

**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)

**REPLY COMMENTS OF UBER TECHNOLOGIES, INC.,  
ON BEHALF OF RASIER-CA, LLC,  
ON PROPOSED DECISION MODIFYING DECISION 13-09-045**

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July 7, 2014

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**I. THE COMMISSION SHOULD ELIMINATE THE PROPOSED  
DECISION’S REQUIREMENT THAT TNC INSURANCE BE  
EXCLUSIVE IN PERIOD ONE**

Some parties argue that a TNC<sup>1</sup> policy must be “exclusive” in Period One.<sup>2</sup> These arguments evidence a fundamental misunderstanding of TNC operations. The TNC driver does not have an exclusive relationship with the TNC during Period One.

First, since a TNC driver is not engaged in transporting passengers for hire during Period One, her personal insurance policy may correctly provide coverage under that policy’s terms. Second, it is common for TNC drivers to have more than one TNC app open at the same time during Period One or, alternatively, to be engaged in non-TNC personal activities during that time. Drivers are able to do this because they are independent contractors and are not under the direct control of any single TNC company. When a TNC driver has more than one TNC app open at the same time, the TNC policy for each of the open apps may potentially provide coverage in addition to the personal auto coverage.

In both scenarios, the insurance carriers for the TNC policies related to the apps open in Period One and the TNC driver’s personal insurance policy would determine which policy is primary and what coverage is owed. Existing California claim settlement

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<sup>1</sup> Unless otherwise defined herein, capitalized terms have the same meaning as set forth in the Opening Comments filed by Uber, on behalf of Rasier.

<sup>2</sup> See, e.g., Opening Comments of the Association of California Insurance Companies, at 4-5; Opening Comments of Personal Insurance Federation of California, at 2-3.

regulations already mandate that insurance carriers promptly: investigate<sup>3</sup>, accept or deny coverage<sup>4</sup>, and pay any undisputed portion of the claim<sup>5</sup>. There has been no evidence submitted that these existing claim settlement regulations are insufficient or are not being followed by insurance carriers for either TNCs or TNC drivers.

Moreover, the “exclusive” coverage requirement would nullify the Commission’s proposal to allow for the TNC and TNC driver to maintain a combination of policies. Instead of risking unintended consequences by using words such as “exclusive” that do not match the practical reality of the situation, the Commission should simply require that each TNC ensure that at least the coverage prescribed by the Commission be available to potential claimants when needed during Period One. For example, Raiser proactively sought to address this issue by obtaining contingent liability coverage in Period One that covers a TNC driver when the driver’s personal insurance carrier denies coverage. This is a practical approach that addresses coverage during Period One and supports the Commission’s proposal to allow TNCs and TNC drivers to maintain a combination of policies.

## **II. THE COMMISSION SHOULD ELIMINATE THE PROPOSED DECISION’S REQUIREMENT THAT TNC INSURANCE “ASSUME ALL LIABILITY”**

Some parties also argue that a TNC policy must “assume all liability.”<sup>6</sup> Such arguments fail to recognize that determining liability for an accident involving a vehicle used in providing TNC services is complex and based on the unique facts of each accident. If the TNC driver is at fault, (as determined by the police report, other post-accident investigation, and/or a court of law) then the appropriate policy shall pay on behalf of the TNC driver for the TNC driver’s liability. The TNC driver may have no liability or only be liable for a portion of the damages and a third party liable for the remainder of the damages. In such a situation, it would be unfair (and pose a moral hazard) to require that a TNC “shall assume all liability.” California law requires the

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<sup>3</sup> Cal. Code Regs. tit. 10, § 2695.5(e)(3).

<sup>4</sup> Cal. Code Regs. tit. 10, § 2695.7(b)(1) and § 2695.7(k).

<sup>5</sup> Cal. Code Regs. tit. 10, § 2695.7(f).

<sup>6</sup> *See, e.g.*, Opening Comments of the San Francisco International Airport and San Francisco Municipal Transportation Agency, at Appendix A-2; Opening Comments of Personal Insurance Federation of California, at 2.

party at fault to assume liability for her share of the damages and then submit a claim to her insurance carrier. Neither taxis nor TCPs are required to “assume all liability,” instead they must only insure against liability for which they are determined to be at fault. In fact, TNCs cannot even purchase an insurance policy to cover an “assume all liability” requirement.

Rather than making unnecessary predeterminations regarding the assumption of liability, the Commission should limit its focus on setting reasonable insurance coverage level requirements that eliminate any remaining uncertainty as to whether adequate insurance coverage exists. Raiser believes it has already done this by proactively obtaining contingent liability coverage. By setting reasonable insurance coverage requirements now and allowing TNCs and the insurance industry to continue to develop innovative solutions and potential insurance combinations to meet those requirements, the Commission can best protect passengers, drivers, pedestrians, and property owners.

