

**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
(Filed December 20, 2012)

**SUMMON'S (FORMERLY INSTANTCAB'S) (TCP 32545) COMMENTS ON
PROPOSED MODIFICATION TO DECISION 13-09-045**

Dated: April 7, 2014

Submitted by:
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Summon (formerly InstantCab) submits the following comments in response to the proposed modifications to Decision 13-09-045 regulating Transportation Network Companies (“TNCs”).

I. THE DEFINITION OF “PROVIDING TNC SERVICES’ SHOULD BE LIMITED TO TIMES WHEN A TNC DRIVER IS ON A RIDE.

The TNC industry grew around the idea that members of the community could use their personal cars to give rides to fellow community members. To an extent, in Decision 13-09-45, the Commission de-emphasized the communal aspects of providing TNC services and labeled it as a commercial endeavor by setting regulations similar to those for limos and taxis.¹ However, *before* the TNC driver accepts a ride request, it’s clear that his or her driving has no commercial component and should not be subject to regulation.

¹ See Public Utilities Commission of the State of California, Decision 13-09-045,

Summon supports limiting the definition of “providing TNC services”² to only include times when drivers are en route to a passenger or transporting a passenger. When drivers are not on a ride but simply logged into the TNC app, they are not using their cars as “public or livery conveyance[s].”³ Before accepting a ride, the TNC driver is no different from any other driver on the road. For example, the TNC driver may be running a personal errand by car and simply have the TNC app on in the background in case a request comes in. Unless and until a request is made, the driver has no need to look at or use the TNC app because the driver is notified by sound of an incoming request.

Since there is no commercial or livery component to the driver’s activity prior to ride acceptance, the driver’s personal auto insurance would cover any incidents that happen at that time. Livery exclusions found in some personal auto insurance policies would not apply when the driver is neither on the way to a customer nor conveying a customer in their vehicle. Indeed, personal auto insurance companies face liability if they do not cover a driver for an incident that occurs during the pre-accept period.⁴

When the driver accepts an incoming request, he or she begins driving on the rider’s behalf. At that time, livery exclusions in personal auto insurance policies may apply, triggering the TNC’s commercial liability insurance. However, in the “pre-accept” period, a TNC driver is indistinguishable from any other driver and should rely on

² Public Utilities Commission of the State of California, Assigned Commissioner’s Ruling Requesting Comment on Proposed Modifications to Decision 13-09-045 Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry (“Ruling Requesting Comment”), March 25, 2014, <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M089/K247/89247822.PDF>, pg. 2.

³ *Id.*

⁴ California Insurance Code 790.03(h)(5) defines the following as an unfair and deceptive act in the business of insurance: “Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear.”

personal auto insurance. Therefore, the definition of “providing TNC services” should be limited to times when drivers are en route to a rider or transporting a rider.

II. SUMMON UNDERSTANDS THE NEED FOR EVOLVING TNC INSURANCE REGULATIONS, BUT THE INSURANCE INDUSTRY HAS NOT OFFERED VIABLE SOLUTIONS.

Summon, as the first TNC to receive an operating permit from the Commission, has shown its commitment to customer safety and understands that comprehensive insurance is crucial to customer safety.⁵ Decision 13-09-045, issued by the Commission last September, required a minimum of \$1 million per-incident commercial liability coverage for incidents involving vehicles and drivers while they are providing TNC services.⁶ The proposed modifications would require TNCs to also obtain uninsured/underinsured motorist coverage with \$1 million per-incident coverage, \$50,000 in comprehensive coverage, \$50,000 in collision coverage, and \$5,000 in medical payments coverage. These proposals, if enacted, would create a mismatch between regulatory requirements and the current insurance market.

Summon understands that insurance regulations must evolve to keep pace with the evolving TNC industry, but it opposes any new insurance requirements until the insurance market offers financially viable products to meet those requirements. Since the TNC industry is still so nascent, no insurance companies have offered a range of

⁵ Summon’s TNC permit demonstrating that it has satisfied all CPUC requirements, including insurance requirements, can be viewed at <http://www.cpuc.ca.gov/NR/rdonlyres/8CDF1AEE-EAF4-45AA-A361-6EB52BF174FB/0/PSG32545.pdf>.

