

**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.

Rulemaking 12-12-011  
(Filed December 20, 2012)

**COMMENTS OF UBER TECHNOLOGIES, INC., ON BEHALF OF RASIER-CA, LLC,  
ON PROPOSED DECISION MODIFYING DECISION 13-09-045**

Steven F. Greenwald  
Vidhya Prabhakaran  
DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111-6533  
Tel. (415) 276-6500  
Fax. (415) 276-6599  
Email: [stevegreenwald@dwt.com](mailto:stevegreenwald@dwt.com)  
Email: [vidhyaprabhakaran@dwt.com](mailto:vidhyaprabhakaran@dwt.com)

June 30, 2014

Attorneys for Uber Technologies, Inc.

**TABLE OF CONTENTS**

I. THE PROPOSED DECISION INAPPROPRIATELY REQUIRES TNCS TO CARRY HIGHER COMMERCIAL INSURANCE LIMITS AND ADDITIONAL INSURANCE COVERAGES WHEN COMPARED TO TCPS OR TAXIS ..... 4

    A. Rasier Accepts a Commercial Liability Insurance Requirement of \$1 Million In Period Two and Period Three ..... 4

    B. No Other Transportation Service Provider in California Is Required to Maintain Uninsured/Underinsured Motorist Coverage ..... 6

    C. No Other Transportation Service Provider in California Is Required to Maintain Comprehensive and Collision Insurance Coverage ..... 7

    D. No Other Transportation Service Provider in California Is Required to Maintain Medical Payments Coverage..... 8

II. THE DEFINITION OF “TNC SERVICES” SHOULD BE LIMITED TO PERIOD TWO AND PERIOD THREE ..... 9

III. THE COMMISSION SHOULD NOT PROHIBIT TNCS FROM SATISFYING THE INSURANCE REQUIREMENTS PRESCRIBED FOR PERIODS TWO AND THREE BY MEANS OTHER THAN MAINTAINING SUCH INSURANCE ON THEIR OWN ..... 11

IV. THE PROPOSED DECISION SHOULD ESTABLISH SEPARATE INSURANCE REQUIREMENTS FOR PERIOD ONE ..... 12

V. APPLYING THE PROPOSED MODIFICATIONS IN THE PROPOSED DECISION TO UBER WOULD BE INAPPROPRIATE, DUPLICATIVE, AND WOULD BE VIOLATIVE OF DUE PROCESS ..... 15

VI. THE PROPOSED DECISION SHOULD NOT DEVIATE FROM THE COMMISSION’S EX PARTE RULES BY EXTENDING THEM TO COMMUNICATIONS WITH STAFF ..... 16

**TABLE OF AUTHORITIES**

**California Statutes**

California Insurance Code  
    § 108(b)(1) .....8  
    § 11580.24.....12  
    § 11580.26.....6

California Vehicle Code  
    § 16500.....13

**Other State Statutes**

Fla. Stat.  
    § 627.041-8(b).....9  
    § 627.736.....8

Mich. Stat. Ann. § 500.3101, et. seq.....8

N.J. Stat. Ann.  
    § 17:28-1.1 .....8  
    § 39:6A-2 .....9  
    § 39:6A-8 .....8  
    § 39:6A-8:1 .....8

N.Y. Ins.  
    § 5102,.....8  
    § 5103.....8

**Legislation**

California Assembly Bill 1871 .....13

Colorado Senate Bill 125 .....13

**California Public Utilities Commission Decisions and Rules of Practice and Procedure**

Decision 13-09-045.....1, 15

Rules of Practice and Procedure, Article 8 .....16, 17

**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.

Rulemaking 12-12-011  
(Filed December 20, 2012)

**COMMENTS OF UBER TECHNOLOGIES, INC., ON BEHALF OF RASIER-CA, LLC,  
TO PROPOSED DECISION MODIFYING DECISION 13-09-045**

The insurance requirements set forth in the Proposed Decision Modifying Decision 13-09-045 (“Proposed Decision”) are not only unprecedented, they are unnecessary. The California Public Utilities Commission (“Commission”) explicitly found that Raiser-CA, LLC (“Rasier”) already carries a “liability insurance polic[y] providing a minimum of \$1 million per incident.”<sup>1</sup>

The coverage under Raiser’s existing insurance policy equals the level of insurance required of taxis in San Francisco and San Diego and exceeds the insurance required of TCPs and taxis in Los Angeles, Sacramento, Fresno, Stockton, and many other cities in California. Simply put, Raiser’s existing insurance policy is as protective of public safety as the insurance carried by transportation service providers throughout California.

Without citing any evidence establishing that insurance currently carried by Raiser or other TNCs is inadequate, the Proposed Decision would impose additional, onerous insurance requirements. As Table 1 below demonstrates, these proposed insurance requirements would require TNCs to carry both additional insurance coverage and coverage at levels that is well beyond the requirements for TCPs and taxis:

---

<sup>1</sup> Proposed Decision, at 21.

