

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

Docket R. 12-12-011

**OPENING COMMENTS OF THE  
SAN FRANCISCO CAB DRIVERS ASSOCIATION  
ON PROPOSED DECISION MODIFYING DECISION 13-09-045**

June 30<sup>th</sup>, 2014

The San Francisco Cab Drivers Association maintains our position that the proposed insurance requirements are insufficient because they provide less than full-time commercial “livery” insurance. This proposed modified decision is based on the false premise that TNC drivers do not provide “livery”, or what is considered “taxi service” by state and federal code<sup>1</sup>, during periods when they are not logged onto an app.

We have identified several time periods and reasons why TNC drivers may be making themselves available or transporting passengers for hire with the app off:

1. When picking up street hails. Although they are not permitted to do this under Decision 13-09-045, we observe them soliciting passengers daily, and on a regular basis. TNC vehicles are commonly seen staging outside nightclubs in front of taxi lines soliciting patrons as they exit. The CPUC provides zero enforcement against this and very little is provided by the city.<sup>2</sup>
2. TNC drivers can avoid sharing 20% of their fares with the TNC by charging a “flat rate” and turning off the app.

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<sup>1</sup> Title 49 US Code 13102(22)B(i), Cal. Pub. Util. Code §102022(3)

<sup>2</sup> Calif. State Auditor Report 2013-130 – June 2014 - <http://www.auditor.ca.gov/pdfs/reports/2013-130.pdf> - “CPUC: It Fails to Adequately Ensure Consumers’ Transportation Safety...” p. 40, “...Branch Is Not Prepared to Handle Additional Responsibilities...”

3. TNC drivers will turn their apps off while racing from a non-“surge” pricing zone to a “surge” pricing zone where they can collect more money, in order to avoid having to turn down calls and negatively affect their ratings.
4. TNC drivers have been known to purposely turn their apps off to artificially induce “surge” pricing (or price gouging).<sup>3</sup>
5. TNC drivers, like taxi drivers, develop a personal customer base and can save their customers and themselves money by not running the app, avoiding the 20% cut for the TNCs.
6. Uber’s app will automatically log drivers off when they miss a call.<sup>4</sup>

This proposed “app on/app off” method presents other problems of determining liability as well, because TNC drivers commonly run several apps at a time. Who would determine which TNC would be liable if an accident occurs during “Period 1”, and how would the injured party know which apps the driver was using?

We also disagree with this proposed modification to Decision 13-09-045 because it considers vehicles used for “transportation network company” services to be “personal vehicles” when they are primarily used for commercial purposes.

A “personal vehicle” is generally on the road a maximum of one or two hours per day for normal personal use, yet UberX offers its drivers special deals if they work at least 40 hours a week using their app.<sup>5</sup>

Listed number 23 under “Finding of Facts” in the CPUC Decision 13-09-045 it states:

*“The primary distinction between a TNC and other TCPs is that a TNC connects riders to drivers who drive their **personal vehicle, not a vehicle** such as a limousine **purchased primarily for a commercial purpose.**”*

*{emphasis ours}*

This is completely contrary to the “real world” application of this loosely regulated decision. Toyota now offers special deals for those who purchase vehicles with the commercial purpose providing “TNC” service using the UberX app.<sup>6</sup> Lyft now offers its “Lyft Plus” custom made luxury vehicle, complete with a brushed steel mustache

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<sup>3</sup> SFCDA Attached Exhibit A

<sup>4</sup> SFCDA Attached Exhibit B

<sup>5</sup> SFCDA Attached Exhibit C

<sup>6</sup> SFCDA Attached Exhibit D

emblem attached to the grill and LED lights under the car which light up to “make it clear your Lyft Plus has arrived”.<sup>7</sup>

