

**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

(Filed December 20, 2012)

**TAXICAB PARATRANSIT ASSOCIATION OF CALIFORNIA'S
OPENING COMMENTS ON PROPOSED DECISION
MODIFYING D.13-09-045**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Taxicab Paratransit Association of California (“TPAC”) respectfully submits its opening comments on the Proposed Decision (the “PD”) Modifying Decision (“D.”) 13-09-045 of Assigned Commissioner Michael R. Peevey, which was mailed on June 10, 2014. The PD addresses the issue of insurance, pursuant to the Commission’s April 11, 2014 grant of rehearing in D.14-04-022 and following the Assigned Commissioner’s Ruling (“ACR”) of March 25, 2014, which requested comments on proposed modifications to D.13-09-045 concerning insurance. A subsequent ACR, filed on May 12, 2014, stated that the Commission would defer ruling on the other issues as to which rehearing was granted in D.13-09-045. The PD also addresses the question raised in the March 25, 2014 ACR of whether or not *ex parte* communications in this proceeding should be subject to reporting under Rule 8.4. TPAC agrees that *ex parte* communications should be reported in this proceeding. In addition, TPAC believes that good cause exists to require retroactive reporting of *ex parte* communications in R.12-12-011. This rulemaking arises out of multiple enforcement actions – matters that are fundamentally adjudicatory in nature. The Commission’s Rules of Practice and Procedure prohibit *ex parte* communications in all adjudicatory proceedings.¹ Moreover, the so-called Transportation Network Companies (“TNCs”) apparently continue to dispute the Commission’s enforcement actions.² Therefore, retroactive *ex parte* reporting would provide much-needed transparency in the public interest and for the public’s safety. The Commission should require *ex parte* reporting in R.12-12-011, retroactive to commencement of the proceeding, and should include the reporting of interested party communications with representatives of the Commission’s Policy and Planning Division, who may have acted, inadvertently or otherwise, as a conduit between TNCs and decisionmakers or as an influential advocate for TNC positions.

As to proposed changes to insurance aspects of D.13-09-045 as set forth in the PD, TPAC agrees that so-called TNCs, including Uber Technologies, Inc. and its subsidiaries and

¹ Rule 8.3(b).

² See Attachment A to TPAC’s concurrently-filed Request for Official Notice (Auditor’s report), p. 27 at fn. 6, available at <https://www.auditor.ca.gov/pdfs/reports/2013-130.pdf>.

affiliates (“Uber”), should be required to maintain adequate primary commercial liability insurance policies, commensurate with the requirements for similarly-situated passenger carriers, such as taxicab services and other charter party carriers. However, TPAC does not agree that commercial insurance coverage for TNCs should be dependent upon whether or not a TNC driver has a TNC application (“app”) open. TNC coverage, which under the PD would allow less financial responsibility protection for the public, including pedestrians, passengers, drivers and property owners involved in an accident with a TNC driver when the app is “off” or “closed,” should be consistent with the insurance requirements that already exist for similarly-situated passenger carriers. In this proceeding, the Commission should be preserving and protecting safety and financial responsibility requirements, not reducing them.

More importantly, the Commission has no jurisdiction to regulate on-demand transportation, *i.e.*, taxicab service, which is largely and in almost all cases exclusively what the TNCs provide. That authority is specifically reserved by the Legislature to local governments,³ while the Commission is expressly denied jurisdiction over anything but “prearranged” transportation by Public Utilities Code section 5353, subdivision (g). Yet, in D.13-09-045, as modified by D.14-04-022, the Commission arrogated to itself statewide regulatory authority over the TNCs’ largely on-demand, non-prearranged operations. It did so in the face of Uber, Sidecar, and Lyft consistently taking the public position that a potential customer cannot “prearrange” transportation service with them and that they only provide “on demand” services. In other words, the Commission’s decisions in this case, including the PD, seek to regulate outside the field granted to the Commission by the Legislature and inside a field expressly denied to the Commission by the Legislature. TPAC continues to believe, as stated in its April 7, 2014 Comments and in its April 21, 2014 Reply Comments on the March 25, 2014 ACR, that the Commission’s modification of D.13-09-045 and the grant of rehearing in D.14-04-022 on a handful of narrow issues does not cure the significant legal defects that TPAC raised in its application for rehearing of D.13-09-045.