Table 1: California Insurance Requirements

# CALIFORNIA INSURANCE REQUIREMENTS

Service	Required 3 <sup>rd</sup> Party Liability	Required UI/UIM	Required Medical Payments	Required Comprehensive/ Collision	Source / Code Reference
<b>For Hire Passenger Transportation - TNC</b>					
Current TNC Requirement	\$1MM CSL	None	None	None	CPUC Decision 13-09-045
Proposed Decision	\$1MM CSL broadened definition of TNC services	\$1MM	\$5K	\$50K, no stated deductible	Prop Decision 6/10/2104
<b>For Hire Passenger Transportation - Non-TNC</b>					
San Francisco Taxi	\$1MM CSL	None	None	None	SFMTA
Los Angeles Taxi	\$100K/300K/50K	None	None	None	LA Muni Code Sec 71.14
Sacramento Taxi	\$500K CSL	None	None	None	Municipal Code 5.136.440
Fresno Taxi	\$100K/300K/100K	None	None	None	Municipal Code 9-916
Stockton Taxi	\$100K/300K/100K	None	None	None	Municipal Code 5.84.480
California taxis and other for-hire transportation (if no higher municipal requirement)	\$15K/30K/5K	None	None	None	Calif. Vehicle Code 16500
CPUC - TCP 1-7 passengers	\$750K CSL	None	None	None	CPUC General Order 115-F

U B E R

The Proposed Decision offers no rational basis, and there is none, for imposing higher commercial insurance limits and additional insurance coverage requirements for TNCs as compared to TCPs and taxis. Such arbitrary distinctions unfairly discriminate against TNCs and passengers who opt for TNC services.

Uber Technologies, Inc., (“Uber”) on behalf of its TNC subsidiary, Raiser, respectfully submits these comments to demonstrate that the public interest is best served by modifying the Proposed Decision as follows:

- 1) Revise the Proposed Decision to set commercial liability insurance requirements for TNCs at levels comparable to TCPs and taxis;
- 2) Eliminate requirements that TNCs carry uninsured/underinsured motorist coverage, comprehensive and collision coverage, or medical payments coverage;
- 3) Define the period in which “TNC services are provided” as the period commencing upon a driver accepting a passenger’s request for a ride and terminating once the passenger safely exits the driver’s vehicle (*i.e.*, Period Two and Period Three as defined in the Proposed Decision);
- 4) Allow TNCs to satisfy the insurance requirements prescribed for Period Two and Period Three by means other than maintaining such insurance on their own;
- 5) Separately establish appropriate insurance coverage requirements for the period after a driver has logged into a smartphone application and made herself available to receive requests, but before she has accepted a trip request (*i.e.*, Period One as defined in the Proposed Decision);
- 6) Recognize that imposing separate insurance requirements on Uber Technologies, Inc. is duplicative and unnecessary. Uber’s TNC subsidiary, Raiser, and all its TCP partners (*i.e.*, the Commission-regulated transportation service providers that utilize Uber’s smartphone application (“the Uber App”)) already maintain Commission-mandated insurance coverages and registrations;<sup>2</sup> and

---

<sup>2</sup> <sup>2</sup> The insurance details including policy numbers for each TCP Holder is even listed on the Commission website for public review. See [http://delaps1.cpuc.ca.gov/cpuc\\_notices/tmis\\_public\\_lookup.htm](http://delaps1.cpuc.ca.gov/cpuc_notices/tmis_public_lookup.htm).

7) Adhere to existing ex parte rules that recognize that members of the Commission staff are not “decisionmakers” and thus communications with them should remain outside of any ex parte requirements the Commission deems applicable to this quasi-legislative proceeding.

Raiser’s specific proposed revisions to the Proposed Decision’s Findings of Fact, Conclusions of Law, and Ordering Paragraphs are attached as Appendix A.

**I. THE PROPOSED DECISION INAPPROPRIATELY REQUIRES TNCS TO CARRY HIGHER COMMERCIAL INSURANCE LIMITS AND ADDITIONAL INSURANCE COVERAGES WHEN COMPARED TO TCPs OR TAXIS**

The Proposed Decision provides no rational basis for requiring TNCs to carry higher commercial insurance limits and additional insurance coverages compared to other transportation service providers in California. Specifically, there is no evidence or public safety interest that supports this Commission requiring TNCs to carry commercial liability insurance that exceeds the requirements for TCPs and taxis in nearly every city in California. Similarly, there is no evidence or public safety interest supporting the Proposed Decision’s attempt to single out TNCs as the sole transportation service providers required to maintain uninsured/underinsured motorist coverage, comprehensive and collision coverage, or medical payments coverage. The Commission should therefore revise the commercial liability insurance requirements as set forth below and eliminate the requirements for uninsured/underinsured motorist coverage, comprehensive and collision coverage, and medical payments coverage.

