

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking on Regulations  
Relating to Passenger Carriers, Ridesharing, and  
New Online-Enabled Transportation Services

R.12-12-011

**WORKSHOP STATEMENT OF  
SIDECAR TECHNOLOGIES, INC. AND SIDE.CR, LLC**

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April 3, 2013

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In accordance with Rule 6.2 of the Rules of Practice and Procedure (the “Rules”) of the California Public Utilities Commission (the “Commission”), the Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling issued on April 2, 2013, and the instructions accompanying the Administrative Law Judge’s Ruling served on parties by electronic mail on March 7, 2013, (the “E-Ruling”), SideCar Technologies, Inc. and Side.CR LLC (hereinafter referred to as “SideCar”) hereby submit this Workshop Statement responsive to the issues identified in the E-Ruling as topics identified for discussion during the upcoming workshop, to be held on April 10-11, 2013, in the above-captioned proceeding (the “Rulemaking”).

**I.  
INTRODUCTION**

SideCar is a technology company that has developed a computer software platform for use by people who carpool or rideshare. SideCar is, in essence, a “match-making information service” for carpoolers and ridesharers. People can download the SideCar mobile application (the “Mobile App”) to their smartphones, and use it to locate other people who are driving or need rides. SideCar licenses the software and the interactive computer system that

facilitates the communication (the “SideCar Network”) and authorizes and manages access to the SideCar Network according to its conditions of access or Terms of Service (“TOS”).

SideCar appreciates that the purpose of these Workshops is to clarify and discuss the issues before the Commission relating to passenger carriers, ridesharing, and online-enabled transportation services in this Rulemaking. As set forth in the Order Instituting Rulemaking (“OIR”), issued on December 20, 2012, these issues include the following:

- how the Commission’s existing jurisdiction should be exercised to regulate new business models using mobile communications and social networks that allow individuals to arrange for transportation, if at all;
- the consumer protection and safety implications of these new business models and methods;
- whether and how the new business models differ from long-practiced forms of ridesharing; and
- the potential impact of the new business models on insurance and access to transportation.

SideCar appreciates the opportunity to discuss the broad issues outlined in the OIR and to provide information responsive to the questions set forth in the E-Ruling.

## II.

### COMMENTS RESPONSIVE TO THE QUESTIONS PRESENTED IN THE RULING

#### 1. Description of New Online Enabled Transportation Services (“NOETS”)

As a preliminary matter, SideCar respectfully disagrees with E-Ruling’s use of the term “New Online Enabled Transportation Services,” or “NOETS” to refer to a whole host of new business models using mobile communications and social networks identified as respondents to this proceeding. The term erroneously implies that all or a majority of the so-called “new online-enabled services” are transportation services. SideCar is a technology company that hosts a communications network. SideCar strongly suggests that the workshops

are the appropriate forum for the parties to consider, discuss and determine a more suitable term, if such agreement can be reached.

Of course, the consequences of taking a one-size-fits-all approach to the nomenclature used in this proceeding would be far less damaging to this burgeoning industry than would be the adoption of a uniform regulatory approach that fails to distinguish between the business models represented by the respondents to this proceeding. As SideCar's prior comments in this Rulemaking have outlined, and as we detail more fully below, it is imperative that the Commission recognize fundamental and significant differences between Uber, Lyft and SideCar, as well as between these participants and other affected and interested parties. SideCar hopes to demonstrate, through its participation in this proceeding, including this Workshop Statement, that using only a single category, such as the proposed "NOETS" acronym, to refer to the entire spectrum of "online-enabled" and "transportation-related" technology-based platforms would only further confuse important policy, legal and practical issues and gloss over important distinctions between the respondents.

SideCar has repeatedly refuted the misconception that it is a "transportation service" or that its business involves "transportation dispatch." SideCar is a communications and information network, following a long line of interactive peer-driven information networks and intermediaries, including (by way of illustration) Match.com (dating), EBay (goods), and Craig's List (classifieds). SideCar cautions the Commission against lumping together these disparate technologies, services, business and operational models under a catch-all "NOETS" category solely because they all commonly employ smartphone and other online technology as a means of connecting drivers with passengers. The differences among these entities are substantial – and significant for regulatory and policy purposes – and should be recognized in this rulemaking proceeding. In fact, a closer look at the range of these platforms and participants reveals that

differences between them are wider than those differences between types of for-hire transportation services like limos, super shuttles, and taxi cabs. Perhaps the only common thread among these “online enabled services” is that they leverage the geo-locational capabilities of smartphones. Respectfully, we caution the Commission against adopting terminology and substantive rules that fail to account for these differences.

SideCar also notes that, because of the significant differences among the companies collectively referred to as “NOETS” in the E-Ruling, SideCar’s responses below relate only to SideCar and other similarly-situated communications networks, platforms or services for dynamic rideshare matching (“Ridematch Networks”), except where specifically indicated.

*a. How are NOETS created?*

The SideCar Network was developed incrementally over several years. SideCar started as a Michigan-based technology company by the name of Shepherd Intelligent Systems (“Shepherd”), which developed transportation information software for fleet management applications. The Shepherd technology and software development team adapted the core intellectual property and technology to form the foundation for the SideCar Network. SideCar, of course, did not invent carpooling, ridesharing or even dynamic online ridesharing. The SideCar Network is only the latest high-tech embodiment of carpool and rideshare networks over the last five decades. These networks have ranged from traditional company and college rideshare corkboards, to electronic message boards with rideshare listings like Craig’s List, to carpool and rideshare-specific information and exchanges like 511.org or Tickengo.

The SideCar Network was designed with technical rules and legally-binding conditions of use that modeled a peer-to-peer, and not centrally administered, network for exempt ridesharing. Like other true peer-to-peer rideshare networks, the SideCar Network enables individuals to find and choose each other specifically for carpooling and rideshare

matching using pick-up and destination information requests. In fact, SideCar's inspiration was traditional casual carpooling and so-called "slug-lines," such as those in the SF Bay area that transport over 5,000 East Bay commuters each day.

SideCar does not guarantee that any person seeking a rideshare will find another person to share a ride with. In fact, many rideshare requests are not matched. SideCar simply facilitates voluntary information-sharing by third parties. It is therefore not "providing" or "operating" a "ground transportation service."

SideCar does not own, rent, lease, loan, contract for or otherwise manage or control any vehicles or drivers. It does not dispatch drivers to pick up riders. This is unlike Lyft or Uber, both of which assign and dispatch drivers without the requirement of destination as part of the ride requests and without rider and driver choice in the matched assignment. This is a fundamental and important difference because:

- Without specifying the intended destination in the passenger ride request, the rideshare cannot logically be an "incidental purpose," as required by Section 5353 of the Public Utilities Code.<sup>1</sup>
- Without rider and driver choice, there is no peer network but rather a digital dispatch and/or transportation service, where the network operator assigns (dispatches) specific drivers to specific pick-up points without destination.
- Without destination, the ride can neither be considered exempt rideshare or a "pre-arranged" transportation service, but rather is an "on-demand" dispatch and/or transportation service.

