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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

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

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S
RULING AMENDING THE SCOPING MEMO AND RULING FOR
PHASE II OF PROCEEDING**

Summary

This Assigned Commissioner and Administrative Law Judge's Ruling (Amended Ruling) amends the previously issued Scoping Memo and Ruling for Phase II of this proceeding, and identifies issues for resolution in Phase II of this proceeding.

1. Background

On December 20, 2012, the Commission opened Rulemaking (R.) 12-12-011 to address new online-enabled forms of transportation. A Scoping Ruling was issued on April 2, 2013, which set the scope of the proceeding.

On September 19, 2013, the Commission adopted Decision (D.) 13-09-045 which created a new category of charter party carrier (TCP) of passengers, called Transportation Network Companies (TNCs) that utilize an "online-enabled app or platform to connect passengers with drivers using their personal vehicles." D.13-09-045 set forth the various requirements that TNCs must comply with in order to operate in California.

D.13-09-045, at Ordering Paragraph (OP) 9, also provided that there would be a Phase II in this proceeding:

This decision orders a second phase to this proceeding to review the Commission's existing regulations over limousines and other charter party carriers in order to ensure that these rules have kept pace with the needs of today's transportation market, and that the public safety rules are up to date. In addition, the second phase will consider the potential impact of any legislative changes that could affect our ability to regulate the Transportation Network Company industry.

In Phase II of this proceeding, the Commission intended to consider whether TCP regulations, rules, and general orders should be modified so that the Commission achieves, where appropriate, consistency between the operational requirements for TNCs and TCPs.

On November 26, 2014, the then-assigned Commissioner and assigned Administrative Law Judge (ALJ) issued a Scoping Memo and Ruling (Ruling) for Phase II. Specifically, the Ruling directed the Commission's Safety and Enforcement Division (SED) to file and serve a report regarding its recommendations for revising any existing TCP regulations, rules, and General Orders, consistent with Section 2.1 of the Ruling.

Since the Ruling was issued, this proceeding has been reassigned to Commissioner Liane Randolph. On February 3, 2015, Commissioner Randolph issued an Assigned Commissioner's Ruling directing SED to suspend the preparation of the staff report regarding its recommendations for Phase II until issuance of an Amended Ruling.

2. Scope of Phase II of the Proceeding

This Amended Ruling sets the scope of Phase II of this proceeding, which will examine the existing TCP and TNC regulations, rules, and general orders to

determine what changes should be made. Specifically, we will focus on policy outcomes that ensure public safety and consumer protection while also encouraging innovation. To the extent practicable, this could include conforming some TNC rules with corresponding TCP rules. We have identified the issues below as being in the scope for Phase II of this proceeding and request comments from parties and stakeholders on them.

2.1. Public Safety and Consumer Protection

- A. Should the Commission require all TCPs, including TNCs, to inspect vehicles on a biennial, mileage or other basis, and to maintain and make available a record of each inspection?
- B. Who should be allowed to conduct the vehicle inspections?
- C. Should the Commission apply the 19-point vehicle inspection checklist in D.13-09-045 to all TCP vehicles except those TCP vehicles already subject to a statutory inspection program?
- D. What driver-specific and/or vehicle-specific information, if any, should the Commission require TNCs to provide, and how does collection of such data by the Commission enhance consumer protection and public safety beyond the TNCs' own quality control, such as driver rating systems?
- E. Should the Commission require TNCs to obtain and/or provide information on driver suspensions/deactivations and subsequent reactivations? What frequency and what level of detail are reasonable?
- F. How should driver training programs be designed to adequately protect consumers and enhance public safety?

- G. Should the Commission require that all TNCs transporting unaccompanied minors comply with the requirements set forth in D. 97-07-063?
- H. In light of California's new statutory insurance requirements for TNCs, should TNCs be required to file certificates of insurance electronically that may only be canceled with a 30-day notice from the insurance company, as currently required of TCPs, as set out in GO-115 and Resolution TL-19105?
- I. Should the Commission reconsider the \$20,000 maximum fine for informal staff citations for violations by all TCPs, including TNCs?¹

2.2. Fostering Innovation

- A. Should any improvements be considered to the TCP and TNC application processes?
- B. Are the Commission's present trade dress rules adequate to ensure public safety and consumer protection, and to encourage innovation?

