

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



FILED
7-17-17
04:59 PM

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

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

**OPENING COMMENTS OF THE SAN FRANCISCO TAXI WORKERS ALLIANCE
(SFTWA) ON PHASE III. B. TRACK 3, TNC DATA**

July 17, 2017

Mark Gruberg
Executive Board Member
San Francisco Taxi Workers Alliance
2940 16th St. #314
San Francisco, CA 94103
Tel: 415-864-8294
Email: mark1106@att.net

The San Francisco Taxi Workers Alliance (SFTWA) submits these Opening Comments on Phase III. B. Track 3 of this Rulemaking, TNC Data: (a) Should the Commission establish a website portal for TNC data; and (b) Should the Commission share TNC trip data with interested California government entities?

I. Introduction

The answers to the questions posed in the subject heading of this Track are YES and YES. TNCs are public utilities under the California Constitution.¹ That places them in a special category of private companies, including telephone, gas and electric utilities, bus and rail lines, limousines and taxis, all subject to firm regulatory control as providers of essential public services.

TNC activity is taking place on an enormous scale and is having profound social, economic and environmental impacts, especially in large cities. Information relating to the scope and effects of this activity is essential to informed planning and decision-making. TNCs have this information literally at their fingertips. Individuals' privacy rights and legitimate proprietary concerns must be respected, but government entities at all levels and the general public have every right to know how and how well these private companies are performing their public function, and what consequences their activities may entail.

II. Responses to posed questions

1. What is the public and/or research value of a website, database, or other publicly accessible means to host data about transportation for hire that is under the Commission's jurisdiction?

¹ California Constitution, Article 12, Section 3: "Private corporations and persons that own, operate, control, or manage a line, plant, or system for the transportation of people or property . . . are public utilities subject to control by the Legislature." The Commission has determined that TNCs are transportation providers and thus subject to its jurisdiction. See D.13-09-045, 9/23/13, at 12-19.

Public policy is best formulated in the light of day. Public participation is its lifeblood, and public information its main tool. Planning and decision-making are compromised if the data upon which they are based are kept secret, known only to government but hidden from the public to whom the decision-makers are responsible.

TNCs have a number of reporting requirements under current Commission Rules. These include annual reports on compliance with requests for accessible vehicles;² the number of rides requested within each zip code, including the number accepted and not accepted;³ the number of driver violations and suspensions, including complaints and investigations regarding the use of intoxicating substances;⁴ reports of accidents and incidents involving TNC drivers;⁵ and the average and mean number of hours and miles each driver has worked.⁶ This and other information in TNC hands is useful both for planning purposes and as a report card on TNC performance.⁷ It must not be cloaked in secrecy. The public as well as the regulator should have access to it, so long as privacy rights are respected.

2. What has been the effectiveness of third-party hosted websites that provide data about Commission programs?

SFTWA lacks sufficient information to respond to this question at this time.

3. What concerns, if any, are there about the ability of a Commission-sponsored website to protect customer privacy and market sensitive data?

² D.13-09-045, 9/23/13, Regulatory Requirement g., at 30-31.

³ *Id.*, Regulatory Requirement j., at 31.

⁴ *Id.*, Regulatory requirement k., at 32.

⁵ *Id.*

⁶ *Id.*, Regulatory requirement l., at 32-33.

⁷ See response to Question 5 below.

The Commission can restrict website content as it sees fit. Customer privacy deserves absolute protection. That can be accomplished by stripping personal information and abstracting the data where necessary.

“Market sensitive data” presents another question. TNCs are providing a public service, using public streets. The public is entitled to know where, when and how they are doing that. Among the reasons are public safety, consumer protections, environmental concerns, service to the disabled and minority communities, workers’ rights, etc.⁸ Any and all claims of proprietary interest must be closely scrutinized, and TNCs should have to convincingly demonstrate that disclosure of particular kinds of information constitutes an undue infringement on their private interests, outweighing the public interest in transparency.

4. What characteristics or design specifications are needed to ensure that a Commission-sponsored website would be flexible enough to adjust to future legislative action including, but not limited to: new background check standards that are germane to the Commission’s jurisdiction over TNCs?

