

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

**FILED**

6-10-14

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June 10, 2014

## TO PARTIES OF RECORD IN RULEMAKING 12-12-011:

This is the proposed decision of Commissioner Michael R. Peevey. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's July 10, 2014 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ TIMOTHY J. SULLIVAN

Timothy J. Sullivan,  
Chief Administrative Law Judge (Acting)

TJS:sbf

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PEEVEY**

(Mailed 6/10/14)

**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  
(Filed December 20, 2012)

**DECISION MODIFYING DECISION 13-09-045**

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**DECISION MODIFYING DECISION 13-09-045****1. Summary**

This decision modifies Decision (D.) 13-09-045 which adopted rules and regulations for Transportation Network Companies (TNC). Specifically, the modifications are as follows:

- a. TNC services are defined as whenever the TNC driver has the application (app) open and/or available to accept rides from a subscribing TNC passenger. TNC services are provided by TNC drivers during three distinct time periods. Period One is: "App open - waiting for a match." Period Two is: "Match accepted - but passenger not yet picked up." Period Three is: "Passenger in car - until passenger safely exits car." D.13-09-045 made clear that coverage was mandatory during Periods Two and Three. This Decision clarifies that coverage is also mandatory during Period One.<sup>1</sup>
- b. A TNC permit from the California Public Utilities Commission will require, and TNCs shall maintain, a \$1 million commercial liability insurance, as well as medical payments coverage in the amount of \$5,000, comprehensive and collision coverage in the amount of \$50,000, and uninsured/underinsured motorist coverage in the amount of \$1,000,000 per incident.<sup>2</sup>

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<sup>1</sup> We have heard from at least one airport that it requires that the app stay on until the TNC driver has left airport property. As we stated in D.13-09-045, the TNCs must follow any and all airport regulations the TNCs must keep the app on for any airport that has a requirement that the app stay on after the passenger has been dropped off and can be turned off no sooner than when the TNC driver has left airport property. Additionally, it should be noted that with respect to the three periods listed above, TNC service would still continue in all situations after a passenger has exited a car provided that the driver's app is still open.

<sup>2</sup> The insurance requirement is not the only requirement to obtain a TNC permit in order to operate in California. D.13-09-045 also made clear that all TNC companies must abide by the Safety Requirements and Regulatory Requirements detailed in page 26-30 of D.13-09-045.

*Footnote continued on next page*

A transportation network company's insurance, as required by these regulations, is primary and exclusive and shall assume all liability during the time periods TNC services are being provided. Such policy shall have the sole duty to defend for an incident which occurred during the time TNC services are being provided. A transportation network company may satisfy the insurance requirements, prescribed by these regulations, by one of the following:

1. Maintaining such insurance on its own, or
2. With any combination of a policy maintained by the transportation network company and a policy maintained by the transportation network company driver that is specifically written for the purpose of covering transportation network services, or portion thereof. Such combination of policies must meet the minimum limits required by these regulations. Such policies are exclusive and shall assume all liability. Such policies shall have the sole duty to defend.

In the event a driver maintained policy is used to partially fulfill the insurance requirements, a transportation network company's insurance must provide sole excess coverage to the driver's policy that is specifically written for the purpose of covering transportation network services, or portion thereof. In the event such driver maintained policy ceases to exist, the transportation network company's insurance shall provide exclusive coverage, and assume all liability and the sole duty to defend, at dollar one.

Unless coverage for TNC services is separately and specifically stated in the policy and priced pursuant to approval by the California Department of

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Failure to comply with any of the rules may result in citation, suspension and/or revocation of the TNC's permit.

Insurance, a driver's personal automobile policy is in no way required to provide coverage or the duty to defend for TNC services.

- a. These modifications shall also apply to Uber Technologies, Inc.
- b. The Commission exercises 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. In addition, the Commission determines that this reporting requirement should, and hereby does, cover communications between "interested persons," as defined in Rule 8.1(d), and the Commission's Policy and Planning Division.

## **2. Procedural History**

### **2.1. The Assigned Commissioner's Ruling (ACR)**

An Assigned Commissioner's Ruling (ACR) was issued on March 25, 2014, requesting comment on five proposed modifications to D.13-09-045.<sup>3</sup> The need to issue that ACR was driven by a number of factors.<sup>4</sup> First, the phrase "providing TNC services" has been interpreted different ways; second, there was some uncertainty over whether a TNC driver's personal automobile insurance would apply to an incident where the TNC driver is wholly or partially at fault, the app is open, and there is no passenger in the vehicle; and third, the Commission analyzed whether the TNC should provide coverage beyond commercial liability insurance required by our decision in light of concerns raised by the California Insurance Commissioner and others about potential gaps

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<sup>3</sup> ACR, at 2-3.

<sup>4</sup> Rule 16.4 of the Commission's Rules sets forth the procedure for a party to file a petition for modification, and the Commission also has the power pursuant to Pub. Util. Code § 1708 to modify its decision.

in TNC insurance required by our decision, including lack of clear requirements for coverage of collision, comprehensive, uninsured/underinsured motorists, and medical expenses. The ACR proposed modifications so that coverage is provided on a consistent basis. The ACR also invited the parties to comment on the proposed changes.