**A. Raiser Accepts a Commercial Liability Insurance Requirement of \$1 Million In Period Two and Period Three**


Commercial liability insurance is intended to protect the TNC and the TNC driver against bodily injury and/or property damage claims brought by third parties.<sup>3</sup> The Proposed Decision

---

<sup>3</sup> Proposed Decision, at 20.

requires TNCs to carry \$1 million of commercial liability insurance during Period Two and Period Three. Currently, as described in Table 2 below, only TNCs and taxis in San Francisco and San Diego are required to carry \$1 million of commercial liability insurance:

Table 2: California Commercial Liability Insurance Requirements



Service	Required 3 <sup>rd</sup> Party Liability	Source / Code Reference
<b>For Hire Passenger Transportation - TNC</b>		
Current TNC Requirement	\$1MM CSL	CPUC Decision 13-09-045
Proposed Decision	\$1MM CSL broadened definition of TNC services	Prop Decision 6/10/2104
<b>For Hire Passenger Transportation - Non-TNC</b>		
San Francisco Taxi	\$1MM CSL	SFMTA
Los Angeles Taxi	\$100K/300K/50K	LA Muni Code Sec 71.14
Sacramento Taxi	\$500K CSL	Municipal Code 5.136.440
Fresno Taxi	\$100K/300K/100K	Municipal Code 9-916
Stockton Taxi	\$100K/300K/100K	Municipal Code 5.84.480
California taxis and other for-hire transportation (if no higher municipal requirement)	\$15K/30K/5K	Calif. Vehicle Code 16500
CPUC - TCP 1-7 passengers	\$750K CSL	CPUC General Order 115-F



Notwithstanding that \$1 million of commercial liability insurance is the highest insurance coverage levels required of any transportation service provider in California (with seven or fewer passengers) and there is no evidence or public safety interest that supports requiring TNCs to carry commercial liability insurance that exceeds the requirements for TCPs and taxis, Raiser accepts the Proposed Decision's requirement of \$1 million commercial liability insurance requirement on TNCs for Period Two and Period Three.

**B. No Other Transportation Service Provider in California Is Required to Maintain Uninsured/Underinsured Motorist Coverage**

Uninsured and underinsured motorist coverage provides coverage for compensatory damages that an occupant of the vehicle receives when the party at fault does not have insurance or does not carry sufficient insurance to cover the damages sustained in the accident. Currently, no transportation service provider in California is required to maintain uninsured and underinsured motorist coverage.<sup>4</sup>

The Proposed Decision offers no rational basis, and there is none, to support its unprecedented imposition on TNCs to maintain uninsured/underinsured motorist coverage. No other transportation service provider in California is required to maintain such coverage. By establishing an insurance requirement unique to TNCs, the Commission would unfairly and unnecessarily discriminate against TNCs.

The principal purpose of uninsured motorist coverage is to provide compensation for bodily injury that cannot be collected from the party at fault. Uninsured motorist coverage for property damage is a narrow coverage under California law and is only offered at a \$3,500 limit.<sup>5</sup>

---

<sup>4</sup> See *supra* Table 1.

<sup>5</sup> See California Insurance Code 11580.26; ISO Form CA 21 55 10 13 (California Uninsured Motorist Property Damage). Because the ISO UMPD form specifies a \$3,500 limit and excludes coverage on a vehicle that also excludes coverage for a vehicle also covered by comprehensive/collision there is no practical way to implement the proposed \$1MM coverage using industry standard forms.

Accordingly, the Proposed Decision<sup>6</sup> should be revised to explain that such coverage, if required, only protects passengers and drivers for *bodily injury*, and not *property damage*.

**C. No Other Transportation Service Provider in California Is Required to Maintain Comprehensive and Collision Insurance Coverage**

It is beyond dispute that no transportation service provider in California is required to carry comprehensive and collision insurance coverage.<sup>7</sup> In fact, Raiser is not aware of a single jurisdiction in the *entire* United States that requires *any* driver to carry comprehensive and collision coverage.

No state requires comprehensive and collision insurance coverage because such coverages confer no protection to the general public. Instead, they are designed to protect the driver and her car.

All transportation service providers in California currently have the choice of whether to carry comprehensive and collision insurance and the amount of the deductible to select. Many drivers choose not to incur the relatively significant costs of maintaining comprehensive and collision insurance. The Proposed Decision has failed to provide a rational basis for denying TNCs the right to make that choice for themselves. Therefore, the Commission should eliminate the comprehensive and collision insurance requirement in its entirety.

The Proposed Decision demonstrates a fundamental misunderstanding of the manner in which comprehensive and collision insurance is sold as optional coverage in the marketplace. First, the Proposed Decision incorrectly suggests that comprehensive and collision coverage can

---

<sup>6</sup> See, e.g., Proposed Decision, at 20.

<sup>7</sup> See *supra* Table 1.

be purchased separately.<sup>8</sup> In reality, a driver may purchase collision insurance coverage by itself, but can only purchase comprehensive insurance when coupled with collision insurance.

Second, and again contrary to the reality of the insurance marketplace, the Proposed Decision imposes a \$0 deductible requirement. No comprehensive and collision insurance coverage exists in the market with a \$0 deductible. This makes sense because otherwise with a \$0 deductible, every minor ding or scrape would be submitted to the insurer—making such a policy untenable. If the Commission does not eliminate the comprehensive and collision insurance requirement, it must clarify that comprehensive and collision coverage are bundled together and set a deductible of at least \$1,000.

