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04-02-13

03:27 PM

MP1/RIM/cla 4/2/2013

**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)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S  
SCOPING MEMO AND RULING**

This scoping memo and ruling (Scoping Ruling) sets forth the category, need for hearing, issues to be addressed and schedule of the proceeding, and designates the presiding officer pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure.

**1. Background**

On December 20, 2012, the Commission initiated this proceeding to protect public safety and encourage innovators to use technology to improve the lives of Californians. The Order Instituting Rulemaking (OIR) is in response to the emergence of new businesses that have recently begun using mobile internet, social media, and location services to offer new ways of arranging transportation of passengers over public highways for compensation. Some of these businesses connect passengers via smartphones with drivers and vehicles already regulated by the Commission as passenger carriers or by cities and counties as taxis while others connect passengers via smartphones with private drivers and vehicles that are not regulated as passenger carriers or taxis.

As the Commission pointed out in the OIR, businesses like Sidecar Technologies, Inc., and Side.cr, LLC, (Sidecar) and Zimride, Inc., (Lyft) have presented the Commission with a situation not encountered before: the use of mobile communications and social networks to connect individuals wishing to offer and receive low cost and convenient, sometimes shared, transportation. UberCab, Inc., (Uber) likewise uses smartphones to present a different business model from traditional limousine service, by allowing passengers to use a GPS-enabled smartphone app to contact a limousine or other passenger carrier. The Commission has a responsibility for determining whether and how public safety might be affected by these new businesses.

As pointed out in the OIR, the Commission's jurisdiction over charter-party carriers is clear. Nevertheless, new technology and innovation requires that the Commission continually review its regulations and policies to ensure that the law and the Commission's safety oversight reflect the current state of the industry and these regulations are just and fair for all passenger carriers.

The OIR describes the Commission's regulation of passenger carriers pursuant to Article XII of the California Constitution and the Passenger Charter-party Carriers' Act, Pub. Util. Code § 5351, et seq. (the Act)<sup>1</sup>, and summarizes recent enforcement actions taken against businesses using new online enabled transportation services (NOETS), including issuing cease and desist letters to Uber, Lyft, and Sidecar.

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise indicated.

The OIR requested comments on several issues, including exercise of the Commission's jurisdiction; the consumer protection and safety implications of the new methods for arranging transportation services; whether and how the new transportation business models differ from longstanding forms of ridesharing; and the new transportation business models' potential impact on insurance and transportation access. Comments were filed in response to the OIR by the California Airports Council, Center for Accessible Technology, eRideShare, Inc., International Association of Transportation Regulators, Luxor Cab Co., San Francisco Cab Drivers Association, San Francisco Municipal Transportation Agency, San Francisco Airport Commission, Sidecar Technologies, Inc. and Side.cr, LLC, Taxicab Paratransit Association of California, Transform, Tickengo, Uber Technologies, Inc., United Taxicab Workers, and Zimride, Inc.

The level of public interest in this OIR is reflected by the number of opening and reply comments that were filed. The parties have raised a number of issues and concerns that validate the Commission's decision that an OIR into this new area of business is warranted.

### **3. Comments on the OIR**

Pursuant to the OIR's instructions, the parties filed opening and reply comments, and some of the major issues contained therein are summarized as follows:

Some parties contend that NOETS are the equivalent of charter-party carrier services and are, therefore, subject to the Commission's jurisdiction.

Some parties contend that NOETS are either the equivalent of ridesharing services or IP-enabled services, both of which they assert are exempt from Commission regulation.

Some parties contend that NOETS should be subject to the same regulatory standards as charter-party carriers for safety data collection, retention, evaluation, and dissemination to the public.

Some parties contend that NOETS should be subject to the same public safety requirements that California regulators impose on taxi and limousine services.

Some parties contend that NOETS should be required to disclose their insurance arrangements so that the Commission can evaluate if the riding public is being sufficiently protected.

Some parties contend that NOETS should be subject to the same accessibility requirements as charter-party carriers for riders with disabilities.

#### **4. Prehearing Conference (PHC)**

A PHC was held on February 15, 2013, to identify issues that may require evidentiary hearings, and to establish a proceeding schedule. Pursuant to the February 4, 2013 Administrative Law Judge's (ALJ's) ruling, PHC statements were submitted by the California Airports Council, Center for Accessible Technology, International Association of Transportation Regulators, San Francisco Municipal Transportation Agency, San Francisco Airport Commission, Sidecar Technologies, Inc. and Side.CR, LLC, Taxicab Paratransit Association of California, Transform, Uber Technologies, Inc., United Taxicab Workers, and Zimride, Inc.

