation are required to obtain a total of \$750,000 in liability coverage against injury to persons or property. Pub. Util. Code § 5391.2. *See also* General Order 115-F(1) (implementing § 5391.2). The Legislature determined that purchasing Collision, Comprehensive and Medical Payments coverage was not required. *Ibid.* Furthermore, the Legislature specifically excluded from the requirement to make available Uninsured/Underinsured Motorist Coverage “any automobile while used as a public or livery conveyance.” Ins. Code § 11580.2(b).

In Decision 13-09-045, the Commission determined that TNCs should be required to obtain a commercial liability insurance policy of at least \$1,000,000, which would be available “regardless of whether a TNC driver maintains insurance adequate to cover any portion of the claim.” D.13-09-045, at 73, OP6. The Proposed Decision now proposes to go much further by imposing sweeping new coverage requirements broader than those imposed on either individuals operating private passenger vehicles or taxis and limousines, and second only to high capacity passenger carriers<sup>19</sup> and transporters of explosives, poisonous gas or radioactive materials in coverage amounts.<sup>20</sup> Although the Proposed Decision provides extensive discussion of the various coverages it believes *should* be available, it does not explain or provide any evidentiary basis for its determination that TNCs should be singled out for limits which are higher and broader than those imposed on either individuals or professional passenger carriers. No finding has been made that TNCs present a greater risk than limousines with a similar carrying capacity. Nor does the Proposed Decision adequately explain why coverages such as Collision, Comprehensive or Medical Payments, which the Legislature has determined should be voluntary for individuals and specifically chose not to require for other charter party carriers, should be required for TNCs. With respect to Uninsured/Underinsured Motorist Coverage, the Legislature chose specifically to

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<sup>19</sup> Gen. Order 115-F (\$1,500,000 for up to 15 passengers; \$5,000,000 for 16 or more persons).

<sup>20</sup> *See* 49 C.F.R. § 171.8, 49 C.F.R. § 173.403.

exclude charter party carriers. Ins. Code § 11580.2(b). Yet, the Proposed Decision determined that such coverage should apply to TNCs, without any explanation of the apparent inconsistency with the Legislature’s prior determination. Finally, the Commission does not explain how it determined the specific coverage amounts that it seeks to require or why it believes those amounts to be “appropriate.”

The imposition of sweeping new insurance requirements without any findings of fact that such coverages are necessary or appropriate for TNCs, or any consideration of the impact of these requirements on the viability of TNCs or competition in the industry, would constitute arbitrary and capricious regulation. As the Supreme Court has explained, findings by the Commission “are essential to ‘afford a rational basis for judicial review and assist the reviewing court to ascertain the principles relied upon by the commission and to determine whether it acted arbitrarily, as well as assist parties to know why the case was lost and to prepare for rehearing or review, assist others planning activities involving similar questions, and serve to help the commission avoid careless or arbitrary action.’” *California Manufacturers Assn. v. Public Utilities Com.*, 24 Cal. 3d 251, 258 - 259 (Cal. 1979); *cf.* Pub. Util. Code § 1705 (“decision shall contain, separately stated, findings of fact and conclusions of law by the commission on all issues material to the order or decision”); *United States Steel Corp. v. Public Utilities Com.*, 29 Cal. 3d 603 (1981) (Commission must weigh competitive and economic effects of proposed requirements). The required findings are not possible on the record before the Commission today.

For that reason, the Commission should defer any action on these issues until the Legislature has had an opportunity to act. The Legislature established the minimum financial responsibility requirements for individuals and the \$750,000 limit for charter party carriers, and it is the governmental body best suited in the first instance to address the policy issue of whether such limits are sufficient for TNCs. To the extent the Legislature does not resolve the issues, they can be addressed in the upcoming Phase II proceedings or in the joint study contemplated by AB 2293, upon a complete evidentiary record.<sup>21</sup>

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<sup>21</sup> The PD’s proposal is also likely to generate significant and negative unintended consequences. Requiring TNCs to provide coverages which an individual might otherwise choose not to purchase would tend to create disincentives for TNC users to purchase such coverage on their own and even greater incentives for an individual to “create” coverage after-the-fact by opening the app. It would also result in perverse and presumably unintended incentives for prospective passengers to utilize TNCs over limousines and

#### **4.2 The Proposed Decision Imposes New Insurance Requirements Without Any Finding That Such Coverage Is Or Will Be Available**

The Proposed Decision states that the new insurance requirements will apply upon the expiration of the insurance policies in place [or] one year from the effective date of this decision, whichever is sooner.” Proposed Decision, OP 4. Depending upon the expiration of a TNC’s policy, the requirements could be effective essentially immediately. Although the Proposed Decision maintains that the new insurance requirements are necessary to promote public safety, it includes no findings that the mandated coverages are available, or are likely to be available, when the requirements go into effect. Nor does the PD make any findings that should these new coverages become available in the marketplace, that they will not be cost-prohibitive or have an anticompetitive effect on the industry. These analyses and findings are required before new regulations may be adopted; particularly where the record before the Commission indicates that such coverage is not, in fact, available.<sup>22</sup> *California Manufacturers Assn.*, 24 Cal. 3d 251; *Utility Reform Network*, 166 Cal. App. 4th 522 (2008) (Commission order must address unrebutted evidence in record); *United States Steel Corp. v. Public Utilities Com.*, 29 Cal. 3d 603 (failed to consider anticompetitive effect).

This is particularly critical here, where the uncertainty created by the Proposed Decision has sent shock waves through the insurance industry and has already had a detrimental effect on current industry initiatives to make additional insurance products available, which have slammed to a halt until this uncertainty is resolved.

#### **5. Conclusion**

The Commission’s landmark decision D.13-09-045 ushered in a new era in environmentally responsible transportation and has served as a model for other jurisdictions, allowing the industry to grow, safely and responsibly. The TNC industry has responded aggressively, working with the insurance industry, regulators and other interested parties to develop and make available new insurance products addressing the unique attributes of this new

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taxis – indeed, over virtually any other form of passenger carrier -- which are not required to offer the smorgasbord of coverages proposed for TNCs.

<sup>22</sup> April 7, 2014 Letter from Dave Jones to Michael Peevey (“CDI Letter”), at <http://www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140407.pdf> , p. 5 (delay necessary to allow coverage to be developed).

transportation model. And although Lyft shares the Commission's goal of ensuring appropriate coverage for drivers, passengers and third parties, Lyft respectfully submits that rushing to impose sweeping and uniquely burdensome new insurance requirements in the absence of evidence that such coverage is appropriate, available, and not cost-prohibitive, would actually have the opposite effect, injecting even greater uncertainty into a rapidly changing environment and effectively freezing current industry efforts to develop new products in their tracks. Lyft urges the Commission to withdraw the Proposed Decision and allow the California Legislature to address the issue of the appropriate levels of coverage in the first instance and to guide the Commission in its further efforts to refine them.

Dated: June 30, 2014

Respectfully submitted,

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