**D. No Other Transportation Service Provider in California Is Required to Maintain Medical Payments Coverage**

As with comprehensive and collision coverage, no transportation service provider in California is required to carry medical payments coverage.<sup>9</sup> Medical payments coverage is “no fault” insurance coverage, meaning that a policyholder and his or her passengers are reimbursed without proof of fault and “irrespective of the legal liability of the insured.”<sup>10</sup> Such coverage is thus only required in “no fault” states such as Florida, New Jersey, New York, and Michigan.<sup>11</sup> These laws restrict a party’s ability to seek recovery from the party at fault and thus it is imperative that all drivers insure themselves and occupants of their vehicle.<sup>12</sup>

California is not a “no fault” state and thus California law imposes no such limitation on an injured party’s ability to sue the party at fault and seek to recover all medical payments. If the

---

<sup>8</sup> See, e.g., Proposed Decision, at page 20.

<sup>9</sup> See *supra* Table 1.

<sup>10</sup> Insurance Code §108(b)(1).

<sup>11</sup> See, e.g., Fla. Stat. §627.736; N.J.Stat.Ann. §17:28-1.1, 39:6A-8, 39:6A-8:1; N.Y. Ins. §§ 5102, 5103; Mich. Stat. Ann. §500.3101, et. seq.

<sup>12</sup> *Id.*

injured party is at fault, her health insurance will cover her medical payments. Thus requiring medical payments coverage serves no purpose within California. The State has accordingly not required any transportation service provider, or any type of driver, to obtain such coverage. The Proposed Decision offers no rational basis for the Commission to impose this unprecedented obligation uniquely on TNC drivers.

Moreover, Florida and New Jersey, each a no fault state, specifically exempt taxicabs and public or livery conveyances from the requirement for medical payments coverage.<sup>13</sup> The reason for this exemption is because passengers will be incented to make a claim because there is no need to demonstrate fault to receive payment up to the limit of these transportation service provider's medical payments coverage. For these reasons, the medical payments coverage requirement the Proposed Decision would arbitrarily impose should be eliminated.

## **II. THE DEFINITION OF "TNC SERVICES" SHOULD BE LIMITED TO PERIOD TWO AND PERIOD THREE**

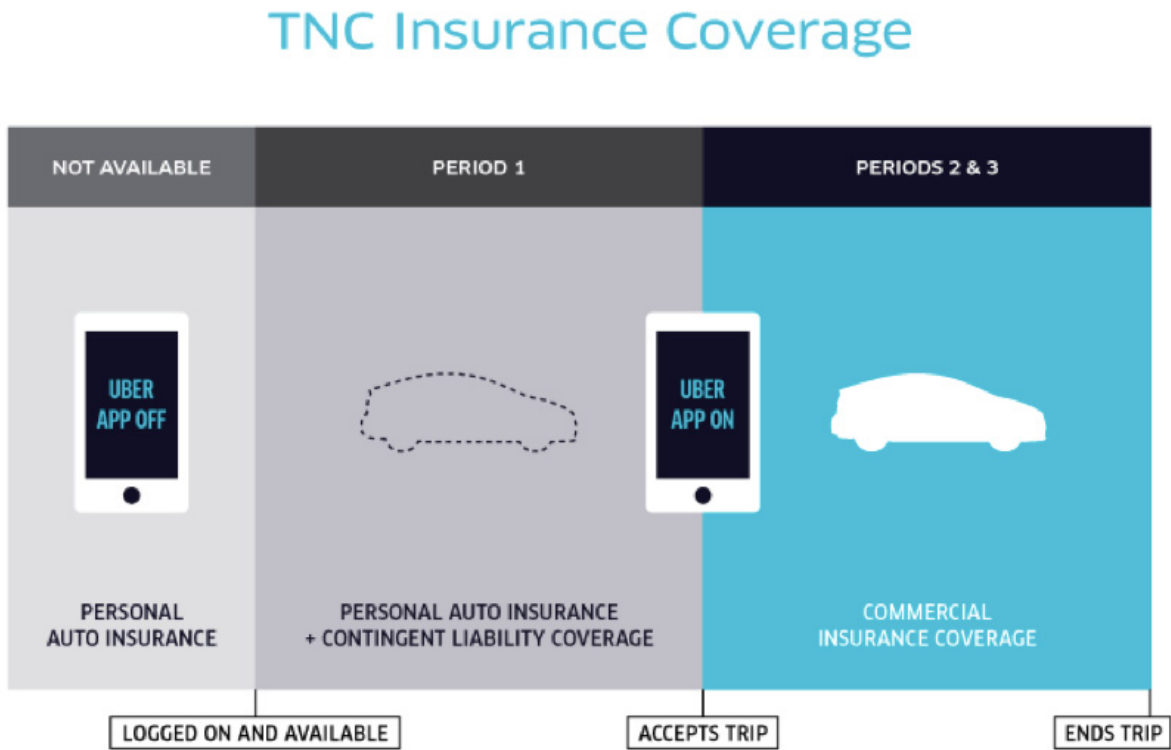
The Proposed Decision should be revised to require that TNC commercial insurance policies only be required during the period when TNC drivers' vehicles are actually engaged in the commercial transportation of passengers.

Taxicab drivers and TCP drivers operate commercial vehicles that are essentially always in operation as a public or livery conveyance. As such, there are no periods analogous to Period One, Period Two, or Period Three for these transportation service providers. They also generally lack the appropriate instruments to differentiate between the periods. Thus, it is both appropriate and necessary that taxicab drivers and TCP drivers be obligated to maintain commercial insurance at all times.

