

**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

Rulemaking 12-12-011
(Filed December 20, 2012)

**VERIFIED STATEMENT OF RASIER-CA, LLC
RESPONDING TO ORDER TO SHOW CAUSE
IN RULEMAKING 12-12-011**

Steven F. Greenwald
Robert Maguire
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: stevegreenwald@dwt.com
Email: robmaguire@dwt.com

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Attorneys for Rasier-CA, LLC

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I. INTRODUCTION

Rasier-CA, LLC (“Rasier”), has substantially complied with the reporting requirements set forth in the TNC Decision¹ and, therefore, should not be sanctioned.² The SED’s “Report on the Failure of Rasier-CA, LLC to Comply with the Reporting Requirements of Decision (D.) 13-09-045” (the “SED Report”) forms the basis for the Order to Show Cause. That Report explains TNCs must submit six reports: (1) a report on providing accessible vehicles (data production request (g)); (2) a report on providing service by zip code (data production request (j)); (3) a report on hours logged by drivers (data production request (l)); (4) a report on miles logged by drivers (data production request (l)); (5) a report on problems with drivers (data production request (k)); and (6) a report on drivers completing the driver training course (data production request (f)).

¹ In this filing, Rasier refers to the “Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry,” Decision 13-09-045, as the “TNC Decision.”

² Rasier is a party to the Rulemaking 12-12-011 as a named respondent in November 14, 2014 “Ruling of Assigned Administrative Law Judge Ordering Rasier-CA, LLC to Appear for Hearing and to Show Cause Why It Should Not Be Found in Contempt, Why Penalties Should Not Be Imposed, and Why Rasier-CA, LLC’s License to Operate Should Not Be Revoked or Suspended for Failure to Comply with Commission Decision 13-09-045.” (“OSC Procedural Ruling”). *See* Commission Rule 1.4(d).

Rasier *fully complied* with *four* of these reports. It gave the SED complete reports on hours and miles logged by drivers, and on drivers completing the driver training course. It also provided the SED with everything Rasier has in its possession, custody, or control regarding problems with drivers. Further, Rasier complied with the accessible vehicle report by informing the SED it would be able to offer accessible vehicles through its software application by October 2014, after the 2014 reporting year concluded. Thus, it informed the SED that during the 2014 reporting year, because its accessible vehicle program had not yet launched, it had no accessible vehicle rides. In addition, Rasier *substantially complied* with the reporting request for information on service by zip code (data production request (j)), producing voluminous responsive information from which the SED can evaluate whether Rasier provides “equal geographic access” to its services. Rasier’s productions, as a whole, allow the SED to fulfill the “purpose of [the TNC] Rulemaking,” which the Commission intended “not to stifle innovation and the provision of new services that consumers want, but rather to *assess public safety risks*, and to ensure that the *safety* of the public is not compromised in the operation of these business models.”³

The only request truly in dispute, then, is one portion of data production request (j)—the portion that seeks highly sensitive commercial and trade secret information on an individual trip- and zip-code level. This individual trip-level information is not relevant to the Commission’s primary public safety purpose,⁴ and the SED has not argued otherwise. Nor does the SED need individual trip-level information to fulfill the only policy objective for that data request—to ensure Rasier does not engage in “redlining.” Rasier produced numerous files containing data in aggregate and percentage form, from which the SED can fully analyze this issue and can conclude Rasier does not engage in redlining. This case, therefore, does *not* raise issues of public safety or unequal access.

³ *Id. mimeo* at 4 (emphasis added) (quoting Order Instituting Rulemaking 12-12-011 at 2).

⁴ *Id.*

Rather, this case presents a garden variety discovery dispute about the unduly burdensome, cumulative, and overly broad scope of data production request (j), and the form and manner in which TNCs may satisfy that request. Rasier has justifiable reasons for not producing the detailed, individual trip data sought in request (j)—the *only* data requested in the TNC Decision that Rasier possesses and has not produced. Although the Commission decided to regulate TNCs to achieve certain public policy objectives—principally to ensure safety and equal access—the Commission’s regulations must still fulfill a regulatory purpose. Individual trip-level data fulfills no such purpose. That data has no bearing on safety, and the SED does not need it to assess redlining. If interpreted to require Rasier to produce detailed information about every single ride requested, data production request (j) would violate the Fourth Amendment’s prohibition on reporting requirements that are excessive and unbounded in scope. And because individual trip-level information is a highly sensitive and confidential trade secret, demanding its production violates Rasier’s trade secret privilege and amounts to an unconstitutional taking. Rasier should not be held in contempt for asserting its constitutional rights.

As parties would in any other discovery dispute, Rasier has worked in good faith to achieve a mutually acceptable resolution with the SED. It has offered to pay for an SED-retained third party to audit the information it has already produced, and to allow the SED to inspect its electronic data, providing even trip-level information, at a third-party site. Inspection is a well-established alternative means of providing information in response to discovery requests and would fully satisfy any interest the SED has in reviewing the data, while also protecting Rasier’s highly confidential information.⁵ Regrettably, the SED has declined Rasier’s offers and has refused to negotiate any possible alternative ways Rasier may satisfy its demands. The SED has taken the intractable position that it can only apply the TNC Decision’s data production requests strictly and so cannot resolve this discovery dispute amicably.

⁵ See, e.g., Fed. R. Civ. Pro. 34(a)(1).

The SED has taken this position even though regulation of the nascent TNC industry is still evolving, and even though the SED has recognized the TNC Decision’s data production requests “lack[] clarity” and “possible modifications to reporting requirements” may be necessary.⁶ A collaborative process would provide the best method to resolve these issues. TNCs and participants in the Rulemaking had no opportunity to comment on the final versions of data production request (j), which the Commission repeatedly revised after the comment period had expired. Rasier has now filed a Petition to Modify data production request (j), requesting that the Commission authorize SED, TNCs and other stakeholders to develop a request more narrowly tailored to the Commission’s public safety and equal access policy objectives, and more protective of TNCs’ confidential information and trade secrets.

Rasier has made good faith efforts to produce data responsive to the TNC Decision’s production requests, and to resolve amicably the parties’ discovery dispute. This is not a case of a regulated entity defying regulators; it is a case of a regulated entity attempting to work cooperatively in navigating uncharted waters. Under these circumstances, a punitive sanction would be improper and unreasonable.

II. PROCEDURAL BACKGROUND

A. The TNC Decision.

On September 19, 2013, the Commission created an entirely new type of regulated entity, Transportation Network Companies (“TNCs”), to address the emergence of a “nascent”⁷ industry that uses smartphone applications to connect passengers with transportation providers who use their personal vehicles. In doing so, the Commission sought to balance competing interests to “ensure that regulation is the safety net that the public relies on for its protection and secondarily encourag[e] innovation and utilization of technology to better the lives of Californians.”⁸

⁶ Safety and Enforcement Division Report En Banc Transportation Network Companies Rules and Regulation, November 4, 2014 (“SED En Banc Report”), at 3, 14.

⁷ TNC Decision, *mimeo* at 3.

⁸ *Id.*, *mimeo* at 69 (Findings of Fact No. 35).

In creating TNCs, the Commission imposed various data production requests, including the following:

f. TNCs shall establish a driver training program to ensure that all drivers are safely operating the vehicle prior to the driver being able to offer service. This program must be filed with the Commission within 45 days of the adoption of this decision. TNCs must report to the Commission on an annual basis the number of drivers that became eligible and completed the course.

g. One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a report detailing the number and percentage of their customers who requested accessible vehicles, and how often the TNC was able to comply with requests for accessible vehicles.

j. One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report detailing the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; and the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates. The verified report provided by TNCs must contain the above ride information in electronic Excel or other spreadsheet format with information, separated by columns, of the date, time, and zip code of each request and the concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted. In addition, for each ride that was requested and accepted, the information must also contain a column that displays the zip code of where the ride began, a column where the ride ended, the miles travelled, and the amount paid/donated. Also, each report must contain information aggregated by zip code and by total California of the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates and the number of rides that were requested but not accepted by TNC drivers.

k. One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report in electronic Excel or other spreadsheet format detailing the number of drivers that were found to have committed a violation and/or suspended, including a list of zero tolerance complaints and the outcome of the investigation into those complaints. Each TNC shall also provide a verified report, in electronic Excel or other spreadsheet format, of each accident or other incident that involved a TNC driver and was reported to the TNC, the cause of the incident, and the amount paid, if any, for compensation to any party in each incident. The verified report will contain information of the date of the incident, the time of the incident, and the amount that was paid by the driver's insurance, the TNC's insurance, or any other source. Also, the report will provide the total number of incidents during the year.

l. One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report

detailing the average and mean number of hours and miles each TNC driver spent driving for the TNC.⁹

B. Uber’s Concerns With the Proposed Data Requirements.

Rasier’s parent, Uber Technologies, Inc. (“Uber”), filed timely objections when the Commission first proposed the data production requests in dispute. Specifically, Uber filed Opening and Reply Comments on the Commission’s Proposed Decision, which contained less stringent reporting requirements.¹⁰ Uber explained that complying with the proposed data requests would necessitate divulging highly sensitive commercial information without any showing the Commission needs access to that level of detail for the public’s safety.¹¹

Over Uber’s objections, the Commission adopted not only the data requests in the Proposed Decision, but the even more detailed and demanding data production requests contained in paragraphs (f), (g), (j), (k), and (l) of the TNC Decision. The Commission did so after revising these requests and in particular, after revising data production request (j) to require detailed, individual trip-level information, organized in Commission-dictated columns in excel spreadsheets. Because the Commission made these changes to data request (j) in “revisions” to the Proposed Decision, participants in the Rulemaking had no formal opportunity to comment on them before the Commission adopted them in the final TNC Decision.

C. Rasier’s Efforts to Work Cooperatively with the SED.

In September 2014, and before the September 19 data production request deadline under the TNC Decision, Rasier contacted the SED to discuss the upcoming deadline for submitting the first annual reports. In a meeting on September 11, Rasier explained it could provide the SED with more user-friendly, relevant, and meaningful information, and it could do so in a way that

⁹ *Id.*, *mimeo* at 21-35.

¹⁰ See Proposed Decision of Commissioner Peevey, mailed July 30, 2013, Regulatory Requirements (i) at 26-27 (promulgating initial reporting requirement); *see also* Opening Comments of Uber Technologies, Inc. on Proposed Decision at 5, filed August 19, 2013 (“Uber Opening Comments”) (noting that the data requirements are not connected to public safety and that the requested information is commercially sensitive); Reply Comments of Uber Technologies, Inc. on Proposed Decision at 4-5, filed August 26, 2013 (“Uber Reply Comments”) (same).

¹¹ Uber Reply Comments at 4-5; *see also* Uber Opening Comments at 5.

would avoid disclosing confidential and proprietary business information and trade secrets, such as by providing certain information in the aggregate. The SED responded that any “refusal” by Rasier to provide what it viewed as complete data—*i.e.*, information relating to each individual ride offered and provided or not provided, and to each individual driver, in the exact prescribed excel spreadsheet—would violate the TNC Decision.¹²

The SED and Rasier have had several communications about the scope of the data requirements and the SED’s and Commission’s intended use of the data since. At no point has the SED provided a substantive response to Rasier’s reasonable inquiry: Can the parties work together to identify and agree to alternative, more feasible and user-friendly, and trade-secret protective ways that Rasier can provide the remaining requested individual trip-level information? The SED has consistently responded that the TNC Decision, as a procedural matter, requires TNCs to provide certain information in a certain form, regardless whether information in other forms might equally or better fulfill the TNC Decision’s policy objectives without significantly harming or burdening the producing TNC. The SED and Commission have also failed to explain how they intend to use individual trip-level information to protect the public’s safety or prevent redlining, or how they intend to use this data at all. Indeed, the SED apparently believes that neither it nor the Commission need state *any* reason to demand the information: “The Decision does not state an explicit, specific purpose for each item of information required, nor does it order SED to use each item of information in a particular way.”¹³ According to the SED, then, it can ask for whatever it wants for any purpose or no purpose, and can do whatever it wants with that information, whether or not that use fulfills a regulatory purpose.

D. Rasier’s Substantial Compliance.

On September 19, Rasier submitted substantial confidential information in response to the TNC data production requests. Specifically, Rasier “provided complete information on

¹² SED Report at 3.

¹³ See Appendix 1 (SED’s Data Response to Rasier’s First Set of Data Requests at 4).

several data components” required under the TNC Decision, including (1) the number of eligible and trained drivers; (2) the number of drivers with a violation and suspension; (3) a list of zero tolerance complaints and outcomes of investigations; (4) detailed information on each accident or incident; (5) files containing the average driver hours, miles, and monthly activity; (6) files containing Rasier service by zip code tabulation area, including average ETA (time from ride request to when the Uber app informs the rider the driver is arriving) by zip code tabulation area, median ETA by zip code tabulation area, percentage of completed rides out of those requested within a zip code tabulation area, share of activity by zip code tabulation area, and percentage of completed requests; (7) a Rasier heatmap of service by zip code, including average ETAs, median ETAs, and percentages of completed requests; and (8) a two-page narrative describing Rasier’s accessibility options.¹⁴

In response to the SED’s request for additional information, Rasier sent the SED a confidential DVD on October 20. In that production, Rasier explained it is working with Uber to provide an accessible vehicle feature on the Uber software application.¹⁵ It also informed the SED the specific date on which it began being able to track VoiceOver requests, and provided the number of VoiceOver requests (which Rasier believes are largely requests for rides by visually impaired passengers using a voice interface to request a driver) since that date. Rasier further explained it had provided all the information it has on complaints and complaint investigations, and noted the SED was asking for additional information about complaints above and beyond what the TNC Decision requires.¹⁶ In addition to responding to the SED’s questions, Rasier provided the median monthly hours and miles by driver.¹⁷ Finally, Rasier explained it could not use the templates the SED provided for the data because the voluminous amount of

¹⁴ SED Report at 5, Confidential Attachment C.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

data produced by Rasier-CA simply would not fit on the templates provided.¹⁸

Through its submissions, Rasier provided all the information it possesses in response to data production requests (g), requesting information on providing rides with accessible vehicles, and (k), requesting information about problems with drivers. The SED has not objected to Rasier's reports produced in response to data production request (l), which requests information on the hours and miles logged by drivers, and to data production request (f), which seeks information on the driver training course. Thus, the *only* data production request actually in dispute is (j), which seeks individual trip-level information. But Rasier substantially complied with data production request (j) as well, by producing voluminous responsive information, including files containing the average driver hours, miles, and monthly activity, average and median ETA by zip code tabulation areas, and percentage of completed rides by zip code tabulation area.

E. The SED Report.

The SED Report asserts that Rasier's productions "failed to provide a significant portion of the information" requested in the TNC Decision's data production requests.¹⁹ Given the volume of data Rasier produced, the SED Report's characterization is remarkable. In fact, even the SED Report focuses largely on the individual trip-level data sought in data production request (j).²⁰ After receiving the SED Report, Rasier again contacted the SED to amicably resolve the parties' dispute over the scope of Rasier's document production. To that end, Rasier first offered to pay for a third-party auditor selected and retained by the SED to verify and audit the aggregate data Rasier had already submitted.²¹ And to address the SED's stated need for

¹⁸ *Id.* SED unfortunately minimizes the substantive significance of Rasier's October production by focusing almost entirely on some irrelevant and inadvertent mishaps in Rasier's delivery and the SED's receipt of the DVD. *See* SED Report at 4.

¹⁹ SED Report at 4.

²⁰ *Id.* (footnote omitted).

²¹ *See* Appendix 2 (Declaration of Steven F. Greenwald in Support of Verified Statement of Rasier-Ca, LLC Responding to Order to Show Cause in Rulemaking 12-12-011 ("Greenwald Declaration") ¶ 4).

“access” to Rasier’s electronic data, Rasier additionally offered to provide the SED with full and complete access to all the electronic data regarding individual rides for the SED’s inspection at a third-party site.²² The SED refused both offers, or to otherwise engage in any meaningful discussion.²³ Its position remained uncompromising—Rasier must strictly comply with every aspect of every data production request in the TNC Decision, or face sanctions.²⁴

F. Rasier’s Petition to Modify the TNC Decision.

In addition to rejecting Rasier’s good faith efforts to reach a mutually agreeable compromise, the SED has also argued Rasier may not, in an Order to Show Cause proceeding, challenge the meaning, intent, or legality of the data production requests at issue. The SED has indicated it believes that it and the Commission must adhere to an absolute “strict construction” of the data production requests in the TNC Decision. According to it, this “strict construction” interpretation is the only possible interpretation of the data production requests, and is therefore final and determinative.

Given the SED’s uncompromising approach, Rasier is filing a Petition to Modify Decision 13-09-045 (the TNC Decision) concurrent with this verified statement. In the Petition, Rasier asks the Commission to vacate data production request (j), and to direct the Commission and stakeholders to work together toward identifying reasonable data reporting requests that address the Commission’s redlining concerns but protect TNCs’ confidential trade secret information.²⁵ Rasier is also concurrently filing a Motion to Amend Phase II Scoping Ruling to add the additional issue whether the annual reporting requirements in the TNC Decision should be refined or amended in the Phase II B proceeding.²⁶

²² *Id.* at ¶ 5.

²³ *Id.* at ¶ 6.

²⁴ *Id.*; *see also* SED Report at 3 (“SED indicated [to Rasier] that a refusal to provide complete data violates the Commission order.”).

²⁵ The Petition to Modify also requests that the Commission strike the portion of data production request (k) requiring TNCs to produce information held by third parties. *See* Appendix 3 (Rasier’s Petition to Modify).

²⁶ *See* Motion of Rasier-CA, LLC, to Amend Phase II Scoping Ruling to Add Additional Issue.

III. ARGUMENT

A. The Commission Should Not Order Sanctions Because Rasier Substantially Complied with the TNC Decision's Data Production Requests.

The Commission should find that Rasier has, at a minimum, substantially complied with the data production requests identified in the SED Report and thus did not violate the TNC Decision.²⁷ Those requests consist of the report on accessibility (data production request (g)), the report on problems with drivers (data production request (k)), and the report on providing service by zip code (data production request (j)).²⁸ If the Commission were to find that Rasier did not comply with any portion of these data production requests, the Commission should conclude any noncompliance was in good faith and justified, and does not warrant financial or other penalties. “Substantial compliance ... means actual compliance in respect to the substance essential to every reasonable objective of the statute. Where there is compliance as to all matters of substance technical deviations are not to be given the stature of noncompliance. *Substance prevails over form.*”²⁹ The Commission has recognized that substantial compliance suffices if such compliance enables the Commission to achieve the policy goals of the underlying decision, or if the party's failure to strictly comply with the letter of the decision is justified.³⁰ Rasier's production in this case satisfies both scenarios, making any sanction unwarranted.

1. Rasier Fully Complied with the Report Requesting Information on Accessible Vehicles.

Data production request (g) seeks a “report detailing the number and percentage of [TNC] customers who requested accessible vehicles, and how often the TNC was able to comply

²⁷ SED Report at 4-5.

²⁸ *Id.*

²⁹ *W. States Petroleum Assn. v. Bd. of Equalization*, 57 Cal. 4th 401, 426 (2013) (citation omitted) (emphasis added).

³⁰ See Appendix 4 (D.88933, Order finding that Darrell J. and Ruth E. Beasley Have Substantially Complied with the Requirements of Decision No. 87364 and are not in Contempt of this Commission, June 23, 1976).

with requests for accessible vehicles.”³¹ The SED claims Rasier’s production “lacked” information about both aspects of this data production request.³² Rasier respectfully disagrees.

Before it applied for its TNC license, Rasier informed the SED it could not offer a mechanism for customers to request wheelchair accessible vehicles until six-months after its licensure.³³ Neither the Commission nor the SED raised any concern about this timeframe. In fact, the Commission expressly recognized the TNCs’ Accessibility Report must include “a *timeline* for modifying apps so that they can allow passengers to indicate their access needs.”³⁴

The Commission issued Rasier its TNC permit on April 7, 2014.³⁵ This meant Rasier had committed to providing an option for riders to request wheelchair accessible vehicles starting as of October 2014—after the time period encompassed by the current reporting period. Rasier has met that goal and is presently providing an accessible vehicle option to customers through its application. By providing the SED with the six-month timeline, providing a report explaining how it would meet that deadline, and meeting that deadline, Rasier satisfied the SED’s accessibility report data production request.

Because the data production requests seek reports through September 2014, and because Rasier’s six-month timeframe for establishing an accessibility option in its app concluded in October 2014, Rasier informed the SED that from April 2014 to September 2014, it had not yet

³¹ TNC Decision, *mimeo* at 30-31.

³² SED Report at 4.

³³ See Rasier-CA, LLC Accessibility Plan, submitted to the Commission on November 7, 2013, at 1, available at: <http://www.cpuc.ca.gov/NR/rdonlyres/193E3DA4-D0FF-497A-8E26-EDAC1C1339FE/0/UberAccessibilityPlan.pdf>.

(“Within six months of the [CPUC’s] approval of Rasier’s TNC application, Rasier will ensure that users of Uber’s request software who request transportation provided by Rasier’s partners may indicate their access needs.”).

³⁴ “Required Reports TNCs Must Provide the CPUC,” available at: <http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC+Required+Reports.htm> (emphasis added).

³⁵ See OSC Procedural Ruling at 4.

launched its accessible ride program.³⁶ But Rasier was able to report that it had been providing rides through the use of VoiceOver, an application for visually impaired riders. It provided the date on which it began being able to track VoiceOver requests, and the number of requests it has received since that date. Rasier also provided information concerning policies for transporting service animals.

With these submissions, Rasier has provided all the information it has responsive to data production request (g) for the reporting period that ended September 19, 2014.

2. Rasier Fully Complied with the Report on Driver Problems.

Data production request (k) seeks the number of drivers who received a violation or suspension, the outcome of the investigation into those complaints, accidents or incidents involving TNC drivers, the cause of any such accidents and amount paid to any party, and the date, time, and amount paid by the “driver’s insurance, the TNC’s insurance, or any other source.”³⁷ The request also seeks the “total number of incidents” in the reporting year.³⁸ Rasier fully complied with all aspects of this request.