The question is highly speculative. SFTWA lacks sufficient information to respond at this time.

5. Should the Commission share TNC trip data with interested California governmental entities?

Yes. Among other reasons, data that might shed light on the environmental impact of TNC operations is extremely valuable for city planning purposes. San Francisco has been beset and besieged by TNC vehicles. Traffic is often at a standstill, and a glimpse will reveal a striking number of halted cars with Uber or Lyft insignia.⁹

⁸ *Id.*

⁹ The actual number is even larger than meets the eye. Not all TNC drivers use the trade dress the Commission requires.

Last year, the San Francisco Tax Collector estimated the number of TNC vehicles providing service in the city at 45,000.¹⁰ A recent study sponsored by the San Francisco County Transportation Authority (SFCTA), based on publicly available information from the Uber and Lyft apps, determined that TNC vehicles made 170,000 intra-city trips in San Francisco on a typical weekday (12 times the number of taxi trips), traveling 570,000 vehicle miles.¹¹ TNC vehicles accounted for 25% of all vehicle trips in the South of Market area at peak times.¹² (The data collected underreports the extent of TNC activity in San Francisco because it excludes trips that began or ended outside the city.)¹³

On numerous occasions in these proceedings, SFTWA has presented evidence of deteriorating environmental conditions in San Francisco and the Bay Area since the arrival of TNCs, including increased congestion, slower traffic speeds, and increased levels of particle pollution.¹⁴ The Commission has refused to address this issue. San Francisco needs information on TNC operations in order to fulfill its responsibilities regarding control of streets, traffic and parking, as well as air quality. TNCs are the only ready source of this information. The SFCTA study, which collected some of this data, required considerable time, effort and resources to conduct. TNCs could provide this and much more information of relevance in the blink of an eye, at negligible cost.

¹⁰ <http://www.ktvu.com/news/260851461-story>.

¹¹ “TNCs Today, A Profile of San Francisco Transportation Network Company Activity”, San Francisco County Transportation Agency, June 2017, at 1; <http://www.sfcta.org/tncstoday>. The study was conducted by researchers from Northeastern University.

¹² *Id.*, at 2.

¹³ *Id.*, at 1.

¹⁴ See, e.g., Reply Comments of SFTWA on Scoping Memo, 6/8/15 at 1-2; Opening Comments of SFTWA on PUC Code Section 5401, 8/21/15 at 7-10; Opening Comments of SFTWA on Personal Vehicles, 7/11/16 at 9-10; Reply Comments of SFTWA on Personal Vehicles, 7/25/16 at 6-7; SFTWA Reply Comments on Personal Vehicles, 12/12/16, at 8.

TNCs possess much other information that may be relevant to government purposes. If certain neighborhoods or segments of the population are being underserved, that is of profound public and municipal interest. The bad driving habits of TNC drivers also raise significant concerns. Illegal and unsafe traffic maneuvers are commonplace. It's a fair surmise that TNC drivers – as opposed to taxi drivers – have an abnormally high rate of accidents.¹⁵ If that is the fact, the city, state and public should know about it.

Long-distance commuting by TNC drivers is also an issue of concern, especially when combined with long workdays or nights promoted by monetary incentives for hours worked or trips completed.¹⁶ Some TNC drivers, with a wink and nod from their companies, reportedly work 12 to 16 hours, even after a long commute.¹⁷ Uber reportedly manipulates its drivers through psychological means to work longer and harder than they might otherwise be inclined to, encouraging violations of law.¹⁸ The Vehicle Code prohibits a person who transports passengers for compensation from driving more than 10 consecutive hours, or more than 10 hours over a period of 15 hours.¹⁹ Additionally, Some TNC drivers who come to San Francisco from afar are

¹⁵ A study done in New York concluded that taxi and livery drivers have one-third fewer accidents than other drivers. “Taxicab and Livery Crashes in New York City 2004”, Schaller Consulting, April 27, 2006, at 1; <http://www.schallerconsult.com/taxi/crash06.pdf>.

¹⁶ <http://www.sfchronicle.com/business/article/Long-distance-Uber-Lyft-drivers-crazy-10942919.php>.

