

#### 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)

ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENT ON PROPOSED MODIFICATION TO DECISION 13-09-045 ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY

88667048 - 1 -

### **Table of Contents**

Title	Page
ASSIGNED COMMISSIONER'S RULING REQUESTING COMME	ENT ON
PROPOSED MODIFICATION TO DECISION 13-09-045 ADOPTIN	IG RULES
AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE AI	LLOWING
NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY	1
1. Summary	2
2. Background	
2.1. The Need for the assigned Commissioner's Ruling (ACF	R)3
2.2. Summary of Existing Insurance Requirements and Prop	osed
Insurance Modifications	6
2.3. Should the proposed modifications also apply to Uber Te	chnologies,
Inc. (Uber)?	8
3. Should All Ex Parte Communications be Reported in this Quas	i-Legislative
Proceeding?	O

# ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENT ON PROPOSED MODIFICATION TO DECISION 13-09-045 ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY

#### 1. Summary

This assigned Commissioner's Ruling requests that parties comment on proposed modifications to Decision (D.) 13-09-045 *Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry.*These proposed modifications are in response to: (1) our review of the insurance requirements we adopted and their potential impact on public safety, (2) our review of the policies the TNCs submitted with their applications, (3) the absence of a definition of "providing Transportation Network Company (TNC) services," and (4) what insurance coverage must be in force and effect while a driver is "providing TNC services."

The proposed modifications are as follows:

First, should "providing TNC services" be defined 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.

Second, should the requirement that TNCs maintain commercial liability insurance policies be modified as follows:

TNCs shall maintain commercial liability insurance policies providing a minimum of \$1,000,000 (one million dollars) per-incident coverage for incidents involving TNC vehicles used as a public or livery conveyance. In the event of a vehicle-related incident, this commercial liability insurance must provide coverage of up to \$1,000,000 per-incident, whether against the driver or the TNC. In addition, these insurance policies must be issued by a company licensed to

write insurance in this state, or by nonadmitted insurers subject to Insurance Code § 1673.

Third, in addition to the requirement that TNCs must maintain commercial liability insurance, should the TNCs be required to maintain the following coverage that, if adopted, will apply on a per-incident basis for incidents involving vehicles and drivers while they are providing TNC services: medical payments coverage in the amount of \$5,000, comprehensive and collision coverage in the amount of \$50,000, and uninsured/underinsured motorists coverage in the amount of \$1,000,000?

Fourth, in addition to applying these proposed modifications to all TNCs and TNC drivers, should these proposed modifications also apply to Uber Technologies, Inc. as it is enjoying the privilege of conducting business in California subject to the Commission's jurisdiction?

Finally, should the Commission exercise its authority under Rule 1.2 of the Commission's Rules of Practice and Procedure (Rules) to make Rule 8.4 (Reporting *Ex Parte* Communications) applicable to this proceeding? Also, should the Commission make the reporting requirement set forth in Rule 8.4 cover communications between "interested persons," as defined in Rule 8.1(d), and the Commission's Policy and Planning Division?

### 2. Background

### 2.1. The Need for the assigned Commissioner's Ruling (ACR)

On September 23, 2013, the Commission issued *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*, D.13-09-045, to apply to all TNCs operating in California to ensure that "public safety is not compromised by the operation of this new

transportation business model."<sup>1</sup> The Commission defined TNCs as "an organization whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles."<sup>2</sup> The specific rules and regulations were grouped under the categories of safety requirements and regulatory requirements.<sup>3</sup>

But as this is a new industry, the Commission knew that the rules and regulations it enacted might need to be modified as real-time information about TNC operations became known. Thus, D.13-09-045 stated that there would be a Phase II to this proceeding that would, at a minimum, consider the impacts "of this new mode of transportation and accompanying regulations" and to make any modifications or enact additional regulations to ensure public safety.<sup>4</sup> While Rule 16.4 of the Commission's Rules sets forth the procedure for a party to file a petition for modification, the Commission also has the power pursuant to Pub. Util. Code § 1708 to modify its decision:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

<sup>&</sup>lt;sup>1</sup> D.13-09-045, at 2.