Rasier produced a “Report on Problems With Drivers” that included the date and time of each incident, the outcome or status of each investigation or the zero tolerance complaint, the nature of the allegation, the amount paid by Rasier’s insurance, and the claim status. This information fully allows SED to investigate and assess the broadest array of potential public safety issues that may be associated with Rasier’s partners (i.e., the TNC drivers).

Despite this production, the SED contends Rasier has not produced the “cause of each incident.”³⁹ Rasier has explained that this information is not readily available because Rasier did not previously assign a specific “cause” to each incident. This means aggregating the

³⁶ Because the technology to request and track accessible vehicle requests has been timely implemented, Rasier will be able to report specific numbers and percentages in each subsequent reporting period.

³⁷ TNC Decision, *mimeo* at 32.

³⁸ *Id.*

³⁹ SED Report at 5.

information in the manner requested would require stitching together multiple databases and could be misleading and inaccurate. Providing the requested “cause” narrative for each incident would also impose a tremendous burden, without leading to the production of particularly helpful information. The SED has demanded this unduly burdensome and cumulative information even though the template the SED posted for the “Report on Problems With Drivers” **does not** include a field to report the “cause of each incident reported.”⁴⁰

The SED also claims Rasier has not produced the “[a]mount paid, if any, by any party other than the TNC’s insurance.”⁴¹ Rasier produced the amount its insurance carrier paid for each reported incident. But as Rasier explained to the SED, Rasier does not have, **and could not have** in its possession, custody, or control information regarding the amount paid, if any, by any party other than its own insurance carrier. Those carriers, which could include the driver’s insurance carrier or a third-party carrier, have no obligation to report to Rasier the amount, if any, provided in response to any particular incident, and Rasier cannot compel them to do so. In data requests to the SED, Rasier asked the SED to “please explain how the SED proposes that Rasier obtain information about insurance programs made by carriers other than by Rasier’s insurance carrier?”⁴² The SED provided **no response**.⁴³

Rasier cannot produce to the SED information it does not have and has no means to acquire.⁴⁴ No basis exists to sanction Rasier for not producing something it does not have and cannot obtain. Rasier’s concurrently submitted Petition to Modify the TNC Decision asks the Commission to modify this request because compliance is impossible.

⁴⁰ “Required Reports TNCs Must Provide the CPUC,” “Report on Problems with Drivers,” available at: <http://www.cpuc.ca.gov/NR/rdonlyres/F3849B65-875C-41A2-BA00-F67888CBC495/0/ReportonProblemswithDrivers.xls>.

⁴¹ SED Report at 5.

⁴² Appendix 1 (SED Response to Rasier First Set of Data Requests, Request 1-8).

⁴³ *Id.*

⁴⁴ *Cf. Fielder v. Berkeley Props. Co.*, 23 Cal. App. 3d 30, 42 (1972) (finding an administrative demand for documents reasonable where “[o]nly such records as were in the custody and control of appellants were required to be produced.”); *see also U.S. Int’l Trade Comm’n v. ASAT, Inc.*, 411 F.3d 245, 277-78, 280 (2d Cir. 1960) (reversing enforcement of an administrative subpoena where the subpoenaed documents were not in the party’s control).

3. Rasier Substantially Complied with the Report on Providing Service by Zip Code.

Data production request (j) seeks several categories of information: the number of rides requested and accepted, and requested and not accepted, by TNC drivers within each zip code in which the TNC operates; the date, time, and zip code of each request, and of each request accepted or not accepted; columns on Excel spreadsheets showing the start and end zip codes for each ride, miles traveled, and amount paid or donated; and information aggregated by zip code and a California-wide total number of rides requested and accepted, and requested and not accepted, for each zip code in which the TNC operates.⁴⁵ The Commission apparently intended data production request (j) to ensure TNCs do not discriminate against economically disadvantaged areas. Rasier substantially complied with data production request (j).

It produced two tables—the “Share of Activity by ZIP Code Tabulation Area Out of All California” and “Percent Completed Out of Requested Within ZIP Code Tabulation Area” tables—from which the Commission and SED can determine whether the number of rides requested but not accepted falls in an acceptable range or indicates any improper geographic or economic discrimination. These tables show, for each zip code in California, the percentage of all completed requests based on the zip code of origination, and the percentage of trips requested from each particular zip code that were completed, excluding trips riders cancelled.

The Commission and SED can derive from these tables all the information needed to assess and determine the zip codes in which Rasier most frequently operates, and the zip codes from which rides are most frequently accepted. The tables enable the Commission and SED to determine, for each zip code, the percentage of rides requested that were accepted *and* the percentage not accepted. The SED can also assess from these tables whether Rasier engages in redlining or whether it makes its services available in a nondiscriminatory, with “equal geographic access”—the regulatory purpose underlying the TNC Decision’s request for trip and zip code information.

⁴⁵ TNC Decision, *mimeo* at 31-32; *see also* SED Report at 5.

Rasier also produced two tables—the “Median ETA by ZIP Code Tabulation Area” and “Average ETA by ZIP Code Tabulation Area”—showing, for each zip code, the median and average response time to ride requests made from those zip codes. This information allows the Commission and SED to evaluate whether response times fall within acceptable levels for each and every zip code Rasier’s driving partners serve, and whether any significant difference in response time to zip codes (taking into account the relative amount of business done in each zip code, which was also provided) exists. The substantial information Rasier provided in response to request (j) thus satisfies the Commission’s and SED’s regulatory purposes of ensuring adequate service levels.

4. Rasier’s Substantial Compliance with the Report on Providing Service by Zip Code Fulfilled Its Data Production Obligations Under the TNC Decision.

Because Rasier provided all the information it can in response to data requests (g) (report on accessible vehicles) and (k) (report on problems with drivers), the only truly disputed data request is (j), the report on providing service by zip code. Rasier discharged its obligation to submit this data by substantially complying through voluminous productions of responsive information.

The Commission, like other regulatory or judicial bodies, accepts substantial compliance in lieu of strict compliance when doing so satisfies the policy purposes of the regulation.⁴⁶ For instance, in *William P. & Marie R. Butrica v. Darrel J. & Ruth E. Beasley*, the Commission accepted substantial compliance with a decision’s requirements and declined to issue sanctions because the substantial compliance fulfilled the decision’s purposes and any omission was

⁴⁶ See, e.g., Appendix 4 (D.88933, Order finding that Darrell J. and Ruth E. Beasley Have Substantially Complied with the Requirements of Decision No. 87364 and are not in Contempt of this Commission, June 23, 1976). See also *Inland Cities Express, Inc. v. Diamond Nat’l Corp.*, 524 F.2d 753, 756 (9th Cir. 1975) (“Where the purposes served by the [CPUC] documentation requirements are met, the technicalities of documentation cannot defeat a claim to a tariff exception.”). Cf. *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993) (“‘Substantial compliance’ with the court[’s] order is a defense to civil contempt, and is not vitiated by ‘a few technical violations’ where every reasonable effort has been made to comply.”).

justified. There, the Commission issued an order to show cause why the Beasleys (the respondents) should not be held in contempt for violating specific provisions of a Commission decision ordering them to: rearrange piping within their water system to even out the water pressure; complete the metering of customers' services and notify the Commission in writing; survey transmission mains and install air release valves on the high points; bill all customers for past due accounts and notify the commission; file up-to-date rules and regulations with the Commission; and transfer and connect a particular well to the water system.⁴⁷

The Commission concluded the Beasleys had complied with some of the requirements, substantially complied with other requirements, and partially complied with others. Specifically, the Beasleys had not rearranged piping within the water system whatsoever, had not installed air release valves on high points within the system, and had not transferred the particular well into the ownership of the utility.⁴⁸ But the Commission explained that in light of the Beasleys' substantial compliance, their "reasons for failure to comply are entitled to consideration."⁴⁹ The Commission analyzed the Beasleys' reasons for not strictly complying with each component of the decision, and the purpose of the Commission's objectives in imposing the conditions in the first instance.

Regarding the re-piping requirement, the Commission found the decision was intended to provide more consistent flow to particular customers, but that the re-piping requirement (which was opposed by residents because it could actually decrease flow) was not necessary to that purpose because re-connecting the well to the system solved any flow problems.⁵⁰ Similarly,

⁴⁷ Appendix 4 (D.88933, Order finding that Darrell J. and Ruth E. Beasley Have Substantially Complied with the Requirements of Decision No. 87364 and are not in Contempt of this Commission, June 23, 1976 at 1-2).

⁴⁸ *Id.*, Findings at 8-10 ("Respondents did not rearrange the piping in each of the small reservoirs as required by Ordering Paragraph 1.a of Decision No. 87364);" *id.* ("Respondents have partially complied with Ordering Paragraph 1.c by surveying the transmission lines as required. No air valves were installed due to."); *id.* ("Respondent Darrell J. Beasley is the legal owner of the well and the property surrounding it and is the co-owner of the Phillipsville Water Company.").

⁴⁹ *Id.* at 7.

⁵⁰ *Id.* at 7 ("1.a [the re-piping requirement] may be disregarded if the Murray well is connected to the system and provides a normal flow.").

regarding the air release valves, the Commission found that none was installed “due to lack of funds and [the Beasleys’] conviction that an adequate water supply would eliminate the need for air valves.”⁵¹ Finally, despite the fact the underlying Commission decision required that the well be transferred to the utility’s possession, the Commission was satisfied the well would remain in service to the water system because its legal ownership remained with an individual associated with the water system.⁵² Taking these factors into consideration, the Commission determined the Beasleys “ha[d] substantially complied with the requirements of [the Decision] and [were] not in contempt of this Commission.”⁵³

Like the Beasleys, Rasier has substantially complied with the TNC Decision’s data production requests, and has produced voluminous information that furthers the policy objectives for those requests. The only discernable goals of the individual trip-level reporting requirements are to allow the SED to measure whether service levels or individual response times vary in particular zip codes—ultimately, to assess whether Rasier or its driving partners are “redlining” certain neighborhoods. The information Rasier already provided squarely fulfills that purpose: It allows the SED to examine, for each individual zip code in California, the share of Rasier’s business that originated in that zip code, the percentage of trips requested from that zip code that were completed or not completed (for any other reason than client cancellation), and the median and average response time to requests for service placed from within that zip code. Any pattern of possible geographic discrimination would appear from that information.

The SED has not contended the information Rasier provided fails to enable it to test for redlining. Instead, it has repeatedly insisted the Decision requires that information because the Decision says so. In contrast, under *Beasley*, the Commission will not hold a party in contempt

⁵¹ *Id.* at 9.

⁵² *Id.* at 9-10.

⁵³ *Id.* at 10.

when the party's substantial compliance with the Commission's decision satisfies the decision's policy goals.⁵⁴

The SED's only substantive objections to the information Rasier has already provided are that it cannot be verified (because the SED does not have the underlying raw data), and it does not allow the SED to present "meaningful findings" to the Commission.⁵⁵ In response to the former concern, Rasier offered to pay for SED to select and retain an independent third party to audit the information it produced, and to give the SED full access to Rasier's electronic data at a third-party location for inspection.⁵⁶ Either option would allow the SED to verify the data without violating Rasier's trade secret privilege.

The second concern—that the SED cannot present "meaningful findings" absent the raw data—lacks any basis. The SED has not described which findings, if any, it would like to extract from Rasier's data but cannot. To the contrary, SED has refused to indicate how—if at all—it seeks to use the data.⁵⁷ The Commission requested the data in the TNC Decision to enable the SED to assess whether Rasier engages in redlining—an analysis the SED can complete and from which it can make "meaningful findings" based on the substantial information Rasier has already provided.

5. Rasier Has Legitimate Reasons for Not Providing Trade Secret Information in Response to Data Production Request (j).

The only information Rasier has in its possession, custody, or control that it has not provided in response to the TNC Decision's data requests consists of the raw, individual trip- and zip-code information requested in data production request (j). To the extent Rasier did not

⁵⁴ *Id.* at 7 ("1.a [the re-piping requirement] may be disregarded if the Murray well is connected to the system and provides a normal flow.").

⁵⁵ SED Report at 3.

⁵⁶ See Appendix 2 (Greenwald Declaration ¶¶ 4-5).

⁵⁷ Appendix 1 (SED's Data Response to Rasier's First Set of Data Requests at 4: "The Decision does not state an explicit, specific purpose for each item of information required, nor does it order SED to use each item of information in a particular way.").

provide information strictly required by the TNC Decision, it has legitimate reasons for not doing so, rendering its substantial compliance sufficient.

The Commission has accepted justifiable reasons for substantial compliance under similar circumstances. In *Beasley*, for instance, the Commission found the Beasleys' substantial compliance with the decision sufficient because the Beasleys' failure to strictly comply with some requirements of the decision was justified. There, the Beasleys "failed" to make certain system improvements. The Commission found the purpose of the underlying order was to provide for consistent flow throughout the system, which purpose the Beasleys fulfilled through alternative means. The Commission also acknowledged the system improvements the decision technically required the Beasleys to make were resisted by the Beasleys' customers and constituted an unnecessary expense. The Commission agreed that once the policy goal (i.e., consistent flow) was met by the Beasleys' act of re-connecting a well to the system, the additional orders (to re-pipe the system and to install air-release valves) became extraneous.

Similarly, here, the purpose of the trip-level data—if discernable at all—is to enable the SED to assess whether Rasier and its contractors adequately serve all Californians, regardless location. Because Rasier has already provided information sufficient to achieve that goal, the Commission can and should find that Rasier substantially complied with data production request (j). In its concurrently filed Petition to Modify data production request (j), Rasier fully analyzes its justifications for not producing trade secret individual trip-level information. Rasier briefly touches on those justifications here to emphasize that its substantial compliance with data production request (j) reflects its good-faith effort to accommodate the Commission's needs while protecting its trade-secret privilege.

First, despite the Commission's authority under Public Utilities Code Section 701 to subject TNCs to certain levels of regulation, its regulations still must bear a relationship to a

regulatory purpose of the Commission.⁵⁸ The TNC Decision makes clear that its paramount purpose is to ensure safety while encouraging technological innovation.⁵⁹ The Commission thus can require TNCs to report information that bears on safety. Yet neither the Commission in the TNC Decision nor the SED elsewhere has articulated *any connection* between the date, time, start and end zip codes, miles traveled, and amounts paid for each individual trip, by zip code, and the goal of ensuring TNCs provide safe transportation. Nor has the Commission or the SED explained why it needs this detailed information to assess redlining when it can evaluate that regulatory concern based on the voluminous data Rasier already provided in aggregate and percentage form. Because no nexus exists between the request for this information and the regulatory purpose of ensuring the public’s safety, and because the SED does not need this detailed information to fulfill the regulatory purpose of protecting against discrimination, an order to produce detailed information about every single trip exceeds the Commission’s jurisdictional grant and constitutes an improper exercise of its police powers.⁶⁰

The Commission’s regulation of TNCs under Public Utilities Code Section 701 does not subject TNCs to the Commission’s broader power to impose rate and financial regulations over a “public utility.”⁶¹ For instance, the SED does not have an unfettered right to Rasier’s information under Public Utilities Code Section 314(a).⁶² That section, among other things, empowers “each person employed by the commission [to], at any time, inspect the accounts, books, papers, and documents of any public utility.” But the Commission’s exercise of jurisdiction over TNCs under Section 701 to ensure “public safety” and “that rules are in place to

⁵⁸ *Ex Parte Hadacheck*, 132 P. 584, 586 (Cal. 1913) (“The power to regulate the use of property or the conduct of a business is, of course, not arbitrary. The restriction must bear a reasonable relation to some legitimate purpose within the purview of the police power.”).

⁵⁹ See TNC Decision, *mimeo* at 7.

⁶⁰ See Appendix 3 (Petition to Modify at 13-16).

⁶¹ See Public Utilities Code § 216(a); Appendix 1 (SED Response to Rasier Data Request 1-1) (arguing Commission has power to impose burdensome data production requirements on TNCs based on its power to regulate a “public utility”).

⁶² See Appendix 1 (SED Response to Rasier Data Request 1-1) (citing Public Utilities Code § 314(a) as authority for data production request (j)).

improve the lives of Californians” did not, and was never contemplated to, subject TNCs to statutes such as Section 314(a).⁶³ In establishing the TNC category, the Commission did not deem TNCs to be subject to its Section 216 jurisdiction over public utilities, and it could not legally do so. Rather, the Commission appropriately asserted its powers over TNCs under Public Utilities Code Section 701, which allows it “to develop new categories of regulation when a new technology is introduced into an existing industry.”⁶⁴

The Commission’s assertion of some regulation over a business for limited and non-rate purposes—*i.e.*, to protect the public’s safety and prevent discrimination—does not subject a TNC to the reporting, accounting, and access requirements of an “electrical corporation” or a “gas corporation.” Section 216 public utilities are subject to rate regulation by the Commission,⁶⁵ have rates set on a cost of service basis, are obligated to maintain their books and records according to certain public utility accounting conventions, have physical assets (*i.e.*, pipelines and electric generating facilities) that are “dedicated to serve the public,” and are granted exclusive “service territories” (*i.e.*, they are monopoly providers within their service areas). Section 216 public utilities are unlike other businesses the Commission subjects to some form of regulation under Section 701 (*i.e.*, for safety and consumer protection purposes). A TNC has none of the characteristics of a Section 216 “public utility,” and the Commission never intended in the TNC Decision to assert such comprehensive regulation over TNCs. The Commission and SED lack authority to demand information from TNCs that does not fulfill the public policy purposes underlying the Commission’s TNC regulations—ensuring public safety and preventing discrimination.

Second, even when a reporting requirement is related to a regulatory purpose of the Commission, the reporting requirement must still comply with the Fourth Amendment.⁶⁶ The requirement cannot be “excessive” but only “adequate,” and must be limited in scope and

⁶³ TNC Decision, *mimeo* at 22.

⁶⁴ TNC Decision, *mimeo* at 23-24.

⁶⁵ See Public Utilities Code § 451 *et seq.*

⁶⁶ See, *e.g.*, *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950).

connected to a legitimate regulatory purpose.⁶⁷ Here, SED’s demand for the date, time, start and end zip codes, and amounts paid for each individual trip (in addition to all the trip- and zip-code data Rasier already provided) lacks any connection to a legitimate regulatory purpose. That data does not help ensure public safety, and it does not add additional information about equal access that the Commission cannot obtain through the trip- and zip-code information Rasier has already provided. Further, the Commission’s individual, trip-level data request is practically unlimited in scope. It requires TNCs to report every detail of every transaction conducted in their business, such as date, time, start and end zip codes, miles, and amounts paid or donated (and presumably whether the amounts were paid or donated) for every single ride accepted, as well as date, time, and zip code information for every single ride requested but not accepted. Because the request is essentially unbounded in scope, it violates the Fourth Amendment.⁶⁸

In fact, the SED admitted in a recent *en banc* presentation that the TNC “Decision lacks clarity on how to implement the [reporting] requirements,” “creat[ing] a challenge for SED to develop [reporting] programs that conform to [the TNC] decision.”⁶⁹ The SED has even acknowledged the need for “possible modifications to reporting requirements.”⁷⁰ The SED cannot in good faith demand strict compliance with, and sanctions based on, an admittedly vague and overbroad request that requires modification.

Third, the requested individual trip information is a protected trade secret under California law.⁷¹ Therefore, the Commission may only compel disclosure of the information when the information is *necessary* to its work.⁷² Neither the Commission nor the SED has

⁶⁷ See *Patel v. City of Los Angeles*, 738 F.3d 1058, 1064 (9th Cir. 2013); Appendix 3 (Petition to Modify at 16-17).

⁶⁸ Appendix 3 (Petition to Modify at 17).

⁶⁹ Safety and Enforcement Division Report En Banc Transportation Network Companies Rules and Regulation, November 4, 2014 (“SED En Banc Report”), at 3.

⁷⁰ *Id.* at 14.

⁷¹ Cal. Civ. Code. § 3426.1; Cal. Evid. Code. § 1061(a)(1); Appendix 3 (Petition to Modify at 17-20). The information Rasier produced in response to data request (j) did not constitute trades because it consisted of aggregated data or statistical analyses that Rasier carefully developed to prevent any disclosure of its valuable confidential information to competitors.

⁷² *Bridgestone / Firestone, Inc. v. Superior Court*, 7 Cal. App. 4th 1384, 1393 (1992)

provided any justification for the individual trip-level data sought. The SED can carry out its regulatory charge with the aggregated data Rasier has already provided. The SED has not actually disagreed with this position; instead it has simply asserted the TNC Decision's data requests are completely inflexible. Because the SED does not need Rasier's protected trade secret information to fulfill the policy objectives for the data production request, the Commission cannot compel its disclosure.

Fourth, because the outstanding requested information is a trade secret, compelling its disclosure would violate federal and California constitutional protections against uncompensated takings.⁷³ Strict compliance with the broad reporting request in data production request (j) would force Rasier to relinquish trade secret protections in exchange for the bare right to operate in California. This would amount to a taking of Rasier's protected property and its enforcement, an unconstitutional condition.⁷⁴

Fifth, the SED's offer to treat the information as confidential does not sufficiently protect Rasier's trade secrets. The SED has already recently disclosed Rasier's confidential data, highlighting the risk Rasier faces if it produces its trade secrets to the SED. As recently as the November 4, 2014 *en banc* proceeding, the SED disclosed that Rasier and Lyft comprise 80% of the TNC market in California, and then disclosed aggregate information regarding driver work hours per month and per week.⁷⁵ This information easily allows Lyft to discern Rasier's confidential information by simply removing its own information from the aggregated information disclosed at the *en banc*. Disclosure of confidential trade secret information to the SED greatly increases the risk of disclosure to competitors. Rasier must protect against and take

⁷³ See *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011, 104 (1984); Appendix 3 (Petition to Modify at 20-22).

⁷⁴ *Philip Morris, Inc., v. Reilly*, 312 F.3d 24, 47 (1st Cir. 2002) ("Massachusetts cannot condition the right to sell tobacco on the forfeiture of any constitutional protections the appellees have to their trade secrets.").

⁷⁵ Rasier has notified SED of this disclosure in a letter attached as Appendix 5.

steps to reduce that risk.⁷⁶ This risk is particularly real here because the TNC Decision itself leaves open whether TNC reports will remain confidential or not—expressly reserving the right to require public filings.⁷⁷ Once Rasier relinquishes control of its data, it cannot protect that data, regardless whether the SED has good faith intentions to maintain confidentiality.

