



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**FILED**  
6-28-16  
04:59 PM

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

Rulemaking 12-12-011

**CHRISTOPHER B. DOLAN AND THE DOLAN LAW FIRM OFFER THE  
FOLLOWING COMMENTS IN RESPONSE TO ASSIGNED COMMISSIONER'S  
RULING INVITING PARTY COMMENTS ON THE CONCEPTS OF PERSONAL  
VEHICLES**

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June 27, 2016

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**INITIAL OBSERVATIONS AND CONCERNS**

The entire original premise behind the creation of this new class of transportation providers, TNC's, was that the drivers were using their *own personal vehicles*. The argument for this new class of transportation providers was that they were not taxis, which are rented or leased on a daily basis by a company which provided vehicles for transportation services, they were individuals utilizing their own, underutilized, vehicles to occasionally engage in the provision of transportation services. To now expand this to a model wherein individuals can rent or lease vehicles for the specific purpose of providing transportation services is antithetical to stated purpose of the TNC model. Once an individual can rent or lease a vehicle for the specific purpose of providing transportation services they are nothing more than unregulated taxi drivers. This is a very slippery and dangerous slope. Operating a transportation entity in this model, which has no rate regulation, will further destabilize the supply of point to point transportation services. Already we see regulated enterprises, specifically taxis, going out of business and/or declaring bankruptcy specifically because of the introduction of the TNC model. To now expand the TNC model to vehicles which are leased and/or rented for the specific purpose of providing transportation services, rather than limiting the model to personal vehicles occasionally used for

transportation services, undermines, entirely, the regulatory structure which has been developed over the past century to promote safety and security. The TNC model provided a compromise reducing the amount and type of regulation which a private individual would face while using their own vehicle. If this new approach is used the only difference between a leased or rented TNC vehicle and a taxi is whether it may pick up a passenger by being hailed. Otherwise it is a driver using a vehicle which is specifically designated for the provision of transportation: it is a charter party carrier (TCP).

If the TNC model is extended to vehicles specifically leased or rented for the purpose of providing transportation the last barrier to entry into the transportation business, the ownership or lease of a vehicle by an individual as their primary transportation, will have evaporated. More entrants to the transportation infrastructure will surface. What then will be the model of providing point to point transportation for a fixed and reliable price? Taxis provide that service now. They are regulated so that the public can know that the price they pay to go back and forth to the doctor, or supermarket, will be the same today as tomorrow, or at 9:00 a.m. or 3:00 p.m. Allowing a private individual to rent/lease a vehicle to exclusively provide transportation services, yet act as a TNC vs. a Charter Party Carrier (TNC) would, in effect, eliminate the class of Charter Party Carriers as the primary distinction between a Charter Party Carrier (TCP) and a TNC was the use of a private vehicle, occasionally, to provide transportation services using an app. As fixed rate transportation providers are further driven out of business (Yellow Cab. In San Francisco is in bankruptcy citing competition from TNC's as a primary reason for insolvency) the public, due to the CPUC creating, and expanding, a new class of unregulated transportation providers, will be subject to the whims of surge pricing. Gone will be the days of an individual being able to plan their weekly/monthly budget as far as transportation services are concerned. The elderly and those on fixed incomes will be unable to know what their costs of transportation will be or whether rate regulated providers will even be available in sufficient supply to meet their needs, if at all.

Many public agencies provide vouchers for the elderly or disabled that are accepted by taxi companies and/or shuttle services. Public agencies need to budget for these programs and, to do so, there must be an adequate supply of rate regulated transportation services.

Before undertaking any further expansion of the TNC model, Dolan requests, and encourages, the CPUC to conduct a study on the impact that the TNC model has had on the inventory of rate regulated point-to-point transportation services and, specifically, taxis and shuttles relied upon by those with fixed incomes. The CPUC is familiar with the need to balance rate regulation so as to provide an incentive to providers to maintain a level of service. It should not overlook the impact that the creation of the TNC model is having on the supply of transportation services for all people, not just those who can afford arbitrary pricing models and surge pricing.

