



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)
_____)

Docket No. R.12-12-011

REPLY COMMENTS
ON THE ISSUES IDENTIFIED IN THE SCOPING MEMO RULING
FILED ON BEHALF OF UNITED TAXICAB WORKERS BY MARK GRUBERG

I. Introduction

The question is this: does the CPUC wish to be the agent responsible for the degradation and possible collapse of the taxi industry in San Francisco and elsewhere in the State of California? That will be the predictable result if the Commission allows a parallel fleet of private vehicles, unlimited in size and unaccountable to local authority, to perform taxi services.

II. Private vehicle ride services are seeking a competitive advantage through regulation lite.

Initially, the companies in question took the position that neither they nor their drivers were subject to regulation by state or local authorities.¹ In view of the overwhelming evidence and argumentation presented in submissions to this Rulemaking and the Workshop discussions, they have backed off that extreme position and say they would agree to some minimal regulations that would mainly fall upon their drivers. Lyft proposes that the Commission “formalize a process by which a TNP [their acronym for their business model] may obtain certification from the Commission so that it is exempt from TCP regulations.”² The company insists that some unnamed portion of what they call “rideshare activity” is “indisputably, statutorily exempt.”³ They imply that they may be willing to file an insurance certificate evidencing \$1 million in coverage,

¹ See Comments to OIR submitted by Uber, Lyft and SideCar.

² Lyft, Further Comments Regarding Scoping Memorandum, p. 5.

³ *Id.*, p. 7.

enroll their drivers in a DMV license check program and subject them to criminal background checks. (Drug testing isn't mentioned. We wouldn't want to subject a "community driver" to that indignity.) Other than the insurance requirement, the company itself would be free from regulation.

SideCar proposes a new licensing category for "'Community Drivers,' who operate through a certified shared-transportation program that meets safety, liability and consumer protection requirements subject to audit and verification by state regulators."⁴ They would agree to certain requirements upon drivers and some minor restrictions on the workings of the app.

These proposals reflect contortions on the part of the subject companies to place themselves nominally within the regulatory framework without accepting responsibility or accountability as either existing charter party carriers or as taxis. They seek a privileged space that will allow them to feast off the fat part of the taxi market while remaining free of the obligation to serve the public at large. It is significant that in their current Comments, neither Lyft nor SideCar even discuss service to the disabled community.

Uber doesn't address the private vehicle portion of its business model except to say it "takes no position regarding 'ridesharing' in this proceeding". It is truly remarkable that the company is willing to engage in a business practice it is unwilling to defend. What does that say, not only about company principles, but also about the Commission's willingness to allow this type of operation?

III. The taxi industry must be allowed to compete on a level playing field.

Again and again, the meaningless term "community", as in "community drivers" and "community members", appears in the comments submitted by the unlicensed and unwilling-to-be-accountable services that are the subject of this Rulemaking.⁵ The term connotes something fuzzy and warm, the nowadays equivalent of a mom-and-pop restaurant. The truth is that these services are or are swiftly becoming giant national and international companies, attracting tens of millions of dollars in venture capital to finance their swift march around the nation and the globe. Uber has raised \$50 million in

⁴ SideCar, Opening Comments in Response to Administrative Law Judge Ruling Granting Further Opportunity for Comment, p. 7.

⁵ E.g., Lyft, *supra*, pp. 4,5,6; SideCar, *supra*, pp. 3,5,7.

venture capital, Lyft \$60 million.⁶ In contrast, every San Francisco cab company, to our knowledge, is locally owned and operated, many by present or former taxi drivers. This also holds true in most other localities.

Another favorite term of private vehicle transportation service providers is “critical mass”.⁷ They insist that they must have a large volume of users for the service to be efficient – or more to the point, profitable for them and their drivers. Where are those users to come from? Clearly the lion’s share will be erstwhile taxi passengers. Travis Kalanick, founder and CEO of Uber (which was originally called “UberCab” until forced by a cease-and-desist order to abandon that name), has been quoted as saying “We are going to dominate every city that we are going to go into.”⁸ But, they claim, the sought-after critical mass can’t be achieved if they are hamstrung by the regulations others need follow.⁹ The argument goes like this: We can’t comply with current rules. Therefore we need a different set of less stringent rules we can comply with. Anything less serves to “impede innovation”.¹⁰ The circularity of the reasoning quickly becomes apparent: we are innovators, therefore we deserve different treatment; but without different treatment, we can’t innovate. Their assumed superiority demands regulatory acquiescence to their scheme. As members of the disruptive economy, the last thing they would consider is employing new technology, as others are doing, within the existing regulatory framework. Instead, they arrogantly proclaim: you must come to us.