---

<sup>13</sup> See, e.g., Fla. Stat. §627.041-8(b); N.J. Stat. Ann. §39:6A-2.

Figure 1: TNC Insurance Coverage



However, in contrast and as demonstrated in Figure 1, TNC drivers operate their private vehicles and engage in personal activities with their vehicles. These private vehicles are not always in operation as a public or livery conveyance. Contrary to the reasoning of the Proposed Decision, TNC drivers are not actually operating as a public or livery conveyance just because their smartphone application is “on.” When the smartphone application is “on,” TNC drivers choose whether or not to accept a passenger’s request for a ride.

Only when a TNC driver accepts a request does she begin operating her private vehicle as a public or livery conveyance and engage in the actual commercial transportation of a passenger. Accordingly, the Proposed Decision should be revised to require TNC commercial insurance

policies only when the TNC driver accepts a passenger's request for a ride until such time as the passenger safely exits the TNC driver's vehicle.

**III. THE COMMISSION SHOULD NOT PROHIBIT TNCs FROM SATISFYING THE INSURANCE REQUIREMENTS PRESCRIBED FOR PERIODS TWO AND THREE BY MEANS OTHER THAN MAINTAINING SUCH INSURANCE ON THEIR OWN**

Rather than imply that only a TNC can satisfy the insurance requirements prescribed by the Proposed Decision, the Commission should allow any TNC to satisfy the insurance requirements for Periods Two and Three by:

- 1) Maintaining such insurance on its own; or
- 2) Maintaining such insurance on its own in combination with a policy maintained by the TNC driver that is specifically written for the purpose of covering TNC services, or portion thereof.

Furthermore, the Commission should require that any combination of policies must meet the minimum limits required by these regulations at all times described by these regulations.<sup>14</sup> The Commission should also require such combination of policies include a duty to defend the TNC driver during Periods Two and Three regardless of whether such duty is provided by any other insurance and provide for primary coverage, from the first dollar of liability, during Periods Two and Three regardless of whether additional coverage is provided by any other insurance.

By at least allowing for the possibility of such combinations occurring, the Commission will allow the insurance industry to innovate and develop products specific to TNC drivers. In the interim, TNCs will procure insurance to meet the Commission's minimum requirements and ensure coverage. But the Commission should not preclude an insurance marketplace for TNC

---

<sup>14</sup> With the possibility and likelihood of multiple insurance policies with potentially overlapping coverages in the TNC context, the Commission should eliminate references in the Proposed Decision to any coverage providing "exclusive" coverage and instead focus on requiring that certain minimum levels of coverage are met at all times. *See, e.g.*, Proposed Decision, at 29 (Ordering Paragraph 6).

drivers to develop by mandating that only TNCs may provide the insurance necessary to meet the Commission's minimum requirements.

To ensure transparency regarding the extent of the insurance coverage that the TNC provides and the limits of liability of that insurance in the context of any such potential combination, the Commission can require that a TNC disclose in writing to participating TNC drivers the insurance coverage the TNC provides and the limits of liability of that insurance. The Commission can also require that the TNC advise the TNC driver that the TNC driver's personal automobile policy may not provide coverage in connection with the TNC driver's provision of TNC services. With such mandatory disclosures, the Commission has no valid reason to prohibit TNCs from satisfying the insurance requirements prescribed for Period Two and Period Three by means other than maintaining insurance on their own.

#### **IV. THE PROPOSED DECISION SHOULD ESTABLISH SEPARATE INSURANCE REQUIREMENTS FOR PERIOD ONE**

The Proposed Decision suggests "uncertainty over whether a TNC driver's personal automobile insurance would apply to an incident where the TNC driver is wholly or partially at fault, the app in open, and there is no passenger in the vehicle."<sup>15</sup> During Period One, as discussed above, the TNC driver is not engaging in the commercial transportation of a passenger. However, some personal insurance companies may argue that a TNC driver is operating in a manner similar to a pizza delivery person or a realtor utilizing their personal vehicle with respect to a claim arising during Period One.

Thus, the insurance company may determine that the TNC driver is driving for a quasi-commercial purpose during Period One, even though the TNC driver is not engaging in the

---

<sup>15</sup> Proposed Decision, at 4.

commercial transportation of a passenger. If all such quasi-commercial use of a vehicle is excluded in the personal insurance policy, the insurance company could deny coverage.

To address this uncertainty, the Proposed Decision improperly extends the TNC commercial insurance requirements that apply to Period Two and Period Three (*i.e.*, the TNC driver is providing commercial transportation of passengers) to Period One (*i.e.*, the TNC driver is not providing commercial transportation of passengers). Instead of expanding the definition of commercial transportation of passengers to include unrelated activities, a better approach would be to establish separate insurance requirements for Period One.