The so-called "NOETS" are not created equal, nor are they operated, marketed or otherwise managed in the same way, as SideCar is confident will be demonstrated by the range of responses submitted in response to this Question 1.a.

***b. Are NOETS required to register with any governmental agency?***

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<sup>1</sup> Hereinafter all references to statutory sections shall be to the Public Utilities Code, unless otherwise indicated.

Side.Cr, LLC and SideCar Technologies, Inc. are, respectively, a Delaware limited liability company and a Delaware corporation registered with the California Secretary of State to transact business in California. As a technology-based communications network, SideCar is not otherwise required to register with any governmental agency.

*c. How do NOETS secure drivers?*

As noted above, SideCar objects to the use of the overly -broad “NOETS” classification because it tends to imply that all online-enabled business models contract with or employ drivers as a “transportation service.” SideCar does not “secure drivers” in any sense of the word. Community drivers register for SideCar and apply to become an “authorized” community drivers on their own initiative. Unlike Lyft and Uber, SideCar does not manage or assign these community drivers to shifts but instead, the drivers share rides entirely on their own initiative and within the parameters of SideCar’s TOS, which, among other things, prohibit commercial or for-profit operations.

SideCar actively promotes and markets its ridematch platform through a variety of means and channels, similar to other online intermediaries and services, such as Match.com, EBay or 511.org. SideCar has found that the most important marketing and promotional channel for the SideCar Network is users recommending the SideCar Mobile App to their friends and through word of mouth. SideCar continues to test different online marketing channels to promote its network and communication services, especially during this development stage where a critical mass of members is of essential value to the exchange of information.

To be authorized to participate in the SideCar Network, either as a passenger or driver, a person must agree to SideCar’s TOS, which terms define and limit the purposes for which the SideCar Mobile App may be used. Participants agree that they will not use SideCar for any commercial purposes, as SideCar is available for personal and legally exempt ridesharing

purposes only. Using SideCar for any commercial purpose will subject the user's SideCar account to immediate termination. In addition to the conditions of access set forth in the TOS, SideCar's web site offers a specific application process and rules of use to become a SideCar driver.

*d. How do we characterize the relationship between the driver and a NOETS (e.g. employee, independent contractor, other)?*

Because it does not provide "transportation services," SideCar's relationship with its driver-users is not characterized by employment, dispatch or any other agency or contractual relationship. SideCar's TOS defines the relationship between all authorized drivers and SideCar, as follows:

Driver, at Driver's sole and voluntary discretion, may agree to accept a request and provide rideshare qualifying transport to a Passenger through the Service. Driver acknowledges and agrees that Driver bears sole and absolute responsibility for all aspects of a ride, including safety, securing all appropriate licenses, insurance, and required registrations, as well as compliance with all applicable federal, state and local laws, rules, and regulations. Driver acknowledges that Driver is not an employee or contractor of SideCar, and is not covered by SideCar's disability compensation insurance, liability insurance, and is not eligible to receive employee benefits from SideCar. Driver is eligible to apply for the Driver Guarantee Program protection as described below. Driver agrees to bear sole responsibility for all vehicle fees, maintenance costs, gasoline charges, and any fines (including tickets) or other fees that may be associated with Driver's vehicle or a ride. Driver bears sole responsibility to confirm with Driver's automobile insurance carrier that Driver's automobile insurance provides coverage to Driver and third party passengers in the context of a qualifying rideshare. If Driver agrees to provide a ride to a Passenger, Driver agrees to comply with SideCar's Terms of Service. Driver agrees to look to the Passenger, and not to SideCar, for any complaint, claim, injury, or other issue that Driver may have in connection with a ride.<sup>2</sup>

For the avoidance of doubt, SideCar reiterates that it does not employ, or independently contract with any of our drivers or users. Our service provides a platform for a driver and a passenger to contact and mutually agree to share a ride with the possibility of a

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<sup>2</sup> To view SideCar's complete Terms of Service please visit <http://www.side.cr/terms>.

voluntary donation. The users of the SideCar mobile platform and service are members, not employees or independent contractors. The drivers who utilize our smartphone Mobile App receive, if at all, voluntary donations, which are made using a third party payment service, Stripe. SideCar's member drivers are registered through the SideCar Network and are vetted through SideCar's Safety Program, but are never issued "shifts," restricted to specific "service territories," or otherwise directed or required to drive.

***e. Does a NOETS driver sign a contract or written agreement with a NOETS?***

SideCar's driver-users do not sign contracts or other written agreements with SideCar. Community drivers are not employed by SideCar. Like tens of thousands of other online information and interactive communications services, SideCar licenses and authorizes access to its platform and ridematch exchange through its TOS. The TOS set forth the conditions of use for participating in the SideCar Network and is the sole agreement a user (whether passenger or driver) makes with SideCar.

***f. What technology must a potential passenger have to make contact with a NOETS driver?***

The only technology SideCar's passenger-users need is a smartphone in order to download the iPhone or Android compatible Mobile App and to participate in SideCar's ridematch enabling platform. A person looking for a shared ride inputs his or her intended pickup and drop-off destination into the SideCar Mobile App. The software provides this passenger-user's information to other users in the area with available space in their vehicle, starting with drivers closest in proximity to the potential passenger-user. Once a driver accepts the ride, the passenger is informed and given a time frame for when the rideshare driver will be at their pickup location. When the driver arrives, the passenger is supplied with a "Share my ETA" message which contains a link for the passenger to share via, text, social media or email

for friends and family to track the ride in real time through GPS technology. After the passenger reaches his or her destination, the driver “closes out” the ride by rating the passenger on a scale of 1 to 5. Only after the driver “closes out” the ride does the passenger have the opportunity to rate the driver and, if they choose, to voluntarily donate to the driver any amount of their choosing, including zero.

***g. How is a NOETS driver compensated?***

Drivers using SideCar’s mobile application may receive voluntary donations from rideshare passengers for the specific purpose of recouping the cost of owning and operating their vehicle. Driver-users are specifically prohibited by SideCar’s TOS from demanding or requiring compensation in any form. SideCar’s suggested donations are completely voluntary – claims that the voluntary nature of the donation system is not genuine or that passenger-users are allowed to be “blackballed” on the basis of donation amounts are misinformed.

Once a passenger-user selects a voluntary donation amount, if at all, SideCar uses a third party payment processor to facilitate such payments and driver-users receive funds from this payment processor. Importantly, rating passengers on the basis of a low donation amount is also prohibited by SideCar’s TOS, as follows:

Anti Discrimination. Users are prohibited from making any negative rating, conduct or speech on the basis of or influenced by gender, race, ethnicity, ability, sexual orientation, age, lack of voluntary donation or other impermissible category under applicable law.