<sup>&</sup>lt;sup>2</sup> *Id*.

<sup>&</sup>lt;sup>3</sup> *Id.*, at 29-33.

<sup>&</sup>lt;sup>4</sup> *Id.*, at 74, Ordering Paragraph 10.

The Commission has utilized its authority to make modifications or alterations if there is a change of factual or legal circumstances, to clarify uncertainties, or to correct minor errors in the text.<sup>5</sup>

The need to issue this ACR was driven by a number of factors. First, the uncertainty over the meaning of the phrase "providing TNC services;" second, the 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 is open, and there is no passenger in the vehicle; and third, should TNCs provide coverage beyond commercial liability insurance required by our decision. These factors have come to light, in part, from Commission staff and the assigned Administrative Law Judge, and from the California Insurance Commissioner and others who raised the specter of potential gaps in TNC insurance required by the Commission's decision, including lack of clear requirements for coverage of collision, comprehensive, uninsured/underinsured motorists, and medical expenses. As a result of these uncertainties, there are a number of different situations where either no coverage or differing coverage may be available. The assigned Commissioner believes it would be in accordance with California's strong public policy for providing insurance protection for the Commission to require the TNCs to provide the widest scope of coverage to protect the TNC drivers, subscribing TNC passengers, other drivers, and pedestrians on a consistent basis.

<sup>&</sup>lt;sup>5</sup> For example, an *assigned Commissioner's Ruling* was issued on July 9, 2010 in Order Instituting Rulemaking Regarding Policies, Procedures and Rules for the California Solar Initiative, the Self-Generation Incentive Program and Other Distributed Generation Issues, Rulemaking (R.) 10-05-10.

## 2.2. Summary of Existing Insurance Requirements and Proposed Insurance Modifications

Insurance Type	Purpose	Amount of Coverage
Commercial Liability Insurance	Protects the TNC driver against bodily injury and or property damage claims brought by third parties.	\$1,000,000 (one million) per-incident coverage
Uninsured/Underinsured Motorists Coverage	Covers injuries and property damage when a TNC driver is in an incident with another driver who is uninsured or whose available limits are less than the limits carried for the TNC driver or subscribing TNC passengers.	\$1,000,000 (one million) per-incident coverage
Comprehensive Coverage	Covers the TNC driver for theft, fire, storm, flood, explosion, and vandalism, and other similar circumstances that can cause damage to a TNC vehicle, except collision while offering TNC services.	\$50,000
Collision Coverage	Covers TNC driver for accidental striking of other vehicles, objects, surface of the road, and people while offering TNC services.	\$50,000
Medical Payments Coverage	Covers medical expenses incurred because of bodily injury sustained by the TNC driver or subscribing TNC passengers.	\$5,000

The assigned Commissioner invites comment on whether these proposed additional coverage requirements will: (a) provide coverage for the types of damage and at least in the amounts specified above to the TNC driver and the subscribing TNC passengers who sustain bodily injury while providing TNC services where the TNC driver is not at fault or not entirely at fault and the party at fault has insufficient or no insurance coverage; (b) provide coverage for the types of damage and at least in the amounts specified above to the subscribing TNC passengers who sustain bodily injury while being picked up, transported, or dropped off while receiving TNC services where the TNC driver is at fault or partially at fault and the TNC driver or party at fault has insufficient or no insurance coverage; (c) provide coverage for collision and comprehensive damage at the limits specified above to pay to repair the TNC driver's vehicle when damaged while the TNC driver is providing TNC services; and (d) provide coverage for a base amount of medical expenses at least in the amounts specified above incurred due to a motor vehicle collision or incident sustained while the TNC driver is providing TNC services.