Will the taxi industry be able to compete against these giants? Not on an unlevel playing field. Cost differences are a major factor, as is flexibility in pricing. By way of example, Uber has just announced a 25 percent reduction in its UberX fares.¹¹ UberX was established as a lower-cost alternative to Uber’s black car and SUV services. At first it utilized CPUC-licensed hybrid vehicles of the same types in use as San Francisco taxis, but since signing its settlement agreement with the CPUC it has expanded the service to include private cars in direct competition with taxis and other private vehicle transportation services.

⁶ Appendix, Exhibit A.

⁷ SideCar, *supra*, p. 2.

⁸ Appendix, Exhibit B.

⁹ Lyft, Further Comments, p. 2.

¹⁰ SideCar, *supra*, p.3.

¹¹ Appendix, Exhibit A.

These unlicensed services can set any fare they like, including the phony “donation” model designed to feign non-profitability. They can raise the price when demand surges in order to maintain reliability. They can even offer incentives to spur acceptance in a given market. Taxis don’t have those options. In most cities, the regulatory authority sets maximum taxi rates, and a company that wishes to undercut them does so at its peril. That’s because taxi operators have fixed costs that owners of private vehicles don’t. In San Francisco, these include \$1 million in liability insurance, workers’ compensation and general liability insurance; dispatch service expenses, including 24/7 operations, in-vehicle computer terminals and two-way radios; other required equipment, including security cameras, meters and top lights; vehicle preparation costs; age and mileage restrictions; rental or ownership of a business location; substantial regulatory costs, etc. Some of these costs cannot be reduced. They are a necessary adjunct of the obligation to provide transportation to the public at large, including wheelchair users, for whom specialized vehicles are available, and people in outlying, sometimes dangerous neighborhoods where private vehicle transportation services have no obligation – and little call -- to go.

These services are unfairly competing against taxis by targeting the easiest segment of the taxi market to serve. Should the Commission grant them the favored treatment they seek, the taxi industry will be forced to lower what costs it can, cutting corners and convincing regulators to debase the standards they have established for the protection of the public. Those include insurance coverage minimums, vehicle age and mileage limits and equipment requirements. Another casualty is likely to be hiring standards, which will need to be compromised in order to find drivers willing to do the job. But even these changes won’t be enough to level the playing field, especially as they will be to the detriment of safety and service. That surely is not what the legislature had in mind when it gave cities and counties “exclusive” authority over taxi service.

IV. The element of trustworthiness is lacking.

The companies in question have shown time and again their contempt for the authority of the Commission and the regulatory systems overseeing charter party carriers and taxis. This contempt is ingrained in their business model, as evidenced by their transparent pretense that they are not transportation providers, and that the drivers of private vehicles working under their auspices are performing exempt ridesharing.

Their driver and user agreements are a compendium of disclaimers of liability and responsibility mixed with transparent fictions about the service they provide.¹² Since the initiation of these proceedings, evidence of their continuing contempt abounds. It can be found in their failure to comply with TPAC's discovery requests¹³ and their refusal to respond substantively to CforAT's concerns over access for the disabled.¹⁴ Ed Healy, a cab driver and party to this proceeding, has documented at length the cavalier attitude of Lyft and SideCar to driver qualifications and vehicle standards.¹⁵

A glaring example of their disdain for authority and the law can be found in their disobedience of cease-and-desist letters sent from SFO to five companies. Three of these companies have signed settlement agreements with the Commission's Safety and Enforcement Division. The agreements with Uber and Lyft compel them to comply with airport rules. (It may be presumed that the agreement with SideCar, which we have not seen, contains a similar provision.) Yet since March 2013, the Airport Bureau of the San Francisco Police Department has issued over 100 verbal admonishments and 12 citations to drivers for disobeying the cease-and-desist orders. Fifty-six percent were Lyft drivers; 35 percent were UberX drivers; and eight percent drove for SideCar.¹⁶

Messages to Lyft's Facebook page for drivers provides further insight into the company's attitude towards the agreement it signed. One message says: "I think SFO Police are giving false info coz lyft management said we can do SFO runs as usual." In response to another post, Lyft CEO John Zimmer wrote: "Yes please let me know of any issues at SFO. You can email me at john at zimride.com. I am still in direct communication with their management. Thank you!" In the final message a driver brags of two rides to the airport in one morning.¹⁷

