

**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

**OPENING COMMENTS OF
SIDECAR TECHNOLOGIES, INC. AND SIDE.CR, LLC ON THE
PROPOSED DECISION OF COMMISSIONER PEEVEY
MODIFYING DECISION 13-09-045**

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June 30, 2014

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In accordance with Rule 14.3 of the Rules of Practice and Procedure (the “Rules”) of the California Public Utilities Commission (the “Commission”), Sidecar Technologies, Inc. and its wholly owned subsidiary Side.cr, LLC (hereinafter referred to as “Sidecar”) hereby submit opening comments on the Proposed Decision of Commissioner Michael R. Peevey, “Decision Modifying Decision 13-09-045” (the “Proposed Decision” or “PD”), which was mailed to the parties for comment on June 10, 2014 in the above-captioned proceeding. Sidecar’s opening comments are timely filed.

I. INTRODUCTION AND SUMMARY OF COMMENTS

On September 23, 2013, the Commission took a commendable step towards reforming and modernizing the provision of transportation services in the state by adopting Decision (“D.”) 13-0-045 (the “TNC Decision”). The TNC Decision was not, in Sidecar’s view, a perfect regulatory “solution” to address the groundswell of demand for safe, reliable and affordable ridesharing. However, Sidecar regarded it as a reasonable – and mostly well-reasoned

– set of initial operating and safety regulations for an emerging and evolving industry born of the growing sharing economy.

Unfortunately, the Proposed Decision does not exhibit the same practical thinking demonstrated in D.13-09-045. As proposed, the modified TNC insurance requirements bear no rational relationship to the insured activities, demand more types and amounts of coverage by TNCs than is required of any other regulated (Commission or otherwise) California transportation service provider, and unjustifiably depart from the existing rules.¹ The effect of the Proposed Decision’s changes would be to impose unnecessary high costs that would discourage TNCs from enlisting community drivers to share their personal vehicles in order to achieve true ridesharing and the environmental benefits that follow. Further, the high costs of the overly broad insurance requirements that are proposed may also price out new entrants and smaller TNC players at the consumer’s expense.

Sidecar appreciates that the Commission has undertaken an ongoing commitment to ensure that its rules minimize risks of physical and financial injury to passengers, drivers and third parties. Sidecar submits that certain modifications to D.13-09-045 would support the Commission’s efforts to accomplish this goal, but that the Proposed Decision greatly miscalculates what is actually needed to achieve it. These comments address the critical inefficiencies and respectfully urge the Commission to consider and adopt Sidecar’s modified proposal.

¹ Sidecar has maintained a \$1 million insurance policy – coverage that meets the requirements of D.13-09-045 – since December 14, 2012. Sidecar secured this level of coverage voluntarily and well over a year before the issuance of Sidecar’s TNC permit on April 17, 2014.

II. THE PROPOSED INSURANCE REQUIREMENTS ARE UNJUSTIFIED AND UNREASONABLE.

A. Insurance Coverage Requirements Should Be Tailored to TNC Activities.

In apparent response to comments on the Assigned Commissioner’s Ruling dated March 25, 2014 (the “ACR”), the Proposed Decision adopts a version of the multi-period activity framework in order to clarify which TNC activities must be covered by TNC insurance. However, by imposing a one-size-fits-all package of insurance coverage requirements activated from “app-on” to “app-off,” the PD fails to discern levels of risk between TNC activities in Period One (“app-open – waiting for match”) versus Period Two (“match accepted – but passenger not yet picked up”) and Period 3 (“passenger in car - until passenger safely exits car”).²

The Proposed Decision would require the TNCs to secure and maintain \$1 million commercial liability insurance from “app-on” to “app-off.” The PD offers very little justification for requiring that Period One be covered but represents the change as a mere clarification of D.13-09-045.³ Although the comments of the Personal Insurance Federation of California (“PIFC”) suggest that personal insurance providers will not cover Period One claims because “these activities are commercial in nature,”⁴ Sidecar understands that recent experience does not confirm this claim.⁵ Instead, without an actual or prospective passenger, the “public or livery conveyance” exclusion in most personal policies would not operate to foreclose otherwise valid

² Nor are all California legislators in agreement with a “one-size fits all” approach to TNC insurance coverage limits for the three Periods. On June 25, 2014, the California State Senate Committee on Insurance heard public testimony on Assembly Bill (“AB”) 2293 (Bonilla). Sidecar understands that after input from the public and stakeholders, committee amendments were accepted by the author to set TNC commercial coverage for Period One at a lower level than for Periods Two and Three, in recognition of the lower risk represented during Period One because no rider is in the personal vehicle.