³ Gov. Code § 53075.5; Pub. Util. Code § 5353, subd. (g); *Cotta v. City and County of San Francisco* (2007) 157 Cal.App.4th 1550, 1560; *People ex rel. Freitas v. City and County of San Francisco* (1979) 92 Cal.App.3d 913, 924, *citing In re Martinez* (1943) 22 Cal.2d 259, *overruled on other grounds by People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 641-642.

Those legal errors are now the subject of petitions for writ of review by TPAC to the Supreme Court (Case No. S218427) and the Court of Appeal, Third Appellate District (Case No. C076432).

In its petition for a writ of review in the Supreme Court, TPAC asserts that the Commission's decisions failed to comply with the California Environmental Quality Act ("CEQA"). In its petition for a writ of review in the Court of Appeal, TPAC asserts that the Commission's decisions (1) were not supported by its findings, (2) exceeded the Commission's jurisdiction and intruded on local authorities' jurisdiction over taxicab services in direct contravention of statutory requirements and decades of Commission and court decisional law, and (3) violated TPAC members' federal and state constitutional equal protection rights by affording less strict regulatory treatment to similarly situated passenger carriers. TPAC provided courtesy copies of its petitions for writ of review to the parties to R.12-12-011 on May 9, 2014.

TPAC urges the Commission to use its broad authority under section 1708 of the Public Utilities Code to vacate or modify D.13-09-045 and D.14-04-022 to correct these legal errors. In the alternative, TPAC respectfully submits that until the petitions for writ of review of D.13-09-045 and D.14-04-022 are resolved by the courts, the Commission should make no further modifications to D.13-09-045, unless – in the interest of public safety and commensurate with requirements for similarly situated passenger carriers – the Commission modifies D.13-09-045 to require full-time, primary commercial insurance coverage for TNC operations. Without waiving any of its objections to the Commission's decisions in this proceeding, TPAC submits its proposed changes to the PD set forth in the attached Appendix. Additional evidence – much of it previously unavailable – that may assist the Commission in making its public interest determinations in this proceeding is presented in TPAC's accompanying Request for Official Notice.

II. INDUSTRY DEREGULATION IS A MATTER FOR THE LEGISLATURE'S CAREFUL CONSIDERATION, NOT A COMMISSION RULEMAKING

The Commission, in D.13-09-045 and D.14-04-022, erroneously determined that mere use of a smartphone app to connect a driver and a passenger will always fulfill the

prearrangement requirements of the Passenger Charter Party Carriers Act.⁴ The Commission made this determination notwithstanding the exclusively non-prearranged nature of the service that most TNC apps facilitate.⁵ The Commission also purported to create the TNC sub-category of charter party carrier, enabling non-professional drivers without commercial licenses or commercial insurance to serve as TNCs' non-employee independent contractors and thereby operate unregulated taxicab services for the TNCs under superficial Commission oversight across the State of California. This arrangement is expressly contrary to the Legislature's intent that the Commission should have regulatory jurisdiction only over prearranged passenger transportation services.⁶ The Commission made these decisions at a time when it is already failing to effectively regulate existing charter party carriers, further eroding its ability to ensure the public safety.⁷

Even if the Commission possessed authority to regulate or deregulate taxicab services (which it does not), history has shown that deregulation must be accomplished with great care, thought and understanding. History teaches that a lack of understanding, foresight and care in deregulation can produce such undesirable results as a questionable AT&T Divestiture or a cataclysmic 2000-2001 Energy Crisis. Similarly, lack of enforcement and oversight can lead to tragedy, as it did in the case of the San Bruno explosion and the death of Sophia Liu.⁸ To date, the Commission's decisions in this proceeding have, inadvertently or otherwise, caused harmful environmental, public health and public safety impacts by flooding California city streets with thousands of so-called TNC drivers and vehicles that illegally compete with taxicab services,⁹ continuing to endanger the public.

