

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' REPLY COMMENTS
ON PROPOSED DECISION MODIFYING DECISION 13-09-045**

Mark Gruberg, Agent
United Taxicab Workers
2940 16th St. #314
San Francisco, CA 94103
Phone: 415-864-8294
Fax: 415-864-8295
E-mail: mark1106@att.net

Dated: July 7, 2014

TABLE OF CONTENTS

	Page
I. Introduction	2
II. Eliminating or reducing app-on insurance requirements will deny the public needed protections	2
III. The arguments against app-on insurance make the case for full commercial Insurance	3
IV. Cities should have the same authority as airports to set their own rules	4
V. The additional proposed types of insurance coverage are needed.....	4
VI. The modified insurance rules should take immediate effect	5
VII. All insurance requirements should apply to Uber	5
VIII. <i>Ex parte</i> reporting rules should apply retroactively	5
IX. Conclusion	5

United Taxicab Workers (“UTW”) submits these Reply Comments in response to parties’ Comments on Commissioner Peevey’s Proposed Decision Modifying Decision 13-09-045 (“PD”)¹.

**I.
Introduction**

In their Comments, Uber, Lyft, Sidecar and Summon speak with one voice on the subject of insurance, saying “the public be damned”. Fully in keeping with Uber’s callous denial of responsibility for the New Years’ Eve death of Sophia Liu, none of their remarks show a drop of concern for the victims who will predictably fall into the gaps their proposals would perpetuate. The Commission must not only reject their recommendations; it must also close the gaps its own proposed rules would leave standing by requiring of ride services the same full-time commercial insurance that charter-party carriers and taxis must carry.

**II.
Eliminating or reducing app-on insurance requirements
will deny the public needed protections.**

All of the ride services commenting on the PD seek to dispense with or vastly reduce the coverage required for “Period 1”, when the driver has the app on but does not have a passenger and has not accepted a ride.² That was exactly the circumstance in the accident that took the life of Sophia Liu and injured her mother and brother. As the Personal Insurance Federation of California (“PIFC”) states, without coverage in all three periods, “gaps in coverage will remain, as personal automobile policies do not cover commercial activities.”³

Uber concedes “the insurance company may determine that the TNC driver is driving for a quasi-commercial purpose during Period 1, even though the TNC driver is not engaging in the commercial transportation of a passenger.”⁴ There is a simple word for this “quasi-commercial purpose”. It’s called “work”. It’s no different from when a cab driver is seeking a fare. But Uber wants a far lower insurance requirement for this

¹ As stated in UTW’s previous Comments, we do not concede the Commission’s jurisdiction over ride services. We do, however, believe it is essential to provide the public with added protections under the Commission’s ostensible authority while the matter is pending in Court. (UTW, Comments, dated June 30, 2014, at 2.)

² Uber, Comments, June 30, 2014 at 9-11; Lyft, Comments, June 30, 2014 at 4-5; Sidecar, Comments, June 30, 2014 at 2-3; Summon, Comments, June 25, 2014 at 2-3.

³ PIFC, Comments, June 30, 2014 at 1.

⁴ Uber, *supra* at 12-13.

period.⁵ There is no justification for the lower amount. Period 1 may well be the most dangerous time of all, as noted by Insurance Commissioner Dave Jones.⁶ The driver may be racing to get to a surge price zone or busy part of town while monitoring one or more apps at the same time. Yet Uber seeks to have Period 1 insurance capped at one-tenth to one-twentieth of the \$1 million required for Periods 2 and 3.⁷

Other ride services would eliminate Period 1 insurance entirely.⁸ Summon considers the requirement “too onerous”.⁹ Lyft claims that app-on insurance will lead to “greater uncertainty” because, it says, there is some ambiguity about whether an app is on or off.¹⁰ Lyft also expresses concern about potential driver manipulation of the app.¹¹ That is certainly taking place, but manipulation can go in either direction. A driver may take advantage of ride service insurance by keeping the app on when not working, while another may fraudulently conceal the connection with the ride service after an accident. Ride services also claim difficulty in finding insurance policies appropriate to their business model.¹² And all ride services question what will happen if a driver is using multiple apps at once at the time of an accident.¹³ While some of these concerns may be valid, none trump the state’s and public’s interest in ensuring that accident victims have recourse to insurance after an accident.

III. The arguments against app-on insurance make the case for full commercial coverage.

While ride services raise some legitimate issues with respect to app-on insurance, their proposed alternative – little or no insurance for Period 1 – is far worse. Thus, to the extent the arguments against app-on insurance have weight, they point in only one direction: toward full commercial insurance. This coverage is the only effective way to

⁵ Uber, *supra* at 13.

⁶ Letter from Jones to President Peevey, April 7, 2014 at 3,

⁷ Uber, Comments at 13. Uber does not put an exact number on its request, but has advocated for a \$50,000-100,000 limit.

⁸ Sidecar, Comments, June 30, 2014 at 5; Summon, Comments, June 25, 2014 at 1; Lyft, Comments, June 30, 2014 at 1. Lyft urges the Commission to refrain from adopting any changes to insurance requirements until the legislature has had an opportunity to act and the Commission has developed a complete evidentiary record. Sidecar urges elimination of the Period 1 requirement, but alternatively proposes a \$50,000-100,000 limit.