In fact, a driver cannot view the voluntary donation amount, if any, until after the driver first “closes out” the ride by rating the passenger. Only after the driver rates the passenger can the passenger also rate the driver, from 1 to 5 stars, and then has the option to voluntarily donate any amount of their choosing, including zero. In this way, no riders can be rated poorly or be penalized for not donating to the driver.

***h. Do NOETS drivers belong to a union?***

Users of SideCar's Mobile App, including drivers, are ordinary people. SideCar does not request nor does it require or otherwise have any specific knowledge of whether particular members belong to any union. Drivers using the SideCar Mobile App are prohibited under the SideCar TOS from using SideCar to operate their vehicle for profit (over and above yearly operating expenses) or for commercial purposes.

***i. How is a fare or donation calculated?***

For each ride, the SideCar Mobile App displays a "suggested donation" amount, which is based on an algorithm that takes into account the distance (in miles) and the time of day (morning, afternoon, evening) during which time period the ride occurs. This suggested donation amount is intended to assist the passenger in determining what to contribute towards the driver's recovery of his or her operating expenses. Any donation made by a SideCar passenger-user is strictly voluntary; there is no minimum or required amount.

***j. What happens if there is a dispute regarding the suggested/requested fare or donation?***

As noted above, donations to drivers are completely voluntary. Passenger-users may select any amount to donate to the driver, which specifically includes making a \$0.00 donation. By accepting SideCar's TOS, both passengers and drivers indicate their acceptance and acknowledgment of this policy, which is quoted in relevant part below:

Voluntary Donation. No Fare. At Passenger's sole discretion, Passenger may make a Voluntary Donation of any amount to Driver for the rideshare provided by Driver. If Passenger does not wish to make any donation to Driver, Passenger must expressly choose to donate \$0.00 in the app within twenty- four (24) hours of completing the ride and if no donation amount is selected, Passenger agrees to donate the Community Voluntary Donation to Driver, and Passenger hereby authorizes SideCar to charge Passenger's credit card the Community Average Donation for the ride. SideCar will facilitate all Passenger donations through a third party payment processing service, and will deposit donation funds to Driver into a bank account designated by Driver upon creation of Driver's SideCar

account. Any donation made by Passenger to Driver will be subject to a SideCar transaction fee and other applicable fees described in the "Paid Services" section below.

***k. How is the fare or donation allocated between the driver and the NOETS?***

SideCar does not provide or get paid for providing transportation services. If a donation is made by a passenger using SideCar's Mobile App, the driver receives 80% of the donation in order to help cover vehicle expenses. SideCar receives 20% of any such donation, which funds are used, in part, to cover SideCar's operational costs, expenses of providing its communications platform and service fees. If no donation is made, SideCar receives no funds.

***l. How does a NOETS track collected fares or donations?***

Payment processing and tracking of fares and donations is performed by an independent third party processor, called Stripe. Stripe contracts with drivers; SideCar does not enter into written contracts with users of its Mobile App. SideCar's TOS sites these conditions for user access and specifies that matches are between drivers and passengers.

***m. Are NOETS nonprofit or for profit entities?***

SideCar reiterates its concern that the Commission not paint the online-enabled services community with too broad a brush. The respondents to this proceeding include a broad range of entities and organizations. Not surprisingly, business models for providing online-enabled and communications-based services also vary greatly and include government agencies, non-profits and for-profit entities. SideCar is a for-profit company.

***n. Do NOETS pay federal, state, and local taxes?***

SideCar pays all applicable state and federal taxes.

*o. Are NOETS records audited by any governmental agency?*

SideCar's accounting practices and tax information are subject to audit by governmental agencies to the same extent as other comparable business entities.

**2. Jurisdiction**

*a. The basis for the Commission's jurisdiction over NOETS*

*i. Article XII of the California Constitution*

While Article XII of the California Constitution represents a broad grant of power to the Commission, that grant is not without its limits. Section 3 of Article XII specifies that the "public utilities" subject to the Commission's jurisdiction include "private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property." SideCar is not, by the plain language of the article, a "line, plant, or system" transporting people or property. SideCar is a technology company that provides a platform for users to share information with other users in order to try to make a rideshare match.

Section 4 of Article XII specifies that the Commission "may fix rates and establish rules for the transportation of passengers and property by transportation companies." SideCar is not, by the plain language of the article, a "transportation company" and does not transport passengers or property. SideCar is a technology company. SideCar's users arrange to share rides by communicating with each other using SideCar's communications platform.

*ii. What portions of the Passenger Charter-Party Carriers' Act (Pub. Util. Code § 5351 et. seq) are applicable?*

The Passenger Charter-Party Carriers' Act (Public Utilities Code section 5351 *et. seq.*, referred to in this section as the "Act") generally governs the use of the public highways for the transportation of passengers for compensation. Although the Act does not strictly apply to SideCar's communications services because SideCar itself is not a "charter-party carrier of

passengers” as defined by Section 5360,<sup>3</sup> the Act has implications for drivers and passengers that use SideCar’s Mobile App to make a rideshare match. Importantly, however, these drivers and passengers fall under Public Utilities Code section 5353(h), hereinafter referred to as the “Rideshare Exemption,” which specifies that the Act does not apply to certain operations, including the following:

Transportation of persons between home and work locations or of persons having a common work-related trip purpose in a vehicle having a seating capacity of 15 passengers or less, including the driver, which are used for the purpose of ridesharing, as defined in Section 522 of the Vehicle Code, when the ridesharing is incidental to another purpose of the driver.

As detailed more fully in SideCar’s Opening Comments, SideCar encourages the Commission to clarify the application and interpretation of the Rideshare Exemption to establish a “safe harbor” for ridesharing drivers and authentic peer-to-peer rideshare technology providers by considering concepts of “profit,” “incidental purpose,” “work-related” purpose, location information and others.

***iii. Are there any other statutes, rules, or orders applicable here that grants the Commission jurisdiction over NOETS?***

No. As stated in SideCar’s Opening and Reply comments to the Commission, SideCar’s communication platform does not fall under the Commission’s jurisdiction to regulate. SideCar is not a transportation or dispatch service under the plain language of the Public Utilities Code. Instead, under the 1996 Telecommunications Act, SideCar is exempt from regulation as a provider of an “interactive computer service.”<sup>4</sup> The public policy reason for this exemption is well-articulated in section 7 of the federal law, which states that “[i]t shall be the policy of the

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<sup>3</sup> SideCar does not employ or contract with drivers and does not own or lease vehicles. As such, under the current regulatory rules and licensing scheme set forth under the Act, SideCar is neither eligible nor required to apply for TCP license.

<sup>4</sup> Telecommunications Act of 1996, Pub. LA. No. 104-104, § 230(e)(2), 110 Stat. 56 (1996).