Further evidence of contempt for authority can be found in the fact that private vehicle ride services have established or attempted to establish unauthorized operations in city after city, provoking the issuance of cease-and-desist orders in places

¹² See UTW, Comments to OIR, pp. 2-3. Lyft's Terms of Service states that it "provides a means for persons who seek transportation to certain destinations . . . to be matched with persons driving to or through those destinations . . ." It further states that the "driver will not . . . offer or provide transportation service for profit." Lyft, Terms of Service, www.lyft.me/terms; SideCar drivers agree to "only give rides to passengers when the ride is incidental to the purpose of the trip." SideCar, Terms of Service, www.side.cr/terms.)

¹³ TPAC, Initial Closing Comments, pp. 2-3.

¹⁴ CforAT, Opening Comments following the Workshop Report, p. 6.

¹⁵ Ed Healy, Comments to Order Instituting Rulemaking.

¹⁶ SFMTA and SFIA, Opening Comments on Issues Identified in the Scoping Memo, p. 2.

¹⁷ Appendix, Exhibit C.

such as Philadelphia, Austin and Dallas as well as California.¹⁸ It is only because the Commission has turned a blind eye to state law and its own regulations that they have been able to operate here despite their egregious non-compliance with existing requirements.

V. Insurance fraud is an inevitable consequence of the business model.

The question of insurance promises to keep courts busy for years sorting out the issues of liability and responsibility amidst a morass of improper coverages and contractual disclaimers. Even identifying the responsible parties becomes problematical considering the fact that the vehicles providing service may be unmarked, so a third party claimant may have no idea 1) that the accident involved transportation for hire; 2) that the underlying private insurance is inapplicable; and 3) that a supplemental policy even exists. The following exchange on the Lyft Driver Lounge, captured in a screenshot, is illustrative:

[Lyft Driver:]

Ok! Had just dropped my Lyft at Gough and MacAllister, and was about to pull away when, with an enormous screeching of brakes, some guy plow . . . [rest of sentence off screen]

No damage to any person, but my poor car! Exchanged info, etc. but now what? Does anyone know?

Do I report this through/via the company, or just through the “usual channels”??

Just want to know the correct protocol.

[Response:]

No it’s still goes through your personal insurance, if I was you I wouldn’t tell them it happened while lyfting cause they could deny your claim¹⁹

The first thing that calls attention is the driver’s ignorance of Lyft’s reporting procedures (assuming they exist). But the larger lesson is clear from the response. Insurance fraud will most certainly, and perhaps routinely, occur in the course of for-hire private vehicle ride service.

VI. A dismissive attitude towards safety prevails.

In their Further Comments on the Scoping Memo, Lyft states: “The concerns that justify increased regulation of taxicabs are not present in the case

¹⁸ TPAC, Initial Closing Comments, Appendix.

¹⁹ Appendix, Exhibit D.

of Lyft (or indeed all the TNPs party to this proceeding).²⁰ Lyft argues that on account of the features of their system, in which drivers and passengers are mutually identifiable, “users of the Lyft platform should not be subject to taxi regulations as they do not present the same concerns motivating such regulations.”²¹ This dismissive attitude does not comport with the realities of public transport. The fact that the parties are identifiable is no guarantee against aggressive or criminal acts performed by one against the other.²² Furthermore, when dealing with a private vehicle ride service, there is not even a guarantee that the driver is the driver or the vehicle is the vehicle. A cell phone can go from hand to hand; and the driver could be using any vehicle, as all are equally unmarked.

Safety has various facets, encompassing both criminal attacks and the safe operation of the vehicle. While attacks by criminals seeking gain are an area of great concern in taxi operations, so too is the needless escalation of relatively minor occurrences, such as a dispute over the route or the fare or a remark which the passenger or driver finds offensive. Intoxication is sometimes a factor in these situations. If not handled properly, such occurrences can turn into violent verbal or even physical attacks. Cab drivers undergo a week of prescribed training before being permitted to drive a cab. An important part of that training is in passenger relations and how to avoid and defuse potential conflicts.