These reasons for Rasier’s compliance with all aspects of data production request (j) except for the individual trip-level portion of that request “are entitled to consideration.”⁷⁸ Because these reasons are legitimate and justified, and because Rasier has substantially complied with data production request (j) and has produced information from which the Commission and SED may fulfill its public safety and equal access goals, no basis exists for subjecting Rasier to sanctions. The SED’s strict compliance approach lacks basis or common sense, and the Commission should not require Rasier to produce highly sensitive and confidential data that would not serve any regulatory purpose but would infringe on Rasier’s legal rights.

B. The Commission Should Not Sanction Rasier Because the SED Has Discretion to Negotiate a Reasonable Compromise, Yet Refuses to Work Toward an Amicable Resolution.

Throughout the reporting period, Rasier has repeatedly attempted to engage the SED regarding Rasier’s concerns over the remaining data the SED has requested. The SED has consistently taken the position it lacks authority to deviate from its strict interpretation of data production request (j) in the TNC Decision. Indeed, in its responses to Rasier’s data requests, the SED stated: “SED does not have discretion or authority to agree to any revision(s) of a Commission order.”⁷⁹ The SED’s position is wrong and arbitrary and capricious.

First, the Commission’s overriding policy is to encourage settlement in all instances in

⁷⁶ Cf. Cal. Pub. Util. Code § 398.5(b) (allowing disclosure of information in an aggregate form only where trade secrets cannot be discerned); Cal. Ins. Code § 1857.9(i) (only allowing publication of aggregate insurance information “in a manner which does not disclose confidential information about identified insurers or insureds”).

⁷⁷ TNC Decision, *mimeo* at 33, n.42.

⁷⁸ D.88933, Order finding that Darrell J. and Ruth E. Beasley Have Substantially Complied with the Requirements of Decision No. 87364 and are not in Contempt of this Commission, June 23, 1976 at 7.

⁷⁹ Appendix 1 (SED Response to Rasier Data Request 1-7).

which settlement is fair and reasonable.⁸⁰ No carve out from this policy exists for disputes that result in an Order to Show Cause proceeding. The Commission's policy favoring settlement advances worthwhile goals, including reducing the cost of litigation, conserving scarce Commission resources, and allowing the parties to reduce the risk that litigation will produce unacceptable results.⁸¹ Second, the SED's absolute position that once the Commission issues an Order to Show Cause, the SED loses its ability to engage in settlement discussions regarding the dispute or to informally resolve the dispute is simply wrong. Indeed, scoping memos have been issued in Order to Show Cause proceedings directing the SED and responding party to seek to resolve the dispute without the need for a hearing.⁸² And the Commission has approved settlements after issuing an Order to Show Cause.⁸³

The SED could have, and should have, engaged with Rasier in meaningful discussions to resolve any differences over the scope of Rasier's production, or, at the very least, it should have articulated a substantive reason why it required the voluminous, confidential, individual trip-level data it continues to insist it must receive. This is particularly so because the SED itself has recognized the TNC Decision's data production requests are unclear and difficult to implement.⁸⁴ Yet now the SED insists the TNC Decision provides perfect guidance and refuses to engage in settlement discussions with Rasier. Because Rasier fully complied with data production requests (g) and (k), because its substantial compliance with data production request (j) sufficed to allow the SED to fulfill its regulatory duties, and because the SED has refused to work amicably with Rasier, the Commission should decline to order any sanctions against Rasier.

⁸⁰ See D.05-03-022, *mimeo* at 7-9.

⁸¹ See D.05-03-022, *mimeo* at 8-9 (citing D.92-12-019, 46 CPUC 2d 538, 553).

⁸² See *e.g.*, I.09-01-017, Administrative Law Judge's Ruling Setting Prehearing Conference and Requiring Joint Case Management Statement, filed February 20, 2009; *see also* D.10-04-033.

⁸³ See D.09-02-015 approving settlement between respondent and CPUC Consumer Protection and Safety Division.

⁸⁴ SED En Banc Report at 3.

C. Commission Rules Do Not Require Issuing Sanctions Against Rasier, and the Commission Should Decline to Order any Sanctions.

The Commission Rules and Public Utilities Code Sections do not warrant sanctions against Uber under the circumstances presented here.⁸⁵ Commission Rule 1.1. provides:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

Rasier has and will continue to fully comply with its obligations under Commission Rule 1.1.

The SED does not contend, and the Order to Show Cause does not allege, that Rasier misled the Commission or its staff by an artifice or false statement of fact or law. The SED does not claim that the comprehensive data Rasier submitted is incorrect. Instead, the SED suggests the information is incomplete because the SED takes the position the TNC Decision requires strict compliance with the data production requests and so, Rasier must produce more data, regardless whether that data would serve any regulatory purpose. In response, Rasier has consistently stated it will provide any and all information that it can to allow the SED to carry out its regulatory charge without damaging its trade secrets, and Rasier has done just that. Rasier has also offered as a compromise to provide the SED with additional data in other forms (such as by a third-party auditor or data inspection), but the SED has refused. Under these circumstances, the Commission should not order any sanctions.

The Commission may consider several factors in deciding whether to set penalties, including (1) the severity of the offense, (2) the respondent's conduct, (3) the respondent's financial resources, and (4) the totality of the circumstances and the role of precedent.⁸⁶ In deciding whether to order significant penalties, the Commission considers factors like intentional violations, and violations that have a serious and broad impact or that cause physical harm.⁸⁷ On

⁸⁵ See OSC Procedural Ruling at 1 (citing to Pub. Util. Code §§ 701, 2107, 2108, 2113, 5411, 5415, 5378(a) and 5381).

⁸⁶ See D. 97-12-088, 1977 Cal. PUC LEXIS 1139, December 16, 1997, D.98-12-075, 1998 Cal. PUC LEXIS 1016, December 17, 1998.

⁸⁷ *Id.*

the other hand, the Commission recognizes mitigating factors such as whether the respondent acted cooperatively, took corrective actions, voluntarily reported information, and the totality of the circumstances.⁸⁸

Here, the factors the Commission may consider do not support any sanctions. Rasier has substantially complied with the TNC Decision’s data production requests, has cooperated with the Commission and SED in providing document productions and responses, and has attempted to work cooperatively with the SED to reach a mutually agreeable resolution. The only information Rasier has not provided (the individual trip-level information) has no bearing on public safety, and the SED and Commission have not argued otherwise. Meanwhile, the SED can fully evaluate whether Rasier provides equal geographic access to its services based on the substantial information Rasier has already provided. In addition, Rasier’s reasons for not providing the individual trip-level data sought under data production request (j)—the only truly outstanding discovery dispute—are justified because that information is highly sensitive commercial and trade secret information. The totality of the circumstances thus mitigate against any penalty, let alone a significant one.

The Commission should therefore exercise its discretion to find Rasier substantially complied with the TNC Decision’s data production requests and to deny any penalty. Alternatively, if the Commission were to decide the parties’ discovery dispute warrants some financial penalty, it should recognize Rasier has provided sufficient information from which the SED may assess safety and “equal geographic access” issues and has acted in good faith. Thus, the Commission should order only the most nominal of penalties.

IV. CONCLUSION

Rasier fully complied with the TNC Decision’s data production requests (g) and (k), and has provided the SED with significant information responsive to the TNC Decision’s data

⁸⁸ *See id.*; see also *Investigation on Comm’ns Own Mot. into the Practices of the S. Cal. Edison Co.*, D.08-09-038 (Commission mitigated penalty against company for manipulating customer satisfaction data and reports for seven years because, among other things, company cooperated in the investigation).

production request (j), and from which the SED can fully evaluate Rasier's partners' provision of services in zip codes across California. Because Rasier's document productions satisfy the TNC Decision's policy purposes for data production request (j), and because any omission of data arguably required under a strict interpretation of the TNC Decision was justified, the Commission should find Rasier in substantial compliance with the TNC Decision and should decline to assess any sanctions.

Respectfully submitted,

By: _____/s/_____
Robert Maguire
Steven F. Greenwald
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: robertmaguire@dwt.com
Email: stevegreenwald@dwt.com
Attorneys for Rasier-CA, LLC

December 4, 2014

VERIFICATION

I, Wayne Ting, am an officer of Uber Technologies, Inc., the parent of Rasier-CA, LLC, and am authorized to make this verification on its behalf. I have read the attached Verified Statement of Rasier-CA, LLC Responding to Order to Show Cause in Rulemaking 12-12-011 (“Rasier Response”) and the contents of the Rasier Response are true, correct, accurate, and complete to the best of my knowledge, information, and belief. My qualifications are listed below:

Experience:

General Manager at Uber San Francisco and Sacramento, May 2014-Present

Senior Policy Advisor, National Economic Council, The White House, May 2012-May 2014

Private Equity Associate, Bain Capital, August 2008-June 2010

Business Analyst, McKinsey & Company, June 2006-June 2008

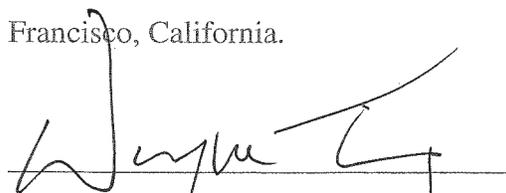
Education:

Harvard Business School, MBA, 2012

Columbia University, BA, 2006

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 4, 2014 at San
Francisco, California.



Wayne Ting, General Manager, Uber
Technologies, Inc., San Francisco

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APPENDIX 1

SED Responses to Data Requests

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

Rulemaking 12-12-011
(Filed December 20, 2012)

SAFETY AND ENFORCEMENT DIVISION'S RESPONSES & OBJECTIONS TO
RASIER-CA, LLC'S FIRST SET OF DATA REQUESTS

SELINA SHEK
Staff Counsel
Safety and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2423
Selina.Shek@cpuc.ca.gov

December 3, 2014

I. INTRODUCTION

The Safety and Enforcement Division (SED) hereby submits the following Responses and Objections to the November 25, 2014 First Set of Data Requests from Rasier-CA LLC. For clarity, each response is provided following each Data Request below.

The following individuals provided the responses to Rasier's First Set of Data Requests:

- 1) Name: Brewster Fong
Title: Public Utilities Regulatory Analyst
Reports to: Valerie Beck (Program Manager of SED's Transportation Enforcement Branch)
- 2) Name: Valerie Kao
Title: Public Utilities Regulatory Analyst
Reports to: Valerie Beck (same as above)
- 3) Name: Selina Shek
Title: SED Counsel
Reports to: Helen Mickiewicz (Assistant General Counsel for Communications, Water & Transportation)

Brewster Fong will be available to testify on these Data Request responses.

II. GENERAL OBJECTIONS

1. These responses and objections are made without waiving or intending to waive, but to the contrary intending to preserve and preserving: (a) any objection as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, or any documents or information produced in response to the Data Requests; (b) the right to object on any ground to the use of documents or information produced in response to the Data Requests at any hearing, trial or other point during this action; (c) the right to object on any ground at any time to a demand for further responses to Data Requests; and (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses to objections contained herein.
2. The documents, information, and responses supplied herein are for use in Rulemaking 12-12-011 and for no other purpose.
3. No response or objection made herein, or lack thereof, is an admission by SED as to the existence or non-existence of any documents or information. SED expressly reserves the right to rely, at any time, on subsequently discovered documents.
4. SED objects to the Data Requests to the extent they seek to impose duties and obligations on SED greater than SED's duties and obligations under the California Code of Civil Procedure or

the Rules of Practice and Procedure of the California Public Utilities Commission (Commission or CPUC).

5. SED objects to the Data Requests to the extent they are vague, ambiguous, unduly burdensome, overbroad, oppressive, duplicative, fail to identify with sufficient particularity the documents or information sought, or are not limited to the discovery of information which is relevant to the subject matter of this Adjudicatory categorized (portion of the) Rulemaking proceeding or reasonably calculated to lead to the discovery of admissible evidence.

6. SED objects to the Data Requests as overly broad, unduly burdensome, and not necessarily calculated to lead to the discovery of admissible evidence to the extent they seek documents, information, or admissions concerning facts not raised in the Order to Show Cause, or concern matters not subject to the jurisdiction of the Commission.

7. SED objects to the Data Requests as unduly burdensome to the extent that they purport to require SED to create, compile, analyze, compute, and/or summarize voluminous data or information that the TNCs have the ability to create, compile, analyze, compute, and/or summarize by reviewing the documents, information, or data that is in the public domain. Moreover, many of these data requests ask for virtually unlimited information, most of which is in the public domain or are provided by the TNCs themselves.

8. SED objects to the Data Requests to the extent that they call for disclosure of material which is subject to the attorney-client privilege or work-product immunity. SED further objects to these interrogatories to the extent that they request premature disclosure of the identity, opinions, and/or reports of experts who may testify on SED's behalf at hearings.

III. THE SAFETY AND ENFORCEMENT DIVISION (SED'S) DATA REQUEST RESPONSES AND SPECIFIC OBJECTIONS

Request 1-1

Please explain the purposes for which, and how, the SED intends to use the data requested in Regulatory Requirement (j) on page 31 of Decision 13-09-045 and the statutory or regulatory basis for the CPUC's authority to collect data for those purposes.

The Safety and Enforcement Division (SED) objects to this interrogatory on the grounds that it calls for information in the public domain and is unduly burdensome. Rasier's data request is open-ended, overbroad, oppressive and asks for unlimited information.

Subject to and without waiving the foregoing objections, SED has considered information in this proceeding's record.¹ Decision (D.) 13-09-045 states that "each TNC shall submit to [SED] a verified report detailing" the information specified in Regulatory Requirement j as it specifically orders that all TNCs shall follow the safety and regulatory requirements and that all reports required must be verified as accurate and contains no material omissions.² The Decision does not state an explicit, specific purpose for each item of information required, nor does it order SED to use each item of information in a particular way.

Further, SED relies on the following statutory authority to collect data from entities that are subject to the Commission's jurisdiction:

Public Utilities Code (P.U. Code) section 314(a):

(a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

P.U. Code section 581:

Every public utility shall furnish to the commission in such form and detail as the commission prescribes all tabulations, computations, and all other information required by it to carry into effect any of the provisions of this part, and shall make specific answers to all questions submitted by the commission.

Every public utility receiving from the commission any blanks with directions to fill them shall answer fully and correctly each question propounded therein, and if it is unable to answer any question, it shall give a good and sufficient reason for such failure.

P.U. Code section 582:

Whenever required by the commission, every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers, and records in its possession or in any way relating to its

¹ Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services, R.12-12-011, December 20, 2012 (TNC OIR). Available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M040/K862/40862944.PDF>

² D.13-09-045, Ordering Paragraphs 1 and 2 at 72.

property or affecting its business, and also a complete inventory of all its property in such form as the commission may direct.

P.U. Code section 584:

Every public utility shall furnish such reports to the commission at such time and in such form as the commission may require in which the utility shall specifically answer all questions propounded by the commission. The commission may require any public utility to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter about which the commission is authorized by any law to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission.

P.U. Code section 701:

The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

P.U. Code section 702:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

P.U. Code section 2107:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

P.U. Code section 2108:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

P.U. Code section 2113:

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

P.U. Code section 5378(a)(2):

The commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to this chapter upon any of the following grounds:

(2) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.

P.U. Code section 5381:

To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

P.U. Code section 5411:

Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.

P.U. Code section 5415:

Every violation of the provisions of this chapter or of any order, decision, decree, rule, direction, demand, or requirement of the commission by any corporation or person is a

separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense.

Request 1-2

Is the SED intending to use the information requested under Regulatory Requirement (j) to assess or advance any public policy other than the Safety and Rider Accessibility public policies? If so, identify each additional public policy objective for which the SED is intending to assess the Regulatory Requirement (j) data. For each such additional public policy purpose the SED identifies, please provide the specific citation in Decision 13-09-045 that supports the SED's use of the data required by Regulatory Requirement (j) to assess such additional public policy objective, and the specific citation to the Public Utilities Code supporting the Commission's pursuit of that policy objective.

SED objects to this interrogatory on the grounds that it calls for information in the public domain and is unduly burdensome. Rasier's data request is open-ended, overbroad, oppressive and asks for unlimited information.

Subject to and without waiving the foregoing objections, D.13-09-045 orders the submission of the data in question. Please see response to Request 1-1 above for Commission authority to collect the data. Further, SED is not certain whether Rasier intends to refer to any specific and explicit set of "Safety and Rider Accessibility policies" (as mentioned in Request 1-2) in the record of R.12-12-011.

Request 1-3

Has the SED provided any clarifications to TNCs or made any revisions with respect to the reporting templates posted on the Commission's website? If so, please provide each clarification or revision, the date on which the SED made each clarification or revision, the individual responsible for making each clarification or revision, why the SED made each clarification or revision, and the basis in Decision 13-09-045 (if any) that SED believes justifies each clarification or revision.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad, oppressive and there is a lack of sufficient information. Further, Rasier's data request is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive.

Moreover, SED objects to this interrogatory on the grounds that it calls for speculation and conjecture, a legal conclusion or an impermissible opinion.

Subject to and without waiving further objections, SED questions the relevance of this Request because SED does not seek information based on the reporting template. For example, on September 10, 2014 and September 11, 2014, SED issued two emails to the TNCs clarifying

the reporting dates, which are separate from what was required by the template.³ The relevant point is that Rasier has failed to produce the un-aggregated raw data that is required by D.13-09-045, Regulatory Requirement (j).

Request 1-4

Has the SED provided any clarifications to TNCs or made any revisions with respect to the TNC reporting requirements set forth in Decision 13-09-045? If so, please provide each clarification or revision, the date on which the SED made each clarification or revision, the individual responsible for making each such clarification or revision, the purpose of the clarification or revision, and the basis in Decision 13-09-045 (if any) on which the SED relies for authority to request that TNCs provide information different from and in a format that deviates from the format contemplated by Regulatory Requirements (j).

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad and oppressive.

Subject to and without waiving the foregoing objections, SED provided two emails to representatives of each TNC, on September 10, 2014 and September 11, 2014, that clarified it did not rely on the reporting template.

Further, as stated in SED's October 2014 Report on the Failure of Rasier-CA, LLC. To Comply with the Reporting Requirements of Decision (D.) 13-09-045, on September 11, 2014, SED met with Rasier's representatives who expressed concerns about providing information at the level of detail required by D.13-09-045, citing the sensitivity and market value of data required in the Report on Providing Services by Zip Code. SED advised Rasier to request confidential treatment for information it considered market-sensitive or proprietary. SED also reminded Rasier that D.13-09-045 specifically states that the TNCs were instructed to submit the reports confidentially. Rasier advocated for a limited data submittal, and offered to provide a 'heat map' and aggregated data in lieu of a detailed submission as required by D.13-09-045.⁴

³ On September 10, 2014, SED emailed all the TNCs with the following clarifications:

"The following are some clarification for the TNC Reports due on September 19, 2014.

1. The report should go from September 1, 2013 to August 31, 2014.
2. On the providing service by zip code sheet, the zip column under "each ride accepted not requested" we would like each ride and attempted ride. We also want the zip code from the pick up point and the zip code of the driver at the time he/she receives the request.
3. The data can be provided in csv format."

On September 11, 2014, SED emailed a second clarification to each TNC:

"For the September 19, 2014 TNC reports, please provide data from October 1, 2013 to August 31, 2014.

There was confusion because the templates state October 1."

⁴ SED's October 2014 Report on the Failure of Rasier-CA, LLC. To Comply with the Reporting Requirements of Decision (D.) 13-09-045, dated September 11, 2014 (SED Report) at 3.

SED indicated that a refusal to provide complete data violates the Commission order. Without the underlying data, SED would be unable to verify the accuracy of heat map(s) and aggregated information, or to present meaningful findings to the Commission.⁵

After the meeting, SED staff emailed the Rasier attendees to confirm that the detailed data specified in D.13-09-045 must be submitted to SED by September 19, 2014. Rasier's outside counsel replied by email to acknowledge SED staff's message.⁶

On October 20, 2014, at 12:07 pm, SED staff informed Rasier counsel that SED had not yet received any DVD from Rasier. At 12:17 pm, Rasier responded that it would hand deliver the DVD in about two hours, and asked if that day's Federal Express shipment had arrived. At 1:28 pm, SED staff responded that Federal Express delivered the daily shipment, which did not include any items from Rasier. At 3:18 pm, SED staff received notice from the Commission's mail room staff that an envelope had been hand delivered to the mailroom. After reviewing these materials, SED staff concluded that Rasier remained out of compliance with several of the reporting requirements in D.13-09-045.⁷

On October 27, 2014, Rasier met with SED staff. Rasier stated that it did not collect certain data required by D.13-09-045, and that it lacked the information technology and trained staff to extract the required data within the specified timeframe. Rasier also confirmed that it would not provide its Zip Code report at the level of detail required by D.13-09-045, but would be willing to work with SED to get data on the cause of each incident included in its Report on Problems With Drivers, but that this would take longer than the timeframe specified by SED. SED indicated that while the Commission could consider proposals to refine the reporting requirements in Phase 2, SED could not enable Rasier to avoid compliance with the current reporting requirements.⁸

⁵ Id.

⁶ Id.

⁷ SED Report at 4.

⁸ Id.

Request 1-5

Has the SED provided any clarifications to TNCs or made any revisions with respect to any of the other Regulatory Requirements in Decision 13-09-045? If so, for each clarification or revision to other Regulatory Requirements, please provide each clarification or revision, the date on which the SED made each clarification or revision, the individual responsible for making each such clarification or revision, the purpose of the clarification or revision, and the basis in Decision 13-09-045 (if any) on which the SED relies for authority to request that TNCs provide information different from and in a format that deviates from the format contemplated by the Regulatory Requirement.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad and oppressive.

Subject to and without waiving the foregoing objections, SED provides the following:

As stated in SED's October 2014 Report on the Failure of Rasier-CA, LLC. To Comply with the Reporting Requirements of Decision (D.) 13-09-045, on October 27, 2014, Rasier stated it would be willing to work with SED to get data on the cause of each incident included in its Report on Problems With Drivers, but that this would take longer than the timeframe specified by SED. SED indicated that while the Commission could consider proposals to refine the reporting requirements in Phase 2, SED could not enable Rasier to avoid compliance with the current reporting requirements.⁹

Eventually, SED staff concluded Rasier provided complete information on several data components as required by D.13-09-045, which includes:

- Number of drivers that became eligible and completed the driver training course.
- Number of drivers that were found to have committed a violation and/or were suspended, including a list of zero tolerance complaints and the outcome of the investigation into those complaints,
- Information on each accident or other incident that involved a TNC driver and was reported to the TNC, such as:
 - o Date and time of the incident.
 - o Amount paid by the TNC's insurer, if any, to compensate any party in each incident,
 - o Total number of incidents since October 1, 2013.