³ PD, p. 28 (Ordering Paragraph 2).

⁴ PIFC Comments on the ACR, pp. 1-2.

⁵ Uber Technologies, Inc. (“Uber”) Comments on the ACR, p. 7.

claims. This makes sense; there is nothing fundamentally “commercial” about, for example, a Sidecar driver turning on the Sidecar app to ride-share while commuting to work, heading out to run errands, or driving to the gym. Accordingly, Sidecar recommends that the Commission decline to modify the commercial liability insurance coverage policies approved in D.13-09-045 by imposing new Period One requirements.

Alternatively, if the Commission is not persuaded that existing personal and commercial coverages provide complementary and comprehensive coverage – as Sidecar believes they do – the Commission should still decline to impose a \$1 million commercial liability insurance coverage requirement for Period One on TNCs. Sidecar strongly disagrees that this overly high level of coverage for Period One is justified. Instead, Sidecar proposes coverage in the amounts of \$50,000 per individual bodily injury claim, \$100,000 per incident, and property damage up to \$25,000. This level of coverage for Period One is better tailored to the insured activity, particularly because, unlike taxis that cruise the streets searching for customers via street hails, Sidecar’s drivers typically wait for a ride match in a stationary location or as the driver goes about his or her normal activities, such as commuting or shopping. As Sidecar explained in its Opening and Reply Comments on the ACR, the resulting risk for accidents is greatly reduced during “Period One,” and the lower insurance requirements are justified.⁶

Regardless of whether the Commission chooses to adopt new insurance requirements for Period One, the Commission should not prematurely conclude that personal auto coverage does not and will not apply to Period One claims. Accordingly, Sidecar recommends the PD be

⁶ If the Commission imposes a requirement that TNCs procure commercial liability policies applicable to Period One, Ordering Paragraph 4 should be revised to clarify that the grace period to secure such coverage applies, as indicated in Appendix A.

revised to eliminate Ordering Paragraph 7 entirely, which provides that “a driver’s personal automobile policy is in no way required to provide coverage”⁷

B. The Definition of “Providing TNC Services” Should Exclude Period One.

Consistent with Sidecar’s recommendation to eliminate or modify mandatory insurance coverage requirements for Period One detailed above, the definition of “providing TNC services” should expressly exclude Period One. Not only does adopting an “app-on, app-off” definition not make sense in the context of matching insurance coverage to risk levels during each Period, but the PD’s proposed definition would create internal inconsistencies as to other aspects of D.13-09-045. As Sidecar observed in its Reply Comments on the ACR, D.13-09-045 specifies that trade dress must be displayed while “providing TNC services.” However, it seems unintended that the rules should require a driver to have to affix trade dress immediately upon turning on a TNC app – even if that driver is waiting for a ride match in her high rise apartment building, dentist’s office or grocery store and not in her vehicle. Noncompliance with some aspects of the TNC Decision might be excused by the Commission in practice. However, Sidecar believes that every reasonable effort should be made to avoid creating such inconsistencies in the first place. Therefore, Period One should be excluded from the definition of “providing TNC services,”⁸ or the original TNC decision should be amended to redefine other requirements that properly impact only Periods Two and Three.

⁷ PD, p. 29 (Ordering Paragraph 7).

⁸ Additionally, while the text of the PD defines the phrase “providing TNC services,” Conclusion of Law 1 and Ordering Paragraph 1 purport to define the term “TNC services” or “Transportation Network Company (TNC) services.” This ambiguity should be resolved consistent with Sidecar’s recommendations herein.

C. The Proposed Decision Fails to Justify Requiring Additional Categories of Insurance Coverage.

In addition to proposing to adopt modifications to TNC commercial liability coverage, the Proposed Decision would require the TNCs to maintain the following policies: (1) comprehensive and collision coverage in the amount of \$50,000; (2) uninsured/underinsured motorist coverage in the amount of \$1 million per incident; and (3) medical payment coverage in the amount of \$5,000. None of these types of policies are required of any other regulated transportation service in California. The Proposed Decision suggests no justification in the PD for requiring TNCs to carry such unparalleled coverage. The unreasonableness of the coverage requirements is exacerbated by the PD's mandate to carry such coverage from "app-on" to "app-off."