Should the CPUC be determined to proceed with the consideration of expanding the TNC model without first giving consideration to the impacts described above, Dolan provides the following comments to the specific questions presented.

**1. Are there any safety or other public-policy concerns that would arise if a TNC driver were allowed to lease or rent a vehicle to provide TNC services?**

YES

**If so: (a) describe these safety or other public-policy concerns with specificity and with reference to any applicable Commission decision, ruling, general order, state statute, state decisional law, federal decisional law, federal statute, or research that supports each of your concerns; and**

**(b) How can the Commission best address these safety or other public-policy concerns?**

**PRELIMINARY MATTER – DEFINITION OF TNC**

Currently the Commission defines a TNC as an organization whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles. (September 23, 2013, DECISION ADOPTING RULES AND REGULATIONS TO PROTECT PUBLIC SAFETY WHILE ALLOWING NEW ENTRANTS TO THE TRANSPORTATION INDUSTRY “Sept 2013 Decision” @ p. 2)

This definition should be expanded as follows . . . . using their personal vehicles or vehicles leased, rented, or borrowed for such purposes.

As the phrase “using their own personal vehicles” is throughout the September 2013 Decision, the Commission needs to clarify that to mean “using their personal vehicles or vehicles leased, rented, or borrowed for such purposes. (See e.g. Sept 2013 Decision, “Regulatory Requirements, (b) “TNCs shall clearly disclose, on their app and website, that TNCs facilitate rides between passengers and private drivers using their own personal vehicles.”

### **SAFETY PUBLIC POLICY CONCERNS**

In the September 2013 Decision, under the section concerning SAFETY REQUIREMENTS (September 2013 Decision at pp. 26-29), subparagraph (l), The Commission required that, “Prior to allowing each TNC driver to operate a vehicle, and annually thereafter, a TNC must *inspect the driver’s vehicle*, or have the vehicle inspected at a facility licensed by the California Bureau of Automotive Repair, and maintain complete documentation of such inspections. A TNC driver’s vehicle must, at a minimum, pass a 19 point inspection prior to allowing the driver to operate the vehicle under the TNC’s platform . . . .”

The Commission should clarify that the vehicle inspection requirement applies to any vehicle being used by a driver providing TNC services whether it is their own personal vehicle or one rented, leased or borrowed for such purposes. The TNC must be obligated to undertake the inspection of these vehicles, or assure that such inspection has been undertaken (as provided for in subsection (l) (“or have the vehicle inspected at a facility licensed by the California Bureau of Automotive Repair”). The TNC must be obligated to obtain and maintain records of such inspections whether they are done by the TNC, or the TNC arranges to have the inspection done by the lessor, renter, or lender.

Likewise, the Regulatory Requirements (September 2013 Decision @ 29-32), and especially Sections (e) (proof of insurance) and (h) (trade dress) must be extended to these vehicles.

Therefore leased vehicles must be properly insured, with proof of insurance provided to the TNC, and kept in the vehicle, and the vehicles must have the appropriate trade dress. The TNC has the obligation to insure that these requirements are met whether by the vehicle owner/driver or by the leasing company. If the leasing company is leasing these vehicles to be used specifically for the provision of TNC services then the requirements pertaining to drivers, based on their ownership of the TNC vehicles, must be extended to enterprises leasing vehicles for these purposes. In the circumstances surrounding the leasing/renting of taxi cabs the obligation is with the leasing/rental company to meet these obligations. This should, however, in no way relieve the TNC's from confirmation and documentation that the CPUC's requirements be met.

**2. Should there be a minimum time period in order for a leased or rented vehicle to be driven by a TNC driver to qualify as a “personal vehicle”?**

NO. The safety and public policy concerns are not altered or affected by the length of time a vehicle is used. If a vehicle is used for any length of time in providing TNC services the same safety standards need to be met and the same records reflecting that the safety standards have been met must be kept by the TNC. These leasing companies are working directly with the TNC's and their relationship is symbiotic such that between them they can develop systems to both ensure, and document, safety standards are being met. If so, what are the applicable statutes or decisional law that supports your response?