The following parties filed opening comments to the ACR: SideCar, Lyft, United Taxicab Workers, San Francisco Municipal Transportation Agency (SFMTA), San Francisco Cab Association, Luxor, Taxicab Paratransit Association of California (TPAC), Uber, Personal Insurance Federation of California (PIFC), Greater Livery, former Willie L. Brown Jr, Christopher Dolan and the Dolan Law Firm (collectively referred to as Dolan).<sup>5</sup> The following parties filed replies to the ACR: Sidecar, Lyft, United Taxicab Workers, SFMTA, San Francisco Cab Association, TPAC, Uber, and the Dolan Law Firm

### **3. Defining the phrase “Providing TNC Services”**

#### **3.1. Comments on the ACR**

D.13-09-045 did not specifically define TNC services other than to say for the purpose of TNC services, a ride is considered prearranged if the ride is solicited and accepted via a TNC digital platform before the ride commences.<sup>6</sup> The ACR proposed to define this terms and asked parties for comment, because TNC companies seemed to settle on a definition that was too narrow and did not meet the Commission’s original intent. Thirteen parties filed comments in response to the ACR.

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<sup>5</sup> Christopher Dolan and the Dolan Law Firm were granted party status, with limitations, by way of an e mail ruling on April 7, 2014.

<sup>6</sup> D.13-09-045 at 30.

California Airports Council believes the definition must include the time a TNC driver is waiting for notification of new patrons and the time between trips.

City and County of San Francisco supports closing the insurance gap but questions if the proposed modification is sufficient. The City proposes that “providing TNC services” should include those periods in which a driver is (1) en route to pick up a TNC passenger; (2) transporting a TNC passenger; (3) picking up a TNC passenger; (4) dropping off a TNC passenger; or (5) situated in the TNC vehicle while the app is open or the driver is otherwise available to accept rides from a subscribing TNC passenger.

Dolan Law Firm supports defining this phrase but suggests changing “whenever the TNC driver is using their vehicle” to “whenever the TNC driver is using a vehicle.” Additionally, the phrase “as a public or livery conveyance” should be changed to read “for the purpose of facilitating the actual or prospective transportation of the public, including but not limited to the time that they initially log onto, open, or otherwise indicate their availability as open and available to accept passengers through, a TNC app, until the driver has logged off, closed the application or otherwise indicated they are no longer available to provide TNC services.” Dolan Law Firm asserts this coverage would be similar to what is afforded by other transportation providers such as taxis.

Luxor argues that a vehicle become a commercial vehicle as soon as the driver registers his or her vehicle with a TNC. Otherwise, Luxor fears that there is an open invitation for insurance fraud.

Lyft does not believe the Commission should create a new definition of “providing TNC services” as the current definition is clear and unambiguous. Additionally, adding the phrase “whenever the TNC driver is using their vehicle as a public or livery conveyance” will create ambiguity with the balance of the

Phase I decision. The app on/app off concept will also throw the entire regulatory framework into chaos as the decision contemplated a nexus between the provision of transportation for compensation and the concept of providing TNC services. There is no universally accepted meaning of the terms “open,” “closed,” or “available to accept rides.”

PIFC suggests defining the phrase to mean “when participating drivers make themselves available for passengers, which includes, but is not limited to, logging on to the transportation network company’s application program, attaching an insignia or logo indicating the personal motor vehicle as providing transportation network services, or having a fare-paying passenger getting into or out of the vehicle.” PIFC believes this definition will accomplish the Commissioner’s goal of removing gaps in the commercial liability coverage.

San Francisco Cab Drivers Association opposes the proposed definition and instead believes either the TNC or the TNC driver needs to provide each vehicle with 100% insurance coverage, 100% of the time.

SideCar believes the proposed definition is overbroad and would subject TNCs to fraud by unscrupulous drivers and higher than necessary insurance costs.

Summons proposes limiting “providing TNC services” to only those times when TNC drivers are en route to a passenger or are transporting a passenger.

TPAC suggest that rather than basing insurance upon a limited time frame when TNC driver has a specific app open, the appropriate Commercial Auto Liability Insurance policy would cover the vehicles being used to provide transportation services at all times. The Commercial Auto Liability Insurance policy should be commensurate with at least the minimum charter-party carrier requirements for TNCs that provide exclusively pre-arranged services.

Uber suggests that the Commission should maintain the original language of the D.13-09-045 with regard to the period during which commercial TNC third-party liability insurance shall apply. While Uber supports establishing coverage requirements for Period 1 (*i.e.*, the driver's app is open, but the TNC driver has not yet accepted a request for transportation), the Commission should allow the TNCs and the insurance industry to fashion market-based solutions to address the coverage needs during that period. Uber is also concerned about a TNC driver in Period 1 having contracted with multiple TNCs and keeping all apps open at all times in order to maximize the likelihood of procuring a request for transportation. Uber suggests defining "providing TNCs services" as follows: "Whenever the TNC driver is using their vehicle as a public or livery conveyance, which is from the time the TNC driver accepts a passenger's request to prearrange transportation services until the time the TNC driver concludes providing such transportation services to the passenger." As for levels of insurance during Period 1, Uber suggests the Commission should mandate coverage "at least at the limits required by state personal auto policies, but leave open the question of who may purchase such coverage."

