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ATTACHMENT A (Workshop Report)



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

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

R. 1212011

**JOINT WORKSHOP REPORT
FOR WORKSHOP HELD ON APRIL 10 - 11, 2013**

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I. INTRODUCTION

Pursuant to Rule 1.8(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), The Taxicab Paratransit Association of California (“TPAC”) and TransForm, submit this Joint Workshop Report on behalf of the following parties: The Center for Accessible Technology; The Greater California Livery Association (“GCLA”); Luxor Cab Company (“Luxor Cab”); The International Association of Transportation Regulators (“IATR”); The Personal Insurance Federation of California (“PIFC”); The San Francisco Cab Drivers Association; The San Francisco Limo Union; the San Francisco Medallion Association; The San Francisco Municipal Transportation Agency (“SFMTA”); The San Francisco Airport Commission (“SFO”)¹; SideCar Technologies, Inc. and Side.cr LLC (together, referred to as “SideCar”); TPAC; Tickengo, Inc.; TransForm; Uber Technologies, Inc. (“Uber”); The United Taxicab Workers (“UTW”); The Utility Reform Network (“TURN”); and Zimride, Inc. (“Zimride”).

II. PROCEDURAL HISTORY

On December 27, 2012, the Commission issued the Order Instituting Rulemaking (OIR) which initiated this proceeding. The stated goal of the OIR is to “assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of these new [Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services (“NOETS”)] business models.”² Subsequent to the parties filing their initial and reply comments, Administrative Law Judge Robert M. Mason III, issued his ruling setting a prehearing conference for February 15, 2013. Thereafter, the Assigned Commissioner and Administrative Law Judge’s Scoping Memo and Ruling (“Scoping Memo”) was issued on April 2, 2013, which required the parties to attend a workshop to consider the issues outlined therein. On April 10th and 11th, 2013, the parties attended the Commission’s workshop in San Francisco at the Commission’s offices.

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¹ SFMTA and SFO were also represented by the San Francisco City Attorney’s Office.

² *Order Instituting Rulemaking on Regs. Relating to Pas. Carriers, Ridesharing, and New Online Enabled Trans. Sers.*, R1212011, p. 2.

The workshop sessions were publicly noticed and open to the public, and instructions were given by the Commission's Policy and Planning Division that public comment was to be communicated to the Commission only through the Commission's Public Advisor's Office and that public comment would not be permitted at the workshops. However, active workshop participants included representatives of the aforementioned Parties, as well as individual members of the public. Commission staff from the Commission's Policy and Planning Division facilitated the workshops, while Commission staff from the Commission's Safety and Enforcement and Legal Divisions attended the workshops in an observation capacity. This report covers the following general topics: (1) jurisdiction; (2) public policy issues; (3) transportation access; (4) proposed modifications; and (5) general considerations. The workshop format was structured loosely, and due to the large number of participants, Parties did not always have the opportunity to respond to the questions posed by Commission staff or rebut statements made by adverse Parties. Therefore, this Workshop Report seeks to record Party positions actually expressed during the workshop and is not intended to provide a comprehensive summary of any one Party's position in this proceeding.

III. JOINT WORKSHOP REPORT

a. JURISDICTION

i. Which Label Applies to NOETS Operations?

NOETS' Asserted That They Are a Software Platform

Uber stated that it is a technology company that has developed a software platform that allows riders to request transportation services from either TCP holders or taxicab drivers. As a point of clarification, at the workshop Uber stated that, currently, Uber App allows a rider to make a request to the following three types of transportation providers: (1) TCP holders; (2) taxicab drivers ("Uber Taxi "); and (3) rideshare drivers ("UberX"). Uber further stated that UberX drivers are compliant with the terms and conditions of a settlement agreement entered into in January 2013 between Uber and the Commission's Safety and Enforcement Division ("SED").

Uber stated that it neither owns nor leases any vehicles, nor does it employ any drivers. In addition, Uber stated that it does not supervise, manage or control any vehicles or drivers that perform passenger transportation services. It contended that it is entirely a software platform that facilitates a request between riders and drivers providing the transportation service. Uber compared itself to sites like Expedia.com, Hotels.com, and Travelocity.com. Uber asserted that the transportation service providers who use the Uber App, in the case of taxis, are subject to regulation by local agencies, including the SFMTA, and, in the case of limousines, by the CPUC. Uber stated that it is a software provider and not a transportation service provider, and thus, not subject to regulation either by local agencies as a taxicab company or by the CPUC as a charter party carrier. With regard to ridesharing, Uber stated that it is in compliance with the settlement agreement that it entered into with the Commission's SED.

Uber also stated that Uber Taxi's rates are set by local taxicab regulations. With regard to TCP holders, Uber contended that the Commission does not regulate rates; rather the Commission allows TCP holders to set their own rates. Uber stated that it negotiated a standardized rate schedule with TCP holders, under which riders can request transportation services from TCP holders by using the Uber App. Uber contended that it would be very confusing to riders if every single TCP holder using the Uber App had a different rate schedule. Furthermore, Uber stated that on behalf of the TCP holder, Uber handles the payment processing (via a third party credit card processor) for each trip requested and taken via use of the Uber App. The TCP holder pays Uber a fee of 10% to 20% of the fare, depending on the service.

To further comment on the software designation, SideCar indicated that it is neither a transportation nor a dispatch service and stated that there is a very important distinction between the network operator and the people actually providing the rideshare transportation. SideCar stated that, as such, it is entitled to the same protections granted to other interactive computer service providers protected under the 1996 Federal Telecommunications Act. SideCar noted the significance of these federal protections and directed the Commission's attention to the Federal Trade Commission's recent statements in the regulatory proceeding before the Colorado Public Utilities Commission, which emphasized that regulation should not be based on rhetoric or speculation about possible public harms.

The Ridesharing NOETS Asserted That Cal. Pub. Util. Code § 5353(h) is Applicable To Their Operations.

SideCar's representative stated that its ridesharing app allows for individuals who are seeking a ridesharing opportunity to connect with each other. SideCar indicated that voluntary donations allow the passenger to contribute to the cost of the ride incurred by the driver. SideCar stated that the company's terms of service specify that the SideCar App cannot be used for any commercial purposes. Sidecar stated that the ridesharing service is designed to be legal; the mobile application permits people to connect for legal ridesharing. SideCar stated its view that, as a result, there is no jurisdiction to regulate its communications service.

In explaining its mobile app, Lyft's representative stated that one of the reasons for the creation of the Lyft App was to minimize barriers to ridesharing in order to facilitate the general application of the ridesharing model to the public as a feasible means of transportation. Lyft cautions that additional barriers to ridesharing platforms will undermine the benefits that can come from bringing ridesharing to the public.

Tickengo, stated that it is a true ridesharing NOETS because it instituted a cap on the amount of money that a community driver can receive annually from giving rides to fellow citizens. Tickengo asserted that not all NOETS have drivers acting as taxis. Tickengo stated that it is similar to the government-run website 511.org in that it was created with the aim of helping people share rides. On Tickengo, users have to schedule rides by entering a requested date, time, and destination in advance. The goal of Tickengo is to be green and reduce pollution and congestion, not to create a new fleet of taxis competing unfairly with existing ones. Tickengo caps how much drivers can make per year based on the American Automobile Association's annual cost of operating and owning a vehicle, which is adjusted annually based on gas prices, inflation, and other factors. Tickengo proposed that the CPUC define a simple and easy-to-administer dollar cap per year to clearly and accurately distinguish between ridesharing and commercial transportation.

Uber stated that it does not consider the use of the Uber App for requesting transportation service with non-TCP drivers its core business. Rather, Uber explained that it intends to include UberX only so long as the CPUC permits other companies that compete with Uber to do so. Uber stated that it was not taking a position in the rulemaking proceeding on whether the

Commission should allow ridesharing (through use of non-TCP drivers) or what terms and conditions that the Commission should impose on such ridesharing services. As a result, Uber limited its comments and participation in the Workshop to its core business – making the Uber App available to riders to request transportation services from licensed TCP holders and taxi drivers.

The Contentions of Parties from the Limousine and Taxicab Industry that NOETS Provide a Taxicab Service

Participants such as TPAC, the SFMTA/SFO/IATR, the GCLA, the SF Cab Drivers Association, the SF Medallion Holders Association, and others, stated that regardless of the technological aspect of the NOETS business model, the physical or real world aspects of NOETS transportation system meets the standard definition of a taxicab service and as such are simply illegal.

