

**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

**Docket R. 12-12-011**

**SAN FRANCISCO CAB DRIVERS ASSOCIATION'S  
COMMENTS IN RESPONSE TO ASSIGNED COMMISSIONER'S RULING REQUESTING  
COMMENT ON PROPOSED MODIFICATION OF DECISION 13-09-045**

**April 7, 2014**

**Introduction**

The San Francisco Cab Drivers Association (SFCDA) appreciates the opportunity to share our knowledge and perspective on these issues. Many of these questions were addressed in previous comments by various participants to this proceeding, but were not considered in Decision 13-09-045. Rather, the cart has been placed before the horse.

Although the TNCs are not required to disclose the names or number of drivers using their apps, the SFCDA has documented over 5,200 distinct personal license plates of vehicles observed conducting

taxi-like “TNC” activities or with TNC trade dress in San Francisco. More than 2,300 were reported active in March alone, and this is just a sampling. This means that in just over the last 15 months since this proceeding began and the CPUC allowed these unregulated services to defy current transportation laws, there are now more than twice as many TNC vehicles as there are licensed taxicabs in San Francisco. Their exponential expansion has effectively deregulated the taxi industry in California. The countless number of inadequately insured TNC vehicles are congesting the streets, polluting the environment, and causing added hazards to other drivers, bicyclists and pedestrians.

The ACR cites “...*the uncertainty over whether a TNC driver’s personal automobile insurance would apply...*”, and that this and other questions have been raised as if for the first time. Yet, the Personal Insurance Federation of California stated in their first comments filed January 28, 2013 and repeatedly thereafter, that personal insurance policies DO NOT cover vehicles that operate commercially providing these “livery services”. The SFCDA and other participants also pointed this out several times throughout the proceeding, so consequently, we believe this should not be considered an “uncertainty”.

The SFCDA, serving as an advocacy hub of driver expertise and information regarding our industry, hears not only from cab drivers, but also TNC and TCP drivers about what is really happening out there on the streets. We hope our insights will help this commission and others understand the true nature of this “new” industry, which is actually centuries old, and has repeatedly proven the need for strong regulations to ensure public safety.

***1. 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.”***

No. Either the TNC or the driver needs to provide each vehicle with 100% insurance coverage, 100% of the time. The reality of the situation is that TNC drivers are providing “taxi service”, and do so whether they have the app on or not. During high demand periods when there are lots of people on the street, many drivers turn their apps off to avoid the TNC fee. Lyft and Uber both have “surge” pricing zones,

which are constantly changing. Drivers race from surge zone to surge zone for the higher fares. In order to avoid being booked off for refusing fares while passing through “non-surge” zones, TNC drivers have learned to shut the app off while driving to the higher surge pricing zones.

Many TNC drivers strive to increase their profits by unlawfully soliciting people on the street, having customers call them directly or otherwise not running the app to avoid paying the 20% TNC fee.

While TNC drivers may turn their apps off at times for deceptive reasons, many also carry multiple phones with multiple apps on at one time. Which TNC would be liable in this case, should an incident occur? A TNC driver may be going to do errands with their app off, but see someone on the way that’s looking for a “taxi” and decide to make a few extra bucks “off the meter”. For these reasons and more, to only provide insurance coverage “*when providing TNC services*” is an impossible method of determining liability.

***2. 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 non-admitted insurers subject to Insurance Code § 1673”***

TNC drivers and vehicles should be required to obtain full time commercial livery insurance policies. The truth of the matter is that the vast majority of TNC drivers use their vehicles far more for commercial purposes than for personal use. Brand new vehicles are being purchased in record numbers primarily to be used as “TNCs”. Rental companies are popping up that specialize in renting vehicles primarily for TNC use, yet only require personal insurance coverage. Uber has set up an enticing finance program for UberX drivers, provided they use the car for UberX. Not only does this directly

contradict the original CPUC decision, it adds significant uncertainty to the question of liability and legality. Vehicles are also being purchased and insured for personal use, yet leased to other individuals for use primarily as TNCs. In most cases this violates the terms of financing and is yet another example of how this “nascent” industry is based on fraud and deception.

***3. 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?***

TNCs should carry full coverage amounting to no less than is required of taxicabs in a given jurisdiction. These vehicles are providing the same passenger transportation and are on the road as much as taxis, providing the same service, so there is no reason they should have different requirements.