⁹ SED Report at 4.

o Average and median number of hours and miles each TNC driver spent driving for the TNC¹⁰

Request 1-6

Has the SED provided any clarifications to TNCs or made any revisions with respect to any of the Safety Requirements identified in Decision 13-09-045? If so, for each clarification or revision to any Safety Requirement, please provide each clarification or revision, the date on which the SED made each clarification or revision, the individual responsible for making each clarification or revision, the purpose of the clarification or revision, and the basis in Decision 13-09-045 (if any) on which the SED relies for authority to request that TNCs provide information different from and in a format that deviates from the format contemplated by the Regulatory Requirement.

SED objects to this interrogatory on the grounds that it is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive. Subject to and without waiving the foregoing objections, SED is not aware of any clarifications or revisions made regarding Safety Requirements.

Request 1-7

The SED Report at page 6 states that: [Rasier] had multiple opportunities to raise concerns regarding the [TNC] reporting requirements, yet failed to notify SED of any concern regarding the “TNC] reporting requirements.

With respect to such statement:

a. ***Does the SED believe that if Raiser had raised more concerns regarding the TNC reporting requirements at an earlier time or in a format other than in its Opening and Reply Comments to the Proposed Decision, that the SED would have had the discretion and authority to agree to revisions in the TNC Reporting Requirements to accommodate Rasier’s concerns?***

SED objects to this interrogatory on the grounds that it calls for speculation and conjecture, a legal conclusion or an impermissible opinion.

Subject to and without waiving the foregoing objections, SED provides the following: SED does not have discretion or authority to agree to any revision(s) of a Commission order. However, SED’s role in this proceeding (except for this adjudicatory matter) is advisory and as such may make recommendations.

¹⁰SED Report at 5.

b. Unless the response to subsection (a) is an unambiguous negative, specify the authority on which the SED relies for its belief that it would have had the discretion and authority to agree to revisions in the TNC Reporting Requirements to accommodate Rasier's concerns.

SED objects to this interrogatory on the grounds that it calls for speculation and conjecture, a legal conclusion or an impermissible opinion.

Subject to and without waiving the foregoing objections, see response to 1-7a above.

c. Unless the response to subsection (a) is an unambiguous affirmative, specify the authority on which the SED relies for its belief that it had no discretion or authority to agree to revisions in the TNC Reporting Requirements to accommodate Rasier's concerns.

SED objects to this interrogatory on the grounds that it calls for speculation and conjecture, a legal conclusion or an impermissible opinion.

Subject to and without waiving the foregoing objections, SED provides the following: not applicable.

Request 1-8

a. The SED Report at page 5 indicates that Rasier's submission "lacked one or more required components" of the "[a]mount paid, if any, by any party other than the TNC's insurance." The SED Report also states that Rasier responded it does not have "any information on amounts paid for incidents other than those paid by the TNC's insurance."

Is the SED requesting that the Commission order Raiser to obtain information it does not possess concerning insurance payments made by anyone other than Rasier's insurance carrier?

Unless your answer is an unambiguous negative, please explain how the SED proposes that Rasier obtain information about insurance payments made by carriers other than by Rasier's insurance carrier.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad and oppressive.

Subject to and without waiving the foregoing objections, Rasier's response (i.e., that it does not have information on amounts paid for by insurance companies other than its own) should be included in a Petition for Modification of D.13-09-045, not as a reason for failing to comply with a Commission order.

As SED stated in its October 2014 Report on the Failure of Rasier-CA, LLC. To Comply with the Reporting Requirements of Decision (D.) 13-09-045, "Uber/Rasier had multiple opportunities to raise concerns regarding the reporting requirements, yet failed to notify SED of

any concern regarding the reporting requirements. Uber/Rasier did not initiate a discussion with SED staff until September 4, 2014, which is the date Uber/Rasier requested a meeting for the following week, and eight working days before the submission deadline. Even at this point, Uber/Rasier only verbally stated its concerns informally to SED staff.”¹¹

Moreover, SED also stated that “on October 23, 2013, Uber filed an Application for Rehearing of D.13-09-045. No part of that application raised concerns with the reporting requirements contained in D.13-09-045. Uber did not file a Petition for Modification of D.13-09-045 within the timeframe specified by the Commission’s Rules of Practice and Procedure (Rule 16.4). And finally, Uber did not file a motion for a protective order with the Commission to prevent it from having to submit the reports as required. Templates for the required reports have been available on the Commission’s website since, at the latest, February 12, 2014, yet Uber/Rasier did not raise concerns regarding the submission until approximately one week before the reports were due.”¹²

Request 1-9

The SED Report states at page 2 that “Rasier failed to submit to SED the most critical data components required by Decision (D.) 13-09-045.”

a. Identify the precise component of the data that Decision 13-09-045 obligates Rasier to provide that the SED has determined to be the “most critical data component” of the information Decision 13-09-045 requires TNCs to provide to the SED.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad, oppressive and there is lack of sufficient information. Further, Rasier’s data request is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive.

Subject to and without waiving the foregoing objections, regardless of what SED considers to be critical, D.13-09-045 requires Rasier to provide the unaggregated, raw data in question.

b. For each such component of the data obligated to be provided that the SED identified in response to (a) above, provide the grounds on which, including citations to Decision 13-09-045, on which the SED determined the data to be one of the “most critical components” required by Decision 13-09-045.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad, oppressive and there is lack of sufficient information. Further, Rasier’s data request is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive.

¹¹ SED Report at 6.

¹² Id.

Subject to and without waiving the foregoing objections, please see response to Request 1-9a above.

c. For each such “critical data component” that the SED contends Rasier failed to provide, explain how the absence of such “most critical data component” has impaired the SED’s ability to fully assess and analyze the Safety and Rider Accessibility public policy issues.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad, oppressive and there is lack of sufficient information. Further, Rasier’s data request is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive.

Subject to and without waiving the foregoing objections, please see response to Request 1-9a above.

APPENDIX 2

Declaration of Steven F. Greenwald

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

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

Rulemaking 12-12-011
(Filed December 20, 2012)

**DECLARATION OF STEVEN F. GREENWALD IN SUPPORT OF
VERIFIED STATEMENT OF RASIER-CA, LLC RESPONDING TO ORDER TO SHOW
CAUSE IN RULEMAKING 12-12-011**

Steven F. Greenwald
Robert Maguire
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: stevegreenwald@dwt.com
Email: robertmaguire@dwt.com

December 4, 2014

Attorneys for Rasier-CA, LLC

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

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

Rulemaking 12-12-011
(Filed December 20, 2012)

**DECLARATION OF STEVEN F. GREENWALD IN SUPPORT OF
VERIFIED STATEMENT OF RASIER-CA, LLC RESPONDING TO ORDER TO SHOW
CAUSE IND RULEMAKING 12-12-011**

I, Steven F. Greenwald, declare:

1. I am an attorney at Davis Wright Tremaine LLP and one of the outside counsel to Rasier-CA, LLC (“Rasier”) in this matter.
2. I make this declaration in support of the “Verified Statement of Rasier-CA, LLC Responding to Order to Show Cause in Rulemaking 12-12-011” filed concurrently with this declaration.
3. On November 19, 2014, I participated on a telephone conference call between representatives of Rasier and representatives of the Safety and Enforcement Division (“SED”) relating to Order to Show Cause issued in this proceeding against Rasier.
4. During this November 19 telephone conference, I communicated an offer on behalf of Rasier to allow SED to select and retain a third-party, at Rasier’s expense, access, audit and otherwise verify the information that Rasier had already provided to SED in accordance with the annual reporting requirements for Transportation Network Companies set forth in Decision 13-09-045. Rasier made this offer to respond to concerns SED expressed in the Report on the Failure of Rasier-CA, LLC to Comply with the Reporting Requirements of Decision (D.) 13-09-045 (“SED Report”) that the information that Rasier had provided did not enable SED to “verify” the accuracy of the information. During that conference call, representatives of SED stated that it required direct “access” to the electronic data information with respect to each zip code in California regarding the individual rides requested and provided.
5. On November 24, 2014 I participated at a meeting between representatives of Rasier and representatives of SED at the offices of the California Public Utilities Commission. At that meeting, I on behalf of Raiser reiterated orally the November 19 offer to have SED retain at Rasier’s expense a third party to inspect, audit and verify the data that Rasier had provided. In response to SED’s November 19 statements that it required direct access to all of Raiser’s electronic data, on behalf of Rasier, I additionally offered in writing to provide SED access to computer files which maintain the information responsive to the

TNC Reporting Requirements which are the subject of this proceeding and to make such responsive electronic data available and accessible to SED for its inspection at a mutually-agreeable location. Such computer files contain information on each individual ride requested and provided by Rasier.

6. SED declined both offers. My understanding of the reason for SED's position is its belief that it lacks the authority to engage in settlement negotiations with respect to the matters to be resolved in the Order to Show Cause and that SED is required to insist that Rasier produce all the information, and with no deviation, SED construes D. 13-09-045 to require Raiser to include in its annual reports. The lead SED representative at the November 24 meeting expressly stated that the meeting was specifically "not a settlement negotiation," because SED must require that Rasier include in its report all data SED construes D. 13-09-045 to obligate Raiser to provide SED.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of December, 2014, at San Francisco, California.

_____/s/_____
Steven F. Greenwald

APPENDIX 3

Petition of Rasier-CA, LLC to Modify Decision 13-09-045

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

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

Rulemaking 12-12-011
(Filed December 20, 2012)

**PETITION OF RASIER-CA, LLC
TO MODIFY DECISION 13-09-045**

Steven F. Greenwald
Robert Maguire
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: stevegreenwald@dwt.com
Email: robertmaguire@dwt.com

December 4, 2014

Attorneys for Rasier-CA, LLC

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

Order Instituting Rulemaking on
Regulations Relating to Passenger Carriers,
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Transportation Services

Rulemaking 12-12-011
(Filed December 20, 2012)

**PETITION OF RASIER-CA, LLC
TO MODIFY DECISION 13-09-045**

I. INTRODUCTION

In September 2013, the Commission issued “Decision 13-09-045, Decision Adopting Rules and Regulations to Protect Safety While Allowing New Entrants to the Transportation Industry” (“TNC Decision”). The TNC Decision established a newly regulated entity—Transportation Network Companies—and created safety and operating requirements for TNCs. The Commission made clear in the TNC Decision that “[t]he purpose of this Rulemaking is not to stifle innovation and the provision of new services that consumers want, but rather to assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of these business models.”¹ Yet in the final TNC Decision, the Commission adopted data production requests that have no bearing on safety. Nor does the Commission need the information sought in these requests to fulfill its alternative regulatory objective of ensuring TNCs provide “equal geographic access” to their services.

In particular, in TNC Decision data production request (j), the Commission seeks detailed, individual trip- and zip-code level information—information that is a highly sensitive commercial trade secret. But the date, time, start and end zip codes, and amounts paid for each and every ride gives the Commission no information from which to evaluate the public’s safety. Nor does the Commission need this individual trip-level information to assess whether TNCs

¹ TNC Decision at 4.

engage in redlining because the Commission requests other aggregate and percentage information in request (j) from which it can fully evaluate redlining. In addition, data production request (k) seeks information about insurance payments made by carriers over which the TNC has no control, and from whom it has no way to compel that information.

As discussed in detail below, Rasier-CA, LLC (“Rasier”), reasonably believed the Commission and SED would enforce the TNC Decision—which adopted data requests the Commission substantially changed after the comment period had expired—flexibly. Rasier anticipated it (and others) would be able to fulfill the data requests without producing highly sensitive and ultimately irrelevant trade secret information, and without being forced to produce documents from third-parties over whom it has no control. Rasier has tried to work cooperatively with the SED to reach an amicable resolution that fulfills the safety and “equal geographic access” objectives of data production requests (j) and (k). But the SED has refused, claiming it lacks authority to interpret the TNC Decision to allow for substantial compliance that fulfills the stated and valid policy goals of the Decision’s data requests. Because data production requests (j) and (k) contain objectionable document demands, and because this has only become apparent through the SED’s strict application of the TNC Decision in this first reporting period, Rasier² now respectfully requests that the Commission modify the TNC Decision in the following ways:

1. Vacate data production request (j), and strike the language in data production request (k) asking TNCs to produce payments from “the driver’s insurance” and “any other source”;

² Rasier brings this Petition although only its parent, Uber Technologies, Inc., was the original party to Decision 13-095-045, for two reasons. First, Rasier is the entity operating as a TNC under the Decision. *See* Permit No. TCP0032512 –P issued to Rasier-CA, LLC, *available at*: <http://www.cpuc.ca.gov/NR/ronlyres/E3470797-2DCB-463F-B898-E5F2697850BE/0/RaiserCALLCPermit.pdf>; Commission Rule 1.4(a)(1). Second, Rasier is the entity named as Respondent in the “Ruling Expanding Scope of Proceeding to Include an Order to Show Cause Against Rasier-CA, LLC and Lyft, Inc.” in Rulemaking 12-12-011, dated November 14, 2014, in which the SED alleges that Rasier violated the reporting provisions addressed in this Petition. Commission Rule 1.4(d).

2. Direct that replacement data production requests for request (j) be developed and applied to the September 2015 reporting period. Rasier requests that this replacement be developed through workshops to be conducted either in early 2015 or during the upcoming Phase II of the ongoing TNC Rulemaking, in which the Commission will assess “equal geographic access to TNC Service;”³ and

3. Issue an order dismissing as moot the pending Order to Show Cause proceeding against Rasier, or, alternatively, an order rescinding any sanction that may be assessed against Rasier in that proceeding.

The Commission should grant Rasier’s Petition to Modify for the following reasons:

First, data production request (j) exceeds the Commission’s limited regulatory power over TNCs and bears no relation to the self-professed safety goal of the TNC Decision.

Second, requiring strict compliance with data production request (j) would violate the Fourth Amendment because agencies may only require adequate reporting requirements, not excessive ones. Strict compliance with data production request (j) renders the request unconstitutionally excessive.

Third, mandating strict compliance with data production request (j) would require Rasier to divulge protected confidential and proprietary business information and trade secrets.

Fourth, requiring Rasier to divulge protected confidential and proprietary business information and trade secrets, as strict compliance with data production request (j) would do, would amount to an unconstitutional taking.

Fifth, data production requests (j) and (k) are arbitrary because request (j) demands

³ See, the Assigned Commissioner and Assigned Administrative Law Judge’s Scoping Memo and Ruling for Phase II of the Proceeding, issued November 26, 2014. That Scoping Memo provides that in Phase II B the following issue will be addressed (among others): “Are TNCs serving all neighborhoods? If not, what regulations should the Commission adopt to assure equal geographic access to TNC services?” Rasier is concurrently filing a “Motion to Amend Phase II Scoping Ruling to Add Additional Issue” to specifically request that the reporting provisions be refined, should the Commission not grant this Petition.

individual trip-level information the SED does not need and for which it has not articulated a need or use, and request (k) requires Rasier to produce information Rasier does not have and cannot acquire.

Sixth, Rasier’s decision to file the Petition to Modify now is justified. The Commission’s rapid revisions to the data requests, and in particular to data request (j), obligate TNCs to produce information in response to data requests on which they had no opportunity to comment. In addition, the TNC Decision expressly commanded the Commission to revisit regulations in Phase II. These two circumstances led Rasier to reasonably believe that SED would flexibly apply the requests in the September 2014 reporting period, but it has not.

II. PROCEDURAL BACKGROUND⁴

A. The TNC Decision.

In creating TNCs, the TNC Decision explicitly recognized the TNC industry is “nascent,” and implicitly acknowledged the industry “use[s] technology to improve the lives of Californians.”⁵ The TNC Decision balances competing interests to achieve the Commission’s paramount objective to best “ensure that regulation is the safety net that the public relies on for its protection and secondarily encouraging innovation and utilization of technology to better the lives of Californians.”⁶ In the Decision, the Commission asserted jurisdiction over TNCs under Public Utilities Code Section 701, “which gives the Commission the ability (via a rulemaking process) to develop new categories of regulation when a new technology is introduced into an existing industry.”⁷ The TNC Decision nowhere suggests the Commission intended (or believed it had authority) to impose traditional “public utility” rate and financial regulations over TNCs.

⁴ The new facts that support this Petition to Modify are either set forth in the referenced Commission rulings (including attachments to the Order to Show Cause, such as the “Report on the Failure of Rasier-CA, LLC to Comply with the Reporting Requirements of Decision (D.) 13-09-045 (the “SED Report”), or in the Declaration of Krishna Juvvadi, attached as Appendix A.

⁵ TNC Decision at 3-4 (citing Rulemaking 12-12-011).

⁶ *Id.* at 69 (Findings of Fact 35).

⁷ *Id.* at 23.

The TNC Decision establishes regulatory requirements for TNCs, which include data production requests such as the following:⁸

j. One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report detailing the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; and the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates. The verified report provided by TNCs must contain the above ride information in electronic Excel or other spreadsheet format with information, separated by columns, of the date, time, and zip code of each request and the concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted. In addition, for each ride that was requested and accepted, the information must also contain a column that displays the zip code of where the ride began, a column where the ride ended, the miles travelled, and the amount paid/donated. Also, each report must contain information aggregated by zip code and by total California of the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates and the number of rides that were requested but not accepted by TNC drivers.

k. One year from the effective date of these rules and annually thereafter, each TNC shall submit to the Safety and Enforcement Division a verified report in electronic Excel or other spreadsheet format detailing the number of drivers that were found to have committed a violation and/or suspended, including a list of zero tolerance complaints and the outcome of the investigation into those complaints. Each TNC shall also provide a verified report, in electronic Excel or other spreadsheet format, of each accident or other incident that involved a TNC driver and was reported to the TNC, the cause of the incident, and the amount paid, if any, for compensation to any party in each incident. The verified report will contain information of the date of the incident, the time of the incident, and the amount that was paid by the driver's insurance, the TNC's insurance, or any other source. Also, the report will provide the total number of incidents during the year.

B. The Commission's Revisions to the Data Production Requests in the Proposed Decision.

The Commission issued the first proposed TNC decision ("Proposed Decision") on July 30, 2013.⁹ The Proposed Decision would have directed TNCs to provide information relating to rider access, and would have given the TNCs and SED the ability to work together to develop meaningful and non-objectionable data requests:

One year from the effective date of these rules and annually thereafter for three years, each TNC shall submit to [SED] a report detailing rides that were

⁸ See *id.* at 21-35.

⁹ Proposed Decision of Commissioner Peevey, mailed July 30, 2013.

requested, but not accepted by TNC drivers. The report must also detail the location and zip code of such rides as well as the number.¹⁰

In its comments on the Proposed Decision, Uber Technologies, Inc., responded that this data production request could potentially require producing sensitive commercial information. It also questioned the Commission's need for this level and magnitude of detail. Uber explained:

Information of this type is highly sensitive commercial information for startup companies that are seeking to develop new products and services in highly competitive and rapidly evolving new markets. Information regarding passenger requests for transportation services also raises significant customer privacy concerns and may violate user agreements. Moreover, there is no demonstrated need or purpose for requiring disclosures of this information by TNCs ...¹¹

The Commission did not give Uber or other participants any additional opportunities to comment on or respond to the revisions the Commission subsequently made to the Proposed Decision's data production requests. When Uber responded to the original Proposed Decision, the version of data production request (j) was relatively fair—it allowed for some flexibility and room to negotiate the type of information the SED believed it needed to assess equal geographic access, and the type of information the TNC could provide without divulging trade secrets.

But just one month later, on August 28, 2013, the Commission issued Revision 1 to the Proposed Decision (“Revision 1”). Revision 1 dramatically altered, without explanation, the scope, purpose, and format for the data production requests. For instance, Revision 1 proposed that TNCs provide detailed information regarding each individual ride on an excel spread sheet organized in a particular way:

... [E]ach TNC shall submit to [SED] a report detailing the number of rides requested and accepted by TNC drivers within each zip code where the TNC

¹⁰ Proposed Decision, Regulatory Requirements (i) at 26-27.

¹¹ Reply Comments of Uber Technologies, Inc. on Proposed Decision at 4-5, filed August 26, 2013; *see also* Opening Comments of Uber Technologies, Inc. on Proposed Decision at 5, filed August 19, 2013 (“The Commission does not require this information in order to protect public safety. In fact, it is unclear for what public interest purposes the Commission would seek to collect this information. Further, this requested information is proprietary and commercially sensitive business information that, if made public, would harm the TNCs. Given the lack of any significant public safety benefit that will result from the collection of this information, the commercial sensitivity of the information, and the resulting damage that could result from the disclosure of such information, the Commission should revise the PD to remove any requirement that TNC reports such proprietary and commercially sensitive information.”).

operates; the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates. The report provided by TNCs must contain the above ride information *in electronic excel format with information of the date, time, and zip code of each request and the concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted*. In addition, for each ride that was requested and accepted, the information must also contain a column that displays the zip code of where the ride began and where the ride ended.¹²

No party had proposed this fundamental change in the scope and format of data production request (j), and TNCs and other participants had no opportunity to respond to the revision. No longer could TNCs and the SED work cooperatively to identify the most useful and least burdensome way for TNCs to produce information regarding rider access. Nor did Revision 1 articulate any nexus between the Commission’s safety and “equal geographic access” policy objectives and the significantly more extensive and burdensome requests in revised data production request (j). And while the Commission vastly expanded the scope of data production request (j), it did not respond to Uber’s concerns that even the less onerous version of this request sought protected trade secret information.

On September 9, the Commission issued yet another revision to the Proposed Decision, “Revision 2.” This second revision temporarily reverted back to the original data production request (j):

One year from the effective date of these rules and annually thereafter for three years, each TNC shall submit to [SED] a report detailing the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates.¹³

But fewer than two weeks later, on September 16, the Commission released a third revision, “Revision 3,” which again without explanation or an opportunity to comment reinstated Revision 1’s inflexible, onerous, and broad version of data production request(j). Revision 3 went even further, though. It expanded the production periods from three years to annually, into perpetuity, increased micro-management over the format of data production (specifying the exact columns to be included in the excel spreadsheet), and denied that the

¹² Revision 1, data production request (i) at 30. (emphasis added).