United Taxicab Workers do not believe the proposed modifications will close the TNC coverage gaps.

### **3.2. Discussion**

As this is a new industry, the Commission knew that the rules and regulations it enacted might need to be modified as real-time information about TNC operations became known. The Commission also has the power pursuant to Pub. Util. Code § 1708 to modify its decision:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of

complaints, rescind, alter, or amend any order or decision made by it.

D.13-09-045 uses the phrase “providing TNC services” in a manner that may have caused some confusion. For example, in Application of the TPAC for Rehearing of D.13-09-045, TPAC argues that the “Decision fails to state whether a TNC driver is considered to be providing TNC services when en route to picking up a passenger, when returning from dropping off a passenger, or when a driver is cruising an area while awaiting a ride request.”<sup>7</sup> The California Department of Insurance has also recognized this potential uncertainty<sup>8</sup> and has advocated defining “providing TNC services” to cover the following three periods: Period 1 (App Open – No Match); Period 2 (Match Accepted – Passenger Pick-Up); and Period 3 (Passenger in the Car – Passenger has safely exited the vehicle).<sup>9</sup>

As such, in an effort to eliminate uncertainty, the Commission defines “providing TNC services” as follows:

Whenever the TNC driver has the application (app) open. Furthermore, TNC services are provided by TNC drivers during three distinct time periods. Period One is: "App open - waiting for a match." Period Two is: "Match accepted - but passenger not yet picked up." Period Three is: "Passenger in car - until passenger safely exits car." D.13-09-045 made clear that coverage was mandatory during Periods Two and Three. This Decision clarifies that coverage is also mandatory during Period One.

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<sup>7</sup> Application, at 23, and fn. 129.

<sup>8</sup> See Department of Insurance letters dated January 10, 2014, March 25, 2014, and Background White Paper updated April 1, 2014.

<sup>9</sup> Department of Insurance letter dated April 7, 2014.

Providing TNC services is not limited to the time between obtaining a recorded acceptance to transport a subscribing TNC passenger or the TNC operator's travel to pick up that subscribing TNC passenger, transport, or drop-off of that subscribing TNC passenger(s) to his/her/their destination. Instead, this definition is expansive enough to cover **all circumstances** when the TNC driver is driving and/or waiting to be hired by a subscribing TNC passenger, has accepted a subscribing TNC passenger and is en route to pick up the subscribing TNC passenger, is transporting the subscribing TNC passenger from the pick-up spot to the destination stop, and is then again driving and/or the app is open to indicate that the driver is available or waiting to be hired by another subscribing TNC passenger. It is our intent that insurance coverage must be consistent with our definition of "providing TNC services" and during those times that those services are being provided.

### **3.3. Comments on Insurance Coverage in Response to the ACR**

As stated above this is a new industry and D.13-09-045 left the proceeding open in the event new data became available that could assist the Commission in refining our policies to further assure public safety, consumer choice, and innovation for the betterment to all Californians. Since the issuance of D.13-09-045 this industry has grown and the Commission has been able to receive additional data regarding the operation of TNCs and how TNCs are applying this Commission's directives. For example, the California Insurance Commissioner raised the specter of potential gaps in TNC insurance required by the Commission's decision, including lack of clear requirements for coverage of collision, comprehensive, uninsured/underinsured motorists, and medical expenses. As a result of these uncertainties, there are a number of different

situations where either no coverage or differing coverage may be available. The Commission's top priority in this case and all cases is to protect the public while allowing for customer choice and encouraging innovation. It is our intent that the TNCs provide the widest scope of coverage to protect the TNC drivers, subscribing TNC passengers, other drivers, and pedestrians on a consistent basis. Twelve parties filed comments in response to the ACR.

California Airports Council supports additional insurance requirements at a level similar to other transportation services. The language should also require that airports be listed as additional insured's to protect airport liability when TNCs are operating on airport property.

City and County of San Francisco (CCSF) argues that the new definition of the phrase "providing TNC services" should remain a part of the decision's insurance requirement. CCSF believes that the phrase "used as a public livery or conveyance" would add further confusion to the question of when TNC insurance applies to incidents involving TNC vehicles and drivers. CCSF supports additional coverage with the caveat that the comprehensive and collision insurance be \$50,000 per person and \$100,000 per accident as recommended by the California Department of Insurance. Additionally, CCSF requests that TNC insurance be deemed primary, that the TNC insurance policies be made available to the public, and ensure that personal insurance providers are advised of TNC activities of their insureds.

