

**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 No. R.12-12-011

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

The San Francisco Cab Drivers Association (SFCDA) agrees with aspects of many of the filings by interested parties in this proceeding and quite predictably disagree with others. The Taxicab Paratransit Association of California (TPAC), the City of San Francisco and San Francisco International Airport, United Taxi Workers (UTW), Personal Insurance Federation of California (PIFC), Association of California Insurance Companies (ACIC), and others make very strong and valid points the Commission should not ignore. The Transportation Network Companies on the other hand are crying foul with misinformation and claims of protectionism by the “incumbent” taxi industry. Quite the contrary, these TNCs got their start by breaking the law and were defying cease and desist orders until *ex parte* agreements were signed behind closed doors. Thus, the CPUC consented to their continued operation without regulations, and has proceeded to tailor laws on their behalf.

Taxi Paratransit Association of California

The San Francisco Cab Drivers Association (SFCDA) fully and wholeheartedly agrees with the Taxicab Paratransit Association of California’s (TPAC’s) conclusion that the Commission has overstepped its authority by claiming jurisdiction of this on demand transportation, i.e., taxicab service, “which is largely and in almost all cases exclusively what the TNCs provide”. The Commission has been given authority by the state legislature to regulate transportation that operates

on a prearranged basis only and we agree with TPAC that the Commission has erroneously concluded that the use of a phone app constitutes prearrangement. We would like to point out that Title 49 of U.S. Federal Code §13102 describes “pre-arranged ground transportation service” as meaning “transportation for a passenger (or group of passengers) that is *arranged in advance*...”, yet TNCs do not even take advanced orders.

From Lyft’s FAQ page:

Can I schedule when I want a ride?

Since Lyft is an on-demand ride share platform, it's not possible Lyft pickup in advance.¹

We also firmly agree with TPAC and are appalled that after citing and issuing to the largest TNCs cease and desist orders in 2010 and 2012, the Commission reached closed door *ex parte* settlements with the TNCs in January 2013 and consented to their continued operation without regulation before any issues had been addressed in the proceeding.

Although these settlements occurred after this proceeding began, they were not made part of the proceeding record. For this reason and the predetermined manner in which the April 2013 workshops were conducted by the Planning Division staff, we agree that good cause exists to require retroactive reporting of *ex parte* communications for R.12-12-011.

A clear example of the Commission’s lack of understanding of TNCs can be found in Decision 14-04-022 declaring that D.13-09-045 was not a CEQA project because “Our requirements are largely ‘paper’ requirements, and they do not have any direct physical impact on the environment.” That they did not “cause a direct physical change in the environment or a reasonably foreseeable indirect change”, as would be required to be a CEQA project.

In San Francisco, the number of authorized “taxicabs” is around 1,900 and they must be either hybrid or alternative fuel vehicles. The San Francisco Cab Drivers Association has collected over 7,000 unique license plates of TNC vehicles since January of 2013 in San Francisco alone and over 4,300 observed active in the last 90 days. We have over 3,500 photos of different TNC vehicles including such heavy polluters as non-hybrid pickup trucks, SUVs, Jeeps, vans and a Hummer.

¹ <https://www.lyft.com/help/article/1515410>

Vehicles providing “on demand” passenger transportation, or “taxi service”, traditionally known as “taxicabs” are designated by the California legislature to be regulated by cities and counties, and their numbers are generally limited so as to avoid this added stress to the environment, as well as the added public safety hazard of having an unlimited number of vehicles providing this continuous on demand transportation.

The unintended effects of Decision 13-09-045 have caused extremely high levels of congestion on countless popular streets in San Francisco. We have also experienced an unprecedented number of pedestrian fatalities and accidents over the past year, to the point where the Board of Supervisors and the Police Commission have convened special hearings to address the matter.

We also agree wholeheartedly with TPAC that the CPUC Decision violates federal and state constitutional equal protection rights by affording less stringent regulatory treatment to similarly situated passenger carriers.

United Taxicab Workers

We agree with the United Taxicab Workers (UTW) that the Proposed Decision does not “provide the widest scope of coverage.” As we have also identified in our previous comments, there are many times when a TNC driver is providing commercial “livery” or taxicab service while their apps are off. Anything less than full-time commercial “livery” insurance will not be sufficient or “provide the widest scope of coverage.”

We also agree that warning TNC drivers that their personal insurance policies might not cover them is not a substitute for proper insurance. Who will warn the pedestrian crossing the street or the driver of another vehicle?

UTW is correct that TNCs should not be considered personal vehicles. They are used primarily for commercial purposes and are being bought, sold and rented primarily for commercial purposes as well.

We would like to echo UTW's contention that by failing to acknowledge and close these obvious insurance gaps, the CPUC is offering TNC drivers an open invitation to commit insurance fraud.

SFO and City of San Francisco

The SFCDA agrees with the comments of SFO and the City of San Francisco that vehicle safety inspections are a critical safety function and that the CPUC's Decision 13-09-045 which allows TNCs to conduct their own safety inspections, rather than by a third party, such as required of San Francisco taxicabs, is insufficient to ensure public safety.