United States to encourage the provision of new technologies and services to the public.”<sup>5</sup>

Opponents of new technologies or services “shall have the burden to demonstrate that such proposal is inconsistent with the public interest.”<sup>6</sup>

**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?***

As noted in SideCar’s response to Question 2.a.ii above, the “safe harbor” for ridesharing provided by the existing Passenger Charter-Party Carriers’ Act could be clarified with respect to concepts of “profit,” “incidental purpose,” “work-related” purpose, location information and other issues. SideCar notes that, while these clarifications are not strictly required in order to effectuate the Rideshare Exemption or exclude the operation of SideCar’s communications platform from Commission jurisdiction, such clarification would facilitate the unambiguous implementation of the existing language.

**v. *Should any new statutes, rules, or orders be enacted?***

As SideCar explained above and in its Opening Comments, the Commission’s power to regulate peer-to-peer rideshare intermediaries like SideCar is limited, if not entirely circumscribed, by existing law. However, if the Commission determines that it has some limited authority to regulate in this area, new regulations should be narrowly-tailored and limited to clarifying the parameters of exempt ridesharing under existing law, creating streamlined procedures that accommodate and support new business forms and operating models in circumstances where ridesharing exemptions do not strictly apply, and enhancing public safety. Importantly, new regulations must not come at the expense of all of the benefits of innovation,

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<sup>5</sup> Telecommunications Act of 1996, Pub. L.A. No. 104-104, § 7(a), 110 Stat. 56 (1996).

<sup>6</sup> *Id.*

including, expanded customer choice and reduced environmental impacts from congestion.

**b. *Are there any exceptions to the Commission's jurisdiction over NOETS?***

Please see SideCar's responses to Question 2.a above. SideCar provides a technology platform for individuals to use to exchange information about their need for, and willingness to provide, a shared ride. SideCar does not provide transportation services subject to the Commission's jurisdiction.

**i. *Do NOETS fit within the definition of ridesharing as provided by Pub. Util. Code §5353(h)?***

Yes. As detailed in SideCar's response to Question 2.a.ii above, SideCar's users operate under the Rideshare Exemption. SideCar notes that there are distinctions to be made between information platforms that enable peer-to-peer rideshare, such as SideCar, and services that dispatch a driver to a specific passenger location for an assigned or dispatched ride. SideCar has demonstrated that requiring passenger destination and passenger and rideshare choice separates true peer-to-peer networks like SideCar, which facilitates voluntary communications among its users, from active dispatch services like Lyft or Uber, which directly participate in the assignment and dispatch of rides.

**ii. *Do NOETS fit within the definition of taxi-cab service as provided by Pub. Util. Code § (g)?***

No. SideCar is not a taxicab service as referenced by Section 5353(g) of the Public Utilities Code, which excludes from the Passenger Charter-Party Carrier Act "[t]axicab transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver."

SideCar is not a taxicab service and does not allow people to turn their cars into taxicabs. SideCar is an online mobile platform for people to locate each other for a possible rideshare match. SideCar prohibits use of its platform to run a commercial transportation or taxi

service. SideCar was developed following the traditional carpooling model, as well as commuting slug lines such as in the Washington DC metro area. SideCar is the modern day equivalent of the carpool cork board or electronic bulletin boards like Craig's List. Unlike, for example, Uber, SideCar is not a digital dispatch service, but is a communications and information platform. SideCar is an information intermediary that allows individuals in communities to find and choose each other for specific rideshare and carpool matching.

**iii. Do NOETS fit within the definition of an Internet Protocol-enabled service?**

Yes, SideCar fits within the definition of an "Internet Protocol-enabled Service," as defined by Section 239(b) of the Public Utilities Code to mean the following:

[A]ny service, capability, functionality, or application using existing Internet Protocol, or any successor Internet Protocol, that enables an end user to send or receive a communication in existing Internet Protocol format, or any successor Internet Protocol format through a broadband connection, regardless of whether the communication is voice, data, or video.

The SideCar Network enables its users to supply transit data to other users in order to coordinate a rideshare match. SideCar does not provide transportation services and is not a transportation services company.

**iv. Do NOETS fit within the definition of an information service provider?**

Yes, SideCar fits within the definition of a provider of "information service," as defined by 47 U.S.C. § 153 to mean the following:

[T]he offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

SideCar makes information available to its users by way of an online-enabled communications platform and Mobile App. SideCar does not provide transportation services.

**c. *How Should the Commission exercise its existing jurisdiction to protect public safety and encourage innovation?***

To the extent that the Commission determines that it has any jurisdiction to regulate the operations of certain online-enabled communications networks, the Commission should exercise this jurisdiction very carefully so as not to stifle innovation and introduce a level of regulatory risk that undercuts this budding industry. SideCar echoes the concern of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics (collectively, the "FTC") expressed in its March 6, 2013 comments filed in the pending Colorado Public Utilities Commission rulemaking proceeding, *In the Matter of The Proposed Rules Regulating Transportation By Motor Vehicle*, attached hereto as Exhibit A. In its comments, the FTC recommended that a regulatory framework in that state "allow for flexibility and adaptation in response to new and innovative methods of competition, while still maintaining appropriate consumer protections." The FTC further cautioned that regulatory changes proposed in that proceeding could, in fact, harm consumers by limiting choice, competition and innovation. SideCar suggests that the Commission should avoid this potential harmful result by narrowly crafting any possible new regulatory scheme, considering the merits of implementing any such new regulations on a demonstration or pilot-program basis that would acknowledge the key differences between the types of new online-enabled applications and promoting the societal and environmental benefits of peer-to-peer ridesharing platforms.

**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?***

SideCar and other rideshare programs decrease traffic and parking congestion, lessen greenhouse gases and pollution, and reduce drunk-driving and crimes against drivers by enabling

people to reduce trips by sharing rides. These widespread and concrete public benefits should be encouraged by any 21st Century regulatory structure. If the Commission promulgates regulations that over-reach and, as a result, fail to support the success of online-enabled communications services, the “unanticipated consequences” would be to undercut these attendant public benefits.

***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?***

There would be no negative effects to public safety if the Commission declines to exercise its jurisdiction, if any. SideCar already has a multi-step process to ensure driver and passenger safety that meets or exceeds the current requirements for taxi and limo drivers.

SideCar’s public safety-oriented procedures include the following:

- SideCar utilizes the Lexis/Nexis service for criminal background checks on all drivers and checks each driver against the National Sex Offender Registry.
- SideCar meets all of our drivers in person and has them attend an introduction to the SideCar communications platform, which includes safety training and accident reporting protocols.
- SideCar has a strict Anti Drug, Tobacco and Alcohol Policy and will remove any driver-user from the SideCar Network who is found to be in violation of this policy.
- Each passenger who uses the SideCar platform must have a valid credit card on file. SideCar’s entire payment model is cashless, which is a safeguard put into place in order to enhance driver safety.
- Each ride is GPS tracked by SideCar in real time and each passenger receives a “Share My ETA” link which can be shared with friends or family to view your ride as it happens.
- SideCar currently has in place a \$1,000,000 guarantee, which covers qualified users whose personal insurance has been exhausted or denied due to an accident while they are participating in the SideCar service.

