

**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

R.12-12-011

**REPLY COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT AND SAN  
FRANCISCO MUNICIPAL TRANSPORTATION AGENCY IN RESPONSE TO  
PROPOSED DECISION MODIFYING DECISION 13-09-045**

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These reply comments are submitted on behalf of the San Francisco International Airport ("SFO" or "Airport") and the San Francisco Municipal Transportation Agency ("SFMTA"), collectively, "the City" in response to the Proposed Decision Modifying Decision 13-09-045 ("the Proposed Decision"). As discussed in its opening comments in response to the Proposed Decision, the City strongly supports President Peevey's efforts to protect the public by crafting a clear, industry-wide insurance mandate applicable to all TNCs. Contrary to the arguments made by the TNCs in their opening comments in response to the Proposed Decision, President Peevey's proposal to close the gaps in the TNC insurance coverage by clarifying and modifying Decision 13-09-45 will not create confusion or unfairly burden TNCs. Instead, the Proposed Decision will provide much-needed certainty, protect the public, and require TNCs, rather than their passengers, drivers and members of the public, to bear the risks created by the TNCs' commercial activities.

**I. The CPUC Should Clarify Decision 13-09-045 to Specify that the TNCs' \$1 Million Commercial Liability Insurance Policies Must Cover "Period One."**

**A. Phase One Activity is Commercial in Nature.**

Several TNCs argue in their opening comments that TNCs are not providing TNC services during Phase One because there is nothing "commercial" about turning on a TNC's app.<sup>1</sup> The City disagrees. A TNC driver who has opened the TNC app is no longer engaged in a purely personal activity. Instead, the driver is advertising his or her immediate availability to provide on-demand, for-hire transportation. The TNC should provide coverage for the risks associated with this commercial activity because, as several parties have noted during this proceeding, the TNC benefits when the driver turns on its app and shows availability to provide rides to the TNC's customers.

**B. Period One Should Not be Covered at a Lower Level.**

President Peevey notes in the Proposed Decision that the TNCs' view of the term "providing TNC services" is too narrow and is inconsistent with the CPUC's original intent.<sup>2</sup> Perhaps in recognition of this fact, several TNCs argue that if they must provide coverage for Period One, they should not be required to provide the \$1 million in liability coverage that the CPUC has already mandated. SideCar suggests coverage in the amount of \$50,000/\$100,000 for

<sup>1</sup> SideCar's Comments at 4; Uber's Comments at 10.

<sup>2</sup> Proposed Decision at 5.

death or bodily injury, and \$25,000 to cover property damage.<sup>3</sup> This suggestion might be reasonable if the risk of a serious accident was significantly lower during Period One than during Periods Two and Three. However, the risk of a serious accident may well be higher during Period One.

As the TNC s have pointed out many times during this proceeding, TNC drivers often have more than one app open simultaneously. A TNC driver who is driving and scanning multiple apps, or even a single app, to secure a "match" may be more likely to be involved in an accident than a driver who has secured a match and is no longer distracted by viewing the app, or apps, while driving. The risk of serious accidents occurring during Period One is borne out by the fact that it was a TNC driver operating during Period One who killed a child and gravely injured her mother in a San Francisco crosswalk. The mother has stated that before was hit she saw the TNC driver "looking at his cellphone, his face illuminated by the screen."<sup>4</sup> The level of Period One insurance suggested by SideCar and Uber would be insufficient to cover the costs of this fatal accident. The family's attorney has stated publicly that the costs of the mother's medical treatment alone exceeded \$500,000.<sup>5</sup>

## **II. Adoption of the "App On/App Off" Standard for Determining When a TNC is "Providing TNC Services" Will Not Increase Uncertainty.**

Lyft argues that the Proposed Decision should not adopt the "app on/app off" definition of the term "providing TNC services" because that definition is based on an inherently ambiguous concept that will compound rather than eliminate the existing uncertainty.<sup>6</sup> But the "app on/app off" standard is not ambiguous, and Lyft does not seriously contend that it is. Instead, Lyft cites to a well-documented "[u]ncertainty among smartphone consumers concerning how to close an app . . . ." <sup>7</sup> Thus, Lyft's apparent concern is not that the "app on/app off" standard itself is uncertain, but that Lyft's drivers are unclear about how to turn off the app.

Lyft may understandably wish to avoid providing insurance coverage for a driver who has mistakenly left the app open and is no longer available to provide for-hire transportation.

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<sup>3</sup> SideCar's Comments at 4; See also Uber's Comments at 13.

<sup>4</sup> The Recorder, June 30, 2014, p. 13.

<sup>5</sup> See [http://www.mercurynews.com/business/ci\\_25345400/san-francisco-uber-announces-new-insurance-policy-drivers](http://www.mercurynews.com/business/ci_25345400/san-francisco-uber-announces-new-insurance-policy-drivers).

<sup>6</sup> Lyft's Comments at 4-5.

