

**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

R.12-12-011

**OPENING COMMENTS OF
SIDECAR TECHNOLOGIES, INC. AND SIDE.CR, LLC ON THE
ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENT ON THE
PROPOSED MODIFICATION TO DECISION 13-09-045**

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Pursuant to the instructions provided in the recent Assigned Commissioner's Ruling (the "ACR"),¹ Sidecar Technologies, Inc. and its wholly owned subsidiary Side.cr, LLC (hereinafter referred to as "Sidecar") hereby submit their opening comments regarding the ACR's proposed modifications to Decision ("D.") 13-09-045 (the "Decision"), adopted by the California Public Utilities Commission (the "Commission") on September 23, 2013. These opening comments provide Sidecar's recommendations regarding the ACR's proposals to: (1) change the existing insurance requirements applicable to Transportation Network Companies ("TNCs"); and (2) apply ex parte communications reporting requirements to this rulemaking proceeding. Sidecar's comments are timely filed.

Sidecar suggests the ACR's proposed change to the existing insurance requirement, which would require insurance coverage to begin when a TNC's app is turned on and to provide coverage until the ride is completed, is overbroad and would subject the TNCs to fraud by unscrupulous drivers and higher than necessary insurance costs. Sidecar further opposes the

¹ R.12-12-011, Assigned Commissioner's Ruling Requesting Comment on the Proposed Modification to Decision 13-09-045 Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, issued March 25, 2014.

imposition of ex parte reporting rules to this docket, believing it will stifle and hinder the free and abundant communication between the staff, the nascent TNC industry and other parties to the proceeding, and increase regulatory burdens and costs on TNCs.

I. INTRODUCTION

Since the issuance of D.13-09-045, Sidecar has been working closely with the Commission’s Safety and Enforcement Division (“SED”) staff to submit its application. Sidecar has sought guidance regarding the implementation of the Decision from both SED and the Commission’s Policy and Planning Division (“Policy Division”) staff. Sidecar has also proactively sought to find a market solution to the perceived insurance issues, by:

- (a) participating in the insurance industry working group with other TNCs, personal insurers, and staff;
- (b) participating in the recent Department of Insurance hearing on TNC insurance; and
- (c) actively seeking and negotiating insurance coverage to supplement the coverage required by D.13-09-045, including a collision policy to cover damage to drivers’ vehicles.

II. PROPOSED CHANGES TO THE EXISTING INSURANCE REQUIREMENTS

In D.13-09-045, the Commission required each TNC to secure and maintain a commercial liability policy providing not less than \$1 million per-incident coverage for incidents involving vehicles and drivers during the time they are providing TNC services. Along with other TNCs, Sidecar had secured such a policy – an “industry first” at the time it was negotiated and procured – and the Commission reviewed and approved that policy prior to the adoption of D.13-09-045. Sidecar’s \$1 million liability policy was written to be “excess and contingent” such that it would be available to cover valid claims not covered by a driver’s own personal insurance. This coverage amount is well in excess of other livery and taxicab liability minimums and was based on the existing coverage already provided by existing TNCs rather than linked to a necessary minimum.

As part of its application filed on November 6, 2013, Sidecar filed its certificate of insurance and a copy of its unredacted insurance policy under seal with the Commission in accordance with D.13-09.045. More information regarding Sidecar’s commercial liability policy can be found on the Sidecar website following this link: <https://www.side.cr/insurance>.

The ACR proposes to modify the existing insurance requirements for TNCs by:

- (1) expressly defining “providing TNC services” to mean “[w]henver 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,” and
- (2) requiring TNCs to supplement commercial liability coverage with 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. While TNCs are beginning to provide this coverage as competition and the market demands, certain elements of the ACR’s proposal fail to account properly for different risks attendant to different activities and disregard the appropriate definition of the State’s role in setting **minimum** standards for insurance coverage.