Dolan Law Firm argues that instead of the phrase "used as a public or livery conveyance," it should state "TNC vehicles providing TNC services" in order to provide consistency throughout the decision. Dolan also supports the additional coverage and limits.

Former mayor Willie L. Brown Jr also supports additional insurance coverage requirements such as Uninsured Motorists Coverage, Comprehensive Coverage, Collision Coverage, and medical payments coverage as a safety measure.

Greater California Livery Association (GCLA) believes additional insurance coverage requirements are fair and responsible. But GCLA suggests that the commercial coverage be primary, transparent to the public, and in force and effect 24 hours per day, 7 days per week. Finally only "A" rated and admitted carriers be allowed to insure TNCs.

Luxor argues for TNCs maintaining full-time primary commercial insurance on all vehicles registered with them for purposes of providing TNC services.

Lyft argues that the Commission need not revise the insurance requirements as there is no documented coverage gap. It cites the settled rule that exclusions in insurance contracts will be narrowly against the insurer. (*White v. Western Title Insurance Company* (1985) 40 Cal. Ed 870, 881.) Lyft concludes that insurers would be unlikely to prevail if they were to invoke this exclusion to deny a TNC driver's coverage under a personal automobile policy during periods when the driver "is in match mode."

PIFC suggests that the TNC commercial liability be primary and clarify that the duty to defend rests with the TNC's primary commercial liability policy.

San Francisco Cab Drivers Association (SFCDA) maintains that TNC drivers and vehicles should be required to obtain full-time commercial livery insurance policies. The coverage limits should be no less than what is required of taxicabs in a given jurisdiction.

SideCar disagrees that the proposed coverage limits are appropriate and, instead, recommends that the \$1,000,000 liability coverage only apply for the period where a ride has been accepted in the app until the ride ends and the passenger exits the vehicle. Contingent third party liability should be \$50,000 per individual bodily injury claim and \$1,000,000 per incident, and property damage up to \$25,000. Contingent collision coverage should be required in the amount of \$50,000.

Summons opposes any new insurance requirements until the insurance market offers financially viable products to meet those requirements.

United Taxicab Workers asserts having separate personal and TNC insurance policies provides an incentive for driver fraud that may be difficult to detect. Instead, TNC drivers must carry commercial livery insurance.

### **3.4. Discussion**

There has been some uncertainty as to whether a TNC driver's personal automobile insurance would apply in the event a TNC driver is involved in an incident while providing TNC services. On the one hand, we stated in Ordering Paragraph (OP) 6 of D.13-09-045 that the TNC's commercial liability insurance policy of at least \$1,000,000 (one million dollars) shall be available to cover claims "regardless of whether a TNC driver maintains insurance adequate to cover any portion of the claim."<sup>10</sup> That statement could be incorrectly interpreted to mean that a TNC driver's personal auto insurance may apply to an incident arising out of the TNC driver providing TNC services.

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<sup>10</sup> D.13-09-045, at 73, OP 6.

As we discussed in D.13-09-045,<sup>11</sup> the PIFC, which represents six of the largest insurance companies<sup>12</sup> in the United States, filed comments in this proceeding and explained why personal liability automobile coverage would not provide coverage in the event of an incident involving a TNC driver:

It appears that the industry standard for personal auto insurance ... is to exempt for insurance coverage claims involving vehicles used for transporting passengers for a charge. Thus, in situations where a vehicle is insured as a private vehicle and is used to transport passengers for a fee, no insurance coverage would exist. The issue before the CPUC is not ridesharing, but instead using a private passenger vehicle in a livery service. This is clearly not covered under a standard policy; if an accident occurs, coverage would not exist.<sup>13</sup>

We are left, then, with the probability that subscribing TNC passengers will be riding with TNC drivers that carry personal automobile insurance coverage that is inapplicable.

We believe that PIFC has raised a legitimate concern regarding the availability of a TNC's driver's personal automobile insurance to an incident arising out of providing TNC services. California construed this exclusion in *Allstate Insurance Company v. Normandie Club* (1963) 221 Cal.App.2d 103. The Court affirmed the trial court's jury instruction that "public" may "refer to a group of persons, although small in number."<sup>14</sup> The terms "public conveyance"

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<sup>11</sup> *Id.*, at 57-58.

<sup>12</sup> State Farm Insurance, Farmers Insurance, Liberty Mutual Group, Progressive Insurance, Allstate Insurance, and Mercury Insurance.

<sup>13</sup> PIFC's Comments, 1-2, filed January 28, 2013.

<sup>14</sup> 221 Cal.App.2d, at 106.

and “livery” mean “the holding out of the vehicle to the general public for carrying passengers for hire.”<sup>15</sup> Finally, the Court stressed that a critical factor for determining the exclusion’s applicability is whether the vehicle’s passengers were selected by “some predetermined standard.”<sup>16</sup> The livery exclusion has been upheld by California and other courts as unambiguous and has been applied in a number of scenarios.<sup>17</sup>

We are also not persuaded by Lyft’s argument, and the authorities on which it relies, that the livery exclusion is narrowly construed and may not apply to the TNC driver scenarios for which insurance is being required. TNC services are available to the public, and the passengers here are selected from a predetermined standard (*i.e.* those passengers who have signed up for the TNC’s app). Thus, a TNC driver providing TNC services probably falls within the scope of the livery exclusion.