⁴ See D.13-09-045, pp. 20-21, 30, Findings of Fact 13 and 14; D.14-04-022, pp. 9, 18, Ordering ¶¶ 3, 5, 14-17.

⁵ Attachments B, C, D, E and F to TPAC's concurrently-filed Request for Official Notice.

⁶ Gov. Code § 53075.5; Pub. Util. Code §§ 5353, subd. (g), 5355.5, 5360.5, 5381.5.

⁷ Attachment A to TPAC's Request for Official Notice (Auditor's report), pp. 17-23, 34-40.

⁸ See March 25, 2014 ACR, p. 10, fn. 9, *citing, e.g.* Constine, J. "Uber's Denial of Liability in Girl's Death Raises Accident Accountability Questions," January 2, 2014, *available at* <http://techcrunch.com/2014/01/02/should-car-services-provide-insurance-whenever-their-driver-app-is-open/>.

⁹ For example, TPAC understands that the San Francisco Cab Drivers Association ("SFCDA") maintains a database of unique license plate numbers collected by its members, which indicates

The Commission's rare grant of rehearing in D.14-04-022 on three separate issues arising from D.13-09-045 speaks volumes about its ongoing inability to protect the public interest. The failure to address those issues in a sufficiently careful fashion in the first instance may arise in part from the Commission's lack of understanding of the TNCs it proposes to regulate. Unreported private conversations with TNC representatives that other parties were not allowed to rebut may have been the Commission's chief source of information concerning TNC apps and operations. It is notable that TPAC's motion to compel discovery of information about TNCs was denied by the Commission, in part upon TNCs' arguments that they should not have to disclose such information to the taxicabs with whom they directly compete.¹⁰

The Commission's lack of understanding of the TNCs, as well as a failure to fully take into account the impact of its decisions on the existing industry, is further evidenced by the refusal of the Commission to conduct an evidentiary hearing in this proceeding or to examine the facts in a side-by-side Order Instituting Investigation proceeding, as it commonly does. Instead of instituting a formal investigation after citing several TNCs in late 2012, the Commission opened this proceeding. It then reached closed-door settlements with the largest TNCs. The TNC settlements were not made a part of the record in this proceeding, but under the settlements the Commission nonetheless permitted the TNCs to continue their operations without formal regulation, pending issuance of D.13-09-045.

In this proceeding, the Commission, without sufficient record foundation or understanding of the facts, and without the authority to do so, has created, condoned and perpetuated a serious threat to the public health and safety. Equally threatened are the livelihoods and property interests of carriers (both Commission-regulated charter party carriers and locally-regulated taxicabs) that obtain the required permits and licenses and comply with them. Whether deliberately or inadvertently, the Commission has effectively restructured the entire passenger transportation industry in California, seriously overstepping

ongoing and increasing TNC operations in San Francisco. *See* January 25, 2014 summary available at <http://www.sfcda.org/archives/945>.

¹⁰ D.13-09-045, Ordering ¶ 16; *see* TPAC's June 14, 2013 Motion to Compel Responses to Discovery at p. 5 and Ex. G thereto.

the bounds of its jurisdiction. In the Commission's eagerness to embrace technology, it has failed to fully understand that technology and its practical application to many TNCs' *de facto* taxicab services. Such statewide deregulation of an industry is a matter for the Legislature's careful consideration, not something to be accomplished through hasty, back-door negotiations with the very parties the Commission proposes to regulate.