These coverage requirements would treat all TNC companies equally, reflecting a view that all TNC drivers use various platforms as a full-time job. Drivers on the Sidecar platform are notably different from taxi and livery drivers; many drivers participate in ridesharing occasionally – they share a ride to work or turn the app on while running errands in hopes of providing a ride to those going their way. Approximately 50% of Sidecar drivers give 6 or fewer rides per week.

Further, drivers are not employees or independent contractors of Sidecar, and are not required to give rides or to sign up for shifts. In many instances, these drivers are not earning more than the cost of operating their vehicle. Sidecar urges the CPUC to consider an insurance

solution that addresses both casual users as well as those that participate in ridesharing to earn supplemental income.

A. The Definition of “Providing TNC Services”

Consistent with the Commission’s use of the phrase “in transit to or during trips” in D.13-09-045, Sidecar has understood the phrase “providing TNC services” for purposes of insurance coverage to mean the period between the time a driver accepts a ride request by indicating this on the app and the time the passenger exits the vehicle and ends the ride. Sidecar acknowledges, however, that D.13-09-045 does not provide an unambiguous definition of the phrase. For the sake of the clear and consistent implementation of D.13-09-045, Sidecar supports a clarification of the rules in this regard. However, defining the phrase “providing TNC services” to include the entire “app-on/app-off” period, as appears to be contemplated by the ACR, is overbroad and concerning to Sidecar on several fronts.

First, the proposed definition is internally inconsistent in that TNC drivers may not be “using their vehicle[s] as a public or livery conveyance” at the time that the “TNC app is open and available to accept rides” when no ride has been accepted. In the context of insurance coverage, the consequences of this internal inconsistency are far-reaching in that it makes the subject insurance policies vulnerable to fraud. As one example, a driver may keep the TNC app “open” and “available” to accept rides in order to activate TNC insurance coverage but in fact be driving for personal use. In another example, a driver may flip on the app after an accident has occurred in order to claim coverage despite not being available for a ride prior to the accident. This potential for fraud would make the required insurance policies exceedingly difficult to secure and expensive to maintain.

Second, the proposed definition would substantially broaden covered activities without regard for the differing levels of potential risk to the public, driver and passenger

associated with those different activities. Defining the coverage period to extend from “app-on” to “app-off” is a “quick fix,” but a lack of circumspection in setting coverage levels would have negative financial consequences both for existing TNCs as well as for potential new market entrants because of increased costs of insurance given the much broader exposure imposed on TNCs by the proposed regulation.

Sidecar supports the extension of some level of insurance coverage to incidents that occur during the time drivers using the Sidecar app are actually in their vehicles waiting to accept a ride, but suggests that tying insurance coverage to the entire “app-on/app-off” period is an inartful solution. Sidecar drivers – and TNCs in general – are not allowed to accept street hails, so they do not drive around wasting gas as they wait for rides that they wish to accept. Instead, Sidecar drivers wait at home, at the side of the road, or in a public place like a coffee shop, waiting for a ride request. Accordingly, “providing TNC services” should be limited to the period between when a driver accepts a ride request and when the passenger exits the vehicle, with insurance requirements to cover the “app-on but no ride match” period addressed separately, as recommended below. Alternatively, if the Commission adopts the ACR’s proposed definition of “providing TNC services,” insurance requirements should be decoupled from the “providing TNC services” period with the differing risks attendant to the “app-on but no ride match” period addressed separately.

B. Coverage Limits.

The ACR proposes to require TNCs to provide \$1 million in commercial liability coverage for the entire “app-on/app-off” period. In addition, the ACR recommends that TNCs supplement commercial liability coverage with medical payments coverage in the amount of

\$5,000,² comprehensive and collision coverage in the amount of \$50,000, and uninsured/underinsured motorists coverage in the amount of \$1,000,000. Sidecar disagrees that the proposed coverage limits are appropriate and instead, recommends the following:

- \$1,000,000 dollar liability coverage for the time period where a ride has been accepted in app until the ride ends and the passenger exits the vehicle. This is consistent with the existing requirements.
- Contingent third party liability policy that covers drivers when they are logged into the app and are available for a ride request but are between trips. Coverage limits should be appropriately set to the risk during this period, which Sidecar recommends to be \$50,000 per individual bodily injury claim, \$100,000 per incident, and property damage up to \$25,000. This exceeds California's requirements for third party liability insurance.
- Contingent collision insurance, which is not required by the State of California for personal insurance, with a limit of \$50,000. Sidecar has acquired such collision insurance, and anticipates finalizing the policy this week.