**4. Insurance and Background Checks**

**a. *Are there any existing statutes, rules, or orders requiring insurance for NOETS?***

SideCar reiterates its objection to the classification of its communications platform as a “NOETS” and would not seek insurance coverage under such classification. SideCar’s operations are unique among the other rideshare mobile apps, such as Lyft and Uber. Drivers using the SideCar communications platform maintain their own personal insurance policies. So long as drivers operate their vehicles consistent with the state’s rideshare exemption, coverage should apply. Currently, there are no existing statutes, rules or orders requiring specific insurance for SideCar’s communications platform. SideCar does, as a business entity operating in the State of California, maintain adequate property and employee insurance. SideCar is also currently in the process of finalizing contingent and excess coverage for all member drivers in California.

**b. *Are there any existing statutes, rules, or orders requiring insurance for a NOETS driver?***

Drivers using the SideCar communications platform are ordinary members of the community. These drivers are not, by virtue of being a member of the SideCar Network, SideCar employees or professional drivers. As such, drivers must maintain the minimum requirements of insurance in California for their personal vehicles.

**c. *What are the types of insurance available to NOETS vehicles?***

SideCar driver-users use their own personal insurance policies. SideCar recommends its driver-users review their personal auto policy to ensure that such policies do not include exclusions from legally-protected ridesharing or carpooling.

**d. *Are there any minimum required levels of insurance coverage?***

SideCar requires all driver-users of the SideCar communications platform to maintain and have a valid California auto insurance policy, which states the minimum levels of liability for Individual Bodily Liability at \$15,000, Total Bodily Liability at \$30,000, and Property Damage Liability at \$5,000.

**e. *What are the protocols for maintaining insurance coverage?***

Drivers using the SideCar Mobile App are responsible for maintaining their own personal auto insurance policy with the aforementioned coverage and policy requirements, and for ensuring that such insurance remains current and valid.

**f. *What are the protocols for providing evidence of insurance coverage?***

SideCar requires that each driver using the SideCar communications platform provide SideCar with documented proof of current and valid insurance coverage. This is a requirement to use SideCar's Mobile App.

**i. *Are there any existing statutes, rules, or orders for conducting or requiring background and safety checks for NOETS drivers?***

Currently, no statutes or rules mandate that SideCar conduct background and safety checks on drivers who use the SideCar Mobile App and their personal vehicles. However, SideCar has voluntarily implemented extensive background and safety policies for our driver-users, which are intended to ensure greater public safety for all users of its ridesharing communication platform.

**j. *If not, what statutes, rules, or orders should the Commission adopt for conducting background and safety checks for NOETS drivers?***

SideCar would like the opportunity to participate in the Department of Motor Vehicles Employer Pull Notice ("EPN") program, which would allow SideCar to monitor the

driving records of driver-users of the SideCar Mobile App. SideCar does not have an employer-employee relationship with its driver-users and so is not currently permitted to participate in the EPN program. Access to the EPN program would allow SideCar to supplement its existing background and safety policies to improve public safety.

5. **Accessibility and Equal Access Issues**

a. ***What protocols are in place for NOETS to comply with current Federal and State accessibility requirements?***

SideCar has been in talks with advocacy and interests groups for transportation access, such as the Center for Accessibility. SideCar has a strict anti-discrimination policy and is committed to working to address access and technological usability issues and to comply with applicable federal and state requirements aimed to accommodate individuals with disabilities.

b. ***Does a NOETS driver have to comply with current Federal and State accessibility requirements to accommodate passengers with accessibility needs?***

Drivers using the SideCar Mobile App are ordinary members of the community, which include individuals with disabilities who desire, as passengers and/or drivers, to share rides in cars outfitted with special equipment. SideCar's Mobile App does not discriminate and facilitates a rideshare matches between people with broad-ranging needs.

SideCar is also committed to ensuring that its Mobile App and website reflect technological developments that enhance and improve usability for people with disabilities.

c. ***What is the service territory for a NOETS driver?***

SideCar does not generate, prescribe or otherwise dictate a "service territory" for driver-users of its Mobile App and communications platform.

- d. Does a NOETS driver have the discretion not to pick up particular passengers or not to drive to particular neighborhoods?**

SideCar is not a transportation service provider and, therefore, does not dictate where, how and when a rideshare trip will take place. SideCar does not dispatch any drivers to pick up any passenger or to service any neighborhood. SideCar's Mobile App enables drivers and passengers to locate each other; it does not require or otherwise guarantee that a successful rideshare match will be made for each user. Users of the SideCar Network maintain complete discretion to serve as either a driver or as a passenger. Users that find a successful "match" have exercised their own independent discretion to share a ride.

- e. Should there be any modification to any existing statutes, rules, or orders to ensure accessibility and equal access to NOETS and NOETS drivers?**

As detailed in SideCar's response to Questions 5a. and 5.b above, SideCar's Mobile App is a tool that facilitates greater transportation access and user-choice without discriminating. SideCar is committed to working to ensure accessibility and equal access for users of its Mobile App by, for example, making investments in technology and focusing its marketing efforts to expand and diversify membership in the SideCar Network of driver-users.

- 6. The manner in which Commission regulation may enhance or impede public access to public roadways**

Complicated regulations that overburden authentic, peer-to-peer rideshare facilitators such as SideCar, will impede public access to the public roadways by eliminating a convenient, reliable and safe transportation alternative. Reducing public access to ridesharing will only diminish the profound economic and environmental benefits of ridesharing, carpooling and vanpooling.

**7. *Any Other Statutes, Rules, or Orders Relevant to the Resolution of this OIR that Should be Identified***

SideCar anticipates that other statutes, rules or orders relevant to the resolution of this Rulemaking may arise during the course of workshop discussions and the development of comments.

**8. *Any other material issues relevant to the resolution of this OIR not discussed above***

SideCar anticipates that additional, material issues relevant to the resolution of this Rulemaking may arise during the course of workshop discussions and the development of comments.

**III.**

**CONCLUSION**

SideCar appreciates the opportunity to provide this Workshop Statement responsive to the questions identified in the E-Ruling. SideCar is optimistic that the upcoming April 10-11 workshops will present a real opportunity for the Commission to better understand SideCar's operations as well as how other companies and organizations function in the online-enabled technology space.

