



PCI's California voice.

April 4, 2014

California Public Utilities Commission
San Francisco Office (Headquarters)
505 Van Ness Avenue
San Francisco, CA 94102

**RE: ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENT ON
PROPOSED MODIFICATION TO DECISION 13-09-045 (TRANSPORTATION
NETWORK COMPANIES)**

Dear Commissioner Peevey:

The Association of California Insurance Companies (ACIC) is a subsidiary of the Property Casualty Insurers Association of America (PCI) and represents 391 property/casualty insurance companies doing business in California. ACIC member companies write 42.3 percent of the property/casualty insurance in California, including 50.7 percent of personal auto insurance, 50.5 percent of commercial automobile insurance, 37.9 percent of homeowners insurance, 38.2 percent of business insurance and 43.6 percent of the private workers compensation insurance. PCI is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association.

ACIC appreciates the opportunity to provide comments to the proposed modification of decision 13-09-045. In our view, there are some serious issues that still need to be addressed that concern insurance coverage. In states such as Arizona and Colorado, the Transportation Network Companies (TNCs) have pursued legislation that would shift the insurance costs associated with these commercial activities to the driver's personal auto policies. Personal auto policies were never intended to cover this kind of commercial use of an automobile. On that basis, we offer the following comments.

I. The CPUC should broadly define "TNC services," so that TNCs protect their drivers whenever they make themselves available for "TNC services."

When a vehicle is held out for hire, regardless of how long, there is a substantial change in the nature of the risk associated with the activity. That difference in risk is the reason why there are different insurance products and pricing for commercial and personal auto insurance. On that basis, we recommend the following definition for TNC services:

- *Whenever the TNC driver logs on to the transportation network companies' application program, drives or travels to or from a location with the intent to provide transportation network service regardless whether the application program is on or off, attaches an insignia or logo indicating the personal motor vehicle as available to provide transportation network services, is transporting a fare-paying passenger, or a fare paying passenger is getting into or out of the vehicle.*

This proposed language attempts to capture instances when TNC drivers are trolling for passengers while the app is on, traveling to a place where TNC passengers are readily available (this is similar to the fact pattern of the Uber driver who traveled from Fremont to San Francisco on New Year's eve 2013), and driving around with visible markings indicating that the driver is available to provide TNC services. While we recognize that the PUC has made street hails illegal, based on the reports we have received, it appears they still occur. Furthermore, when any kind of a marking is left on the vehicle (even while the app maybe turned off), there is a reasonable expectation from a potential passenger that the TNC driver is available for services. Left unaddressed, different fact patterns will generate costly disputes over insurance coverage that could delay compensation to accident victims.

II. The CPUC should modify its current regulations by making TNCs insurance coverage primary for any accidents that occur while the TNC services are being provided.

Allowing TNC coverage to be "excess" contravenes sound public policy. The TNCs have the obligation to protect their drivers notwithstanding their position that they are "merely a technology provider" program. When drivers prominently display the TNC markings on their cars they represent the TNC and send the message to the public that they work for or are associated with that TNC.

Furthermore, allowing TNC coverage to be "excess" inappropriately shifts the risks and cost of insurance to the TNC driver when commercial use of the TNC driver's vehicle is unlikely to be covered by the personal auto insurer. Case law has long upheld the livery exclusion in personal auto insurer contracts, which excludes coverage for "commercial use" of the vehicle. From an insurance underwriting perspective, a TNC driver is a fundamentally different risk altogether to be included in the risk pool of personal drivers. Consider the following differences:

- TNC driver drives more miles;
- TNC driver encounters more traffic and pedestrians; and

- TNC drivers engages in riskier behavior, which may include looking at multiple apps while driving and carrying passengers who may be in a hurry and therefore prompting the TNC driver to drive above speed limits.

We, therefore, recommend the following changes to the current CPUC regulations:

- *TNC insurance policies shall serve as the primary insurance coverage for TNC drivers when they are conducting TNC services as defined by section ____.*

It is important to note that ACIC’s recommendation to make TNC insurance coverage primary for TNC driver is consistent with what the California Department of Insurance previously recommended to the CPUC to adopt: “*CDI recommended that the CPUC require TNCs to maintain primary commercial insurance.*”¹

As a matter of clarification, we further note Insurance Code Section 1673 as cited on page 3 of the “Assigned Commissioner’s Ruling Requesting Comment on Proposed Modification to Decision 13-09-045” does not exist; and thus must be replaced with an appropriate section.

III. The CPUC should require TNCs to cover the TNC drivers’ medical payments, comprehensive collision, and uninsured/underinsured motorists’ coverage to address the gaps in insurance coverage that currently exist.

The current CPUC rule requiring TNCs to only provide liability insurance is insufficient to protect their drivers when an accident occurs. Under the current TNC liability insurance coverage CPUC requirement, a TNC driver’s medical payments, comprehensive or collision damages, and any damages related to uninsured/underinsured are not covered by the TNC. To take on all of these risks for a rate of about \$35 hour that a TNC driver may earn working for a TNC is inequitable. In our view, the TNCs must step up and cover these insurance gaps on a primary basis as well.

IV. The CPUC regulations should also apply to Uber Technologies if it is somehow related to the functions of a transportation network company.

For consistency purposes, if Uber Technologies is somewhat related or assists in the function of a transportation network company then the CPUC regulations should extend to them as well.

¹ California Department of Insurance Investigatory Hearing Insurance and Transportation Network Companies: Solving the insurance challenges so passengers, drivers, pedestrians and property owners are adequately protected Friday, March 21, 2014, Agenda page 1.

V. The CPUC should clarify that the TNCs have the duty to defend and indemnify their drivers in the event of a civil action.

Liability coverage typically includes the duty to defend and indemnify. For example, Driver A hits Driver B. When Driver B sues Driver A the insurer under the liability coverage will provide defense of that lawsuit, and if there is judgment against Driver A, the insurer will indemnify or pay for that judgment. The current CPUC rules require TNCs to provide liability coverage, but it is ambiguous whether that includes the duty to defend and indemnify. Car accidents while providing TNC activities are inevitable and thus it is in the best interest of the CPUC to clarify what rule will govern in such instances. To address this issue, we recommend the CPUC adopt the following language:

- *In the event that the TNC driver is named a party in a civil action for a loss or injury that occurs during any time period when the personal motor vehicle is made available for transportation network services, the transportation network company shall have the duty to defend and indemnify the TNC driver.*

ACIC appreciates your consideration of these comments and looks forward to working with the CPUC on these issue. Should you have any questions, please do not hesitate to contact me directly at (916) 440-1117 or email at armand.feliciano@acicnet.org.

Respectfully Submitted,



Armand Feliciano
Vice President, Association of California Insurance Companies

Cc: The Honorable Governor Jerry Brown
The Honorable Insurance Commissioner Dave Jones