Sidecar believes that the above proposal balances the Commission's prominent public safety responsibilities without disregarding the proper definition of the State's role in setting workable minimum standards for insurance coverage.

III. REPORTING OF EX PARTE COMMUNICATIONS

The ACR proposes to require that all ex parte communications made in this rulemaking proceeding be reported in accordance with the notice and filing requirements of Rule 8.4.³ The ACR cites the "constant state of change" in the nascent TNC industry as reason to consider a deviation from Rule 8.3(a), which otherwise permits ex parte communications in quasi-legislative proceedings "without restriction or reporting requirement." Sidecar supports

² Sidecar disagrees with providing medical payments coverage, which is not required by the State of California for personal insurance. This insurance operates to provide medical payments to drivers should they be at fault in an accident. This insurance operates similarly to workman's compensation insurance and is inappropriate given that Sidecar drivers are not employees. Requiring this type of coverage would be similar to requiring business to provide health benefits to independent contractors and is more than the necessary insurance minimums to protect public safety.

³ The ACR does not appear to recommend imposing restrictions on the making or substance of ex parte communications, as are applied by Rule 8.3(c) in the context of ratesetting proceedings. Sidecar agrees that no such restrictions should be required in the context of this quasi-legislative rulemaking proceeding.

transparency in the rulemaking process, but is unclear from the ACR what exact problem is being addressed with this proposal. Sidecar is concerned that the burden imposed by reporting all covered communications may chill the effective flow of “real-time” information between the numerous rulemaking participants and the Commission (whether a “decisionmaker” or Policy Division staff).

For example, in the last months, Sidecar has been engaged in the process of applying for its initial TNC authorization. The newness of the process has necessitated numerous communications with the Commission’s Policy Division – initiated by both sides – to clarify the intended implementation of D.13-09-045’s application requirements. Sidecar has also sought to respond quickly to Policy Division’s inquiries regarding the developing nature of various issues attendant to the TNC business model. Additionally, Policy Division staff is active in the industry insurance coalition. While the ACR would impose “only” reporting requirements, rather than limits on the substance and timing of ex parte communications themselves, application of Rule 8.4 in these contexts would unnecessarily complicate and encumber these productive, collaborative discussions.

Furthermore, because violation of the ex parte rules may subject a person to sanctions, including fines or penalties, someone not well-versed in the application of the Commission’s Rules may decline, for example, to respond to an informal request for feedback from Policy Division staff, in order to avoid the risk of inadvertently violating the Rules. The potential to stifle the free exchange of ideas and information is a reason why quasi-legislative proceedings – much like the drafting and development of legislation by the California Legislature – are generally excused from ex parte reporting rules.

Easy and abundant participation by the public and interested parties advances the quality of the process and legitimacy of the Commission’s decisions in quasi-legislative

proceedings. Sidecar believes that the Commission's Rules should be implemented in such a way as to encourage, rather than discourage, such participation. Accordingly, Sidecar recommends that the Commission – at a minimum – decline to take the unusual step of extending Rule 8.4 to its Policy Division staff. Allowing unconstrained communication between parties and the Policy Division will enable staff to continue to serve the process efficiently as a valuable clearinghouse and conduit for industry developments. However, if the Commission determines – in the discretion afforded it under Rule 1.2 – that “due process and the orderly and efficient dissemination of information” outweighs the potential risk to the effective exchange of information in a rapidly evolving marketplace, Sidecar will faithfully adhere to the reporting requirements of Rule 8.4 as made applicable to this proceeding.

IV. CONCLUSION

For the reasons set forth above, we respectfully urge the Commission to adopt the ACR proposals, modified as recommended herein.

Respectfully submitted,

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