Industry members and the SFMTA/SFO/IATR point to several NOETS operational factors that, in their opinion, prove that NOETS are bandit taxicab operations. For instance, the representatives from the SFMTA/IATR and TPAC contended that the NOETS calculate fares, or donations, based on distance and time. They elaborated that the NOETS use of GPS data from a smartphone to calculate a fare based on time and distance meets the definition of a taximeter, one of the only two distinctions between livery and taxicab transportation services. The SF Medallion Holders Association stated that another factor is that the NOETS meet the definition of on-demand services, meaning that shortly after a ride is requested, a driver is dispatched to that request. The representative for SFMTA/IATR and counsel for SFMTA/SFO argued that NOETS fit the statutory definition of charter-party carriers, but operate like taxicabs. They stated that if the Commission does not regulate NOETS as charter-party carriers, it should allow local entities to regulate them as taxicabs.

With regard to rideshare NOETS, parties such as the SF Cab Drivers Association, UTW, and the GCLA disputed that NOETS fit within the Commission's rideshare exemption. Counsel for SFMTA/SFO stated that the existing statutory definition of rideshare is clear; driver and riders must have a common work-related destination, and the rideshare must be incidental to the primary purpose of the driver's trip. The exemption from regulation is designed to encourage the

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sharing of trips that a driver is already planning to make, not to encourage drivers to make trips so that they can charge for the ride. The SF Cab Drivers Association contended that Lyft's practice of scheduling drivers for ten hour shifts or SideCar's attempt to entice new drivers to the site by telling them that they can make \$30 per hour, is evidence that the NOETS rideshare drivers are providing rides for profit. Moreover, the SFMTA/SFO asserted that the typical Lyft or SideCar ride is not incidental to the purpose of the driver. The consensus among the taxicab industry representatives is that these actions do not meet the definition of ridesharing. The SF Cab Drivers Association stated that these actions do not meet the Public Utilities Code definition of ridesharing and that use of the term ridesharing to describe services that Lyft, Sidecar or Uber provide is inappropriate and deceiving.

The SF Medallion Holders Association postulated that since ridesharing NOETS calculate suggested donations using distance and time, they have the ability to determine when the driver crosses into for-hire transportation. When asked whether or not Lyft or SideCar tracks this type of information, Lyft stated that they do not currently use a driver's mileage or time as the means to determine commercial use. The representative from Lyft asserted that there is no current legal test to determine when a community driver passes from protected ridesharing to commercial activity and that the tests proposed by TPAC and others are unworkable, inherently arbitrary and will necessarily not reflect the true costs of any particular driver. SideCar also stated that it did not use mileage or a dollar amount as a proxy to measure impermissible commercial purposes. SideCar asserted that clarifying the definition of legal ridesharing by adopting some bright line test could support the public benefits of ridesharing.

TPAC disputed Uber's claims that it does not exert any control over the provision of transportation services to customers. TPAC contended that Uber possesses control over many factors of the transportation service, including, but not limited to, how fares are calculated, rates, what forms of payment are accepted, dress code, vehicle cleanliness standards, and the rating of the drivers. The representative from the Limo Union stated that he is an Uber partner/driver and agreed with TPAC's statements by explaining that Uber issues a driver quality report card and dispatch acceptance rate. The representative from the Limo Union stated that Uber sends out e-mails to drivers about their performance, imposes punitive measures if a driver does not meet Uber's standards, and unilaterally sets Uber Black rates.

Furthermore, TPAC and SFMTA/IATR stated that NOETS and taxicabs present the same issues that are specifically addressed by local taxicab regulations. TPAC/SFMTA/IATR stated that, for instance, in the area of traffic, NOETS and taxicabs present identical issues such as the staging of vehicles in high volume areas and the clogging of intersections while soliciting or obtaining payments. TPAC continued that municipalities and county governments regulate the number of taxicabs in response to very local considerations of supply, demand, traffic, public safety and other issues, whereas, with NOETS, local regulators have no control over the number of vehicles providing transportation services for compensation on the road. Other problems present themselves, such as access to services, blacklisting of particular users, environmental issues, and safety issues such as vehicle maintenance. TPAC and SFMTA/IATR stated that all of these issues are applicable to NOETS and addressed by local regulation of taxicab industry.

Who has jurisdiction over taxicabs?

Participants from the taxicab industry, the limousine industry, and others acknowledged that the Commission regulates certain passenger motor carriers and that municipal and county governmental agencies regulate taxicabs. SFMTA/IATR pointed out that California is unique in this configuration, as many jurisdictions across the country localize regulatory control over livery and taxicab services at the municipal or local government level. But, regardless of this jurisdictional distinction, TPAC's representatives asserted that by labeling the NOETS operations as taxicabs, the Commission does not lose jurisdiction. The Commission, as well as local authorities, have jurisdiction over illegal taxicab operators.

Several parties from the taxicab and limousine industry commented that it is unclear why the Commission is even entertaining NOETS operations, which in their opinion, are illegal. The representative from the SF Medallion Holders Association stated that even if the Commission accepts the NOETS claim that they are merely software companies, there is still the issue of unlicensed drivers operating without any oversight or TCP holders who are operating as taxicabs. From the industry's perspective, these NOETS are considered to be taxi competitors by the public.

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SFMTA/IATR commented that the taxi industry is a highly regulated and managed system and to simply flood the street with vehicles that compete with taxis undermines a city's ability to regulate its public transportation system. For instance, municipalities control the supply of taxi operators given urban environmental issues specific to a given city. SFMTA/IATR stated that it does not make sense to control the number of taxis on the road if there are an unlimited number of for-hire non-professional drivers on the street.

UTW commented that taxicabs are regarded under state law as an essential government function. Promoting safe and reliable taxicab service is state policy, and the economic viability and stability of taxicab transportation is regarded as a matter of statewide importance.

What is the historical reason for the distinction between taxis and limos?

Luxor Cab stated that the distinction is rooted in the on-demand nature of the taxicab service, and the prearranged nature of a limousine service. Taxicabs provide on-demand service that by its very nature poses unique regulatory issues. For instance, TPAC explained that in the typical street hail situation, a passenger is in a vulnerable position because she lacks the ability to negotiate with the taxicab. Since there is an immediate need for transportation services, the situation is ripe for an unscrupulous person to take advantage of the passenger. As such, regulators stepped in to make sure that there are certain standards in order to protect the passenger. For example, setting fixed and industry standardized rates to prevent price gouging in times of need, instituting commercial insurance requirements, and requiring vehicle checks to ensure passenger safety.

The issues particular to the on-demand scenario are typically not present in the limousine context because the service is negotiated in advance. Lyft stated that the CPUC was initially the Railroad Commission, and originally regulated various forms of transportation that were outside the cities' jurisdiction such as trucks and trains. Lyft stated that taxis were regulated by cities, and limousines came later, and the legislature eventually accepted them under the Commission's jurisdiction. Therefore, there are two key regulatory distinctions between the two services. The first distinction is prearranged versus on-demand service. The GCLA explained that a limousine service is prearranged and the terms of the agreement are represented in a written waybill that contains all of the pertinent information about the ride before the trip begins. Whereas, taxis are

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completely on-demand. As Luxor Cab described, the consumer typically requests taxi service within minutes of actually needing a ride.

The GCLA continued that the second distinction is the manner in which the fare for the transportation service is calculated. Thus, with a limousine service, the fare is negotiated between the passenger and the company, with each limo setting its own fare, whereas, a taxi uses a taximeter to calculate an individual fare based on distance traveled and time elapsed during that particular trip. Counsel for SFMTA/SFO stated that taximeter rates fares are set by the city or county.

Several parties representing the taxi industry and taxi regulators commented that the distinction between taxicabs and limousines has been steadily degrading for some time. The SF Cab Drivers Association stated that limousines are starting to act like taxis. The UTW stated that violating limousines are in greater numbers and competing with taxis for on-demand business. The SFMTA/IATR commented that unregulated limos acting like taxicabs pose serious safety risks. Several taxi companies, the SFMTA/IATR, TPAC and others stated that illegal taxicab operations have been ongoing for a long time and the introduction of the NOETS is merely adding a technological component to an illegal activity.

Uber stated that the TCP holders, who obtain passengers via the Uber App, do not functionally meet the definition of taxi cabs in providing transportation services to customers. Uber noted during the workshop that the Commission has made many distinctions between taxis and non-taxis in decisions regarding this issue of whether a transportation provider is functionally acting as a taxi cab. Some of these decisions were raised in the workshop. Uber contends that one of the key distinctions made by the Commission is whether the transportation service provider has the appearance of a taxi (top lights, taximeter on the dash, specific paint scheme, etc.) and the vehicles used by the TCP holders who provide transportation services to passengers using the Uber App, do not have the appearance of a taxi.

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How has smartphone technology affected the distinction between taxicab services and livery services?