1. Comprehensive and collision automobile coverage.

That the Proposed Decision seeks to require TNCs to "provide the widest scope of coverage to protect drivers, passengers, other drivers, and pedestrians" is clear.⁹ What is unclear from the PD is whether any deliberation regarding the appropriateness of such unprecedented coverage requirements took place; the PD simply restates the definitions for these types of coverages before summarily concluding that "it is appropriate for TNCs to provide comprehensive and collision automobile coverage in the amount of \$50,000."¹⁰ While Sidecar has exercised its competitive business judgment to secure collision insurance as part of its ongoing effort to build a community of trust and safety in peer-to-peer transportation,¹¹ Sidecar objects to the imposition of comprehensive and collision minimum coverage limits as mandatory requirements. In no other context do regulatory bodies require physical automobile damage

⁹ PD, p. 11.

¹⁰ PD, pp. 18-19.

¹¹ Sidecar currently maintains collision insurance coverage in the amount of \$50,000 to cover damage to a Sidecar driver's car while on an active ride.

coverage. Imposing such burdensome requirements on ridesharing companies is a severe departure from the norm without any proper and necessary justification.

The absence of substantive analysis to justify the proposed new rules is particularly concerning to Sidecar in the context of comprehensive coverage. As the PD observed, comprehensive coverage is designed to cover damage to one's vehicle by causes "other than collision," including theft, fire, flood and vandalism. That parties are even discussing whether the Commission should require a TNC company to cover the theft of someone's laptop from a personal vehicle makes it clear how far the PD has strayed from the Commission's proper role of providing a minimum "safety net" to protect the public.

2. Uninsured and underinsured motorist coverage.

Uninsured and underinsured motorist coverage generally covers injuries and property damage when a driver is in an incident with another driver who is uninsured. The Proposed Decision would require TNCs to secure coverage in the amount of \$1 million per-incident. The PD reasons that the requirement is justified because "[w]e do not believe that the potential absence of coverage [under scenarios involving collisions with uninsured or underinsured motorists] is consistent with California public policy."¹² However, the PD ignores that that same person, when driving for personal purposes,¹³ as a Commission-regulated TCP,¹⁴ or as a taxicab,¹⁵ is not required to have such insurance protection. If the Commission desires to create a level playing field for transportation service providers, Sidecar recommends the PD be revised to remove the uninsured/underinsured motorist coverage requirement.

¹² PD, p. 17.

¹³ Ins. Code, § 11580.1(b); Veh. Code, § 16056.

¹⁴ General Order 115 (charter-party carriers of passengers with seating capacity of 7 or less); see also <http://www.cpuc.ca.gov/PUC/transportation/FAQs/psgfaqs.htm> (TCP Q&A).

¹⁵ See, e.g., Veh. Code, § 16500.

3. Medical payments coverage.

Medical payments coverage is not required by the State of California for personal insurance and is required of no other livery or for-hire platform in the state. As with its cursory discussion of comprehensive and collision coverage, the PD simply says what medical payments insurance does, and concludes, without any justification, that TNCs should provide it. The PD does not, however, address the fact that medical payments coverage is duplicative of existing policies, in that a driver's medical bills would typically be paid by the driver's health insurance policy and a passenger's damages for bodily harm would be paid by the TNC-acquired liability coverage. Therefore, the medical payments coverage required by the PD is an additional, unnecessary TNC expense that offers no enhanced public safety benefit.

D. Making TNC Insurance Coverage Primary Would Increase Confusion as to Insurance Coverage Determinations and the Likelihood of Litigation.

The Proposed Decision would mandate that all types of required TNC insurance policies be primary because of the “probability that subscribing TNC passengers will be riding with TNC drivers that carry personal automobile insurance coverage that is inapplicable.”¹⁶ Proponents of this change have suggested that this change will simplify the evaluation and payment of insurance coverage claims.¹⁷ In reality, insurance coverage determinations and claims investigations are a fact-intensive inquiry under just about any circumstance – not only when a TNC app is involved. Contrary to having a streamlining effect, Sidecar believes that the PD would create more uncertainty regarding applicable coverage. For example, the PD fails to address the common scenario where a potential TNC driver is logged into more than one TNC app during the time prior to accepting a ride match. It is unclear which of two primary commercial liability insurers would be obligated to pay a claim associated with an accident that

¹⁶ PD, p. 14.

