

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

**UNITED TAXICAB WORKERS' COMMENTS
ON PROPOSED DECISION MODIFYING DECISION 13-09-045**

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United Taxicab Workers (“UTW”) submits these Comments in response to Commissioner Peevey’s proposed Decision Modifying Decision 13-09-045 (“Proposed Decision”).

I. Introduction

UTW has maintained from the start of these proceedings that ride services such as UberX and Lyft are essentially providing taxi services and as such fall within the exclusive regulatory authority of cities and counties.¹ That issue is currently being litigated in an appeal brought by the Taxicab Paratransit Association of California (“TPAC”). This response is provisional and contingent upon a judicial determination of the Commission’s jurisdiction, and should not be construed to concede the Commission’s right to regulate this form of transportation.²

Secondly, the California legislature is currently considering a bill governing ride service insurance. Should it pass, its provisions will prevail over any conflicting Commission rules. Because the risk to the public is so grave, we believe the Commission should revise its rules in advance of the legislature’s action, but not in the fashion proposed.³

II.

The proposed rule modifications do not provide “the widest scope of coverage”.

The Proposed Decision states as follows:

It is our intent that the TNCs provide *the widest scope of coverage* to protect the TNC drivers, subscribing TNC passengers, other drivers, and pedestrians on a consistent basis. (Emphasis added.)

It is factually untrue that the proposed rules will accomplish their purpose of affording the widest scope of coverage. In our previous Comments we identified several commonplace situations where no insurance – neither the commercial policy nor the driver’s personal policy – would apply.⁴

The Proposed Decision follows the lead of Insurance Commissioner Dave Jones (“Jones”) in identifying three periods when commercial insurance is required. These

¹ UTW, Comments to Order Instituting Rulemaking, dated January 28, 2013, at 2.

² We use the abbreviation “TNC” where convenient, and not as an endorsement of the term.

³ The legislation, if passed, would not go into effect until January 1, 2015. But the Commission’s proposed rules would only become effective when a ride service’s current policy expires or in one year, whichever is sooner. Thus it is questionable whether the Commission’s rules will have any effect before being superseded by state law.

⁴ UTW, Comments on Proposed Modification to Decision 13-09-045, dated April 7, 2014 at 2-3.

periods cover the time the driver's smartphone app is on. There is, however, a fourth period: when the driver has the app turned off, but is working nonetheless. This will occur when the driver has a private client, takes a street hail or turns the app off temporarily for tactical reasons. Some TNC drivers allegedly do this in order to take advantage of surge pricing, which may apply in some parts of town but not in others. With the app off, the driver does not have to turn down a ride at the lower fare while enroute to the surge price zone.⁵ (Drivers are expected to accept a high percentage of offered rides in order to remain in good standing with the company.)

Jones has acknowledged the existence of a gap in one of these instances:

If a TNC driver picks up a "private client" outside of the TNC app, it is likely no insurance would be in effect, because the driver is using his or her personal vehicle for a livery purpose.⁶

The same would be true in the other situations mentioned above. Jones's solution, however, falls short of the mark. He states: "TNC drivers should be required to provide prominent disclosures about this risk to both drivers and passengers."⁷ But disclosure is no substitute for insurance. And prior disclosure to pedestrians or other motorists is not feasible.

The modifications currently proposed are weaker than those contained in the Assigned Commissioner's Ruling ("ACR"). That document defined "providing TNC services" as follows:

Whenever the TNC driver is using their vehicle as a public or livery conveyance including when the TNC app is open and available to accept rides from a subscribing TNC passenger until that app has been closed.⁸

While somewhat ambiguous, this language would apparently cover private clients or street hails, though it would not do so for temporary "app-off" periods while the driver is still in a working mode.⁹ The current proposal would address none of these situations.

⁵ Upon information and belief, some ride service drivers have adopted the technique of turning their apps off in concert in order to create a shortage of supply and induce surge pricing to kick in.

⁶ Letter from Jones to President Peevey, dated April 7, 2014 at 5.

⁷ *Id.*

⁸ ACR, filed March 25, 2014 at 2.

⁹ A driver who turns the app off for purposes of financial gain is not acting illegally. It seems highly unlikely that a personal insurance carrier would agree to cover an accident under such circumstances. Protracted litigation would be the likely result.

Affording “the widest scope of coverage” means closing the gaps entirely.¹⁰

III.

The assumptions underlying the proposed insurance rules are in error.

The Commission’s Decision 13-09-045 (“Decision”) proceeded on a false assumption that has been fully assimilated into the current proposal. The Decision states:

The primary distinction between a TNC and other TCPs is that a TNC connects riders to drivers who drive their personal vehicle, not a vehicle such as a limousine purchased primarily for a commercial purpose.¹¹

This isn’t so.¹² Many TNC drivers have purchased vehicles expressly for commercial livery purposes. This is evident in Uber’s driver recruitment efforts. The company offers special financing deals and price discounts on vehicle purchases for drivers who contract with them.¹³ It also offers new drivers a bonus of \$5,000 after four weeks of driving an average of 40 hours or more per week.¹⁴ For its part, Lyft is launching a premium service with a uniform, customized fleet of Ford Explorers.¹⁵ And many drivers who originally purchased their vehicles for personal use are currently using them primarily as livery vehicles. Many others use their previously purchased vehicles primarily as livery vehicles. The notion that these are “private cars” is a colossal fiction.¹⁶ They are no different than any other commercial livery vehicles, except for the fact that the rules don’t compel them to be registered as such.¹⁷

IV.

