

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

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In accordance with Rule 14.3(d) 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 the following Reply Comments on the Proposed Decision of Commissioner Michael R. Peevey Modifying Decision 13-09-045 (the “Proposed Decision” or “PD”).

Sidecar supports the Commission’s ongoing efforts to ensure that the regulations it adopted in D.13-09-045 operate appropriately in an evolving transportation services marketplace. In this Reply, Sidecar addresses the efforts of certain parties to persuade the Commission to exercise its jurisdiction to place unreasonable, competition-killing requirements on TNCs providing safe, reliable and affordable ridesharing.

I. TNC INSURANCE COVERAGE SHOULD COVER COMMERCIAL ACTIVITIES.

TPAC and other parties advocating on behalf of taxicab interests¹ urge the Commission to require that TNC insurance coverage be in effect “at all times,” rather than

¹ Taxicab, Paratransit Association of California (“TPAC”) Opening Comments on the PD, p. 13; *see also* United Taxicab Workers (“UTW”) Comments on the PD, pp. 4-5.

“whenever the TNC driver has the application (app) open,” as proposed by the PD² or from “ride-match” to the time “the passenger exits the vehicle,” as generally advocated by Sidecar, Lyft, Uber and Summons.³ These and other parties also insist that TNC coverage be “primary” and “exclusive” of any personal automobile insurance carried by the driver.⁴ Sidecar opposes these recommendations, as they ignore a fundamental distinction between taxicabs and TNCs – that TNC drivers use their personal vehicles to give rides to passengers matched via a TNC app.

As Sidecar explained in its Opening Comments, having a TNC app open and running on a mobile device is not by itself a manifestly commercial activity. This is also true of simply having a TNC app downloaded to a person’s smartphone. Accordingly, there is no inappropriate cost-shifting from “those providing commercial transportation to personal liability and health insurance policy holders and to the public at large . . .”⁵ when a personal insurer covers a claim for an accident occurring in the absence of any commercial activity. It is unreasonable to require TNC insurance to operate in a manner that ignores the nature of the TNC model.

A mandate for TNC coverage to be in effect “at all times” would result in TNCs covering the use of personal vehicles for personal activities for drivers that – as is often the case for Sidecar users – only occasionally use a TNC app to share the cost (e.g. gas, parking, tolls) of driving to a common destination. Moreover, such a requirement would fail to serve the public good because it would insure periods of time when no transportation-related activity is occurring and create exorbitant costs that would reduce TNC competition and consumer-choice.

² PD, p. 27 (Conclusion of Law 1).

³ Sidecar Opening Comments on the PD, p. 5; Lyft, Inc. (“Lyft”) Opening Comments on the PD, pp. 4-6; Uber Technologies, Inc. (“Uber”) Opening Comments on the PD, pp. 9-11; Summon Opening Comments on the PD, pp. 2-3.

⁴ TPAC Opening Comments on the PD, pp. 12-13; *see also* Personal Insurance Federation of California (“PIFC”) Comments on the PD, p. 2.

⁵ UTW Comments on the PD, p. 5.

Similarly, making TNC insurance “primary” and “exclusive” of any other insurance policy is unjustified. D.13-09-045 recognized that vehicles were being used by TNC drivers for both personal and commercial purposes, and established an arrangement whereby personal and commercial insurers covered their respective obligations. Making TNC commercial coverage primary and exclusive overturns this careful balance at the sole expense of the TNCs.

Instead, the Commission should narrowly tailor insurance requirements to meet the evidence-based needs of TNC drivers and passengers, as well as third parties.⁶ In Sidecar’s view, those needs are met by the coverage described in Appendix A to its Opening Comments.

