



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  
Filed December 20, 2012

CITY OF LOS ANGELES DEPARTMENT OF TRANSPORTATION

COMMENTS ON PROPOSED DECISION

THOMAS M. DRISCHLER  
TAXICAB ADMINISTRATOR/MANAGER  
FRANCHISE & TAXICAB REGULATION  
LOS ANGELES DEPARTMENT OF TRANSPORTATION  
100 S. MAIN STREET, 10<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90012  
(213) 972-8431

[tom.drischler@lacity.org](mailto:tom.drischler@lacity.org)

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## **SUMMARY**

Below please find the Los Angeles Department of Transportation's (LADOT) official comments of the California Public Utilities Commission's (CPUC) proposed decision on Rulemaking 12-12-011 regarding "transportation network companies" (TNC).

## **DISCUSSION**

### **Proposed Rules**

LADOT supports the overall focus of the proposed decision for addressing issues relating to public safety - including insurance requirements, criminal background checks, zero tolerance for drugs and alcohol, the review of driving records, driver training, and safety inspections.

Below are specific issues that LADOT believes the CPUC should consider incorporating into any final rule making.

### **Insurance**

The CPUC needs to identify and implement a way for local jurisdictions such as the City of Los Angeles to verify that TNC vehicles have the type and level of insurance required by the CPUC and that such insurance covers not only the driver and his or her vehicle but also passengers, third parties, and property damage.

### **Liability Disclaimers**

The CPUC should direct TNCs to remove current (see attached examples) and prohibit future disclaimers that assert that the TNCs are not liable for the actions of drivers and will not cover injuries and damages through their insurance policies. Currently, all

drivers and passengers must agree to the terms of these disclaimers prior to utilizing the apps. This is important so that members of the public have reasonable assurances that they are protected by CPUC-required insurance in the event of an accident.

### **Criminal Background Checks**

TNCs should be required to follow a specific background check process consistent with the process used for TCP drivers. The CPUC should specify and require this process for TNCs.

### **Zero Tolerance**

The CPUC should expand and clarify the proposed rule making so that the CPUC may conduct random drug and alcohol testing. In addition, the CPUC should consider allowing local jurisdictions to conduct the same testing.

### **Driver Records**

The CPUC should maintain or require TNCs to maintain driver records in a manner (e.g. on-line database) that allows local jurisdictions to confirm whether or not a driver currently is authorized to operate a vehicle consistent with CPUC rules.

### **Driver Training**

The CPUC should specify the required type of driver training, including the subjects to be taught and a minimum number of hours of said training.

## **Safety Inspections**

The CPUC should conduct vehicle inspections and/or should specify the inspection requirements. For example, LADOT's taxi regulations require mechanical inspections by an AAA certified mechanic.

## **Enforcement**

The CPUC should explicitly authorize local jurisdictions to conduct enforcement actions against TNCs, including the enforcement of any General Orders to be promulgated by the Commission regarding TNCs.

## **Taxicab Operations Prohibited**

TCPs are not allowed to engage in taxicab service and the CPUC should explicitly make clear that TNCs also are prohibited from engaging in taxicab service.

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. (CPUC General Order 157-D)

TNCs also should be prohibited by the CPUC from advertising or referring to their services as taxicab services either explicitly or inferred. This already applies to charter-party carriers.

No charter-party carrier of passengers shall advertise its services, or in any manner represent its services, as being a taxicab or taxi service. For the purposes of this section, "advertise" includes any business card, stationery, brochure, flyer, circular, newsletter, fax form, printed or published paid

advertisement in any media form, or telephone book listing. (California Public Utilities Code Sec. 5386.5)

This prohibition would preclude TNCs from using terms such as “taxicab”, “taxi”, or “cab” either alone or as part of another term, i.e. “XYZ TNC-Cab” would be prohibited.

### **Additional Regulations**

The CPUC should explicitly reference and/or re-state existing state law in any TNC permit or operating agreements that local jurisdictions may impose additional regulations on TNCs just like they can on charter-party carriers.

The governing body of any city, county, or city and county may not impose a fee on charter-party carriers operating limousines. **However, the governing body of any city, county, or city and county may impose a business license fee on, and may adopt and enforce any reasonable rules and regulations pertaining to operations within its boundaries for, any charter-party carrier domiciled or maintaining a business office within that city, county, or city and county.** (California Public Utilities Code Sec. 5371.4. (a); emphasis added)

### **Copy of Website Disclaimers**

Please see various disclaimer statements currently found on TNC provider web sites. All the statements below were copied verbatim from the websites as listed in July 2013.

