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01-18-13
04:59 PM

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

COMMENTS – from Willie Brown

1. Summary

The following comments regarding Rulemaking 12-12-011 have been submitted by former San Francisco Mayor Willie J. Brown Jr. in response to the California Public Utilities Commission which initiated a proceeding to create parameters and regulations to allow innovators to use technology to improve the lives of Californians. Some of the innovators, such as Tickengo and the government-run site 511.org, currently connect passengers via websites and/or smartphones with private drivers and vehicles.

Pure ridesharing platforms not operating as charter-party carriers but simply enabling licensed drivers and riders to connect and share empty seats in their cars, such as Tickengo and the government-run 511.org, must be defined clearly by the CPUC in order to avoid competitive misunderstandings from passenger carriers and taxis and improve the lives of Californians. The category of ridesharing needs to be clearly defined in order to differentiate the category from that of charter-party carriers.

We are proposing a mandatory cap on revenues per driver so that no driver on a site or mobile app may make a profit, as defined by the definition of “profit” in CPUC

Code Section 5353(h). A good model for this is Tickengo, a true peer-to-peer collaborative transportation community similar to the government-run ridesharing site 511.org. Tickengo mandates a limit on drivers using its site and mobile apps. Both Tickengo and 511.org sites allow any non-commercial driver to sign-up and provide an innovative means to fill empty seats in cars on the road.

2. Definition of Ridesharing

CPUC Code Section 5353(f) states that the CPUC does not regulate “passenger vehicles carrying passengers on a noncommercial enterprise basis”. The issue for sites such as Tickengo and 511.org is that there is no clear definition included in 5353(f) of “vehicles carrying passengers on a noncommercial enterprise”. Sites like 511.org and Tickengo encourage carpooling and ridesharing and 511.org encourages riders and drivers to negotiate the sharing of expenses. Sites such as Tickengo are not regulated by the CPUC. Yet the CPUC has received complaints against Tickengo by limousine and taxi industry players seeking to eliminate potential competition in the form of ridesharing. For this reason there needs to be a clear definition of how much money can be received annually by drivers providing ridesharing. A clear definition of ridesharing will help eliminate confusion with charter-party carriers, fill empty seats in cars, and reduce pollution and congestion while lowering the cost of door-to-door transportation for citizens.

Pure ridesharing platforms not operating as charter-party carriers and simply enabling licensed drivers and riders to connect and share empty seats in their cars, with a mandatory cap on revenues per driver so that no driver can make a profit (profit defined by CPUC Code Section 5353(h)), are exempted from current regulation. These platforms/companies do not own or operate any vehicle as they are communications service platforms for non-commercial drivers and carpoolers/ride sharers to connect easily. Tickengo is a true peer-to-peer collaborative transportation community similar to

the government-run ridesharing site 511.org. Both sites allow any driver or rider to sign-up. Tickengo proposes that the CPUC create a specific regulation allowing for any ridesharing platform such as 511.org or Tickengo to exist, as long as these platforms limit the maximum share-the-expense carpool amount drivers can collect on a yearly basis to the American Automobile Association's (AAA) official annual cost of vehicle ownership (currently \$8,776 per year). This method of calculating the average cost of owning and operating a vehicle is the most accurate and makes it possible for ridesharing to exist without controversy. We propose this annual AAA number because it would be impossible to calculate the exact expense of every single trip so this limitation guarantees that ridesharing drivers are not “driving for a living” as commercial drivers. It also uses the definition of “profit” currently used by the CPUC in Section 5353(h).

A ridesharing platform such as 511.org or Tickengo does not provide a contract with drivers to provide transportation. It simply has Terms and Conditions where users of the website and mobile apps agree that the site is a forum where people can easily connect with each other and agree on their own accord to ride together and fill empty seats in cars on the road. This is vastly different from companies interviewing, screening, and training drivers to work as commercial drivers.

If there were an accident, users of true ridesharing platforms agree through the Terms and Conditions to turn to the responsible party. The responsible party in these cases is the party who caused an accident. For example, 511.org, the government-run website, explicitly states in its Terms and Conditions that it bears no responsibility in case of accidents. Tickengo has similar language. The site 511.org, the Craig’s List ridesharing site, and Tickengo have never been held responsible for car accidents with drivers using their site for ridesharing.

3. Ridesharing

Ridesharing is not regulated by the CPUC. Craig's List ridesharing site or 511.org, which have been operating for years, have never caused the CPUC to be held responsible for any safety issues as all rides have being arranged between regular citizens. Despite this fact, a clearer definition of ridesharing will enable the CPUC to create a clear delineation between ridesharing sites and charter-party carriers to avoid further confusion.

Reputation and review features enable ridesharing sites such as Tickengo to promote it's own voluntary safety system. Reputations and reviews have been major keys to success for companies such as eBay which have made purchasing products easier. eBay has not been held responsible for defects in the products sold by individuals on its site.

PU Code Section 5353(h) exempts certain providers of "ridesharing" from the application of the Act and from the Commission's authority. Section 5353(h) refers to the definition of ridesharing in § 522 of the California Vehicle Code, which states:

"Ridesharing" means two or more persons traveling by any mode, including, but not limited to, carpooling, vanpooling, buspooling, taxipooling, jitney, and public transit.

Drivers who sign-up on Tickengo or 511.org fall under this definition of ridesharing.

PU Code Section 5353(h) also states:

This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision does not include the recovery of actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

On Tickengo drivers are not allowed to make a profit from their driving activities on the site; they can only recoup the expense of owning their vehicles as calculated by AAA's official annual cost of vehicle ownership (currently \$8,776 per year).