The SFMTA/IATR discussed issues related to the regulatory distinction between taxi services and livery services. The SFMTA/IATR stated that, the distinction between the services has been blurred as a result of what she termed regulatory lag or the failure to evolve regulatory definitions to keep up with new technology.

From the perspective of the SFMTA/IATR, prearrangement has been rendered meaningless. The SFMTA/IATR explained that the Commission interpreted prearrangement as the time it takes a passenger to make a telephone call, contract for transportation services, and get picked up. The GCLA stated that historically, parties contracted at least a day before the ride was dispatched. The SFMTA/IATR stated that this distinction became ineffective when people started carrying telephones. Thus, one of the key methods to distinguish between limousines and taxi services has been eliminated by smartphone technology. In the modern context, prearrangement is not clearly defined. UTW commented that in contrast to the traditional limousine industry, which uses luxury vehicles, caters to a limited clientele and uses advance bookings, NOETS vehicles continuously circulate and gravitate towards busy areas in the same manner as taxis.

Uber stated that the Uber App helps ensure that transportation services by TCP holders are provided on a “prearranged basis” as required by State law and CPUC regulations. The Uber App requires that a number of separate deliberate steps must be initiated and completed by both the rider and the transportation provider before transportation service may be provided: 1) the rider must request transportation; 2) a driver must receive the request for transportation and agree to provide it; 3) the driver must drive to the rider’s pick-up location; and 4) the driver must pick up the rider. In Uber's opinion, that process ensures prearrangement. Completion of this process necessarily takes time: between the time the transportation service is contracted for through use of the App to the time the transportation services commence. Under normal circumstances, Uber stated that there is typically an 8 minute lag between the request and pick-up. In Uber's opinion, this process, which the Uber App requires, ensures that the service is “prearranged” within the meaning of applicable CPUC precedent.

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The representative from SideCar stated that use of its software application to arrange a ride satisfies the concerns motivating the institution of a prearrangement requirement by allowing the user to identify and evaluate the driver prior to pick up, including by use of a rating system, and by maintaining a record of all rides and parties involved. Sidecar stated that the concept of prearrangement is flexible enough to accommodate innovation and asserted that if the purpose of prearrangement is to ensure that passengers retain the power of choice in selecting a driver, the SideCar app meets that need by allowing customer to view community drivers in the area, review their driver ratings, and choose the right driver.

Lyft stated that the ability of a customer to navigate the company log-in, and to choose a community driver constitutes prearrangement because it satisfies the concerns motivating the prearrangement requirement identified by TPAC and others.

A representative from the SF Medallion Holders Association responded that it is absurd to believe that the manner in which Uber describes prearrangement is satisfactory. From his perspective, if someone electronically hails a ride that is immediately dispatched to them, that is a taxi service, not prearrangement. TPAC echoed this sentiment by stating that 8 minutes does not meet the definition of prearrangement and that Uber markets itself as an on-demand service.

Tickengo stated that it currently implements a 30-minute minimum pre-arrangement requirement. Tickengo further stated that its ride requesters must enter a date, time, and destination at least 30-minutes in advance. Tickengo asserted that true ridesharing does not involve commercial drivers wandering around neighborhoods looking to give immediate rides like taxis. Tickengo stated that its 30-minute minimum pre-arrangement makes the most sense today.

The SFMTA/IATR stated that the second distinction, the taximeter, is not adequately defined under state law. The general definition of a taximeter is a device that measures time and distance. The SFMTA/IATR explained that smartphones have again destroyed this distinction because a smartphone can calculate a fare based on distance and time. The SFMTA/IATR stated that the national regulatory bodies that regulate weights and measures are currently meeting in order to understand how to apply smartphone technology to the for-hire transportation context,

and until a decision is reached, in the SFMTA/IATR's opinion, the use of a smartphone to calculate a fare (or donation) is simply illegal.⁴

There was a general consensus among the participants from the taxi and the livery industries and transportation regulators that the distinction between the two services should be reinforced. The UTW stated that there is an inherent incompatibility in the laws regarding livery and taxi services. With limousines in greater numbers and illegally competing with taxis, there is an urgent need to create clear regulatory distinctions.

Uber stated that many of the arguments that the taxi industry and SFMTA/IATR are making in this rulemaking have been made before in prior proceedings before the Commission and have been rejected. Uber noted that in 1993, for example, the Commission staff conducted a study to assess the claims of the taxi industry and airport authorities that the Commission's policies and practice in regard to issuance of charter party carrier permits was increasing congestion on streets, highways and at the airports.⁵ The Commission concluded on the basis of the study conducted by its staff that, contrary to the claims of the taxi industry, the Commission's policies regarding issuance of charter party carrier permits reduced rather than increased congestion. The reasons for this is that Commission licensed charter party carriers typically carry more persons per vehicle than other vehicles. Furthermore, Uber stated that in 1989, the Commission considered and rejected taxi industry proposals for a minimum time period in advance of providing transportation for the service to be "prearranged."⁶ Uber stated that the Commission based its decision on the grounds that such a requirement is unnecessary and would be contrary to the public interest.

SideCar indicated that there is a clear distinction between its peer-to-peer service, which offers a mechanism for rideshare matching, and existing transportation services. SideCar stated

⁴ The SFMTA stated that Philadelphia solved this problem by allowing smartphones to measure time, but not distance. To her, this was an elegant solution because a limo can choose to set its fares based on an hourly rate. But, when distance is introduced into the smartphone calculation, the fares become problematic because the device has not been approved by any regulatory agency.

⁵ *Order Instituting Rulemaking concerning the regulation of Charter-Party Carriers of Passengers regarding implementation of Assembly Bill 1506 (Stats. 1990, ch. 518), concerning insurance limits, maintenance records requirements, and the effect of regulation on highway congestion*, D. 93-11-069, R. 93-06-033 (Filed June 23, 1993).

⁶ *Order Instituting Rulemaking concerning the regulation of passenger carrier services*, D. 89-10-028, R.88-03-012 (Filed March 9, 1988).

that it is neither a transportation nor a dispatch service and explained that because SideCar requires destination information as an element of the trip, it does not provide “on demand” service in the way of taxicab services and should not be regulated as such.

ii. Is there a third way regulatory approach for NOETS operations?

The SFMTA/IATR stated that the idea that there is some third way to regulate these NOETS is offensive to the men and women who work as regulators protect public safety and access. The SFMTA/IATR pointed out that the taxi industry is a highly managed transportation network that requires regulations to ensure universal access to door to door transportation in an urban environment.

TPAC stated that it believed that the Commission had inappropriately provided pre-approval to a third-way regulatory approach via its settlement agreements with NOETS such as Uber and Lyft. TPAC stated that the third-way regulatory approach affected by the NOETS settlement agreement amounted to the deregulation of the taxicab industry, and as such violated state law. TPAC explained that since NOETS use drivers holding nothing more than California driver’s licenses, they are merely “bandit” taxicab operations that use apps to solicit customers. TPAC quoted Cal. Gov. Code § 53075.8(a) which provides that “taxicabs operating without a proper taxicab certificate, license, or permit have exposed customers to unscrupulous persons who portray themselves as lawful operators.” TPAC further affirmed that it is not appropriate for the Commission to create new classifications to accommodate bandit taxicabs. TPAC stated that the Commission should also not circumvent the Legislature’s clear directive to leave the regulation of taxicabs to local governments. TPAC quoted from Cal. Gov. Code § 53075.8(b) which states that the “Legislature further finds and declares that the termination of telephone service utilized by taxicabs operating without proper authority is essential to ensure the public safety and welfare.” TPAC pointed out that Cal. Gov. Code § 53075.8 grants local agencies the power to terminate the telecommunication services of bandit taxicab operators because the “termination of telephone service utilized by taxicabs operating without proper authority is essential to ensure the public safety and welfare.” TPAC concluded that there is no new third way regulatory approach that could or should allow the NOETS’ illegal taxicab operations to continue. TPAC stated that to do so would be inconsistent with state law.

Counsel for the SFMTA/SFO stated that NOETS have presented no credible argument for a "third way. The SFMTA/SFO stated that there are two possible regulatory schemes, the local system for taxicabs and the state system for charter-party carriers, but there is no justification for subjecting NOETS to lesser standards than those applicable to all other charter-party carriers.

Luxor Cab stated that the topic of a third way to regulate NOETS is misleading because it assumes that there is something new about the NOETS, when taxi companies have been using similar technological services for several years before the inception of Uber, Lyft and SideCar. TPAC contends that the Commission should not circumvent the legislature's mandate regarding taxis and that the NOETS should be brought into compliance with existing regulatory requirements. Parties such as the SFMTA/IATR, the GLCA, UTW, the SF Medallion Holders Association, the San Francisco Cab Drivers Association, and Luxor Cab Company agreed that there should not be a third way. UTW commented that the premise of the rulemaking is flawed in that it is based on an assumption that NOETS are distinct from other forms of transportation on account of their use of new technology, whereas taxis and others are using the same technology.