As such, in the event of a motor vehicle collision or incident where the TNC driver is providing TNC services, the insurance, as required by these regulations, is primary and exclusive and shall assume all liability. Such policy shall have the sole duty to defend the incident stemming from TNC services.

It is also our intent to clarify the \$1,000,000 in commercial liability insurance shall be available if the injured party has a claim and/or brings suit against the TNC driver or the TNC with whom the TNC driver is associated. We make this clarification so that there is no ambiguity that the commercial liability

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<sup>15</sup> Id.

<sup>16</sup> Id., at 107.

<sup>17</sup> See “Construction and effect of exclusionary clause in automobile liability policy making policy inapplicable while vehicle is used as a public or livery conveyance.”<sup>30</sup> A.L.R. 273.

insurance is intended to cover the TNC driver regardless of their classification as an employee, agent, or independent contractor.

Since the issuance of D.13-09-045, the Commission has considered various damage scenarios where a TNC's commercial insurance policies might not apply to cover all damages if there was an incident arising out of providing TNC services. To understand the significance of these considerations, it will be necessary to discuss the nature of liability insurance coverage. California Insurance Code § 108 defines liability insurance to include:

Insurance against loss resulting from liability for injury, fatal or nonfatal, suffered by any natural person, or resulting from liability for damage to property, or property interests of others but does not include worker's compensation, common carrier liability, boiler and machinery, or team and vehicle insurance.

In D.13-09-045, we used the phrase "commercial liability insurance" which is synonymous with the phrase "liability insurance" insofar as the expected intent of the coverage is for alleged tortious conduct. For example, commercial insurance policies can be of one of three forms: "(1) individual policies; (2) comprehensive general liability (CGL) policies; or (3) 'package' policies."<sup>18</sup> TNCs must provide Uninsured/Underinsured Motor Vehicle Coverage

There may be instances where a TNC driver is providing TNC services and is involved in a motor vehicle collision with a person driving either an uninsured or underinsured motor vehicle.<sup>19</sup> A TNC driver's passenger(s) should be covered

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<sup>18</sup> California Insurance Law & Practice; Matthew Bender & Company (2013) §41.05 [2][a].

<sup>19</sup> Pursuant to Insurance Code § 11580.2(b), "uninsured motor vehicle" means "a motor vehicle with respect to the ownership, maintenance or use of which there is no bodily injury liability insurance or bond applicable at the time of the accident, or there is the applicable insurance or bond but the company writing the insurance or bond denies coverage thereunder or refuses to admit coverage thereunder [.]" Pursuant to Insurance Code § 11580.2 (p)(2), "underinsured

*Footnote continued on next page*

for bodily injury or damages at least up to the limits specified herein while being picked up, transported, or dropped off. The TNC driver who has sustained bodily injury or damage to their vehicle while providing TNC services, similarly, will want to be covered for their losses but may not be made whole due to nature of the other driver's uninsured or underinsured status.

There may also be instances where a TNC driver is providing TNC services with a subscribing TNC passenger in the vehicle, and the TNC driver's vehicle collides with another vehicle whose driver is uninsured/underinsured and where that other driver is wholly or partially at fault. Now both the TNC driver and their subscribing TNC passenger will be able to seek compensation from the at-fault driver but, again, might not be made whole due to the lack of insurance covering the other driver or vehicle or due to the policy limits of the other driver's insurance. If the TNC is only insuring the TNC driver with commercial liability insurance, there may not be insurance available for any of these scenarios.

We do not believe that the potential absence of coverage is consistent with California public policy. In enacting Insurance Code § 11580.2, the Legislature intended to further California's policy of providing compensation for injuries caused by uninsured and underinsured motorists. (*See Mercury Insurance Company v. Enterprise Rent-A-Car Company* (2000) 80 Cal.App.4th 41, 48-49 ("The objective of the [UM] statute is to provide protection to the insured from the injuries caused by the unsafe operation of uninsured motor vehicles[,]")) quoting

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motor vehicle" means "a motor vehicle that is an insured motor vehicle but insured for an amount that is less than the uninsured motorist limits carried on the motor vehicle of the injured person."

*Denny v. St. Paul Guardian Insurance Company* (1987) 196 Cal.App.3d 73, 77); and *Viking Insurance Company v. State Farm Mutual Automobile Insurance Company* (1993) 17 Cal.App.4th 540, 548 (“[T]he fundamental purpose of section 11580.2 is to provide the insured with the same insurance protections he would have enjoyed’ had the ‘tortfeasor carried liability limits equal to [i]nsured’s underinsured motorist limits[,]” quoting *Rudd v. California Casualty General Insurance Company* (1990) 219 Cal.App.3d 948, 951).) Some TNCs have already included uninsured/underinsured coverage and we applaud those that have. This coverage, however, is not being offered on a consistent TNC industry-wide basis.