III. THE COMMISSION SHOULD VACATE OR MODIFY ITS DECISIONS

The Legislature vested the Commission with the authority to change its decisions.¹¹ The Commission acknowledged this authority in D.14-04-022 (p. 8), and would do so again in the PD modifying D.13-09-045 (PD, pp. 4 at fn. 4; 8). Therefore, Commission should use this authority to correct the fundamental legal errors of D.13-09-045 and D.14-04-022 by vacating the decisions, or modifying them, upon a thorough consideration of the nature of TNC services and the fitness of TNCs for regulation under existing regulatory schemes

As TPAC has previously stated, it agrees with the Commission's determination in D.13-09-045 that TNCs do not qualify for a rideshare exemption from regulation under the Passenger Charter Party Carriers Act, Public Utilities Code §§ 5351-5420.¹² However, TPAC maintains that the Commission failed to fully analyze its findings and support its determination, in D.13-09-045 and D.14-04-022, that TNCs do not fit within already-existing regulatory categories and its determination that TNCs' services are entirely prearranged. TPAC contends, notwithstanding the Commission's modification of D.13-09-045 in D.14-04-022,¹³ that the Commission's conclusion that TNC services are prearranged is not supported by the Commission's findings, the record or the TNCs' continuing practice and representations to the public.

TPAC's position on the nature of the TNCs' services is supported by the Commission's proposed finding in the PD that TNC services encompass three distinct time periods,¹⁴ because none of the three time periods described ensures that TNC service is

¹¹ Pub. Util. Code § 1708.

¹² D.13-09-045, pp. 18-20, 39-40, 48-52 and Finding of Fact 20, Conclusions of Law 7-10, *citing* Pub. Util. Code § 5353, subd. (h).

¹³ D.14-04-022, p. 23, Ordering ¶ 16, adding Conclusion of Law 16 ("TNCs engage in providing prearranged travel").

¹⁴ PD, pp. 2, 9 and Ordering ¶ 2.

actually prearranged. To the contrary, the period of time that the Commission describes as “Match accepted – but passenger not yet picked up” implicitly concedes that TNC service is entirely on-demand, not prearranged. That is because, once the passenger accepts a match to a TNC ride, the driver and vehicle are dedicated to that on-demand request and they are en route to pick up that specific passenger and no other. At that point in time, the driver has accepted an electronic hail, or e-hail – little different than a telephone call seeking an immediate dispatch, or a hand wave asking the driver to pull up and provide a ride. In any of these cases, the prospective passenger is asking for a ride *now* or *as soon as possible*, not at some prearranged future time, and the driver is en route to satisfy the request. In addition, the period of time described as “Application open – waiting for a match” connotes that a driver and vehicle are dedicated to the next demand for their service, instead of agreeing to provide a specific passenger with a ride at a specific future time to a specific destination. In truth, there is not even a possibility of using most TNC apps to contract for a ride “arranged in advance”¹⁵ as the Commission incorrectly assumed in D.14-04-022 and D.13-09-045,¹⁶ because the TNCs (or at least the largest TNCs, such as Lyft, Sidecar and Uber) continue to operate entirely on-demand, not prearranged, services.¹⁷ With these carriers’ apps, there is no way to order a ride next Tuesday at 11 a.m.; the prospective passenger must wait until next Tuesday at or about 11 a.m. and only then request “on demand” service.

TPAC’s position finds further support in recent correspondence from the Airport Director at San Francisco International Airport to President Peevey.¹⁸ According to the Airport Director’s letter, out of 110 TNC drivers who were stopped for operating illegally at the airport in a three-week period, most were operating “without proof of a pre-arranged

¹⁵ D.13-09-045, p. 20.

¹⁶ *Ibid*; D.14-04-022, pp. 7-9 and Ordering ¶ 16.

¹⁷ Attachments B, C, D, E and F to TPAC’s Request for Official Notice, *available at* <https://support.uber.com/hc/en-us/articles/201831036-Can-I-make-a-reservation-in-advance->, <https://www.lyft.com/help?article=1515410>, <http://support.side.cr/>, <http://help.summon.com/customer/portal/articles/1389741-why-should-i-use-summon->, and <http://help.wingz.me/home>, respectively. *See also* TPAC’s April 3, 2013 Workshop Brief, pp. 14-16 and Ex. A thereto at pp. 34, 38, 55.