SideCar asserted the need for regulatory recognition of the innovative combination of services offered by communications platforms such as SideCar, in combination with non-commercial ridesharing. SideCar stated its belief that the ridesharing exemption could benefit from clarification in order to support the public benefits of ridesharing. SideCar also noted that, to the extent that there are drivers that seek to earn a profit and make a living from driving, SideCar believes that a level playing field with respect to licensing requirements – one that allows for and encourages innovation in business models – should be allowed. SideCar stated that the existing regulatory structure must change to allow new forms of transportation services to exist. SideCar stated that the existing regulatory framework favors incumbents and prohibits alternative transportation models, including those that contemplate a different relationship between network operators and the people providing transportation via ridesharing services.

Lyft stated that, to the extent the Commission finds that it should regulate to protect public safety interests, it is supportive of a third way regulatory approach because, if applied to NOETS, the current regulatory scheme would create unreasonable barriers for ridesharing

services to enter the market. For instance, while commenting on the viability of ridesharing platforms, Lyft stated that there are a variety of potential usages on their platform: (1) occasional drivers or commuters, such as people who only share rides to and from work; and (2) more frequent drivers who may share rides for numerous hours on a single day. Lyft contends that, based on its 6 years in the carpooling and ridesharing business, for any ridesharing platform to truly work there has to be a match between the supply and the demand for rides, and a base of more frequent drivers must be present in order to maintain adequate supply to meet demand. Lyft believes that this is key to ensuring the viability of ridesharing platforms. Lyft pointed to several key studies on ridesharing that indicate that there must be a critical mass of users so that there is always reliability on the platform.

b. PUBLIC POLICY ISSUES

i. Safety Issues:

Passenger Safety

Taxi Safety Requirements

The SFMTA/IATR outlined the safety check requirements that taxis are required to follow. The SFMTA/IATR has instituted a fingerprint based background check called the “Live Scan Criminal Background Check.” Additionally, the SFMTA/IATR is in the process of expanding its search parameters to a national level. Also, all taxi drivers are subjected to a 10 year Department of Motor Vehicle license check. All taxi drivers are required to undergo two training programs. The first is a four day program that covers the following topics: (1) geography of San Francisco; (2) strategies for protection against crime; (3) customer service; and (4) regulatory compliance. The second program is a one day course that focuses on paratransit service requirements, traffic safety, disability sensitivity and regulations for operating at the airport. Furthermore, the State of California requires the drug testing of taxi drivers in four circumstances: (1) pre-employment; (2) permit renewal; (3) after an accident; or (4) for cause. Every city in the State of California has implemented the drug testing requirement or is in the process of doing so. Lastly, all vehicles are inspected upon entry into the market. The SFMTA/IATR applies mileage entry and exit limits and inspects high mileage vehicles at least twice per year.

TCP Safety Requirements

The GCLA outlined the Commission's safety check requirements. All TCP drivers are required to undergo a pre-employment drug test. Furthermore, the drivers are subject to random drug and alcohol testing as well as testing after any type of accident. The Commission also requires a criminal background check to be undertaken on a national level, and each driver is entered into the California Department of Motor Vehicles' pull-notice program. Moreover, each driver undergoes 80 hours of training covering the following topics: (1) maps; (2) procedures on accidents; (3) interactions with clients; (4) protocol training; and (5) vehicle registration requirements. The GCLA also stated that the charter industry is inspected by the California Highway patrol and the San Francisco International Airport on an annual basis.

Public Safety Policies Implemented by the NOETS

Lyft stated that trust and safety is an incredibly important component of a good customer relationship. As such, Lyft proactively implemented the following safety requirements: (1) driving checks with the DMV; (2) criminal background checks with no occurrences of theft, violent crimes or property damage allowed; (3) drivers must be 23 years of age and have maintained a US driver's license for at least a year; (4) only four-door cars no older than a model year of 2000 are allowed; and (5) and the vehicle is inspected for safety and cleanliness. With regard to the DMV checks, the representative from Lyft expounded that they use the following criteria: (1) no more than one accident in the past 18 months; (2) no more than three minor violations in the past three years; (3) no major violations in the past three years; (4) no DUI or drug related violations within the last seven years. In response to Lyft's comments that its driver DMV checks were more restrictive than those applicable to taxi drivers, Mr. Ed Healy stated that a taxi driver must have a completely clean record.

SideCar stated that it has implemented the following public safety measures: (1) criminal background checks; (2) driving record checks, which includes a prohibition against reckless driving charges; (3) a driver orientation and training program; (4) vehicle screening based on reasonable suspicion of a defect, which might be initiated by customer complaint; (5) drug screening based on reasonable suspicion, which also might be initiated by customer complaint.

SideCar's representative indicated that it is very aware of its public safety responsibilities and it takes steps to prescreen its drivers in order to increase the safety and reliability of the platform.

Uber reiterated that it neither owns nor leases any vehicles, nor does it employ any drivers. In addition, it does not supervise, manage or control any vehicles or drivers that perform passenger transportation services. Uber stated that as a software provider, and not a transportation service provider, it is not subject to regulation by local agencies as a taxicab or by the CPUC as a charter party carrier. The drivers and vehicles that arrange transportation services with passengers through use of the Uber App are, however, subject to regulation by State and local agencies. Charter party carriers are required by Uber's terms and conditions of use to remain in compliance with all applicable CPUC regulations pertaining to their services, including all safety and insurance regulations. Taxis are similarly required by Uber's terms and conditions of use to comply with all applicable regulations of local taxi regulatory authorities. Uber further stated that no public purpose would be served by subjecting Uber to additional regulation duplicative of the existing State and local regulations applicable to the licensed charter party carriers and taxis that arrange transportation services through use of the Uber App.

Although not a part of Uber's core business, and only provided pursuant to the settlement agreement between Uber and the Commission's SED, non-TCP holders that accept requests for transportation services through use of Uber's App are required to undergo the following public safety checks: (1) criminal background checks; (2) DMV record Check and pull notice; (3) drug and alcohol testing; (4) and other requirements that are contained within the settlement agreement.

Disputes regarding Implementation of the NOETS Public Safety Procedures

The SFMTA/IATR stated that the public safety policies of the NOETS are not under the scrutiny of any regulatory agency. Thus, SFMTA/IATR contended that the public is left to rely on self-interested representations by parties who have not opened their records to regulatory agencies.

Mr. Ed Healy described his experience of applying to become a driver for Lyft and SideCar. Mr. Healy indicated that at no point during his application process did either company ask him about whether or not he was qualified to transport passengers. Furthermore, he stated

that the most difficult question that he was asked at Lyft was "If you had a passenger in your car for ten minutes, who would you want in your car." The most difficult question that he was asked at SideCar was "If you were a car, what kind of car would you be?" Mr. Healy further stated that Lyft did not perform a mechanical inspection of his car and that SideCar's vehicle inspection consisted of him uploading a picture of his vehicle to their website. Mr. Healy also stated that the representatives from Lyft and SideCar did not look at the mileage of his car or confirm the VIN number to ensure that it matched his proof of insurance. Mr. Healy stated that he had gone through the application process a few months earlier, and did not know the current requirements of companies. Mr. Healy further stated that he had written about it, and that Lyft and Sidecar might have made changes because of what he wrote. He contended that he was hired by both companies and was told to download their apps so he could go to work, although he did not do so because by signing their terms and conditions he would have agreed not to sue. Lyft responded that Mr. Healy was rejected by Lyft before the point in the process at which Lyft requires driver applicants to submit to background checks and other safety measures.

SideCar indicated that if the Commission determined that it had some measure of jurisdiction to regulate the operations of ridematching communications platforms, that the Commission should focus on instituting narrowly-crafted, public safety-related regulations.

Driver Safety

Luxor Cab stated that many aspects of providing transportation services to strangers contribute to the occupational risk of homicide and other forms of violence against drivers. Luxor Cab indicated that the passenger transportation industry has one of the highest levels of occupational homicide, which is even higher for illegal taxicab operators. The taxi industry addresses these occupational risks by providing driver training and requiring safety equipment. For instance, the SFMTA/IATR provides driver training for: (1) how to deal with intoxicated customers; (2) racial tensions in the taxicab; (3) altercations with other motorists; and (4) fare disputes. Furthermore, to protect drivers, the SFMTA/IATR requires security cameras, which act as a deterrent to criminal behavior and provide a mechanism for tracking complaints.

Luxor Cab further questioned whether NOETS operators recognized that there was an elevated risk of danger to the drivers and asked what steps are being taken by the NOETS to deal with that risk.