¹³ Revision 2, data production request (i) at 30.

information sought was commercially sensitive, even requiring that the reports be made public.

In particular, request (j) in Revision 3 stated:

One year from the effective date of these rules and annually thereafter, each TNC shall submit to [SED] a verified report detailing the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates; and the number of rides that were requested but not accepted by TNC drivers within each zip code where the TNC operates. The verified report provided by TNCs must contain the above ride information in electronic excel format with information, separated by columns, of the date, time, and zip code of each request and the concomitant date, time, and zip code of each ride that was subsequently accepted or not accepted. In addition, for each ride that was requested and accepted, the information must also contain a column that displays the zip code of where the ride began, a column where the ride ended, the miles travelled, and the amount paid/donated. ***The payment information may be filed confidentially, if desired, but all other ride information must be available publicly.*** Also, each report must contain information aggregated by zip code and by total California of the number of rides requested and accepted by TNC drivers within each zip code where the TNC operates and the number of rides that were requested but not accepted by TNC drivers.¹⁴

On September 18, two days after Revision 3 and just one day before the Commission's Decision Conference, the Commission issued "Revision 4." Revision 4 acknowledged that individual ride-level information was confidential and allowed TNCs to submit that information in the 2014 reporting year on a confidential basis. But it also stressed that the Commission would consider requiring "public reporting" during Phase II of the proceedings.¹⁵

Just hours later on September 18, the Commission issued "Revision 5," which did not change Revision 4's version of data production request (j) and which the Commission adopted in the final TNC Decision.

Uber did not comment on the versions of data production request (j) in Revisions 1 through 5 because the Commission did not give it that opportunity. Uber appreciated that in the TNC Decision, the Commission authorized TNCs to operate in California, and established rules to ensure public safety, transparency, innovation, privacy, competitive fairness, and equal geographic access. Based on the Commission's five changes to the reporting requests and Uber's

¹⁴ Revision 3, data production request (j) at 30-31.

¹⁵ Revision 4, data production requests (j) and (l) n.42 at 30-31 ("For the requested reporting requirements, TNCs shall file these reports confidentially unless in Phase II of this decision we require public reporting from TCP companies as well.").

inability to comment on those changes, Uber and ultimately, Rasier, reasonably expected the Commission and SED would be flexible, balancing their regulatory objectives with the need to protect Rasier’s confidential and proprietary information. Because this issue was not ripe until the SED applied the data production requests to Rasier in this 2014 reporting cycle, Rasier did not seek to modify the TNC Decision until now.

C. Rasier’s Efforts to Work Cooperatively with the SED.

In September 2014, and before the data production request deadline under the TNC Decision, Rasier contacted the SED to discuss the upcoming deadline for submitting the first annual reports. In a meeting on September 11, Rasier explained to the SED that some of the data requirements in the TNC Decision (1) would obligate Rasier to submit market sensitive data, and (2) would not provide the SED with the best and most “user-friendly” information to assess the geographic provision of services. Rasier also stated it could provide the SED with more user-friendly, relevant, and meaningful information, and it could do so in a way that would avoid disclosing confidential and proprietary business information and trade secrets, such as by providing certain information in the aggregate. The SED responded that any “refusal” by Rasier to provide what it viewed as complete data—i.e., information relating to each individual ride offer and provided, and to each individual driver in the exact excel column-by-column prescribed manner—would violate the TNC Decision.¹⁶

The SED and Rasier have had several communications about the scope of the data requirements since. At no point has the SED provided a substantive response to Rasier’s reasonable inquiry: Can the parties work together to identify and agree to alternative, more feasible and user-friendly, and trade-secret protective ways that Rasier can provide the remaining requested information? The SED has consistently responded the TNC Decision, as a procedural matter, requires TNCs to provide certain information in a certain form, regardless whether information in other forms might equally or better fulfill the TNC Decision’s policy objectives

¹⁶ SED Report at 3.

without significant harm and burden to the producing TNC.

D. Rasier's Substantial Compliance.

On September 19, Rasier submitted substantial confidential information in response to the TNC data production requests. Specifically, Rasier “provided complete information on several data components” required under the TNC Decision, including (1) the number of eligible and trained drivers; (2) the number of drivers with a violation and suspension; (3) a list of zero tolerance complaints and outcomes of investigations; (4) detailed information on each accident or incident; (5) files containing the average driver hours, miles, and monthly activity; (6) files containing Rasier service by zip code tabulation area, including average ETA (time from ride request to when the Uber app informs the rider the driver is arriving) by zip code tabulation area, median ETA by zip code tabulation area, percentage of completed rides out of those requested within a zip code tabulation area, share of activity by zip code tabulation area, and percentage of completed requests; (7) a Rasier heatmap of service by zip code, including average ETAs, median ETAs, and percentages of completed requests; and (8) a two-page narrative describing Rasier's accessibility options.¹⁷

In response to the SED's request for additional information, on October 20, Rasier sent the SED a confidential DVD with additional information. In the information contained on this DVD, Rasier explained it is working with Uber to provide an accessible vehicle feature on the Uber software application, and has identified partners who can provide accessible vehicles.¹⁸ It also informed the SED it had only been able to track VoiceOver requests since mid-May 2014, and provided the number of VoiceOver requests it had received since that time (which Rasier believes are largely requests for rides by blind passengers using a voice interface to request a driver). Rasier further explained it had provided all the information it has on complaints and complaint investigations, and noted the SED was asking for additional information about

¹⁷ D. 13-09-045, Order to Show Cause, SED Report, Confidential Report at 5 & Attachment C.

¹⁸ *Id.*

complaints above and beyond what the TNC Decision requires.¹⁹ In addition to responding to the SED’s questions, Rasier provided the median, monthly hours and miles by driver.²⁰ Finally, Rasier explained it could not use the templates the SED provided for the data because the voluminous amount of data produced by Rasier-CA simply would not fit on the templates provided.²¹

Through its submissions, Rasier provided all the information it possesses in response to data production requests (g), requesting information on providing rides with accessible vehicles, and (k), requesting information about problems with drivers.²² In its September production, Rasier produced an Excel table showing the date and time of each incident or accident involving a driver, the date a complaint was filed, identifying information for the incident, the outcome or status of each investigation, the type of allegation, the amount paid by Rasier’s insurance, if any, and the claim status of each incident. Indeed, in its Report on the Failure of Rasier-CA, LLC to Comply with the Reporting Requirements of Decision (D.) 13-09-045 (the “SED Report”), the SED acknowledged that Rasier provided information relating to the (1) date and time of each incident; (2) amount paid by Rasier’s insurer for compensation associated with the incident; (3) total number of incidents; and (4) average and median number of hours and miles each TNC driver spent driving.²³ The SED also acknowledged Rasier informed it that Rasier does not have “any information on amounts paid for incidents other than those paid by” Rasier’s insurance carrier.²⁴ Rasier cannot produce what it does not have and what it has no power to obtain, regardless how strictly the SED interprets the data production request (k). For similar reasons,

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* SED unfortunately minimizes the substantive significance of Rasier’s October production by focusing almost entirely on irrelevant and inadvertent mishaps in Rasier’s delivery and SED’s receipt of the DVD. *See* SED Report at 4.

²² *Cf. Fielder v. Berkeley Properties Co.*, 23 Cal. App. 3d 30, 42 (Cal. Ct. App. 1972) (administrative demand for documents reasonable where “[o]nly such records as were in the custody and control of appellants were required to be produced.”).

²³ SED Report at 5.

²⁴ SED Report at 5, fn. 10.

Rasier could not produce narratives describing the “cause” of each accident. It has not historically assigned a “cause” to each accident and so compiling this information would require analyzing and synthesizing numerous databases—an endeavor Rasier could not feasibly complete in the time required.²⁵

The SED has not objected to Rasier’s reports produced in response to data production request (l), which requests information on the hours and miles logged by drivers, and in response to the portion of data production request (k) that seeks driver training course information.

Thus, the only data production request actually in dispute is (j), which seeks trip-level zip code information. Rasier substantially complied with data production request (j) as well, by producing voluminous responsive information, including files containing the average driver hours, miles, and monthly activity, average and median ETA by zip code tabulation areas, and percentage of completed rides by zip code tabulation area. These reports, together, allow the SED to fully evaluate whether Rasier or the drivers using its app provide equal geographic access across California zip codes. The SED can also determine the percentage of Rasier’s business that originates within each California zip code, the percentage of rides requested from that zip code that were not completed (for reasons other than client cancellation), and the response time associated with the zip code. The SED can use this information to examine whether any disparity exists between zip codes and thus, whether any redlining is occurring.²⁶

In addition, to address any concerns the Commission or SED might have about the integrity of the data Rasier provided, Rasier has offered to allow the Commission and SED to

²⁵ Further, “cause” is vague in the context of a vehicle accident because, for instance, an accident involving two drivers could have been caused by both.

²⁶ See Appendix A (Declaration of Krishna Juvvadi ¶ 8). Confidential Attachment C of the SED Report explains Rasier provided a tabulation of the Percent Completed Out of Requested With ZIP Code Tabulation Area, and a tabulation of the Share of Activity by ZIP Code Tabulation Area Out of All California. In addition, Rasier provided a Heatmap of Service by Zip Code, which are cartographic representations of the other tabulations focused on all California, Los Angeles, San Diego, and San Francisco. Rasier also informed the SED that it could not use the templates the SED provided for the data because the voluminous amount of data produced by Rasier-CA simply would not fit on the templates provided.

inspect the electronic data responsive to data production request (j) at a third-party site (including individual trip-level data), and to pay have the SED select and retain a third party, at Rasier's expense, to audit the information Rasier provided.²⁷

Given the substantial responsive information Rasier has already provided, the SED does not need the minutia of each individual ride to achieve the public safety and "equal geographic access" goals of data production request (j).

3. The Order to Show Cause.

In response to SED's internal distribution of the SED Report, on November 7, 2014, Assigned Commissioner Peevey issued a "Ruling Expanding Scope of Proceeding to Include an Order to Show Cause Against Rasier-CA, LLC and Lyft, Inc." On November 14, Assigned Administrative Law Judge Mason issued a ruling "Ordering Rasier-CA, LLC to Appear for Hearing and to Show Cause Why It Should Not Be Found in Contempt, Why Penalties Should Not Be Imposed, and Why Rasier-CA, LLC's License to Operate Should Not Be Revoked or Suspended for Failure to Comply with Commission Decision 13-09-045" ("Order to Show Cause"). The Order to Show Cause directed Rasier to file a verified response by December 4, and set a hearing date for December 11. Rasier files this Petition to Modify concurrent with its verified response to the Order to Show Cause. Rasier also concurrently files a Motion to Modify Phase III Scoping Ruling to Add an Additional Issue—whether the annual reporting requirements in the TNC Decision should be refined or amended.

III. ARGUMENT

Commission Rule 16.4 contains the legal standard for petitions to modify and states, in relevant part:

(a) A petition for modification asks the Commission to make changes to an issued decision.

(b) A petition for modification of a Commission decision must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision. Any factual allegations must be

²⁷ Appendix A (Declaration of Krishna Juvvadi ¶ 8).

supported with specific citations to the record in the proceeding or to matters that may be officially noticed. Allegations of new or changed facts must be supported by an appropriate declaration or affidavit. ...

(d) Except as provided in this subsection, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed,²⁸ the petition must also explain why the petition could not have been presented within one year of the effective date of the decision. If the Commission determines that the late submission has not been justified, it may on that ground issue a summary denial of the petition.

Rasier satisfies each of these elements.

A. Data Production Request (j), as Written, Exceeds the Commission’s Regulatory Powers and Bears No Relation to the Goals of That Request.

The TNC Decision aims to “ensure that regulation [by this Commission] is the safety net that the public relies on for its protection and secondarily encourag[e] innovation and utilization of technology to better the lives of Californians.”²⁹ But requiring detailed data underlying each and every trip requested of and made by a TNC—as data production request (j) does—serves *no* regulatory purpose and discourages innovation by unnecessarily burdening TNC, contrary to the stated purpose of the TNC Rulemaking.³⁰ Indeed, the only authority the SED has cited for demanding this type of individual trip-level information is the Commission’s extremely broad regulatory jurisdiction over traditional “public utilities,” over whom it exercises rate, ownership, and financial regulations.³¹ But TNCs are not traditional “public utilities” like “electrical

²⁸ Subsection (C) of Rule 16.4 also imposes some additional service requirements if the Petition for Modification is served more than one year after the issuance of the initial decision. Rasier is concurrently serving all parties Rule 16.4(c) obligates it to serve with this Petition for Modification.

²⁹ TNC Decision, mimeo at 69 (Findings of Fact 35).

³⁰ See TNC Decision at 7 (“The purpose of this Rulemaking is not to stifle innovation and the provision of new services that consumers want, but rather to assess public safety risks, and to ensure that the safety of the public is not compromised in the operation of these business models. The Commission invited all interested parties to participate in this proceeding to ensure that regulation is not a hindrance, but continues to be the safety net that the public can rely on for its protection.”).

³¹ “Safety and Enforcement Division’s Responses & Objections to Rasier-CA, LLC’s First Set of Data Requests,” at Request 1-1, Attached has Appendix B. The SED also cites, among other statutes that do not apply given the Commission’s limited jurisdiction over TNCs, Public Utilities Code Section 314(a). According to the SED, any “person employed by the [C]ommission may, at any time, inspect the accounts, books, papers and documents” of any

corporations” or “gas corporations,” and the Commission initiated rulemaking to regulate TNCs to protect the public safety and encourage innovation, *not* to set rates or control financials.³² Nothing in the TNC Decision suggests otherwise.

Yet the SED’s strict interpretation of data production request (j) forces TNCs to surrender highly sensitive and confidential trade secret information—even though individual trip-level information sheds no light on public safety and is not necessary to ensure nondiscriminatory access to TNC services. Nor has the Commission or SED explained what additional “equal geographic access” information it needs and can only obtain from the individual trip-level data, or even what they intend to do with such sensitive data. This failure to identify a justification for the seeking the individual trip-level data comes as no surprise. The SED can accurately assess and report to the Commission whether Rasier engages in redlining from the substantial information Rasier has already provided in response to data production request (j). The SED has not argued otherwise. Indeed, in its responses to Rasier’s data requests, the SED essentially conceded it has no articulable need or purpose the trip level data. In response to a request asking it to “explain the purposes for which, and how, the SED intends to use the data requested” in data request (j), the SED responded: “[t]he Decision does not state an explicit, specific purpose for each item of information required, nor does it order SED to use each item of information in a particular way.”³³

The Commission has broad regulatory powers over traditional public utilities, over which it may assert rate, ownership, and financial regulations.³⁴ But in the TNC Decision, the Commission did not claim (and could not lawfully claim) that its regulatory powers over TNCs extend as broadly as they do over public utilities to whom the Commission grants exclusive

TNC. But the Commission’s exercise of jurisdiction over TNCs under Public Utilities Code Section 701 to ensure “public safety” did not subject TNCs to statutes such as Section 314(a).

³² TNC Decision at 4.

³³ Appendix B (SED Responses to Rasier Data Requests at Request 1-1).

³⁴ See *Sable Comm’ns of California, Inc. v. Pac. Tel. & Tel. Co.*, 890 F.2d 184, 189 n. 9 (9th Cir. 1989) (noting that the Commission is vested with police power); see also *Argonaut Ins. Co. v. Transport Indem. Co.*, 6 Cal. 3d 496, 505 (Cal. 1972) (same).

franchise areas, and for whom the Commission sets rates on a cost-of-service basis. Rather, the Commission has a much narrower regulatory authority over TNCs—a regulatory authority driven primarily by the Commission’s desire to ensure public safety.³⁵

But regardless the scope of the Commission’s regulatory authority over TNCs, it must still enact reasonable regulations that bear a real or substantial relation to the public health, safety, morals or general welfare.³⁶

The power to regulate the use of property or the conduct of a business is, of course, not arbitrary. The restriction must bear a reasonable relation to some legitimate purpose within the purview of the police power.³⁷

Here, however, the Commission has not articulated a connection between the individual trip-level data sought in data production request (j) and the stated policy objectives for the data requests in the TNC Decision—ensuring the public’s safety and preventing discrimination.³⁸ This failure, combined with the overly broad and burdensome nature of data production request (j), renders the request arbitrary.

In contrast, other data request provisions in the TNC Decision explicitly tie the need for the documents to a specific regulatory purpose and fall within the Commission’s limited authority over TNCs. For instance, the Decision contemplates that TNCs must make information available upon request so the Commission can investigate complaints.³⁹ But unlike data production request (j), these other data provisions in the TNC Decision only require a TNC to surrender individual records if and when the Commission needs to inspect them for a particular regulatory purpose. The TNC Decision does not enforce its ability to investigate complaints by requiring a TNC to submit a log of each ride *before* it receives a complaint; nor does it require a TNC to preemptively submit *all* records to enable the Commission to carry out a putative

³⁵ TNC Decision at 4.

³⁶ *See Massingill v. Dep’t of Food & Agriculture*, 102 Cal. App. 4th 498, 504 (Cal. Ct. App. 2002).

³⁷ *Ex Parte Hadacheck*, 132 P. 584, 586 (Cal. 1913).

³⁸ *See* Appendix B at Request 1-1.

³⁹ TNC Decision at 34.

investigation. The TNC Decision appropriately avoids imposing such measures—recognizing they would be arbitrary and unduly burdensome. But the SED construes data production request (j) as requiring the TNC to preemptively submit *all* records of every trip despite the lack of any regulatory purpose for requesting those records.

Because the individual trip-level information sought in data production request (j) bears no relation to any regulatory purpose, interpreting it to require strict compliance would be an arbitrary and thus unlawful exercise and ultra vires extension of the Commission’s regulatory authority over TNCs.

B. Requiring Strict Compliance with Data Production Request (j) Would Violate the Fourth Amendment.

The TNC Decision must comply with the general rules that proscribe the breadth of document requests or reporting obligations an agency may impose.⁴⁰ Under the Fourth Amendment of the United States Constitution, when agencies make document requests, the documents “*to be produced [must be] adequate, but not excessive.*”⁴¹ This means that although the Commission may

require business to maintain records and make them available for routine inspection when necessary to further a legitimate regulatory interest . . . the Fourth Amendment places limits on the government’s authority in this regard. The government may ordinarily compel the inspection of business records only through an inspection demand sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.⁴²

These restrictions apply regardless whether the responding party produces records under an administrative subpoena, agency rule, or order.⁴³

⁴⁰ See, e.g., *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950).

⁴¹ *Craib v. Bulmash*, 777 P.2d 1120, 1124 (Cal. 1989) (emphasis in *Craib*) (quoting *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186, 209 (1946)).

⁴² *Patel v. City of Los Angeles*, 738 F.3d 1058, 1064 (9th Cir. 2013) (internal quotation marks and citations omitted).

⁴³ See *Morton Salt*, 338 U.S. at 652-53 (1950) (“The gist of the protection is in the requirement, expressed in terms, that the disclosure sought shall not be unreasonable.” (citation omitted)); *Craib*, 777 P.2d 1120, 1125 (Cal. 1989) (citing *California Bankers Ass’n v. Shultz*, 416 U.S. 21, 66-67 (1974)).

If the Commission strictly enforces data production request (j)—as the SED urges it to do—the request would violate the Fourth Amendment. The SED does not need individual trip-level information to assess whether Rasier engages in redlining—it can evaluate that policy objective through the aggregated and percentage data Rasier has already provided, *i.e.*, information that is “adequate” for the SED to discharge its regulatory responsibilities. And individual trip-level information provides no insight into public safety concerns. Not surprisingly, the SED cannot articulate even a single reason justifying requesting the trip-level data.⁴⁴ While the Commission may require businesses “to file reports dealing with *particular* phases of their activities,”⁴⁵ data production request (j) seeks data underlying *all* phases of Rasier’s business—literally *every single ride* solicited through the Uber app, and *all* associated data regarding whether, when, and where the request was fulfilled. Data production request (j) seeks “excessive” information not “limited in scope” and not “relevant in purpose.”⁴⁶ Because neither the Commission in the TNC Decision nor the SED has articulated any substantive reason why they need the detailed, voluminous, and burdensome individual trip-level data requested in data production request (j), and because that data exceeds and is not relevant to the only regulatory purpose for request (j), the request violates the Fourth Amendment.⁴⁷

C. Requiring Strict Compliance with Data Production Request (j) Would Violate the Trade Secret Privilege.

The SED interprets data production request (j) as requiring Rasier to produce data detailing each and every ride requested and provided by Uber app users. This information constitutes protected trade secret information.

⁴⁴ See Appendix B (SED Responses to Rasier Data Requests at Request 1-1).

⁴⁵ *California Bankers Ass’n v. Shultz*, 416 U.S. 21, 65 (1974) (emphasis supplied) (citing *United States v. Morton Salt Co.*, 388 U.S. 632 (1950)).

⁴⁶ *Patel*, 738 F.3d at 1064 (internal quotation marks and citations omitted).

⁴⁷ *Cf. California Bankers Ass’n*, 416 U.S. at 66-67 (approving of reporting requirements where they were not “unreasonable” because the requirements were “sufficiently related to a tenable congressional determination as to” a regulatory purpose “within the authority of the agency.”).

A trade secret is “information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”⁴⁸ Under California law, “the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice.”⁴⁹ The trade secret privilege applies in *all* proceedings,⁵⁰ including any “action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency . . . or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.”⁵¹

Rasier’s trip-level data is a trade secret because it is “information” that discloses business volume and location data that Rasier’s existing and prospective competitors could use to “obtain economic value.” Rasier’s competitors could easily use this information to assess their relative market share for business and financial modeling. They could use it to advertise their market share to attract more consumers and drivers. And they could use it in their own fundraising efforts to show investors they are competitively positioned against Rasier. The information is also subject to reasonable efforts to maintain its secrecy: Rasier does not disclose the raw trip-level information to anyone. Rasier seeks to avoid disclosing this information here precisely because it has independent economic value to Rasier and its competitors.⁵²

⁴⁸ Cal. Civ. Code. § 3426.1; Cal. Evid. Code. § 1061(a)(1).

