

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 12-12-0011

Comments from Personal Insurance Federation of California on Proposed Modifications to  
Decision 13-09-045

In response to Commissioner Peevey’s proposed decision modifying 13-09-05, the Personal Insurance Federation of California submits these comments.

The Personal Insurance Federation of California (PIFC) consists of seven member companies, including State Farm, Farmers, Liberty Mutual Insurance, Progressive, Allstate, Mercury and Nationwide. Combined, these companies write the majority of personal lines auto insurance in California.

PIFC writes to comment on the Commissioner’s proposed decision with respect to (1) the definition of “providing TNC services”; (2) the requirement that TNCs maintain commercial liability insurance policies; (3) the options for maintaining commercial insurance; and (4) the TNC’s duty to defend.

**1. Definition of Providing TNC Services**

PIFC strongly agrees with the Commissioner’s proposed rule to define “providing TNC services” as covering the entire period that the application (“app”) is on (Periods 1, 2 and 3). This definition is critical to ensuring that adequate insurance coverage is provided to protect the public and drivers. Without such, gaps in coverage will remain, as personal automobile policies do not cover commercial activities. Commercial coverage must come into play during this commercial period because as soon as the “app” is turned on, the behavior of the driver changes, and his or her activities become commercial in nature. In other words, the driver has indicated that he or she is open for business.

**2. The Requirement that TNCs Maintain Commercial Liability Insurance Policies**

The insurance requirements must be clearly set out with respect to all three periods. The proposed decision states that Decision 13-09-045 made clear that coverage is mandatory for

Periods 2 and 3. PIFC believes that this is not clear. Decision 13-09-045 requires coverage for “while providing TNC Services” without defining the term; thus, it has not been clear for which periods such insurance is required. Defining “providing TNC services” to include all three periods, as proposed, addresses this issue, so long as it is stated in paragraph three of the proposed decision that insurance is required for “while providing TNC services.”

The type of insurance required needs to be clearly laid out, as well. The current regulations require commercial insurance, but are silent as to whether such insurance is primary or excess; in fact, they arguably permit excess insurance, given the language stating insurance coverage shall be available to cover claims “regardless of whether a TNC driver maintains insurance adequate to cover any portion of the claim.” This language implies that the TNC commercial insurance is somehow excess to a personal policy, which could result in unintended consequences such as increases in litigation, a delay in coverage for the injured party, and increased insurance costs for consumers of personal policies. Personal lines policies should not be brought into this arena, as they are created for a specific purpose – to provide insurance coverage to drivers using their personal vehicles for every day, personal use.

PIFC recommends that the proposed decision clarify that such commercial coverage, required by the CPUC, for all three periods is “exclusive and shall assume all liability.” This language is necessary to ensure everyday consumers of personal auto policies do not wind up covering these commercial activities. PIFC recommends using the suggested language, not the term “primary” as it implies another policy is excess.

### **3. Options for Maintaining Commercial Insurance**

PIFC supports the Commissioner’s proposed regulations allowing for a combination of policies to fulfill the insurance requirements. PIFC believes providing for a combination of policies as set out in the proposed regulations supports and encourages innovation. PIFC strongly supports the adoption of the proposed language that clearly recognizes that any personal policies obtained for satisfying this requirement must be “specifically written for the purpose of covering TNC services, or portion thereof.” PIFC also strongly suggests the Commission adopt the proposed language stating that “Unless coverage for Transportation Network Company (TNC) services is separately and specifically stated in the policy and priced pursuant to approval by the California Department of Insurance, a driver’s personal automobile policy is in no way required to provide coverage or the duty to defend for TNC services.” This language addresses the concerns outlined above in heading 2.

### **4. The TNCs’ Duty to Defend**

PIFC agrees with the Commissioner’s proposed language to clearly place the duty to defend with the insurance required by the CPUC. It is necessary to clarify that the duty to defend rests with the commercial policy since case law has interpreted the duty to defend as broader than the duty

to indemnify. If it is not clarified, even if a personal auto policy has a livery exclusion, that insurer may still have a duty to defend, thus increasing litigation, creating delays in compensation, and adding costs to the system.

In conclusion, PIFC appreciates Commissioner Peevey's and the Commission's continued efforts to address these complex insurance issues. The proposed regulations appropriately recognize that TNCs services begin at "app on," and thus that the TNCs must fill in the insurance gap by maintaining adequate coverage for these commercial activities for drivers, passengers, pedestrians, and the public. PIFC encourages the Commission to keep its proposed definition of TNC services as including all three periods, beginning at "app on." PIFC also asks that the Commission include language to ensure that the required coverage applies to all three periods, and that such coverage is exclusive and assumes all liability, as well assumes the sole duty to defend.

PIFC appreciates the opportunity to contribute to these proceedings.

Dated June 30, 2014 at Sacramento, CA

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