

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

**UNITED TAXICAB WORKERS' COMMENTS
ON PROPOSED MODIFICATION TO DECISION 13-09-045**

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I. Introduction

United Taxicab Workers (“UTW”) welcomes the opportunity to comment on proposed modifications of the Commission’s insurance rules for TNCs and thanks the Commission for revisiting this critical subject. We are in full accord with the goal stated in the Assigned Commissioner’s Ruling (“ACR”) of providing “the widest scope of coverage to protect the TNC drivers, subscribing TNC passengers, other drivers, and pedestrians on a consistent basis.”¹ Unfortunately, the proposed rule modifications do not come near achieving that end.

At the outset, we wish to point out that the failure of TNC insurance to adequately protect the public was copiously documented by a number of parties throughout the previous proceedings, including comments from the insurance industry itself. The Commission chose to ignore those clear warnings, sanctioning glaring gaps in TNC insurance. As a consequence of this regulatory failure, Uber saw fit to deny responsibility for the death of a little girl and injuries to her mother and brother caused by a driver logged onto its app. The proposed modifications seek to address this and similar situations. They are, however, a less-than-halfway measure that would perpetuate current insurance gaps and uncertainty and continue to provide a powerful incentive for fraud. The only solution adequate to the task of providing the widest scope of coverage is to require TNC drivers to carry commercial livery liability insurance in the amount of \$1 million, applicable under all circumstances and at all times. And to further ensure that the public gets the protection it deserves, every TNC company should be required to carry a backup policy that would apply in case the driver’s insurance has lapsed or a violation of policy terms has allowed the carrier to deny liability.

II. **The proposed rule modifications will not close gaps in TNC insurance.**

The proposed modifications would define “providing TNC services” 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.

This formulation would provide coverage in an accident like the one that killed Sophia Liu because, according to reports, the driver had the app open at the time.² But other accidents are virtually certain to occur at times when the driver is actively working despite the fact that the app is off. Upon information and belief, some TNC drivers turn

¹ ACR at 5.

² Assuming, however, that this is provable, as discussed below.

the app off and on in order to take advantage of surge pricing, which may apply in some parts of town but not in others. The driver heads for an area where the fare is higher with the app off to avoid being offered a ride in the quieter zone at the lower fare. (Drivers are expected to accept a high percentage of offered rides in order to remain in good standing with the company.) Once in the desired area, the app goes back on. If an accident were to occur while the app was off, the proposed rule would allow the TNC to deny coverage. It's hard to imagine that the driver's personal insurance would provide coverage in such a circumstance. And even if personal insurance were to apply, the coverage limit would most likely be far lower than the amount the Commission requires.

At other times when the app is off, the driver may be using the vehicle "as a public or livery conveyance" nonetheless. San Francisco cab drivers are constant witnesses to instances of TNC drivers soliciting passengers or accepting street hails. There is an incentive to engage in this practice because the driver can charge whatever the traffic will bear, and does not have to pay a commission to the company. It is also a common practice in the taxi industry and, doubtless, among TNC drivers as well, to develop a private clientele of riders who summon the driver by means of a phone call or text message. While the driver in such instances is, however unlawfully, "using the vehicle as a public or livery conveyance", as the rule states, the superfluous reference in the rule's language to whether the app is on or off leaves doubt as to whether transportation provided under these circumstances would come within its scope.

III.

Having separate personal and TNC insurance policies provides an incentive for driver fraud that may be difficult to detect.

A TNC driver who gets into an accident may have a strong incentive for pretending he or she was not on the app at the time.³ The most obvious reason is to conceal from the personal insurance carrier the fact that the driver is providing ride services for compensation. Another reason may be to keep the job, since an at-fault accident while the driver is on the app will count as a black mark against that driver. This kind of fraud may be extremely difficult to detect. For one thing, many TNC drivers

³ At the Investigatory Hearing held March 21 by Insurance Commissioner Dave Jones, San Francisco Deputy District Attorney Conrad Del Rosario testified that some ride service drivers involved in accidents have falsely claimed that they were driving for personal reasons. Conversely, a TNC representative claimed a driver might have an incentive for pretending the app was on. In either instance, the action is fraudulent.

don't bother to use the company's "trade dress", which in any event is easily removable. If the driver doesn't have a passenger on board to bear witness, neither an injured party nor the driver's personal insurer may have any way of knowing that the driver worked for a TNC, much less that he or she was on the app at the time. And even if the vehicle can be linked to a TNC, there may be thorny questions of proof as to the exact moment of the accident, whether the app was on or off at the time, and whether the driver quickly changed status once the accident occurred. This information is in the hands of a company with a strong self-interest at stake. In any event, an injured party should not have to wade through this morass in order to collect on a claim.

IV.

To obviate the problems discussed above, TNC drivers must carry commercial livery insurance.

Unless TNC drivers carry the same kind of insurance as taxis and TCP vehicles, insurance gaps, uncertainty as to coverage and incentives for fraud will persist. The insurance in question should be commercial livery insurance with a \$1 million coverage limit. It should be in the driver's name. If the insurance is in the TNC's name and an accident were to occur while a driver is using multiple apps and is not matched to a passenger, which TNC would be responsible?⁴ It may be objected that some drivers will be performing TNC services only on occasion, and that the insurance required would therefore be prohibitively expensive. But that need not be the case. Liability insurance rates are based, among other factors, on mileage. Drivers who put on low mileage should be able to qualify for a lower rate for the same coverage limit.

In addition to a commercial policy in the name of the driver, the TNC should be required to have backup insurance in the event the driver's policy has lapsed or coverage is denied for any reason. As this policy would be rarely invoked, its cost would be modest. Requiring such insurance would be in furtherance of the ACR's intention to provide the public with the widest scope of coverage.

V.

Uber should carry commercial livery insurance on all its vehicles.

Uber presents an interesting case-in-point, illustrating a major problem with the Commission's Decision. Some Uber X vehicles have TCP licenses and some are personal vehicles. Uber X TCPs and TNCs use the same types of cars, mainly

⁴ At some point, the Commission should examine the implications for safety of the use of multiple apps.

modestly priced sedans. In either case, the drivers provide exactly the same service. Insurance and other rules that treat them differently make no sense. The basic lesson to be learned from Uber X is that there is no need for the TNC designation at all. The type of service rendered by TNCs can be perfectly well provided by TCPs under the existing rules.

VI.

All *Ex Parte* communications should be reported.

Transparency is vital to the workings of democracy. When decisions inimical to the public interest take place out of the public's sight, or undue influence is wielded behind closed doors, no one may be the wiser. Therefore, exceptions to public disclosure and participation in decision-making must be kept to a minimum. Unfortunately, that was not the case in these proceedings. The Commission's Cease-and-Desist Orders, which were amply justified on account of the fact that companies now called TNCs were operating in clear violation of law, were rescinded, and these companies were allowed to continue to operate outside the law, without any public process or disclosure of the communications that led to those decisions. It is fair to presume that extensive contacts must have taken place between the companies in question and the Commission. The public remained unaware of these discussions, and therefore was precluded from presenting differing points of view. Those decisions, we maintain, tainted the proceedings that followed and led to a foreordained conclusion. Full disclosure at this point comes much too late; but it is better than nothing. Better still would be to require the rules about *Ex Parte* communications to be retroactive to the very first contacts between the Commission and the companies now called TNCs.

VII.

Conclusion

Unless TNCs are required to have commercial livery insurance applicable under all circumstances, the insurance troughs and abysses that presently haunt the system will continue to exist. The public will inevitably pay the price.

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Respectfully submitted,

/s/ Ruach Graffis

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