Waybills and Safety

TPAC stated that the issue of a waybill touches upon all of the same safety issues raised by prearrangement because it is vital to preventing overcharging, tracking who is responsible for property damage, and other matters. Furthermore, TPAC stated that given the basis for the prearrangement distinction, ensuring that riders and drivers know who they are riding with before the passenger gets in the vehicle supports public safety. Luxor Cab, the GCLA, and other members of the taxi industry stated that waybills are important for safety as they provide clear records of a driver's activities. Mr. Healy further commented that the police need to be able to monitor compliance, so there needs to be a mechanism to enforce waybill requirements.

Uber stated that the waybill requirement applies to TCP holders, including all TCP holders that accept requests for transportation services from riders through use of the Uber App. Uber stated that these waybill requirements do not apply to its operations because it is a software company not a transportation service provider or charter party carrier. Uber stated that its App provides a lot of the same information as is required on waybills and facilitates compliance by TCP holders with waybill requirements.

The moderators asked Uber how it was empowering TCP partners to adhere to the Commission's waybill requirement. Uber responded that it is not responsible for driver compliance, but that the driver gets all of the information necessary to complete the waybill and can do it themselves. The GCLA responded that prearrangement demands that a waybill is filled out prior to going out on a trip, and not about finding out the information once the passenger gets in the vehicle.

Lyft stated that it maintains detailed records of information that is contained in a waybill, and that they keep the information in perpetuity, subject to its terms of service and privacy policy.

SideCar indicated that its users' accounts contain detailed records of matched rides, which is an element of the communications platform that SideCar hosts. SideCar also stated that it does not delete those user records.

ii. Insurance

Comments from the Personal Insurance Federation of California (“PIFC”)

The PIFC began the discussion on whether personal insurance policies are sufficient to cover passengers of NOETS such as Lyft, SideCar and Uber X. The PIFC stated that whether personal insurance policies will apply in the NOETS context is determined on a case-by-case basis. The controlling factor will be the terms of the personal insurance policy at issue. PIFC stated that most, if not all, personal insurance policies, especially those that are based on the standardized insurance policy forms created by the Insurance Services Organization,⁸ contain exclusions for livery services. Thus, theoretically, the determination of whether a passenger is covered under the personal insurance policy of a NOETS rideshare driver depends on two factors: (1) whether or not the personal insurance policy contains an exclusion for livery services; (2) whether or not any payment made to the driver is determined to fall under that exclusion. The determination is dependent on whether a payment received by a NOETS driver is to be considered a “for-hire” payment, or a “shared-expense” payment. In response to a hypothetical presented by the SFMTA/SFO, the PIFC stated that it is likely that where the cost of the particular ride is more than the actual expense of the ride, that would be considered a livery or for-hire situation and fall under the livery exclusion.

TPAC further stated that “livery” or “for-hire” is generally defined as a driver charging more than the actual cost of transporting a passenger. Another applicable definition is a driver that is holding himself out to multiple potential customers as one that provides transportation services. The inevitable conclusion is that insurance policies consider livery or for-hire transportation services to be commercial activities that are not covered by personal insurance policies.

The PIFC stated that in the event of an accident involving a NOETS driver, a claims representative will have to make a determination as to whether or not the driver was engaged in a for-hire or shared-expense situation. The representative of the UTW questioned whether or not a claims representative’s determination of for-hire versus shared expense will take into account the

⁸ The Insurance Service Organization is not an insurance company. ISO provides advisory services and information to insurance companies. ISO develops and publishes policy language that many insurance companies use as the basis for their products.

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total number of rides a driver has provided in a particular period of time. The PIFC's representative responded that she was unsure.

The SF Medallion Holders Association commented that the level of coverage is starkly different from commercial to personal insurance policies. The SFMTA/IATR requires all taxicabs to carry one million dollars worth of insurance, per accident. Whereas, the representative from PIFC confirmed that the state minimums for personal insurance policies are \$15,000 for injury/death to one person and \$30,000 for injury/death to more than one person per accident. All in all, the representative from PIFC stated that it is not clear whether or not personal auto insurance policies will provide coverage to NOETS drivers. Mr. Healy read from the PIFC's comments and responded by stating that the issue before the CPUC is not ridesharing but using a private vehicle as a livery service. Mr. Helay asked the PIFC representative whether California personal auto insurance rates would increase if insurance companies were required to cover all NOETS vehicles. The PIFC representative stated that it could if there was a massive scale of commercial use.

Lyft, SideCar, UberX Supplemental Insurance Coverage

Lyft stated that it has obtained a \$1 million supplemental insurance policy that is designed to respond even if the underlying personal auto insurance policy does not provide coverage. Lyft's policy covers \$1 million of third-party personal injury and property damage. SideCar indicated that the company had secured a \$1 million excess and contingent liability policy, which replaced the \$1 million guarantee program it had in place previously. Uber's representative stated that it also has the same supplemental insurance policy in the amount of \$2 million.

Lyft commented that its supplemental policy has been designed to "drop down" in the event that the driver's underlying personal auto insurance policy does not respond. Additionally, Lyft stated that its supplemental policy is designed to provide coverage from the very first dollar. Lyft further stated that its supplemental policy is written in such a way so as to include every driver that is registered on the Lyft platform.

Several taxicab industry members and the SFMTA/IATR commented on the potential complex nature of the claims process that could be applicable to NOETS. From the perspective

of a taxi driver, if there is an accident, there is one insurance policy that is applicable, whereas, with the NOETS insurance coverage, there is a myriad of steps that need to be taken into consideration. First, the claimant must make a claim to the individual insurance carrier of the driver, who then decides whether or not there is coverage. If coverage is denied or if the policy limits of the underlying coverage are too low, the claimant must then make a claim to the NOETS whose insurer will decide whether to apply coverage. The UTW questioned whether a third party claimant would know that in the event of an accident with a Lyft or SideCar driver, that supplemental insurance policy is available. The response from Lyft was that: (a) it is the responsibility of the driver to inform the third party victim of the Supplemental Lyft Policy; and (b) that the existence of the Supplement Lyft Policy is well known. Mr. Ed Healy stated that he doubted that these policies cover what Lyft and Sidecar claimed that they covered, and requested that they show their policy. Mr. Healy also presented Desoto Cab's insurance policy with \$1 million in coverage.

The SF Cab Drivers Association contended that since Lyft and Sidecar advertise that drivers can make up to \$35 an hour, and the PIFC has stated that vehicles operating for profit are not covered by personal insurance, that the ridesharing NOETS were being deceptive by requiring the drivers to deny that they were operating for profit in order to have their personal insurance policies cover the accident. The SF Cab Drivers Association stated that this is insurance fraud by not disclosing the for-profit nature of their business in order to use the drivers' personal insurance policies for primary coverage. Lyft denied these contentions.

Tickengo stated that it operates similarly to the website 511.org knowing that true occasional ride sharing, with only expense-sharing, is covered by individual policies and that Tickengo is not a transportation company with commercial drivers or even drivers acting as commercial drivers.

Verifying Personal Auto Insurance Policies

The representative from the GCLA questioned how Lyft and Sidecar confirmed on a continuing basis, whether their community drivers' insurance policies are valid. Moderator Zafar expanded on this topic, indicating that with TCP drivers, the Commission is provided with insurance verification from the insurance companies thereby confirming insurance coverage.

She queried whether the NOETS have a similar system to ensure confirmation of personal insurance coverage. Lyft responded that there is no independent verification process that is currently in place for Lyft's community drivers because process is logistically impossible. Lyft stated that it records the expiration date of the policies of all drivers and requires that they confirm renewal of the policy in order to continue to use the platform as a driver. In addition, Lyft stated that just like every other California driver, a Lyft driver who is driving without personal insurance as required by statute would be in violation of the law and thus, it was highly unlikely that a community driver would be operating without adequate personal insurance.

Data Regarding Accident Rates and Denial of Coverage:

A representative from the taxicab industry asked about statistics concerning the number of claims that have been submitted to personal insurance companies from NOETS drivers and the associated denial rate of coverage. The representative from PIFC stated that she had surveyed her membership, but that none of the insurance companies are keeping track of that type of data, and as such, she could not comment on the question.

Fleet Insurance

TPAC's representative questioned whether the comprehensive fleet insurance of a taxi or limo company would apply to Uber fares. The SF Medallion Holders Association commented that with most of its membership, if a driver is working for Uber, the fleet insurance does not provide coverage. Uber countered, by stating that it believed that a taxi companies' fleet insurance would not be rendered inoperative if a taxi accepts an Uber originated fare.