⁴⁹ Cal. Evid. Code § 1060.

⁵⁰ Cal. Evid. Code § 910.

⁵¹ Cal. Evid. Code § 901; *see also S. Cal. Gas Co. v. Pub. Util. Comm’n*, 50 Cal. 3d 31, 39 (1990) (holding that, even though the CPUC is generally authorized to create its own rules for hearings, the attorney client privilege found in Evidence Code applies to CPUC proceedings in the absence of any specific statute to the contrary); *Gonzalez v. Thang Vi Duong, Inc.*, 2014 Cal. Wrk. Comp. P.D. LEXIS 321 (2014) (applying trade secret privilege to WCAB matter).

⁵² The information Rasier previously produced in response to data production request (j) did not consist of trade secrets because Rasier produced that information in aggregate or statistical analytic form so as to ensure no disclosure of valuable trade secret information to competitors. Appendix A (Declaration of Krishna Juvvadi ¶ 14).

The proponent of disclosing trade secret information cannot compel that disclosure unless it demonstrates the information is relevant and *necessary* to the proceeding.⁵³ That the information would be helpful or useful does not suffice.⁵⁴ Here, the SED cannot overcome Rasier’s trade secret privilege. The SED does *not* need the individual trip-level data it seeks through data production request (j) to determine whether Rasier or other TNCs are meeting safety or “equal geographic access” service requirements.⁵⁵ Neither the Commission in the TNC Decision nor the SED has explained why they need the underlying trip-level data at all.⁵⁶

The SED has suggested it cannot verify aggregate data and cannot make “meaningful findings” based on that data.⁵⁷ In response to the former concern, Rasier has already offered to pay for an independent third-party selected and retained by the SED to inspect and audit the information it has produced, and to give the SED full access to Rasier’s electronic data at a third-party location for inspection.⁵⁸ Either option would allow the SED to verify the data without violating Rasier’s trade secret privilege. And inspection would allow SED full access to run queries and review the material it seeks.

The second concern—that the SED cannot present “meaningful findings” absent the raw data—lacks any basis. The SED has not described which findings, if any, it would like to extract from Rasier’s data. The reason the Commission requested the data in the TNC Decision was to enable the SED to assess whether Rasier engages in redlining—an analysis the SED can complete and from which it can make “meaningful findings” based on the information Rasier has

⁵³ *Bridgestone / Firestone, Inc.*, 7 Cal. App. 4th at 1390; see also *Alejandra Gonzalez*, 2014 Cal. Wrk. Comp. at *4-*6 (applying *Bridgestone / Firestone* in an administrative hearing).

⁵⁴ *Bridgestone / Firestone*, 7 Cal. App. 4th at 1395-97.

⁵⁵ See *Bridgestone / Firestone, Inc. v. Superior Court*, 7 Cal. App. 4th 1384, 1393 (1992) (noting that after a trade secret is established, the burden shifts to the proponent of the information to make a particularized showing why the information is relevant *and necessary*).

⁵⁶ See Appendix B (SED Responses to Rasier Data Requests at Request 1-1).

⁵⁷ SED Report at 3.

⁵⁸ Appendix A (Declaration of Krishna Juvvadi ¶ 11).

already provided. The SED cannot overcome Rasier’s trade secret privilege simply by declaring a desire to examine the information.⁵⁹

Finally, the SED’s offer to treat the information as confidential does not sufficiently protect Rasier’s trade secrets. The SED has already recently disclosed Rasier’s confidential data, highlighting the risk Rasier faces if it produces its trade secrets to the SED. At the November 4, 2014 *en banc* proceeding, the SED disclosed that Rasier and Lyft comprise 80% of the TNC market in California, and then disclosed aggregate information regarding driver work hours per month and per week.⁶⁰ This information easily allows Lyft to discern Rasier’s confidential information. Lyft need only remove its own information from the aggregated information disclosed at the *en banc*. Plainly, once Rasier discloses information to the SED, a greater risk of disclosure to competitors exists. Rasier must take steps to reduce that risk.⁶¹ The risk of disclosure is particularly great here because the TNC Decision itself leaves open whether TNC reports will remain confidential or not—expressly reserving the right to require public filings.⁶² Once Rasier relinquishes control of its data, it cannot protect that data, regardless whether the SED has good faith intentions to maintain its confidentiality.

D. Requiring Rasier to Disclose Trade Secrets Would Amount to an Unconstitutional Taking.

If the Commission interprets data production request (j) to require Rasier to produce individual trip-level data, as the SED urges, the Commission will violate California and federal takings laws. Both the Takings Clause of the Fifth Amendment to the U.S. Constitution and

⁵⁹ See *Bridgestone / Firestone*, 7 Cal. App. 4th at 1397. (“The declarations of the parties' experts plainly establish that the trade secret formulas would be helpful to the analysis of the case and to Mr. Hindin's ability to reach conclusions and render opinions concerning the tire's failure and Firestone's knowledge of problems with it. But nothing in the record demonstrates the necessity of the formula information.”).

⁶⁰ Rasier has notified SED of this disclosure in a letter attached as Appendix C.

⁶¹ *Cf.* Cal. Pub. Util. Code § 398.5(b) (allowing disclosure of information in an aggregate form only where trade secrets cannot be discerned); Cal. Ins. Code § 1857.9(i) (only allowing publication of aggregate insurance information “in a manner which does not disclose confidential information about identified insurers or insureds”).

⁶² TNC Decision at 33 n.42.

California state law require compensation for takings of all types of property—including intangible property.⁶³ The Supreme Court has held the Fifth Amendment’s Taking Clause applies to the compelled disclosure to government regulators of a company’s trade secret data.⁶⁴ In *Ruckelshaus v. Monsanto*, for instance, the Court held the Environmental Protection Agency’s demand to produce trade secret data could qualify as a compensable taking because “[o]nce the data that constitutes a trade secret are disclosed to others, or others are allowed to use the data, the holder of the trade secret has lost his property interest in the data.”⁶⁵ The “disclosure *or use* by others of the data could destroy [the] competitive edge” that the trade secret would otherwise confer.⁶⁶

Indeed, in *Philip Morris, Inc. v. Reilly*, the court held that under *Ruckelshaus*, required disclosure under Massachusetts state law of individual ingredients in tobacco products was an unconstitutional taking of a trade secret because the state did not provide sufficient protection.⁶⁷ There, the regulatory scheme treated the information as confidential unless its release “could” reduce risks to public health.⁶⁸ The court reasoned that the state’s ability to release the information—and the lack of assurance that it would protect the trade secret—resulted in the government forcing the “companies to cede their trade secrets.”⁶⁹ This forced relinquishment of trade secrets constituted a taking despite the state’s “*significant, perhaps compelling, state interest*: a right for Massachusetts to protect and promote the health of its citizens.”⁷⁰

⁶³ See, e.g. *Kimball Landry Co. v. United States*, 338 U.S. 1, 10-11, 16 (1949) (holding that intangible property is condemnable only upon just compensation because “the intangible acquires a value . . . no different from the value of the business’s physical property.”); *Syngenta Crop Protection, Inc. v. Helliker*, 138 Cal. App. 4th 1135, 1167 (Cal. Ct. App. 2006) (“The takings clauses of the United States and California Constitutions protect not only tangible property, but also intangible trade secret property rights protected by state law.”).

⁶⁴ *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011, 104 (1984).

⁶⁵ *Id.*

⁶⁶ *Id.* (emphasis added).

⁶⁷ *Philip Morris, Incorp., et al., v. Reilly*, 312 F.3d 24, 45-46 (1st Cir. 2002).

⁶⁸ *Id.* at 29.

⁶⁹ *Id.* at 39.

⁷⁰ *Id.* at 44. (emphasis added).

The court so concluded because it was not “convinced that this regulation was tailored to promote health and was the best strategy to do so.”⁷¹ For instance, the regulation required producing the *entire list* of ingredients, which the court found was not demonstrably preferable to other regimes with which the companies complied—regimes in which they reported specific harmful ingredients or were guaranteed trade secret protection.⁷² “[T]his actual publication, or right to publish . . . has not been shown to further the stated goal of promoting public health in such a way as to counterbalance the tremendous private loss involved.”⁷³ Finally, the fact the state offered the right to do business in Massachusetts in exchange for the information did not save the regulation: “Massachusetts cannot condition the right to sell tobacco on the forfeiture of any constitutional protections the appellees have to their trade secrets.”⁷⁴

Here, like the government in *Reilly*, the SED is interpreting data production request (j) to require Rasier to produce trade secret information, and it is doing so though the TNC Decision does not protect against disclosure of trade secret information.⁷⁵ In fact, the Decision expressly contemplates that the Commission might make reports submitted by TNCs public.⁷⁶ Further like the regulation in *Reilly*, data production request (j), as the SED strictly interprets it, requires Rasier to produce *all* of Rasier’s individual ride-level data. The SED is interpreting the data request in this manner even though the SED does not need individual trip-level data to assess whether Rasier operates safely and in a nondiscriminatory manner. And by interpreting data request (j) in this manner, the SED is essentially claiming the Commission can order TNCs to produce trade secrets *without any* regulatory purpose.⁷⁷ The Commission and SED therefore

⁷¹ *Id.*

⁷² *Id.* at 45.

⁷³ *Id.*

⁷⁴ *Id.* at 47.

⁷⁵ *Cf.* Cal. Pub. Util. Code § 398.5(b) (“Information submitted to the Energy Commission pursuant to this section that is a trade secret as defined in subdivision (d) of Section 3426.1 of the Civil Code shall not be released except in an aggregated form such that trade secrets cannot be discerned.”).

⁷⁶ TNC Decision at 33, n. 42.

⁷⁷ Appendix B (SED’s Responses to Rasier’s Data Requests at Request 1-1).

cannot justify “the tremendous private loss involved.” Because the TNC Decision does not protect against disclosure, Rasier would have to waive its trade secret privilege to comply with the SED’s strict interpretation of the data request.⁷⁸ The Decision, as the SED interprets it, requires Rasier to give up its trade secrets in exchange for the right to operate in California, which *Reilly* clarifies is an unconstitutional exchange.

E. Requiring Rasier to Produce Individual Trip Data in Response to Data Request (j) and to Produce Information It Does Not Have and Cannot Get in Response to Data Production Request (k) Is Arbitrary.

Data production request (j) requires revision because it seeks information that does not fulfill the two possible policy objectives for the request—protecting public safety and preventing discrimination—rendering the request arbitrary. Data production request (k) is also arbitrary but for a different reason—it directs TNCs to produce information they do not have and cannot obtain. Specifically, data production request (k) asks TNCs to provide the amount insurance carriers other than the TNC’s own insurance carrier paid for any given accident.⁷⁹ But Rasier does not know what other insurance carriers (or anyone else other than its own insurance carrier) paid and has no ability to obtain that information—it cannot compel other insurance carriers to disclose to Rasier what they paid. Rasier has explained these issues to the SED, but the SED maintains that data production request (k) says what it says. Because a party cannot produce information that it cannot obtain and over which it has no possession, custody, or control, strictly enforcing data production request (k) is unreasonable and therefore arbitrary.⁸⁰ Indeed, the SED has essentially conceded the Commission should modify the TNC Decision to vacate this requirement, stating in response to Rasier’s data requests that: “Rasier’s response (i.e., that it

⁷⁸ See Cal. Civ. Code 3426.1(d)(2).

⁷⁹ TNC Decision, data production request (k) at 32.

⁸⁰ Cf. *Fielder v. Berkeley Properties Co.*, 23 Cal. App. 3d 30, 42 (Cal. Ct. App. 1972) (finding an administrative demand for documents reasonable where “[o]nly such records as were in the custody and control of appellants were required to be produced.”); see also *United States Intern. Trade Comm’n v. ASAT, Inc.*, 411 F.3d 245, 278 (reviewing an administrative subpoena to protect against arbitrary orders and reversing enforcement of an administrative subpoena where the subpoenaed documents were not in the party’s control).

does not have information on amounts paid for by insurance companies other than its own) should be included in a Petition for Modification of D.13-09-045, *not* as a reason for complying with a Commission order.”⁸¹

F. Rasier’s Decision to File This Petition to Modify Now Is Justified.

The Commission has recognized it did not intend the initial TNC data production requests to be set in stone and applied into perpetuity. The TNC Decision itself acknowledges the experimental and transitional nature of the TNC data production requests, stating the Commission would “convene a workshop one year after the issuance of the [TNC Decision] to hear from all stakeholders on the impacts of this new mode of transportation and accompanying regulations.”⁸² The SED’s enforcement of those data reporting requests in this September 2014 reporting year has made clear that data production requests (j) and (k) are unworkable as written. Even the SED has criticized the TNC Decision for both “lack[ing] clarity” on how SED should “implement the [TNC Reporting] requirements,” “creat[ing] a challenge for SED to develop [reporting] programs that conform to [the TNC] decision.”⁸³ In fact, the SED has already suggested the need for “possible modifications to reporting requirements,”⁸⁴ and at the November 4, 2014 *en banc* proceeding, Director Tyrell acknowledged that there “may be some sort of compromise in the middle that the Commission can make about this data.”⁸⁵

No party—not the Commission, the SED, or Rasier—could know how data production requests (j) and (k) would be applied to TNCs, or what strict compliance with those requests would mean. Nor could Rasier reasonably foresee the SED would refuse to work cooperatively

⁸¹ Appendix B (SED Responses to Rasier’s Data Requests at Request 1-8) (emphasis added). In its responses to Rasier’s data requests, the SED failed to answer the question “how the SED proposes that Rasier obtain information about insurance payments by carriers other than Rasier’s insurance carrier.” *Id.*

⁸² TNC Decision, *mimeo* at 33.

⁸³ Safety and Enforcement Division Report En Banc Transportation Network Companies Rules and Regulation, November 4, 2014 (“SED En Banc Report”), at 3.

⁸⁴ *Id.* at 14.

⁸⁵ See video of November 4, 2014 *en banc* proceeding, available at: http://streaming.aanet.org/ramgen/cpuc/CPUC_EB110414-1.rm

with Rasier on satisfying data production request (j) through means that would protect Rasier's trade secret information and satisfy the SED's desire for detailed (but unnecessary) data.⁸⁶ Indeed, the SED Report stresses that Rasier "had multiple opportunities to raise concerns regarding the [TNC] reporting requirements,"⁸⁷ suggesting the SED was and remains open to discussing mutually-advantageous revisions to the TNC Reporting Requirements. Rasier began these good faith negotiations with the SED in September, before the reporting deadline had passed, and continued them through October and November, seeking to achieve an amicable resolution *before* and without the need for this litigation.⁸⁸ The SED refused to cooperate⁸⁹—unlike in typical discovery disputes between parties in litigation.

The SED's consistent position throughout has been it will not agree to allow Rasier to provide data in a format different from the words in data production request (j), revealing that regardless how reasonable, sufficient, or efficient Rasier's proposal might be, the SED would refuse it. The SED's refusal to work with Rasier has necessitated this Petition to Modify, and justifies Rasier's filing of this Petition to Modify at this time of impasse.

Ruling on Rasier's Petition to Modify now will not harm any party or policy. The public's safety is the overriding purpose for the TNC Decision and the associated data production requests. Data production request (j) does not seek information relevant to protecting the public's safety. Data production request (k) does, but the objectionable portion of request (k) seeks information Rasier simply does not have and cannot obtain.

Nor would vacating data request (j) and eliminating the requirement under data request (k) that TNCs provide how much other insurance carriers or parties paid cause prejudice. Rather, these revisions will enhance the Commission's ability to most appropriately ensure that all TNCs offer service to the broadest possible array of customers, regardless location, and it will allow the Commission to achieve this goal with the least risk of harmful disclosure of

⁸⁶ See Appendix A (Declaration of Krishna Juvvadi ¶ 7).

⁸⁷ SED Report at 6.

⁸⁸ See Appendix A (Declaration of Krishna Juvvadi ¶ 7).

⁸⁹ See *id.*

confidential trade secret information, and the least impediment to the continued development and growth of the innovative TNC industry.

IV. CONCLUSION

For all the foregoing reasons, Rasier respectfully requests that the Commission grant this Petition to Modify the TNC Decision. Specifically, Rasier requests that the Commission:

1. Vacate the annual reporting requirements established in data production request (j), and strike the clause “and the amount that was paid by the driver’s insurance, ... or any other source” from data production request (k) of the TNC Decision;
2. Direct that replacement data production requests for request (j) be developed and applied to the September 2015 reporting year, and that these replacements be developed through workshops during the upcoming Phase II of the ongoing TNC Rulemaking, where the Commission will assess “equal geographic access to TNC Service;” and
3. Order that the pending Order to Show Cause hearing challenging Rasier’s compliance with the existing reporting requirements be dismissed as moot, or alternatively, that any sanction issued in that proceeding be rescinded.

Respectfully submitted,

By: _____/s/_____

Robert Maguire
Steven F. Greenwald
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: robertmaguire@dwt.com
Email: stevegreenwald@dwt.com

Attorneys for Rasier-CA, LLC

December 4, 2014

APPENDIX A

Declaration of Krishna K. Juvvadi

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

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

Rulemaking 12-12-011
(Filed December 20, 2012)

**DECLARATION OF KRISHNA K. JUVVADI
IN SUPPORT OF
PETITION OF RASIER-CA, LLC
TO MODIFY DECISION 13-09-045**

Steven F. Greenwald
Robert Maguire
DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: stevegreenwald@dwt.com
Email: robertmaguire@dwt.com

December 4, 2014

Attorneys for Rasier-CA, LLC

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

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

Rulemaking 12-12-011
(Filed December 20, 2012)

**DECLARATION OF KRISHNA K. JUVVADI
IN SUPPORT OF
PETITION OF RASIER-CA, LLC
TO MODIFY DECISION 13-09-045**

I, Krishna K. Juvvadi declare:

1. I am Senior Counsel with Uber Technologies, Inc. (“UTI”).
2. I make this declaration in support of the “Petition of Rasier-CA, LLC to Modify Decision 13-09-045” filed concurrently with this declaration. The statements made in this declaration are based on a review of business and public records, and information prepared at my direction or provided to me by UTI and/or Rasier-CA, LLC.
3. Raiser-CA, LLC (“Rasier”) is a wholly-owned subsidiary of UTI.
4. Proposed Decision 13-09-045, issued on July 30, 2013, first required that “each TNC shall submit to [SED] a report detailing rides that were requested, but not accepted by TNC drivers. The report must also detail the location and zip code of such rides as well as the number.” Rasier raised concerns about this statement in both its opening and reply comments, commenting that submitting location and zip code level detail for rides implicated sensitive commercial information and that there was no demonstrated need or purpose for disclosing that information. The Commission then issued five Revisions to Proposed Decision 13-09-045 over the next 50 days, each one amending the reporting provisions, culminating in the existing provisions embodied in Decision 13-09-045, which was adopted on September 19, 2013. Rasier never had an opportunity to comment on the proposed revisions, and none of the revisions addressed Rasier’s opening or reply comments.
5. On November 7, 2013, Rasier provided the commission its Accessibility Plan, which stated that “[w]ithin six months of the [CPUC]’s approval of Rasier’s TNC application, Rasier will ensure that users of Uber’s request software who request transportation provided by Rasier’s partners may indicate their access needs.” This provision was consistent with the Commission’s requirement that an accessibility plan include “a timeline for modifying apps so that they allow passengers to indicate their access needs.”

6. On April 7, 2014, the CPUC issued a permit allowing Rasier to operate as a Transportation Network Company.
7. On September 10, 2014 Rasier initiated discussions with the Safety and Enforcement Division (“SED”) to discuss Rasier’s concerns with reporting provisions contained in D.13-09-045 (the “TNC Decision”). Rasier believed that, given the numerous revisions to the reporting provisions and the Decision’s intent to revisit regulations after one-year, SED would work with Rasier to cooperatively and flexibly resolve Rasier’s concerns while providing information necessary for SED to discharge its regulatory duties. Rasier representatives met with SED on September 11, 2014. In particular, Rasier communicated that the reporting provisions in subparagraph (j) of the TNC Decision requested confidential, highly-sensitive information that could be utilized by competitors. SED responded that providing the information was required by the TNC Decision and that SED lacked discretion to accept anything less than the specific information stated in the TNC Decision. SED rejected Rasier’s proposal to instead examine statistical data that would provide the same level of information to SED without compromising Rasier’s valuable commercial information.
8. On September 19, 2014, Rasier timely submitted data in response to the TNC Decision reporting provisions. Rasier submitted reports detailing: the share of Rasier’s entire activity by zip code (“Share of Activity by ZIP Code Tabulation Area Out of All California”); the percentage of each ride requested from each California zip code that was completed, excluding rider cancellations, (“Percent Completed Out of Requested Within ZIP Code Tabulation Area”); the median driver ETA by zip code (“Median ETA by ZIP Code Tabulation Area”); the mean driver ETA by zip code (“Average ETA by ZIP Code Tabulation Area”); the number of months of activity per driver (“Months of Activity by Driver”); the average miles driven per driver per month (“Average Miles by Driver”); the average hours worked per driver per month (“Average Hours by Driver”); the number, type, claim status, amount paid by Rasier’s insurance, and other information relating to problems with drivers (“CPUC Rasier Report on Problems with Drivers”); and drivers completing a driver training course (“CPUC Rasier Report Drivers Completing Driver Training Course”). Rasier also submitted a narrative report detailing its progress, consistent with its prior-submitted Accessibility Plan, towards meeting accessibility goals (“CPUC Rasier Providing Accessible Vehicles”). This information was sufficient to allow SED to investigate Rasier’s safety and accessibility record; it allows SED to compare, for each zip code in California, the relative density of Rasier’s service provision, the percentage of rides requested from each zip code that were completed and not completed (excluding client cancels), and the median and mean response times to each zip code.
9. On October 6, 2014, SED communicated that it considered Rasier’s submission incomplete, and that it required “raw data” to carry out its analyses. On October 20th, Rasier submitted supplemental information, including the median hours and miles driven per driver, and answers to specific questions that SED posed regarding the allegedly incomplete September 19, 2014 production. These answers were provided in a confidential memorandum dated October 10, 2014.