The Proposed Decision errs in failing to analyze or discuss whether full-time commercial livery insurance should be required

The Proposed Decision fails to even consider a call by multiple parties to this

¹⁰ California Vehicle Code Section 16020 *et seq.* requires all drivers to be able to establish proof of financial responsibility. The proposed rules do not conform to this requirement.

¹¹ Decision at 24. The false assumption that TNC vehicles are primarily used for personal purposes is further entwined with the Commission’s faulty premise that the technology employed, rather than the service provided, is what distinguishes this form of transportation.

¹² According to a study conducted at George Washington University, Americans drive an average of 87 minutes a day. <http://abcnews.go.com/Technology/Traffic/story?id=485098>. That translates to a little over 10 hours a week. Applying that standard, it’s fair to say that a ride service driver who works more than that amount of time is using the vehicle primarily for a commercial purpose.

¹³ Exhibit A.

¹⁴ Exhibit B.

¹⁵ Exhibit C.

¹⁶ Carrying this farce a step further, a company called Breeze is renting cars to drivers for Uber, Lyft and Sidecar. (Exhibit D.) Breeze does not own the cars. It leases them from a supplier and sub-leases each car to two drivers.

¹⁷ Vehicle Code Section 260 defines a commercial vehicle as a motor vehicle “used or maintained for the transportation of persons for hire, compensation or profit . . .” These vehicles fit squarely within that definition.

proceeding, including UTW, for ride services to carry full-time commercial livery insurance, just as taxis and limousines do.¹⁸ UTW also called the Commission's attention to documented instances of fraud committed by ride service drivers.¹⁹ Insurance gaps and insurance fraud shift the cost burden of accidents and injuries from those providing commercial transportation to personal liability and health insurance policyholders and to the public at large through increased taxation. There was no discussion or analysis of whether full-time commercial livery insurance is the best or only practical means of avoiding these consequences.

V.

Recommended changes to the proposed decision

The Proposed Decision sets forth a definition of TNC services that we reject as inadequate to the task of providing the widest scope of insurance coverage for victims of accidents involving ride service vehicles and drivers. Accordingly, we recommend amendments to The Commission's Safety and Regulatory Requirements reflecting the need for full-time commercial livery insurance, as follows:

Safety Requirements

- a) TNCs shall maintain full-time primary commercial (livery) liability insurance policies providing not less than \$1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers while they are providing TNC services. The insurance coverage shall be available regardless of whether a TNC driver maintains insurance adequate to cover any portion of the claim.
- b) TNC drivers shall be required to provide proof of ~~both their personal insurance and the~~ commercial insurance in case of an accident.

Regulatory Requirements

- b) TNCs shall clearly disclose, on their app and website, that ~~TNCs facilitate rides between passengers and private drivers using their own personal vehicles. Additionally, the disclosure should state that each TNC is required to maintain an insurance policies policy providing a minimum of \$1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers while they are providing TNC services.~~
- e) ~~TNCs shall obtain proof of insurance from each TNC driver before the~~

¹⁸ Parties proposing this were UTW, TPAC, the Greater California Livery Association ("GCLA"), the San Francisco Cab Drivers Association ("SFCDA") and Luxor Cab. The Personal Insurance Federation of California ("PIFC") proposed commercial insurance coverage whenever "participating drivers make themselves available for passengers", including times when the driver is logged onto the app, displays an identifying marker or has a fare-paying passenger. (PIFC, Comments, dated April 7, 2014 at 1.) This is similar to the Commission's previous proposal.

¹⁹ UTW, Comments on Proposed Modification to Decision 13-09-045, dated April 7, 2014 at 3-4.

~~driver begins providing service and for as long as the driver remains available to provide service.~~

- kj) One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report in electronic Excel or other spreadsheet format detailing the number of drivers that were found to have committed a violation and/or suspended, including a list of zero tolerance complaints and the outcome of the investigation into those complaints. Each TNC shall also provide a verified report, in electronic Excel or other spreadsheet format, of each accident or other incident that involved a TNC driver and was reported to the TNC, the cause of the incident, and the amount paid, if any, for compensation to any party in each incident. The verified report will contain information of the date of the incident, the time of the incident, and the amount that was paid by the ~~driver's insurance, the TNC's insurance,~~ or any other source. Also, the report will provide the total number of incidents during the year.

VI.

Conclusion

The Proposed Decision adopts a head-in-the-sand approach by failing to acknowledge or close obvious insurance gaps, and by offering ride service drivers an open invitation to commit fraud. We urge the Commission to reject the proposed rules modifications and adopt the changes recommended herein.

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Respectfully submitted,

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APPENDIX

Findings of Fact:

1. App-on commercial insurance will not close insurance gaps that arise when a driver is working with the app off, e.g., when transporting a street hail or a private client or temporarily turning the app off to take advantage of surge pricing in another part of town.

2. App-on commercial insurance provides an inducement for fraud on the part of the driver, who may seek to hide the fact that he or she was providing commercial transportation in order to conceal from the ride service company the fact that the accident occurred, or conceal from a personal insurer that he or she was performing commercial transportation services at the time. A driver may also be induced to commit fraud by keeping the app on while not working in order to take advantage of a ride service's higher insurance coverage limits.

3. App-on insurance will result in cost shifting between commercial and personal insurance policies, causing all personal policyholders to bear the financial burden of commercial accidents.

4. Insurance gaps will place a financial burden on the public at large, which will end up paying for injuries not covered by liability insurance through higher medical insurance rates or higher taxes.

5. The negative consequences of having dual insurance policies may only be avoided by requiring ride services or their drivers to maintain full-time commercial livery insurance.

6. A minimum of \$1 million in commercial liability insurance is required to adequately protect the public.

Conclusions of Law:

1. TNC vehicles should carry full-time commercial livery insurance in the amount of \$1 million.