Uber stated that TCP holders that arrange transportation service with passengers through use of its App must comply with all CPUC insurance requirements applicable to such TCP holders. Uber stated that it requires proof of insurance from each TCP holder that is allowed to use the Uber App. Similarly, taxis that use Uber's App must also comply with applicable local agency insurance requirements applicable to taxicabs. In addition to the insurance that TCP holders and taxis must maintain to comply with State and local agency requirements, Uber stated that it also has a liability policy totaling \$2 million and an excess policy of \$5 million applicable to transportation service requested from TCP holders and taxi drivers.

iii. Safety vs. Innovation

Several members of the San Francisco taxicab industry commented that the industry is not opposed by any means to innovation. They use Taximagic.com as an example of how innovation can work within an existing regulatory framework. The representatives from Luxor Cab stated that TaxiMagic entered the taxi industry by approaching all of the taxicab companies and presenting their platform as a means to increase business by using smartphones to electronically hail taxis. Luxor Cab commented that TaxiMagic works within their system so that the taxi company has complete records of all fares that originated from the TaxiMagic platform. Luxor indicated that they have been using the TaxiMagic platform since 2008, several years before NOETS like Uber were in existence. On the other hand, Uber did not approach the taxi companies in San Francisco, and essentially use the transportation assets of taxi companies (their drivers, vehicles, insurance, etc) without their permission. From the taxi industry's perspective, apps like TaxiMagic prove that innovation can be achieved within existing regulatory frameworks. Furthermore, TPAC stated that innovation will take care of itself and that innovation should not take away from public safety. Representatives from the Limo Union, Luxor Cab and Ed Healy commented that Tickengo has the closest approximation of true ridesharing.

SideCar detailed the measures that the company has implemented in order to balance safety and innovation: (1) criminal background checks; (2) driving record checks, which includes a prohibition against reckless driving charges; (3) a driver orientation and training program; (4) vehicle screening based on reasonable suspicion of a defect, which might be initiated by customer complaint; (5) drug screening based on reasonable suspicion, which also might be initiated by customer complaint. SideCar's representative indicated its screening process is intended to address safety, which, in turn, boosts the reliability of the matching service and communications platform. SideCar indicated that, to the extent that the Commission determined that it had some measure of jurisdiction to regulate the operations of ridematching communications platforms, which question has not yet been determined, that the Commission should focus on instituting narrowly-crafted regulations aimed at institutionalizing public safety measures.

iv. Promoting Fair Competition - Regulated Entities vs. Unregulated Entities.

TPAC commented that the goal of the Commission should be to create a fair system. In unbalanced situations, the market will correct itself and move towards balance, thus, competition will find a level playing field. In the instance of a regulated system versus an unregulated one, the natural inclination of the industry will be to move towards deregulation in order to avoid all of the costs of regulatory compliance. Consequently there will be no room left for a regulated industry.

Several parties including the SFMTA/SFO, TPAC, UTW, and the SF Cab Drivers Association contended that regulated taxis cannot compete with NOETS. UTW argued that to allow the NOETS to exist in their current unregulated form or subject to minimal regulation essentially creates a race towards the bottom with negative impact on safety and service. These groups contended that professional drivers will be pushed towards the NOETS business model because of lower operational costs. The representative from the SFMTA/IATR states that when this unregulated system devastates the regulated environment, no one will be left to provide safe and accessible door to door service to city residents and visitors.

In response to the moderator's hypothetical of how NOETS would ensure public safety and access if the taxi industry was destroyed because it could not compete, SideCar's representative expounded that it is their belief that their rideshare platform is not at odds with the taxi industry. From SideCar's perspective, the industries are complementary because they serve different customers and are authorized to provide transportation services in different ways.

The moderators asked if NOETS provide any benefits to competition or safety. Luxor Cab responded that they were an early adopter of the Taxi Magic app, which was an innovation not constrained by regulation. UTW's representative stated that his company has been using the Flywheel app for the past several years, and over 700 San Francisco taxis now use the app. GCLA responded that they want competition as long as it's on a level playing field; competitors should not be allowed to avoid the cost of doing business in the industry. TPAC and several taxi industry representatives stated that there are no additional benefits to NOETS because they do not adhere to the regulations and refuse to be accountable.

Sidecar responded that there are major social benefits to ridesharing and the ridematch service that SideCar provides, including, but not limited to, serving the public's evolving understanding of the sharing economy and facilitating the sharing of a capital intensive asset. SideCar also noted that the existing regulatory system prevented new business models from operating and that, to the extent that driver-users of SideCar's communications platform seek to make a profit, there should be a level playing field with respect to licensing that allows the regulation to joint the internet age.

Uber stated that the Commission should consider the Federal Trade Commission's written statement submitted to the Colorado Public Utilities Commission and attached to Uber's pre-workshop statement, which states that there are competitive benefits to NOETS.

The SFMTA/IATR quoted from Cal. Pub. Util. Code § 5352, which in the SFMTA/IATR's opinion, does not empower the Commission to consider competition over public safety. The Moderator responded by reading from the Commission's Mission Statement from its website which indicates that the Commission stimulates competitive markets where possible. Uber additionally asserted that the California courts have held that the promotion of competition is a factor that the Commission may consider in carrying out its regulatory function.

v. Accountability

Counsel for SFMTA/SFO commented that one of the problems is that the NOETS have decided that they are experts on the passenger transportation industry and therefore they get to decide what the appropriate level of self-regulation is. Counsel for SFMTA/SFO further commented that throughout the proceedings Lyft and SideCar have failed to present any reasons or evidence as to why they should not be subject to the same regulations as every other transportation service in the state or why they should not be held accountable to a regulatory agency. UTW said there is a vast difference between NOETS and taxis in terms of safety. UTW described the various layers of responsibility and accountability in the taxi industry, discussing obligations of the driver, the medallion holder and the company to the regulatory agency and the airport.

TPAC posed the question of whether any of the NOETS have staff that respond to consumer complaints or investigate driver safety issues. TPAC stated that the underlying issue is

that the regulatory agencies cannot police everyone, therefore, the companies in the industry are charged with some level of self regulation.

Lyft responded that they have a staff that handles support issues during the operating hours of the platform. TPAC followed up its question by asking whether Lyft sends out anybody to the scene of an accident to determine whether the driver was at fault and so forth. Lyft responded that the San Francisco Police Department carries out such investigations.

SideCar stated that it maintains a support staff of eight people that responds to customer complaints and issues and that accidents and complaints, depending upon their nature, may trigger a vehicle or drug screening.

Uber stated that it maintains community managers handle comments and complaints. The Uber representative indicated that they have not had an accident nationwide to date, but if it were to occur, the community managers would be in place to investigate such matters.

vi. Transparency

SFMTA/IATR, and several members of the taxicab industry, including Luxor Cab, the SF Medallion Holders Association, the SF Cab Drivers Association, TPAC, and the SFMTA commented on multiple occasions that they are not opposed to innovation. To them, it is an issue of transparency, because no one knows whether the NOETS' operations meet the standards applicable to the passenger transportation industry. Luxor Cab stated that the impression that the industry is left with, is that while SideCar, Lyft, and Uber seem to speak to the ideal of improving transportation services, they are also trying to avoid being transparent about what innovation they are actually bringing to the industry.

Many parties questioned why Lyft, SideCar and Uber's supplemental insurance policies have not been made available to the public. SFMTA/SFO commented that there is a real concern that no one can see the insurance coverage that Lyft, SideCar and Uber represent that they have. Moreover, she questioned the Commission's decision to ensure that the NOETS insurance policies would not be turned over to the public, even in the face of "Public Records Act" request. Lyft's representative stated that companies do not generally disseminate their insurance policies, but that the Commission's Safety and Enforcement Division has reviewed and approved it's supplemental insurance policy. The GCLA questioned the double standard applied to the

NOETS. All TCP drivers are required to have their insurance policies reviewable online, whereas, the NOETS are not required to provide any documentation to support their claim that their Supplemental Insurance Policies works to protect the public.

Uber stated that it is in complete compliance with all regulations in a very transparent way because transportation service from Commission-licensed TCP holders requested by a rider through use of the Uber App is already regulated by the Commission and transportation service from local agency-permitted taxicabs requested by passengers through Uber Taxi is already regulated by local taxi authorities. Given the use of regulated carriers, Uber contended that no public purpose would be served by imposing another duplicative layer of regulation on Uber. Uber stated that none of the regulations contained in GO 157-D apply to a software company, thus there would be no incremental benefit to the public by requiring transportation regulations to be imposed on a software company like Uber.

vii. Terms of Service / Disclaimers

The issue of the NOETS' terms of service touched various aspects of the workshop, but became a clear point of discussion during the discussion on insurance. TPAC presented the disclaimer language from the terms of service agreements of Lyft, SideCar and Uber, which provides that NOETS are not liable for the injuries or damages that occur as a result of the use of their platform. TPAC went on to point out that no regulated transportation company can use the same disclaimer language as the NOETS.