II. TNCs SHOULD HAVE THE FLEXIBILITY TO OBTAIN COVERAGE THROUGH A COMBINATION OF PRODUCTS AND POLICIES.

SFO and SFMTA recommend the Proposed Decision be revised to prohibit TNCs from satisfying the insurance requirements by a combination of a TNC-maintained policy and a policy maintained by a TNC driver, as set forth in Ordering Paragraph 5 of the PD. Instead, they advocate that the Commission “place the full responsibility for insurance on TNCs”⁷ by eliminating – at least until the issue is discussed in this proceeding’s Phase II – the option of TNC driver-maintained insurance. The justification offered for this position is that “the insurance industry has not yet developed automobile insurance policies for TNC drivers that would cover for-hire transportation” – and yet, SFO and SFMTA support the imposition of insurance requirements for a range of other types of policies also not commercially available.⁸

Sidecar urges the Commission to reject this request and to retain the flexibility afforded by the PD for allowing a combination of policies to fulfill insurance requirements.⁹

⁶ Current law (Insurance Code section 11580.24) already authorizes a harmonization of insurance coverage requirements to address different exposures arising from the use of one vehicle in the “personal vehicle sharing” context.

⁷ SFO and SFMTA Comments, pp. 2-3.

⁸ *Id.* at 3.

⁹ This approach is currently reflected in Assembly Bill (“AB”) 2293, pending before the State Legislature.

III. IF ANY NEW TNC INSURANCE COVERAGE IS REQUIRED, THE TNCS MUST BE AFFORDED A REASONABLE PRE-COMPLIANCE PERIOD TO TRY TO SECURE SUCH COVERAGE.

TPAC urges the Commission to mandate that any new insurance requirements be procured by TNCs immediately,¹⁰ while SFO and SFMPA interprets the Proposed Decision's purported "clarification" of TNC commercial liability insurance coverage requirements as requiring such coverage be in place on the effective date of a finally-adopted Decision.¹¹ Sidecar urges the Commission to reject such conditions, which are intended only to disrupt TNCs operations while the insurance industry works to craft new insurance products for the TNC market that are not currently available.

Instead, the Commission should clarify that if D.13-09-045 is modified to impose any new TNC insurance requirements, all such requirements, including commercial liability insurance coverage for Period One, are subject to the pre-compliance period set forth in Ordering Paragraph 4 of the PD. Sidecar submits that this pre-compliance period would be the minimally-adequate time needed to procure such coverage, if such policies are made available at all.

IV. THE COMMISSION SHOULD DECLINE TO ADOPT RULES ADDRESSING CIRCUMSTANCES BEYOND THE COMMISSION'S RESPONSIBILITY.

Two parties request the Commission modify D.13-09-045 to address their special circumstances. SFO and SFMTA request the Commission redefine "TNC services" to include airport-specific rules governing TNC operations on airport property.¹² The ACIC wants the Commission to adopt specific language that would direct a TNC or its insurance company to cooperate in any claims investigations involving a driver using a TNC app.¹³

¹⁰ TPAC Opening Comments, p. 12, Appendix A p. 2.

¹¹ SFO and SFMTA Comments, pp. 1-2.

¹² SFO and SFMTA Comments, p. 1.

¹³ ACIC Comments, p. 6.

Sidecar submits that the Commission should decline to adopt rules trying to resolve special circumstances beyond the Commission’s expertise or responsibility that are more appropriately addressed in other venues. To the extent of their authority, the airports can craft rules applicable to TNC operations on airport property, and the manner in which a TNC or its insurer might approach a particular insurance claim investigation is truly not the Commission’s concern. These recommendations should be rejected.

V. CONCLUSION

Sidecar’s focus on true ridesharing is evidenced by the need for our riders to input their destination so they can be matched to drivers “going their way.” Further commercializing this innovative transportation service by imposing excessively burdensome insurance requirements is unjustified and would harm consumers. For the reasons set forth above and in its Opening Comments, Sidecar respectfully urges the Commission to revise the Proposed Decision in accordance with Appendix A to Sidecar’s Opening Comments, thereby sustaining transportation access and environmentally-friendly ridesharing in the state.

Respectfully submitted,

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