¹⁸ Attachment G to TPAC’s Request for Official Notice, p. 1, May 9, 2014 letter from J. Martin to M. Peevey, *available at* <http://www.taxi-library.org/cpuc-2014/sfo-letters-re-tncs-2014-05-09.pdf>.

ride (waybill).”¹⁹ In a concurrent memo to the Airport Commission, the Airport Director specifically noted that of the same 110 drivers “63% did not have all of the information required by the CPUC in the form of any electronic waybill.”²⁰ The Commission specifically relied upon the TNCs’ use of their apps to provide the required electronic waybill information that would establish prearrangement.²¹ Yet to TPAC’s knowledge, *only one* so-called TNC claims to have configured its app so as to assure that its services are truly prearranged,²² seeking to fulfill the sole condition that completely distinguishes charter party carriers from taxicabs under the Public Utilities Code: prearrangement.²³ Moreover, as TPAC has repeatedly noted, the only carriers that are subject to the Commission’s jurisdiction are those that provide exclusively prearranged transportation.

D.13-09-045 and D.14-04-022 effectively and impermissibly expand the Commission’s charter party carrier jurisdiction to include on-demand services, *i.e.*, taxicab services. The PD’s recommendations as to time periods when TNC insurance should apply²⁴ actually demonstrate that TNCs are providing on-demand service. For example, once a “match” is made between a passenger and a driver, the driver and vehicle are committed to a specific passenger’s electronic hail for a ride “now” and they are precluded from committing to any other passenger’s request. Indeed, the app then allows the prospective passenger to track the TNC driver’s geographic progress in responding to the request for immediate pick-up. This is the essence of “on-demand” transportation, which under California statutory and decisional law may only be provided by taxicabs. As Uber freely admitted in successfully opposing TPAC’s motion to compel responses to data requests in this proceeding, its direct competitors are *taxicabs*.²⁵

¹⁹ *Ibid.*

²⁰ Attachment H to TPAC’s Request for Official Notice, p. 2, May 9, 2014 memorandum from J. Martin to Airport Commission, *available at* <http://www.taxi-library.org/cpuc-2014/sfo-letters-re-tncs-2014-05-09.pdf>.

²¹ D.13-09-045, p. 21; D.14-04-022, p. 9 and Ordering ¶¶ 9, 14.

²² Attachment F to TPAC’s Request for Official Notice.

²³ Pub. Util. Code §§ 5360.5, 5381.5; *see also* D.13-09-045, pp. 20-21, 30, 33 and Findings of Fact 8, 13, 14; D.14-04-022, pp. 5-9 and Ordering ¶¶ 14-17.

²⁴ PD, pp. 2, 9 and Ordering ¶ 2.

²⁵ TPAC’s June 14, 2013 Motion to Compel Responses to Discovery at p. 5 and Ex. G thereto.

Instead of attempting to improperly and illegally impose insurance requirements on providers of on-demand transportation, over which the Commission has no statutory authority, the Commission should require the TNCs to ensure that their apps are fulfilling all of the waybill requirements for charter party carrier contracts, including an appointment for pickup at a specific future time for travel to a specific and identified destination.²⁶ Alternatively, if the TNCs were to configure their apps to offer only a connection to legitimate holders of existing taxicab licenses (for on-demand service) or existing charter party carrier permits (for prearranged service), as Uber claims it does,²⁷ there would be no conflict with the clear dual jurisdictional scheme established by the Legislature. However, from a review of the TNCs' currently-available information on-line, it appears that most TNC apps continue to connect passengers with TNC drivers who provide *only* on-demand, not prearranged, services.²⁸ If that is the case, the Commission has no jurisdiction to impose insurance requirements, or any other requirements upon carriers who do not provide prearranged services, because the Commission is expressly precluded from exercising regulatory jurisdiction over on-demand, *i.e.*, taxicab services.²⁹

Finally, in the face of compelling evidence that the Commission's transportation enforcement staff is already significantly over-extended,³⁰ the Commission should acknowledge that it has exceeded its regulatory jurisdiction. According to the State Auditor's recent report, the Commission has failed to protect public safety in the past and it

²⁶ Putting aside any assessment of the separate requirements for authorized airport operations, configuration of TNC apps so as to supply the required waybill information appears to be eminently possible as evidenced by the Wingz app and website, which allegedly require a two-hour minimum advance reservation time. (Attachment F to TPAC's Request for Official Notice.)