This definition of ridesharing does not permit transportation performed “for profit”. Recovery of actual costs incurred explicitly applies to vanpool vehicles in 5353(h), but must be interpreted to include all vehicles, as the CPUC explicitly does not regulate “passenger vehicles carrying passengers on a noncommercial enterprise basis” in 5353(f). The CPUC provide a narrow definition of “profit” in 5353(h) and this definition of “profit” can logically be extended to other vehicles as well in the absence of any other definition. The term “noncommercial enterprise basis” is easily understood as “not making a profit but with the ability to recoup expenses”.

Section 5353(h) should explicitly allow all ridesharing as defined by Section 522 of the vehicle code, in order to promote progress and consumer benefits. Ridesharing sites such as 511.org and Tickengo should continue to exist and be recognized by the CPUC, with a clearly-written regulation stating that carpooling or ridesharing drivers who sign-up on the sites should not make more than the cost of owning and operating their vehicles. If they made more than that, they would need to be regulated as commercial drivers or charter-party carriers. The CPUC’s definition of “profit” in 5353(h) should be used explicitly for all ridesharing vehicles, so that ridesharing sites may continue to be promoted and citizens may continue to fill empty seats in cars on the road. This is consistent with the goals of carpool lanes and free bridge tolls.

Although § 5360 refers to the “transportation of persons by motor vehicle for compensation” in its definition of passenger carriers, the Act does not suggest that there is a minimum amount of compensation necessary to trigger the Act’s application. There needs to be a minimum amount defined by the CPUC. Again here we suggest using AAA's official annual cost of vehicle ownership (currently \$8,776 per year). This definition falls in line with the current CPUC Code Section 5353(h). It also takes into account many cost factors such as current gas prices, depreciation, and repairs.

There a clear difference between a driver who transports passengers by motor vehicle for *de minimis* compensation, and a driver who transports passengers by motor

vehicle for a living. Today already millions of people share expenses and compensation when ridesharing. This behavior is encouraged by the government on the site 511.org. This is good for society. Carpool lanes and free bridge tolls are “de minimis compensation” from the government itself to encourage ridesharing. The question is to what degree can they be compensated? The limit needs to be as defined in the current CPUC Code Section 5353 as this would be both verifiable and easily calculable by all entities.

Legitimate ridesharing includes the transportation of a passenger on a trip the driver was not otherwise planning to take. This is because it would be impossible to read drivers' minds and differentiate between people just helping out other people and people trying to recoup their vehicle expenses. The limit needs to be as clearly defined using CPUC Code Section 5353(h) as this would be both verifiable and easily calculable by all entities. Again we suggest using AAA's official annual cost of vehicle ownership (currently \$8,776 per year). This definition falls in line with the current CPUC Code Section 5353(h). It also takes into account many factors such as current gas prices, depreciation, and repairs.

In legitimate ridesharing, automobile insurance protects not only the covered party, but also the other motorist(s) and any other parties or property (such as pedestrians or nearby structures) involved in a vehicle accident. If a vehicle is insured as a private vehicle, but involved in an accident while transporting passengers in a ridesharing arrangement, insurance is offered for injuries/damage to the driver, the expense-sharing passenger, and other people involved in the accident and/or the vehicles involved. Today regular car insurance policies cover passengers when the trips are not "livery" or commercial. For example a typical standard policy with Liberty Mutual states: "Liability Exclusion Number 5: For that person's liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool." Drivers on 511.org or Tickengo are not

commercial drivers so they are covered under this type of policy. On Tickengo they cannot make more than the AAA's official annual cost of vehicle ownership (currently \$8,776 per year). The definition of expense reimbursement is also set by California law under California Insurance Code § 11580.24. The reason this law exists is that courts have held that reasonable expense sharing agreements do not constitute use of an automobile as a “public or delivery conveyance.” The case of Allstate Insurance Company v. Roberson, 5CCH (Auto 2nd.) 389, is considered a leading one in the application of automobile liability insurance to the circumstances under review in this OIR. The court held that expense sharing agreements do not constitute use of the automobile as a “public or livery conveyance”. Other courts have interpreted current insurance policy language in a similar fashion.

More importantly carpooling ride sharers are provided state-mandated insurance protection when drivers arranged through 511.org or Tickengo are covered at the state’s minimum levels. The California driver’s license allows drivers to carry passengers. California insurance regulations are deemed sufficient for regular drivers driving their friends and family. If this level of insurance is deemed unsafe for ridesharing, the minimum amount of insurance coverage would need to be modified at the State Insurance Code level so that all drivers and riders who have been compensated through time savings to use carpool lanes, ridesharing arrangements or free bridge tolls are not put at an inappropriate level of liability risk. Ridesharing sites such as 511.org or Tickengo allow for the public to interact with each other and make decisions together about sharing rides. The 511.org website recommends that passengers inquire with the drivers about what type of insurance they carry so that they may make their own decisions on whether or not it suffices. Most drivers today carry \$300K in liability coverage, more than the state minimums. By law, drivers are not allowed to drive without insurance.

California Insurance Code § 11580.24 prohibits insurance carriers from classifying a private vehicle as a commercial or livery vehicle just because the vehicle is used in a car sharing program (i.e., renting out one’s personal vehicle to another driver), as long as

the vehicle owner does not earn more than the annual cost of owning the vehicle from the car sharing program. This is an appropriate criterion for determining whether vehicles used in legitimate ridesharing sites like Tickengo or 511.org have an effect on public safety or transportation access.

California Insurance Code 11580.24 is appropriate as true ridesharing communities should not allow drivers to make more than the annual cost of owning the vehicle. For this reason and the others cited above we suggest that the CPUC use the AAA's official annual cost of vehicle ownership (currently \$8,776 per year), for clear delineation between ridesharing and charter-party carrying.

Dated January 18, 2013 at San Francisco, California.

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