We believe it is appropriate, then, to require TNCs to provide uninsured/underinsured motor vehicle coverage in an amount equal to the commercial liability (*i.e.* a minimum of \$1 million) coverage that covers all occupants of the TNC vehicle during the provision of TNC services.

Next we will discuss medical, comprehensive and collision coverage. Comprehensive automobile coverage is designed to indemnify the insured for accidental loss to the insured vehicle by “causes other than collision. This typically includes loss by theft, and fire, as well as such risks as storm, flood, explosion, and vandalism.” (Witkin, *Summary of California Law*, 10th ed., Insurance, § 160, at 239.)

Pursuant to Insurance Code § 660(d), “Automobile collision coverage’ includes all coverage of loss or damage to an automobile insured under the policy resulting from collision or upset.” Thus, if the insured vehicle is damaged due to the accidental striking of another vehicle or object, collision coverage will be applicable. (Witkin, *Summary of California Law*, at 238, citing *Moblard v. Western Indemnity Company of Dallas* (1921) 53 Cal.App. 683, 684.) Collision, then, is a

specific type of automobile coverage that is not always offered with comprehensive coverage.

We believe it is appropriate for TNCs to provide comprehensive automobile and collision coverage in the amount of \$50,000.

Medical payments coverage includes the coverage for reasonable medical expenses incurred “because of bodily injury sustained by the insured.” (Witkin, *Summary of California Law*, § 161 at 239.) Typically, these payments can be made for doctor visits, hospital stays, surgeries, examinations, ambulance fees, and professional nursing care. Pursuant to Insurance Code § 108(b)(1), the medical expenses are covered “irrespective of the legal liability of the insured.”

We believe it is appropriate for TNCs to provide medical payments coverage in the amount of \$5,000 that covers all occupants of the TNC vehicle during the provision of TNC services.

#### **3.4.1. Summary of Required Insurance Coverage**

Therefore, in accordance with California’s strong public policy for requiring insurance companies to offer the above protections, and to ensure that the TNCs provide the widest scope of coverage to protect the drivers, passengers, other drivers, and pedestrians on a consistent basis, we will require TNCs to carry commercial liability insurance, uninsured/underinsured insurance, comprehensive and collision coverage, and medical payments coverage while TNC drivers are providing TNC services. We summarize in the chart below the coverage, types, purposes, and amounts:

| <b>Insurance Type</b>                     | <b>Purpose</b>   | <b>Amount of Coverage</b>                       |
|---|--|---|
| Commercial Liability Insurance            | Protects the TNC and the TNC driver against bodily injury and or property damage claims brought by third parties   | \$1,000,000 (one million) per-incident coverage |
| Uninsured/Underinsured Motorists Coverage | Covers injuries and property damage when a TNC driver is in an incident with another driver who is uninsured or whose available limits are less than the limits carried for the TNC occupants. | \$1,000,000 (one million) per-incident coverage |
| Comprehensive Coverage                    | Covers theft, fire, storm, flood, explosion, vandalism, and other similar circumstances that can cause damage to a TNC vehicle, except collision while offering TNC services.                  | \$50,000  |
| Collision Coverage                        | Covers TNC driver for accidental striking of other vehicles, objects, surface of the road, and people while offering TNC services.   | \$50,000  |
| Medical Payments Coverage                 | Covers medical expenses incurred because of bodily injury sustained by the TNC driver or a TNC driver's passengers.  | \$5,000   |

We reject the claim that Lyft, SideCar, and Uber/UberX do not have insurance. The Commission's Safety & Enforcement Division, in entering into settlement agreements with these entities, made sure that each of these companies maintained liability insurance policies providing a minimum of \$1 million per incident. We note PIFC's comments in this Rulemaking, and note that, even if a TNC driver's personal insurance does not apply in the event of an accident, the insurance required by the Commission will apply.

We require that each TNC file their insurance policies under seal with the Commission as part of applying for a permit. Furthermore, the permit for the TNC will automatically expire upon expiration of the insurance policy unless and until the TNC provides an updated insurance policy and applies to renew its permit. The new insurance requirements will apply upon the expiration of the insurance policies in place or one year from the effective date of this decision, whichever is sooner. In the meantime, we encourage the insurance industry to create new products specific to TNC drivers. As such, a TNC may satisfy the insurance requirements, prescribed by these regulations, by one of the following:

1. Maintaining such insurance on its own, or
2. With any combination of a policy maintained by the TNC and a policy maintained by the TNC driver that is specifically written for the purpose of covering TNC services, or portion thereof. Such combination of policies must meet the minimum limits required by these regulations. Such policies are exclusive and shall assume all liability. Such policies shall have the sole duty to defend.

In Phase II of this proceeding we will consider whether these policies for both TCP as well as TNC certificate holders should be made public and included in the Commission's website.

### **3.4.2. Applying the Modified Insurance Requirements to Uber Technologies, Inc.**

#### **3.4.2.1. Comments regarding applying modifications to Uber Technologies, Inc.**

The California Airports Council supports applying the proposed modifications to Uber Technologies, Inc.