⁹ Summon, *supra* at 3. San Francisco taxis all carry \$1 million liability policies and have many other expenses ride services don’t, including costs for equipment and signage for safety, metering and identification purposes; 24/7 dispatch services; regulatory fees and charges; medallion rental fees, etc.

¹⁰ Comments, Lyft, June 30, 2014 at 4-5.

¹¹ *Id.*

¹² See, e.g., Summon, *supra* at 3. This objection seems unpersuasive given the fact that all approved ride services ostensibly have \$1 million in coverage for periods 2 and 3, and Uber has some coverage for Period 1.

¹³ See, e.g., Lyft, *supra* at 5.

deal with the app-off coverage gaps Insurance Commissioner Jones and parties to this proceeding have amply demonstrated.¹⁴ With full commercial coverage in place, the gaps, ambiguities, uncertainties, likelihood of litigation, potential for fraud, etc. all disappear. There is one policy, and only one. The public is protected under all circumstances, simply, clearly and completely.

IV.

Cities should have the same authority as airports to set their own rules.

San Francisco International Airport (“SFO”) and the San Francisco Municipal Transportation Agency (“SFMTA”) recognize the inadequacy of the Commission’s proposed insurance rules. They seek a special provision requiring working drivers to have both app-on and app-off coverage while on airport grounds:

. . . 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.¹⁵

SFO/SFMTA’s proposed amendments would cover all situations, but they would only apply to the airport’s small patch of ground.¹⁶ The same concerns that led SFO/SFMTA to propose this language apply equally in all places at all times. If the Commission is unwilling to offer the public at large the same protection SFO seeks on its property, it should at least allow cities, as well as airports, to do so.

V.

The additional proposed types of insurance coverage are needed.

Uber and other ride services argue against the PD’s requirement for collision/comprehensive and other insurance coverages.¹⁷ The rationale for requiring collision/comprehensive insurance is tied to the faulty dual-policy insurance scheme. A driver who carries this type of insurance personally will find the coverage lacking while he or she is providing commercial transportation; hence the need for separate, additional coverage. If the Commission were to require full commercial insurance, however,

¹⁴ See, e.g., Letter from Jones, *supra* at 5; UTW, *supra* at 2-4; SFCDA, Comments, June 30, 2014 at 1-2.

¹⁵ SFO/SFMTA, Comments, June 30, 2014 at 1.

¹⁶ SFO has the authority to impose its own rules regardless of whether its proposed amendment is adopted. (PD at 2, In. 1.)

¹⁷ Uber, *supra* at 6-9; Sidecar, *supra* at 6-8; Lyft, *supra* at 7.

collision/ comprehensive could be made discretionary on the part of the driver, as it is for personal insurance.

Uninsured/underinsured motorist insurance is an important protection for the public. If charter-party carriers aren't currently subject to the requirement, that should be remedied in Phase II of these proceedings. The proposed \$5,000 medical payments coverage is a small item that will provide drivers and others at least some recompense for medical bills regardless of fault.

VI.

The modified insurance rules should take immediate effect.

UTW agrees with TPAC and SFO/SFMTA that the Commission's new insurance rules should take effect immediately.¹⁸ Ride services have been operating with deficient insurance for at least two years. Any further delays continue to place the public at risk. We urge the Commission to adopt our recommendation for full primary commercial insurance, but any enhancement is better than none – and the sooner it is in place, the better for all.

VII.

All insurance requirements should apply to Uber.

Uber argues that it should not be subject to the Commission's modified insurance rules because its subsidiary, Rasier-CA LLC, provides TNC service in California. We agree with the PD that it should be subject to those rules. As the PD notes, Uber is currently subject to the Commission's insurance requirements.¹⁹ Since Uber holds itself out to the public as the service provider, it is fitting and proper to make it responsible for all insurance requirements.

VIII.

***Ex parte* reporting rules should apply retroactively.**

UTW agrees with TPAC's recommendation that *ex parte* reporting rules should apply retroactively as well as prospectively. We also recommended this in our Comments to the ACR on proposed insurance modifications.²⁰ Parties, stakeholders and the public have every right to know about private communications brought to bear upon the decision-making process. If prospective reporting is warranted in a given proceeding, there is no rational reason why prior communications in the same

¹⁸ TPAC, Comments, June 30, 2014 at 12; SFO/SFMTA, *supra* at 1-2.

¹⁹ PD at 23.

²⁰ UTW, Comments on ACR, March 25, 2014 at 5.

proceeding should be exempted.

**IX.
Conclusion**

What is at issue in this proceeding is the protection of the public. Unless ride services are required to carry full-time primary commercial insurance, accident victims will be stranded in a no-man's-land without any recourse to coverage under predictable, routinely occurring conditions. If the Commission is serious about its intention to provide "the widest scope of coverage", this cannot be allowed.

Dated: July 7, 2014

Respectfully submitted,

/s/ Ruach Graffis
Acting Chair, United Taxicab Workers
Tendered by Mark Gruberg, Agent
2940 16th St. #314
San Francisco, CA 94103
Tel: 415-864-8294
E-mail: mark1106@att.net