⁶ Public Utilities Commission of the State of California, Decision 13-09-045 Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, September 23, 2013, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M077/K192/77192335.PDF>, pg. 73.

solutions tailored to TNCs. Many insurance companies, unsure of the TNC business model, have declined to provide insurance to TNCs or charge excessive premiums, even for the \$1 million per-incident commercial liability coverage already required by Decision 13-09-045. Requiring additional insurance could limit the entry of new TNCs into this already-competitive market and hamper their growth. While there are a few services out there now that offer auto insurance solutions for *TNC drivers*,⁷ there are virtually no insurance options for the *TNCs* themselves that are required to hold the coverage.

Attachment A to these Comments is a letter from insurance brokers that have represented Summon on the insurance market. The brokers, who have several years experience in the auto insurance industry, acknowledge that the insurance industry does not currently have a product that could provide the types of coverage the Commission is proposing at reasonable rates. The letter states, “The CPUC recommendations appear sensible and are possibly needed in the long run. However, the market place at present does not offer these coverages, or if they did it would be at such an exorbitant premium as to destroy any further TNC companies and innovation.”⁸ According to these brokers, a better strategy would be for personal lines insurance companies to add endorsements to TNC drivers’ personal policies that would protect TNC drivers, customers, and the public.

In its proposal, the Commission writes, “as this is a new industry . . . the rules and regulations [the Commission] enacted might need to be modified as real-time information

⁷ See, e.g., American Business Insurance Services, Ride Sharing Insurance Quote, <https://www.abiweb.com/onlinequote/ridesharing/>.

⁸ Attachment A.

about TNC operations [become] known.”⁹ Given the reality of available insurance products, the Commission should not impose any more insurance requirements on TNCs until the insurance industry can offer financially viable products that allow TNCs to enter and remain in the industry while complying with the rules.

By requiring TNCs to carry insurance when drivers are logged into the app but not on a ride, it also creates an incentive for drivers to turn on their TNC apps as much as possible, even when they can’t or don’t want to accept rides, to take advantage of TNC insurance. This does a disservice to the public who rely on TNC services to get rides and reduces the quality of the TNC driver pool. More importantly, this would also put an unfair burden on TNCs and their insurance carriers by multiplying their risk exposure.

The availability of multiple TNC apps can also create confusion with regards to insurance coverage. Most TNC drivers drive for multiple services and are logged into multiple TNC apps at the same time.¹⁰ If an incident occurs prior to ride acceptance, confusion will arise about which TNC’s insurance should cover the incident. Industry self-regulations that limit drivers to one TNC app at a time are not the answer. Part of the success of TNCs lies in driver independence and in allowing drivers to use multiple apps to suit their lifestyle and maximize the number of rides. Regulations (both self-regulations and from external entities like the Commission) requiring TNC drivers to use one app at any given time would diminish the independence and ingenuity of the TNC industry.

⁹ Ruling Requesting Comment, pg. 4.

¹⁰ See Patrick Hoge, Nery Drive Multi-Taxis With Uber, Flywheel, Summon, San Francisco Business Times, March 13, 2014, <http://www.bizjournals.com/sanfrancisco/blog/2014/03/nery-driver-multi-taxis-with-uber-flywheel-summon.html?page=all> (although this article focuses on taxi drivers, many TNC drivers also have several apps open at the same time).

III. SOME, BUT NOT ALL, EX PARTE COMMUNICATIONS SHOULD BE SUBJECT TO THE REPORTING REQUIREMENT OF RULE 8.4.

While most types of information that flow between interested parties and the Commission is private business information or readily available in the media, the meeting minutes of the Insurance Working Group should be made available to all parties. This will facilitate discussion on insurance matters that are relevant to the TNC industry.

Information, such as TNC pricing strategies and formulas and background check programs, is confidential business intelligence that should not be made available to all parties. Such details are competitive advantages to each TNC. Each TNC like Summon that has a permit from the CPUC has shown that it has met minimum safety-related requirements with regard to background checks, inspections, and other matters. If a TNC chooses to go beyond minimum regulatory requirements and develop other programs, that is the TNC's prerogative and should be kept private. Pricing should be kept outside the regulatory realm. The TNC industry is highly competitive. Requiring sensitive business information to be made available to all parties pursuant to Rule 8.4 would discourage TNCs from innovating and developing creative solutions because of the fear that competitors could easily learn this information.