New companies are emerging such as “Breeze”,<sup>8</sup> which lease and rent vehicles solely for the commercial purpose of using them to provide “TNC” service. They even match multiple drivers to vehicles with “complimentary driving schedules such as one driving on weekdays and the other preferring to drive on weekends.” Breeze’s CEO is quoted as saying “We’re the first cab company for ride-sharing.”<sup>8</sup>

On page 21 of these proposed modifications it states:

*“We reject the claim that Lyft, SideCar, and Uber/UberX do not have insurance. The Commission’s Safety & Enforcement Division, in entering into settlement agreements with these entities, made sure that each of these companies maintained liability insurance policies providing a minimum of \$1 million per incident. We note PIFC’s comments in this Rulemaking, and note that, even if a TNC driver’s personal insurance does not apply in the event of an accident, the insurance required by the Commission will apply.”*

The absurdity of this \$1 million **excess** policy, allowed when the Commission’s Safety & Enforcement Division entered into settlement agreements with these companies, lifting their cease and desist orders at the onset of this proceeding,<sup>9</sup> is that these policies relied on drivers not disclosing their commercial activities to their personal insurance companies. The Personal Insurance Federation of California (PIFC) stated in their initial comments filed on January 28, 2013, that these were private vehicles providing a livery service and that “coverage would not exist” if an accident were to occur. Nevertheless, this commission allowed an unlimited number of these vehicles to operate free from any regulation for the following eight months, turning the streets of San Francisco into the “Wild Wild West” and allowing these law defiant companies to expand exponentially at the expense of law abiding cab drivers and cab companies which provide the exact same service.

The acceptance and routine practice of insurance fraud by TNC drivers was revealed by the CEO for Breeze, in a published interview when he asked the reporter not to reveal the last names of the three TNC drivers she interviewed because it “would jeopardize their livelihood with the insurance companies”.<sup>10</sup> It has also been recently reported that an Uber spokesperson advised potential UberX drivers in South Carolina to “refrain from discussing their association with Uber with their personal insurance company.”<sup>11</sup>

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<sup>7</sup> <http://get.lyft.com/plus/>

<sup>8</sup> SFCDA Attached Exhibit E

<sup>9</sup> SFCDA Attached Exhibit F

<sup>10</sup> <http://www.sfgate.com/default/article/Drivers-for-ride-app-services-accused-of-fraud-5339357.php>

<sup>11</sup> <http://www.postandcourier.com/article/20140624/PC05/140629685> - <http://www.whosdrivingyou.org/blog/worst-advice-ever>

We recommend that TNC drivers be required to disclose to their insurance companies if they are using their vehicle at any time to provide “TNC services”. We also recommend that the TNCs be required to register the drivers license numbers of all their drivers with the CPUC and that list be made available for reference by insurance companies.

**It is important to note that we are not talking about a small number of vehicles.** The San Francisco Cab Drivers Association has created a database of license plates and photos of personal vehicles observed providing “TNC” (or taxi) services. Compared to some 1,900 authorized taxis, we have collected over 7,000 unique TNC plates since January of 2013 and over 4,300 unique plates active in the last 90 days. We have photos of over 3,500 different TNC vehicles, and this is just a sampling.

For the reasons described above, anything less than 100 percent commercial “livery” insurance, such as required of TCP operators or taxicab drivers, leaves huge insurance gaps and the likelihood of continued widespread insurance fraud.

### **Ex Parte Communications**

We agree with the Commission that all ex parte communications between “interested persons” and the Commission’s Policy and Planning Division be reported pursuant to Rule 8.4. We believe if this rule had been in place during Part 1 of this proceeding, the scheduled workshop discussion on the subject of whether “NOETS” should be regulated as taxicabs would not have been derailed 20 minutes in, by the planned presentation of an Uber representative for 40 minutes<sup>12</sup>, and that the entire workshop might have been conducted more even handedly.

Dated June 30, 2014 at San Francisco, California.

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<sup>12</sup> April 10, 2013 – CPUC Workshop Video, Morning Session