The assigned Commissioner notes that, recently, some of the TNCs have attempted to provide additional coverage due to the uncertainty over the meaning of "providing TNC services" and the potential resulting gap in available insurance. For example, one TNC has stated that if the TNC driver is logged into or onto the TNC's network and is waiting to accept a ride from a subscribing TNC passenger, the TNC will provide "coverage up to \$50,000 for bodily injury to an individual, \$100,000 for bodily injury to all individuals, and

\$15,000 for property damage."<sup>6</sup> While efforts to craft market-based solutions are certainly appreciated, not all of the TNCs who have filed applications with the Commission have voluntarily proposed solutions to close the acknowledged insurance gap. Thus, the assigned Commissioner believes it is incumbent on the Commission to consider fashioning a remedy that will apply on an industrywide basis.

Accordingly, the assigned Commissioner invites parties to comment on both the proposal that the \$1,000,000 in commercial liability insurance that each TNC procures must provide coverage consistent with the proposed definition of "providing TNC services," and the recent TNC proposals to provide other lesser coverage when the TNC driver is logged into or onto the TNC's network and is waiting to accept a ride from a subscribing TNC passenger.

### 2.3. Should the proposed modifications also apply to Uber Technologies, Inc. (Uber)?

While the Commission has not yet determined if Uber, as opposed to Uber X, is a TNC, Uber is conducting business in California subject to the Commission's jurisdiction and the Commission has imposed minimum insurance requirements in D.13-09-045, OP 13 on Uber. As such, parties are asked to comment if the Commission should also require Uber to comply with the aforesaid proposed modifications to the insurance requirements in D.13-09-045.

<sup>&</sup>lt;sup>6</sup> Carolyn Said, *Uber boosts insurance coverage for drivers*, San Francisco Chronicle, March 14, 2014, C-1; Carolyn Said, *Lyft expands insurance coverage*, SFGate, March 13, 2014, <a href="http://blog.sfgate.com/techchron/2014/03/13/lyft-expands-insurance-coverage">http://blog.sfgate.com/techchron/2014/03/13/lyft-expands-insurance-coverage</a>.

### 3. Should All *Ex Parte* Communications be Reported in this Quasi-Legislative Proceeding?

Rule 8.1(c) defines "ex parte communications" as either a written, electronic, or oral communication that "concerns any substantive issue in a formal proceeding, takes places between an interested person and a decisionmaker, and does not occur in a public hearing, workshop, or other public forum noticed by ruling or order in the proceeding, or on the record of the proceeding." Normally in any quasi-legislative proceeding, "ex parte communications are allowed without restriction or reporting requirement." (Rule 8.3(a) of the Commission's Rules of Practice and Procedure.) But the Commission does have the authority "in special cases and for good cause shown," to "permit deviations from the rules." (Rule 1.2 of the Commission's Rules.)

In this instance, the assigned Commissioner believes there is good cause to deviate from Rule 8.3(a) and, instead, proposes to require that all *ex parte* communications be reported pursuant to Rule 8.4. The TNC industry is in a constant state of change in terms of its operations and governmental regulation. For example, since the Commission issued its decision on September 23, 2013, there have seen news articles and blogs regarding:

- Changes in TNC insurance offerings;7
- Formulation of the Insurance Working Group;8

<sup>7</sup> Ellen Hunt, *Drivers for Uber*, *Lyft stuck in insurance limbo*, SFGate, January 29, 2014, *updated on* February 2, 2014, <a href="http://www.sfgate.com">http://www.sfgate.com</a> bayarea/article/Drivers-for-Uber-Lyft-stuck-in-insurance-limbo-5183379.php; Marc Lifsher *Ride-sharing firm Lyft says it has improved insurance*, Los Angeles Times, February 6, 2014, <a href="http://articles.latimes.com/2014/feb/06/business/la-fi-rideshare-insurance-20140207">http://articles.latimes.com/2014/feb/06/business/la-fi-rideshare-insurance-20140207</a>.