**3. Should the definition of a “personal vehicle” not be tied to a time period but instead be defined by authorized uses?**

For example, should one requirement of a “personal vehicle” be the explicit authorization of using the vehicle for TNC service in any rental or lease contract?

This is nonsensical. Should the definition of “personal vehicle” be the explicit authorization of using the vehicle for exclusively for a commercial purpose? No. Once a vehicle is being used solely for a commercial purpose it is a commercial vehicle and should be licensed and regulated

as such.

**4. Where alternative definitions are proposed in answer to questions 2 and 3, how will a proposed definition of personal vehicle ensure adherence to the Commission's existing safety rules regarding vehicle inspections and insurance?**

See response to No 1 above.

**5. Where a non-TNC company offers vehicles for TNC drivers to use, what specific documentation and processes should be required of that company and/or of the TNC so that the Commission can ensure that rules regarding vehicle inspections, trade dress, and insurance are met?**

See response to No 1 above.

**6. Should the Commission distinguish vehicle inspection and insurance rules depending on the source of the vehicle offered on a short-term basis to TNC drivers, such as rental fleets or fleets R.12-12-011 LR1/jt2 - 3 - offering peer-to-peer vehicle transactions as contrasted with individual peer-to-peer transactions?**

No. The need for public safety does not change by the term that a vehicle is used for TNC purposes. The TNC model already accounts for occasional use, indeed, that was the justification for the new class of transportation providers.

**7. What insurance products exist that cover, for a single vehicle, multiple drivers driving the vehicle for periods of less than 24 hours for personal use and for a TNC? Does the insurance attach to the vehicle or to the individual driver? Does the insurance product meet California's legal requirements?**

Commercial Insurance. That is what is required of Charter Party Carriers, Passenger Stage Coach Carriers, taxis and other enterprises engaged in transportation.

**8. How much time is needed for a TNC to update its inspection, mileage, or other records**

**on a vehicle being used by one or more drivers:**

**(a) for periods of less than 24 hours;**

**(b) on a weekly basis; or**

**(c) on a monthly basis?**

There should be no change to the existing requirements. Safety is not affected in proportion to the amount of time a vehicle is being used.

9. How many times a day is it feasible for a TNC to update its vehicle records where a car may be driven by several drivers in a 24-hour period?

The timing should be the same regardless of how many drivers, or how many times per day, a vehicle is being used. If it is not feasible to meet the current time periods now provided to meet minimal safety requirements set forth in previous decisions of this Rulemaking Procedure then such a use should not be permitted. If anything, as the number of drivers and frequency goes up, the record keeping and verification processes should increase, not decrease.

**10. What procedures are taken by a TNC to ensure that drivers have current vehicle information in the TNC's records?**

This is set forth in the September 2013 Decision. It should be enhanced to require that a driver take a photograph of the license plate of the vehicle they are logging on it to verify it is a vehicle which has met the safety requirements. Such a photo could be transmitted to the TNC. There have been instances where a TNC operator uses the smart phone in a vehicle other than that registered with the TNC. Currently there is no verification system in place to make sure the smartphone and TNC operator are in the vehicle which has been inspected by the TNC. Dolan is handling one case now where the TNC operator was driving a stolen vehicle and the passenger was subject to a felony stop by multiple armed police/

**11. What procedures are taken by a TNC when it finds that a driver has not notified the TNC that s/he is driving a vehicle other than the one originally registered by the driver?**

None.

**12. How should the Commission ensure that each TNC company and/or company offering**

**leased cars to TNC drivers maintains a proportion of vehicles that are accessible to disabled riders?**

The CPUC needs to assign a minimal number which each TNC needs to provide. That will allow the CPUC to establish a minimum number of such vehicles in the TNC inventory as a whole.

Dated: June 27, 2016

Respectfully Submitted;

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