Respectfully submitted,

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April 3, 2013

# **EXHIBIT A**



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Office of Policy Planning  
Bureau of Competition  
Bureau of Consumer Protection  
Bureau of Economics

March 6, 2013

State of Colorado  
Public Utilities Commission  
1560 Broadway Suite 250  
Denver, CO 80202

Re: Docket No. 13R-0009TR

The staffs of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics<sup>1</sup> appreciate this opportunity to provide comments to the Colorado Public Utilities Commission ("CPUC") on three proposed changes to the Code of Colorado Regulations, contained in its Notice of Proposed Rulemaking *In The Matter of The Proposed Rules Regulating Transportation By Motor Vehicle*, 4 Code of Colorado Regulations 723-6.<sup>2</sup> Proposed Rule 6001(ff) would equate the advertisement or offering of the provision of transportation with being a "motor carrier." Proposed Rule 6301(a) would require charter contract transportation, which includes transportation provided by luxury limousines, including stretched limousines and executive cars and vans, to operate using a specific fixed price. Proposed Rule 6309(d) would prohibit luxury limousines from stationing within 200 feet of a hotel, motel, restaurant, bar, taxicab stand, or airport passenger pickup point without the service having been prearranged and the completed charter order being in the vehicle.

FTC staff is concerned that these three proposed changes may significantly impair competition in passenger vehicle transportation services, including innovative methods of competition enabled by new software applications ("applications") that allow consumers to arrange and pay for services in new ways that they might prefer, and thus harm consumers. In evaluating claims that the practices to be prohibited impose a genuine threat to consumer welfare, we recommend that CPUC be guided by the principle that any restriction on competition designed to address such potential harm should be narrowly crafted to minimize its anticompetitive impact.

Generally, staff recommends that a regulatory framework for passenger vehicle transportation should allow for flexibility and adaptation in response to new and innovative methods of competition, while still maintaining appropriate consumer protections. Given the recent introduction of new applications for arranging and paying

for passenger vehicle transportation services, CPUC may wish to consider whether there are ways to clarify or update existing rules on passenger vehicle transportation service to allow competition to flourish, while still maintaining appropriate, reasonably tailored consumer protections.

## **I. Interest and Experience of the Federal Trade Commission**

The FTC is an independent federal agency that enforces laws prohibiting unfair methods of competition and unfair and deceptive acts or practices in or affecting commerce.<sup>3</sup> The Commission has wide-ranging responsibilities concerning nearly all segments of the economy. Pursuant to this responsibility, the Commission seeks to identify business practices and regulations that impede competition without offering countervailing benefits to consumers.<sup>4</sup>

Competition and consumer protection enforcement naturally complement and mutually reinforce each other, to the benefit of consumers. Consumers benefit from market competition. The U.S. Supreme Court has recognized that the benefits of competition go beyond lower prices: "The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain - quality, service, safety, and durability - and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers."<sup>5</sup> At the same time, consumer protections promote informed consumer decision-making by requiring sellers to make truthful and non-deceptive representations about their offerings. In other words, competition pressures producers to be innovative and responsive to consumer preferences with respect to price, quality, and other options, while consumer protection policies reinforce competition by facilitating informed consumer choices and prohibiting firms from engaging in unfair or deceptive acts or practices.

In carrying out its mission, the Commission has developed considerable expertise in analyzing issues relating to passenger vehicle service markets. FTC staff previously has submitted a number of advocacy filings related to taxicabs with various local and state authorities.<sup>6</sup> The FTC has also brought enforcement actions against two cities relating to taxicab regulation.<sup>7</sup> Another major contribution in this area is an FTC staff report on taxi regulation.<sup>8</sup> The report's conclusions are still generally applicable today.<sup>9</sup>

## **II. The Passenger Vehicle Transportation Marketplace**

Until recently, the passenger vehicle transportation marketplace in the United States remained largely unchanged since at least the early 1980s.<sup>10</sup> However, in response to the introduction of smartphones around 2007, both incumbent passenger vehicle transportation service providers and other entrepreneurs have introduced new software applications that allow consumers to arrange and pay for passenger vehicle transportation service.<sup>11</sup> These software applications, also sometimes called digital dispatch services, make use of technologies such as mobile smartphone applications, Internet web pages, email messages, and text messages.

These applications represent an innovative form of competition that may enable consumers to more easily arrange and pay for passenger vehicle transportation services, compared to traditional methods such as street hails or prearrangement by telephone through traditional service dispatchers.<sup>12</sup> For example, some applications use the Global Positioning System (“GPS”) technology incorporated into smartphones to enable consumers to locate nearby vehicles and track their arrival on an electronic map, thus facilitating matching between customers and service.<sup>13</sup> Some applications also utilize the GPS and computing capabilities of smartphones to enable new fare calculation methods based on one or more factors such as distance, time, per trip fees, demand, additional services, or gratuities, which the application can then charge to a credit card.<sup>14</sup> These technologies and methods may promote a more efficient allocation of resources (e.g., vehicles and drivers) to consumers seeking passenger vehicle transportation services. These technologies and methods may also raise novel consumer protection issues, for example, relating to consumers’ understanding of price information communicated via an application. Other potential areas of concern may include the collection, use, and retention of consumer trip data and the collection, use, and retention of consumer credit card data.

### **III. A Regulatory Framework Should be Responsive to New Methods of Competition**

Staff recommends that a regulatory framework for passenger vehicle transportation should allow for flexibility and adaptation in response to new and innovative methods of competition, while still maintaining appropriate consumer protections. CPUC also should proceed with caution in responding to calls for change that may have the effect of impairing new forms or methods of competition that are desirable to consumers. Regulation of vehicle transportation should focus primarily on ensuring qualified drivers, safe and clean vehicles, sufficient liability insurance, transparency of fare information, and compliance with other applicable laws.<sup>15</sup> Regulation of new computer and phone-based applications should focus primarily on ensuring the safety of customers and drivers, deterring deceptive pricing practices, and addressing other consumer protection issues.<sup>16</sup>

In general, competition should only be restricted when necessary to achieve some countervailing procompetitive virtue or other public benefit such as protecting the public from significant harm. This is because consumers benefit from competition among passenger vehicle transportation services, both new and traditional. In the case of passenger vehicle transportation services, competition takes place on a variety of dimensions, including price, availability, timeliness, convenience, quality, vehicle type, and other amenities. A regulatory framework should not restrict the introduction or use of new types of applications, or novel features they provide, absent some evidence of public harm. Generally, a regulatory framework should promote innovation and experimentation that benefit consumers. If CPUC receives evidence of harm from a particular act or practice, a restriction on competition should be narrowly crafted to minimize its anticompetitive impact.

Truthful, non-deceptive information about passenger vehicle transportation services is necessary for the passenger vehicle transportation marketplace to function efficiently.<sup>17</sup> Software applications may provide a number of benefits to consumers, including helping them to compare passenger vehicle transportation services, but they also have the potential to confuse or mislead consumers if, for example, they fail to adequately disclose how fares are calculated or employ “drip pricing” practices.<sup>18</sup> Nevertheless, to promote competition and consumer choice, CPUC should consider less restrictive alternatives to what may be *de facto* bans on new methods of competition facilitated by software applications.

#### **IV. Notice of Proposed Rulemaking**

The Notice of Proposed Rulemaking contains three proposed amendments to the Code of Colorado Regulations that may unnecessarily restrict competition in the passenger vehicle transportation marketplace.