Currently, Raiser, voluntarily and at significant expense, carries coverage for Period One that is over three times the current state minimum for most other passenger vehicles used in business (*e.g.*, delivery, traveling salespeople, real estate agents, security guards) and for taxicabs not regulated by some other jurisdiction of \$15K/\$30K/\$5K.<sup>16</sup> Moreover, the insurance coverage Raiser's policy provides is consistent with the insurance coverage requirements enacted by TNC legislation in Colorado and the car sharing insurance coverage requirements proposed in California Assembly Bill 1871 (which was sponsored by now-Insurance Commissioner David Jones).<sup>17</sup>

---

<sup>16</sup> Vehicle Code 16500 specifies the liability limits:

Every owner of a vehicle used in the transportation of passengers for hire, including taxicabs, when the operation of the vehicle is not subject to regulation by the Public Utilities Commission, shall maintain, whenever he or she may be engaged in conducting those operations, proof of financial responsibility resulting from the ownership or operation of the vehicle and arising by reason of personal injury to, or death of, any one person, of at least fifteen thousand dollars (\$15,000), and, subject to the limit of fifteen thousand dollars (\$15,000) for each person injured or killed, of at least thirty thousand dollars (\$30,000) for the injury to, or the death of, two or more persons in any one accident, and for damages to property of at least five thousand dollars (\$5,000) resulting from any one accident.

<sup>17</sup> Colorado 2014 Senate Bill 125 (Pabon) sets a standard for period one of \$50K/\$100K/\$30K. California Assembly Bill 1871 sponsored by Assemblyman David Jones (now California Insurance Commissioner) sets a standard of "three times the minimum insurance requirements for private passenger vehicles" which equates to \$45K/\$90K/\$15K. (California Insurance Code 11580.24)(c)(1)).



Rasier's policy acts as primary in the event the TNC driver's personal insurance policy does not provide coverage. No TNC policy can be considered exclusive during Period One.

In such a scenario where a TNC driver has multiple apps open at the same time, multiple TNC policies may potentially provide coverage and any concept of "exclusivity" would be impossible to determine. The driver is not exclusively engaged in the activities of one particular TNC (or any other commercial or non-commercial activity) until they accept a request for transportation from a rider. The concept of "exclusive" coverage contradicts the Proposed Decision's attempt to allow multiple policies to co-exist by explicitly allowing combinations of policies maintained by the TNC driver and/or the TNC. Instead of requiring "exclusivity," the Commission should simply require that the TNC ensure that the specified coverage be available to potential claimants if needed.

The Commission should allow insurance coverage in Period One to be demonstrated by one of three ways:

- 1) A personal automobile policy that recognizes the driver's provision of TNC services;
- 2) An automobile liability insurance policy maintained by a TNC that provides coverage in the event a driver's personal auto policy does not recognize the driver's provision of TNC services; or
- 3) A combination of an auto policy that recognizes the driver's provision of TNC services and an automobile liability insurance policy maintained by the TNC.

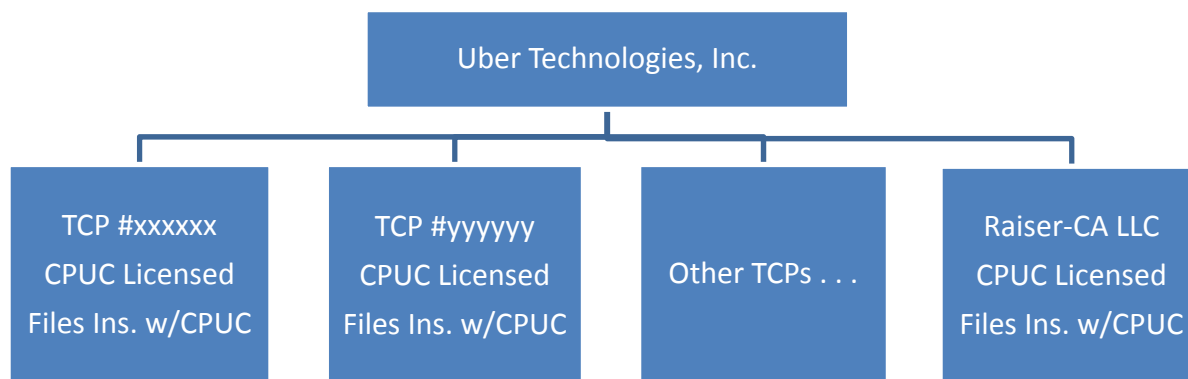
By setting such insurance requirements, the Commission would not in any way be limiting or modifying the liability, if any, of a TNC arising out of an automobile accident involving vehicles operated by TNC drivers. Instead, the Commission would be setting a reasonable insurance requirement during Period One that takes into consideration the fact that TNC drivers do not provide the commercial transportation of a passenger during Period One but still eliminates any remaining uncertainty as to whether adequate insurance coverage exists.

Moreover, by establishing a separate insurance requirement for Period One, the Commission would best ensure that appropriate levels of insurance coverage exist at all times for a vehicle relative to its private, quasi-commercial, and fully commercial uses.

**V. APPLYING THE PROPOSED MODIFICATIONS IN THE PROPOSED DECISION TO UBER WOULD BE INAPPROPRIATE, DUPLICATIVE, AND WOULD BE VIOLATIVE OF DUE PROCESS**

The Proposed Decision overreaches in imposing TNC insurance requirements on companies that do not provide TNC services.<sup>18</sup> It is beyond dispute that Uber does not provide TNC services. Instead, Uber’s subsidiary, Rasier, provides TNC services in California.