***4. 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?***

Yes. Although we feel that the modifications proposed are impractical, we believe that all requirements imposed on TNCs should most certainly apply to Uber Technologies as well. Particularly as it enjoys the privilege of conducting on demand (taxi) transportation service using personal and TCP vehicles under this Commission’s jurisdiction.

We would like to point out however, that California and US Federal Codes describe taxi service as “***on call or on demand***” (CPU Code §103022) local transportation “***where the fare is determined primarily on the basis of distance travelled***” (Title 49 of US Federal Code 13102) and that California Government Code Section 53075.5 requires cities and counties, not the CPUC, to adopt ordinances regulating taxi transportation service:

53075.5. (a) Notwithstanding Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code, every city or county shall protect the public health, safety, and welfare by adopting an ordinance or resolution in regard to taxicab transportation service rendered in vehicles designed for carrying not more than eight persons, excluding the driver, which is operated within the jurisdiction of the city or county.

**5. 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?**

Yes. The Commission should absolutely exercise its authority to require reporting of *ex parte* communications, including communications between "interested persons" and the Commission's Policy and Planning Division.

During Phase I of this proceeding, the two-day workshop, which served in lieu of evidentiary hearings, was conducted by Marzia Zafar, the head of the Policy and Planning Division and a staff member. It became apparent during these workshops that extensive *ex parte* communications had taken place between "NOETS" representatives and the staff beforehand. What was scheduled to be a one hour and 45 minute discussion about whether these services should be regulated as taxicabs was cut short after 20 minutes for a 40 minute planned presentation by Uber on "*What Uber is and what Uber is not*". It only ended after strong objections from most participants present. Questions and comments throughout the workshop were inappropriately steered away from critical questions around such things as insurance and jurisdictional issues. Workshop attendees were instructed by the moderators *not* to discuss issues mentioned in our Pre-Workshop Comments, although the purpose of those comments were originally

intended to be topics for discussion as per the Workshop Scoping Memo dated March 7, 2013 by ALJ Robert Mason and the agenda instructions for the workshop.

Just weeks after this proceeding began, before the first comments had been submitted or any discussion had taken place, *ex parte* agreements were signed between Uber, Lyft and the Safety Enforcement Division of this Commission. It stands to reason that other *ex parte* communications took place with at least one commissioner. These agreements allowed an unlimited number of vehicles to provide taxi like service without regulations and with no enforcement. The “excess liability” insurance policies that were approved in these *ex parte* agreements were never scrutinized by the insurance industry or by local regulators and have been treated as “proprietary information”. Yet these excess liability policies erroneously relied primarily on the drivers’ personal insurance, which does not cover this type of commercial activity and therefore relied on drivers committing perjury insurance fraud. Even under current TNC policies, drivers do not disclose their commercial activities to their personal insurance carriers for fear of being cancelled.

We believe many of the decisions made throughout this proceeding were decided through *ex parte* discussions, lacking proper assessment from the various participants. Without transparency and full disclosure of *ex parte* communications, this proceeding merely serves as a facade for true public process.

## **Conclusion**

Insurance underwriters and the DMV should not have to rely on the SFCDA’s license plate database to find out if vehicles are being used commercially as TNCs. All Transportation Network Companies should be required to register all vehicles using their apps in a public registry.

Due to the huge incentive to commit insurance fraud in this so-called “nascent” industry and the difficulty monitoring the true activities of TNC drivers, these vehicles must be fully insured 100% of the time. The fact that TNC drivers use more than one app at a time and the difficulty this causes in determining liability puts the onus for full-time livery or taxi insurance coverage on the driver.

Allowing TNCs to continue saturating the streets, operating without proper local regulation and oversight is irresponsible to the citizens of California and encourages the ongoing compromise of public safety in an industry that is not new or innovative. The SFCDA believes the decision of this proceeding by the CPUC was made prematurely without proper exploration of pertinent facts, negatively influencing the environment, public safety and the passenger transportation industry in California.

Dated April 7, 2014 at San Francisco, California.

/s/ Barry Korengold  
Barry Korengold  
President  
San Francisco Cab Drivers Association  
1874 24th Avenue  
San Francisco, CA 94122  
415-602-1180  
bkor@pacbell.net