##### **A. Proposed Rule 6001(ff)**

Proposed Rule 6001(ff) would amend the definition of a “motor carrier,” so that “Without limitation, providing transportation includes advertising or otherwise offering to provide transportation.” According to the Notice of Proposed Rulemaking, this amendment would equate the mere advertisement or offering of providing transportation with being a motor carrier that provides transportation in intrastate commerce.<sup>19</sup> Such an expansive definition seems overbroad. Merely communicating an advertisement or offer to provide transportation is not the functional equivalent of actually providing transportation service. This change would create an unwarranted barrier to the entry and operation of applications that are not also motor carriers, and may inhibit, impair or preclude new and innovative ways in which independent applications can affiliate with transportation service providers.

To the extent that CPUC finds that software applications may harm consumers, it should craft any necessary regulations to minimize their anticompetitive impact. Otherwise, CPUC should allow for flexibility and experimentation in the ways that applications and motor carriers can affiliate with each other.

##### **B. Proposed Rule 6301(a)**

Proposed Rule 6301(a) would require that charter contract transportation, which includes transportation services provided by luxury limousines, including stretched limousines and executive cars and vans, be based on a “specific fixed price.”<sup>20</sup> This change seems overbroad, as it would effectively preclude variable pricing for charter transportation, including new types of application-based demand pricing, which might potentially benefit consumers and competition. Demand pricing can be an efficient way to allocate resources (e.g., vehicles and drivers) to consumers, particularly during times of peak demand (e.g., during particular times of day, periods of traffic congestion, around the time of special events). That is to say, price increases signal increased consumer

demand for goods and services, while price declines can signal the opposite.<sup>21</sup> Demand-based pricing, therefore, can be more responsive to consumer preferences than some traditional flat-rate models.

FTC staff believes that, absent some specific compelling evidence that pricing models other than a “specific fixed price” will harm consumers, this change should not be adopted. To the extent that CPUC does receive evidence of such harm, any restriction designed to address that harm should be narrowly crafted to minimize its anticompetitive impact. For example, CPUC may wish to consider requiring applications to disclose certain price information to consumers before purchase,<sup>22</sup> expressly allowing or requiring applications to provide an electronic receipt to customers for verification purposes, or requiring applications to maintain a trip log or manifest for verification purposes.<sup>23</sup> Otherwise, CPUC should allow for flexibility and experimentation in charter contract pricing in order to facilitate innovative forms of pricing that may benefit consumers.

### **C. Proposed Rule 6309(d)**

Proposed Rule 6309(d) would prohibit luxury limousines from stationing within 200 feet of a hotel, motel, restaurant, bar, taxicab stand, or airport passenger pickup point without the service having been prearranged and the completed charter order in the vehicle. This proposed change also seems overbroad, as it would likely impede the ability of consumers to quickly obtain luxury limousine service using an application in many cases, particularly in areas having high concentrations of covered locations, such as downtown areas and other “urban village” areas that have a mixture of residential areas and businesses close to each other. This change would appear to require that luxury limousines depart such areas after dropping off passengers and before completing another order.

FTC staff believes that, absent some specific compelling evidence that the presence of luxury limousine vehicles in proximity to typical passenger pick-up areas will harm consumers, this change should not be adopted. To the extent that CPUC may be concerned about potential queue problems or congestion issues in certain areas, it could consider using a less restrictive means to deal with these problems.<sup>24</sup> Staff is aware that special issues have sometime arisen regarding the regulation of passenger vehicle transportation services, as in the case of first-in first-out taxicab queues at airport, rail station, or downtown taxicab stand areas.<sup>25</sup> But these problems alone do not support this proposed broad restriction. Generally, there are likely to be more passenger transportation vehicles stationing in particular areas only if there is demand for such vehicles in those areas. Also, passenger vehicle services can potentially reduce traffic congestion because increased use of those services can mean reduced use of private automobiles, especially in downtown and other densely populated areas. Consequently, absent evidence of queue problems or congestion issues, CPUC should avoid unnecessarily restricting the ways that consumers can be picked up by passenger vehicle transportation services.

**V. Conclusion**

FTC staff appreciates this opportunity to provide views in regard to this matter and would be happy to address any questions you may have regarding competition and consumer protection policy in the passenger vehicle transportation marketplace.

Respectfully submitted,

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<sup>1</sup> This staff letter expresses the views of the Federal Trade Commission's Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, and Bureau of Economics. The letter does not necessarily represent the views of the Federal Trade Commission or of any individual Commissioner. The Commission, however, has voted to authorize staff to submit these comments.

<sup>2</sup> CPUC Docket No. 13R-0009TR (Open Date Jan. 7, 2013), *available at* [https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=13R-0009TR](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=13R-0009TR).

<sup>3</sup> Federal Trade Commission Act, 15 U.S.C. § 45.

<sup>4</sup> Specific statutory authority for the FTC's competition advocacy program is found in Sections 6(a) and (f) of the FTC Act, under which Congress authorized the FTC "[t]o gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce," and "[t]o make public from time to time such portions of the information obtained by it hereunder as are in the public interest. . . ." 15 U.S.C. § 46(a), (f).

<sup>5</sup> *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 695 (1978); *accord*, *FTC v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411, 423 (1990).

<sup>6</sup> *E.g.*, FTC Staff Comments Before the Colorado Public Utilities Commission Concerning Application of Union Taxi Cooperative for Permanent Authority to Operate a Taxi Service (Nov. 3, 2008), *available at* <http://www.ftc.gov/os/2008/11/V090000cotaxis.pdf>.

<sup>7</sup> The FTC sued the cities of New Orleans and Minneapolis in 1984, charging both cities with unfair competition by combining with taxicab operators to impose regulations that limited the number of taxicab licenses, increased fares, and eliminated competition in violation of the federal antitrust laws. The complaint against Minneapolis was withdrawn after the city revised its ordinance to permit more competition. The complaint against New Orleans also was withdrawn after the state authorized the conduct in question by a new law. *See generally* FTC, 1985 ANNUAL REPORT 5 (1985), *available at* <http://www.ftc.gov/os/annualreports/ar1985.pdf>.

<sup>8</sup> MARK W. FRANKENA & PAUL A. PAUTLER, AN ECONOMIC ANALYSIS OF TAXICAB REGULATION (1984) (FTC Bureau of Economics Staff Report), *available at* <http://www.ftc.gov/be/econrpt/233832.pdf> ("Staff Report").

<sup>9</sup> OECD, Directorate for Financial and Enterprise Affairs, Competition Committee Working Party No. 2 on Competition and Regulation, Taxi Services Regulation and Competition – United States (Oct. 15, 2007), *available at* <http://www.ftc.gov/bc/international/docs/ustaxis.pdf>.