- Positions on how TNCs respond to incidents involving their TNC drivers;<sup>9</sup>
- Other city and state attempts to regulate the TNCs (e.g. Seattle, Washington, Rhode Island; Pittsburg, Pennsylvania; Dallas, Texas; Georgia; Colorado; Detroit, Michigan; and Milwaukee, Wisconsin);<sup>10</sup>

<sup>9</sup> Vivian Ho, *Lyft driver strikes elderly woman in S.F.*, SFGate, January 18, 2014, <a href="http://www.sfgate.com/crime/article">http://www.sfgate.com/crime/article</a>/ Lyft-driver-strikes-elderly-woman-in-S-F-5154019.php; Josh Constine, *Uber's Denial of Liability in Girl's Death Raises Accident Accountability Questions*, Techcrunch.com, January 2, 2014, <a href="http://techcrunch.com/2014/01/02/should-car-services-provide-insurance-whenever-their-driver-app-is-open/">http://techcrunch.com/2014/01/02/should-car-services-provide-insurance-whenever-their-driver-app-is-open/</a>.

<sup>10</sup> See e.g., Adam Mertz, Pilot program to regulate Seattle rideshares, KING5.com, December 11, 2013, <a href="http://www.king5.com/news/cities/seattle/Uber-235517131.html">http://www.king5.com/news/cities/seattle/Uber-235517131.html</a>; Kim Kalunian, Uber: New state-imposed charge will drive us out of RI, WPRO News, October 30, 2013,

http://www.630wpro.com/common/page.php?feed=2&pt=NEWS%3A+Uber%3A+New+state-imposed+charge+will+drive+us+out+of+RI&id=26573&is\_corp=0; Andy Vuong, PUC to investigate low-cost ride-sharing service Lyft and uberX The Denver Post, December 11, 2013, http://www.denverpost.com/business/ci\_24698031/puc-investigate-low-cost-ride-sharing-services-lyft; David Maly, As Uber Looks to Expand, Debate Flares Over Dallas' Code Texas Tribune, November 1, 2013, http://www.texastribune.org/2013/11/01/uber-making-headway-texas-expansion/; P. Kenneth Burns, Opponents Move to Shave Lyft Mustache in Maryland, WYPR.org, November 22, 2013, http://news.wypr.org/post/opponents-move-shave-lyft-mustache-maryland; JC Reindl, Uber car service rolling into regulatory trouble in Detroit, Detroit Free Press, February 16, 2014,

http://www.freep.com/article/20140216/BUSINESS06/302160040/Uber-car-service; Katie DeLong, *Committee passes motion for investigation into Uber app*, Fox6now.com, February 19, 2014, http://fox6now.com/2014/02/19/committee-passes-motion-to-conduct-investigation-into-uber-app/; Kim Lyons and Moriah Ballingit, *Ride-share firms gain more traction with support from PUC*, Pittsburgh Post-Gazette, February 24, 2014, http://www.post-gazette.com/business/2014/02/25/Ride-share-firms-gain-more-traction-in-Pa-talks/stories/201402250111; and Dug Begley, *Lyft Launches in Houston Friday, but with City Eyeing Enforcement*, McClatchy News Service, February 20, 2014,

<sup>&</sup>lt;sup>8</sup> Ryan Lawler, *Lyft Announces Rideshare Insurance Coalition And Additional Coverage For Its Drivers*, Techcrunch.com, February 5, 2014, <a href="http://techcrunch.com/2014/02/05/lyft-insurance/">http://techcrunch.com/2014/02/05/lyft-insurance/</a>.

- TNC changes in pricing variables and formulas;<sup>11</sup>
- Changes in TNC background-checking programs;<sup>12</sup>
- Concerns over TNC's ability to provide services to the disabled community;<sup>13</sup>
- Litigation over whether TNC drivers are employees or independent contractors;<sup>14</sup>
- Whether TNC drivers must use their aps in a manner consistent with California Vehicle Code §§ 23123(a) and 23123.5;<sup>15</sup>
- Must TNCs advise subscribing TNC passengers when surge pricing is in effect in accordance with the notice requirements set forth in Pub. Util. Code § 451; and
- The Department of Insurance entertained comments from TNC representatives, insurance company

http://www.houstonchronicle.com/news/transportation/article/Lyft-launching-Friday-but-with-city-eyeing-5249944.php.