#### **5. Scope of the Proceeding**

The scope of this proceeding was initially set forth in the OIR. In addition, we have considered the comments to the OIR and at the February 15, 2013 PHC to determine the scope of this proceeding. As set forth in the OIR, the parties'

opening and reply comments, and parties' respective PHC statements, the factual and legal issues for resolution are identified as follows:

**5.1 Description of New Online Enabled Transportation Services (NOETS)**

- a. How are NOETS created?
- b. Are NOETS required to register with any governmental agency?
- c. How do NOETS secure drivers?
- d. How do we characterize the relationship between the driver and a NOETS (e.g., employee, independent contractor, other)?
- e. Does a NOETS driver sign a contract or written agreement with a NOETS?
- f. What technology must a potential passenger have to make contact with a NOETS driver?
- g. How is a NOETS driver compensated?
- h. Do NOETS drivers belong to a union?
- i. How is a fare or donation calculated?
- j. What happens if there is a dispute regarding the suggested/requested fare or donation?
- k. How is the fare or donation allocated between the driver and the NOETS?
- l. How does a NOETS track collected fares or donations?
- m. Are NOETS nonprofit or for-profit entities?
- n. Do NOETS pay federal, state, and local taxes?
- o. Are NOETS records audited by any governmental agency?

**5.2 Jurisdiction**

- a. What are the bases for the Commission's jurisdiction over NOETS?

- i. Article XII of the California Constitution?
  - ii. What portions of the Passenger Charter-Party Carriers' Act (Pub. Util. Code § 5351 et seq.) are applicable?
  - iii. Are any other statutes, rules, or orders applicable here that grant the Commission jurisdiction over NOETS?
  - iv. Should Article XII, the Passenger Charter-Party Carriers' Act, or any other statute, rule, or order be modified to enhance or clarify the Commission's jurisdiction over NOETS?
  - v. Should any new statutes, rules, or orders be enacted?
- b. Are there any exceptions to the Commission's jurisdiction over NOETS?
- i. Do NOETS fit within the definition of ridesharing as provided by Pub. Util. Code § 5353(h)?
  - ii. Do NOETS fit within the definition of taxi-cab service as provided by Pub. Util. Code § 5353(g)?
  - iii. Do NOETS fit within the definition of an Internet Protocol-enabled service?
  - iv. Do NOETS fit within the definition of an information service provider?
- c. How should the Commission exercise its existing jurisdiction to protect public safety and encourage innovation?

### **5.3 Public Safety**

- a. What are the likely consequences to public safety, with special attention paid to avoiding "unanticipated consequences" if the Commission exercises its jurisdiction?

- b. What are the likely consequences to public safety, with special attention paid to avoiding “unanticipated consequences” if the Commission declines to exercise its jurisdiction?

#### **5.4 Insurance and Background Checks**

- a. Are there any existing statutes, rules, or orders requiring insurance for NOETS?
- b. Are there any existing statutes, rules, or orders requiring insurance for a NOETS driver?
- c. What are the types of insurance available to NOETS vehicles?
- d. Are there any minimum required levels of insurance coverage?
- e. What are the protocols for maintaining insurance coverage?
- f. What are the protocols for providing evidence of insurance coverage?
- g. Should the Commission modify any existing statutes, rules, or orders on the matter of insurance?
- h. Should the Commission enact any new existing statutes, rules, or orders on the matter of insurance?
- i. Are there any existing statutes, rules, or orders for conducting or requiring background and safety checks for NOETS drivers?
- j. If not, what statutes, rules, or orders should the Commission adopt for conducting background and safety checks for NOETS drivers?

#### **5.5 Accessibility and Equal Access Issues**

- a. What protocols are in place for NOETS to comply with current accessibility requirements?
- b. Does a NOETS driver have to comply with current accessibility requirements?

- c. What is the service territory for a NOETS driver?
- d. Does a NOETS driver have the discretion not to pick up particular passengers or not to drive to particular neighborhoods?
- e. Should there be any modification to any existing statutes, rules, or orders to ensure accessibility and equal access to NOETS and NOETS drivers?

**5.6 The manner in which Commission regulation may enhance or impede public access to public roadways**

**5.7 Any Other Statutes, Rules, or Orders that Should be Identified**

**5.8 Any other material issues relevant to the resolution of this OIR**

**6. Scheduling**

In view of the many issues that have been raised in the opening and reply comments, the PHC statements, and at the PHC, and identified in Section 5 of this Scoping Ruling, the most efficient way in which to explore and discuss these issues will be in a workshop forum. The parties will be expected to file workshop statements prior to the workshop. Parties should be prepared to discuss the contents of their statements at the workshop and to ask questions regarding the contents of other parties' workshop statements. Having this robust discussion of the issues will hopefully lead to some agreement regarding how the Commission can best provide the necessary regulatory and safety protections for riders who elect to avail themselves of NOETS, while at the same time encouraging innovation and provision of these new business models, as appropriate.