Table 3: Uber Technologies, Inc.<sup>19</sup>



As the chart above demonstrates, there are no insurance “ambiguities.” The TNCs and TCPs that receive trip requests from the Uber App carry insurance that complies with the Commission’s requirements. Specifically, Raiser carries insurance that meets the requirements for TNCs set by the Commission.

<sup>18</sup> Proposed Decision, at 22-23 and Ordering Paragraph 8.

<sup>19</sup> Table 3 identifies entities that receive trip request from the Uber App. Rasier-CA, LLC is a subsidiary of Uber Technologies, Inc. TNC drivers are independent contractors who have a contract with Rasier-CA. The TCPs are independent contractors that have contract with Uber Technologies, Inc.

Similarly, TCP Holders are Commission-regulated and licensed and must comply with existing Commission insurance requirements applicable to TCP Holders.<sup>20</sup> The Proposed Decision has failed to provide any rational basis for mandating that Uber duplicate the insurance coverage carried by Rasier and TCP Holders.

Importantly, extending the proposed modifications of the Proposed Decision to Uber is also at best premature. Decision 13-09-045 (“TNC Decision”) directs that any remaining issues regarding whether Uber should possibly be regulated as a TCP should be deferred to Phase 2 of the proceeding. The Proposed Decision offers no explanation for it to countermand the TNC Decision. No proceedings have yet been convened to consider this issue and no decision issued. The Commission should eliminate this section of the Proposed Decision and provide all parties the due process rights the TNC Decision provided all parties with respect to resolving this issue.

#### **VI. THE PROPOSED DECISION SHOULD NOT DEVIATE FROM THE COMMISSION’S EX PARTE RULES BY EXTENDING THEM TO COMMUNICATIONS WITH STAFF**

The Proposed Decision enters the Commission on to a slippery slope by extending the Commission’s ex parte reporting requirements set forth in Article 8 of the Rules of Practice and Procedure, for the first time in any proceeding, to communications with members of the Commission staff who are not “decisionmakers.” The Proposed Decision seeks to justify its otherwise impermissible rewriting of Rule 8.4 on the basis that the staff has “played a visible role in this proceeding.”<sup>21</sup> The Commission should delete this requirement.

---

<sup>20</sup> The insurance details including policy numbers for each TCP Holder is even listed on the Commission website for public review. See [http://delaps1.cpub.ca.gov/cpub\\_notices/tmis\\_public\\_lookup.htm](http://delaps1.cpub.ca.gov/cpub_notices/tmis_public_lookup.htm).

<sup>21</sup> Proposed Decision, at 25.

In addition to the absence of any supporting precedent, there is simply no need for this requirement. The Commission’s Rules of Practice and Procedure have established clear guidelines for reporting ex parte communications with decisionmakers in proceedings in which the reporting requirements are applicable.<sup>22</sup> The members of the Commission staff are not decisionmakers— no matter how much of a “visible role” they play in any proceeding.

Respectfully submitted,

By: \_\_\_\_\_ /s/  
Steven F. Greenwald  
Vidhya Prabhakaran  
DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, CA 94111-6533  
Tel. (415) 276-6500  
Fax. (415) 276-6599  
Email: stevegreenwald@dwt.com  
Email: vidhyaprabhakaran@dwt.com

Dated: June 30, 2014

Attorneys for Uber Technologies, Inc.

---

<sup>22</sup> See Rule 8.4 of the Commission’s Rules of Practice and Procedure.

## Appendix A

### Revised Findings of Fact, Conclusions of Law, and Ordering Paragraphs

#### **Findings of Fact**

1. D.13-09-045 did not define the phrase “providing TNC services.”
2. Parties have differing interpretations of the phrase “providing TNC services.”
3. The California Department of Insurance has advocated a definition of “providing TNC services” that is different than how some insurance companies have defined “providing TNC services.”
4. Some parties have taken the position that a TNC driver’s personal automobile insurance will not apply to an incident arising out of the TNC driver “providing TNC services because of the presence of the public conveyance or livery exclusion.
5. TNC drivers operate during three distinct time periods. Period One is: "Application open - waiting for a request for transportation." Period Two is: "request for transportation accepted - but passenger not yet picked up." Period Three is: "Passenger in car - until passenger safely exits car."
- ~~5. It is possible that TNC drivers are not insured for uninsured/underinsured motor vehicle coverage, comprehensive automobile and collision coverage, and medical payments coverage while they are “providing TNC services.”~~
- ~~6. Uber is conducting business in California with the permission of the Commission.~~
- ~~7. Uber is required to provide the Commission with proof of public liability and property damage insurance applicable to “providing TNC services.”~~
- ~~8. Uber is required to keep its required insurance active and in effect, and its proof of insurance must be on file with the Commission while Uber is conducting business in California.~~
9. 6. Communications between “interested persons” and “decision-makers” have occurred during this proceeding without notice to other “interested persons” and without any reporting of the communications.
- ~~10. Communications between “interested persons” and the Commission’s Policy and Planning Division have occurred during this proceeding without notice to other “interested persons” and without any reporting of the communications.~~