10. Rasier again met with SED on October 27, 2014. At that meeting, Rasier addressed additional SED concerns with Rasier's production, including why certain information desired by SED was not available. Rasier explained that it did not track "cause" for driver complaints or accidents, but would be able to provide some information on "cause" in the future, and that it was unable to provide information held by third-parties regarding insurance payments made to address accidents. In addition, Rasier reiterated its concerns with providing individual trip-level data to SED, and again offered to provide SED alternative data that would allow SED to investigate any facet of Rasier's provision of services. SED again declined, insisting that the TNC Decision required full submission of the raw data, and that Rasier's recourse, if any, lay with the Commission.
11. After the Order to Show Cause was issued, Rasier again met with SED on November 24, 2014. At that meeting, Rasier offered two remedies to alleviate any SED concern with the accuracy of the data underlying Raiser's aggregate statistics: Rasier offered to allow SED to have a third-party, at Rasier's expense, access and verify Rasier's data; Rasier also offered to allow SED full access to Rasier's electronic data at a third-party location. SED declined those offers, and indicated that it had no authority to settled the Order to Show Cause or accept anything less than complete submission of Rasier's underlying data. At no point has SED articulated a substantive reason why the information already provided is not sufficient for it to investigate safety and geographic access. Instead, SED has maintained that it requires the information because it is listed in the TNC Decision and that SED has no authority to deviate from those specific provisions.
12. Rasier cannot disclose the information requested in subsection (j) of the TNC Decision without jeopardizing its trade secrets. The TNC Decision requests the "number of rides requested and accepted within each zip code where the TNC operates; and the number of rides that were requested and not accepted by TNC drivers within each zip code where the TNC operates." In addition, the TNC Decision requires the disclosure of the date, time, and zip code of each request, and for each accepted ride, the zip code where the ride began, where the ride ended, the miles travelled, and the amount paid / donated for each ride. This information is highly confidential. If provided, the information displays a complete picture of Rasier's business. The information would allow any person to determine where and when Rasier's business is concentrated, which segments of its business are most remunerative, and in fact how much income Rasier grossed in California during the reporting period.
13. Rasier does not disclose this information publicly because its competitors could use the information to assess their relative market share or for purposes of business and financial modeling. In addition, they could use their relative market position to attempt to attract more customers and drivers, or could use it to help in their own fundraising efforts.
14. Rasier delivered information to SED as aggregated data or statistical data specifically to protect Rasier's trade secrets. If Rasier's individual, underlying data is compelled, it will disclose its trade secrets. Even if SED were to treat Rasier's underlying data as confidential, should SED aggregate Rasier's data and produce it combined with that of

other TNCs, those TNCs could disaggregate their submitted data in order to discern Rasier's data. This has in fact already occurred. At the November 4, 2014 *en banc* proceeding, SED disclosed Rasier's confidential information, disclosing that Rasier and Lyft constitute 80% of the market for TNCs in California, and then presenting aggregated data regarding driver hours, miles travelled and accidents. Lyft, through extracting its own data from the aggregate, would be able to discern Rasier's driver and accident data from the information disclosed at the *en banc*.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 4th day of December, 2014, at San Francisco, California.



APPENDIX B

SED Responses to Data Requests

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

Rulemaking 12-12-011
(Filed December 20, 2012)

SAFETY AND ENFORCEMENT DIVISION'S RESPONSES & OBJECTIONS TO
RASIER-CA, LLC'S FIRST SET OF DATA REQUESTS

SELINA SHEK
Staff Counsel
Safety and Enforcement Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 703-2423
Selina.Shek@cpuc.ca.gov

December 3, 2014

I. INTRODUCTION

The Safety and Enforcement Division (SED) hereby submits the following Responses and Objections to the November 25, 2014 First Set of Data Requests from Rasier-CA LLC. For clarity, each response is provided following each Data Request below.

The following individuals provided the responses to Rasier's First Set of Data Requests:

- 1) Name: Brewster Fong
Title: Public Utilities Regulatory Analyst
Reports to: Valerie Beck (Program Manager of SED's Transportation Enforcement Branch)
- 2) Name: Valerie Kao
Title: Public Utilities Regulatory Analyst
Reports to: Valerie Beck (same as above)
- 3) Name: Selina Shek
Title: SED Counsel
Reports to: Helen Mickiewicz (Assistant General Counsel for Communications, Water & Transportation)

Brewster Fong will be available to testify on these Data Request responses.

II. GENERAL OBJECTIONS

1. These responses and objections are made without waiving or intending to waive, but to the contrary intending to preserve and preserving: (a) any objection as to the competency, relevancy, materiality, privilege, or admissibility as evidence, for any purpose, or any documents or information produced in response to the Data Requests; (b) the right to object on any ground to the use of documents or information produced in response to the Data Requests at any hearing, trial or other point during this action; (c) the right to object on any ground at any time to a demand for further responses to Data Requests; and (d) the right at any time to revise, correct, add to, supplement, or clarify any of the responses to objections contained herein.
2. The documents, information, and responses supplied herein are for use in Rulemaking 12-12-011 and for no other purpose.
3. No response or objection made herein, or lack thereof, is an admission by SED as to the existence or non-existence of any documents or information. SED expressly reserves the right to rely, at any time, on subsequently discovered documents.
4. SED objects to the Data Requests to the extent they seek to impose duties and obligations on SED greater than SED's duties and obligations under the California Code of Civil Procedure or

the Rules of Practice and Procedure of the California Public Utilities Commission (Commission or CPUC).

5. SED objects to the Data Requests to the extent they are vague, ambiguous, unduly burdensome, overbroad, oppressive, duplicative, fail to identify with sufficient particularity the documents or information sought, or are not limited to the discovery of information which is relevant to the subject matter of this Adjudicatory categorized (portion of the) Rulemaking proceeding or reasonably calculated to lead to the discovery of admissible evidence.

6. SED objects to the Data Requests as overly broad, unduly burdensome, and not necessarily calculated to lead to the discovery of admissible evidence to the extent they seek documents, information, or admissions concerning facts not raised in the Order to Show Cause, or concern matters not subject to the jurisdiction of the Commission.

7. SED objects to the Data Requests as unduly burdensome to the extent that they purport to require SED to create, compile, analyze, compute, and/or summarize voluminous data or information that the TNCs have the ability to create, compile, analyze, compute, and/or summarize by reviewing the documents, information, or data that is in the public domain. Moreover, many of these data requests ask for virtually unlimited information, most of which is in the public domain or are provided by the TNCs themselves.

8. SED objects to the Data Requests to the extent that they call for disclosure of material which is subject to the attorney-client privilege or work-product immunity. SED further objects to these interrogatories to the extent that they request premature disclosure of the identity, opinions, and/or reports of experts who may testify on SED's behalf at hearings.

III. THE SAFETY AND ENFORCEMENT DIVISION (SED'S) DATA REQUEST RESPONSES AND SPECIFIC OBJECTIONS

Request 1-1

Please explain the purposes for which, and how, the SED intends to use the data requested in Regulatory Requirement (j) on page 31 of Decision 13-09-045 and the statutory or regulatory basis for the CPUC's authority to collect data for those purposes.

The Safety and Enforcement Division (SED) objects to this interrogatory on the grounds that it calls for information in the public domain and is unduly burdensome. Rasier's data request is open-ended, overbroad, oppressive and asks for unlimited information.

Subject to and without waiving the foregoing objections, SED has considered information in this proceeding's record.¹ Decision (D.) 13-09-045 states that "each TNC shall submit to [SED] a verified report detailing" the information specified in Regulatory Requirement j as it specifically orders that all TNCs shall follow the safety and regulatory requirements and that all reports required must be verified as accurate and contains no material omissions.² The Decision does not state an explicit, specific purpose for each item of information required, nor does it order SED to use each item of information in a particular way.

Further, SED relies on the following statutory authority to collect data from entities that are subject to the Commission's jurisdiction:

Public Utilities Code (P.U. Code) section 314(a):

(a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

P.U. Code section 581:

Every public utility shall furnish to the commission in such form and detail as the commission prescribes all tabulations, computations, and all other information required by it to carry into effect any of the provisions of this part, and shall make specific answers to all questions submitted by the commission.

Every public utility receiving from the commission any blanks with directions to fill them shall answer fully and correctly each question propounded therein, and if it is unable to answer any question, it shall give a good and sufficient reason for such failure.

P.U. Code section 582:

Whenever required by the commission, every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers, and records in its possession or in any way relating to its

¹ Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services, R.12-12-011, December 20, 2012 (TNC OIR). Available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M040/K862/40862944.PDF>

² D.13-09-045, Ordering Paragraphs 1 and 2 at 72.

property or affecting its business, and also a complete inventory of all its property in such form as the commission may direct.

P.U. Code section 584:

Every public utility shall furnish such reports to the commission at such time and in such form as the commission may require in which the utility shall specifically answer all questions propounded by the commission. The commission may require any public utility to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter about which the commission is authorized by any law to inquire or to keep itself informed, or which it is required to enforce. All reports shall be under oath when required by the commission.

P.U. Code section 701:

The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

P.U. Code section 702:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper to secure compliance therewith by all of its officers, agents, and employees.

P.U. Code section 2107:

Any public utility that violates or fails to comply with any provision of the Constitution of this state or of this part, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the commission, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than fifty thousand dollars (\$50,000) for each offense.

P.U. Code section 2108:

Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be a separate and distinct offense.

P.U. Code section 2113:

Every public utility, corporation, or person which fails to comply with any part of any order, decision, rule, regulation, direction, demand, or requirement of the commission or any commissioner is in contempt of the commission, and is punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section does not bar or affect any other remedy prescribed in this part, but is cumulative and in addition thereto.

P.U. Code section 5378(a)(2):

The commission may cancel, revoke, or suspend any operating permit or certificate issued pursuant to this chapter upon any of the following grounds:

(2) The violation of any order, decision, rule, regulation, direction, demand, or requirement established by the commission pursuant to this chapter.

P.U. Code section 5381:

To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

P.U. Code section 5411:

Every charter-party carrier of passengers and every officer, director, agent, or employee of any charter-party carrier of passengers who violates or who fails to comply with, or who procures, aids, or abets any violation by any charter-party carrier of passengers of any provision of this chapter, or who fails to obey, observe, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or of any operating permit or certificate issued to any charter-party carrier of passengers, or who procures, aids, or abets any charter-party carrier of passengers in its failure to obey, observe, or comply with any such order, decision, rule, regulation, direction, demand, requirement, or operating permit or certificate, is guilty of a misdemeanor and is punishable by a fine of not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000) or by imprisonment in a county jail for not more than three months, or by both that fine and imprisonment.

P.U. Code section 5415:

Every violation of the provisions of this chapter or of any order, decision, decree, rule, direction, demand, or requirement of the commission by any corporation or person is a

separate and distinct offense, and in case of a continuing violation each day's continuance thereof is a separate and distinct offense.

Request 1-2

Is the SED intending to use the information requested under Regulatory Requirement (j) to assess or advance any public policy other than the Safety and Rider Accessibility public policies? If so, identify each additional public policy objective for which the SED is intending to assess the Regulatory Requirement (j) data. For each such additional public policy purpose the SED identifies, please provide the specific citation in Decision 13-09-045 that supports the SED's use of the data required by Regulatory Requirement (j) to assess such additional public policy objective, and the specific citation to the Public Utilities Code supporting the Commission's pursuit of that policy objective.

SED objects to this interrogatory on the grounds that it calls for information in the public domain and is unduly burdensome. Rasier's data request is open-ended, overbroad, oppressive and asks for unlimited information.

Subject to and without waiving the foregoing objections, D.13-09-045 orders the submission of the data in question. Please see response to Request 1-1 above for Commission authority to collect the data. Further, SED is not certain whether Rasier intends to refer to any specific and explicit set of "Safety and Rider Accessibility policies" (as mentioned in Request 1-2) in the record of R.12-12-011.

Request 1-3

Has the SED provided any clarifications to TNCs or made any revisions with respect to the reporting templates posted on the Commission's website? If so, please provide each clarification or revision, the date on which the SED made each clarification or revision, the individual responsible for making each clarification or revision, why the SED made each clarification or revision, and the basis in Decision 13-09-045 (if any) that SED believes justifies each clarification or revision.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad, oppressive and there is a lack of sufficient information. Further, Rasier's data request is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive.

Moreover, SED objects to this interrogatory on the grounds that it calls for speculation and conjecture, a legal conclusion or an impermissible opinion.

Subject to and without waiving further objections, SED questions the relevance of this Request because SED does not seek information based on the reporting template. For example, on September 10, 2014 and September 11, 2014, SED issued two emails to the TNCs clarifying

the reporting dates, which are separate from what was required by the template.³ The relevant point is that Rasier has failed to produce the un-aggregated raw data that is required by D.13-09-045, Regulatory Requirement (j).

Request 1-4

Has the SED provided any clarifications to TNCs or made any revisions with respect to the TNC reporting requirements set forth in Decision 13-09-045? If so, please provide each clarification or revision, the date on which the SED made each clarification or revision, the individual responsible for making each such clarification or revision, the purpose of the clarification or revision, and the basis in Decision 13-09-045 (if any) on which the SED relies for authority to request that TNCs provide information different from and in a format that deviates from the format contemplated by Regulatory Requirements (j).

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad and oppressive.

Subject to and without waiving the foregoing objections, SED provided two emails to representatives of each TNC, on September 10, 2014 and September 11, 2014, that clarified it did not rely on the reporting template.

Further, as stated in SED's October 2014 Report on the Failure of Rasier-CA, LLC. To Comply with the Reporting Requirements of Decision (D.) 13-09-045, on September 11, 2014, SED met with Rasier's representatives who expressed concerns about providing information at the level of detail required by D.13-09-045, citing the sensitivity and market value of data required in the Report on Providing Services by Zip Code. SED advised Rasier to request confidential treatment for information it considered market-sensitive or proprietary. SED also reminded Rasier that D.13-09-045 specifically states that the TNCs were instructed to submit the reports confidentially. Rasier advocated for a limited data submittal, and offered to provide a 'heat map' and aggregated data in lieu of a detailed submission as required by D.13-09-045.⁴

³ On September 10, 2014, SED emailed all the TNCs with the following clarifications:

"The following are some clarification for the TNC Reports due on September 19, 2014.

1. The report should go from September 1, 2013 to August 31, 2014.
2. On the providing service by zip code sheet, the zip column under "each ride accepted not requested" we would like each ride and attempted ride. We also want the zip code from the pick up point and the zip code of the driver at the time he/she receives the request.
3. The data can be provided in csv format."

On September 11, 2014, SED emailed a second clarification to each TNC:

"For the September 19, 2014 TNC reports, please provide data from October 1, 2013 to August 31, 2014.

There was confusion because the templates state October 1."

⁴ SED's October 2014 Report on the Failure of Rasier-CA, LLC. To Comply with the Reporting Requirements of Decision (D.) 13-09-045, dated September 11, 2014 (SED Report) at 3.

SED indicated that a refusal to provide complete data violates the Commission order. Without the underlying data, SED would be unable to verify the accuracy of heat map(s) and aggregated information, or to present meaningful findings to the Commission.⁵

After the meeting, SED staff emailed the Rasier attendees to confirm that the detailed data specified in D.13-09-045 must be submitted to SED by September 19, 2014. Rasier's outside counsel replied by email to acknowledge SED staff's message.⁶

On October 20, 2014, at 12:07 pm, SED staff informed Rasier counsel that SED had not yet received any DVD from Rasier. At 12:17 pm, Rasier responded that it would hand deliver the DVD in about two hours, and asked if that day's Federal Express shipment had arrived. At 1:28 pm, SED staff responded that Federal Express delivered the daily shipment, which did not include any items from Rasier. At 3:18 pm, SED staff received notice from the Commission's mail room staff that an envelope had been hand delivered to the mailroom. After reviewing these materials, SED staff concluded that Rasier remained out of compliance with several of the reporting requirements in D.13-09-045.⁷

On October 27, 2014, Rasier met with SED staff. Rasier stated that it did not collect certain data required by D.13-09-045, and that it lacked the information technology and trained staff to extract the required data within the specified timeframe. Rasier also confirmed that it would not provide its Zip Code report at the level of detail required by D.13-09-045, but would be willing to work with SED to get data on the cause of each incident included in its Report on Problems With Drivers, but that this would take longer than the timeframe specified by SED. SED indicated that while the Commission could consider proposals to refine the reporting requirements in Phase 2, SED could not enable Rasier to avoid compliance with the current reporting requirements.⁸

⁵ Id.

⁶ Id.

⁷ SED Report at 4.

⁸ Id.

Request 1-5

Has the SED provided any clarifications to TNCs or made any revisions with respect to any of the other Regulatory Requirements in Decision 13-09-045? If so, for each clarification or revision to other Regulatory Requirements, please provide each clarification or revision, the date on which the SED made each clarification or revision, the individual responsible for making each such clarification or revision, the purpose of the clarification or revision, and the basis in Decision 13-09-045 (if any) on which the SED relies for authority to request that TNCs provide information different from and in a format that deviates from the format contemplated by the Regulatory Requirement.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad and oppressive.

Subject to and without waiving the foregoing objections, SED provides the following:

As stated in SED's October 2014 Report on the Failure of Rasier-CA, LLC. To Comply with the Reporting Requirements of Decision (D.) 13-09-045, on October 27, 2014, Rasier stated it would be willing to work with SED to get data on the cause of each incident included in its Report on Problems With Drivers, but that this would take longer than the timeframe specified by SED. SED indicated that while the Commission could consider proposals to refine the reporting requirements in Phase 2, SED could not enable Rasier to avoid compliance with the current reporting requirements.⁹

Eventually, SED staff concluded Rasier provided complete information on several data components as required by D.13-09-045, which includes:

- Number of drivers that became eligible and completed the driver training course.
- Number of drivers that were found to have committed a violation and/or were suspended, including a list of zero tolerance complaints and the outcome of the investigation into those complaints,
- Information on each accident or other incident that involved a TNC driver and was reported to the TNC, such as:
 - o Date and time of the incident.
 - o Amount paid by the TNC's insurer, if any, to compensate any party in each incident,
 - o Total number of incidents since October 1, 2013.

⁹ SED Report at 4.

o Average and median number of hours and miles each TNC driver spent driving for the TNC¹⁰

Request 1-6

Has the SED provided any clarifications to TNCs or made any revisions with respect to any of the Safety Requirements identified in Decision 13-09-045? If so, for each clarification or revision to any Safety Requirement, please provide each clarification or revision, the date on which the SED made each clarification or revision, the individual responsible for making each clarification or revision, the purpose of the clarification or revision, and the basis in Decision 13-09-045 (if any) on which the SED relies for authority to request that TNCs provide information different from and in a format that deviates from the format contemplated by the Regulatory Requirement.

SED objects to this interrogatory on the grounds that it is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive. Subject to and without waiving the foregoing objections, SED is not aware of any clarifications or revisions made regarding Safety Requirements.

Request 1-7

The SED Report at page 6 states that: [Rasier] had multiple opportunities to raise concerns regarding the [TNC] reporting requirements, yet failed to notify SED of any concern regarding the “TNC] reporting requirements.

With respect to such statement:

a. ***Does the SED believe that if Raiser had raised more concerns regarding the TNC reporting requirements at an earlier time or in a format other than in its Opening and Reply Comments to the Proposed Decision, that the SED would have had the discretion and authority to agree to revisions in the TNC Reporting Requirements to accommodate Rasier’s concerns?***

SED objects to this interrogatory on the grounds that it calls for speculation and conjecture, a legal conclusion or an impermissible opinion.

Subject to and without waiving the foregoing objections, SED provides the following: SED does not have discretion or authority to agree to any revision(s) of a Commission order. However, SED’s role in this proceeding (except for this adjudicatory matter) is advisory and as such may make recommendations.

¹⁰SED Report at 5.

b. Unless the response to subsection (a) is an unambiguous negative, specify the authority on which the SED relies for its belief that it would have had the discretion and authority to agree to revisions in the TNC Reporting Requirements to accommodate Rasier's concerns.

SED objects to this interrogatory on the grounds that it calls for speculation and conjecture, a legal conclusion or an impermissible opinion.

Subject to and without waiving the foregoing objections, see response to 1-7a above.

c. Unless the response to subsection (a) is an unambiguous affirmative, specify the authority on which the SED relies for its belief that it had no discretion or authority to agree to revisions in the TNC Reporting Requirements to accommodate Rasier's concerns.

SED objects to this interrogatory on the grounds that it calls for speculation and conjecture, a legal conclusion or an impermissible opinion.

Subject to and without waiving the foregoing objections, SED provides the following: not applicable.

Request 1-8

a. The SED Report at page 5 indicates that Rasier's submission "lacked one or more required components" of the "[a]mount paid, if any, by any party other than the TNC's insurance." The SED Report also states that Rasier responded it does not have "any information on amounts paid for incidents other than those paid by the TNC's insurance."

Is the SED requesting that the Commission order Raiser to obtain information it does not possess concerning insurance payments made by anyone other than Rasier's insurance carrier?

Unless your answer is an unambiguous negative, please explain how the SED proposes that Rasier obtain information about insurance payments made by carriers other than by Rasier's insurance carrier.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad and oppressive.

Subject to and without waiving the foregoing objections, Rasier's response (i.e., that it does not have information on amounts paid for by insurance companies other than its own) should be included in a Petition for Modification of D.13-09-045, not as a reason for failing to comply with a Commission order.

As SED stated in its October 2014 Report on the Failure of Rasier-CA, LLC. To Comply with the Reporting Requirements of Decision (D.) 13-09-045, "Uber/Rasier had multiple opportunities to raise concerns regarding the reporting requirements, yet failed to notify SED of

any concern regarding the reporting requirements. Uber/Rasier did not initiate a discussion with SED staff until September 4, 2014, which is the date Uber/Rasier requested a meeting for the following week, and eight working days before the submission deadline. Even at this point, Uber/Rasier only verbally stated its concerns informally to SED staff.”¹¹

Moreover, SED also stated that “on October 23, 2013, Uber filed an Application for Rehearing of D.13-09-045. No part of that application raised concerns with the reporting requirements contained in D.13-09-045. Uber did not file a Petition for Modification of D.13-09-045 within the timeframe specified by the Commission’s Rules of Practice and Procedure (Rule 16.4). And finally, Uber did not file a motion for a protective order with the Commission to prevent it from having to submit the reports as required. Templates for the required reports have been available on the Commission’s website since, at the latest, February 12, 2014, yet Uber/Rasier did not raise concerns regarding the submission until approximately one week before the reports were due.”¹²

Request 1-9

The SED Report states at page 2 that “Rasier failed to submit to SED the most critical data components required by Decision (D.) 13-09-045.”

a. Identify the precise component of the data that Decision 13-09-045 obligates Rasier to provide that the SED has determined to be the “most critical data component” of the information Decision 13-09-045 requires TNCs to provide to the SED.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad, oppressive and there is lack of sufficient information. Further, Rasier’s data request is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive.