2.3. Status of Uber Technologies, Inc.

On November 13, 2012, the Commission's Consumer Protection and Safety Division (now known as Safety Enforcement Division (SED)) issued a citation to Uber Technologies, Inc. (Uber) for operating as a TCP without an operating authority (Pub. Util. Code §§ 5371 and 5413.5); and for advertising as a TCP without including the number of a permit or certification issued by the Commission (Pub. Util. Code §§ 5386 and 5414.5). Uber was also fined \$20,000.

¹ Pub. Util. Code §5378(b) states, in part: "The commission may levy a civil penalty of up to seven thousand five hundred dollars (\$7,500) upon the holder of an operating permit or certificate issued pursuant to this chapter, for any of the grounds specified in subdivision (a), as an alternative to canceling, revoking, or suspending the permit or certificate." Resolution CE 2-92 (attached) delegates to staff the authority to fine up to a \$20,000 maximum.

On January 2, 2013, Uber filed an appeal of citation F-5195 (Case PSG-3018). While the appeal was pending, Uber and SED entered into a settlement on January 24, 2013 and January 30, 2013, whereby pending the issuance of a final decision in R.12-12-011, Uber agreed to do the following:

- Comply with all state and local laws regarding maintenance of an active corporate or LLC status, have a current Statement of Information on file with the Secretary of State, have an agent of service of process with a physical business or residential address, and file all applicable fictitious business names;
- Require any TCP holder that enters into a contract with Uber to provide transportation service to users who request a ride via use of the Uber smartphone application (Uber App) not to transport passenger onto airport property unless the provider possesses the requisite license;
- Contact the California Department of Food and Agriculture's Division of Measurement Standards regarding its development of a certification program of GPS-enabled iPhone and Android mobile devices for use in the calculation of rates for passenger transportation;
- Allow the Commission's authorized representatives access to Uber's offices for inspection of Uber's records;
- Provide SED's Consumer Intake Unit with a contact person to respond to any complaint filed against Uber or a TCP holder;
- Require any TCP holder that enters into a contract with Uber to comply with the levels of insurance required by GO 115-F; and
- Maintain all trip records for a period of not less than three years or until any OIR and subsequent legislative action is adopted.

SED agreed to do the following:

- Suspend the Cease and Desist letter issued to Uber; and
- Suspend the Citation against Uber.

Decisions D.13-09-045 and D.14-11-043 stated that Uber's status as a possible TCP would be taken up as part of the scope of Phase II of this proceeding.² To assist the Commission in making that determination, this Amended Ruling confirms that Uber's potential status as a TCP is an issue within the scope of Phase II of this proceeding, and will be investigated via a separate Assigned Commissioner's Ruling and/or ruling from the Assigned ALJ.

3. Schedule for Comments

This Ruling is served on the service list for R.12-12-011.

Comments are requested on the issues identified under the headings Public Safety and Consumer Protection (2.1.) and Fostering Innovation (2.2.). Opening comments shall be filed and served by May 22, 2015, and reply comments shall be filed and served by June 8, 2015.

4. Assignment of Proceeding

Commissioner Liane M. Randolph is the assigned Commissioner and Robert M. Mason III is the assigned ALJ and Presiding Officer.

IT IS RULED that:

1. The scope of Rulemaking 12-12-011, Phase II, is amended to address the issues identified above under the headings Public Safety and Consumer Protection (2.1.), and Fostering Innovation (2.2). Opening comments shall be filed and served by May 22, 2015, and reply comments shall be filed and served by June 8, 2015.

2. The scope of Rulemaking 12-12-011, Phase II, is amended to address the issue of whether Uber is a TCP.

² D.13-09-045 at 17-18. D.14-11-043 at 28, OP 7.

3. Liane M. Randolph is the assigned Commissioner and Administrative Law Judge Robert M. Mason III is designated as the Presiding Officer.

4. It is the intent of the assigned Commissioner to resolve this proceeding within 18 months from the issuance of this Ruling. The assigned Commissioner reserves the right to adjust, as needed, the schedule for the resolution of this proceeding.

Dated April 28, 2015, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner

/s/ ROBERT M. MASON III

Robert M. Mason III
Administrative Law Judge