²⁷ Uber's April 7, 2014 comments on ACR, p. 10.

²⁸ Attachments B, C, D, E and F to TPAC's Request for Official Notice.

²⁹ Gov. Code § 53075.5; Pub. Util. Code § 5353, subd. (g); *People ex rel. Freitas v. City and County of San Francisco*, *supra*, 92 Cal.App.3d at 924, *citing In re Martinez*, *supra*, 22 Cal.2d 259.

³⁰ Attachment A to TPAC's Request for Official Notice, pp. 17-23, 34-40. ("When the commission fails to stop carriers from operating illegally and does not actively investigate carriers when there is evidence to warrant more investigative scrutiny . . . it allows carriers to continue to defy state law, putting the public in danger." *Id.* at p. 23.)

is ill-equipped to adequately regulate TNC operations in the future,³¹ even assuming the Commission properly had jurisdiction to do so. If it did, immediate enforcement action would seem to be required against *most* TNCs, as they are clearly operating in violation of their charter party carrier status *and* the Commission’s TNC regulations by failing to provide solely prearranged transportation.³² Taken together with the Commission’s *ultra vires* foray into regulating on-demand transportation, the Auditor’s report provides another compelling reason for the Commission to consider exercising its power under Public Utilities Code § 1708 to withdraw or modify prior decisions. TPAC maintains that D.13-09-045 and D.14-04-022 should be vacated, so that the Commission may finish its inquiry concerning the nature of TNC operations on an adequate record and, on that basis, accurately determine whether they should be regulated as either traditional charter party carriers or taxicab services depending upon the nature of their services.

IV. RECOMMENDED CHANGES TO THE PD MODIFYING D.13-09-045

TPAC continues to believe that the Commission should determine, upon a reasoned analysis with citation to record support, whether the TNCs’ services fall within existing regulatory regimes for standard charter-party carriers and/or for taxis. TPAC believes the evidence forcefully bears out its contention that they do, and that their services are largely – if not exclusively – on-demand in nature, *i.e.*, taxicab services. Such a finding by the Commission would eliminate the need for a new regulatory category of “TNC,” as well as the need to require new, different or not-yet-extant insurance coverage for TNC operations.

TPAC supports insurance coverage that is commensurate with the coverage required for similarly situated providers of transportation. For example, other charter-party carriers must comply with the minimum coverage requirements set forth in General Order (“G.O.”) 115-F,³³ and taxicab services must comply with the requirements of their local regulators, which may require minimum liability coverage typically ranging between minimums of \$500,000 and \$2 million. Thus, the Commission’s proposed coverage amounts³⁴ appear to

³¹ *Id.* at p. 40.

³² Attachments B, C, D and E to TPAC’s Request for Official Notice.

³³ G.O. 157-D, § 1.05, *citing* G.O. Series 115.

³⁴ PD, p. 20; Conclusion of Law 2; Ordering Para. 3.

fit within the broad contours of the insurance coverage amounts that apply to other providers of passenger transportation. A minimum requirement of \$1 million liability coverage per incident appears to be workable.

However, many other aspects of the PD suffer from the same infirmity as D.13-09-045 and D.14-04-022, because the PD also rests on an inaccurate assumption that as long as TNC passengers utilize TNC apps, all of the TNCs are advertising and providing exclusively prearranged transportation. As the TNCs' own web pages show, this is not the case.³⁵

TPAC's specific comments on the issues addressed in the PD are as follows:

A. Insurance Coverage Should Not Depend Upon the Proposed Definition of "Providing TNC Services," which is Incompatible With Prearrangement.