Subject to and without waiving the foregoing objections, regardless of what SED considers to be critical, D.13-09-045 requires Rasier to provide the unaggregated, raw data in question.

b. For each such component of the data obligated to be provided that the SED identified in response to (a) above, provide the grounds on which, including citations to Decision 13-09-045, on which the SED determined the data to be one of the “most critical components” required by Decision 13-09-045.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad, oppressive and there is lack of sufficient information. Further, Rasier’s data request is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive.

¹¹ SED Report at 6.

¹² Id.

Subject to and without waiving the foregoing objections, please see response to Request 1-9a above.

c. For each such “critical data component” that the SED contends Rasier failed to provide, explain how the absence of such “most critical data component” has impaired the SED’s ability to fully assess and analyze the Safety and Rider Accessibility public policy issues.

SED objects to this interrogatory on the grounds that it is unduly burdensome, overbroad, oppressive and there is lack of sufficient information. Further, Rasier’s data request is open-ended and asks for unlimited information, and is overbroad, duplicative and oppressive.

Subject to and without waiving the foregoing objections, please see response to Request 1-9a above.

APPENDIX C

Letter to SED

U B E R

RASIER-CA LLC
1455 MARKET STREET
SAN FRANCISCO, CA 94103

KRISHNA K. JUVVADI
SENIOR COUNSEL
KRISHNA@UBER.COM

December 4, 2014
VIA EMAIL

Denise Tyrrell
Interim Director
Safety and Enforcement Division
California Public Utilities Commission
Safety and Enforcement Division
505 Van Ness Avenue
San Francisco, CA 94102-3298
tyr@cpuc.ca.gov

Re: Unauthorized Release of Confidential and Proprietary Information by the Safety and Enforcement Division

Dear Director Tyrrell:

We write to advise you that Rasier-CA, LLC (“Rasier”) and Uber Technologies, Inc. (“Uber”) considers the Safety and Enforcement Division’s (“SED”) public disclosure of certain information during the *en banc* hearing conducted on November 4, 2014 to be a violation of Public Utilities Code sections 583 and 5412.5, General Order 66-C, and Decision 13-09-045. These provisions each specifically require that SED maintain the confidentiality of proprietary information that a Transportation Network Company (“TNC”) is obligated to submit to SED. The seriousness with which the Legislature regards the obligation of Commission employees to maintain the confidentiality of such materials is evidenced by Public Utilities Code section 5412.5, which authorizes criminal sanctions for unauthorized disclosures of confidential information.

In accordance with Decision 13-09-045, Rasier has submitted substantial amounts of confidential information to SED in reliance on SED’s obligation to maintain the confidentiality of the material. SED did not request authority to release confidential information Rasier submitted to SED and Rasier did not authorize SED to publicly release any of its confidential information.

During the *en banc* hearing, SED disclosed, based on information Rasier had provided on a confidential basis, that Rasier and Lyft comprise 80% of the TNC market in California. This disclosure of this market share statistic enables Lyft to unfairly and prejudicially derive confidential and proprietary information regarding Rasier.

At the *en banc* hearing SED additionally disclosed aggregate information regarding the mean and median number of hours per month for an “average” TNC driver in California. SED further revealed the specific number of TNC drivers that work a certain average number of hours per month. Lyft has knowledge of the statistics for its own drivers and thus SED’s disclosures will readily enable Lyft to calculate the exact numbers for Rasier – information which Rasier has not publicly disclosed, which it considers highly confidential and commercially sensitive and which it does not want disclosed to its competitor Lyft. Lyft will also be able to use the combination of these aggregate statistics to back engineer the percentage of the TNC market that Rasier serves.

We appreciate that SED may have considered that by “aggregating” the confidential information of the TNC companies that it was appropriately discharging its responsibilities to maintain the confidentiality of Rasier’s proprietary information. However, as explained above, the public disclosure of TNC companies’ aggregate

information along with the fact that Rasier and Lyft comprise 80% of the TNC market in California enables each company to derive the other's information.

In fact, California law recognizes that aggregating information may not be sufficient to ensure the confidentiality of proprietary information. Section 398.5(b) of California Public Utilities Code specifically provides that information that "retail suppliers" of electricity are required to report to the California Energy Commission regarding their "specific" supply sources shall not be released by the Energy Commission in "an aggregated form [unless such disclosure in an aggregated form will ensure that the trade secrets cannot] be discerned." See *also* Cal. Ins. Code § 1857.9(i) (allowing Insurance Commissioner to publish confidential information provided by insurers in the aggregate if such "manner [of disclosure] does not disclose confidential information about identified insurers or insureds").

SED's disclosure of such confidential and proprietary information underscores Rasier's and Uber's legitimate and ongoing concerns regarding the manner in which SED may utilize the confidential and proprietary information that Rasier has provided and will continue to provide SED. We ask SED to identify the corrective actions it intends to implement to absolutely ensure that such a breach of SED's obligations to maintain the confidentiality of Rasier's and Uber's trade secrets and other sensitive, proprietary and commercial information is not repeated.

Sincerely,

Krishna Juvvadi

Krishna K. Juvvadi
Senior Counsel
Uber Technologies, Inc.

APPENDIX 4

D. 88933

ORIGINAL

Decision No. 88933 JUN 13 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM P. & MARIE R. BUTRICA, et al.,

Complainants,

vs.

DARRELL J. & RUTH E. BEASLEY, dba
PHILLIPSVILLE WATER CO.,

Defendants.

Case No. 10129
(Filed June 23, 1976)

O P I N I O N

This is a proceeding in which Darrell J. and Ruth E. Beasley were ordered to show cause why they should not be adjudged in contempt of the Public Utilities Commission and punished therefor according to law.

Decision No. 87364 was issued in this proceeding on May 24, 1977. The order to show cause was issued on August 23, 1977 and is based upon an affidavit of a staff engineer dated August 8, 1977, which asserts that a certified copy of Decision No. 87364 was served upon Darrell J. Beasley and Ruth E. Beasley on June 7, 1977 and that respondents have failed to comply with the requirements of Ordering Paragraph 1 of the decision, which states:

"1. Darrell J. and Ruth Beasley, doing business as Phillippsville Water Company, shall within thirty days after the effective date of this order:

"a. Rearrange the piping in each of the small reservoirs so water will flow unrestricted into the town system rather than to the favored customers who now receive it.

- "b. Complete the metering of customers' services and notify the Commission in writing, when all features have been installed.
- "c. Survey all transmission mains to locate high points. Install air release valves thereon, and notify the Commission within ten days that the project has been completed.
- "d. Bill for past due accounts or credit for over-payments as appropriate, but issue no bills for service rendered prior to six months from the date of the request for payment, and notify the Commission within 10 days from the date the bills or credits are mailed.
- "e. File up-to-date rules and regulations with the Commission."

The affidavit states that the failure and refusal was and continues to be in violation of law and in contempt of the Commission.

The affidavit and order to show cause allege a second offense which concerns paragraph 4 of said decision which reads as follows:

"Defendants shall transfer and connect the (Murray) well to their public utility water system forthwith, and Darrell Beasley shall inform this Commission within 10 days after the transfer."

The affidavit states that Ordering Paragraph 4 has not been complied with.

A public hearing was held on September 7, 1977 in Garberville before Administrative Law Judge Fraser. Evidence was presented by the Commission staff and respondents. Several local residents who are served by the water system also testified.

The staff engineer who signed the affidavit and application for order to show cause testified that the change in piping required by Ordering Paragraph 1 of Decision No. 87364 was not completed on schedule and that the Commission has not been informed as required

by the other ordering paragraphs; that meters have been installed on all services (Ordering Paragraph 1.b); that water transmission lines have been surveyed and air release valves installed as required (Ordering Paragraph 1.c); that past due bills and credits have been mailed to customers (Ordering Paragraph 1.d); and that up-to-date rules and regulations have not been filed with the Public Utilities Commission (Ordering Paragraph 1.e). He noted that respondent Darrell has installed pipes and meters in the past and is capable of performing the necessary outdoor work required; whereas respondent Ruth has been handling the records and bills of the company and should be capable of mailing customer bills and credits.

The witness further testified that Ordering Paragraph 4 of Decision No. 87364 requires that the Murray well be connected to the system. The decision finds dedication of the well to the public and identifies it as part of the water system. He further testified that the PG&E records on power supplied to the Murray well show that all bills were sent to Darrell Beasley prior to April 1, 1977; after this date the bills were issued to Mauney Enterprises which was identified as the lessee of the well (Exhibit 2). The witness noted that the existence of the lease apparently first became known during the month prior to the issuance of Decision No. 87364; he advised there has been no indication that the ownership of the Murray well has been acquired by the utility.

On cross-examination the witness testified that the installation order concerns four meters and the staff has been informed that two are already in place. He also testified that one customer has told the staff that water bills are now being received. He admitted that Exhibit 2 shows the Murray well used 110 kilowatt-hours in June

and more than 1,000 kilowatt-hours in July and August and about 3,000 kilowatt-hours in September 1977. The witness stated that he was informed that the well was again connected to the water system. Although the staff is still receiving complaints on water outages, the witness stated that it may not be necessary to change the reservoir piping as required by Ordering Paragraph 1.a if the Murray well is connected to the water system. No change in piping would be necessary if the well could provide a sufficient volume of water to make up the difference.

A water utility customer testified that his meter and his next door neighbor's have been recently installed and that all parties are satisfied. One of the complainants in the original case testified that her husband has dug the necessary ditches and purchased the pipe required for the meter installation but it has not been done. She admitted that a man came to install the meter, and she told him that her husband preferred to do the work with Mr. Beasley. She stated that she has received a billing for six months from January 1 to the end of June 1977 as required by the Commission order, received a July bill about the 15th of July, no August billing, and a bill for both August and September during the first few days of September. She advised the system ran out of water twice for half-hour periods a few days before this hearing, but has no other complaints. The last witness was a customer served from one of the reservoirs whose piping was to be changed under Ordering Paragraph 1.a of Decision No. 87364. He testified that he will have poor service with frequent outages if the planned changes are made in the piping. He presented a letter to the Commission which expressed strong objection to any change in the reservoir piping and was signed by representatives of

all seven families who receive water by direct line from the smaller reservoirs. He further testified that he has worked on the system for many years and is familiar with its operation. If the pipes are changed according to the recommendation of the Commission staff, the seven families at the top of the hill will have no pressure and very little water due to air locks in the pipes. The town will receive all of the water which will be flowing out of pipes in the bottom of each reservoir. He emphasized that he and his neighbors plan to go to court for an injunction if any effort is made to change the pipes or to lessen their water pressure or water supply. He testified that respondents have been notified of this possible action and warned about the feelings of these concerned customers. He testified he is certain that connecting the well to the system will eliminate the need to change the reservoir piping.

Respondent Darrell Beasley testified that the system was purchased in July of 1971 and now serves approximately 62 customers; the income is \$300 and expenses about \$750 a month. He has never withheld any of the income available as either salary or return on investments, all of it has been spent on the utility; he has not changed the piping from the reservoirs due to continuous opposition from the customers involved; also, because the change in piping recommended will eliminate water service on fourteen connections most of the time; he has been installing meters, one of which was a type costing \$350 per unit excluding labor, as rapidly as possible, and is ready to install the Butrica meter whenever the complainants are ready; he has found that meters are touchy because installation has resulted in sudden changes in pressure and broken water lines; it is also difficult to meter two of the flat rate customers the Commission

recommended metering since a private water supply is connected to one of the lines; he claimed the transmission lines were surveyed with a staff representative several months prior to the hearing and that up-to-date rules and regulations were mailed to the Commission during the last week in August 1977.

He testified that the Murray well was leased by the owner (Mrs. Ellen B. Murray) to the Gary Mauneys and Mauney Enterprises of Phillippsville for the year 1977 at an annual rental of \$250; the well was reconnected to the water system in June 1977 and is providing service at a monthly rental of \$100 which he pays and a monthly pumping charge which is paid by collecting a small fee from each customer, his share last month was \$9. Outages have occurred since the automatic pump which is connected to a float in the tank was turned off due to the inability of the utility to pay its electric bills. Beasley testified he has not been able to pay the principal on the note which was executed to purchase the system; only the monthly interest is paid and an additional \$1,000 has been borrowed since the purchase to keep the system operating; the system will never produce sufficient revenue to make all of the improvements suggested by the Commission staff. A copy of the lease was filed as an exhibit. It transfers the land on which the well is located and all of the water under the land during the period from January 1 to December 31, 1977. Beasley admitted that the land and well were deeded to him by Mrs. Murray (his mother) in 1972 (Exhibit 16 in original Case No. 10129) that the deed was recorded and that he has never deeded the property back to Mrs. Murray.

Mrs. Murray made a brief statement that she originally allowed her son to use the well when another well was removed from the system years ago. She intended for him to use it temporarily and reserved her right to revoke her permission. She intends to sell the land where the well is located and cannot do so if the well is a permanent part of the water system.

Discussion

Respondents have substantially complied with Ordering Paragraphs 1.b, 1.d, and 1.e; there has been a partial compliance on Ordering Paragraph 1.c, and no compliance with Ordering Paragraph 1.a. Respondents' reasons for failure to comply are entitled to consideration. The record indicates that 7 to 14 customers will have a less efficient service if the requirements of Ordering Paragraph 1.a are enforced; also that 1.a may be disregarded if the Murray well is connected to the system and provides a normal flow. This theory seems sound as complaints have tapered off since the well was recently added to the system.

The Murray well is now a part of the water system. It cannot be transferred, leased, sold, or attached without first obtaining authority from the Public Utilities Commission (Public Utilities Code Section 851). The lease agreement, if ever effective, expired on December 31, 1977, and the well is in service.

Ordering Paragraph 4 has been substantially complied with as the well is connected to the system and respondent Darrell Beasley is still the legal owner. The record reveals there are other wells on or near the system. Respondents should apply for an increase in water rates and seek additional sources of water so the Murray well may no longer be needed.

Findings

1. Respondents were served with a copy of Decision No. 87364.

Ordering Paragraph 1 states:

- "1. Darrell J. and Ruth Beasley, doing business as Phillippsville Water Company, shall within thirty days after the effective date of this order:
 - "a. Rearrange the piping in each of the small reservoirs so water will flow unrestricted into the town system rather than to the favored customers who now receive it.
 - "b. Complete the metering of customers' services and notify the Commission in writing, when all features have been installed.
 - "c. Survey all transmission mains to locate high points. Install air release valves thereon, and notify the Commission within ten days that the project has been completed.
 - "d. Bill for past-due accounts or credit for over-payments as appropriate, but issue no bills for service rendered prior to six months from the date of the request for payment, and notify the Commission within 10 days from the date the bills or credits are mailed.
 - "e. File up-to-date rules and regulations with the Commission."

The decision further ordered that a well which was identified as part of the water system and dedicated to public use be returned to the water system and connected to it.

2. An affidavit and an application for an order to show cause were filed by a staff engineer that charged respondents failed to comply with any of the ordering paragraphs referred to above and also failed to notify the Commission that any effort toward compliance had been made.

3. An order to show cause, re contempt of the Public Utilities Commission was issued on August 23, 1977 and a public hearing was held on September 7, 1977 in Garberville, California.

4. Respondents did not rearrange the piping in each of the small reservoirs as required by Ordering Paragraph 1.a of Decision No. 87364 due to strong opposition from customers whose water service would be affected thereby and a conviction that an adequate supply of water would eliminate the need.

5. Respondents have completed the metering of services and have substantially complied with Ordering Paragraph 1.b of Decision No. 87364.

6. Respondents have partially complied with Ordering Paragraph 1.c by surveying the transmission lines as required. No air valves were installed due to lack of funds and respondents' conviction that an adequate water supply would eliminate the need for air valves.

7. Respondents have substantially complied with Ordering Paragraph 1.d, by sending bills and credits to customers and by revising their billing procedures.

8. Respondents have substantially complied with Ordering Paragraph 1.e, by filing a copy of the Phillipsville Water Company rules and regulations with the Commission after conclusion of the September 1977 hearing.

9. There has been substantial compliance with Ordering Paragraph 4 of Decision No. 87364 which requires respondents to transfer and connect the Murray well to their public utility water

system forthwith, and then inform the Commission. Respondent Darrell J. Beasley is the legal owner of the well and the property surrounding it and is the co-owner of the Phillipsville Water Company; the well was connected to the water system prior to the September 1977 hearing.

10. The property on which the Murray well is located is described as:

"All that real property described in that Deed in which MARGARET E. COMBS is named as grantor, and ELLEN B. FLEMING is named as grantee, which deed was recorded on 2 August 1948, in book 58, at page 125, of Official Records, Humboldt County Recorder."

Conclusions of Law

1. Respondents have complied with Ordering Paragraphs 1.b, 1.d, and 1.e of Decision No. 87364.
2. Respondents have partially complied with Ordering Paragraph 1.c and have failed to comply with Ordering Paragraph 1.a of Decision No. 87364.
3. Respondents have substantially complied with Ordering Paragraph 4 of Decision No. 87364.

O R D E R

IT IS ORDERED that:

1. Darrell J. and Ruth E. Beasley have substantially complied with the requirements of Decision No. 87364 and are not in contempt of this Commission.
2. The Murray well will remain connected to the water system and will be continued in service without additional charge to the customers. No sale, lease, or other encumbrance will be placed on this well, nor on the real estate necessary for access and servicing, without prior Commission approval.

3. The Executive Director is directed to file a certified copy of this decision and order with the Recorder of Humboldt County.

The Executive Director of the Commission is directed to cause service of this order to be made upon each of the respondents.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 13th day of JUNE, 1978.

Robert Bayman
President
William G. Jones, Jr.
Vernon L. Strigun
Richard J. Howell
Clair D. Deibel
Commissioners

APPENDIX 5

Letter to SED Regarding Disclosure

U B E R

RASIER-CA LLC
1455 MARKET STREET
SAN FRANCISCO, CA 94103

KRISHNA K. JUVVADI
SENIOR COUNSEL
KRISHNA@UBER.COM

December 4, 2014
VIA EMAIL

Denise Tyrrell
Interim Director
Safety and Enforcement Division
California Public Utilities Commission
Safety and Enforcement Division
505 Van Ness Avenue
San Francisco, CA 94102-3298
tyr@cpuc.ca.gov

Re: Unauthorized Release of Confidential and Proprietary Information by the Safety and Enforcement Division

Dear Director Tyrrell:

We write to advise you that Rasier-CA, LLC (“Rasier”) and Uber Technologies, Inc. (“Uber”) considers the Safety and Enforcement Division’s (“SED”) public disclosure of certain information during the *en banc* hearing conducted on November 4, 2014 to be a violation of Public Utilities Code sections 583 and 5412.5, General Order 66-C, and Decision 13-09-045. These provisions each specifically require that SED maintain the confidentiality of proprietary information that a Transportation Network Company (“TNC”) is obligated to submit to SED. The seriousness with which the Legislature regards the obligation of Commission employees to maintain the confidentiality of such materials is evidenced by Public Utilities Code section 5412.5, which authorizes criminal sanctions for unauthorized disclosures of confidential information.

In accordance with Decision 13-09-045, Rasier has submitted substantial amounts of confidential information to SED in reliance on SED’s obligation to maintain the confidentiality of the material. SED did not request authority to release confidential information Rasier submitted to SED and Rasier did not authorize SED to publicly release any of its confidential information.

During the *en banc* hearing, SED disclosed, based on information Rasier had provided on a confidential basis, that Rasier and Lyft comprise 80% of the TNC market in California. This disclosure of this market share statistic enables Lyft to unfairly and prejudicially derive confidential and proprietary information regarding Rasier.

At the *en banc* hearing SED additionally disclosed aggregate information regarding the mean and median number of hours per month for an “average” TNC driver in California. SED further revealed the specific number of TNC drivers that work a certain average number of hours per month. Lyft has knowledge of the statistics for its own drivers and thus SED’s disclosures will readily enable Lyft to calculate the exact numbers for Rasier – information which Rasier has not publicly disclosed, which it considers highly confidential and commercially sensitive and which it does not want disclosed to its competitor Lyft. Lyft will also be able to use the combination of these aggregate statistics to back engineer the percentage of the TNC market that Rasier serves.

We appreciate that SED may have considered that by “aggregating” the confidential information of the TNC companies that it was appropriately discharging its responsibilities to maintain the confidentiality of Rasier’s proprietary information. However, as explained above, the public disclosure of TNC companies’ aggregate

information along with the fact that Rasier and Lyft comprise 80% of the TNC market in California enables each company to derive the other's information.

In fact, California law recognizes that aggregating information may not be sufficient to ensure the confidentiality of proprietary information. Section 398.5(b) of California Public Utilities Code specifically provides that information that "retail suppliers" of electricity are required to report to the California Energy Commission regarding their "specific" supply sources shall not be released by the Energy Commission in "an aggregated form [unless such disclosure in an aggregated form will ensure that the trade secrets cannot] be discerned." See *also* Cal. Ins. Code § 1857.9(i) (allowing Insurance Commissioner to publish confidential information provided by insurers in the aggregate if such "manner [of disclosure] does not disclose confidential information about identified insurers or insureds").

SED's disclosure of such confidential and proprietary information underscores Rasier's and Uber's legitimate and ongoing concerns regarding the manner in which SED may utilize the confidential and proprietary information that Rasier has provided and will continue to provide SED. We ask SED to identify the corrective actions it intends to implement to absolutely ensure that such a breach of SED's obligations to maintain the confidentiality of Rasier's and Uber's trade secrets and other sensitive, proprietary and commercial information is not repeated.

Sincerely,

Krishna Juvvadi

Krishna K. Juvvadi
Senior Counsel
Uber Technologies, Inc.