

**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

**COMMENTS OF SAN FRANCISCO INTERNATIONAL AIRPORT AND SAN
FRANCISCO MUNICIPAL TRANSPORTATION AGENCY IN REPOSE TO PROPOSED
DECISION MODIFYING DECISION 13-09-045**

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These comments are submitted on behalf of the San Francisco International Airport (“SFO” or “Airport”) and the San Francisco Municipal Transit Agency (“SFMTA”), collectively, “the City.” The City applauds the California Public Utilities Commission (“CPUC”) and Commission President Peevey for recognizing that public safety requires that gaps in TNC insurance requirements be closed, and the City fully supports the modifications to those requirements recommended in the Decision Modifying Decision 13-09-045, filed on June 10, 2014 (“the Proposed Decision”). These comments are submitted in an effort to clarify the Proposed Decision’s Order, and to urge the CPUC to address several important safety issues in Phase II of this rulemaking proceeding.

1. Definition of “Providing TNC Services”

a. Insurance Coverage on Airport Property

As noted in its comments to the Assigned Commissioner’s Ruling Requesting Comment on Proposed Modification to Decision 13-09-045, filed on March 25, 2014, the City strongly supports the CPUC’s efforts to close the gap in current TNC insurance coverage by more thoroughly defining the term “Providing TNC Services.” Therefore, the City is pleased that the Proposed Decision would clarify the fact that TNC insurance coverage is mandatory during “Phase One” -- the period during which the driver has the TNC app open and is waiting for a match. The City also appreciates the CPUC’s recognition that airports are entitled to require that TNC drivers keep their apps open for the entire time that their vehicles are on airport property.¹ However, to avoid any confusion regarding TNC liability for incidents occurring on airport property, SFO and SFMTA request that the CPUC modify the definition of “Providing TNC Services” to include all times that TNC vehicles are on airport property, regardless of whether an app is on or off, or whether the TNC driver has a passenger. Such a modification will protect members of the public when a TNC driver drops a passenger off, decides to take a break or end his/her shift, turns off the app, and then gets into an accident while still on airport property.

A proposed revised definition is included in Appendix A.

b. Effective Date of New Insurance Requirements

The Proposed Decision’s Order states that “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.”² The Order’s statement that TNC insurance coverage is mandatory during Period One is not a new requirement, but is, as the Proposed Decision repeatedly states, a clarification

¹ Proposed Decision at 2, fn. 1.

² Proposed Decision at. 28.

of the insurance requirements imposed by Decision 13-09-045.³ For this reason, the City's understanding is that if the CPUC adopts the Proposed Decision, TNCs will be responsible for providing \$1 million in commercial liability coverage during Phase One immediately upon the effective date of the Proposed Decision. The City respectfully suggests that the CPUC include a statement to this effect in the Proposed Decision's Order.

2. Insurance Requirements

The City appreciates the Commission's clear statement of intent that "...the TNCs provide the widest scope of coverage to protect the TNC drivers, subscribing passengers, other drivers, and pedestrians on a consistent basis,"⁴ and the Commission's thoughtful comments regarding whether the standard personal automobile liability policy would provide coverage for TNC services.

The Proposed Decision recognizes the concerns of the Personal Insurance Federation of California ("PIFC") – i.e., standard auto liability policies carry an exclusion for "vehicles used for transporting passengers for a charge."⁵ With respect to the PIFC's comments, the Proposed Decision notes, "[w]e 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."⁶

Crafting a clear, industry-wide insurance mandate applicable to all TNCs is critical to public safety and the success of the TNC industry. The insurance industry has made it clear -- and the Commission recognizes -- that personal automobile policies do not presently cover TNC services. There has been no evidence that TNC drivers presently have, or could even presently obtain, commercial liability insurance for providing TNC services. For these reasons, the City urges the Commission to avoid an Order that includes any contingency, i.e., *either* TNCs provide 100% coverage while a drivers is "providing TNC services," *or* TNCs and TNC drivers will jointly carry commercial coverage while providing TNC services. Instead, the City urges the Commission to issue an Order that continues to place the full responsibility for insurance on TNCs. The insurance industry has already developed, and the CPUC has already reviewed and accepted, TNC insurance policies for commercial liability coverage. We understand that the insurance industry has not yet developed automobile insurance policies for TNC drivers that would cover for-hire transportation. The City suggests that the CPUC might address the question of permitting TNCs to meet their at least some

³ Proposed Decision at. 2, 9, and 28.