As such, the schedule is set as follows:

Event	Dates
File and Serve Workshop Report Statements	April 3, 2013
Workshops	April 10 and April 11, 2013



	9:30 a.m. Commission Courtroom State Office Building 505 Van Ness Avenue San Francisco, CA 94102
Deadline to serve Draft Joint Workshop Report on the parties for comment	April 25, 2013
Deadline to Serve Proposed Comments or Corrections to the Draft Joint Workshop Report	April 30, 2013
Deadline to file and serve final Joint Workshop Report	May 9, 2013
Proposed Decision	July 9, 2013

**7. Workshop Statement Format**

The workshop statements shall be prepared in Word format and served on the parties and the assigned ALJ. Any case law, ruling, general order, advice letter, or statutory authority cited in a party’s workshop statement shall be attached as an appendix to the party’s copy of the workshop statement that is served on the assigned ALJ. In the event an individual case, ruling, general order, advice letter or statute is in excess of 50 pages, only the relevant pages need be attached, with the pertinent passages highlighted or marked for ease of reference.

**8. Workshop Agenda and Protocols**

An agenda for the workshop as well as any workshop protocols will be provided either prior to or at the first day of the workshop. The Commission’s Policy and Planning Division will facilitate the workshop.

**9. Joint Workshop Report**

Prior to the start of the workshop, the parties shall meet and confer and designate scribes who shall be responsible for preparing the draft and final

workshop reports. The draft and final workshop reports shall be prepared in Word format. The contents of the workshop report shall include the following:

- The workshop report shall summarize each party's position and recommendation on each issue discussed at the workshop.
- To the extent the parties believe that there are existing Commission rules, general orders, and statutes that are relevant, without modification, to the outcome of this OIR, each rule, general order, and statute shall be set forth in the workshop report with an explanation as to why each is applicable. To the extent other parties disagree, the workshop report shall identify who disagrees and summarize the reasons for the disagreement.
- To the extent the parties believe that there should be modifications to existing Commission rules, general orders, and statutes that are relevant to the outcome of this OIR, each proposed modification to an existing Commission rule, general order, and statute shall be set forth and the workshop report shall identify which parties support each modification. To the extent other parties disagree, the workshop report shall identify who disagrees and summarize the reasons for the disagreement.
- To the extent the parties believe that there should be new Commission rules and or general orders to assist the Commission in resolving this OIR, each proposed new rule and or general order shall be set forth and the workshop report shall identify which parties support each new rule or general order. To the extent other parties disagree, the workshop report shall identify who disagree and summarize the reasons for the disagreement.

#### **10. Discovery/Law and Motion Matters**

Discovery will be conducted pursuant to the provisions of Article 10 of the Rules and Rule 11.3. Rule 11.3 requires parties to meet and confer before bringing a formal motion. Parties are expected to engage in timely discovery

well before deadlines and are expected to raise discovery issues in a timely fashion to avoid adverse impacts on the schedule.

#### **11. Filing, Service and Service List**

The official service list was discussed and agreed to at the February 15, 2013 PHC and is now on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission's web site meets that definition.

Electronic service is now the standard under Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded that, when serving copies of documents, the document format must be consistent with the requirements set forth in Rule 1.10(a).

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by

United States mail. Additionally, parties shall serve paper copies of all filings on the presiding officer and assigned Commissioner.

**12. Categorization and Need for Hearings**

This Scoping Ruling confirms the Commission's preliminary categorization of this proceeding as quasi-legislative. This determination is appealable under the provisions of Rule 7.6. This Scoping Ruling also confirms that hearings are not necessary.

**13. Ex Parte Communications**

As this is a quasi-legislative proceeding, *ex parte* communications are governed by Rule 8.3(a) of the Commission's Rules of Practice and Procedure.

**14. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**15. Assigned ALJ**

Pursuant to Pub. Util. Code § 1701.3 and Rule 13.2, ALJ Robert M. Mason III is designated as the assigned ALJ.

**IT IS RULED** that:

1. The scope of this proceeding is as set forth above.
2. The schedule of this proceeding is as set forth above.
3. This proceeding is categorized as quasi-legislative.
4. The Commission's preliminary determination that hearings are not necessary is confirmed.

5. The issues to be resolved in this proceeding are listed in Section 5 of this Scoping Memo and Ruling (Scoping Ruling).

6. Workshops shall be held on Wednesday, April 10 and Thursday, April 11, 2013, as set forth above in Section 6 of this Scoping Ruling.

7. The workshop statements shall be filed and served electronically no later than April 3, 2013, and hard copies shall be provided to the assigned Commissioner and ALJ.

8. Robert M. Mason III is the assigned ALJ.

9. Rule 8.3 regarding *ex parte* communications in quasi-legislative proceedings applies to this proceeding.

Dated April 2, 2013, at San Francisco, California.

/s/ MICHAEL R. PEEVEY  
Michael R. Peevey  
Assigned Commissioner

/s/ ROBERT M. MASON III  
Robert M. Mason III  
Administrative Law Judge