¹⁷ PIFC Comments on the ACR, p. 2.

occurred during that time. Sidecar believes the likelihood of litigation under such circumstances will rise, generating significant costs and inefficiencies. Additionally, the PD ignores that the exposure in Period One is rightly covered by the personal insurer. As noted in Section II.A above, concerns of a “regulatory coverage gap” are proving unfounded.

III. THE COST OF THE PD’S INSURANCE REQUIREMENTS WILL PLACE UNFAIR BURDENS ON SMALL TNCs AND REDUCE COMPETITION IN THE TNC MARKETPLACE.

Based on active discussions with insurance brokers, Sidecar estimates that its insurance-related expenses will more than triple if the Proposed Decision is adopted in its current form. Assuming such coverages are even available to Sidecar and other TNCs in the next six to nine months, the inflated cost associated with the PD’s proposed requirements would be devastating to smaller TNC players in particular, and to competition in the TNC marketplace overall. Sidecar is continuously innovating to produce a more enjoyable and tailored experience for its users, but is concerned that the PD’s unreasonable insurance requirements would siphon away resources better devoted to improving the consumer experience – an experience that rightly prioritizes public safety.

The Commission’s stated goal in this rulemaking proceeding was “to strike the proper balance between safety and innovation, so that regulation provides a safety net that the public can rely on for its protection while new businesses innovate and use technology to better the lives of Californians.”¹⁸ The PD goes well beyond this regulatory “safety net” to impose costs not borne by other classes of transportation providers at the expense of improved services generated by healthy competition. Ultimately, it is consumers that would suffer for the lack of a robust marketplace for transportation services if the magnitude of the regulatory burden overwhelmingly supports the status quo over invention.

¹⁸ D.13-09-045, p. 62.

IV. AIRPORT REGULATIONS SHOULD NOT BE MEMORIALIZED IN A COMMISSION DECISION.

The Proposed Decision's Footnote 1 contains the following statement regarding TNC operations on airport property:

As we stated in D.13-09-045, the TNCs must follow any and all airport regulations the TNCs must keep the app on for any airport that has a requirement that the app stay on after the passenger has been dropped off and can be turned off no sooner than when the TNC driver has left airport property. Additionally, it should be noted that with respect to the three periods listed above, TNC service would still continue in all situations after a passenger has exited a car provided that the driver's app is still open.

Sidecar has two concerns with the above quoted dicta. First, D.13-09-045 does not make any statement about "keep[ing] the app on for any airport" that has such a requirement. This erroneous reference should be corrected by deleting the entire text of the first quoted sentence after the phrase "the TNCs must follow any and all airport regulations"

Second, Sidecar appreciates that the Commission's Safety and Enforcement Division works closely with law enforcement and other agencies, including airport authorities, to ensure that only safe, legal and properly inspected carriers transport passengers in California. Notwithstanding the public safety benefits of that close coordination, Sidecar objects to including an unidentified airport's regulations in the text of a Commission decision. The Commission does not directly enforce airport rules and such regulations are changeable at the sole discretion of the particular airport authority. The references to specific airport regulations made in Footnote 1 should be eliminated from the PD.

V. CONCLUSION

Up to now, the Commission has shown genuine vision in promulgating rational and balanced safety and regulatory requirements as part of the nation's inaugural statewide TNC regulatory regime. In Sidecar's view, D.13-09-045 reflects a concerted effort on the part of the

Commission to curtail the stifling effects of overregulation while advancing and modernizing innovative transportation access and environmentally-friendly ridesharing in the state. The Proposed Decision is a blunt departure from the Commission’s prior careful, but forward-thinking, approach. The Proposed Decision does not properly weigh proposed requirements against comparable requirements imposed on other transportation providers, nor does it tailor the required insurance to the risks presented in each Period. Sidecar fears that this type of unstudied and reactive regulation will ultimately harm consumers, by unfairly impacting smaller TNC players that focus on true ride-sharing, and thus narrowing consumer choice and eliminating viable modes of transportation access – without producing a measureable increase in public safety. For these reasons and those expressed above, Sidecar respectfully urges the Commission to adopt a revised decision that incorporates the recommendations contained in these opening comments.

Respectfully submitted,

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