We would like to add that San Francisco taxicabs are required to have a designated garage for repairs and that they are regularly maintained. Brake pads are inspected and changed as often as every two weeks and generally every four to six. We are doubtful that the majority of TNC drivers have the means, knowledge or will to provide the extra maintenance required of vehicles used for this commercial purpose. San Francisco puts such wear and tear on vehicles providing taxi service that auto companies over the years have tested their parts and vehicles on San Francisco taxicabs. The Ford Escape was first tested as a SF taxi before made publicly available.

We agree with the City and SFO that the added \$1 million primary commercial liability coverage during "Phase One" should be applicable immediately upon the effective date of the Proposed Decision, however this is insufficient as we have explained in our previous comments.

It is noteworthy that SFO and the SFMTA request that in order "to avoid any confusion regarding TNC liability" that "the CPUC modify the definition of 'Providing TNC Services' to include all times that TNC vehicles are on airport property, regardless of whether an app is on or off, or whether the TNC driver has a passenger". **Why then shouldn't this be the case wherever they are?**

On the other hand, we do not agree with SFO and the City of San Francisco that insurance companies should develop a new product specific to TNC drivers. As they state, there are already products developed and approved by the CPUC for commercial liability coverage. There is no

logical reason TNC vehicles should be considered any different than other vehicles which are primarily used for commercial purposes.

PIFC and ACIC

The Personal Insurance Federation of California (PIFC) and the Association of California Insurance Companies (ACIC) are operating under the mistaken assumption that TNC drivers by and large are only operating commercially when they have their apps on. We have already cited several examples of “periods” besides “periods 1,2 and 3”, when TNC drivers are providing commercial passenger transportation without their apps on. The insurance industry is opening themselves up for further massive insurance fraud and the costs will inevitably be covered by consumers.

We feel that if the insurance industry still wants to try and cash in on this new privileged industry that’s not required to follow the same rules as others providing the same service, it is not in the best interest of public safety or consumer protection to uproot both the existing taxi industry and traditional TCP licensed charter party carriers for this purpose.

Transportation Network Companies (Uber, Lyft, and Sidecar)

First and foremost, both Uber and Lyft claim that the proposed insurance requirements are more onerous and more costly than what a taxi company or charter party carrier would have to carry. This is patently false. TCP operators must carry \$750,000 full-time liability coverage and taxis must carry full-time commercial liability as well. San Francisco taxis are required to carry \$1,000,000 liability coverage 100% of the time, as well as workers compensation insurance. \$5,000 for medical payments for a TNC driver is a very poor substitute for legitimate workers compensation and yet another attempt of the TNCs to shirk their employer responsibilities.

We do not agree with the TNCs that the “comprehensive coverage” being proposed under the PD is excessive. A company with a multi-billion dollar valuation should have no trouble covering what thousands of traditional taxi companies have covered for generations, with minimal finances and certainly no venture capital.

In Uber's filing (page 9 bottom paragraph) they assert that no taxi or TCP has periods analogous to the TNC “periods” 1,2 and 3. Because we:

“...lack the appropriate instruments to differentiate between the periods...”²

So, we go from the difference being that they don't take street hails to the argument that we (the taxi industry) lack the ability to differentiate commercial from noncommercial activities with our taxis. Just because one stops to get groceries on their way through the city back to the cab yard does not mean they're not engaged, legally or otherwise, in commercial activity. The same theory applies with any TNC driver as the claim they all make, Sidecar more brazenly, that the drivers are not in fact cruising for fares, and that they may even be relaxing in their “high rise apartment” in the same sentence they claim that the divers may even be "logged in to more than one app”.³ This further highlights the need for full time commercial livery insurance.

In their opening comments Lyft states that “without findings of fact” the suggested coverages are not appropriate.⁴ The irony of this statement is that the public (including the CPUC) has been kept in the dark by the TNCs as to the exact data that would contribute to the finding of fact they are asking for here. We, and the CPUC, would be able to make a much better determination of fact on the TNC claims were they to release driver and trip data metrics for analysis to ALL PARTIES concerned in these proceedings.

Conclusion

By creating this special category of lightly regulated transportation service, which is no different than what already exists, you are ultimately eliminating the already existing and more strictly regulated taxicab and charter party services because who would choose to be more regulated with higher operating costs?

There is nothing “new” or “innovative” that TNCs are doing by using smartphone apps. Taxis were using them before TNCs existed but followed all existing laws. Currently over two-thirds of SF taxis use Flywheel (previously “Cabulous”) which also connects passengers directly with drivers

² Uber's Comments Page 9

³ Sidecar's Comments Page 8

⁴ Lyft's Comments Page 9

and the service is near instant. There are other apps which only connect legal taxicabs with passengers such as Hailo and Taxi Magic which have been around as long or longer than Uber. The CPUC's Decisions are rewarding those who break the law and punishing those who don't. Innovation is great, but let's all play by the same rules and have laws that are applied equally

Dated July 7, 2014 at San Francisco, California.

Respectfully submitted,

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