<sup>7</sup> Lyft's Comments at 4.

But this is a potential problem that Lyft can easily solve. Decision 13-09-045 required all TNCs to institute a driver training program.<sup>8</sup> In the context of that training program, Lyft could teach its drivers how to close the Lyft app when they are no longer available to provide TNC services.

Lyft also cites to uncertainty in the form of coverage disputes that might arise from a Phase One accident when the TNC driver had more than one app open at the time of the accident.<sup>9</sup> As the City and other parties to this proceeding have previously noted, when multiple apps are open, the TNCs share the benefit of the drivers' commercial activity and should share the burden of that activity. If a TNC prefers not to be subjected to the uncertainty of a possible coverage dispute, it can bar its drivers from driving for other TNCs, or from operating with more than one app open at a time. Such a rule will have the added benefit of protecting the public from the risk of distracted driving by TNC drivers operating their vehicles while simultaneously scanning multiple apps in search of fares.

Lyft also argues that the "app on/app off" definition of providing TNC services could create confusion because drivers might turn on the app with no intention of providing TNC services simply to take advantage of the insurance coverage provided by the TNC. Again, a TNC benefits when its driver has the app open but has not yet accepted a fare. And as the City has previously argued in this proceeding, a TNC controls and monitors its driver's use of the app. If necessary, a TNC may institute rules that both require its drivers to close the app when they no longer intend to accept fares, and provide the drivers with an incentive to do so.

### **III. The Proposed Decision's Commercial Liability Insurance Requirements Do Not Unfairly Burden TNCs.**

Although Uber "accepts" the CPUC's requirement that it maintain \$1 million in commercial liability insurance during Periods Two and Three, it contends that if the CPUC were to clarify Decision 13-09-045 to mandate such coverage during Period One, the CPUC would be unfairly "requiring TNCs to carry commercial liability insurance that exceeds the requirements for TCPs and taxis in nearly every City in California."<sup>10</sup> Likewise, Lyft argues that the Proposed Decision would "single out" TNCs by imposing insurance limits that are higher and broader than

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<sup>8</sup> Decision 13-09-045 at 27.

<sup>9</sup> Lyft's Comments at 5; SideCar's Comments at 8-9.

<sup>10</sup> Uber's Comments at 4.

those imposed on other for-hire transportation providers.<sup>11</sup> The City disagrees. The requirement that TNCs carry \$ 1 million in commercial liability coverage is consistent with insurance requirements imposed on similarly-situated commercial transportation providers.

TNCs provide on-demand, for-hire transportation service -- the same service provided by taxicabs. The CPUC recognized this fact and required, in Decision 13-09-045, that TNCs carry the same level of insurance coverage that the SFMTA requires taxicabs to carry -- \$ 1 million in commercial liability coverage.<sup>12</sup> As several parties to this proceeding have argued, taxicabs must provide this coverage at all times and under all circumstances. The Proposed Decision would not require such round-the-clock coverage of TNCs. Instead, the \$1 million in commercial liability insurance coverage would be mandatory only when the TNC driver is providing TNC services. Such a requirement is neither unfair nor burdensome.<sup>13</sup>

#### **IV. The CPUC Should Not Delay Modifying and Clarifying Its TNC Insurance Requirements to Protect the Public.**

State law mandates that the CPUC, in granting a charter-party carrier permit, require the carrier to procure insurance that is adequate to cover its potential liability for death, bodily injury, and destruction of property. State law has not prescribed the level of coverage that is adequate, but has left that determination to the discretion of the CPUC. Despite the Legislature's clear directive that the CPUC to establish insurance requirements for charter-party carriers, Lyft urges the CPUC to delay adoption of the Proposed Decision and await possible Legislative action.<sup>14</sup> The City contends that such delay is inconsistent with the CPUC's duty to protect the public.<sup>15</sup>

Assembly Bill 2293, which is currently pending in the Assembly would, among other things, specify the level of commercial liability insurance coverage that TNCs must provide, and

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<sup>11</sup> Lyft's Comments at 8.

<sup>12</sup> Decision 13-09-045 at 26.

<sup>13</sup> Although TCPs are currently required by CPUC General Order 115-F to provide only \$750,000 in commercial liability coverage, the CPUC has ordered a Phase Two of this rulemaking proceeding to address TCP safety requirements and ensure that they are up-to-date. The CPUC may well decide during Phase Two to increase the TCP insurance requirement to \$1 million, consistent with the requirement applicable to TNCs.

<sup>14</sup> Lyft's Comments at 6-7.

<sup>15</sup> Lyft also argues that the CPUC should delay its adoption of the Proposed Decision until the CPUC develops a complete evidentiary record. (Lyft's Comments at 7.) This argument is inconsistent with Lyft's position, taken some 17 months ago, that the CPUC need not develop an evidentiary record through the conduct of discovery in this proceeding. (Zimride's Prehearing Conference Statement, filed February 13, 2013, at 2.)