Therefore, the Commission should eliminate the “assume all liability” reference.

### **III. COVERAGE LIMITS OF \$50K/\$100K/\$25K DURING PERIOD ONE EXCEED STATE-MANDATED COVERAGE LEVELS AND PROVIDE SUFFICIENT PROTECTION FOR DRIVERS, PEDESTRIANS, AND PROPERTY OWNERS**

Some parties contend that \$1 MM or more of commercial liability coverage during Period One must be required to adequately protect drivers, pedestrians, and property owners.<sup>7</sup> As noted above, Raiser proactively obtained contingent liability coverage for Period One in order to ensure coverage when a TNC driver’s personal insurance policy is found not to provide coverage for the accident. Raiser’s existing policy (liability coverage of \$50,000/individual/incident for bodily injury, \$100,000 total/incident for bodily injury and \$25,000/incident for property damage) meets the highest financial responsibility requirement of any state in the United States. Raiser obtained this coverage to uniformly ensure public safety regardless of what state an accident occurs in and to provide transparency for regulators.

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<sup>7</sup> See, e.g., Opening Comments of San Francisco International Airport and San Francisco Municipal Transportation Agency, at 2-3; Opening Comments of the Association of California Insurance Companies, at 4; Opening Comments of Taxicab Paratransit Association of California, at 12-13.

Raiser's policy includes coverage limits that exceed California statutory requirements imposed on taxis *and* personal passenger autos, both of which require \$15,000/individual/incident for bodily injury, \$30,000 total/incident for bodily injury and \$5,000/incident for property damage.<sup>8</sup> While some cities require taxis to maintain higher coverage limits than required by California statute, these requirements are often far below the \$1MM requirements in the Proposed Decision. For example, Los Angeles requires liability insurance in the amount of \$100,000/individual/incident for bodily injury, \$300,000 total/incident for bodily injury and \$50,000/incident for property damage and none of the requirements for other coverages in the Proposed Decision.<sup>9</sup> There has been no showing of fact that the risk presented by TNC drivers during Period One is materially different than that posed by any other ordinarily operated personal automobile. Existing state mandated coverage levels are therefore sufficient, and as noted above are exceeded by Raiser's current \$50K/\$100K/\$25K coverage during Period One by more than three times.

#### **IV. NO EVIDENCE SUPPORTS THE UNPRECEDENTED INSURANCE REQUIREMENTS THE PROPOSED DECISION WOULD IMPOSE**

Some parties support the unprecedented insurance requirements the Proposed Decision would impose.<sup>10</sup> A few even seek more onerous insurance requirements.<sup>11</sup>

Not one presented any evidence supporting such requirements or explained how mandating such requirements would further the public interest. Instead, these commentators cling to unsubstantiated notions that the coverage levels and scope of insurance that Raiser maintains fail to offer adequate protection, and offer less coverage than required for other transportation service providers.

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<sup>8</sup> Cal. Veh. Code §16056 (private passenger vehicles) and Cal. Veh. Code §16500 (taxis).

<sup>9</sup> Los Angeles Municipal Code §71.14.

<sup>10</sup> *See, e.g.*, Opening Comments of San Francisco International Airport and San Francisco Municipal Transportation Agency, at 2-3; Opening Comments of the Association of California Insurance Companies, at 4; Opening Comments of Taxicab Paratransit Association of California, at 12-13.

<sup>11</sup> *See, e.g.*, Opening Comments of San Francisco International Airport and San Francisco Municipal Transportation Agency, at 1 (proposing TNC insurance coverage of TNC drivers on airport property even when the TNC App is off.); *see also* Opening Comments of United Taxicab Workers, at 5; Opening Comments of Taxicab Paratransit Association of California, at 13 (proposing commercial liability insurance policies for vehicles used to provide TNC services at all times including even when the app is off).

Contrary to these arguments, Rasier's existing insurance policies are as protective of public safety as the analogous policies carried by transportation service providers throughout California.<sup>12</sup> No commentators presented any evidence, which either dispute Raiser's evidence, or provide a rational basis to impose uniquely higher insurance requirements on Rasier or other TNCs.

The comments similarly fail to address that these arbitrarily higher insurance requirements unfairly discriminate against TNCs and against passengers who opt for TNC services. Accordingly, the evidence, public policy and customer choice all warrant the Commission to set commercial liability insurance requirements for TNCs at levels comparable to TCPs and taxis and eliminate requirements that TNCs carry uninsured/underinsured motorist coverage, comprehensive and collision coverage, or medical payments coverage.

Respectfully submitted,

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Dated: July 7, 2014

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<sup>12</sup> See Rasier Opening Comments, at 2 (Table 1).