As TPAC stated in its Comments in response to the March 25, 2014 ACR, the phrase "providing TNC services" should apply at all times for insurance purposes, and vehicles used for TNC services should have primary commercial insurance coverage at all times.³⁶ It is contrary to the public interest and the safety objectives of this proceeding to condition insurance coverage on vague and unenforceable time constraints. Attempting to identify times when non-employee drivers are "providing TNC services" and confining TNC commercial insurance coverage to those times is inherently unworkable and dangerous, as TPAC pointed out in its April 21, 2014 Reply Comments in response to the March 25, 2014 ACR (pp. 3-5). Such an approach ignores the reality of multiple app use by TNC drivers and their acceptance of street hail passengers.³⁷ It also invites costly and unnecessary coverage

³⁵ Attachments B, C, D and E to TPAC's Request for Official Notice.

³⁶ April 21, 2014 Reply Comments of TPAC, pp. 3-5.

³⁷ April 21, 2014 Reply Comments of TPAC, p. 5, fn. 3 and Attachments 2 and 3 (arrests of TNC drivers in Los Angeles for accepting street hails are indicate extensive *defacto* taxicab operations; TNC vehicles in San Francisco often pick up street hails). *See also* Jan. 29, 2013 Opening Comments of the SFCDA, p. 2 (drivers observe passengers hailing TNCs); Nov. 7, 2013 SFCDA Response to TPAC Application for Rehearing, p. 3 ("we are seeing more and more passengers . . . hail an unpermitted personal vehicle. . . . These people are not using these services because there are no licensed taxis available, they use them because personal vehicles can charge less, having fewer requirements and restrictions than city permitted taxicabs"); April 7, 2014 United Taxicab Workers Comments on Proposed Modification of D.13-09-045, p. 3 ("cab drivers are constant witnesses to instances of TNC drivers soliciting passengers or accepting street hails"); April 7, 2014 Comments of Christopher B. Dolan ("TNC providers are aware of drivers having multiple apps open simultaneously"); April 7, 2014 SFCDA Comments

disputes that will delay and confound the assumption of financial responsibility by the TNCs. The Department of Insurance suggested to the Commission that “as long as TNCs are encouraging non-professional drivers to use their personal vehicles to drive passengers for a profit . . . TNCs should bear the insurance burden.”³⁸ Furthermore, as noted by the Auditor’s report, the passenger transportation industry already suffers from inadequate enforcement by the Commission, endangering public safety.³⁹ Using an “app on / app off” approach as the PD suggests could further encourage regulated carriers to avoid complying with the requirement to provide for their passengers’ safety by maintaining adequate insurance.⁴⁰ The development of new hybrid insurance products to sell may enrich the insurance companies but it will not enhance protection of the public.

B. TNCs Must Be Required to Maintain Primary Commercial Insurance Coverage Commensurate with Charter-Party Carrier and Taxicab Requirements.

TPAC agrees with the Insurance Commissioner that the so-called TNCs should be required to maintain adequate primary commercial liability insurance policies.⁴¹ TPAC also urges the Commission to require TNCs to implement primary coverage immediately, rather than waiting for the expiration of potentially deficient policies that TNCs may currently have in place. To the extent that the PD would impose insurance policy requirements that are commensurate with the requirements for similarly-situated passenger carriers, such as taxicab services and other charter party carriers, TPAC – like the Insurance Commissioner – supports the PD. The Commission should also require TNCs to disclose to their drivers that

on Proposed Modification of D.13-09-045, p. 3 (“Many TNC drivers strive to increase their profits by unlawfully soliciting people on the street . . . [¶] . . . [M]any also carry multiple phones with multiple apps on at one time”); April 4, 2014 Comments of the Association of California Insurance Companies, p. 2 (“based on the reports we have received, it appears [street hails] still occur”).