⁴ Proposed Decision at 11.

⁵ Proposed Decision at 14.

⁶ Id., at 14.

portion of their insurance obligations through policies maintained by their drivers in Phase II of this proceeding .

The Proposed Decision also considers other insurance coverage issues (uninsured and under insurance motorist protection, comprehensive and collision coverage, and medical payments coverage), and concludes that these additional coverages will be required prospectively and, “[i]n the meantime, we encourage the insurance industry to create new products specific to TNC drivers.”⁷ The City supports the addition of these insurance requirements.

Proposed revisions to the Order regarding insurance coverage are included in Appendix A.

3. The CPUC Should Strengthen Requirements for TNC Vehicle Inspections, Driver Training, and Driver Background Checks to Protect the Public.

The CPUC has ordered a Phase II of this proceeding to review existing regulations for limousines and other charter party carriers "in order to ensure that these rules have kept pace with the needs of today's transportation market, and that the public safety rules are up to date."⁸ As part of this Phase II review of charter-party carrier safety requirements, SFO and SFMTA urge the CPUC to consider modifying its rules requiring criminal background checks of TNC drivers, training of TNC drivers, and inspection of TNC vehicles to better protect the public.

a. Driver Training

Decision 13-09-045 required all TNCs to “establish a driver training program to ensure that all drivers are safely operating the vehicle before the driver being able to offer service.”⁹ Decision 13-09-045 did not, however, provide specific standards for the required driver training program, for example, the number of training hours, the training course curriculum, or the required qualifications of the trainers. As the City has noted previously, the quality of the TNCs' driver training programs filed with the TNC permit applications reflects the need for CPUC guidance regarding what constitutes an effective driver training program.¹⁰ The City urges the CPUC to amend its driver training requirement to provide explicit standards for driver training, and to include in those standards a requirement that drivers are trained in safe driving techniques on dense urban streets full of bicyclists and pedestrians.

b. Vehicle Inspections

Decision 13-09-045 requires that a TNC vehicle pass a 19-point inspection before it is authorized by the TNC to provide TNC services, and that the vehicle be inspected annually thereafter.

⁷ Id., at 21.

⁸ Decision 13-09-045 at 74.

⁹ Decision 13-09-045 at 27. TNCs were required to file their driver training programs within 45 days of the adoption of Decision 13-09-045(*Id.*)

¹⁰ See SFO/SFMTA Reply Comments to March 25, 2014 Assigned Commissioner's Ruling at 7, fn. 8.

APPENDIX A

IT IS ORDERED that:

1. Transportation Network Company (TNC) drivers are engaged in providing TNC services ~~services are defined as whenever the TNC driver has the application open.~~

2. ~~Transportation Network Company (TNC) services are provided by TNC drivers during~~ the following 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."

One immediately upon the effective date of the this Decision ~~Decision 13-09-045 made clear that coverage was~~ is mandatory during: (a) all three periods and (b) Periods Two and Three. This Decision clarifies that coverage is also mandatory during Period One. during the entire time a TNC driver is on the property of any municipal airport, regardless of whether a TNC driver's app is on or off, and regardless of whether the TNC driver has a TNC passenger in the vehicle.

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. The insurance requirements set forth in paragraph 3 of this Order may ultimately be shared by TNCs and TNC drivers. However, unless and until the insurance industry develops products providing commercial coverage to individual TNC drivers during the periods they are providing TNC Services as defined herein, TNCs shall provide 100% of the coverage described in paragraph 3 for all TNC Services. The availability of TNC insurance products for individual drivers will be addressed in Phase II of these proceedings. In the meantime, TNC policies are exclusive and primary, and shall assume all liability. Such policies shall have the sole duty to defend.

~~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.~~

67. 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.

7. The modified insurance requirements also applies to Uber.

~~8.~~ 8. We require that all *ex parte* communications be reported pursuant to Rule 8.4.

910. 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.

101. Rulemaking 12-12-011 remains open.