<sup>10</sup> *Id.* at 2 ("As of 2007, the general description of the taxicab industry and taxicab regulation in the United States remains much as it was when Frankena and Pautler described it in 1984. That is, nothing dramatic has happened to alter the U.S. industry in the interim.").

<sup>11</sup> *See generally* Lauren Goode, *Worth It? An App to Get a Cab*, WALL STREET J. (June 17, 2011), *available at* <http://blogs.wsj.com/digits/2011/06/17/worth-it-an-app-to-get-a-cab/>.

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<sup>12</sup> See generally *id.*

<sup>13</sup> See generally *id.*

<sup>14</sup> See generally Brian X. Chen, *Uber, an App That Summons a Car, Plans a Cheaper Service Using Hybrids*, N.Y. TIMES, July 1, 2012, available at <http://www.nytimes.com> (discussing charging by time, distance, consumer demand, and gratuities); Michael B. Farrell, *Taxi App Hailo to Expand Service*, BOSTON GLOBE, Feb. 5, 2013, available at <http://www.bostonglobe.com> (discussing booking fees, service fees, and gratuities).

<sup>15</sup> See generally Staff Report, *supra* note 8, at 1-2.

<sup>16</sup> For example, under the Washington, D.C. Public Vehicle-for-Hire Innovation Amendment Act of 2012 (D.C. Council B19-0892) (adopted Jan. 18, 2013) (amending D.C. Official Code § 50-329.02), "A digital dispatch service shall be exempt from regulation by the [District of Columbia Taxicab] Commission, other than rules and regulations that are necessary for the safety of customers and drivers or consumer protection." See also generally Press Release, California Public Utilities Commission, CPUC Enters Into Operating Agreement With Uber (Jan. 31, 2013), available at <http://www.cpuc.ca.gov/NR/rdonlyres/F013B3B9-ED4E-4554-9C34-E468C9DAED88/0/CPUCEntersIntoOperatingAgreementwithUber.pdf> (describing an interim agreement allowing Uber Technologies, Inc. to operate pursuant to certain safety requirements, while a California Public Utilities Commission rulemaking on innovations in passenger vehicle transportation services is underway). The details of this agreement are contained in Term Sheet for Settlement Between the Safety and Enforcement Division of the California Public Utilities Commission and Uber Technologies, Inc. Re Case PSG-3018, Citation F-5195 (Jan. 2013) (available via the California Public Utilities Commission).

<sup>17</sup> From the perspective of consumer protection, information relating to the provision of passenger transportation vehicle services communicated to consumers should be evaluated on a totality of the circumstances approach. FTC Policy Statement on Deception, Appended to Cliffdale Assoc., Inc., 103 F.T.C. 110, 174 (1984), available at <http://www.ftc.gov/bcp/policystmt/ad-decept.htm>. The FTC's approach to deception consists of a three-part test. First, there must be a representation, omission, or practice that is likely to mislead the consumer. Practices that have been found to be misleading or deceptive in specific cases include false written representations, misleading price claims, use of bait and switch techniques, and failure to perform promised services. Second, the practice is examined from the perspective of a consumer acting reasonably in the circumstances. In evaluating a particular practice, the Commission considers the totality of the practice in determining how reasonable consumers are likely to respond. If the representation or practice affects or is directed primarily to a particular group, the FTC examines reasonableness from the perspective of that group. Third, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception. In many instances, materiality, and hence injury, can be presumed from the nature of the practice. In other instances, evidence of materiality may be necessary. Thus, the FTC will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.

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<sup>18</sup> Drip pricing is a pricing technique whereby firms advertise only part of a product's price and reveal other charges later as the customer goes through the buying process. The additional charges can be mandatory charges, such as hotel resort fees, or fees for optional upgrades and add-ons. Drip pricing is used by many types of firms, including internet sellers, automobile dealers, financial institutions, and rental car companies. *See generally* Fed. Trade Comm'n Conference on the Economics of Drip Pricing (May 21, 2012), available at <http://www.ftc.gov/be/workshops/drippricing/index.shtml>.

<sup>19</sup> In addition, if Proposed Rule 6001(ff) were adopted, a software application would, apparently, then also be covered by Proposed Rule 6010(a), (c) (concerning motor carrier authority and permit applications and motor carrier use of trade names). CPUC may wish to consider whether, in this scenario, a software application might be unnecessarily restricted from using certain words, due to it being subjected to existing traditional motor carrier classifications. For example, CPUC may wish to consider whether, pursuant to Proposed Rule 6010(a), (c), a software application covered as a motor carrier might be unnecessarily restricted from using the phrase "limousine taxi" to describe a luxury limousine service. Staff further recommends that CPUC also more generally evaluate the use of such terms regarding motor carrier service based on a totality of the circumstances approach, as described above, and consider whether there is evidence of consumer confusion regarding different types of motor carrier services that warrants adopting Proposed Rule 6010(a), (c). CPUC may also wish to consider whether there are specific ways to clarify or update existing motor carrier classifications, so as to avoid unnecessarily inhibiting the use of applications that might facilitate passenger vehicle transportation service across different traditional classifications.

Because Proposed Rule 6010(a), (c) would implement certain restrictions on commercial speech, it may also raise First Amendment issues. *See generally* Central Hudson Gas & Elec. Corp. v. Public Service Comm'n of New York, 447 U.S. 557 (1980) (articulating four-part test for evaluating whether government restrictions on commercial speech are constitutional).

<sup>20</sup> 4 COLO. CODE REGS. 723-6 § 6001(ee) ("Luxury limousine service" means a specialized, luxurious transportation service provided on a prearranged, charter basis as defined in rule 6301(a)."); § 6001(dd) ("Luxury limousine" means a motor vehicle, for compensation to transport passengers in luxury limousine service."); § 6308(a) (I)-(III) (Luxury Limousine Categories).

<sup>21</sup> *See generally* ROBERT H. FRANK, MICROECONOMICS AND BEHAVIOR 37 (2010).

<sup>22</sup> *See generally, e.g.*, 4 COLO. CODE REGS. 723-6 § 6252 (requiring taxicabs to post certain information, including certain fare information).

<sup>23</sup> *See generally, e.g.*, 4 COLO. CODE REGS. 723-6 § 6256 (requiring taxicab carriers to maintain certain data for each trip, for a minimum of one year from the date a customer requested taxicab service).

<sup>24</sup> Consumers appear to be better off when regulators pursue alternatives for such locations that are less restrictive, such as redesigning taxicab stands, increasing taxicab line user fees, or entering into contracts with operators. Staff Report, *supra* note 8, at 1, 50-51, 123-24, 156; OECD, *supra* note 9, at 6-7.

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<sup>25</sup> It appears that in some cases first-in first-out taxicab queues have inhibited price competition, that drivers sometimes bickered over their places in line as queues of waiting cabs lengthened, and that drivers also sometimes refused service to passengers wanting only a short trip. Staff Report, *supra* note 8, at 1, 50-51, 123-24, 156; OECD, *supra* note 9, at 2.