TPAC questioned why the NOETS maintain their Supplemental Insurance Policies if they believe that they are not an integral part of a passenger transportation system. TPAC further commented on the discrepancies between the statements made by Lyft, SideCar, and Uber regarding their safety measures and the disclaimers contained in their terms of service. For instance, TPAC quoted from SideCar's terms of service which states "You agree that your use of the service is at your own risk." Additionally, TPAC quoted Lyft's terms of service which states "We (Lyft) do not screen the participants using the services in any way" and disclaims any responsibility for bodily injury or death. Lastly, TPAC quoted Uber's terms of service which states "You understand therefore, that by using the application and the service, you may be exposed to transportation that is potentially dangerous, offensive, harmful to minors, unsafe, or

otherwise objectionable, and that you use the application and the service at your own risk." TPAC questioned why there is such a contradiction between the NOETS representations to the Commission and the NOETS terms of service agreements.

UTW further questioned whether the disclaimers within a NOETS' terms of service will allow its insurance carrier to avoid coverage. The PIFC commented that it was a possibility, but that the legal impact of the NOETS' disclaimers on their supplemental insurance policies is wholly dependent on the contractual language of each policy.

The NOETS responded on two fronts. First, they offer that they are software companies, not transportation companies. Second, there are very legitimate and logical reasons why software companies disclaim liability for services that they do not own, manage or wholly control. Uber contended that its terms of service agreement is drafted from the perspective of a software company that does not own the vehicles or employ the drivers that provide transportation services arranged through use of its App. Uber's representative also stated that TaxiMagic uses essentially the same language limiting its liability in its terms of service with taxi companies for the very same reason that Uber uses such language in its terms of service: software companies cannot assume liability for transportation service providers that use their applications where the software company does not own, manage or control the transportation service provider.

SFMTA/SFO further questioned the language of SideCar's terms of service that instructs drivers to ensure that their personal auto insurance policies do not contain exclusions for legally protected ridesharing. The assertion was that SideCar is representing to non-lawyers that they are considered to be engaged in legally protected ridesharing, when, from the perspective of the SFMTA/SFO, SideCar does not qualify for the exemption. SideCar's representative responded that SideCar believes that drivers-users of the SideCar mobile application that do not use the communications platform for commercial purposes are covered under the Commission's rideshare exemption.

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c. TRANSPORTATION ACCESS

Universal Pick-up Requirements

The SFMTA/IATR stated that all San Francisco taxis are subject to a universal pick up requirements, which means that any person who needs a ride has a right to obtain service from a taxicab. From an enforcement perspective, if a person is refused service, since all taxicabs are painted with identifying information, a person can call 311 to lodge a complaint against the taxi driver. The SFMTA/IATR will investigate the complaint and issue a citation if it is called for. Drivers are also subject to counseling regarding universal pick-up requirements. In terms of an enforcement mechanism for taxi companies that do not serve poor neighborhoods, the same complaint process is in place, where the SFMTA/IATR will aggregate complaints against a particular taxi company and enact procedures to ensure compliance with universal pick-up requirements. The GCLA stated that limousines are not subject to the universal pick-up requirement because all trips must be prearranged.

San Francisco's Paratransit System

The SFMTA stated that San Francisco possesses one of the world's largest subsidized transportation services and that all taxis in San Francisco are part of the paratransit fleet, which provides rides to the elderly and disabled persons. The SFMTA/IATR requires that each taxi driver undergoes disability training that which educates drivers on how to provide service to customers with special needs.

SFMTA and other parties stated that most taxi companies maintain several wheelchair accessible vehicles in their fleet, many of which operate as paratransit vehicles. For instance, Luxor Cab maintains forty ramped taxis for wheel chair accessibility. The SFMTA pointed out that if the taxi industry were to collapse under the pressure of unfair competition from unregulated transportation providers, it is these individuals, the elderly, poor, and the disabled that will be the first to suffer. Luxor Cab reinforced the SFMTA's sentiment by explaining that the paratransit system is a not-for-profit oriented service. For companies like Luxor Cab, there is a cross-subsidy that occurs where paratransit rides are balanced by lucrative ones. When the most lucrative rides are being taken by unregulated transportation services, a taxi company's ability to provide paratransit services is directly impacted.

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Lyft pointed out that San Francisco is unique in using taxis as part of its paratransit system and that many other jurisdictions in California contract with transportation service companies to provide dial-a-ride services using vans equipped to serve ADA riders. The SFMTA/IATR responded that although Lyft is correct that there are other subsidized paratransit models, San Francisco is a true success story because it has reduced the average cost of a wheelchair accessible trip from \$ 45.00 to about \$12.00. SFMTA stated that if taxicabs were not used for paratransit trips in San Francisco, the paratransit system would cost local taxpayers and additional \$7 million per year, and the quality of the paratransit service would suffer significantly. SFMTA added that the usage of taxicabs has been a tremendous savings to the public, and if taxicabs became unavailable to the paratransit transportation system, then the public would incur a substantially higher cost in order to maintain paratransit services.

With regard to ridesharing NOETS accommodating special needs passengers, SideCar stated its belief that with the expansion of ridesharing into various and diverse communities, expanded community participation will match the needs of the ridesharing community, including the needs of disabled persons requiring, for example, cars outfitted with special equipment. SideCar stated that it has engaged the Center for Accessible Technology to work on the issue, and they are confident that they can further address accessibility issues. The SFMTA/IATR responded that ridesharing NOETS cannot accommodate special needs customers because, for example, it is unrealistic that the driver of a personal vehicle will purchase a wheelchair accessible vehicle in order to engage in ridesharing. These vans are a very specialized and expensive type of equipment, and they break down frequently and use a tremendous amount of gasoline as there are no fuel efficient alternatives. The representative of the SFMTA/IATR opined that the only way to maintain wheelchair accessible service is to require it through regulations. The representative from Luxor cabs concurred with the SFMTA's analysis of this issue.

With regard to livery services, the GCLA stated that all of its drivers are trained under the American Disabilities Act ("ADA") and have undergone training on how to provide service to disabled persons.

In response to Uber's statement that their services are akin to a Hotels.com, Expedia.com, or Kayak.com, the representative from the Center for Accessible Technology pointed out that

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these websites are legally obligated to provide disabled persons the ability to book rooms that fit their needs, and the hotels that participate, have an obligation to ensure that such rooms are available. When asked about what obligation Uber has to ensure that there is accessible services from their participating partners, Uber responded that it is a software provider and not the provider of transportation services and thus, is not responsible for compliance by the providers of the transportation service who utilize Uber's software. Uber added, however, that it could do a better job of helping to ensure that companies that do provide transportation services arranged through use of the Uber App comply with applicable requirements for disability access.

Uber stated that it has approached the SF Mayor's office to become part of the paratransit network. The representative from the SFMTA/IATR does not support Uber's inclusion into the paratransit network because that would mean that an entity that is not subject to any regulatory controls is receiving publicly subsidized funds to pay unregulated fares that fluctuate unpredictably based on demand. She posed the hypothetical of what would occur during an earthquake where Uber's surge pricing could raise the price of a ride, as SFMTA stated it did during Hurricane Sandy in New York.

The workshop facilitators asked about the use of Uber after hurricane Sandy, and what steps Uber took to ensure the safety of their drivers, and how "surge pricing" fit in. Uber stated that they offered surge pricing rates to drivers to help maintain an adequate supply of vehicles, but initially did not charge their passengers the surge price rate.

Tickengo stated that disabled passengers are already using its website and apps to request special vehicles (there is a special note section for this type of request), and that all drivers (including those with special disabled-access vehicles) can carpool and sign up on its website without discrimination whatsoever. Tickengo stated that it encourages people with disabilities to use its service and feels that ridesharing between citizens is perfect for citizens with special needs.

Preventing Conflicts with Public Transit Systems

TransForm stated that the Commission should distinguish online-enabled services from Passenger Stage Corporations to ensure a process that can facilitate communication, and prevent conflicts with public transit services. TransForm stated that preventing these conflicts are

important to ensure that the cost recovery and quality of service of public transit operations are not impacted.

Congestion

The UTW asserted that NOETS cause congestion and pollution and increases the chances of accidents. Cities have vital interests in issues affecting the environment, safety and access to transportation by the disabled.

d. PROPOSED MODIFICATIONS

The Distinction Between Taxicabs and Livery Services.

Applicable Statutes, Rules, and General Orders

Cal. Pub. Util. Code § 5360.5. - Prearranged basis operation

(a) Charter-party carriers of passengers shall operate on a prearranged basis within this state.