## LIABILITY DISCLAIMERS OF TRANSPORTATION NETWORK COMPANIES

From the Lyft website:

### Limitation of Liability

IN NO EVENT WILL WE, OUR SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES OR OUR SUPPLIERS, BE LIABLE TO YOU FOR ANY INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR DELETION, CORRUPTION, LOSS OF DATA, LOSS OF PROGRAMS, FAILURE TO STORE ANY INFORMATION OR OTHER CONTENT MAINTAINED OR TRANSMITTED BY OUR SERVICES, SERVICE INTERRUPTIONS, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES) ARISING OUT OF OR IN CONNECTION WITH LYFT, OUR SERVICES OR THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE) EVEN IF WE OR OUR AGENTS OR REPRESENTATIVES KNOW OR HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

WE DO NOT SCREEN THE PARTICIPANTS USING THE SERVICES IN ANY WAY. AS A RESULT, WE WILL NOT BE LIABLE FOR ANY DAMAGES, DIRECT, INDIRECT, INCIDENTAL AND/OR CONSEQUENTIAL, ARISING OUT OF THE USE OF LYFT OR THE SERVICES, INCLUDING, WITHOUT LIMITATION, TO DAMAGES ARISING OUT OF COMMUNICATING AND/OR MEETING WITH OTHER PARTICIPANTS OF LYFT OR THE SERVICES, OR INTRODUCED TO YOU VIA LYFT OR THE SERVICES. SUCH DAMAGES INCLUDE, WITHOUT LIMITATION, PHYSICAL DAMAGES, BODILY INJURY, DEATH AND OR EMOTIONAL DISTRESS AND DISCOMFORT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OUR LIABILITY, AND THE LIABILITY OF OUR SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AND SUPPLIERS, TO YOU OR ANY THIRD PARTIES IN ANY CIRCUMSTANCE IS LIMITED TO \$100. CERTAIN STATE LAWS DO NOT ALLOW

LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

LYFT HAS NO RESPONSIBILITY WHATSOEVER FOR THE ACTIONS OR CONDUCT OF DRIVERS OR RIDERS. LYFT HAS NO OBLIGATION TO INTERVENE IN OR BE INVOLVED IN ANY WAY IN DISPUTES THAT MAY ARISE BETWEEN DRIVERS, RIDERS, OR THIRD PARTIES. RESPONSIBILITY FOR THE DECISIONS YOU MAKE REGARDING PROVIDING OR ACCEPTING TRANSPORTATION REST SOLELY WITH YOU. IT IS EACH RIDER AND DRIVER'S RESPONSIBILITY TO TAKE REASONABLE PRECAUTIONS IN ALL ACTIONS AND INTERACTIONS WITH ANY PARTY THEY MAY INTERACT WITH THROUGH USE OF THE SERVICES. LYFT MAY BUT HAS NO RESPONSIBILITY TO SCREEN OR OTHERWISE EVALUATE POTENTIAL RIDERS OR USERS. USERS UNDERSTAND AND ACCEPT THAT LYFT HAS NO CONTROL OVER THE IDENTITY OR ACTIONS OF THE RIDERS AND DRIVERS, AND LYFT REQUESTS THAT USERS EXERCISE CAUTION AND GOOD JUDGMENT WHEN USING THE SERVICES. DRIVERS AND RIDERS USE THE SERVICES AT THEIR OWN RISK.

LYFT OFFERS INFORMATION AND A METHOD TO CONNECT DRIVERS AND RIDERS WITH EACH OTHER, BUT DOES NOT AND DOES NOT INTEND TO PROVIDE TRANSPORTATION SERVICES OR ACT IN ANY MANNER AS A TRANSPORTATION CARRIER, AND HAS NO RESPONSIBILITY OR LIABILITY FOR ANY TRANSPORTATION SERVICES VOLUNTARILY PROVIDED TO ANY RIDER BY ANY DRIVER USING THE LYFT PLATFORM.

From the Uber website:

THE COMPANY DOES NOT PROVIDE TRANSPORTATION SERVICES, AND THE COMPANY IS NOT A TRANSPORTATION CARRIER. IT IS UP TO THE THIRD PARTY TRANSPORTATION PROVIDER, DRIVER OR VEHICLE OPERATOR TO OFFER TRANSPORTATION SERVICES WHICH MAY BE SCHEDULED THROUGH USE OF THE APPLICATION OR SERVICE. THE COMPANY OFFERS INFORMATION AND A METHOD TO OBTAIN SUCH THIRD PARTY TRANSPORTATION SERVICES, BUT DOES NOT AND DOES NOT INTEND TO PROVIDE TRANSPORTATION SERVICES OR ACT IN ANY WAY AS A TRANSPORTATION CARRIER, AND HAS NO RESPONSIBILITY OR LIABILITY FOR ANY TRANSPORTATION SERVICES PROVIDED TO YOU BY SUCH THIRD PARTIES.

#### Indemnification

By entering into this Agreement and using the Application or Service, you agree that you shall defend, indemnify and hold the Company, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, Users, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (a) your violation or breach of any term of this Agreement or any applicable law or regulation, whether or not referenced herein; (b) your violation of any rights of any third party, including providers of transportation services arranged via the Service or Application, or (c) your use or misuse of the Application or Service.