Other TNC-relevant information can be found in the news media. For example, litigation over whether TNC drivers are employees or independent contractors, other city and state attempts to regulate TNCs, and changes in TNC insurance offerings are topics that are actively covered by news media and can be accessed by all interested parties. There is no need to apply the reporting requirements of Rule 8.4 to information about such topics.

Despite the need for interested parties to be able to speak privately and candidly with the Commission about sensitive information, certain discussions should be made available to all parties to facilitate positive developments in the TNC industry. For example, the Insurance Working Group marked the creation of a forum where various industry stakeholders could discuss ways to reduce risk and increase the safety of TNC services.¹¹ However, upon request of the group's founding members, Summon was not invited to be a member of the working group. If all TNCs are not included in meetings that could affect the future of the industry, it stifles dialogue and undercuts the potential for precisely the types of "industry-wide"¹² solutions the Commission seeks that can benefit all TNCs. For this reason, Summon supports applying the reporting requirements of Rule 8.4 to meeting minutes of the Insurance Working Group.

Dated: April 7, 2014

Respectfully Submitted,

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¹¹ Ryan Lawler, Lyft Announces Rideshare Insurance Coalition and Additional Coverage for Its Drivers, Techcrunch.com, February 5, 2014, <http://techcrunch.com/2014/02/05/lyft-insurance/>.

¹² Ruling Requesting Comment, pg. 8.

Attachment A

Letter from Insurance Brokers About Availability of TNC Insurance



CPUC Comments

Insurance Carrier State of the Market:

Transportation Network Companies are an emerging industry which the insurance market is handling on a customized and extremely limited basis; it is the most challenging class of business facing the insurance industry today. There are only a couple carriers that write this business and they are at capacity and unwilling to make major changes or allow additional entrants. To add to this challenge, personal lines carriers are unwilling to extend coverage to this exposure.

The CPUC recommendations appear sensible and are possibly needed in the long run. However, the market place at present does not offer these coverages, or if they did it would be at such an exorbitant premium as to destroy any further TNC companies and innovation. A more measured and incremental implementation of these recommendations with plenty of advanced notice would be more beneficial to the future of this industry. TNCs are very interested in offering the full range of coverage to build the public confidence in the future of this transportation mode. Thus, this is not a matter of TNC's trying to avoid providing the appropriate coverage, but rather a simple matter of obtaining it for a reasonable cost that would allow the continuation of this business model.

The CPUC could make a recommendation to the insurance commissioner that would make every auto insurer in California provide the opportunity to add a TNC endorsement/enhancement as they do for the activities of Real Estate Agents, Lawyers, Outside Sales Representatives, Advertising Agents and Insurance Agents. Most insurance carriers can accommodate those activities for a nominal charge. This would immediately resolve the issues facing the TNCs, the CPUC, and consumers.

Definition of "Providing TNC Services":

An open TNC application is not the best definition for insurance coverage to begin. That definition invites someone to leave an application open/online all day to avoid their personal insurance responsibilities. This proposed definition ultimately would be counterproductive and have unforeseen consequences. The acceptance of a potential fare/rider via the application would be a more accurate definition for coverage to begin. The declination of a ride via the application or a completion of a ride would be a more accurate definition for coverage to end.

Proposed Limits (\$1,000,000 TNC Drivers, Comp, Collision, and Medical):

Writing liability insurance and property insurance for a non-commercial/non-professional driver that is not an employee of the insured and for a vehicle not owned/leased or controlled by the insured is not a risk insurance companies have provided coverage for or are willing to provide with the exception of "trial limits" as evidenced in the CPUC proposal. In addition, of the very few insurers in this market space some don't have the ability with reinsurance treaties or policy forms to

provide this coverage. This literally reduces the number of insurance carriers willing to write this coverage to 1 or 2, if any.

The CPUC recommendations are mismatched with the realities of risks associated with this form of transportation, as compared with taxis. Unlike taxi drivers, TNC drivers are not professional drivers and are making a personal decision to engage in TNC services. As such, trying to provide insurance for personal drivers with a taxi cab business model is at this time an unworkable situation. Without the participation of personal lines carriers, the long term viability of this emerging industry will be hampered and delayed. The barriers to entry with this proposal will stop all but the top one or two companies from competing and ultimately reduce innovation and growth in the TNC and transportation industries.

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