³⁸ Ins. Comm’r letter of April 7, 2014 to President Peevey at p. 1 (Attachment 1 to TPAC’s April 21, 2014 Reply Comments in response to ACR).

³⁹ Attachment A to TPAC’s Request for Official Notice, p. 17; *see also* Airport Commissioner’s letter, Attachment G to TPAC’s Request for Official Notice, pp. 1-2.

⁴⁰ Pub. Util. Code §§ 5387, 5391. *See* G.O. 157-D at § 1.05; G.O 115-F.

⁴¹ *See* Attachment I to TPAC’s Request for Official Notice, p. 1 (Ins. Comm’r letter of June 16, 2014 to President Peevey), *available at*

<http://www.insurance.ca.gov/video/0030VideoHearings/upload/Peevey-6-17-14.pdf>.

personal policies do not provide coverage for paid transportation of passengers.⁴²

Furthermore, TPAC suggests that TNCs should be required to make a similar disclosure to passengers until such time as the TNC provides the Commission with evidence that it maintains a full-time, primary commercial liability policy. Disclosure to pedestrians and other drivers should also be required, by publication and/or some other reasonable means.

However, TPAC does not agree that commercial insurance coverage for TNCs should be dependent upon whether or not a TNC driver has a TNC application (“app”) open. Rather, coverage should be in effect at all times. The Department of Insurance has recommended that the Commission require insurance coverage during the three time periods described in the PD,⁴³ but there is no reason that the Commission, in the interest of public safety, should not extend TNC insurance coverage beyond the minimum recommendations set forth in the Insurance Commissioner’s April 7, 2014 letter. Requiring coverage at all times would bring TNC coverage more closely in line with the insurance requirements that already exist for similarly-situated passenger carriers, such as taxicab services and other charter party carriers. It would also serve the public safety objectives of this proceeding by firmly closing the existing insurance “gap” and would help to avoid costly and drawn-out litigation over claims or coverage involving accidents or injuries related to TNC operations.

V. EX PARTE REPORTING RULES SHOULD APPLY RETROACTIVELY

TPAC applauds the PD’s intention to apply Rule 8.4, to require the reporting of *ex parte* communications in this proceeding. The requirement is proper, among other reasons, because this rulemaking had its origins in multiple enforcement actions – actions that are fundamentally adjudicatory in nature.

In addition, TPAC believes that if the Commission carefully inquired into the true nature of TNC operations, it would find that almost all of the TNCs are flouting the statutory requirement and Commission’s decisions providing that their services must be entirely prearranged.⁴⁴ Moreover, TPAC understands that the TNCs continue to contest the

⁴² *Ibid.*

⁴³ April 7, 2014 Ins. Comm’r letter at pp. 2-3, Recommendations 1 and 2 (Attachment 1 to TPAC’s April 21, 2014 Reply Comments in response to ACR).

⁴⁴ *See, e.g.*, Attachments B, C, D and E to TPAC’s Request for Official Notice.

Commission's enforcement efforts.⁴⁵ Therefore, TPAC believes that good cause exists for the Commission to order disclosure retroactively of all *ex parte* communications that have taken place in this proceeding, including those with representatives of the Commission's Policy and Planning Division, who may have acted, inadvertently or otherwise, as a conduit between TNCs and decisionmakers or as an influential advocate for TNC positions. Requiring *ex parte* reporting in R.12-12-011, retroactive to commencement of the proceeding, would provide much-needed transparency in the public interest and for the public safety.

VI. CONCLUSION

The so-called TNCs, including Uber, should be required to have primary commercial insurance coverage at all times, and the coverage should be commensurate with charter-party carrier and typical taxicab insurance coverage requirements. Rule 8.4 should apply retroactively in this proceeding to all *ex parte* communications with Commission decisionmakers, including the Policy and Planning Division.

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Respectfully submitted,

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⁴⁵ See Attachment A to TPAC's Request for Official Notice (Auditor's report), p. 27 at fn. 6.