#### Disclaimer of Warranties

THE COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR APPLICATION. THE

COMPANY DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE OR APPLICATION WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, APPLICATION, SYSTEM OR DATA, (B) THE SERVICE OR APPLICATION WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS IN THE SERVICE OR APPLICATION WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND APPLICATION IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY THE COMPANY. THE COMPANY MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, SAFETY, TIMELINESS, QUALITY, SUITABILITY OR AVAILABILITY OF ANY SERVICES, PRODUCTS OR GOODS OBTAINED BY THIRD PARTIES THROUGH THE USE OF THE SERVICE OR APPLICATION. YOU ACKNOWLEDGE AND AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE APPLICATION AND SERVICE, AND ANY THIRD PARTY SERVICES OR PRODUCTS REMAINS SOLELY WITH YOU, TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Limitation of Liability

IN NO EVENT SHALL THE COMPANY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING PERSONAL INJURY, LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE). THE COMPANY AND/OR ITS LICENSORS SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS, DAMAGE OR INJURY ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SERVICE OR APPLICATION, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE OR APPLICATION, ANY RELIANCE PLACED BY YOU ON THE COMPLETENESS, ACCURACY OR EXISTENCE OF ANY ADVERTISING, OR AS A RESULT OF ANY RELATIONSHIP OR TRANSACTION BETWEEN YOU AND ANY THIRD PARTY SERVICE PROVIDER, ADVERTISER OR SPONSOR WHOSE ADVERTISING APPEARS ON THE WEBSITE OR IS REFERRED BY THE SERVICE OR APPLICATION, EVEN IF THE COMPANY AND/OR ITS LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

THE COMPANY MAY INTRODUCE YOU TO THIRD PARTY TRANSPORTATION PROVIDERS FOR THE PURPOSES OF PROVIDING TRANSPORTATION. WE WILL NOT ASSESS THE SUITABILITY, LEGALITY OR ABILITY OF ANY THIRD PARTY TRANSPORTATION PROVIDERS AND YOU EXPRESSLY WAIVE AND RELEASE THE COMPANY FROM ANY AND ALL ANY LIABILITY, CLAIMS OR DAMAGES ARISING FROM OR IN ANY WAY RELATED TO THE THIRD PARTY TRANSPORTATION PROVIDER. YOU ACKNOWLEDGE THAT THIRD PARTY TRANSPORTATION PROVIDERS PROVIDING TRANSPORTATION SERVICES REQUESTED THROUGH UBERX MAY OFFER RIDESHARING OR PEER-TO-PEER TRANSPORTATION SERVICES AND MAY NOT BE PROFESSIONALLY LICENSED OR PERMITTED. THE COMPANY WILL NOT BE A PARTY TO DISPUTES, NEGOTIATIONS OF DISPUTES BETWEEN YOU AND ANY THIRD PARTY PROVIDERS. WE CANNOT AND WILL NOT PLAY ANY ROLE IN MANAGING PAYMENTS BETWEEN YOU AND THE THIRD PARTY PROVIDERS.

RESPONSIBILITY FOR THE DECISIONS YOU MAKE REGARDING SERVICES OFFERED VIA THE APPLICATION OR SERVICE (WITH ALL ITS IMPLICATIONS) RESTS SOLELY WITH YOU. WE WILL NOT ASSESS THE SUITABILITY, LEGALITY OR ABILITY OF ANY SUCH THIRD PARTIES AND YOU EXPRESSLY WAIVE AND RELEASE THE COMPANY FROM ANY AND ALL LIABILITY, CLAIMS, CAUSES OF ACTION, OR DAMAGES ARISING FROM YOUR USE OF THE APPLICATION OR SERVICE, OR IN ANY WAY RELATED TO THE THIRD PARTIES INTRODUCED TO YOU BY THE APPLICATION OR SERVICE. YOU EXPRESSLY WAIVE AND RELEASE ANY AND ALL RIGHTS AND BENEFITS UNDER SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA (OR ANY ANALOGOUS LAW OF ANY OTHER STATE), WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

THE QUALITY OF THE TRANSPORTATION SERVICES SCHEDULED THROUGH THE USE OF THE SERVICE OR APPLICATION IS ENTIRELY THE RESPONSIBILITY OF THE THIRD PARTY PROVIDER WHO ULTIMATELY PROVIDES SUCH TRANSPORTATION SERVICES TO YOU. 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.

From the Sidecar website:

SIDECAR DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY RIDE YOU REQUEST OR PROVIDE THROUGH THE SIDECAR SERVICE, NOR DOES SIDECAR WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PROPERTY DAMAGE, INCLUDING TO YOUR VEHICLE, PERSONAL INJURY, UP TO AND INCLUDING DEATH, THAT OCCURS AS A RESULT OF THE RIDE OR YOUR USE OF THE SERVICE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SIDECAR ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY, INCLUDING DEATH, OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO OR USE OF OUR SERVICE (INCLUDING RIDES FACILITATED BY THE SERVICE)

Respectfully submitted,

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Thomas M. Drischler

Los Angeles Department of Transportation