<sup>11</sup> Salvador Rodriguez, *Sidecar: California riders will be required to pay minimum fares*, Los Angeles Times, November 15, 2013, <a href="http://articles.latimes.com/2013/nov/15/business/la-fi-tn-sidecar-california-pay-minimum-fares-20131115">http://articles.latimes.com/2013/nov/15/business/la-fi-tn-sidecar-california-pay-minimum-fares-20131115</a>; Donna Tam *Ride-sharing service Sidecar lets drivers name their own prices*, CNET.com, February 19, 2014, <a href="http://news.cnet.com/8301-1035\_3-57619086-94/ride-sharing-service-sidecar-lets-drivers-name-their-own-prices/">http://news.cnet.com/8301-1035\_3-57619086-94/ride-sharing-service-sidecar-lets-drivers-name-their-own-prices/</a>.

- <sup>12</sup> Colleen Taylor, *Uber Beefs Up Its Background Checking System*, Techcrunch.com, February 12, 2014, http://techcrunch.com/2014/02/12/uber-beefs-up-its-background-checking-system/.
- <sup>13</sup> Carolyn Said, *As Uber, Lyft, Sidecar grow, so do concerns of disabled*, SFGate, February 18, 2014, *updated on* February 25, 2014, <a href="http://www.sfgate.com/news/article/As-Uber-Lyft-Sidecar-grow-so-do-concerns-of-5240889.php">http://www.sfgate.com/news/article/As-Uber-Lyft-Sidecar-grow-so-do-concerns-of-5240889.php</a>.
- <sup>14</sup> Bob Egelko, *Uber drivers' suit over tips clears hurdle*, SFGate, December 7, 2013, <a href="http://www.sfgate.com/business/article/Uber-drivers-suit-over-tips-clears-hurdle-5044858.php">http://www.sfgate.com/business/article/Uber-drivers-suit-over-tips-clears-hurdle-5044858.php</a>; *Douglas O'Connor and Thomas Colopy v. Uber Technologies, Inc. Travis Kalanick, and Ryan Gravers*, (2013) U.S.D.C:ND.

<sup>&</sup>lt;sup>15</sup> See Liu Complaint, ¶ 49.

representatives, and local officials regarding the insurance ramifications surrounding D.13-09-045.

While the assigned Commissioner does not propose to resolve these issues in this ACR, they should be considered as part of Phase II of this proceeding. To the extent any "interested person" wishes to bring information about any of the above topics—as well as other topics not listed above that are relevant to this proceeding—to a "decisionmaker," the assigned Commissioner believes that it is vital to the assurance of due process and to the orderly and efficient dissemination of information that all parties to this proceeding receive notice of the communications in accordance with Rule 8.4, and parties are invited to comment on this proposed change.

For the reasons set forth above, there is also good cause to consider making the reporting requirements of Rule 8.4 applicable to *ex parte* communications between "interested persons" and the Commission's Policy and Planning Division," and parties are invited to comment on this proposed change.

#### IT IS RULED that:

- 1. Parties may file and serve comments on the proposed modifications to Decision 13-09-045 contained in this ruling no later than April 7, 2014, and reply comments be filed and served no later than April 14, 2014.
- 2. In accordance with the deadlines set forth in paragraph 1, parties may file comment on whether the Commission should make Rule 8.4 (Reporting *Ex Parte*

-

<sup>&</sup>lt;sup>16</sup> Pursuant to Rule 8.1(b), "decisionmaker" means "any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge."

R.12-12-011 MP1/ek4

Communications) of the Commission's Rules of Practice and Procedure

applicable to this proceeding.

3. In accordance with the deadlines set forth in paragraph 1, parties may file

comment on whether the Commission should expand the reporting requirement

to include ex parte communications between "interested persons" and the

Commission's Policy and Planning Division.

4. This assigned Commissioner's Ruling shall be served on the service list for

Rulemaking 12-12-011.

Dated March 25, 2014, at San Francisco, California.

/s/ MICHAEL R. PEEVEY

Michael R. Peevey Assigned Commissioner

- 13 -