(b) For purposes of this section, "prearranged basis" means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone.

CPUC GO § 3.01 - Prearranged Transportation

Class A and Class B charter party carriers, as defined in Public Utilities Code Section 5383, and carriers holding permits under Public Utilities Code Section 5384 (b) shall provide transportation only on a prearranged basis.

CPUC GO § 3.03 - Taxi Transportation Service Not Authorized

A carrier is not authorized to engage in taxicab transportation service licensed and regulated by a city or county. Carriers are prohibited from using vehicles which have top lights and/or taxi meters.

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Proposed Modifications

SFMTA/IATR proposed that a third means to distinguish between taxi service and limo service is the concept of minimum pricing for TCP services. Minimum pricing ensures the distinction between two separate classes of service: on-demand taxi service and prearranged luxury limousine service.

Pre-Arrangement

Applicable Statutes, Rules, and General Orders

Cal. Pub. Util. Code § 5360.5 – “Prearranged basis”

- (a) Charter-party carriers of passengers shall operate on a prearranged basis within this state.
- (b) For purposes of this section, “prearranged basis” means that the transportation of the prospective passenger was arranged with the carrier by the passenger, or a representative of the passenger, either by written contract or telephone.

CPUC GO § 3.01 - Prearranged Transportation

Class A and Class B charter party carriers, as defined in Public Utilities Code Section 5383, and carriers holding permits under Public Utilities Code Section 5384 (b) shall provide transportation only on a prearranged basis.

Proposed Modifications

Several parties including TPAC and the SF Medallion Association stated that the Commission needs to add a time component to the Commission’s prearrangement requirement. Several parties recommended a 30-60 minute prearrangement requirement. Tickengo stated that it already has a 30-minute prearrangement requirement before any passenger can obtain a ride from a community driver. In response to questions from representatives from the taxi industry, Tickengo stated that it would consider a prearrangement period of one day.

Uber stated that the Commission has considered and rejected proposals by the taxi industry in prior proceedings for a minimum time requirement for transportation service to constitute “prearranged” service because it would hurt innovation. Uber referred to a Commission study from 1993 to support its statement. TPAC responded that

times have changed, and the Commission's investigation of a time requirement predated smartphone technology. TPAC reiterated that 8 minutes from request to pick-up is not prearrangement. SFMTA/IATR echoed TPAC's response and elaborated that technology has destroyed the distinction between limos and taxicabs and that a new study would result in different findings. Lyft stated that a time requirement would serve no public safety interest.

Ridesharing

Applicable Statutes, Rules, and General Orders

Cal. Pub. Util. Code § 5353 – Exclusions

(h) 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. This exemption also applies to a vehicle having a seating capacity of more than 15 passengers if the driver files with the commission evidence of liability insurance protection in the same amount and in the same manner as required for a passenger stage corporation, and the vehicle undergoes and passes an annual safety inspection by the Department of the California Highway Patrol. The insurance filing shall be accompanied by a one-time filing fee of seventy-five dollars (\$75). This exemption does not apply if the primary purpose for the transportation of those persons is to make a profit. "Profit," as used in this subdivision, does not include the recovery of the actual costs incurred in owning and operating a vanpool vehicle, as defined in Section 668 of the Vehicle Code.

Proposed Modifications

Tickengo proposed that the Commission adopt the American Automobile Association's ("AAA") average cost of car ownership of \$8,776 as the maximum amount that a driver can earn per year. Tickengo contended that a dollar amount such as the AAA amount, will ensure that rideshare NOETS do not compete with commercial drivers. Tickengo states that a maximum price per mile (such as the IRS mileage rate) would not be accurate because drivers would have to give rides 100% of the time in order to recuperate the cost of owning their vehicle. Also

citizens would no longer be free to choose how much to contribute to fellow citizens for individual carpools.

With regard to ridesharing NOETS accommodating special needs passengers, SideCar stated its belief that with the expansion of ridesharing into various and diverse communities, expanded community participation will match the needs of the ridesharing community, including the needs of disabled persons requiring, for example, cars outfitted with special equipment.

Lyft stated that a cost cap is inherently arbitrary and unenforceable. A bright-line test like the one advocated by Tickengo is arbitrary because it relies on an opaque calculation determined by AAA for a different purpose and because, by definition, an average figure cannot accurately reflect the actual costs experienced by any particular driver or a vehicle. The vague standard such as the one advocated by Sidecar in the form of AB 171 would be impossible for the Commission to enforce.

TPAC, the SF Cab Driver's Association, and other industry members, proposed that an ideal limit is the IRS mileage rate. TPAC stated that the AAA cost of ownership is inappropriate because drivers would be allowed to receive payments covering ridesharing and non-ridesharing expenses. TPAC explained that the talk of annual limits is really just a shell game. Drivers do not provide rides "by the year." The unit of measure that applies to for-hire transportation is the individual trip. Thus, the issue is whether the driver possessed a profit motive when he provided a specific ride to a particular passenger. The IRS mileage rate is a bright line test that can be applied to every single instance of ridesharing. TPAC also responded to the contention that different cars require a different cost analysis by stating that part of the idea of using an average expense such as the IRS mileage rate is to discourage the use of highly consumptive vehicles. Therefore, TPAC concluded that the IRS mileage rate: (1) is the simplest and most accurate method to calculate the actual cost of engaging in a ridesharing trip; and (2) encourages the use of more fuel efficient vehicles.

TransForm stated that its comments refer to ridesharing trips that are aggregating trips with coincident origins and destinations along the same route. TransForm stated that especially for trips that are not served well by public transit that there is a role for expanded access to ridesharing. TransForm stated that while it is relatively easier to identify a work-related rideshare, that it is difficult to find a non-work rideshare without the use of technology, and that

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it is important to review the definition of ridesharing to allow riders to use the services to share rides, gain transportation choices, and improved connectivity to transit.

The San Francisco Cab Drivers Association proposed that a true ridesharing app should require the driver to post their destination first, with a reasonable time window, and for the maximum per mile rate should be the prorated IRS standard business mileage rate, currently 56.5 cents per mile, which along with bridge tolls and other trip expenses, should be shared equally among passengers and driver.

Uncontrolled number of vehicles on the road

The SFMTA/IATR points to the fact that the supply of taxicabs is highly regulated by the city, whereas, the number of TCP holders and NOETS drivers is completely uncontrolled. The SFMTA/IATR would like to see state law give the local jurisdiction some ability to control the volume of for-hire and NOETS vehicles within their jurisdiction.

e. GENERAL CONSIDERATIONS

IP - Service / Information Service Providers:

TURN stated that NOETS are not simply IP Enabled Services. If they were a true IP-Enabled service, they would license the entire platform to companies and make money through licensing fees. TURN stated that the fact that the NOETS are making money from transporting people from point A to point B necessarily means that they are not an information service.

No objection to the technology:

The consensus from most of the taxicab and livery representatives and transportation regulators is that they are not against innovation or the technology that is used by the NOETS. The SF Medallion Holders Association commented that the SFMTA is currently developing a similar app to connect all taxicabs to the same service.

Lack of Information:

TPAC, the SFMTA/IATR, the SF City Attorney's Office, the Center for Accessible Technology, the UTW, the GCLA, and other parties expressed their concern that the lack of a

factual record severally hinders the Commission's ability to make a decision on these issues. The issues of ridesharing, insurance, fare calculations, access, congestion, and many other issues cannot be determined without a more thorough understanding of NOETS and their operations. SFMTA/SFO commented that it is hard to truly test anyone's statements without some sort of evidentiary proceeding or at the very least requiring the parties to submit evidence under oath that supports their position.

SideCar stated that any public harm that purport to justify new regulations must be based in evidence and not in accusations or rhetoric. Sidecar stated that there has been a lot of speculation regarding harm to public safety, but that such speculation has not been backed up by hard data. Sidecar stated that they want this regulatory process to be evidence-based and that the company is confident that data would support the reformation of the existing, anti-competitive market and create a new level playing field. SideCar further stated that since the industry is so new, the Commission may consider instituting a pilot program or to institute regulation on a demonstrative basis in order to aggregate the facts necessary in order to craft appropriate, narrowly-tailored regulations.

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Re-imposition of the Cease and Desist Order on the NOETS

Several parties, including the SF Cab Drivers Association, believe that the Commission should re-impose the cease and desist order on the NOETS. These parties argued that there is a regulatory framework, both at the local and the state level, which bars the NOETS transportation operations. The SF Cab Drivers Association asserted that the continued operation of NOETS allows them to operate free from regulations imposed on taxicabs and livery vehicles, and that this grants NOETS an unfair competitive advantage and is driving law abiding operators out of business.

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