Vehicular safety is also of prime importance. This is another major component of driver training. In addition to city-mandated training, cab companies have their own training regimens, which focus largely on road safety and accident avoidance. Major charter party carriers also do extensive training. This training is crucial in creating a corps of professional drivers. That professionalism is lacking in the defiantly amateurish world of private vehicle ride services. The lack of safety training and professional driver standards among companies that are barely a year old may not yet have reared its head, but over time, it will.

²⁰ Lyft, Further Comments, p. 4.

²¹ *Id.*

²² Exhibit B to UTW’s Comments to the OIR consisted of a series of tweets between Lyft users and company management. Among the complaints were alleged sexual misconduct and assault.

VII. The urban environment will be a major loser if private vehicles are allowed to provide public transportation.

Only 17 percent of the cars whose ride service owners were admonished or cited at SFO for violation of cease-and-desist orders were clean-air vehicles.²³ SFO has concluded that it is “highly unlikely” that any of these trips were true rideshare.²⁴ These are vehicles that wouldn’t otherwise be on the streets. It stands to reason that most of the passengers they brought to the airport would have used taxis instead. Close to 100 percent of the regular fleet of San Francisco taxis are hybrids or other vehicles that meet stringent clean-air standards.

The societal damage attendant to an open entry system of private vehicles providing public transportation in direct competition with taxis may best be described by analogy. “The Tragedy of the Commons” is a seminal article in the field of environmental studies that first appeared in Science magazine in 1968.²⁵ Its author, Garrett Hardin, uses the example of farmers grazing their cattle on a common pasture:

The tragedy of the commons develops in this way. Picture a pasture open to all. It is to be expected that each herdsman will try to keep as many cattle as possible on the commons. Such an arrangement may work reasonably satisfactorily for centuries because tribal wars, poaching, and disease keep the numbers of both man and beast well below the carrying capacity of the land. Finally, however, comes the day of reckoning, that is, the day when the long-desired goal of social stability becomes a reality. At this point, the inherent logic of the commons remorselessly generates tragedy.

As a rational being, each herdsman seeks to maximize his gain. Explicitly or implicitly, more or less consciously, he asks, “What is the utility *to me* of adding one more animal to my herd?” This utility has one negative and one positive component.

1) The positive component is a function of the increment of one animal. Since the herdsman receives all the proceeds from the sale of the additional animal, the positive utility is nearly +1.

2) The negative component is a function of the additional overgrazing created by one more animal. Since, however, the effects of overgrazing are shared by all the herdsmen, the negative utility for any particular decision-making herdsman is only a fraction of $\hat{\Delta}^{\hat{\Delta}}\hat{\Delta}^{\hat{\Delta}}1$.

²³ SFMTA/SFIA, Opening Comments on Scoping Memorandum, p. 2.

²⁴ *Id.*

²⁵ <http://www.sciencemag.org/content/162/3859/1243.full>.

Adding together the component partial utilities, the rational herdsman concludes that the only sensible course for him to pursue is to add another animal to his herd. And another; and another... But this is the conclusion reached by each and every rational herdsman sharing a commons. Therein is the tragedy. Each man is locked into a system that compels him to increase his herd without limit--in a world that is limited. Ruin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all.

The “tragedy” of which Hardin speaks is not the result of competition *per se*. It occurs when private competition takes place in the public sphere, when a place of common possession (such as the pasture in the parable, or the planet earth) becomes overused because the rational decisions made by private parties run counter to the common good. Public transportation is such a sphere. It of necessity uses the public streets and urban environment for its purpose. It creates, congestion, noise, and noxious emissions, as well as danger to pedestrians, bicyclists, drivers and passengers.

In this instance, the farmers are the companies involved in providing public transportation. The cities are the commons on which the cattle graze. The drivers are the cattle. As the commons is degraded, each head of cattle has less to eat, but the farmers continue to add more in order to maintain and increase their proportional share. In the end, all will suffer when the commons is ruined beyond repair. But if some farmers have their own privileged place on the commons, they will thrive at the expense of the rest, and of the commons itself. That must not be allowed to happen, here in California or elsewhere.

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VIII. Conclusion

The vital interests here at stake are preeminently local. If taxi service is going to be allowed to fulfill its ordained role as the primary provider of for-hire passenger vehicle transportation, the industry must have a level playing field on which to compete, and the SFMTA and like agencies must be able to perform their regulatory tasks free of the looming specter of a parallel fleet of private vehicles, unlimited in size and unaccountable to local authority, performing taxi services in all but name.

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Respectfully submitted,

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