¹⁷ *Id.* Uber sets no cap on driver hours. Lyft has a 14-hour cap, after which the driver must rest for at least six hours. <http://www.cbsnews.com/news/uber-drivers-driving-tired-under-new-incentives/>.

¹⁸ “How Uber Uses Psychological Tricks to Push Its Drivers’ Buttons”, New York Times, 4/2/17. https://www.nytimes.com/interactive/2017/04/02/technology/uber-drivers-psychological-tricks.html?_r=0.

¹⁹ California Vehicle Code Section 21702(a): “No person shall drive upon any highway any vehicle designed or used for transporting persons for compensation for more than 10 consecutive hours nor for more than 10 hours spread over a total of 15 consecutive hours. Thereafter, such person shall not drive any such vehicle until eight consecutive hours have elapsed. Regardless of aggregate driving time, no driver shall drive for more than 10 hours in any 24-hour period unless eight consecutive hours off duty have elapsed.”

known to sleep in their cars.²⁰ Homelessness, even of a temporary nature, is not conducive to safe public transportation. Public disclosure of driver hours and earnings, properly anonymized, would help determine if exploitive practices that would not be tolerated in an employee-employer relationship are part-and-parcel of TNC work.

Factors such as these have led San Francisco City Attorney Dennis Herrera to subpoena TNC records related to safety and service (including service to the disabled).²¹ The City Attorney has also asked the Commission for TNC compliance reports and additional data related to safety, service, congestion and violations of law.²² This information should be provided to San Francisco and any other government entity that seeks it. It should also be made available through a website so the public can be informed and meaningfully participate in decision making concerning these issues at the Commission, the Legislature, and city or county government. Even if actions by the Legislature or the Commission may preempt and preclude cities and counties from directly regulating certain TNC operations, the information thus furnished will help cities identify problems and formulate solutions on a broader scale. Beyond that, the Commission itself should address issues such as environmental impacts of TNC operations; driver fatigue and unsafe practices that TNC incentives may encourage; manipulation and exploitation of drivers; and, where they exist, service deficiencies to the disabled and minority communities.

Furthermore, data on accidents and insurance claims, stripped of identifying information, would be extremely useful to state agencies and the Legislature, as well as

²⁰ <http://www.sfchronicle.com/business/article/Long-distance-Uber-Lyft-drivers-crazy-10942919.php>.

²¹ <https://www.sfcityattorney.org/2017/06/05/herrera-orders-uber-lyft-provide-data-driver-practices-accessibility-service/>.

²² *Id.*

to local governments. For example, San Francisco's Vision Zero is a major initiative aimed at eliminating traffic deaths by 2024.²³ Knowing the extent to which TNCs are responsible for accidents, injuries and deaths could point to corrective measures, either at the state or local level. Likewise, information on TNC insurance claims could aid in state regulation, enforcement and legislative action. All government entities, regardless of whether they have a direct hand in TNC legislation or regulation, should have access to this data.

6. What factors should the Commission take into account in determining if TNC trip data should be shared with interested California governmental entities?

Government entities should have access to all trip data and other relevant information produced by TNCs for planning and decision-making purposes, subject to confidentiality protections where warranted. (See responses to Questions 3 and 5 above).

7. What steps should the Commission consider implementing to protect the market sensitivity of trip data?

Trip and other data as described above should be provided in full to government entities upon request, subject to necessary and appropriate confidentiality restrictions. For purposes of public disclosure, the data may be summarized or abstracted to protect confidentiality.

III. Conclusion

State and local government entities and the public have a vital interest in data related to TNC operations. While disclosure of personal information should be strictly prohibited, claims for protection based on proprietary interests must be weighed against

²³ <http://visionzerosf.org/>.

the concerns for safety, consumer and environmental protections, adequate service to the disabled and to minority communities, and workers' rights.

July 17, 2017

Respectfully submitted,

/s/ Mark Gruberg
Member of the Executive Board
San Francisco Taxi Workers Alliance
2940 16th St. #314
San Francisco, CA 94103
Tel: 415-864-8294
Email: mark1106@att.net