## Conclusions of Law

1. TNC services should be defined as transportation services, which are provided by TNC drivers exclusively during Period Two and Period Three whenever the TNC driver has the application (app) open.
2. A TNC permit from the California Public Utilities Commission should require a TNC to maintain \$1 million commercial liability insurance to cover a TNC driver providing TNC services, as well as medical payments coverage in the amount of \$5,000, comprehensive and collision coverage in the amount of \$50,000, and uninsured/underinsured motorist coverage in the amount of \$1,000,000.
3. The Commission should require that a TNC ensure that during Period One that TNC drivers are covered by insurance with limits of liability coverage of not less than \$50,000 because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than \$100,000 because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than \$25,000 because of injury to or destruction of property of others in any one accident.
4. Separate insurance requirements are not necessary for Uber as Uber's subsidiary, Rasier-CA, LLC must meet all insurance requirements for a TNC and Uber's TCP partners must meet all insurance requirements for a TCP. All such policies are already filed with the Commission and available on its website. Further evaluation of whether Uber itself is a TCP has already been assigned as a topic for Phase 2 of this proceeding.

## Ordering Paragraphs

1. Transportation Network Company (TNC) services are defined as transportation services which are provided by TNC drivers from the time that a TNC driver accepts a request for transportation, while en route to pick up the passenger(s), while picking up the passenger(s), while transporting the passenger(s) through until the passenger(s) safely exit the vehicle whenever the TNC driver has the application open.
2. ~~Transportation Network Company (TNC) services are provided by TNC drivers during three distinct time periods. Period One is: "Application open – waiting for a match." Period Two is: "Match accepted – but passenger not yet picked up." Period Three is: "Passenger in car – until passenger safely exits car." Decision 13-09-045 made clear that coverage was mandatory during Periods Two and Three. This Decision clarifies that coverage is also mandatory during Period One.~~

~~2. 3. A Transportation Network Company (TNC) permit from the California Public Utilities Commission will require the TNC to maintain a \$1 million commercial liability insurance to cover a TNC driver providing TNC services, as well as medical payments coverage in the amount of \$5,000, comprehensive and collision coverage in the amount of \$50,000, and uninsured/underinsured motorist coverage in the amount of \$1,000,000.~~

3. A Transportation Network Company (TNC) must ensure that during the time that a TNC driver has indicated their availability to receive request to transport passengers for hire but has not yet accepted such request (“available to provide TNC services”) that TNC drivers are covered by insurance with limits of liability coverage of not less than \$50,000 because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than \$100,000 because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to, or destruction of property, to a limit of not less than \$25,000 because of injury to or destruction of property of others in any one accident. A TNC may satisfy the insurance requirements for Period One, prescribed by these regulations, by either maintaining such insurance on its own, or with any combination of a policy maintained by the TNC and a policy maintained by the TNC driver that is specifically written for the purpose of covering TNC services, or portion thereof. Such combination of policies must meet the minimum limits required by these regulations at all times described by these regulations.

4. We require that each Transportation Network Companies file their insurance policies under seal with the Commission as part of applying for a permit. The new insurance requirements will apply upon the expiration of the insurance policies in place one year from the effective date of this decision, whichever is sooner.

5. Transportation Network Companies (TNC) may satisfy the insurance requirements for Periods Two and Three, prescribed by these regulations, by either maintaining such insurance on its own, or with any combination of a policy maintained by the TNC and a policy maintained by the TNC driver that is specifically written for the purpose of covering TNC services, or portion thereof. Such combination of policies must meet the minimum limits required by these regulations at all times described by these regulations. Such policies are exclusive and shall assume all liability. Such policies shall have the sole duty to defend. Such combination of policies shall also provide for primary coverage, from the first dollar of liability, while providing TNC services regardless of whether additional coverage is provided by any other insurance.

~~6. In the event a driver maintained policy is used to partially fulfill the insurance requirements, a transportation network company’s insurance must provide sole excess coverage to the driver’s policy that is specifically written for the purpose of covering transportation network services, or portion thereof. In the event such driver maintained policy ceases to exist, the transportation network company’s insurance shall provide primary and exclusive coverage, and assume all liability and the sole duty to defend, at dollar one.~~

6. A TNC shall disclose in writing to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the transportation network company provides, and shall advise a TNC driver in writing that the driver’s personal automobile

insurance policy may not provide coverage in connection with the TNC driver's provision of TNC services.

7. The insurance requirements for Uber Technologies, Inc. found in Ordering Paragraph 13 of Decision 13-09-045 are rescinded.

~~7. Unless coverage for Transportation Network Company (TNC) services is separately and specifically stated in the policy and priced pursuant to approval by the California Department of Insurance, a driver's personal automobile policy is in no way required to provide coverage or the duty to defend for TNC services.~~

~~8. The modified insurance requirements also applies to Uber.~~

~~8. 9. We require that all *ex parte* communications be reported pursuant to Rule 8.4.~~

~~10. We require the reporting requirements set forth in Rule 8.4 to cover communications between "interested persons" and the Commission's Policy and Planning Division such that any communication between an "interested person" and Policy and Planning Division must be reported in accordance with Rule 8.4.~~

~~9. 11. Rulemaking 12-12-011 remains open.~~