Dolan supports applying the insurance modifications to Uber but also wants them to apply to Raiser-Ca. LLC. Finding of Fact ¶ 26 should also be changed with the phrase “while they are providing Uber services” added at the end following the phrase “incidents involving vehicles and drivers.” This same change should be made at Finding of Fact ¶ 13. Finally, Dolan suggests that the commercial liability coverage be a primary “nonwasting policy” so that defense fees and costs do not eat away at the policy limits.

SFCDA agrees that these modified insurance requirements should apply to Uber.

Uber disagrees, reasoning that as the TNC insurance requirements already apply to Uber’s TNC subsidiary, Raiser-CA LLC, there is no need to apply them to Raiser’s parent entity, Uber. Uber also believes the question is premature as the Commission deferred issues regarding whether Uber should be regulated as a TCP to Phase 2.

United Taxicab Workers argues that Uber should be required to carry commercial livery insurance on all its vehicles.

#### **3.4.2.2. Discussion**

The Commission concludes that the modified insurance requirements adopted by this decision should also apply to Uber. In D.13-09-045 OP 12 the Commission ordered that “Uber is required to demonstrate to the Commission within 30 days of the issuance of this decision that it maintains commercial

liability insurance policies providing not less than \$1,000,000 (one million dollars) per-incident coverage for incidents involving vehicles and drivers while they are providing Uber services. The insurance coverage shall be available to cover claims regardless of whether an Uber driver maintains insurance adequate to cover any portion of the claim.” As Uber is already subject to the Commission’s insurance requirements so that it may operate its business in California, we see no reason not to make these modified insurance requirements applicable to Uber.

**4. All *Ex Parte* Communications Must be Reported in this Quasi-Legislative Proceeding.**

The above-mentioned ACR also asked for comments on a proposal to treat all communication regarding this proceeding with Commission Decision-makers subject to the reporting requirements of our *Ex Parte* communication rules (Rule 8.4).

**4.1. Comments on *Ex Parte* Communications**

California Airports Council supports making Rule 8.4 applicable to this proceeding.

CCSF supports reporting of *ex parte* communications in this proceeding.

Lyft sees no reason for the Commission to depart from its *ex parte* rules.

SFCDA supports requiring the reporting of *ex parte* communications.

SideCar opposes the reporting requirements as they will stifle and hinder the free and abundant communication between Commission staff and the TNC industry

Summons supports having the reporting requirements cover meeting minutes of the Insurance Working Group.

TPAC supports making the *ex parte* reporting rules applicable to this proceeding.

United Taxicab Workers argues that all *ex parte* communications should be reported.

#### **4.2. Discussion**

Normally in any quasi-legislative proceeding, “*ex parte* communications are allowed without restriction or reporting requirement.” (Rule 8.3(a) of the Commission’s Rules of Practice and Procedure.) But the Commission does have the authority “in special cases and for good cause shown,” to “permit deviations from the rules.” (Rule 1.2 of the Commission’s Rules.)

In this instance, we believe there is good cause to deviate from Rule 8.3(a) and, instead, require that all *ex parte* communications be reported pursuant to Rule 8.4. The TNC industry is in a constant state of change in terms of its operations and regulation. To the extent any “interested person”<sup>20</sup> wishes to bring information about any of the above topics – as well as other topics not listed above that are relevant to this proceeding – to a “decision-maker,”<sup>21</sup> we believe that it is vital to the assurance of due process and to the orderly and efficient dissemination of information that all parties to this proceeding receive notice of the communications in accordance with Rule 8.4.

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<sup>20</sup> Pursuant to Rule 8.1(d), “interested person” means any party to the proceeding or the agents or employees of any party; any person with a financial interest, as described in Government Code § 87100, et seq.; or a representative acting on behalf of any formally organized civic, environmental, neighborhood, business, labor, trade, or similar association who intends to influence the decision of a Commission member on a matter before the Commission.

<sup>21</sup> Pursuant to Rule 8.1(b), “decisionmaker” means “any Commissioner, the Chief Administrative Law Judge, any Assistant Chief Administrative Law Judge, the assigned Administrative Law Judge, or the Law and Motion Administrative Law Judge.”

There is also good cause to require the reporting requirements set forth in Rule 8.4 to cover communications between “interested persons” and the Commission’s Policy and Planning Division such that any communication between an “interested person” and Policy and Planning Division must be reported in accordance with Rule 8.4. While not within the definition of a “decisionmaker,” Policy and Planning Division has nonetheless played a visible role in this proceeding. For example, Policy and Planning Division:

- Facilitated the Phase I workshop;
- Worked with Commission staff in proposing the regulations that were adopted in our Phase I decision;
- Addressed the San Francisco Board of Supervisors on the Commission’s regulation of the TNC industry;
- Spoke on behalf of the Commission to the media after the proposed decision from Phase I was issued;<sup>22</sup> and,
- Communicated with the California Department of Insurance and PIFC regarding the decision’s insurance requirements.<sup>23</sup>

We are concerned that “interested persons” may direct their communications to Policy and Planning Division without sharing this information with the “decision-makers” and parties to the proceeding, thus frustrating the evenhanded flow of information that is critical to the fair administration of the Commission’s proceedings. Given the role it has played, we consider it important that any further communications between “interested persons” and Policy and Planning Division be subject to Rule 8.4.

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<sup>22</sup> “Ride-share” Services on Road to Legitimacy Forum with Michael Krasny. KQED Radio, August 6, 2013, available online at [www.kqed.org/a/forum/R201308060930](http://www.kqed.org/a/forum/R201308060930).

<sup>23</sup> Letters from PIFC and Department of Insurance dated September 9, 2013.

**5. Comments on Modified Decision**

The proposed modified decision of the assigned Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**6. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Robert Mason III is the assigned ALJ in this proceeding.

**Findings of Fact**

1. D.13-09-045 did not define the phrase "providing TNC services."
2. Parties have differing interpretations of the phrase "providing TNC services."
3. The California Department of Insurance has advocated a definition of "providing TNC services" that is different than how some insurance companies have defined "providing TNC services."
4. Some parties have taken the position that a TNC driver's personal automobile insurance will not apply to an incident arising out of the TNC driver "providing TNC services because of the presence of the public conveyance or livery exclusion.
5. It is possible that TNC drivers are not insured for uninsured/underinsured motor vehicle coverage, comprehensive automobile and collision coverage, and medical payments coverage while they are "providing TNC services."
6. Uber is conducting business in California with the permission of the Commission.

7. Uber is required to provide the Commission with proof of public liability and property damage insurance applicable to “providing TNC services.”

8. Uber is required to keep its required insurance active and in effect, and its proof of insurance must be on file with the Commission while Uber is conducting business in California.

9. Communications between “interested persons” and “decision-makers” have occurred during this proceeding without notice to other “interested persons” and without any reporting of the communications.

10. Communications between “interested persons” and the Commission’s Policy and Planning Division have occurred during this proceeding without notice to other “interested persons” and without any reporting of the communications.

### **Conclusions of Law**

1. TNC services should be defined as whenever the TNC driver has the application (app) open.

2. A TNC permit from the California Public Utilities Commission should require a \$1 million commercial liability insurance, as well as medical payments coverage in the amount of \$5,000, comprehensive and collision coverage in the amount of \$50,000, and uninsured/underinsured motorist coverage in the amount of \$1,000,000.

3. The modified insurance requirements should be applicable to Uber.

**O R D E R****IT IS ORDERED** that:

1. Transportation Network Company (TNC) services are defined as whenever the TNC driver has the application open.
2. Transportation Network Company (TNC) services are provided by TNC drivers during three distinct time periods. Period One is: "Application open - waiting for a match." Period Two is: "Match accepted - but passenger not yet picked up." Period Three is: "Passenger in car - until passenger safely exits car." Decision 13-09-045 made clear that coverage was mandatory during Periods Two and Three. This Decision clarifies that coverage is also mandatory during Period One.
3. A Transportation Network Company permit from the California Public Utilities Commission will require a \$1 million commercial liability insurance, as well as medical payments coverage in the amount of \$5,000, comprehensive and collision coverage in the amount of \$50,000, and uninsured/underinsured motorist coverage in the amount of \$1,000,000.
4. We require that each Transportation Network Companies file their insurance policies under seal with the Commission as part of applying for a permit. The new insurance requirements will apply upon the expiration of the insurance policies in place one year from the effective date of this decision, whichever is sooner.
5. Transportation Network Companies (TNC) may satisfy the insurance requirements, prescribed by these regulations, by either maintaining such insurance on its own, or with any combination of a policy maintained by the

TNC and a policy maintained by the TNC driver that is specifically written for the purpose of covering TNC services, or portion thereof. Such combination of policies must meet the minimum limits required by these regulations. Such policies are exclusive and shall assume all liability. Such policies shall have the sole duty to defend.

6. In the event a driver maintained policy is used to partially fulfill the insurance requirements, a transportation network company's insurance must provide sole excess coverage to the driver's policy that is specifically written for the purpose of covering transportation network services, or portion thereof. In the event such driver maintained policy ceases to exist, the transportation network company's insurance shall provide primary and exclusive coverage, and assume all liability and the sole duty to defend, at dollar one.

7. Unless coverage for Transportation Network Company (TNC) services is separately and specifically stated in the policy and priced pursuant to approval by the California Department of Insurance, a driver's personal automobile policy is in no way required to provide coverage or the duty to defend for TNC services.

8. The modified insurance requirements also applies to Uber.

9. We require that all *ex parte* communications be reported pursuant to Rule 8.4.

10. We require the reporting requirements set forth in Rule 8.4 to cover communications between "interested persons" and the Commission's Policy and Planning Division such that any communication between an "interested person" and Policy and Planning Division must be reported in accordance with Rule 8.4.

11. Rulemaking 12-12-011 remains open.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.